

**Submission from PRILA: Mary Rogan, Sarah Curristan, Ray O’Keefe, Sophie Van Der Valk
February 2018**

Options for the ratification of OPCAT – the Justice sector

Background

Prisons: the rule of law, accountability and rights (PRILA) is a research project funded by the European Research Council, grant agreement 679362. Its principal investigator is Professor Mary Rogan, School of Law, Trinity College Dublin. Sarah Curristan, Sophie Van Der Valk and Ray O’Keefe are research students working on the project. The project commenced on April 1 2016 and will run until March 30 2021.

PRILA aims:

1. To find out whether ‘accountability’ is a distinctive norm of the European legal system in the field of prisons;
2. To engage in comparative legal analysis on the topic of accountability in prisons by exploring European law and that of the United States and the Inter-American Court of Human Rights;
3. To find out how accountability is experienced by prisoners, prison staff and staff of bodies such as Ombudsmen, inspectors, and bodies which deal with complaints;
4. To create a typology of accountability bodies in European prison systems, and examine the relationship between the presence of such bodies and other indicators of prison regimes.

PRILA seeks to contribute to policy and practice in Ireland and internationally and welcomes the opportunity to make a submission to the Department of Justice and Equality on options for the ratification of the Optional Protocol to the Convention against Torture (OPCAT). PRILA welcomes the consultation process on options for ratifying OPCAT. This submission focuses on prisons.

The PRILA research project is focused largely on inspection and oversight as it applies to prisons. Our comments are, therefore, largely derived from the prison context. We have used the headings suggested to structure this submission.



- **Using existing sectoral authorities to carry out OPCAT inspections;**

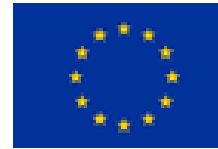
PRILA submits that, whatever formulation is used to allow for ratification of OPCAT, it is necessary to ensure that domain-specific expertise is retained. Prisons are unique institutions, with unique power differentials. The deprivation of liberty may be life-long. For almost all prisoners, detention will be for longer than a few days or weeks. People spend considerable periods of their lives in prisons, and must live in what are, in part, domestic spaces. They are therefore qualitatively different from e.g. Garda stations or court cells. It is important that those inspecting prisons understand this, and have prison-related experience to draw on.

- **Using an expanded office of the Inspector of Prisons to deal with OPCAT inspections in the Justice Sector (Office of Inspection of Places of Detention);**

PRILA submits that, even if the basic structure of the Office of the Inspector of Prisons is used, it would perhaps be better to describe the Justice Sector Body as a new Office of Inspection of Places of Detention. From a legislative point of view, the Prisons Act 2007 has some deficiencies, including the powers of the Inspector. These deficiencies mean simply extending the remit of the Office of the Inspector to cover other places of detention would not be OPCAT-compliant. The reasons for this are set out in our previous submission, which is enclosed. There is an opportunity to revise the powers and structure of the Office which will inspect places of detention in the Justice sector, and a new body, with a new statute is advised.

At present, prison inspection in Ireland is governed by the Prisons Act 2007. That legislation could be improved by:

1. Ensuring that the fact visits are permitted by the state is explicitly stated;
2. Ensuring that the appointments procedure for all those inspecting prisons and its independence be stated explicitly and that there is a clear term of appointment;
3. Ensuring that there is a diversity of expertise on the inspection team, including the provision of medical expertise;
4. Ensuring that the inspectorate can propose its own budget;
5. Using formal protocols to govern the powers of inspection;
6. Ensuring an explicit power to make recommendations and comment on draft legislation;
7. Ensuring an explicit power to have confidential conversations;
8. Placing an obligation on the authorities to examine the recommendations;



9. Removing the power to redact reports and including an explicit requirement that reports be published.

These matters would need to be addressed for any body to be designated an NPM.

It is further submitted that an opportunity in this review has been presented to re-examine:

1. The development and publication of protocols for how prisons to be inspected are selected;
2. The development and publication of protocols concerning the maximum periods between inspections of places of detention;
3. The development and publication of protocols concerning the inspection process;
4. The development and publication of protocols concerning how recommendations are formulated;
5. Support and training for prison inspectors, including sharing of best practice internationally;
6. The training of prison staff at all levels concerning working with inspectors and the potential value of their role for the organisation.

- **What role/relationship could such an office have with existing agencies?**

As stated above, PRILA submits that those conducting prison inspections should have a prison specific focus and training. It is also submitted that the existing expertise within the Office of the Inspector of Prisons could be usefully and formally shared with other sub-bodies or sectors of the Office of Inspection of Places of Detention. All bodies will share common challenges: getting buy-in and cooperation from management and staff of the places of detention, obtaining credibility in the eyes of staff and those detained, methodology of inspections, formulating recommendations, maintaining confidentiality and so on. There should be formal mechanisms to allow the different sectors to share their experiences, protocols, manuals and so on.

A separate budget head for each sector might also be considered.



- **Could any existing agencies carry out OPCAT type inspections on behalf of an Office of Inspection of Places of Detention?**

The reasons for the lack of HIQA involvement in inspecting prisons is not clear to PRILA. It has extensive expertise in inspection methodology, making recommendations and follow up.

PRILA has undertaken preliminary analysis of the variety of bodies which play some role in the oversight and scrutiny of prisons. These include:

It is submitted that the opportunity offered by the creation of an Office of Inspection of Places of Detention to which would have its own specifically developed, OPCAT-compliant legislation, outweighs the possible benefits of using existing bodies. It is also not clear whether any of those other bodies has the powers required under OPCAT.

It is important that any new Office has the benefit of the expertise of the Irish Human Rights and Equality Commission in formulating proposals on legislation and in obtaining information on human rights standards domestically and internationally.

- **Using this expanded office - Office of Inspection of Places of Detention to act as a coordinating NPM**

There are advantages to this approach. If one considers the most important feature of inspectorates to be the ability to conduct excellent, professional inspections, then having a body with its main focus as inspections would be sensible. Such a body would need to draw on support for formulating recommendations concerning existing and draft legislation. It would also need resources for remaining up to date with international and domestic human rights standards. It is submitted that having good inspection practices, and well run inspections are, on balance, the most important characteristic of system of inspections. This is a strong reason for having such an office at the helm.

Another possibility is for the Irish Human Rights and Equality Commission to act as the coordinating body. This has the advantage of avoiding a situation where non-justice sector bodies feel that they are being viewed as criminal justice institutions. On the other hand, the Commission is not an inspecting body and the practical support it could give to its constituent members would, even though undoubtedly very well intentioned, would be more limited than an office with its central focus being the practicalities of inspections. Another advantage of this approach would be the ability to draw on the extensive experience of the Commission in



commenting on policy and legislation. That experience should be provided to any body which emerges, at least until such time as the body is proficient in such activities itself. Should this option be adopted it is essential that inspection activities has its own budget head, a matter regularly referred to by the Committee for the Prevention of Torture.

- **Any views on how agencies could interact with the coordinating NPM for OPCAT.**

The PRILA team submits that any structure created will need:

1. Regular joint training and information/experience sharing sessions between the various branches/sectors of inspectors. Inspectors are likely to share common challenges in their work;
2. Support to share protocols and methodologies for inspection between various branches/sectors;
3. Regular debriefing sessions on the experiences of inspecting and visiting;
4. An arm which is responsible for/trained in making policy proposals and to draft recommendations concerning legislation or draft legislation;
5. A coordinating body which acts as the direct line to the Subcommittee for the Prevention of Torture and which coordinates the responses/issues reported by the various branches/sectors;
6. Expertise in or consultancy on human rights standards governing inspection and monitoring, as well as substantive issues in the area of detention conditions.

It is also necessary for the NPM to engage in confidence building activities with staff and people deprived of their liberty.

Further information

The PRILA team will be delighted to meet you and your colleagues to discuss this submission and the issues raised further.