**IHRC Policy Statement**

**Human Rights Compliance of An Garda Síochána**

**April 2009**

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**The Irish Human Rights Commission (IHRC) was established under statute in 2001, to promote and protect human rights in Ireland. The human rights that the IHRC is mandated to promote and protect are the rights, liberties and freedoms guaranteed under the Irish Constitution and under international agreements, treaties and conventions to which Ireland is a party.**

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**Glossary of Terms**

**CPD** Continual professional development

**CPT** European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment

**CPT Committee** European Committee for the Prevention of Torture, established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment

**ECHR** European Convention for the Protection of Human Rights and Fundamental Freedoms

**ECtHR** European Court of Human Rights

**ECRI** European Commission against Racism and Intolerance

**GSOC** Garda Síochána Ombudsman Commission

**ICCPR** International Covenant on Civil and Political Rights

**IHRC** Irish Human Rights Commission

**Ionann Report** The Ionann Management Consultants’ Human Rights Audit of An Garda Síochána

**LRC** Law Reform Commission

**OPCAT** UN Optional Protocol to the Convention Against Torture

**PACE** Police and Criminal Evidence Act 1984

**Patten Report** Report of the Independent Commission on Policing for Northern Ireland

**PSNI** Police Service of Northern Ireland

**UNCAT** United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**UNCERD** UN Convention on the Elimination of All Forms of Racial Discrimination

**Executive Summary**

1. **Introduction**

The Irish Human Rights Commission (IHRC) has a statutory remit under the Human Rights Commission Act 2000 to endeavour to ensure that the human rights of all persons in the State are fully realised and protected in the law and policy of the State.[[1]](#footnote-1) The IHRC is Ireland’s National Human Rights Institution, recognised as such by the United Nations (UN).[[2]](#footnote-2) The IHRC is mandated to review the law and practice in all state bodies, including An Garda Síochána, for compliance with Ireland’s human rights standards.[[3]](#footnote-3) As a result, the IHRC has a role in reviewing not only the legislative framework for policing, but also An Garda Síochána’s operational policies and their implementation, and in making recommendations thereon. One of the objectives of the IHRC Strategic Plan 2007-2011 is to “[e]ngage with An Garda Síochána, the Garda Síochána Ombudsman Commission and the Garda Síochána Inspectorate to help promote a culture of human rights in policing”.[[4]](#footnote-4)

Policing is central to the protection of human rights in a democratic society and to the promotion of a social order in which the human rights of all are protected and vindicated. While the unique powers of police officers to limit the rights and freedoms of persons can create the potential for tension between human rights and policing, it has been asserted that no such tension should exist as “[p]olicing means protecting human rights”.[[5]](#footnote-5)

At the outset, the IHRC acknowledges the inherent difficulties in the task of policing. In the course of their work members of An Garda Síochána face a variety of challenges and are exposed to a wide range of stressful situations. In order for police officers to be effective in promoting and protecting human rights, the State must ensure that the rights of Gardaí themselves are upheld and respected at an individual and institutional level. Therefore, the recommendations contained in this Policy Statement are made from the perspective that a human rights view of policing is one that best serves the legitimate interests of all stakeholders, including Gardaí and the public alike.

An Garda Síochána is currently undergoing a significant period of reform which includes initiatives to develop a more human rights compliant police service. The IHRC welcomes this reform period. While significant progress has been made, however, there is much of an urgent nature that remains to be done. It is crucial at this juncture to maintain the momentum and to sustain the reform process.

This IHRC Policy Statement is intended to support the work of members of An Garda Síochána and to assist those involved in both the policy and practice of policing in Ireland, including senior management of An Garda Síochána and the Minister for Justice Equality and Law Reform (Minister for Justice), by providing guidance on human rights standards in policing in a number of key areas. The Policy Statement provides an overview of the applicable national and international law and best practice in the field of human rights and policing. It surveys the current legal and policy context in which An Garda Síochána is operating, acknowledging some reforms introduced so far in the area of human rights. Finally, it identifies some key challenges and priorities ahead for developing a more human rights compliant police service and in light of these sets out the IHRC’s legislative and policy recommendations at this time.

To assist further in the promotion of a culture of human rights in policing and to progress its work with An Garda Síochána, in April 2006, the IHRC, commissioned Professor Dermot Walsh of the University of Limerick to undertake a study on An Garda Síochána and human rights standards. The IHRC considered that it was an important time to commission the study having regard *inter alia* to: the rapidly changing nature and increasing diversity of Irish society; the example set in Northern Ireland since the Report of the Independent Commission on Policing for Northern Ireland (“the Patten Report”); the new legislative framework under the Garda Síochána Act 2005 and the human rights concerns expressed in the Morris Tribunal Reports.[[6]](#footnote-6) The result of this commissioned research, *Human Rights and Policing in Ireland: Law Policy and Practice*, written by Professor Dermot Walsh and published by Clarus Press (hereinafter “the Walsh Study”), represents an important contribution to research on the law, policy and practice governing An Garda Síochána from a human rights perspective.[[7]](#footnote-7)

While this IHRC Policy Statement has been significantly informed and enabled by the Walsh Study, the present Policy Statement represents the recommendations of the IHRC at this time in pursuance of its statutory mandate to make recommendations to Government on the measures it considers should be taken to strengthen, protect and promote human rights in the State. In the present Policy Statement the IHRC has chosen to focus on a number of key areas for priority attention. This of course is without prejudice to future recommendations concerning policing which the IHRC may make from time to time.

1. **Sources of Human Rights Standards in Policing**

In the performance of their duties and functions members of An Garda Síochána are required to have regard to the principles of human rights as set out in international and national law.[[8]](#footnote-8) Section II of this Policy Statement briefly outlines the international human rights treaties and other standards that are of central relevance to the duties and functions of An Garda Síochána.

Ireland has ratified four major international conventions which are of primary relevance to the functioning and accountability of law enforcement officials. These are: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has been given express effect in Irish law by way of the European Convention on Human Rights Act 2003; 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); and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT). The Constitution of Ireland also has a number of fundamental human rights provisions which are applicable to the functioning of An Garda Síochána. The core Article from a human rights perspective is Article 40, which protects the personal rights of the citizens of the State.

These international and national instruments are supplemented by a range of international standards on policing issued by inter-governmental bodies, such as the Council of Europe and the UN. Of particular importance are the European Code of Police Ethics,[[9]](#footnote-9) the UN Code of Conduct for Law Enforcement Officials[[10]](#footnote-10) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[[11]](#footnote-11) In addition to these international instruments the Patten Report represents a comprehensive study on policing which provides important guidance on human rights standards in policing that may be broadly applied in Ireland and elsewhere.[[12]](#footnote-12)

1. **Legal and Policy Context**

Section III of the Policy Statement surveys, from a human rights perspective, the current legal and policy context in which An Garda Síochána is operating. An awareness of and commitment to developing a more human rights compliant police service has progressed steadily within An Garda Síochána since the launch of An Garda Síochána’s Human Rights Initiative in 1999. As part of this initiative, An Garda Síochána commissioned Ionann Management Consultants to carry out an external human rights audit of Garda policies and procedures. The Ionann Management Consultants’ Human Rights Audit of An Garda Síochána (“hereinafter the Ionann Report”) was completed in June 2004.[[13]](#footnote-13)

In response to the Ionann Report, An Garda Síochána developed a Garda Human Rights Action Plan with specified targets and timeframes for the implementation of the recommendations arising from the Ionann Report.[[14]](#footnote-14) Since the publication of the Garda Human Rights Action Plan, An Garda Síochána has produced three Status Reports on its implementation. It is evident from these Status Reports that through implementing the clearly identified objectives in the Garda Human Rights Action Plan definite progress has been made in meeting the recommendations in the Ionann Report.[[15]](#footnote-15) A noteworthy example has been the establishment of a Strategic Human Rights Advisory Committee to advise the Commissioner and senior management of An Garda Síochána, on which the IHRC is represented. The IHRC is aware that the Strategic Human Rights Advisory Committee has compiled a report for the Garda Commissioner. This report contains a broad number of recommendations to An Garda Síochána in three main areas: (1) developing a human rights framework for monitoring the practice and actions of An Garda Síochána, (2) progressing human rights compliance through training, learning and development and (3) human rights proofing and auditing of policies, procedures and guidelines.  The IHRC recommends that prompt action is taken on foot of the Report of the Strategic Human Rights Advisory Committee.

The Garda Síochána Act 2005 introduced some of the most fundamental human rights reforms to date in relation to An Garda Síochána. For example, the Act established new oversight bodies such as the Garda Síochána Inspectorate[[16]](#footnote-16) and the Garda Síochána Ombudsman Commission (GSOC).[[17]](#footnote-17) Within the Gardaí itself, the Act introduced initiatives such as the Professional Standards Unit and Joint Policing Committees.[[18]](#footnote-18) Since 2005, the Department of Justice has introduced further important measures including a new set of Garda Disciplinary Regulations enacted in May 2007[[19]](#footnote-19) and the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007. In addition, and in accordance with Section 17 of the Garda Síochána Act 2005, a Code of Ethics is currently being developed that includes human rights standards of conduct for members of An Garda Síochána.

The IHRC commends An Garda Síochána for the positive human rights based reform process it is currently embarking upon and for the many positive initiatives undertaken so far. However, given that many of the initiatives are still in gestation, it is difficult to determine the impact that many of the reform initiatives will have on operational policing and on individuals subject to Garda powers. In addition, the IHRC is concerned about the pace at which some of these reforms are being implemented. The objectives in the Garda Human Rights Action Plan, intended to address the recommendations emerging from the Ionann Report, were due to have been fully implemented by December 2007. However, many of the actions are still in gestation and progress is difficult to assess.[[20]](#footnote-20) There has also been no action or at times limited action on several key recommendations in the Ionann Report.[[21]](#footnote-21) The IHRC considers it vital that all the initiatives in the Garda Human Rights Action Plan are fully implemented and reinforced with effective management and training. The IHRC also considers it vital that all outputs from the Strategic Human Rights Advisory Committee are promptly addressed by senior management.

1. **Issues, Challenges and Recommendations**

Section IV of this Policy Statement highlights some of the key issues and challenges ahead to build on the current reform process and to promote a culture of human rights compliance in An Garda Síochána. Informed by international human rights standards and best practice, the IHRC Policy Statement highlights a number of priority areas for reform and makes legislative and policy recommendations in this regard. In particular, the IHRC examines the following five major issues: mainstreaming human rights in An Garda Síochána policies and practices; human rights in training and development; accountability; serving the community and the rights of the Gardaí.

1. **Mainstreaming Human Rights in An Garda Síochána Policies and Practices**
	1. **An Garda Síochána Operational Policies and Procedures**

The powers of An Garda Síochána are regulated by a wide range of statutory provisions and the common law. In the area of operational policing, Ireland’s statutory framework provides An Garda Síochána with broad discretionary powers.[[22]](#footnote-22) For the most part, these powers are not circumscribed by transparent guidance in the form of accessible written Garda policies or by guidance in the form of Ministerial regulations or codes of practice.[[23]](#footnote-23) As emphasised in the Walsh Study, there can be no doubt that An Garda Síochána has internal policies to supplement the statutory provisions and govern the exercise of Garda powers and procedures; a fundamental difficulty is that these policies are not published.[[24]](#footnote-24)

The reluctance to publish Garda policies, with the exception of some security-related procedures, runs counter to developing an open and transparent police service and may certainly be said to fall short of best international practice. 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.[[25]](#footnote-25) In addition, An Garda Síochána is currently excluded from the scope of the Freedom of Information legislation, a situation that has been criticised by Ireland’s Information Commissioner as being “virtually unique” in Europe.

It is of particular concern to the IHRC that where Garda policies are inaccessible it is not possible to determine if they are human rights compliant. The IHRC considers that human rights proofing of An Garda Síochána operational policies and procedures is of crucial importance in mainstreaming human rights standards in all aspects of policing.In the view of the IHRC the publication of the Garda Code and Garda operational policies would enhance the human rights proofing process and would allow for independent external assessment and oversight.

Finally, the IHRC considers that where appropriate, key areas of policing, such as the areas identified in the Walsh study, should be subject to detailed and accessible human rights based codes of practice. The areas identified in the Walsh study, which require further guidance in the form of detailed human rights based policies or codes of practice, include: arrest, detention, interviewing, taking fingerprints, photos and bodily samples, entry, search and seizure, stop, search and question, public order, use of force, use of surveillance methods, use of the witness protection programme, handling of Garda confidential information, protecting the rights of victims, treatment of children in Garda custody, and the use of ASBOs and fixed penalties.[[26]](#footnote-26) The purpose of the codes of practice would be to govern the exercise of these and other Garda powers. The codes of practice would comprehensively set out Garda policy and procedure informing Garda decisions and regulating Garda powers in a transparent and human rights compliant manner.

**IHRC Recommendations:**

* All sections of the Garda Code and Garda operational policies and procedures, with the exception of some security-related procedures, should be published and made accessible for the public.
* An Garda Síochána should be brought within the scope of the Freedom of Information legislation in Ireland.
* An Garda Síochána should arrange for human rights proofing of all Garda policies, procedures and practices.
* The retention of adequate human rights expertise is required, whether in-house or on a contract for services, to ensure proper human rights proofing of all Garda policies and procedures.
* Where appropriate, key areas of policing should be subject to detailed and accessible human rights based codes of practice. When legislation governing Garda powers in key aspects of operational policing is being drafted or reviewed, the IHRC recommends that consideration should be given to providing the Minister for Justice with the power to issue supplementary codes of practice to accompany the statutory Garda powers.
* Legislation providing the Minister for Justice with the power to issue codes of practice should require the Minister to engage in an appropriate consultation process prior to issuing the codes.
* Effective compliance measures should be incorporated into Garda codes of practice. While compliance measures may differ from code to code, the IHRC considers that typically, compliance measures should include a requirement for contemporaneous record-keeping by members of the Gardaí when exercising Garda powers. Furthermore, the IHRC considers that when appropriate a breach of a code of practice should suffice to trigger the complaints mechanism and/or disciplinary action.
	1. **Internal Management Structures for Mainstreaming Human Rights**

While there are a number of components in the institutional framework of An Garda Síochána which have an important role to play in promoting human rights, there continues to be no central management structure whose sole remit is to mainstream and monitor human rights in An Garda Síochána.[[27]](#footnote-27) Human rights are currently merely one part of a very comprehensive portfolio attached to the Assistant Commissioner, Professional Standards.

**IHRC Recommendations:**

* Consideration should be given to reviewing the internal management structures of An Garda Síochána with a view to strengthening the existing institutional human rights framework. The IHRC considers that the designated high level Human Rights Champion should have a full-time human rights portfolio or, at a minimum, have limited additional competing duties in order to allow the majority of his or her time to be focused on human rights issues.
* Human rights should be explicitly part of the core agenda of the new Garda Síochána Executive Committee.
	1. **Strategic Advice and External Expertise**

To enhance human rights compliance in An Garda Síochána external expertise and strategic advice are of fundamental importance. The IHRC acknowledges the important role of the high-level Strategic Human Rights Advisory Committee in providing strategic advice and external expertise to the Commissioner and senior management of An Garda Síochána. The IHRC considers that this Committee should continue to function and its recommendations be given due attention. In addition, the IHRC endorses the model of a national committee, as recommended by the Morris Tribunal, to formulate and recommend policy to Garda management in respect of investigative interviewing.[[28]](#footnote-28) The IHRC considers that this model of a national committee could be broadened to some other aspects of operational policing.

**IHRC Recommendations:**

* The IHRC considers that the work of the Strategic Human Rights Advisory Committee should continue and that prompt action should be taken to implement the recommendations of the Strategic Human Rights Advisory Committee’s Report.
* The IHRC endorses the model of a national committee, as recommended by the Morris Tribunal, to formulate and recommend policy to Garda management in respect of investigative interviewing and considers that this model could be broadened to some other aspects of operational policing.
1. **Human Rights in Training and Development**

The IHRC considers it essential that human rights principles are integrated into all aspects of training and professional development of the Garda organisation. While reported progress is commendable, the extent to which human rights awareness has been integrated into Garda training and development is difficult to assess fully without information relating to the Garda College curricula. The IHRC welcomes the Garda Commissioner’s initiative to establish a Training Review Group with external representation to review all training in An Garda Síochána.[[29]](#footnote-29) The IHRC considers that this is a timely opportunity to place human rights at the core of all aspects of training and professional development in An Garda Síochána.

**IHRC Recommendations:**

* 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.
* Garda training and development should be underpinned by the principles of transparency and openness. The IHRC recommends that information on Garda teaching materials and the curricula in the Garda Training College should be publicly available.
* All aspects of Garda training and development should be human rights proofed as a means of effectively integrating human rights standards within An Garda Síochána, from course development through to course delivery. In the view of the IHRC, public information on training materials would substantially enhance this process.
* The retention of adequate human rights expertise is required, whether in-house or on a contract for services, to ensure proper human rights proofing of Garda training.
* Human rights training should be a central component of Garda CPD programmes. Each member of An Garda Síochána should partake in human rights based CPD programmes on a regular basis.
1. **Accountability**
	1. **Garda Síochána Ombudsman Commission**

The Garda Síochána Act 2005 and the establishment of the GSOC marked a historic step towards placing human rights at the centre of Irish policing. The IHRC has participated from the beginning in a Consultative Group established by GSOC to guide it in the development of its operating policies and protocols.[[30]](#footnote-30) The IHRC is aware that GSOC is currently reviewing all aspects of its operations including training, in order to ensure continuing compliance with human rights principles.

However, aspects of GSOC’s powers are of concern to the IHRC. As set out below the IHRC has formulated a number of recommendations that it considers are required to enhance the independence and effectiveness of GSOC.

It has emerged that GSOC has been involved in discussions with the Department of Justice to request modifications to the Garda Síochána Act 2005, which they believe will aid the efficiency and effectiveness of GSOC.[[31]](#footnote-31) The IHRC considers that any potential amendment to the Garda Síochána Act 2005 to allow for the “leaseback” of investigations to An Garda Síochána, whether for disciplinary matters or the investigation of *prima facie* criminal offences, must be strictly limited to cases involving minor offences or to cases which do not involve serious misconduct. In addition, the IHRC considers that any potential amendment to the Act to provide for the “leaseback” of complaints to the Garda Commissioner must be accompanied by appropriate statutory safeguards.

**IHRC Recommendations:**

* Section 106 of the Garda Síochána Act 2005 should be amended to allow GSOC to instigate a review on its own initiative of a practice, policy or procedure of An Garda Síochána.
* Section 99 and Section 126 of the Garda Síochána Act 2005 should be reconsidered to ensure that nothing in the Act could have the effect of restricting GSOC’s right of access to Garda stations on demand in the course of an investigation of a complaint.
* The proposed GSOC amendment to Section 94 of the Garda Síochána Act 2005 to allow for the “leaseback” of investigations to An Garda Síochána must be strictly limited to cases involving minor offences or to cases which do not involve serious misconduct.
* Certain statutory safeguards surrounding GSOC investigations, including mandatory supervision by GSOC, GSOC approval of the Garda appointed to conduct the investigation, and a requirement to obtain the consent of the complainant prior to referral, would need to be incorporated into any proposed amendment of the Garda Síochána Act 2005 that would allow for the “leaseback” of complaints to the Gardaí for an investigation of *prima facie* criminal offences.
* Crucially, it is essential that GSOC is sufficiently resourced to facilitate the supervision of Garda investigations, whether or not the Act is amended.
	1. **National Preventative Mechanism** **to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

The UN Optional Protocol to the Convention Against Torture (OPCAT) requires that a national oversight body inspect Garda stations on a regular basis, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. Ireland has not yet ratified the OPCAT and at present there is no inspection mechanism in Ireland mandated to carry out preventative inspections of Garda stations.

**IHRC Recommendation:**

* The Irish government should ratify OPCAT without delay and ensure that Garda stations are subjected to preventative inspections on a regular basis by the National Preventative Mechanism designated under the OPCAT. Such a National Preventative Mechanism must comply with all the requirements of the OPCAT and in particular, must possess the independence, mandate and adequate, ring-fenced resources to allow it to carry out its functions effectively.
	1. **Community Policing**

The IHRC welcomes the initiatives taken to date by An Garda Síochána to develop community policing. Of particular significance is the establishment of Joint Policing Committees, under the Garda Síochána Act 2005. The functions of the Joint Policing Committees include serving as a forum for consultation, discussions and recommendations on matters affecting policing in the local authority’s administrative area.

**IHRC Recommendations:**

* An Garda Síochána should continue to develop and strengthen Garda initiatives on community engagement and to ensure that the Garda Síochána National Model of Community Policing is rolled out in practice.
* The Ministerial Guidelines on Joint Policing Committees should ensure that the Committees include a broad range of community representatives, in particular from elements of the community that experience high levels of contact with the police.
* The IHRC considers that transparency in the selection process of community and voluntary sector representatives to the Joint Policing Committees is desirable. As a result, the IHRC strongly encourages consultation with the community and voluntary forum prior to the selection of representatives from this sector.
1. **Serving the Community**
	1. **Diversity and Interculturalism**

To effectively provide for the needs of the community and in light of the growing diversity in Irish society, An Garda Síochána must have sufficient measures in place to combat racism and to address the requirements of all members of Irish society. Many positive measures have been taken to monitor racist incidents and to address racial discrimination and racially motivated misconduct within the Garda service.[[32]](#footnote-32) However, the IHRC considers it fundamental that racially motivated misconduct forms an explicit disciplinary offence within An Garda Síochána.

The IHRC was pleased to learn that An Garda Síochána is currently working towards a Diversity Strategy and Implementation Plan, aimed at complementing, enabling and taking strategic advantage of diversity.[[33]](#footnote-33) The IHRC looks forward to the publication of this Strategy. In the view of the IHRC, the provision of a reliable, certified and good quality interpretation service is an important aspect of enabling diversity and is essential in vindicating the human rights of persons requiring the services of the Gardaí.

**IHRC Recommendations:**

* The Garda Síochána (Disciplinary) Regulations 2007 should provide for an explicit disciplinary offence of racist behaviour.
* A reliable, certified and good quality interpretation service should be available for members of the community who come in contact with An Garda Síochána and are unable to effectively communicate in the English language. In this regard, the IHRC encourages the Office of the Minister for Integration to implement the recommendations in the Government funded report, *Developing Quality, Cost Effective Interpreting and Translation Services for Government Service Providers in Ireland.*
* Adequate interpretation services should be provided for persons with speech and hearing impairments.
	1. **A Representative Garda Service**

If An Garda Síochána is to be successful in promoting and protecting the human rights of everyone in Irish society, it must become a truly representative service. It is important that An Garda Síochána continue to work towards creating a police service in Ireland which reflects the composition of Irish society in terms of ethnicity, religion and gender.

**IHRC Recommendation:**

* Further action and a targeted strategy to encourage the recruitment, retention and progression of a more diverse Garda service are required.
1. **Rights of Gardaí**
	1. **Personal Safety and Well-Being of Members of An Garda Síochána**

In any discussion on human rights in policing it is important to recall that members of An Garda Síochána enjoy the same civil and political rights as the citizens of the State. Among other rights a member of An Garda Síochána has the right to have his or her life and bodily integrity safeguarded in accordance with the Irish Constitution and the ECHR.

**IHRC Recommendations:**

* Government and Garda Management must take all necessary measures to protect the personal safety of the members of An Garda Síochána. Bearing in mind the human rights principle of minimum use of force, members of the Garda service should be provided with adequate and up to date protective equipment.
* Effective training and guidance on the use of protective equipment, particularly protective equipment that has the potential to cause death or bodily harm, must be provided to all members on An Garda Síochána. The training provided should be in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, with a particular emphasis on human rights principles such as necessity and proportionality.
* Support should be available to members of An Garda Síochána in the form of stress programmes. These can be delivered through either organised peer support and outreach or via a professionally staffed stress counselling service, or both.
	1. **Due Process Rights of the Gardaí**

GSOC has acknowledged that it is dealing with an accumulation of investigations and complaints and that it cannot function at an acceptable level of effectiveness if this backlog continues.[[34]](#footnote-34) Given the current backlog of complaints, the right of a member of An Garda Síochána to have a complaint against them dealt with within a reasonable period of time may be undermined.[[35]](#footnote-35) It is of concern that long delays may cause undue hardship to both the complainant and the Garda member whose conduct is the subject of the complaint. Ongoing delays might jeopardize the effectiveness and credibility of the complaints process.

**IHRC Recommendation:**

* GSOC should be provided with the required resources to enable it to carry out its functions in an efficient and effective manner and with full fairness to all persons involved.
	1. **Garda Promotions System**

The promotion system within the Garda organisation has important human rights implications for members of the service and the public alike. The IHRC welcomes the measures taken to date by An Garda Síochána to link human rights competence to career progression.[[36]](#footnote-36) However, it is unfortunate that further details on the nature of the selection criteria applied, in identifying candidates for promotion within the service, are not publicly available.[[37]](#footnote-37) The Garda Síochána (Promotion) Regulations 2006 provide that “the selection of members for promotion shall be based on merit and the readiness and suitability for promotion of the candidates”.[[38]](#footnote-38) However, the Regulations do not elaborate on the selection criteria to be applied by the members of the designated promotions board.

**IHRC Recommendations:**

* There should be increased transparency in the Garda promotions system.
* When considering if a candidate has reached the required standard of merit for promotion within An Garda Síochána, human rights compliance and awareness, especially as demonstrated in past performance, ought to be a determining factor in the selection process. In addition, the IHRC recommends that career progression is linked to Garda participation in continuing professional development programmes which include human rights education.
* Clear targets for female recruitment and promotion relative to male recruitment and promotion are required. When the targets entail a lower percentage for females the underlying reasoning should be made explicit.
1. **Introduction**

The Irish Human Rights Commission (IHRC) has a statutory remit under the Human Rights Commission Act 2000 to endeavour to ensure that the human rights of all persons in the State are fully realised and protected in the law and policy of the State.[[39]](#footnote-39) The IHRC is Ireland’s National Human Rights Institution, recognised as such by the UN. Its functions include keeping under review the adequacy and effectiveness of the law and practice in the State in relation to constitutional and international human rights standards deriving respectively from the Irish Constitution and international treaties to which Ireland is a party. The IHRC makes recommendations to the Government as it deems appropriate in relation to the measures which the IHRC considers should be taken to strengthen, protect and promote human rights in the State.

One of the objectives of the IHRC Strategic Plan 2007-2011 is to “[e]ngage with An Garda Síochána, the Garda Síochána Ombudsman Commission and the Garda Síochána Inspectorate to help promote a culture of human rights in policing”.[[40]](#footnote-40) The IHRC has a statutory mandate to review the law and practice in all state bodies, including An Garda Síochána, for compliance with Ireland’s human rights standards.[[41]](#footnote-41) As a result, the IHRC has a role in reviewing not only the legislative framework for policing, but also An Garda Síochána’s operational policies and their implementation, and in making recommendations thereon.

Policing is central to the protection of human rights in a democratic society. Police officers are entrusted by the State to uphold the rule of law and to safeguard the lives, safety, liberty and property of all people living in the State. However, in carrying out these functions, police officers are empowered to limit the rights and freedoms of persons. These unique powers create the potential for tension between human rights and policing. However, as the Report of the Independent Commission on Policing for Northern Ireland (hereinafter “the Patten Report”) makes clear, there should not be any conflict between human rights and policing; “[p]olicing means protecting human rights”.[[42]](#footnote-42)

At the outset, the IHRC acknowledges the inherent difficulties in the task of policing. In the course of their work members of An Garda Síochána face a variety of challenges, including: an increase in organised, gun and drug-related crime in Ireland;[[43]](#footnote-43) interaction with vulnerable persons, including those with mental health difficulties; the growth in diversity and ethnicity in Irish society; and, more generally, exposure to a wide range of stressful situations. It is of fundamental importance that those members and management of An Garda Síochána who are committed to creating a police service based on best international human rights standards are supported in their work.

It is particularly important that the rights of the Gardaí themselves are recognised, upheld and protected. In order for police officers to be effective in promoting and protecting human rights and to act with high levels of respect for the public, the State must ensure that the Gardaí enjoy equivalent levels of respect and protection of their rights at an individual and institutional level. Therefore, the recommendations contained in this Policy Statement are made from the perspective that a human rights view of policing is one that best serves the legitimate interests of all stakeholders, including Gardaí and the public alike.

An Garda Síochána is currently undergoing a significant period of reform which includes initiatives to develop a more human rights compliant police service. The IHRC welcomes this reform period. While significant progress has been made, there is much of an urgent nature that remains to be done. It is crucial at this juncture to maintain the momentum and to sustain the reform process.

This IHRC Policy Statement is intended to support the work of members of An Garda Síochána and those involved in both the policy and practice of policing in Ireland, including senior management of An Garda Síochána and the Minister for Justice, Equality and Law Reform (Minister for Justice), in providing guidance on human rights standards in policing in a number of key areas. The Policy Statement provides an overview of the applicable national and international law and best practice in the field of human rights and policing. It surveys the current legal and policy context in which An Garda Síochána is operating, acknowledging some reforms introduced so far in the area of human rights. Finally, it identifies some of the key challenges ahead in developing a more human rights compliant police service, setting out the IHRC’s legislative and policy recommendations at this time.

To assist further in the promotion of a culture of human rights in policing and to progress its work with An Garda Síochána, the IHRC, in April 2006, commissioned Professor Dermot Walsh of the University of Limerick to undertake a study on An Garda Síochána and human rights standards.[[44]](#footnote-44) The IHRC considered it an opportune time to commission the study having regard to, *inter alia,* the rapidly changing nature and increasing diversity of Irish society; the example set in Northern Ireland (since the Patten Report); the new legislative framework under the Garda Síochána Act 2005 and the human rights concerns expressed in the Morris Tribunal Reports.[[45]](#footnote-45)

*Human Rights and Policing in Ireland: Law Policy and Practice*, written by Professor Dermot Walsh and published by Clarus Press (hereinafter “the Walsh Study”), represents an extremely valuable contribution to research on the law, policy and practice of An Garda Síochána from a human rights perspective.[[46]](#footnote-46) The IHRC would like to thank Professor Dermot Walsh warmly for this high-quality, comprehensive research, which will undoubtedly be a core resource, widely used well into the future. While this IHRC Policy Statement has been greatly informed and enabled by the Walsh Study, the present Policy Statement represents the conclusions and recommendations of the IHRC in pursuance of its statutory mandate.

The IHRC has issued this Policy Statement for the purpose of highlighting what it considers are some key priority areas where further improvements are needed to develop a more human rights compliant police service. These areas are: mainstreaming human rights in An Garda Síochána policies and practices; human rights in Garda training and development; Garda accountability; the role of the Gardaí in serving the community and the rights of members of An Garda Síochána. This is not an exhaustive list of areas of concern and the IHRC will in future continue to comment as appropriate on these and on other areas of concern, as informed by the Walsh Study and additional sources, as the case may be.

1. **Sources of Human Rights Standards in Policing**

In the performance of their duties and functions, members of An Garda Síochána are required to have regard to the principles of human rights as set out in national and international law.[[47]](#footnote-47) This section provides a snapshot of the applicable national and international law and best practice in the field of human rights and policing. A comprehensive account of the relevant human rights law is contained in Part I of the Walsh Study.

1. **International Law**

Ireland has ratified four major international conventions which are of primary relevance to the functioning and accountability of law enforcement officials. These are: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has been given express effect in Irish law by way of the European Convention on Human Rights Act 2003; 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); and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT).[[48]](#footnote-48)

While not exclusively concerned with the operation of police powers, certain provisions of the ECHR and the UN Conventions have direct relevance to the exercise of Garda powers. This section will focus primarily on the ECHR as it is the only one of the four Conventions mentioned above that is directly enforceable in the Irish courts. Section 3(1) of the European Convention on Human Rights Act 2003 provides that, subject to any statutory provision or rule of law, “every organ of the State shall perform its functions in a manner compatible with the State’s obligations under the Convention provisions”. Therefore, all public bodies, including An Garda Síochána, are under a specific statutory obligation to perform their functions in an ECHR compliant manner.

A key characteristic of the system of human rights protections established under the ECHR is that it creates positive obligations on the State to promote and protect the rights contained in the ECHR.[[49]](#footnote-49) Certain ECHR rights are directly relevant to policing, in particular, Article 2 on the right to life, Article 3 on the prohibition of torture and Article 5 on the right to liberty and security. These Articles require not only that the State refrains from direct violations of those rights, but also that the State takes preventive measures to ensure violations of the rights do not occur.[[50]](#footnote-50) Furthermore, the State must take remedial action to ensure justice and accountability where violations have already taken place.[[51]](#footnote-51)

The right to life and the prohibition against the arbitrary deprivation of life is protected by Article 2 of the ECHR, as well as Article 6 of the ICCPR. It is evident from the case law of the European Court of Human Rights (ECtHR) that there are a number of fundamental aspects to the State’s obligation to protect the right to life. Primarily, agents of the State must not engage in intentional and unjustified killings. The use of force, which may result as an unintended outcome in the deprivation of life, is permissible only if deployed to achieve a legitimate objective as set out in sub-paragraphs 2(a) to 2(c) of Article 2 and where the use of force is no more than absolutely necessary.[[52]](#footnote-52) When Article 2 is read in conjunction with Article 13, on the right to an effective remedy, it is evident from the case law that a thorough and effective investigation is required leading to the identification and punishment of persons responsible for the deprivation of life.[[53]](#footnote-53) Furthermore, Article 2 imposes a positive obligation on the State and its agents to protect an individual’s life in certain circumstances.[[54]](#footnote-54) In accordance with this positive obligation the police are required to take reasonable measures, within the scope of their powers, to protect an individual’s life when they are aware of a real and immediate risk to the life of that individual.[[55]](#footnote-55)

The prohibition of torture or inhuman or degrading treatment or punishment derives from Article 3 of the ECHR and Article 7 of the ICCPR.[[56]](#footnote-56) The ECtHR has firmly established that the prohibition is absolute.[[57]](#footnote-57) That is, there are no circumstances in which torture or inhuman or degrading treatment or punishment is permissible. The importance attached to the prohibition against torture led to the adoption of a specific UN Convention against Torture and a specific European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment. The European Convention provides for the establishment of a Committee of experts, the European Committee for the Prevention of Torture and Inhuman Degrading Treatment or Punishment (CPT Committee), to carry out preventative inspection visits in State parties and to report on the treatment of persons deprived of their liberty.[[58]](#footnote-58)

The right to liberty and security of person is protected in Article 5 of the ECHR and Article 9 of the ICCPR. Both Articles provide for the lawful arrest and detention of a person in limited circumstances providing it is in accordance with a procedure prescribed by law. All persons arrested are guaranteed a number of due process rights including: the right to be informed of the charges against him or her; the right to be brought promptly before a judge and to trial; the right to appeal the lawfulness of the detention; and the right to compensation in the event of an unlawful arrest or detention.[[59]](#footnote-59)

Other rights protected in the ECHR and the ICCPR, which can have direct relevance to the exercise of Garda powers, include: the right to a fair trial;[[60]](#footnote-60) the right to respect for private and family life;[[61]](#footnote-61) and the rights to freedom of assembly, association[[62]](#footnote-62) and expression, respectively.[[63]](#footnote-63)

1. **Constitutional Law**

A number of fundamental human rights provisions in the Constitution of Ireland are applicable to the functioning of An Garda Síochána. The core Article, from a human rights perspective, is Article 40, which protects the personal rights of the citizens of the State. Among those provisions applicable to the exercise of Garda powers are: Article 40.4.1 (the right to liberty); Article 40.5 (inviolability of a citizen’s dwelling); and Article 40.6.1 (the right to freedom of expression, assembly and association). In addition to these specified rights, Article 40.3.1 of the Constitution places a positive obligation on the State to “defend and vindicate the personal rights of the citizen” through its laws. The Irish courts have interpreted this provision to incorporate unspecified rights, such as the right to privacy,[[64]](#footnote-64) the right to freedom from torture and inhuman or degrading treatment or punishment,[[65]](#footnote-65) and the right to bodily integrity.[[66]](#footnote-66) The due process rights, protected in Article 38.1, are also applicable to the Gardaí in the investigation of crime.

1. **Standards of Best Practice**

The aforementioned international and national instruments are supplemented by a range of international standards issued by inter-governmental bodies, such as the Council of Europe and the UN. Of particular importance are the European Code of Police Ethics,[[67]](#footnote-67) the UN Code of Conduct for Law Enforcement Officials[[68]](#footnote-68) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[[69]](#footnote-69) While not legally binding, these instruments set the standard for best international practice in policing. They have been used by the ECtHR and the UN Treaty Monitoring Bodies as interpretative guides on how the legal obligations, set out in the principal treaties, should be implemented in practice at the domestic level.[[70]](#footnote-70) The instruments form a valuable point of reference for human rights standards in An Garda Síochána.

In addition to these international instruments, the Patten Report represents a comprehensive study on policing, which contains a broad-ranging set of recommendations based on best international practice in the field of policing.[[71]](#footnote-71) The IHRC endorses the approach taken by the Patten Commission. The IHRC believes that many ofthe recommendations for police reform, contained in the Patten Report, transcend the situation in Northern Ireland and provide guidance on human rights standards in policing that may be broadly applied in Ireland and elsewhere.

The IHRC recalls that in signing the Belfast Agreement the Irish Government committed itself to ensuring that the protection of human rights in the State would be at least as strong as that in Northern Ireland.[[72]](#footnote-72) In the view of the IHRC, this core principle of equivalence makes it appropriate to refer, *inter alia*, to the Patten Report and reforms consequent thereon.

1. **Legal and Policy Context**

This section surveys, from a human rights perspective, the current legal and policy context in which An Garda Síochána is operating.[[73]](#footnote-73)

1. **Policy and Legal Environment within An Garda Síochána**

In 1997 the Council of Europe launched the ‘Police and Human Rights 1997-2000’ programme. Its central aim was to raise awareness of human rights standards in policing throughout police organisations in Europe.[[74]](#footnote-74) The programme stimulated An Garda Síochána to launch its own Human Rights Initiative in 1999, entitled ‘Policing and Human Rights: Promoting Best Practice’.[[75]](#footnote-75) An awareness of and commitment to developing a more human rights compliant police service has progressed steadily within An Garda Síochána since the launch of this initiative.

An internal Human Rights Office was established within An Garda Síochána and is now called the Human Rights and Diversity Section. Working within the resources available to it, the Human Rights and Diversity Section has a role in delivering human rights training at the Garda College in Templemore and in developing and implementing Garda initiatives on human rights.[[76]](#footnote-76) A Garda Racial and Intercultural Office was established separately in 2001.[[77]](#footnote-77) The Office has responsibility for the development and monitoring of the implementation of organisational policies and strategies, which deal with racial, ethnic, religious and cultural diversity.[[78]](#footnote-78) In an effort to closely integrate the work of the Human Rights and Diversity Section and the Garda Racial and Intercultural Office, a formal liaison has now been established between the two Offices.[[79]](#footnote-79)

A Human Rights Working Group, comprising Garda staff as well as three external members, was formed in 2000 to develop the aims of the Garda human rights initiative.[[80]](#footnote-80) Of particular significance, the Garda Human Rights Working Group, on behalf of the Garda Commissioner, commissioned Ionann Management Consultants to carry out an external human rights audit of Garda policies and procedures. The Ionann Management Consultants’ Human Rights Audit of An Garda Síochána (hereinafter “the Ionann Report”) was conducted in accordance with its established objectives. These included, *inter alia*:

1. to examine Garda policies and strategies to assess the extent to which they comply with the values enshrined in international human rights standards, with particular reference to the basic values set out in the Council of Europe’s ‘Policing in a Democratic Society’;
2. to identify gaps in compliance with these values;
3. to make recommendations for future compliance.[[81]](#footnote-81)

Ionann Management Consultants reported in June 2004.[[82]](#footnote-82) In response to the Ionann Report, An Garda Síochána developed a Garda Human Rights Action Plan with specified targets and timeframes for the implementation of the recommendations arising from the Ionann Report.[[83]](#footnote-83) Since the publication of the Action Plan, An Garda Síochána has produced three Status Reports on the implementation of the Garda Human Rights Action Plan. These Status Reports contain much for An Garda Síochána to be proud of. It is evident from the Status Reports that through implementing the clearly identified objectives in the Garda Human Rights Action Plan definite progress has been made in meeting the recommendations in the Ionann Report.[[84]](#footnote-84) A noteworthy example has been the establishment of a Strategic Human Rights Advisory Committee to An Garda Síochána, on which the IHRC is represented by Commissioner Lia O’Hegarty.[[85]](#footnote-85) The IHRC is aware that the Strategic Human Rights Advisory Committee has compiled a report for the Garda Commissioner. This report contains a broad number of recommendations to An Garda Síochána in three main areas: (1) developing a human rights framework for monitoring the practice and actions of An Garda Síochána, (2) progressing human rights compliance through training, learning and development, and (3) human rights proofing and auditing of policies, procedures and guidelines.  The IHRC recommends that prompt action is taken on foot of the Report of the Strategic Human Rights Advisory Committee.

The publication of the Ionann Report, the Garda Human Rights Action Plan and the subsequent Status Reports introduced an improved level of transparency within the Gardaí. The IHRC welcomes the commitment of An Garda Síochána to addressing the recommendations in the Ionann Report and the improved level of transparency in the implementation process.

The Garda Síochána Act 2005 introduced some of the most fundamental human rights reforms within An Garda Síochána. The Garda Síochána Act 2005 amended the statutory declaration to be taken by each member of the service, unequivocally committing them for the first time to discharge their duties with “regard for human rights”.[[86]](#footnote-86) Furthermore, the Act expressly provides that one of the objectives of An Garda Síochána is “vindicating the human rights of each individual”.[[87]](#footnote-87)

Further reforms introduced by the Garda Síochána Act 2005 included new oversight bodies such as the Garda Síochána Inspectorate[[88]](#footnote-88) and the Garda Síochána Ombudsman Commission (GSOC).[[89]](#footnote-89) Within the Gardaí itself, the Act introduced initiatives such as the Professional Standards Unit and Joint Policing Committees.[[90]](#footnote-90) The Garda Síochána Act 2005 also imposed for the first time a statutory obligation on the Garda Commissioner to prepare periodic strategy statements and annual policing plans, and a requirement to make arrangements to obtain the views of the public on policing and the state of crime.[[91]](#footnote-91)

Since 2005, An Garda Síochána and the Department of Justice have introduced further measures to build on the impact of the reforms introduced under the Garda Síochána Act 2005. A new set of Garda Disciplinary Regulations was approved by Government in May 2007 and is now in operation.[[92]](#footnote-92) The new Regulations take into account the recommendations of the Morris Tribunal. The Minister for Justice in April 2007 introduced the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 in response to a concern expressed in the Ionann Report and in line with a recommendation of the Morris Tribunal. A Whistleblower’s Charter has been approved and is currently being disseminated to all members and civilian employees of An Garda Síochána. Under this Charter, members of the Gardaí and civilian employees will be able to make confidential reports to appointed individuals in accordance with the Charter.[[93]](#footnote-93)

It is noteworthy that An Garda Síochána and the Department of Justice have, for the most part, responded positively and in a transparent manner to the recommendations of the Garda Síochána Inspectorate. The Inspectorate has to date published four Reports with extensive recommendations.[[94]](#footnote-94) Considerable progress has been made in giving effect to these recommendations, many of which have a human rights component.[[95]](#footnote-95) Indeed, the IHRC considers that significant advances will be made in the development of a human rights compliant police service if the recommendations in the Reports of the Morris Tribunal and the Garda Síochána Inspectorate are fully implemented.

The Declaration of Professional and Ethical Values, adopted in 2003, currently provides a non-statutory human rights based framework within which all Gardaí are expected to operate. In accordance with Section 17 of the Garda Síochána Act 2005, a Code of Ethics is currently being developed that includes standards of conduct and practice for members of An Garda Síochána.[[96]](#footnote-96) It is expected that a breach of the new Code of Ethics will trigger disciplinary proceedings.[[97]](#footnote-97) The IHRC has engaged in a consultation process on the draft code of ethics at the request of the Garda Commissioner and pursuant to Section 17(3)(d) of the 2005 Act.

Finally, it is noteworthy that the Garda Commissioner has established a working group to review Garda training and development. The IHRC welcomes this initiative and hopes that it will contribute to the further development of a human rights compliant police service.

An Garda Síochána is to be commended for the positive human rights based reform process it is currently embarking upon. However, given that many of the initiatives are still in gestation, it is difficult to determine the impact that many of the reform initiatives will have on operational policing and on individuals subject to Garda powers. While welcoming the many positive initiatives undertaken, the IHRC is concerned about the pace at which some of them are being implemented. The objectives in the Garda Human Rights Action Plan, intended to address the recommendations emerging from the Ionann Report, were due to have been fully implemented by December 2007. As is evident from the last Status Report, published in December 2007, many of the actions are still ongoing and progress is difficult to assess.[[98]](#footnote-98) The IHRC considers it vital that all the initiatives in the Garda Human Rights Action Plan are fully implemented and reinforced with effective management and training.

Despite the many positive initiatives, there has also been no action or at times limited action on several key recommendations in the Ionann Report. For example, the Ionann Report recommended as a priority that the Garda Code[[99]](#footnote-99) should be reviewed to ensure that human rights concerns are fully integrated and that the Code should become an open and public document with the exception of security related procedures.[[100]](#footnote-100) However, there is no mention of the Garda Code in the Garda Human Rights Action Plan and, as of yet, the IHRC has not seen evidence of an explicit commitment to publish the Garda Code in principle.[[101]](#footnote-101)

1. **Issues, Challenges and Recommendations**
2. **Mainstreaming Human Rights in An Garda Síochána Policies and Practices**
3. **National and International Law and Best Practice**

As detailed above, the international human rights Conventions that Ireland has ratified are binding on the State including through the actions and omissions of its agents. The advancement and attainment of the human rights standards contained in these treaties must underpin all policies and procedures of An Garda Síochána. One of the most fundamental principles of national and international human rights law is that no interference with the rights and liberties of an individual is permitted unless it is provided for in the law of the State and proportionate to a legitimate aim. In addition, adequate and effective safeguards must exist to protect the individual from an arbitrary or unjustifiable interference with those rights.

1. *Interferences must be in accordance with the law*

The Irish Constitution provides that any interference with a citizen’s personal rights, protected under Articles 40.4, 40.5 and 40.6 of the Constitution, must be in accordance with the law.[[102]](#footnote-102) Likewise, the ECHR requires that any interference with the rights protected under Articles 5, 8, 9, 10 and 11 of the Convention must be “in accordance with the law” or “as prescribed by law”.[[103]](#footnote-103) A similar requirement is provided for in Articles 9, 21 and 22 of the ICCPR.[[104]](#footnote-104)

The requirement that an interference with a right is “in accordance with the law” refers not only to the existence of relevant law, but also to “the quality of the law”.[[105]](#footnote-105) In determining whether an interference with a right protected in the ECHR can be considered to be in accordance with the law, the ECtHR has applied a threefold test. 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.[[106]](#footnote-106) This is known in the jurisprudence of the ECtHR as the “test of foreseeability”.

The concept behind the ECHR foreseeability requirement is that the State should give citizens an adequate indication of the circumstances in which the public authorities are empowered to interfere in their lives. In applying the foreseeability test the ECtHR has stated that “a law which confers a discretion must indicate the scope of that discretion.”[[107]](#footnote-107) It is noteworthy that in the case of *Silver and Others v. The United Kingdom* the ECtHR considered that instruments, such as Orders and Instructions, which did not have the force of law themselves may be taken into account in assessing whether the primary legal instrument satisfied the test of foreseeability, but only if those concerned are sufficiently aware of their contents.[[108]](#footnote-108) Ultimately, the ECtHR requires domestic law, including the law which confers powers on the police, to be sufficiently accessible and precise to be foreseeable as to its effects and to avoid all risk of arbitrariness.[[109]](#footnote-109)

This foreseeability test is expressly set out in the European Code of Police Ethics. The European Code provides that “[l]egislation guiding the police shall be accessible to the public and sufficiently clear and precise and, if need be, supported by regulations equally accessible to the public and clear”.

1. *Adequate and effective safeguards must be in place*

Once the ECtHR establishes that a particular interference is “in accordance with the law”, the court’s consideration turns to whether the measure in question is justified, by determining whether it is “necessary in a democratic society” and for one of the specified legitimate aims set out in the ECHR Article under consideration.[[110]](#footnote-110) The Court has interpreted the phrase “necessary in a democratic society” to mean that in order to be compatible with the Convention the interference must, *inter alia*, correspond to a “pressing social need” and be “proportionate to the legitimate aim pursued”.[[111]](#footnote-111) In assessing the proportionality of the interference the Court will consider whether adequate and effective safeguards exist to ensure that the interference with the right is no greater than necessary and to protect the individual from an arbitrary or unjustifiable interference. [[112]](#footnote-112)

1. **An Garda Síochána Operational Policies and Procedures**

The powers of An Garda Síochána are regulated by a wide range of statutory provisions and the common law.[[113]](#footnote-113) In the area of operational policing, Ireland’s statutory framework provides An Garda Síochána with broad discretionary powers.[[114]](#footnote-114) For the most part, these powers are not circumscribed by transparent guidance in the form of accessible written Garda policies or by guidance in the form of Ministerial regulations[[115]](#footnote-115) or codes of practice.[[116]](#footnote-116) When asked by Professor Dermot Walsh in the course of his study about the existence of Garda policies on the exercise of broad discretionary powers it is reported that the Garda response was to the effect that police powers are vested by law in each individual member and the only guidance issued by Garda management relevant to the exercise of these powers is confined to guidance on any changes effected by legislation and caselaw. [[117]](#footnote-117)

As emphasised in the Walsh Study, however, there can be no doubt that An Garda Síochána has internal policies governing operational powers and procedures; the fundamental problem is that these policies are not published.[[118]](#footnote-118) The Garda Code covers all aspects of An Garda Síochána’s work and has been described in the Ionann Report as the “key operational policing tool”.[[119]](#footnote-119) It can be presumed that the Garda Code details certain policies and procedures of An Garda Síochána; however, this is not possible to determine as it is an internal, confidential document.[[120]](#footnote-120)

1. *Transparency*

The IHRC acknowledges that the level and quality of An Garda Síochána communication on human rights matters, within the service and the public at large, has significantly improved in recent years. The IHRC welcomes the publication of the Annual Policing Plans, the Garda Corporate Strategies, the Garda Human Rights Action Plan and the subsequent Status Reports, all of which have created a new level of transparency within An Garda Síochána. However, it is of considerable concern to the IHRC that An Garda Síochána remains reluctant to publish operational policies and procedures and to engage in public debate on important aspects of policies and procedures relevant to Irish policing.

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. The reluctance to publish Garda policies may certainly be said to fall short of best international practice and runs counter to developing an open and transparent police service. Commenting on the importance of transparency the Walsh study states:

Transparency might be viewed as the most urgent and vital ingredient for the promotion of human rights based policing. Transparency creates an environment in which human rights breaches and deficits can be detected and remedied. In its absence abuses can persist and multiply.[[121]](#footnote-121)

Similarly, the Patten Report stated:

People need to know and understand what their police are doing and why. This is important if the police are to command public confidence and active cooperation. Secretive policing arrangements run counter not only to the principles of a democratic society but also to the achievement of fully effective policing.[[122]](#footnote-122)

It may also be noted that freedom of information legislation in Northern Ireland requires the police service to publish their written policies.[[123]](#footnote-123) As a result, considerable progress has been made in Northern Ireland regarding the publication of police policies and codes of practice. In this context, it is worth recalling that An Garda Síochána is currently outside the scope of Freedom of Information legislation in Ireland, a fact that has been criticised by Ireland’s Information Commissioner.[[124]](#footnote-124) The Information Commissioner has repeatedly expressed concern that Ireland is “virtually unique” in Europe and in the developed world in excluding its police service from the scope of freedom of information legislation.[[125]](#footnote-125) She has recommended that “[i]n the context of ongoing reform, such as the establishment of the Garda Inspectorate and the Garda Ombudsman Commission…now is the correct time to make An Garda Síochána amenable to the [Freedom of Information] Act”.[[126]](#footnote-126) The IHRC is strongly supportive of this viewpoint and considers that, if the Gardaí are to move towards a culture of openness and transparency, it is necessary to bring An Garda Síochána within the scope of the Freedom of Information legislation in Ireland.

1. *Human Rights Proofing*

The IHRC considers that human rights proofing of An Garda Síochána operational policies and procedures is of crucial importance in mainstreaming human rights standards in all aspects of policing.It is of equal concern to the IHRC that if the policies themselves are inaccessible it is not possible to determine if the existing Garda operational policies and procedures are human rights compliant.[[127]](#footnote-127) The Ionann Report concluded that if members of An Garda Síochána are to be clear about what is expected from them, human rights and their implications for day to day policing need to be embedded in fundamental policing documents.[[128]](#footnote-128) Consequently, the Ionann Report recommended:

An Garda Síochána should undertake a human rights impact assessment of all existing and forthcoming policies and procedures. It should establish systems to monitor policy implementation to ensure compliance. As a priority the Garda Code should be reviewed to ensure that human rights concerns are fully integrated. It is recommended that external advice is used in this process and that the Code should become an open and public document with the exception of security related procedures.[[129]](#footnote-129)

Likewise, the Walsh Study states:

Ultimately, the most effective and direct means of disseminating the application of human rights standards in policing is through the Garda Code and operational policies. If these are written and published in a manner which expressly incorporates the relevant human rights standards throughout, they will offer a clear and detailed reference in respect of all aspects of policing and the police organisation.[[130]](#footnote-130)

While still in its very early stages, the IHRC acknowledges that some initial progress has been made in the direction of human rights proofing Garda policies, procedures and practices. It is reported in the most recent Status Report that a pilot project attempting to human rights proof six high risk Garda policing policies was conducted with the assistance of the Honorable Society of King’s Inns at the request of the Garda Commissioner.[[131]](#footnote-131) In particular, the IHRC welcomes the involvement of the Strategic Human Rights Advisory Committee in devising a Human Rights Audit Tool and developing the concept of human rights proofing. It is understood that these have now been passed to the Garda Commissioner.

The retention of adequate human rights expertise, whether in-house or on a contract for services, is essential to ensure proper human rights proofing of all Garda policies and procedures. In this context, it is noteworthy that the Police Service of Northern Ireland (PSNI) has a Legal Services Department with a team of six lawyers and 17 administrative staff to support the Head of Legal Services. The Department has a dedicated Human Rights Legal Advisor who contributes to promoting awareness and understanding of human rights law and advises on policies and procedures to ensure that the PSNI complies with human rights requirements.[[132]](#footnote-132)

Finally, the IHRC considers that the publication of Garda policies and the Garda Code would assist future oversight of the quality of the human rights proofing initiatives. Since many Garda policies are not currently published it is difficult to determine the extent or quality of human rights proofing and to subject the process to any meaningful external assessment.[[133]](#footnote-133)

1. *Codes of Practice*

The Walsh Study identifies aspects of operational policing which may require further guidance, in the form of detailed human rights based policies or codes of practice, to supplement the existing statutory provisions and address the discretion currently conferred on individual members of An Garda Síochána. While a detailed analysis of these areas is outside the scope of the present Policy Statement, the IHRC notes that the Walsh Study makes this recommendation in relation to Garda powers in the areas of: arrest, detention, interviewing, taking fingerprints, photos and bodily samples, entry, search and seizure, stop, search and question, public order, use of force, use of surveillance methods, use of the witness protection programme, handling of Garda confidential information, protecting the rights of victims, treatment of children in Garda custody, and in the use of ASBOs and fixed penalties.[[134]](#footnote-134)

The need for clear Garda policies is further emphasised in the most recent Report of the Garda Síochána Inspectorate and in the Morris Tribunal Reports. In its latest Report the Garda Inspectorate stated that “[e]very large police organisation requires clear statements of policy. These are important in guiding operations and ensuring consistency of approach by individual officers”.[[135]](#footnote-135) The Garda Inspectorate proceeded to recommend that An Garda Síochána begin a comprehensive review of internal policy related to all aspects of roads policing[[136]](#footnote-136) In the First Report of the Morris Tribunal, Mr. Justice Morris, in looking at best practice in the area of handling informers, analysed the approach in the United Kingdom. He noted that Section 71 of the United Kingdom Regulation of Investigatory Powers Act 2000 obliged the Secretary of State to issue a code of practice relating to the exercise and performance of the powers and duties of those concerned with the implementation of Part II of the Act. Consequently, Mr. Justice Morris recommended that an informant manual should be produced and circulated to every member of An Garda Síochána, which should include a code of conduct for the handling of informers.[[137]](#footnote-137) Similarly, in its Seventh Report, the Morris Tribunal recommended that a clear set of instructions should be given to all Gardaí as to how they should approach the question of issuing summonses.[[138]](#footnote-138)

The IHRC considers that where appropriate, such as in the areas identified in the Walsh study, key areas of policing should be subject to detailed and accessible human rights based codes of practice.[[139]](#footnote-139) Their purpose would be to govern the exercise of particular Garda powers. The codes of practice would comprehensively set out Garda policy and procedure informing Garda decisions and regulating Garda powers in a transparent and human rights compliant manner.

In England and Wales, the broad discretionary powers which Statute confers on the police have been balanced by detailed guidance in the form of codes of practice. The Police and Criminal Evidence Act 1984 (PACE) provided the Secretary of State with the power, subject to Parliament’s approval, to issue codes of practice governing certain key areas of operational policing. PACE Codes of Practice currently govern police powers in the following areas: stop and search, search of premises, detention and questioning of suspects, identification, tape-recording, video-recording of interviews with suspects, statutory powers of arrest, and detention of terrorism suspects. The Police and Criminal Evidence (Northern Ireland) Order 1989 approved the Codes of Practice for Northern Ireland.

The object of the Codes of Practice was to produce booklets for police officers that would be used as comprehensive guides to the various aspects of their duties.[[140]](#footnote-140) The reason provided by the Home Office for not having codes in the form of a statutory instrument was that the code format was considered beneficial in that the language used would be less formal than in legislation and therefore would be more intelligible to the police officers. Furthermore, it was considered that the safeguards inherent in the process of bringing a statutory instrument into force are fulfilled by the procedure adopted in the PACE Act 1984 for bringing the Codes of Practice into operation.[[141]](#footnote-141) Once the Codes are brought into force they are publicly available and easily accessible to all members of the public.

In the view of the IHRC, when legislation governing Garda powers in key aspects of operational policing is being drafted or reviewed, consideration should be given where appropriate to including a provision to provide the Minister for Justice with the power to issue supplementary codes of practice to accompany the statutory Garda powers.The IHRC considers that legislation providing the Minister for Justice with the power to issue codes of practice should require the Minister to engage in an appropriate consultation process prior to issuing the codes.[[142]](#footnote-142)

Such codes of practice should be underpinned by the human rights standards in the Irish Constitution, the ECHR and other human rights Conventions ratified by Ireland. They should also take into account the standards set out in the European Code of Police Ethics and other leading international instruments, which set the standard for best practice in policing.[[143]](#footnote-143)

In the view of the IHRC, it is essential that effective compliance measures are incorporated into Garda codes of practice. As succinctly noted in the Walsh Study, “[t]here is little point in having detailed, comprehensive, state-of-the-art policies if they are not applied in practice because there are no enforcement or supervisory mechanisms”.[[144]](#footnote-144) While each individual code may incorporate different compliance measures, they should in general include a requirement for contemporaneous record-keeping by members of An Garda Síochána when exercising Garda powers.[[145]](#footnote-145) Furthermore, the IHRC considers that when appropriate a breach of a code of practice should invoke disciplinary action.[[146]](#footnote-146)

More broadly speaking, compliance with codes of practice would be strengthened by their publication and widespread dissemination, coupled with effective monitoring, management and training. In addition to the external oversight that may follow a breach of a code of practice, in the form of an investigation by the Garda Síochána Ombudsman Commission, an internal mechanism to monitor compliance with the codes of practice should be put in place by Garda management.

Finally, it is noteworthy that in accordance with international law, certain codes of practice are required to be kept under review and should be regularly updated to accommodate changes in the law.[[147]](#footnote-147)

1. *Legislative and Policy Recommendations*

**The IHRC recommends that all sections of the Garda Code and Garda operational policies and procedures, with the exception of some security-related procedures, should be published and made accessible for the public.**

**The IHRC recommends that An Garda Síochána should be brought within the scope of Freedom of Information legislation in Ireland.**

**The IHRC recommends that An Garda Síochána human rights proof all Garda policies, procedures and practices.**

**The IHRC recommends the retention of adequate human rights expertise, whether in-house or on a contract for services, to ensure proper human rights proofing of all Garda policies and procedures.**

**The IHRC recommends that where appropriate key Garda operational policies and procedures should be subject to detailed and accessible human rights based codes of practice. When legislation governing Garda powers in key aspects of operational policing is being drafted or reviewed, the IHRC recommends that consideration should be given to providing the Minister for Justice with the power to issue supplementary codes of practice to accompany the statutory Garda powers.**

**The IHRC recommends that legislation providing the Minister for Justice with the power to issue codes of practice should require the Minister to engage in an appropriate consultation process prior to issuing the codes of practice.**

**The IHRC recommends that such codes of practice should be underpinned by the human rights standards in national and international law.**

**The IHRC recommends that effective compliance measures should be incorporated into An Garda Síochána codes of practice. While compliance measures may differ from code to code, the IHRC considers that typically compliance measures should include a requirement for contemporaneous record-keeping by members of the Gardaí when exercising Garda powers. Furthermore, the IHRC considers that, when appropriate, a breach of a code of practice should suffice to trigger the complaints mechanism and/or disciplinary action.**

1. **Internal Management Structures for Mainstreaming Human Rights**

Effective management will play a vital role in embedding a culture of human rights in An Garda Síochána and equally in protecting the rights of members of the Gardaí. The Ionann Report identified a lack of a central management or high level structure to “champion” human rights across the organisation.[[148]](#footnote-148) In response to this recommendation, the Garda Commissioner appointed the Assistant Commissioner Human Resource Management as Human Rights Champion in 2005, with responsibility for the implementation of the Garda Human Rights Initiative and the recommendations of the Ionann Report. The IHRC understands that the role of Human Rights Champion is now assigned to the newly created position of Assistant Commissioner, Professional Standards.[[149]](#footnote-149)

From a human rights perspective, other positive structural developments include: the establishment of the Strategic Human Rights Advisory Committee, which incorporates an external component including a representative of the IHRC (Commissioner Lia O’Hegarty); the establishment of the Garda Síochána Inspectorate and an internal Professional Standards Unit; and the establishment of the Human Rights and Diversity Section and the Racial and Intercultural Office.

While each of the components in the institutional framework outlined above have an important role to play in promoting human rights in An Garda Síochána, there continues to be no central management structure whose sole remit is to mainstream and monitor human rights in An Garda Síochána.[[150]](#footnote-150) Human rights is merely one part of a very comprehensive portfolio attached to the Assistant Commissioner, Professional Standards.[[151]](#footnote-151) The existing institutional framework requires significant strengthening and cohesion to drive the human rights agenda forward in An Garda Síochána.

The IHRC considers that the designated high level Human Rights Champion should have a full-time human rights portfolio or at least one without too many additional competing duties. Equally, the IHRC considers that human rights should be explicitly part of the agenda of the new Garda Síochána Executive Committee.[[152]](#footnote-152)

* + 1. *Policy Recommendations*

**The IHRC recommends that the internal management structures of An Garda Síochána be reviewed with a view to strengthening the existing institutional human rights framework. The IHRC considers that the designated high level Human Rights Champion should have a full-time human rights portfolio or, at a minimum, have limited additional competing duties in order to allow the majority of his or her time to be focused on human rights issues.**

**The IHRC recommends that human rights should be explicitly part of the core agenda of the new Garda Síochána Executive Committee.**

1. **Strategic Advice and External Expertise**

To enhance human rights compliance in An Garda Síochána external expertise and strategic advice are of fundamental importance. An external element is crucial in a number of respects. It introduces an independent perspective and protects the interests of the community, while harnessing external expertise in the field of human rights.[[153]](#footnote-153) The IHRC acknowledges the importance of the external component in the high level Strategic Human Rights Advisory Committee to An Garda Síochána. The IHRC welcomes its participation in this Committee and the important role the Committee plays in providing strategic advice to Garda management.[[154]](#footnote-154) It is noteworthy, however, that the independent external element of the Strategic Human Rights Advisory Committee is weakened by the fact that the Garda members of the Strategic Human Rights Advisory Committee are in a majority, while the external members are in the minority.[[155]](#footnote-155) It is further weakened by the absence of an external role in chairing or convening meetings.

The IHRC recalls the recommendation in the Sixth Report of the Morris Tribunal, that a national committee be formed to develop policy concerning the interviewing of witnesses and suspects. The Tribunal recommended:

The Committee should formulate and recommend the policy to be implemented in respect of investigative interviewing by the Garda Commissioner on an ongoing basis in all its respects, and make such recommendations from time to time in relation to any legal changes or changes in practice that it deems to be appropriate in this area.[[156]](#footnote-156)

It was recommended that membership of the committee should include Gardaí from all ranks with experience in this area of policing, as well as a representative from the Office of the Attorney General, the Director of Public Prosecutions, the IHRC, civil liberties groups and members of the legal profession engaged in the practice of criminal law for the defence and prosecution. In addition, it was recommended that the committee should have access to expert advice from a psychologist or psychiatrist who may be able to assist in the formulation of policy towards those subject to various relevant vulnerabilities or disabilities.[[157]](#footnote-157) While the recommendation of the Morris Tribunal is confined to one aspect of policing, namely investigative interviewing, the IHRC considers that this model of a national committee to formulate and recommend policy to Garda management could be broadened to some other aspects of operational policing.

1. *Policy Recommendations*

**The IHRC considers that the work of the Strategic Human Rights Advisory Committee should continue and that prompt action should be taken to implement the recommendations of the Strategic Human Rights Advisory Committee’s Report.**

**The IHRC endorses the model of a national committee as recommended by the Morris Tribunal to formulate and recommend policy to Garda management in respect of investigative interviewing. The IHRC considers that this model of a national committee could be broadened to some other aspects of operational policing.**

1. **Human Rights in Training and Development**
2. **International Law and Best Practice**

The ECHR, the ICCPR and UNCAT place a positive obligation on the State proactively to prevent human rights violations from occurring.[[158]](#footnote-158) Appropriate training and instruction of law enforcement officials in human rights is considered to be an effective preventive measure in compliance with this obligation.[[159]](#footnote-159) Indeed, international human rights law expressly provides that “[l]aw enforcement officials should receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin”.[[160]](#footnote-160)

The European Code of Police Ethics embraces the concept that police training should be based on the values of democracy, the rule of law and the protection of human rights.[[161]](#footnote-161) The European Code identifies a number of fundamental principles which should underpin the training of police personnel, including the principle of openness and transparency in the training of staff and the principle that initial recruit training should be followed by regular in-service training.[[162]](#footnote-162) The Code singles out aspects of training that it considers to be of crucial importance; it highlights the importance of training on the use of force and its limits, with particular reference to the ECHR, and the importance of training on the need to challenge and combat racism and xenophobia.[[163]](#footnote-163)

Likewise, the Patten Report considered the training, education and development of police officers to be of critical importance in achieving the human rights based objectives central to the Patten Report.[[164]](#footnote-164) The Patten Report emphasised the importance of providing human rights based training to all members of the police service, at both the recruit and in-service training levels.[[165]](#footnote-165)

1. **Human Rights in the Training and Development of An Garda Síochána**

Over the past decade progress has been made in improving and developing the training programmes in An Garda Síochána. From a human rights perspective, the IHRC welcomes the training and education initiatives introduced that seek to promote respect and protection of human rights. Indeed, there is a commitment in Templemore Garda College to integrate human rights awareness in all their courses.[[166]](#footnote-166) However, progress in this area is difficult to assess without access to information relating to the Garda College curricula and information on learning outcomes.[[167]](#footnote-167)

The most recent Status Report on the implementation of the Garda Human Rights Action Plan provides some indication of the measures introduced to provide diversity and human rights awareness training to all members of the Gardaí in compliance with the recommendations of the Ionann Report.[[168]](#footnote-168) These initiatives include: a comprehensive training programme for immigration staff on human rights, diversity and refugee law; a ‘Diversity Works’ one day training programme for delivery by Continuous Professional Trainers, with the objective to deliver it to all Garda staff during 2007 and 2008; the delivery of a training programme with a strong human rights focus to senior managers of Commissioner and Chief Superintendant rank – with an expectation that this programme will be rolled out nationwide in 2008; and the inclusion of content on human rights issues in the Sergeants’ and Inspectors’ promotion examinations.[[169]](#footnote-169)

While the reported progress is commendable, the extent to which human rights training and human rights *based* training have been delivered is difficult to assess fully. The information available in the most recent Status Report suggests that progress in integrating human rights in Garda training and development is currently on somewhat of an *ad-hoc* basis. The IHRC was pleased to learn, however, that the Human Rights Office has prepared a ‘Training Strategy for Human Rights and Diversity’ for inculcating human rights across Garda training programmes. The strategy provides the template in accordance with which all human rights and diversity training programmes must be developed.[[170]](#footnote-170) However, it is not clear, as of yet, to what extent this strategy has been implemented. The IHRC welcomes the role of the Strategic Human Rights Advisory Committee in assessing how human rights compliance can best be progressed through the training of An Garda Síochána. The IHRC looks forward to further progressing the work of SHRAC in this area.

The IHRC considers it essential that human rights education is integrated into all aspects of training and professional development of the Garda organisation. In this context, the IHRC recalls the previous recommendation of the Garda Síochána Inspectorate, which emphasised the importance of effectively communicating Garda values so that all employees know them, embrace them and put them into effect in their daily work.[[171]](#footnote-171) The Garda Inspectorate considered that “respect, courtesy, integrity and human rights” neatly summed up the most important organisational values.[[172]](#footnote-172)

The IHRC also welcomes the Garda Commissioner’s initiative to establish a Training Review Group with external representation to review all training in An Garda Síochána.[[173]](#footnote-173) The IHRC considers that this is a timely opportunity to place human rights at the core of all aspects of training and professional development in An Garda Síochána.

The IHRC considers that the reform process in Garda training and development should be underpinned by the principles of transparency and openness. As noted above, the European Code of Ethics emphasises the importance of transparency in the training of police personnel. The IHRC considers that, in particular, information relating to teaching materials and the curricula in the Garda Training College should be appropiately accessible.[[174]](#footnote-174)

In the view of the IHRC, all aspects of Garda training and development, including the delivery of training, should be human rights proofed as a means of effectively integrating human rights standards within An Garda Síochána. Again, the IHRC reiterates the view that the retention of adequate human rights expertise, whether in-house or on a contract for services, would be essential to ensure proper human rights proofing of Garda training, both as regards course content and actual course delivery and learning outcomes.[[175]](#footnote-175)

It was noted in the Third Report of the Garda Síochána Inspectorate that a concern has been expressed by members of various ranks and in meetings with the representative associations that consistent, valuable in-service training is lacking.[[176]](#footnote-176) The Garda Síochána Inspectorate recommends that there should be a continual professional development (CPD) programme in place for each rank and civilian grade in the organisation.[[177]](#footnote-177) It is widely acknowledged in the public and private sector that up-skilling on a regular basis through participation in CPD programmes is of primary importance.[[178]](#footnote-178) In highlighting the importance of revamping the current CPD programmes in An Garda Síochána, the Walsh Study notes that “the value of human rights based training for new recruits will be severely undermined if it is not also extended to the existing body of members”.[[179]](#footnote-179) The IHRC considers that it would be of benefit to the professional development of An Garda Síochána if existing members were provided with continual guidance and supported in their job through ongoing training with adequate human rights components.

Accordingly, the IHRC endorses the recommendation that each member of An Garda Síochána should partake in CPD programmes on a regular basis. To support the Gardaí in their work and to deliver a human rights compliant police service, the human rights elements in Garda operational policies and procedures, including references to the ECHR, must be reinforced with effective training. Thereby, the IHRC considers it essential that human rights training is a central component of CPD programmes.

It should be noted that in accordance with its statutory function under Section 8(e) of the Human Rights Commission Act 2000 to promote understanding and awareness of the importance of human rights by providing assistance for research and other educational activities, the IHRC is in the process of developing its role in the area of human rights training.[[180]](#footnote-180) The IHRC has considerable expertise in the field of human rights and training and in this regard An Garda Síochána may wish to consider utilising this expertise in the development of the human rights components of its training.[[181]](#footnote-181)

* + 1. *Policy Recommendations*

**The IHRC recommends that training on human rights standards is integrated into all aspects of Garda training and professional development at both the recruit and in-service training levels.**

**In the view of the IHRC, Garda training and development should be underpinned by the principles of transparency and openness. Accordingly, the IHRC recommends that information relating to Garda teaching materials and the curricula in the Garda Training College should be appropriately accessible.**

**The IHRC recommends that all aspects of Garda training and development, including the delivery of training, should be human rights proofed as a means of effectively integrating human rights standards within An Garda Síochána.**

**The IHRC recommends the retention of adequate human rights expertise, whether in-house or on a contract for services, to ensure proper human rights proofing of Garda training, from course development through to course delivery.**

**The IHRC recommends that human rights training should be a central component of Garda CPD programmes and that each member of An Garda Síochána should partake in human rights based CPD programmes on a regular basis.**

1. **Accountability**

The unique role and powers of police officers mean that appropriate mechanisms of accountability must be put in place to protect against any potential for abuse of those powers and to ensure that the police act in accordance with the human rights of all persons. Effective oversight bodies, coupled with transparency and engagement with the community, are core mechanisms of accountability.

While the Garda Síochána Act 2005 did not go so far as to introduce an Independent Police Authority, the Act did introduce important mechanisms to strengthen Garda accountability in a number of areas.[[182]](#footnote-182) Of particular significance, a member of An Garda Síochána is now obliged by statute to account for any act or omission made while on duty, when directed to do so by a member of a higher rank.[[183]](#footnote-183) In addition, the Garda Síochána Act 2005 introduced new oversight bodies in the form of a Garda Síochána Ombudsman Commission and the Garda Síochána Inspectorate.[[184]](#footnote-184) It also introduced important initiatives such as the Professional Standards Unit, Joint Policing Committees and an Audit Committee.[[185]](#footnote-185) For the purpose of this Policy Statement the IHRC will focus on two aspects of Garda accountability: an effective complaints mechanism, namely the Garda Síochána Ombudsman Commission, and community policing.

1. **National and International Law and Best Practice**

The legal standards contained in the Constitution of Ireland, the ECHR and the ICCPR are of key relevance to the accountability of An Garda Síochána. All members of a police service can be legitimately required to operate in accordance with the rule of law, given that it is a central principle of all three instruments.[[186]](#footnote-186) Indeed, applicable international standards provide that where there are reasonable grounds for believing that a person’s human rights have been violated as a result of the actions or omissions of law enforcement officials, an effective, impartial investigation must be carried out.[[187]](#footnote-187)

The issue of police accountability is given more detailed expression in the European Code of Police Ethics. Section VI of the European Code of Police Ethics is exclusively concerned with accountability and control of the police.[[188]](#footnote-188) Article 59 of the European Code provides that “[t]he police shall be accountable to the state, the citizens and their representatives. They shall be subject to sufficient external control.” Likewise, the Patten Report emphasises the importance of the police being accountable to the citizens as well as the State. The Patten Report identifies five aspects to accountability: democratic accountability, by which the police are accountable to the elected representatives; transparency, by which the community is kept informed; legal accountability in the event of abuse of police powers; financial accountability; and internal accountability, by which officers are accountable within a police organisation.[[189]](#footnote-189) The Patten Report provides that “[a]ll these aspects must be addressed if full accountability is to be achieved, and if policing is to be effective, efficient, fair and impartial”.[[190]](#footnote-190)

There are also international standards relating to the inspection of Garda stations. The UN Optional Protocol to the Convention Against Torture (OPCAT), which has been signed but not yet ratified by Ireland,[[191]](#footnote-191) provides for an international body as well as regular inspections by a designated national body to all places where persons are deprived of their liberty, including police stations, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.[[192]](#footnote-192) The OPCAT contains a number of requirements for any body or bodies designated as the National Preventative Mechanism. The mandate and resources of the National Preventative Mechanism must be adequate to carry out its functions. It must be able to make recommendations to the authorities and submit proposals and observations on legislation, and the authorities must enter into a dialogue on its recommendations. It must have the necessary powers, privileges and immunities and the right to publish reports. Finally, it must be independent, credible, comply with the Paris Principles[[193]](#footnote-193) and have a representative, expert membership.[[194]](#footnote-194)

1. **Garda Síochána Ombudsman Commission**

The Garda Síochána Act 2005 and the establishment of GSOC marked a historic step towards placing human rights at the centre of Irish policing.[[195]](#footnote-195) The IHRC has participated from the beginning in a Consultative Group established by GSOC to guide it in the development of its operating policies and protocols.[[196]](#footnote-196) The Consultative Group met six times during GSOC’s set-up phase and currently meets at six-monthly intervals. The IHRC is aware that GSOC is currently reviewing all aspects of its operations including training, in order to ensure continuing compliance with human rights principles.

However, aspects of GSOC’s powers are of concern to the IHRC, including the restrictions on the ability of GSOC to instigate a review of a practice, policy or procedure of An Garda Síochána on its own initiative and the restrictions on GSOC’s right of access to all Garda stations on demand.[[197]](#footnote-197) In the view of the IHRC, certain legislative measures are required to enhance the independence and effectiveness of GSOC.

Section 106 of the Garda Síochána Act 2005 provides that the Minister for Justice can request, either on his or her own initiative or following a recommendation by GSOC, that a practice, policy or procedure be examined for the purpose of preventing complaints arising or to reduce the incidence of such complaints. The IHRC considers that GSOC should have the power to instigate such a review on its own initiative.[[198]](#footnote-198) Such a power would greatly strengthen the independence of GSOC.[[199]](#footnote-199) Indeed, the Ombudsman for Northern Ireland is mandated to investigate a current practice or policy of the police of its own initiative if he or she has reason to believe that it would be in the public interest to do so.[[200]](#footnote-200) The proposal that the Police Ombudsman should initiate inquiries was recommended in the Patten Report.[[201]](#footnote-201)

The IHRC is also concerned that the provisions in Section 99 and Section 126 of the Garda Síochána Act 2005 are unnecessarily restrictive. Section 99 of the Act provides that a station may be searched by a GSOC designated officer where the officer has reasonable suspicion that an offence has been committed. However, subsection 99(3) provides that certain stations, which contain information, documents or things relating to the security of the State, may be designated by the Minister under Section 126 of the Act and may only be searched to the extent specified by the Minister. Notification must be given to the Garda Commissioner and the Minister for Justice in respect of any proposed GSOC authorisation to search such a station. The Minister may then make directions as to the extent of any proposed search of the station in question.

Under the ECHR, national security is recognised as a legitimate ground for limiting the rights and freedoms protected in the ECHR.[[202]](#footnote-202) Nevertheless, the IHRC is of the view that the objective of protecting national security can be achieved without creating this category of designated stations, which could potentially be open to abuse.[[203]](#footnote-203) The IHRC notes that investigating staff of the GSOC are bound by the same duties as members of An Garda Síochána, which include the Official Secrets Act 1963. Furthermore, any warrant for a search of a station will be restricted to material relevant to the specific complaint. It is also significant that investigators from international bodies such as the CPT Committee have the power to enter any Garda station on demand. Therefore to restrict the powers of the GSOC in this way would seem anomalous.[[204]](#footnote-204)

The IHRC considers that alternative measures could be put in place to meet the objective of protecting national security. For example, categories of documents, as opposed to individual Garda stations, could be designated for the purpose of state security. The material which a senior member of An Garda Síochána claims to be related to matters of national security could be sealed and a procedure provided whereby the nature of such material would be assessed by a judge.[[205]](#footnote-205)

It has emerged that GSOC has been involved in discussions with the Department of Justice to request modifications to the Garda Síochána Act 2005, which they believe will aid the efficiency and effectiveness of GSOC.[[206]](#footnote-206) One of the proposed amendments is to introduce a provision under Section 94 of the Garda Síochána Act 2005 to allow for the “leaseback” of investigations to An Garda Síochána, whether for disciplinary issues or the investigation of *prima facie* criminal offences. The proposed amendment includes a specific requirement that the Garda Commissioner forwards to GSOC all the information, documentation and evidence collected during the investigation, as GSOC would remain responsible for sending the file to the Director of Public Prosecutions.[[207]](#footnote-207)

The Police Ombudsman for Northern Ireland is required under legislation to formally investigate all serious complaints.[[208]](#footnote-208) It is within the Ombudsman’s discretion to determine whether other complaints are to be formally investigated by the Police Ombudsman or whether to refer the complaint to the Chief Constable for formal investigation by a police officer.[[209]](#footnote-209) Section 57 of the Police (Northern Ireland) Act 1998 provides the Police Ombudsman of Northern Ireland with a number of statutory powers to oversee an investigation carried out by a police officer. The Ombudsman may approve the police officer whom the Chief Constable proposes to appoint, supervise the investigation of any complaint, and impose requirements as to the conduct of an investigation, which the police officer will be statutorily obliged to comply with.

The IHRC considers that any potential amendment to the Garda Síochána Act 2005, to allow for the “leaseback” of investigations to An Garda Síochána, whether for disciplinary matters or investigations of *prima facie* criminal offences, must be strictly limited to cases involving minor offences or to cases which do not involve serious misconduct. In addition, the IHRC considers that an amendment to the Act to provide for the “leaseback” of complaints to the Garda Commissioner must be accompanied by appropriate statutory safeguards.

Currently, under Section 94 of the Garda Síochána Act 2005, if a complaint is referred to the Garda Commissioner for a disciplinary investigation, GSOC has the power to require that no Garda is appointed to investigate the complaint without its prior approval.[[210]](#footnote-210) In addition, GSOC may supervise the investigation of a complaint if it considers it desirable in the public interest to do so.[[211]](#footnote-211) The IHRC considers that if Section 94 is amended to introduce a provision to provide for the “leaseback” of complaints to the Garda Commissioner for an investigation of *prima facie* criminal offences, the provision should include a requirement of mandatory supervision by GSOC. Inextricably linked to this recommendation is the requirement that GSOC is sufficiently resourced to facilitate the supervision of investigations. Furthermore, the IHRC considers that if such a provision is introduced, there should be a statutory requirement on GSOC to approve the appointment of the Garda member or members chosen to conduct the investigation.

Finally, in the view of the IHRC, the consent of the person making the complaint should always be required before GSOC can refer a case involving an allegation of a criminal offence to the Garda Commissioner. The IHRC considers that each of these suggested safeguards must be incorporated into any amendment of Section 94, arising from the GSOC proposal, in order to ensure continued public confidence in GSOC as an independent body.

The IHRC notes that progress has been made to facilitate a process of mediation or informal resolution to resolve less serious complaints when the complainant consents. Following a period of consultation with Garda management and Garda staff associations, GSOC has drafted guidelines for informal resolution or mediation, as provided for by Section 90 of the Garda Síochána Act 2005.[[212]](#footnote-212) The IHRC welcomes these developments and considers that every effort should be made to facilitate the process of informal resolution in minor cases where the consent of the complainant is obtained.

1. *Legislative Recommendations*

**The IHRC recommends that Section 106 of the Garda Síochána Act 2005 be amended to allow GSOC to instigate a review on its own initiative of a practice, policy or procedure of An Garda Síochána.**

**The IHRC recommends that Section 99 and Section 126 of the Garda Síochána Act 2005 be reconsidered to ensure that nothing in the Act could have the effect of restricting GSOC’s right of access to Garda stations on demand in the course of an investigation of a complaint.**

**The IHRC recommends that the proposed GSOC amendment to Section 94 of the Garda Síochána Act 2005 to allow for the “leaseback” of investigations to An Garda Síochána, whether for disciplinary matters or the investigation of *prima facie* criminal offences, must be strictly limited to cases involving minor offences or to cases which do not involve serious misconduct.**

**The IHRC recommends that certain statutory safeguards, including a statutory requirement of mandatory supervision by GSOC, GSOC approval of the Garda appointed to conduct the investigation, and a requirement to obtain the consent of the complainant prior to referral, must be incorporated into any proposed amendment of the Garda Síochána Act 2005 that would allow for the “leaseback” of complaints to the Gardaí for an investigation of *prima facie* criminal offences**. **It is essential that GSOC is sufficiently resourced to facilitate the supervision of Garda investigations, whether or not the Act is amended.**

1. **OPCAT National Preventative Mechanism** **to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

As outlined above, the OPCAT requires that a national oversight body inspect Garda stations on a regular basis, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. Ireland has not yet ratified the OPCAT, but will be required to designate a body or bodies as a National Preventative Mechanism within one year of ratification. At present, there is no inspection mechanism in Ireland mandated to carry out preventative inspections of Garda stations.[[213]](#footnote-213) Thus, there is a clear gap at the domestic level, which should be rectified by prompt ratification of the OPCAT and designation of the National Preventative Mechanism. Any National Preventative Mechanism must comply with the requirements of the OPCAT. This entails, *inter alia*, ensuring that it possesses the independence, mandate and adequate, ring-fenced resources to carry out its functions effectively. As Ireland’s national human rights institution, the IHRC has been engaging with key stakeholders to progress the process towards the introduction of the required legislation and the designation of a National Preventative Mechanism.[[214]](#footnote-214)

1. *Legislative and Policy Recommendations*

**The IHRC recommends that the current lack of preventative inspections of Garda stations must be addressed. The Irish government should ratify the OPCAT without delay and ensure that Garda stations are subjected to preventative inspections on a regular basis by the National Preventative Mechanism designated under the OPCAT. Such a National Preventative Mechanism must comply with all the requirements of the OPCAT and in particular, must possess the independence, mandate and adequate, ring-fenced resources to allow it to carry out its functions effectively.**

1. **Community Policing**

In order to ensure accountability of the police to the citizens of the State, the police must be engaged with the community at a local level. The Patten Report recommended that “policing with the community should be the core function of the police service and the core function of every police station”.[[215]](#footnote-215) The Garda Síochána Inspectorate, in its Third Report, recommended that An Garda Síochána “[d]evelop community policing as the fundamental policing philosophy at the core of the organisation”.[[216]](#footnote-216) The IHRC endorses this recommendation and was pleased that the Minister for Justice recently expressed agreement with the view of the Garda Síochána Inspectorate.[[217]](#footnote-217) The IHRC is of the view that the objectives of community policing are consistent with Ireland’s consensual, constabulary model of policing[[218]](#footnote-218) and that community policing has the potential to improve the capacity of the Gardaí to promote and protect human rights in the community.[[219]](#footnote-219)

The IHRC welcomes the initiatives taken to date by An Garda Síochána to develop community policing. It is commendable that the Garda Síochána Corporate Strategy 2007-2009 identifies ‘Community Engagement’ as a strategic goal of An Garda Síochána.[[220]](#footnote-220) A number of proposed actions towards achieving this goal are set out in the Policing Plan 2009.[[221]](#footnote-221) One of the proposed initiatives was to develop the Garda Síochána National Model of Community Policing, which was published in January of this year.[[222]](#footnote-222)

Two of the core components of the National Model of Community Policing are Garda-community partnerships and collaborative engagement. The main objective of establishing partnerships is to determine, through consultation, community needs and policing priorities and to promote Garda accountability, transparency and effectiveness.[[223]](#footnote-223) There is unfortunately, however, a lack of detail in the National Model of Community Policing Action Plan in relation to how An Garda Síochána propose to build partnerships with communities.[[224]](#footnote-224) Further concrete information is required. There should in particular be a focus on hard-to-reach and disadvantaged elements of communities.

A particularly significant development in Community Policing was the establishment of Joint Policing Committees, under the Garda Síochána Act 2005. The functions of the Joint Policing Committees include serving as a forum for consultation, discussions and recommendations on matters affecting policing in the local authority’s administrative area. Since September 2008, Joint Policing Committees are being rolled out to all local authority areas in Ireland. Membership of the Committees includes representatives of the local authority, the Oireachtas and of An Garda Síochána and representatives from the community and voluntary sector.

While the IHRC welcomes the inclusion of representatives from the community and voluntary sector in the Joint Policing Committees, the IHRC considers it unfortunate that the Ministerial Guidelines on Joint Policing Committees limit their membership to a small minority.[[225]](#footnote-225) The IHRC considers that the Joint Policing Committees should encompass a broad range of community activists and workers and in particular representatives of the elements of the community that experience high levels of contact with the police.[[226]](#footnote-226) In addition, the Ministerial Guidelines on Joint Policing Committees provide that the persons representing the community and voluntary sector shall be “selected in accordance with local arrangements which *may* include consultation with the community and voluntary forum” (emphasis added).[[227]](#footnote-227) The IHRC considers that transparency in the selection process is desirable and as a result the IHRC would strongly encourage consultation with the community and voluntary forum prior to the selection of representatives from this sector.

A further initiative, aimed at responding to the needs of the community, is the public attitude surveys conducted by the Garda research unit. The focus of the public attitude surveys is primarily on public satisfaction with Garda service, policing priorities and experiences and fear of crime.[[228]](#footnote-228) A survey has also been conducted specifically with members of the Traveller Community and members of ethnic communities.[[229]](#footnote-229) An analysis of the findings of these surveys will be incorporated in the development of policing objectives and strategies in the Policing Plans.[[230]](#footnote-230) As the Walsh Study notes, these surveys are a necessary and commendable exercise in addressing community concerns in policing policies and practices.[[231]](#footnote-231)

1. *Legislative and Policy Recommendations*

**The IHRC recommends that An Garda Síochána continues to develop and strengthen initiatives on community engagement** **and to ensure that the Garda Síochána National Model of Community Policing is rolled out in practice.**

**The IHRC recommends that the Ministerial Guidelines on Joint Policing Committees should ensure that the Committees include a broad range of community activists and workers and in particular representatives of the elements of the community that experience high levels of contact with the police.**

**The IHRC considers that transparency in the selection process of community and voluntary sector representatives to the Joint Policing Committees is desirable. As a result, the IHRC strongly encourages consultation with the community and voluntary forum prior to the selection of representatives from this sector.**

1. **Serving the Community**

To effectively provide for the needs of the community and in light of the growing diversity in Irish society, An Garda Síochána must have sufficient measures in place to combat racism and to address the requirements of all members of Irish society. Equally, to enhance communication and trust within the community it is imperative that that the police service in Ireland reflects the composition of Irish society in terms of ethnicity, religion and gender.

1. **National and International Law and Best Practice**

Article 40.1 of the Irish Constitution provides that “[a]ll citizens shall, as human persons, be held equal before the law”. Indeed, the prohibition against discrimination is a firmly established principle of international law. International law prohibits discrimination on a variety of grounds, including, *inter alia*, on the grounds of race, sex, colour and religion.[[232]](#footnote-232)

With regard to racial discrimination, Ireland is a State party to the UN Convention on the Elimination of All Forms of Racial Discrimination (UNCERD). Under Article 2(1) of UNCERD, State parties are obliged to ensure that public authorities will not engage in any practice of racial discrimination.[[233]](#footnote-233) The provisions of the UNCERD are of considerable importance for An Garda Síochána, particularly in light of Garda interaction with members of ethnic groups and the important role Gardaí play in combating racist crime and protecting vulnerable communities. In 2007, the Council of Europe European Commission against Racism and Intolerance (ECRI)[[234]](#footnote-234) adopted a General Policy Recommendation on combating racism and racial discrimination in policing.[[235]](#footnote-235) While not legally binding, the ECRI makes a number of concrete recommendations to State parties focused on addressing racial discrimination and misconduct within the police service, on the role of the police in combating racism and monitoring racist incidents, and on building relations between the police and members of minority groups.

To be considered equal before the law presupposes access to interpretation, where the person in question does not understand the official language(s). It is a fundamental principle of international law that everyone who is arrested and/or charged with a criminal offence has the right to be informed promptly in a language which they understand of the reasons for their arrest and/or of the nature and cause of the accusation against them.[[236]](#footnote-236) State parties of the Council of Europe are further obliged, to the extent possible, to provide for all members of the community who come in contact with the police and do not understand the official language(s) to have access to an effective interpretation service.[[237]](#footnote-237) Likewise, the European Code of Ethics provides that interpretation and translation services shall be provided where necessary throughout a police investigation.[[238]](#footnote-238) This indicates that translation and interpretation services should be provided to the victim to enable them to participate fully in the investigation process.[[239]](#footnote-239)

On the issue of equality in the recruitment of police personnel and non-discrimination in the workplace, the Employment Equality Act 1998 promotes equality of opportunity and prohibits discrimination in the workplace across the nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller Community.[[240]](#footnote-240) Equality in the recruitment of police personnel is specifically addressed in the European Code of Police Ethics. Article 25 of the European Code provides that “recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates”.[[241]](#footnote-241) The Article expressly provides that recruitment policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the objective of making police personnel reflect the society they serve.

The fundamental importance of having a police service that reflects the composition of the community as a whole is emphasised in the Patten Report and by ECRI.[[242]](#footnote-242) In addition, ECRI has recommended that the State must ensure that under-represented minority groups in the police service have equal opportunities for progression in their careers.[[243]](#footnote-243)

1. **Diversity and Interculturalism**

The IHRC welcomes the commitment in An Garda Síochána to monitor racist incidents and to address racial discrimination and racially motivated misconduct within the service. Good relations between the Gardaí and ethnic minority communities are crucial to the integration of minorities and the development of an inter-cultural society in Ireland. This is all the more pressing in light of the most recent census figures, which document that non-nationals account for more than ten percent of the population in Ireland.[[244]](#footnote-244) The IHRC supports the viewpoint that one of the most disturbing aspects of the Ionann Report was the finding of institutional racism in An Garda Síochána.[[245]](#footnote-245) Likewise, the analysis provided in the Walsh Study of a number of state agency and NGO reports, which detail racist attitudes within the Gardaí, gives rise to further concern.[[246]](#footnote-246)

The commitment of Garda management to challenge racism is evident in the positive objectives of the Garda Human Rights Action Plan and the corresponding actions.[[247]](#footnote-247) It is also evident in the recent policing plans and corporate strategy statements.[[248]](#footnote-248) Some positive measures include the establishment of a National Consultation Process, which involves consultation on a regular basis at District, Divisional and National level between local Garda management and members of the ethnic communities and the appointment of 450 ethnic liaison officers trained to liaise with ethnic communities nationwide.[[249]](#footnote-249) Of note, Garda management is progressing towards training all community Gardaí as ethnic liaison officers.[[250]](#footnote-250) The Garda Racial and Intercultural Office has been to the fore in driving forward positive initiatives to combat racism within An Garda Síochána. In particular, the IHRC was pleased to learn that An Garda Síochána is currently working towards a Diversity Strategy and Implementation Plan, aimed at complementing, enabling and taking strategic advantage of diversity.[[251]](#footnote-251)

There are other fundamental measures which the IHRC considers are required to challenge racism effectively and to protect the rights of ethnic minority communities. In particular, the IHRC considers that racially motivated misconduct should form an explicit disciplinary offence within An Garda Síochána. The Garda Human Rights Action Plan makes a commitment to “revise performance standards to prohibit racist or discriminatory language/behaviour as a serious disciplinary offence”.[[252]](#footnote-252) However, two years later, when issuing the Garda Síochána (Disciplinary) Regulations 2007, the opportunity was not taken to include racial discrimination or racially motivated behaviour as a specific disciplinary offence. While the Disciplinary Regulations provide that a failure to comply with any specified provision of a code of ethics will constitute a breach of discipline, it is uncertain whether the final version of the Code of Ethics, which is currently being developed, will include an explicit prohibition against racial discrimination or racially motivated behaviour.[[253]](#footnote-253) In the view of the IHRC, the Garda Disciplinary Regulations should provide for an explicit disciplinary offence of racially motivated behaviour.[[254]](#footnote-254)

The Ionann Report highlighted the importance of tackling language barriers to improve communication between members of the Gardaí and the community. Accordingly, the Report recommended the establishment of a register of accredited interpreters who will be trusted by all stakeholders.[[255]](#footnote-255) It is understood that An Garda Síochána currently secure interpreters through the listings provided by the Courts Service.[[256]](#footnote-256) However, An Garda Síochána is currently undertaking an EU based procurement to put in place contracts for the provision of interpretation and translation services. It is expected that the new service will be in place in the first quarter of this year.[[257]](#footnote-257) The IHRC was pleased to learn that as part of the process emphasis is being placed on ensuring that appropriate quality assurance mechanisms are in place both in the initial selection of the service providers and in the ongoing monitoring of standards over the duration of the contracts.[[258]](#footnote-258)

The right to interpretation is provided for in international law and best practice standards as outlined above. It is noted in the Walsh Study that the quality of interpretation services, together with the interpreter’s independence and professionalism, can have a critical impact on the human rights of the person requiring the services of an interpreter, especially when the engagement concerns the questioning of a person in police custody on suspicion of a crime.[[259]](#footnote-259) The IHRC considers it crucial that a reliable, certified and good quality interpretation service is available for members of the community who come in contact with An Garda Síochána and are unable to effectively communicate in the English language.

In October 2008, a Government funded report, entitled *Developing Quality, Cost Effective Interpreting and Translation Services for Government Service Providers in Ireland*, was published.[[260]](#footnote-260) The IHRC welcomes the conclusions and recommendations in this Report and considers that the implementation of the recommendations would greatly improve the interpretation and translation services provided by An Garda Síochána. The recommendations include the development of a national policy framework for the provision of interpretation and translation services, the development of a register of accredited practitioners to be used by Government service providers and the development of appropriate accreditation standards to underpin the register.[[261]](#footnote-261) The IHRC encourages the Office of the Minister for Integration to consider the recommendations of the Report and to put the necessary measures in place to proceed with their implementation. In the view of the IHRC, it is equally important that provision is made for persons with speech and hearing impairments.

1. *Legislative and Policy Recommendations*

**The IHRC recommends that the Garda Síochána (Disciplinary) Regulations 2007** **provide for an explicit disciplinary offence of racist behaviour.**

**The IHRC recommends that a reliable, certified and good quality interpretation service should be available for members of the community who come in contact with An Garda Síochána and are unable to effectively communicate in the English language. In this regard, the IHRC encourages the Office of the Minister for Integration to implement the recommendations in the Government funded report, *Developing Quality, Cost Effective Interpreting and Translation Services for Government Service Providers in Ireland.***

**The IHRC recommends that adequate interpretation services are provided for persons with speech and hearing impairments.**

1. **A Representative Garda Service**

If An Garda Síochána is to be successful in promoting and protecting the human rights of everyone in Irish society, it must become a truly representative service. The commitment by the Department of Justice and senior members of An Garda Síochána to open up the recruitment procedures to Irish residents from different ethnic backgrounds and to encourage the retention and progression of a more diverse police service must be acknowledged. Of particular significance was the removal, in 2005, of the requirement for admission as a trainee Garda to have an academic qualification in the Irish language.[[262]](#footnote-262) Since 2005, the Gardaí have undertaken a number of recruitment drives and advertising campaigns aimed at minority communities.[[263]](#footnote-263) The IHRC was pleased to learn that one of the key actions of An Garda Síochána Policing Plan 2009 is to increase the capability and effectiveness of An Garda Síochána in creating an organisation representative of the community it serves. This goal is expected to be achieved through targeted and innovative recruitment campaigns.[[264]](#footnote-264)

At the time of the Ionann Report it was thought that there were only two members of minority communities in the service.[[265]](#footnote-265) As of May 2008 it was reported that there were four persons from different ethnic backgrounds in the Garda organisation with a further 21 in training, while there were eight members in the Garda Reserve from ethnic minorities with a further five in training.[[266]](#footnote-266) While some progress is being made there continues to be a huge disparity, relative to the population make-up, in the numbers of persons from different ethnic backgrounds in the Garda service.

Further action is required to encourage the recruitment, retention and progression of a more diverse Garda service. In this context, the IHRC looks forward to the publication of the Diversity Strategy and Implementation Plan, which is currently under consideration. Of note, the Garda Síochána Inspectorate previously emphasised that it is important that the new strategy brought forward offers a real prospect of achieving greater cultural diversity.[[267]](#footnote-267)

The low representation of women within the Garda organisation is also of considerable concern. The issue of recruitment and promotion of women within the Garda organisation is dealt with in greater detail in Section 5(d) below.

1. *Policy Recommendation*

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

1. **Rights of Gardaí**
2. **National and International Law and Best Practice**

In any discussion on human rights in policing it is important to recall that members of An Garda Síochána enjoy the same civil and political rights as the citizens of the State. This is explicitly provided for in Article 31 of the European Code of Police Ethics.

With regard to economic, social and cultural rights, the European Code of Ethics provides that “police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible”.[[268]](#footnote-268) The European Code provides in particular that staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security and to be provided with special health and security measures, taking into account the particular character of police work.[[269]](#footnote-269)

The due process rights protected under Article 6 of the ECHR are equally applicable to members of the Gardaí in the investigation of a complaint which may have been made against them. Article 6 of the ECHR sets out the minimum rights applicable to all persons in the determination of their civil rights and obligations and of any criminal charge against them.[[270]](#footnote-270) The principal entitlement under Article 6 is the right to a fair and public hearing within a reasonable time by an independent and impartial body. The objective underlying an individual’s right to a hearing within a reasonable time is to protect the individual concerned from living too long under the stress of uncertainty and, more generally, to ensure that justice is administered without delays, which might jeopardize its effectiveness and credibility.[[271]](#footnote-271)

It is noteworthy that the European Code of Ethics has recognised that due to their role in society police personnel will at times be the subject of ill-founded accusations concerning their duties. Article 34 of the European Code provides that public authorities shall support police personnel who are subject to such accusations.

1. **Personal Safety and Well-Being of Members of An Garda Síochána**

As indicated above, police officers do not sacrifice their rights by joining the police service. Being a member of An Garda Síochána by no means lessens a Garda’s right to be protected by the State and to have his or her right to life and bodily integrity safeguarded in accordance with the Irish Constitution and the ECHR. The personal safety of members of the Garda service is of fundamental importance. Indeed, a recent British High Court decision has suggested that, under Article 2 of the ECHR, governments have a positive obligation to protect the life of its law enforcement agents.[[272]](#footnote-272) The case followed an inquest into the death of a British soldier, serving in Iraq in 2003, who died from heatstroke in temperatures reaching in excess of 50 degrees centigrade. The Court stated that:

Article 2 covers the taking of life by state agents. But it also imposes a positive obligation to protect life. Thus where there is a known risk to life which the State can take steps to avoid or to minimise, such steps should be taken. What can reasonably be done will depend on the circumstances of a particular case. It is obvious that sending members of the armed forces to fight or to keep order will expose them to the risk of death…[b]ut the soldier does not lose all protection simply because he is in hostile territory carrying out dangerous operations. Thus, for example, to send a soldier out on patrol or, indeed, into battle with defective equipment could constitute a breach of Article 2.[[273]](#footnote-273)

The personal safety of members of the Garda service is an issue that has been looked at by the Garda Síochána Inspectorate. In its Second Report the Garda Síochána Inspectorate offered a number of recommendations concerning the safety of members of the Garda service.[[274]](#footnote-274) A focus of the recommendations is on the need for adequate and up to date protective equipment for members of the Gardaí. The Garda Inspectorate recommended that: a digital radio system be implemented as a top priority in order to enhance the safety and effectiveness of front-line police officers; a review of the current state and number of firearms available in Garda districts should be conducted immediately, with a view to ensuring that appropriate numbers and types of weapons, as well as an adequate number and deployment of Gardaí authorised to use a firearm are available to respond to reported armed confrontations; wearing of protective vests should be a mandatory requirement for all Gardaí; and, in the interests of safety, incapacitant spray should be made available to all Gardaí on operational duty.[[275]](#footnote-275)

The IHRC encourages the Government and Garda Management to continue to take all necessary measures to protect the personal safety of the members of An Garda Síochána. Bearing in mind the human rights principle of minimum use of force, individual members of the Garda service should be provided with adequate and up to date protective equipment. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials encourages Governments and law enforcement agencies to equip their law enforcement agents with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet proof means of transportation, in order to decrease the need to use weapons of any kind.

Effective training and guidance on the use of protective equipment must be provided to all members of An Garda Síochána. This is particularly important in relation to protective equipment that has the potential to cause death or bodily harm. The training provided should be in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, with a particular emphasis on human rights principles such as necessity and proportionality. [[276]](#footnote-276)

Gardaí are also exposed to a wide range of stressful situations, which often exhibit a common set of factors such as exposure to violence and suffering, seeing dead, dying and severely injured people following road traffic accidents and crime, shift work, negative publicity about them and the service and reduced resources. Furthermore, members of the service may be exposed to the risks involved in armed confrontation, which can lead to the police officer developing psychiatric illnesses, such as Depression or Post-Traumatic Stress Disorder.

Professionals in the area of law enforcement are aware of an important need for stress programmes for members of the police service.[[277]](#footnote-277) Furthermore, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that Government and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.[[278]](#footnote-278)

From the perspective of preventing human rights abuses, the provision of stress management programmes has an important role to play for officers who otherwise might fall into the, possibly remote, risk of misconduct. The IHRC considers that members of An Garda Síochána have a right to the best possible support from the authorities and this can be delivered through either organised peer support and outreach or via a professionally staffed stress counselling service, or both. Clearly, stress programmes are the province of Garda authorities and can only be properly organised following a scientifically conducted Needs Assessment.

1. *Policy Recommendations*

**The IHRC recommends that the Government and Garda Management take all necessary measures to protect the personal safety of the members of An Garda Síochána. Bearing in mind the human rights principle of minimum use of force, members of the Garda service should be provided with adequate and up to date protective equipment.**

**The IHRC recommends that effective training and guidance on the use of protective equipment, particularly protective equipment that has the potential to cause death or bodily harm, is provided to all members on An Garda Síochána. The training provided should be in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, with a particular emphasis on human rights principles such as necessity and proportionality.**

**The IHRC recommends that support should be available to members of An Garda Síochána in the form of stress programmes and these can be delivered through either organised peer support and outreach or via a professionally staffed stress counselling service, or both.**

1. **Due Process Rights of the Gardaí**

GSOC was established as the independent body to receive and investigate complaints by the public concerning the conduct of members of An Garda Síochána. GSOC is statutorily obliged to ensure that its functions, including the investigation of complaints, are performed in an efficient and effective manner and with full fairness to all persons involved in complaints and investigations.[[279]](#footnote-279) In the first year of its operation, from 9 May 2007, GSOC received a total of 2,905 complaints from members of the public and 294 referrals were made by the Garda Commissioner under Section 102 of the Garda Síochána Act 2005.[[280]](#footnote-280) The IHRC is aware that GSOC is currently reviewing all aspects of its operations in order to ensure continuing compliance with human rights principles. However, GSOC has acknowledged that it is dealing with an accumulation of investigations and complaints and that it cannot function at an acceptable level of effectiveness if this backlog continues.[[281]](#footnote-281) GSOC has identified inadequate staffing levels and an under-developed information technology system, in addition to the need for certain legislative amendments, as contributing factors to the current backlog.[[282]](#footnote-282)

It is of concern to the IHRC that, given the current backlog of complaints, the right of a member of An Garda Síochána to have a complaint against them dealt with within a reasonable period of time may be under threat. It is of concern that long delays may cause undue hardship to both the complainant and the Garda member, whose conduct is the subject of the complaint, and give rise to concerns that delays might jeopardize the effectiveness and credibility of the complaints process. It is essential that GSOC is provided with the required resources to enable it to carry out its functions in an efficient and effective manner and with full fairness to all persons involved.

1. *Policy Recommendation*

**The IHRC recommends that GSOC is provided with the required resources to enable it to carry out its functions in an efficient and effective manner and with full fairness to all persons involved.**

1. **Garda Promotions System**

The promotion system within the Garda organisation has important human rights implications for members of the service and the public alike. The Ionann Report recorded concerns expressed by Gardaí that the promotions system was governed by ‘who you know’ and nepotism and the procedures militated against female members.[[283]](#footnote-283) The concerns raised highlight the importance of having a Garda promotion system based on merit.

The Garda Human Rights Action Plan identified the importance of a link between human rights competence and career progression.[[284]](#footnote-284) In furtherance of this objective, the promotion examination syllabi have been reviewed and include content on human rights issues in the Sergeants’ and Inspectors’ promotion examinations.[[285]](#footnote-285) It is also reported that diversity and human rights awareness now form an integral part of the selection criteria for promotion within the Garda organisation.[[286]](#footnote-286)

The IHRC welcomes the measures taken by An Garda Síochána to link human rights competence to career progression. However, it is unfortunate that further details on the nature of the selection criteria applied, in identifying candidates for promotion within the service, are not publicly available.[[287]](#footnote-287) The Garda Síochána (Promotion) Regulations 2006 provides “the selection of members for promotion shall be based on merit and the readiness and suitability for promotion of the candidates.”[[288]](#footnote-288) Again, the Regulations do not elaborate on the selection criteria to be applied by the members of the designated promotions board.

The IHRC would welcome greater transparency in the Garda promotions system and further information on the selection criteria applied by the promotions board. In the view of the IHRC, human rights compliance and awareness ought to be a determining factor in the selection process when considering if a candidate has reached the required standard of merit for promotion. It is equally important that career progression is linked to Garda participation in continuing professional development programmes.[[289]](#footnote-289) Such transparency would also facilitate external oversight in human rights proofing the promotions system for members of An Garda Síochána.

To ensure that the promotion system within the Garda organisation is solely based on merit, independence and impartiality must be at the core of the Garda promotions system. In this regard, the IHRC acknowledges the recent changes made by the Department of Justice to achieve a greater level of objectivity in the selection process. The Garda Síochána (Promotion) Regulations 2006 provides that the promotion system, for the ranks of sergeant to deputy commissioner, will be based on interview boards consisting of two civilians and a member of An Garda Síochána.[[290]](#footnote-290) One of the civilian board members will act as chair.

It is of concern that there is a considerable gender imbalance in the Garda service. The Walsh Study notes that the female members of the service still account for a relatively small percentage of the organisation, approximately 21 percent, and their proportion decreases further as rank increases.[[291]](#footnote-291) Accordingly, the Walsh Study emphasises the need for further action to be taken to address the issue of female recruitment and promotion. The Report recommends that a more “coherent and transparent” recruitment and promotion policy, which sets “justified and clear targets” for female recruitment and promotion relative to male recruitment and promotion, is required.[[292]](#footnote-292) The Walsh Study considers that when the targets entail a lower percentage for females it is important that the underlying reasoning is made explicit.[[293]](#footnote-293) The IHRC endorses this recommendation, believing it to be an important step towards addressing the current gender imbalance in An Garda Síochána.

1. *Policy Recommendations*

**The IHRC encourages greater transparency in the Garda promotions system.**

**The IHRC recommends that when considering if a candidate has reached the required standard of merit for promotion within An Garda Síochána, human rights compliance and awareness ought to be a determining factor in the selection process. In addition, the IHRC recommends that career progression is linked to Garda participation in continuing professional development programmes.**

**The IHRC recommends clear targets for female recruitment and promotion, relative to male recruitment and promotion. When the targets entail a lower percentage for females the underlying reasoning should be made explicit.**

1. **Conclusion**

At the core of effective policing is respect for human rights, which at the most basic level is respect for the human dignity of every individual. Considerable progress has been made towards a human rights based approach to policing in Ireland. However, significant further improvements are required. While the human rights based reforms introduced within An Garda Síochána are commendable, it is crucial that the momentum for change is sustained. As noted in the Ionann Report, the process of embedding human rights standards in An Garda Síochána must not be viewed as a once off exercise; it is a constant and evolving process.[[294]](#footnote-294)

Ensuring that the rights and securities of all persons in Ireland are protected is a challenging task. This Policy Statement is intended to support the work of members of An Garda Síochána in providing guidance on human rights standards in policing. The Policy Statement has identified some priority areas where further human rights based reforms are required and has made recommendations based on national and international law and best practice. The recommendations are underpinned by core principles and human rights standards, in particular, the need for greater openness, transparency, accountability and diversity within the police service.

The IHRC looks forward to further engagement with those involved in both the policy and practice of policing in Ireland, including senior management of An Garda Síochána, members of An Garda Síochána and the Minister for Justice.

1. **Summary of IHRC Legislative and Policy Recommendations**
2. **Recommendations to An Garda Síochána**
3. The IHRC recommends that all sections of the Garda Code and Garda operational policies and procedures, with the exception of some security-related procedures, should be published and made accessible for the public.
4. The IHRC recommends that An Garda Síochána human rights proof all Garda policies, procedures and practices.
5. The IHRC recommends the retention of adequate human rights expertise, whether in-house or on a contract for services, to ensure proper human rights proofing of all Garda policies and procedures.
6. The IHRC recommends that the internal management structures of An Garda Síochána be reviewed, with a view to strengthening the existing institutional human rights framework. The IHRC considers that the designated high level Human Rights Champion should have a full-time human rights portfolio or, at a minimum, have limited additional competing duties in order to allow the majority of his or her time to be focused on human rights issues.
7. The IHRC recommends that human rights should be explicitly part of the core agenda of the new Garda Síochána Executive Committee.
8. The IHRC recommends that training on human rights standards is integrated into all aspects of Garda training and professional development at both the recruit and in-service training levels.
9. In the view of the IHRC, Garda training and development should be underpinned by the principles of transparency and openness. Accordingly, the IHRC recommends that information relating to Garda teaching materials and the curricula in the Garda Training College should be appropriately accessible.
10. The IHRC recommends that all aspects of Garda training and development should be human rights proofed as a means of effectively integrating human rights standards within An Garda Síochána, from course development through to course delivery.
11. The IHRC recommends the retention of adequate human rights expertise, whether in-house or on a contract for services, to ensure proper human rights proofing of Garda training.
12. The IHRC recommends that human rights training should be a central component of Garda CPD programmes and that each member of An Garda Síochána should partake in human rights based CPD programmes on a regular basis.
13. The IHRC recommends that An Garda Síochána continues to develop and strengthen Garda initiatives on community engagement and to ensure that the Garda Síochána National Model of Community Policing is rolled out in practice.
14. The IHRC recommends further action and a targeted strategy to encourage the recruitment, retention and progression of a more diverse Garda service.
15. The IHRC encourages greater transparency in the Garda promotions system.
16. The IHRC recommends that when considering if a candidate has reached the required standard of merit for promotion within An Garda Síochána, human rights compliance and awareness ought to be a determining factor in the selection process. In addition, the IHRC recommends that career progression is linked to Garda participation in continuing professional development programmes.
17. The IHRC recommends clear targets for female recruitment and promotion, relative to male recruitment and promotion. When the targets entail a lower percentage for females the underlying reasoning should be made explicit.
18. **Recommendations to the Department of Justice, Equality and Law Reform**
19. The IHRC recommends that An Garda Síochána should be brought within the scope of Freedom of Information legislation in Ireland. This would require to be done in conjunction with the Minister for Finance.
20. The IHRC recommends that where appropriate, key areas of policing should be subject to detailed and accessible human rights based codes of practice. When legislation governing Garda powers in key aspects of operational policing is being drafted or reviewed, the IHRC recommends that consideration should be given to providing the Minister for Justice with the power to issue supplementary codes of practice to accompany the statutory Garda powers.
21. The IHRC recommends that legislation providing the Minister for Justice with the power to issue codes of practice should require the Minister to engage in an appropriate consultation process prior to issuing the codes of practice.
22. The IHRC recommends that such codes of practice should be underpinned by the human rights standards in national and international law.
23. The IHRC recommends that effective compliance measures should be incorporated into An Garda Síochána codes of practice. While compliance measures may differ from code to code, the IHRC considers that typically compliance measures should include a requirement for contemporaneous record-keeping by members of the Gardaí when exercising Garda powers. Furthermore, the IHRC considers that, when appropriate, a breach of a code of practice should suffice to trigger the complaints mechanism and/or disciplinary action.
24. The IHRC recommends that Section 106 of the Garda Síochána Act 2005 be amended to allow GSOC to instigate a review on its own initiative of a practice, policy or procedure of An Garda Síochána.
25. The IHRC recommends that Section 99 and Section 126 of the Garda Síochána Act 2005 be reconsidered to ensure that nothing in the Act could have the effect of restricting GSOC’s right of access to Garda stations on demand in the course of an investigation of a complaint.
26. The IHRC recommends that the proposed GSOC amendment to Section 94 of the Garda Síochána Act 2005 to allow for the “leaseback” of investigations to An Garda Síochána, whether for disciplinary matters or the investigation of *prima facie* criminal offences, must be strictly limited to cases involving minor offences or to cases which do not involve serious misconduct.
27. The IHRC recommends that certain statutory safeguards, including a statutory requirement of mandatory supervision by GSOC, GSOC approval of the Garda appointed to conduct the investigation, and a requirement to obtain the consent of the complainant prior to referral, must be incorporated into any proposed amendment of the Garda Síochána Act 2005 that would allow for the “leaseback” of complaints to the Gardaí for a criminal investigation. It is essential that GSOC is sufficiently resourced to facilitate the supervision of Garda investigations, whether or not the Act is amended.
28. The IHRC recommends that the current lack of preventative inspections of Garda stations must be addressed. The Irish government should ratify the OPCAT without delay and ensure that Garda stations are subjected to preventative inspections on a regular basis by the National Preventative Mechanism designated under the OPCAT. Such a National Preventative Mechanism must comply with all the requirements of the OPCAT and in particular, must possess the independence, mandate and adequate, ring-fenced resources to allow it to carry out its functions effectively.
29. The IHRC recommends that the Ministerial Guidelines on Joint Policing Committees should ensure that the Committees include a broad range of community activists and workers and in particular representatives of the elements of the community that experience high levels of contact with the police.
30. The IHRC recommends that the Garda Síochána (Disciplinary) Regulations 2007 provide for an explicit disciplinary offence of racist behaviour.
31. The IHRC recommends that a reliable, certified and good quality interpretation service should be available for members of the community who come in contact with An Garda Síochána and are unable to effectively communicate in the English language. In this regard, the IHRC encourages the Office of the Minister for Integration to implement the recommendations in the Government funded report, *Developing Quality, Cost Effective Interpreting and Translation Services for Government Service Providers in Ireland.*
32. The IHRC recommends that adequate interpretation services are provided for persons with speech and hearing impairments.
33. The IHRC recommends that GSOC is provided with the required resources to enable it to carry out its functions in an efficient and effective manner and with full fairness to all persons involved.
34. **Recommendations to An Garda Síochána and the Department of Justice, Equality and Law Reform**
35. The IHRC considers that the work of the Strategic Human Rights Advisory Committee should continue and that prompt action should be taken to implement the recommendations of the Strategic Human Rights Advisory Committee’s Report.
36. The IHRC endorses the model of a national committee as recommended by the Morris Tribunal to formulate and recommend policy to Garda management in respect of investigative interviewing. The IHRC considers that this model of a national committee could be broadened to some other aspects of operational policing.
37. The IHRC considers that transparency in the selection process of community and voluntary sector representatives to the Joint Policing Committees is desirable. As a result, the IHRC strongly encourages consultation with the community and voluntary forum prior to the selection of representatives from this sector.
38. The IHRC recommends that the Government and Garda Management take all necessary measures to protect the personal safety of the members of An Garda Síochána. Bearing in mind the human rights principle of minimum use of force, members of the Garda service should be provided with adequate and up to date protective equipment.
39. The IHRC recommends that effective training and guidance on the use of protective equipment, particularly protective equipment that has the potential to cause death or bodily harm, is provided to all members on An Garda Síochána. The training provided should be in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, with a particular emphasis on human rights principles such as necessity and proportionality.
40. The IHRC recommends that support should be available to members of An Garda Síochána in the form of stress programmes and these can be delivered through either organised peer support and outreach or via a professionally staffed stress counselling service, or both.

**Appendix**

**Summary of Recommendations from the Ionann Management Consultants’ Human Rights Audit of An Garda Síochána**

**Recommendations to An Garda Síochána**

**It is recommended that An Garda Síochána should:**

1. **Publish the report of the human rights audit.**

[…]

1. **Strengthen and enhance the roles of the Garda Human Rights Office and the Racial and Intercultural Office.**

[…]

1. **Establish a high level strategic advisory committee and a central senior management structure to drive forwards implementation of the human rights initiative and the recommendations in this report.**

[…]

1. **Undertake a human rights impact assessment of all existing and forthcoming policy and operations procedures, including the Garda Code, and establish systems to monitor compliance with human rights standards in operational policing.**

[…]

1. **Provide more support for staff to report human rights abuses and breaches of good human rights practice**

[…]

1. **Develop more effective mechanisms for consultation, promotion and dissemination of human rights information externally and internally**

[…]

1. **Develop and enhance arrangements for community liaison**

[…]

1. **Develop a communication strategy which incorporates human rights observance**

[…]

1. **Develop ways to overcome language barriers**

[…]

1. **Implement the CPT and other recommendations to further protect the human rights of those subject to police powers**

[…]

1. **Identify and tackle institutional racism**

[…]

1. **Deal robustly with racist crime and protect vulnerable communities**

[…]

1. **Protect the human rights of its staff**

[…]

1. **Encourage the recruitment, retention and progression of a more diverse police service**

[…]

**15 Provide human rights and race and diversity training for all staff**

[…]

**Recommendations to the Department for Justice, Equality and Law Reform**

**The Department should**

1. **Consider amending the Equal Status Act 2000**

[…]

1. **Ensure that there is a strong independent membership of the proposed local policing committees**

[…]

1. **Consult local communities in the production of the code of ethics proposed in the Garda Síochána Bill 2004**

[…]

1. **Ensure that the new independent inspectorate encourages complaints from all sections of the community**

[…]

1. **Consider a review of An Garda Síochána’s role in immigration**

[…]

**PRIORITIES FOR ACTION**

Based on the results of this review, the table below sets out priorities for action in five broad priority areas, along with a suggested target date for implementation.

In general the following steps are recommended:

* This audit (or a summary) is published and that comments and views are invited from the public.
* Similarly the audit or a summary is circulated to all staff inviting comments and feedback.
* Senior management as a matter of urgency discusses the priorities set out in this table.
* A one-day workshop is convened at which senior managers from each department should develop departmental specific action plans to achieve the targets.

|  |  |
| --- | --- |
| **Priority areas and relevant recommendations** | **Target date** |
| **Priority area 1****Developing and underpinning a comprehensive human rights ethos and structure**1. Publish the report of the human rights audit.2. Strengthen and enhance the roles of the Garda Human Rights Office and the Racial and Intercultural Office.3. Establish a high level strategic advisory committee and a central  senior management structure to drive forwards implementation of  the human rights initiative and the recommendations in this report.4. Undertake a human rights impact assessment of all existing and  forthcoming policy and operations procedures, including the Garda  Code, and establish systems to monitor compliance with human  rights standards. | July 2005Dec 2005Sept 2005Sept 2005  |
| **Priority area 2****Promotion of and accountability for human rights policing**5. Provide more support for staff to report human rights abuses 6. Develop more effective mechanisms for consultation, promotion  and dissemination of human rights and other relevant information  externally and internally10. Protect the human rights of those subject to police powers | End 2004Sept 2005Sept 2005 |
| **Priority area 3****Policing in a diverse community**11. Identify and tackle institutional racism12. Deal robustly with racist crime and protect vulnerable communities | Sept 2005March 2005 |
| **Priority area 4****Staff engagement, training and development**13 Protect the human rights of staff14. Encourage the recruitment, retention and progression of a more  diverse police service15 Provide human rights and race and diversity training for all staff | Dec 2005Dec 2005June 2005 |
| **Priority area 5****Community engagement, involvement and partnership**7. Develop and enhance arrangements for community liaison8. Develop a communication strategy which incorporates human rights  observance9. Develop ways to overcome language barriers | Dec 2005Mar 2005Dec 2005 |

1. Section 8(a) of the Human Rights Commission Act 2000 provides that the function of the Commission will be “to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights”. [↑](#footnote-ref-1)
2. The IHRC is an “A” accredited national human rights institution in full compliance with the United Nations Principles relating to the status and functioning of National Institutions for the protection and promotion of human rights, General Assembly Resolution 48/134, 4 March 1994. [↑](#footnote-ref-2)
3. Section 2 of the Human Rights Commission Act 2000 defines human rights as “the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, and the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party”. [↑](#footnote-ref-3)
4. IHRC, *Strategic Plan 2007-2011*, p. 21. [↑](#footnote-ref-4)
5. Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 18. [↑](#footnote-ref-5)
6. The Morris Tribunal was created in March 2002 to investigate complaints concerning some Gardaí in the Donegal Division. The Tribunal concluded its work in October 2008, having issued eight reports which include extensive recommendations. The reports are available at <http://www.morristribunal.ie>. [↑](#footnote-ref-6)
7. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009. [↑](#footnote-ref-7)
8. Section 3(1) of the European Convention on Human Rights Act 2003 and Sections 7(1)(c) and 16(1) of the Garda Síochána Act 2005. [↑](#footnote-ref-8)
9. 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). [↑](#footnote-ref-9)
10. UN Code of Conduct for Law Enforcement Officials, GA Resolution 34/169 (1979). [↑](#footnote-ref-10)
11. 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). [↑](#footnote-ref-11)
12. Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999. [↑](#footnote-ref-12)
13. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004. The recommendations arising from the Ionann Report are set out in the Appendix. [↑](#footnote-ref-13)
14. An Garda Síochána, *Garda Action Plan for the Implementation of the Garda Human Rights Audit Report*, April 2005. [↑](#footnote-ref-14)
15. For the most recent Status Report, *see* 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*. [↑](#footnote-ref-15)
16. Section 114 of the Garda Síochána Act 2005. [↑](#footnote-ref-16)
17. Section 67 of the Garda Síochána Act 2005. [↑](#footnote-ref-17)
18. Sections 24 and 36 of the Garda Síochána Act 2005. [↑](#footnote-ref-18)
19. Garda Síochána (Discipline) Regulations 2007. [↑](#footnote-ref-19)
20. Examples include: the Garda objective to conduct a human rights impact assessment on all current policies and operational procedures to ensure human rights compliance and the development of a pre-operational ‘Briefing Document’ underpinned by a human rights policing approach. 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*, at 1.4 and 2.1.1. [↑](#footnote-ref-20)
21. For example, the Ionann Report recommended as a priority that the Garda Code should be reviewed to ensure that human rights concerns are fully integrated in it and that the Code should become an open and public document with the exception of security related procedures. However, there is no mention of the Garda Code in the Garda Human Rights Action Plan and, as of yet, the IHRC has not seen evidence of an explicit commitment to follow the recommendation to publish the Garda Code with the exception of security related procedures. [↑](#footnote-ref-21)
22. This is particularly apparent in relation to Garda powers associated with public-order maintenance. For example, Section 5 of the Public Order Act 1994 provides: “[i]t shall be an offence for any person in a public place to engage in offensive conduct— *a*) between the hours of 12 o'clock midnight and 7 o'clock in the morning next following, or *b*) at any other time, after having been requested by a member of the Garda Síochána to desist.” 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”. [↑](#footnote-ref-22)
23. Codes of practice are administrative (i.e. non-statutory or ‘soft law’) instruments. *Cf.* Gerard Hogan and David Gwynn Morgan, *Administrative Law in Ireland*, 3rd ed, Round Hall Sweet and Maxwell, Dublin, 1998, pp. 41-52. [↑](#footnote-ref-23)
24. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 695. Indeed, it is reported in the most recent Status Report on the implementation of the Garda Human Rights Action Plan that a pilot project to human rights proof six high risk Garda policing policies is being conducted by the Honorable Society of King’s Inns at the request of the Garda Commissioner. It can also be presumed that the Garda Code details certain policies and procedures of An Garda Síochána; however, this is not possible to determine as it is an internal, confidential document. [↑](#footnote-ref-24)
25. For an overview of the law in relation to the ECHR requirements of accessibility and foreseeability *see* pp.33-34. [↑](#footnote-ref-25)
26. *See generally* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, pp. 766-770. [↑](#footnote-ref-26)
27. These components include a designated ‘Human Rights Champion’, the Strategic Human Rights Advisory Committee, the Garda Síochána Inspectorate, the Professional Standards Unit, the Human Rights and Diversity Section and the Racial and Intercultural Office. [↑](#footnote-ref-27)
28. *See* Report of the Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division, *Report on the Detention of ‘Suspects’ Following the Death of the Late Richard Barron on the 14 October 1996 and related Detentions and Issues*, Government Publications, Dublin, 2008, Volume 3, at para. 16.04. *See also* para. 15.104. [↑](#footnote-ref-28)
29. The Training Review Group was due to report to the Garda Commissioner by the end of November 2008. As of 29 January 2009 the report of the Training Review Group had not been published. [↑](#footnote-ref-29)
30. The GSOC Consultative Group consists of Garda management, Garda staff associations, the Department of Justice, the Garda Síochána Inspectorate and the Irish Human Rights Commission. [↑](#footnote-ref-30)
31. *See* Garda Síochána Ombudsman Commission, *Report to the Minister for Justice, Equality and Law Reform on (a) the effectiveness of the Ombudsman Commission and (b) the adequacy of the functions assigned to it under the Garda Síochána Act 2005*, (hereinafter “Two Year Report”), March 2008, p. 22. The Garda Síochána (Amendment) Bill is listed in the Government’s Legislative Programme for 2009. [↑](#footnote-ref-31)
32. For further details of the positive measures taken by An Garda Síochána to combat racism *see* pp. 62-63. [↑](#footnote-ref-32)
33. An Garda Síochána Management Journal, *Communiqué*, December 2007, p. 13. [↑](#footnote-ref-33)
34. Garda Síochána Ombudsman Commission, Two Year report, March 2008, p. 11. [↑](#footnote-ref-34)
35. Article 6 of the ECHR provides for the right to a fair and public hearing within a reasonable time by an independent and impartial body established by law. [↑](#footnote-ref-35)
36. The Garda Human Rights Action Plan identified the importance of a link between human rights competence and career progression. In furtherance of this objective, the promotion examination syllabi have been reviewed and include content on human rights issues in the Sergeants’ and Inspectors’ promotion examinations. It is also reported that diversity and human rights awareness now form an integral part of the selection criteria for promotion within the Garda organisation. 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*, at 2.1. [↑](#footnote-ref-36)
37. *See also* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p 687. [↑](#footnote-ref-37)
38. Section 3(1) of the Garda Síochána (Promotion) Regulations 2006. [↑](#footnote-ref-38)
39. Section 8(a) of the Human Rights Commission Act 2000 provides that the function of the Commission will be “to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights”. [↑](#footnote-ref-39)
40. IHRC, *Strategic Plan 2007-2011*, p. 21. [↑](#footnote-ref-40)
41. Section 2 of the Human Rights Commission Act 2000 defines human rights as “the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, and the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party.” [↑](#footnote-ref-41)
42. Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 18. [↑](#footnote-ref-42)
43. *See* Central Statistics Office, *Recorded Crime*, *Quarter 3 2008*, Government Publications, Dublin, 30 October 2008. [↑](#footnote-ref-43)
44. Dermot P.J. Walsh, LLB, PhD, BL, Professor of Law was appointed to his current position of Chair in Law at the University of Limerick in 1996. He is Director of the Centre for Criminal Justice, which is based in the School of Law. [↑](#footnote-ref-44)
45. The Morris Tribunal was created in March 2002 to investigate complaints concerning some Gardaí in the Donegal Division. The Tribunal concluded its work in October 2008, having issued eight reports which include extensive recommendations. The reports are available at <http://www.morristribunal.ie>. [↑](#footnote-ref-45)
46. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009. [↑](#footnote-ref-46)
47. Section 3(1) of the European Convention on Human Rights Act 2003 and Sections 7(1)(c) and 16(1) of the Garda Síochána Act 2005. [↑](#footnote-ref-47)
48. It should be noted that other international human rights treaties are also relevant to police practice. For example the UN Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the CERD Committee’s General Comment 13 on the training of law enforcement officials in the protection of human rights, referred to below in Section IV(2)(a) and Section IV(4); the UN Convention on the Rights of the Child and the European Social Charter. [↑](#footnote-ref-48)
49. *See for example* *McCann and others v. The United Kingdom*, Judgment of 5 September 1995, (1996) 21 EHRR 97, at para. 151. [↑](#footnote-ref-49)
50. *Osman v. The United Kingdom*, Judgment of 28 October 1998, (1998) 29 EHRR 245, at para. 116; *Z and Others v. The United Kingdom*, Judgment of 10 May 2001, at para. 73; *Storck v. Germany*, Judgment of 16 June 2005, (2005) 43 EHRR 6, at para. 102. [↑](#footnote-ref-50)
51. Article 13 of the ECHR provides: “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”. For a detailed analysis of the right to an effective remedy as enshrined in the ECHR *see* IHRC, *Observations on the Scheme of the Garda Síochána Bill 2003*, November 2003, at paras 3.1.1-3.1.3. [↑](#footnote-ref-51)
52. *McCann and Others v. The United Kingdom*, Judgment of 5 September 1995, (1996) 21 EHRR 97 at, paras 148-149. The term “absolutely necessary” indicates that the use of force must be “strictly proportionate” to the achievement of the aims set out in sub-paragraphs 2(a)-2(c). *Ibid.* [↑](#footnote-ref-52)
53. *See* *Keenan v. The United Kingdom*, Judgment of 3 April 2001, (2001) 33 EHRR 1357, at para. 123. [↑](#footnote-ref-53)
54. *LCB v. The United Kingdom*, Judgment of 9 June 1998, (1998) 27 EHRR 212. [↑](#footnote-ref-54)
55. *Osman v. The United Kingdom*, Judgment of 28 October 1998, (1998) 29 EHRR 245, at para. 116. [↑](#footnote-ref-55)
56. Article 7 of the ICCPR also includes a prohibition against ‘cruel’ treatment or punishment. [↑](#footnote-ref-56)
57. *See Chalal v. The United Kingdom*, Judgment of 15 November 1996, (1997) 23 EHRR 413, at para. 80; *Egmez v. Cyprus*, Judgment of 21 December 2000, (2002) 34 EHRR 753, at para. 77. [↑](#footnote-ref-57)
58. The CPT Committee has visited Ireland on four occasions, with their most recent visit being in 2006. For further details on the CPT Committee and for access to the Committee’s 2006 Report on Ireland *see* <http://www.cpt.coe.int>. [↑](#footnote-ref-58)
59. Articles 5(2), 5(3), 5(4) and 5(5) of the ECHR respectively and Articles 9(2), 9(3), 9(4) and 9(5) of the ICCPR. [↑](#footnote-ref-59)
60. Article 6 of the ECHR and Article 14 of the ICCPR. [↑](#footnote-ref-60)
61. Article 8 of the ECHR and Article 17 of the ICCPR. [↑](#footnote-ref-61)
62. Article 11 of the ECHR and Articles 21 and 22 of the ICCPR. [↑](#footnote-ref-62)
63. Article 10 of the ECHR and Article 19 of the ICCPR. [↑](#footnote-ref-63)
64. *Kennedy v. Ireland* [1987] IR 587. [↑](#footnote-ref-64)
65. *The State (C) v. Frawley* [1976], IR 365, at para. 374. [↑](#footnote-ref-65)
66. *Ryan v. The Attorney General* [1965] IR 294. [↑](#footnote-ref-66)
67. 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). [↑](#footnote-ref-67)
68. UN Code of Conduct for Law Enforcement Officials, GA Resolution 34/169 (1979). [↑](#footnote-ref-68)
69. 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). [↑](#footnote-ref-69)
70. *See for example* *McKerr v. The United Kingdom*, Judgment of 4 May 2001, (2002) 34 EHRR 553, at paras 92-96 and General Comment 21 of the UN Human Rights Committee, Humane Treatment of Persons deprived of their Liberty, (1992), at para. 5. [↑](#footnote-ref-70)
71. Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999. [↑](#footnote-ref-71)
72. The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, signed at Belfast on 10 April 1998, Chapter 6, at para. 9. The term ‘Belfast Agreement’ refers to both the Multi-Party Agreement made between political parties and the British and Irish Governments and the British-Irish Agreement between the States of Ireland and Britain. In popular usage both agreements are commonly known as the Good Friday Agreement. [↑](#footnote-ref-72)
73. *Cf*. Part III of the Walsh Study, which describes the current legal and policy context in considerable detail. [↑](#footnote-ref-73)
74. Council of Europe, ‘Police and Human Rights 1997-2000’ Programme, available at <http://www.coe.int/T/E/Human_Rights/Police.html>. [↑](#footnote-ref-74)
75. Garda Síochána Human Rights Initiative, available at <http://www.garda.ie/col/human.html>. [↑](#footnote-ref-75)
76. According to the most recent Status Report on the implementation of the Garda Human Rights Action Plan staffing at the Human Rights and Diversity Section consists of two Sergeants. 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*, at 1.3. [↑](#footnote-ref-76)
77. The Office was established as part of an EU funded programme entitled, ‘Intercultural Ireland, Identifying the Challenges for the Police Service’. [↑](#footnote-ref-77)
78. *See* Racial and Intercultural Office, available at <http://www.garda.ie/racial.html>. [↑](#footnote-ref-78)
79. 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*, at 1.3. [↑](#footnote-ref-79)
80. The Working Group is no longer in operation; however, at the time it focused on engaging in consultation with relevant stakeholders and on raising awareness and promoting the protection of human rights. In addition, it developed education and training interventions designed to inculcate respect for human rights and personal dignity in all Gardaí. [↑](#footnote-ref-80)
81. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 1. [↑](#footnote-ref-81)
82. The recommendations arising from the Ionann Report are set out the Appendix.. [↑](#footnote-ref-82)
83. An Garda Síochána, *Garda Action Plan for the Implementation of the Garda Human Rights Audit Report*, April 2005. [↑](#footnote-ref-83)
84. For the most recent Status Report, *see* 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.*. [↑](#footnote-ref-84)
85. The terms of reference of the Strategic Human Rights Advisory Committee are: to advise the Commissioner and Senior Management of An Garda Síochána on how to (a) progress implementation of human rights initiatives to bring about a cultural change across the organisation; (b) promote human rights policies and procedures internally and externally and (c) ensure that best human rights practice is at the core of our policing service. [↑](#footnote-ref-85)
86. Section 16(1) of the Garda Síochána Act 2005. [↑](#footnote-ref-86)
87. Section 7(1)(c) of the Garda Síochána Act 2005. [↑](#footnote-ref-87)
88. Section 114 of the Garda Síochána Act 2005. The objective of the Garda Síochána Inspectorate is to ensure that the resources available to the Garda Síochána are used so as to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards of comparable police services. [↑](#footnote-ref-88)
89. Section 67 of the Garda Síochána Act 2005. The main function of the Garda Síochána Ombudsman Commission is to receive complaints made by members of the public concerning the conduct of members of An Garda Síochána. [↑](#footnote-ref-89)
90. Sections 24 and 36 of the Garda Síochána Act 2005. [↑](#footnote-ref-90)
91. Sections 21, 22 and 27 of the Garda Síochána Act 2005. [↑](#footnote-ref-91)
92. Garda Síochána (Discipline) Regulations 2007. [↑](#footnote-ref-92)
93. An individual has been appointed by the Minister for Justice as an ‘External Confidential Recipient’ of complaints, while nine internal ‘Confidential Recipients’, at Chief Superintendent and senior civilian management level, have been appointed by the Garda Commissioner. Dáil Debates, Vol. 659 No. 1, (8 July 2008). [↑](#footnote-ref-93)
94. The Reports published by the Garda Síochána Inspectorate are: *Senior Management Structures in An Garda Síochána*, (October 2006); *Review of Practices and Procedures for Barricade Incidents*, (February 2007); *Policing in Ireland – Looking Forward*, (August 2007); *Roads Policing Review and Recommendations,* (November 2008). [↑](#footnote-ref-94)
95. *See for example* Garda Síochána Inspectorate, *Status Report as of 31 October, 2008 on the Implementation of the Recommendations of the Third Report of the Garda Inspectorate – “Policing in Ireland, Looking Forward”*, December 2008. [↑](#footnote-ref-95)
96. As of 29 January 2009 the Code of Ethics had not been published. It is reported that the Code of Ethics has been finalised and following consideration by the Garda Commissioner it will be forwarded to the Minister for Justice for his approval and the making of a Statutory Instrument. *Ibid*., at 3.2. [↑](#footnote-ref-96)
97. The most recent Status Report on the Implementation of the Garda Human Rights Action Plan provides that a submission to include the Garda Code of Ethics as a schedule to the new Disciplinary Regulations has been approved. 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*, at 3.1. [↑](#footnote-ref-97)
98. Examples include: the Garda objective to conduct a human rights impact assessment on all current policies and operational procedures to ensure human rights compliance and the development of a pre-operation ‘Briefing Document’ underpinned by a human rights policing approach. 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*, at 1.4 and 2.1.1. For further examples of initiatives in the Garda Human Rights Action Plan, which are still in gestation, *see* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, pp. 647-648. [↑](#footnote-ref-98)
99. The Garda Code, as described by the Minister for Justice in 2005, “covers all areas of Garda duties including operational, security and administrative matters. Every member of An Garda Síochána is issued with a personal copy of the code which is retained for the duration of his or her service. It is a confidential publication”. Minister McDowell, Dáil Debates, Vol. 597 No. 6, (16 February 2005). [↑](#footnote-ref-99)
100. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 27. [↑](#footnote-ref-100)
101. *Cf.* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, pp. 646-647, for other examples of key recommendations in the Ionann Report which have been either omitted or marginalised in the Garda Human Rights Action Plan. [↑](#footnote-ref-101)
102. These Constitutional rights include the right to liberty (Article 40.4.1); inviolability of a citizens dwelling (Article 40.5) and the right to freedom of expression, assembly and association (Article 40.6.1). [↑](#footnote-ref-102)
103. These ECHR rights include the right to liberty (Article 5); the right to respect for private and family life (Article 8); freedom of thought, conscience and religion (Article 9); freedom of expression (Article 10) and freedom of assembly and association (Article 11). [↑](#footnote-ref-103)
104. These ICCPR rights include the rights to liberty (Article 9); freedom of assembly (Article 21) and freedom of association (Article 22). [↑](#footnote-ref-104)
105. *Dougoz v. Greece*,Judgment of 6 March 2001,(2002) 34 EHRR 61, at para. 55 [↑](#footnote-ref-105)
106. 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. [↑](#footnote-ref-106)
107. *Silver and Others v. The United Kingdom*, Judgment of 25 March 1983, (1983) 5 EHRR 347, at para. 88. [↑](#footnote-ref-107)
108. *Ibid*. The specific instruments at issue in the *Silver* case were management guides and directives in the form of Standing Orders and Circular Instructions, which had been issued by the Home Secretary in the United Kingdom to prison governors. Prison governors were required to comply with the directives although they did not have, or purport to have, the force of law. [↑](#footnote-ref-108)
109. *Cf. Amuur v. France,* Judgment of 20 May 1996, (1996) 22 EHRR 632, at para. 50. [↑](#footnote-ref-109)
110. The specified grounds in Article 8 of the ECHR, which is regarded as one of the broadest and most open-ended provisions of the Convention, are: in the interests of national security; the interests of public safety; the interests of the economic well-being of the country; the prevention of disorder or crime; the protection of health or morals or the protection of the rights and freedoms of others. [↑](#footnote-ref-110)
111. *Silver and Others v. The United Kingdom*, Judgment of 25 March 1983, (1983) 5 EHRR 347, at para. 97. [↑](#footnote-ref-111)
112. *See* *Camenzind v. Switzerland*, Judgment of 16 December 1997, (1997), at paras 45-47; *Klass and Others v. Germany*, Judgment of 6 September 1978 (1978) 2 EHRR 214, at para. 50. [↑](#footnote-ref-112)
113. Some of the main statutes governing Garda powers include: the Offences Against the State Acts, 1939-1998; the Criminal Justice Act, 1984; the Criminal Justice (Forensic Evidence) Act, 1990; the Public Order Act, 1994; the Criminal Justice (Drug Trafficking) Act, 1996; the Criminal Justice Act, 1996; the Criminal Justice Act, 2006 and the Criminal Justice Act, 2007. [↑](#footnote-ref-113)
114. This is particularly apparent in relation to Garda powers associated with public-order maintenance. For example, Section 5 of the Public Order Act, 1994, provides: “[i]t shall be an offence for any person in a public place to engage in offensive conduct— *a*) between the hours of 12 o'clock midnight and 7 o'clock in the morning next following, or *b*) at any other time, after having been requested by a member of the Garda Síochána to desist.” 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”. [↑](#footnote-ref-114)
115. The Minister for Justice derives a general power to issue regulations on the internal management of An Garda Síochána from Section 14 of the Police Forces Amalgamation Act, 1925. In addition, specific regulatory powers, confined to a detailed subject matter, can be conferred on the Minister in the provisions of an Act. For example, Section 7 of the Criminal Justice Act, 1984 conferred on the Minister the power to make regulations providing for the treatment of persons in custody in Garda Síochána stations. Of note, these regulations are supplemented by the Judges Rules and the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997. However, regulations issued by the Minister to date have primarily dealt with administrative, structural and disciplinary matters. [↑](#footnote-ref-115)
116. The IHRC is aware that An Garda Síochána has an internal Data Protection Code of Practice and a Code of Practice for the Management and Use of Covert Human Intelligence Sources. The Data Protection Code of Practice is the product of work undertaken by An Garda Síochána in close cooperation with the Office of the Data Protection Commissioner, as provided for in Section 13 of the Data Protection Act 1988. The Code of Practice has been circulated internally by means of a Directive to members of the Gardaí. The Code of Practice for the Management and Use of Covert Human Intelligence Sources has no foundation in legislation and is also not publicly available. It was introduced following a recommendation in the First Report of the Morris Tribunal. *See* Report of the Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division, *Report on Explosive ‘Finds’ in Donegal*, Government Publications, Dublin, 2004, (hereinafter “First Report of the Morris Tribunal”), p. 485. [↑](#footnote-ref-116)
117. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 693. [↑](#footnote-ref-117)
118. *Ibid*., p. 695. [↑](#footnote-ref-118)
119. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 122. [↑](#footnote-ref-119)
120. The December 2007 Status Report on the implementation of the Garda Human Rights Action Plan states that Standard Operating Procedures are being included in the new Manual of Criminal Investigations being developed as a consequence of the First Morris Tribunal Report. It can be expected that Garda policies will also be set out in the new Manual of Criminal Investigations. *See* 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*, at 2.1. [↑](#footnote-ref-120)
121. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 785. [↑](#footnote-ref-121)
122. Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, pp. 24-25. [↑](#footnote-ref-122)
123. Freedom of Information Act 2000. The Act applies to all of the United Kingdom. [↑](#footnote-ref-123)
124. *See* Emily O’Reilly, Information Commissioner, ‘FOI Legislation – Still Achieving its Purpose?’, Public Affairs Ireland Conference, 30 November 2006; Office of the Information Commissioner, Annual Report, 2006; Office of the Information Commissioner, Annual Report, 2007. [↑](#footnote-ref-124)
125. Emily O’Reilly, Information Commissioner, ‘FOI Legislation – Still Achieving its Purpose?,’ Public Affairs Ireland Conference, 30 November 2006. [↑](#footnote-ref-125)
126. Office of the Information Commissioner, Annual Report, 2006. [↑](#footnote-ref-126)
127. At the time of the Ionann Report, it was noted that the Garda Code did not reflect and embed human rights. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 119. It may also be noted that the Sixth Report of the Morris Tribunal found that aspects of the Garda Code are not currently human rights compliant. According to the Report, regulation 6.37(4) of the Garda Code provides that when members of An Garda Síochána are defending a civil action, “each of the allegations should be addressed and refuted where possible.” Justice Morris recommended the immediate amendment of this provision. Report of the Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division, *Report on the Detention of ‘Suspects’ Following the Death of the Late Richard Barron on the 14 October 1996 and related Detentions and Issues*, Government Publications, Dublin, 2008, (hereinafter “Sixth Report of the Morris Tribunal”), p. 446 and p. 1254. [↑](#footnote-ref-127)
128. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 122. [↑](#footnote-ref-128)
129. *Ibid.* [↑](#footnote-ref-129)
130. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 676. [↑](#footnote-ref-130)
131. 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. [↑](#footnote-ref-131)
132. Chief Constable’s Annual Report 2007/2008. [↑](#footnote-ref-132)
133. *See also* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 772*.* [↑](#footnote-ref-133)
134. *See generally* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, pp.766-770. [↑](#footnote-ref-134)
135. Garda Síochána Inspectorate, *Roads Policing Review and Recommendations,* (November 2008) p. 17. [↑](#footnote-ref-135)
136. *Ibid.* [↑](#footnote-ref-136)
137. The First Report of the Morris Tribunal, pp. 481-485. A Code of Practice for the Management and Use of Covert Human Intelligence Sources of Practice has subsequently been circulated within An Garda Síochána. However, it has no foundation in legislation and is not publicly available. [↑](#footnote-ref-137)
138. Report of the Tribunal of Inquiry Set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division, *Report into Allegations of Harassment of the McBrearty Family of Raphoe, County Donegal and of Relatives, Associates and Agents of the Family, by members of the Garda Síochána subsequent to the death of Mr. Barron, Including the Issue and Prosecution of Summonses Relating to Offences Alleged to Have Occurred between 28th October 1996 and 28th September 1998*, Government Publications, Dublin, 2008, at para. 5.51. [↑](#footnote-ref-138)
139. Codes of practice are administrative (i.e. non-statutory or ‘soft law’) instruments. *Cf.* Gerard Hogan and David Gwynn Morgan, *Administrative Law in Ireland*, 3rd ed, Round Hall Sweet and Maxwell, Dublin, 1998, pp. 41-52. In recent years a number of statutes in Ireland expressly permit or require regulatory authorities to issue codes of practice. For example, Section 13 of the Data Protection Act 1988. The Law Reform Commission has noted that codes of practice are consistent with recognition of the proportionality principle of regulation, set out in the Government White Paper *Regulating Better*, which encourages regulation to be as light as possible and consideration to be given to alternative means of achieving the required aims. *See* Law Reform Commission, *Report on Vulnerable Adults and the Law*, (LRC 83-2006), 2006, p. 43. *Cf.* Government White Paper, *Regulating Better*, 2004. [↑](#footnote-ref-139)
140. Michael Zander, *The Police and Criminal Evidence Act, 1984*, 4th ed, Sweet and Maxwell, London, 2003, p. 240. [↑](#footnote-ref-140)
141. *Ibid.* Bringing the PACE Codes of Practice into force involves a two-stage process. The process has been refined over the years to create a simplified procedure to amend the Codes, in light of the need to frequently update them. Currently, under Section 11 of the Criminal Justice Act 2003, the Secretary of State is required before issuing a code or any revision of a code to consult with (a) persons whom he considers to represent the interests of police authorities, (b) persons whom he considers to represent the interests of chief officers of police, (c) the General Council of the Bar, (d) the Law Society of England and Wales, (e) the Institute of Legal Executives, and (f) such other persons as he thinks fit. Secondly, the Codes are laid before Parliament. The Codes will come into operation by an order of the Secretary of State made by statutory instrument. If the order is bringing a new code of practice into operation the order must previously have been laid before Parliament and approved by a resolution of each House of Parliament. An order bringing a revision of a Code into operation is required merely to be laid before Parliament. [↑](#footnote-ref-141)
142. For details of the consultation process which the Secretary of State in England is required to engage in before issuing a code of practice or any revision of a code *see* footnote 139 above. [↑](#footnote-ref-142)
143. *See* Section II (3) above for examples of international instruments which set the standard for best practice in policing. [↑](#footnote-ref-143)
144. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 698. [↑](#footnote-ref-144)
145. This recommendation is repeatedly made in the Walsh Study. *See for example* *Ibid*., p. 706. *See also* First Report of the Morris Tribunal, which noted that “[f]undamental to the proper pursuit of the role of policing is the concise, accurate and contemporaneous reporting of events of importance”. First Report of the Morris Tribunal, p. 455. [↑](#footnote-ref-145)
146. The IHRC previously recommended that disciplinary proceedings should result where there has been a breach of the Garda Code of Ethics by a member of An Garda Síochána. *See* IHRC, *Observations on the Scheme of the Garda Síochána Bill, 2003,* November 2003. [↑](#footnote-ref-146)
147. Article 11 of UNCAT provides, “[e]ach State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subject to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.” *See also* General Comment 20 of the UN Human Rights Committee concerning the prohibition of torture and cruel treatment and punishment, (1992), at para. 11. [↑](#footnote-ref-147)
148. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 123. [↑](#footnote-ref-148)
149. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 665. Assistant Commissioner Nóirín O’ Sullivan has undertaken the role of Human Rights Champion in her position as Assistant Commissioner, Professional Standards. [↑](#footnote-ref-149)
150. For a detailed analysis of the bodies listed above (with the exception of the Garda Síochána Inspectorate) and their role in promoting human rights in An Garda Síochána, *see* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, pp. 657-666. The Walsh Study concludes that “[i]f human rights are to be mainstreamed in Irish policing in any meaningful sense, it is essential that there should be a body with this sole remit.” *Ibid.*, p. 678. [↑](#footnote-ref-150)
151. The creation of the post of Assistant Commissioner, Professional Standards was recommended by the Garda Síochána Inspectorate. The Inspectorate envisaged that the responsibilities would include managing the Internal Affairs Unit, the Internal Audit Unit, anti-corruption, the Professional Standards Unit and liaison with the Ombudsman Commission. An Garda Síochána Inspectorate, *Garda Síochána Senior Management Structure*, October 2006. [↑](#footnote-ref-151)
152. The Garda Síochána Inspectorate recommended that a Garda Síochána Executive Committee be established to assist the Garda Commissioner in discharging his functions. The membership of the Committee includes the Deputy Commissioners, the Chief Administrative Officer and the Legal Advisor. The Director of Communications is the designated Secretary to the Committee. Following the recent appointment of the Legal Advisor the Executive Committee has commenced its operations. Garda Síochána Inspectorate, *Status Report as of 31 October, 2008 on the Implementation of the Recommendations of the First Report of the Garda Inspectorate – “Senior Management Structure”*, December 2008, at 1.3. [↑](#footnote-ref-152)
153. *Cf.* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 631. [↑](#footnote-ref-153)
154. For the terms of reference of the Strategic Human Rights Advisory Committee, *see* footnote 81 above. [↑](#footnote-ref-154)
155. The Strategic Human Rights Advisory Committee consists of an Assistant Garda Commissioner, three Chief Superintendents, three Superintendents, an Inspector and a Sergeant (Secretary). The six external members include representatives from the IHRC, the Equality Authority, the Department of Justice, the Irish Council for Civil Liberties, Amnesty International and a independent human rights legal academic. [↑](#footnote-ref-155)
156. Sixth Report of the Morris Tribunal, Volume 3, at para. 16.04. *See also* para. 15.104. [↑](#footnote-ref-156)
157. *Ibid.* [↑](#footnote-ref-157)
158. Article 2 of the ECHR and *see also* *McCann and Others v. The United Kingdom*, Judgment of 5 September 1995, (1996) 21 EHRR 97, at para. 151; Article 2 of the ICCPR; Article 2 of UNCAT and General Comment 2 of the UN Committee Against Torture concerning the implementation of Article 2 by State Parties, (January 2008), at para. 4. [↑](#footnote-ref-158)
159. Article 10 of UNCAT. *Cf.* General Comment 2 of the UN Committee Against Torture concerning the implementation of Article 2 by State Parties, (January 2008), at para. 25; and General Comment 20 of the UN Human Rights Committee concerning the prohibition of torture and cruel treatment and punishment, (1992), at para. 10. [↑](#footnote-ref-159)
160. General Comment 13 of the UN Committee for the Elimination of all Forms of Racial Discrimination concerning the training of law enforcement officials in the protection of human rights, (1993), at para. 2. [↑](#footnote-ref-160)
161. Article 26 of the European Code of Police Ethics. [↑](#footnote-ref-161)
162. Articles 27 and 28 of the European Code of Police Ethics. [↑](#footnote-ref-162)
163. Articles 29 and 30 of the European Code of Police Ethics. [↑](#footnote-ref-163)
164. Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 91. [↑](#footnote-ref-164)
165. *Ibid. Cf.* Chapter 16 of the Patten Report which sets out a number of specific recommendations on human rights based training, education and development in the police service. [↑](#footnote-ref-165)
166. Dáil Debates, Vol. 563, (12 March 2003). [↑](#footnote-ref-166)
167. In the course of researching this Policy Statement the IHRC requested information from An Garda Síochána on the Garda College curricula. No information was received. [↑](#footnote-ref-167)
168. At the time of the Ionann Audit, Gardaí were not likely to have received human rights training unless they attended a special course or were recent recruits. No training had been provided to senior managers. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 99. [↑](#footnote-ref-168)
169. Further details on these initiatives and other Garda training initiatives can be found at 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*. *See also* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, pp. 425-429. [↑](#footnote-ref-169)
170. 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 2.3. [↑](#footnote-ref-170)
171. Garda Síochána Inspectorate, *Report of the Garda Síochána Inspectorate: Policing in Ireland – Looking Forward*, August 2007, p. 27. [↑](#footnote-ref-171)
172. *Ibid*., p. 6. [↑](#footnote-ref-172)
173. The Training Review Group was due to report to the Garda Commissioner by the end of November 2008. As of 29 January 2009 the report of the Training Review Group had not been published. [↑](#footnote-ref-173)
174. *See also* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 784. Of note, the Patten Report made a similar recommendation. *See* Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 96. [↑](#footnote-ref-174)
175. *See* Section IV(1)(b)(ii) above. [↑](#footnote-ref-175)
176. Garda Síochána Inspectorate, *Report of the Garda Síochána Inspectorate: Policing in Ireland – Looking Forward*, August 2007, p. 19. [↑](#footnote-ref-176)
177. *Ibid*., p. 20. [↑](#footnote-ref-177)
178. The Department of Spatial Information Sciences in the Dublin Institute of Technology defines CPD as “the systematic updating and enhancement of skills, knowledge and competence which takes place throughout working life. Most professionals recognise the need for professional updating but CPD's emphasis on systematic development and the comprehensive identification of learning opportunities now provides a framework within which both formal and informal learning activities can be set. Learning and development becomes planned, rather than accidental.” [↑](#footnote-ref-178)
179. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 783. [↑](#footnote-ref-179)
180. Section 8(e) of the Human Rights Commission Act 2000 provides that one of the functions of the IHRC shall be “to promote understanding and awareness of the importance of human rights in the State and, for those purposes, to undertake, sponsor or commission, or provide financial or other assistance for, research and educational activities”. [↑](#footnote-ref-180)
181. It is noteworthy that the Northern Ireland Human Commission (NIHRC) has been involved in the evaluation of the human rights components of the PSNIs training programme. The work of the NIHRC has included the review of curricula, the observation of training in action, working with PSNI to secure improvements in training and contributing to public discussions on human rights training within the police. The NIHRC has stated that the PSNI has been very open to working with them and in allowing them to evaluate the human rights components of the third and final stage of the Recruit Training Programme. *See* NIHRC, *Human Rights in Police Training, Report Five, Tutor Constables Scheme*, April 2006; NIHRC, *Human Rights in Police Training, Report Four: Course for All,* April 2004; NIHRC, *Human Rights in Police Training, Report Three: Probationer, Constables and Student Officers,* March 2004; NIHRC, *An Evaluation of Human Rights Training for Student Police Officers in the Police Service of Northern Ireland,* November 2002. [↑](#footnote-ref-181)
182. An Garda Síochána remains answerable to the Dáil through the Minister for Justice. The IHRC previously stated that the vesting of oversight and appointment functions with an independent and representative agency such as a Police Authority, as recommended by the Patten Report, could make a valuable contribution to the promotion of human rights within Irish policing. The independence and the public perception of independence of the police service from executive control are central to the credibility of the police service. *See* IHRC, *Observations on the Garda Síochána Bill 2004*, February 2004, p.1. An Independent Policing Board is currently in operation in Northern Ireland. [↑](#footnote-ref-182)
183. Section 39 of the Garda Síochána Act 2005. The Criminal Justice Act 2007 extended a Garda’s duty to account to a designated officer of the Garda Síochána Ombudsman Commission. [↑](#footnote-ref-183)
184. Sections 64 and 114 of the Garda Síochána Act 2005. [↑](#footnote-ref-184)
185. Sections 24, 36 and 44, respectively, of the Garda Síochána Act 2005. [↑](#footnote-ref-185)
186. *Cf.* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 309. [↑](#footnote-ref-186)
187. Articles 2, 3, 5, 8 and 13 of the ECHR; *see also* the corresponding text to footnote 52 above; Articles 2, 6 and 7 of the ICCPR and General Comment 20 of the UN Human Rights Committee concerning the prohibition of torture and cruel treatment and punishment (1992); Articles 12, 13 and 14 of UNCAT and General Comment 2 of the UN Committee Against Torture concerning the implementation of Article 2 by State Parties, (January 2008), at para. 4. [↑](#footnote-ref-187)
188. *See also* Articles 12, 16 and 17 of the European Code of Police Ethics. [↑](#footnote-ref-188)
189. Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 22. [↑](#footnote-ref-189)
190. *Ibid.* [↑](#footnote-ref-190)
191. Ireland signed the OPCAT on 2 October 2007. [↑](#footnote-ref-191)
192. Article 1 of the OPCAT. [↑](#footnote-ref-192)
193. UN, *Principles relating to the status and functioning of national institutions for protection and promotion of human rights*, endorsed by the UN Commission on Human Rights in March 1992, resolution 1992/54, and by the General Assembly, resolution A/RES/48/134 of 20 December 1993. [↑](#footnote-ref-193)
194. *See* Part IV of the OPCAT on national preventative mechanisms, Articles 17-21. [↑](#footnote-ref-194)
195. *See* IHRC Press Release, ‘Human Right Commission gives broad welcome to amendments in Garda Bill 2004’, (1 March 2004). [↑](#footnote-ref-195)
196. The GSOC Consultative Group consists of Garda management, Garda staff associations, the Department of Justice, Equality and Law Reform, the Garda Síochána Inspectorate and the Irish Human Rights Commission. [↑](#footnote-ref-196)
197. These concerns have previously been expressed by the IHRC. *See* IHRC, *Observations on the Scheme of the Garda Síochána Bill 2003*, November 2003. These concerns and additional ones are also expressed in the Walsh Study. *See* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, pp. 340-348. [↑](#footnote-ref-197)
198. *See also* IHRC, *Observations on the Garda Síochána Bill 2004*, February 2004; IHRC, *Submission to the Human Rights Committee on the Examination of Ireland’s Third Periodic Report*, March 2008. [↑](#footnote-ref-198)
199. Of note, in 2007 the Minister for Justice refused a request by the GSOC to conduct an examination under Section 106 of the management of incidence of crowd protest or civil disobedience by groups or persons. *See* Garda Síochána Ombudsman Commission, *Second Annual Report*, March 2008. [↑](#footnote-ref-199)
200. Section 13 of the Police (Northern Ireland) Act 2003. [↑](#footnote-ref-200)
201. *See* Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 37. [↑](#footnote-ref-201)
202. *See* Articles 8-11 of the ECHR. [↑](#footnote-ref-202)
203. The GSOC Commissioners highlighted in their Two Year Report that on occasion in the past when malpractices have been revealed in certain quarters of the Garda Síochána, the excuse of State security has been advanced by way of attempted justification. *See* Garda Síochána Ombudsman Commission, Report to the Minister for Justice, Equality and Law Reform on (a) the effectiveness of the Ombudsman Commission and (b) the adequacy of the functions assigned to it under the Garda Síochána Act 2005, (hereinafter “Two Year Report”), March 2008, p. 20. [↑](#footnote-ref-203)
204. *See also* IHRC, *Observations on the Garda Síochána Bill 2004*, February 2004, p. 11. [↑](#footnote-ref-204)
205. *Ibid.* [↑](#footnote-ref-205)
206. Garda Síochána Ombudsman Commission, Two Year Report, March 2008, p. 22. The Garda Síochána (Amendment) Bill is listed in the Government’s Legislative Programme for 2009. [↑](#footnote-ref-206)
207. *Ibid.,* p. 27. [↑](#footnote-ref-207)
208. Section 54 (2) of the Police (Northern Ireland) Act 1998. [↑](#footnote-ref-208)
209. Section 54 (3) of the Police (Northern Ireland) Act 1998. [↑](#footnote-ref-209)
210. Section 94(2) of the Garda Síochána Act 2005. [↑](#footnote-ref-210)
211. Section 94(3) of the Garda Síochána Act 2005. [↑](#footnote-ref-211)
212. Garda Síochána Ombudsman Commission, Two Year Report, March 2008, p. 19. [↑](#footnote-ref-212)
213. Although GSOC may carry out a search of a police station under Section 99 of the Garda Síochána Act 2005, this search is conducted in the context of the investigation of a particular complaint. GSOC is primarily an individual complaints mechanism rather than a preventative inspection mechanism. The Prison Inspectorate has no function in relation to police stations (*see* Section 31 of the Prisons Act, 2007). [↑](#footnote-ref-213)
214. In May 2008, the IHRC hosted a Roundtable on OPCAT, which was attended by representatives of all the key stakeholders, including a Garda Representative from the Professional Standards Unit. [↑](#footnote-ref-214)
215. Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 43. [↑](#footnote-ref-215)
216. Garda Síochána Inspectorate, *Report of the Garda Síochána Inspectorate: Policing in Ireland – Looking Forward*, August 2007, p. 11. [↑](#footnote-ref-216)
217. Dáil Debates, Vol. 659 No. 1, (8 July 2008). [↑](#footnote-ref-217)
218. When the constabulary police force was first established in Britain, it represented a compromise following public fears about the French gendarmerie model of a national, centralised police force. The constabulary police force was modelled on the ancient office of the local constable as the basic unit of the force. Another feature was that the new police were unarmed and therefore had to rely fundamentally on the support and co-operation of the people. The constabulary model was also adopted in Ireland. *See* Dermot P.J. Walsh, *The Irish Police*, Round Hall Sweet and Maxwell, Dublin, 1998, at pp. 5-6 and 13-14. [↑](#footnote-ref-218)
219. *See also* IHRC, *Observations on the Scheme of the Garda Síochána Bill 2003*, November 2003, p. 36. [↑](#footnote-ref-219)
220. *See* Strategic Goal 6 in the *Garda Síochána Corporate Strategy 2007-2009*. [↑](#footnote-ref-220)
221. *See* An Garda Síochána, *Policing Plan 2009*, p. 9. These key actions are: a national focus on community policing; implement Garda Youth Strategy; the implementation of the Garda Charter; engage with older people; communicate effectively with the community; engagement with all members of the community and enhance An Garda Síochána’s victim related services. [↑](#footnote-ref-221)
222. *An Garda Síochána National Model of Community Policing*, available at <http://www.garda.ie>. [↑](#footnote-ref-222)
223. *Ibid*., p. 5. [↑](#footnote-ref-223)
224. The National Model of Community Policing Action Plan currently identifies three actions to develop appropriate structures to build and sustain positive partnerships with communities. These are: to hold an annual Garda Síochána National Community Policing Conference; to review current structures regarding the efficient ‘streamlining and rationalisation’ of community relations related ‘external stakeholder’ meetings; and for District Officers to disseminate and report core community policing related issues emanating from their Local Joint Policing Committees and local policing fora. *Ibid*., p. 19. [↑](#footnote-ref-224)
225. The local authority and Oireachtas members assigned to a Joint Policing Committee vary in number depending on the size of the electorate in the given area. Membership of the community and voluntary sector is limited to three representatives on each of the Committees. For example, membership of the Cork City Council Joint Policing Committee is made up of 16 local authority members and the Lord Mayor; six members of the Oireachtas; the city manager and a person nominated by him or her; two Garda officers accompanied by officers they deem appropriate and three representatives of the community and voluntary sector. *See* Joint Policing Committee Guidelines, September 2008, available at <http://www.justice.ie>. [↑](#footnote-ref-225)
226. *See also* IHRC, *Observations on the Scheme of the Garda Síochána Bill 2003*, November 2003, p.17. Of note, the Ionann Report also recommended that there should be a strong independent membership of the proposed local policing committees to complement the local authority members. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 26. [↑](#footnote-ref-226)
227. Joint Policing Committee Guidelines, September 2008, available at <http://www.justice.ie>. [↑](#footnote-ref-227)
228. *See for example* Colm Brown Garda Research Unit, *Garda Public Attitude Survey 2008*. [↑](#footnote-ref-228)
229. Mary Walker, Garda Research Unit, *Traveller/Ethnic Minority Communities’ Attitudes to the Garda Síochána 2007*. [↑](#footnote-ref-229)
230. 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 5.1. [↑](#footnote-ref-230)
231. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 752. [↑](#footnote-ref-231)
232. *See for example* the prohibition against discrimination as provided for in Articles 26 and 14 of the ICCPR; Article 14 of the ECHR and Protocol 12 to the ECHR. *See also* Article 40 of the European Code of Police Ethics. [↑](#footnote-ref-232)
233. General Comment 13 of the UN Committee for the Elimination of all Forms of Racial Discrimination concerning the training of law enforcement officials in the protection of human rights, (1993), at para. 1. [↑](#footnote-ref-233)
234. The European Commission against Racism and Intolerance 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. [↑](#footnote-ref-234)
235. ECRI, General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing, CRI(2007)39, adopted on 29 June 2007. [↑](#footnote-ref-235)
236. 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. [↑](#footnote-ref-236)
237. ECRI, General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing, CRI(2007)39, adopted on 29 June 2007. *See also* Article 10(2) of the Council of Europe Framework Convention for the Protection of National Minorities, which has been ratified by Ireland. [↑](#footnote-ref-237)
238. Article 53 of the European Code of Police Ethics. [↑](#footnote-ref-238)
239. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 264. [↑](#footnote-ref-239)
240. Section 6 of the Employment Equality Act 1998. [↑](#footnote-ref-240)
241. In an earlier provision the Code specifies that personal qualifications and experience, appropriate for the objectives of the police, should be the basis for recruitment. Article 22 of the European Code of Police Ethics. [↑](#footnote-ref-241)
242. *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; and ECRI, General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing, CRI(2007)39, adopted on 29 June 2007. [↑](#footnote-ref-242)
243. *Ibid.* [↑](#footnote-ref-243)
244. Central Statistics Office, *Census 2006: Non-Irish Nationals Living in Ireland*, Government Publications, Dublin, June 2008. [↑](#footnote-ref-244)
245. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 726. [↑](#footnote-ref-245)
246. *See* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, pp. 592-597. Among others, the Walsh Study looks at a report of the Combat Poverty Agency, ‘Policing and Social Marginalisation in Ireland’, publications in the Garda Review and the Annual Reports of the Garda Síochána Complaints Board. [↑](#footnote-ref-246)
247. The Garda Human Rights Action Plan identified one of five priority areas as Policing in a Diverse Society, which has two objectives and a number of detailed actions. The objectives are to identify and tackle factors which facilitate institutional racism and to deal robustly with racist crime and protect vulnerable communities. *See* An Garda Síochána, *Garda Action Plan for the Implementation of the Garda Human Rights Audit Report*, April 2005. [↑](#footnote-ref-247)
248. One of six strategic goals identified by An Garda Síochána in their Corporate Strategy 2007-2009 is ‘Ethnic and Cultural Diversity’, with the objective of providing equal protection and appropriate service, while nurturing mutual respect and trust. *See* Strategic Goal 5, *The Garda Síochána Corporate Strategy 2007-2009.* Expected progress on implementing the goal is set out in the An Garda Síochána, *Policing Plan 2009*. [↑](#footnote-ref-248)
249. 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*, at 2.2 and 5.1. [↑](#footnote-ref-249)
250. An Garda Síochána, *Policing Plan 2008*, p. 14. [↑](#footnote-ref-250)
251. An Garda Síochána Management Journal, *Communiqué*, December 2007, p. 13. It is reported that a draft Diversity Strategy and Implementation Plan has been circulated for the views of the National Consultative Committee on Racism and Interculturalism, the Equality Authority and the Strategic Monitoring Group responsible for overseeing the implementation of the National Action Plan against Racism. The Strategy was due to be discussed at the Commissioner’s Management meeting in December 2008. Garda Síochána Inspectorate, *Status Report as of 31 October, 2008 on the Implementation of the Recommendations of the Third Report of the Garda Inspectorate – “Policing in Ireland, Looking Forward”*, December 2008, at 3.22. As of 29 January 2009 the Diversity Strategy and Implementation Plan had not been published. It should also be noted that the remit of the NCCRI has been ended and the mandate of the Strategic Monitoring Group of the National Action Plan Against Racism has come to an end and has not been renewed. [↑](#footnote-ref-251)
252. An Garda Síochána, *Garda Action Plan for the Implementation of the Garda Human Rights Audit Report*, April 2005. [↑](#footnote-ref-252)
253. Section 19 of the Schedule to An Garda Síochána (Disciplinary) Regulations 2007. [↑](#footnote-ref-253)
254. *See also* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 728. [↑](#footnote-ref-254)
255. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 58. The Ionann Report suggested that the register could be established in partnership with other public bodies such as the courts and local authorities. [↑](#footnote-ref-255)
256. 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 5.3. [↑](#footnote-ref-256)
257. Dáil Debates, Vol. 670 No. 5, (18 December 2008). [↑](#footnote-ref-257)
258. *Ibid*. [↑](#footnote-ref-258)
259. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 755. [↑](#footnote-ref-259)
260. Office of the Minister for Integration Policy and National Consultative Committee on Racism and Interculturalism, *Developing Quality, Cost Effective Interpreting and Translation Services for Government Service Providers in Ireland,* 2008. [↑](#footnote-ref-260)
261. *Ibid*., pp. 129-136. [↑](#footnote-ref-261)
262. Garda Síochána (Admissions and Appointments) (Amendment) Regulations 2005. [↑](#footnote-ref-262)
263. For further details of the actions taken by An Garda Síochána to encourage the recruitment, retention and progression of a more diverse Garda service, *see* 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*, at 4.3. [↑](#footnote-ref-263)
264. An Garda Síochána, *Policing Plan 2009*, p. 8. [↑](#footnote-ref-264)
265. *See* Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 127. [↑](#footnote-ref-265)
266. Dáil Debates, Vol. 655, No.4, (28 May 2008). [↑](#footnote-ref-266)
267. Garda Síochána Inspectorate, *Report of the Garda Síochána Inspectorate: Policing in Ireland – Looking Forward*, August 2007, p. 18. [↑](#footnote-ref-267)
268. Article 32 of the European Code of Police Ethics. The commentary to Article 32 clarifies that the social and economic rights referred to are those protected in the European Social Charter, a complementary instrument to the ECHR for economic, social and cultural rights. [↑](#footnote-ref-268)
269. *Ibid.* [↑](#footnote-ref-269)
270. The ECtHR has interpreted the term ‘charge’ as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”. Consequently, the protection of Article 6 can commence prior to formal charges being made. *See* *Eckle v. Germany*, Judgment of the 15 of July 1982, (1983) 5 EHRR 1, at para. 73. [↑](#footnote-ref-270)
271. *Bottazzi v. Italy*, Judgment of the 28 July 1999, at para. 22. *Cf*. Francis Jacobs and Robin White, *European Convention on Human Rights*, 4th ed, Oxford University Press, New York, 2006, pp. 187-188. [↑](#footnote-ref-271)
272. *R (Catherine Smith) v The Assistant Deputy Coroner for Oxfordshire*, Unreported, 11 April 2008 (HC Admin). [↑](#footnote-ref-272)
273. *Ibid*., at paras 19-20. [↑](#footnote-ref-273)
274. Garda Síochána Inspectorate, *Review of Garda Síochána Practices and Procedures for Barricade Incidents*, February 2007. [↑](#footnote-ref-274)
275. *Ibid*., pp. 31-33. In line with the recommendation of the Garda Síochána Inspectorate incapacitant spray will be introduced for use by all operational members of An Garda Síochána following the development of protocols and the provision of training. For further updates on the implementation of these recommendations *see* Garda Síochána Inspectorate, *Status Report as of 31 October, 2008 on the Implementation of the Recommendations of the Second Report of the Garda Síochána Inspectorate – “Review of Practices and Procedures for Barricade Incidents”*, December 2008. [↑](#footnote-ref-275)
276. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide important guidance on the training of law enforcement officials in the use of force. Article 19 provides that in the training of law enforcement officials special attention shall be given to issues of police ethics and human rights. [↑](#footnote-ref-276)
277. *See* the United States National Institute of Justice, *Developing a Law Enforcement Stress Program for Officers and Their Families*, 1997; Joseph A. Harpold and Sameul L. Freemster, *Negative Influences of Police Stress*, FBI Law Enforcement Bulletin (September 2002). [↑](#footnote-ref-277)
278. 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), at para. 21. [↑](#footnote-ref-278)
279. Section 67(1)(a) of the Garda Síochána Act 2005. [↑](#footnote-ref-279)
280. These figures are taken from the written replies by the Government of Ireland concerning the List of Issues (CCPR/C/IRL/Q/3) to be taken up in connection with the consideration of the Third Periodic Report of Ireland under the International Covenant of Civil and Political Rights (CCPR/C/IRL/3), July 2008. [↑](#footnote-ref-280)
281. Garda Síochána Ombudsman Commission, Two Year report, March 2008, p. 11. [↑](#footnote-ref-281)
282. *Ibid.,* pp. 11-12. [↑](#footnote-ref-282)
283. *See for example* Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, pp. 123 and 141. [↑](#footnote-ref-283)
284. An Garda Síochána, *Garda Action Plan for the Implementation of the Garda Human Rights Audit Report*, April 2005, p. 4. [↑](#footnote-ref-284)
285. 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 2.1. [↑](#footnote-ref-285)
286. *Ibid.* [↑](#footnote-ref-286)
287. *See also* Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p 687. [↑](#footnote-ref-287)
288. Section 3(1) of the Garda Síochána (Promotion) Regulations 2006. [↑](#footnote-ref-288)
289. Of note, the Garda Síochána Inspectorate in its Third Report recommended that the Garda promotion systems must be closely aligned with related human resources systems, such as performance management and continuing professional development. Garda Síochána Inspectorate, *Report of the Garda Síochána Inspectorate: Policing in Ireland – Looking Forward*, August 2007, p. 21. [↑](#footnote-ref-289)
290. Section 12 of the Garda Síochána (Promotion) Regulations 2006. Previously the interview boards consisted of two sworn members and one external civilian. The civilians are drawn from a panel approved by Government. The Public Appointment Service has a role in nominating suitably qualified people to the panel. [↑](#footnote-ref-290)
291. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 289. [↑](#footnote-ref-291)
292. Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, 1st ed, Clarus Press, Dublin, 2009, p. 291. [↑](#footnote-ref-292)
293. *Ibid*. [↑](#footnote-ref-293)
294. Ionann Management Consultants Ltd, *An Garda Síochána Human Rights Audit*, June 2004, p. 120. [↑](#footnote-ref-294)