

# ICCL Submission on the Policing, Security and Community Safety Bill, 2021

August 2021

# Submission on the Policing, Security, and Community Safety Bill

## Introduction

ICCL welcomes the opportunity to provide an analysis of the General Scheme of the Policing, Security, and Community Safety Bill.<sup>1</sup> This Bill introduces some positive and welcome developments and reforms, in line with recommendations by the Commission on the Future of Policing in Ireland (CoFPI). ICCL is committed to advocating for a human rights based approach to policing in Ireland and made a comprehensive submission on this to the CoFPI.<sup>2</sup>

## Head by Head Analysis

This Bill introduces important organisational and structural reforms recommended by CoFPI. It establishes a new Policing and Community Safety Authority, an Independent Examiner of national security legislation, and a Garda Síochána Ombudsman.

ICCL does not comment on all Heads but have put comments on the Heads we wish to analyse in numerical sequence below.

### Head 7

*Increased references to human rights:* The Bill includes increased references to human rights standards, as compared to the Garda Síochána (GS) Act 2005. It also sets out principles of policing, including “when providing policing services every member of garda personnel is required to act professionally, ethically, with integrity and in a manner that protects and vindicates human rights.”<sup>3</sup> The increased focus on human rights is welcome.

### Head 9

*Prosecution powers:* The Bill includes a provision on prosecution by AGS despite the CoFPI recommendation that AGS should not have a role in prosecution. It is a similar provision to the GS Act 2005<sup>4</sup> and provides that “any member of AGS may institute and conduct prosecutions in a court of summary jurisdiction, but only in the name of the Director of Public Prosecutions.”<sup>5</sup> CoFPI recommended that “All prosecution decisions should be taken away

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<sup>1</sup> This submission was written by ICCL policy officer Elizabeth Carthy.

<sup>2</sup> Alyson Kilpatrick, ICCL, *A Human Rights Based Approach to Policing in Ireland*, 2018.

<sup>3</sup> *Ibid.* Head 7.

<sup>4</sup> Garda Síochána Act 2005, section 8.

<sup>5</sup> Policing, Security, and Community Safety Bill, 2021, Head 9.

from the police and given to an expanded state solicitor or national prosecution service. We also recommend that the practice of police prosecuting cases in court should cease.”<sup>6</sup> ICCL reiterates this recommendation and calls for this provision and prosecutorial powers for AGS to be removed. We call on government to provide sufficient resources to the DPP as a matter of urgency to ensure that there are adequate numbers of prosecutors in the State.

### **Head 10 and 11**

**Board of AGS:** As recommended by CoFPI, a Board of AGS will be set up with different functions, including to “ensure that AGS has appropriate systems, policies and procedures in place to ensure compliance with its obligations under section 42 of the Irish Human Rights and Equality Commission Act 2014.”<sup>7</sup> However, the Bill does not include human rights experience as something that members should have experience or expertise in. It only includes reference to matters connected with the functions of AGS, organisational governance, management or public administration or financial matters.<sup>8</sup> ICCL recommends that when appointing a person to be a member of the Board, the Minister shall satisfy themselves that the person has sufficient expertise or experience in human rights law and the public sector duty. We also note Footnote 63 of the COFPI report in relation to the creation of this board, where two of the members of the Commission state their opposition to the creation of this board as follows:

*Dr Vicky Conway and Dr Eddie Molloy fully support the Commission’s report on the future of policing in Ireland. However, they state their disagreement with the recommendation relating to a board as follows: “Against a background of decades of antipathy in Ireland towards external oversight and accountability for policing, we believe the inclusion of this board as an additional element in the oversight and governance architecture, and the consequential dilution of the role of the external oversight body (until now the Policing Authority), does not offer the best prospects of achieving the goal of unambiguous, independent, empowered, transparent accountability. While exchanges between the Policing Authority and An Garda Síochána may have appeared fractious, it is still early days in the development of an effective system of governance. Our proposal would be simply to build on the progress made to date by the Policing Authority, which in our view has been both supportive and necessarily challenging in its engagement with An Garda Síochána. We believe that the solution should be to adequately empower the Policing Authority while encouraging maturation of the culture of An Garda Síochána concerning external accountability.”*

ICCL considers that there is merit to this opinion and we urge government to clarify the advantages of an internal governance Board and how robust external oversight and accountability, currently offered by the Policing Authority, will be maintained.

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<sup>6</sup> Commission on the Future of Policing, *The Future of Policing in Ireland*, 2018, pp. 29-30.

<sup>7</sup> Policing, Security, and Community Safety Bill, 2021, Head 11.

<sup>8</sup> *Ibid.* Head 10.

## Head 65

*Need to provide for disaggregated data collection for all areas of policing:* The Bill restates the provision relating to statistical information that is in the GS Act 2005.<sup>9</sup> This provision provides that the Garda Commissioner shall ensure that statistical information concerning offences, criminal proceedings and the state of crime in the State is compiled and stored. This provision is too narrow and does not meet the data gathering requirements of AGS under human rights law. As ICCL has previously highlighted, data collection is vital for transparency and ensures effective accountability. It also enables the public to understand and question particular trends in policing.<sup>10</sup>

ICCL recommended that AGS, liaising with the Policing Authority, should monitor all areas of policing. This means collecting disaggregated data on: reported incidents of crime; recording rates for hate crime; recording rates for domestic and sexual violence; use of powers to stop, search, question, and enter premises; use of security powers including surveillance and covert operations; use and deployment of cover human intelligence sources; detentions; use of force; arrest, charge and outcome rates; complaints; training delivered; and, the representativeness of the service.<sup>11</sup>

Disaggregated data includes data on the grounds under equality legislation, such as age, gender, disability, and race, and others, such as ethnicity.<sup>12</sup> Throughout the Covid-19 pandemic, the Policing Authority have published reports with detailed information on the use of Covid-19 related enforcement powers.<sup>13</sup> ICCL and others have called on AGS to collect and report disaggregated data relating to the use of these powers, specifically in relation to ethnicity.<sup>14</sup>

The AGS Legal Executive Director, appearing before the Oireachtas on the topic of civil liberties during the Covid-19 pandemic on 22 June 2021, questioned whether AGS should be the collector of disaggregated data on the use of police powers or “the referrer of that data to entities within the state who already hold that data, that would require an action and legislative permission to take a unique identifier which is then transferred” and highlighted that “AGS are not experts in this regard, in the collection of such sensitive data, but more importantly are not the appropriate body to collect it in the context of such adversarial circumstances that suspects in particular and vulnerable individuals might find themselves in

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<sup>9</sup> Policing, Security, and Community Safety Bill, 2021, Head 65; GS Act, 2005, section 47.

<sup>10</sup> See further Alyson Kilpatrick, ICCL, *A Human Rights Based Approach to Policing in Ireland*, 2018, p. 25.

<sup>11</sup> *Ibid.*

<sup>12</sup> Equal Status Acts 2000-2018.

<sup>13</sup> Policing Authority, *Oversight of Covid-19 Policing*, 2021.

<sup>14</sup> ICCL, *Monitoring rights during the pandemic*, 2021; ICCL, *Human rights in a pandemic*, 2021.

vis-à-vis AGS.” The AGS Legal Executive Director highlighted that the Garda Commissioner is supportive of the need to collect this data pursuant to its statutory duty to eliminate discrimination.<sup>15</sup>

Given the vital role that disaggregated data plays in ensuring transparency, accountability, and evidence based responses, ICCL recommends that provision be made in this Bill for the collection of disaggregated data relating to the use of police powers and on all areas of policing based on equality grounds (gender, family status, marital status, age, disability, sexual orientation, race, religion, and member of the Traveller community), socio-economic status, geographic location, and ethnicity.

## Head 66

*Disciplinary code:* The Bill provides for a code of ethics for members of garda personnel to be established by the Policing and Community Safety Authority. It will include standards of conduct and practice and provisions to encourage and facilitate the reporting of wrongdoing in AGS.<sup>16</sup> This provision is similar to the GS Act 2005, however it is no longer the Minister who shall establish the code or Garda Commissioner who shall draft the code.<sup>17</sup> Further, in preparing the code of ethics, the Authority shall have regard to the policing principles in addition to the standards, practices and procedures in other EU countries, and relevant recommendations of the Council of Europe.

In 2002, the Ioann Report, a human rights audit of Garda policies and practices was published. It recommended that “The Garda Code should be reviewed to ensure that human rights are reflected throughout so that infringements of human rights, as with other infringements of the code, become a disciplinary offence.”<sup>18</sup> Similarly, ICCL, in our 2018 CoFPI submission, recommended that the code of ethics should be revised to expressly include the human rights standards expected of Garda and civilian staff and their practical application.<sup>19</sup> While the Bill provides that reference to the policing principles, which include mention of human rights, shall be taken into account in drafting the code of ethics, ICCL recommends that the Bill explicitly include the need to include human rights when preparing the code of ethics. Further, the Authority should have regard to the human rights standards expected of garda members and staff and their practical application when performing its functions.

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<sup>15</sup> Irish Human Rights and Equality Commission Act 2014, s 42.

<sup>16</sup> Policing, Security, and Community Safety Bill, 2021, Head 66.

<sup>17</sup> Garda Síochána Act 2005, section 17.

<sup>18</sup> Alyson Kilpatrick, ICCL, *A Human Rights Based Approach to Policing in Ireland*, 2018, p. 35.

<sup>19</sup> Alyson Kilpatrick, ICCL, *A Human Rights Based Approach to Policing in Ireland*, 2018, p. 46.

The code of ethics provided for in the Bill is not a disciplinary code. Instead the Bill provides for conduct regulations<sup>20</sup> and performance regulations.<sup>21</sup> As ICCL has previously recommended, breach of the code of ethics should constitute a disciplinary offence.<sup>22</sup>

### Head 100

*Policing and Community Safety Authority:* The Policing and Community Safety Authority will replace the existing Policing Authority and Garda Inspectorate. It is positive that in making recommendations of persons who are suitable for appointment as ordinary members of the Authority, consideration shall be given to the desirability of the members possessing knowledge of, and experience in, certain matters, including matters connected with human rights, equality, and diversity.<sup>23</sup>

### Head 104

Head 104 provides that the objective of this body is to “oversee and assess in an independent and transparent manner the performance of AGS of its functions relating to policing services in order to support the effective provision and continuous improvement of such services to the benefit of the safety of the public.”<sup>24</sup> This body has clear and welcome functions, which include references to human rights standards. Given the importance of inspections to ensuring that standards are upheld, a particularly important function of this body will be to “carry out at its own initiative or at the request of the Minister inspections in relation to any particular aspects of the operation and administration of AGS relating to policing services (including in relation to adherence to human rights standards and cooperation with other public service bodies to enhance community safety.”<sup>25</sup> Another important function from a human rights perspective will be its obligation to “promote professional policing standards (including human rights standards) and the continuous improvement of policing having regard to best international practice.”<sup>26</sup>

### Head 113

*Increased inspection powers:* The Bill provides for the appointment of Inspectors of Policing Services by the Policing and Community Safety Authority. It provides that “the Authority and Garda Commissioner shall agree a memorandum of understanding concerning the conduct of investigations” and sets out a number of issues which the memorandum must address. This includes visits, including unannounced visits in connection with a planned inspection,

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<sup>20</sup> Policing, Security, and Community Safety Bill, 2021, Head 221.

<sup>21</sup> Policing, Security, and Community Safety Bill, 2021, Head 220.

<sup>22</sup> Alyson Kilpatrick, ICCL, *A Human Rights Based Approach to Policing in Ireland*, 2018, p. 46.

<sup>23</sup> Policing, Security, and Community Safety Bill, 2021, Head 100.

<sup>24</sup> Policing, Security, and Community Safety Bill, 2021, Head 104.

<sup>25</sup> Policing, Security, and Community Safety Bill, 2021 Head 104(2)(c)

<sup>26</sup> Policing, Security, and Community Safety Bill, 2021 Head 104(2)(h)

the manner in which they may be carried out, and the furnishing of information and the making available of records or documents in relevant locations, including in Garda stations.

ICCL has long called for independent inspections of Garda stations and we welcome this provision. However, the current plans to appoint the Inspector of Prisons as the inspectorate for Garda stations as part of the National Preventive Mechanism, required under the Optional Protocol to the UN Convention against Torture may cause some confusion as to roles and responsibility. ICCL considers the policing oversight body is the appropriate inspector for Garda Stations and calls on government to reconsider the designation of the Inspector of Prisons for this role. We address the scope of the current inspection powers provided for in this Bill further below.

### Head 114

*Increased inspections and the ratification of OPCAT:* ICCL has repeatedly called for the ratification and implementation of the Optional Protocol to the UN Convention against Torture (OPCAT).<sup>27</sup> While ICCL welcomes the increased inspection powers provided for in the Bill by Inspectors of Policing Services, these powers are to be carried out “in connection with a planned inspection.”<sup>28</sup> A “planned inspection” means “an inspection included in the annual business plan... or of which the Garda Commissioner has been informed prior to a visit to any relevant location.”<sup>29</sup> Given these limitations, it is unclear whether these inspections would be sufficient to meet OPCAT requirements. Independent, unannounced visits to Garda stations and other places where people deprived of their liberty can be an important safeguard against abuse. The European Committee for the Prevention of Torture highlighted allegations of physical ill-treatment and verbal disrespect from remand prisoners in police custody and recommended that custody registers in all Garda stations should be comprehensively maintained and an independent system to monitor stations should be put in place.<sup>30</sup> ICCL recommends that OPCAT be ratified and implemented and an effective and independent National Preventive Mechanism to inspect all places of detention, including police stations, be established.

### Head 139

*Garda Síochána Ombudsman:* The Bill provides for the re-organisation of the current three person Garda Síochána Ombudsman Commission (GSOC) to a one person Garda Síochána Ombudsman with a Deputy Garda Ombudsman. The CoFPI recommended that this body be

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<sup>27</sup> See for example, ICCL, *Ratify OPCAT and allow inspection of direct provision centres*, 2018.

<sup>28</sup> Policing, Security, and Community Safety Bill, 2021, Head 114.

<sup>29</sup> Policing, Security, and Community Safety Bill, 2021, Head 114.

<sup>30</sup> Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Government of Ireland on the visit from CPT from 23 September to 4 October 2019, 2020, p.4.

called the Independent Office of the Police Ombudsman to “make clear that it is not part of AGS.”<sup>31</sup> ICCL agrees that the name of the Ombudsman should reflect its independence from AGS and recommends that the CoFPI recommendation be implemented.

## Head 194

*Independent Examiner:* An Independent Examiner of national security legislation will be established, as recommended by CoFPI. This body will “promote public confidence in measures being taken to protect the security of the state, including by assessing whether security legislation is necessary, proportionate and effective while containing the appropriate safeguards for human rights and by preparing reports for publication.”<sup>32</sup> This is a positive step. ICCL has highlighted the need for a review of security legislation, particularly in relation to its compliance with human rights. We have previously recommended that there should be a clear statutory framework to ensure that any rights interfered with for the purpose of security can only be done so lawfully.<sup>33</sup>

## Recommendations

1. Include a requirement for sufficient expertise or experience in human rights law and the public sector duty in order to be appointed as an AGS board member.
2. Rename the Garda Síochána Ombudsman to the Independent Office of the Police Ombudsman.
3. Remove the power of prosecution by members of AGS, as recommended by CoFPI.
4. Include reference to the human rights standards expected of garda members and staff and their practical application as part of the code of ethics.
5. Ensure the code of ethics can be enforced by making it a disciplinary code.
6. Ratify OPCAT and create an effective and independent National Preventive Mechanism to inspect all places of detention, including prisons, Garda stations, direct provision centres, and psychiatric hospitals.
7. Assign the Police Oversight Body as the inspector for Garda station custody suites rather than the Inspector of Prisons.
8. Provide for the collection of disaggregated data on the use of police powers and on all areas of policing.

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<sup>31</sup> Commission on the Future of Policing, *The Future of Policing in Ireland*, 2018, p. xi.

<sup>32</sup> Policing, Security, and Community Safety Bill, 2021, Head 194.

<sup>33</sup> See further Alyson Kilpatrick, ICCL, *A Human Rights Based Approach to Policing in Ireland*, 2018, p. 21.





# About ICCL

**The Irish Council for Civil Liberties (ICCL)** is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights.