Irish Council for Civil Liberties
An Comhairle um Chearta Daonna

ICCL Submission on Criminal Justice Bill 2004 (as initiated) and Proposed Amendments

March 2006

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About the ICCL

The Irish Council for Civil Liberties (An Chomhairle um Chearta Daonna) is the leading independent, non-governmental membership organisation working to promote and defend human rights and civil liberties in Ireland. It was founded in 1976 by, among others, Mary Robinson (former President of Ireland and UN High Commissioner for Human Rights), Kader Asmal (Professor of Law and member of the South African Government), and Justice Donal Barrington (former Supreme Court Judge and Judge at the European Court of Justice and the first President of the Irish Human Rights Commission). Its members and officers through the years have included many leading academics, politicians, lawyers and public figures.

Over the last thirty years, the ICCL has campaigned in the sphere of civil liberties; in particular, it has consistently focused on the interface between criminal justice issues and human rights concerns.

The ICCL has also been very active in a wide range of constitutional reform campaigns, and has championed the rights of minorities including gay and lesbian rights, travellers' rights, women's rights, and the rights of refugees and asylum-seekers.

For further details: ICCL
DMG Business Centre
9-13 Blackhall Place
Dublin 7
Tel: +353 1 7994504 Email: info@iccl.ie
Website: www.iccl.ie

1. Introduction

The Criminal Justice Bill 2004 as initiated in July 2004 and the amendments[1] contain extensive suggested reforms to the Irish criminal justice system. This ICCL submission focuses on a number of key areas including: the extension of Garda powers, the admissibility of certain witness statements, the taking of DNA samples, on-the-spot fines, organised crime and anti-social behaviour orders.

The ICCL is concerned that in the approach of the Bill and its amendments, there is a tendency to see solutions to crime in terms of increasing policing powers and creating new offences. It is the view of the ICCL that the Gardaí and criminal justice system in general are severely under-funded and that the measures proposed by the Minister for Justice are cosmetic and are not justified with reference to appropriate research. The Irish Human Rights Commission (IHRC) recommends that:

> *…all legislative proposals to increase the powers of the Garda Síochána should be subject to careful scrutiny in order to ensure that the correct balance is struck between, on the one hand, the rights of everyone in society to have a police service capable of effectively detecting and prosecuting crime and, on the other hand, the rights of the individual to the enjoyment of the full range of his or her human rights and freedoms*[2].

The IHRC also observes that the Minister for Justice has circumvented earlier legislative processes by introducing a series of substantive proposals at Committee stage. The ICCL believes that this is an unacceptable way to enact such far-reaching changes to the criminal justice system and that it undermines democratic processes.

[1] Draft amendments made available by the Oireachtas Committee on Justice, Equality, Defence and Women's Rights.

[2] IHRC (2004) *Observations on the Criminal Justice Bill 2004*, IHRC: Dublin, p. 1.

2. Search Warrants in relation to Arrestable Offences

Section 5(1) provides that a District Court judge may issue a search warrant when satisfied by information on oath of a member not below the rank of sergeant, that there are reasonable grounds for suspecting evidence of, or relating to, the commission of any arrestable offence.

Section 5(2) provides that a member not below the rank of superintendent may issue a search warrant in certain circumstances, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an arrestable offence is to be found in any place. Section 5(3) states that a search warrant should not be issued on this basis unless it is necessary and where it is impractical to apply to a judge for a search warrant because of delays.

A large number of statutes create powers of entry and search for the Gardaí for a variety of different purposes.[3] Most of these powers relate to a specific criminal offence, for example the power to search premises where someone is suspected of handling stolen goods under the Larceny Acts 1916/1990 and the power to search a premises in relation to theft/fraud offences under the Criminal Justice (Theft and Fraud Offences) Act 2001. Powers of search without a warrant include a common law power for Gardaí to search a place where someone is arrested for the purpose of taking into custody any dangerous weapon or other item that may be evidence of the crime alleged.

The ICCL is concerned that the new provision giving Garda Superintendents the power to issue search warrants in certain situations [section 5(2)] may be open to abuse. Judicial scrutiny is vital for protecting against arbitrary interference with protected rights. Other Irish legislation[4] referring to search warrants include important safeguards to protect against abuse. For example, under section 8 of the Criminal Justice (Drug Trafficking) Act, 1996, a Garda Superintendent may issue a search warrant for the purpose of investigating drug trafficking offences where it is impracticable to apply to a District Court judge or a peace commissioner. In these circumstances it must be shown that the investigating officer tried to secure a search warrant from a District Court judge or a Peace Commissioner[5]. The warrant is also only valid for 24 hours.

The European Court on Human Rights also 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.[6]

[3] See for example, Walsh, D. (2002) *Criminal Procedure,* p. 393.

[4] Apart from section 29 of the Offences Against the State Act

[5] Section 26, Misuse of Drugs Act 1977.

[6] See *inter alia*, *Camenzind V Switzerland*, Judgment of 16 December 1997, Reports 1997 – VIII.

In *Camenzind v Switizerland* the Court ruled that a search carried out in a residential premise 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 which included: (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.[7]

The ICCL also understands that in practice judges' movements/absences are well known by the Gardaí and efforts are made to ensure that there is always a judge available for the issuance of search warrants.

No credible and convincing research has been produced by the Minister for Justice to suggest that the Gardaí's current powers are inadequate. Also the ICCL questions whether the Minister has considered other less restrictive alternatives, and in the absence of such consideration submits that Ireland has not met its obligations under the ECHR. The Irish Human Rights Commission (IHRC) points out that if members of the Gardaí experience difficulties getting hold of District Court judges, particularly in rural areas, then this matter should be discussed with the President of the High Court.[8]

Recommendation

- Delete section 5(1).
- Delete section 5(2).

[7] Ibid at para 46.

[8] IHRC (2003) *Observations on the Scheme of the Criminal Justice Bill 2003*, p. 12.

3. Increased Powers of Detention

Section 8 of the Criminal Justice Bill 2004 amends section 4 of the Criminal Justice Act 1984 to provide for increased powers of detention for all arrestable offences. Section 8 amends section 4 paragraph (c) of the 1984 Act to provide for the possibility of a further period of 12 hours detention on the approval of an officer of at least the rank of Chief Superintendent if he/she believes that such further detention is necessary for the proper investigation of the offence. Therefore a person may be detained for up to 24 hours (in addition to a rest period of up eight hours which is excluded from the calculation of the time in custody) before being brought before a judge.

The right to liberty protects an individual from arbitrary detention. It is provided for under Article 40.4.1 of the Irish Constitution and Article 5 of the ECHR.[9] Article 5(3) of the ECHR makes clear that a person arrested should be brought "promptly" before a judge or other official authorised to exercise judicial power and shall be entitled to a trial within a reasonable time.

The ICCL believes that this change is excessive given that it applies to all persons being questioned for all arrestable offences. Again, the Minister for Justice has produced no credible and convincing research to suggest that the Gardaí's current powers are inadequate and this point has also been made by the IHRC.

> *The HRC believes that the case for an increase of a further 12 hours without judicial supervision in the case of all arrestable offences has not been made and that it is not strictly necessary. It has not been demonstrated in a concrete manner which reference to practical examples that the period of 12 hours currently provided for is inadequate for the proper investigation of all arrestable offences…The HRC believes that the period of detention of 12 hours currently provide for in our legislation is sufficient for the proper investigation of arrestable offences and that the case for justifying an extension of this period for all arrestable offences has not been made.*[10]

The ICCL is concerned that, in the absence of judicial supervision, the power to hold someone for 24 hours may result in detainees being routinely detained for that entire period. In practice this could amount to a maximum period of 32 hours, taking account of time for rest period between midnight and 8am. It is the view of the ICCL that this amendment should be deleted. If it is considered necessary to extend a custodial period without charge, this should only be possible where authorised by a member of judiciary.

[9] Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with the procedure prescribed by law.

[10] HRC (2004) *Observations on the Criminal Justice Bill 2004,* IHRC: Dublin, p. 4.

The ICCL also believes that Garda stations currently do not have the custody facilities to allow for extended periods for questions. For example, Dundalk Garda Station does not have video-recording equipment. A lot of work needs to be done to improve facilities for questioning before extending these Garda powers, as well as further training of the Gardaí on interview techniques.

Recommendation

- Delete section 8.

4. DNA and Bodily Samples

Section 13 of the Criminal Justice Bill 2004 amends the Criminal Justice (Forensic Evidence) Act 1990 in order to reclassify saliva as a "non-intimate" bodily sample, thereby allowing gardaí to take DNA samples without consent. Under the existing law, consent is required for intimate samples (blood, pubic hair, urine, dental imprints etc.) and all samples must be destroyed within six months. Section 13 also amends the same Act to extend the time the Gardaí may retain a DNA sample from six months to twelve months in cases where proceedings are not instituted against persons detained.

Section 13 gives the Gardaí greater access to bodily samples and paves the way for the establishment of a DNA database. The ICCL considers that the use of DNA and DNA profiling as a forensic tool in the detection and prosecution of crime offers many potential benefits and can be used in a positive way to establish the innocence of any suspect, or to corroborate the guilt beyond reasonable doubt of a perpetrator. However, the ICCL has previously expressed serious reservations about the necessity of a DNA database to augment the already lawful use of DNA as a forensic tool in crime detection.[11]

[11] ICCL (2003) *ICCL Position Paper: Human Rights Compatibility of the Establishment of a DNA Database,* ICCL: Dublin.

The ICCL is concerned at the granting of such broad powers to the Gardaí to take bodily samples without consent. There is an inherent danger that the Gardaí may resort to unnecessary force in circumstances where people in their custody refuse to provide DNA samples. Article 40.3 of the Irish Constitution guarantees the right to bodily integrity and Article 3 of the ECHR provides that no one should be subjected to serious harm, inhumane and degrading treatment. Moreover, the ICCL believes that without some form of restriction, the Gardaí may decide to take and analyse DNA samples from almost all persons who have been detained for questioning which will ultimately lead to inefficient use of police time.

Firstly, the ICCL recommends that judicial authority must be sought in cases where a person has refused to give their permission. Secondly, the ICCL recommends that the taking of bodily samples must be video recorded where no consent has been given. Clearly, such powers may, in exceptional circumstances, be justified; however, they should be accompanied by appropriate safeguards. In particular, Gardaí should be provided with guidance as to the circumstances in which they may resort to the use of force in the event that people in their custody refuse to provide DNA samples.

Recommendation

- In section 13, insert a new provision stating judicial authority must be sought in cases where a person detained for questioning by the Gardaí refuses to provide a DNA sample.
- In section 13, delete the proposed amendment of section 4(2) of the Criminal Justice (Forensic) Act 1994 on the extension of time from six months to twelve months.

5. Admissibility of Certain Witness Statements

Section 15 permits a statement "relevant" to the proceedings made by a witness to be used in a trial for an arrestable offence where the witness: (a) refuses to give evidence, (b) denies making the statement, or (c) gives evidence which is materially inconsistent with it. A statement may be admitted if the witness confirms or it is proved that he or she made it [section 15(2)(a)]. The statement shall not be admitted in evidence if the court is of opinion that it is in the interests of justice, or if its admission is unnecessary having regard to other evidence.

A basic feature of the criminal justice system is its adversarial/accusatorial nature and the centrality of trial through oral procedure.[12] Section 15 is a fundamental interference with the adversarial principle and is potentially unconstitutional. It also runs the risk of unreliable/potentially fabricated evidence being used in a court of law against a defendant and it is the view of the ICCL that this section is the most legally unsound. An admitted witness statement may cause considerable prejudice to the accused where the person making the statement cannot be cross-examined on its contents. If such statements are to be admissible, then the law should make it clear that they are not the best evidence and the judge and jury warned accordingly.

Cross-examination of evidence in criminal proceedings under the Offences Against the State Act is currently being considered by the Supreme Court. In Kelly v the Director of Public Prosecutions (DPP)[13], the Supreme Court are considering whether a person can be convicted for membership of an illegal organisation based on the 'belief' of a Garda. The Garda in this case claims that his belief is based upon privileged information of which he cannot be cross-examined. This case was referred to the Supreme Court for their consideration.

The ICCL also believes that section 15 is incompatible with Article 6(1) and 6(3)(d) of the ECHR. According to Article 6(1):

> *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

[12] Walsh, ibid, p. 1.

[13] Heard by the Supreme Court on 14 February 2006.

Under Article 6(3)(d) everyone charged with a criminal offence has as a minimum right:

> *(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.*

Recommendation

- Delete section 15.

6. On-the-Spot Fines

Section 29 amends the Criminal Justice (Public Order) Act 1994 to include two new sections, 23(A) and 23(B). Section 23(A)(1) enables the Gardaí to issue fines for a section 5 public order offence (disorderly conduct in a public place) where they have reasonable grounds for believing that the person is committing the offence. The fine notice will be served on a person and be due for payment within 28 days. Failure to pay will result in prosecution. Providing a false name or address is an offence and Gardaí may arrest anyone without warrant if they believe that they are committing such an offence. [14]

The new section 23(B)(1) allows the Gardaí to also issue fines to persons suspected with reasonable cause of committing an offence under section 4 (intoxication in a public place) of the Criminal Justice (Public Order) Act 1994. In addition where a person has been arrested for a section 4 offence and brought to a Garda station, the Gardaí may instead of releasing the individual on bail, issue a fine [section 23(B)(2)(B)].

The ICCL opposes these amendments to the Criminal Justice (Public Order) Act 1994. Section 5 offences (disorderly conduct in a public place) are notoriously vague. These amendments allow the Gardaí to be "judge and jury" without any safeguards for persons accused of these offences. The ICCL believes that the section is not compatible with the right of an individual to access the courts and a right to a fair trial as provided for under Article 6 of the ECHR.

[14] New section 23A(3)(b).

Recommendation

- Delete section 29.

7. Organised Crime

Section 69(1) states that a criminal organisation means a structured group, however organised, that:

(a) is composed of 3 or more persons acting in concert,

(b) is established over a period of time,

(c) has as its main purpose or main activity the commission or facilitation of one or more serious offences in order to obtain, directly or indirectly, a financial or other material benefit.

A structured group is defined in the draft amendments as a group that (a) is not randomly formed for the immediate commission of a single offence, and (b) does not need to have formally defined roles for its members, continuity of its membership or a developed structure. Section 71(1) makes clear that a person who for the purpose of enhancing the ability of a criminal organisation to commit or facilitate a serious offence in the State, and outside the State (where it would constitute a serious offence), is guilty of an offence.

The ICCL believes that the above section is badly drafted and written in a 'negative' manner. Meaning that the definition of a criminal organisation focuses on what a criminal organisation is not rather than what it is.

In proceedings relating to section 71(1), it is not necessary for the prosecution to any of the following:

- Prove that the criminal organisation actually committed a serious offence [71(2)(a)]
- The participation or contribution of the person concerned actually enhanced the ability of the criminal organisation to commit or facilitate the offence
- The person knew the specific nature of any offence that may have been committed or facilitated by the criminal organisation concerned. Further, the penalty for this new offence may be a fine and/or imprisonment for a term not exceeding five years [71(5)].

Again, this section is drafted in a negative manner; it focuses on what the prosecution do not need to prove rather than what it does.

When determining whether a person participates in or contributes to any activity of a criminal organisation, the court may consider whether the person:

(a) uses a name, word, symbol or other representation that identifies, or is associated with, the organisation, or

(b) *receives any benefit from the organisation.*

A person who commits a serious offence for the benefit of, at the direction of, or in association with, a criminal organisation is guilty of an offence [section 72(1)]. A person found guilty of this offence shall be liable upon conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

It is the views of the ICCL that these draft amendments are deeply flawed and should be deleted for the following reasons:

Existing Law is Sufficient

Individuals conspiring to commit a crime can already be charged with offences under the existing criminal code, for example, the doctrine of joint enterprise and common design in conspiracy, as well as the common law on incitement. No reasonable justification has been advanced as to why new offences are required to target members of criminal gangs. While there have been difficulties in securing convictions in relation to the existing offences[15], the Gardaí and Director of Public Prosecutions (DPP) are likely to experience similar problems with the proposed new offences.[16] The Minister

[15] Bacik, I. (2003) Submission to the Oireachtas Committee on Justice, Equality and Women's Rights Re: The Report on the Review of the Criminal Justice System.

[16] This has been the experience of Canada which introduced new criminal anti-gang measures with Bills C-8 and C-17.

for Justice recognised this fact in his presentation to the Oireachtas Committee on Justice, Equality, Defence and Women's Rights in September 2005.[17]

Uncertainty and Lack of Clarity

The ICCL is concerned that these new offences are so vaguely worded that they could be misapplied and misinterpreted in practice. Membership of certain organisations is unlawful under the Offences Against the State Act 1939-1998. However, evidence on unlawful organisations prohibited under this Act tends to be given in terms of oath, ideology and arrangement. One commentator observes that where there is: "neither oath, ideology nor structure in gang, it is harder to prove its existence or even membership of or participation in it." [18] We believe that this legislation is extremely similar to the Canadian legislation and at odds with the Irish Constitution which protects individuals against the operation of vague and uncertain criminal laws.[19] If the Gardaí believes someone is a member of a criminal gang, then they should use traditional investigatory techniques such as surveillance.

Resourcing An Garda Síochána and Community Policing

Research shows that fear of detection is a much more effective deterrent of criminal behaviour, than heavier sentencing or the introduction of new offences[20]. If the Government is seriously committed to addressing organised crime then it must invest heavily in the Gardaí. For example, not only do the State need to increase the size of the service, members of Gardaí need to regularly undergo training on up-to-date investigatory techniques. In addition, real problem-solving community policing measures are essential in addressing serious organised crime.[21] Community policing programmes throughout the United States and the United Kingdom have been extremely successful in reducing crime and fear in communities.

Recommendation

- Delete provisions on criminal organisations.

[17] Ministerial Presentation on the Criminal Justice Bill 2004 to Joint Committee on Justice, Equality, Defence and Women's Rights, September 2005.

[18] Bacik,ibid.

[19] *King v Attorney General* [1981] IR. 233.

[20] Schuck, A. (2005) "American Crime Prevention: Trends and New Frontiers", *Canadian Journal of Criminology and Criminal Justice,* Vol. 47, No. 2.

[21] See for example, the National Crime Council's Consultation Paper, *Tackling the Underlying Causes of Crime: A Partnership Approach,* (2002), National Crime Council: Dublin.

8. Civil Proceedings in Relation to Anti-Social Behaviour Orders (ASBOs)

Part 11 of the amendments includes a substantial list of proposals to create a new system of anti-social (1) behaviour warnings and (2) civil orders for adults. Section 121 (1) defines anti-social behaviour as:

> *(1) For the purpose of this section a person behaves in an anti-social way if he or she behaved in a manner that caused or, in all the circumstances, was likely to cause to one or more persons not of the same household –*
> *(a) Harassment,*
> *(b) Significant or persistent alarm, distress, fear or intimidation or,*
> *(c) Significant or persistent impairment of their use or enjoyment of their property.*

'Behaviour Warnings'

Where it appears to a member of the Gardaí that a person has behaved in an anti-social manner, he/she may issue a warning to that person [section 113(1)]. The behaviour warning may be issued orally or in writing, and if issued orally, shall be recorded in writing as soon as reasonably practicable [113(2)]. The person to whom a behaviour warning is issued shall comply with the demands of the warning [section 113(6)] and the behaviour warning will remain in force for three months [section 113(7)]. Further, failure to provide the Gardaí with one's name and address for the purpose of issuing a behaviour warning is an offence (see below).

'Civil Orders'

On application, the District Court may make a 'civil order' prohibiting the respondent from doing anything in the order if the court is satisfied that:

> *(a) The respondent has behaved in an anti-social manner*
> *(b) The order is necessary to prevent the respondent from continuing to behave in that manner, and*
> (c) *Having regard to the effect or likely effect of that behaviour on other persons, the order is reasonable and proportionate in the circumstances.* [123(1)].

Before making an application, a senior member of the Gardaí must be satisfied that either or both of the following conditions have been met: (a) the respondent did not comply with a behaviour warning and (b) the respondent has been issued with three or more behaviour warnings in less than six consecutive months [123(4)]. Judges are afforded a very wide discretion as to the type and content of orders made [123(2)] and the respondent cannot be charged, prosecuted or punished for an offence for the same behaviour [123(5)]. Finally the orders remain in place for two years [123(6)] and the standard of proof in these proceedings is that applicable to civil proceedings [123(9)].

Appeals Against Civil Orders

Civil orders can be appealed to the Circuit Court within 21 days from which the order is made [115(1)]. However, the civil order shall remain in force unless the appeal court places a stay on it [115(3)].

Offences

A person commits an offence who:

(a) *Fails to give a name and address when required to do so under section 113(4) or gives a name or address that is false or misleading in response to that requirement, or*
(b) *Without reasonable excuse, does not comply with a civil order to which the person is subject.* [116(1)].

A member of the Gardaí may arrest a person without a warrant if they have reasonable grounds to believe that the person has committed an offence [116(2)]. A person found to have breached an order is liable on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding six months or both [116(3)(b)].

Again, the ICCL believes that inadequate consideration has gone into the development of these new proposals. For example, the amendments were introduced by the Minister for Justice, Equality and Law Reform without any prior consultation. Such a radical change to the criminal law landscape merits, in the ICCL's opinion, structured consultation with political party representatives, local community groups, non-governmental organisations (NGOs) and members of the general population. The ICCL makes the following observations in relation to the proposed introduction of ABSOs.

Human Rights Concerns

The ICCL believes that the definition of anti-social behaviour in the proposed amendments is extremely vague and gives Gardaí too much discretion to give behaviour warnings. Judges are also given too much discretion to decide on the scope and type of anti-social behaviour orders and this gives rise to considerable uncertainty in the law and a lack of clarity, a point which the IHRC supports[22]. In the UK, excessive discretion has led to orders being imposed mainly on children and vulnerable people for behaviour ranging from impolite or irritating conduct to actually criminal behaviour.[23]

[22] IHRC (2006) *Observations on Additional Proposals for Amendments to the Criminal Justice Bill 2004*, IHRC: Dublin, p. 28.
[23] Gask, A. (2004) "Anti-Social Behaviour Orders and Human Rights", paper available from Liberty. www.liberty-human-rights.org.uk

The general aim of the criminal law is to create a standard of behaviour which the State will not tolerate and the criminal justice system has developed due process protections to uphold fundamental rights.[24] ASBOs, as described in the amendments, are civil orders with the potential of criminal sanctions for breach which blurs the division between civil and criminal law.[25] In practice this means there is no common standard of behaviour, this is determined by individual Gardaí and District Court judges. Hence, the Minister runs the risk of criminalizing non-criminal behaviour, and unduly restricting the constitutional and human rights of individuals.

It is the view of the ICCL that if individuals are committing crimes of intimidation or harassment, then the criminal law should be used to tackle their behaviour. However, there is also a strong possibility that members of the Gardaí may seek to impose an ASBO in circumstances where they do not have enough evidence to convict someone of a criminal offence. The danger is that a member of the Gardaí may instead of gathering enough evidence required to prove guilt to the criminal standard of beyond a reasonable doubt, go to the District Court seeking imposition of an ASBO. In other words, ASBOs may serve as a short-cut to obtaining a criminal conviction without the need to actually prove the original crime. This concern has also been raised by the IHRC:

> *While the proposals go to some lengths to emphasise that anti-social behaviour orders are intended as a last resort, there may be a real danger that they become, in practice a substitute for the criminal justice procedures of proffering charges, particularly as, given the wide definition of anti-social behaviour, members of the Garda and prosecution authorities may find it less onerous in practice to obtain an anti-social behaviour order than they would to pursue the prosecution of a criminal offence in respect of a particular incident or person.*[26]

Again, the ICCL believes that if the Government is seriously committed to addressing crime and intimidation of local communities, it must properly resource the Gardaí and support problem solving community policing measures. ASBOs will only compound and further damage relations between the Gardaí and people from marginalised areas.

Recommendation

- Delete Part 11 of the proposed amendments.

[24] Ibid.
[25] Ibid.
[26] IHRC (2006) *Observations on Additional Proposals for Amendments to the Criminal Justice Bill 2004*, IHRC: Dublin, p. 28.