



# PRELIMINARY REPORT

## NATIONAL CONSULTATIONS ON THE RIGHT TO PROTEST IN IRELAND FACILITATED BY THE IRISH COUNCIL FOR CIVIL LIBERTIES (ICCL) AND SUPPORTED BY THE INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS (INCLO)

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*Prepared by Doireann Ansbro,<sup>1</sup> Luciana Pol<sup>2</sup> and Michael Power<sup>3</sup>*

*For further information contact Sinéad Nolan at [sinead.nolan@iccl.ie](mailto:sinead.nolan@iccl.ie)*

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<sup>1</sup> Doireann Ansbro is a Senior Research and Policy Officer at the ICCL.

<sup>2</sup> Luciana Pol is a Senior Fellow in Security Policy and Human Rights for the Center for Legal and Social Studies (CELS), a human rights organization in Argentina. Previously she acted as a Researcher and Coordinator of the Public Safety Program, where she conducted studies on security policies, protest, use of force, police violence, women and prisons, and drug policies in Latin America. Since 2013, Luciana has participated in INCLO as a Team Leader of the Protest Rights and Policing thematic area.

<sup>3</sup> Michael Power is a public interest lawyer based in Johannesburg, South Africa and a Director of ALT Advisory. Michael specialises in the right to freedom of assembly and association and acts as a consultant to INCLO in its Protest Rights and Policing thematic area.

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## EXECUTIVE SUMMARY

From Wednesday, 19 June to Saturday, 22 June 2019, the ICCL, supported by INCLO, facilitated a series of meetings and national consultations on the status of the right to protest in Ireland. Consultations were facilitated in Cork (Wednesday, 19 June), Ennis (Thursday, 20 June) and Dublin (Saturday, 22 June) and meetings were held on an *ad hoc* basis during the consultation period.

The primary aims of the consultations were two-fold: (1) for the ICCL to engage with activists, protesters and social movements to better understand existing challenges to the full enjoyment of the right to protest in Ireland, and to determine what role the ICCL can play in remedying these challenges; and (2) for INCLO to better understand existing challenges to the full enjoyment of the right to protest in Ireland in order to better support the ICCL and to determine trends in relation to the right to assembly and association within INCLO jurisdictions.

This preliminary report documents the consultations process and provides a summary of the law governing the right to protest in Ireland, including international standards (section C). It further provides a summary of the consultations in Cork, Ennis and Dublin and records submissions made by participants (section E).

Thereafter, this report notes identified trends in the consultations process (section F), which include:

- Reported intimidation and harassment of protesters.
- Concerns around the criminalisation of protest activity.
- The role of non-state actors in policing protest, including private security companies.
- The exercise of the right to protest in private spaces which serve a public purpose.
- Limited access to legal support and Legal Aid services.

Lastly, this report makes key observations and preliminary recommendations (section G), which include recommendations on:

- The wide discretion afforded to An Garda Síochána.
- Ensuring equality, non-discrimination and the promotion of human dignity in the context of protests in Ireland.
- The lack of clear and publicly-accessible guidelines, policies and regulations.
- Concerns around limited and ad hoc training on human rights.
- Concerns around the operational definition of what constitutes a protest.
- Insufficient record-keeping and accountability.

ENDS.

## A. INTRODUCTION

1. From Wednesday, 19 June to Saturday, 22 June 2019, the ICCL, supported by INCLO, facilitated a series of meetings and national consultations on the status of the right to protest in Ireland.<sup>4</sup> Consultations were facilitated in Cork (Wednesday, 19 June), Ennis (Thursday, 20 June) and Dublin (Saturday, 22 June) and meetings were held on an *ad hoc* basis during the consultation period.
2. The primary aims of the consultations were two-fold:
  - 2.1. For the ICCL to engage with activists, protesters and social movements to better understand existing challenges to the full enjoyment of the right to protest in Ireland, and to determine what role the ICCL can play in remedying these challenges.
  - 2.2. For INCLO to better understand existing challenges to the full enjoyment of the right to protest in Ireland in order to better support the ICCL and to determine trends in relation to the right to assembly and association within INCLO jurisdictions.
3. The following preliminary report documents the national consultation process in Ireland and is divided into the following sections:
  - 3.1. An overview of the ICCL and INCLO.
  - 3.2. A summary of the right to protest in Ireland.
  - 3.3. An explanation on the methodology used for the consultations process.
  - 3.4. A summary of engagements.
  - 3.5. A list of identified trends in relation to the right to protest in Ireland.
  - 3.6. An overview of key observations and preliminary recommendations.
4. This report remains in a preliminary form until otherwise stated and, in this form, should not be seen as binding on the ICCL, INCLO, or its representatives or affiliates.

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<sup>4</sup> See section C. By way of a definition, “At the core of what the right of peaceful assembly protects is the non-violent gathering of a number of people in a publicly accessible place with a common expressive purpose. Peaceful assemblies may take many forms, including demonstrations, meetings, processions, strikes, rallies, sit-ins and flash mobs. They are protected under article 21 of the International Covenant on Civil and Political Rights, 1976 whether they are stationary, such as pickets, or moving, such as processions or marches. The right of peaceful assembly constitutes an individual right that is exercised collectively. Inherent to the right is thus an associative element. (United Nations Human Rights Committee, *Draft General Comment No. 37* on Article 21 of the ICCPR, 2019 at paras 4-5).”

This report has been prepared by representatives of ICCL, assisted by representatives of INCLO, and it should not be seen as binding on any of the INCLO organisations until such time as it has been made final and it has been endorsed by each individual INCLO member organisation.

## B. ABOUT ICCL AND INCLO

5. Founded in 1976, [ICCL](#) works to defend and strengthen constitutional rights protections and to ensure the full implementation of international human rights standards. It draws on the tradition of civil liberties activism in many countries, including the civil rights movements in Northern Ireland, the United Kingdom and the United States. Domestically focused and internationally informed, ICCL has developed strong partnerships with civil society organisations in Ireland and networks and alliances with similar organisations internationally, including as a member organisation of INCLO.
6. In fulfilling its mandate, ICCL:
  - 6.1. Monitors government policy and legislation to make sure that it complies with international standards, and speaks out when it does not.
  - 6.2. Conducts original research on human rights issues as diverse as equal rights for all families, the right to privacy, protest and police reform and judicial accountability.
  - 6.3. Runs campaigns to raise public and political awareness of human rights issues while working closely with other key stakeholders.
7. [INCLO](#), of which ICCL is a member organization, is a network of 13 independent, national human rights organizations from different countries in the North and South that work together to promote fundamental rights and freedoms. It supports and mutually reinforces the work of member organizations in their respective countries and collaborates on a bilateral and multilateral basis.
8. INCLO works towards advancing four key principles internationally: protest rights, privacy, religious freedom and equal treatment, and the protection of civic space. INCLO is presently working with member organisations on a series of national consultations on the right to protest in order to determine how it can provide better support to its members and to determine trends in relation to the exercise of the right to protest in the jurisdictions in which its members operate.

## C. THE RIGHT TO PROTEST IN IRELAND

*The Constitution of Ireland, the European Convention on Human Rights and domestic legislation*

9. The “right to protest” is informed by three rights contained in the Constitution of Ireland, 1937:
  - 9.1. “The right of citizens to express freely their convictions and opinions”<sup>5</sup>;
  - 9.2. “The right of citizens to assemble peaceably and without arms”<sup>6</sup>; and
  - 9.3. “The right of citizens to form associations and unions”.<sup>7</sup>
10. Importantly, the Constitution of Ireland provides that, in relation to the right to assemble peaceably, “[p]rovision may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas”.<sup>8</sup> Additionally, the Constitution of Ireland provides that “[l]aws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised *shall contain no political, religious or class discrimination*”.<sup>9</sup> (Own emphasis.) Further, Article 40(1) provides that “[a]ll citizens shall, as human persons, be held equal before the law.”<sup>10</sup>
11. In addition to the Constitution of Ireland, the European Convention on Human Rights (**ECHR**) became directly enforceable in Irish Courts in 2003.<sup>11</sup> The Irish Courts are required to apply and interpret Irish legislation, and every organ of the State must perform its functions, in a manner that is compatible with the rights contained within the ECHR. All individuals within Ireland are entitled to take a case before the Courts if they believe their rights have been violated by the Irish State. If they are unsuccessful in the Irish Courts, individuals may appeal their case to the European Court of Human Rights in Strasbourg (**EctHR**). Further, the Irish Courts are required to take “judicial notice” of and “take due account of the principles laid down by” the EctHR. This is significant in

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<sup>5</sup> Article 40(6)(1)(i) of the Constitution of Ireland, 1937.

<sup>6</sup> Article 40(6)(1)(ii) of the Constitution of Ireland, 1937.

<sup>7</sup> Article 40(6)(1)(iii) of the Constitution of Ireland, 1937.

<sup>8</sup> Article 40(6)(1)(ii) of the Constitution of Ireland, 1937.

<sup>9</sup> Article 40(6)(2) of the Constitution of Ireland, 1937.

<sup>10</sup> The Constitution of Ireland provides that personal rights attach to the ‘citizen’. However, in a number of decisions, the Irish Courts have found that these rights may attach to non-citizens in Ireland, depending on the right itself and the degree of attachment the individual may have to the Irish State. See, for example, *N.H.V v Minister for Justice and Equality and Ors* [2017] IESC 35 at para 17 where the Court stated: “the Article 40.1 requirement that individuals as human persons are required [to] be held equal before the law, means that those aspects of the right which are part of human personality cannot be withheld absolutely from non-citizens.”

<sup>11</sup> The European Convention on Human Rights Act, 2003.

the context of protest given the extensive jurisprudence of the ECtHR in outlining the scope of the right.<sup>12</sup>

12. The ECHR equally contains several rights that are relevant to the right to protest, including:
  - 12.1. The right to freedom of assembly and association, (article 11);
  - 12.2. The right to freedom of expression (article 10);
  - 12.3. The right to freedom of thought, conscience and religion (article 9);
  - 12.4. The right not to be discriminated against (article 14).
13. In addition to the rights which apply in terms of the Constitution of Ireland and the ECHR, the following Irish legislation is relevant to the right to protest and include grounds for the criminalisation of protest:
  - 13.1. The Human Rights and Equality Commission Act, 2014
  - 13.2. The Criminal Justice (Public Order) Act, 1994 (**Public Order Act**).
  - 13.3. The Road Traffic Acts, 1961 (as amended) (**Road Traffic Acts**).
  - 13.4. The Water Services Act, 2007.
  - 13.5. The Offences Against the State Act, 1939.
14. The Human Rights and Equality Act requires all public bodies to have regard to the need to protect the human rights of “the persons to whom it provides services”.<sup>13</sup> The Public Order Act outlines a range of public order offences, which give An Garda Síochána (**AGS**) broad discretionary powers to ‘move on’ or arrest people that may be engaging in peaceful protest. This includes where a person may be considered to be engaging in:
  - 14.1. Disorderly conduct in a public place;<sup>14</sup>

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<sup>12</sup> See, for example, *Kuznetsov v Russia* [ECHR] 23 January 2009, Application No. 10877/04 at paras 44-5 which held “as a general principle, the Court reiterates that any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance. [...] Any measures interfering with the freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles - however shocking and unacceptable certain views or words used may appear to the authorities - do a disservice to democracy and often even endanger it.”

<sup>13</sup> Section 42 of the Human Rights and Equality Commission Act, 2014.

<sup>14</sup> Disorderly conduct is defined in section 5 of the Public Order Act as: “engaging in unreasonable behaviour which, having regard to all the circumstances, is likely to cause serious offence or serious annoyance to any person who is, or might reasonably be expected to be, aware of such behaviour”, having been “requested by a member of the Garda Síochána to desist”.



- 14.2. Threatening, abusive or insulting words or behaviour that can be considered a breach of the peace;<sup>15</sup>
- 14.3. Failing to comply with a direction of a garda member;<sup>16</sup>
- 14.4. Preventing or disrupting the passage of any person or vehicle in a public place without lawful authority or reasonable excuse;<sup>17</sup>
- 14.5. Trespass with the intent to commit an offence, unlawfully interfere with property or in a manner that causes or is likely to cause fear.<sup>18</sup>

*The right to protest in international law and standards*

15. In terms of international law and standards, ten general principles have been identified in relation to the right to protest:

- 15.1. States shall respect and ensure all rights of persons participating in assemblies.** In this regard, states must respect and ensure rights without discrimination on the basis of any prohibited ground in law; where ambiguity exists in the drafting of laws relating to the management of assemblies, the relevant provisions are interpreted in favour of those wishing to exercise their right to protest; and the State provides the necessary support to, and sufficient oversight of, the authorities involved in the management of assemblies, at all levels of government. This includes sufficient training and necessary financial and human resources.<sup>19</sup>

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<sup>15</sup> Section 6(1) of the Public Order Act provides that: "It shall be an offence for any person in a public place to use or engage in any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned." Section 7(1) of the Public Order Act provides that: "It shall be an offence for any person in a public place to distribute or display any writing, sign or visible representation which is threatening, abusive, insulting or obscene with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned."

<sup>16</sup> Under section 8 of the Public Order Act, the AGS must suspect, with reasonable cause, that a person has been acting in a manner contrary to the provisions of sections 4, 5, 6, 7 or 9 of the Public Order Act and the member may direct a person to "i. desist from acting in such a manner, and ii. leave immediately the vicinity of the place concerned in a peaceable or orderly manner".

<sup>17</sup> Section 9 of the Public Order Act provides that: "Any person who, without lawful authority or reasonable excuse, wilfully prevents or interrupts the free passage of any person or vehicle in any public place shall be liable on summary conviction..."

<sup>18</sup> Section 11(1) of the Public Order Act provides that: "It shall be an offence for a person- (a) to enter any building or the curtilage of any building or any part of such building or curtilage as a trespasser, or (b) to be within the vicinity of any such building or curtilage or part of such building or curtilage for the purpose of trespassing thereon, in circumstances giving rise to the reasonable inference that such entry or presence was with intent to commit an offence or with intent to unlawfully interfere with any property situate therein." Section 13(1) provides that: "It shall be an offence for a person, without reasonable excuse, to trespass on any building or the curtilage thereof in such a manner as causes or is likely to cause fear in another person."

<sup>19</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. 4 February 2016, A/HRC/31/66 (*UN Report on the Proper Management of Assemblies*) at paras 14-16.

- 15.2. Every person has the inalienable right to take part in peaceful assemblies.** In terms of this principle, all assemblies should be presumed to be lawful and a broad interpretation of the term “peaceful” should be afforded. Additionally, assemblies should be facilitated *within sight and sound* of their target and no person should be held criminally, civilly or administratively responsible for the mere act of organising or participating in a peaceful protest.<sup>20</sup> (Own emphasis.)
- 15.3. Any restrictions imposed on peaceful assemblies shall comply with international human rights standards.** Freedom of assembly is a fundamental right and should be enjoyed without restriction to the greatest extent possible. *Any restrictions to the right must be lawful, necessary and proportionate.* The onus of justifying a limitation of the right rests with the imposing authority, and access to judicial and/or administrative review in a prompt, competent, independent and impartial fora should be available to any person seeking to vindicate their rights.<sup>21</sup> (Own emphasis.)
- 15.4. States shall facilitate the exercise of the right of peaceful assembly.** There is a positive obligation on the State to ensure that the right to protest is facilitated. The State’s obligation to facilitate protests includes the provision of basic services, including traffic management, medical assistance and clean-up services. Organizers should not be held responsible for the provision or cost of such services. Additionally, the stop-and-search or arrest of assembly participants must not be arbitrary or violate the principle of non-discrimination.<sup>22</sup>
- 15.5. Force shall not be used unless strictly unavoidable, and if applied it must be done in accordance with international law.** States are obligated under international law to respect and protect, without discrimination, the rights of all persons participating in an assembly, as well as monitors and bystanders. The principle of legality requires States to develop a domestic legal framework for the use of force, especially potentially lethal force, that complies with international standards. Importantly, States must establish effective reporting and review procedures to address any incident in relation to an assembly during which potentially unlawful use of force occurs.<sup>23</sup>
- 15.6. Every person shall enjoy the right to observe, monitor and record assemblies.** All persons enjoy the right to record an assembly, which includes the right to record the law enforcement operation. Equally, all persons enjoy the right to record an interaction in which he or she is being

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<sup>20</sup> *Id* at paras 18-27.

<sup>21</sup> *Id* at paras 29-35.

<sup>22</sup> *Id* at paras 37-48.

<sup>23</sup> *Id* at paras 50-66.

recorded by a state agent. Human rights violations against monitors should be fully investigated and, where necessary, prosecuted.<sup>24</sup>

- 15.7. The collection of personal information in relation to an assembly must not interfere impermissibly with privacy or other rights.** The collection and processing by authorities of personal information, such as through recording devices, closed-circuit television and undercover policing, must comply with protections against arbitrary or unlawful interference with privacy. Legislation and policies regulating the collection and processing of information relating to assemblies or their organizers and participants must incorporate legality, necessity and proportionality tests. Importantly, restrictions to online access or expression must be necessary and proportionate and applied by a body independent of any political, commercial or other unwarranted influences.<sup>25</sup>
- 15.8. Every person has the right to access information related to assemblies.** The public should have easy, prompt, effective and practical access to information related to assemblies. Legalisation facilitating such access should be based on the principle of *maximum disclosure*, establishing a presumption that information is accessible, subject only to a narrow system of exceptions. Exceptions, which fall on the limiting authority to justify, should only apply where there is a risk of substantial harm to the protected interest and where the harm is greater than the overall public interest in having access to the information.<sup>26</sup>
- 15.9. Business enterprises have a responsibility to respect human rights in the context of assemblies.** Businesses have a responsibility to respect human rights, including in the context of assemblies. This requires that businesses avoid causing or contributing to adverse human rights impacts through their own activities, and address adverse human rights impacts in which they are involved. States have a duty to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct by business enterprises, which include private security companies.<sup>27</sup>
- 15.10. The State and its organs shall be held accountable for their actions in relation to assemblies.** States bear an obligation to provide those whose rights have been violated in the context of an assembly with an adequate, effective and prompt remedy determined by a competent authority having the power to enforce remedies. Liability should extend to officers with command control where they have failed to exercise effective command and control. Reparation shall be provided by the State to victims of acts or omissions

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<sup>24</sup> *Id* at paras 68-71.

<sup>25</sup> *Id* at paras 73-77.

<sup>26</sup> *Id* at paras 79-81.

<sup>27</sup> *Id* at paras 83-87.

which can be attributed to the State and constitute gross violations of international human rights law.<sup>28</sup>

16. The Constitution of Ireland, the ECHR, domestic legislation and international law and standards inform the key observations and preliminary recommendations found in this report.

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<sup>28</sup> *Id* at paras 89-95.

## D. METHODOLOGY

17. Discussions between the ICCL and INCLC in relation to the national consultations process started in March 2019, with the purpose of engaging with activists, protesters and social movements to better understand existing challenges to the full enjoyment of the right to protest in Ireland.
18. In order to survey persons and groups active in protest spaces in Ireland, the ICCL engaged in research to map such persons and groups and prepared and circulated a questionnaire. Thereafter, and based on the responses received to the questionnaire, the ICCL, in consultation with INCLC, resolved to host three national consultations in Cork, Ennis and Dublin based on the location of persons and groups who had indicated an interest in the national consultation process. Additionally, and for persons and groups who were unable to join one of the national consultations, ad hoc meetings were scheduled in Dublin. A meeting was also held with representatives of the Policing Authority, the Garda Inspectorate and senior members of AGS.
19. In order to gain a better understanding of the exercise of the right to protest in Ireland and with a view to providing a tool for protesters, the ICCL prepared a draft *Know Your Rights* manual for discussion during the consultations and its representatives engaged in research on international standards and jurisprudence from Irish Courts and the ECtHR.
20. During each consultation, the following structure was followed and engagements were documented:
  - 20.1. An introduction to the consultation process was presented.
  - 20.2. The draft *Know Your Rights* manual was presented and discussed.
  - 20.3. Discussions with participants were facilitated within the following broad thematic areas:
    - 20.3.1. What are the primary areas for concern regarding, and the key obstacles to, the full exercise of the right to protest in Ireland.
    - 20.3.2. What support mechanisms are needed by social movements, activists and protesters in Ireland.
    - 20.3.3. What are the experiences of social movements, activists and protesters in Ireland.

- 20.3.4. How can formalised civil society organisations (CSOs) such as the ICCL better support social movements, activists and protesters in Ireland.
- 20.4. Digital security training was presented by INCLO.
- 20.5. Key observations were noted.

## E. SUMMARY OF ENGAGEMENTS

### *Consultations in Cork*

21. On Wednesday, 19 June 2019, the ICCL, supported by INCLO, facilitated a two-hour consultation in Cork. The consultation was attended by representatives of the ICCL, INCLO, academics and representatives of various social movements and groups. The consultation followed the structure detailed above.
22. The following matters were raised during the Cork consultation:
  - 22.1. The intimidation and harassment of older generations of protest leaders has had a chilling effect on others and can lead to protest fatigue.
  - 22.2. Criminalisation of activists and protest leaders undermines the ability of social movements to promote their messages and causes.
  - 22.3. Messages, causes and the targets of protest are often highly localised, which results in limited support from other organisations, groups or CSOs outside of that locale.
  - 22.4. It was reported that judges and prosecutors at District Court level have not taken into account the right to protest in relevant decisions. Concerning decisions include a District Court in County Clare “banning” protesters from the entire county as a result of their protest activities.
  - 22.5. Limited, if any, legal assistance is provided to social movements, in part as a result of the limited legal aid scheme in Ireland and the lack of a widespread pro bono culture among the legal profession.
  - 22.6. Legal Aid assistance is not available to persons facing evictions.
  - 22.7. There is a general mistrust of legal professionals and judicial processes as a result of perceived injustices in the past.
  - 22.8. There is a lack of clarity on what rules apply to private security officers and firms.
  - 22.9. There is a lack of clarity around the right of members of AGS to record protesters.
  - 22.10. There is a need for social movements to be fully informed of the Public Order Act.

- 22.11. There is a perception that the Public Order Act has been misused by members of AGS.
- 22.12. There is a need for the youth to be empowered with knowledge of their rights and to create a culture of democratic dissent.
- 22.13. In order to enable and support social movements, know your rights manuals, cards and applications and rights briefings, trainings, independent observers, access to legal advice and support services, including pro bono or public interest lawyers, and note taking in court are useful to social movements.

*Consultations in Ennis*

- 23. On Thursday, 20 June 2019, the ICCL, supported by INCLO, facilitated a two-hour consultation in Ennis. The consultation was attended by representatives of the ICCL, INCLO, academics and representatives of various social movements and groups. The consultation followed the structure detailed above.
- 24. The following matters were raised during the Ennis consultation:
  - 24.1. There is a lack of clarity around what constitutes violence, which renders a protest no longer peaceful. For example, should minor damage to property be considered violence?
  - 24.2. There is a lack of clarity around what constitutes a “breach of the peace”.
  - 24.3. Limited, if any, legal assistance is provided to social movements.
  - 24.4. While AGS increasingly facilitate the right to protest, they often advise social movements where they can and can’t protest. The policing of protest can change depending on whether political figures are in the vicinity.
  - 24.5. Garda officers have intimidated and harassed protesters by filming them in close quarters, recording vehicle registration numbers and misusing policing powers to target activists and protest leaders, including through the confiscation of mobile phones.
  - 24.6. AGS have used arrests without charge as a controlling tactic.
  - 24.7. Complaints to the Garda Síochána Ombudsman Commission (**GSOC**) about the behaviour of individual members of AGS have not been appropriately addressed.
  - 24.8. Social movements need guidance on what rules apply to private security officers and firms and the recording of protesters by AGS.



- 24.9. Guidance is needed on what rules apply to by-laws which create exclusion zones and restrict the right to protest.
- 24.10. Freedom of information requests are not dealt with sufficiently or expeditiously.
- 24.11. In order to enable and support social movements, know your rights manuals, trainings, independent observers, access to legal advice and support services, including pro bono or public interest lawyers, are useful to social movements.

*Consultations in Dublin*

- 25. On Saturday, 22 June 2019, the ICCL, supported by INCLO, facilitated a four-hour consultation in Dublin. The consultation was attended by representatives of the ICCL, INCLO, academics, lawyers, independent observers and representatives of various social movements and groups. The consultation followed the structure detailed above.
- 26. The following matters were raised during the Dublin consultation:
  - 26.1. Social movements need guidance from AGS on what rules apply to private security officers and firms.
  - 26.2. There is a lack of clarity around the right of members of AGS to record protesters.
  - 26.3. Private security officers are often mandated to carry out evictions and do not allow for the exercise of the right to protest during evictions. Further, members of AGS were accused of being present during rights violations by private security officers and of carrying out evictions when the media was not present.
  - 26.4. Social movements are empowered by exercising their right to record but members of AGS often get “annoyed” and require protesters to produce their names and addresses. Additionally, there are reports of AGS confiscating mobile phones and erasing content.
  - 26.5. Stop and search procedures are employed.
  - 26.6. Victimisation of, and retribution against, protesters, particularly in Direct Provision, is reportedly occurring. There is a lack of clarity between Direct Provision centre owners and members of AGS around who should facilitate the right to protest and whether the right to protest applies in private spaces that are delivering public services such as Direct Provision centres. The

withholding of food and benefits and the excessive use of restraints against those seeking international protection who attempt to exercise their rights was reported. A climate of fear as a result of feared and actual retribution and threats against those seeking international protection was reported.

- 26.7. Concerns were raised in relation to the alleged use, or the possibility of use, of the Offences Against the State Act, 1939 against protesters.
- 26.8. Limited, if any, legal assistance is provided to social movements and guidance is needed on how to approach Legal Aid services and private solicitors.
- 26.9. Increasingly, privacy rights and freedom of expression are being curtailed by AGS and private security officers, particularly in relation to statements made online.
- 26.10. Significant concerns were raised about the treatment of activists on arrest and/or detention by AGS. Detained protesters are asked to provide statements to the garda, without being provided access to a lawyer. Protesters have been subject to degrading strip-searches in police stations after arrest.
- 26.11. Concerns were raised about misuse of the Public Order Act and the targeting of individuals.
- 26.12. General concerns were raised about the right to be treated with dignity and respect by members of AGS.

#### *Ad hoc meetings*

27. Throughout the course of the consultations process, a series of meetings were held with academics and activists. The following matters were raised during these meetings:
  - 27.1. Data protection and retention by AGS needs to be regulated and it must be ensured that AGS comply with the General Data Protection Regulation (**GDPR**) of the European Union and the EU Law Enforcement Directive, which regulates exceptions to the GDPR for law enforcement purposes.
  - 27.2. The use of undercover policing agents, including the documented activities of Mark Kennedy (a member of the Metropolitan Police in the United Kingdom) in Ireland, need to be fully investigated and understood.

28. A meeting was also held between ICCL, INCLO and representatives of the Policing Authority, the Garda Inspectorate and AGS. The following matters were raised during these meetings:
- 28.1. AGS approach every policing intervention, including the management of assemblies, from a “human rights-based approach”. The recommendations of the Commission on the Future of Policing are being implemented in accordance with the Government Implementation Plan. As part of this plan, a human rights advisor is now used in operational contexts.
  - 28.2. AGS policies, training manuals and operational protocols relevant to the management of assemblies are not generally publicly available.
  - 28.3. There is no formalised comprehensive human rights training of AGS officials and AGS do not engage in implicit bias training.
  - 28.4. AGS, outside of the use of CCTV cameras, do not record protests and the Garda do not engage in “overt” surveillance. (The Data Protection policies associated with the use of CCTV cameras is not publicly known.)
  - 28.5. AGS no longer employ a graduated use of force along the use of force continuum and the use of force in the context of assemblies is at the discretion of individual members of AGS and the operational commander.
  - 28.6. Statistics on the use of force, stop-and-search and detention are not made publically available. Data in relation to the potential profiling of persons in stop-and-search procedures is not kept.
  - 28.7. As part of the reform process, when members of AGS register uses of force with PULSE in the future, a report will automatically go to GSOC.
  - 28.8. There are accountability mechanisms in place for members of AGS who engage in misconduct both in terms of disciplinary infractions and criminal prosecutions.

## F. IDENTIFIED TRENDS

29. As a result of the consultations and the series of ad hoc meetings, the following trends in relation to the right to protest were identified:

### *Intimidation and harassment of protesters*

30. The intimidation and harassment of protesters by members of AGS was reported in all three of the consultations and remains a cause for concern in ensuring the facilitation of the right to protest in Ireland. In this regard, participants in the consultations noted that:

30.1. AGS officers intimidate and harass protesters by filming them in close quarters, recording vehicle registration numbers and misusing policing powers to target activists and protest leaders, including through the confiscation of mobile phones (and erasing content) and through stop-and-search procedures and strip searches in detention.

30.2. Victimization of and retribution against protesters, particularly in Direct Provision, is reportedly occurring. There is a lack of clarity between Direct Provision centre owners and the garda around who should facilitate the right to protest and whether the right to protest applies in private spaces where public services are delivered such as Direct Provision centres. Further, the withholding of food and benefits and the excessive use of restraints against those seeking international protection who attempt to exercise their right to protest was reported. A climate of fear as a result of feared and actual reprisals and threats against those seeking international protection was reported.

### *Criminalisation of protest activity*

31. The criminalisation of protest activity through the use of the Public Order Act was reported and requires further investigation to ensure that provisions of the Public Order Act and AGS policies are in line with the Constitution of Ireland and the ECHR. Additionally, participants in all three consultations reported that arrest was often used as a tactic to suppress protest activity and create a “chilling effect” on a protest but that charges are subsequently dropped or protesters are released, without charge.

### *The role of non-state actors*

32. A developing and concerning trend in the full realisation of the right to protest in Ireland is the use of non-state actors in contexts in which protests may occur such as

evictions. Participants in the consultations noted that private security officers have been deployed, without sufficient guidance as to what authority they act under and what regulations govern their operations. In this regard, the *UN Report on the Proper Management of Assemblies* provides that:

“Civilian private security services may perform a policing-type role while protecting private property or assets during an assembly, and private companies often play a role in surveillance. Business entities should carry out human rights due diligence, and where a potential impact on assembly and related rights is identified mitigate these risks. Civilian private security services should not perform policing-type functions in relation to assemblies. However, where this occurs, such services must respect and protect human rights and should comply with the highest voluntary standards of conduct.”<sup>29</sup>

#### *Exercising the right to protest in private spaces*

33. Increasingly, the right to protest is being exercised in private spaces which are accessible to the public, such as shopping centres, or in private spaces which fulfill a public purpose, such as Direct Provision centres. In this regard, the *UN Report on the Proper Management of Assemblies* notes that:

“While private landowners generally have the right to determine who may access their property, the rights related to assembly may require positive measures of protection even in the sphere of relations between individuals.”<sup>30</sup>

and

“Where privately owned spaces are open to the general public and serve a similar function as public spaces, they should be treated as a public space for the purpose of the rights to freedom of assembly and expression”.<sup>31</sup>

#### *Limited access to support services and know your rights manuals*

34. Of concern to all of the participants in the consultations was the lack of support services, including legal support services, psycho-social support services, and protest monitoring services. As a result of limited availability of legal services, participants indicated that, on occasion, they represent themselves. Additionally, protesters indicated that they needed support in understanding the legal implications of, among others, the Public Order Act and Road Traffic Acts. In this regard, participants suggested that know your rights manuals and toolkits were an important tool in the full realisation and enjoyment of the right to protest.

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<sup>29</sup> *UN Report on the Proper Management of Assemblies* at para 85.

<sup>30</sup> *Id* at para 84.

<sup>31</sup> *Id* at para 88(b).

*Limited access to Legal Aid services*

35. Allied to the trend of limited access to support services, participants noted that access to Legal Aid services were insufficient for those seeking to challenge court orders such as repossession orders or to challenge the constitutionality or human rights compliance of actions of state actors.

## G. KEY OBSERVATIONS & PRELIMINARY RECOMMENDATIONS

36. Based on the consultations and the *ad hoc* meetings, the following key observations and preliminary recommendations are noted:

*Wide discretion afforded to An Garda Síochána*

37. The Public Order Act gives members of AGS a wide discretion to police protest using public order offences. In particular, section 9 provides for an offence against: “Any person who, without lawful authority or reasonable excuse, wilfully prevents or interrupts the free passage of any person or vehicle in any public place”. Further, section 8 allows a Garda who has “reasonable cause” to suspect that a person is committing an offence of obstruction in terms of section 9 to direct that person to either immediately desist from their actions or immediately leave the area.

- 38. This wide discretion may be subject to abuse and it lacks clarity on what may be considered to be “lawful authority” or “reasonable excuse”. Additionally, the Act provides a low threshold on disruption: being the “free passage” of vehicular or pedestrian traffic. These wide discretionary powers may be considered over-broad and vague. Absent reform, both members of AGS and members of the judiciary should interpret the Public Order Act in accordance with established international standards on the right to protest, including a presumption in favour of protests.<sup>32</sup>**

*Equality, non-discrimination and the promotion of human dignity*

39. The Constitution of Ireland and the ECHR requires the State to ensure equal application of the law and non-discrimination. Reports during the consultation process indicate that members of AGS, on occasion, seek to apply different standards to different groups of protesters. Members of AGS were reported to make a clear distinction between large processions and smaller groups of protesters seeking to effect social change through protest action, for example sit-ins against evictions. Additionally, reports indicate that some members of AGS have treated protesters in an undignified and demeaning manner, including through the use of strip-searches and restraints.
- 40. The principles of non-discrimination and human dignity are central to the full enjoyment of the right to protest and should be protected and promoted by AGS. Human rights training focused on non-discrimination and human dignity should be mandatory within AGS training and any violations of these principles should be promptly and effectively investigated and remedied.**

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<sup>32</sup> *Id* at paras 14-16.

*Lack of clear guidelines and transparency*

41. One of the primary observations flowing from the consultation process is the lack of clear and publicly-accessible guidelines, policies and regulations from AGS on the management or facilitation of assemblies, particularly in relation to crowd management training, human rights training in the context of assemblies, manner, time and place restrictions, the right to record and the use of force. Additionally, there is limited clarity on disciplinary mechanisms and data collection and retention.
42. **The public should have easy, prompt, effective and practical access to information related to protest. Legal and policy measures facilitating such access should be based on the principles of *maximum disclosure* and transparency, establishing a presumption that information is accessible, subject only to a narrow system of exceptions. Where exceptions exist, they should be justified by AGS and should only apply “where there is a risk of substantial harm to the protected interest and where the harm is greater than the overall public interest in having access to the information.”<sup>33</sup>**

*Limited and ad hoc training*

43. **Allied to the lack of clear and publicly-accessible guidelines, policies and regulations from AGS is the uncertainty in relation to what training is provided to members of the AGS which promotes a “human rights-based approach”, and whether this training is consistent and ongoing or offered on an ad hoc basis. Additionally, implicit bias training should be mandatory for all members of the AGS and any training manuals which relate to the management or facilitation of assemblies should be publicly accessible.**

*Concerns around the operational definition of a protest*

44. The United Nations (UN) Special Rapporteur (UNSR) on freedom of assembly and of association recognises that protests may take many forms, including demonstrations, meetings, processions, strikes, rallies, sit-ins and flash mobs . . . whether they are stationary, such as pickets, or moving, such as processions or marches.<sup>34</sup> The UNSR recognises further that: “[w]hile an assembly is defined as a temporary gathering, this may include long-term demonstrations, including extended sit-ins and “occupy”-style manifestations. Although an assembly has generally been understood as a physical gathering of people, it has been recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online.”<sup>35</sup>

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<sup>33</sup> *Id* at paras 79-81.

<sup>34</sup> See note 3 above.

<sup>35</sup> *UN Report on the Proper Management of Assemblies*.



45. **In the Irish context, and based on international standards, an expanded definition of what constitutes a protest should be favoured to avoid instances in which some protests, which do not meet the “traditional” notions of a protest, are prohibited and the full enjoyment of the right to protest is infringed. Absent publicly-accessible policies defining what constitutes a protest, including analogous interactions taking place online, both members of AGS and members of the judiciary should interpret the definition of a protest as widely as possible and in accordance with established international standards on the right to protest. Members of the AGS should also be cognisant that spontaneous protests can occur in certain contexts, particularly when there are perceived rights violations, and must ensure that these protests are properly facilitated in accordance with established international standards.**

*Insufficient record-keeping and data*

46. It was noted that data in relation to arrests, detentions, the use of handcuffs, and interferences with the right to protest by members of AGS are not kept, or are not publicly-accessible, but that reforms are presently underway. **Pending reforms in relation to record-keeping and data, and in order to ensure effective accountability and the full application of the right to an effective remedy, the AGS should establish effective reporting and review procedures to address any incident in relation to an assembly during which a potentially unlawful use of force occurs.<sup>36</sup> Additionally, proper record keeping of decisions made by command officers at all levels should be kept.<sup>37</sup>**

*Accountability*

47. Finally, concerns were expressed by many protesters that complaints about AGS misconduct in the context of protest have not been sufficiently addressed. **Accountability for AGS misconduct or violations of human rights, whether through disciplinary proceedings or prosecutions for serious offences, should be ensured.**

ENDS.

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<sup>36</sup> *Id* at para 64.

<sup>37</sup> *Id* at para 66.