



**IPRT Submission to the UN Committee against Torture  
on Ireland's one year follow-up to its second periodic report under CAT  
(61<sup>st</sup> Session)  
23 November 2018**

**About IPRT**

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our vision is one of respect for human rights in the penal system, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system and to reducing imprisonment. We are working towards progressive reform of the penal system based on evidence-led policies and on a commitment to combating social injustice.

IPRT publishes a wide range of policy positions and research documents; we campaign vigorously across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

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## Introduction

- 1.1. IPRT previously made a submission to the UN Committee against Torture in July 2017 in respect of Ireland's Second Periodic Report under the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment<sup>1</sup>. IPRT has now reviewed "*Information received from Ireland on follow-up to the concluding observations*" dated 11 August 2018<sup>2</sup>. This submission is written to update the Committee on the developments specifically in respect of the ratification of OPCAT.
- 1.2. Ireland signed the OPCAT in 2007. In July 2018, the Minister for Justice and Equality stated that legislation to establish a National Preventative Mechanism is expected before the end of 2018:

*"It is my intention that the draft scheme will be finalised in the autumn in order that I can bring it to Government before the end of the year."*<sup>3</sup>

Furthermore, the Minister stated:

*"It is my intention to bring a memo to Cabinet not this session but in the autumn and I hope to have a general scheme of a Bill published and debated before Christmas."*<sup>4</sup>

- 1.3. In the *Legislation Programme Autumn Session 2018*<sup>5</sup> Bills are classified under one of three headings: 'priority legislation for publication', 'expected to undergo Pre-Legislative Scrutiny' and 'all other legislation'. The *Inspection of Places of Detention Bill* is **not** listed as 'priority legislation' or 'expected to undergo Pre-Legislative Scrutiny'. It is listed under 'all other legislation', a position which has remained unchanged since July 2017. It is also of some concern that its purpose is described narrowly here as '*to provide for inspection of all places of detention in the Justice area - prisons, Garda stations, courts*', with no mention of places of detention outside the criminal justice sector.
- 1.4. The State has indicated that it has sought observations from relevant stakeholders including IPRT and that -  
*"the last of these submissions was received in April 2018 and the DJE is now in the process of considering them. Following this process which is expected to conclude within the next month, Department of Justice and Equality officials will be meeting with the newly appointed Inspector of Prisons to discuss the functions that the Inspector of Prison's Office may carry out in the future as*

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<sup>1</sup> [http://www.iprt.ie/files/IPRT\\_61st\\_Session\\_Report\\_lo-res.pdf](http://www.iprt.ie/files/IPRT_61st_Session_Report_lo-res.pdf)

<sup>2</sup> [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fCO%2f2%2fAdd.1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fCO%2f2%2fAdd.1&Lang=en)

<sup>3</sup> Dáil Éireann Debate, Houses of the Oireachtas, *UN Conventions*, 5<sup>th</sup> July 2018

<https://www.oireachtas.ie/en/debates/question/2018-07-05/1/>

<sup>4</sup> Ibid.

<sup>5</sup> *Legislation Programme Autumn Session 2018* [https://merrionstreet.ie/MerrionStreet/en/News-Room/News/20180919\\_Legislative\\_Programme.pdf](https://merrionstreet.ie/MerrionStreet/en/News-Room/News/20180919_Legislative_Programme.pdf)

*part of Ireland’s implementation of OPCAT. This meeting will help the DJE to finalise a policy position for agreement and will ultimately inform the shape of relevant legislation to enable ratification of OPCAT.”*

- 1.5. As of November 2018, the detailed policy position of the State remains unclear and neither the legislation nor Heads of Bill have been published or debated. There has therefore been limited opportunity to engage in informed dialogue with the State on the detail of the proposed NPM. However, the broad indications which have been given as to the likely shape of the NPM give rise to a number of concerns set out below.

### **Co-ordinating Body**

- 1.6. First, it remains unclear what, if any, role the State envisages for the Irish Human Rights and Equality Commission in the National Preventative Mechanism. However, the indications which have been provided as to the likely shape of the NPM did not appear to contemplate a co-ordinating role for the Irish Human Rights and Equality Commission (IHREC), Ireland’s National Human Rights Institution (NHRI).

- 1.7. The stated position and recommendation of IHREC is that:

*“The Commission recommends that the State accompany the collective designation of relevant bodies and agencies as the National Preventative Mechanism with the creation of an NPM co-ordinating framework, which includes all designated NPM bodies, to act as a point of shared learning and oversight of all OPCAT-relevant activities within the State both within and beyond the criminal justice sphere. The Commission recommends that it should lead as the coordinating body within the NPM framework, in line with Article 18 OPCAT”.*

- 1.8. It also our view that this is an appropriate role for IHREC as Ireland’s ‘A status’ NHRI and the current capacity, expertise and resources available to the organisation.

### **Powers of Inspecting Bodies**

- 1.9. IPRT published a *Statement of Principles*<sup>6</sup> which sets out our view on the minimum legislative requirements for the creation of an NPM (attached to this submission). This *Statement* was heavily informed by the most recently published Guidance from the Office of the United Nations Human Rights Commissioner<sup>7</sup>.

- 1.10. In our view, effective ratification will require (1) a collective designation of existing relevant inspection bodies (2) necessary adjustments to their powers, functions and resources and (3) a designation of an NPM coordinator, namely IHREC.

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<sup>6</sup> IPRT (2018) *Statement of Principles on Legislation to Ratify OPCAT*, <http://www.iprt.ie/contents/3371>

<sup>7</sup> [https://www.ohchr.org/Documents/Publications/NPM\\_Guide\\_EN.pdf](https://www.ohchr.org/Documents/Publications/NPM_Guide_EN.pdf)

- 1.11. Indeed IHREC helpfully commissioned and published research on the issue of OPCAT in January 2017<sup>8</sup>. This research included a detailed analysis<sup>9</sup> of existing organisations with remit to carry out inspections and visits and where gaps exist, a proposed extension of remit and extracts from the relevant legislation linked to statements about what OPCAT requires. However, it is not clear to what extent if any this valuable work has been reflected in the model currently proposed.
- 1.12. To illustrate the above issue further, we take just one example of the adjustments that would be needed in the area of prison inspections:
- 1.12.1. Currently each of the twelve Irish prisons should be regularly inspected by the Office of the Inspector of Prisons.<sup>10</sup> However, in reality, **only one prison inspection report has been published since 2014. No prison inspection report has been published in 2015, 2016 or 2018<sup>11</sup>. There has been no published inspection of Cork, Cloverhill, Wheatfield, Portlaoise or Midlands prison from the Office of the Inspector of Prisons at all in the last ten years**. While the OPCAT does not define what is understood by ‘regular’ visits, the Association for the Prevention of Torture states that – depending on the nature of the prison (for example, remand/sentenced) and the nature of concerns raised about a particular establishment – in-depth visits should take place at least once a year for remand prisons and those holding vulnerable populations, and at least once every three years for other prisons.
- 1.12.2. Necessary financial and human resources must be in place for the functioning of the NPM to conduct visits to places of detention with sufficient frequency and in the manner required prevent ill-treatment. There is **no mention** in the 2007 Act regarding who to be appointed and **composition** of Inspectorate. We understand that currently the Office of the Inspector has three full time equivalent staff. However, the lack of inspection reports would suggest that the **current level of resources provided to the Office of the Inspector of Prisons is inadequate** to perform its functions effectively.
- 1.12.3. It is difficult to ascertain to what extent it has staff with diversity of background, capabilities, professional knowledge including **relevant legal and health care expertise** to meet the requirements of the OPCAT. The CPT noted in November 2015: *‘the Irish authorities should pursue their efforts to identify an appropriate independent body to undertake a fundamental review of healthcare services in Irish prisons’*. The government responded that the HIQA did not have the remit to look at this and the review has never taken place. It would appear therefore that the Office

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<sup>8</sup> <https://www.ihrec.ie/app/uploads/2017/09/Ireland-and-the-Optional-Protocol-to-the-UN-Convention-against-Torture.pdf>

<sup>9</sup> See Appendix I at page 55

<sup>10</sup> Office of the Inspector of Prisons <http://www.inspectorofprisons.gov.ie/>

<sup>11</sup> See Office of the Inspector of Prisons, *Inspection of Prisons Reports*, [http://www.inspectorofprisons.gov.ie/en/iop/pages/inspection\\_of\\_prisons\\_reports](http://www.inspectorofprisons.gov.ie/en/iop/pages/inspection_of_prisons_reports)

of the Inspector **does not have the requisite multi-disciplinary expertise at its disposal** to satisfy the OPCAT requirements. Healthcare services can and should make an important contribution to the prevention of ill-treatment of persons in prison custody.

1.12.4. The Inspector of Prisons **does not have the power to publish** her reports independently. She is currently required to submit any reports to the Minister for Justice and Equality who retains the **power to redact** them and to delay publication to a time of his choosing.

1.12.5. Neither the Office of the Inspector of Prisons or any other agency has statutory power to inspect **prisoner escort services**.

### **Conclusion**

**1.13.** The IHREC report and the IPRT's Statement of Principles should together act as a roadmap for legislation which both establishes the framework of the NPM and enhances the constituent inspection mechanisms' powers and independence so that they comply with the OPCAT's requirements.

**1.14.** We reiterate our position that given the provisions in Article 11, 17 and 24 there is no impediment to Ireland immediately ratifying OPCAT.

**1.15.** It is vital that the relevant stakeholders, including the IPRT have an opportunity to engage in a genuine consultation process about the detail of the draft legislation and proposed mechanism. The very limited engagement to date with both IHREC and the relevant health and social care bodies poses real concerns about the ultimate ability of the NPM to coordinate and share practice.

**1.16.** All agencies and stakeholders recognise that with effective consultation there is potential to develop an effective NPM that is empowered to carry out its functions in any place where a person may be deprived of their liberty, is *de facto* detained, or where the conditions a person experiences places significant restrictions on their liberty. To achieve effective legislation that ensures the State is fulfilling its obligations to prevent ill-treatment it is imperative that the relevant Government Departments work collaboratively and in ongoing and genuine consultation with all relevant stakeholders while utilizing to the greatest extent possible the resources and expertise that already exist.