

Review of the Garda Síochána Act, 2005

**Submission of IHRC (Designate) to the
Joint Oireachtas Committee on Justice,
Defence and Equality.**

4 April 2014



I. Introduction

- 1) The Irish Human Rights Commission (“IHRC”) was established pursuant to the Human Rights Commission 2000. Its functions include reviewing the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and making recommendations to Government thereon. The Irish Human Rights and Equality Commission Bill 2014 envisages the merger of the Equality Authority and the IHRC into a single enhanced body whose functions will include the functions of reviewing law and practice and making recommendations to Government thereon.
- 2) The IHRC welcomes the opportunity to make the present written Submission to the Joint Oireachtas Committee on Justice, Defence and Equality (hereafter “the Committee”). The IHRC considers that a review of the Garda Síochána Act, 2005, is now necessary to deal with weaknesses in that legislation that have become apparent and also to consider issues that are not dealt with under the Act, such as the establishment of some form of Policing Authority, which has now been committed to by Government.
- 3) Accountability in the policing structure of the State has been a significant theme in the work of the IHRC since its inception and a number of policy statements and legislative observations have been published which underline the importance of a human rights compliant police service in the State.¹ This is unsurprising given the IHRC’s genesis in the Good Friday Agreement and the influence of the Patten Report and attendant policing reforms introduced in Northern Ireland. The principle of equivalence of rights North and South is a key principle in the Good Friday Agreement.
- 4) Significantly, the IHRC commissioned a substantial piece of research by Professor Dermot Walsh in relation to human rights and An Garda Síochána, which was published as a book in 2009 entitled *Human Rights and Policing in Ireland: Law Policy and Practice*.² Many of the issues examined in that book, and previous contributions on policing matters by the IHRC, have relevance to the matters being considered by this Committee. This submission draws on this previous work as well as addressing human rights and policing in the context of more recent developments since 2009.
- 5) It is also recalled here that, since 2007, the IHRC has repeatedly called for the ratification by the State of the *Optional Protocol to the Convention Against Torture* (OPCAT) and the introduction of a *National Preventive Mechanism* (NPM) to allow for independent inspections of all places of detention, including Garda Stations.³ This Protocol has been incorporated in many European States and its introduction in Ireland is overdue. The IHRC considers that the ratification of OPCAT should be embraced in the present consideration being given by the Committee to a revision of the Garda Síochána Act, 2005.

¹ See for instance, *A proposal for a New Garda Complaints System*, IHRC, December 2002; *Observations on the Scheme of the Garda Síochána Bill 2003*, IHRC, November 2003; *Observations on the Scheme of the Garda Síochána Bill, 2003*, IHRC, February 2004; *Policy Statement: Human Rights Compliance of An Garda Síochána*, IHRC, April 2009.

² *Human Rights and Policing in Ireland*, Walsh, Dermot, Clarus Press, 2009.

³ See, *Policy Statement: Human Rights Compliance of An Garda Síochána*, IHRC, April 2009, at p. 57.

- 6) The IHRC and its sister body, the Equality Authority, are represented on the Strategic Human Rights Advisory Committee of An Garda Síochána (“SHRAC”), which is chaired by an Assistant Garda Commissioner. The establishment of SHRAC is part of the efforts of An Garda Síochána to incorporate and mainstream human rights and equality protections in the policies and procedures of the organisation. The IHRC and the Equality Authority also engage in training of Gardaí, although this is not as yet formalised in the Garda training curriculum.
- 7) This submission makes proposals regarding a number of thematic issues that arise from the present legislation underpinning the policing function in Ireland; the Garda Síochána Act, 2005 and the accountability of our police force both from the perspective of overall public accountability and also in relation to resolving specific complaints and concerns.

II. Accountability in Policing Generally

- 8) The IHRC has previously stated that effective oversight bodies, coupled with transparency and engagement with the community, are core mechanisms of human rights accountability. While the Garda Síochána Act, 2005, addressed a very significant gap in accountability in establishing an independent Garda complaints mechanism (namely the Garda Síochána Ombudsman Commission or “GSOC”), the IHRC considers that there are deficits in the legislative underpinnings to that complaints mechanism, and that such a mechanism on its own is not necessarily sufficient to provide a comprehensive structure to ensure accountability in policing.
- 9) As far back as 2004, in considering the Garda Síochána Bill preceding the 2005 Act, the IHRC argued 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.⁴ The IHRC has further argued that the independence of the police service from executive control is central to the credibility and the capacity of the police service to protect human rights.
- 10) The IHRC would draw attention to the fact that the issue of police accountability is given detailed expression in the European Code of Police Ethics.⁵ Section VI of the European Code of Police Ethics is exclusively concerned with accountability and control of the police.⁶ 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.⁷ The Patten Report identifies five aspects to accountability: (1) democratic accountability, by which the police are accountable to the elected representatives; (2) transparency, by which the community is kept informed; (3) legal accountability in the event of abuse of police powers; (4) financial accountability; and (5) internal accountability, by which officers

⁴ See, *Observations on the Garda Síochána Bill, 2004*, at p. 1.

⁵ *The European Code of Police Ethics*, Council of Europe Recommendation, Rec (2001) 10.

⁶ See also Articles 12, 16 and 17 of the European Code of Police Ethics.

⁷ Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999.

are accountable within a police organisation.⁸ The Patten Report states 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”⁹ There is an additional aspect of accountability which is increasingly evident in the years since the publication of the Patten Report, namely the responsibility of the State Parties to the European Convention on Human Rights to ensure that proper accountability structures exist within their police forces to ensure: effective investigations following suspicious deaths (Article 2); proper planning and oversight of police operations to address foreseeable risks of human rights violations (Articles 2, 8, 13) and proper complaints mechanisms following any human rights violations that can occur at the hands of police (Article 13 when read in conjunction with Articles 2, 3, 8 and 14).

- 11) The IHRC notes that there is now a commitment by Government to establish an independent Police Authority in the State. While this may be seen as a reactive response to recent events, the IHRC welcomes this commitment to review accountability in the policing function. In conducting this review, the IHRC recommends that any such police authority be established with sufficient independence, resources and functional capacity to address deficits in accountability and oversight of An Garda Síochána. It is also submitted that the functions of any such police authority must be calibrated in such a way as not to encroach or undermine the work of GSOC, but rather should compliment and support it. In addition, the Garda Síochána Inspectorate, established under Part 5 of the Garda Síochána Act, 2005, would need to be realigned with any new policing authority, in order to ensure that reporting procedures are through such an authority and not the executive as is the case at present.
- 12) While the IHRC may, in due course, provide formal Observations in relation to any proposed legislation to establish a policing authority, we would submit that the following characteristics should, at a minimum, define such a body:
 - Establishment in a manner that optimises independence and properly balances the Executive’s influence in the work of such an authority with its independent functions;
 - Ensure sufficient representation from different sectors of society including minorities and representatives of the public more generally;¹⁰
- 13) Aside from these characteristics, such an Authority should also include within its statutory remit the following functions:
 - Reviewing the adequacy and appropriateness of the policies and procedures which underpin the operation of an effective policing service;
 - Setting performance targets for An Garda Síochána and monitoring and reporting on the achievement of those targets, including in relation to human rights compliance;

⁸ *Ibid*, at p. 22.

⁹ *Ibid*.

¹⁰ The nine grounds covered by the equality legislation may be a useful reference in this regard, as well as taking into account the needs of certain geographical communities.

- Monitor and address human rights and equality compliance by An Garda Síochána at every level of its operations and align breaches of discipline or criminal offences identified by GSOC and which would also reveal a breach of human rights or a discriminatory act with disciplinary procedures within the force.¹¹
- Appointing, disciplining and ultimately dismissing senior management within An Garda Síochána, that would fall outside the statutory remit of GSOC;
- Reviewing the adequacy of standards in relation to the training of An Garda Síochána and the structures, policies and procedures for assessment and development of those standards, with a very specific emphasis on training in human rights and equality.
- The Policing Authority should have a defined relationship with GSOC that reinforces the independence of the latter, while allowing the policing authority to bring to the attention of GSOC matters of concern that might warrant an investigation by GSOC.

III. The Office of the Garda Commissioner

- 14) At present the Garda Commissioner is appointed by the Government,¹² as are Deputy Garda Commissioners and Assistant Garda Commissioners.¹³ The Government may also remove those persons from office for stated reasons.¹⁴ Thus, the most senior ranking Gardaí in the State are political appointees and may ultimately be removed for reasons that are not only linked to performance but may perceptually be politically motivated.
- 15) As noted above, the IHRC recommends that the provisions of the Garda Síochána Act, 2005, concerned with be deleted and replaced with provisions that would ensure that the most senior Officers within An Garda Síochána are appointed in a fully independent and transparent manner. Such Office holders should also be accountable to an independent body for the performance of their functions, and be removable from Office by an independent authority if ultimately warranted.
- 16) The functions of the Garda Commissioner are presently as follows:
 - (a) to direct and control the Garda Síochána;
 - (b) to carry on and manage and control generally the administration and business of the Garda Síochána, including by arranging for the recruitment, training and appointment of its members and civilian staff;

¹¹ It is noted that the Irish Human Rights and Equality Commission Bill, 2014 includes a duty on public bodies at section 42 to “have regard to” the elimination of discrimination, promotion of equality and to protect the human rights of its members, staff and the persons to whom it provides services, and which would also apply to An Garda Síochána.

¹² Section 9.

¹³ Section 10.

¹⁴ Section 11

- (c) to advise the Minister on policing and security matters;
 - (d) to perform any other functions that are assigned to him or her by this Act or that may, by regulation, be assigned to him or her.¹⁵
- 17) In addition, the Commissioner of An Garda Síochána has very detailed reporting obligations to the Minister for Justice under sections 40 and 41 of the 2005 Act, which are essentially designed to ensure the accountability of the Garda Commissioner in the discharge of his or her functions. Therefore, the Garda Commissioner is accountable fully to the Government and the Minister for any aspect of his/her functions, and is under a duty to provide any document under his/her control as requested by the Secretary General of the Department of Justice, Equality and Defence.¹⁶
- 18) The Garda Commissioner is, more generally, required to keep the Minister informed of a wide range of matters touching on the policing function in the State.¹⁷
- 19) The IHRC considers that the managerial functions of the Garda Commissioner under section 26, should largely remain intact, noting also that section 7 of the Act, creates a general obligation on the Garda Síochána to vindicate the human rights of each individual. However, the direct reporting requirements to the Minister should be severed in favour of a more structured and explicit reporting requirement to an independent policing authority. In this regard the matters enumerated in section 41 would need re-consideration to make it transparent and clear what matters the Garda Commissioner must report on and be accountable in relation to, and those matters which the Garda Commissioner, on a discretionary basis may bring to the attention of an independent authority. Further, there should be alignment of disciplinary procedures which flow from GSOC investigations including, where serious allegations arise, the placing of officers under suspensive sanction (such as placing the member concerned on administrative leave) pending judgment in criminal offences.

¹⁵ Section 26, Garda Síochána Act, 2005.

¹⁶ Section 40, Garda Síochána Act, 2005.

¹⁷ Section 41, Garda Síochána Act, 2005 provides that the Garda Commissioner is required to keep the Minister informed of the following matters:

(a) matters relating to significant developments concerning—

(i) the preservation of peace and public order in the State,

(ii) the protection of life and property in the State, and

(iii) the protection of the security of the State;

(b) significant developments that might reasonably be expected to affect adversely public confidence in the Garda Síochána;

(c) matters relevant to the accountability of the Government to the Houses of the Oireachtas;

(d) any other matters that, in the Commissioner's opinion, should be brought to the Minister's attention

IV. The Garda Síochána Ombudsman Commission

20) In its *Observations on the Scheme of the Garda Síochána Bill, 2003* and its further *Observations on the Garda Síochána Bill, 2004*, the IHRC expressed concerns on a number of provisions regarding the statutory operation of the Garda Síochána Ombudsman Commission, and whether they fully addressed the human rights objectives underpinning the establishment of such a statutory complaints mechanism.

(a) *Independent handling of Complaints*

- 21) In relation to the complaints which GSOC may consider, these are confined to alleged misconduct by members by An Garda Síochána. Standards of Conduct for members of An Garda Síochána, are established by reference to a Code of Ethics, which sets out standards in Garda conduct, and which is established as secondary legislation by the Minister for Justice under section 17 of the Garda Síochána, Act, 2005, and also drawn from various other sources as set out in section 123 of the Act dealing with disciplinary regulations. While a policing authority might ultimately be the responsible body in relation to promulgating a Code of Ethics and disciplinary regulations for An Garda Síochána, the IHRC would raise a question as to whether the remit of GSOC is not presently too narrow and whether it should also extend to include poor standards of service provided by An Garda Síochána. The IHRC notes that breaches of discipline are dealt with by a formal structure within An Garda Síochána, but may not be appropriate to dealing with systemic lapses, as opposed to individual default by a member of An Garda Síochána.
- 22) The IHRC has raised concerns in relation to the referral of complaints between GSOC and the Garda Commissioner and expressed a view that the provisions are seriously flawed and paid insufficient regard to the principle of independent investigation.¹⁸ Under section 91 only complaints regarding “*death or serious harm*” are subject to mandatory investigation by GSOC, and all other complaints may effectively be referred to the Garda Commissioner. It is a matter for the Garda Commissioner to nominate a member of An Garda Síochána to investigate a complaint referred to him or her, and that person may investigate the complaint with or without supervision by GSOC.
- 23) The IHRC has made recommendations for reform in this area. At the present time, the IHRC considers that there is a substantial case to be made for a radical realignment of the complaints mechanism, such that all complaints, unless *prima facie* suitable for a mediated resolution, would be investigated by GSOC.

¹⁸ *Observations on the Garda Síochána Bill, IHRC, February 2004.*

- 24) While it is understood that this would have significant implications for GSOC in terms of resources and capacity, the IHRC considers it timely to give serious consideration to this proposal. The views of GSOC would be crucial in this regard, and also an understanding of how the present resources of An Garda Síochána being dedicated to investigating complaints could be reinvested in GSOC to ensure it was not ultimately paralysed in its operations by the volume of complaints when tested against its limited resources. The clear and overriding advantage of this proposal is that public confidence would be bolstered in the knowledge that complaints against An Garda Síochána are addressed in a verifiably independent manner, while obviating criticism of An Garda Síochána for inability to self regulate.
- 25) The IHRC is mindful that certain matters may come to light of possible serious criminal activity or breach of discipline on the part of a member of An Garda Síochána in the context of a complaint to GSOC, and the investigation of the complaint by GSOC should not inhibit the Garda Commissioner from taking immediate precautionary action pending the outcome of the complaint concerned, such as placing the member concerned on administrative leave, pending the outcome of the investigation. In this regard, the IHRC would suggest that a policing authority might have a role in giving a direction to the Garda Commissioner regarding the course of action to be taken pending the final determination of a complaint in such serious cases.
- 26) It is further recommended that there be no restriction on GSOC receiving a complaint from a serving member of An Garda Síochána.¹⁹ The Protected Disclosures in the Public Interest Bill, 2012, should include specific provision to deal with the protection and procedures for dealing with disclosures by members of An Garda Síochána and there are specific human rights standards that would be relevant in this context and which have been commented on previously by the IHRC.²⁰ This is not to suggest that whistleblowing should not be an exceptional occurrence and the culture inculcated in An Garda Síochána should allow, at first instance, for the receipt and addressing of internal disclosures of serious matters without the need for public disclosure. Nonetheless provision for whistleblowing is an important safeguard for accountability.

(b) The Role of the Minister for Justice and Independence

- 27) There are a number of aspects of the operation of GSOC which are subject to the control or direction of the Minister for Justice.²¹ In this regard, the IHRC recommends that the statutory underpinning to GSOC, under the Garda Síochána Act, 2005, be reviewed overall, to ensure full structural and operational independence for the

¹⁹ Section 124 of the Garda Síochána Act, 2005, requires the Minister to make regulations providing for the establishment of a charter containing guidelines and mechanisms to enable members of the Garda Síochána or other persons to report in confidence allegations of corruption and malpractice within An Garda Síochána. The present regulations are contained in the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 (S.I 168/2007).

²⁰ Observations on the Protected Disclosures in the Public Interest Bill, 2012, IHRC, June 2012. It is noted that the UN Code of Conduct for Law Enforcement Officials states that if an enforcement official has reason to believe that there has been a violation of the code, they are required to report the matter to their superior authorities and where necessary to other appropriate authorities or organs.

²¹ Specifically, GSOC submits an annual report to the Minister and is also required to provide a 5 year review report to the Minister after its commencement, on its performance and its functions. GSOC may also make a special report to the Minister for Justice under section 80(5) on a matter of particular gravity.

organisation.²² On a structural level, there would thus be a clearer basis for asserting and protecting, into the future, the independence of the organisation and insulating it from any politicisation of its work.

- 28) In particular, it is recommended that GSOC be in a position to instigate a review of a practice, policy or procedure of An Garda Síochána on its own initiative.²³ At present, such a review is at the decision of the Minister for Justice.²⁴ Such a power would further enhance the independence of GSOC and should allow it, of its own volition to make recommendations relevant to its statutory remit but that go beyond making determinations on individual complaints.²⁵

V. National Security

- 29) There are a number of provisions under the Garda Síochána Act, 2005 that relate to national security. It is noted, in this regard, that part of the functions of An Garda Síochána is protecting the security of the State. Thus in Ireland we have a combined policing and State security service. This is reflected in the 2005 Act, insofar as national security is a ground which may restrict certain of the investigative functions of GSOC. It is arguable that the mixing of policing with national security functions, provides opportunities by which oversight of the policing function will be stymied by claims in relation to protection of national security. The question of whether policing and national security functions should be severed is a valid one, and should be considered by the Committee. The IHRC will confine itself in this submission to addressing the specific provisions of the Garda Síochána Act, 2005 where references to national security may reduce the accountability and oversight of An Garda Síochána.
- 30) The IHRC has previously reflected on these provisions and considered that although the protection of national security is a legitimate objective on the part of the State, the manner in which this restricts the functions of GSOC, and the width of the discretion conferred on the Minister for Justice and the Garda Commissioner are not sufficiently calibrated to ensure transparency and accountability.²⁶

²² While only directly applicable to National Human Rights Institutions (NHRIs), the UN Paris Principles provide some useful benchmarks in the context of establishing the independence of a statutory body such as GSOC, and may be a useful resource in that regard. See *National institutions for the promotion and protection of human rights*, UN General Assembly Resolution 48/134, 1993.

²³ 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. The proposal that the Police Ombudsman should initiate inquiries was recommended in the Patten Report

²⁴ 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.

²⁵ See Christopher Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999, p. 37.

²⁶ A Judge of the High Court may be appointed to keep under review the operation of sections 96(4) to (6) and 99(3) to (5) and regulations under section 126 (designating certain Garda Stations not to be searched without the permission of the Minister). The designated judge may investigate any case in which a direction is given by the Minister, and may inspect any Garda Station designated under s.126. Reports of the designated judge are laid before the Houses of the Oireachtas but may be redacted (section 100(7)).

- 31) Specifically, the IHRC is concerned that the provisions in Sections 96, 99 and Section 126 of the Garda Síochána Act, 2005, are unnecessarily restrictive. GSOC has powers of compellability in relation to investigations under section 95 (investigations not involving an offence), and as such may require any person possessing information and/or documentation and/or a thing, relevant to an investigation to provide same to GSOC, or may require the person to attend before GSOC for that purpose. However, the Minister, at the request of the person required to provide information to GSOC, may decide that certain information not be disclosed to GSOC if same would be prejudicial to the security of the State.
- 32) Section 99 of the Act provides that a Garda 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.
- 33) Under the ECHR, national security is recognised as a legitimate ground for limiting the rights and freedoms protected in the ECHR.²⁷ 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.²⁸ 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.²⁹ The earlier comments in this Submission regarding the ratification of OPCAT by the State and establishment of an NPM, are also relevant in this regard.
- 34) The IHRC has previously pointed out 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.³⁰ The IHRC is particularly concerned that the broad scope of national security consideration should not be used as a cloak to exclude independent oversight and investigation of An

²⁷ See Articles 8-11 of the ECHR.

²⁸ 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.

²⁹ See also IHRC, *Observations on the Garda Síochána Bill 2004*, February 2004, p. 11.

³⁰ *Ibid.*

Garda Síochána, particularly since public confidence in the policing function is connected to the perception of adequate independent oversight of policing activities.

- 35) A matter not addressed in the Garda Síochána Act, 2005, is the issue of covert surveillance by An Garda Síochána. It has been noted that until 2009, with the specific exception of telephone and postal intercepts, there is no statutory framework governing the use of covert surveillance and covert intelligence methods.³¹ The Criminal Justice (Surveillance) Act 2009, sought to provide regulation in this area, however, it is unclear that all methods of surveillance are caught by the legislation and further whether there are sufficient remedies in respect of inappropriate use of covert surveillance, and overall the human rights compliance of the legislation is arguably insufficient.³² Obviously, this has very significant implications for the protection of the right to privacy both under the ECHR and the Constitution. The IHRC considers that these are matters that should be further addressed in legislation, both in terms of ordinary operational use of surveillance methods, and also practices that relate to national security. It would also be appropriate that the proposed independent policing authority would have a role in developing policies in relation to the use of surveillance by An Garda Síochána, and also ensuring that such policies are human rights and equality proofed and made public.³³

VI. Conclusion

- 36) In conclusion, the IHRC would make the following broad recommendations:
- i. That the State ratify OPCAT and establish an adequately resourced National Preventive Mechanism without delay.**
 - ii. That the State establish an independent oversight authority in respect of the operation of An Garda Síochána that would ensure public confidence and trust in An Garda Síochána and minimise political influence in the operational aspects of the work of by An Garda Síochána.**
 - iii. That the reporting requirements of the Garda Commissioner be reviewed, with less discretion being left to the Garda Commissioner in relation to what matters to report on and, in addition, that the general reporting requirements of the Garda Commissioner be to an independent body, rather than directly to the Minister for Justice.**
 - iv. That the structural independence of GSOC be reviewed in light of the UN Paris Principles, and be insulated from any politicisation of its work.**
 - v. That consideration be given to all complaints in relation to An Garda Síochána including from serving members of An Garda Síochána be dealt with and investigated by GSOC.**

³¹ See Walsh, at p. 717.

³² See, *Observations on the Criminal Justice (Surveillance) Bill*, IHRC, May 2009.

³³ It is noted that An Garda Síochána have issued a policy document in relation to the use of Covert Human Intelligence Source

- vi. **That the restrictions under the Garda Síochána Act, 2005 that pertain to national security be reformulated and more narrowly drawn to ensure there is independent oversight of all police functions, albeit with safeguards in relation to national security concerns.**
 - vii. **That the use of covert surveillance techniques by An Garda Síochána be further regulated by law to ensure that they are compliant with relevant human rights standards including in relation to individual remedies and are comprehensive in addressing different forms of covert surveillance.**
- 37) The IHRC would be happy to expand on any of the matters addressed in this submission before the Committee if invited to do so.

4 April 2014

Appendix 1

- [European Code of Police Ethics](#)
- [European Convention on Human Rights](#)
- [Garda Síochána Ombudsman Commission, *Second Annual Report*, March 2008](#)
- [Garda Síochána Act, 2005](#)
- [Irish Human Rights and Equality Commission Bill, 2014](#)
- [IHRC, Policing Statement, *Human Rights Compliance of An Garda Síochána*, April 2009](#)
- [IHRC, *Observations on the Garda Síochána Bill*, February 2004](#)
- [IHRC, *Observations on the Protected Disclosures in the Public Interest Bill*, 2012](#)
- [*National institutions for the promotion and protection of human rights*, UN General Assembly Resolution 48/134, 1993](#)
- [Patten, *A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing for Northern Ireland*, 1999](#)