



**VICTIMS' RIGHTS ALLIANCE**

WORKING TOGETHER FOR FULL IMPLEMENTATION OF THE VICTIMS' RIGHTS DIRECTIVE

# **Submissions to the Commission on the Future of Policing in Ireland**

## **Victims' Rights Alliance\***

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## Contents

A. Introduction .....	3
B. Who are the Victims' Rights Alliance? .....	3
C. Victim's Rights in Law .....	3
D. An Garda Síochána – The Gatekeeper for Victim's Rights in Ireland .....	4
E. Recommendations .....	5
I. Leadership in An Garda Síochána on Victim's Rights.....	5
II. Cultural Shift - Management Structure to implement the Victim's Directive and the Criminal Justice (Victims of Crime) Act 2017.....	6
III. The best ideas for change may come from within An Garda Síochána	8
IV. Garda Intranet.....	9
V. Victims Portal: Track-my-crime .....	10
VI. Training .....	11
VII. Monitoring: Statistics on the implementation of the Victim's Directive and the Criminal Justice (Victims of Crime) Act 2017.....	12
VIII. An Garda Síochána should have a strategy and policy with respect to equal access to justice and protection for all victims of crime .....	14
IX. Governance Procedures: The establishment of a Victims Ombudsman's Office .....	18
F. Conclusion .....	21

## **A. Introduction:**

The Victims' Rights Alliance acknowledges that the Commission, in its Terms of Reference, has been tasked with several functions. These submissions offer solutions to some of the policing challenges from a victim's perspective. We wish to focus on the necessity for leadership within An Garda Síochána when it comes to victim's issues and the proper resourcing and management of an office which is responsible for implementing the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017*. Only with leadership, decision making structures, resources, communication between different departments within An Garda Síochána and outside of it and appropriate training for all members, will An Garda Síochána be able to evolve into an international leader on policing.

We appreciate that the Commission for the Future of the Policing in Ireland seeks to look to the future rather than to dwell on the past; however, it is only by identifying former mistakes that we can offer solutions.

## **B. Who are the Victims' Right Alliance (VRA)?**

The Victims' Rights Alliance (VRA) is an Alliance of victim support and human rights organisations in Ireland namely, Advocates for Victims of Homicide [AdVIC], the CARI Foundation, the Crime Victims Helpline, the Dublin Rape Crisis Centre [DRCC], , the Immigrant Council of Ireland, Inclusion Ireland, the Irish Criminal Justice Disability Network [ICJDN], the Irish Council for Civil Liberties [ICCL], the Irish Road Victims' Association [IRVA], the Irish Tourist Assistance Service [ITAS], the National Women's Council of Ireland [NWC], One in Four, the Rape Crisis Network Ireland [RCNI], Ruhama, Safe Ireland & Support after Homicide [SAH]. See [www.victimsrightsalliance.com](http://www.victimsrightsalliance.com). The Alliance was formed with one key goal: to ensure the Victims' Directive is implemented in Ireland for the benefit of all victims of crime.

## **C. Victim's Rights in Law**

For decades, victims' rights have had a marginal place in Irish criminal law. Victims were seen as '*mere consumers of services, rather than holders of rights*'.<sup>1</sup> References to victims of crime had little statutory footing with the result that victim's needs, rights and interests were an afterthought in the criminal justice system. From a policing perspective the new focus on victim's rights requires a policy shift to ensure that the rights of both the accused and the victim are

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\*Please note that due to time constraints the members of the Victims Rights Alliance may not have had an opportunity to sign off on this Submission. On that basis this document does not necessarily represent the views of all the VRA member organisations.

<sup>1</sup> Wolhuter et al, *Victimology, Victimisation and Victims' Rights* (UK: Routledge-Cavendish, 2008) 141

protected (emphasis added). This cultural shift cannot happen overnight and clear policy's, leadership, management structures and training must be provided to ensure an effective and consistent cultural shift within An Garda Síochána. (emphasis added)

The legal impetus for this change is the EU Victim's Directive, and EU law which provides substantial legal rights to victims of crime. The Directive lies at the heart of a comprehensive EU legislative package that seeks to ensure that all victims of crimes have procedural rights to information, support, protection and participation in criminal justice systems within the EU. The Directive can significantly alter the manner by which victims of crime are treated within the Irish criminal justice system, a system which, until now, has arguably failed to balance the rights of the accused with the rights of the victim.

The implementation of the Victim's Directive in practice is complex and challenging. The recently commenced *Criminal Justice (Victims of Crime) Act 2017*, which gives effect to the Victim's Directive places significant obligations on An Garda Síochána; obligations which are being implemented in an ad hoc and inconsistent manner.

The transposition date for Victim's Directive was the 16<sup>th</sup> of November 2015. However, to date An Garda Síochána have failed to fully implement that Directive contrary to EU law and Irish law. The failure to fix some of these issues is not down to An Garda Síochána's willingness to engage. Quite the contrary. Some members of An Garda Síochána are aware of the work required to implement the Directive and the Act. However, there must be leadership, communication, decision making, resources and training for the effective transposition of the Directive and the Act by An Garda Síochána. Members of An Garda Síochána working hard to ensure the implementation of the Directive will not be provided with the decision-making capacity and the resources, if the leadership of An Garda Síochána does not appreciate the importance of both the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017*. If the status quo continues it is only a matter of time before An Garda Síochána will be brought before the Irish and/or the EU courts for a breach of the Victim's Directive and the Act.

#### **D. An Garda Síochána – The Gatekeeper for Victim's Rights in Ireland**

If a victim is not told about what rights they are entitled to, then they cannot access them. The role played by An Garda Síochána to inform victims of what rights they have is essential. They are the gatekeeper for victim's rights within the Irish criminal justice system.

The VRA would like to highlight the excellent work done by members of An Garda Síochána. We acknowledge the excellent relationship we have with members of An Garda Síochána, including the former Commissioner, Noreen O’Sullivan. We often hear from victims of crime about how members of An Garda Síochána go over and above the call of duty. More often than not a member of An Garda Síochána is the first introduction for a victim to the Irish criminal justice system. When a victim is treated with respect, informed and supported by An Garda Síochána, then the risk of re-victimisation is significantly reduced. How An Garda Síochána engage with, provide information to and support victims is key to an effective criminal justice system.

The VRA would like to briefly mention some of the well published criticisms of An Garda Síochána, as outlined in the O’Higgins Report<sup>2</sup> and the Inspectorate Report.<sup>3</sup> At the heart of each report lies numerous victims of crimes whose rights were not protected. We acknowledge the importance of whistle-blowers and the political debate which has arisen around them; however, we believe that the voice of the victim, which whistle-blowers often represent, should not be forgotten. It is the victim’s voice and the voice of members of An Garda Síochána and the NGO’s that support victims, that will help guide An Garda Síochána as to what mistakes have been made and what structures need to be put in place to ensure that victim’s rights are protected going forward.

It is important to note members of An Garda Síochána are also victims of crime. Some officers have paid the ultimate price and have lost their life during duty. The VRA does not represent the views of these victims. It is a voice often not heard. Engaging with officers who would be willing to speak about their expertise as a victim of crime may also be of assistance to the Commission.

## **E. Recommendations**

The VRA proposes the following recommendations:

### **I. Leadership in An Garda Síochána on Victim’s Rights**

*Recommendation:*

An Assistant Commissioner should have responsibility for victim’s rights. This individual should also be tasked with developing a change in culture in An Garda Síochána from a victim’s rights perspective.

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<sup>2</sup> Commission of Investigation (Certain Matters relative to the Cavan / Monaghan Division of the Garda Síochána). Final Report. May 2016

<sup>3</sup> Garda Inspectorate, Report of the Garda Síochána Inspectorate: Crime Investigation, (Dublin, Garda Inspectorate, 2014)

### *Reasoning*

Having an identified senior member of An Garda Síochána dealing with victim's rights will result in a clear chain of command ensuring that decisions can be made in a quick and easy manner.

*Example: Why is this change needed?*

The VRA is of the view that there are delays for members of An Garda Síochána at Chief Superintendent level/Superintendent level in obtaining decisions from senior leadership. For example, the ICCL, The Bar of Ireland and the Law Society of Ireland, with the assistance of the VRA developed an online training programme for lawyers on the Victims Directive. An Garda Síochána were invited to complete a pre-recorded video on their role under *the Criminal Justice (Victims of Crime) Act 2017*. The Acting Commissioner was contacted, inviting An Garda Síochána to access the free training online. It took over two months to get a response with respect to whether they would like to do a pre-recorded video and when it was forthcoming the training course was in its last week. Also, no response was received with respect to the invite for An Garda Síochána to access the training on the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017*. The training programme is being accessed by all participants within the Irish Criminal Justice system.

*Time Period for implementation of recommendation:*

6 months to a year.

## **II. Cultural Shift - Management Structure to implement the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017***

*Recommendation:*

A working group should be established to implement the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017* within An Garda Síochána. It should include members of An Garda Síochána from the legal, policy, IT and the training departments, the Garda National Protective Services Unit and the Garda National Victim Liaison Office.

*Reasoning:*

A management structure needs to be put in place to ensure effective implementation of the Victim's Directive within each department of the Garda Síochána. The experience of the VRA suggests that there may not be effective communication between different departments within An Garda Síochána. There

may be a management decision in one department but approval may also be needed from another department such as IT, legal or policy sections. This may lead to delays.

*Example: Why is this change needed?*

The VRA had advocated for a change in the current Garda Leaflet for over two years as, in its current format, it does not comply with the Victim's Directive or the *Criminal Justice (Victims of Crime) Act 2017*. The leaflet does not provide victims with the information required under the Directive and it is not in a language which is easy to understand. The former Garda Commissioner acknowledged the need for change and the necessity for the leaflet to be sent to the National Adult Literacy Agency (NALA) to be in a plain text language.

When a victim navigates the Garda website to find the relevant information the link to information on the website is incorrect. For example a link which refers to [Victim Support Organisations and Other Useful Contacts](#) does not provide information on Victim Support Organisations and rather refers to the Commission for Victims of Crime which no longer exists in Ireland. The information is misleading for victims.

Despite bringing these issues to the attention of An Garda Síochána on numerous occasions, no amendment has been made to the leaflet or the website.

The Garda National Victim Liaison Office is responsible, according to An Garda Síochána, for:

- *Formulating Garda Strategy;*
- *Developing Garda Policy;*
- *Supporting the implementation of An Garda Síochána's Victims Charter*"<sup>4</sup>

There is a noticeable absence of any reference to the implementation of the Victim's Directive or the *Criminal Justice (Victims of Crime) Act 2017* within the work of the Garda National Victim Liaison Office.

While the VRA welcomes the establishment of the Garda National Protective Services Unit, it notes its focus for the most part on gender-based violence, including sexual and gender-based violence. The VRA accepts this unit is also looking at other issues such as disabilities and the Garda National Victim Liaison Office is within its remit. The VRA is concerned that the work of the Garda National Victim Liaison Office will be diluted with its inclusion in the Garda National Protective Services Unit. The rights under the Victim's Directive and the Act relate to all victims of crime and it is important that there is a Chief

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<sup>4</sup> See <http://www.garda.ie/Controller.aspx?Page=1662>

Superintendent in charge of the Garda National Protective Services Bureau and the Garda National Victims Liaison Office to ensure both the unit and office functions effectively. An Garda Síochána needs several people working in the Garda National Victims Liaison Office to monitor the Garda Victim Services Offices Nationwide in addition to the office's role developing strategy and policy on victim's rights. Chief Superintendent, [name redacted in public version], has retired as has [name redacted in public version]; both of which worked in the Garda National Victims Liaison Office. The VRA understands that there is due to be two new staff allocated to the office; however, these staff need senior management and training to ensure that they can carry out their functions effectively.

*Time Period for implementation of recommendation:*

6 months to 1 year

### **III. The best ideas for change may come from within An Garda Síochána**

*Recommendation:*

An Garda Síochána should develop a culture and structure which encourages and enables members of An Garda Síochána to brainstorm, develop and present best practice to management.

*Reasoning:*

Very often the best ideas come from employees within an organisation. They are the first to identify issues and find solutions, strategies, procedures and management structures which ensure a more effective policing system. Indications are that morale needs a boost in An Garda Síochána. Enabling members of An Garda Síochána to share their ideas for change, and implementing those changes, is a means to improve morale and policing in general.

*Example: Why is this change needed?*

The VRA has been given the opportunity to interview over 20 members of An Garda Síochána from around the country as part of a victim's project being conducted with the ICCL, The Bar of Ireland and the Law Society of Ireland.

During the course of those interviews it was very clear that a number of Gardaí had expertise, knowledge and ideas which could improve the manner by which policing is conducted.

The interviews also identified that the management structure can vary significantly from county to county thus leading to inconsistencies in practice

with respect to victim's rights. These should be streamlined by identifying best practices and adopting them throughout the country.

The VRA is aware that the Commission visited Athlone and got an overview of the District. The VRA had the opportunity to interview [name redacted in public version] in August 2017 and was very impressed by the answers provided and the management of cases with respect to victim's rights and issues. It would be the view of the interviewer that structures and policies developed there may be able to be applied countrywide. (Please note that permission has been sought and obtained from the writer to reference [name redacted in public version] in the submission to the Commission).

The VRA has been informed that there are current structures within An Garda Síochána to share best practice. However, those asked were not aware of such a structure. Also, it appears that these structures are only available for management rather than members at a more junior level (the VRA stands to be corrected on this. Although it appears from the interviews that members of An Garda Síochána at a junior level are not aware that they may submit an idea or suggestion).

Sometimes the best ideas come from members of An Garda Síochána, as they understand their community and the policing needs within their area. They should be able to submit their ideas and suggestions on how to improve policing within their community. Members of An Garda Síochána should be able to share their ideas anonymously.

*Time Period for implementation of recommendation:*

1 to 5 years

#### **IV. Garda Intranet**

*Recommendation:*

The intranet should be a useful resource for the Gardaí and should contain training material, links to consolidated legislation, required proofs for offences and recent case law.

*Reasoning:*

The Gardaí work in a high-pressurised environment and have little time to engage in research for court. Having access to the relevant proofs in a case and relevant updated case law will facilitate effective prosecution. It will enable a member of An Garda Síochána to refresh his or her memory with respect to the legal elements which they must prove in advance of court.

*Example: Why is this change needed?*

This idea came from a member of An Garda Síochána.

*Time Period for implementation of recommendation:*

Ongoing

## **V. Victims Portal: Track-my-crime**

*Recommendation:*

The development of an online portal for victims of crime, such as Track-my-Crime. See <https://trackmycrime.police.uk/>

*Reasoning:*

The Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017* requires the Gardaí to offer certain information to victims of crime on first contact with them. They are also obliged under Article 8 of the Victim's Directive to 'facilitate the referral' of victims to victim support service providers. The question then arises how to best provide information to victims of crime. Although, it is always best practice to provide information in person, online portals such as Track-My-Crime offer victims the ability to receive and interact with An Garda Síochána at a time and place where the victim is willing and able to receive the information.

*Example: Why is this change needed?*

The Track-My-Crime website has been rolled out by the Department of the Justice in the UK to all police areas and it permits victims to gain access about the crime via the internet in a secure setting similar to an online banking account. It also enables the victim to send messages and receive messages via a secure channel to the police offices working on their case. We believe that the adoption of such a system in Ireland would greatly facilitate the implementation of the Directive in Ireland. It would also assist An Garda Síochána in providing information, support and protection as required by the Victim's Directive and the Act in an easy and accessible manner for both the victim and the allocated guard. Most importantly it enables the provision of information to victims even if the guard who is allocated to his/her case is unavailable. The Track-My-Crime website can be made available in different languages, which would permit Ireland to adhere to its translation obligations under the Directive and *Criminal Justice (Victims of Crime) Act 2017*.

The VRA first engaged with Avon and Somerset Police, the PSNI and the Department of Justice in the UK in relation to the Track-My-Crime website in Ireland in 2014. It was first brought to the attention of the former Garda

Commissioner, Noreen O’Sullivan in 2014 and she indicated that she was looking at its implementation.

The VRA discovered in 2015 that the cost of developing and licencing the Track-My-Crime website was very low. The core infrastructure cost the PSNI £35,000 stg (€44,541 approx.); with a licence fee of approx. £1,500 (€1,909 approx.) to £2,000 stg (€2545 approx.) per year. These costs were based on the one-way processing rather than two ways. There would be additional costings if XML messaging was built into the system i.e. the cost of victim and witness e-mail and text. For example, victims may be sent a text if their court date is coming up. The PSNI have assessed that 5/6 main messages would be sent to the victim at a charge per text message.

*Time Period for implementation of recommendation:*

Pilot project within 18 months

Full roll out 2 years to 3 years.

## **VI. Training**

*Recommendation:*

All members of An Garda Síochána must be trained in victim’s rights, needs and interests.

*Reasoning:*

A cultural shift can only happen in An Garda Síochána if each member understands their obligations with respect to victims of crime. Historically, the role of An Garda Síochána was often seen to be to investigate and prosecute offences. However, the Victim’s Directive and the *Criminal Justice (Victims of Crime) Act 2017* now requires An Garda Síochána to provide, information, support and protection to victims of crime. Members of An Garda Síochána must also carry out an individual assessment of all victims of crime to ascertain whether they have special protection needs.

Article 25 (1) of the Victim’s Directive places an obligation on the Garda Síochána to train members on victim’s rights and needs:

*“Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner”* (emphasis added).

In accordance with EU law all members of An Garda Síochána must be trained on victims needs and rights. Also, specialist training should be provided to members of An Garda Síochána depending on the type and level of engagement with victims of crime.

*Example: Why is this change needed?*

Training is a legal requirement of the Victim's Directive and it is necessary for the effective implementation of both the Directive and the *Criminal Justice (Victims of Crime) Act 2017*.

As already mentioned, An Garda Síochána were offered access to the Massive Open Online Training Course (MOOC) on the Victim's Directive. The MOOC is for lawyers and judges, but it includes important information on victim's rights and support services which may be useful for members of An Garda Síochána. No response was received from An Garda Síochána with respect to this offer. The VRA understands that it may be more appropriate that An Garda Síochána conduct their own training programmes. Currently training in An Garda Síochána on victim's rights appears to focus on new recruits in Templemore. While this is welcome, current members of An Garda Síochána need to be trained with respect to their obligations under the Directive and the Act. For example, An Garda Síochána have an obligation to provide a victim with a brief outline of the basic elements of the offence which a victim reported. The VRA has been approached by victims who have not received a summary of the basic elements of the offence, along with many other issues, as required by both the Act and the Directive. We therefore have concerns with the consistency by which An Garda Síochána are complying with their obligations under the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017*. Members of An Garda Síochána cannot provide information to victims if they do not know that they are legally required to do it pursuant to legislation. Failure to implement the Directive and Act is a leadership, training and resource issue and it should be addressed as soon as possible.

*Time Period for implementation of recommendation:*

Immediately

## **VII. Monitoring: Statistics on the implementation of the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017***

*Recommendation*

Statistics should be gathered on how An Garda Síochána are implementing the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017*. An

Garda Síochána should also offer victims the opportunity to monitor the service which they have received to determine An Garda Síochána's compliance with the Victim's Directive and the Act.

*Reasoning:*

Section 36 (1) of the *Criminal Justice (Victims of Crime) Act 2017* requires an Garda Síochána to

*'(a) compile and store statistical information relating to the operation of this Act, and*

*(b) provide that statistical information to the Minister,*

*in such manner and at such intervals as may be specified by the Minister.'*

Section 36 (1) was implemented to give effect to the States obligation under Article 28 of the Victim's Directive to provide statistics to the European Commission on how victims have accessed their rights under the Directive. The State must also provide a report to the Commission on what measures they have taken to comply with this Directive. This report was due in November 2017; however, as the VRA understands it, appropriate statistics are not available from An Garda Síochána.

*Example: Why is this change needed?*

The former Federal Ombudsman for Victims of Crime in Canada, Sue O'Sullivan, uses the mantra: what's measured gets done. There is an obligation under both EU and Irish law to keep statistics on the implementation of the *Criminal Justice (Victims of Crime) Act 2017*. These statistics will enable an Garda Síochána to identify what they are doing right as well as what is going wrong. Monitoring will help An Garda Síochána to ensure that the mistakes of the past are not repeated and that the rights of victims under the Victim's Directive are protected for generations to come.

Given that training forms a part of the Directive, the reporting of what training has been provided to the Gardaí is also essential to monitor the implementation of the Victim's Directive in Ireland.

*Time Period for implementation of recommendation:*

Ongoing

## **VIII. An Garda Síochána should have a strategy and policy with respect to equal access to justice and protection for all victims of crime**

### *Recommendation*

An Garda Síochána needs to develop a strategy and policy with respect to equal access to justice and protection for all victims of crime. All members of An Garda Síochána must be able to identify someone as a victim as defined by the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017*.<sup>5</sup>

### *Reasoning:*

There is potential for the value of the Victim's Directive to be diluted by the failure of An Garda Síochána to identify someone as a victim of crime. If An Garda Síochána do not recognise someone as a victim of crime, then they will not tell them their rights. Without knowledge, victims cannot access their rights.

### *Example: Why is this change needed?*

Members of An Garda Síochána can fail to identify someone as a victim for the following reasons:

#### *a. Misclassification of a Crime*

A crime may not be recorded as a crime or it can be misclassified. This issue is illustrated in the Report of the Garda Inspectorate on crime investigation from 2014,<sup>6</sup> and figures from the Central Statistics Office from 2016 indicate that some acts have been recorded as non-crimes by the Garda information system, PULSE while other crimes have been misclassified.<sup>7</sup> The impact of this mistake can be seen in the O'Higgins Report and it has the potential to prevent a victim from not only accessing their rights under the Directive but it also inhibits a victim from accessing justice, pursuant to the European Convention of Human Rights and the EU Charter.<sup>8</sup>

#### *b. The Principle of Non-Discrimination and the Residence Status of the Victim*

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<sup>5</sup> Article 2 Victims Directive; Section 2 Criminal Justice (Victims of Crime) Act 2017

<sup>6</sup> Garda Inspectorate, Report of the Garda Síochána Inspectorate: Crime Investigation, (Dublin, Garda Inspectorate, 2014)

<sup>7</sup> Central Statistics Office Review of the quality of crime statistics 2016, 4/5

<sup>8</sup> Commission of Investigation (Certain Matters relative to the Cavan / Monaghan Division of the Garda Síochána). Final Report. May 2016

The Victim's Directive must be adopted by Member States in a non-discriminatory manner including with respect to a victim's residence status.<sup>9</sup> A victim of crime does not have a right to residence because of the rights set out in the Directive; however, they have a right to information, support and protection once they make a complaint to an Garda Síochána about a criminal act.

An Garda Síochána should have a strategy and policy with respect to equal access to justice and protection for all victims of crime, regardless of immigration/residence status, as provided for by the Directive. This may require a 'Firewall' such that the victim reporting the crime to An Garda Síochána is not subsequently reported to other areas of An Garda Síochána which may result in the individual being deported. It is in the interest of Irish society as whole that crimes are reported regardless of the legal status of the victim. Failure to enable undocumented migrants to make complaints enables traffickers and fails to protect vulnerable victims. This is an issue not just for An Garda Síochána but for other state agencies.

The VRA appreciates that the remit of other state agencies is not within the Terms of Reference of the Commission, however, other State agencies dictate how An Garda Síochána should engage with victims who happen to be non-documented migrants. For this reason, it is important to outline the role, or the potential role of other state agencies in this process. An Garda Síochána should be able to seek clear guidelines from Government with respect to their role and obligations.

For victims to be able to actively engage with the criminal justice system, a residence permit should be allocated for the duration of those criminal proceedings. If a victim's residence permit is removed, then a victim will not be able to actively participate in criminal proceedings. In Spain, for example, the *Immigration Act* as amended permits the residential status of a non-EU national victim of domestic abuse to be extended for the course of the criminal justice

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<sup>9</sup> European Commission DG Justice, *DG Justice Guidance Document on the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of Crime, and replacing Council Framework Decision 2001/220/JHA5*, (Brussels: European Commission DG Justice, 2013)

proceedings.<sup>10</sup> If the victim's abuser is found guilty, then the victim 'will receive a regular residence and labour permit'.<sup>11</sup>

Recital 18 of the Victim's Directive acknowledges the very difficult position which victims of domestic violence may be in if their residence permit is linked to the residence of their abuser.<sup>12</sup> This issue has been addressed by the State in submissions made in a Report to the Committee of the UN Convention on the Elimination of all Forms of Discrimination Against Women (Department of Justice and Equality 2016). The Department of Justice has now put in place arrangements 'to ensure that victims of domestic violence are issued with a Stamp 4 permit which allows the holder to reside in the State in their own right, and to access the labour market freely and without the need for a work permit'.<sup>13</sup> This is certainly a welcome development. It is important that clear guidelines are in place so that a victim knows how to make an application to reside in the State and that members of An Garda Síochána can advise them about their rights. Very often there will be language barriers to accessing this information. It is also not clear when a victim will be deemed to be a victim of domestic violence in order to access a work permit. For example, is a person deemed to be a victim when he/she makes a complaint to the Gardaí? How does a victim seek such a permit in advance of making a complaint? The Department has not clarified for how long a victim is entitled to a work permit. These are all matters that should be addressed in guidelines and/or regulation(s) and must be clarified for An Garda Síochána to carry out their obligations to inform, support and protect non-documented migrants under the Victim's Directive and the *Criminal Justice (Victim of Crime) Act 2017*.

*c. A victim may be involved in a criminal offence*

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<sup>10</sup> Plan de Atención y Prevención de la Violencia de Género en Población Extranjera Inmigrante 2009-2012; Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. PICUM 'Strategies to End Double Violence Against Undocumented Women Protecting Rights and Ensuring Justice' (Brussels: PICUM, 2012) pg. 103-107 available at

<http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20-%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>

<http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20-%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>

<sup>11</sup> Ibid, PICUM 'Strategies to End Double Violence Against Undocumented Women Protecting Rights and Ensuring Justice' (Brussels: PICUM, 2012) pg. 106

<sup>12</sup> Recital 18, Victims Directive

<sup>13</sup> CEDAW Response of Ireland to List of Issues and Questions prior to Reporting, 24 See

[http://www.justice.ie/en/JELR/CEDAW\\_REPORT\\_September\\_2016.pdf/Files/CEDAW\\_REPORT\\_September\\_2016.pdf](http://www.justice.ie/en/JELR/CEDAW_REPORT_September_2016.pdf/Files/CEDAW_REPORT_September_2016.pdf)

Third, a victim of crime is entitled to the rights set out in the Directive regardless of his/her involvement in another criminal offence. This is something that is often seen in feuding groups/families, where one day they are a victim of a crime and the next they are an accused, having been involved in a retaliatory attack. Similarly, a convicted person may be a victim of crime in prison and he/she should be entitled to the rights under the Directive. Victims of trafficking can find themselves involved in criminal conduct such as breaches of immigration law, prostitution, forced marriages (due to become an offence in the *Domestic Violence Bill 2017*)<sup>14</sup> and sham marriages.<sup>15</sup> An Garda Síochána should be cognisant that an accused may have been trafficked into the country. If an individual is identified as a victim of trafficking, then he/she should be entitled to the rights set out in the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017*, including access to special protection measures.<sup>16</sup> The Trafficking Directive gives additional rights to victims of trafficking over and above those outlined in the Victims' Directive.

If someone is defined as a victim of trafficking under the Trafficking Directive, then the DPP has a discretion not to prosecute that individual if he/she has been compelled to carry out the offence.<sup>17</sup> Article 11 (4) of the Trafficking Directive provides that Member States are required to put in place '*appropriate mechanisms*' for the early identification of suspected victims of trafficking. The decision of Ms. Justice O'Malley in *P. v. The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland* illustrates '*that there is a necessity for rules or protocols, if not legislation, establishing what is to be done in circumstances where the person claiming to be a victim is also suspected of criminal activity*' in Irish law.<sup>18</sup>

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<sup>14</sup> See Section 39 Domestic Violence Bill 2017, (As passed by Seanad Éireann, 30th November 2017)

<sup>15</sup> Immigrant Council of Ireland; *Exploitive Sham Marriages and Human Trafficking in Ireland: Irish National Report* (Dublin: Immigrant Council of Ireland, 2016)

<sup>16</sup> Article 22 (3) Victim's Directive and Section 15 (2) (f) Criminal Justice (Victims of Crime) Act 2017

<sup>17</sup> Article 8 of the Trafficking Directive provides that Member States shall have measures to ensure that prosecution authorities, such as the Director of Public Prosecutions (DPP), are entitled not to prosecute accused persons for engaging in criminal conduct if they have been compelled to commit the offence as a result of being trafficked. The DPP has issued Guidelines to Prosecutors (2016) stating that if there is 'credible information that a suspect is also a crime victim, the prosecutor should consider whether the public interest is served by a prosecution of the suspect' (13). There are a number of factors which prosecutors should consider when determining whether or not proceedings should continue against a victim of trafficking. These include the type of offence; information relating to duress or coercion and if there was duress whether there was any violence or threats of violence used or fraud, deceit, or an abuse of authority. Consideration will also be had as to whether or not a victim co-operated with the State

<sup>18</sup> *P. v. The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland* [2015] IEHC 222 para 191 The Trafficking Directive defines criminal offences relating to trafficking and the sanctions which should be imposed. It does not define a victim of trafficking. Article 11 (2) provides that the supports under the directive should be made available 'as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected' to a criminal offence provided for in the Directive. In

Given all the foregoing there are many variables which can impact on someone being identified as a victim. If someone falls under the definition of victim in the Act, then they should be provided with basic rights. An Garda Síochána must have a clear strategy and policy in place to ensure all victims of crime can access justice and their rights under the Victims' Directive and Act

*Time Period for implementation of recommendation:*

6 months – 2 years

## **IX. Governance Procedures: The Establishment of a Victims Ombudsman's Office**

*Recommendation*

The establishment of a Victims Ombudsman's Office

*Reasoning:*

Although the establishment of a Victims Ombudsman is a matter for legislation it falls within the Terms of Reference of the Commission when considering '*the appropriate structures for governance, oversight and accountability*' of An Garda Síochána.<sup>19</sup>

The VRA has been advocating for a Victims Ombudsman for several years.

For victims of crime to trust An Garda Síochána there must be appropriate grievance procedures in place which deal with a victim's issues and complaints in a quick and clear manner.

Section 7 (1) (l) of the *Criminal Justice (Victims of Crime) Act 2017* provides that victims must be informed by a member of An Garda Síochána of the '*the procedures for making a complaint to the Garda Síochána*'. Victims must know about the complaints procedures available to them. The results of victims

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Ireland victims are identified as a victim of trafficking via an administrative scheme drafted by the Department of Justice and Equality. The obligation to ascertain whether someone is a suspected victim of trafficking was allocated to a Garda officer not below the rank of Superintendent of the Garda National Bureau of Immigration. Ms. Justice O'Malley in *P. v. The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland* said that the 'current mechanism, such as it is, must be held to be inadequate in terms of the transposition of the Directive' (205). A recommendation has been made by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) that the Irish Government implement legislation to transpose the Trafficking Directive (GRETA 2013: 52-53; IHERC 2015: 8). The Irish Human Rights and Equality Commission (2015) has also recommended that the State 'take immediate action to rectify the inadequacies in the administrative system and put in place a statutory scheme for the identification and protection of alleged victims of trafficking in line with the relevant EU law' (IHERC 2015: 8). The State to date have not effectively implemented the Trafficking Directive and further challenges may ensue given the lack of guidance on how to identify a victim of trafficking.

<sup>19</sup> Commission on the Future of Policing in Ireland: Terms of Reference See [http://policereform.ie/en/polref/pages/terms\\_of\\_reference](http://policereform.ie/en/polref/pages/terms_of_reference)

surveyed by the VRA in 2017 (results to be published in the coming months) show that no victim, who completed the survey, was told how to make a complaint by a member of An Garda Síochána. 93 victims were surveyed who had been victims of a range of crimes including rape, sexual abuse homicide, road traffic (dangerous driving/careless driving causing death), trafficking, domestic abuse. If these results reflect the norm, then it illustrates that members of An Garda Síochána are not informing victims on how to make a complaint as required by law.

The current Garda Leaflet states that if a victim has a complaint then they should contact GSOC directly. However, there should be a mechanism within An Garda Síochána to deal with more minor matters relating to the failure to provide certain information to a victim, for example the failure to provide information on complaints procedures.<sup>20</sup> Going directly to GSOC may escalate matters unnecessarily rather than resolving the problem for the victim. Moreover, making a complaint to GSOC may not be appropriate or within GSOC remit and it can result in secondary victimisation.

A survey of victims of crime, conducted by the VRA in 2014 and 2017 both illustrate that victims of crime are not satisfied with the current grievance procedures.<sup>21</sup> Victims indicated that they did not make a complaint about an Garda Síochána for a number of reasons including: they were afraid it might affect their case; felt it would be ignored; didn't know that they could complain; did not know who to complain to and the majority said there was 'no point'.

An office such as a Victims Ombudsman office would act as a trusted independent intermediary which can advise a victim as to what their rights are and how they can make an informal or formal complaint to An Garda Síochána.

*Example: Why is this change needed?*

Trust is key in policing. If a victim does not trust that their case will be dealt with properly then they are unlikely to come forward and make a complaint. VRA survey results from 2017 indicate that almost 30% of persons surveyed were unhappy with the investigation. If someone is unhappy, then they should be able to make a complaint.

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<sup>20</sup> The Victims Leaflet is available at

<http://www.garda.ie/Documents/User/Victims%20Information%20Leaflet%20English%20and%20Irish%20Version%202016.pdf>

<sup>21</sup> Maria McDonald 'The Implementation & Enforcement of the Victim's Rights Directive in Ireland: Ensuring the Consistency of Victims' Rights for all Victims of Crime' (2014, VRA) available at <https://victimsrightsalliancedotcom.files.wordpress.com/2014/10/vra-report.pdf> The Survey results from 2017 are due to be published in the coming months.

The VRA accepts that Garda Ombudsman (GSOC) have many challenges and are working in a difficult environment. However, what we are hearing is that victims have lost trust in GSOC. This is in part due to the delay in cases being dealt with and victims feel that they had no effective resolution/outcome.

Grievance procedures for breaches of the Victim's Directive and *the Criminal Justice (Victims of Crime) Act 2017* are fragmented and complaints go to different state agencies or bodies. For example, the Ombudsman Office can deal with complaints under the Directive and the Act relating to the courts services [translation et al] and the HSE. The Ombudsman for Children can deal with complaints under both with respect to children.

In the authors view a breach of the Victim's Directive or the *Criminal Justice (Victims of Crime) Act 2017* by a member of An Garda Síochána is likely to fall under Schedule 5 'breach of discipline' of the Garda Síochána Act 2005. However, the breaches in Schedule 5 are worded generally and they should be amended to include references to both the Directive and the Act.

GSOC will need informal complaint mechanisms via legislation to effectively and efficiently deal with a victims' complaint of a breach of their rights under the Victim's Directive and the *Criminal Justice (Victims of Crime) Act 2017*.

The VRA's preference is for the establishment of an independent Victims Ombudsman. The VRA made submissions to An Tánaiste and Minister Frances Fitzgerald, as she was then, during a debate around the content of the *Criminal Justice (Victims of Crime) Bill 2016*. In May 2017, when the Bill was before the Justice Committee, the then Tánaiste indicated that she is considering setting up a Victims Ombudsman Office but that it is a decision that will need full cabinet support.

There appears to be general support for the establishment of a Victims Ombudsman in Ireland. Several members of the opposition, in both the Dáil and the Seanad, advocated for the establishment of a Victims Ombudsman Office at the different parliamentary stages of the *Criminal Justice (Victims of Crime) Bill 2016*. Opposition amendments to include a Victims Ombudsman in the Bill were ruled out of order due to the Bills office indicating that it would result in a cost to the exchequer.

The VRA is aware of the cost implications in establishing a Victim Ombudsman's Office. We engage regularly with the Federal Ombudsman for Victims of Crime in Canada and the Commissioner for Victims and Survivors in Northern Ireland and have discussed the use of similar models in Ireland. It is our view that an independent office should be set up to deal with all complaints by victims;

however, we have put a proposal to government with respect to a Victims Ombudsman forming part of a pre-existing Ombudsman Office. These proposals were put forward after speaking with the Ombudsman's for Children, a Garda Ombudsman and the Ombudsman and was done so to offer an option with reduced costs for the State.

In that regard a Victims Ombudsman could fall within the remit of a pre-existing Ombudsman's office, such as the Ombudsman's Office. This office would be able to transfer or manage complaints under the Victim's Directive or the *Criminal Justice (Victims of Crime) Act 2017* to GSOC and/or the Ombudsman for Children, where relevant.

The establishment of a Victims Ombudsman while dealing with breaches of the Directive/legislation, could also facilitate the provision of information to victims of crime and the referral of victims of crime to victim support services while advocating for legislative changes for victim's rights within Ireland based on the complaints and issues the office receives.

The VRA would like to make it clear that its preference is for an Independent Victims Ombudsman.

*Time Period for implementation of recommendation:*

18 months

## **F. Conclusion**

The VRA would like to thank the Commission for its work on the future of policing in Ireland. The VRA would be happy to assist the Commission in any way possible. Should you require any further information about our work or information about these submissions please do not hesitate to contact Maria McDonald BL on [marianidhomhnaill@gmail.com](mailto:marianidhomhnaill@gmail.com)