

**Speech by Mr. Willie O'Dea T.D., Minister of State at the Department of Justice,**

**Equality and Law Reform at the ICCL Seminar**

**"A Human Rights Approach to policing"**

**Royal Dublin Hotel, O'Connell Street - 4 March 2003 1 p.m.**

Mr. Chairman, distinguished speakers, ladies and gentlemen. I must first convey the apologies of the Minister for Justice, Equality and Law Reform, Mr Michael McDowell, T.D., who was to have spoken to you on this important topic. As you are probably aware, the Minister cannot be here today, as he is still engaged in important business at Hillsborough with the Taoiseach, and other parties to the Good Friday Agreement. I am sure you will join with me in wishing all the participants in that important process the very best with their endeavours.

I am very pleased to have this opportunity to speak at this important seminar on "A Human Rights Approach to Policing" and for the opportunity to outline the approach of the Minister and of the Government to this issue. I also want to welcome the Council for Civil Liberties policy paper on the matter, which I am sure is a welcome contribution to the debate on police reform.

A respect for human rights must be at the heart of policy on policing, because the very nature of police work inevitably raises issues of human rights. The investigation of crime invariably involves an intrusion, sometimes a serious intrusion, into what everyone would regard as the most basic of human rights. The right to privacy is compromised if police examine a person's bank records, or if they search a person's home or office. The right to liberty is temporarily set aside by arrest and detention. One can think of many other ways in which personal human rights can be affected by the process of criminal investigation or law enforcement. But of course it does not simply come down to a balance of, on the one hand, police powers and, on the other hand, human rights. The very purpose of police powers is to vindicate the human rights of victims or potential victims of crime and the wider rights of society. It is therefore, in one sense, a balance of rights, a balance that must be got right, and a balance that I and the

Government regard as critical to a just and effective criminal justice system that respects and vindicates the rights of all.

It is a balance which is reflected in our laws and our Constitution, which has at its heart the protection of the rights of the individual and of society. Over the years, too, human rights standards have been developed and adopted by the United Nations which set out practical guidance to States and law enforcement officials. While some are legally binding and some are not, they all have a persuasive and moral force and are intended to take into account national law and practice. They all spring from the fundamental human rights contained in the “Universal Declaration of Human Rights” in 1948, rights which are reflected in the European Convention on Human Rights and of course our Constitution, many of which are central to the issue of human rights and policing, including :

- the right to life
- the right not to be subjected to torture, or arbitrary arrest or detention
- the right to equality before the law and to be presumed innocent unless proven guilty according to law in a fair and public trial
- the right to freedom of movement, opinion, peaceful assembly and association
- the right to privacy and
- the right to an effective remedy by competent national tribunals for acts violating a person’s fundamental rights.

In practical terms, this means that the Garda Síochána must have effective powers of criminal investigation, but there must also be in place a mechanism whereby the public have full and secure confidence that the considerable powers vested in the Garda Síochána are used properly and proportionately and are subject to independent oversight. In this context you will be aware of the commitment in the programme for Government to replace the Garda Complaints Board with a Garda Inspectorate, and I want to outline for you the Minister’s proposals in that regard, but I do think it is important to recognise the other measures already in place, or in the process of being put in place, which are designed to protect, directly or indirectly, the human rights of those who are the subject of criminal investigations or law enforcement.

The Garda Síochána have of course in place a detailed code of practice, and any breaches of this practice can be subject to disciplinary procedures under the Garda Síochána (Discipline) Regulations, 1989. In addition, any member of the Force who engages in criminal wrongdoing is liable to prosecution by the Director of Public Prosecutions. Furthermore, it is open to any member of the public to take

a civil action against individual Gardaí and the State in respect of alleged abuses of their human rights, and I can tell you that this right is no empty formula, but one that is regularly exercised. There is also the potential for the Oireachtas to establish Tribunals of Inquiry in cases which give rise to significant public concern. This is a weighty mechanism, not to be lightly invoked, but it is worth recalling that there are currently two such Tribunals examining Garda conduct, one in relation to certain events in Donegal and the other in relation to the circumstances which led to the tragic death of John Carthy.

There are also detailed regulations, made under the Criminal Justice Act, 1984, which set out procedures to be followed by members of the Garda Síochána when dealing with persons in Garda custody. A key objective of the regulations is the safeguarding of the human rights of those in custody. They provide that arrested persons must be given the reason for their arrest, that they must be told that they are entitled to consult a solicitor, that they are entitled to have notification of their detention sent to another person, and that the fundamental rights of persons in custody, including the right to rest and medical treatment and the right not to be ill treated, must be fully respected.

Detailed records of detention must also be maintained.

A further safeguard which has been introduced and progressively extended nationwide in the Garda Síochána is the provision of Audio/Video recording of interviews. A Steering Committee, chaired by the President of the Circuit Court, Mr. Justice Esmond Smyth, has been actively advancing this project and it is nearing conclusion. There are now over 220 rooms in approximately 130 Garda stations fitted with the equipment, spread throughout the country, and comprehensive training has been given to almost 10,000 members of the Force.

I understand from the Garda Authorities that, where at all possible, persons who are detained are brought to a station which has interview rooms suitably equipped to make it possible to electronically record the interview. Again, detailed regulations are in place which specify how and in what circumstances the recording of interviews should be conducted. The introduction of this system, which is now in regular use, has added a further protection for those detained and interviewed in Garda custody, and I believe that its full impact has yet to be felt.

A further recent positive development from the perspective of human rights has been the introduction of the Garda Station Legal Advice Scheme, which commenced in February 2001. This Scheme provides that where a person is detained in a Garda station for the purpose of the investigation of an offence, and has insufficient means to pay for a consultation with a solicitor, the consultation will be paid for by the State. The scheme applies to detention under the provisions of the Offences Against the State Acts, the Criminal Justice Act, 1984 and the Criminal Justice (Drug Trafficking) Act, 1996, in other words the main provisions on detention. This scheme is of course in addition to the right of persons to have legal representation in the Courts which is provided by the State

for persons whom the Courts establish cannot afford it.

I think that it should also be recognised that there has for some considerable time been an awareness and appreciation within the Garda Síochána of the need to address issues which can give rise to conflict and concern. An example of this is the Garda pilot conflict resolution training programme which was commenced in 2001 with the objective of enhancing standards of courtesy and professionalism in dealing with conflict situations. The programme, which ran to the end of 2001, was conducted in Tallaght and Store Street Station in the Dublin Metropolitan Region. I understand that the feedback from the programme was very positive with a recorded reduction of 46% in official complaints against Gardaí at Store Street Garda Stations. While this reduction may be attributed to a number of factors, the results of the evaluation were quite positive with most respondents indicating that the course was relevant and worthwhile. Certainly, 74% of Garda respondents reported that their ways of dealing with conflict situations has altered since attending the programme, and 69% of Garda respondents considered that the programme was either useful or very useful to their policing needs.

Building on this pilot scheme, a Conflict Resolution training course has been introduced into the Garda Student/ Probationer Training Programme, and the National Core Garda In-Service Training Programme now also includes a module on Conflict Resolution. In addition, the Garda Policing plan for 2003 sets out "Declaration of Professional Values and Ethics Standards". Included in the specific values and standards laid down in the plan are respect for the human dignity of every person and the obligation to uphold and protect the human rights of all. There is a commitment on the part of the Garda authorities to evaluate the depth and thoroughness of the implementation of the plan and to evaluate the level of compliance at the end of the year.

That is a brief summary of some of the main provisions which, apart from the Garda Complaints Board, exist to ensure respect for the rights and dignity of those who come into contact with the Garda Síochána. I do not list these provisions in any sense of complacency, or by way of asserting that the balance I earlier referred to is yet fully right, but I think it is important to recognise the safeguards that are in place and that are in a sense a starting point from which we can move forward.

As you know, the Government is committed to the establishment of a new body, a Garda Inspectorate, to deal with complaints against the Garda Síochána. Work on the preparation of a General Scheme of a Bill to provide for this is well advanced, and the Minister intends bringing this to Government in the near future with a view to publication later this year. This should not be taken as any criticism of the existing Garda Complaints Board, which can only operate under existing law and which indeed has itself been a strong advocate of change, but a recognition of a public need for reassurance that there is independent oversight

of the exercise of the extensive powers given to the Garda Síochána.

I am glad that the proposal for a Garda Inspectorate has been generally welcomed, but I recognise, too, that many in the human rights field have called instead for the establishment of a Garda Ombudsman. In particular, I am aware of the Human Rights Commission's views on this matter. I assure you that the Minister has carefully studied their proposals for a Police Ombudsman published last December, and he has noted their view that an Ombudsman would represent a more effective complaints mechanism.

I should first of all say that the Commission will have the opportunity of examining the proposals in greater detail as soon as the Minister obtains the approval of the Government for the drafting of the Bill, as he has made it clear to the Commission that he will be referring the matter to them in accordance with the terms of section 8(b) of the Human Rights Commission Act, 2000. The Minister very much hopes that the detail of his proposals will significantly address their initial misgivings. Indeed, recently, in answer to a Parliamentary Question, the Minister directly addressed the two principal concerns which have been raised, and I might briefly do so again here.

First of all, the Minister emphasised that the commitment in the Programme for Government to give the Inspectorate the powers of an Ombudsman will be reflected in his proposals. The Minister intends the Inspectorate to have comprehensive powers of investigation, fully equal to those that might be given to an Ombudsman. It is true that at this stage the Minister sees advantage in the Inspectorate comprising perhaps three persons, supported by appropriate staff, rather than simply one person as would be the case with an Ombudsman, but this surely cannot pose a difficulty of principle for those who support the idea of an Ombudsman.

Secondly, the Minister recognises that the principal concern of the Human Rights Commission over the Inspectorate relates to the proposed dual role of the Inspectorate, whereby it will not only examine complaints but also examine Garda practices and procedures. The Commission is concerned that this dual role is or at least could be inherently incompatible. It is important to make the point, however, that the Commission, in coming to this view, acknowledge their assumption that the role of the Inspectorate in examining practices and procedures will be broadly similar to the role of the U.K. Inspectorate of Constabulary, which is tasked with ensuring the efficiency and effectiveness of police forces. I want to say clearly that this is not the Minister's intention.

In fact, he intends proposing that the function of the Inspectorate in examining Garda practices and procedures will be focused on those practices and procedures which could give rise to complaints or significant public concern rather than, for instance, issues such as efficiency, value for money etc. In other words, there will be a very close and fully compatible link, and no tension, between the two

proposed functions of the Inspectorate.

I should say also that the legislation under preparation will, quite apart from the provisions relating to the Garda Inspectorate, contain proposals for a general reform of the legislative basis of the Garda Síochána, based on a report on the performance and accountability of the Force. This arises from a fundamental review of the workings and practices of the Garda Síochána which has been under way since a 1997 Report on the Efficiency and Effectiveness of the Force, conducted within the framework of the Strategic Management Initiative across the public service. The Report contained a number of recommendations relating to the organisation, operations, financing and performance and accountability of An Garda Síochána, and led to the establishment by Government in January, 1998 of a Garda SMI Implementation Steering Group.

This Steering Group has representation not only from my Department and Garda management but also, and importantly from the perspective of achieving a consensus on the way forward, the Garda representative bodies. This Group is now nearing conclusion on its final work on reviewing the organizational structures and systems of the Garda Síochána and the deployment of its operational resources, but already it has completed an agreed report, which has been accepted by Government, on performance and accountability and, as I say, this will be reflected in the legislation now being prepared. It will constitute a comprehensive restatement of the functions of the Garda Síochána and of its relationship with Government. It will be a significant reforming measure, which will have at its heart the objective of improved accountability. It will make the Garda Commissioner Accounting Officer for the Force and directly responsible to the Oireachtas for the annual Garda budget. It will provide for the setting and measurement of clear policing objectives, and it will establish a new basis for the establishment of policing policy into the future.

Mr. Chairman, we are approaching a period of significant police reform, reform which I believe will be and indeed is being embraced by the Garda Síochána and which I am sure will attract strong public support. I can pledge to this seminar, on behalf of the Minister, that respect for human rights will be at the heart of that reform, and that we will listen very carefully to all of the views that are expressed today and that will be expressed in the time ahead.

Thank you.