

## Written Submission to the Joint Committee on Justice on the General Scheme of the Inspection of Places of Detention Bill 2022

### Introduction

1. The Jesuit Centre for Faith and Justice (hereafter Centre) welcomes the opportunity to provide a written submission to the Joint Committee on Justice (hereafter Committee) on the Draft General Scheme of the Inspection of Places of Detention Bill 2022 (hereafter General Scheme). The Centre is an agency of the Irish Jesuit Province, dedicated to undertaking social analysis and theological reflection in relation to issues of social justice, including housing and homelessness, penal policy, environmental justice, and economic ethics.

2. With 15 years having passed between Ireland's signing of the Optional Protocol to the Convention Against Torture in 2007 and the publication of the General Scheme in June 2022 to ratify the Convention, there is an imperative for the Government to go beyond an ambition for oversight and monitoring which may have been acceptable if ratifying in 2007. Positively, this General Scheme provides a starting position by the Minister but, unfortunately, the Centre do not consider the draft legislation as sufficient to satisfy the letter and the spirit of the Optional Protocol. We have particular concerns over the independence of the proposed Inspectorate, the introduction of discretion on death in custody investigations, and a lack of clarity of publication of reports by the Chief Inspector.

3. Six key areas within the General Scheme have been identified by the Centre for further consideration and scrutiny by the Committee. These areas are discussed within the head based on the order of the General Scheme:

- A. Independence of the Inspectorate of Places of Detention [Head 6]
- B. Minimum Requirement for Regular Inspection of Prisons [Head 8]
- C. Lay Investigative Reports before the Oireachtas [Head 8]
- D. Discretion on Death in Custody Investigations [Head 10]
- E. Clarity on Reports to be Laid Before the Oireachtas [Head 12]
- F. Secretariat and Budget for Prison Visiting Committees [Head 13]

## Responses to Select Heads of the General Scheme

### A. Independence of the Inspectorate of Places of Detention

**Relevant Section: Head 6 – Provision of Services to the Inspectorate of Places of Detention**

4. While subhead (2) of Head 6 states that the funds, premises, facilities, services and staff required for the “proper functioning of the Inspectorate” shall be provided by the Minister, subhead (6) then continues that the appointment of persons to be staff of the Inspectorate require the consent of the Minister and the Minister for Public Expenditure and Reform. Staffing of the new Inspectorate will naturally form the largest proportion of budgetary expenditure and no constraints should exist in relation to how the budget is spent by the Inspectorate on an annual basis.

5. Our concerns are based on the potential for significant underspend despite a healthy ‘paper’ budget. For example, a statutory body may have a budgetary underspend on a regular basis due to recruitment constraints so, on paper, the statutory has an adequate budget to fulfil its remit but is unable to fully utilise its budget due to lacking full independence. Financial independence is a core element of a National Preventive Mechanism (NPM).

**Recommendation/s:**

- **Remove the clause in subhead (6) requiring “consent of the Minister and the Minister for Public Expenditure and Reform” in order for the Chief Inspector to appoint people as staff.**
- **Examine potential for oversight of budgetary spending within the Inspectorate by the Office of the Comptroller and Auditor General.**

### B. Minimum Requirement for Regular Inspection of Prisons

**Relevant Section: Head 8 – Functions of the Inspector of Places of Detention in relation to Inspection of Prisons**

6. Considering the frequency of prison inspections, subhead (1) states that the Chief Inspector “shall carry out regular inspections of all prisons in the State.” This proposed legislation should state a legal minimum for each prison in Ireland to have a full inspection. In the *Framework for the Inspection of Prisons in Ireland*, the former Inspector of Prisons recommended that prisons across Ireland should be subject to a full inspection at a minimum of every 5 years.<sup>1</sup> The *Framework for the Inspection of Prison in Ireland* anticipated that, in the future as institutional capacity was developed, each prison should receive a full inspection every 2-3 years. It is vital for the minimum frequency to be stated in legislation to ensure that both the State and NPMs have recourse.

**Recommendation:**

- **Insert clause in subhead (1) legislating that each prison in Ireland will receive a full prison inspection, with report published, at least once every three years.**

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<sup>1</sup> Office of the Inspector of Prisons, ‘A Framework for the Inspection of Prisons in Ireland’ (Dublin: Office of the Inspector of Prisons, March 2020).

### C. Lay Investigative Reports before the Oireachtas

**Relevant Section:**       **Head 8 – Functions of the Inspector of Places of Detention in relation to Inspection of Prisons**

7. When an investigation into a serious adverse event or a death in custody is completed, either at the request of the Minister or at the discretion of the Chief Inspector, subhead (3) requires the report to be submitted to the Minister and to the Director General of the Irish Prison Service. If a criminal investigation or other proceedings have commenced on the basis of the investigative report's findings, these should be permitted to conclude before the investigative report is also published by the Minister. Transparency and accountability are at risk if investigative reports into serious adverse incidents are not published and made available to the Oireachtas and Committee for scrutiny.

**Recommendation/s:**

- **Insert a clause requiring the Minister to publish any investigative reports, following the conclusion of any subsequent criminal investigation or other proceedings. Details permitting the identification of individuals should be redacted from any reports.**

### D. Discretion on Death in Custody Investigations

**Relevant Section:**       **Head 10 – Investigation of Deaths in Custody of Prisoners**

8. At present, all deaths in custody and any death of a prisoner on temporary release—that occurs within one month of his/her release—are investigated by the Office of the Inspector of Prisons. Subhead (2) permits discretion by the Chief Inspector to decide on which death in custody cases will be investigated by the Inspectorate. While there are a high number of death in custody reports to be completed (only three for the entirety of 2020 have been published), this introduction of discretion is of concern. Discretion is not an adequate solution to an investigative backlog due to lack of institutional capacity and staffing levels.

9. Deaths in custody, or in the weeks after release, are often the sharp points of operational failures and institutional blind spots. Often, because of the gravity of the consequences, deaths in custody reveal failures which may not be easily identifiable in routine prison-wide inspections or spot-checks. Recent published death in custody have revealed serious gaps in the use of compassionate release for older prisoners at the stage of requiring end-of-life care. These cases may be overlooked in the future as the prioritisation is given to overdoses, suicides and homicides. Discretion also introduces the potential for changing areas of focus to the disregard of others, dependent on the Chief Inspector in the role. In this instance, the simplest solution may be the most appropriate.

**Recommendation/s:**

- **Remove clause in subhead (2) stating that the Chief Inspector “may decide whether the matter of a death of a prisoner in custody requires investigation by his or her Office.”**
- **Maintain the current legislative basis for the requirement of all deaths in custody to be investigated by the Inspectorate.**

### E. Clarity on Reports to be Laid Before the Oireachtas

**Relevant Section:      Head 12 – Publication of Annual and other Reports**

10. The proposed ability of the Chief Inspector, as outlined in subheads (2) and (3) to have the power to lay annual reports and other reports directly before the Oireachtas is welcome. However, additional clarity and precision is required in the proposed legislation to state exactly what other reports may be laid directly before the Oireachtas. The Justice Committee needs to examine what is intended by “other reports”, as the Inspectorate produces a number of reports: full investigation reports, death in custody reports, investigative reports, and thematic reports.

**Recommendation/s:**

- **Clarification is required on what the Department of Justice define as “other reports” which may be laid directly by the Chief Inspector before the Oireachtas.**
- **Insert clause defining “other reports” as “all completed reports which are not currently subject to criminal proceedings.”**

### F. Introduction of a Secretariat and Budget for Prison Visiting Committees

**Relevant Section:      Head 13 – Prison Visiting Committees**

11. The spirit of the Optional Protocol is that the more external eyes on our places of detention, the more likely we are to prevent the occurrence of torture and maltreatment. We are prompted to move from a reactive posture to a preventative posture. With the increasing remit of the proposed Inspectorate, and the time required to build institutional capacity, the necessary frequency of full prison inspections will likely be progressively realised. However, the lay prison visiting committees provide an opportunity to maintain regular visits in this interim period. Commitment to a secretariat and an adequate annual budget for training would both undergird the oversight role of the prison visiting committees and ensure the lay visitors are trained to assess prisons based on the Convention Against Torture.

**Recommendation/s:**

- **Insert clause committing to the creation of a Secretariat with an annual budget for the Prison Visiting Committees.**

## Conclusion

12. Transparency and accountability are core to the functioning of a safe and humane prison system. Without either, many cruelties and injustices can be perpetrated by the State in the name of its citizens, who trust the State with the task of imprisonment. The Optional Protocol encourages us to shift from a traditionally reactive response to injustices, within our institutions and places of detention, to a more proactive response, desiring to prevent the occurrence of injustice in the first place.

13. The Centre has reservations that the General Scheme in its current form will permit Ireland to fully ratify the UN Optional Protocol to the Convention against Torture. These reservations are based on two main reasons; the independence of the Chief Inspectorate and the dilution of the existing role of the Office of the inspector of Prisons.

14. While the remit of the proposed Chief Inspector of Places of Detention has increased to include the wider justice system—detention facilities in Garda stations, holding cells in Courts, and transportation to and from places of detention—proposed Ministerial consent on staffing decisions by the Chief Inspector may adversely impact on budgetary spending. Full financial independence is necessary in order for the Inspectorate to inspect the increased remit of places of detention; otherwise, the prison inspection regime may be adversely impacted.

15. The proposed discretion for death in custody investigations is similarly concerning. Deaths in custody, or in the weeks after release, are the sharp points of operational failures, institutional neglect and policy blind spots. Often, because of the gravity of the consequences, deaths in custody reveal failures which may not be easily identifiable in routine prison-wide inspections or spot-checks. It is for this reasoning that all deaths in custody should be investigated by the Inspectorate.

## Report Details

**Author:** Keith Adams, Social Policy Advocate

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