

ICCL Submission on An Garda Síochána Strategy Statement 2022-2024

April 2021

Overview

ICCL welcomes the opportunity to contribute to An Garda Síochána's (AGS) Strategy Statement 2022-2024. This submission highlights how human rights based and community based approaches need to underpin the new Strategy Statement. It also describes some key human rights concerns and measures that should be taken, including in the new Strategy Statement to ensure that AGS is taking a diverse, inclusive, and human rights compliant approach to policing. Finally, it provides a summary of recommendations for the Strategy Statement 2022-2024.

Part 1: Need for a human rights based approach

ICCL would like to reiterate the importance to the AGS of taking a human rights based approach throughout its work. This is a legal obligation, as public bodies have a statutory duty to promote equality, eliminate discrimination, and protect the human rights of members, staff, and the persons to whom they provide services.¹ It is welcome that the 2019-2021 Strategy Statement emphasised human rights as a foundation for providing police services for the first time.²

ICCL also welcomes the fact that the reform process and commitments of 'A Policing Service for our Future' (ASPF) plan will "remain a significant strategic objective". The first principle of the Commission on the Future of Policing in Ireland's (CFP) report is that "Human rights are the foundation and purpose of policing" and it makes key recommendations relating to integrating human rights into all aspects of policing.³ ASPF includes key commitments to human rights, including the establishment of a Human Rights Unit, development of a Human Rights strategy, and re-establishment of a Strategic Human Rights Advisory Committee (SHRAC).⁴ Some of these measures have been implemented, such as the establishment of a Human Rights Unit and the re-establishment of the SHRAC.⁵ Other measures have yet to be implemented as there have been delays due to Covid-19.⁶ While the implementation of the reform process has been delayed, it is positive that it will remain a strategic objective.

Recommendations for the Strategy Statement 2022-2024:

- Prioritise a human rights based approach in the Strategy Statement 2022-2024.
- Continue to implement the policing reform process, including human rights-related measures.

Part 2: Need for a community-based approach, drawing on lessons learned during the Covid-19 response

The Policing Authority has described the role of AGS in responding to Covid-19 as “hugely positive.”⁷ ICCL welcomes the graduated approach, taken by AGS, in relation to the Covid-19 regulations, known as the four ‘E’ approach of engagement, explanation, encouragement, and enforcement, where enforcement is a last resort to ensuring compliance.⁸ However, ICCL has expressed concern about the expansion of powers accorded to AGS to enforce the Covid-19 regulations given the potential disruption of over policing to the transition of AGS from a police force to a community focused police service, as per the recommendation of the CFP.

Further, ICCL is concerned about the introduction and use of anti-spit hoods in the Covid-19 response. ICCL is completely opposed to the use of spit hoods at any time given the likelihood that the use of these hoods could be considered inhuman and degrading treatment. ICCL urges AGS to discontinue their use. The Policing Authority has also highlighted concerns related to the use of anti-spit hoods and was somewhat reassured that the use of anti-spit hoods was “being strictly limited to the current crisis.”⁹ There are key concerns in relation to the disproportionate use of anti-spit hoods on particular groups and also their use on vulnerable individuals. There is a lack of evidence about the effectiveness of anti-spit hoods in preventing the transmission of Covid-19.¹⁰ AGS commenced an evaluation of the use and management of anti-spit hoods in September 2020. ICCL made a submission to this evaluation, highlighting its opposition to the use of anti-spit hoods at any time and urging AGS to discontinue their use.¹¹ The status of this evaluation is not clear and has not been published as of April 2021.

All policing measures, including the deployment of new policing tools, must comply with human rights law and should be subject to a human rights assessment before being introduced. This includes the proposed roll out of new technologies that may impact a range of rights such as body worn cameras.

Recommendations for the Strategy Statement 2022-2024:

- Maintain a focus on community-based policing in the Strategy Statement 2022-2024, drawing upon the success of community-based policing strategies during the Covid-19 response.
- Explicitly highlight in the Strategy Statement 2022-2024 the need for all new policing measures to comply with human rights law and to demonstrate that they have been subject to a human rights assessment before being introduced.

Part 3: Need to eliminate discrimination

ICCL welcomes AGS's questions relating to diversity and its openness to improving its approach to diversity. ICCL would like to highlight some measures AGS should take to demonstrate its commitment to diversity and to ensure that it eliminates discrimination across the service.

First, ICCL would highlight its briefing note on the State's human rights obligations regarding the use of lethal force with reference¹² to the case of Mr. George Nkencho.¹³ On 30 December 2020, Mr. Nkencho, a Black-Irish man was shot dead by members of AGS. There is an ongoing investigation into the circumstances by the Garda Síochána Ombudsman Commission (GSOC). Our briefing note highlights the need for a range of measures to be taken, including in relation to the use of force, racial profiling, and mental health and policing. These are further discussed below.

Second, ICCL would like to highlight the need for further information into the use of restraints, and the use of both non-lethal and lethal force in policing and the need for disaggregated data on these measures. For example, there is a lack of disaggregated data on the basis of ethnicity in relation to Covid-19 enforcement powers, including the use of anti-spit hoods, despite the Policing Authority repeatedly requesting this information.¹⁴ ICCL has previously recommended that AGS should, with the assistance of human rights legal experts, develop and publish a detailed policy on the use of force to expressly include the relevant human rights standards and their practical application.¹⁵

Third, ICCL notes there is a need to take measures to address racial profiling by members of AGS, including an investigation into conscious and unconscious bias throughout AGS. This was highlighted in 2019 by the UN Committee on the Elimination of Racial Discrimination, which raised concerns "about the reportedly high incidence of racial profiling by the Irish police targeted at people of African descent, Travellers and Roma, and the disproportionately high representation of these ethnic minority groups in the prison system."¹⁶

Fourth, the CFP made clear recommendations relating to mental health and policing, in recognition of the fact that police are often at the frontline of dealing with the most vulnerable members of society, including those suffering from mental health conditions.¹⁷ The CFP recommended that "the prevention of harm should be explicitly identified as a core objective of policing."¹⁸ Other relevant recommendations includes the establishment of Crisis Intervention Teams, which should be comprised of police, mental health, substance abuse, child services, and other social workers who know their communities and are able to serve every part of the country.¹⁹ There is a need for information on what progress is being made on these recommendations.²⁰

Recommendations for the Strategy Statement 2022-2024

- Make transparency relating to the use of force an organisational objective in the Strategy Statement 2022-2024.
 - Include activities, as part of this organisational objective, such as:

- Develop, with the assistance of human rights legal experts, and publish a detailed policy on the use of force to include the relevant human rights standards and their practical application.
 - Conduct an inquiry into use of restraints, and use of both non-lethal and lethal force in Irish policing.
- Include strategic outcomes, as part of this objective, such as:
 - A clear and human rights compliant policy on the use of force by AGS members.
 - A transparent policing force, which regularly shares disaggregated data on the use of force by AGS members.
- Make eliminating discrimination an organisational objective in the Strategy Statement 2022-2024.
 - Include activities, as part of this organisational objective, such as:
 - Record and publish disaggregated data on policing measures, including on the basis of ethnicity.
 - Conduct a wider inquiry into the extent to which racial profiling plays a part in policing, which should include a review of policy, practices, and training.
 - Include strategic outcomes, as part of this organisational objective, such as:
 - A database showing the use of policing measures against different groups, which can inform the development of further measures to address racial profiling.
 - A review of policy, practices, and training of AGS to understand the extent to which racial profiling, conscious, and unconscious bias plays a part in policing.
- Make the prevention of harm an organisational objective in the Strategy Statement 2022-2024.
 - Include activities, as part of this organisational objective, such as:
 - Review and publish an update on the status of the recommendations made by CFP into providing mental health expert support to Garda members in crisis response situations.
 - Equip police with “the necessary special response techniques required in incidents involving vulnerable individuals who may not react well to typical police interventions.”²¹
 - Include strategic outcomes, as part of this organisational objective, such as:
 - The prevention of harm, by improved coordination between police and social services, to get vulnerable people the help they need as early as possible.²²

Summary of recommendations for the Strategy Statement 2022-2024

Need for a human rights based approach

- Prioritise a human rights based approach in the Strategy Statement 2022-2024.
- Continue to implement the policing reform process, including human rights-related measures.

Need for a community-based approach

- Maintain a focus on community-based policing in the Strategy Statement 2022-2024, drawing upon the successes of community-based policing strategies during the Covid-19 response.
- Explicitly highlight in the Strategy Statement 2022-2024 the need for all new policing measures to comply with human rights law and how they are subject to a human rights assessment before being introduced.

Need to eliminate discrimination

- Make transparency relating to the use of force an organisational objective in the Strategy Statement 2022-2024.
 - Include activities, as part of this organisational objective, such as:
 - Develop, with the assistance of human rights legal experts, and publish an overarching policy on the use of force to include the relevant human rights standards and their practical application.
 - Conduct an inquiry into use of restraints, and use of both non-lethal and lethal force in Irish policing.
 - Include strategic outcomes, as part of this objective, such as:
 - A clear and human rights compliant policy on the use of force by AGS members.
 - A transparent policing force, which regularly shares disaggregated data on the use of force by AGS members.
- Make eliminating discrimination an organisational objective in the Strategy Statement 2022-2024.
 - Include activities, as part of this organisational objective, such as:
 - Record and publish disaggregated data on policing measures, including on the basis of ethnicity.
 - Conduct a wider inquiry into the extent to which racial profiling, including conscious or unconscious bias, plays a part in policing, which should include a review of policy, practices, and training.
 - Include strategic outcomes, as part of this organisational objective, such as:
 - A database showing the use of policing measures against different groups, which can inform the development of further measures to address racial profiling.

- A review of policy, practices, and training of AGS to understand the extent to which racial profiling plays a part in policing.
- Make the prevention of harm an organisational objective in the Strategy Statement 2022-2024.
 - Include activities, as part of this organisational objective, such as:
 - Review and publish an update on the status of the recommendations made by CFP into providing mental health expert support to Garda members in crisis response situations.
 - Equip police with “the necessary special response techniques required in incidents involving vulnerable individuals who may not react well to typical police interventions.”²³
 - Include strategic outcomes, as part of this organisational objective, such as:
 - The prevention of harm, by improved coordination between police and social services, to get vulnerable people the help they need as early as possible.²⁴

Notes

- ¹ Irish Human Rights and Equality Commission Act 2014, s 42.
- ² AGS, *Strategy Statement 2019-2021*, 2019, p. 3. Available at: <https://www.garda.ie/en/about-us/publications/policing-plans/strategy/garda-strategy-statement-2019-2021-2-1-20.pdf>.
- ³ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, 18 September 2018. Available at: <http://policereform.ie/en/polref/pages/pb18000006>.
- ⁴ Government of Ireland, 'A Policing Service for the Future' Implementing the Report of the Commission on the Future of Policing in Ireland, 2018, p. 16. Available at: http://www.justice.ie/en/JELR/Pages/Commission_on%20the_Future_of_Policing_in_Ireland.
- ⁵ AGS, *General Briefing Note on ASPF*, 2021, p. 1.
- ⁶ Government of Ireland, 'A Policing Service for the Future' Implementing the Report of the Commission on the Future of Policing in Ireland, 2018. Available at: http://www.justice.ie/en/JELR/Pages/Commission_on%20the_Future_of_Policing_in_Ireland. The first two phases 'Building Blocks' and 'Launching phase' were to be completed between January-December 2019, the third 'Scaling phase' was planned for January 2020-June 2021 and the final 'Consolidation phase' was planned for July 2021-December 2022. However, as of March 2021, the first two phases have been completed. The third phase commenced in October 2021 and will be officially launched in March or April 2021.
- ⁷ Policing Authority, *Assessment of Policing Performance*, 2020. Available at: https://www.policingauthority.ie/assets/uploads/documents/Policing_Authority_Assessment_of_Policing_Performance_2020.pdf.
- ⁸ Policing Authority Report, *Report on the Policing Performance by the Garda Síochána in relation to Covid-19 regulations*, 6 May 2020, p. 11.
- ⁹ Policing Authority, *Report on the Policing Performance by the Garda Síochána in relation to Covid-19 regulations*, 20 April 2020, p. 5.
- ¹⁰ Policing Authority, *Report on the Policing Performance by the Garda Síochána in relation to Covid-19 regulations*, 11 September 2020, p. 8.
- ¹¹ ICCL, *ICCL Submission to AGS re Spit Hoods*, 26 August 2020, p.1. Available at: <https://www.iccl.ie/wp-content/uploads/2020/08/ICCL-submission-to-An-Garda-Siochana-on-spit-hoods.pdf>.
- ¹² ICCL, *Briefing on Garda Use of Lethal Force*, 2021. Available at: <https://www.iccl.ie/wp-content/uploads/2021/01/210122-FINAL-ICCL-Briefing-use-of-lethal-force-by-Gardai.pdf>.
- ¹³ ICCL, *Briefing on Garda Use of Lethal Force*, 2021. Available at: <https://www.iccl.ie/wp-content/uploads/2021/01/210122-FINAL-ICCL-Briefing-use-of-lethal-force-by-Gardai.pdf>.
- ¹⁴ Policing Authority, *Policing Performance by the Garda Síochána in relation to Covid-19 Regulations*, 6 May 2020, p. 9. Available at: https://www.policingauthority.ie/assets/uploads/documents/Policing_performance_by_the_Garda_S%C3%ADoch%C3%A1n_a_in_Relation_to_Covid-19_Regulations_-_6th_May_2020.pdf.
- ¹⁵ ICCL, *Briefing on Garda Use of Lethal Force*, 2021, p. 9. Available at: <https://www.iccl.ie/wp-content/uploads/2021/01/210122-FINAL-ICCL-Briefing-use-of-lethal-force-by-Gardai.pdf>.
- ¹⁶ Committee on the Elimination of Racial Discrimination, *Concluding Observations on the combined fifth to ninth reports of Ireland*, 23 January 2020, CERD/C/IRL/CO/5-9, para. 15.
- ¹⁷ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, 18 September 2018, p. 13. Available at: <http://policereform.ie/en/polref/pages/pb18000006>.
- ¹⁸ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, 18 September 2018, p. 13. Available at: <http://policereform.ie/en/polref/pages/pb18000006>.
- ¹⁹ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, 18 September 2018, p. 15. Available at: <http://policereform.ie/en/polref/pages/pb18000006>.
- ²⁰ Ellen Coyne, *Shortfall in mental health experts to assist Garda during crisis stand-offs*, 9 January 2021. Available at: <https://www.independent.ie/irish-news/shortfall-in-mental-health-experts-to-assist-garda-during-crisis-stand-offs-39949076.html>.
- ²¹ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, 18 September 2018, p. 13. Available at: <http://policereform.ie/en/polref/pages/pb18000006>.
- ²² Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, 18 September 2018, p. 96. Available at: <http://policereform.ie/en/polref/pages/pb18000006>.
- ²³ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, 18 September 2018, p. 13. Available at: <http://policereform.ie/en/polref/pages/pb18000006>.
- ²⁴ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland*, 18 September 2018, p. 96. Available at: <http://policereform.ie/en/polref/pages/pb18000006>.