

Implementing Morris An Agenda for Change

Placing Human Rights
at the Core of Policing in Ireland

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Irish Council for
Civil Liberties



Contents

About the Irish Council for Civil Liberties (ICCL)	03	
Introduction	04	
Action Point 01	05	
Garda Management and Human Rights Proofing		
Action Point 02	09	
Civic Oversight – The Need for a Garda Authority		
Action Point 03	11	
Garda Accountability		
Action Point 04	14	
A Fresh Approach to Garda Recruitment and Training		
Action Point 05	16	
Legal Power of Superintendents to Issue a Search Warrant		
Action Point 06	18	
Handling Garda Informers/Informants and Covert Policing		
Appendix 01	21	
Morris Tribunal Inquiry Terms of Reference		
Appendix 02	23	
List of Morris Tribunal Reports and Outstanding Modules		
Appendix 03	24	
ICCL Papers on Garda Reform		

About the Irish Council for Civil Liberties (ICCL)

The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

Founded in 1976 by Mary Robinson and others, the ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included establishing an independent Garda Síochána Ombudsman Commission, legalising the right to divorce, securing more effective protection of children's rights, decriminalising homosexuality and the introduction of multi-ground equality legislation.

We believe in a society which protects and promotes human rights, justice and equality.

What we do:

- Lobby government for positive changes in the area of human rights;
- Monitor government policy to make sure that it complies with international standards;
- Conduct original research and publish reports on issues as diverse as equal rights for all families, the right to privacy, police accountability and judicial accountability;
- Run campaigns to raise public and political awareness of human rights, justice and equality issues;
- Work closely with other key stakeholders in the human rights, justice and equality sectors.

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Introduction

The Morris Tribunal of Inquiry was set up on 24 April 2002 pursuant to the Tribunals of Inquiry (Evidence) Acts 1921-2002, to inquire into conduct of certain Gardai in the Donegal Division.¹ The Tribunal has published five reports² detailing its findings in relation to a number of Garda investigations, arrests and detentions. Mr Justice Frederick Morris has reported that he has been “staggered” by the amount of “indiscipline” and “insubordination” that he has found in the Garda force.³ However, Mr Justice Morris makes clear that there is a need to do far more than tackle the historical misconduct of Gardai serving in the Donegal Division since, in his words, they are not an “aberration from the generality. All of them trained as Gardai and served under a uniform structure of administration and discipline that is standardised throughout the country.”⁴ In the Tribunal’s opinion, “proper discipline has been lost” within An Garda Síochána and, without reforms in management based on strict compliance with orders and immediate accountability, the situation that arose in Donegal could happen again.⁵

The Tribunal’s reports, in particular, reports 1 and 2 set out a raft of recommendations designed to address what Mr Justice Morris describes as a “lack of proper management at senior level, corruption at middle level and a lack of review throughout the force”.⁶ Implementation of these recommendations is long overdue; however, the Irish Council for Civil Liberties (ICCL) believes that proposed reforms launched by the Minister for Justice, Equality and Law Reform do not go far enough in addressing the deficiencies identified in the Morris reports.

The purpose of the present document is to outline six action points for change based on the Morris Tribunal recommendations. These are:

Action Point 1 Garda Management and Human Rights Proofing

Action Point 2 Civic Oversight – The Need for a Garda Authority

Action Point 3 Garda Accountability

Action Point 4 A Fresh Approach to Garda Recruitment and Training

Action Point 5 Legal Power of Superintendents to Issue a Search Warrant

Action Point 6 Handling of Garda Informers/Informants and Covert Policing

1: Refer to Appendix 1 for Terms of Reference.

See also www.morristribunal.ie

2: Refer to Appendix 2 for a list of the Morris Tribunal of Inquiry reports.

3: Morris Tribunal of Inquiry (2006) *Report on the Arrest and Detention of Seven Persons at Burnfoot, County Donegal on the 23rd of May 1998 and the Investigation relating to same* [Term of reference (i)], Government Stationery Office, at p. 264.

Hereinafter referred to as Report 5.

4: *Ibid.*

5: Morris Tribunal of Inquiry (2004) *Report on Explosives ‘Finds’ in Donegal* [Term of reference (e)], at pp. 251-252. Hereinafter referred to as Report 1.

6: *Ibid.*, at p. 525.

Action Point 1

Garda Management and Human Rights Proofing

MORRIS TRIBUNAL FINDINGS AND RECOMMENDATIONS:

Over the course of five reports, the Morris Tribunal has reported on the “scandalous conduct”⁷ of certain Gardaí operating in the Donegal division. What is truly troubling about the Morris Tribunal findings is the scale of Garda corruption uncovered, which largely went unchecked throughout the 1990s. Indeed, Mr Justice Morris maintains that the most serious issue that has been highlighted by the inquiry has been “the neglect of the fundamental duty of police management to ask questions and get answers.”⁸

Commenting on the shortfalls in the relationship between the Donegal Garda division and Garda Headquarters, the Morris Tribunal found that Garda senior managers were not directing and controlling operations, that there were no adequate systems of internal review, and that specialist units, such as the Crime and Security Branch, only acted as receivers of information. In addition, the Tribunal found that individual Gardaí were not fully reporting and accounting for their activities, either to their direct supervisors or to Garda Headquarters.

*There can be no basis upon which Headquarters, or indeed the Assistant Commissioners in the region as representatives of Headquarters, can be entitled to see themselves as merely the receivers of information. They are online managers [....] The nature of management requires that the person with responsibility should direct and control operations. It is impossible to offer advice, or to issue a command, in the absence of knowledge. It is all too easy for Garda Headquarters, and its regional Assistant Commissioners, to be hoodwinked and misled if a situation of, even at a minimum, negligence is met by a determined effort on the part of Superintendents and Chief Superintendents not to report.*⁹

7: Morris Tribunal of Inquiry (2005) *Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples*, Government Stationery Office, at p. 507.
Hereinafter referred to as Report 2.

8: Report 1, at p. 525.

9: *Ibid.*, at p. 455.

THE MORRIS TRIBUNAL MAKES THE FOLLOWING RECOMMENDATIONS:

1. There should be an obligation on Superintendents in Districts to review the files of Inspectors, Sergeants and Gardaí by physically taking them up and looking through them on a periodic basis. The Chief Superintendent of a District should interest himself or herself in major cases as they occur, and engage in the same process vis-à-vis them, to a much greater extent than is currently the practice.
2. There should be a periodic review by the Chief Superintendent, in consultation with the Assistant Commissioner of the Region, of the progress of all major cases. Those under their command should be encouraged to report difficulties, areas of controversy and potential pitfalls in cases under their control. Reviews should be strengthened.
3. Garda Headquarters should take a more active role in the management of its divisions. As online managers, they are not just receivers of information. Management should involve the scrutiny of paperwork by Chief Superintendents and Assistant Commissioners.
4. A document template to be devised indicating the status of an investigation and the eventual outcome of a search, of the consequences of an interrogation, or indeed any other important step in an investigation.
5. Minimum standards need to be adopted for reporting serious crime from the Regions to Garda Headquarters, the Regional Commissioners and the Divisions. The reality is that trust is much less likely to be misplaced if those to whom power is entrusted are aware that their actions are being reviewed on a periodic basis.
6. The system of reporting major incidents through Garda Headquarters to the Department of Justice is unsatisfactory. A document should be drawn up indicating the major incidents that need to be reported from Garda Headquarters to the Department of Justice, Equality and Law Reform. Garda Headquarters should forward to the Department of Justice, Equality and Law Reform communications in major cases on a similar basis.
7. The method of receiving information between Garda Headquarters and the Department of Justice Equality and Law Reform should be reviewed internally between the two bodies, so as to achieve a satisfactory flow of information.
8. A body to be set up within Garda Headquarters to which, on a confidential basis, difficulties and possible irregularities can be reported.
9. The Tribunal was much concerned by the lack of any independent body to receive legitimate concerns about Garda behaviour. A body needs to be put in place for people with legitimate concerns.¹⁰

ICCL ANALYSIS

The ICCL endorses the Tribunal's findings and believes that its work has been crucial in shedding light on fundamental deficiencies in Garda management structures/practices. There has been a lack of investment in reform of the Garda prior to the enactment of the Garda Síochána Act 2005. This is in contrast to Northern Ireland, where the Patten Commission undertook a comprehensive study of police structures and produced a human rights based template for reform of policing.¹¹ The Commission's recommendations resulted in the introduction of a number of oversight structures and, in particular, the creation of an independent Northern Ireland Policing Board¹² which monitors police performance including by reference to the Human Rights Act 1998.¹³

The Northern Ireland Policing Board has produced a human rights monitoring framework for the Policing Service of Northern Ireland (PSNI). The Board's scrutiny of police practice covers the following areas: (1) The PSNI's human rights action programme; (2) the adequacy and effectiveness of PSNI human rights training; (3) compliance of PSNI policies with the Human Rights Act 1998 (human rights auditing); (4) compliance of PSNI operations with the Human Rights Act 1998; (5) adherence by PSNI officers to the Code of Ethics; (6) complaints, discipline and civil actions raising human rights issues; (7) public order; (8) the use of force; (9) covert policing; (10) victims' rights; (11) the treatment of suspects and (12) human rights awareness among PSNI officers.

10: Report 2, at pp. 598–600.

11: The Independent Commission on Policing for Northern Ireland (1998) *A New Beginning: Policing in Northern Ireland, Report of the Independent Commission on Policing for Northern Ireland*, accessible at www.belfast.org.uk/report.htm.

12: www.nipolicingboard.org.uk

13: Section 3(3)(b)(ii). Adopting an interpretative model, the Human Rights Act 1998 gave further effect to the European Convention on Human Rights in the United Kingdom.

This document also includes a Human Rights Index, setting out the international and national human rights standards against which the Board measures the performance of the PSNI. The effect of this is to place human rights at the very heart of police management and monitoring in Northern Ireland. As yet there are no equivalent structures/monitoring frameworks in place as regards the Gardaí.

To date, via the Garda Síochána Act 2005, the Irish Government has introduced two new bodies intended to improve management practices – the Professional Standards Unit and the Garda Inspectorate.

The **Professional Standards Unit** is an internal unit staffed by Garda officers. It reports to the Garda Commissioner and its functions are to:

- (a) *Examine and review, as directed by the Commissioner, the operational, administrative and management performance of the Garda Síochána at all levels,*
- (b) *Propose measures to the Commissioner to improve that performance, and*
- (c) *Promote the highest standards of practice, as measured by reference to the best standards of comparable police services, in operational, administrative and management matters relating to the Garda Síochána.*¹⁴

Sections 113-120 of the Garda Síochána Act 2005 provide for the establishment of a **Garda Síochána Inspectorate** which reports to the Minister for Justice, Equality and Law Reform. The members of the Inspectorate are independent of the Gardaí, although all three are former senior police officers (from the United States and Canada). The main objective of the Garda Inspectorate is to ensure that resources are used “to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards of comparable police services”.¹⁵ Its functions are to carry out, at the request or with the consent of the Minister, inspections or inquiries in relation to any particular aspect of the operation and administration of the Garda Síochána and to submit reports on those inspections or inquiries.¹⁶ In addition, the Inspectorate is to report on the operation and administration of the Garda Síochána and make recommendations.

While the Irish Council for Civil Liberties welcomes these reforms, it is clear that human rights have yet to be placed at the core of policing within An Garda Síochána. This is despite the fact that the European Convention on Human Rights has now been given further effect domestically through the European Convention on Human Rights Act, 2003. Section 3 of the ECHR Act 2003 requires every “organ of the State”, which includes the Gardaí, to perform its functions in a manner compatible with the State’s obligations under the ECHR.

The ICCL also acknowledges that, in April 2005, the Garda Commissioner published a Human Rights Action Plan to implement recommendations made in a Human Rights Audit report produced by Ionnan Consultants in 2004.¹⁷ However, so far, progress on the implementation of the Action Plan has been slow. For example, Objective 1.4 states that a human rights impact assessment will be conducted on all current policies and operational procedures to ensure human rights compliance by the Gardaí.¹⁸ However, this human rights auditing exercise has not taken place and the Garda Commissioner has since introduced new policies – including a new version of the Garda Code – which have not been human rights proofed. Similarly, under the heading of promoting accountability for human rights policing, the Human Rights Action Plan states that human rights principles and standards will be inculcated into decision-making operations and impact assessments.¹⁹ In the absence of a detailed human rights monitoring framework and adequate in-house human rights experience it is, in the view of the ICCL, unrealistic to expect Garda management to be able to implement this recommendation.

14: Section 24(1), Garda Síochána Act 2005.

15: Section 117(1), Garda Síochána Act 2005.

16: Section 117(2), Garda Síochána Act 2005.

17: Ionnan Consultants (2004)

An Garda Síochána Human Rights Audit, Report from Ionnan Management Consultants, published by An Garda Síochána.

18: An Garda Síochána (2005) *Garda Human Rights Action Plan*, An Garda Síochána at p. 3.

19: *Ibid*, at p. 4.

ICCL RECOMMENDATIONS

- The ICCL endorses the Morris Tribunal's recommendations on the reform of Garda management and practices;
- Human rights should be made central to the management of the Gardaí. The ICCL recommends that a human rights monitoring framework be devised for the Garda Síochána;
- As a matter of urgency, all current Garda policies and practices should be human rights proofed.

Action Point 2

Civic Oversight – The Need for a Garda Authority

MORRIS TRIBUNAL FINDINGS AND RECOMMENDATIONS

A key concern of the Morris Tribunal was the issue of effective communication between the Department of Justice, Equality and Law Reform and Garda Headquarters, which the Tribunal considered contributed to the overall lack of accountability in the Gardaí. For example, in the absence of any proper reporting structures, Mr Justice Morris recommends that the Department of Justice, Equality and Law Reform should be kept apprised of all major incidents and events in significant cases and believes that there should be some measure of accountability to the Department.

The Garda Síochána Act 2005 radically changes the relationship between the two bodies and for the first time in the history of the State makes the Garda Commissioner directly accountable to the Minister for Justice, Equality and Law Reform. For instance, Section 20(1) (a) of the 2005 Act enables the Minister to set out policy priorities for the Gardaí in performing its functions²⁰ and with the approval of Government, to issue written Directives to the Commissioner concerning any matter relating to the Garda Síochána.²¹ Section 21(1) also requires the Garda Commissioner to submit three year strategy statements to the Minister for approval²² which must take account of, among other factors, “relevant government policy”.²³ Moreover, the Garda Commissioner must submit annual policing plans to the Minister for approval.²⁴

ICCL ANALYSIS

The ICCL endorses Justice Morris’s recommendations on communications between Garda Headquarters and the Department of Justice, Equality and Law Reform. 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”.²⁵ The Minister has an important role in managing the justice area on behalf of the Executive and should be well informed on all issues pertaining to justice/security. However, the ICCL believes that the new formal structures in the Garda Síochána Act 2005 run the risk of overcentralising as well as politicising the Garda, which would ultimately undermine its independence. Robert Peel laid down the foundations of modern policing within a common law tradition in 1829. Those foundations were designed to ensure that the police were seen as the people’s police service and not a tool of government.²⁶ These principles are entirely consistent with the historical development of the Gardaí.

By allowing the Minister to set priorities for the Garda Síochána, by making the Commissioner accountable to the Minister and utilising the relatively imprecise term “government policy”, the Gardaí’s protection from political interference is potentially diminished. Walsh has noted that there is no other public body in Ireland composed of more than 12,000 individuals who can utilise a broad range of discretionary powers which can have very serious implications for human rights such as liberty, privacy and bodily integrity.²⁷ Is it really acceptable to allow one Ministerial position to exert such huge influence over the Gardaí?

20: Section 20(1)(a),
Garda Síochána Act 2005.

21: Section 25(1),
Garda Síochána Act 2005.

22: Section 21(1),
Garda Síochána Act 2005.

23: Section 21(3)(a),
Garda Síochána Act 2005.

24: Section 22(4),
Garda Síochána Act 2005.

25: The Independent Commission on
Policing for Northern, *supra*, at p. 22.

26: Lewis, C. (1999) *Complaints
Against Police: The Politics of Reform*,
Hawkins Press: Sydney, at p. 15.

27: Walsh, D. (1999) *The Irish Police:
A Legal and Constitutional Perspective*,
Roundhall/Sweet & Maxwell, at p. 367.

What is missing from current Garda oversight structures is civic oversight in the form of an independent policing authority such as the Policing Board in Northern Ireland. An independent Garda Authority could also have an oversight role in issues such as the allocation of Garda contracts, management performance, the setting of clear performance goals to which the Commissioner would be accountable on an annual basis, and the appointment of senior Garda officers, up to and including the Commissioner.

If established, a Garda Authority could play a role in setting priorities and monitoring compliance with human rights principles. The Garda Authority, with the input and consultation of the Commissioner, could also draw up the strategic and annual policing plans. Further, the Commissioner could then be held accountable by the Authority for the performance of his or her functions in accordance with the strategy plan and annual plan.

ICCL RECOMMENDATIONS

- The ICCL recommends the establishment of an independent Garda Authority with the following functions:
 - An oversight role in 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;
 - Supervise the appointment of senior Garda officers, up to and including the Garda Commissioner;
 - Set priorities and monitor compliance of An Garda Síochána in accordance with human rights principles;
 - In consultation with the Garda Commissioner, draw up strategic and annual policing plans.

Action Point 3

Garda Accountability

MORRIS TRIBUNAL FINDINGS AND RECOMMENDATIONS

The Morris Tribunal found that there is a “substantial core” of Gardaí “who act within the law and for the good people of Ireland”.²⁸ Nonetheless, the Tribunal found that a certain number of Gardaí had been responsible for wrongful arrests and ill-treating suspects in custody, planting hoax explosives evidence and reliance on informers to prop up fraudulent investigations for career advancement. Furthermore, Mr Justice Morris found that some Garda members had planted a gun at a Traveller encampment and subsequently falsely accused and arrested Travellers from the site.

The Morris Tribunal recognises that an effective police force is required to protect the security of the State and its citizens. To this end, the Gardaí are vested with a range of legal powers which lawfully deprive citizens of their rights. It is therefore the Tribunal’s opinion that police work requires the “safeguard of strict internal discipline”²⁹ and, while legal scrutiny is available through the Courts, Gardaí who are guilty of serious wrongdoing can go undetected/unpunished if individuals do not mount legal challenges.³⁰ Indeed, Mr Justice Morris maintains that the Garda “is losing its characteristics as a disciplined force”.³¹ Mr Justice Morris is also critical of the Gardaí’s current disciplinary procedures³² because they fail to equip Garda managers to discipline errant members of the service in a timely, effective and fair manner.

*Because of the overlay of legal formalism on this process, procedures can be used to delay and frustrate simple and straightforward investigations. Members of the Gardaí against whom any wrong is alleged have the dubious, and often exploited, benefit of procedures that compare with those in a murder trial.*³³

Mr Justice Morris states that the Gardaí must have “accountability and unwavering discipline”³⁴ and makes the following recommendations:

1. The creation of a special offence of failure to account for duty. This should be a dismissal offence and a failure to account truthfully and immediately in respect of duties should result in immediate suspension.
2. No one apart from an individual Garda should write any document putting himself or herself on duty or taking himself or herself off duty. In the event of a legitimate reason for not returning to the station, the duty should be signed off, in consultation with the station Sergeant, at a later time which should be noted.
3. Consideration should be given to revising the discipline regulations to make these more streamlined, less cumbersome and swifter.
4. A new means of removing Garda from office should be considered.³⁵

28: Report 5, *ibid*, at p. 262.

29: *Ibid*.

30: *Ibid*.

31: Report 2, at p. 636.

32: Garda Síochána (Discipline) Regulations 1989.

33: Report 5, at p. 265.

34: *Ibid*.

35: Report 2, *ibid*, at p. 615.

36: Morris Tribunal of Inquiry (2006) *Report of the Garda Investigation of an Arson Attack on Property Situated on the Site of the Telecommunications Mast at Ardara, County Donegal in October and November of 1996*, Government Stationery Office, at p. 52. Hereinafter referred to as Report 4.

Mr Justice Morris also sees a role for members of the Gardaí who witness wrongdoing by fellow colleagues. Reporting on the investigation of an arson attack on the site of a telecommunications mast at Ardara, the Morris Tribunal found that Sergeant John White was “determined” to arrest the late Anthony Driver, Hugh Driver and Bernard Shovlin under Section 30 of the Offences Against the State Act in connection with a suspected arson attack.³⁶ The Morris Tribunal found that Sergeant White planted a hoax explosive device at the top of the mast to justify arresting the Drivers and Shovlin under this power. During the investigation, Sergeant White’s fellow investigating officers, in particular, Garda O’Donnell, expressed concern about the find and the subsequent arrests. Garda O’Donnell photocopied documents which, in the event that

Mr Shovlin brought a subsequent civil claim, would have indicated that his arrest had been improper. However, in the absence of “appropriate structures” Garda O’Donnell never reported his concerns to a higher authority, i.e. to Garda Headquarters. Hence, Mr Justice Morris recommends that members of An Garda Síochána should be able to report suspicions of wrongdoing by fellow colleagues.

Subject to safeguards, it should be possible for any serving member of An Garda Síochána to ring Headquarters, and to speak in confidence with a designated officer, or group of officers, as to real concerns they may have as to misconduct within the organisation. Those complaints should be investigated on a basis which, insofar as it is possible, is confidential as regards the source of the information. Such complaints should be regarded as a matter of urgency. Steps should be taken to ensure that mischief-makers are weeded out of such a process early on.³⁷

ICCL ANALYSIS

Accountability goes to the heart of how any institution is governed. The actions of officials should be measured against standards of ethics and quality. At its most basic level, accountability requires that the rule of law apply to every member of the Garda.

The ICCL endorses the Morris Tribunal’s recommendations on accountability and discipline, which mainly relate to internal disciplinary procedures. Since the publication of the last three modules of the Morris Tribunal, the Minister for Justice, Equality and Law Reform has published new draft Garda Síochána (Discipline) Regulations. The new regulations represent a step in the right direction, in that they introduce formal sanctions for failing to account for one’s actions while on duty (although it might be thought to be quite extraordinary that it has taken until 2006 for such a measure to be introduced). Nonetheless, shortcomings remain: the three-member Disciplinary Boards are composed exclusively of serving officers, and only one member of the Appeals Board (albeit the member designated as its Chair) may be a civilian. In this context, and in respect of similar reforms in a neighbouring jurisdiction (the United Kingdom), the Council of Europe’s European Committee for the Prevention of Torture (CPT) has commented that:

*As regards the conduct of disciplinary hearings, the presence of “at least one independent member” on adjudication panels, [...] would certainly represent a step forward. However, given that police disciplinary hearings should be, and be seen to be, impartial, **the CPT considers that it would be preferable if the independent element on adjudication panels were to preponderate.**³⁸*

Where the Garda Síochána is concerned, the ICCL considers that it would be preferable if an independent element were to preponderate on both Disciplinary Boards and Disciplinary Appeals Boards.

However, internal disciplinary procedures are not enough to ensure legal accountability. An independent complaints system is absolutely necessary to investigate and resolve complaints made by members of the public. Replacing the discredited Garda Complaints Board, Part III of the Garda Síochána Act 2005 establishes a three person Garda Síochána Ombudsman Commission, to receive and investigate individual complaints against the Gardaí from members of the public. Section 91 of the Garda Síochána Act specifies that the Ombudsman Commission **must** investigate a complaint if it concerns the death or serious harm of a person as a result of Garda operations or while in Garda custody. The Ombudsman Commission **can** investigate any other complaint or require the Garda Commissioner to investigate it with or without supervision.

The ICCL welcomes the establishment of the Ombudsman Commission, a mechanism for which it has been calling since 1985.

However, it considers that two crucial issues are at stake where the Garda Ombudsman Commission is concerned.

The first is whether, or not, all of the Ombudsman Commission’s investigators will be truly independent. The Commission may have no option but to recruit some investigators with a background as police officers in other jurisdictions. However, if it is not only to be, but to be seen to be, truly independent and impartial, it is vital that it should avoid recruiting anyone who has

37: *Ibid*, at p. 53.

38: Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 17 September 1997 (CPT/Inf (2000) 1), at paragraph 56.

previously served as a member of An Garda Síochána. It should also be noted, in this respect, that section 72 of the Garda Síochána Act 2005 allows for the possibility that staff of the discredited Garda Complaints Board could be transferred to work for the Commission. In the view of the ICCL, this would be highly undesirable.

Secondly, the Garda Síochána Act 2005 leaves a wide discretion to the Ombudsman Commission as to the range of complaints that it may choose to investigate. As already mentioned, it must investigate the most serious complaints (i.e. those involving the “death of, or serious harm to, a person as a result of Garda operations or while in the custody or care of the Garda Síochána”, see section 91 (1) of the Garda Act 2005). However, where less serious complaints are concerned, (including complaints about “conduct that appears to constitute an offence”, see section 90 (1) (b) of the 2005 Act), there remains the possibility for the Commission to refer the complaint back to the Garda Commissioner for investigation (see section 94 of the 2005 Act). The Ombudsman Commission may decide to “supervise” such investigations, but it is under no legal obligation to do so.

In the view of the ICCL, the Commission’s future credibility and effectiveness will depend upon the extent to which it is prepared to take on the independent investigation of the broadest possible range of complaints, and not simply those that it is obliged to investigate under section 91 (1) of the 2005 Act. Moreover, in the event that any complaints are referred to the Garda Commissioner for investigation, the Ombudsman Commission should, as a matter of policy, be prepared to closely supervise those investigations.

Furthermore, Section 17 of the 2005 Act provides that the Minister for Justice, Equality and Law Reform shall, by regulation, establish a Code of Ethics that includes standards of conduct and practice for all members of the Gardaí. The ICCL believes that the Code of Ethics needs to comply with human rights standards and should underpin all Garda activity. In addition, adequate resources (training and support) must be allocated to ensure the full implementation and mainstreaming of the Code into day-to-day practice.

Finally, the ICCL endorses the Morris Tribunal’s recommendations on allowing members of the Gardaí to report suspicions of Garda wrongdoing to Garda Headquarters. The ICCL believes that a “Whistle Blowers Charter” should be drawn up, outlining a procedure whereby members of the Gardaí can confidentially report suspicions of fraud, corruption, unlawful or improper conduct to Garda Headquarters.

ICCL RECOMMENDATIONS

- No former members of An Garda should be appointed as Garda Ombudsman Commission investigators;
- Staff of the Garda Complaints Board should not be transferred to work for the Ombudsman Commission;
- The Ombudsman Commission should investigate the broadest possible range of complaints, and not simply those under section 91 (1) of the Garda Act 2005;
- In the event that the Ombudsman Commission refers any complaints back to the Garda Commissioner, the Ombudsman Commission should closely supervise the investigations concerned;
- The Code of Ethics needs to comply with human rights standards and should underpin all Garda activity. Adequate resources (training and support) must be allocated to ensure the full implementation and mainstreaming of the Code into day-to-day practice;
- A Whistle Blowers Charter should be drawn up, outlining a procedure whereby members of the Gardaí can confidentially report suspicions of fraud, corruption, unlawful or improper conduct to Garda Headquarters.

Action Point 4

A Fresh Approach to Garda Recruitment and Training

MORRIS TRIBUNAL FINDINGS AND RECOMMENDATIONS

In its findings, the Morris Tribunal calls for a fresh approach to Garda recruitment with a view to diversifying expertise and experience, as well as religious backgrounds and ethnicity. From its own experience, the Tribunal suggests that a combination of experienced Garda personnel and those with service at commander level in foreign police forces could work well. “What An Garda Síochána needs is a combination of experience, dynamism and honesty”.³⁹

The Tribunal recognises that police officers from foreign countries may be discouraged from joining the Gardaí because they must be inducted at trainee rank and therefore lose significant salary and personal benefits. The Tribunal makes the following recommendation in this regard:

*The revision of the Civil Service entry requirements to allow transfer, in appropriate cases, of persons below the rank of Superintendent, and under appropriate conditions of service and re-training, into An Garda Síochána from within the European Union or from friendly countries outside it.*⁴⁰

In terms of religious and ethnic diversity, the Tribunal notes the low number of members of minority religious communities serving in Donegal, which is not representative of the County Donegal population.⁴¹ The Tribunal recommends that this should be addressed in future recruitment for the Gardaí generally.

Training features in several modules of the Morris Tribunal and Mr Justice Morris acknowledges its importance by stating that the Gardaí: “act on the basis of their training to enforce the law, at the same time, respecting it”.⁴² In its inquiries, the Tribunal noted a number of instances where some Garda members had not received sufficient training to enable them to adequately perform their functions. For example, in report 1, the Tribunal discovered that the Gardaí had not received a proper level of training on informer handling.⁴³ In report 2, the Tribunal found that some members had not received enough training on crime scene preservation or crime scene analysis.⁴⁴ Mr Justice Morris recommends that the Gardaí should receive training in both areas and he urges those in authority to urgently consider what changes in structure, ethics and training need to take place in order to militate against a reoccurrence of the “extraordinary events” of Donegal.⁴⁵

39: Report 2, at p. 600.

40: *Ibid*, at p. 601.

41: Report 5, at p. 54.

42: Report 1, at p. 34.

43: *Ibid*, at p. 48.

44: Report 2, at p. 317.

45: Report 3, at p. 256.

ICCL ANALYSIS

The ICCL endorses the Morris Tribunal findings on the adoption of a fresh approach to Garda recruitment. Provisions in the Garda Síochána Act 2005 now allow for the appointment of members of the PSNI to the ranks of the Garda not below Superintendent for a period not exceeding three years.⁴⁷ While this change is welcome, the ICCL considers that it does not go far enough. The Morris Tribunal suggested that the Gardaí should also recruit members from friendly countries such as Canada and European Union (EU) Member States, not just from Northern Ireland.

The ICCL also believes it to be essential that the Gardaí make efforts to increase the number of minorities employed in the service. The less representative the Garda Síochána is of the communities it polices, the harder it will be to secure an inclusive community partnership approach to policing.

In 2005, the Garda Commissioner made efforts to increase the number of black and ethnic minorities in the police service. Before September 2005, persons applying to join the Garda needed to hold a Leaving Certificate⁴⁸ qualification in both the Irish and English languages. Given that this acted as a barrier to recruitment for foreign nationals, the Irish language requirement was removed. Although this was a very positive development, the ICCL believes that future recruitment drives should be accompanied by outreach strategies to encourage minority groups who may currently have a difficult relationship with the Gardaí to join the service for example, people of African origin and members of the Irish Traveller community. Moreover, the British experience demonstrates that unless police services address the issue of institutional racism and harassment, they will find it difficult to retain members of minority communities.⁴⁹

Moreover, provisions in the Garda Síochána Act 2005 give the Government a role in appointing senior members of the service, from the Garda Commissioner to Superintendents.⁵⁰ Recalling that the Gardaí ought to be an independent public service free from political influence, the ICCL considers it inappropriate for the Government to have the power to directly appoint nearly all its senior members. Transparency and accountability are important principles in any area of public service and the ICCL considers that this appointment function should be given to an independent body. In the event of a Garda Authority being established, the Authority could have a role in the appointment of the Garda Commissioner and other senior ranks.

Finally, the ICCL endorses the Tribunal's recommendations on training. However, the ICCL also believes that human rights training should be included in all training programmes for all members of the service at all levels. Training reinforces respect for human rights and accountability, and is necessary to educate the Gardaí on their obligations under the European Convention on Human Rights Act 2003.

ICCL RECOMMENDATIONS

- The ICCL endorses the Morris Tribunal's recommendations on taking a fresh approach to Garda recruitment. Civil Service entry requirements should be revised to allow for the transfer of officers from a range of other jurisdictions in a manner that ensures that they can maintain rank, salary and benefits.
- Garda recruitment programmes should incorporate more outreach strategies for black and ethnic minority groups, including Travellers.
- The Gardaí's new Code of Ethics should explicitly condemn racial discrimination within the service.
- Recruitment and appointment of the Garda Commissioner, together with other senior Garda members should be undertaken by an independent commission/panel. In the event of the establishment of an independent Garda Authority, these functions could be carried out by the Authority.
- Human rights should be included in all training programmes for all members of the service at all levels.

47: Section 53(1)(a), Garda Síochána Act 2005.

48: Irish final exam for secondary/high school.

49: According to George Rhoden, Chairperson of the Black Metropolitan Police Association, Black police officers experienced racism upon joining the British police force in the 1980s. As a result, the police were unable to recruit and retain new staff. See Rhoden, George. (October 2005) 'Policing: The London Experience', paper delivered to *Policing in Multiethnic Europe Seminar*, organised by Amnesty International Irish Section and the Irish Council for Civil Liberties (ICCL). Paper available from the ICCL.

50: For example, Section 9(1) states that the appointment of the Garda Commissioner shall be made by Government; Section 10(1) provides that the Government may appoint, subject to certain regulations, members to the ranks of Deputy Garda Commissioner and Assistant Garda Commissioner; Section 13(1) provides that the Government may appoint, subject to certain regulations, members to the ranks of Superintendent and Chief Superintendent.

Action Point 5

Legal Power of Superintendents to Issue a Search Warrant

MORRIS TRIBUNAL FINDINGS AND RECOMMENDATIONS

In Report 5, the Morris Tribunal details its investigations and findings in relation to the arrest and detention of seven members of the Traveller community in May 1998 at Burnfoot. Mr Justice Morris found that Sergeant John White and Detective Garda Thomas Kilcoyne planted a gun at a Traveller encampment with a view to arresting some of its residents under Section 30 of the Offences Against the State Act, 1939. As part of this Garda investigation, Mr Justice Morris also found that a search warrant had been issued by Superintendent Lennon under Section 29 of the Offences Against the State Act to search the Traveller encampment and locate the gun.

In his analysis of the Burnfoot events, Mr Justice Morris was particularly “disturbed” by the manner in which Chief Superintendents are able to issue search warrants under Section 29 of the Offences Against the State Act. While judicial scrutiny is required for the issuance of search warrants in ordinary criminal investigations, Section 29 of the Offences Against the State Act enables Chief Superintendents to issue warrants for gathering evidence in relation to offences against the State by suspected paramilitaries and, more recently, criminal gangs. Mr Justice Morris surmises that the Oireachtas vested this power in a senior officer of the Gardaí to ensure a measure of objectivity and independence.⁵¹ However, in several of the Tribunal’s modules, Justice Morris found that “objectivity” and “independence” were eroded because the Chief Superintendent in question was also involved in the Garda investigation or too close to the investigating officer. According to Mr Justice Morris, this practice:

*Cannot instil any confidence in the independence of the decision made to issue the warrant [...] The danger exists that a warrant would be issued automatically and without proper investigation of the matter by the superintendent to whom the application is made if he or she is heading the investigation.*⁵²

Mr Justice Morris believes that the power to issue search warrants should be vested in judges and that modern communications technology can facilitate this process. Thus, he recommends that “urgent consideration” be given to vesting power to issue warrants under Section 29 in judges of the District or Circuit Court. The Tribunal considers this to be in keeping with best modern practice as exemplified in judgments of the European Court of Human Rights and judicial trends in Canada and New Zealand.⁵³

51: Report 5 at, p. 268.

52: *Ibid*, p. 269.

53: *Ibid* at p. 270.

ICCL ANALYSIS

The ICCL agrees with the Morris Tribunal's recommendations. Judicial scrutiny is vital to protect against arbitrary interference with protected rights and Section 29 of the Offences Against the State Act is extremely broad and inconsistent with the "normalisation of security arrangements" foreseen in the Good Friday (Belfast) Agreement, 1998.⁵⁴ The European Court of Human Rights takes a strict approach to the issuing of search warrants without judicial supervision. There must be very strict limits on such powers, and in each case relevant and substantive reasons must exist before the infringement on privacy can be deemed proportionate to the legitimate aim pursued.⁵⁵

In its judgment in the case of *Camenzind v Switzerland*, the European Court of Human Rights ruled that a search carried out on residential premises in connection with administrative criminal law proceedings without judicial approval did not violate Article 8. The Court found in favour of Switzerland because of important safeguards in Swiss legislation which limited the scope of the search, including: (a) the fact that the search in question could only be carried out by specifically-trained officials; (b) that the search could not be executed on Sundays, public holidays or at night (except in exceptional circumstances); (c) that before the search commenced, the investigating officer had to produce evidence of his/her identity and explain the purpose of the search; and (d) the fact that a search record had to be produced. In addition, the officials carrying out the search did not go beyond what was strictly required for the purpose of the search.⁵⁶

The power set out in Section 29 of the Offences Against the State Act is not constrained by safeguards of this nature.

ICCL RECOMMENDATIONS

- The ICCL endorses the Morris Tribunal's recommendation that powers to issue search warrants under Section 29 of the Offences Against the State Act should be vested in judges of the District or Circuit Court.

54: See Chapter 6.

55: See *inter alia*, *Camenzind v. Switzerland* – 21353/93 [1997] ECHR 99 (16 December 1997).

56: *Ibid* at para 46.

Action Point 6

Handling Garda Informers/Informants and Covert Policing

MORRIS TRIBUNAL FINDINGS AND RECOMMENDATIONS

The Morris Tribunal suggests that one of the most delicate aspects of Garda activities is police intelligence and the handling of informers and informants.⁵⁷

However, throughout its investigations, the Tribunal found that the handling of informers in Donegal was poorly managed and sometimes “chaotic”. For example, in Report 1 the Tribunal established that, from 1987 to 1991, in Letterkenny, Adrienne McGlinchey falsely portrayed herself as a Provisional IRA operative with a view to passing information on “subversive matters” to the Gardaí.⁵⁸ The Morris Tribunal is certain that Ms McGlinchey was never a member of the republican movement and is critical that her value as an informer was never properly assessed. Instead, information that she provided was sent to the Crime and Security Branch in Garda Headquarters by means of “C.77 reports” which always protected her identity.

McGlinchey continued her activities when she moved to Buncrana in 1991 and came to the attention of Detective Garda McMahon and Detective Inspector Lennon. The Tribunal found that Garda McMahon and Detective Inspector Lennon subsequently involved McGlinchey in a series of hoax explosive and arms finds. In addition, Mr Justice Morris found that McMahon and Lennon’s superior officers were gravely at fault for not properly analysing the situation.

The Morris Tribunal uncovered further examples of poor informer handling in Report 3 – the so-called “Silver Bullet” module. Mr Justice Morris found that Detective Sergeant John White retained Bernard Conlon, a man with many previous convictions, as an agent and worked with him to conspire to make false allegations against innocent people. Together with Garda John Nicolson, Detective Sergeant White also induced Conlon to enter Frank McBrearty Senior’s licensed premises in Raphoe in order to allow himself to be caught drinking after hours.

A key question here is how were these events allowed to happen? Mr Justice Morris found that the handling of informers was subject to self regulation and that ordinary members of the Gardaí only had directions and encouragements outlined in circulars.⁵⁹ There was no manual on handling informers and the Crime and Security Branch was unable to assess the quality of information because submissions by individual Gardaí protected the identity of individual informers.

The Morris Tribunal⁶⁰ has recommended that:

[...] the use of any person as an agent and witness should be subject to strict controls and restricted to cases of strict necessity. It is recommended that urgent consideration be given to the formulation of proper written guidelines by the Minister for Justice, Equality and Law Reform, in conjunction with the Commissioner of An Garda Síochána, governing the use of agents as witnesses. These regulations should provide a regime within which operations in which agents are approved and retained are accurately and adequately recorded and then reported to the prosecuting authority. It is wrong, as happened in the Bernard Conlon case, for members of An Garda Síochána to casually engage an agent without making a single note about the matter and without Garda management authority.... The entire use of, noting of, authorisation of, and disclosure in respect of, agents should be the subject of written Garda regulations. Contravention of these regulations should be a serious disciplinary offence.⁶¹

57: According to Mr Justice Morris, old Garda manuals distinguish between ‘informers’ and ‘informants’. Informers refer to individuals who pass on information to the Garda on a regular basis and informants refer to the casual passing on of information by a person who might have knowledge of a crime. Refer to Report 1 at p. 44.

58: *Supra*, at p. 503.

59: *Ibid*, at p. 460.

60: There are more extensive recommendations on informer handling in Chapter 13 of Report 1.

61: Morris Tribunal of Inquiry (2006) *Report on the Circumstances Surrounding the Arrest and Detention of Mark McConnell on the 1st October and Michael Peoples on the 6th of May 1999*, Government Stationary Office, at p. 256. Hereinafter referred to as Report 3.

ICCL ANALYSIS

The ICCL endorses Mr Justice Morris's recommendations as it considers that the use of human intelligence sources by the Gardaí raises serious issues under Article 6 (right to a fair trial) and Article 8 (right to a private life) of the European Convention on Human Rights. As regards Article 6, the European Court of Human Rights has determined that the use of undercover agents may not be incompatible with the Convention subject to certain qualifications. The leading case in this area is *Teixeira de Castro v Portugal*.⁶² In this case, two undercover police officers posed as drug addicts and visited the applicant in order to buy heroin. The applicant had no heroin at the house and the two undercover officers encouraged him to obtain heroin on their behalf from another address. Subsequently he was arrested and charged. The applicant argued before the European Court of Human Rights that his right to a fair trial had been violated because he had been convicted of a crime which he would not have committed without the intervention of the police officers. In ruling against Portugal, the Strasbourg Court expressed concern about the lack of safeguards and supervision.

As regards Article 8⁶³, police surveillance covers a variety of activities (phone tapping, covert listening devices etc.) that interfere with the right to privacy. However, this does not mean that all forms of police surveillance are prohibited. Police surveillance activities can be justified under Article 8(2) if it can be shown that they are prescribed by law, necessary in a democratic society and proportionate. For example, in *Klas v Germany*⁶⁴, the European Court of Human Rights recognised that police surveillance was necessary to deal with new "sophisticated forms of espionage and terrorism, with the result that the State must be able, in order to effectively counter such threats, to undertake secret surveillance of subversive elements operating within its jurisdiction".⁶⁵ In *Malone v UK*⁶⁶, a case involving phone tapping, the Court ruled that surveillance powers should be set out in law and restricted to certain circumstances.

*It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference.*⁶⁷

In the *Malone* case, the European Court also determined that the law had to be foreseeable and applied sensibly.

*The law must be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to this secret and potentially dangerous interference with the right to respect for private life and correspondence.*⁶⁸

The UK subsequently introduced the Interception of Communications Act 1985. However, the European Court of Human Rights ruled against the UK in the *Halford* case⁶⁹ because the Act did not cover internal communications systems operated by public authorities. The UK later introduced the Regulation of Investigatory Powers Act 2000 which puts covert investigative techniques on a statutory footing.

The ICCL believes that agents and handlers need ethical direction and recommends that any new policy or supervisory procedure should be human rights proofed in order to ensure that it complies with ECHR standards. A new Garda manual on the use of Covert Human Intelligence Sources (CHIS) has been introduced; however, it has yet to be human rights proofed.

Moreover, in line with best practice elsewhere, for example, Northern Ireland, the ICCL believes that Garda covert policies and practices should be set out in law and subject to external scrutiny by, for example, a High Court judge. Finally, it considers that all members of the Gardaí who are engaged in activities involving the use of overt policing should undergo human rights based training on new policies in this area.

62: (1999) 28 EHRR 101.

63: According to Article 8: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2.

There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

64: (1979-80) 2 EHRR 214.

65: *Klas v Germany*, op. cit., Para 48.

66: (1985) 7 EHRR 14.

67: *Malone v UK*, op. cit., Para 68.

68: Ibid. Note 12 at para 67.

69: *Halford v UK* (1997) 24 EHRR 523.

ICCL RECOMMENDATIONS

- Garda policies on informer handling and covert policing methods should be human rights proofed;
- Garda covert policies and practices should be subject to external scrutiny by, for example, a High Court judge;
- Members of the Gardaí who are engaged in activities involving the use of covert policing should undergo training on new policies in this area.

Appendix 1

Morris Tribunal Inquiry Terms of Reference

TERMS OF REFERENCE INSTRUMENT

entitled

**Tribunals of Inquiry
(Evidence) Act 1921
(Establishment of Tribunal)
Instrument 2002**

To be made by the Minister for

Justice, Equality and Law Reform

WHEREAS a resolution in the following terms was passed by Dáil Éireann on 28 March 2002 and by Seanad Éireann on the same day:

That Dáil Éireann:⁷⁰

- bearing in mind the serious public concern about allegations that members of the Garda Síochána in the Donegal Division engaged in unethical and criminal behaviour;
- noting the decision of the Minister for Justice, Equality and Law Reform in November, 2001, to request Mr Shane Murphy, SC, to conduct an independent review of all the relevant papers and the progress on the investigations into these allegations generally with a view to the Minister receiving expert independent advice as to whether there are measures that might now be taken to bring matters to finality sooner rather than later;
- noting that having completed his review, it is the opinion of Mr Shane Murphy, SC, that a Tribunal of Inquiry represents the only comprehensive method of inquiry to resolve outstanding issues of fundamental public importance;
- mindful that a number of criminal proceedings have been instituted arising from some of these allegations, and mindful of the ongoing investigation into the death of Mr Richard Barron, and not wishing to prejudice these or related criminal proceedings;

resolves that it is expedient that a tribunal be established under the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002, to inquire urgently into the following definite matters of urgent public importance:

- (a) The making of extortion and hoax telephone calls to the home of Michael and Charlotte Peoples on 9th November, 1996 and the subsequent Garda investigation into that complaint;
- (b) Investigations in relation to the death of Mr. Richie Barron of Raphoe, Co. Donegal on 14th October, 1996 with particular reference to the arrest and treatment of persons in custody in connection with that investigation, the progress, management and effectiveness of the Garda investigation with particular reference to the management of informants;
- (c) Allegations of harassment of the McBrearty family of Raphoe, County Donegal and of relatives, associates and agents of that family by members of the Garda Síochána subsequent to the death of Mr. Barron including the issue and prosecution of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th September, 1998;
- (d) The circumstances surrounding the arrest and detention of Mark McConnell on 1st October, 1998 and Michael Peoples on 6th May, 1999;

⁷⁰: In the resolution of Seanad Éireann, the reference is to Seanad Éireann.

- (e) Complaints that some Gardaí in County Donegal may have been involved in hoax explosives and bomb-making equipment finds (in particular discoveries on 11th September, 1993, 19th November, 1993, 11th January, 1994, 14th March, 1994, 4th June, 1994, 13th June, 1994 and 18th July, 1994) and a review of the management and investigation of these issues;
- (f) The circumstances surrounding the arrest and detention of Frank McBrearty Jnr. on 4th February, 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December, 1996 on Edward Moss with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution;
- (g) Allegations relating to the Garda investigation of an arson attack on property situated on the site of the telecommunications mast at Ardara, County Donegal in October/November 1996;
- (h) Allegations contained in documents received by Deputy Jim Higgins on 25th June, 2000 and in information received by Deputy Brendan Howlin on 25th June, 2000 that two senior members of An Garda Síochána may have acted with impropriety;
- (i) The circumstances surrounding the arrest and detention of seven persons at Burnfoot, County Donegal on 23rd May, 1998 and the investigation relating thereto;
- (j) The effectiveness of the Garda Síochána Complaints inquiry process viz-a-viz the complaints made by Frank McBrearty Snr. and his family between 1997 and 2001;

and to report to the Minister for Justice, Equality and Law Reform and to make such findings and recommendations as it sees fit in relation to these matters;

and further resolves that -

- (I) the Tribunal shall report to the Minister for Justice, Equality and Law Reform on an interim basis not later than four months from the date of establishment of the Tribunal and also as soon as may be after the tenth day of any oral hearings of the Tribunal on the following matters:
 - (a) the number of parties then represented before the Tribunal,
 - (b) the progress which will then have been made in the hearings and work of the Tribunal,
 - (c) the likely duration (so far that may then be capable of being estimated) of the proceedings of the Tribunal,
 - (d) any other matters that the Tribunal considers should be drawn to the attention of the Houses of the Oireachtas at the time of the report (including any matters relating to its terms of reference);
- (II) the inquiry shall be completed in as economical a manner as possible and at the earliest possible date consistent with a fair examination of the matters referred to it;
- (III) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Tribunal should, as far as it is consistent with the interests of justice, be borne by those individuals;
- (IV) the Minister for Justice, Equality and Law Reform shall within 14 days of receipt of any Report from the Tribunal either apply to the High Court for directions regarding publication of the Report or arrange to have it laid before both Houses of the Oireachtas.

NOW, I, John O'Donoghue, Minister for Justice, Equality and Law Reform, in pursuance of those resolutions and in exercise of the powers conferred on me by section 1(1) (as adapted by the Tribunals of Inquiry (Evidence) Act 1921 Adaptation Order 1936 (S.R. & O. No. 25 of 1936)) of the Tribunals of Inquiry (Evidence) Act 1921, make the following instrument:

Given under my Official Seal,
24th April, 2002
John O'Donoghue
Minister for Justice, Equality and Law Reform

Appendix 2

List of Morris Tribunal Reports and Outstanding Modules

REPORTS

- Report 1** Explosives ‘finds’ in Donegal. [Term of reference (e)]
- Report 2** The investigation into the death of Richard Barron and
The Extortion Calls to Michael and Charlotte Peoples.
[Term of reference (a) and (b)]
- Report 3** The circumstances surrounding the arrest and detention of Mark McConnell on the
1st October 1998 and Michael Peoples on the 6th May 1999. [Term of reference (c)]
- Report 4** The Garda Investigation of an arson attack on property situated on
the site of the telecommunications mast at Ardara, County Donegal
in October and November of 1996.
[Term of reference (g)]
- Report 5** The arrest and detention of seven persons at Burnfoot, County Donegal on the 23rd
of May 1998 and the investigation relating to same.
[Term of reference (i)]

OUTSTANDING MODULES

- Allegations of harassment of the McBrearty family of Raphoe, County Donegal and of relatives, associates and agents of that family by members of the Garda Síochána subsequent to the death of Mr. Barron including the issue and prosecution of summonses relating to offences alleged to have occurred between 28th October, 1996 and 28th September, 1998.
[Term of reference (c)]

This module is being heard together with:

- The effectiveness of the Garda Síochána Complaints inquiry process viz-a-viz the complaints made by Frank McBrearty Snr. and his family between 1997 and 2001. [Term of reference (j)]
- The circumstances surrounding the arrest and detention of Frank McBrearty Jnr. on 4th February, 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December, 1996 on Edward Moss with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution. [Term of reference (f)]
- Allegations contained in documents received by Deputy Jim Higgins on 25th June, 2000 and in information received by Deputy Brendan Howlin on 25th June, 2000 that two senior members of An Garda Síochána may have acted with impropriety. [Term of reference (h)]

Appendix 3

ICCL Papers on Garda Reform

- ICCL Presentation to the Oireachtas Committee on Justice, Equality and Women's Rights on Community Policing, March 2005.
- ICCL Submission on the Garda Síochána Bill 2004, April 2005.
- ICCL Submission on the Garda Síochána Policing Plan, November 2004.
- ICCL Response to the Lord Mayor's Commission on Crime and Policing, November 2004.
- ICCL Submission on the Scheme of the Garda Síochána Bill 2003, November 2003.
- ICCL Policy Paper on Police Reform: Why Patten Should Apply Here and How This Can Be Achieved?, March 2003.
- Know Your Rights Information Pack, March 2003.
- Policing as a Human Rights Issue: The Case for a Garda Ombudsman, December 2002.
- The Role of the Police in a Democratic Society, November 2000.
- Police Complaints in the Republic of Ireland, 1999.
- ICCL Response to CPT Report – European Committee for the Prevention of Torture, December 1999.
- The Garda Síochána (Complaints) Bill, 1985.

Notes



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