

# **Submission to the Commission on the Future of Policing**

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**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission



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## Introduction

The Irish Human Rights and Equality Commission ('the Commission'), established under the Irish Human Rights and Equality Commission Act 2014, is both the national human rights institution and the national equality body for Ireland. In accordance with its founding legislation, the Commission is mandated to 'keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality' and 'to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights and equality'.<sup>1</sup>

The Commission welcomes the opportunity to make a submission to the Commission on the Future of Policing. The Commission, and its predecessor body, the Irish Human Rights Commission ('IHRC'), has previously raised concerns about the implementation of human rights and equality standards in policing in Ireland, in particular in the IHRC's 2009 Policy Statement on *Human Rights Compliance of An Garda Síochána*. This statement was informed by research commissioned by the IHRC, which was published as a book entitled *Human Rights and Policing in Ireland: Law, Policy and Practice*.<sup>2</sup>

This submission will focus on human rights and equality standards and will reference international treaties and best practice. Reference will also be made, where appropriate, to the Patten Report and policing reforms introduced in Northern Ireland. This is particularly important given the principle of equivalence of rights North and South enshrined in the Belfast/Good Friday Agreement.

This submission does not constitute an extensive review of all human rights and equality issues connected to policing. Instead, bearing in mind the Terms of Reference of the Commission on the Future of Policing, the purpose of this submission is to outline some priority human rights and equality issues that arise in the following context:

- the delivery of policing services;

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<sup>1</sup> Section 10(2)(b), (d) of the Irish Human Rights and Equality Commission Act 2014.

<sup>2</sup> Walsh (2009) *Human Rights and Policing in Ireland* (Dublin: Clarus Press).

- the performance of police operations;
- policing oversight and accountability.

The Irish Human Rights and Equality Commission is available to provide clarification on any of the matters raised in this submission.

## Embedding equality and human rights in policing

According to the United Nations High Commission for Human Rights' Human Rights Centre 'law enforcement officials are obliged to know, and to apply, international standards for human rights'.<sup>3</sup> Ireland has ratified a number of international human rights treaties relevant to policing, such as the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has been indirectly incorporated into Irish law by means of the European Convention on Human Rights Act 2003. Many of these rights are also reflected in the Constitution of Ireland, Bunreacht na hÉireann, for example Article 40, which protects the personal rights of the citizens of the State. These international and national instruments are supplemented by a number of international standards on policing, in particular the Council of Europe's European Code of Police Ethics,<sup>4</sup> the UN Code of Conduct for Law Enforcement Officials<sup>5</sup> and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>6</sup>

The Commission notes the initiatives undertaken by An Garda Síochána in the last 20 years to engage with human rights and equality standards, which began with the launch of the Human Rights Initiative in 1999. In 2004, Ionann Management Consultants were commissioned to carry out a Human Rights Audit of An Garda Síochána's policies and practises in order to assess the extent to which those complied with international human rights standards ('the Ionann Report').<sup>7</sup> The findings of that report were then translated into the Garda Human Rights Action Plan with specified targets and timeframes for the implementation of the recommendations.<sup>8</sup> While the Action Plan was a welcome and

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<sup>3</sup> OHCHR, *International Human Rights Standards for Law Enforcement*, available: <http://www.ohchr.org/Documents/Publications/training5Add1en.pdf>

<sup>4</sup> The European Code of Police Ethics, Council of Europe Recommendation Rec(2001)10; See also the Council of Europe's Declaration on the Police, Resolution 690 (1979).

<sup>5</sup> UN Code of Conduct for Law Enforcement Officials, GA Resolution 34/169 (1979).

<sup>6</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders (1990).

<sup>7</sup> Ionann Management Consultants (2004) *An Garda Síochána Human Rights Audit*.

<sup>8</sup> An Garda Síochána (2005) *Garda Action Plan for the Implementation of the Garda Human Rights Audit Report*, April 2005.

positive measure, it was a once-off exercise and a number of the recommendations have not yet been fully implemented.

The Ionann Report noted that human rights is ‘not a one-off, tick-box exercise, but a constant and evolving process’ that requires resources, regular reviews and monitoring mechanisms at a senior level in an organisation.<sup>9</sup> Since then, such a process has since been placed on statutory footing in the form of the Public Sector Equality and Human Rights Duty, which came into force on 1 November 2014. The duty is enshrined in section 42 of the Irish Human Rights and Equality Commission Act 2014, which provides:

42. (1) A public body shall, in the performance of its functions, have regard to the need to—
  - a) eliminate discrimination,
  - b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and
  - c) protect the human rights of its members, staff and the persons to whom it provides services.

A public body includes ‘a Department of State’ and ‘a body or organisation established by or under an enactment’.<sup>10</sup> Therefore, all relevant bodies who have a role in policing are obliged to implement the duty, namely the Department of Justice and Equality, the Garda Síochána Ombudsman Commission (GSOC), the Policing Authority and the Garda Síochána Inspectorate (GSI).

Section 42(2) of the Irish Human Rights and Equality Commission Act 2014 requires public bodies to conduct an assessment of the human rights and equality issues relevant to their functions and to develop policies, plans and actions to address those issues. Public bodies are required to include this assessment in their strategic plan and to report on developments and achievements in their annual report.

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<sup>9</sup> Ionann Management Consultants (2004) *An Garda Síochána Human Rights Audit*, p. 120.

<sup>10</sup> Section 2 of the Irish Human Rights and Equality Commission Act 2014.

**The Commission is of the view that full implementation of the Public Sector Equality and Human Rights Duty by all public bodies involved in policing provides an opportunity for human rights and equality standards to be embedded in every aspect of policing.**

# **Equality and human rights issues related to the delivery of policing services**

In reviewing all aspects of the administration and operation of An Garda Síochána in November 2015, the Garda Síochána Inspectorate (GSI) identified an ineffectual organisational structure; deficiencies in governance, accountability, leadership and intrusive supervision; inconsistent and inefficient allocation of resources and a culture which inhibits change.<sup>11</sup> Since then the Policing Authority has published four quarterly reports on the implementation of *Changing Policing in Ireland*.<sup>12</sup> In this section, the Commission highlights four issues that should be placed at the heart of future reforms to the delivery of policing services.

## **Composition of the police service**

The Commission is of the view that in order to enhance trust within the community it is imperative that the police service in Ireland fully reflects the diversity of Irish society. This view was also emphasised in the Patten Report in its examination of the future of policing in Northern Ireland.<sup>13</sup> The European Commission on Racism and Intolerance has recommended that the State must ensure that under-represented minority groups in the police service have equal opportunities for progression in their careers.<sup>14</sup> Article 25 of the European Code of Police Ethics provides that ‘recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates’.

The Commission notes that in April 2017 the Policing Authority formed the view that ‘current arrangements for recruitment of Gardaí are manifestly inappropriate for the needs

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<sup>11</sup> See Garda Síochána Inspectorate (2015) *Changing Policing in Ireland* (available at [http://www.gsinsp.ie/en/GSINSP/Pages/published\\_reports](http://www.gsinsp.ie/en/GSINSP/Pages/published_reports)).

<sup>12</sup> Available at: <http://www.policingauthority.ie/website/PA/PolicingAuthorityWeb.nsf/page/Publications-en>

<sup>13</sup> See Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 3 and p. 81.

<sup>14</sup> ECRI, General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing, CRI(2007)39, adopted on 29 June 2007.

of the modern Garda organisation'.<sup>15</sup> The Commission welcomes the Authority's recommendation that a programme of positive action should be developed in order to encourage a more diverse range of applicants.<sup>16</sup>

**The Commission recommends further action and a targeted strategy to encourage the recruitment, retention and progression of a more diverse Garda service.**

## **Human rights and equality training of the police service**

In recent years, a number of international human rights treaty monitoring bodies have identified shortcomings in law enforcement training in Ireland. These bodies have recommended targeted training on specific issues. For example, following its examination of Ireland in 2017, the UN Committee on the Elimination of Discrimination against Women recommended that the State:

Intensify existing efforts to combat gender-based violence against women, including domestic violence, by ensuring that prosecutors and the police are properly trained to identify, investigate and prosecute cases of gender-based violence, including domestic violence, particularly targeting Traveller, Roma and migrant women and girls<sup>17</sup>

This recommendation was echoed by the UN Committee Against Torture in 2017, which also recommended that 'training on ... the absolute prohibition of torture, as well as on non-coercive interrogation methods' be made mandatory for the police.

At the time of the establishment of the Policing Authority, the Commission recommended that the Authority 'review the adequacy of standards in relation to the training of An Garda Síochána and the structures, policies and procedures for assessment and development of those standards, with a very specific emphasis on training in human rights and equality'.<sup>18</sup>

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<sup>15</sup> Policing Authority (2017) *Submission to the Garda Inspectorate on entry routes to the Garda Síochána*, p 1.

<sup>16</sup> Policing Authority (2017) *Submission to the Garda Inspectorate on entry routes to the Garda Síochána*, p 6.

<sup>17</sup> CEDAW (2017) *Concluding Observations on Ireland*, para. 27(b).

<sup>18</sup> IHREC (Designate) (2014) *Submission to the Cabinet Sub Committee on Justice on the Establishment of an Independent Policing Authority*, available:

[https://www.ihrec.ie/app/uploads/download/pdf/ihrec\\_designate\\_submission\\_on\\_independent\\_policing\\_authority\\_may\\_2014.pdf](https://www.ihrec.ie/app/uploads/download/pdf/ihrec_designate_submission_on_independent_policing_authority_may_2014.pdf), p. 4.

The former IHRC also previously recommended that training on human rights standards should be integrated into all aspects of Garda training and professional development at both the recruit and in-service training levels.<sup>19</sup>

**The Commission is of the view that human rights and equality are central to the training of new police staff and to the continuous training of law enforcement personnel.**

## Cultural competence

According to the Patten Report, the fundamental purpose of policing is to protect and vindicate the human rights of all people.<sup>20</sup> It is therefore essential for the police service to be responsive and sensitive to the needs of minority communities. The Commission notes the commitment in An Garda Síochána Modernisation and Renewal Programme 2016-2021 in relation to engaging with minority communities and that the Garda Racial and Intercultural and Diversity Office (GRIDo) now has over 270 Diversity Officers working nationwide.<sup>21</sup> The Commission also notes that the *Code of Ethics for the Garda Síochána*, published in January 2017, contains a number of commitments in relation to equality and respect, opposing and challenging any behaviour or language that demonstrates discrimination or disrespect, in particular with regard to vulnerable individuals or minority groups.<sup>22</sup> However, the Commission notes that a number of reports relating to the treatment of minority communities by An Garda Síochána raise questions about the level of cultural competence within policing services.

For example, the Ionann Report found evidence of institutional discrimination against minority communities in some of the operations of An Garda Síochána.<sup>23</sup> It has also been suggested that Garda operations which were the subject of the Morris Tribunal of Inquiry

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<sup>19</sup> IHRC (2009) *Policy Statement on Human Rights Compliance of An Garda Síochána*, p 16.

<sup>20</sup> Independent Commission on Policing for Northern Ireland (1999) *A New Beginning: Policing in Northern Ireland* (the Patten Report), p.18.

<sup>21</sup> <http://www.garda.ie/Documents/User/Garda%20Strategy%20final%202%202014.7.16.pdf>

<sup>22</sup> Policing Authority (2017) *Code of Ethics for the Garda Síochána* (available at <http://www.policingauthority.ie/website/PA/PolicingAuthorityWeb.nsf/page/Publications-en>). The Commission engaged with the Policing Authority on the proposed Code of Ethics during its consultation process.

<sup>23</sup> Ionann Management Consultants (2004) *An Garda Síochána Human Rights Audit*, p. 76, 93-95.

included a ‘racist dimension [that] stemmed from the readiness of a member of the Garda at the heart of the operation to associate Travellers with criminal activity’.<sup>24</sup> In 2017, a national needs assessment of Roma in Ireland revealed that 53.9 per cent of respondents reported feeling discriminated against by An Garda Síochána.<sup>25</sup>

At international level, concerns have been raised about racial profiling. Following its examination of Ireland in 2011 the UN Committee on the Elimination of Racial Discrimination stated:

18.The Committee is concerned at the lack of legislation proscribing racial profiling by the *Garda Síochána* (Police) and other law enforcement personnel. The Committee also notes with regret reports that many non-Irish people are subjected to police stops, and are required to produce identity cards, which practice has the potential to perpetuate racist incidents and the profiling of individuals on the basis of their race and colour (arts. 2, 3 and 6)

The Committee recommends that the State party adopt legislation that prohibits any form of racial profiling, a practice which has the danger of promoting racial prejudice and stereotypes against certain racial groups in the State party. Furthermore, the State party should strengthen its efforts to promote the humane treatment of migrants and people of non-Irish origin by the *Garda Síochána* (Police) and other law enforcement personnel in accordance with international human rights law. The Committee further recommends that the State party establish appropriate mechanisms to encourage the reporting of racist incidents and crimes.<sup>26</sup>

The State has made the following observations in its draft response to the Committee’s Concluding Observations:

An Garda Síochána (Police) does not, as an institution, engage in discriminatory profiling and, specifically, does not engage in data gathering or data mining based upon discriminatory profiling in respect of race, colour, language, religion,

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<sup>24</sup> Walsh (2009) *Human Rights and Policing in Ireland* (Dublin: Clarus Press), p. 592.

<sup>25</sup> Pavee Point (2017) *Roma in Ireland: A national needs assessment*, p. 53.

<sup>26</sup> CERD (2011) *Concluding observations on Ireland*, para 18.

nationality, national or ethnic origin, ethnicity or membership of the Traveller community.<sup>27</sup>

Furthermore, the State asserts that An Garda Síochána is using the definition of racial profiling adopted by the Council of Europe's European Commission against Racism and Intolerance (ECRI) in 2007.<sup>28</sup>

However, the Commission notes that experience has demonstrated a lack of capacity to adhere to this policy in the delivery of policing services. For example, in 2013 a Special Inquiry was established to examine the removal of two Roma children from their families on the basis that the children did not physically resemble their respective parents as their appearance did not conform to racial stereotypes.<sup>29</sup> The Inquiry found that, in the case of one of the Roma children affected, his 'ethnicity was so influential in determining the decision to remove him from the care of his parents, with no objective or reasonable justification' that it amounted to ethnic profiling.<sup>30</sup> The Inquiry recommended that an independent audit on the use of section 12 of the Child Care Act 1991 be carried out in order to consider, amongst other matters, whether certain groups are over-represented in the figures when compared with the size of their communities.<sup>31</sup> This audit was carried out by Geoffrey Shannon in 2017 and found that 'crucial demographic data in relation to individuals who engage with members of AGS is not routinely recorded on their PULSE file'.<sup>32</sup>

The Inquiry concluded that 'cultural competence within An Garda Síochána with respect to the Roma community must be enhanced' and recommended that 'An Garda Síochána must ensure that its policy on interpretation and language supports, diversity training for staff and

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<sup>27</sup> Available at

[http://www.justice.ie/en/JELR/UNCERDIRL5\\_6\\_7PR\\_DRAFT\\_for\\_CONSULTATION\\_\(003\).pdf](http://www.justice.ie/en/JELR/UNCERDIRL5_6_7PR_DRAFT_for_CONSULTATION_(003).pdf)

<sup>28</sup> ECRI, General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing, CRI(2007)39, adopted on 29 June 2007. The European Commission against Racism and Intolerance (ECRI) is the Council of Europe's monitoring body, combating racism, xenophobia, anti-Semitism and intolerance in greater Europe, from the perspective of the protection of human rights.

<sup>29</sup> Department of Justice and Equality (2014) *Report of Ms. Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*, available:  
<http://www.justice.ie/en/JELR/Emily%20Logan%20report.pdf>

<sup>30</sup> Department of Justice and Equality, *Report of Ms. Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*, 2014 p 115.

<sup>31</sup> Department of Justice and Equality, *Report of Ms. Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*, 2014 p 115.

<sup>32</sup> See p. xiii, Dr Geoffrey Shannon (2017) *Audit of the exercise by An Garda Síochána of the provisions of Section 12 of the Child Care Act 1991* (available at <http://www.garda.ie/Controller.aspx?Page=20512>).

community engagement conform to the highest standards.<sup>33</sup> As outlined above, the Commission reiterates its view that human rights and equality are central to the training of new police staff and to the continuous training of law enforcement personnel. The Commission also notes that in 2013, the European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations 2013 transpose a European Directive on this matter into Irish law. It is a fundamental human rights principle that high quality interpretation and translation services be delivered effectively.<sup>34</sup>

**The Commission is of the view that racial profiling in any form is unacceptable and should be dealt with appropriately, including, for example, through disciplinary or other procedures. The Commission also recommends that protocols and cultural competence training for An Garda Síochána be put in place.**

## **Victims' rights**

The Commission welcomes the enactment of the Criminal Justice (Victims of Crime) Act 2017, which was commenced on 27 November 2017. This legislation is an important first step, which recognises the rights of victims of crime, but the Commission is of the view that more must be done to fully realise victim's rights. In its observations on the draft legislation, the Commission made a number of recommendations in relation to the provision of timely, meaningful and accessible information to victims, consistency of practice in providing high-quality victim supports and protection against repeat and secondary victimisation and effective remedies.<sup>35</sup> The Commission also welcomes the establishment of the Garda Victim Service Offices, the Garda National Protective Services Bureau and the ongoing roll-out of Divisional Protective Services Units in order to ensure that these services are available to victims of crime nationwide.

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<sup>33</sup> Department of Justice and Equality (2014) *Report of Ms. Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*.

<sup>34</sup> This is provided for in Articles 5(2) and 6(3)(a) of the ECHR; Article 14(3)(a) of the ICCPR and Article 10(3) of the Council of Europe Framework Convention for the Protection of National Minorities. The Framework Convention for the Protection of National Minorities expressly provides that where necessary the free assistance of an interpreter should be provided.

<sup>35</sup> Available at <https://www.ihrec.ie/app/uploads/2017/02/Observations-on-the-Criminal-Justice-Victims-of-Crime-Bill-2016.pdf>

**The Commission reiterates its recommendations in relation to the provision of timely, meaningful and accessible information to victims, consistency of practice in providing high-quality victim supports and protection against repeat and secondary victimisation and effective remedies.**

## Equality and human rights issues in police operations

In 2014, the GSI published a wide-ranging report on crime investigation, which made 212 recommendations and concluded that An Garda Síochána was:

‘in critical need of modernisation of its crime investigation operational and support infrastructure. The absence of up to date technology and dated inefficient investigative processes and policies, combined with poor internal audit controls, inconsistent case management and poor supervisory practices have led to the systemic operational deficiencies identified in this and other recent government initiated reports. As a result, potentially hundreds of thousands of Garda staff hours and resources, which should be spent on front-line policing, are currently allocated to those inefficient processes’.<sup>36</sup>

These deficiencies in ICT coupled with technological advances can give rise to human rights and equality issues, which will be discussed briefly below. This section also highlights the need for human rights and equality proofing operational codes of practice in key areas of police operations.

### The recording and investigation of particular types of crimes

The GSI has reported on deficiencies in systems and processes that hinder the proper functioning of investigations.<sup>37</sup> In particular, the Commission notes the findings in relation to the use of the PULSE system in the recording and investigation of domestic violence and hate crime which give rise to equality concerns on both the gender and race grounds.

With respect to domestic violence investigations, the GSI found issues in relation to the accuracy in recording and classification of domestic violence incidents on PULSE, including examples of cases of domestic violence where a crime had occurred, but it was wrongly

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<sup>36</sup> Garda Síochána Inspectorate (2014) *Crime Investigation* (available at [http://www.gsinsp.ie/en/GSINSP/Pages/published\\_reports](http://www.gsinsp.ie/en/GSINSP/Pages/published_reports)).

<sup>37</sup> See Garda Síochána Inspectorate (2014) *Investigation of Crime*

recorded as a ‘domestic dispute’.<sup>38</sup> In 2015, the Central Statistics Office found that 26 per cent of domestic violence incidents were not recorded on the PULSE system.<sup>39</sup> There have been additional reports on the incorrect categorisation of domestic violence and sexual assault cases, together with delays in the investigation of complaints resulting in prosecutions not being progressed.<sup>40</sup> The GSI report also highlighted differences in Garda attitudes towards domestic violence noting that ‘while some members demonstrated an understanding of domestic violence, others were unaware of the complex reasons why many domestic violence victims return to their abusive partners and the broader challenges faced by domestic violence victim’.<sup>41</sup>

Similarly, with respect to the investigation of racist incidents, the GSI found that the levels of recording are ‘very low’.<sup>42</sup> A recent study<sup>43</sup> reveals a number of problems associated with the recording of hate crime by An Garda Síochána, including the following: inadequate understanding of hate crime and a lack of understanding of the ‘Macpherson’ definition.<sup>44</sup> The study also uncovered a lack of awareness among Garda officers regarding the recording of hate crime on PULSE, which was summarised by one Garda officer as follows:

‘You’re relying on three groups of people to have it recorded. So those three groups of people: ... the victim ... may not be aware [it’s a hate crime]; the guard probably won’t have it in their head, they’ll just see this as a crime, they’ll look for criminal evidence; and then you have the person who records it on the system ... who probably isn’t aware of what a hate crime is anyway’<sup>45</sup>

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<sup>38</sup> See Garda Síochána Inspectorate (2014) *Investigation of Crime*, p. 17.

<sup>39</sup> See the website of the CSO at <http://www.cso.ie/en/statistics/crimeandjustice/>

<sup>40</sup> See Garda Síochána Inspectorate (2014) *Investigation of Crime* which reports on examinations of the Garda Professional Standards Unit.

<sup>41</sup> See Garda Síochána Inspectorate (2014) *Investigation of Crime*.

<sup>42</sup> See Garda Síochána Inspectorate (2014) *Investigation of Crime*, p. 45.

<sup>43</sup> Carr, J (2017); Recording and Reporting Racist Hate Crime: Police and Civil Society Responses, in Haynes, A, Schweppe, J & Taylor, S (Eds) (2017) *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland*, Palgrave Macmillan, 369-391, at p.373.

<sup>44</sup> Macpherson Report, Recommendation 12, Definition of racist incident: That the definition should be: “A racist incident is any incident which is perceived to be racist by the victim or any other person.” 13. That the term “racist incident” must be understood to include crimes and non-crimes in policing terms. Both must be reported, recorded and investigated with equal commitment. 14. That this definition should be universally adopted by the police, local government and other relevant agencies.

<sup>45</sup> Haynes, A, Schweppe, J, Carr, C, Carmody, N & Enright, Shannen (2015) ‘Out of the Shadows’ *Legislating for Hate Crime in Ireland: Preliminary Findings*, Hate and Hostility Research Group, University of Limerick, p.34.

The low level of hate crime recorded by An Garda Síochána has also been linked to a lack of training for Garda officers. An interview with a retired officer reveals that he never received training on recording racism on PULSE.<sup>46</sup>

The Commission notes that modernisation of PULSE was included in An Garda Síochána's Modernisation and Renewal Plan and that An Garda Síochána has since indicated to the Policing Authority that 'an overhaul or replacement of the front-end of PULSE is mandated'.<sup>47</sup> The Commission also notes that as part of the Migrant Integration Strategy, published in 2017, An Garda Síochána has committed to implementing 'good investigative practices in racial and other similar crimes' and will seek to address the issue of the under-reporting of racially-motivated crime 'through the development of greater contact with marginalised communities'.<sup>48</sup> While these initiatives are to be welcomed, the Commission underlines the importance of human rights and equality training for Garda officers. Such training must incorporate cultural competence, as outlined above, and should include training on how human rights and equality considerations are relevant to internal procedures related to the detection and investigation of specific crimes that have a human rights and equality dimension.

The Commission also notes that victims of crime, who may be in a vulnerable position due to their migration status, should not be deterred from reporting crime for fear of prosecution in relation to immigration matters. Therefore, the Commission is of the view that migration status should not pose a barrier to the reporting and investigation of crime.<sup>49</sup>

**The Commission recommends that Gardaí should be equipped to understand, recognise and thoroughly investigate all instances of hate crime, including in situations where the victim does not identify the hate element of the crime.**

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<sup>46</sup> Carr, J (2017) Recording and Reporting Racist Hate Crime: Police and Civil Society Responses, in Haynes, A, Schwerpe, J & Taylor, S (Eds) (2017) *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland*, Palgrave Macmillan, 369-391, at p.373.

<sup>47</sup> Available: [http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/IAHD-AVAJKV1474623-en/\\$File/4th%20Report%20to%20the%20Minister%20-%20FINAL%20211217.pdf](http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/IAHD-AVAJKV1474623-en/$File/4th%20Report%20to%20the%20Minister%20-%20FINAL%20211217.pdf)

<sup>48</sup> Available: [http://www.integration.ie/website/omi/omiwebv6.nsf/page/JWKY-AJEE6A1021139-en/\\$File/Migrant\\_Integration\\_Strategy\\_English.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/JWKY-AJEE6A1021139-en/$File/Migrant_Integration_Strategy_English.pdf)

<sup>49</sup> Article 1 of Directive 2012/29/EU (also known as the EU Victim's Directive) provides: 'The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.' Positive obligations under Article 2 ECHR also require states to 'take appropriate steps to safeguard the lives of those within their jurisdiction, in particular by putting in place effective criminal-law provisions backed up by law-enforcement machinery' – see further: [http://www.echr.coe.int/Documents/FS\\_Life\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Life_ENG.pdf)

**The Commission recommends that all Garda officers should receive training on the consideration of human rights and equality issues in the detection and investigation of specific crimes that have a human rights and equality dimension.**

## **Surveillance, data retention and the right to privacy**

Surveillance powers are provided for under three main pieces of legislation in Ireland: the use of surveillance and tracking devices under the Criminal justice (Surveillance) Act 2009; the interception of postal packets and telephone conversations (phone tapping) under the Postal Packets and Telecommunications Messages (Regulations) Act 1993; and the use of information that has been generated by service providers arising from the use of phones and various electronic devices under the Communications (Retention of Data) Act 2011.

In *Kane v Governor of Mountjoy Prison* the Supreme Court stated that the absence of a specific justification for the covert surveillance of an individual could constitute an infringement of privacy rights.<sup>50</sup> The right to privacy was recognised in *Kennedy v Ireland* as an unenumerated right under Article 40.3 of the Constitution of Ireland, Bunreacht na hÉireann.<sup>51</sup> Likewise, the right to privacy has been enshrined in numerous international human rights instruments.<sup>52</sup> While privacy rights may be infringed in order to pursue a legitimate public interest such as the investigation of a serious crime, any interference with that right must be proportionate.<sup>53</sup>

The Commission has previously expressed concern that not all methods of surveillance fall within the scope of the Criminal justice (Surveillance) Act 2009.<sup>54</sup> The former IHRC had also previously raised concerns about whether there are sufficient remedies in respect of inappropriate use of covert surveillance as well as the overall compliance of the legislation

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<sup>50</sup> [1988] 1 IR 757.

<sup>51</sup> [1987] IR 587

<sup>52</sup> Universal Declaration of Human Rights (Article 12), International Covenant on Civil and Political Rights (Article 17); and regional standards including the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8). See also Human Rights Committee, General Comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation (art. 17); see also report by the UN High Commissioner for Human Rights, the right to privacy in the digital age, A/HRC/27/37, 30 June 2014.

<sup>53</sup> *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 IR 701.

<sup>54</sup> IHREC (2017) CAT.

with human rights standards, in particular the right to privacy.<sup>55</sup> In *DPP v Idah* the Court of Criminal Appeal stated that the ‘law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which public authorities are entitled to resort to such covert measures and it must provide necessary safeguards for the rights of individuals potentially affected’.<sup>56</sup>

In response to the Review of the Law on Access to Communication Data by Mr Justice Murray in 2016, the Commission noted that data retention by telecommunications service providers and disclosure of data to An Garda Síochána ‘lacks ... well-resourced independent expert oversight at appropriate points in the process, and access to effective remedies where rights are infringed.’<sup>57</sup> Further to its analysis of the current legislative framework and practice in the acquisition and disclosure of bulk metadata, the Commission found that the powers appear to be in widespread use with almost two requests for access to data per hour (62,000 in 5 years), mainly by An Garda Síochána, and fewer than two per cent of these are declined.<sup>58</sup> Noting that surveillance technology is outpacing the law, the Commission formed the view ‘that the inadequacies in the current framework for data retention and disclosure call for root and branch reform’.<sup>59</sup> The Commission has since welcomed the commitment to review the law on interception of communications.<sup>60</sup>

**The Commission reiterates its recommendation that the use of covert surveillance techniques by An Garda Síochána be further regulated by law to ensure that they are compliant with human rights standards including in relation to individual remedies and are comprehensive in addressing different forms of covert surveillance.<sup>61</sup>**

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<sup>55</sup> IHRC (2009) Observations on the Criminal Justice (Surveillance) Bill.

<sup>56</sup> [1999] 3 IR 1.

<sup>57</sup> IHREC (2016) Memorandum regarding the Review of the Law on Access to Communication Data (available at <https://www.ihrec.ie/documents/memorandum-review-law-access-communication-data/>).

<sup>58</sup> IHREC (2016) Memorandum regarding the Review of the Law on Access to Communication Data.

<sup>59</sup> IHREC (2016) Memorandum regarding the Review of the Law on Access to Communication Data, p. 1.

<sup>60</sup> IHREC (2017) *Ireland and the UN Convention Against Torture*, p. 23.

<sup>61</sup> Available at

[https://www.ihrec.ie/app/uploads/download/pdf/ihrc\\_submission\\_to\\_review\\_of\\_an\\_garda\\_siochan\\_act\\_2005\\_by\\_oir\\_eachtas\\_committee\\_on\\_justice\\_april\\_2014.pdf](https://www.ihrec.ie/app/uploads/download/pdf/ihrc_submission_to_review_of_an_garda_siochan_act_2005_by_oir_eachtas_committee_on_justice_april_2014.pdf)

**The Commission reiterates its recommendation that independent expert oversight and access to effective remedies must be incorporated into the legal framework on the interception of communications.**

## **Operational procedures and guidance**

Ireland's statutory framework provides An Garda Síochána with broad discretionary powers in the area of operational policing.<sup>62</sup> These powers, such as arrest<sup>63</sup> and stop and search<sup>64</sup>, as well as operational practices, such as the use of force<sup>65</sup> and crowd control, can have wide-reaching impacts on individual human rights and can give rise to equality issues. It is a fundamental principle of human rights law that any interference with a citizen's personal rights must be in accordance with the law.<sup>66</sup>

The European Court of Human Rights has developed a threefold test to assess whether an interference is in accordance with the law as follows: first, the interference must have some basis in national law; second, the law must be accessible; and third, the law must be formulated in such a way that a person can foresee, to a degree that is reasonable in the circumstances, the consequences which a given action will entail.<sup>67</sup> In the context of the third limb of the test, known as the foreseeability test, the Commission has previously noted that without publication it cannot be assessed whether internal Garda policies contain adequate and effective safeguards to protect the individual from arbitrary or unjustifiable interference with their rights.<sup>68</sup>

At the time of the establishment of the Policing Authority, the Commission recommended that the Authority should have responsibility for the publication of procedures as well as the publication of Garda operational policies and procedures, with the exception of certain

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<sup>62</sup> For example, section 5 of the Criminal Justice (Public Order) Act 1994 provides: 'it shall be an offence for any person in a public place to engage in offensive conduct'. Offensive conduct is broadly defined as 'unreasonable behaviour which, having regard to all the circumstances, is likely to cause serious offence or serious annoyance to any person who is, or might reasonably be expected to be, aware of such behaviour'.

<sup>63</sup> See further Walsh (2009) *Human Rights and Policing in Ireland* (Dublin: Clarus Press), pp.130-29 and pp.461-477.

<sup>64</sup> See discussion on racial profiling above.

<sup>65</sup> As mentioned above the UN has published *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.

<sup>66</sup> This applies in relation to Article 40 of the Constitution of Ireland as well as Articles 5 and 8–11 of the ECHR.

<sup>67</sup> The test was originally laid down in *The Sunday Times v The United Kingdom*, Judgment of 26 April 1979, (1980) 2 EHRR 245, at para. 48–50. It is now well established jurisprudence of the ECtHR. See for example *Malone v. The United Kingdom*, Judgment of 2 August 1984, (1985) 7 EHRR 14; *Liberty and Others v. The United Kingdom*, Judgment of 1 July 2008.

<sup>68</sup> IHRC (2009) *Policy Statement: Human Rights Compliance of An Garda Síochána*, p. 13.

clearly-defined tactical and/or security-related procedures.<sup>69</sup> The Commission notes that some guidance on particular areas of police operations have been published and is aware of the existence of codes or guidance in other areas. For example, the Commission understands that a review of internal procedures on the use of force was carried out in 2015 but notes that no policies or procedures have been made publicly available.<sup>70</sup> The Commission remains concerned about the degree to which equality and human rights standards are reflected in such operational guidance.

For example, the Code of Practice on Access to a Solicitor by Persons in Garda Custody was published in April 2015. While the Code provides some clarity,<sup>71</sup> the Council of Europe's Committee for the Prevention of Torture observed some confusion among Gardaí and lawyers with regard to the role of solicitors during interviews of persons detained during its visit to Ireland in 2014.<sup>72</sup> The Code does not make reference to the right to a fair trial or the prohibition on torture, inhuman and degrading treatment. Instead the code contains a general statement on human rights that states: 'any action taken by a member of An Garda Síochána must comply with the fundamental principles of legality, necessity, proportionality and accountability and be applied in a non-discriminatory manner'.<sup>73</sup>

**The Commission reiterates its view that the right of access to a lawyer during questioning be placed on a legislative basis, in order to ensure the effective realisation of the accused's right to a fair trial.<sup>74</sup>**

An Garda Síochána has also published a public statement on its Code of Practice for the Management and Use of Covert Human Intelligence Sources, which provides an overview of the contents of the code. The section on standards and human rights states that the code 'brings together current established best practice and recent recommendations made by

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<sup>69</sup> p. 4, available at

[https://www.ihrec.ie/app/uploads/download/pdf/ihrec\\_designate\\_submission\\_on\\_independent\\_policing\\_authority\\_may\\_2014.pdf](https://www.ihrec.ie/app/uploads/download/pdf/ihrec_designate_submission_on_independent_policing_authority_may_2014.pdf)

<sup>70</sup> Correspondence received from An Garda Síochána in 2015.

<sup>71</sup> The Code confirmed that, upon request, a suspect ought to have a solicitor present during interview in custody. The right of access to a solicitor prior to questioning has been recognised by the Supreme Court in *DPP v Gormley* and *DPP v White* [2014] IESC 17.

<sup>72</sup> Para 14 Council of Europe (2015) *CPT Report*.

<sup>73</sup> An Garda Síochána (2015) *Code of Practice on Access to a Solicitor* (available at <http://www.garda.ie/Documents/User/Code%20of%20Practice%20on%20Access%20to%20a%20Solicitor%20by%20Persons%20in%20Garda%20Custody.pdf>, p. 11).

<sup>74</sup> IHREC (2017) CAT, p. 23.

Mr. Justice Frederick Morris in his reports from the Tribunal of Inquiry into the activities of certain Gardaí in the Donegal Division'.<sup>75</sup>

The Ionann report recommended that An Garda Síochána undertake a human rights impact assessment of existing and forthcoming polices and operational procedures.<sup>76</sup> It was reported in the Ionann implementation report that a pilot project attempting to human rights proof six high risk Garda policing policies was conducted.<sup>77</sup>

**In light of its obligations under the Public Sector Equality and Human Rights Duty, the Commission reiterates its recommendation that policies, procedures and practices of An Garda Síochána should be equality and human rights proofed and should be made accessible to the public.**

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<sup>75</sup> Available at

<http://www.garda.ie/Documents/User/Management%20and%20use%20of%20Covert%20Human%20Intelligence%20Sources.pdf>

<sup>76</sup> Ionann Management Consultants (2004) *An Garda Síochána Human Rights Audit*, p 27.

<sup>77</sup> An Garda Síochána, *Action Plan for the Implementation of the Recommendations of the Garda Human Rights Audit Report, Status Report as at 31 December 2007*, (undated), at 1.4.

## Policing oversight and accountability

Accountability in policing in Ireland was a significant theme in the work of the former IHRC and continues to be a priority for the Commission.<sup>78</sup> Effective oversight bodies, coupled with transparency and engagement with the community, are core mechanisms of human rights accountability. The Commission has welcomed recent legislative reforms such as the extension of the remit of GSOC<sup>79</sup> and the establishment of the Policing Authority.<sup>80</sup> However, the Commission is of the view that gaps in police accountability continue to impact public confidence in law enforcement.

The Patten Report identifies five aspects to accountability: (1) democratic accountability, by which the police are accountable to the elected representatives; (2) transparency, by which the community is kept informed; (3) legal accountability in the event of abuse of police powers; (4) financial accountability; and (5) internal accountability, by which officers are accountable within a police organisation.<sup>81</sup> In addition, the European Convention on Human Rights (ECHR), which has been indirectly incorporated into domestic law by means of the European Convention on Human Rights Act 2003, requires a number of mechanisms to be put in place in order to hold the police service to account. These include:

- effective investigations following suspicious deaths (Article 2);
- proper planning and oversight of police operations to address foreseeable risks of human rights violations (Articles 2, 8, 13);
- proper complaints mechanisms following any human rights violations that can occur at the hands of police (Article 13 when read in conjunction with Articles 2, 3, 8 and 14).

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<sup>78</sup> See IHREC (2014) Observations on the Garda Síochána (Amendment No.3) Bill 2014; IHREC (designate) (2014) Submission of IHREC (Designate) to the Cabinet Sub-Committee on Justice on the Establishment of an Independent Policing Authority; IHREC (designate) (2014) Review of the Garda Síochána Act, 2005; IHRC (2009) Policy Statement: Human Rights Compliance of An Garda Síochána; IHRC (2004) Observations on the Garda Síochána Bill 2004; IHRC (2003) Observations on the Scheme of the Garda Síochána Bill, 2003 and IHRC (2002) A proposal for a New Garda Complaints System (all publications available at <https://www.ihrc.ie/publications/>).

<sup>79</sup> The Garda Síochána (Amendment) (No. 3) Bill 2014 was enacted as the Garda Síochána (Amendment) Act 2015.

<sup>80</sup> The Garda Síochána (Amendment) (No. 3) Bill 2014 was enacted as the Garda Síochána (Amendment) Act 2015.

<sup>81</sup> Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 22.

Drawing on the Patten Report and ECHR requirements, this section will focus on democratic accountability, complaints mechanisms, investigations and inspections, and the oversight of police operations to address human rights violations.

## Democratic accountability

The independence of the police service from executive control is central to the credibility and the capacity of the police service to protect human rights. Article 59 of the European Code of Police Ethics provides that '[t]he police shall be accountable to the state, the citizens and their representatives. They shall be subject to sufficient external control.'<sup>82</sup> The Commission has previously called for the minimisation of political influence in the operational aspects of the work of An Garda Síochána.<sup>83</sup>

At the time of the establishment of the Policing Authority, the Commission made a number of recommendations, including in relation to the supervision of the functioning of the Garda Commissioner's Office as well as the appointment and supervision of senior management within An Garda Síochána, including the Garda Commissioner.<sup>84</sup> Given that responsibility for the appointment and removal of the Garda Commissioner continues to lie with the Minister, the Commission noted that the Policing Authority did not displace either the Minister or the Department in terms of Garda Síochána governance.<sup>85</sup> In December 2017 the Policing Authority, in a review of its own effectiveness, recommended greater clarity in relation to the relationship between the Authority, the Minister for Justice and Equality, the Department of Justice and Equality and the Oireachtas.<sup>86</sup>

In addition, the Commission has previously expressed concerns about the operation of the Garda Síochána Act 2005 with respect to the curtailment of the investigation of Garda stations in the context of national security and the involvement of the Garda Commissioner

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<sup>82</sup> Council of Europe's Code of Ethics.

<sup>83</sup> See IHREC (Designate)(2014) *Review of the Garda Síochána Act, 2005*.

<sup>84</sup> IHREC (Designate) (2014) *Submission to the Cabinet Sub Committee on Justice on the Establishment of an Independent Policing Authority*.

<sup>85</sup> IHREC (2017) CAT, p 22.

<sup>86</sup> Policing Authority (2017) *Report in accordance with section 62(O) of the Garda Síochána Act 2005*, p. 21–22.

and the Minister for Justice and Equality in that decision-making process.<sup>87</sup> Currently GSOC must notify the Garda Commissioner in advance of searching a garda station that has been designated as exempt by the Minister for Justice and Equality for national security reasons.<sup>88</sup> In December 2017, GSOC recommended that the requirement for advance notification be removed in future legislation.<sup>89</sup> While the protection of national security is recognised as a legitimate ground for limiting the rights and freedoms protected in the European Convention on Human Rights,<sup>90</sup> the Commission has previously recommended that more proportionate measures could be put in place to protect national security. For example, certain documents may be designated by a senior member of An Garda Síochána which could then be sealed and assessed by a judge.<sup>91</sup>

**The Commission reiterates its recommendation that the State minimise political influence in the operational aspects of the work of by An Garda Síochána.<sup>92</sup>**

## Police complaints system

In 2009 the Council of Europe's Commissioner for Human Rights issued an Opinion Concerning Independent and Effective Determination of Complaints against the Police, which stated that:

Reflective police practice, including a willingness to address grievances and acknowledge mistakes at the earliest opportunity and learn the lessons from complaints, enhances police effectiveness and public trust and confidence in the police.

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<sup>87</sup> IHREC (Designate) *Review of the Garda Síochána Act 2005, Submission of IHRC (Designate) to the Joint Oireachtas Committee on Justice, Defence and Equality*, available:

[https://www.ihrec.ie/download/pdf/ihrc\\_submission\\_to\\_review\\_of\\_an\\_garda\\_siohan\\_act\\_2005\\_by\\_oireachtas\\_committee\\_on\\_justice\\_april\\_2014.pdf](https://www.ihrec.ie/download/pdf/ihrc_submission_to_review_of_an_garda_siohan_act_2005_by_oireachtas_committee_on_justice_april_2014.pdf)

<sup>88</sup> Section 99 of the Garda Síochána Act 2005.

<sup>89</sup> GSOC (2017) *Submission to Department of Justice and Equality on Proposals for Legislative Change*, p. 21.

<sup>90</sup> Articles 8–11 of the ECHR.

<sup>91</sup> See p 11 IHREC (Designate)(2014) *ICCPR Submission*.

<sup>92</sup> P 7

[https://www.ihrec.ie/app/uploads/download/pdf/ihrc\\_designate\\_submission\\_on\\_independent\\_policing\\_authority\\_may\\_2014.pdf](https://www.ihrec.ie/app/uploads/download/pdf/ihrc_designate_submission_on_independent_policing_authority_may_2014.pdf)

A responsive and accountable police service that is demonstrably willing to tackle public concerns will also be better placed to secure public trust and confidence in its ability and commitment to prevent crimes and abuses of power committed by police officers<sup>93</sup>

The Commission notes that in January 2018, Ms Justice Mary Ellen Ring, Chair of GSOC, stated that GSOC ‘should no longer be under the remit of the department in order to give the public confidence in the independence of its work’.<sup>94</sup> This echoes concerns previously raised by the Commission about GSOC’s statutory independence and functions. These concerns include (1) the limited scope of mandatory formal investigations by GSOC to those situations involving ‘death or serious harm’ resulting from Garda operations; (2) the limitation on GSOC’s power to investigate the Garda Commissioner which is ‘subject to the consent of the Minister’; (3) the continued involvement of An Garda Síochána in investigating disciplinary matters (including serious disciplinary problems); and (4) the use of officers of An Garda Síochána by GSOC rather than its own independent pool of investigators.<sup>95</sup>

These concerns are shared by international human rights bodies. Following its examination of Ireland in 2017, the UN Committee Against Torture recommended that the State:

- (a) Strengthen the independence and effectiveness of the Garda Síochána Ombudsman Commission to receive complaints relating to violence or ill-treatment by the police and to conduct timely, impartial and exhaustive inquiries into such complaints;
- (c) Provide information on the number of complaints filed with the Commission which may relate to torture or ill-treatment and on the final outcome of such complaints processed by the Commission;

The Commission notes that in December 2017, GSOC published its proposals for legislative change, which address many of the concerns of the Commission.<sup>96</sup>

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<sup>93</sup> <https://rm.coe.int/16806daa54>

<sup>94</sup> <https://www.irishtimes.com/news/politics/charlie-flanagan-has-open-mind-on-gsoc-independence-1.3355404>

<sup>95</sup> IHREC (2017) CAT, p. 20–21.

<sup>96</sup> GSOC (2017) *Proposal for Legislative Change*.

**The Commission recommends that the legislative reforms proposed by GSOC be taken into consideration in order to strengthen the existing police complaints mechanisms.**

## **Inspection of custodial settings**

Police custodial settings are currently not subject to independent oversight or unannounced inspections at domestic level. The continuing gap in oversight of police custody requires immediate attention to assist in preventing ill-treatment in police custodial settings.

According to a judicial statement, conditions in police cells may undermine the resolve of an arrested person to wait for legal advice.<sup>97</sup> National and international oversight bodies have brought attention to healthcare treatment for people in police custody.<sup>98</sup> In 2014, the GSI reported on incomplete custody records, instances of a failure to update PULSE prisoner logs, lack of specific training, and an absence of an Independent Custody Visitor tasked with checking the welfare of persons detained. Inconsistencies in the use of CCTV in interview rooms and inadequacies of security in custody areas were also reported.<sup>99</sup>

The Commission notes that heads of bill are under preparation in relation to the Inspection of Places of Detention Bill, which will provide for the inspection of all places of detention in the justice area, namely prisons, Garda stations and courts.<sup>100</sup> Addressing the lack of independent domestic oversight or unannounced inspections of police custodial settings is also an important step in developing a National Preventative Mechanism in order to meet the requirements of the Protocol to the UN Convention against Torture (OPCAT).<sup>101</sup> In 2016, IHREC commissioned research on Ireland and OPCAT from the Human Rights

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<sup>97</sup> *DPP v Gormley and DPP v White* [2014] IESC 17.

<sup>98</sup> See p 16 Council of Europe (2015) CPT Report. See also Minister for Justice and Equality, Frances Fitzgerald TD 'Motion: Dáil Debate Committee Report on Garda Oversight and Accountability', *Parliamentary Debates: Dáil Éireann*, 2 February 2017 (available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2017020200045>). See Report of the Oireachtas Committee [press release] <http://www.oireachtas.ie/parliament/mediazone/pressreleases/2016/name-40153-en.html>.

<sup>99</sup> See Garda Síochána Inspectorate (2014) *Investigation of Crime*.

<sup>100</sup> Spring/Summer Legislative Programme 2018, available [https://www.taoiseach.gov.ie/DOT/eng/News/Government\\_Press\\_Releases/Government\\_Legislation\\_Program\\_Spring\\_Summer\\_2018.html](https://www.taoiseach.gov.ie/DOT/eng/News/Government_Press_Releases/Government_Legislation_Program_Spring_Summer_2018.html)

<sup>101</sup> Ireland signed the Optional Protocol to the UN Convention against Torture (OPCAT) in 2007, but has yet to ratify it. Article 3 OPCAT states that "Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism)."

Implementation Centre (HRIC) at the University of Bristol Law School, which was published in February 2017 in a report titled *OPCAT: Ireland and the Optional Protocol to the UN Convention against Torture*.<sup>102</sup> This report set out a number of different options in relation to the formation of a National Preventative Mechanism and the Commission understands that the Department of Justice and Equality is currently exploring the possible structure of such a mechanism.

Following its examination on Ireland in 2017, the UN Committee Against Torture recommended that the State:

Expedite the drafting of the Inspection of Places of Detention Bill and ensure that this or other national legislation promptly establishes an independent body tasked with inspecting police stations and monitoring the provision by the police of all fundamental safeguards against torture to persons deprived of their liberty, including respect for the right of prompt access to a lawyer; the rigorous keeping of detention records, including in a centralized register; and systematic closed-circuit monitoring of interview rooms<sup>103</sup>

**The Commission reiterates its recommendation that the State ratify the Optional Protocol to the Convention against Torture and establish an independent National Preventive Mechanism, incorporating provision for the conduct of unannounced visits on Garda stations.<sup>104</sup>**

## **Oversight of the implementation of human rights and equality standards in policing**

At the time of the establishment of the Policing Authority, the Commission recommended that the Authority ‘monitor and address human rights and equality compliance by An Garda Síochána at every level of its operations and align breaches of service/ discipline or criminal

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<sup>102</sup> <https://www.ihrec.ie/app/uploads/2017/09/Ireland-and-the-Optional-Protocol-to-the-UN-Convention-against-Torture.pdf>

<sup>103</sup> CAT (2017) *Concluding Observations on Ireland*, para 10(b).

<sup>104</sup> IHREC (2017) *Ireland and the Convention Against Torture*.

offences identified by GSOC and which would also reveal a breach of human rights or a discriminatory act with disciplinary procedures within the force'.<sup>105</sup>

The Commission notes that the Ionann Report recommended that the implementation of human rights and equality standards requires monitoring mechanisms at a senior level in an organisation. Given that the Public Sector Equality and Human Rights Duty requires the monitoring of compliance with human rights and equality standards, the Commission is of the view that a formal mechanism should be established to ensure effective oversight.

The Commission is of the view that external expertise and strategic advice are of fundamental importance to enhance human rights compliance in An Garda Síochána.<sup>106</sup> This allows for an independent perspective and protects the interests of the community, while harnessing external expertise in the field of human rights. Based on the experience within the Policing Board in Northern Ireland, the Commission is of the view that a full-time independent oversight mechanism should be established to ensure the effective protection of human rights and equality. Following the Patten Report, an independent human rights advisor was employed by the Policing Board in Northern Ireland, who provided human rights expertise and produced an annual human rights report on policing matters.<sup>107</sup>

**The Commission recommends that an independent human rights advisor be appointed by the Policing Authority to ensure oversight of the implementation of human rights and equality standards in policing.**

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<sup>105</sup> p. 5, available at

[https://www.ihrc.ie/app/uploads/download/pdf/ihrc\\_designate\\_submission\\_on\\_independent\\_policing\\_authority\\_may\\_2014.pdf](https://www.ihrc.ie/app/uploads/download/pdf/ihrc_designate_submission_on_independent_policing_authority_may_2014.pdf)

<sup>106</sup> IHRC (2009) *Policy Statement: Human Rights Compliance of An Garda Síochána*.

<sup>107</sup> See Northern Ireland Policing Board, *Human Rights Annual Reports*, available at <https://www.nipolicingboard.org.uk/annual-reports-0>.





**16 – 22 Sráid na Faiche,  
Baile Átha Cliath, D07 CR20**  
16 – 22 Green Street,  
Dublin, D07 CR20

**Idirlón/Web** [www.ihrec.ie](http://www.ihrec.ie)  
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