

Opening Statement to the Joint Committee on Justice
Draft General Scheme of the Garda Síochána (Recording Devices) (Amendment) Bill 2023
Dr. Daragh Murray
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I would like to thank the Committee for the invitation to participate in this session. It is a privilege, and the use of facial recognition by An Garda Síochána is definitely an issue that deserves discussion and debate.

In my opening remarks I would like to first address, in general terms, the surveillance capability made possible by the use of facial recognition and to highlight the chilling effects that this surveillance may give rise to. I will then flag three concerns regarding the human rights law compliance of the Draft Bill.

Facial recognition represents a step change in police surveillance capability. It is an oversimplification to think of facial recognition as a technology that merely allows police to examine an image and to identify those present. The use of retrospective facial recognition allows police to look back in time, and to determine where an individual was, who they were with, and what they were doing. Both live and retrospective facial recognition make possible the ability to monitor, track and profile large segments of the population, with significant private life implications.

Linked to this surveillance capability is the possibility that chilling effects will emerge. Chilling effects arise when individuals modify their behaviour because they are afraid of the consequences that might follow if that behaviour is observed. Chilling effects are most likely to be felt by those outside the mainstream or in opposition to the status quo. In concrete terms they can undermine the right to protest, and the ability to mobilise or organise for political change.

Chilling effects are most likely to be felt when police are granted broad powers, as is the case regarding the Draft Bill which allows police to use facial recognition for a wide variety of offences and a wide variety of purposes, on the basis of subjective interpretation. The European Court of Human Rights has classified facial recognition as ‘highly intrusive’ requiring a ‘high level’ of justification to be considered ‘necessary in a democratic society’. It is difficult to see how New Section 43 satisfies this criterion.

Two additional issues can be highlighted, linked to the authorisation and oversight process, which again raise concerns regarding human rights compliance. The authorisation process runs the risk of being reduced to a tick box exercise, by failing to take account the context of each use of facial recognition, thereby undermining the ability to evaluate necessity. Equally, a tool this powerful should appropriately be subject to independent oversight.

To summarise, the surveillance capability made possible by facial recognition is unprecedented. We should be cautious about authorising the use of this tool, and should first fully understand both the benefit to policing and the potential harm, including to human rights. Discussion surrounding police uses of facial recognition are characterised by unsubstantiated claims and this is why I have suggested a moratorium.