

**Call for input: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the 52<sup>nd</sup> session of the Human Rights Council**

**Response from Ireland**

**November 2022**

**1: Challenges, impediments and obstacles to effective national investigations and prosecutions of acts of torture:** What are the main impediments preventing full and prompt investigations into allegations of torture – consider matters such as gaps in legal and regulatory frameworks, political-cultural-leadership, institutional, practical and other challenges?

Non-ratification of OPCAT; The Optional Protocol to the UN Convention against Torture (OPCAT)<sup>1</sup> was agreed by the UN General Assembly in 2002. This introduced a combined system of national and international monitoring of places of detention with a view to preventing ill-treatment.

The Department of Justice is currently developing legislation that will allow Ireland to ratify the OPCAT once it has been enacted. The Inspection of Places of Detention Bill 2022<sup>2</sup> will provide for the designation of NPMs for all types of places of detention and for a co-ordinating NPM in accordance with the requirements of OPCAT.

Places of detention are not limited to prisons. The OPCAT applies to anywhere where people are deprived of their liberty. Examples of places of detention include, but are not limited to:

- Psychiatric units;
- Juvenile detention centres;
- Immigration detention centres;
- Pre-trial detention facilities;
- Garda/Police stations;
- Places of Military Detention.

The main obligation under the Protocol is to set up an independent National Preventive Mechanism (NPM), or multiple NPMs. This, in a practical sense, means the establishment of independent body(s) at a national level to undertake regular visits to places of detention and formulate recommendations to the relevant authorities. These bodies will work within the scope of the text of OPCAT to prevent torture or other forms of ill-treatment in all places of detention. OPCAT is unique in that it is proactive. It aims to prevent actions from taking place by creating an inspection regime to prevent torture at a national level.

Once ratified, inspections under OPCAT will be obligatory in all places where people are deprived of liberty. For example, Psychiatric Hospitals, Children Detention Schools and Places of Military Detention will all be liable to be inspected.

The draft General Scheme of the 'Inspection of Places of Detention Bill' was submitted to Government and approved in June 2022 so that formal drafting of the Bill can commence with a view to publishing the Bill by the end of the year. Pre-legislative Scrutiny of the General Scheme took place on October 18<sup>th</sup> 2022<sup>3</sup>. Full enactment and commencement of the Bill should follow in 2023 following the Bill's

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<sup>1</sup> [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR](#)

<sup>2</sup> [Draft General Scheme Inspection of Places of Detention Bill](#)

<sup>3</sup> [Joint Committee on Justice debate - Tuesday, 18 Oct 2022 \(oireachtas.ie\)](#)

passage through the Houses of the Oireachtas. Enactment of the Bill will allow Ireland to be in a position to formally ratify OPCAT.

**2: Regulatory frameworks:** How is torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable) criminalized in your national legislation? Please provide examples (and copies) of national laws that criminalize torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable), and approaches to questions such as immunities, amnesties, statutes of limitations, defences of superior orders, and sentencing.

- [Criminal Justice \(United Nations Convention Against Torture\) Act 2000<sup>4</sup>](#)
- [European Convention on Human Rights Act 2003<sup>5</sup>](#)
- [Prisons Act 2007<sup>6</sup>](#)
- [Irish Human Rights and Equality Commission Act 2014<sup>7</sup>](#)

**3: Elements of human rights-compliant investigations and prosecutions:** Please provide concrete examples of laws, regulations or practices that ensure that torture investigations and prosecutions are:

- a. independent and impartial,
- b. prompt,
- c. adequate and effective,
- d. accessible and safe,
- e. open to public scrutiny and transparent, and
- f. secure rights and remedies for victims and survivors.

There are a number of statutory inspection bodies already conducting inspections of places where people are detained or deprived of liberty in Ireland, notably the Inspector of Prisons within the sphere of Justice.

The Office of the Inspector of Prisons<sup>8</sup> is a statutory body, independent in how it carries out its work, which was set up under the Prisons Act 2007.

The Inspector of Prisons is obliged to carry out regular inspections of prisons and for this purpose may:

- at any time enter any prison or any part of a prison,
- request and obtain from the Governor a copy of any books, records, other documents or extracts from such documents, and,
- in the course of an inspection or arising out of an inspection bring any issues of concern to the notice of the governor of the prison concerned, the Director General of the Irish Prison Service or the Minister as the Inspector considers appropriate.

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<sup>4</sup> [Criminal Justice \(United Nations Convention Against Torture\) Act, 2000 \(irishstatutebook.ie\)](#)

<sup>5</sup> [European Convention on Human Rights Act 2003 \(irishstatutebook.ie\)](#)

<sup>6</sup> [Prisons Act 2007 \(irishstatutebook.ie\)](#)

<sup>7</sup> [Irish Human Rights and Equality Commission Act 2014 \(irishstatutebook.ie\)](#)

<sup>8</sup> [Home - Inspector of Prisons \(oip.ie\)](#)

The Inspector may, and must if she receives a request from the Minister, investigate any matter arising out of the management or operation of a prison and shall submit to the Minister a report on any such investigation.

Governors, prison officers, other persons employed in prisons and prisoners, must as far as reasonably practicable, comply with any request for information that the Inspector may make in the performance of his or her functions.

Since 2012, the Inspector has been tasked by the Minister with the investigation into the circumstances of all deaths in custody and those within one month of temporary release from custody.

The Inspection of Places of Detention Bill, which is currently being developed by the Department of Justice, will reform the role of the Inspector of Prisons to be the new Chief Inspector of Places of Detention which will act as the NPM for the Justice sector, in line with the requirements of OPCAT.

International inspections of places of detention also already occur under the Council of Europe Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>9</sup> on an administrative basis and the Department of Justice has co-ordinated the visits for this purpose for a number of years. It is anticipated that the international inspections under OPCAT will follow a similar pattern.

Where OPCAT differs from the CPT is that it requires, in addition to inspections of places of detention by international bodies, regular inspections at a national level by NPMs, which would report to the relevant UN body, the Subcommittee on Prevention of Torture<sup>10</sup> (as well as to national authorities) on these inspections and inform UN reports.

**4: Mechanisms/institutions/entities involved in complaints, investigations and prosecution:** What are the institutional arrangements in place to secure independent and effective investigations and prosecutions of allegations of torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable)? How are complaints initiated? Please elaborate on competence, composition and expertise, working methods, legal and regulatory framework, etc

The Irish Prison Service currently conducts investigations of prisoner complaints in the Irish Prison Service under its 'Prisoner Complaints Policy'<sup>11</sup>. This document sets out that;

"1.1 all investigations of prisoner complaints in the Irish Prison Service are compliant with legislation, the Prison Rules and the procedure laid out in this policy

1.2 all Complaints are dealt with in confidence.

1.3 all complaints are investigated in a timely, robust and transparent manner.

1.4 any prisoner who wishes to make a complaint may do so with the assurance that there will be procedural fairness."

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<sup>9</sup> [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(coe.int\)](http://coe.int)

<sup>10</sup> [OHCHR | Subcommittee on prevention of torture](http://www.ohchr.org)

<sup>11</sup> [Prisoner complaints \(irishprisons.ie\)](http://www.irishprisons.ie)

Secondary legislation is currently being developed that will put the Prisoner Complaints Policy on a legislative basis.

The Department of Justice is liaising with the Irish Prison Service and the OPC in drafting legislation to create a new, updated Prisoner Complaints System. It is envisaged that this new system will allow for the creation and management of prisoner complaints and appeals in a clear fashion and serve as a legislative template for prisoners and the IPS to follow in every case.

**5: Victim participation and protection:** What measures are in place to secure victim participation in proceedings involving allegations of torture, and how are their rights and safety secured? Are there special arrangements and protections available for victims of sexual and gender based violence? Please give consideration also to witness protection schemes, as well as whistleblower legislation and protection and other measures taken to ensure protection of complainants against reprisals.

No input received.

**6: Complex investigations:** Please share concrete examples of handling complex investigations and prosecutions, including those where the crime was committed outside the territory of the prosecuting state (extradite or prosecute), during ongoing armed conflict or occupation or ongoing public emergency. Do you have experience of mutual legal assistance in torture cases, or universal jurisdiction? Also please share information about handling situations where both domestic and international investigations and prosecutions are occurring simultaneously.

No input received.

**7: Evidence collection and innovation:** Please provide examples of innovative practices to secure evidence collection and any associated challenges around use of new technologies, open source documentation, application of the Istanbul Protocol<sup>6</sup>, or other innovative practices and developments.

No input received.