



An Garda Síochána

A Human Rights Based Approach to Policing

Operational Guidance Document

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Part 1

Human Rights Based Policing

Introduction

- 1 This document provides general guidance to Garda Members and Garda Staff so that they may be aware of how human rights are to be observed in the course of their work. Where the application of this guidance refers to both Garda Members and Garda Staff, the term Garda Personnel is used. For a more detailed account, please refer to the Garda Human Rights Framework document which sets out human rights legal obligations on An Garda Síochána and Garda Personnel.
- 2 The vindication of human rights is a key policing objective, and is in fact the very basis of policing. Garda Personnel play a vital role in ensuring that citizens may enjoy their rights to live free from violence, abuse and crime. Garda Personnel also help preserve an environment in which people can live free from fear and enjoy other rights and freedoms.
- 3 An Garda Síochána has a proud tradition in serving communities and protecting the State with Garda Personnel who are committed to delivering an effective and efficient police service. Delivering this service depends on securing the confidence, support and co-operation of all communities. This is the cornerstone of a democratic and progressive society. That confidence, support and co-operation will be enhanced by providing ever better human rights protection by

ensuring a human-rights focused police service.

- 4 The Code of Ethics for An Garda Síochána provides the standards of conduct and practice for Garda Personnel. This guidance document and the Human Rights Framework for An Garda Síochána will support Garda Personnel in their day to day duties in upholding the human rights and ethical standards that are required to secure the rights of those with whom we interact.

Principles for a Human Rights based approach to Policing

- 5 Respect human dignity and uphold and protect individual rights.
- 6 Identify the outcome you wish to achieve and exercise the least intrusive/ invasive measures to achieve it.
- 7 Do not discriminate but if you must differentiate amongst them with whom you interact, ensure you can justify it and that the differentiation is proportionate.
- 8 Identify the key rights engaged in the proposed action or inaction, including competing rights, and consider the discretion available to you.
- 9 Ensure that the action you take has a legal basis in the law in the particular circumstances you are confronting.
- 10 Consider the different approaches to address the issue and determine which will ensure the rights of all are respected and protected.
- 11 Use the decision making model, apply the human rights and ethical principles, consider the appropriate tactical options, and before deciding on the action to be

taken, check how it will respect those principles.

Human Rights Based Policing and the Role of Garda Personnel

- 12 In order to achieve a human-rights focused police service Garda Personnel are guided by three policing principles which state that policing services must be provided:
 - Independently and impartially
 - In a manner that respects Human Rights
 - In a manner that supports the proper and effective administration of justice.
- 13 In the performance of their duties, Garda Personnel must respect and protect human dignity and maintain and uphold the human rights of all persons.
- 14 Garda Members have a duty to:
 - preserve peace and public order,
 - protect life and property,
 - vindicate the human rights of each individual,
 - protect the security of the State,
 - prevent crime,
 - bring criminals to justice, including by detecting and investigating crime, and
 - Regulate and control road traffic and improve road safety.
- 15 Garda Personnel should, as far as is practicable, carry out their functions in co-operation with, and with the aim of securing the support of the community.

Interaction with the Public

- 16 Garda Personnel should act with fairness, self-control, tolerance and impartiality when carrying out their duties. They should use appropriate language and behaviour in their dealings with members of the public, and their colleagues.
- 17 Garda Personnel should act with integrity towards members of the public and their colleagues so that confidence in An Garda Síochána is secured and maintained. They should avoid all forms of behaviour that may reasonably be perceived to be abuse, harassment, discrimination, bullying or victimisation. Any difference in treatment shall be required to be justified and proportionate.
- 18 Garda Members have a very special position with regard to human rights, because while they must always respect the rights of individuals, they also have the power and obligation on occasion to curtail these rights (for example through stop and search or arrest). Garda Members have these powers so as to ensure that the rights of others are protected. Proper exercise of these powers is not always straightforward particularly in light of the discretion which is vested in Garda members.

Principle of Discretion

- 19 Garda members are independent legal officers with legal powers of arrest and control of the public that are vested in them directly. It is because these are powers that every member has by virtue of being a member and which they must exercise both in accordance with law and with a degree of discretion that makes the screening of the use of those powers for

human rights a frontline task of each member.

20 It is essential that Garda Members adhere to human rights based processes when exercising discretion, and that all actions taken are as limited as possible to meet the individual circumstances in line with the principles of legality, necessity, proportionality, accountability and non-discrimination. A margin of discretion enables Garda Members to tailor their response to each particular situation, taking into account all the relevant factors of each case.

21 The appropriate use of discretion is particularly complicated because Garda Members must often act in complex, unclear and emotionally stressful situations. Decisions are made on the spot, in the heat of the moment, often within seconds and without preparation. It is when exercising discretion that human rights principles become particularly relevant. This discretion requires Garda Members to display an appropriate attitude and exercise a strong sense of responsibility. The principles of equal treatment and of proportionality, including taking the least intrusive measures or stopping if the injury/damage from Garda action would clearly outweigh its benefits, are of most relevance.

22 The discretionary powers afforded to each Garda Member entail an obligation to act prudently when choosing to use or refrain from using these powers in an individual case. The use of discretion must always aim to avoid arbitrariness. In this regard, the use of discretion should be guided by a process which involves 'taking relevant considerations into account, ignoring irrelevant considerations and acting proportionately'.

23 Garda Members also exercise their discretion in determining if a prosecution should be initiated. This discretion shall be exercised in accordance with where the public interest lies. Garda Members shall be guided by the Director of Public Prosecutions Guidelines for Prosecutors in determining if it is in the public interest to commence a prosecution.

24 Any interference with a suspect's human rights must be as limited as possible, in line with the principles of legality, necessity, proportionality, accountability and non-discrimination.

Principle of Legality

25 All actions by An Garda Síochána must have a clear basis in law. Therefore, any interference with human rights must be capable of being justified by reference to the law.

Ask yourself:

- What are my legal powers in this situation?
- What legal action am I obligated to take?
- Have I any discretionary power in this situation?
- What are the limits of my discretion?

Principle of Necessity and Proportionality

26 The principles of necessity and proportionality are used to determine whether an action that interferes with human rights is necessary in order to achieve an aim and if the measures used are proportional to the aim pursued.

27 The question when it comes to proportionality is whether the action

taken to prevent the perceived harm was no more than the minimum required to prevent that harm. In other words, the question is what is the least I have to do in order to ensure that the undesired event does not occur. Put in the positive, what is the least I have to do in order to achieve the desired result.

Ask yourself:

- Is the action appropriate to achieve the legitimate aim? In answering this question, examine whether the measure is appropriate and effective. Ineffective measures are not proportionate.
- Is it necessary to resolve this problem?
- Is it the least intrusive measure?
- Are there alternatives available?
- Remember that excessive measures are not proportionate.

Principle of Accountability

- 28 Accountability is taking responsibility for your actions. It is being answerable for delivering a policing service while treating individuals fairly and within the bounds of the law.
- 29 The recording of all relevant information including the rationale for decisions and actions/inactions contemporaneous with every event in which a member of Garda Personnel is engaged, is essential to ensure accountability as required. When force is used, the recording and reporting procedures as provided for in the most recent up to date Use of Force Policy will apply.
- 30 Garda Personnel who have reason to believe that an improper action has been taken by or is about to be taken by another member of staff, shall, to the best of their capability, prevent and rigorously

oppose any such action. Garda Personnel shall, at the earliest opportunity, report the matter to their supervisor and, where necessary, to other appropriate authorities vested with responsibility for investigating such matters. Notwithstanding this responsibility all Garda Personnel are of course compelled to adhere to all lawful orders. An Garda Síochána has independent over-sight provided by the Garda Síochána Ombudsman Commission (GSOC), the Garda Inspectorate and the Policing Authority. Garda Members are under the general direction and control of the Garda Commissioner who in turn is accountable to the Minister for Justice and Equality for the performance of An Garda Síochána of their functions in accordance with the Garda Síochána Act 2005. The Minister, in turn, is responsible to the Dáil pursuant to Article 28.4 of the Constitution.

Principle of Non-Discrimination

- 31 Garda Personnel must consider if an action they propose will impact adversely on another. Consider if an action has the potential to engage with the following wrongful reasons for discrimination:

Age, colour, disability, nationality, family status, ethnic or national origins, gender, sexual orientation, marital status, gender non conformity, membership of the traveller community, political opinion, religion, residence status, race or social origin.

- 32 Arbitrary discrimination is forbidden. Differential treatment is not prohibited in all instances. However, any differential treatment must have an objective and reasonable justification. Where differential treatment is being considered, ask yourself:

- What is the justification for this differential treatment? Does it pursue a legitimate aim?
- Is the justification objective and reasonable or arbitrary?
- If the justification is considered arbitrary, it is forbidden.
- If the justification is considered objective and reasonable, then consider whether the differential treatment is proportionate i.e. could that aim be achieved without resorting to differential treatment.

Decision Making Model

- 33 The Garda Decision Making Model applies to all decisions, from spontaneous incidents to planned operations, daily duties to strategic planning. The model can be applied by an individual member or teams of people and to both operational policing and non-operational policing matters. It is applicable across all ranks and grades and in all situations and provides for a standardised and accountable framework for internal and external stakeholders.
- 34 The model supports and empowers all staff of An Garda Síochána to make effective decisions, to reflect on and evaluate their decisions and to enhance their learning and the development of professional judgement over time. The model also supports and empowers all staff of An Garda Síochána to rigorously oppose unprofessional, unethical illegal or corrupt behaviour or decisions.
- 35 The decision making model provides a framework for continuous review, evaluation and improvement in a simple and easily understood manner.

Part 2

Applying Human Rights Standards to Policing

Introduction

36 This section will provide an overview of the application of human rights to policing duties. The key constitutional rights and rights under the European Convention on Human Rights from a policing perspective are provided at **Annex A**. An explanatory note on each of these rights is provided in **Annex B**. Other international human rights instruments refer to human rights in specific contexts and these are reflected in Irish law transposing those instruments.

37 It is essential that in the performance of their duties, Garda Personnel respect and protect human dignity and maintain and uphold the human rights of all persons. With that in mind, all actions taken must be in accordance with the principles of legality, necessity, proportionality, accountability and non-discrimination.

38 Among the human rights most applicable to policing are:

- Right to Dignity
- Right to Life
- Prohibition from Torture, Inhuman, Degrading Treatment
- Prohibition of Slavery and

- Forced Labour
- Right to Liberty and Security
- Right to a Fair Trial
- No Punishment without Law
- Right to Privacy
- The Right to Inviolability of a Dwelling
- Freedom of Thought, Conscience and Religion
- Freedom of Expression
- Freedom of Assembly and Association
- Right to Marry
- Right to an Effective Remedy
- Equality and Non- Discrimination
- Children’s Rights
- Property Rights
- Right to Education
- Right to Free Elections
- Freedom of Movement
- Asylum/Expulsion and Related Safeguards

39 The right to life admits of no exceptions save those specified in the ECHR. It cannot be restricted otherwise for any reason including the public interest. There are special provisions dealing with a death through the use of force by a Garda Member.

40 The prohibition on torture inhuman and degrading treatment, prohibition of slavery, and no punishment without law are also absolute rights which means they cannot be restricted for any reason including the public interest.

41 The right to liberty protects individuals from having their freedom taken away arbitrarily. The right may only be interfered with in the circumstances defined by law. Where the right to liberty is being restricted, the law sets out the safeguards to be applied.

- 42 The right to a fair trial applies in both civil and criminal proceedings. The right requires a public hearing before an impartial tribunal, within a reasonable time. The right to a public hearing may be curtailed in certain circumstances. The right to a fair trial in the criminal context includes the presumption of innocence. Safeguards in relation to the right to a fair trial are incorporated in Irish criminal procedure.
- 43 The right to privacy, right to freedom of thought, conscience or religion, freedom of expression, freedom of assembly and association and the right to equality/non-discrimination are qualified rights which means that they can be restricted, but only when such a restriction is for a legitimate reason and is necessary and proportionate. Relevant to assessing whether a restriction is proportionate is the question of whether the same objective could be achieved by less restrictive alternatives.

Protecting the Public

- 44 In certain well-defined circumstances, Garda Members are under an obligation to take preventative operational measures to protect individuals whose lives are at risk from the criminal acts of others. Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices, which must be made in terms of priorities and resources, such an obligation must be interpreted in a way, which does not impose an impossible or disproportionate burden.
- 45 Garda Personnel are required to take all steps that could reasonably be expected of them to avoid a real and immediate risk to life about which they know or ought to have known. This obligation does not always involve a criminal act,

for example, it can extend to an obligation to take reasonable steps to prevent self-imposed risks to life (e.g. suicide).

- 46 Failing to pass on important information concerning a risk to an individual's life to the appropriate person or body can breach this obligation.

The Prohibition on Torture, Inhuman and Degrading Treatment

- 47 Torture and cruel, inhuman and/or degrading treatment and/or punishment are prohibited absolutely.
- 48 Torture includes deliberate inhuman treatment causing very serious and cruel suffering, which has a purpose, such as the obtaining of information or confession, or the infliction of punishment.
- 49 Treatment/punishment will be inhuman if it 'causes intense physical or mental suffering'. It is less severe than torture but can include threats of torture and the infliction of psychological harm.
- 50 Treatment/punishment will be degrading if it arouses in the victim a feeling of fear, anguish and inferiority capable of debasing him or her.
- 51 Degrading treatment or punishment consists of treatment or punishment which grossly humiliates a person or drives him to act against his/her will or conscience.

The Use of Force

- 52 Arbitrary or abusive use of force is never acceptable and is punishable as a criminal offence.

- 53 Every human being has an inherent right to life. Torture, cruel, inhuman or degrading treatment or punishment is prohibited.
- 54 No person should be deprived of their right to life except in very limited circumstances; the deprivation of life should only arise when absolutely necessary. When deciding what is absolutely necessary, Garda Members should consider if the action was:
- In defence of a person from lawful violence;
 - To effect a lawful arrest or to prevent the escape of a person lawfully detained; or
 - Lawfully taken for the purposes of quelling a riot or insurrection.
- 55 However, recourse to potentially lethal force, even in the situations outlined above, should only occur in very limited circumstances; actions should always be proportionate to the threat faced. Lethal force must be 'strictly proportionate' to the danger posed. Garda Members should maintain a detailed knowledge of the most up to date Use of Force Policy.
- 56 The importance of the right to life imposes a responsibility upon members to take all appropriate care to avoid to the greatest possible extent, risk to life. In situations when members employ lethal force, an honest belief that the force was necessary is sufficient providing it is based on reasonable grounds given the information available at the time. The use of lethal force against a person known to pose no threat to life or limb and not suspected of having committed a violent offence can never be necessary, even if that results in the person escaping.
- 57 Whenever the use of force is necessary, including the use of firearms where 'absolutely necessary', members should:
- exercise restraint in such use, acting in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - minimise injury/damage and respect and preserve human life;
 - render assistance and medical aid to any injured or affected persons at the earliest opportunity; and
 - notify relatives or close friends of injured or affected persons at the earliest opportunity.
- 58 Members must use the least intrusive/invasive measures to achieve the desired outcome.
- 59 The key issues to consider regarding 'absolute necessity' include the following:
- The nature of the aim pursued – was it the protection of a person from unlawful violence which poses a real and immediate risk to life?
 - Was the use of lethal/potentially lethal force 'absolutely necessary' in the circumstance, bearing in mind the dangers to the lives of all persons involved?
 - What were the risks to others, including the person subject to the force and all others in the vicinity?
 - What other options were considered before resorting to the use of force?
 - What weapons or equipment were available at the time?
 - Have all relevant decisions been recorded and reported?
- 60 All operations which have the potential for lethal force must be planned and controlled so as to minimise, to the

greatest extent possible, recourse to lethal force.

- 61 Force should not be used against persons in custody or detention except where strictly necessary and proportionate for the maintenance of security and order within the station or when personal safety is threatened.

Investigation and Follow up in Cases of Death or Serious Injury

- 62 Effective reporting and review procedures are required regarding injuries and/or deaths resulting from the use of force by Garda Members. In cases of death and serious injury, a detailed report should be sent to GSOC. The investigation must be prompt, thorough, impartial and careful so as to ensure accountability and responsibility. A flawed investigation can result in a breach of the underlying right to life. The investigation will involve an assessment of the organisation and planning of the operation during which lethal force was used. The training, instructions and communications of those who used lethal force and those who lay behind the operation are relevant to that determination. An official investigation will require GSOC to secure all the relevant evidence concerning the incident causing death and to analyse the cause of death.

Public Order

- 63 Public order issues inevitably engage a number of human rights including the freedom of expression and freedom of assembly. However, these are qualified rights – they can be restricted, but only where a restriction is prescribed by law, necessary and proportionate to do so.

- 64 The purpose of an assembly, march, protest or demonstration is largely irrelevant, so long as it is peaceful and the mere fact that it may annoy or offend others is not enough to justify a restriction.

- 65 Where there is a threat of disruption or disorder from others, the Garda Members may be under a duty to take appropriate steps to protect those who want to exercise their right of peaceful assembly, march, protest or demonstration. But there is no absolute duty to protect those who want to exercise their right of peaceful assembly, march, protest or demonstration. The obligation on Garda Members is to take ‘reasonable and appropriate measures’ and they have a fairly wide discretion in deciding how to police a peaceful assembly, march, protest or demonstration.

- 66 Manifestations of belief may entail public demonstrations or gatherings or other public displays, if motivated by religious belief or conscience. Garda Members may be required to intervene to curtail a public manifestation of belief where public safety, public order, health or morals, or the protection of the rights and freedoms of others are threatened by the public manifestation of religious belief or personal conscience. Such intervention should be necessary, and proportionate to the threat, and conducted with respect for the beliefs and dignity of those involved.

- 67 For example, section 8 (1) of the Criminal Justice (Public Order) Act, 1994 states “*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*”. This is an example of a provision which depending

on the circumstances may require the intervention of members to prevent or suspend the public manifestation of belief.

- 68 Freedom of expression may arise in the context of printed material, spoken words and non-verbal expression related to opinions. Materials which may offend, shock or disturb are in principle protected expression. However, hate speech, or expression which spreads, incites, promotes or justifies hatred based on intolerance is not protected and is regulated by the Incitement to Hatred Act 1989.
- 69 The freedom of expression of Garda Personnel may be curtailed as a condition of their service. However, under the Protected Disclosures Act 2014 provision is made for the making of protected disclosures in respect of relevant wrongdoings and the protection of the identity of those making such disclosures. The right to remain silent under Garda questioning is also protected under the constitutional right to freedom of expression.
- 70 Restraint must be exercised in circumstances where these rights are engaged. Any action taken must be in accordance with law, necessary and proportionate to the aim to be achieved and non-discriminatory.
- 71 Further information may be found in Annex C which gives an example of operational guidance in relation to Assembly/Protest/March/Demonstrations/Execution of Court Orders.

Criminal Investigations

- 72 Most criminal investigations will interfere with privacy and therefore must be in

accordance with the law. Persons subject to a criminal investigation are entitled to be presumed innocent until guilt is proven in a court of law. Criminal investigations should also be objective and fair; and they should be sensitive and adaptable to the needs of vulnerable persons including an adult with a physical or intellectual disability, dementia or mental health problems or a child.

- 73 In principle, an investigation shall be conducted in an effective and efficient manner in order to establish the facts, and shall be:
- Independent and impartial;
 - Conducted with promptness and diligence;
 - Subject to public scrutiny;
 - Be capable of leading to the establishment of facts of the case and to the identification and punishment of those responsible.
- 74 The following should underpin all investigations:
- That there were reasonable grounds to suspect some knowledge or involvement relevant to the offence under investigation or disturbance of the peace.
 - That the proper procedures have been followed, recorded and all actions were authorised.
 - That the nature of the interference is proportional in its seriousness to the matter being investigated.
 - All options were considered and all the relevant factors recorded.
 - That the methods used were proportionate and necessary for the purpose of the enquiry.
- 75 All reasonable steps should be taken to secure evidence.

- 76 Engagement with victims and their families is a primary consideration. Victims should be informed of the timing and progress of the investigation of their cases and subsequent proceedings.
- 77 Matters of a confidential nature in the possession of Garda Personnel shall be kept confidential unless the performance of duty or the needs of justice require otherwise. The processing of personal data must be in accordance with the law.
- 78 Consultations with a solicitor must be facilitated and the confidentiality of their discussions guaranteed. The interviewing of suspects must be conducted in a manner which respects their right to be presumed innocent and the right to remain silent under Garda questioning. Vulnerable suspects require further protection in this regard. There is a need to be sensitive to the difficult circumstances in which individuals may find themselves.
- 79 Criminal investigations must be conducted in an expeditious manner. Evidence must be secured in accordance with the law and handled appropriately and responsibly to ensure its admissibility is not compromised. There is a responsibility to facilitate the disclosure of evidence to the defence in accordance with law, including the disclosure of information that would assist the accused person.
- 80 Consideration must be given to any communication with the media, or any other person outside the investigation, to ensure that no publication suggests that a suspect or person of interest is guilty of an offence.

Surveillance

- 81 The use of surveillance will interfere with privacy and fair trial rights and therefore must be in accordance with the law.
- 82 All covert investigations that involves the use of surveillance devices must comply with the Criminal Justice (Surveillance) Act 2009.
- 83 The methods of accountability regarding both the authorisation and the use of surveillance must be in accordance with the 2009 Act.
- 84 Investigations into allegations that an individual's privacy has been breached by surveillance must be independent. Generally speaking, such investigations are carried out independently under the 2009 Act.
- 85 Matters of a confidential nature in the possession of An Garda Síochána shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.
- 86 The data obtained through the use of CCTV cameras whether in private or public places, and the retention of data, can raise privacy issues. CCTV in public places may only be installed and used in accordance with the Garda Síochána Act 2005 and where it is necessary and proportionate to the aim being pursued.

Informers and Undercover Operations

- 87 In relation to undercover operations and informers, it is imperative that members and informers do not engage in any conduct that would in any way incite an individual to commit a crime he or she would not otherwise commit.

- 88 The details of such operations should be recorded in a dedicated manner. Dedicated recording of such information would assist a court when called upon to make a determination as to the lawfulness of prosecutions or the admissibility of evidence arising from undercover operations.

Fingerprints, DNA Samples and Personal Data

- 89 Taking fingerprints, DNA samples and personal data interferes with privacy and therefore must be in accordance with law, necessary and proportionate. Retaining fingerprints, samples and personal data also interferes with privacy and therefore must be in accordance with the law, necessary and proportionate.

Search and Seizure

- 90 Search and seizure interferes with privacy and therefore must be in accordance with law, legitimate and necessary and proportionate to the aim pursued. The right to privacy can extend to business or work premises. Consent to search and seizure will not be valid unless it is genuine and informed.

Stop and Search, Arrest and Detention

- 91 Everyone has the right to liberty and security of their person. No one shall be subjected to arbitrary stop and search, arrest or detention. Such actions should be carried out strictly in accordance with the law.
- 92 Deprivation of liberty of persons shall be limited as possible and conducted with

regard to the dignity, vulnerability and personal needs of each detainee.

- 93 There must be a reasonable suspicion that an individual has committed a criminal offence before a stop and search, arrest or detention is made. Having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person may have committed the offence.
- 94 Sufficient details should be given to enable the person concerned to know the basis upon which he or she is being stopped/held. This information should be recorded
- 95 Everyone arrested should be informed, at the time of arrest or as soon as practicable thereafter in a language he or she understands, of the reasons for his/her arrest, the time of the arrest, the identity of the Garda Member concerned and the place of custody.
- 96 In all circumstances, persons must be treated in a humane manner and with respect for the inherent dignity of the human person. Any unnecessary force used against those is likely to be classified as inhuman.
- 97 The health of an affected person should be fully protected and medical attention should be provided when required.
- 98 All money, valuables, clothing and other property belonging to a detainee which he or she is not allowed to retain should be placed in safe custody.
- 99 Detained persons should also be provided with information on, and an explanation of, their rights and how to avail themselves of their rights.
- 100 Instruments such as handcuffs shall never be applied as a punishment.

101 Those detained (particularly vulnerable individuals such as children) are entitled to notify or to require the Gardaí to notify members of their family or other appropriate persons of their choice of their arrest, detention.

102 Allegations of ill treatment must be properly, promptly and impartially investigated.

Access to a Solicitor

103 Everybody detained/arrested by the Gardaí should be informed of the right of access to a Solicitor. This is fundamental and should not be delayed. A suspect in Garda custody should not be interviewed prior to his or her obtaining legal advice unless he / she waives his right to legal advice or in exceptional circumstances as explained in the Code of Practice on Access to a Solicitor by Persons in Garda Custody.

104 Communications between a suspect and his/her Solicitor should be confidential unless there are highly exceptional circumstances, such as evidence that the Solicitor is engaged in crime.

Questioning

105 Persons subject to a criminal investigation are entitled to be presumed innocent until guilt is proven in a court of law.

106 The time and place of all questioning should be recorded. Any resort to violence, threats or methods of questioning that impair a suspect's capacity to make decisions or judgments is prohibited.

107 Suspects have the right to remain silent during questioning, although, within

limits, adverse inferences can be drawn from silence in certain circumstances.

The Right to be Brought Promptly before a Court

108 Everyone arrested for a criminal offence has the right to be brought promptly before a court. A person in Garda custody may be released on station bail in accordance with law.

Children

109 In all actions concerning children, the best interests of the child are the primary consideration. A child must be afforded such protection and care as is necessary for his or her well-being.

110 The Stop and Search, Arrest / detention of a child should be used only as a measure of last resort and for the shortest appropriate period of time.

111 Protecting a child's privacy is of paramount importance. In principle, no information that may lead to the identification of a child suspect should be published.

112 Records of child suspects should be kept strictly confidential.

113 While in custody, children should receive care, protection and all necessary individual assistance that they require in view of their age, sex and vulnerability.

114 A child's parents or guardian should be Immediately notified of the apprehension of their child.

115 All procedures should take account of the child's age and the need to support their welfare.

Victims

- 116 Victim, including next of kin in the case of a deceased person, shall be treated with compassion and respect for their dignity. They are entitled to the mechanism of justice as provided for by legislation for the harm they have suffered.
- 117 The necessary support / assistance and information should be provided to victims without discrimination.
- 118 Victims shall be informed of the timing and progress of the investigation of their cases and subsequent proceedings.

Part 3

Monitoring Human Rights

- 119 All Executive Directors and Assistant Commissioners shall review policy and procedures which falls under their area of responsibility. They should be reviewed in conjunction with the Human Rights Framework and Human Right Screening Tool.
- 120 All training materials should be developed in conjunction with the Human Rights Framework and Human Right Screening Tool.
- 121 All operational orders should be completed in conjunction with the Human Rights Framework and Human Rights Screening Tool.
- 122 The Human Rights Section is available to screen polices and training materials from a human rights legal perspective and provide advice as required.
- 123 Garda Personnel in their daily duties, be it operational or administrative, will apply human rights standards in accordance with the Human Rights Framework. In doing so, they will be guided by this Operational Guidance Document.

- 124 The Strategic Human Rights Advisory Committee will evaluate compliance with the Human Rights Framework.

Annex A

Table of Key Constitutional and Human Rights Applicable to Policing

Human Rights	Constitution of Ireland Rights	European Convention on Human Rights
Right to Dignity	Preamble & Article 40.3.1	Implicit in Article 2 and 3
Right to Life	Article 40.3	Article 2
Prohibition on Torture	Article 40.3.1	Article 3
Prohibition of Slavery and Forced Labour	No direct referral	Article 4
Right to Liberty and Security	Article 40.4	Article 5
Right to a Fair Trial	Article(s) 38.1; 40.3.1; & 40.4	Article 6
No Punishment without Law	Article(s) 38.1; 40.3.1; 40.3.2 & 40.4.1	Article 7
Right to Privacy	Article 40.3.1	Article 8
Right to the Inviolability of the Dwelling	Article 40.5	Article 8
Freedom of Thought, Conscience and Religion	Article 44	Article 9
Freedom of Expression	Article 40.6.1	Article 10
Freedom of Assembly and Association	Article 40.6.1 ii	Article 11
Right to Marry	Article 41	Article 12
Right to an Effective Remedy	Article 40.3.1	Article 13
Equality/Non-Discrimination	Article 40.1	Article 14
Rights of the Child	Article 42A	Article 14
Protection of Property	Article(s) 40.3; 43	Protocol 1, Article 1
Right to Education	Article 42	Protocol 1, Article 2
Right to Free Elections	Article(s) 6.1; 12.2; 6.2; 28A.2; 28A.4; 46; 47	Protocol 1, Article 3
Freedom of Movement	Article 40	Protocol 4, Article 2
Asylum/Expulsion and related safeguards	No direct referral	Protocol 4 Article 3 and 4 Protocol 7, Article 1

Annex B

Human Rights Explained

Introduction

125 This section provides an overview of each of the human rights applicable to policing through the Irish Constitution and the European Convention for Human Rights. A table of these rights is available at Annex A.

Right to Dignity

126 Human dignity is an innate quality possessed by all human beings. Every person has the right to respect, fair treatment and personal dignity. Everyone working in An Garda Síochána and those with whom it interacts, are entitled to have their dignity respected and protected.

Right to Life

127 No person should be deprived of their right to life except in very limited circumstances; the deprivation of life should only arise when absolutely necessary. These are:

- To defend themselves or another person against unlawful violence
- To make an arrest or prevent someone from escaping
- To stop a riot or violent uprising against the government.

The force used in these circumstances must be **'no more than is absolutely necessary'**.

128 The European Court of Human Rights has considered a number of cases involving the right to life. The Court has used the following principles:

- the ECHR bans unlawful killing by state agents, for example the Gardaí or prison officers;
- the government has to take positive steps to protect life, for example by making murder an offence or making sure that inquests take place;
- all reported suspicious deaths require an effective and efficient Garda investigation to establish the facts;
- if the Gardaí know or ought to know that there is a real and immediate risk to someone's life, they must act to protect the right to life;
- all deaths caused by state agents, such as the Gardaí, army or prison service require effective and efficient investigations which must be independent, open, prompt and thorough.

Prohibition of Torture, Inhuman or Degrading Treatment

129 Every person has the right not to be tortured, and to be free from treatment or punishment that is inhuman or degrading. Even in times of emergency, such as war, torture, ill treatment or degrading treatment is forbidden. The European Court of Human Rights has made clear that even people who break the law, such as people accused of terrorism, are protected from torture, in

human, ill treatment or degrading treatment.

130 The level of harshness that is needed to amount to ill treatment depends on the person and the circumstances. For example, treatment that could be used lawfully against an adult may be considered inhuman or degrading if used on a vulnerable person including an adult with a physical or intellectual disability, dementia or mental health problems or a child.

131 An Garda Síochána must take positive steps to protect people from torture, inhuman and degrading treatment. All reported assaults require an effective and efficient Garda investigation to establish the facts. Any complaint that state agents have carried out torture or treated someone in an inhuman or degrading way must be investigated. These investigations must be effective and efficient. They must be independent, open, prompt and thorough.

132 The European Court of Human Rights has found that the right to freedom from torture, in human and degrading treatment was violated when:

- a person was to be extradited to a country where they would sit on death row for an indefinite period;
- a State failed to protect children who suffered serious ill-treatment at the hands of their parents.

Prohibition of Slavery and Forced Labour

133 A person cannot be treated as a slave or forced to work. This is an absolute right and exists at all times. Forced labour is when one is recruited against their will or forced to work without normal rights such as breaks, fair payment or holidays

or tied to their employer by debt or threats of violence. Complaints or suspicions of such treatment that engages the criminal law require an effective and efficient investigation to establish the facts.

Right to Liberty and Security

134 Every person has the right not to be deprived of liberty except in certain circumstances. To be deprived of liberty means to be held against ones will. Any deprivation of liberty will consequently put the affected person into an extremely vulnerable position. Key issues to consider includes the requirement of reasonable suspicion and that the decision to arrest must not be arbitrarily made. A person may only be deprived of liberty in accordance with the law for one of the reasons set out in Article 5 of the ECHR:

- on conviction of a crime by a court;
- breach of a court order;
- to bring the person before a court because they are suspected of committing a crime. This does not preclude the possibility of investigating the suspect between the moment of arrest and the time he/she is brought before a judicial authority in accordance with the law;
- to prevent the person committing a crime or leaving the country if they are a suspect;
- the person is under 18 and is detained in order to receive educational supervision or be brought before a court;
- to prevent the spread of infectious diseases;
- the person is suffering from certain mental illnesses;

- the person is an alcoholic, a drug addict or a homeless person (in certain circumstances);
- the person is trying to enter a country or cross a border illegally;
- there is a deportation order or extradition order against the person, which means he/she must leave the country.

135 Upon arrest the person has the right to be told the reasons for the arrest and any charge made in a language that is understood by the person. An arrested person has the right to be brought before a court in a reasonable period of time, to challenge the grounds of and to have a trial in a reasonable time.

136 A person cannot give up the right to liberty. Even if they agree to be detained unlawfully it will still be a violation of their rights.

137 Protocol 4 of the ECHR also deals with free movement. If a person is lawfully in the country, he/she has the right to go where they want and to live where they want within the country. An Irish national cannot be made to leave the country or be banned from entering it.

Right to Fair Trial

138 Everyone has the right to a fair and public hearing within a reasonable period of time. The fair trial rights apply from the time of the arrest. Under the right to a fair trial suspects/accused person have the following rights:

- right to a fair chance to present their case;
- their case must be heard before an independent and impartial court or tribunal;
- their case must be heard in a reasonable time;

- their case must be heard in public (with some exceptions, for example family law cases);
- right to be presumed innocent unless proved to be guilty;
- right not to incriminate oneself;
- right to be informed of any charge in a language that they understand;
- right to time to prepare their defence;
- right to defend themselves personally or through a lawyer;
- right to be provided, free of charge, with an interpreter who speaks their language;
- right to cross-examine witnesses.

139 The European Court of Human Rights found that the right to a fair trial was violated where:

- a person was convicted for refusing to answer questions by the police;
- a judge made statements to the press which affected a person's right to be presumed innocent;
- statements taken through torture were used in court;
- children were not able to take part effectively in their own trial.

No Punishment without Law

140 For an act to be considered criminal, there must be a legal basis for it which must be applicable to the time when the offence occurred. Garda Personnel must be vigilant and thorough in establishing that the alleged conduct is criminal in nature, that is to say, constitutes an offence under legislation or the common law.

Right to Privacy

141 Everyone has the right to respect for their private and family life, home and

correspondence. This is a qualified right, which means that it can be restricted by law for the following reasons:

- national security;
- public safety;
- economic well-being;
- to prevent crime or disorder;
- to protect health or morals; or
- to protect the rights and freedoms of other people.

142 An Garda Síochána has a fundamental duty to respect the private and family life, home and correspondence of an individual. There are exceptions to this rule. Many operational activities of An Garda Síochána engage the right to privacy, for example covert surveillance, use of CCTV and the taking of photographs, interception of communications, taking fingerprints and intimate/non-intimate samples from detained persons and processing personal data. Any such action must be in accordance with the law and be necessary and proportionate to the aim (at paragraph 135) to be achieved.

130. The Court has defined family life in broad terms so that it is not just a family based on marriage. It includes grandparents, uncles, aunts, non-married couples and same-sex couples.

131. The European Court of Human Rights found that the right to private and family life was violated where: the police carried out unlawful surveillance.

The Right to the Inviolability of the Dwelling

132 The right to the protection of the dwelling from intrusion by An Garda Síochána is a constitutional right, however forcible

entry is permitted if it is carried out in accordance with law. If forcible entry is deemed to be the necessary and proportionate course of action, then such entry must be effected in a lawful manner.

133 A member of An Garda Síochána may also enter if they are invited or permitted to do so by the occupier. However, if such permission or invitation to enter is withdrawn subsequently, members will be required to leave in order to avoid a risk of being unlawfully on the premises.

Freedom of Thought, Conscience and Religion

134 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

135 Freedom to manifest one's religion or beliefs is a qualified right, which means that it can be restricted by law for the following reasons:

- public safety;
- protect public order;
- to protect health or morals; or
- to protect the rights and freedoms of other people.

136 As expressions of belief have the potential to cause divisions in society, it is important to approach these issues with the motivation to promote pluralism.

Freedom of Expression

- 137 Everyone has the right to hold opinions and to express views both alone or as part of a group.
- 138 This is a qualified right, which means that it can be restricted by law for the following reasons:
- national security;
 - territorial integrity (to protect borders) or public safety;
 - to prevent crime or disorder;
 - to protect health or morals;
 - to protect the reputation or rights of other people;
 - to prevent information received in confidence from being disclosed;
 - to make sure judges stay impartial.

Freedom of Assembly and Association

- 139 Everyone has the right to assemble with other people in a peaceful way. Along with this is the right to associate with other people by, for example, joining a trade union.
- 140 This is a qualified right, which means that it can be restricted by law for the following reasons:
- national security;
 - public safety;
 - to prevent crime or disorder;
 - to protect health or morals; and
 - to protect the rights and freedoms of other people.
- 141 Interference is permitted where the assembly threatens one of the above interests (at paragraph 140) and in accordance with the law. Demonstrations in a public place may cause a certain level of disruption to ordinary life. It is

important to seek to minimise the disruption while facilitating the right to assembly. This does not mean ensuring the assembly runs smoothly. Restraint must be exercised in circumstances where this right is engaged. Any action taken must be in accordance with the law, necessary and proportionate to the aim to be achieved and non-discriminatory. Any assembly organised with a violent purpose can be lawfully dispersed.

Right to Marry

- 142 Everyone of marriageable age has the right to marry and start a family. However, marriages of convenience, that is to say, a marriage contracted for the sole purpose of obtaining an immigration entitlement, is not valid.

Right to Effective Remedy

- 143 Every person is entitled to a remedy if their rights have been interfered with in an unfair way. This means that every person has the right to make a complaint and have their complaint dealt with effectively.

Equality/ Non-Discrimination

- 144 The vindication of human rights requires that everyone be treated equally. No person should be treated any differently because of:
- sex;
 - race;
 - skin colour;
 - language;
 - religion;
 - political opinion or other opinion;
 - nationality;

- minority status;
- property; or
- birth.

This does not require that all individuals are treated identically but any distinction made must not be arbitrary. Any differential treatment must have an objective and reasonable basis.

Children's Rights

- 145 Child protection is a fundamental role of all Garda Members. Garda Personnel must be aware of the particular vulnerability of children. The State is obliged to seek to protect children from all forms of physical and mental violence, sexual exploitation, abduction and trafficking. Garda Members are required to intervene wherever a breach of the criminal law is suspected.
- 146 All children who Garda Personnel encounter in the course of their duties must be treated with dignity and with due regard to their age and level of maturity. This applies equally to suspects and victims of crime alike.
- 147 Children should be addressed in child appropriate language. A primary focus should be the best interests of the child, affording children the right to be heard, endeavouring to detain them apart from adult detainees, and always taking into account the desirability of promoting the child's reintegration into society.

Property Rights

- 148 Everyone has the right to enjoy their property and possessions. The right to property does not establish entitlements to property but rather protects ownership, the circumstances in which a

person may be dispossessed and the use to which persons may put their property.

Right to Education

- 149 Everyone has the right to access the education system. Parents have a right to education for their children that supports their own religious and philosophical beliefs.

Right to Free Elections

- 150 Elections for a legislative body, such as Dáil Éireann and the European Parliament, must be free and fair. The election must take place by secret ballot (ensuring private vote).
- 151 Some limits on this right are allowed, for example the age at which people are allowed to vote. An Garda Síochána plays its role through the enforcement of the electoral legislation in particular, to ensure the effective operation of the system of free elections. Garda Members must work together with election staff to secure this right by ensuring effective running of the system of free elections on polling day. Garda Members are prohibited from being members of political parties and must at all times carry out their duties in a politically correct and neutral manner.
- 152 Article 3 of Protocol 1 of the ECHR provides that the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Freedom of Movement

- 153 The right to move freely within the territory of the State is enjoyed by all

those lawfully resident in the State. The right to enter and leave the country extends to all European Economic Area (EEA) nationals. Restrictions may apply to the citizens of other States who are lawfully resident in Ireland. Such persons may not move freely within the EEA. The Garda Síochána may place certain restrictions on the exercise of these rights, but only if those restrictions can be shown to be lawful, necessary and proportionate.

Expulsion Protections/Asylum

- 154 The rights and procedural safeguards which arise in this operational area are derived from the State's international commitments, but are also grounded in constitutional principles.
- 155 Those individuals awaiting a determination on their status as refugees are deemed to be legally resident asylum seekers. Insofar as An Garda Síochána is concerned, these rights and safeguards are applicable particularly when enforcing immigration legislation and deportation orders which involve arrest and detention of persons.
- 156 Members enforcing this legislation must ensure that their actions are in accordance with law. Persons being removed from the State, who are the subject of a deportation order, must be treated with dignity and respect.
- 157 Members shall at all times be sensitive to the difficult circumstances in which individuals may find themselves when in contact with An Garda Síochána. This may include difficulties such persons may have in communicating or their negative perception of police or other uniformed persons as a result of their experiences in other countries.
- 158 There is an absolute rule that a person may not be returned to a country where they will suffer persecution. Although this is a matter for the Minister for Justice and Equality in deciding whether to expel a non-national, it is possible that the issue will arise in the course of the arrest or detention of the non-national due to recent changes in circumstances in their home state. If this arises, the member is under a duty to check with the Department of Justice and Equality whether such a claim is correct.

Annex C

Example of Operational Guidance for Assembly, Protest, March, Demonstration and/or Execution of Court Orders

Engagement of Rights

- Identify the rights likely to be engaged.
- The two key fundamental rights which are likely to be engaged during a demonstration/protest etc and which the services of the Gardaí are required, are the right to freedom of expression and the right to freedom of peaceful assembly. These rights are related and interdependent. The right to freedom of expression secures the right to express opinions on matters of public importance. Freedom of assembly exists as a further protection of opinions and the right to express them in public, in the form of demonstrations, marches and other assemblies.
- Expressions/actions which shock, offend or disturb may be expressed in public once the intention of the assembly is peaceful and the participants are otherwise in compliance with the criminal law.

- Demonstrations/protests etc in a public place may cause a certain level of disruption to ordinary life. Members should seek to minimise the disruption while facilitating the right to assemble peacefully. All restrictions placed on demonstrations must be lawful, necessary, proportionate to the aim to be achieved and non-discriminatory.
- Because of the fundamental nature of these rights, members should exercise restraint. This requires balancing against the expectation of our responsibility to protect the public. Members of An Garda Síochána must maintain their neutrality at all times and not react to or interact with the views being expressed.
- It is important to understand the key principles of legality, necessity, proportionality, accountability and non-discrimination and that they be applied as part of the decision-making process as follows.

Application of Rights

- **Is the assembly and/or expression etc suspected to be a breach of the criminal law?**

Members need to assess the situation and establish whether a breach of the criminal law is disclosed, and if so, what options are available for example, Garda powers, Garda policy, resources, discretion.

- **Is an intervention/non-intervention justified?**

This can be established by following these **key steps**:

➤ **Legality**

The following questions should be considered:

- What are my legal powers in this situation?
- What legal action am I obligated to take?
- Have I any discretionary power in this situation?
- What are the limits of my discretion?

➤ **Necessity**

The following questions should be considered: Does the proposed intervention pursue any legitimate aims?

A legitimate aim may include, but is not limited to:

- National security;
- Public safety;
- The prevention of disorder or crime;
- The protection of health or morals;
- The protection of the rights and freedoms of others.

Does the proposed intervention interfere with the right/s to the least extent *necessary*? The prevention of disorder or crime and the protection of the rights and freedoms of others are the relevant legitimate aims in this regard. Where demonstrators engage in acts of violence the necessity to intervene must be in pursuit of a legitimate aim (for example public safety or the protection of rights and freedoms of others) and be in accordance with law.

➤ **Proportionality**

Any response must be proportionate to the threat. This involves the selection of the least intrusive measure to combat the threat. Such measures must be appropriate and effective. While these steps should be followed in the formation of any planned or spontaneous response members may need to use their discretion in deciding what if any action to take. The use of discretion should be guided by a process which involves **taking relevant considerations into account, ignoring irrelevant considerations and acting proportionately**. The following questions should be considered:

- What are my legal powers in this situation?
- What legal action am I obligated to take?
- Have I any discretionary power in this situation?
- What are the limits of that discretion?
- Is the action appropriate to achieve the legitimate aim?
- In answering this question, examine whether the measure is appropriate and effective.

Ineffective measures are not proportionate.

- Is it necessary (a “pressing social need”)?
- Is it the least intrusive measure?
- Are there any alternatives?
- Excessive measures are not proportionate.

➤ **Accountability**

Record all relevant information regarding the situation. Document all the interventions considered and rejected and the reasons why. Document the reason why the selected intervention was chosen

and the results of the intervention to facilitate accountability and improve the effectiveness of future interventions.

➤ **Equality and Non-Discrimination**

Individuals have a constitutional right to be held equal before the law. Individuals or groups shall never be subjected to differential treatment on the basis of their political opinions.

The relevant commitments given in the Code of Ethics must be at the centre of all decision making, in particular:

"I will act with self-control, even when provoked or in volatile situations."

I will respect the human rights of all people, including the right to life, to security of the person and bodily integrity; to freedom of expression; to freedom of assembly and association; to privacy; and to be free from arbitrary arrest or detention."