

Policing

ICCL POLICY PAPER ON POLICE REFORM

Why Patten Should Apply Here and How this can be Achieved

IRISH COUNCIL FOR CIVIL LIBERTIES

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EXECUTIVE SUMMARY

- Human Rights should be at the core of policing philosophy and practice. The Garda Code of Ethics and Professional Practice should underpin all Garda activity and adequate resources must be allocated to ensure the full implementation and mainstreaming of the Code into day-to-day Garda practice.
- An independent human rights audit of all current Garda policies and practices should be conducted as a matter of urgency. In mainstreaming human rights standards in the Garda it is crucial that internal practice mirrors external aspirations. In this regard, the organisation must first ensure that its structures and practices ensure adequate protection of the rights of its own members.
- The Garda must be accountable to human rights standards in all of their activities through both democratic accountability and legal accountability
- The Garda Commissioner should be accountable to the community for the strategies, actions and utilisation of resources of the Garda. This should can in part be achieved through both new and existing democratic institutions and also through the creation establishment of clear lines of accountability and responsibility between the Garda Commissioner, the Minister for Justice, Equality and Law Reform, the

Government and the Oireachtas. The division of responsibility between the Minister and the Commissioner should be established by statute and include a clear definition of the concept of operational independence. The Commissioner should also be directly accountable to the Oireachtas.

- Direct accountability of the Garda to the community requires the establishment of a more representative and independent Garda Board. This Board, similar to the Policing Board in Northern Ireland, should be drawn from both elected representatives and representatives of different sectors of the community. In particular, the Board should include representatives of minority groups, human rights groups, the legal professions and sections of the community, which have a high level of contact with the Garda. The Board should also be gender-balanced.
- Complaints against members of the Garda must be investigated by agents with full and effective independence from the Garda. The investigators must be afforded adequate and effective powers of discovery and compellability, the procedure must be prompt, accessible and transparent and must be capable of providing a successful complainant with a just remedy, including compensation.
- A Garda Ombudsman with similar powers and status to the Police Ombudsman for Northern Ireland should be established to conduct such investigations. The Garda Ombudsman must be fully independent of Government and the Oireachtas, in terms of his/her appointment and in terms of his/her functions. The office must be adequately funded and should have the same powers of compellability and powers to initiate investigation as the Police Ombudsman for Northern Ireland. The Ombudsman powers should include the power to instigate investigations into serious complaints existing before the establishment of the office.
- Particular concerns arise in relation to the accountability of covert policing, in particular the activities of the Garda Special Detective Unit. Internal accountability structures and integrity structures should be reappraised to ensure that all Garda activities and operations are effectively monitored for compliance with human rights standards.
- Human Rights training should run throughout all Garda educational programmes and constitute an integral part of all training regarding the exercise of police powers. Student gardaí should receive a comprehensive education in the legal and practical aspects of international and domestic rights' standards. This must include anti-discrimination training and specific modules raising Garda awareness of the special needs and rights of vulnerable groups within society such as the Travelling community, ethnic and racial minorities, persons with disabilities, women, young persons and persons from socio-economically deprived communities.
- Criminal justice legislation conferring powers on the Garda should be examined and scrutinised in light of its impact on citizens' human rights. This scrutiny of legislation should be carried out by an appropriate body such as the Human Rights Commission. This should include There should also be an evaluation of the impact on human rights of existing legislation conferring ordinary and exceptional powers on the Garda.
- In the interests of equality and creating a truly representative police force, the Garda should review its existing recruitment and promotion practices. In particular we note that there is a low representation of women within the force. This poor gender balance within the Garda is particularly acute within the higher grades of the force. The very low representation within the force, and other policing institutions, of Travellers and

members of ethnic minorities is also undesirable and presents a serious obstacle to improving relationships between the Garda and these communities.

- Safeguards to protect persons being interrogated from possible abuse of police powers should be strengthened. In particular, the right of access to a lawyer should be brought into line with international best practice. The electronic recording of interviews should also be introduced in all Garda custody suites as a matter of urgency.

We also believe that the right of access to a lawyer should be brought into line with international best practice.

INTRODUCTION

1. Literally since its foundation in 1976, ICCL has campaigned for change to many aspects of how An Garda Síochána is structured, managed and held accountable. In recent times several factors have created a momentum towards such reform, placing police reform in a prominent position on the political and public agenda. Regardless of why reform is now becoming a realistic prospect, ICCL believes that the forthcoming process should be viewed as a unique opportunity to look at wider questions of how we, as a nation, wish to be policed.
2. The position outlined in this paper reflects the views of ICCL on the role of police as protectors and defenders of individual rights, views that have been developed over the past twenty-seven years. Since the establishment of ICCL, it has drawn attention to instances where police have been responsible for human rights violations and has always highlighted the inadequacy of existing accountability mechanisms within the force. It is the ICCL's view that the existing problems within the Garda arise from a lack of understanding of policing as a human rights function in a democratic society and that a reformed Garda with respect for human rights at its core can act as a powerful and effective defender and protector of human rights.
3. The paper considers the current context of police reform, examining the particular needs and sensitivities that arise in the specific circumstances of policing in this jurisdiction. In the main, the history of policing in Ireland is one of which we can be proud. Nevertheless, as it now stands, the force has remained largely unreformed since its establishment. It is a universal truth of policing that police officers will only be able effectively to do their job in a climate of public consent to their work. The corollary is that the degree to which the police are supported and trusted by the public is a measure of how successful they are in serving the public's needs.
4. All citizens have an important stake in how the police protect the community, and a public debate on police reform that is both inclusive and comprehensive must therefore be fostered. That debate should involve not just the institutions of state, but also canvass and take on board the views and experiences of the wider public. Community groups, particularly those from areas where there are high levels of contact between the police and the community, and those representing marginalised sections of society should be consulted, along with representatives of ethnic minority groups and groups with special needs. Effective consultation must also involve a strong human rights perspective and the professional legal bodies. Police reform should be based on principles of partnership and shared objectives and should not take place in a climate of confrontation. It is in everyone's interest, police and civilian, to make this a

shared responsibility - ultimately it is only by ensuring the highest standards of policing that the fundamental rights of citizens can be protected and developed.

5. Debate on police reform is not new to these shores and there are several prior publications on this debate that must be acknowledged. Policing reform was, and continues to be, a key issue in the 1998 Belfast Agreement and the associated Peace Process in Northern Ireland. The Agreement assigned the task of reporting on how reform of the RUC could be achieved to an Independent Commission on Policing for Northern Ireland headed by Chris Patten (hence known as the "Patten Commission"). This paper owes much to the recommendations contained in the Report of that Commission, (more commonly referred to as the "Patten Report"). The Patten Report is the most comprehensive study of police structures ever undertaken in a common law legal system and in the opinion of the ICCL the recommendations contained in the Patten Report represent best international practice in policing. This paper aims to point out the practical and principle benefits of basing reform of the Garda on the solid foundations of the Patten Report. We should also point out that on the specific issue of an independent complaints mechanism, Patten endorsed an earlier report prepared by Senator Maurice Hayes, himself a member of the Patten Commission, recommending the establishment of a Police Ombudsman in Northern Ireland. This Paper draws heavily on both reports.
6. As with any discussion of policing in Ireland this paper uses as its principal point of reference the work of Professor Dermot Walsh. Professor Walsh's analysis of the complex political and constitutional issues involved is a foundation stone for the reasoning contained in this paper. We are also heavily indebted to the work of our sister organisation, the Committee for the Administration of Justice (CAJ), whose report on the application of international principles of policing to Northern Ireland Human Rights on Duty (CAJ, 1997) provided a blueprint for this paper. Many of the main points in this paper were outlined in an earlier ICCL Publication Police Interrogation Endangers the Innocent, (Dublin 1993) and in a paper delivered by Michael Farrell (former chair of ICCL and currently member of the Human Rights Commission) to a conference organised by the Garda Human Rights Working Group in, 2000.
7. We also wish to draw attention to the fact that there are already many progressive initiatives being taken within the Garda that are contributing to a greater awareness of human rights concerns within the force. In particular, we would point to the excellent work of the Garda Human Rights Working Group, which has hosted a number of significant public meetings and is responsible for increasing awareness and understanding of human rights within the force. It is the hope of ICCL that a wide and well informed public debate on police reform will assist to bring together both these positive aspects of existing practice and the new ideas of Patten in a synthesis that aspires to place the Garda Síochána once again at the forefront of international policing.

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Chapter 1 - The Context of and Case for Reform

[Culture of Denial](#)

1.1 The circumstances surrounding the establishment of the Garda Síochána in 1922 are perhaps unique. Set against a background of increasing public disorder and an increasingly volatile political situation, the State's first police force was established on the recommendations of a committee that was given only three weeks to make proposals for a new force to replace the disbanded RIC. This first attempt was ultimately unsuccessful as the force, whose membership was drawn mainly from the pro-treaty camp, became embroiled in the political tensions of the time, culminating in the Kildare mutiny in the summer of 1922.

1.2 The force was disbanded and, on the recommendations of another committee, it was reformed with selective enrolment whereby politicians were excluded from membership. Another recommendation of the second committee was that the force should be unarmed. Professor Dermot Walsh recalls that the inaugural Garda Commissioner, Michael Staines, set out the rationale behind the decision to disarm the Garda:

"The Civic Guard will succeed not by force of arms, or numbers, but on their moral authority as servants of the people"

Staines's principled position is reminiscent of Robert Peel's intentions when establishing the British police a century earlier and puts Irish policing clearly in the common law tradition of constabulary, consensual policing as distinct from the French tradition of an armed *gendarmerie*.

1.3 The establishment of an unarmed police force independent of politics in the aftermath of a civil war was a brave move for a newly independent state. The fact that the force successfully performed its functions as an unarmed force through later periods of political unrest is, rightly, a source of considerable pride to both the Garda and the wider Irish public. However, one consequence of the troubled background against which the Garda was established was the absence of any public or parliamentary consultation or debate about the structures and status of the new force. Uniquely among Irish public institutions, there has been no significant overall review of the force since its inception in 1922. Indeed, Professor Walsh's *The Irish Police* published in 1998^{text} was the first comprehensive analysis of how An Garda Síochána is structured and operates.

1.4 It is always going to be the case that any institution would be ripe for restructuring after eighty years of operation, but the dramatic changes that have occurred in Irish society in recent years have brought many of the more outdated characteristics of the Garda into sharp relief. The composition of Irish society has changed with the advent of unprecedented levels of immigration and we also have a demographic profile that is uniquely young among European states. We have witnessed dramatically increased urbanisation, large increases in disposable incomes and integration into the European Union, all of which have reconstituted the fabric of Irish society. Other general changes to the role of the family in society and greater physical and social mobility have also had a profound effect on the concept of community in Ireland and have contributed to major shifts in crime patterns in Ireland. There have also been associated increases in many of our social problems such as the growth of alcohol and drug consumption. In many regards, these changes require different approaches to policing and the ability of the force to respond to these changes is hampered by its unreformed structures.

1.5 There has also been a development over time in the relationship between citizen and public service more generally. A more confident and sophisticated public demands higher levels of service from public bodies than was the case in the past. The Patten

Commission quotes one European police officer that said that no force around the world had yet "finalised the transformation from force to service". Although policing can be differentiated from other areas of public service in that it involves the possible resort to the use of force, nonetheless the basic nature of policing is as an exercise of public administration and the provision of a public service. The case is sometimes made that policing is an exception to general standards of public service because of the sensitive nature of the functions of policing. However, we believe that the general principles of good governance should apply to An Garda Síochána as to any other service.

1.6 The three most important principles of good governance in any area of public service are accountability, transparency and a respect for individual rights. Although issues of confidentiality and national security may create a need for certain exceptions to transparency in the area of policing, they should not be used to justify a significant departure from normal principles of openness and transparency. However, there is no reason why the police should be any less accountable or be measured by any lower an ethical standard than any other organ of the state. In fact, we would contend that the special powers available to the force mean that a greater standard of respect for individual rights should apply in the sphere of policing than in other areas of public service.

1.7 At the international level there is a growing understanding of the concept of "community policing", although conflicting definitions may sometimes cause confusion as to what precisely is meant when the term is used. At the outset of the Commission's chapter dealing with the area, Patten begins by setting out his understanding of the concept:

"We have called this chapter "Policing in the Community" because we believe this encapsulates what most people want to see - the police participating in the community and responding to the needs of that community, and the community participating in its own policing and supporting the police. What we emphatically do not mean by "community policing" is vigilante groups policing neighbourhoods with baseball bats, or, at the other extreme, what the Philadelphia police chief, John Timoney has described as 'sitting around the trees, holding hands and singing Kumbaya'."

1.8 Patten clearly recommends that neighbourhood policing should be the core function of policing in Northern Ireland and we would also endorse that view in regard to this jurisdiction. It is our view that, at present, community policing is a peripheral, rather than central aspect of Garda operational strategy. The change in philosophy that is required will have serious implications for management, training and resource allocation within the force and many of these issues are outside the remit of this paper. However, a clear statement of the prioritisation of neighbourhood and community policing would be an important first step.

1.9 As we have already emphasised, public consent and trust in the police force is a pre-requisite for effective policing, and the serious results that occur when that consent and trust is lost, are in evidence around the world. It is, of course, axiomatic that only by fully understanding the causes of the problems facing the Garda that we can hope to effectively address public concerns. The history of the force over the past eighty years has generally been characterised by a good relationship between public and police, (although some sections of society, including Travellers and working class inner-city communities, have had less positive experiences). However, notwithstanding Garda commissioned surveys that claim a high level of satisfaction in the force has been maintained, there is good reason to believe that public confidence in the Garda has been damaged in recent years. Certainly one of the most important factors behind the current move towards Garda reform is the growing public concern at a number of

high profile controversies about alleged corruption and illegal activity involving individual gardaí. Some of these incidents have involved institutional failures to properly investigate serious allegations against gardaí and, perhaps most significantly, some allegations have been made of systematic misconduct involving groups of gardaí.

1.10 On looking to explain how these changes have occurred, it is quite possible that the positive early history of the Garda Síochána bred a certain degree of complacency within the Garda and the general public. When suddenly faced with a substantial threat from subversive organisations in the 1970's, the force remained unarmed. However, there is considerable evidence to suggest that some gardaí began to use illegitimate means in the interrogation of persons suspected of crimes related to subversive activity. Unfortunately when such allegations of misconduct were made, just as today, there was no independent mechanism for investigating them. This point was not lost in the politics of the time and, as far back as 1973 as part of the ill-fated Sunningdale commitment, the Irish government undertook to set up "an independent complaints procedure for dealing with complaints against the police". This was, as we know, never acted upon.

1.11 It is understandable, though not justifiable, that defensiveness and secrecy would have developed in a police force operating under the threat of terrorism during the 1970's and 1980's, but it seems that certain unacceptable practices were tolerated or even encouraged. There also seems to have been particularly acute problems in certain sections of the force.

1.12 Garda management and successive Ministers for Justice denied that any such problem existed, but journalists and lawyers began to unveil a considerable number of individual cases of physical abuse of prisoners. These cases also pointed to a pattern of mistreatment of suspects involving a group of interrogating officers that indicated the existence of a so-called 'Heavy Gang' within the force, a problem highlighted by Amnesty International in 1977. One of the most dramatic of these cases was the investigation into the Sallins train robbery, a case where the means of investigation employed by members of the gardaí led to a serious miscarriage of justice.

1.13 It soon became clear that the use of physical force to intimidate witnesses was not confined to subversive cases. The Kerry Babies scandal and the circumstances surrounding the Shercrock case, where a prisoner died in custody in highly suspicious circumstances in a County Cavan garda station in the early 1980's, pointed to wider difficulties within the force. However, public support for the Garda continued to be high and, to some extent, the public too must share a degree of the blame for the gradual erosion of standards within the force. There is a sense in which the public was all too willing to turn a blind eye to abuses as long it seemed that members of subversive groups were bearing the brunt of this mistreatment. Individual cases involving the mistreatment of single mothers and vulnerable prisoners also failed to exercise high levels of public concern. Events at the turn of the century, however, have turned that blind eye: The shooting of John Carthy at Abbeylara ; the false confession secured from Dean Lyons ; the prosecution of Frank Shortt on allegedly fabricated evidence ; the excessive use of force by Garda in Dublin at the Reclaim the Streets Protest on May 6th 2002 ; and the events in Donegal at the heart of the Morris Tribunal have all contributed creating a new context of public distrust of policing.

1.14 These cases are important in themselves, not least because of the devastating impact that the actions of some individual gardaí has had on the lives of innocent civilians, but it also seems that they have created a 'critical mass' of public opinion on the current state of the force. As often is the case, events, rather than policies have

created the climate whereby there is now widespread consensus that reform is needed and that both practice and procedure must be radically overhauled within the force. The real significance of the scandals of recent years has been in how the Garda authorities and politicians have chosen denial rather than disclosure and have allowed impunity to spread among the force.

Culture of Denial

1.15 The way in which these events have been dealt with, or not dealt with, suggests a wider problem of political and administrative will within elements of the force, a problem of a systemic and cultural nature. Cultures are created over time. They grow and are nurtured by leadership and example, both explicit and implicit, and only change slowly and in the face of radical action. Once a cultural force is endemic and dominant within an institution, it will not be addressed by worthy initiatives and rhetoric alone. It will only be tackled by root and branch reform and by action. In relation to An Garda Síochána, as with many police forces around the world, the culture that is dominant is a culture of denial. The response of the leadership of the force and of successive governments to allegations of wrongdoing has been a policy of various levels of denial.

1.16 CAJ refer to Stanley Cohen's study of the practice of denial among police forces and other state institutions internationally and the various forms that systems of denial take. When one looks at the various stages of a policy of denial that Cohen has identified, they soon become familiar to anyone who has observed the approach to allegations of wrongdoing within An Garda Síochána here in recent years. He points to the classic characteristics of such a policy as being the resisting of calls for inquiries until the last resort; then confining any such inquiries to the narrowest possible remit; ensuring that the inquiry is as protracted as possible; and ultimately that the findings of any inquiry are restricted to purely technical facts. Cohen also points out that even the more damning and high profile *ad hoc* inquiries can only have limited influence on long term change as they will always be confined to the individual case.

1.17 This type of defensiveness is common to many force and has its roots in the nature of policing operations. The day-to-day risks that police officers face on the streets encourage close-knit camaraderie and strong personal loyalty between officers. In the Irish context, paramilitary use of violence against gardaí in the 70's and 80's impacted significantly on the attitudes and behaviour of members of the force. Police forces also tend to display strongly hierarchical and conservative traits and this also contributes to defensiveness and resistance to change. Dr. Colleen Lewis, Head of Criminal Justice and Criminology, Monash University Australia, traces how these common traits of defensiveness and resistance to scrutiny have also manifested themselves in several other jurisdictions over the past half-century.

1.18 The consequences of a culture of denial and defensiveness are manifold. Firstly, over time, trust is undermined in the management of the force. Within the force, the defensiveness that goes with the culture of denial drives a wedge between the police force and members of the public who seek to have wrongdoing held accountable. This oppositional relationship is undesirable, and also unnecessary. More significantly, a culture of impunity develops, whereby junior officers witness serious wrongdoing going unpunished and therefore have good reason to expect that any breach of the law or of garda discipline will also not be exposed to outside inquiry. Impunity breeds a culture of wrongdoing and the bending and breaking of rules. There are many worrying signs in Ireland that the failure of management to punish serious wrongdoing by officers has contributed to a culture of violation of procedures and rules both by established officers and more junior officers coming into the force. As an example it is likely that a sense of impunity for violating regulations was a contributory factor to the wide scale indiscipline

among members of the Garda Síochána in Dublin on May 6th 2002.

1.19 On a positive note, if one analyses policing challenges in other jurisdictions, it quickly becomes clear that Ireland is not grappling with any issues that have not arisen elsewhere. On the contrary, we are coming somewhat late to the table in regard to the international debate and have the opportunity to learn from the mistakes and successes of other countries. Unlike other societies, such as Northern Ireland, we are not facing the challenge of police reform against a background of political conflict or social unrest. Therefore Ireland has the opportunity to address the deficiencies in our police force in a considered and objective fashion, without being bound by complicating political factors. It is also likely that the current debate on Garda reform will present the only opportunity to address these deficiencies for some considerable time. For these reasons, the Government should now aim, not just to address current concerns by minimal action, but rather aim to achieve the highest possible standards of policing within the Garda.

1.20 As was the conclusion reached by CAJ in regard to Northern Ireland, the key factor in addressing this issue is political will. The difficulties outlined in this chapter in relation to police resisting change can be overcome, but only if the legislature and executive arms of government have the necessary political will. In any society, police authorities will constitute a powerful interest group and possess the ability to exercise significant political influence. Successive Irish governments have been unwilling to confront what have been increasingly obvious shortcomings in the performance of the Garda, no doubt partly because of a reluctance to confront this powerful interest group. The current government has indicated its intention to be distinguished from that tradition and to implement real reform. It remains to be seen if they will deliver on that promise.

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Chapter 2

[International Human Rights Law](#)

2.1 The Report of the Patten Commission on Policing in Northern Ireland sets out very clearly and starkly what we believe should be the starting point of any discussion about policing. In paragraph 4.1 of the Patten Commission's Report they state

"The fundamental Purpose of Policing should be ... the protection and vindication of the rights of all...there should be no conflict between human rights and policing.
Policing means protecting human rights."

This fundamental principle demands a rethinking of the relationship between police and public from the current perspectives of both the police and those of us representing a traditional human rights' perspective. We believe that both perspectives should aim towards a view of that relationship where police are perceived as important protectors of rights in cooperation with and with the support of the community.

2.2 Although police have a role in protecting rights, they will also have to make choices in the exercise of their duty which may sometimes involve the denial of rights, such as the right to liberty, of members of the public. The way in which these choices are made will have grave implications for the rights of citizens. We believe that when these decisions are made with primary reference to human rights standards, not only does

this lead to good policing practice, but it aids the efficiency of the force. Where powers are used without proper regard for human rights standards, injustice, abuse of power and mistreatment are likely to follow and the associated undermining of public trust in the force. Hostility to police is based in negative experience of the misuse of garda powers and this hostility renders effective policing impossible. Not only does respect for human rights lead to higher standards within the force, but that it also produces a more efficient use of police resources and makes the work of the individual officer on the street markedly less difficult.

2.3 Ralph Crawshaw, former Chief Superintendent in the Essex Constabulary, and expert in human rights training for police, has outlined that there are three principle functions of any police force: to prevent and detect crime; to maintain and, where necessary, restore order; and to aid and assist in emergencies. Crawshaw suggests that part of the difficulty with the dominant understanding of policing at present arises from an over-emphasis on the law enforcement functions of policing. He argues that the reality of contemporary operational policing is more based on assisting people who are experiencing some kind of personal emergency. Crawshaw presents an alternative to the security and law enforcement view of policing placing greater importance on the assistance of persons in emergency and the maintenance of social order. In this view, prevention of crime is a secondary consequence of these functions.

2.4 Crawshaw goes on to make the link between this focus on the maintenance of social order and the philosophy of the human rights movement, which is contingent on the establishment and protection of a social order in which rights and freedoms can be exercised. With this view as a starting point policing, often viewed as a potential threat to individual rights, can now be seen also as a positive factor in the broader promotion of human rights. Primarily, policing can contribute to the protection of rights by creating and sustaining the social order, but policing can also contribute to the protection of specific rights such as the rights to life and bodily integrity in specific ways by preventing and detecting crimes such as homicide, rape and physical assault. Given the wide variety of tasks that policing entails, the 'protection of rights' view of policing also has the advantage of being able to encompass the protection of citizens' economic and social rights (for example when police are called upon to arbitrate in property disputes) as well as police protection of civil and political rights.

2.5 In Ireland the difficulty of overemphasis on the security functions of policing has been particularly noticeable in the period since the 1970's when the Garda have taken on responsibilities in the area of state security vis-à-vis terrorist organisations involved in the conflict in Northern Ireland. Until 1999, human rights remained largely peripheral to garda policy, including training, in Ireland. In October of that year a Garda Human Rights Initiative was launched in response to the Council of Europe Policing and Human Rights Programme. A Working Group was set up to raise awareness about the initiative and to develop links with human rights organisations and community groups. It has held a number of conferences and seminars and promoted a poster campaign to contribute to an ethos of human rights in police stations. It has also submitted a Human Rights Training Strategy, which is being considered by the Superintendent with responsibility for training (see below). However, probably the most significant outcome of the Initiative has been the revised Declaration of Professional Values and Ethical standards (see below Appendix 2).

2.6 Detailed guidelines and codes for what standards law enforcement officials are expected to meet, and what constitutes international best practice for police officers exist at both the Council of Europe and UN levels. The Council of Europe "Policing and Human Rights 1997-2000" Programme, was aimed at highlighting how human rights obligations impact on policing functions and the responsibilities of all police officers and

police leaders and several training manuals for police officers were developed by the Council of Europe during this programme. Those manuals set out in detail how individual human rights obligations translate into good operational practice and the texts which should be used as core material for policing officers are set out below. The most significant of these is the European Code of Police Ethics, adopted in a Recommendation of the Committee of Ministers of the Council of Europe in September 2001. As well as setting out a blueprint for a human rights based philosophy of policing, the Code also calls upon member states to introduce national codes of police conduct reflecting the principles set out in the Code.

2.7 This obligation under the Code has now been met by the Irish Government with the recent adoption of a reformed "Declaration of Professional Values and Ethical Standards" by the force (see Annex).. The Declaration was developed under the Human Rights Initiative and is based on ethos of respect for human rights is an essential starting point to reforming the culture within the force. It will serve both as an oath for individual members of the force and as an over-arching ethical framework for the force as a whole. The adoption of the Declaration is an important first step in developing a policing policy that puts international human rights standards at the centre of police policy and strategy.

2.8 While we welcome the adoption of the Declaration, we are concerned that this and other positive moves towards mainstreaming human rights in Garda policy in recent years has not been adequately reflected in the Garda Policing Plan for 2003. The Plan makes little reference to human rights and indicates a move away from prioritising human rights commitments undertaken in recent years in favour of responding to the findings of the Garda Public Attitudes Survey of 2002. The two approaches of responding to public concerns and adhering to human rights standards need to be intermeshed rather than public perceptions of crime and policing needs taking precedence over the real need to foster a human rights approach to policing.

2.9 International human rights treaties create responsibilities for States parties both by precluding certain types of police behaviour and by placing an obligation on States to ensure adequate legal structures to prevent and investigate misconduct. In particular, the recent jurisprudence of the European Court of Human Rights has created clear obligations on all states party to the convention in regard to the investigation of complaints against law enforcement officials. We set out below a comprehensive list of all UN and Council of Europe standards in the area.

International Human Rights Law

[The United Nations Standards for Law Enforcement Officials.](#)
[The Council of Europe](#)
[European Convention on Human Rights](#)

The United Nations Standards for Law Enforcement Officials.

2.92.10 The 1979 United Nations Code of Conduct for Law Enforcement Officials (see AnnexAppendix 1) represents the definitive international standard against which acceptable police practice is to be measured. The main points of the Code are that it puts human rights at the core of the policing. Article 2 of the Code states,

"In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."

The other UN texts that are relevant to policing are:

- UN International Covenant on Civil and Political Rights
- UN Convention on the Elimination of All Forms of Racial Discrimination
- UN Convention Against Torture, Inhuman or Degrading Treatment or Punishment
- UN Convention on the Elimination of All Forms of Discrimination Against Women
- UN Convention on the Rights of the Child
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

The Council of Europe

2.11 The key Council of Europe texts on policing are:

- European Convention on Human Rights
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Recommendation (2001) 10 of the Committee of Ministers to member states on the European Code of Police Ethics
- Resolution 690 of the Parliamentary Assembly: Declaration on the Police
- Resolution (78) 41 of the Committee of Ministers on the Teaching of Human Rights
- Resolution (73) 5 of the Committee of Ministers: Standard Minimum Rules for the Treatment of Prisoners

European Convention on Human Rights

2.12 Under the terms of the Belfast Agreement the Irish Government is required to provide at least equivalent human rights protection, as exists in Northern Ireland. On this basis the incorporation of the European Convention of Human Rights ("ECHR") in Ireland has fresh impetus. The Convention imposes many key fundamental obligations on the police linked to the right to life (Article 2), prohibition on torture (Article 3), right to liberty (Article 5), fair trial (Article 6) and more. The European Court of Human Rights in Strasbourg has, in its recent jurisprudence on Articles 2 & 3 of the Convention, also set out procedural requirements for the investigation of complaints against police forces where there are allegations that the police have been responsible for torture, inhuman or degrading treatment or loss of life.¹² As the European Court has said, "the essential purpose of such an investigation is to secure the effective implementation of the domestic laws" and "in those cases involving State agents or bodies, to ensure

their accountability..."²¹ The investigative mechanisms, which should be readily available to any person who has a credible claim to have suffered a violation of a fundamental right, must have several characteristics, if they are to meet the standards required by the European Convention. The Court's jurisprudence highlights the following elements:

- Independence: The persons responsible for and carrying out the investigation should be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence, which means for example that there should not be reliance on evidence or information solely from the source being investigated;
- Effectiveness: The investigation must also be effective in the sense that it is capable of leading to a determination of the extent of the violation and to the identification and punishment of those responsible. *This is not an obligation of result, but of means.* The authorities investigating must have the mandate to establish the key issues of responsibility and liability, coupled with the power and resources to secure the evidence, which leads to the determination of those issues. Any deficiency in the investigation which undermines its ability to reach a determination on these will risk falling foul of this required standard. There must be available to the victim or the victim's family a mechanism for establishing any liability of *State officials or bodies* for acts or omissions involving the breach of their rights;
- Promptness: A requirement of promptness and reasonable expedition is implicit in this context. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts;
- Access by the victims: Victims or complainants should have some form of effective access to the investigatory procedure;
- Public scrutiny: A sufficient element of public scrutiny of the investigation or its results is also necessary for public confidence and to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victims should be involved in the procedure to the extent necessary to safeguard their legitimate interests;
- Compensation: In the case where fundamental rights are breached compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress.

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As we shall see below the current Garda complaints system fails to meet these standards.

Chapter 3 Legal Accountability - Citizens Complaints

[Current System for Investigating Complaints - Garda Síochána Complaints Board International Requirements and the Need for Change](#)

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3.1 In broad terms, human rights is essentially concerned with structures and standards to which state actions can be held accountable. The corollary of this that accountability can be understood as a human rights issue as well an issue of governance. There are two important ways in which accountability impacts on policing: democratic accountability and legal accountability. Patten defines democratic accountability as being the means "by which the elected representatives of the community tell the police what sort of service they want from the police, and hold the police accountable for delivering it". Legal Accountability refers to how the rule of law applies to police officers.

3.2 Accountability goes to the heart of how any institution is governed, about whether actions are measured against standards of ethics and quality or whether they enjoy a wide discretion and immunity from scrutiny. At the most basic level it is concerned with whether the rule of law applies to members of the force. As set out by the CAJ,

"The measure of whether police accountability mechanisms are working effectively is the extent to which the current checks and balances are deterring or punishing any wrongdoing by the police."

There have been a small number of cases of criminal prosecution of members for offences such as traffic offences, bribery and assaults, including sexual assaults carried out while off-duty. It is sometimes suggested that the existence of these cases prove that there is no problem of impunity within the force. However this argument fails to address the central issue of abuse of power by police officers and of the accountability of police officers for actions carried out *during* the exercise of their duties. Prosecutions for excessive use of force, for interfering with evidence and for using illegal means of interrogating suspects, for example, have been extremely rare. In its report for 2001 the Garda Síochána Complaints Board (GSCB) indicated that in 2001 of the 1,200 complaints that it received, only 199 were referred to the DPP and only 3 resulted in prosecution.

3.3 An important requirement of any police force is that it must be subject to the same law that they enforce and that they must be perceived to be so. A key consequence of police impunity is the detrimental effect it has on public perceptions of the force. If legal wrongdoing by police goes unpunished not only do the victims of any such wrongdoing become alienated from future cooperation with the police, but public confidence and respect for the force in general is seriously damaged. Individuals and groups who feel that the police are acting in a partisan manner against them are likely to learn distrust not just of the police but also of the law itself. In many respects the behaviour of the police is the embodiment of our legal system and constitutes the most important interface with the judicial system for large sections of the community.

3.4 There is the fundamental requirement, therefore, that members of the public who suffer rights' violations at the hands of members of the Garda must have a fair, speedy and effective remedy. It is also essential that when concerns arise, the public can be that any abuse of police power will be addressed and punished swiftly and fairly. We strongly believe that the greatest impediment to developing a relationship of trust and respect between public and police is the strong sense that a small minority of officer have been guilty of serious misconduct with impunity. The Patten Commission puts it well when it states:

"It is not enough to suggest, as some have, that one should accept that every organisation has [such] "bad apples". They should be dealt with."

That there are many cases in recent history of the Garda, where not only have the 'bad apples' not been dealt with, but have in fact been reassigned to other areas where yet more serious and well-known violations have occurred, indicates a serious systemic problem within the force.

3.5 The area of accountability for police misconduct and the need for an independent complaints' mechanism is the most important issue on the reform agenda. Almost all parties to the debate on police reform, including the Association of Garda Sergeants and Inspectors, have accepted the principle that the introduction of an independent complaints mechanism is required. The outstanding question, then, is what form such a new structure should take.

3.6 In attempting to answer this question, we will look firstly at the shortcomings of the existing system of investigating complaints against members of the Garda. Secondly, we will look at best international practice in the area. Finally we look at specific issues that arise in the Irish context and examine how the current Government proposals for change fall short of the standards existing in Northern Ireland and elsewhere. On this basis we will make recommendations for a Garda Ombudsman for Ireland.

Current System for Investigating Complaints - Garda Síochána Complaints Board

(i) Composition of the Board

(ii) Means and Powers of Investigation

(iii) Resources - Delay

3.7 The principal difficulty with the existing method of investigating complaints against members of the force, the Garda Complaints Board is that it is not sufficiently independent and hence does not enjoy the support of the confidence of the public. The Board accepts this and has recommended change.

3.8 There are three main difficulties with the current system. These are

(i) Composition of the Board

The Board is comprised of a chair and eight ordinary members who are all appointed by the Government. There is no specific appointment procedure involving any outside input into the selection of members of the board. One of the members of the Board must be the Garda Commissioner or, as has been the usual practice, his appointee. From the outset, any body that includes a representative of the Garda Commissioner can never be independent of the force in any meaningful way. Even though the representative is only one of eight ordinary members of the Board, it is likely that, within the Board, deference will be paid to a serving member of the force by other members of the Board.

On a more general level, of the remaining seven ordinary members, three must be solicitors or barrister of ten years standing and the Government has indicated that the remaining four will be appointed as "persons who will immediately command the respect and confidence of the general public and of the Garda". Dermot Walsh has argued that lawyers and the kind of person "who enjoys the confidence and respect of both the general public and the Garda" may very well find it difficult to gain the trust of those sections of the community that are likely to make complaints against members of

the Garda. Even were justice being done by the Board, it is clear that the Board is not, and will not, be perceived as being properly independent.

Another aspect of the system that Dermot Walsh highlights as problematic is the part-time nature of the Board. He suggests that its part-time status and the fact that it is the Board is two steps removed from the actual conduct of investigations which is carried out by the Chief Executive of the Board greatly inhibits the establishment of a public persona for the Board. His argument is that an individual, such as an Ombudsman, is much more likely to gain public confidence than a face-less, anonymous board.

(ii) Means and Powers of Investigation.

Formal investigations are conducted by either a Garda Inspector or a Superintendent, who then submits a report to the GSCB. There is also provision for informal resolution of complaints involving a local superintendent if the complainant consents. Despite the limited autonomy of the Board itself, the fact that investigations are still carried out by serving members of the force greatly undermines any possibility that complainants will see the process as objective.

The Board has the power to establish an external investigation in certain circumstances. This power has only been exercised once, in the case of allegations of Garda misconduct in the May 6th 2002 operation in Dublin. That investigation was headed by a former Assistant Garda Commissioner and ran into severe difficulties as members of the force refused to cooperate with it and the Board does not have the crucial power to compel witnesses. Gordon Holmes, Chairman of the Board has publicly stated that of 150 gardai contacted by the investigation team, only 20 have responded and none of those were able to identify their fellow officers.

(iii) Resources - Delay

A basic requirement of any system of justice is that the system delivers an effective remedy in a reasonable time. At present, the resolution of complaints can take anything up to 18 months. This problem has been acknowledged in 2001 Report also points to the persisting problem of delay in processing complaints. The Board expressed their concern that in some cases the DPP was being denied the right to consider whether a Garda should be prosecuted because the law on summary prosecution requires that any such prosecution must commence within six months of the commission of an offence. The GSCB admits that it increasingly fails to provide files to the DPP within this period (the GSCB did not indicate in how many cases) and therefore the possibility of any prosecution is excluded due solely to delays within the system.

International Requirements and the Need for Change

[European Committee on the Prevention of Torture](#) [Obligations under the United Nations Human Rights Treaties](#)

European Committee on the Prevention of Torture

3.9 The European Committee on the Prevention of Torture has highlighted the deficiency of the Garda complaints system on a number of occasions. As far back as 1993, following its first visit to Ireland, the CPT was highly critical of the Irish system of investigating complaints and called on the Government to, "reconsider the composition of the Garda Síochána Complaints Board and of the disciplinary tribunals appointed by it". In their response, the Irish authorities indicated that the "opinion of the Board and of disciplinary tribunals will be reviewed shortly in the light of the recommendation".

When the Government had failed to act by the time of the Committee's second visit in 1998, the CPT went into more detail on the issue:

"One of the most effective means of preventing ill-treatment by police officers lies in the diligent examination of complaints of such treatment and the imposition of suitable penalties. In this respect, the Committee's 1993 report stressed that to be fully effective a complaints procedure must be, and be seen to be, independent and impartial. Having regard to the presence of serving police officers amongst the members of the Garda Síochána Complaints Board, and of disciplinary tribunals appointed by it, the CPT recommended that the composition of those bodies be reviewed."

During the 1998 visit, Department of Justice, Equality and Law Reform officials confirmed that, "the Act under which the Garda Síochána Complaints Board operates is currently being reviewed."

3.10 When the CPT conducted its third visit to Ireland in 2002, they would have seen that the Complaints Board was still in place. When the recommendations of the CPT are published later this year, it is likely that they will express serious concern at the lack of progress in this lengthy 'review'.

Obligations under the United Nations Human Rights Treaties

3.11 The most important UN human rights treaty-monitoring body, the UN Human Rights Committee, has explicitly addressed the issue of police accountability in Ireland. In its concluding observations on Ireland's Second Periodic Report under the International Covenant on Civil and Political Rights, the Committee stated,

"The Committee recommends that, in the context of its current review of the Garda Complaints Act of 1986, the State party take steps to ensure that the Garda Complaints Board is not dependent on the Garda for the conduct of investigations. Consideration should be given to the establishment of a police Ombudsman. In the case of death resulting from action by members of the Garda, the State party should ensure that allegations are investigated by an independent and accountable process."

3.12 The views of these two authoritative international bodies clearly demonstrate that Ireland's system of investigating complaints is in contravention of our commitments under international human rights treaties.

Implementation in Northern Ireland and Proposed Implementation in Ireland

[Powers of the Ombudsman](#)

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[Implementation of the Ombudsman's findings](#)

3.13 The Hayes Review and the Patten Commission have explored the issue of how to implement these international standards into national practice in great detail. The conclusion reached by the Patten Commission was to endorse the recommendations of the Hayes Report of a fully independent Ombudsman. At the time the Patten Report was being produced the Hayes recommendations, having been accepted by the police themselves, had a legislative basis, but the Commission had no opportunity to evaluate the success of the Ombudsman office. With the benefit of greater time-lapse than Patten, we are in a position to make preliminary evaluations of the post and ICCL is of the view that there is no need for the Irish Government to 're-invent the wheel' on this

question. We support both the method in which Patten examined this issue and the conclusions that the Commission reached: that is a fully independent Ombudsman office with powers to compel evidence, and initiate investigations.

3.14 Calls of the relatives of the victims the Omagh bombing to allow Nuala O'Loan investigate the circumstances of the Garda investigation into that bombing have drawn attention to the advantages of the Northern system. After a meeting with the relatives, when the Minister of Foreign Affairs was asked what measures he had taken in comparison to the equivalent independent investigation conducted in Northern Ireland, he could only point to his own investigation that was headed by former civil servants. This case brought the discrepancy between accountability mechanisms in the two jurisdictions into sharp relief.

3.15 Recent years have also demonstrated that co-operation between the Garda Síochána and the PSNI is crucial in preventing crime, particularly terrorist activity. There is legislation in preparation to consolidate and enhance that co-operation. Compatibility between policing structures can only assist such co-operation. Equivalence in the forms and modes of accountability will be an essential element in building of public confidence in the effectiveness of cooperation and information sharing between the two forces. This is a further practical reason why the Northern structures should be transposed to this jurisdiction. What those structures entail is considered below.

Powers of the Ombudsman

3.16 A Garda Ombudsman must enjoy the power not only to investigate complaints that are received, but to initiate investigations. In the conduct of the investigation the Ombudsman must also enjoy full investigative powers: the power to call, question and if necessary arrest suspects; the power to conduct searches, carry out forensic investigation, seize and if necessary compel the production of documents or other evidence. All of these powers are enjoyed by the Police Ombudsman of Northern Ireland have been used, and have contributed to the success of that office. In the exercise of these powers there is of course the natural corollary that any Garda subject to an investigation would enjoy full rights of due process in accordance with international human rights standards, and protected under the Constitution.

Appointment

3.17 The position of Police Ombudsman in Northern Ireland is currently held by Nuala O'Loan. Statistics independently compiled following the Omagh report show that 86% of people the new office of Northern Ireland Police Ombudsman to be independent. ICCL believes that her success in gaining public support and being perceived as being clearly independent from the police and political systems is due in no small part to the transparent method by which she was appointed. We believe that the position of Garda Ombudsman should similarly be publicly advertised and that candidates should be interviewed and evaluated on the basis of criteria that are in the public domain.

Jurisdiction over cases

3.18 A Garda Ombudsman would not necessarily investigate every single complaint against the Garda, recognising that some low level complaints about, for example, Garda incivility may not warrant a full investigation by the office. Powers to delegate but yet retain oversight of investigation of the less grave allegations would seem sensible, notwithstanding that Nuala O'Loan's office is responsible for the complete range of police complaints. Nevertheless a Garda Ombudsman must be able to, and should, investigate complaints which may appear less serious, when taken as individual, discrete incidents - but in fact indicate a pattern of abuse or misconduct. This goes hand in hand with the jurisdiction of the office, as recommended by Patten,

to investigate and comment on any police practice, procedure or policy which may underlie complaints or problems.

3.19 Any process of reform, however far-reaching, must firstly address the outstanding cases of injustice. The Government have not yet indicated whether their proposed model will have retrospective jurisdiction. While it may not be practically possible to properly address all un-addressed public grievances against members of the force, there should at least be an effort to address some of the most serious cases. At a bare minimum, we would argue that an Ombudsman must be able to review all the reports of the recent internal garda inquiries that have been conducted and remain outside the public domain, and recommend their publication to the Minister for Justice, Equality and Law Reform subject to any overwhelming public interest identified by the Ombudsman. It is indefensible that important inquiries into matters of grave public concern, indeed investigations that were prompted by high levels of public concern, should then remain wholly inaccessible to the public. The refusal to make public these reports constitutes a serious violation of the rights of the persons affected by the alleged garda misconduct in these cases. It is important to bear in mind that the groups affected by these cases may be wider than the persons directly alleging that their rights were violated.

3.20 Examples of the type of cases that we feel should be addressed are:

- The Garda investigation into the murders of Sylvia Shields and Mary Callinan at Grangegorman in 1997 and the associated questioning of Dean Lyons.
- The Garda investigation and questioning of Colm Murphy in relation the Omagh bombing and evidence relating to forging of interview notes by gardaí.
- The Garda investigation and questioning of Paul Ward in relation to the murder of Veronica Guerin and his treatment in custody.

It is notable that in these three cases, internal Garda reports were commissioned by the Garda Commissioner and have not been published.

Resourcing the Ombudsman

3.21 The Office of Garda Ombudsman that we are recommending will require adequate resources to carry out his/her functions effectively and this issue of resources will certainly be raised when any proposed legislation is being debated. Proper funding of the office, will not only allow the office to carry out its work with a full time professional staff, but will be a reflection of how important the government sees this office and the role it plays in improving policing and serving the public. The Police Ombudsman for Northern Ireland employs 126 people and has an annual budget in the region of Sterling £6.7 (€11) and this large investment in a smaller jurisdiction gives some indication of the scale of funding that will be required. However, it is worth considering that the current means by which complaints are being dealt with also involves substantial financial costs. Newspaper reports have suggested that approximately €6 million has been paid in compensation for assaults and wrongful arrests by members of the Garda Síochána between 1997 and 2002, the large majority of these cases being settled out of court.

3.22 The cost of the Tribunal of Inquiry into the shooting of John Carthy by members of the Garda Emergency Response Unit in April 2000 and the Tribunal of Inquiry into the actions of individual gardaí in the Donegal Division are difficult to estimate at this time, but will certainly run into several million euro. Both tribunals are involved in

investigating matters that would fall within the remit of a Garda Ombudsman. It also worth noting that several of the most prominent cases in recent years have been the subject of internal Garda investigations that must, presumably, have incurred significant financial human resources costs. The fact that so few of these inquiries, which also would fall within the remit of a Garda Ombudsman, have resulted in published reports or disciplinary actions raises serious questions about the use of significant Garda resources to suppress proper investigation of Garda members.

Implementation of the Ombudsman's findings

3.23 The standards of the European Convention on Human Rights require that an investigation should also provide some remedy to the victims - this can be both the punishment of the perpetrator, where appropriate, and also the award of compensation. To meet the first requirement the Garda Ombudsman must refer evidence of prosecutable criminal conduct to the DPP, or in the case of less serious misconduct s/he should recommend disciplinary action. The second criteria foresees the office enjoying the power to recommend awards of compensation to victims.

Government Proposals 2002

3.24 The Government's announcement that a Garda Inspectorate would be set up to replace the Garda Síochána Complaints Board has not yet been matched by any legislative proposal so it is difficult to assess precisely what shape this new body would have. Public statements by the previous and incumbent Minister for Justice would seem to suggest, though, that the proposed Inspectorate will conflate the functions of an ombudsman with some of the functions of a police authority or board (such as the Northern Ireland Police Board).

3.25 The reasons why ICCL believes that this type of dual function inspectorate would be unworkable are discussed in the context of democratic control of policing in the next chapter. However, our general position is that we believe there is an important distinction between the management and strategic functions of an inspectorate and the investigatory functions of an ombudsman and we believe that these two different functions should be performed by different specialised agencies. The most important difference in practice is that the management duties of a police authority or inspectorate may well justify the involvement of persons with experience of police management. However, complaints must be dealt with by an agency that is clearly both independent of policing and politics and also perceived to be so. Conflating the two may very well be used as an excuse for the appointment of the standard 'safe pair of hands' to the position.

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Chapter 4 Wider Accountability - Sed quis custodiet ipsos cutodes

[Parliament and Government](#)

[Garda Commissioner](#)

[Civic Oversight - The Case for a Garda Board](#)

[Whistleblowers](#)

4.1 Civilian oversight of the police force not only is a safeguard against police abuse of power, but is also a means by which public values can influence policing standards and practices. The previous chapter examined the issue of accountability in the sense of bringing individual actions to account against established standards of police conduct.

This chapter will look at the issue of accountability in its other sense; that of answerability of the institution to those whom it serves and reform of the internal structures of the Garda and the existing political structures for wider accountability of the force as a whole.

4.2 As public servants invested with extensive legal powers, the public have a legitimate right to demand that the functioning of the force truly serves the interests and needs of the community. Particular concerns arise in relation to the accountability of covert policing, in particular the activities of the Garda Special Detective Unit, where the powers of the police and the potential for abuse of police power are greatest. The formalisation and development of lines of communication between police and the public is crucial. Police policy and practice can be accountable in several ways: through the executive of the people, through the parliament of the people and at the community level. We will look at each of these lines of public accountability separately, but as a general principle, accountability structures emphasising engagement between the community and the police are more immediate and of a different quality to structures where accountability is mediated through elected representatives.

4.3 In Ireland, the primary means of holding the Garda accountable has been through the Minister for Justice, and even then that political accountability has been limited. As in the previous chapter we will argue that systems of accountability based on a traditional view of the separation of powers and restricted to the Oireachtas and the Government can only ever achieve limited success in this area and we recommend further institutional innovation in this area whereby the community can have a more meaningful input into Garda values and operational policies. Institutional innovation is particularly apposite when there are these two quite separate objectives of accountability involved. The principle underpinning the relationship must be one of partnership, not just consultation. However, we will begin by looking at the existing ways in which the Garda Commissioner is accountable to the State.

4.4 As a public service funded from the general estimate, the State has a legitimate role in overseeing the general operation of the police force. Historically, both Ireland and the United Kingdom have rejected the model of direct ministerial control of policing, which is the norm in many European countries. The Garda Commissioner is responsible for the general direction and control of the force, with the Minister for Justice Equality and Law Reform being answerable to the Oireachtas for financial matters and internal regulations.

4.5 In any democracy, there will be a difficult and delicate balance to be struck in ensuring that the police remain free from political interference, while at the same time ensuring that parliament and the executive are able to exercise the proper and necessary roles of supervision over the force. This view is based on a legitimate fear that excessive interference in police matters by government or parliament could lead to partisan political control. and has led to the development of the doctrine of 'operational independence' whereby the Commissioner has enjoyed a high degree of independence in relation to the day-to-day functioning of the force.

4.6 The CAJ study emphasised that the proper definition of the term 'operational independence' is at the heart of the debate about the democratic accountability and policing. A wide definition of the concept can be used by police to remove their actions from external scrutiny. It has been argued by some commentators that successive Commissioners have employed such a wide definition of the concept in the past to resist attempts at political scrutiny of particular garda operations (see section on Garda Commissioner below). In any event, there is a strong case for having a clear definition of what constitutes operational matter established in statute law and there should also

be a clear description of the roles of the Commissioner, the Minister and the Oireachtas in this regard and would extend the accountability of the force. We also believe that the establishment of a Policing Board would greatly improve the quality of that accountability by ensuring a more representative structure of public control of Garda policy. We will now look at the appropriate functions of each of these bodies in more detail

Parliament and Government

4.7 Parliamentary questions constitute one important existing means for elected representatives to raise concerns and demand direct political accountability on policing matters. Professor Walsh conducted a study of the nature of Dáil Questions on policing matter over a period in the 1980's and the results of his survey indicate that many of the questions asked related to non-operational matters such as requests for statistical information relating to manpower and the allocation of resources. Other questions related to more direct operational issues and this creates a rather curious situation whereby the Minister for Justice is answerable in the Dáil for matters for which the Commissioner is responsible. Essentially, the Minister has become the defender of police policy and execution where he has no control over many aspects of that execution.

4.8 In practice, Dáil questions to the Minister have not proven to be a satisfactory means of making the Garda accountable. Professor Walsh goes into some detail in illustrating the weaknesses and limitations of the Oireachtas as a means of accountability and his analysis certainly strengthens the case for a Garda Board. However, it is our view that in all matters, ultimate accountability should be to the elected parliament. At present the Commissioner comes before the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Issues on an annual basis. It is our view that the issue of policing is of sufficient public importance to merit a full Dáil debate on the Garda Annual Report, which should be presented by the Commissioner in Leinster House.

Garda Commissioner

4.9 The Commissioner should be responsible and ultimately answerable for all operations and functions of his members. Patten also looked at this issue and his comments are instructive:

"(Operational Independence) does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case. But the term 'operational independence' suggests that it might be, and invocation of the concept by a recalcitrant chief constable could have the effect that it was. It is important to be clear that a chief constable, like any other public official, must be both free to exercise his or her responsibilities but also capable of being held to account afterwards for the manner in which he/she exercises them."

In our view, the Commissioner should be answerable to the Oireachtas in the formal sense outlined above but he should also continue to be accountable to the Minister on a day-to-day basis. It is also our view that on financial and resource matters particularly, this relationship should become more formalised. The current system of appointment of the Garda Commissioner is also in need of review. In the interests of creating higher levels of independence for the Office of Commissioner, it would be more appropriate that his appointment should be by an independent selection process

and through a Garda Board.

Civic Oversight - The Case for a Garda Board

Composition of the Board

Regulation of the Representative Bodies

4.10 The rationale behind having an additional level of accountability is based on the objective of including a wider type of public representation than one confined to elected representatives. The establishment of an institution such as an ombudsman or a Garda Board in any area of public life is based on the philosophy of institutional innovation. It is because of the limitations of traditional political and administrative structures that novel approaches to accountability and the regulation of state functions have been developed. Patten described the function of a Police Board to consist of the setting of medium term goals for the police force, the monitoring of overall police performance and looking at issues such as the efficient spending of resources by police management. We believe that this broadly represents the proper role of a Garda Board as well including such issues as the allocation of garda contracts, management performance and the setting of clear performance goals to which the Commissioner would be accountable on an annual basis. A Garda Board would also have a role in senior Garda appointments, such as the Commissioner. Any appointments would still require the approval of Government or the Minister, but a more open and transparent system of appointment removed from ministerial discretion would greatly add to the status and independence of senior Garda management.

4.11 The current Minister for Justice has indicated that one of the reasons that he does not support the establishment of separate Ombudsman and Police Board institutions is that he feels a Garda Board would act as an unnecessary buffer between police and parliament. We believe that this should in fact be seen as an advantage rather than a disadvantage and that the view belies a deep-rooted, but misplaced, belief in the omnipotence of the parliament as a means of exercising and regulating power. The creation of a Garda Board would reduce, to a certain extent, the powers and functions of the Minister for Justice, Equality and Law Reform over the Garda, but restricting control to the executive suggests a narrow view of the separation of powers based on traditional administrative structures.

4.12 Another, rather more curious, argument that has been offered against the need for a Garda Board here is that Ireland is sufficiently small in size not to require this type of civic oversight even though the populations of many of the areas under the scrutiny of English police authorities are in fact smaller than this jurisdiction. The argument that the existence in Ireland of one police force, as opposed to separate divisional forces in some way precludes the establishment of a Garda Board does not stand up to much scrutiny either when one considers that Northern Ireland faces the same challenge.

Composition of the Board

4.13 In Northern Ireland the Board is made up of ten Members of the Northern Ireland Assembly and nine representatives of business, trade unions, community representatives and voluntary bodies with an aim to having a Board that is as representative as possible of contemporary society. In many respects, the issue of composition of a Garda Board obviously presents far fewer difficulties than arise in a Northern Ireland context. Generally, a board consisting of as many as nineteen members is likely to prove unwieldy and inefficient. Therefore, we would recommend a Garda Board consisting of between eleven and fifteen members.

4.14 We agree with Patten that such a Board should be made up of a combination of elected representatives and representatives of civic society. However, it is our view that his recommendation that the majority of the Board should be politicians may reflect concerns particular to Northern Ireland and, given the importance in ensuring that policing does not become politicised, such a composition would not be desirable or necessary in this jurisdiction. We would recommend a composition of members based more on a partnership model with one third each coming from elected representatives, statutory bodies and community and voluntary groups. The elected officials should be appointed on a cross-party basis. The community representatives should include representatives of minority groups and groups with high levels of contact with Garda. Bearing in mind the under representation of women within policing bodies, the composition of the Board should also have regard to principles of gender balance.

4.15 As with the institution of Ombudsman, the identity of the first chair of Board will play a great part in establishing the credibility of the office. In this regard, the selection and appointment of the Chair of the Committee should be on the same basis as for the Garda Ombudsman, though any sitting politician should be excluded from holding the position.

Regulation of Representative Bodies

4.16 We have already referred to the concern that policing might become subordinate to partisan political concerns. However, there is also the danger that a police force that is not adequately accountable to the community could be in a position to wield political influence. This can have just as undesirable consequences. Colleen Lewis refers to one example in Queensland where police associations became involved in supporting one party in a state election .

4.17 Similar difficulties have arisen in Ireland in recent years, with the Garda Representative Association (GRA) becoming involved in some issues that arguably fall into the category party political matters. For example, in the run-up to this year's general election the GRA publicly attacked the opposition parties who were proposing the establishment of a Garda Ombudsman, making a clear distinction with the outgoing Government's policy. In recent months, representative associations have also become embroiled in individual criminal cases on matters such as sentencing.

4.18 There is a delicate balance to be drawn between ensuring effective rights of association to members of the police force while also ensuring that police organisations, which have significant potential influence within society, do not become involved in party political issues. This balance is specifically referred to in Article 11.2 of the European Convention on Human Rights whereby police and armed forces are explicitly excluded from the general guarantee of the right to freedom of association. On this basis we believe that there is a good case for limits to be placed on the proper areas of competence of the two representative associations.

Whistleblowers

4.19 The primary responsibility for addressing misconduct must always come from within the force itself. Article 8 of the UN Code states,

"Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities."

4.20 The Patten Commission referred to the legislative regime in Queensland where a

statutory obligation is placed on officers to reporting any misconduct by their fellow officers. We believe that it is worth considering equivalent measures here. The words of Gordon Holmes in relation to the non-cooperation of gardaí in the 2002 May 6th investigation are worth considering again. He said that the Gardaí's non-cooperation, "spoke well of their loyalty to their colleagues, but not of their loyalty to the Garda Síochána".

4.21 Dr. Lewis refers to a common phenomenon in all police forces whereby officers who inform on colleagues are branded and ostracised. Measures creating an obligation to report misconduct, such as those adopted in Queensland, may go some way to addressing the defensive culture within the Garda and should be considered here. The reporting of misconduct should become the norm, rather than the exception. It is crucial then that not only are officers compelled to inform superior officers of misconduct, they must also be afforded protection from any detrimental personal consequences in the aftermath.

4.22 It is worth noting that many of the complaints received by the Police Ombudsman in Northern Ireland comes from within the police force - there have been over 74 referrals from the Chief Constable and other "walk - in"s from police officers. Up to 40% of all complaints came via the Police Service in Northern Ireland during 2002.

Chapter 5 Improving Operational Practice

[Training](#)

[Police Powers and Criminal Legislation](#)

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Training

5.1 Reform of structures is important, but real change in the quality of policing can only be affected by addressing the culture and attitudes dominant within the force. If a culture of resistance to change and accountability exists and is allowed to persist, any programme of structural reform is unlikely to be successful. Training, both at the Garda College and during service, plays a crucial role in addressing these issues.

5.2 We believe that human rights should be not only constitute a significant proportion of the curriculum within the primary training of officers, but should infuse all elements of police training and education.

As it is succinctly put in Patten, the aim of human rights education should be that

"[R]espect for the human rights of all, including suspects, should be an instinct rather than a procedural point to be remembered."

5.3 To achieve the police force that is best for the public good, you must have an education system with appropriate training programmes that will best serve the new policing objectives. In a policing culture that is characterised by wide individual discretion of officers, the judgment and decision making process of each member of

the force is the key element in the interface between public and police. It is therefore crucial that such decision-making process is informed by a strong cultural sense of accountability to ethical standards and the principles of equal and fair treatment. Training plays a key role in instilling those values.

5.4 At present promotion courses at the Garda College in Templemore involve two days of training in human rights and related concepts. There is also some anti-racism, constitutional and international law education for students at the college. However at the time of writing, there is not yet any specific human rights module on the main student curriculum. We understand that plans are currently under consideration within the College to introduce a compulsory study of human rights in the main student course in the near future.

Police Powers and Criminal Legislation

5.5 Another area where human rights have a direct relevance to police practice is in the drafting of legislation endowing powers to police. In chapter 3 we discussed the legal accountability of police officers, but to protect human rights effectively it is not enough that the police be accountable to the law, the laws relating to policing must also be fair and proportionate. The tactics and strategy adopted by police to deal with a given situation should be those involving the minimum of force and the minimal degree of interference with individual rights even where other, more invasive, powers exist. However, conversely, where legislation setting out police powers is drawn excessively broad, a tendency to utilise these powers to their full extent is likely to emerge. It is important then to look at what powers are granted to the police, as excessively wide discretionary powers are likely to lead to excessive actions.

5.6 Existing legislation that falls into that category includes the Offences Against the State Act 1939, the Criminal Justice (Drug Trafficking) Act 1996 and most significantly the Criminal Justice (Public Order) Act 1994. In the 2001 Report of the GSCB the Board pointed out that about one third of all the complaints that it investigated were in public order related incidents. The GSCB 2001 Report also expressed concern that, under the Misuse of Drugs Act, 1977, a juvenile can be searched without the presence of a parent or responsible adult. This is at variance with the general principle of law relating to the detention of juveniles, contained in the 1987 Custody Regulations, whereby gardaí are prohibited from questioning a juvenile without the presence of such a responsible adult.

5.7 The input of police into the drafting of these acts is not clear, but certainly the gardaí have often been vocal in the media in calling for the introduction of broader powers, most notably in the case of the Criminal Justice (Drug Trafficking) Act. This, of course, also forms part of a wider question about how criminal justice policy is developed in Ireland. A lack of proper examination of how the police execute their duties has also had a detrimental effect on the level of public debate on criminal justice policy more generally. At times when there is a public perception of an increased threat of crime, the police can lay the blame at the door of the criminal justice system and demand additional powers without proper scrutiny of how they use the powers available to them.

5.8 In the United Kingdom at the Westminster level, the Joint Parliamentary Committee on Human Rights, established in the wake of the Human Rights Act, has the power to review legislation including policing powers with a view to assessing its human rights compatibility. The Human Rights Commission in Ireland also has a mandate to review legislation, however its position in the legislative process is significantly different to that

of a parliamentary committee. A human rights proofing of new policing legislation, at an appropriate stage in the parliamentary system is to be welcomed.

Representation

5.9 Obviously, one of the main focuses of the Patten Commission in Northern Ireland was on the low level of representation of Catholics in the RUC and the historical difficulties this has presented the force in gaining the support of that community. While Ireland may not be faced with the same type of division in our society as exists in post-conflict Northern Ireland, that is not to say that under-representation of certain sections of the community in An Garda Síochána is not an issue.

5.10 Women continue to be under-represented at all levels of policing and police institutions and this urgently needs to be addressed. Although statistical data is not available on the relative representation of persons from urban and rural backgrounds in the force, this may also be relevant, particularly with regard to working class urban communities, which have high levels of contact with the Garda. There are also two significant groups in Irish society that are virtually unrepresented within our police force: immigrants and the Travelling Community. Non-nationals continue to comprise a relatively small proportion of the Irish population, however this has grown dramatically in recent years. The Travelling Community is also small in size, but as with the immigrant community, Travellers come into contact with gardaí disproportionately more often than the community generally for both legal and sociological reasons. Initiatives to address this under-representation would be welcome. Representation of minority groups. However, is not confined to membership of the force itself, but also requires that minorities are able to contribute in a meaningful way to policing policy through community policing structures.

Interrogation of suspects

5.11 In its 12th General Report, the CPT focussed specifically on developments in standards of protection of human rights in police custody and it made a number of recommendations in regard to interrogations. At para. 34 of the Report, the Committee states:

"The questioning of criminal suspects is a specialist task which calls for specific training if it is to be performed in a satisfactory manner. First and foremost, the precise aim of such questioning must be made crystal clear: that aim should be to obtain accurate and reliable information in order to discover the truth about matters under investigation, not to obtain a confession from someone already presumed, in the eyes of the interviewing officers, to be guilty. ... It is self-evident that a criminal justice system which places a premium on *confession* evidence creates incentives for officials involved in the investigation of crime - and often under pressure to obtain results - to use physical or psychological coercion. In the context of the prevention of torture and other forms of ill-treatment, it is of fundamental importance to develop methods of crime investigation capable of reducing reliance on confessions, and other evidence and information obtained via interrogations, for the purpose of securing convictions."

This recommendation has a special resonance here where many commentators have referred to the phenomenon of high number of criminal trials where conviction is based wholly or in large part on the basis of a confession. Many commentators have referred to the high rate of such convictions in Ireland.

Electronic Recording of Interviews

5.12 It is widely recognised that one of the most important safeguards for detainees' rights is the video- and audio- recording of police interviews. Recording interrogation protects suspects from ill-treatment and also protects gardaí from malicious accusations being brought against them.

5.13 The introduction of electronic recording technology into Irish custody suites has been recommended by a variety of sources, including the CPT internationally and the Garda Complaints Board at the domestic level, from as far back as 1979. However, when the issue was raised in Dáil Éireann in November 2002, the Minister for Justice responded to an adjournment motion by Joe Costello T.D. by saying that he was still "considering the matter in conjunction with garda management". We note that, in many countries, it was the police themselves who campaigned for the introduction of recording, but in Ireland there has been a continuing reluctance to introduce relatively inexpensive technology that is proven to work. The persistent failure to introduce this basic protective measure for detainees' rights is unjustifiable and we call on the Minister and Garda authorities to remedy this failure immediately.

Access to Lawyers in Custody

5.14 Persons in police custody in Ireland have a general right to consult a solicitor, but the CPT has questioned whether this right is effectively enjoyed by all in custody. In particular, the Committee has expressed its dissatisfaction with the formal guarantees that persons who do not have a lawyer are adequately informed of their rights in this regard. Although it is informal practice in many stations to provide names of available solicitors to persons who do not have their own solicitor, no steps have been taken to make this practice mandatory or to follow the Law Society's recommendation to create panels of solicitors who would be prepared to attend stations. However, there has been some progress in extending the criminal legal aid scheme to cover consultations in police stations.

5.15 The principal difficulties arise in regard to questioning of suspects where, in contrast with the United Kingdom, detained persons in Ireland do not enjoy a right to have a lawyer present with them during interrogation. The CPT has repeatedly emphasised that this right is one of the fundamental safeguards against ill-treatment of detained persons and in its report on its 1999 visit to Ireland the CPT noted that the Irish Government had stated in 1993 that it would give "careful consideration" to the issue. However, interrogation remains excluded from the right to consult a solicitor in Irish police stations. The real significance of the absence of this safeguard is greatly exacerbated when one considers that it is accompanied by the absence of electronic recording of interviews and the high rate of conviction on the basis of confession.

Chapter 6 Conclusions

[Accountability](#)

[Training](#)

[Garda Powers](#)

[Representation](#)

6.1 The adoption of the Declaration of Professional Values and Ethical Standards reflects a very positive and encouraging sign that human rights are being affirmed as

core and central values in the service provided by An Garda Síochána. Reform of the Garda must, however, go much further than the adoption of a declaration if it is to ensure improvement in public confidence in the gardaí, and to meet the standards of international best practice.

6.2 As we have indicated throughout this paper the ICCL believes that reform must happen at many levels:

Accountability

We call for the Garda Commissioner to be accountable through both new and existing democratic institutions and also through the creation establishment of clear lines of accountability and responsibility between the Garda Commissioner, the Minister for Justice, Equality and Law Reform, the Government and the Oireachtas. The division of responsibility between the Minister and the Commissioner should be established by statute and include a clear definition of the concept of operational independence. The Commissioner should also be directly accountable to the Oireachtas.

- We call for the the establishment of a more representative and independent Garda Board to hold the Gardaí accountable to the community. The Board should be drawn from both elected representatives and representatives of different sectors of the community, with appropriate gender balance.
- We call for the establishment of a Garda Ombudsman with similar powers and status to the Police Ombudsman for Northern Ireland to conduct independent investigations of complaints against the Gardaí. The Garda Ombudsman must be fully independent of Government and the Oireachtas, in terms of his/her appointment and in terms of his/her functions. The office must be adequately funded and should have the same powers of compellability and powers to initiate investigation as the Police Ombudsman for Northern Ireland. The Ombudsman powers should include the power to instigate investigations into serious complaints existing before the establishment of the office.

Training

- We call for comprehensive human rights training to be mainstreamed throughout all Garda educational programmes and to constitute an integral part of all training regarding the exercise of police powers.

Garda Powers

- We call for a review and scrutiny of all proposed criminal justice legislation conferring powers on the Garda in light of its impact on citizens' human rights. We recommend that such a task be carried out by an appropriate body such as the Human Rights Commission. This should includeThere should also be an evaluation of the impact on human rights of existing legislation conferring ordinary and exceptional powers on the Garda.

Representation

- In the interests of equality and creating a truly representative police force, we call on the Garda to review its existing recruitment and promotion practices.

6.3 The ICCL hopes that the forthcoming period will be an opportunity for inclusive

debate and action in the sphere of Garda reform. The ICCL welcomes indication that there is political will to initiate reform, and also recognises that key figures within the Garda establishment support such moves. A thorough comprehensive reform process is long overdue - and the ICCL believes that such a process is now owed, not just to the public who deserve a police service in keeping with best practice, but also it is owed to the men and women who serve in An Garda Síochána.

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Appendix 1 - International Standards of Human Rights in Policing

United Nations Code of Conduct for Law Enforcement Officials
Adopted by General Assembly resolution 34/169 of 17 December 1979

(with article-by-article commentary from Official UN website)

[Article 1](#)

[Article 2](#)

[Article 3](#)

[Article 4](#)

[Article 5](#)

[Article 6](#)

[Article 7](#)

[Article 8](#)

[Recommendation Rec \(2001\) 10 of the Committee of Ministers to member states on the European Code of Police Ethics](#)

[Appendix to Recommendation Rec \(2001\) 10 on the European Code of Police Ethics](#)

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary:

(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2 In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3 Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use

force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4 Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential , unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5 No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment .

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: "[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6 Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7 Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

Recommendation Rec (2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics

*(Adopted by the Committee of Ministers
on 19 September 2001
at the 765th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind that it is also the purpose of the Council of Europe to promote the rule of law, which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the rule of law and that the police have an essential role within that system;

Aware of the need of all member states to provide effective crime fighting both at the national and the international level;

Considering that police activities to a large extent are performed in close contact with the public and that police efficiency is dependent on public support;

Recognising that most European police organisations - in addition to upholding the law - are performing social as well as service functions in society;

Convinced that public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights;

Considering the principles expressed in the United Nations Code of Conduct for Law Enforcement Officials and the resolution of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police;

Bearing in mind principles and rules laid down in texts related to police matters -

criminal, civil and public law as well as human rights aspects as adopted by the Committee of Ministers, decisions and judgments of the European Court of Human Rights and principles adopted by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; Recognising the diversity of police structures and means of organising the police in Europe;

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of the police to safeguard security and individual's rights in democratic societies governed by the rule of law,

Recommends that the governments of member states be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the text of the European Code of Police Ethics, appended to the present recommendation, with a view to their progressive implementation, and to give the widest possible circulation to this text.

Appendix to Recommendation Rec (2001)10 on the European Code of Police Ethics

I. Objectives of the police

II. Legal basis of the police under the rule of law

III. The police and the criminal justice system

IV. Organisational structures of the police

V. Guidelines for police action/intervention

VI. Accountability and control of the police

VII. Research and international co-operation

Definition of the scope of the code

This code applies to traditional public police forces or police services, or to other publicly authorised and/or controlled bodies with the primary objectives of maintaining law and order in civil society, and who are empowered by the state to use force and/or special powers for these purposes.

I. Objectives of the police

1. The main purposes of the police in a democratic society governed by the rule of law are:

- to maintain public tranquillity and law and order in society;
- to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;
- to prevent and combat crime;
- to detect crime;
- to provide assistance and service functions to the public.

II. Legal basis of the police under the rule of law

2. The police are a public body which shall be established by law.
3. Police operations must always be conducted in accordance with the national law and international standards accepted by the country.
4. Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public and clear.
5. Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society.

III. The police and the criminal justice system

6. There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies.
7. The police must strictly respect the independence and the impartiality of judges; in particular, the police shall neither raise objections to legitimate judgments or judicial decisions, nor hinder their execution.
8. The police shall, as a general rule, have no judicial functions. Any delegation of judicial powers to the police shall be limited and in accordance with the law. It must always be possible to challenge any act, decision or omission affecting individual rights by the police before the judicial authorities.
9. There shall be functional and appropriate co-operation between the police and the public prosecution. In countries where the police are placed under the authority of the public prosecution or the investigating judge, the police shall receive clear instructions as to the priorities governing crime investigation policy and the progress of criminal investigation in individual cases. The police should keep the superior crime investigation authorities informed of the implementation of their instructions, in particular, the development of criminal cases should be reported regularly.
10. The police shall respect the role of defence lawyers in the criminal justice process and, whenever appropriate, assist in ensuring the right of access to legal assistance effective, in particular with regard to persons deprived of their liberty.
11. The police shall not take the role of prison staff, except in cases of emergency.

IV. Organisational structures of the police

[B. General](#)

[A. Qualification, recruitment and retention of police personnel](#)

[C. Training of Police Personnel](#)

[D. Rights of police personnel](#)

A. General

12. The police shall be organised with a view to earning public respect as professional

upholders of the law and providers of services to the public.

13. The police, when performing police duties in civil society, shall be under the responsibility of civilian authorities.

14. The police and its personnel in uniform shall normally be easily recognisable.

15. The police shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable.

16. Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.

17. The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.

18. The police shall be organised in a way that promotes good police/public relations and, where appropriate, effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups.

19. Police organisations shall be ready to give objective information on their activities to the public, without disclosing confidential information. Professional guidelines for media contacts shall be established.

20. The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular to guarantee respect for individuals' fundamental rights and freedoms as enshrined, notably, in the European Convention on Human Rights.

21. Effective measures to prevent and combat police corruption shall be established in the police organisation at all levels.

B. Qualifications, recruitment and retention of police personnel

22. Police personnel, at any level of entry, shall be recruited on the basis of their personal qualifications and experience, which shall be appropriate for the objectives of the police.

23. Police personnel shall be able to demonstrate sound judgment, an open attitude, maturity, fairness, communication skills and, where appropriate, leadership and management skills. Moreover, they shall possess a good understanding of social, cultural and community issues.

24. Persons who have been convicted for serious crimes shall be disqualified from police work.

] 25. Recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society

they serve.

C. Training of Police Personnel

26. Police training, which shall be based on the fundamental values of democracy, the rule of law and the protection of human rights, shall be developed in accordance with the objectives of the police.

27. General police training shall be as open as possible towards society.

28. General initial training should preferably be followed by in-service training at regular intervals, and specialist, management and leadership training, when it is required.

29. Practical training on the use of force and limits with regard to established human rights principles, notably the European Convention on Human Rights and its case law, shall be included in police training at all levels.

30. Police training shall take full account of the need to challenge and combat racism and xenophobia.

D. Rights of police personnel

31. Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.

32. Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work.

33. Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.

34. Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.

[Back to top of document](#) **V. Guidelines for police action/intervention**

[A. Guidelines for police action/intervention: general principles](#)

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. Guidelines for police action/intervention: general principles

35. The police, and all police operations, must respect everyone's right to life.

36. The police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.

37. The police may use force only when strictly necessary and only to the extent

required to obtain a legitimate objective.

38. Police must always verify the lawfulness of their intended actions.

39. Police personnel shall carry out orders properly issued by their superiors, but they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of sanction.

40. The police shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination.

41. The police shall only interfere with individual's right to privacy when strictly necessary and only to obtain a legitimate objective.

42. The collection, storage, and use of personal data by the police shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.

43. The police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.

44. Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups.

45. Police personnel shall, during intervention, normally be in a position to give evidence of their police status and professional identity.

46. Police personnel shall oppose all forms of corruption within the police. They shall inform superiors and other appropriate bodies of corruption within the police.

B. Guidelines for police action/intervention: specific situations

[1. Police Investigation](#) [2. Arrest/deprivation of liberty by the police](#)

1. Police investigation

47. Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.

48. The police must follow the principles that everyone charged with a criminal offence shall be considered innocent until found guilty by a court, and that everyone charged with a criminal offence has certain rights, in particular the right to be informed promptly of the accusation against him/her, and to prepare his/her defence either in person, or through legal assistance of his/her own choosing.

49. Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons.

50. Guidelines for the proper conduct and integrity of police interviews shall be

established, bearing in mind Article 48. They shall, in particular, provide for a fair interview during which those interviewed are made aware of the reasons for the interview as well as other relevant information. Systematic records of police interviews shall be kept.

51. The police shall be aware of the special needs of witnesses and shall be guided by rules for their protection and support during investigation, in particular where there is a risk of intimidation of witnesses.

52. Police shall provide the necessary support, assistance and information to victims of crime, without discrimination.

53. The police shall provide interpretation/translation where necessary throughout the police investigation.

2. Arrest/deprivation of liberty by the police

54. Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record shall be kept systematically for each detainee.

55. The police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.

56. The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.

57. Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible, of their choice.

58. The police shall, to the extent possible, separate persons deprived of their liberty under suspicion of having committed a criminal offence from those deprived of their liberty for other reasons. There shall normally be a separation between men and women as well as between adults and juveniles.

VI. Accountability and control of the police

59. The police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.

60. State control of the police shall be divided between the legislative, the executive and the judicial powers.

61. Public authorities shall ensure effective and impartial procedures for complaints against the police.

62. Accountability mechanisms, based on communication and mutual understanding

between the public and the police, shall be promoted.

63. Codes of ethics of the police, based on the principles set out in the present recommendation, shall be developed in member states and overseen by appropriate bodies.

VII. Research and international co-operation

64. Member states shall promote and encourage research on the police, both by the police themselves and external institutions.

65. International co-operation on police ethics and human rights aspects of the police shall be supported.

66. The means of promoting the principles of the present recommendation and their implementation must be carefully scrutinised by the Council of Europe.

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