**Reflecting on Irish Penal Policy 2013 – 2023**

***All-Party Oireachtas Group on Penal Reform***

***October 18 2023***

Deputy Bacik, Deputy Farrell, Senators and Deputies, colleagues, a chairde go léir, my very warm thanks for the invitation to be here today. It is a pleasure to share some reflections on how penal policy in Ireland has been getting on in the ten years since the then Joint Committee on Justice, Defence and Equality’s Report on Penal Reform and Sentencing. Today’s meeting is taking place at a really important time. I think back to 2013, when the Joint Committee’s first report was published. That was a time of optimism in penal policy, which followed a prolonged period in our history when penal policy lacked strategic direction, where prison numbers seemed close to beyond control, and where prison conditions were really far from acceptable in many cases. The Joint Committee report signalled a change of direction, a change for the better, and a desire to grasp the perennial problems in our penal system.

I am going to focus on some core issues which I see as remaining outstanding from the series of policy proposals which emerged in that uplifting time ten years ago. I will also spend some time focusing on the need to ensure the ratification and implementation of OPCAT in Ireland. This issue was not at the forefront of discussions in 2013, but it was a key matter of concern in the Joint Committee’s report of 2018. The lack of progress we see in following the recommendations of the Joint Committee’s report is a major problem. It’s a problem for our compliance with domestic constitutional law and international human rights obligations, it’s a problem for how international monitoring bodies see us (the European Committee for the Prevention of Torture is coming back to us next year), and it’s a costly problem – both economically and in terms of human suffering.

I would like to look at some of recommendations the Joint Committee reports alongside the report of the Penal Policy Review Group which reported in 2014. This group was established by the then Minister for Justice, Alan Shatter, who deserves much credit for his work in the area of prisons. It brought together senior officials from the Department, from the agencies including the Prison Service and the Probation Service, and, I think very importantly, representatives from groups outside ‘officialdom’ – I think of the wonderful Maeve Lewis of One in Four. IPRT was also represented, and I served on the review group as then Chairperson of IPRT.

The thrust of both the Joint Committee reports and the Penal Policy Review Group reports is similar: reduce the numbers in prison (especially regarding people on short sentences); provide a legislative basis for various forms of release; improve prison conditions; and increase the use of open prisons. The 2018 report of the Justice Committee gave further prominence, as the Penal Policy Review Group did, to addressing the interconnections between mental health policy and penal policy.

Looking more closely at the Penal Policy Review Group, we recall that its report represented a critical and novel moment in the history of Irish penal policy, resulting in 43 recommendations on how to create much-needed reform.. A key feature of the group was its ability to achieve consensus. A conclusion of the Penal Policy Review Group is worth restating:

*“The Review Group considers that Irish penal policy can be renewed to better serve the Irish people. … The Review Group believes that Ireland, a country with a tradition of compassion, community, commitment to human rights, and scholarship can create a penal policy which is recognised internationally for its just and effective practices”.*

There are very similar sentiments to those expressed by the Joint Committee. This vision sought to ensure that those who are victims and survivors of crime are treated with the justice and care that they deserve. It also sought to ensure that our resources are used in the most effective way, that our policies are the best they can be, and that we do not use imprisonment unnecessarily.

Underlying all these important recommendations is a very important concern I want to focus on – that is how penal policy is made. Experience both at home in Ireland and abroad suggests that where countries take an approach to penal policymaking which relies on evidence, which seeks consensus amongst parties rather than conflict, and which tries to view penal policy a bit like public health policy – something which is about getting the best outcomes, rather than scoring points – you tend to see a reluctance to increase prison numbers and an emphasis on community-based sanctioning.

The Penal Policy Review Group recommended the establishment of a Consultative Council. This body, in our understanding, would look a bit like the Penal Policy Review Group itself – being made up of a mixture of people with insider expertise, like senior officials in the Irish Prison Service, senior people within the Department, and so on, but also external representatives, from civil society, and from academia, or from places which have other types of expertise to offer, with an international perspective also welcome. The idea is that certain, perhaps especially difficult issues, could go out to this group for advice and reflection on how to proceed. Government ultimately makes the final decision, but it is supported by a more deliberative process. In 2022, the Department of Justice published another important document, the Review of Policy Options for Prison and Penal Reform 2022-2024. What had been recommendation 42 in the Penal Policy Review Group is now Priority Area 5 of this 2022 document. It is heartening to see this renewed commitment, but we need to see the Consultative Council up and running. Relatedly, I welcome the establishment of a forum examining respect for the rights of victims of crime.

The second area I want to emphasise is the question of reducing prison numbers. The Committee in 2013 stated upfront that Ireland needs to reduce its prison numbers. The Penal Policy Review Group recommended that the principle that imprisonment be a measure of last resort be put into statute. The 2022 review undertakes to give policy consideration to establishing this principle in statute, which would include consideration of creating a presumption against the imposition of short custodial sentences for individuals who do not pose a risk of harm to the public (in priority action 1).

Increasing prison numbers are a manifestation of the non-implementation of aspects of the Penal Policy Review Group and the Joint Committee’s view, concerning alternatives to custody and penal policy planning. When I hear of doubling up and sleeping on the floor in Mountjoy, I think of the fact the Penal Policy Review Group and the Joint Committee made their recommendations in the context of just these problems – increasing numbers, overcrowding, and the effects on conditions. These problems are back, and they are no less urgent than they were 10 years ago. I might also say I look forward to the publication of the Eighth Report of the Implementation and Oversight Group’s report.

These has been considerable progress within the Department of Justice concerning the use of evidence, with much greater use of data evident. However, it cannot be said that we have seen progress or perhaps, it must be said, even commitment at a political level to assessing the impact of policy or legislative changes on prison numbers. The history of penal policy in Ireland teaches us, unfortunately, that times of great promise and reform can be followed by periods of drift and stagnation, and ultimately regression. We do not wish to fall out of line with European principles in this area, which emphasise the need to reduce the size of the prison population, and to promote a rehabilitative approach. We need to rededicate ourselves to the principles of the Joint Committee’s report.

I now wish to turn to a question that I would respectfully suggest the All-Party Group continues to keep the spotlight firmly on in the coming months (and I know it is very much on your agenda, with the Joint Committee’s report of March 2023). This is the implementation of OPCAT. It has been really striking to see how slow progress has been in this area. My research team (with Eva Aizpurua) carried out an examination of OPCAT implementation in the EU27+UK. Of that 28, we are now one of two countries (Belgium) still yet to ratify OPCAT. The publication of the General Scheme of the Inspection of Places of Detention Bill is hugely overdue, but still of course welcome. I endorse the recommendations made by the Joint Committee concerning the General Scheme and I welcome the Committee’s in-depth reflection on this important issue.

In the time remaining, I would like to share some additional reflections on that General Scheme. First, I would like to suggest that the functions of the Chief Inspector concerning prisons be revised to come more into line with the Council of Europe’s European Prison Rules and the United Nations’ Mandela Rules which also govern this matter. The notes on the relevant Head, Head 8, state that the purpose of inspection is the protection of the rights of prisoners, but the Head itself provides that an inspection shall have ‘due regard’ to the rights of prisoners, among other things. The purpose of inspection under the European Prison Rules and Mandela Rules is firmly to ensure the protection of rights and dignity and I would suggest ‘due regard’ is not a sufficiently strong phrase to align with these principles.

I also suggest that the power to speak to people in prison and prison staff be explicitly mentioned in the legislation. The scheme currently refers to ‘all such powers as are necessary or expedient’ for the performance of the functions of Chief Inspector, but the power to speak to people in confidence is not stated directly. Given the importance of this power, it should be there. In this respect, it is welcome that it will become unlawful not to comply with a request for a document for example, without ‘due cause’. I also wondered why a power to have access to all staff and prisoners, and indeed a power to have ‘private’ interviews were outlined for Visiting Committees, but not the Chief Inspector. I endorse the Joint Committee’s call for consideration to be given to how to include the voices of people in prisons in inspection, which was a key finding of our research on this topic.

It is concerning, as others have raised, that the Draft Scheme contains a prohibition on the Chief Inspector regarding questioning the merits of any policy of the Government or the merits of the objectives of such policy (Head 11). The European Committee for the Prevention of Torture comments regularly on policies which increase prison numbers, and often encourages states to adopt non-custodial approaches. It is often extremely difficult to extricate critique of, for example, prison conditions, from the drivers which have led to those problems. It seems unduly cautious to prevent a Chief Inspector from commenting on such matters, and this prohibition should be removed.

Head 12 contains detail on the areas which an inspection report should cover, including the effectiveness and efficiency of the general management of the prison. I sound a note of caution here. Inspections must focus on treatment and human rights compliance; inspections should not be about financial efficiency or managerial concerns unless they relate to the key purpose of inspections: protection of rights.

Head 21 contains a general protection from sanctions for those who provide information, whether true or false, to an NPM. This is a very welcome power. I suggest the term ‘sanction’ be expanded to include ‘reprisal’; the Head refers to a prohibition on ‘prejudice of any kind’ against a person who speaks to NPMs, but this could be more specific.

Finally, I will mention reports and recommendations issued by the Chief Inspector, and indeed other NPMs. Head 17 obliges the Minister to consider recommendations made by an NPM and respond to the NPM ‘as soon as may be’. This does not go as far at the Mandela Rules, which require (in rule 93.7) that reports of monitoring bodies and the responses to shall be made public.

I might also add that, compared with the provisions on inspecting prisons, I am surprised that, with all the many years of debate that are now behind us, the remainder of the General Scheme dealing with non-prison related inspection and monitoring seems, to put things a bit bluntly, undercooked. When we think of how well-developed monitoring mechanisms are in, for example, the area of nursing homes, it seems surprising that we do not yet have a clear sense of the interconnected nature of the work of the various bodies that will comprise our NPM and how underdeveloped the provisions are with respect to specific settings.

I would like to conclude by thanking you, the All-Party Group, for your continuing interest in penal reform and the important work you are doing. It sends an important signal to have cross-party and deliberative approaches to penal policy. I am very pleased to have had the opportunity to learn from your work and thank you sincerely for the opportunity to talk to you today.

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