



FOR ALL OUR RIGHTS. NO EXCEPTIONS.

HUMAN RIGHTS IN IRISH POLICING

**Analysing the Implementation of the
Recommendations from the Commission on
the Future of Policing in Ireland**



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for their support of our work and this report.

List of Abbreviations

AGS	An Garda Síochána
CoFPI/the Commission	The Commission on the Future of Policing in Ireland
DPP	Office of the Director of Public Prosecutions
ECHR	European Convention on Human Rights
GSOC	Garda Síochána Ombudsman Commission
HLRG	High Level Review Group on the Role of An Garda Síochána in the Public Prosecution System
Inspectorate	Garda Síochána Inspectorate
ICCL	Irish Council for Civil Liberties
PSCS Act	Policing, Security and Community Safety Act 2024
PSNI	Police Service of Northern Ireland
Strategy	An Garda Síochána Human Rights Strategy 2022-2024

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Foreword



Police reform has been a defining part of the Irish Council for Civil Liberties' (ICCL) work since its foundation to secure increased human rights protections in Ireland and forms one of the four key pillars of our work. Our work on policing is guided by our history calling for increased accountability and oversight of An Garda Síochána.

Gardaí have a unique dual relationship with human rights: as a State body, An Garda Síochána has a statutory obligation to protect and vindicate human rights, but the exercise of their police powers of search, arrest and detention interfere with our fundamental rights to privacy, liberty and security of the person. The Commission on the Future of Policing in Ireland (CoFPI) recognised this unique relationship and ultimately recommended that human rights should be the foundation and purpose of policing.

Having human rights at the heart of policing is fundamental to the exercise of democratic freedoms and equal treatment in our society. The Commission marked a culmination in Irish police reform, calling for full root and branch reform of An Garda Síochána. Since the publication of the Commission's final report in 2018, ICCL has closely monitored its implementation.

This report traces the progress in implementation made by government and An Garda Síochána, and identifies the gaps and challenges that persist. It focuses on the recommendations which implicate human rights, as this is ICCL's area of expertise. ICCL also engaged in interviews with relevant policing stakeholders, including the policing oversight bodies, academics, former members of the Commission and civil society organisations, as part of our research. We thank our interviewees for their engagement and their important contributions to this report.

Following the passage of the Policing, Security and Community Safety Act 2024, we are now at a critical juncture to ensure the vision of the Commission – human rights as the foundation and purpose of policing – aligns with the implementation of the Act, including the establishment of the new oversight bodies. In this report, we put forward specific and concrete recommendations for how government and An Garda Síochána can address the gaps in implementation we have identified and fully commit to a human rights-based approach to policing.

A handwritten signature in black ink, appearing to read 'Liam Herrick', written in a cursive style.

Liam Herrick
Executive Director
Irish Council for Civil Liberties
May 2024

Executive Summary

Since its establishment in 1976, the Irish Council for Civil Liberties (ICCL) has long campaigned for human rights-based police reform. Over the intervening decades there have been several reports from Irish and international bodies identifying the need for significant reform of Irish policing, including several which arose from scandals or crises within An Garda Síochána (AGS) that have yet to be fully embraced and implemented.¹

The Commission on the Future of Policing in Ireland (CoFPI) was established by government in May 2017 to provide recommendations on full root and branch reform of An Garda Síochána. Its paramount recommendation was that human rights should be the foundation and purpose of policing.² Other recommendations relevant to human rights include reform of the policing oversight bodies; the codification of police powers of arrest, search, and detention; and the establishment of a Human Rights Strategy and a Human Rights Unit for AGS. This report will analyse the extent to which the human rights recommendations from the Commission's final report have been implemented.

The Commission on the Future of Policing in Ireland (CoFPI) was established by government in May 2017 to provide recommendations on full root and branch reform of An Garda Síochána. Its paramount recommendation was that human rights should be the foundation and purpose of policing.

Chapter 1 explores the history and mandate of the Commission, its key recommendations, ICCL's submission to the Commission, and the progress made in implementing the recommendations since 2018. It also explores what a human rights-based approach to policing looks like and how this informs the other recommendations. This chapter additionally explores government's plan for implementation (A Policing Service for our Future) and summarises the current state of implementation.

Chapter 2 discusses the relevant legal framework that governs the relationship between human rights and policing, including Bunreacht na hÉireann (Constitution of Ireland), domestic equality law, the European Convention on Human Rights (ECHR), and other international human rights treaties. This chapter also includes an overview of the existing AGS internal policies relevant to human rights. It explores interview data discussing the appropriate role of policing and how this relates to maintaining the community's confidence in police.

Chapter 3 contains this report's core analysis. It analyses the implementation of CoFPI's recommendations relating to human rights, including those calling for non-legislative and legislative change. Non-legislative recommendations that are discussed include the establishment of the new Garda Síochána Operating Model, the need for culture change and human rights training. Analysis of the Policing, Security and Community Safety Act 2024 (PSCS Act) is of prime importance as it is intended to implement a number of recommendations from CoFPI which require legislation, including the amalgamation of the Garda Síochána Inspectorate and the Policing Authority into a new Policing and Community Safety Authority, the establishment of an Office of the Police Ombudsman to replace the Garda Síochána Ombudsman Commission, the establishment of the Independent Examiner of Security Legislation, the creation of a corporate board for AGS, and the shift to a multi-agency approach to policing and community safety. ICCL is concerned about the scope of jurisdiction and institutional independence of the oversight bodies and believes that their current powers as outlined in the PSCS Act do not meet the standard recommended by the Commission. Other legislative recommendations that are analysed include the retention of the

¹ See the Morris Tribunal of Inquiry, the Fennelly Commission, and the O'Higgins Commission.

² The Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, September 2018, [https://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf](https://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland(web).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland(web).pdf), p. 11.

prosecutorial powers of Gardaí, the review of the status of AGS under the Freedom of Information Act 2014, and the lack of progress with the codification of police powers following the publication of the Garda Síochána (Powers) Bill in June 2021. The conclusion finds that recommendations that have been only partially implemented largely deal with the accountability and transparency of AGS, which is regrettable and worrisome given the multiple scandals and crises related to AGS, and associated tribunals and commissions of inquiry – all of which predated CoFPI.

ICCL engaged in qualitative interviews with a variety of policing stakeholders – including the policing oversight bodies, civil society, academics and former members of CoFPI – to gather information on how CoFPI recommendations have been implemented in practice. A research request to interview members of AGS was denied prior to publication. Important issues raised in interviews include concerns regarding the potential regression of the power of oversight bodies, the need for culture change and continuous human rights training within AGS, and the importance of AGS maintaining the community's confidence in policing.

The conclusion finds that recommendations that have been only partially implemented largely deal with the accountability and transparency of AGS, which is regrettable and worrisome given the multiple scandals and crises related to AGS, and associated tribunals and commissions of inquiry - all of which predated CoFPI.

The report concludes with a summary of findings and an analysis of how police reform is influenced by external social, political, economic and legal factors. It concludes with a discussion of formulating an evidence base for change and how to continue the momentum of human rights-based police reform in the future. Recommendations to AGS, government, the Oireachtas and policing oversight bodies are then presented, in order to continue the implementation of the recommendations from CoFPI and advance a human rights-based approach to policing in Ireland.

An overview of implementation assessment is included in Appendix 2.

Recommendations

This report builds on ICCL's historic work on police reform by calling on the government to fully implement the recommendations from CoFPI and calling on AGS to commit to a human rights-based approach to policing.

FOR AN GARDA SÍOCHÁNA:

- Continue the use of Human Rights Strategies firstly to embed an awareness of human rights law and standards within AGS, and secondly to embed a human rights ethos of policing in the organisation – including through continuous human rights training for members throughout their service and through engagement with the Human Rights Champion programme developed with the University of Limerick. Senior management should take a leadership role in advocating for the use of a human rights-based approach and in actioning its implementation.
- Ensure that the Human Rights Unit does not operate in a silo and that it engages with the wider organisation and other relevant units and bureaus, including the Garda National Diversity and Integration Unit, the Public Order Unit and the Garda National Protective Services Bureau, to ensure all aspects of policing align with human rights.
- Adequately resource the Human Rights Unit to allow it to function at peak capacity and work collaboratively with other areas of the policing service in order to fully embed a human rights ethos.
- Facilitate anti-racism and anti-oppression training for members to understand how systems of oppression work and how they relate to power and privilege; the role of AGS in furthering systems of oppression; and how policing may disproportionately affect certain communities. The training should address stereotypes, racism and conscious and unconscious bias.
- Increase the diversity of AGS members.³ Consider the use of special measures, such as affirmative action policies, to recruit people from various socio-political identities, including intersectional identities.
- Look to the experience of the Police Service of Northern Ireland (PSNI) in advancing culture change, including through diverse recruitment.
- Take active steps to build trust with communities to ensure they are operating on the basis of the public's consent.
- Strengthen the reference to human rights in the Code of Conduct to be equivalent to the reference in the PSNI's Code of Conduct.
- Facilitate engagement with civil society and have a publicly named policy lead for specific human rights issues such as covert policing, hate crime and racial profiling.
- As a form of accountability and an evaluation tool, establish clear policies mandating improved record-keeping and data collection regarding the types/categories of cases where AGS are making prosecutions decisions and pursuing prosecutions in court, and the types/categories of cases that are best moved from AGS to the Office of the Director of Public Prosecutions (DPP) for decision and prosecution.

³ A recent publication from the Central Statistics Office found that around 98% of employees were white Irish, 98% were Irish nationals, 89% were Roman Catholic, 64% were male and 4% had a disability. This is compared to Census 2022 results which found that 77% of the population identified as white Irish, 84% identified as Irish nationals, 69% identified as Roman Catholic, 49% were male, and 21.5% identified as having a disability to any extent. For more information, please see "Census of Population 2022 – Summary Results," Central Statistics Office, accessed 23 January 2024, <https://www.cso.ie/en/releasesandpublications/ep/p-cpsr/censusofpopulation2022-summaryresults/>.

FOR GOVERNMENT:

- Amend the PSCS Act to address concerns regarding the restructured oversight bodies:
 - For the Office of Police Ombudsman:
 - Expand the scope of its jurisdiction and ensure that “the Police Ombudsman [...] be notified of all allegations of misconduct which may amount to a breach of discipline” in addition to notifiable misconduct.⁴
 - Remove the requirement to consult the Garda Commissioner to authorise searches of Garda stations.
 - Allow for the Ombudsman itself to submit its Strategy Statement and Annual Reports before the Oireachtas, as is the case with other Ombudsman institutions in Ireland (e.g., Office of the Ombudsman, Ombudsman for Children).
 - For the Policing and Community Safety Authority:
 - Permit the Policing and Community Safety Authority the ability to conduct announced and unannounced visits (including inspections) provided for in law.
 - Clarify whether a robust inspection power for security services will be provided to the Policing and Community Safety Authority or the Independent Examiner in order to remedy the limitation which currently exists on inspection of security services per sections 242(6) and 242(7) of the PSCS Act.
 - For the Independent Examiner of Security Legislation:
 - Ensure that the provisions establishing the powers and jurisdictions of the Office are equivalent to those provided for by the Independent Reviewer of Terrorism Legislation⁵ in the UK (the model recommended by CoFPI), including expanding the eligibility of the role to include senior counsel, the scope of access to relevant information and the level of transparency regarding public information.
 - Introduce a precise, clear definition of national security in domestic legislation that is guided by regional and international human rights law.⁶
- Significantly increase investment in the Office of the Police Ombudsman to provide for adequate financial and human resources in order to ensure a satisfactory investigation.
- Expedite the review of the Garda Síochána (Discipline Regulations) 2007 and ensure any reform to the Discipline Regulations and the proposed Conduct Regulations provided for under section 257(2) of the PSCS Act include “human rights violation” in a definition of breach of discipline and/or notifiable misconduct.
- Codify the existing police powers of search, arrest and detention and ensure they are in compliance with recent jurisprudence and human rights standards. This should not be viewed as an opportunity to expand police powers and should instead be confined to existing powers found in criminal law and relevant case law. Best practices from relevant common law jurisdictions should be considered as a model for codification.
- Amend the Freedom of Information Act 2014 to provide for full access to records relating to An Garda Síochána in order to demonstrate commitment to the transparency and accountability of AGS.

⁴ Garda Síochána Ombudsman Commission, *GSOC Observations on the Policing, Security and Community Safety Bill 2023*, February 2023, <https://www.gardaombudsman.ie/news-room/archive/gsoc-publishes-its-observations-on-policing-security-and-community-safety-bill/?download=file&file=4385>, p. 14; Irish Council for Civil Liberties, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, October 2023, <https://www.iccl.ie/wp-content/uploads/2023/10/ICCL-Briefing-on-Policing-Security-and-Community-Safety-Bill-2023.pdf>, p. 2-3.

⁵ See Counter Terrorism and Security Act 2015.

⁶ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 5-6.

- Progress the National Equality Data Strategy⁷ announced in March 2022 and mandate the collection of disaggregated equality data on domestic equality grounds⁸ and on equality grounds protected under international human rights law. These equality grounds should include but not be limited to sex, age, ethnicity, migration or displacement status, disability, religion, civil status, income, sexual orientation and gender identity.⁹
 - The collection and publication of disaggregated equality data under the National Equality Data Strategy should allow for collecting and identifying data on multiple and intersecting forms of discrimination (e.g., on the basis of sex and disability) and how this data can inform different communities' confidence in police.
- Provide for the collection of geographic location data for policing activities, including stop and search, arrest and detention, in order to identify if certain communities are being disproportionately affected by policing.
- Ensure that the protection of human rights in policing is equivalent to that in Northern Ireland and that it upholds the principle of equivalence found in the Good Friday Agreement.
- Alongside the shift to a multi-agency and community approach to policing, invest in areas of social policy where AGS often spends the majority of its time dealing with harm prevention, including housing, drugs and mental health.
- Increase investment in the office of the DPP to ensure it can provide sufficient oversight of the prosecutorial powers of AGS and to execute the recommendations of the High-Level Review Group on the Role of An Garda Síochána in the Public Prosecution System (HLRG).

FOR THE OIREACHTAS:

- As recommended by CoFPI, establish a regular programme of engagement between the Joint Oireachtas Committee on Justice and Equality and AGS. We suggest this happen on a quarterly basis.
- Continue to put pressure on government, for instance through the use of private members' time or parliamentary questions, for CoFPI's recommendations to be fully implemented and to maintain momentum on human rights-based police reform in Ireland.

⁷ See "Minister O'Gorman announces the development of a National Equality Data Strategy," Government of Ireland, accessed 23 January 2024, <https://www.gov.ie/en/press-release/5a7f4-minister-ogorman-announces-the-development-of-a-national-equality-data-strategy/>.

⁸ Equal Status Acts 2000-2018; Employment Equality Acts 1998-2015.

⁹ United Nations Office of the High Commissioner for Human Rights, *A Human Rights-Based Approach to Data: Leaving No One Behind in the 2030 Agenda for Sustainable Development*, 2018, <https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>, p. 7.

FOR THE OVERSIGHT BODIES (POLICING AND COMMUNITY SAFETY AUTHORITY, OFFICE OF THE POLICE OMBUDSMAN, INDEPENDENT EXAMINER OF SECURITY LEGISLATION):

- In the execution of their duties, maintain an active role in assessing and calling for the human rights compliance of AGS, including adherence to Bunreacht na hÉireann, the European Convention on Human Rights and relevant international human rights treaties.
- Encourage their staff to complete the Certificate in Policing and Human Rights Law in Ireland at the University of Limerick.
- Increase their diversity of staff to correspond to the increasing diversity in Irish society.

FOR THE POLICING AND COMMUNITY SAFETY AUTHORITY:

- In accordance with section 143(1) of the PSCS Act, ensure that the protection and vindication of human rights as a core function of AGS is central to the objectives and functions of the Authority, particularly for its inspection function to advance strong, robust and independent oversight and ensure adequate protection of human rights in policing.
- Appoint a full-term human rights expert staff member for the Policing and Community Safety Authority, similar to the Human Rights Advisor to the Northern Ireland Policing Board.

Introduction

The Irish Council for Civil Liberties (ICCL) has long campaigned for human rights-based police reform. The organisation has called for robust policing oversight, challenged emergency powers and sought justice for the misuse and abuse of police powers. In fact, ICCL's establishment in 1976 partially arose from proposals to extend emergency powers legislation and a number of high-profile incidents of the mistreatment of suspects in custody by Gardaí.¹⁰

Gardaí have a statutory mandate to respect, protect and fulfil human rights; one of An Garda Síochána's (AGS) objectives of policing is "protecting and vindicating the human rights of each individual".¹¹ As a State body, AGS is also obligated to comply with the European Convention on Human Rights (ECHR).¹² By providing policing services and through the exercise of police powers, human rights can be infringed upon or denied, including the right to liberty, the right to privacy and family life, freedoms of expression and assembly, and in the most egregious cases, the prohibition of torture and other ill-treatment and the right to life.¹³ Therefore, it is paramount that policing is grounded in the respect for and guarantee of human rights. Embedding human rights in policing benefits both the police and the public; it leads to increased public confidence in the police and, importantly, less opportunity for police misconduct.¹⁴



Ireland has made progress in moving towards a human rights-based approach to policing in the past two decades. In particular, there have been improvements regarding accountability and transparency following the establishment of the Garda Síochána Ombudsman Commission (GSOC), the Garda Síochána Inspectorate (Inspectorate) and the Policing Authority.¹⁵ These advances arose from persistent calls for Garda reform from tribunals of inquiry and commissions of investigation into AGS scandals and crises.¹⁶ The Morris Tribunal of Inquiry (2002) explored incidents of systemic Garda misconduct in County Donegal from the 1990s to the 2000s and identified a high level of corruption and indiscipline among Gardaí.¹⁷ The Fennelly Commission (2014) and the O'Higgins Commission (2015) explored significant Garda management and discipline problems.¹⁸

Despite a plethora of reports containing recommendations for changes to Irish policing practice, the totality of recommendations have yet to be fully embraced and implemented by AGS.¹⁹ Previous Garda

¹⁰ ICCL, *Police Reform: An ICCL Policy Paper: Why Patten Should Apply Here and How This Can be Achieved*, March 2003, <https://www.iccl.ie/wp-content/uploads/2017/11/ICCL-policy-paper-on-police-reform2003.pdf>, p. 5; ICCL, *Implementing Morris An Agenda for Change: Placing Human Rights at the Core of Policing in Ireland*, November 2006, <https://www.iccl.ie/wp-content/uploads/2017/11/Implementing-Morris-An-Agenda-for-Change-Placing-Human-Rights-at-the-core-of-Policing-in-Ireland-November-2006.pdf>, p. 4; ICCL, *Rights-Based Policing: How Do We Get There? A submission to the Commission on the Future of Policing in Ireland*, January 2018, <https://www.iccl.ie/wp-content/uploads/2018/01/RIGHTS-BASED-POLICING-ICCL-submission-to-CFP-2.pdf>; Alyson Kilpatrick BL, *A Human Rights-Based Approach to Policing* (Dublin, IE: Irish Council for Civil Liberties, 2018), <https://www.iccl.ie/wp-content/uploads/2018/09/Human-Rights-Based-Policing-in-Ireland.pdf>.

¹¹ Policing, Security and Community Safety Act 2024, section 9(1)(c).

¹² European Convention on Human Rights Act 2003, section 3.

¹³ ICCL, ICCL Submission on the General Scheme of the Garda Síochána (Powers) Bill, August 2021, <https://www.iccl.ie/wp-content/uploads/2022/05/ICCL-Submission-Police-Powers-Bill.pdf>, p. 5.

¹⁴ ICCL, *Police Reform: Why Patten Should Apply Here*, p. 13.

¹⁵ See Garda Síochána Act 2005, Part 3 (Establishment and Functions of Garda Síochána Ombudsman Commission), Part 4 (Complaints, Investigations and other Procedures), Part 5 (Establishment and Functions of Garda Síochána Inspectorate) and Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015.

¹⁶ Conway, V., & Walsh, D. P. J., "Current developments in police governance and accountability in Ireland", *Crime, Law and Social Change* 55, no. 2-3 (2011): 4-6, <https://doi.org/10.1007/s10611-011-9271-z>; interviewee, 20 November 2023.

¹⁷ Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice* (Clarus Press: Dublin, 2009), viii.

¹⁸ ICCL, *Rights-Based Policing: How Do We Get There?*, p. 4.

¹⁹ Ibid; Garda Síochána Inspectorate, *Changing Policing in Ireland*, November 2015, <https://www.gsinsp.ie/wp-content/uploads/2020/01/Changing-Policing-in-Ireland.pdf>, p. xii, 2.

reform initiatives also occurred alongside the findings of the Patten Report in Northern Ireland (1999), the recommendations of which led to significant reforms grounded in human rights in the broader context of the peace process.²⁰ The pattern of successive crisis-based reforms is part of the broader sociopolitical context and demonstrates the need for full root and branch reform which led to the establishment of the Commission on the Future of Policing in Ireland (CoFPI) in 2017.

CoFPI was tasked with reporting to government with recommendations on the future of policing.²¹ All aspects of policing were examined and members of the Commission came from diverse backgrounds: academia, civil servants, civil society, police professionals and the private sector.²² The Commission co-existed alongside other police reform initiatives, including recommendations for reform arising from Garda Síochána Inspectorate reports and the Garda Commissioner's Modernisation and Renewal Programme 2016-2021.²³

The paramount recommendation arising from the Commission's final report in 2018 was that human rights are the foundation and purpose of policing.²⁴ In practice, this means that human rights are at the centre of all Garda decision-making and actions.²⁵ This report will analyse the implementation of the human rights recommendations from CoFPI. Key to this analysis is the Policing, Security and Community Safety Act 2024 (PSCS Act), which is intended to implement the recommendations regarding reform of the oversight bodies and the shift to a multi-agency approach to community safety on a legislative basis. To complement the desk-based research and legal analysis, ICCL engaged in semi-structured qualitative interviews with relevant stakeholders to gain insight into the progress of implementing CoFPI's recommendations. Interviewees included staff and members of the policing oversight bodies, academics, former members of CoFPI and civil society organisations.²⁶ A research request to interview members of AGS was denied prior to publication.

²⁰ The Report of the Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland*, September 1999, <https://cain.ulster.ac.uk/issues/police/patten/patten99.pdf>, para 1.9, 4.1.

²¹ CoFPI, *The Future of Policing in Ireland*, p. 1.

²² *Ibid.*, p. 1-2.

²³ *Ibid.*, p. 2.

²⁴ *Ibid.*, p. ix, 10-12.

²⁵ An Garda Síochána, *Policy Document: Garda Decision Making Model*, December 2022, <https://www.garda.ie/en/about-us/our-departments/governance-and-accountability/garda-ethics-culture-bureau-gecb-/garda-decision-making-model.pdf>, p. 4-5.

²⁶ A list of interview questions is available in Appendix 1 of this report.

CHAPTER 1

The Commission on the Future of Policing in Ireland

The Commission on the Future of Policing in Ireland was established by government in May 2017 to review all elements of policing and report back with recommendations.²⁷ Its Terms of Reference specified that the recommendations should address operational policing issues (i.e., service delivery); human resources challenges such as the composition, recruitment and training of Gardaí; the culture and ethos of policing; and adequate oversight, governance and accountability mechanisms.²⁸

The recommendations arising from CoFPI must be viewed in conjunction with previous recommendations regarding Garda reform (described above), including the Modernisation and Renewal Programme 2016-2021.²⁹ The Commission stated that previous Garda reform initiatives that are inconsistent with those from CoFPI should not proceed.³⁰ The recommendations were informed by an extensive consultation process, including submissions from the public, civil society organisations, Garda members, political parties, academics and policing organisations and bodies.³¹ The recommendations were intended to be holistically implemented and together form the basis for human rights-based policing reform in Ireland.³²

ICCL made a submission to CoFPI entitled “Rights-Based Policing: How Do We Get There? A Submission to the Commission on the Future of Policing in Ireland”. It addressed why human rights should be the foundation of policing, arising from Ireland’s obligations under domestic, regional and international human rights law, and then offered detailed recommendations on how Ireland can practically embed human rights in policing. It was intended not as a definitive policy document, rather it should be used to inspire future research on how to continuously embed human rights in the future of policing in Ireland.

Human Rights as the Foundation and Purpose of Policing

The paramount recommendation of CoFPI was that human rights are the foundation and purpose of policing.³³ This recommendation forms the basis for broader human rights-based police reform and should be used to contextualise and orient the other recommendations. The Commission also recommended a shift to a multi-agency and community approach to policing, recognising how AGS has traditionally filled the gap in other areas of policy failures, such as housing and drug use.³⁴ The Commission’s embrace of human rights was uncontroversial and formalised a human rights-based approach to policing on a government policy level.³⁵

Before assessing the implementation of the Commission’s recommendations, it is important to clarify the meaning of human rights and how this recommendation translates in practice. Human rights are a set of entitlements that everyone possesses to ensure they are treated fairly. They are grounded in the inherent dignity of the person.³⁶ Arising from philosophical traditions, human rights are found in the Constitution of Ireland, European Union law, and regional and international human rights treaties.³⁷ These instruments impose an obligation on the Irish government to respect, protect and fulfil the human rights of everyone

²⁷ CoFPI, *The Future of Policing in Ireland*, p. 1.

²⁸ “Terms of Reference,” Commission on the Future of Policing in Ireland, accessed 18 October 2023, https://policereform.ie/en/polref/pages/terms_of_reference.

²⁹ CoFPI, *The Future of Policing in Ireland*, p. 2; “Modernisation and Renewal Programme,” An Garda Síochána accessed 18 October 2023, <https://www.garda.ie/en/about-us/publications/policing-plans/strategy/modernisation-and-renewal-programme/>.

³⁰ CoFPI, *The Future of Policing in Ireland*, p. 2.

³¹ *Ibid.*, p. 3; “Submissions Received by the Commission on the Future of Policing in Ireland,” Commission on the Future of Policing in Ireland, accessed 18 October 2023, <https://policereform.ie/en/polref/pages/wp1800001>.

³² Interviewee, 22 November 2023.

³³ CoFPI, *The Future of Policing in Ireland*, p. ix, 10.

³⁴ Interviewee, 19 December 2023.

³⁵ Interviewee, 22 November 2023; interviewee, 19 December 2023.

³⁶ ICCL, *Rights-Based Policing: How Do We Get There?*, p. 12.

³⁷ *Ibid.*, p. 13-15.

in Ireland. As an organ of the State, there is also a legal obligation on An Garda Síochána to execute its duties in accordance with human rights under the **European Convention on Human Rights Act 2003** and its **public sector duty** under the **Irish Human Rights and Equality Commission Act 2014**.³⁸

A human rights-based approach to policing places human rights at the centre of all decision-making and actions by Gardaí. In doing so, human rights are respected, protected, and fulfilled through policing.³⁹ This approach ensures all people are treated fairly and equally and promotes a culture of accountability within policing services.⁴⁰ It should address stereotypes, racism, and conscious and unconscious biases that exists within AGS.⁴¹ One interview participant eloquently expressed:



“I think human rights is the only paradigm that you can use that will equally locate the suspect, the offender, the victim, the person who goes in to get their passport signed, it’s the only framework that puts equal obligation on the Guards to afford everybody that treatment that’s appropriate”.⁴²

A human rights-based approach to policing is particularly helpful and important when engaging with racial and ethnic minorities and other vulnerable communities, as it furthers trust and respect between communities and police.⁴³ Trust is absolutely indispensable to a police service that operates on the basis of the public’s consent and a community policing model.⁴⁴ The experience of human rights-based policing reform in Northern Ireland demonstrates that meaningful reform takes time, and that momentum for policing reform must be maintained to continuously ensure compliance with human rights.⁴⁵

Where We Are Now: Police Reform Moving Forward

Following the publication of the final report of CoFPI, A Policing Service for our Future was established as the framework for government to implement its recommendations.⁴⁶ Minister for Justice Helen McEntee identified the implementation of CoFPI recommendations as her “top priority as Minister for Justice” and as a core government commitment from the Programme for Government.⁴⁷ It is expected that government will publish a final report on the implementation of CoFPI by the end of 2024, following the commencement of the PSCS Act, which is intended to implement the CoFPI recommendations. This final report will summarise the actions taken in the final phase of police reform, analyse the actions taken in contrast to the original recommendations and identify if any outstanding reform issues remain.⁴⁸ Chapter 3 of this present report also provides an analysis of implementation to date, with a focus on the recommendations relating to human rights.

Given the fundamental need for root and branch reform that necessitated the establishment of CoFPI, the Commission’s final report identified a number of recommendations as urgent next steps for government, which they have completed, including preparing enabling legislation to implement the report’s recommendations (i.e., the PSCS Act), the establishment of the Implementation Group for Policing Reform and the Policing Reform Implementation Programme Office, and the establishment of the Strategic Threat Analysis Centre.⁴⁹ However, substantive political dialogue and debate regarding the recommendations of CoFPI have since stalled – which has detrimental consequences to ensuring the recommendations from CoFPI are meaningful and are not relegated to being yet another report on Garda reform gathering dust on a shelf.

³⁸ See Section 3(1); Section 42 respectively.

³⁹ Alyson Kilpatrick BL, *A Human Rights-Based Approach to Policing*, p. 8.

⁴⁰ Interviewee, 13 December 2023; interviewee, 14 December 2023.

⁴¹ Interviewee, 14 December 2023.

⁴² Interviewee, 20 November 2023.

⁴³ Interviewee, 14 December 2023.

⁴⁴ Policing Authority, *Code of Ethics for the Garda Síochána*, 2020, <https://www.garda.ie/en/about-us/publications/policy-documents/code-of-ethics-2020.pdf>, p. 10.

⁴⁵ Alyson Kilpatrick BL, *A Human Rights-Based Approach to Policing*, p. 8.

⁴⁶ Government of Ireland, *A Policing Service for our Future: Implementing the Report of the Commission on the Future of Policing in Ireland*, 2019, <https://www.drugsandalcohol.ie/33265/1/implementation-plan.pdf>, p. 5.

⁴⁷ Ibid.

⁴⁸ An Garda Síochána Daíl Éireann debate, Tuesday 3 October 2023. Full transcript available here: <https://www.oireachtas.ie/en/debates/question/2023-10-03/130/?highlight%5B0%5D=policing&highlight%5B1%5D=service&highlight%5B2%5D=our&highlight%5B3%5D=future>.

⁴⁹ CoFPI, *The Future of Policing in Ireland*, p. 99.

This report analyses the implementation of CoFPI's recommendations, categorising them by their progress: fully implemented, partially implemented, or not implemented. It is vital that the recommendations' subsequent implementation is resourced effectively (both from a financial and human resources perspective) and that implementation is meaningful. ICCL will continue to monitor the implementation of CoFPI recommendations and identify gaps in the government's approach to operationalising a human rights-based approach to policing.

To complement the legal analysis of the implementation of the CoFPI recommendations, qualitative research data obtained through semi-structured interviews with policing stakeholders (including staff and members of the oversight bodies, academics, former members of CoFPI and civil society organisations) is embedded throughout the report. A research request to interview members of AGS was denied before the deadline for this report.

CHAPTER 2

Human Rights and Policing

Following the final report of CoFPI, a human rights-based approach to policing is now core government and AGS policy.⁵⁰ The relationship between human rights and policing in Ireland is derived from domestic, regional, and international law. Human rights law standards that apply to AGS include: Bunreacht na hÉireann (Constitution of Ireland),⁵¹ domestic equality legislation,⁵² the European Convention on Human Rights (ECHR⁵³), the International Covenant on Civil and Political Rights⁵⁴ and the Convention against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment.⁵⁵



Some human rights, such as the prohibition of torture and ill-treatment, are absolute, meaning that they cannot be limited or interfered with.⁵⁶ Other rights can be limited, but only in certain circumstances when the limitation is necessary, proportionate and grounded in law.⁵⁷ Upholding and respecting human rights requires both negative and positive action: States must refrain from certain actions (e.g., torture) whereas the advancement of socio-economic rights such as the rights to an adequate standard of living, education, or health, requires investment in social policy over time.⁵⁸ Obligations arising from Bunreacht na hÉireann, the ECHR and other international human rights treaties means that the government and AGS are accountable for any human rights violations that may occur.⁵⁹ Furthermore, the public sector duty contained within section 42 of the Irish Human Rights and Equality Commission Act 2014 obliges AGS to eliminate discrimination and protect the human rights of both its staff and the people it serves.⁶⁰ Section 33(2)(c) of the PSCS Act expands on the public sector duty and obliges the Garda Commissioner to ensure AGS's functions are carried out with due regard to its obligations under the public sector duty.

While policing works to advance the rights of individuals to feel safe in their communities, police can also enable human rights violations through, e.g., the targeted use of stop and search of minority communities, inappropriate searches of body orifices, disproportionate use of force or the use of less than lethal weapons in response to protest. When police forces are targeting certain types of crime, including terrorism,

⁵⁰ For example, please see Government of Ireland, *A Policing Service for our Future: Implementing the Report of the Commission on the Future of Policing in Ireland*; An Garda Síochána, *Human Rights Strategy 2022-2024*, May 2022, <https://www.garda.ie/en/about-us/publications/policing-plans/strategy/an-garda-siochana-human-rights-strategy-2022-2024.pdf>; An Garda Síochána, *Garda Decision-Making Model*, July 2019, <https://www.garda.ie/en/about-us/our-policing-principles/garda-decision-making-model.pdf>, p. 1-2.

⁵¹ See Article 40.3.2^o (right to life), Article 40.4.1^o (right to liberty), Article 40.3.1^o (right to privacy and bodily integrity), Article 40.1 (right to equality and non-discrimination), Article 38.1 (procedural rights deriving from the right to a fair trial).

⁵² See Equal Status Acts 2000-2018; Employment Equality Acts 1998-2015; Irish Human Rights and Equality Commission Act, s. 42.

⁵³ See Article 2 (right to life), Article 3 (prohibition of torture or inhuman or degrading treatment or punishment), Article 5 (right to liberty and security), Article 6 (fair trial rights), Article 8 (right to respect for private and family life), Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination).

⁵⁴ Article 6 (right to life), Article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), Article 9 (right to liberty and security of the person), Article 10 (human treatment for all persons deprived of their liberty), Article 14 (fair trial rights), Article 17 (right to privacy), Article 19 (freedom of expression), Article 21 (freedom of assembly), Article 22 (freedom of association), Article 26 (prohibition of discrimination), Article 27 (rights of ethnic, religious, or linguistic minorities).

⁵⁵ See Article 1 (definition of torture), Article 2 (measures to prevent torture), Article 10 (training of law enforcement officials), Article 15 (inadmissibility of evidence obtained by torture).

⁵⁶ ICCL, *Rights-Based Policing: How Do We Get There*, p. 12; "Fundamental Rights," European Commission Migration and Home Affairs, accessed 18 October 2023, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/fundamental-rights_en.

⁵⁷ Ibid (European Commission); Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed to the State Parties to the Covenant*, (Geneva, CH: Human Rights Committee, 2004), para. 6.

⁵⁸ Ibid (Human Rights Committee), ICCL, *Rights-Based Policing: How Do We Get There*, p. 12.

⁵⁹ ICCL, *Rights-Based Policing: How Do We Get There*, p. 15.

⁶⁰ Irish Human Rights and Equality Commission Act 2014, section 42(1)(a) and (c).

their strategies must not have a disproportionate impact on human rights, such as the use of torture or tactics that result in ill-treatment.⁶¹ Gardaí have individual discretion and must exercise appropriate decision-making when determining whether to use their extensive powers to further discriminatory and targeted attacks against an individual.⁶² If left unchecked, Garda powers can be used maliciously and cause great harm. Garda misconduct and abuse of human rights affect the community's confidence in the police, which is detrimental in a police service that operates on the basis of the public's consent and a community policing model.⁶³

Human Rights and An Garda Síochána Internal Policy

An Garda Síochána has taken steps to incorporate human rights principles in its policy documents – its Code of Ethics provides that policing is done in a manner that respects human rights – within a broader context of applicable domestic and international law.⁶⁴ The Code of Ethics applies to all ranks of Gardaí, both when they are interacting with the public and with each other.⁶⁵ However, the reference to human rights in the Code of Ethics is weaker compared to the Police Service of Northern Ireland (PSNI) Code of Ethics and it must be meaningfully integrated into daily police practice.⁶⁶ Human rights are also placed at the centre of the Garda decision-making model.⁶⁷

AGS's Human Rights Strategy 2022-2024 (the Strategy) further advances the internal policy shift towards embedding human rights in policing. The Strategy references the four-year CoFPI implementation plan and how the priority actions for human rights policies were addressed in the earlier strategy (2020-2022) and will continue in the current iteration, including recommendations for human rights training and having oversight bodies assess AGS human rights compliance in the future.⁶⁸

There are other internal and operational Garda documents which discuss human rights and are relevant to an analysis of AGS compliance with a human rights-based approach to policing. Regrettably, these documents are not publicly available. In particular, the Operational Guidance Document on Human Rights “sets out what human rights-based policing actually entails and provides specific guidance to applying human rights standards to policing”.⁶⁹ Given that this appears to be a guidance tool that is fundamental to Gardaí implementing a human rights-based approach to policing, it is vital that the public have access to it in order to assess its true compliance with human rights and also to further the accountability and transparency of AGS.⁷⁰

International Context: Rethinking the Role of the Police

Recommendations emanating from CoFPI and human rights-based reform of Irish policing is happening within a broader international context of discussions on the appropriate role, function and purpose of policing.⁷¹ Indeed, CoFPI itself noted that, “while crime is a top priority for police, in practice the majority of police time, in Ireland and elsewhere, is spent on harm prevention – providing service to people with mental health and addiction conditions, homeless people, children, elderly and others at risk”.⁷² The role of Gardaí in areas outside their statutory purpose of crime prevention and detection was noted by interviewees of this project, including how this may have partially resulted from government failures in social policy development, such as housing and drug policy.⁷³ Additionally, some expressed the need for Irish society to have a broader conversation about the role of police in Ireland, but cautioned that society

⁶¹ ICCL, *Rights-Based Policing: How Do We Get There?*, p. 16.

⁶² Dermot P.J. Walsh, *Human Rights and Policing in Ireland: Law, Policy and Practice*, p. viii.

⁶³ The first Garda Commissioner, Michael Staines, expressed the importance of the community having confidence in the police service: “The Civic Guard will succeed not by force of arms, or numbers, but on their moral authority as servants of the people”. For more information, please see ICCL, *Police Reform: Why Patten Should Apply Here*, p. 7; Policing Authority, *Code of Ethics for the Garda Síochána*, p. 10.

⁶⁴ Policing Authority, *Code of Ethics for the Garda Síochána*, p. 4.

⁶⁵ *Ibid.*, p. 5.

⁶⁶ ICCL, *Implementing Morris An Agenda for Change*, p. 13.

⁶⁷ An Garda Síochána, *Human Rights Strategy 2022-2024*; An Garda Síochána, *Garda Decision-Making Model*, p. 1-2.

⁶⁸ An Garda Síochána, *Human Rights Strategy 2022-2024*, p. 3, 5.

⁶⁹ An Garda Síochána, *Human Rights*, June 2019, <https://www.garda.ie/en/about-us/publications/policy-documents/human-rights-policy-june-2022.pdf>, p. 2-3.

⁷⁰ Alyson Kilpatrick BL, *A Human Rights-Based Approach to Policing*, p. 6.

⁷¹ See “Defund the Police,” Defund the Police, accessed 23 January 2024, <https://defundpolice.org/>; Karla Adam and Rick Noack, “Defund the police? Other countries have narrowed their role and boosted other services,” The Washington Post, 14 June 2020, https://www.washingtonpost.com/world/europe/police-protests-countries-reforms/2020/06/13/596eab16-abf2-11ea-a43b-be9f6494a87d_story.html.

⁷² CoFPI, *The Future of Policing in Ireland*, p. ix.

⁷³ Interviewee, 20 November 2023; interviewee, 19 December 2023.

may perceive this shift as a ‘soft’ approach.⁷⁴ This is particularly relevant in light of the ‘tough on crime’ response to the Dublin riots in November 2023.⁷⁵

Respondents also identified the need for AGS to modernise its outlook and adapt its policing to be appropriate for a modern, diverse Irish society as they felt that some communities are subject to a very different policing approach.⁷⁶



Specifically, one stakeholder noted how these communities do not see AGS as protecting them, rather they see them as a “repressive arm of the State” which exists to “protect the communities which they came from [middle class white settled people]”⁷⁷ and that police powers are used disproportionately to target certain communities. Interviewees expressed how the overuse of police powers in certain communities can delegitimise the exercise of their powers and goes against the community policing ethos of the organisation.⁷⁸

The role and function of the police, and how they engage with communities during their duties (including human rights compliance), is essential as AGS operates on the basis of public confidence.⁷⁹ It is important to acknowledge here that compared to other jurisdictions, AGS enjoys a general high level of public confidence which is often attributed to its engagement with community-based policing.⁸⁰

However, the demographics of Irish society are changing and interviewees identified that certain communities will have more negative perceptions of AGS, such as members of the Travelling community, Roma and people of African descent,⁸¹ and that in particular, racial profiling experiences have an extremely damaging impact on the relationship between racialised and minority communities and AGS.⁸² This has been seen with the inclusion of immigration checks amid broader policing and public safety strategies.⁸³ Stakeholders reported that this has damaged the relationship between AGS and immigrants as it is counterproductive, erroneously furthers the assumption that immigrants are inherently criminal and perpetuates generalisations which blame immigrants for social problems (rather than a failure in State policy).⁸⁴

Placing human rights at the centre of policing and embedding a human rights culture into the ethos of AGS will help further the community’s confidence in police.

One interviewee noted the inextricable link between effective community policing and respect for human rights.⁸⁵

⁷⁴ Interviewee, 20 November 2023.

⁷⁵ Paul Reynolds, “Public Order Unit to be issued with tasers,” RTÉ, 29 November 2023, <https://www.rte.ie/news/ireland/2023/11/29/1419129-gar-da-justice/>; Department of Justice, “Minister McEntee receives Cabinet approval for draft Facial Recognition Technology Bill,” Press Release, 14 December 2023 <https://www.gov.ie/en/press-release/797e2-minister-mcentee-receives-cabinet-approval-for-draft-facial-recognition-technology-bill/>; Liam Herrick, “Dublin riots must not be an excuse to magic away legal and human rights,” 29 November 2023, <https://www.irishtimes.com/opinion/2023/11/29/liam-herrick-dublin-riots-must-not-be-an-excuse-to-magic-away-legal-and-human-rights/>.

⁷⁶ Interviewee, 15 December 2023; interviewee, 14 December 2023.

⁷⁷ Interviewee, 14 December 2023.

⁷⁸ Interviewee, 15 December 2023.

⁷⁹ See footnote 63; PSCS Act, section 4(c).

⁸⁰ Interviewee, 15 December 2023.

⁸¹ Interviewee, 23 November 2023; interviewee, 19 December 2023; Irish Council for Civil Liberties and the Irish Network Against Racism, *Policing and Racial Discrimination in Ireland: A Community and Rights Perspective*, April 2024, <https://inar.ie/wp-content/uploads/2024/04/1.-POLICING-AND-RACIAL-DISCRIMINATION-1.pdf>, p. 15.

⁸² Interviewee, 13 December 2023.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Interviewee, 15 December 2023.

Conclusion

As described throughout this chapter, policing services can both respect and violate human rights. AGS is obliged under human rights law to further a human rights-based approach to policing and centring human rights in policing was the paramount recommendation of CoFPI. Although progress has been made in incorporating human rights principles in internal Garda policies and the renewal of the Human Rights Strategy, interviewees expressed how racialised communities continue to face different policing experiences than white Irish people, including racial profiling and a deep lack of trust in police.

As Irish society becomes more diverse, CoFPI's recommendation to have human rights as the foundation and purpose of policing becomes essential, especially in a policing service operating on the basis of public confidence.⁸⁶

The following chapter will analyse the extent of implementation of the recommendations from CoFPI, which must be seen in the broader legal framework regulating policing and human rights in addition to conversations on the role of the police and how this links to community confidence.

⁸⁶ See footnote 63; PSCS Act, section 4(c).

CHAPTER 3

Analysis of the Implementation of the Recommendations from CoFPI

As discussed in the preceding chapters, the Commission has provided a holistic framework to advance a police reform agenda in Ireland which requires both legislative and non-legislative change. This chapter will analyse the extent of the implementation of the recommendations relating to human rights.

In doing so, the recommendations will be categorised by their progress: fully implemented, partially implemented, or not implemented. By categorising implementation in this manner, the data can be used to identify actions that can be more easily implemented versus recommendations that will require more comprehensive law reform. It is vital that the subsequent implementation of all recommendations is resourced effectively and is meaningful. An overview of implementation assessment is included in Appendix 2.

Non-Legislative Change (Partially Implemented)



On an operational level, the Garda Síochána (Functions and Operational Areas) Act 2022 facilitated the implementation of the new Garda Síochána Operating Model, which established a new divisional policing model. The goal of the new model is to have effective day-to-day operational policing in the local community alongside broader organisational corporate accountability.⁸⁷ AGS also accepted and implemented the recommendation for the establishment of a Human Rights Strategy and a Human Rights Unit.⁸⁸ Interviewees noted that the siloing of the Human Rights Unit may have an adverse impact and be contrary to a holistic human rights-centred approach to policing.⁸⁹ Concern about adequate resourcing of the Human Rights Unit was also raised.⁹⁰ In addition, pilot multi-agency crisis intervention teams and local community safety partnerships⁹¹ have been established.⁹²

A regular programme of engagement between the Joint Oireachtas Committee on Justice and Equality and AGS was also recommended. ICCL received written correspondence from the Committee stating that “the Committee keeps its method of engagement with An Garda Síochána under review and is satisfied that such engagement is effective”. ICCL would recommend a more regularised and established programme of engagement between AGS and the Justice Committee to ensure the political accountability of AGS, as recommended by CoFPI.⁹³

The recommendation to move towards a multi-agency approach and the prioritisation of community policing was broadly welcomed by stakeholders, but they cautioned that this may not work in practice. Notably, interviewees expressed that the impact of CoFPI will be best seen practically with the help of internal policy, operational judgement and resource allocation.⁹⁴

⁸⁷ Rebecca Halpin, Oireachtas Library and Research Service Bill Digest, Garda Síochána (Functions and Operational Areas) Bill 2021, September 2021, https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2021/2021-10-05_bill-digest-garda-siochana-functions-and-operational-ar-eas-bill-2021_en.pdf, p. 2, 12, 13.

⁸⁸ An Garda Síochána, *Human Rights Strategy 2022-2024*; An Garda Síochána, *Human Rights Strategy 2020-2022*, n.d., <https://www.garda.ie/en/about-us/publications/policy-documents/an-garda-siochana-human-rights-strategy-2020-2022.pdf>; Donncha O’Connell, “Garda Síochána has little room for complacency on human rights,” *Irish Times*, 11 June 2020, <https://www.irishtimes.com/opinion/garda-siochana-has-little-room-for-complacency-on-human-rights-1.4275792>.

⁸⁹ Interviewee, 20 November 2023.

⁹⁰ Ibid.

⁹¹ The local community safety partnerships will become permanent under the Policing, Security and Community Safety Act 2024, see section 114.

⁹² Interviewee, 19 December 2023; Cormac O’Keefe, “Crisis intervention teams to be piloted in Limerick city in wake of George Nkencho killing,” *Irish Examiner*, 22 July 2021, <https://www.irishexaminer.com/news/munster/arid-40342505.html>; “Local Community Safety Partnerships,” Government of Ireland, accessed 15 January 2024, <https://www.gov.ie/en/collection/e166a-pilot-local-community-safety-partnerships/>.

⁹³ CoFPI, *The Future of Policing in Ireland*, p. 40-41.

⁹⁴ Interviewee, 14 December 2023.



The Importance of Culture Change (Partially Implemented)

Culture change is a significant element of non-legislative reform and was extensively discussed in ICCL's interviews with policing stakeholders. Interviewees raised the issue of cultural problems within policing services more broadly and identified the need for AGS to recognise culture as a systemic issue: the narrative must move away from "one bad apple" and move toward the rotting barrel instead.⁹⁵ Leadership must model the best cultural practices, such as good management and governance, for them to take form.⁹⁶

Stakeholders raised the importance of selecting the right people to join the organisation – as AGS largely remains a monocultural institution – including recruiting people from diverse and intersectional backgrounds.⁹⁷ Special measures should be taken to recruit people from specific communities who are most marginalised in society.⁹⁸ Having diverse members of AGS who are not policing their own sociopolitical identities (e.g., race, ethnicity, disability, or religion) can increase confidence in police.⁹⁹

Investment in and commitment to culture change is essential as culture takes years to change (especially when combined with the well-documented phenomenon of Gardai hesitant to report incidents of misconduct and avoid external oversight referred to as the blue wall of silence),¹⁰⁰ but is important in reshaping community relations and maintaining long-term relationships with stakeholders.¹⁰¹

Human rights training is one tool that can be used to achieve culture change, but it should also incorporate anti-racism and anti-oppression training.¹⁰² CoFPI noted how police training should instil a respect for human rights in Gardai, both during recruitment and continuing professional development.¹⁰³ AGS has made progress in this regard, including through the establishment of a Human Rights Champions network. Members of this network have completed the Certificate in Policing and Human Rights Law in Ireland at the University of Limerick.¹⁰⁴ Interviewees identified the progress made in training, but emphasised the danger in losing these skills if they are not used frequently.¹⁰⁵ Human rights must be truly embedded into the organisation's psyche to ensure they are at the heart of its decision-making.¹⁰⁶ Interviewees also expressed the importance of translating the relevant human rights norms into practical applications for daily operational decision-making to be most effective.¹⁰⁷

⁹⁵ Interviewee, 20 November 2023.

⁹⁶ Interviewee, 22 November 2023.

⁹⁷ Interviewee, 14 December 2023; interviewee, 23 November 2023.

⁹⁸ Interviewee, 19 December 2023.

⁹⁹ Interviewee, 14 December 2023.

¹⁰⁰ Westmarland, L., & Conway, S., "Police ethics and integrity: Keeping the 'blue code' of silence", *International Journal of Police Science & Management* 22, 4(2020): 378, <https://doi.org/10.1177/1461355720947762>; interviewee, 19 December 2023.

¹⁰¹ Interviewees, 19 December 2023.

¹⁰² Interviewee, 14 December 2023.

¹⁰³ CoFPI, *The Future of Policing in Ireland*, p. 69.

¹⁰⁴ An Garda Síochána, *Human Rights Strategy 2022-2024*, p. 6.

¹⁰⁵ Interviewee, 20 November 2023.

¹⁰⁶ Interviewee, 19 December 2023.

¹⁰⁷ Interviewee, 15 December 2023.



Legislative Change (Partially Implemented)

A key legislative recommendation was to codify the police powers of arrest, search and detention with statutory codes of practice. The **General Scheme of the Garda Síochána (Powers) Bill 2021** was introduced in June 2021 to fulfil this recommendation, but as of the publication of this report, there has been no further legislative progress on this.¹⁰⁸ It has been identified as a priority of the Department of Justice for publication in the summer legislative programme.¹⁰⁹

CoFPI also recommended **a review of AGS's status under the Freedom of Information Act 2014**, as the law currently only provides access to records relating to human resources, finance and procurement.¹¹⁰ Expanding the scope of access to records would play a significant role in advancing the transparency of AGS. A freedom of information request submitted by ICCL to the Department of Justice revealed that there were no records relating to such a review.

A significant recommendation from CoFPI called for **the removal of the prosecutorial powers** of AGS.¹¹¹ This has not been implemented; in fact, section 10 of the PSCS Act retains this power for AGS. While the government accepted this recommendation in principle, the High-Level Review Group on the Role of An Garda Síochána in the Public Prosecution System (HLRG) was established to evaluate the practical implications of implementation, including impact on resources.¹¹² The HLRG published its final report in February 2024 and ultimately recommended the retention of AGS's prosecutorial powers with greater internal oversight.

ICCL is concerned regarding the lack of change in this area. The practice of police prosecuting cases in court is contrary to international best practice.¹¹³ There is no comparable practice to having police services prosecute cases in the UK, Canada, Australia, or New Zealand.¹¹⁴ Independent and properly trained prosecutors are vital to ensure that police investigations comply with human rights law and essential for fairness and consistency in the courts.¹¹⁵ Furthermore, the proposed strengthening of internal oversight referred to within the HLRG report is the new Garda operating model and the associated Divisional Court Management Offices – a form of internal, rather than independent, external oversight. ICCL is of the view that internal oversight is not sufficient, particularly in the broader context of previous reform initiatives predating CoFPI which arose from internal corruption.

In the absence of the abolition of Garda prosecutorial powers, ICCL appreciates the recommendation from the HLRG calling for an increased oversight role for the Office of the Director of Public Prosecutions (DPP), including the recommendation from the HLRG for protocols governing the shared prosecution functions between the two bodies to provide clarity and detail on each other's roles. ICCL also notes the HLRG's recommendations for improved record-keeping, data collection, and increased training for Gardaí in prosecutions work. ICCL will continue to call for the removal of Garda prosecutorial powers but welcomes these recommendations calling for increased external oversight to how these prosecution powers are used in the interim.

Ultimately, the recommendation from the HLRG and the commitment from the government to retain Garda prosecutorial powers found in section 10 of the PSCS Act is contrary to CoFPI's recommendations and international best practice. It is a recommendation with significant human rights implications that has not been implemented.

¹⁰⁸ ICCL, *ICCL Submission on the Garda Síochána (Powers) Bill*, August 2021.

¹⁰⁹ Department of the Taoiseach, *Government Legislation Programme: Summer 2024*, April 2024, <https://www.gov.ie/pdf/?file=https://assets.gov.ie/290519/49fd0f70-f7dd-4b49-90bd-dd0bd67edfd4.pdf#page=null>, p. 7.

¹¹⁰ Freedom of Information Act 2014, Schedule 1, Part 1 (n).

¹¹¹ CoFPI, *The Future of Policing in Ireland*, p. 29-30.

¹¹² High Level Review Group on the role of An Garda Síochána in the Public Prosecution System, *Report to Government*, February 2024, <https://www.gov.ie/pdf/?file=https://assets.gov.ie/283202/7944926b-4ca0-4523-b0d1-55767574c7c4.pdf#page=null>, p. 10.

¹¹³ See for example 'The European Code of Police Ethics', Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and its explanatory memorandum and 'The Role of Public Prosecution in the Criminal Justice System', Recommendation Rec(2000)19 adopted by the Committee of Ministers of the Council of Europe on 6 October 2000.

¹¹⁴ ICCL, ICCL submission for 3rd stage debate on the Policing, Security and Community Safety Bill 2023, April 2023, <https://www.iccl.ie/wp-content/uploads/2023/04/230417-PSCS-Bill-ICCL-Submission-April-2023.pdf>, p. 3.

¹¹⁵ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 1-2.

Policing, Security and Community Safety Act 2024

Introduced in the Oireachtas in January 2023, the Policing, Security and Community Safety Act 2024 intended to implement various recommendations from CoFPI, including:

	Codify the protection and vindication of human rights as a function of Irish policing	FULLY IMPLEMENTED 
	Reform to the police oversight bodies in Ireland, including the amalgamation of the Garda Síochána Inspectorate and the Policing Authority to a new Policing and Community Safety Authority and the establishment of a new Office of the Police Ombudsman to replace the Garda Síochána Ombudsman Commission to reiterate that it is an independent office and not part of AGS	PARTIALLY IMPLEMENTED 
	Establish the office of the Independent Examiner of Security Legislation, with limited powers to ensure that national security legislation has sufficient safeguards for human rights	PARTIALLY IMPLEMENTED 
	Create a corporate board for AGS	FULLY IMPLEMENTED 
	Shift to a multi-agency approach to policing and community safety	FULLY IMPLEMENTED 

Significant gaps exist between the PSCS Act and the recommendations from CoFPI. The independence and the scope of powers of each of the new oversight bodies has been diluted compared to the Commission's recommendations. This is regrettable as effective, independent policing oversight is fundamental in a democratic society to guarantee human rights-compliant policing.¹¹⁶ The following section will detail the gaps between the recommendations for the restructured oversight bodies and the provisions of the PSCS Act.

Office of the Police Ombudsman (Partially Implemented)

Having an independent and well-resourced Police Ombudsman is essential for the oversight and accountability of AGS. In its current form, the Act weakens the scope of its jurisdiction and its full independence is compromised.¹¹⁷ The power of the Police Ombudsman to investigate complaints is confined to those involving Garda personnel¹¹⁸ who have committed an offence or behaved in a manner that constitutes notifiable misconduct. Excluded from the scope of investigation are situations like “the discharge or loss of a Garda firearm or less than-lethal weapon”, as this would affect the public's confidence in policing.¹¹⁹ ICCL concurs with GSOC that the definition of notifiable misconduct should have been expanded to include all “incidents of concern” and that the Police Ombudsman should be “notified of all allegations of misconduct which may amount to a breach of discipline”.¹²⁰

¹¹⁶ Interviewee, 19 December 2023.

¹¹⁷ GSOC has written extensively on the proposed changes, please see their submission to the Bill here: Garda Síochána Ombudsman Commission, GSOC Observations on the Policing, Security and Community Safety Bill 2023, February 2023, <https://www.gardaombudsman.ie/news-room/archive/gsoc-publishes-its-observations-on-policing-security-and-community-safety-bill/?download=file&file=4385>.

¹¹⁸ The definition of Garda personnel includes both members of AGS and Garda staff per section 44 of the PSCS Act.

¹¹⁹ GSOC, GSOC Observations on the Policing, Security and Community Safety Bill 2023, p. 14.

¹²⁰ Ibid.

The Police Ombudsman's powers to conduct searches of Garda stations being contingent upon the Garda Commissioner's permission may have adverse consequences for its ability to collect evidence in a timely manner and conduct independent investigations.¹²¹ Sections 183, 184 and 185 of the Act limit the independence of the new body by obliging it to submit a governance framework to the Minister for Justice and stating that the Minister for Justice, rather than the Police Ombudsman itself, should lay the Strategy Statement and Annual Reports before the Oireachtas. GSOC has noted that the independence of the new Police Ombudsman is inconsistent with both CoFPI recommendations and the Council of Europe's Principles on the Protection and the Promotion of the Ombudsman Institution (Venice Principles).¹²²

CoFPI recommended that the revised legislation allow the Garda Commissioner to refer matters that are in the public interest (such as past police wrongdoing in historical or legacy cases) to GSOC.¹²³ Section 205(7) of the PSCS Act provides for this, however, in GSOC's observations on the Act, it notes that "following engagement with the Department, it has been indicated that the intention of this bill is not to effect any change to the Ombudsman's remit in this respect" and to "not appear directly to envisage legacy cases".¹²⁴ Having jurisdiction over historical or legacy cases would further Ireland's transitional justice obligations (e.g., the right to truth, the right to access justice and guarantees of non-recurrence)¹²⁵ and provide an opportunity for accountability, but it would need to be accompanied by a necessary increase in financial and human resources to ensure adequate investigation.

In sum, due to the concerns regarding the changes to its scope of jurisdiction and institutional independence, the recommendations from CoFPI on the establishment of a new Independent Office of a Police Ombudsman have only been partially implemented. While the provisions of the PSCS Act represent a shift towards investigating incidents rather than individuals,¹²⁶ incidents of concern are limited to those which constitute "notifiable misconduct".¹²⁷ In its final report, the Commission noted that it received multiple submissions (including from ICCL) on the need to reform the discipline process, alongside the Garda Síochána (Discipline) Regulations 2007.¹²⁸ Any reform to the Disciplinary Regulations and the proposed Conduct Regulations provided for under section 257(2) of the Act, should ensure that any human rights violation that constitutes a breach of discipline falls within the definition of notifiable misconduct – and thus within the scope of investigation for the new body.¹²⁹

On a positive note, CoFPI's recommendation that complaints can be made regarding both Garda members and Garda staff has been incorporated under section 173(2)(a) of the Act. As recommended by CoFPI, the Policing and Community Safety Authority now has sole jurisdiction over inspections (as GSOC previously had limited inspection authority).¹³⁰ The new model also facilitates all complaints first going through the Office.¹³¹ Furthermore, the Act incorporates CoFPI's recommendation to expand the scope of the judicial inquiry into the processes and procedures of the Office.¹³² CoFPI also recommended that the new legislation address a possible review or appeals mechanism for determinations made by the Ombudsman. Section 257(2) of the Act proposes that this could be included in the Conduct Regulations (intended to address misconduct by AGS).¹³³ Although progress has been made, concerns regarding the scope of jurisdiction and independence of the Office remain significant. Therefore, CoFPI's recommendation regarding the establishment of a new Independent Office of the Police Ombudsman has only partially been implemented.

¹²¹ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 3.

¹²² GSOC, *GSOC Observations on the Policing, Security and Community Safety Bill 2023*, p. 4.

¹²³ CoFPI, *The Future of Policing in Ireland*, p. 50.

¹²⁴ GSOC, *GSOC Observations on the Policing, Security and Community Safety Bill 2023*, p. 21.

¹²⁵ UNGA, 'Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence' (9 July 2020) A/HRC/45/45, para 21.

¹²⁶ CoFPI, *The Future of Policing in Ireland*, p. 49.

¹²⁷ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 2-3.

¹²⁸ CoFPI, *The Future of Policing in Ireland*, p. 51.

¹²⁹ PSCS Act, section 193(1)(b).

¹³⁰ CoFPI, *The Future of Policing in Ireland*, p. 50; PSCS Act, sections 142, 143, 173.

¹³¹ CoFPI, *The Future of Policing in Ireland*, p. 49; PSCS Act, sections 173(2); GSOC, *GSOC Observations on the Policing, Security and Community Safety Bill 2023*, p. 6.

¹³² CoFPI, *The Future of Policing in Ireland*, p. 50; PSCS Act, section 225(1)(b).

¹³³ CoFPI, *The Future of Policing in Ireland*, p. 50.

The Policing and Community Safety Authority (Partially Implemented)



The PSCS Act establishes the Policing and Community Safety Authority as the sole policing and community safety oversight mechanism, thus amalgamating some of the functions and responsibilities of the Policing Authority and Garda Síochána Inspectorate. Importantly, the Act's proposed mandate includes the power to carry out inspections (recommended by CoFPI), but the Act does not extend the inspection power to security services, unlike the current inspection power of the Inspectorate.¹³⁴ The new Independent Examiner of Security Legislation should have this inspection power, but the Act does not explicitly provide for it. There is a limited power to request "appropriate facilities and accommodation be made available within the premises of an information holder to permit the examination of information, documents or things and to put questions to individuals and where he or she so requests an information holder shall comply with the request", but this is subject to Ministerial approval and thus creates a gap in security services oversight.¹³⁵ There is also a failure to include cooperation with the proposed Inspector of Places of Detention¹³⁶ to ensure that oversight of Garda custody facilities is robust.¹³⁷

Section 143(5) of the Act requires the Policing and Community Safety Authority to send written notice to the Garda Commissioner notifying them of a planned inspection, including the scope and terms of the inspection, and later a statement of the nature and particulars of the matters to be inspected. Unannounced visits are only permitted through a Memorandum of Understanding.¹³⁸ The Garda Síochána Inspectorate has identified that unannounced visits should be provided for in law.¹³⁹ While CoFPI did not specifically call for unannounced visits, they are important in terms of Ireland's broader human rights obligations to monitor conditions in places where people are deprived of their liberty, such as Garda stations.¹⁴⁰

Therefore, in its current form under Part 4 of the PSCS Act, the recommendation from CoFPI to create a new oversight body "to promote inter-agency working and scrutinise the role of all agencies as they affect policing and community safety" has been partially implemented. The functions of the Policing and Community Safety Authority are provided for under section 122 of the PSCS Act and include the specifications provided for by CoFPI, including scrutiny of police performance, inspections, promotion of policing standards, fostering and monitoring of inter-agency cooperation in the delivery of community safety, and engagement in research.¹⁴¹ Section 115 provides for the Minister to make regulations regarding community policing forums and section 116 provides for the functions of safety partnerships.¹⁴² There has been more progress made in implementing the Policing and Community Safety Authority compared to the Office of the Police Ombudsman, but gaps still remain, including unannounced visits, and in inspection powers for security services.

¹³⁴ PSCS Act, section 122(2)(d); ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p.4.

¹³⁵ PSCS Act, section 242(6), 242(7).

¹³⁶ The General Scheme of the Inspection of Places of Detention Bill - which will establish the Inspector of Places of Detention - will enable ratification of the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman, Degrading Treatment or Punishment and provide a mechanism for inspection of places where people are deprived of their liberty.

¹³⁷ See General Scheme of the Inspection of Places of Detention Bill 2022, for ICCL's submission on this General Scheme please see ICCL, *ICCL submission on the General Scheme of the Inspection of Places of Detention Bill 2022*, August 2022, <https://www.iccl.ie/wp-content/uploads/2022/08/220805-IOPD-Bill-ICCL-submission-to-Justice-Committee-FINAL.pdf>.

¹³⁸ PSCS Act, section 148(2)(a).

¹³⁹ Garda Síochána Inspectorate, *Submission to the Houses of the Oireachtas Joint Committee on Justice: General Scheme of the Policing, Security and Community Safety Bill*, August 2021, <https://www.gsinsp.ie/submission-to-the-commission-on-policing/>, p. 5.

¹⁴⁰ ICCL, *ICCL submission on the General Scheme of the Inspection of Places of Detention Bill 2022*, p. 4.

¹⁴¹ See Section 122(1) regarding scrutiny of police performance, section 122(2)(d) for the ability to conduct inspections, section 122(2)(m) allows the Authority to promote and scrutinise effective multi-agency approaches to community safety, section 122(2)(i) permits the Authority to promote professional policing standards, including human rights standards, section 122(2)(n) provides for the Authority to undertake, commission, or assist in research, and section 122(3) reiterates that the Authority will not be involved with internal governance issues, such as the management of the performance of the Garda Commissioner.

¹⁴² CoFPI, *The Future of Policing in Ireland*, p. 44.

Independent Examiner of Security Legislation (Partially Implemented)



A defining feature of AGS as a police service is that it has responsibility for both policing and security services.¹⁴³ Up until the commencement of the PSCS Act, there has been no oversight of national security in Ireland. To remedy this deficiency, CoFPI recommended the establishment of an Independent Examiner of terrorism and serious crime legislation, based on the role in the United Kingdom.¹⁴⁴

There are stark differences between the role in the UK and the role currently prescribed for in the PSCS Act, which is one of the biggest gaps in implementation. This is serious given concerns from the Policing Authority and GSOC that national security has frequently been used to deny oversight bodies access to information.¹⁴⁵ As provided for in the PSCS Act, the scope of access to relevant information, the level of transparency regarding public information, and eligibility for appointment are gaps in implementation that depart from the recommendations of the Commission and will affect the efficacy and importance of the role.

Access to and Transparency of Information

Access to information is essential for the Independent Examiner to be effective. The Act has restricted the Independent Examiner's ability to disseminate relevant information to the public, and it has impaired access to information relevant to its work on the vague and imprecise grounds of "international relations".¹⁴⁶ No definition of "international relations" is included in the Act, and ICCL believes it should be removed as "most information relevant to national security has the potential to impact international relations".¹⁴⁷ Alternatively, a precise, clear definition of national security that is guided by regional and international human rights law should be introduced.¹⁴⁸

The Act does not provide for unfettered access to information for the Independent Examiner, as information holders¹⁴⁹ can refuse to disclose information on the basis of safeguarding international intelligence sources or to "conceal the identity of a person, where to reveal the identity of the person might endanger the life or safety of any person".¹⁵⁰ The lack of full access to information is not found in equivalent positions in other jurisdictions.¹⁵¹ Given the scope of the exception regarding safeguarding international intelligence sources, AGS could use it to refuse to provide national security information that relies on intelligence from abroad to the Independent Examiner.¹⁵² In practice, AGS could also use this exception to refuse to disclose almost all information relating to national security to the Independent Examiner given the transnational nature of national security threats today.¹⁵³ The restriction of information on a national security basis is taking place within a broader international context of national security being used as a justification to limit human rights without having an agreed upon definition;¹⁵⁴ however, this can only be done in a limited and proportionate manner.¹⁵⁵

Jonathan Hall KC, the current Independent Reviewer of Terrorism Legislation in the UK, has previously expressed that access to information for the Independent Examiner must be "non-negotiable".¹⁵⁶ He noted

¹⁴³ Ibid., p. 35.

¹⁴⁴ Ibid., p. 38.

¹⁴⁵ Ibid.

¹⁴⁶ PSCS Act, section 234(1)(c).

¹⁴⁷ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 6.

¹⁴⁸ Ibid., p. 5-6.

¹⁴⁹ Per section 229 of the Act, information holder is defined as "(a) An Garda Síochána, (b) the Permanent Defence Force, and (c) a Minister of the Government or any other public body – (i) with responsibilities relating to national security and protecting the security of the State, including the safeguarding of critical infrastructure, the economic well-being of the State and international relations, (ii) responsible for, or involved in, the development, implementation or operation of security legislation, or (iii) in possession of information, documents or any other thing which, in the opinion of the Independent Examiner, is relevant to his or her work.

¹⁵⁰ PSCS Act, section 242(5)(i) and 242(5)(ii).

¹⁵¹ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 5.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ For more information on the lack of precise definition of national security, please see Irish Council for Civil Liberties and the Committee on the Administration of Justice, *Police Surveillance North and South: Covert Intelligence, Facial Recognition Technology, Oversight and Human Rights*, forthcoming 2024.

¹⁵⁵ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 5.

¹⁵⁶ Cormac O'Keefe, "Security watchdog 'must have access' to secret information," *Irish Examiner*, 24 October 2023, <https://www.irishexaminer.com/news/arid-41254972.html>.

that in his role, he does not have extensive powers and has been able to access information to fulfil the duties of his role, including reporting to Parliament.¹⁵⁷ Any individual entrusted with the responsibilities of such a role must be fully vetted and trusted by the public.¹⁵⁸ The scope of access to information was also raised as a concern by the equivalent office in Australia.¹⁵⁹

Eligibility for Appointment

The eligibility for appointment has been severely limited by confining eligibility to those who have been a judge at the High Court, Court of Appeal or Supreme Court. This is limited compared to other jurisdictions.¹⁶⁰ The eligibility criteria has been criticised by Jonathan Hall KC, who expressed the importance of expanding eligibility beyond senior judges.¹⁶¹ He also noted that the first appointment sets the tone and creates confidence in the role.¹⁶² Interviewees expressed how the limited eligibility criteria and the government's messaging may contribute to a public perception that there is adequate national security oversight, contrary to the reality of the current provisions contained within the PSCS Act.¹⁶³ Grant Donaldson SC (former Independent National Security Legislation Monitor in Australia) also noted the limitation, stating that the Independent Examiner is not a judicial role and that a senior barrister may be more appropriate.¹⁶⁴

Due to these significant issues regarding access to and transparency of information as well as eligibility for appointment, the role and mandate of the Independent Examiner as outlined in Part 4 of the PSCS Act is not equivalent to the Independent Reviewer of Terrorism Legislation in the UK and thus does not meet the standard recommended by CoFPI. The proposal to create such a role means that the recommendation has only been partially implemented and will not be considered fully implemented until significant legislative reforms are incorporated to address the concerns raised above.

Summary of Revised Oversight Mechanisms Concerns

A common theme from the proposed changes to the oversight bodies is a potential regression of powers, access to information and independence. Interviewees expressed particular concern regarding the limitations of the proposed Independent Examiner, as the Commission recommended that AGS retain its dual role of policing and security services on the basis of effective oversight.¹⁶⁵ They also noted that in its current form, the Independent Examiner will be a weaker body than its equivalent position in Northern Ireland (the Independent Reviewer of National Security Arrangements) and may be contrary to principles of equal protection of human rights in both jurisdictions as described within the Good Friday Agreement.¹⁶⁶ The weakened powers of the oversight bodies are regrettable and worrisome given the history of successive crises in AGS arising from a lack of sufficient oversight.

Broader Oversight Concerns

Overall, a key intention behind CoFPI's recommendations relating to oversight was to strengthen and simplify the oversight landscape.¹⁶⁷ Having effective oversight also plays a key role in maintaining the momentum and continuity of human rights-based reform.¹⁶⁸ The reform and changes to the oversight bodies provided for in the PSCS Act are crucial for implementing the CoFPI recommendations. Interviewees highlighted the importance of getting this reform right and expressed concern about the potential weakening and regression of public oversight by the creation of an internal board, highlighting a

¹⁵⁷ Ibid.

¹⁵⁸ Cormac O'Keefe, "Security watchdog 'must have access' to secret information."

¹⁵⁹ Cormac O'Keefe, "New watchdog will be at odds with our notoriously secretive security services," Irish Examiner, 23 September 2022, <https://www.irishexaminer.com/opinion/commentanalysis/arid-40967183.html>.

¹⁶⁰ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 6.

¹⁶¹ Cormac O'Keefe, "Security watchdog 'must have access' to secret information."

¹⁶² Ibid.

¹⁶³ Interviewee, 22 November 2023.

¹⁶⁴ Cormac O'Keefe, "New watchdog will be at odds with our notoriously secretive security services."

¹⁶⁵ Interviewee, 22 November 2023.

¹⁶⁶ Ibid; agreement between the Government of Ireland and the Government of the United Kingdom (adopted 10 April 1998, entered into force 2 December 1999), para. 9.

¹⁶⁷ CoFPI, *The Future of Policing in Ireland*, p. 7.

¹⁶⁸ Interviewee, 19 December 2023; interviewee, 20 November 2023.

possible impact on transparency and accountability.¹⁶⁹ Transparency is essential to ensuring the respect of human rights in policing. The lack of transparency provided for in the PSCS Act regarding the proposed Board stands in stark contrast to the current level of transparency of the Policing Authority when dealing with governance matters.¹⁷⁰ Interview respondents also highlighted how legislation can only go so far in terms of creating the new oversight bodies, and that resourcing (both human and financial) will play a large role in the future success of these bodies.¹⁷¹

Conclusion: Analysis of Implementation

Overall, now that the era of Garda reform specifically associated with CoFPI appears to be drawing to a close with the passage of the Policing, Security and Community Safety Act 2024, it is necessary to maintain the momentum on progress made and to continue advancing a human rights-based approach to policing.

ICCL will continue to advocate for this to government and for strengthened, robust and independent oversight bodies as well as broader policing compliance with human rights standards. ICCL will closely monitor the recommendations from CoFPI which were not provided for in the PSCS Act, including those contained in the General Scheme for the Garda Síochána (Powers) Bill, the retention of prosecutorial powers of AGS following the publication of the HLRG report, and the review of the status of AGS under the Freedom of Information Act 2014.

Interviewees passionately emphasised the importance of police reform being an ongoing process and that it is never finished.¹⁷² The experience of human rights-based police reform in Northern Ireland demonstrates how purposeful police reform must be continuous and ongoing.¹⁷³ The concluding chapter will address how to keep human rights at the centre of police reform moving forward and propose recommendations for doing so.

¹⁶⁹ Interviewee, 20 November 2023; interviewee, 14 December 2023.

¹⁷⁰ Interviewee, 14 December 2023.

¹⁷¹ Interviewee, 19 December 2023; interviewee, 20 November 2023.

¹⁷² Interviewee, 14 December 2023; interviewee, 20 November 2023.

¹⁷³ Alyson Kilpatrick BL, *A Human Rights-Based Approach to Policing*, p. 8.

CONCLUSION

Outlook and Moving Forward

The Commission on the Future of Policing in Ireland (CoFPI) provided a holistic framework for moving forward with human rights-based police reform in Ireland. It examined all aspects of policing and its recommendations required both legislative and non-legislative change. While progress has been made, this report has highlighted some gaps in the implementation of CoFPI's recommendations and the human rights-based reform process. The findings contained within this report inform its recommendations - aimed at AGS, government, the Oireachtas and the oversight bodies - and reiterate the need for further work on implementing CoFPI's recommendations. The recommendations arising from this report are intended to be used in ICCL's broader advocacy and campaigning work on policing and justice reform and should be viewed in conjunction with previous recommendations.¹⁷⁴

As Chapter 3 outlined, the majority of CoFPI's recommendations have only been partially implemented. Stakeholders interviewed for this report emphasised that there should be investment in the financial and human resources to ensure the recommendations can be implemented effectively, and that the impact of CoFPI's recommendations will be seen operationally (rather than in legislation) in terms of internal policy, operational judgement and resource allocation.¹⁷⁵

While there has been progress in increasing human rights training for Gardaí via the establishment of the Human Rights Strategy and the Human Rights Unit within AGS, there are concerns regarding the scope of powers and institutional independence of the restructured oversight bodies. The proposed Independent Examiner may be toothless due to the limited eligibility criteria of the role as well as restrictions on access to and transparency of information. In particular, there are concerns that AGS and other information holders will be able to withhold information on the vague basis of "national security".¹⁷⁶ The failure of government to remove the prosecutorial powers of AGS (arising from the report of the HLRG) is worrisome as it fails to meet a key recommendation from CoFPI and is also contrary to international best practice.¹⁷⁷ There has also been no progress made on the review of the status of AGS under freedom of information legislation. The scope of access to records from AGS is currently limited to those relating to human resources, finances and procurement, thus making it difficult to access substantive information relating to operational decisions and human rights.¹⁷⁸

In other words, while there has been progress made on recommendations that have less of a direct impact on human rights, such as those requiring non-legislative change, the recommendations directly concerning the oversight bodies and the transparency and accountability of An Garda Síochána have not been fully implemented. This is incredibly concerning given the history of weak external accountability of Gardaí, the historical practice of politicians and Garda management denying problems (including corruption) within the organisation and the particular circumstances (i.e., the successive cycle of crisis-based reforms) that gave rise to CoFPI.¹⁷⁹ Furthermore, ICCL believes that the lack of full implementation of CoFPI recommendations is contrary to the holistic nature of its recommendations and the demonstrated need for full root and branch reform. This key finding has informed ICCL's recommendations, which are included in the next section for AGS, government, the Oireachtas and the oversight bodies. It also guides ICCL's advocacy work and calls for increased Garda accountability.

¹⁷⁴ See footnote 10.

¹⁷⁵ Interviewee, 14 December 2023.

¹⁷⁶ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 5.

¹⁷⁷ *Ibid.*, p. 1-2.

¹⁷⁸ Freedom of Information Act 2014, Schedule 1, Part 1 (n).

¹⁷⁹ ICCL, *Police Reform: Why Patten Should Apply Here*, p. 10.

Police Reform Amid Changing Societal Demographics

Police reform does not occur in a vacuum; it is influenced by broader social, legal, economic and political factors. Most recently, the government's and AGS's reactive and knee-jerk response to the Dublin riots in November 2023 included the rapid acquisition of water cannons, the expansion of tasers to all members of the Public Order Unit, the procurement of double strength pepper spray and expedition of legislation to regulate the use of facial recognition technology by Gardaí.¹⁸⁰ Under human rights law, crowd control weapons and surveillance technology should only be used when there is a basis in law and when the response is proportionate to meet a pressing need. The reactive nature of the Garda response to the riots and more general public safety measures was also raised by interviewees, who highlighted the increased Garda presence in Dublin city centre and the inclusion of immigration checks amongst publicly announced public safety measures.¹⁸¹

Ensuring that policing practice applies to all equally and that no communities are disproportionately affected by the exercise of certain police powers is intrinsic to a human rights-based approach to policing and is necessary for a police service that is grounded in community policing. This fact will only grow more relevant with the increasing diversity and changing societal demographics present in Ireland, as noted by the Commission.¹⁸² With an increasingly diverse population,¹⁸³ lack of trust and lower levels of confidence in Gardaí on the part of minoritised communities¹⁸³ and stakeholders' experiences of differential treatment or negative interactions with Gardaí,¹⁸⁴ it is imperative that AGS take measures to increase the diversity of its members and to increase trust amongst all communities since it operates on the basis of community consent.¹⁸⁵ A human rights-based approach to policing benefits both the public and AGS, as it increases public confidence and provides less opportunity for Garda misconduct.¹⁸⁶

An Evidence Base for Change

Interviewees expressed that although practitioners may see the need for change, an evidence base for change is sometimes needed to advance evidence-based policies and solutions to decision-makers, including government and AGS.¹⁸⁷ While the Commission's reports and its recommendations contribute to this evidence base, there remain significant gaps in data collection regarding which communities are policed more frequently in Ireland and why. ICCL has consistently called for the collection of disaggregated data for all areas of policing, particularly for the use of police powers, based on equality grounds, socio-economic status, geographic location and ethnicity.¹⁸⁸ Disaggregated data can provide insight into possible cases of discrimination and on what equality grounds they occur, thus contributing to an evidence base for reform.¹⁸⁹

Interviewees expressed that the PSCS Act could have been used to provide a statutory basis for collecting data on how policing is carried out.¹⁹⁰ ICCL has also produced reports on racial profiling and police surveillance, calling for human rights-based reform and implementation of CoFPI recommendations.¹⁹¹ Collecting such research, data and evidence demonstrating the need for reform (including this report) is important for advancing the accountability and transparency of AGS and for maintaining the momentum of human rights-based police reform.

¹⁸⁰ Paul Reynolds, "Public Order Unit to be issued with tasers," RTÉ, 29 November 2023, <https://www.rte.ie/news/ireland/2023/1129/1419129-garda-justice/>; Department of Justice, "Minister McEntee receives Cabinet approval for draft Facial Recognition Technology Bill," Press Release, 14 December 2023, <https://www.gov.ie/en/press-release/797e2-minister-mcentee-receives-cabinet-approval-for-draft-facial-recognition-technology-bill/>.

¹⁸¹ Interviewee, 13 December 2023.

¹⁸² CoFPI, *The Future of Policing*, p. 90-92.

¹⁸³ ICCL and INAR, *Policing and Racial Discrimination in Ireland: A Community and Rights Perspective*, p. 15.

¹⁸⁴ For more detailed information, please see ICCL and INAR, *Policing and Racial Discrimination in Ireland: A Community and Rights Perspective*, and interviewee, 13 December 2023; interviewee 14 December 2023.

¹⁸⁵ See footnote 63.

¹⁸⁶ ICCL, *Police Reform: Why Patten Should Apply Here*, p. 13.

¹⁸⁷ Interviewee, 20 November 2023.

¹⁸⁸ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 6.

¹⁸⁹ UNOHCHR, *A Human Rights-Based Approach to Data: Leaving No One Behind in the 2030 Agenda for Sustainable Development*, p. 7.

¹⁹⁰ Interviewee, 19 December 2023; interviewee, 20 November 2023.

¹⁹¹ See ICCL and INAR, *Policing and Racial Discrimination in Ireland: A Community and Rights Perspective*; Irish Council for Civil Liberties and the Committee on the Administration of Justice, *Police Surveillance North and South: Covert Intelligence, Facial Recognition Technology, Oversight and Human Rights*, forthcoming 2024; the Committee on the Administration of Justice and the Irish Council for Civil Liberties, *Racial Profiling in Law Enforcement*, forthcoming 2024.

Human Rights-Based Police Reform for the Future

Protecting and vindicating human rights is now a statutory function of AGS in providing policing and security services, thereby reflecting CoFPI's paramount recommendation that human rights be the foundation and purpose of policing.¹⁹² Interviewees expressed that they believed Garda decision-making will be much better once human rights are embedded into their thinking.¹⁹³ There cannot be meaningful human rights-based police reform without adequate policing oversight bodies that would allow for the ability to file complaints about Garda misconduct (including members of AGS violating human rights), the ability to question decisions made on the basis of national security, and the ability of oversight bodies (i.e., the Policing and Community Safety Authority) to conduct both announced and unannounced visits (including inspections).

The historic lack of effective accountability and transparency of AGS has led to a considerable need for full root and branch reform. Yet, this report has found that CoFPI's recommendations relating to accountability and transparency have only partially been implemented and that significant gaps remain. The recommendations listed in the following section are informed by this report's findings as well as engagement with policing stakeholders. These recommendations are intended to fill the gaps in the implementation of CoFPI recommendations and to provide a framework for continuing to advance a human rights-based approach to police reform in Ireland.

¹⁹² PSCS Act, section 9(1)(c).

¹⁹³ Interviewee, 19 December 2023.

RECOMMENDATIONS

This report builds on ICCL's historic work on police reform by calling on the government to fully implement the recommendations from CoFPI and calling on AGS to commit to a human rights-based approach to policing.

FOR AN GARDA SÍOCHÁNA:

- Continue the use of Human Rights Strategies firstly to embed an awareness of human rights law and standards within AGS, and secondly to embed a human rights ethos of policing in the organisation – including through continuous human rights training for members throughout their service and through engagement with the Human Rights Champion programme developed with the University of Limerick. Senior management should take a leadership role in advocating for the use of a human rights-based approach and in actioning its implementation.
- Ensure that the Human Rights Unit does not operate in a silo and that it engages with the wider organisation and other relevant units and bureaus, including the Garda National Diversity and Integration Unit, the Public Order Unit and the Garda National Protective Services Bureau, to ensure all aspects of policing align with human rights.
- Adequately resource the Human Rights Unit to allow it to function at peak capacity and work collaboratively with other areas of the policing service in order to fully embed a human rights ethos.
- Facilitate anti-racism and anti-oppression training for members to understand how systems of oppression work and how they relate to power and privilege; the role of AGS in furthering systems of oppression; and how policing may disproportionately affect certain communities. The training should address stereotypes, racism and conscious and unconscious bias.
- Increase the diversity of AGS members.¹⁹⁴ Consider the use of special measures, such as affirmative action policies, to recruit people from various socio-political identities, including intersectional identities.
- Look to the experience of the Police Service of Northern Ireland (PSNI) in advancing culture change, including through diverse recruitment.
- Take active steps to build trust with communities to ensure they are operating on the basis of the public's consent.
- Strengthen the reference to human rights in the Code of Conduct to be equivalent to the reference in the PSNI's Code of Conduct.
- Facilitate engagement with civil society and have a publicly named policy lead for specific human rights issues such as covert policing, hate crime and racial profiling.
- As a form of accountability and an evaluation tool, establish clear policies mandating improved record-keeping and data collection regarding the types/categories of cases where AGS are making prosecutions decisions and pursuing prosecutions in court, and the types/categories of cases that are best moved from AGS to the Office of the Director of Public Prosecutions (DPP) for decision and prosecution.

¹⁹⁴ A recent publication from the Central Statistics Office found that around 98% of employees were white Irish, 98% were Irish nationals, 89% were Roman Catholic, 64% were male and 4% had a disability. This is compared to Census 2022 results which found that 77% of the population identified as white Irish, 84% identified as Irish nationals, 69% identified as Roman Catholic, 49% were male, and 21.5% identified as having a disability to any extent. For more information, please see "Census of Population 2022 – Summary Results," Central Statistics Office, accessed 23 January 2024, <https://www.cso.ie/en/releasesandpublications/ep/p-cpsr/censusofpopulation2022-summaryresults/>.

FOR GOVERNMENT:

- Amend the PSCS Act to address concerns regarding the restructured oversight bodies:
 - For the Office of Police Ombudsman:
 - Expand the scope of its jurisdiction and ensure that “the Police Ombudsman [...] be notified of all allegations of misconduct which may amount to a breach of discipline” in addition to notifiable misconduct.¹⁹⁵
 - Remove the requirement to consult the Garda Commissioner to authorise searches of Garda stations.
 - Allow for the Ombudsman itself to submit its Strategy Statement and Annual Reports before the Oireachtas, as is the case with other Ombudsman institutions in Ireland (e.g., Office of the Ombudsman, Ombudsman for Children).
 - For the Policing and Community Safety Authority:
 - Permit the Policing and Community Safety Authority the ability to conduct announced and unannounced visits (including inspections) provided for in law.
 - Clarify whether a robust inspection power for security services will be provided to the Policing and Community Safety Authority or the Independent Examiner in order to remedy the limitation which currently exists on inspection of security services per sections 242(6) and 242(7) of the PSCS Act.
 - For the Independent Examiner of Security Legislation:
 - Ensure that the provisions establishing the powers and jurisdictions of the Office are equivalent to those provided for by the Independent Reviewer of Terrorism Legislation¹⁹⁶ in the UK (the model recommended by CoFPI), including expanding the eligibility of the role to include senior counsel, the scope of access to relevant information and the level of transparency regarding public information.
 - Introduce a precise, clear definition of national security in domestic legislation that is guided by regional and international human rights law.¹⁹⁷
- Significantly increase investment in the Office of the Police Ombudsman to provide for adequate financial and human resources in order to ensure a satisfactory investigation.
- Expedite the review of the Garda Síochána (Discipline Regulations) 2007 and ensure any reform to the Discipline Regulations and the proposed Conduct Regulations provided for under section 257(2) of the PSCS Act include “human rights violation” in a definition of breach of discipline and/or notifiable misconduct.
- Codify the existing police powers of search, arrest and detention and ensure they are in compliance with recent jurisprudence and human rights standards. This should not be viewed as an opportunity to expand police powers and should instead be confined to existing powers found in criminal law and relevant case law. Best practices from relevant common law jurisdictions should be considered as a model for codification.
- Amend the Freedom of Information Act 2014 to provide for full access to records relating to An Garda Síochána in order to demonstrate commitment to the transparency and accountability of AGS.

¹⁹⁵ Garda Síochána Ombudsman Commission, *GSOC Observations on the Policing, Security and Community Safety Bill 2023*, February 2023, <https://www.gardaombudsman.ie/news-room/archive/gsoc-publishes-its-observations-on-policing-security-and-community-safety-bill/?download=file&file=4385>, p. 14; Irish Council for Civil Liberties, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, October 2023, <https://www.iccl.ie/wp-content/uploads/2023/10/ICCL-Briefing-on-Policing-Security-and-Community-Safety-Bill-2023.pdf>, p. 2-3.

¹⁹⁶ See Counter Terrorism and Security Act 2015.

¹⁹⁷ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 5-6.

- Progress the National Equality Data Strategy¹⁹⁸ announced in March 2022 and mandate the collection of disaggregated equality data on domestic equality grounds¹⁹⁹ and on equality grounds protected under international human rights law. These equality grounds should include but not be limited to sex, age, ethnicity, migration or displacement status, disability, religion, civil status, income, sexual orientation and gender identity.²⁰⁰
 - The collection and publication of disaggregated equality data under the National Equality Data Strategy should allow for collecting and identifying data on multiple and intersecting forms of discrimination (e.g., on the basis of sex and disability) and how this data can inform different communities' confidence in police.
- Provide for the collection of geographic location data for policing activities, including stop and search, arrest and detention, in order to identify if certain communities are being disproportionately affected by policing.
- Ensure that the protection of human rights in policing is equivalent to that in Northern Ireland and that it upholds the principle of equivalence found in the Good Friday Agreement.
- Alongside the shift to a multi-agency and community approach to policing, invest in areas of social policy where AGS often spends the majority of its time dealing with harm prevention, including housing, drugs and mental health.
- Increase investment in the office of the DPP to ensure it can provide sufficient oversight of the prosecutorial powers of AGS and to execute the recommendations of the High-Level Review Group on the Role of An Garda Síochána in the Public Prosecution System (HLRG).

FOR THE OIREACHTAS:

- As recommended by CoFPI, establish a regular programme of engagement between the Joint Oireachtas Committee on Justice and Equality and AGS. We suggest this happen on a quarterly basis.
- Continue to put pressure on government, for instance through the use of private members' time or parliamentary questions, for CoFPI's recommendations to be fully implemented and to maintain momentum on human rights-based police reform in Ireland.

¹⁹⁸ See "Minister O'Gorman announces the development of a National Equality Data Strategy," Government of Ireland, accessed 23 January 2024, <https://www.gov.ie/en/press-release/5a7f4-minister-ogorman-announces-the-development-of-a-national-equality-data-strategy/>.

¹⁹⁹ Equal Status Acts 2000-2018; Employment Equality Acts 1998-2015.

²⁰⁰ United Nations Office of the High Commissioner for Human Rights, *A Human Rights-Based Approach to Data: Leaving No One Behind in the 2030 Agenda for Sustainable Development*, 2018, <https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>, p. 7.

FOR THE OVERSIGHT BODIES (POLICING AND COMMUNITY SAFETY AUTHORITY, OFFICE OF THE POLICE OMBUDSMAN, INDEPENDENT EXAMINER OF SECURITY LEGISLATION):

- In the execution of their duties, maintain an active role in assessing and calling for the human rights compliance of AGS, including adherence to Bunreacht na hÉireann, the European Convention on Human Rights and relevant international human rights treaties.
- Encourage their staff to complete the Certificate in Policing and Human Rights Law in Ireland at the University of Limerick.
- Increase their diversity of staff to correspond to the increasing diversity in Irish society.

FOR THE POLICING AND COMMUNITY SAFETY AUTHORITY:

- In accordance with section 143(1) of the PSCS Act, ensure that the protection and vindication of human rights as a core function of AGS is central to the objectives and functions of the Authority, particularly for its inspection function to advance strong, robust and independent oversight and ensure adequate protection of human rights in policing.
- Appoint a full-term human rights expert staff member for the Policing and Community Safety Authority, similar to the Human Rights Advisor to the Northern Ireland Policing Board.

Appendix 1: Interview Questions

Questionnaire for Oversight Bodies

Introduction

- Do you consent to having your interview recorded and possibly referenced in my research report? You can stop at any time or refuse to answer a question.
- How long have you been a member of X oversight body? What year did you join?
- Have you worked in an oversight/accountability/Ombudsperson office before? What is your background?

Transition: There are many recommendations arising from the final report of the Commission on the Future of Policing in Ireland, but the Irish Council for Civil Liberties is focusing on those associated with human rights as this is our area of expertise, and thus the following questions will address the relationship between human rights and policing reform.

Human Rights and Policing Reform in Ireland

- Can you tell me about your relationship with AGS?
- Can you describe to me what you think the appropriate role/function of AGS is in Irish society?
- Do you think this role/function aligns with the current goals of policing? (And the function of AGS as identified in the Garda Síochána Act 2005 and the PSCS Bill)? Do you think policing in Ireland is moving in the right direction?
- Are you familiar with/aware of the recommendations from the Commission on the Future of Policing in Ireland? If yes, have you read The Future of Policing Report?
 - Do you agree with the recommendations? Is there anything you think should be changed? Do you think the Commission on the Future of Policing in Ireland missed anything?
 - Have you seen aspects of the Commission on the Future of Policing in Ireland related to human rights being implemented? Can you give details?
- Have you been monitoring the implementation of the Commission's recommendations, particularly those relating to oversight and accountability?
- Do you think there is a need to reform AGS? Do you think orienting human rights as the focus of policing is an effective method of reform?
- What does police reform mean to you, your organisation, and/or the people your organisation represents?
- What role do you see your organisation playing in police reform in Ireland?
- Are you familiar with the reform process in the North? Have you heard of the Patten report or read the recommendations from it?
- Are you aware of previous reports making recommendations for reform (e.g., Fennelly Commission/O'Higgins Commission/Ionann Audit)? Do you experience reform fatigue?

-
- What do you believe has stopped or hindered institutional reform?
-
- Are you concerned that the recommendations from the Commission on the Future of Policing in Ireland are not being implemented fully?
-
- What are your thoughts on the Policing, Security and Community Safety Bill? Do you think this Bill will contribute to meaningful change or reform in Irish policing and the oversight structures? Do you think these changes are a move in the right direction?
-
- What barriers do you face in executing your mandate? What do you think are options to fix this?

GSOC Only: Have you been disaggregating the data you receive from monitoring and tracking trends in complaints including the type of complaints, most frequent complaint, and geographic distribution of complaints?

Human Rights and Policing

-
- Can you describe to me, in your own words, what human rights are?
-
- Can you describe to me what human rights are implicated in your work?
-
- How do you think you engage with human rights on a daily basis? How do you proactively incorporate human rights into your daily work?
-
- Have you participated in human rights training?
-
- Based on what you see in your work/role, do you think there is a high level of public confidence in An Garda Síochána? Do you think people respect the role and powers of Gardaí? Do you think this can depend on a person's community?
-
- Have you raised human rights concerns relating to AGS in domestic law reform (Oireachtas), UN human rights treaty body reporting, Universal Periodic Review, or other international human rights monitoring mechanisms, such as those associated with the Council of Europe (European Commission against Racism and Intolerance [ECRI] or the Committee on the Prevention of Torture)?
-
- Do you get updated human rights training or regular briefings, for example when new law is developed by the Oireachtas, the Irish Courts or international courts such as the European Court of Justice or the European Court of Human Rights?
-
- Have you ever been briefed on recommendations to An Garda Síochána from international human rights bodies, such as the Human Rights Committee or the Committee Against Torture?

Conclusion

-
- Is there anything else you want to tell me?
-
- Thank participants for their time and reiterate that all responses are confidential, and if they will be referenced in the final research report they will be anonymised.
-

Questionnaire for Civil Society Organisations

Introduction

- Do you consent to having your interview recorded and possibly referenced in my research report? You can stop the interview at any time or refuse to answer a question.
- How long have you been working for/involved in your organisation?
- Can you describe to me the work of your organisation?

Transition: There are many recommendations arising from the final report of the Commission on the Future of Policing in Ireland, but the Irish Council for Civil Liberties is focusing on those associated with human rights as this is our area of expertise, and thus the following questions will address the relationship between human rights and policing reform.

Human Rights and Policing Reform in Ireland

- Can you tell me about your interactions or relationship with AGS?
- Do you help or support people in complaining about the Gardaí?
- Does your organisation regularly engage or consult with Gardaí?
- How much of your work involves interaction with the Gardaí?
 - Does your work involve addressing the consequences/ramifications of marginalised groups interacting with Gardaí (e.g., impact of racial profiling, certain groups being disproportionately subject to police interaction, migrants having to register with GNIB, drug users being policed, criminalisation of homelessness, etc.)?
- Can you describe to me what you think the appropriate role/function of AGS is in Irish society?
- Do you think this role/function aligns with the current goals of policing? (And the function of AGS as identified in the Garda Síochána Act 2005 and the PSCS Bill)? Do you think policing in Ireland is moving in the right direction?
- What are your thoughts on the Policing, Security and Community Safety Bill? Do you think this Bill will contribute to meaningful change or reform in Irish policing?
- Do you think there is a need to reform AGS? Do you think orienting human rights as the focus of policing is an effective method of reform?
- What does police reform mean to you, your organisation, and/or the people your organisation represents?
- What do you believe has stopped or hindered institutional reform?
- Are you aware of the outputs/reports/recommendations of the Policing Authority or the Garda Síochána Inspectorate? If so, have they affected your work? How?
- Do you think there is a high level of public confidence in An Garda Síochána? Do you think people respect the role and powers of Gardaí? Do you think this can depend on a person's community?
- Do you think different communities experience policing differently?

-
- What has your experience been like with a move towards a multi-disciplinary and multi-agency approach to policing, the approach recommended by the Commission on the Future of Policing in Ireland?
 - Do you think involving other agencies/organisations/departments in policing is the right approach? In particular, in relation to dealing with social issues such as mental health, drug use, homelessness, and housing insecurity?
 - Have you engaged with the pilot Local Community Safety Partnerships? If so, what has your experience been like?
-
- Did you make a submission to the Commission on the Future of Policing in Ireland?
 - Have you read the final report?
 - Do you agree with its recommendations? Do you think the Commission missed anything?
-
- Have you been monitoring the implementation of the Commission's recommendations, including the impact of the particular group that your organisation represents/advocates for?
-
- Have you raised human rights concerns relating to AGS in domestic law reform (Oireachtas), UN human rights treaty body reporting, Universal Periodic Review, or other international human rights monitoring mechanisms, such as those associated with the Council of Europe (European Commission against Racism and Intolerance [ECRI] or the Committee on the Prevention of Torture)?
-

Conclusion

- Is there anything else you want to tell me?
-
- Thank participants for their time and reiterate that all responses are confidential, and if they will be referenced in the final research report they will be anonymised.
-

Questionnaire for Academics and Legal Practitioners, including former Members of the Commission

Introduction

- Do you consent to having your interview recorded and possibly referenced in my research report? You can stop at any time or refuse to answer a question.
- How long have you been an academic/solicitor/barrister? Have you always worked/researched with/about Gardaí/police and broader policing and criminal justice issues?

Transition: There are many recommendations arising from the final report of the Commission on the Future of Policing in Ireland, but the Irish Council for Civil Liberties is focusing on those associated with human rights as this is our area of expertise, and thus the following questions will address the relationship between human rights and policing reform.

Human Rights and Policing Reform in Ireland

- Can you tell me about your interactions or relationship with AGS? Do you regularly engage with them? How do you engage with Gardaí in your daily work? (**For academics only** – is your research solely desk-based? Is your research comparative? Do you frequently engage with other Irish or international academics? Do you research other police services? If so, which ones?)
- Can you describe to me what you think the appropriate role/function of AGS is in Irish society? Have your thoughts on this changed since you began working closely with Gardaí?
- Do you think this role/function aligns with the current goals of policing? (And the function of AGS as identified in the Garda Síochána Act 2005 and the PSCS Bill)? Do you think policing in Ireland is moving in the right direction?
- Are you familiar with/aware of the recommendations from the Commission on the Future of Policing in Ireland? If yes, have you read The Future of Policing Report? Did you make a submission?
 - Do you agree with the recommendations? Is there anything you think should be changed? Do you think the Commission on the Future of Policing in Ireland missed anything?
 - Have you seen aspects of the Commission on the Future of Policing in Ireland related to human rights being implemented?
 - Are you concerned that the recommendations from the Commission on the Future of Policing in Ireland are not being implemented fully?
- Do you think there is a need to reform AGS? Do you think orienting human rights as the focus of policing is an effective method of reform?
- What does police reform mean to you? What does it look like? Do you think you have a role in police reform?
- Are you familiar with the reform process in in the North? Have you heard of the Patten report or read the recommendations from it?
- Are you aware of previous reports making recommendations for reform (e.g., Fennelly Commission/O'Higgins Commission/Ionann Audit)? Do you experience reform fatigue?
- What do you believe has stopped or hindered institutional reform?
- What are your thoughts on the Policing, Security and Community Safety Bill? Do you think this Bill will contribute to meaningful change or reform in Irish policing?

Human Rights and Policing

- Do you think there is a high level of public confidence in An Garda Síochána? Do you think people respect the role and powers of Gardaí? Do you think this can depend on a person's community?
- Do you think different communities experience policing differently? What is your experience engaging with police like?
- Have you raised human rights concerns relating to AGS in domestic law reform (Oireachtas), UN human rights treaty body reporting, Universal Periodic Review, or other international human rights monitoring mechanisms, such as those associated with the Council of Europe (European Commission against Racism and Intolerance [ECRI] or the Committee on the Prevention of Torture)?

Conclusion

- Is there anything else you want to tell me?
- Thank participants for their time and reiterate that all responses are confidential, and if they will be referenced in the final research report they will be anonymised.

Appendix 2: Assessment of Implementation of Recommendations

FIRST PRINCIPLE: HUMAN RIGHTS ARE THE FOUNDATION AND PURPOSE OF POLICING.

Recommendation from CoFPI:

Legislation defining police powers of arrest, search and detention should be codified, with statutory codes of practice.



WHAT HAS BEEN DONE

Publication of the General Scheme of the Garda Síochána (Powers) Bill 2021.

GAPS IN IMPLEMENTATION

The codification of police powers is welcomed to clarify the scope of Gardaí powers. It is an important step forward in advancing the transparency and accountability of Gardaí. It will ensure that the exercise of police powers conforms with human rights law and standards, including the right to life, the prohibition of torture and ill-treatment, the right to liberty, and the rights to privacy, equality, and non-discrimination. Any restrictions on these rights must be prescribed by law, be necessary in a democratic society, and be proportionate to a legitimate aim.²⁰¹

In the General Scheme of the Garda Síochána (Powers) Bill 2021, the provision to record stop and searches is important as the experience in other jurisdictions demonstrates how minority groups disproportionately experience stop and searches. Previous ICCL research found that Black and Traveller communities are disproportionately affected.²⁰²

However, ICCL remains concerned about provisions which entail rollbacks to relevant rights and how this Act is being used to expand Garda powers – in particular, removing the 24-hour limit to detention, expanding the power to arrest without a warrant, and permitting Gardaí to compel the sharing of personal device (i.e., phone, computer) passwords without a warrant.²⁰³

There should also be additional thresholds for police powers involving the use of force, including a higher threshold for the use of lethal force that complies with human rights law and international best practices.

²⁰¹ ICCL, *ICCL Submission on the Garda Síochána (Powers) Bill*, p. 1, 5.

²⁰² ICCL and INAR, *Policing and Racial Discrimination in Ireland: A Community and Rights Perspective*, p. 16, 23.

²⁰³ ICCL, *ICCL Submission on the Garda Síochána (Powers) Bill*.

FIRST PRINCIPLE: HUMAN RIGHTS ARE THE FOUNDATION AND PURPOSE OF POLICING.

Recommendation from CoFPI:

An Garda Síochána should have a human rights strategy and a human rights unit within the organisation to develop, implement and monitor the strategy. It should work with the Irish Human Rights and Equality Commission to fulfil its human rights and equality responsibilities.



WHAT HAS BEEN DONE

Since the publication of CoFPI's final report, there have been two human rights strategies published by AGS. The Human Rights Strategy 2020-2022 focused on incorporating human rights into policing.²⁰⁴ The Human Rights Strategy 2022-2024 is purported to address priority actions arising from CoFPI's final report. The Strategy (2022-2024) aims to continue the progress made in increasing awareness of the relationship between human rights and policing. The Strategy identifies a seven step "action plan" for building a human rights infrastructure within AGS and for implementing the human rights recommendations of the Commission report. Priorities within the report include human rights training for members and "the future assessment by an oversight body of compliance by AGS with human rights obligations".²⁰⁵

The Strategy also recognises the recommendations regarding culture change and embedding a human rights ethos in policing: "the recommendations of CoFPI with regard to actions that AGS can take to embed the protection of human rights in the thinking, ethos and operations will continue to be implemented".

GAPS IN IMPLEMENTATION

ICCL welcomes the establishment of the Human Rights Unit and the development of the Human Rights Strategy. ICCL encourages the commitment to a human rights-based approach to policing enshrined in the Strategy, including continuous human rights training.

ICCL also welcomes any information relating to the review of Actions 2.8 and 2.9 and relating to clarifying the role of Gardaí in coroner inquests. ICCL also welcomes a Code of Practice on the Lawful and Effective Use of Covert Techniques [Surveillance Techniques] for implementation within AGS.²⁰⁶

AGS should additionally publish relevant Garda documents that outline its approach to human rights policing, such as the Operational Guidance Document "A Human Rights Based Approach to Policing", the Human Rights Framework, and the Human Rights Screening Tool in order to advance the accountability and transparency of AGS.²⁰⁷

²⁰⁴ An Garda Síochána, *Human Rights Strategy 2022-2024*, p. 4.

²⁰⁵ *Ibid.*, p.5.

²⁰⁶ *Ibid.*, p.18

²⁰⁷ Alyson Kilpatrick BL, *A Human Rights-Based Approach to Policing*, p. 6.

FIRST PRINCIPLE: HUMAN RIGHTS ARE THE FOUNDATION AND PURPOSE OF POLICING.

Recommendation from CoFPI:

PCSOC should have a human rights adviser to assist in assessing police compliance with human rights obligations.



WHAT HAS BEEN DONE

The provision calling for a human rights advisor for the Policing and Community Safety Authority is absent from the PSCS Act.

GAPS IN IMPLEMENTATION

The absence of a human rights advisor for the Policing and Community Safety Authority contradicts the recommendations of CoFPI. It is important that the PSCS Act be amended to include the establishment of such an advisor. ICCL recommends the establishment of a full-term human rights expert staff member for the Policing and Community Safety Authority, similar to the Human Rights Advisor to the Northern Ireland Policing Board.

FIRST PRINCIPLE: HUMAN RIGHTS ARE THE FOUNDATION AND PURPOSE OF POLICING.

Recommendation from CoFPI:

Human rights training should be made available to members of the policing governance and oversight bodies.



GAPS IN IMPLEMENTATION

ICCL's interviews found that members and staff of the policing oversight bodies are engaged in human rights training.²⁰⁸

The most recent annual report available from GSOC (2022) notes that "Seven staff members completed qualifications in Policing & Human Rights Law in Ireland, and two staff members enrolled in a Masters in Human Rights in Criminal Justice programme, in the University of Limerick".²⁰⁹

²⁰⁸ Interviewees, 14 November 2023 and 20 November 2023.

²⁰⁹ Garda Síochána Ombudsman Commission, *2022 Annual Report – Transformation, Growth, Reform*, September 2023, p. 19.

SECOND PRINCIPLE: POLICING AND NATIONAL SECURITY ARE NOT THE RESPONSIBILITY OF THE POLICE ALONE.

Recommendation from CoFPI:

Establish new legislation – a Policing and Community Safety Act – redefining policing and the role of the police service and other state agencies in harm prevention.



WHAT HAS BEEN DONE

Passage of the Policing, Security and Community Safety Act 2024 in February 2024.

Section 9 of the Act outlines the function and role of the police service.

Section 9(2) of the Act outlines cooperation between AGS and other Departments of State, agencies, and bodies by law which are responsible for any matters relating to the function of AGS.

The role of AGS in harm prevention is found in section 9(1)(f) of the Act.

GAPS IN IMPLEMENTATION

Although ICCL welcomes the positive steps the PSCS Act has taken in partially implementing the recommendations from CoFPI, significant concerns remain regarding reform to the oversight bodies, which is described below.

Although this Act is purported to put the recommendations from CoFPI on a statutory footing, some recommendations have been excluded. For example, section 10 of the Act, which provides for the retention of the prosecutorial powers of Gardaí (and the government's commitment to retaining Garda prosecutorial powers is reaffirmed following the publication of the High-Level Review Group on the Role of An Garda Síochána in the Public Prosecution System), is directly opposed to the relevant recommendation by CoFPI and international best practice.

CoFPI also recommended a review of the status of AGS under freedom of information legislation, but a freedom of information request submitted by ICCL revealed that there were no such records in the Department of Justice relating to such a review.

While ICCL welcomes the provisions (sections 77 and 122) of the PSCS Act that oblige AGS and the Authority to collect “statistical information concerning offences, criminal proceedings and the state of crime in the State”, statistics related to the use of force, and trends and patterns in crimes committed (section 122(I)(i) and 122 (I)(ii)), ICCL believes that these provisions should be expanded to include the collection of disaggregated data for all areas of policing. In particular, the data should include how police powers are being used. For instance, disaggregated data should be collected for stop and search on the basis on equality grounds, socio-economic status, geographic location, and ethnicity.²¹⁰

²¹⁰ ICCL, Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023), p. 6.

THIRD PRINCIPLE: ACCOUNTABILITY AND OVERSIGHT STRUCTURES SHOULD BE CLEAR AND EFFECTIVE.

Recommendation from CoFPI:

An enhanced, regular programme of engagement between An Garda Síochána and the Joint Oireachtas Committee on Justice and Equality should be introduced to improve the effectiveness of the channel.



GAPS IN IMPLEMENTATION

ICCL received written correspondence from the Justice Committee stating that, “the Committee keeps its method of engagement with An Garda Síochána under review and is satisfied that such engagement is effective”. ICCL recommends a more regularised and established program of engagement between AGS and the Justice Committee to ensure the political accountability of AGS, as recommended by CoFPI.²¹¹

²¹¹ CoFPI, *The Future of Policing in Ireland*, p. 40-41.

THIRD PRINCIPLE: ACCOUNTABILITY AND OVERSIGHT STRUCTURES SHOULD BE CLEAR AND EFFECTIVE.

Recommendation from CoFPI:

There should be a clear distinction between democratic accountability and oversight by appointed bodies. The operational independence of the Garda Commissioner should be explicit in legislation. Oversight should be streamlined, more coherent and strengthened in a new Policing and Community Safety Oversight Commission (PCSOC), superseding the Garda Síochána Inspectorate and the Policing Authority, and taking on most of their functions as well as some new ones. PCSOC should have a remit to oversee the relevant activity of all agencies involved in policing and the prevention of harm, at both national and local level. It should scrutinise policing performance, carry out inspections, promote professional standards and coordinate and support local structures for community engagement with police.



WHAT HAS BEEN DONE

The PSCS Act outlines the reformed oversight bodies: the Policing and Community Safety Authority (Part 4) and the Office of the Police Ombudsman (Part 5).

Section 34(1) of the PSCS Act explicitly provides for the independence of the Garda Commissioner, and section 34(2) notes that it is accountable to the board. Section 122(3) of the Act reiterates its independence: “For the avoidance of doubt, the performance by the Authority of its functions shall not incorporate management of the performance of the Garda Commissioner”.

Section 122 of the Act outlines the objective, functions, and powers of the Authority, which comply with the recommended functions from CoFPI. This includes reviewing policing performance (sections 122(2)(b) and (c)), carrying out inspections (section 122(2)(d)), promoting professional policing standards (section 122(2)(i)), and supporting local structures for community engagement with police (section 122(m)).

GAPS IN IMPLEMENTATION

While ICCL welcomes the steps taken towards implementing the recommendations of CoFPI in the PSCS Act, it remains concerned about gaps in implementation, as described in detail in Chapter 3 of this report.

For instance, the PSCS Act does not provide for the Policing and Community Safety Authority to have oversight of all agencies involved in policing and harm prevention, as it does not give the Policing and Community Safety Authority oversight of the Local Community Safety Partnerships (section 122 [objectives, functions and powers of Authority] is confined to oversight of AGS) and inspections are similarly confined to AGS (section 143(1)). In other words, the Authority is only responsible for oversight of AGS (which is not in line with the multi-agency approach to harm prevention and policing posited in the final report of CoFPI).

While section 122(d) provides for the power to “carry out inspections”, ICCL suggests that this be expanded to explicitly refer to the carrying out of inspections to adhere to “human rights standards and cooperation with other public service bodies to enhance community safety”.²¹²

The provisions regarding visits and inspections, including Section 145 which provides for joint inspections with proscribed inspection bodies, should also be expanded to include explicit reference to the new Inspector of Places of Detention (outlined in the General Scheme of the Inspection of Places of Detention Bill 2022) and the guarantee of unannounced inspections as provided for in law to ensure compliance with the Optional Protocol to the United Nations Convention against Torture.²¹³

ICCL is also concerned about sections 139 and 140 of the Act, which prohibits the Chief Executive of the Policing and Community Safety Authority to question or express opinions on government or ministerial policy. Hence, ICCL is calling for these provisions to also be removed.

To retain the independence of the Policing and Community Safety Authority, the annual reports should be submitted directly to the Oireachtas and not to the Minister for Justice.²¹⁴

²¹² ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 4.

²¹³ *Ibid.*

²¹⁴ PSCS, section 138(1).

THIRD PRINCIPLE: ACCOUNTABILITY AND OVERSIGHT STRUCTURES SHOULD BE CLEAR AND EFFECTIVE.

Recommendation from CoFPI:

An independent body, superseding GSOC, should be established, perhaps named the Independent Office of the Police Ombudsman (IOPO) to make clear that it is not part of An Garda Síochána. IOPO should receive all complaints about the police service, from whatever source. If it judges a complaint to be a performance management matter, IOPO should refer it to the police service for resolution.



All complaints that go beyond performance management, and involve alleged breaches of human rights or accepted standards of policing, should be investigated by IOPO itself, not by police, and IOPO should be adequately resourced to do so. All complaints, including performance matters dealt with by the police service, must be properly documented and the data accessible to the IOPO. All complaints should be handled swiftly, and transparently so that the complainant can easily track progress, and those who are the subject of complaints are properly informed. The police service should improve its performance management processes and should distinguish between matters of discipline and those requiring guidance rather than punishment. The Disciplinary Regulations should be reviewed and reformed.

WHAT HAS BEEN DONE

Part 5 of the PSCS Act outlines the establishment of the new Office of the Police Ombudsman.

GAPS IN IMPLEMENTATION

The jurisdiction of the Office of the Police Ombudsman outlined in the PSCS Act does not fully align with the recommendations from CoFPI, as complaints are confined to instances of a Garda personnel 1) committing an offence or 2) behaving in a manner that constitutes notifiable misconduct. ICCL concurs with GSOC that the definition of “notifiable misconduct” should be expanded to include all “incidents of concern” and that Garda should be “notified of all allegations of misconduct which may amount to a breach of discipline”.²¹⁵

The Act only permits for searches of Garda stations contingent upon permission from the Garda Commissioner.²¹⁶ The Act also limits the institutional independence of the office by requiring reports to go through the Minister for Justice before being presented in the Oireachtas. The Ombudsman should be permitted to lay its Strategy Statement and Annual Reports before the Oireachtas directly, like other ombudsman institutions.²¹⁷

Any reforms to the Disciplinary Regulations, and the proposed Conduct Regulations provided for under section 257(2) of the Act, should ensure that all human rights violations constitute breaches of discipline and fall within the definition of notifiable misconduct – and thus within the scope of investigation for the new body.²¹⁸

²¹⁵ GSOC, *GSOC Observations on the Policing, Security and Community Safety Bill 2023*, p. 14.

²¹⁶ ICCL, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, p. 3.

²¹⁷ GSOC, *GSOC Observations on the Policing, Security and Community Safety Bill 2023*, p. 4.

²¹⁸ PSCS Act, section 193(1)(b).

THIRD PRINCIPLE: ACCOUNTABILITY AND OVERSIGHT STRUCTURES SHOULD BE CLEAR AND EFFECTIVE.

Recommendation from CoFPI:

Special arrangements should be made to provide for a more extensive and robust oversight mechanism for national security matters. We recommend the establishment of an Independent Examiner whose role will be to review security legislation, examine operational events which give rise to concern and adjudicate on requests for information from the policing oversight bodies.



We recommend the establishment of an Independent Examiner of terrorist and serious crime legislation, based on the model used in the United Kingdom. The Examiner would maintain a continuous review of how security legislation is being implemented by police and other agencies, and evaluate the case for changes needed to match the evolving threats while respecting fundamental rights. This would require the Examiner to have powers to review the conduct of particular security operations when concerns arise that call for independent scrutiny. Access to papers and personnel would be needed to discharge these duties, with redactions only for the identity of informants.

The Independent Examiner could also act as an adjudicator to consider requests for information from policing oversight bodies which have been rejected in whole or in part by the police on the grounds of national security, and where the oversight bodies wish to appeal that decision.

The establishment of the Independent Examiner might also present an opportune time to review the role of the designated judge provided for under Section 100 of the Garda Síochána Act 2005 and the provisions of Part 4 of the Act as they relate to ministerial powers to issue directions regarding access to security material.

The Independent Examiner should report to the Taoiseach and should be a part-time appointment. Selecting the right individual for the post will be critical. A strong legal background and great credibility within the legal profession will be vital, given the focus of the work on legislation and how it is applied. Excellent communication skills will also be important. The Examiner will need to command public confidence.

WHAT HAS BEEN DONE

Part 7 of the PSCS Act outlines the establishment of the Independent Examiner of Security Legislation position.

GAPS IN IMPLEMENTATION

As it stands, the current provisions establishing the Independent Examiner of Security Legislation position do not meet the recommended model outlined by the Commission.

Firstly, there are significant limitations on access to and transparency of information. The Independent Examiner has a limited ability to disseminate relevant information to the public and can be denied access to information on the broad basis of “international relations”.²¹⁹ Information can also be denied to it on the basis of safeguarding international intelligence sources or to “conceal the identity of a person, where to reveal the identity of the person might endanger the life or safety of any person”.²²⁰ This lack of full access to information is not found in equivalent positions in other jurisdictions.²²¹

The Act has significantly limited the eligibility criteria for appointment to the role. CoFPI did not specify the types of professions that would be eligible for the role (i.e., senior judges, rather than senior counsel), yet the Act grants eligibility to those who have only been a judge for the High Court, the Court of Appeal, or the Supreme Court.²²²

²¹⁹ Ibid., section 234(1)(c).

²²⁰ Ibid., sections 242(5)(i) and 242(5)(ii).

²²¹ ICCL, Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023), p. 5.

²²² Ibid., p. 6.

NINTH PRINCIPLE: POLICING SHOULD BE SEEN AS A PROFESSION.

Recommendation from CoFPI:

Professional ethics are vital in any profession, and especially policing, which is grounded in the need to promote and protect human rights. An Garda Síochána has recently adopted a comprehensive Code of Ethics, which we welcome. This should be embedded in the human resources practices of the organisation at every stage, including recruitment, probation and performance management and the handling of complaints.



WHAT HAS BEEN DONE

Developed by the Policing Authority, the Code of Ethics applies to all ranks of Gardaí and provides for policing to be done in a manner that respects human rights.²²³ Human rights are also placed at the centre of the Garda decision-making model.²²⁴

GAPS IN IMPLEMENTATION

Regrettably, the reference to human rights in the Code of Ethics is not as strong as the reference in the Police Service of Northern Ireland Code of Ethics. To be most effective; it must be meaningfully integrated into daily police practices.²²⁵

²²³ Policing Authority, *Code of Ethics for the Garda Síochána*, p. 10.

²²⁴ An Garda Síochána, *Human Rights Strategy 2022-2024*; An Garda Síochána, *Garda Decision-Making Model*, p. 1-2.

²²⁵ ICCL, *Implementing Morris An Agenda for Change*, p. 13.

Appendix 3: Select ICCL Publications on Policing

- Irish Council for Civil Liberties, *Police Reform: An ICCL Policy Paper: Why Patten Should Apply Here and How This Can be Achieved*, March 2003, <https://www.iccl.ie/wp-content/uploads/2017/11/ICCL-policy-paper-on-police-reform2003.pdf>
- Irish Council for Civil Liberties, *Implementing Morris An Agenda for Change: Placing Human Rights at the Core of Policing in Ireland*, November 2006, <https://www.iccl.ie/wp-content/uploads/2017/11/Implementing-Morris-An-Agenda-for-Change-Placing-Human-Rights-at-the-core-of-Policing-in-Ireland-November-2006.pdf>
- Irish Council for Civil Liberties, *Rights-Based Policing: How Do We Get There? A submission to the Commission on the Future of Policing in Ireland*, January 2018, <https://www.iccl.ie/wp-content/uploads/2018/01/RIGHTS-BASED-POLICING-ICCL-submission-to-CFP-2.pdf>
- Alyson Kilpatrick BL, *A Human Rights-Based Approach to Policing* (Dublin, IE: Irish Council for Civil Liberties, 2018), <https://www.iccl.ie/wp-content/uploads/2018/09/Human-Rights-Based-Policing-in-Ireland.pdf>
- Irish Council for Civil Liberties, *ICCL Submission on the General Scheme of the Garda Síochána (Powers) Bill*, August 2021, <https://www.iccl.ie/wp-content/uploads/2022/05/ICCL-Submission-Police-Powers-Bill.pdf>
- Irish Council for Civil Liberties, *ICCL Submission on the Policing, Security and Community Safety Bill*, 2021, August 2021, <https://www.iccl.ie/wp-content/uploads/2021/10/210813-FINAL-Policing-Security-and-Community-Safety-Bill-Submission-2.pdf>
- Irish Council for Civil Liberties, *Briefing for Second Stage Seanad Debate on Policing, Security and Community Safety Bill (2023)*, October 2023, <https://www.iccl.ie/wp-content/uploads/2023/10/ICCL-Briefing-on-Policing-Security-and-Community-Safety-Bill-2023.pdf>
- Irish Council for Civil Liberties and the Committee on the Administration of Justice, *Police Reform in both Jurisdictions: Learning from the Past and Planning for the Future: Conference Report*, June 2023, <https://caj.org.uk/wp-content/uploads/2023/06/Police-Reform-in-Both-Jurisdictions-conference-report.pdf>
- Irish Council for Civil Liberties, *ICCL Submission on the Garda Síochána (Digital Recording) Bill*, August 2021, <https://www.iccl.ie/wp-content/uploads/2022/09/210813-FINAL-ICCL-Submission-Digital-Recording-Bill-2.pdf>
- Irish Council for Civil Liberties and Digital Rights Ireland, *Briefing for Committee Stage of the An Garda Síochána (Recording Devices) Bill 2022*, July 2023, <https://www.iccl.ie/wp-content/uploads/2023/07/ICCL-DRI-Recording-Devices-bill-briefing-July-2023.pdf>
- Irish Council for Civil Liberties and the Irish Network Against Racism, *Policing and Racial Discrimination in Ireland: A Community and Rights Perspective*, April 2024, <https://inar.ie/wp-content/uploads/2024/04/1.-POLICING-AND-RACIAL-DISCRIMINATION-1.pdf>
- Irish Council for Civil Liberties and the Committee on the Administration of Justice, *Police Surveillance North and South: Covert Intelligence, Facial Recognition Technology, Oversight and Human Rights*, forthcoming 2024.
- The Committee on the Administration of Justice and the Irish Council for Civil Liberties, *Racial Profiling in Law Enforcement*, forthcoming 2024.

Appendix 4: Relevant Regional and International Human Rights Law

International Human Rights Law Core International Human Rights Treaties

International Covenant on Civil and Political Rights (ratified by Ireland)

- Article 6: Right to life
- Article 7: Prohibition of torture and cruel, inhuman, or degrading treatment or punishment
- Article 9: Right to liberty and security of the person
 - Article 9 (1): Prohibition of arbitrary arrest or detention
 - Article 9(2): Informed of reasons for arrest and any potential charges
 - Article 9(3): Trial within a reasonable time
 - Article 9(4): Court can review the lawfulness of the detention
 - Article 9(5): Victims of unlawful arrest or detention have a right to compensation
- Article 10: Treat those who have been deprived of their liberty with humanity
- Article 14: Equal recognition before courts and tribunals
 - Article 14(1): Fair and public hearing by a competent, independent, and impartial tribunal established by law
 - Article 14(2): Presumption of innocence
 - Article 14(3): Fair trial rights, including to be tried without undue delay, to have access to interpretation if required, and to examine the witnesses against him
 - Article 14(4): Procedures for youth criminal justice
 - Article 14(5): Right to review conviction
 - Article 14(6): Circumstances for miscarriages of justice
 - Article 14(7): Prohibition of double jeopardy
- Article 17: Right to privacy
- Article 18: Freedom of thought, conscience, and religion
- Article 19(2): Freedom of expression
- Article 21: Right of peaceful assembly
- Article 22: Freedom of association
- Article 26: Equal protection and non-discrimination

Convention against Torture and Any Other Form of Cruel, Inhuman or Degrading Treatment or Punishment (ratified by Ireland)

- Article 2: Obligations of States to take measures to prevent torture
- Article 10: Education and training regarding the prohibition of torture for law enforcement officials
- Article 11: Requirement to regularly review interrogation policies and the treatment of persons deprived of their liberty
- Article 12: Investigation of acts of torture
- Article 13: Right to have case alleging torture examined by authorities
- Article 14: Right to redress
- Article 16: Application of obligation to other acts of cruel, inhuman or degrading treatment or punishment

Convention on the Rights of the Child (ratified by Ireland)

- Article 40: Youth criminal justice

Convention on the Elimination of All Forms of Racial Discrimination (ratified by Ireland)

- Article 5: Obligation to prohibit and eliminate racial discrimination, particularly in the following rights:
 - (a) Equal treatment before tribunals
 - (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution
 - (d)(ix) The right to freedom of peaceful assembly and association

Convention on the Rights of Persons with Disabilities (ratified by Ireland)

- Article 13: Access to justice
 - Article 13(1): Right of access to justice, including right to procedural and age-appropriate accommodations
 - Article 13(2): Obligation to provide training to law enforcement officials, including police, on the rights of persons with disabilities in accessing justice
- Article 14: Liberty and security of the person
 - Article 14(1)(b): Existence of a disability cannot justify the deprivation of liberty
- Article 17: Right of physical and mental integrity

Convention for the Protection of All Persons from Enforced Disappearance (signed in 2007, but yet to be ratified by Ireland)

- Article 17: Safeguards for circumstances of deprivation of liberty
 - Article 17(1): Prohibition of secret detention
 - Article 17(2): Safeguards in law for instances of deprivation of liberty
 - Article 17(3): Records for deprivation of liberty
- Article 23: Training of law enforcement officials on issues relating to enforced disappearance

Soft Law

Universal Declaration of Human Rights

- Article 3: Right to life, liberty, and security of the person
- Article 5: Prohibition of torture and cruel, inhuman, or degrading treatment or punishment
- Article 9: Prohibition of arbitrary arrest
- Article 10: Fair trial rights
- Article 11(1): Presumption of innocence
- Article 12: Right to privacy
- Article 20: Right to freedom of peaceful assembly and association

Normative Instruments

- [Code of Conduct for Law Enforcement Officials](#)
- [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#)
- [Basic Principles for the Treatment of Prisoners](#)
- [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#)
- [The United Nations Standard Minimum Rules for the Treatment of Prisons \(the Nelson Mandela Rules\)](#)
- [United Nations Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders \(Bangkok Rules\)](#)
- [United Nations Standard Minimum Rules for Non-custodial Measures \(Tokyo Rules\)](#)
- [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \(Beijing Rules\)](#)
- [OHCHR Guidance on Less-Lethal Weapons in Law Enforcement](#)
- [Resource book on the use of force and firearms in law enforcement jointly published by OHCHR with UNODC](#)

General Comments

Human Rights Committee

- [General comment no. 37 \(2020\)](#) on the right of peaceful assembly
- [General comment no. 35 \(2014\)](#) on article 9, liberty and security of the person
- [General comment no. 32 \(2007\)](#): Article 14: right to equality before courts and tribunals and to a fair trial

Committee on the Elimination of Racial Discrimination

- [General comment no. 36 \(2020\)](#) on preventing and combatting racial profiling by law enforcement officials
- [General comment no. 31 \(2005\)](#) on the prevention of racial discrimination in the administration and functioning of the criminal justice system

Committee Against Torture

- [General comment no. 2 \(2007\)](#): implementation of article 2 by States parties
- [General comment no. 3 \(2012\)](#): implementation of article 14 by States parties
- [General comment no. 4 \(2017\)](#): implementation of article 3 of the Convention in the context of article 22

Committee on the Rights of the Child

- [General comment no. 24 \(2019\)](#) on children's rights in the child justice system

Reports of Special Procedures

- Working Group of Experts on People of African Descent
 - Thematic report on racial profiling [A/HRC/4/39](#)
- Special Rapporteur on extrajudicial, summary or arbitrary executions
 - Thematic report on deaths in prisons [A/HRC/53/29](#)
 - Joint thematic report with the Special Rapporteur on the rights of freedom of peaceful assembly and of association [A/HRC/31/66](#)
- Special Rapporteur on the rights to freedom of peaceful assembly and of association
 - Thematic report on access to justice as an integral element of the protection of rights to freedom of peaceful assembly and association [A/HRC/47/24](#)
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
 - Thematic report on the extra-custodial use of force and the prohibition of torture [A/77/502](#)

Regional Human Rights Law

- European Convention on Human Rights
 - Article 2: Right to life
 - Article 3: Prohibition of torture and inhuman or degrading treatment or punishment
 - Article 5: Right to liberty and security
 - Article 6: Fair trial rights
 - Article 8: Right to privacy
 - Article 11: Freedom of assembly and association
- Protocol No. 7 to the ECHR:
 - Article 2: Right of appeal in criminal matters
 - Article 3: Compensation for wrongful conviction
 - Article 4: Right not to be tried or punished twice
- Protocol No. 12 to the ECHR: Non-discrimination
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Soft Law

Normative Instruments

- [European Commission against Racism and Intolerance \(ECRI\) General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing](#)
- [Recommendation Rec \(2001\)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum](#)
- [Recommendation Rec \(2000\)19 adopted by the Committee of Ministers of the Council of Europe on 6 October 2000 and explanatory memorandum](#)



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