



Statement by the Garda Síochána Ombudsman Commission
regarding its investigation into the death of Mr. George Nkencho

19 June 2023

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Introduction

On Wednesday, the 30th December 2020 a member of the Garda Síochána Armed Support Unit shot and killed Mr George Nkencho outside his family home in West Dublin.

The incident was referred by An Garda Síochána to the Garda Síochána Ombudsman Commission (GSOC) further to s102(1) of the Garda Síochána Act.¹

GSOC commenced an independent criminal investigation into the incident, pursuant to s98 of the Act.²

On 19th June 2023 the Garda Síochána Ombudsman Commission forwarded a file³ to the Office of the Director of Public Prosecutions (DPP). A decision by the DPP is now awaited.

As the investigation remains subject to a number of current and possible future statutory processes,⁴ GSOC is not in a position at present to provide detail of the investigation. GSOC has, however, undertaken to make the substantive detail of its investigation publicly available when other statutory processes permit.

¹ Section 102(1) of the Garda Síochána Act 2005 provides for the referral to GSOC by An Garda Síochána of “any matter that appears to the Garda Commissioner to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person”.

² Section 98 of the Act lays out the investigative powers of GSOC designated officers where the matter being investigated appears to involve an offence.

³ The file is an investigative report, drafted subject to s101 of the Act. This is a statutory report, whose purpose is to be considered by the Ombudsman Commission. In the event that the Ombudsman Commission is “of the opinion that the conduct under investigation may constitute an offence”, it is obliged to forward it to the Office of the Director of Public Prosecutions, whose role it is to decide whether a prosecution should take place. It is to be noted that, as is the case with analogous investigative files produced by other agencies, including An Garda Síochána, a report produced under s101 of the Act is not a public document and is not suitable for publication. GSOC is empowered under other provisions in the Act to publish information on its investigative work. In this case, GSOC has undertaken to make substantive detail of its investigation publicly available as and when other statutory processes permit.

⁴ This will be determined by any directions arising from the DPP in this case. Further statutory processes may include the undertaking of a prosecution, should the DPP direct one; the commencement of a disciplinary investigation under s95 of the Act, should this arise; and, the formal processes that apply under the Coroner’s Act.

In the meantime, in recognition of the significant public interest in this case and in the interest of accountability to the public, GSOC is publishing this statement. While this statement cannot now point to substantive detail, it is hoped that it will provide an insight into the steps that GSOC took in conducting its investigation.

GSOC is acutely aware that the events of 30th December 2020 and their consequences have been extremely traumatic to the Nkencho family. GSOC has at all times sought to complete the investigation as quickly as possible. We recognise and acknowledge that the duration of this investigative process and the statutory processes that flow from it have been the cause of frustration. We thank the Nkencho family for their patience and understanding and for their continued engagement with us at what we appreciate continues to be a very difficult time for them.

Referral, Commencement of Investigation, and Family Liaison

On Wednesday, the 30th December, 2020, An Garda Síochána made contact with GSOC's on-call team to refer a case pursuant to s102(1) of the Garda Síochána Act, 2005.

The referral was made in respect of the shooting of Mr George Nkencho, in West Dublin, in which members of An Garda Síochána were involved.

GSOC commenced a criminal investigation of the incident pursuant to s98 of the Act.⁵

On the same date, GSOC investigating officers met with the Nkencho family. A GSOC Family Liaison Officer⁶ was appointed to provide information and support to the family. GSOC has met and corresponded with the family throughout the course of the investigation.

Investigative Objectives: Independence, Effectiveness, and Evidence

The core objective of the investigation was to gather information with respect to the shooting of Mr Nkencho in order to:

⁵ Section 98 of the Act lays out the investigative powers of GSOC designated officers where the matter being investigated appears to involve an offence.

⁶ Family Liaison Officers (FLO) are deployed by the Garda Síochána Ombudsman Commission to the family of a victim of death or serious harm. The FLO acts as a point of contact for the families, providing information, support and updates on the progress of the investigation.

- provide a file to the Ombudsman Commission for their consideration and, thereafter, if necessary, to the Office of the Director of Public Prosecutions (DPP) to allow them to decide whether criminal charges should be preferred against Garda members involved
- permit consideration, if applicable, of any potential breaches of the Garda Síochána (Discipline) Regulations, which may require further examination under s95 of the Act
- provide evidence and information to the Dublin City Coroner, in accordance with GSOC's obligations as an agent of the Coroner's Court⁷
- identify any other evidence or information that may raise concerns regarding practice and procedure which may form the basis of systemic recommendations to An Garda Síochána.

The State is bound by Article 2 of the European Convention of Human Rights to conduct an effective, independent investigation into deaths resulting from the actions of State agents.⁸ GSOC's role as an independent policing oversight agency is a core element in the discharge by the State of this obligation.

The Investigation

GSOC progressed this investigation as promptly as possible, while upholding the investigation's integrity, independence and effectiveness.

The investigation included the review of documentation, the taking of statements, and the securing of exhibits. The investigation also involved complex coordination with other experts and agencies in the fields of medicine, audio-visual technology, digital and physical forensics, ballistics, tactical firearms, operational policing and legal review.

While it is not possible at present to provide an exhaustive account of the investigation, investigative activity undertaken by the GSOC investigative team included:

- The designation of a crime scene
- Identification of witnesses
- Collection and review of audio-visual evidence
- The taking of witness statements, and the conduct of witness interviews
- The preparation of an incident timeline

⁷ Where GSOC is investigating an incident in which a death has occurred, the Coroner is empowered under the Coroners Act, 1962 as amended to request the attendance, testimony and assistance of GSOC in coronial proceedings. This is analogous to the role An Garda Síochána plays in coronial proceedings when they are the lead investigative agency.

⁸ European Court of Human Rights (August 2022), *Guide on Article 2 of the European Convention on Human Rights: Right to Life*, p35. Available at [Guide on Article 2 - Right to life \(coe.int\)](https://www.coe.int/t/e/hudocdoc/guide/article2/eng/guide_article2_right_to_life.pdf)

- The collation and assessment of medical evidence
- The conduct and coordination of technical examinations of the scene of the shooting incident, and of weapons deployed in the incident
- Research

Peer Review and Operational Risk

GSOC completed an initial draft of its investigative file in the Autumn of 2022, which was subjected to internal peer review by a senior operational staff member not involved in the investigation.

In order to ensure compliance with Article 2 of the European Convention on Human Rights, and in keeping with best international practice in such cases, GSOC referred this draft for independent external peer review by experts outside the jurisdiction.

Arising from the peer review analysis, GSOC identified some areas of live operational risk for An Garda Síochána. The Ombudsman Commission communicated this to the Garda Commissioner, so that it may be addressed at the earliest opportunity.⁹ GSOC will elaborate publicly on these matters in the form of a systemic recommendation, and in the context of its broader undertaking to make detail of the investigation publicly available, when other statutory processes permit.

Feedback and advice arising from the peer review process has now been incorporated into the file that issued today to the Office of the Director of Public Prosecutions.

Next Steps

The matter is now with the Office of the Director of Public Prosecutions (DPP). The DPP is independent in its functions, pursuant to section 2(5) of the Prosecution of Offences Act, 1974. GSOC will not comment further on the investigation at present. GSOC will, however, make the substantive detail of its investigation publicly available when other statutory processes permit.

⁹ It is a well-established practice for GSOC to communicate any perceived operational risk to the Garda Commissioner, including, where necessary, in the course of an investigation. It is the Garda Commissioner's prerogative to determine any operational response.