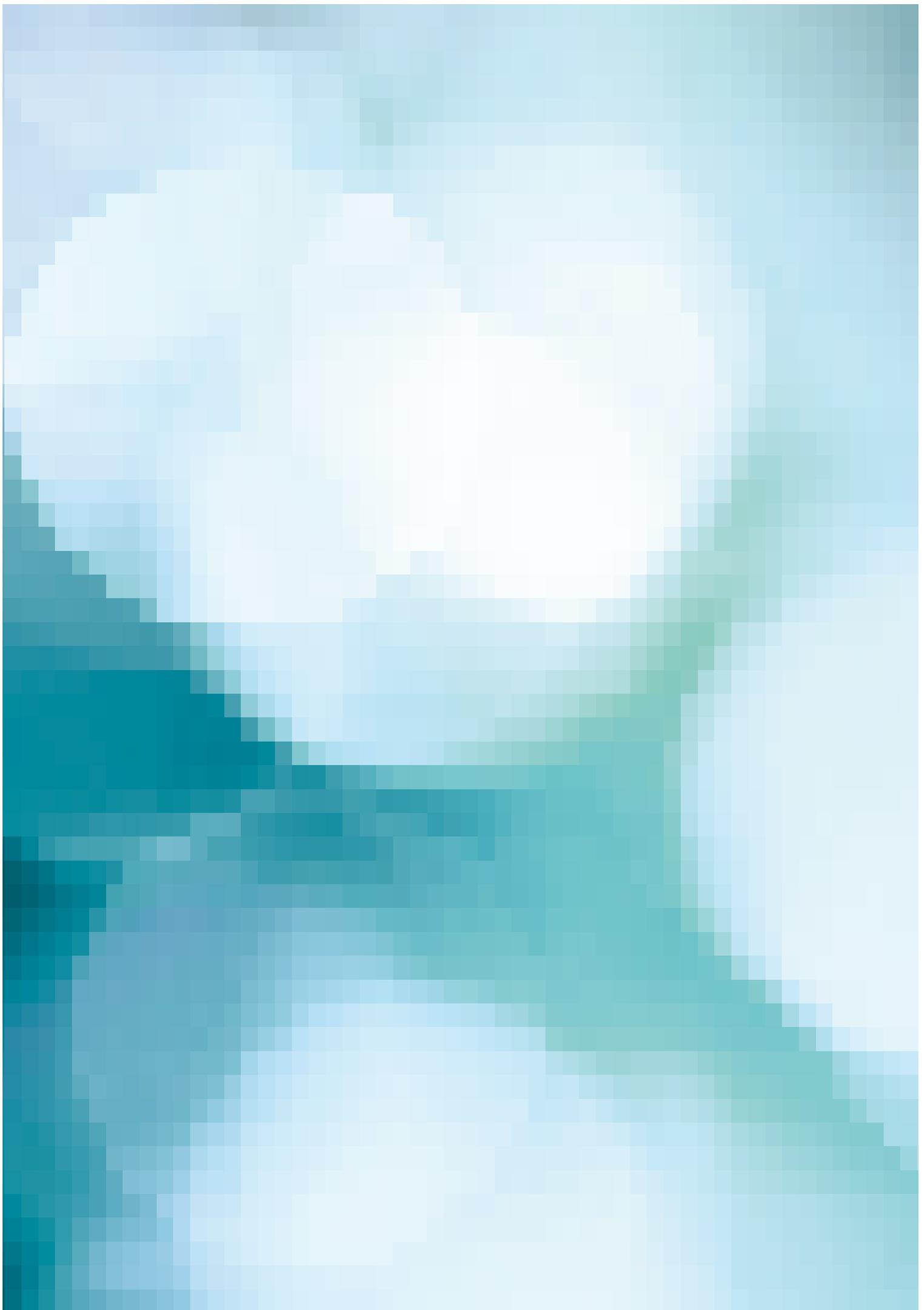


NGO Alliance Against Racism

SHADOW REPORT

In response to the Third and Fourth Periodic Reports of Ireland under the UN International Convention on the Elimination of All Forms of Racial Discrimination

Dominican Justice Office | Galway Refugee Support Group | **Immigrant Council of Ireland (ICI)** | Educate Together | **Equality & Rights Alliance** | Irish National Organisation of the Unemployed (INOUE) | **Integration Office of the Irish Inter-Church Committee** | Irish Refugee Council (IRC) | **Pavee Point Travellers' Centre** | Presentation Justice Network | **LIR Anti Racism Training and Education Programme** | Mercy Refugee Network | Nasc, The Irish Immigrant Support Centre | **Integration Centre** | Migrant Rights Centre Ireland (MRCI) | **Mercy Justice Office** | National Youth Council of Ireland (NYCI) | **New Communities Partnership (NCP)** | National Women's Council of Ireland (NWCII) | **Insaka-Ireland** | Show Racism the Red Card | Cairde | **European Network Against Racism (ENAR) Ireland** | National Traveller MABS | **Sport Against Racism Ireland (SARI)** | National Traveller Women's Forum | Vincentian Refugee Centre | Africa Centre | **AkiDwA** | Anti Racism Network (ARN) | Churches' Asylum Network (CAN) | **Crosscare** | Clare Intercultural Network | **Irish Traveller Movement (ITM)** | Irish Penal Reform Trust (IPRT) | Comhlámh | **Catholic Bishops' Refugee and Migrant Project** | Doras Luimni | **Free Legal Advice Centres (FLAC)** |



NGO Alliance Against Racism **SHADOW REPORT**

In response to the Third and Fourth Periodic Reports of Ireland under the UN
International Convention on the Elimination of All Forms of Racial Discrimination

January 2011

This report is a compilation of efforts by a broad range of anti-racist, community and human rights non-governmental organisations (NGOs). The participating organisations are each concerned with some but not all of the issues covered in this report, and the views expressed do not necessarily reflect the policies and positions of each of the contributing organisations. Rather, the report reflects a collective vision of human rights and anti-racism in Ireland.

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Foreword

The NGO Alliance Against Racism (NAAR) is a network of over fifty non-governmental organisations (NGOs) working on a broad range of anti-racist, community and human rights issues. NAAR is coordinated by the Dominican Justice Office and previously made submissions to the UN Committee on the Elimination of Racial Discrimination (CERD)¹ and Follow-up Coordinator, Mr Morten Kjaerum.²

NAAR received a large number of submissions from its member organisations, many of which were based on consultations held with people directly affected by the matters that arise under ICERD. These consultations and submissions have assisted in the identification of the issues dealt with in this shadow report.

NAAR would like to acknowledge its funders for this report: Atlantic Philanthropies, the Joseph Rowntree Charitable Trust, The Community Foundation for Ireland, Churches Together in Britain and Ireland - Racial Justice Fund, and the Dominican Justice Office.

This research report was researched and written by Edel Quinn, with research/contributions from Dr. Jane Pillinger and Sarah Murphy.

Acknowledgements

Thanks are due to people who contributed in so many ways to this report: members of the NAAR Steering group and sub-groups; our funders; representatives of organisations who endorsed the report, organised consultations and/or made submissions, commented on drafts and sourced data for inclusion, in particular Catherine Cosgrave of the Immigrant Council of Ireland; the people who participated in focus and consultation groups and who shared with us their experiences of racism; Dr Jane Pillinger and Sarah Murphy for their contributions; Katrina Goldstone for proof reading the document; Derek Speirs for the photographs; Cronin Designs for designing, laying out and printing the report, and Marian Tannam and Marie Williams of the Dominican Justice Office for their coordination of the project.

We especially wish to thank Edel Quinn for her commitment to the process and her expertise in the drafting and writing of the report.

1 NAAR Submission to the List of Issues with regard to the examination of Ireland's Third and Fourth Periodic Reports under Article 9 of the UN Convention on the Elimination of All Forms of Racial Discrimination, 10 December 2010, NAAR Shadow Report In Response to the Irish Government's First National Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, November 2004
<http://www.immigrantcouncil.ie/research-publications/archive/269-ngo-alliance-shadow-report>

2 NAAR, One Year On: Comments on the Implementation by the Irish Government of the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD), June 2006
<http://www.integratingireland.ie/userfiles/File/Database/NGO%20Alliance%20Against%20Racism%202011%20Year%20On%20Report.pdf>

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Executive Summary

NAAR welcomes the opportunity to submit to the joint third and fourth periodic review of Ireland under the UN International Convention on the Elimination of All Forms of Racial Discrimination (hereafter, ICERD). Ireland has faced stark economic challenges in the period since its previous review by the UN Committee on the Elimination of Racial Discrimination (hereafter, the Committee) in 2005. Due to the economic recession and the sovereign debt crisis which have left the country in grave circumstances, the State was forced to request a bailout from the European Union (EU) and the International Monetary Fund (IMF) in order to avoid sovereign debt default. While no-one can deny that the State is in crisis, these circumstances cannot be used as an excuse to ignore, and take retrograde steps which affect groups that are already vulnerable or that face discrimination as part of their everyday lives in boom or bust.

At the time of writing, it is expected that there will be a change of government in the coming months. In light of this, NAAR suggests that the Committee request that the State revert to it in one year's time to update it on three main areas: funding of national anti-racism and human rights bodies, strategies to promote anti-discrimination nationally and the lack of effective remedies to address racism.

In what has been seen as an attack on the human rights infrastructure of the State, bodies such as the Equality Authority, the Irish Human Rights Commission (hereafter, IHRC) and the National Consultative Committee on Racism and Interculturalism (hereafter, NCCRI) all faced disproportionately large funding cuts with the latter finding itself closed down altogether. The NCCRI has apparently been subsumed into the Office of the Minister for Integration but there is little evidence of this. With the loss of this body went the only independent national racist incident recording point in the State. NGOs working with Black and minority ethnic groups receive inadequate or no resources from the State to continue their work which is particularly critical in these times of economic strife.

There has been no continuation or follow-on to the National Action Plan Against Racism 2005-2008 leaving the State lacking an integrated, strategic mechanism for government action to respond to racism. Without these bodies and strategies, Ireland is deprived of national leadership, vision and a focal point for anti-discrimination and anti-racism measures as well as a fora for national debate on these matters.

There is a clear lack of effective remedies to address racism in Ireland. The capacity of the Equality Authority to carry out its central legal functions has been diminished due to the funding cuts; the number of complaints taken under the Equal Status Acts 2000-2008 has fallen. Key members of staff have left and the position of the legal advisor to the Authority has not been refilled due to the hiring embargo, leaving the body without an advisor to fulfil its strategic litigation or legislative analysis role.

Under the legislation establishing the new Garda Síochána Ombudsman Commission (GSOC), it is possible that some alleged complaints of discrimination against the Gardaí, though under the supervision of GSOC, can be referred back to Gardaí for investigation.

An independent appeals mechanism against immigration related decisions has not materialised in spite of a commitment to it in the Programme for Government and the opportunity to provide for it in proposed immigration legislation. The 14-day limit for foreign nationals to apply for judicial review on matters relating to their immigration status and on asylum matters remains and has not been extended under the new Immigration, Residence and Protection Bill 2010.

There is evidence of under-reporting of racist incidents out of fear of jeopardising immigration status for example. Despite amendments to equality legislation, an expansion of the legislation to include all government functions, activities and controlling duties has not been undertaken. Racist behaviour (excluding incitement to hatred) is still not

expressly criminalised in legislation. Neither has the State taken the opportunity to amend equality legislation which allows religious institutions to give preference to people who share their religious ethos in their hiring practices as well as admittance to schools. This is markedly problematic given the high proportion of schools of one religion in the State.

Aside from these key issues, a range of concerns which were previously highlighted by the Committee remain unaddressed. Ireland has not incorporated the Convention into its domestic legal order, which it must, as a consequence of its dualist system, in order to give effect to the Convention under Irish law. While the State argues that domestic law already provides adequate protections, there is no obligation on the State to consider minority ethnic positions in policy for example.

The State Report was drawn up without sufficient current detailed and disaggregated information in areas relating to Travellers, Black and minority ethnic groups. This has been a consistent problem for NGOs working on issues involving these groups over the years and has seen no improvement. Neither does Government data recognise the intersection between racism and other types of discrimination such as that relating to disability or gender. There is a lack of adequate awareness and dissemination by the State of information relating to the Convention and the other UN international human rights treaties as well as the Concluding Observations of this Committee and other treaty bodies.

Travellers continue to face discrimination in areas such as education, employment, health and accommodation. The State persists in its refusal to recognise them as an ethnic group in spite of the positive implications this may yield under the Convention and beyond. Little has been done to address racism and discrimination faced by Black and minority ethnic groups across a range of areas including employment and at work. These groups remain underrepresented in all aspects of public life, including the judiciary, the political system, public and civil service and the police. Women in these groups face additional discrimination, for example migrant women who experience domestic abuse who find themselves without adequate support in such circumstances.

There is no evidence that the State has taken the requisite measures to ensure that its policy of direct provision and dispersal of asylum seekers and others seeking protection does not have negative consequences for those involved. This policy is shown to have a number of negative mental and physical impacts on those who reside under the regime. The lack of an adequate complaints mechanism for those living under direct provision is a further area of concern as is the State's handling of separated children. The blanket ban on asylum seekers and those seeking other protection from

being capable of satisfying the habitual residence condition attached to social welfare payments is of particular concern.

Proposals have been put in place through the Civil Law (Miscellaneous Provisions) Bill 2010 to remove the right to an oral hearing before the Equality Tribunal, denying parties such basic rights as cross examination.

Concern has been expressed relating to the treatment of foreign nationals at ports of entry to the state, in particular relating to adequate safeguards against arbitrary detention. Also problematic is the power of the Gardaí to stop and demand documentation of non-Irish nationals. There is concern that this may result in racial profiling, potentially leading to the detention of Black and minority ethnic people on suspicion of their being unlawfully present in the State, merely because they cannot immediately produce adequate identification.

Under current employment legislation and policy, foreign workers find themselves unable to change employer within the first twelve months of the issuance of a work permit. In addition, they are unable to seek employment outside of a particular economic sector. Domestic workers can be especially vulnerable to exploitation. Of specific concern are domestic workers employed by foreign diplomats who in certain circumstances can find themselves without adequate legal recourse in the event of a grievance.



Mr Jipe Kelly presenting at a NAAR seminar, April 2010. Photo: Marie Williams

Summary of Recommendations

Article One

- The State should recognise the Traveller Community as an ethnic group.
- The State should provide an update on the conclusions drawn from the discussions relating to refining the Garda Síochána Ombudsman Commission's (GSOC) current Case Management System. In the event of a successful solution, statistics on the number of allegations of racial discrimination against the Gardaí and the outcomes of the related investigations should be published as a matter of course.

Article Two

- ICERD should be given full effect in Irish law.
- In a previous submission to the Committee, the State noted that it would review its reservation to Article 4 in light of the findings of a study, the State should provide evidence of this review.³ The State should explain its justification for its continued declaration to Article 14.
- NAAR calls for the withdrawal of the declarations to Articles 4 and 14.
- The State should ratify the UN Migrant Workers Convention 1990 and the related International Labour Organisation Migration for Employment Convention (Revised) 1949.
- The State should amend the criminal law to allow for a more severe punishment for offences committed with a racist motivation.
- The institutions of the State which monitor and promote human rights and anti-discrimination should be provided with adequate funding to carry out their functions effectively.
- The State should explain its strategy to ensure that anti-racism and interculturalism are given prominence in these times of economic crisis.
- The State should provide the number and synopsis of cases supported by the Equality Authority from 2008-2011.
- The State should revert to the Committee indicating the funding to be made available to address all of the cuts to the equality and anti-racism bodies and the national strategies to be put in place to deal with racism.

- The State should provide adequate funding to NGOs working with minority ethnic and migrant groups including Traveller groups in order to ensure their work can continue effectively.
- Intercultural strategies with the principle of anti-discrimination at its core should be implemented in schools, youth work settings (non-formal education settings) and work places and the State should ensure that they are adequately resourced.
- For the purposes of documenting the type and frequency of discriminatory or racist acts, the State should support the creation of a national independent entity to which racist incidents can be reported and to promote awareness of such an entity once it is in existence.

Article Three

- The State should provide details of the assessment of direct provision recommended by the Follow-Up Coordinator in his 2006 report.
- The processing of asylum applications should take no longer than six months. In cases where the processing time exceeds six months, the applicant should have the right to access employment.
- In view of the significant decrease in numbers of new asylum applicants, the Direct Provision system, designed to cater for much larger numbers of applicants, should now undergo a radical review in light of the serious concerns about its negative impact on residents.
- An independent complaints mechanism should be established for those in direct provision in line with the guidelines of the Ombudsman.
- No-one should be expelled from the direct provision system without being provided with a suitable alternative.
- Each separated child should be immediately provided with a *guardian ad litem* upon their identification as such.

Article Four

- The State should release to the public the conclusions that have been drawn from the decade long review of the Incitement to Hatred Act. It should publish its considered response to the research on racism and the criminal law and explain the steps that are being

³ Comments by the Government of Ireland to the Concluding Observations of the Committee on the Elimination of Racial Discrimination, 16 June 2006, para 22 UN Doc: CERD/C/IRL/CO/2/Add.1

taken to strengthen anti-incitement and anti-racism legislation in light of these conclusions.

- The State should support and encourage local and national media to promote interculturalism and non-discrimination.

Article Five

- The State should explain the rationale for legislating to provide for mobility within an economic sector whilst undermining this with a contradictory policy. It should clarify the basis upon which this policy was introduced.
- Adequate legal remedies should be introduced to ensure that exploited workers employed at embassies can assert their rights and have their grievances heard.
- Work permit holders should have the freedom to change employers to any job on the eligible category list.
- The State should provide access to the disaggregated data collected under the new AVATS system.
- The State should address the recommendations made by the Irish Human Rights Commission in relation to the treatment of visitors at Ireland's ports of entry.
- Provisions removing the right to an oral hearing before the Equality Tribunal should not be included in the final Civil Law (Miscellaneous Provisions) Act.
- The practice of referring incidents of alleged discrimination for investigation to the Garda Commissioner by GSOC should cease.
- The stop and search of Black and minority ethnic individuals on suspicion of being illegal immigrants by ordinary members of the Gardaí should not be allowed under proposed immigration and residence legislation, particularly where this could lead to detention.
- The Department of Education and Skills should put strategies in place to ensure that segregated schooling does not continue in Ireland.
- The State should support the broader establishment of non-denominational or multid denominational schools.
- The State should provide more investment in intercultural education and peer-led education.
- The State should explain how the Department of Education and Skills will meet the education and language needs of Traveller children and linguistic minorities given that it will lose a major cohort of designated Traveller teacher and language support posts.
- The cut-off point for language support at post primary level should be raised to B1 standard. Students who have not reached this level of proficiency should receive support until they have acquired this level regardless of how long they need it (if necessary more than two years). The two-year rule should be waived for students

who have little or no literacy in their mother tongue to protect vulnerable children such as Roma children.

- The State should expand the scope of the Equal Status Acts 2000-2008 to include all government functions, activities and controlling duties.
- The State should clarify whether the provisions of the Equal Status Acts 2000-2008 extend to asylum seekers.
- The State should introduce preventative measures, such as equality proofing, to deal with underlying inequality.
- Adequate Traveller-specific alternative accommodation should be provided to Travellers who are forced to live without basic facilities.
- The provisions of the Housing (Miscellaneous Provisions) Act 2002 should be reviewed to ensure that they do not disproportionately and negatively affect Travellers.
- The State should address the content and recommendations of the All Ireland Traveller Health Study with a view to improving the health of all Travellers.
- The State should increase self-catering accommodation options for asylum seekers to address food poverty and malnutrition.
- More supports for asylum seekers (including preventive care) with regard to both mental and physical health should be explored.
- The State should explore alternatives to direct provision in consultation with stakeholders (NGOs, residents, housing experts, etc.) in order to minimise institutionalisation and physical and mental health problems.
- Section 15 of the Social Welfare and Pensions [No. 2] Act 2009, which denies any direct provision resident the right to be recognised as habitually resident in Ireland, should be repealed. Each case should be decided on its own individual merit.
- Affirmative action measures should be introduced to increase the political representation of Travellers and persons from minority ethnic groups in Irish public life.
- Special measures should be introduced to address the particular discrimination faced by Black and minority ethnic women.

Article Six

- The State should repeal the current time limits on judicial review and provide procedural safeguards, including independent appeals (also provided for in the Programme for Government) in the Immigration Residence and Protection Bill 2010.
- The principle of fair procedures should apply in all cases and given the serious nature of an allegation of fraud, a right to reasons for a decision and to some form of

an administrative appeal should be allowed to those accused of submitting a fraudulent visa application from Nigeria and any other state.

- Equality legislation should not cap an award of compensation so as to rule out the possibility of adequate compensation in severe cases.
- The State should provide adequate protections for all migrant women who experience domestic abuse under the Immigration, Residence and Protection Bill 2010.

Article Seven

- The State should launch an internal human rights awareness programme targeted towards key decision-makers and officials tasked with law reform, policy and service management.
- The State should report back to the Committee to indicate the initiatives and resources it intends to make available for the dissemination of information to the public relating to ICERD and other human rights instruments.

Introduction

The NGO Alliance against Racism⁴ welcomes the Joint Third and Fourth Periodic Reports of Ireland submitted under Article 9 of the UN Convention on the Elimination of All Forms of Racial Discrimination. The UN Committee on Racial Discrimination recommended that the report be received by them on or before 28 January 2008 and in this regard it was over twenty-two months overdue on submission.

NAAR welcomed the opportunity to attend the State's NGO consultation in November 2008. However, NAAR and other NGOs were given little time to analyse the Government's Report. This issue had previously been raised in relation to the ICCPR periodic report consultation. The meeting was poorly organised with slots being provided to NGOs to present their views without any advance notice being provided from the Department of Justice, Equality and Law Reform (now Department of Justice and Law Reform) on who would present. The State Report lists the concerns raised by NGOs at the consultation session but it does not directly address them. There are no formal mechanisms in place to ensure that there is an appropriate level of real engagement between public authorities and minority ethnic groups in the development of policies and programmes affecting them.

Ireland has undergone significant change since the Committee's previous review of the State in 2005. It is currently in its third year of austerity measures following a devastating national recession in the context of a severe global economic downturn. As a result, the Government deficit for 2010 stood at a staggering 31%.⁵ The sovereign debt crisis in Ireland led the State to request a €85 billion bailout from the European Union (EU) and the International Monetary Fund (IMF) that will lead to external oversight of the economy's performance. In November 2010, at the time the bailout was granted, the unemployment rate in the State stood at 13.5% and this is expected to be the average

rate for 2011.⁶ A National Recovery Plan was adopted in December 2010 which will bring further stark austerity measures until at least 2014. The subsequent Budget 2011 outlines the financial implications of the measures named in the Plan for 2011. These events have had a stark impact on the Irish population, especially minority ethnic groups as well as organisations that support them. In 2010, Ireland had the highest rate of emigration in the EU at 9%, almost twice the rate of the next highest state.⁷

There is now no dedicated national initiative to address racism or discrimination. Like most sectors, the NGO sector and those working on anti-racism and discrimination are experiencing an increasing demand for their services and expertise while facing serious funding challenges. The vulnerable in Irish society including minority ethnic groups and migrants bear the brunt of the crisis through increasingly restrictive immigration policies and social welfare cuts.

At the time of writing, it is expected that there will be a change of government in the coming months. In light of this, NAAR suggests that the Committee request that the State revert to it in one year's time to update it on three main areas: funding of national anti-racism and human rights bodies, strategies to promote anti-discrimination nationally and a lack of effective remedies to address racism.

This shadow report was researched and written in the latter part of 2010 and finalised in January 2011.

⁴ NAAR has made previous submissions to the Committee: a shadow report to the joint first and second periodic reports of Ireland in 2004 and a One Year On commentary report on the implementation of CERD's 2005 Concluding Observations on Ireland in 2006, as well as the List of Issues submission to the current review in December 2010.

⁵ Economic and Social Research Institute, *Quarterly Economic Commentary, Autumn 2010, Research Bulletin 10/03*, p.1

⁶ Central Statistics Office, *Live Register November 2010*, 1 December 2010, p. 7; Economic and Social Research Institute, *Quarterly Economic Commentary, Autumn 2010, Research Bulletin 10/03*, Summary Table.

⁷ Eurostat News Release, *European Demography*, 110/2010, 27 July 2010, Rates of population change (per 1000 population)

Article 1

1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Recognition of Travellers as an ethnic group

Irish Travellers are an indigenous nomadic minority people who have been part of Irish life for centuries.⁸ It is estimated that Travellers make up approximately 1% of the Irish population. This Committee, the Follow-Up Coordinator, the UN Human Rights Committee⁹ and the Council of Europe

High Commissioner for Human Rights¹⁰ have all recommended that the State progress the recognition of Travellers as an ethnic group. Yet the State continues to refuse to provide such recognition. In its Report, it questions the basis for this recognition.¹¹ Over fifteen years ago the government Task Force Report on Travelling People stated that “the distinct culture and identity of the Traveller community [should] be recognised and taken into account”.¹² The Irish

⁸ Travellers are also based in the United Kingdom, United States of America and beyond.

⁹ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, 14 April 2005, para. 20 UN Doc: CERD/C/IRL/CO/2; Report, Visit of Coordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69/Misc.9 para. 16; Concluding Observations by the UN Human Rights Committee on Ireland, 30 July 2008, para. 23 UN Doc: CCPR/C/IRL/CO/3

¹⁰ Report by the Council of Europe, High Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland, 26-30 November 2007, para. 97

¹¹ Third and Fourth Periodic Report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 21 December 2009, para. 8 UN Doc: CERD/C/IRL/3-4

¹² Report of the Task Force on the Travelling Community, Executive Summary, July 1995, p. 23

Human Rights Commission has since noted that to recognise Traveller ethnicity is not to recognise a separate biological group but to apply a broader understanding of the concept as outlined in the Convention that reflects the unique identity, history, culture and lifestyle of Travellers.¹³

Such recognition would be in keeping with British case law on race/religion, in particular, the pre-requisite of self-identification. The House of Lords has identified a number of elements that together determine the characteristics of an “ethnic group” which include as essential a long and shared history and a cultural tradition of its own. Also deemed relevant by the Court are either a common geographical origin, or descent from a small number of common ancestors, a common language, a common literature peculiar to the group, a common religion different from that of neighbouring groups or from the general community surrounding it and being a minority or being an oppressed or a dominant group within a larger community.¹⁴ Irish Travellers have been recognised as fulfilling these criteria by a British Court¹⁵ and specific legislation in Northern Ireland acknowledges their status upon which the language relating to Travellers in the Equal Status Acts 2000-2008 is based.¹⁶

Contrary to the State’s submission that recognition of their ethnicity by the State would be of no domestic legal significance for Travellers, it would mean that public authorities and policymakers would be under a positive obligation to ensure that the identity and culture of Travellers is respected when considering issues which affect them. It would also ensure that Travellers would have the capacity to make a complaint to the Committee under Article 14 of the Convention and that Travellers are covered by EU directives relating to race and ethnicity.

13 Irish Human Rights Commission, Travellers as an ethnic minority under the Convention on the Elimination of Racial Discrimination: A Discussion Paper, 24 March 2004, p. 15-16

14 See for example the United Kingdom, *Mandla v Dowell Lee* [1983] 2 AC 548, HL (E)

15 *O’Leary & Others v. Allied Domecq & Others*, unreported 29 August 2000 in which it was stated: “Our conclusions therefore are that of the two essential characteristics, namely the long shared history and the cultural tradition, we are satisfied that both these criteria have been sufficiently satisfied. Of the others – the common geographical origin or descent from a small number of ancestors – clearly that is satisfied, they all come originally from Ireland. The common language we have dealt with, the literature we have dealt with and the religious and minority aspects we have dealt with. It follows therefore, that our conclusions clearly are that we are satisfied that the *Mandla* criteria are satisfied in this case, and therefore Irish travellers may be properly identified as an ethnic minority, so we answer the preliminary question in the affirmative”.

16 Section 5(3) Race Relations (Northern Ireland) Order 1997, Section 2 Equal Status Acts 2000-2008

Box 1: Doherty Case

The lack of recognition of Traveller ethnicity has proved to be an obstacle to Travellers who are seeking to exercise their rights. No discrimination was found in a High Court case in 2007, which concerned accommodation for an older Traveller couple.¹⁷ Without taking into consideration the implications of cultural or ethnic difference, it was found that the local authority had not failed to fulfil its duties under housing legislation because it offered the same treatment to the couple as it would have offered to settled people. The case was supported by the Irish Traveller Movement and the Equality Authority acted as *amicus curiae*.

Recommendation:

The State should recognise the Traveller Community as an ethnic group.



Expressing pride in Traveller Culture. Photo: Derek Speirs

Data collection on Black and minority ethnic groups in Ireland

Regularly updated official data and statistics are difficult to obtain relating to various aspects of the lives of Black and minority ethnic groups including Travellers such as employment, health, accommodation, education and women’s issues. The expansion of categories in surveys by the Central Statistics Office among others to include the categories of ‘ethnicity’ and ‘nationality’ is welcome.¹⁸ However, the State fails to publish gender and racially disaggregated data

17 *Doherty & Anor -v- Sth Dublin County Council & Ors*, [2007] IEHC 4, paras. 10-18, 19-30, 40-45

18 The category of ‘ethnicity’ was included in the most recent Census of 2006. Data collection by ‘nationality’ in key surveys produced by the Central Statistics Office include: Annual Population and Migration Estimates, the Survey on Income and Living Conditions (SILC), Quarterly National Household Survey etc., while CSO data is available on employment of foreign nationals (issuing of PPS numbers, employment permits and social welfare claimants). The 2010 *All Ireland Traveller Health Study* provides the most comprehensive data to date on Traveller health and well-being, taking a broad social determinants perspective of health.

in these areas. This information is key to the design and implementation of effective law and policy relating to these groups and in particular those demographics within these groups that face multiple discrimination in Irish society such as minority ethnic women.¹⁹

There is no analysis as to the effectiveness or adequacy of the information that has been collected. The State Report notes that it was not possible to elicit disaggregated information as to the type of discrimination alleged from the Garda Síochána Ombudsman Commission's current Case Management System.²⁰ At the time of the Report's submission in December 2009, discussions were taking place to consider how the system may be refined to provide a more detailed breakdown. While some statistics have recently been made available by GSOC at the specific request of NGOs, the information should be routinely published.

Recommendation

The State should provide an update on the conclusions drawn from the discussions relating to refining the Garda Síochána Ombudsman Commission's (GSOC) current Case Management System. In the event of a successful solution, statistics on the number of allegations of racial discrimination against the Gardaí and the outcomes of the related investigations should be published as a matter of course.



Chinese Vs Poland Football match, organised by Sport Against Racism Ireland, January 2006. Photo: Derek Speirs

¹⁹ The Committee has recognised the nexus between racial and other dimensions of discrimination in its General Recommendation XXV of March 2000.

²⁰ Third and Fourth Periodic Report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 21 December 2009, para. 79. UN Doc: CERD/C/IRL/3-4

Article 2

- 1.** States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
 - (a)** Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
 - (b)** Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
 - (c)** Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
 - (d)** Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
 - (e)** Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
- 2.** States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

“I want to clarify that on 10 March last, the United Nations Committee on the Elimination of Racial Discrimination did not issue a judgment imposing an obligation on the Irish State to promote the establishment of multi-denominational schools. Rather the committee encouraged Ireland to promote the establishment of non-denominational or multid denominational schools.”

Ms. Mary Hanafin, T.D., former Minister for Education and Science, three months after the previous review of Ireland by the CERD Committee in response to a parliamentary question, 28 June 2005.

Incorporation of the Convention into the State’s domestic legal order

In spite of repeated requests²¹ to consider incorporation of ICERD into its domestic legal order, the State refuses to do so on the grounds that there is adequate provision to address racism and racial discrimination under current legislation.²² However, the State has failed to produce any evidence, such as an audit of current legislation, to ensure that this is the case.

Contrary to the State’s position, incorporation of ICERD into domestic law would provide additional protection to certain groups at risk of discrimination in Ireland today. An example of this is the positive duty on the State under Article 1 paragraph 4 and Article 2 paragraph 2 to take special measures for the advancement, development and protection of certain racial and ethnic groups. The State refers to two current provisions in the Employment Equality Act 1998-2008 and the Equal Status Acts 2000-2008 which allow for positive discrimination relating to integration into employment with regard to the former, and equal opportunities and catering for special needs with regard to the latter, of marginalised groups. The positive duty under ICERD would provide a duty,

for example, on public authorities to take the particular needs of Black and minority ethnic groups into consideration when developing related policy or for the State to take positive measures to increase the representation of women or Travellers in the its political institutions.

Recommendation

The ICERD should be given full effect in Irish law.

Ireland’s declarations to ICERD

Ireland has lodged a declaration under Article 4 of the Convention which states the following:

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the measures specifically described in sub-paragraphs (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention. Ireland therefore considers that through such measures, the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised. These rights are laid down in Articles 19 and 20 of the Universal Declaration of Human Rights; they were reaffirmed by the General Assembly of the United Nations when it adopted Articles 19 and 21 of the International Covenant on Civil and Political Rights and are referred to in Article 5 (d)(viii) and (ix) of the present Convention.

The State adopts a wide interpretation of the Constitutional provision relating to freedom of expression²³ even though there is very little jurisprudence on this article. In any case, the Oireachtas (Irish Parliament) Joint Committee on the Constitution has recommended reform of this provision, describing it as “unsatisfactory” with an “undue prominence” given to the limitations on free speech. The Joint Committee recommended that provisions relating the express restrictions on free speech based on blasphemy, sedition or the publication of indecent material be removed. Further, it recommended that the provision be brought into line with Article 10 of the European Convention on Human Rights²⁴ with the aim of bringing clarity to the text.²⁵ It is worth noting that under the Defamation Act 2009, the State introduced a crime of blasphemy which provides for a penalty

21 Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, para. 9 UN Doc: CERD/C/IRL/CO/2. Report, Visit of Coordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69/Misc.9 para. 5

22 First and Second Report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 24 June 2004 paras. 97-101 UN Doc: CERD/C/460/Add.1, Comments by the Government of Ireland to the Concluding Observations of the Committee on the Elimination of Racial Discrimination, 16 June 2006, para 19 UN Doc: CERD/C/IRL/CO/2/Add.1, Third and Fourth Periodic Report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 21 December 2009, para. 49 UN Doc: CERD/C/IRL/3-4

23 Article 40.6.1.i of Bunreacht na hÉireann 1937, the Constitution of Ireland

24 Article 10, European Convention on Human Rights and Fundamental Freedoms 1950

25 Joint Committee on the Constitution, First Report, Article 40.6.1.i – Freedom of Expression, July 2008, chapter 5, paras. 5.1, 5.6

of up to €25,000.²⁶ The State has shown its willingness to introduce legislation relating to blasphemy but not in relation to enhancing incitement to hatred legislation.

The Committee and Follow-Up Coordinator have both called upon the State to reconsider its position in relation to this declaration citing 'no compelling reason' to impede its withdrawal.²⁷

Ireland has further lodged a declaration in relation to Article 14 as follows:

With reference to Article 14, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature at New York on 7 March 1966, Ireland recognizes the competence of the Committee on the Elimination of Racial Discrimination, established by the aforementioned Convention to receive and consider communications from individuals or groups of individuals within Ireland claiming to be victims of a violation by Ireland of any of the rights set forth in the Convention. Ireland recognizes that competence on the understanding that the said Committee shall not consider any communication without ascertaining that the same matter is not being considered or has not already been considered by another international body of investigation or settlement.

Recommendation:

In a previous submission to the Committee, the State noted that it would review its reservation to Article 4 in light of the findings of a study. The State should provide evidence of this review.²⁸ The State should explain its justification for its continued declaration to article 14.

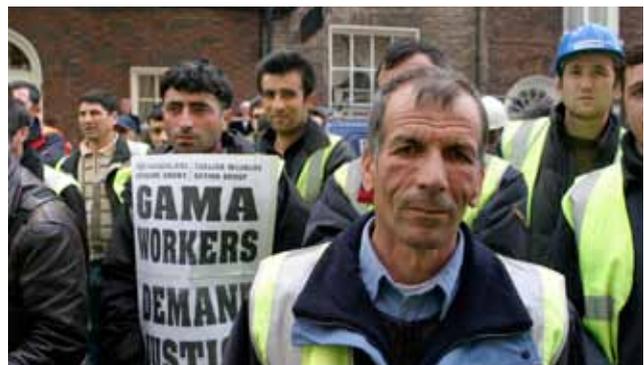
NAAR calls for the withdrawal of the declarations to Articles 4 and 14.

Ratification of the UN Migrant Workers Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 and the International Labour Organisation Migration for Employment Convention (Revised) 1949

In its Report, the State noted that it was keeping under consideration²⁹ the ratification of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 and the ILO Migration for Employment Convention (Revised), 1949 (No. 97). However, notwithstanding the call of the Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights Commission to ratify this important treaty to ensure the best protection of the human rights of migrant workers on the island of Ireland, the Irish Government has categorically stated that, at present, there are no plans to sign or ratify the Convention³⁰ and the ratification of the Convention is not part of the existing Programme for Government.

Recommendation:

The State should ratify the UN Migrant Workers Convention 1990 and the related International Labour Organisation Migration for Employment Convention (Revised) 1949



Migrant Workers' protest. Photo: Derek Speirs

Lack of criminal legal provisions on racist offences

Aside from incitement to hatred, racist behaviour is not explicitly criminalised in Irish law.³¹ In its Concluding

²⁶ Defamation Act 2009, section 36 — (1) A person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable upon conviction on indictment to a fine not exceeding €25,000.

(2) For the purposes of this section, a person publishes or utters blasphemous matter if—
(a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and
(b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.

²⁷ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, para. 10 UN Doc: CERD/C/IRL/CO/2. Report, Visit of Coordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69/Misc.9 para. 6

²⁸ Comments by the Government of Ireland to the Concluding Observations of the Committee on the Elimination of Racial Discrimination, 16 June 2006, para 22 UN Doc: CERD/C/IRL/CO/2/Add.1

²⁹ Third and Fourth Periodic Report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 21 December 2009, para. 86 UN Doc: CERD/C/IRL/3-4

³⁰ Third periodic report to the UN Human Rights Committee on ICCPR, available on: <http://www.dfa.ie/uploads/documents/Political%20Division/iccrfinalpdf.pdf>

³¹ Examples of legislation used to prosecute such acts are s. 6 Criminal Justice (Public Order) Act 1994 on offensive speech; S. 2 (assault), s. 3 (assault causing harm), s. 10 (harassment) Non-Fatal Offences against the Person Act 1997.

Observations on Ireland in 2005, the Committee recommended that the State introduce a criminal law provision that allows for a more severe punishment for offences committed with a racist motivation or aim by making it an aggravating circumstance.³² Research carried out by the Centre for Criminal Justice Research at the University of Limerick on behalf of the Department of Justice, Equality and Law Reform,³³ recommended that statutory provisions be introduced:

...to provide that where a court is determining the sentence to be imposed for any offender, and it appears to the court that the offence was one which was committed with racial or religious hostility, then the court must treat that hostility as an aggravating factor.³⁴

The report also recommended that legislation be amended to specifically address racism online. However, this has also been ignored to date. While the State's Report to the Committee highlights other aspects of this report, it fails to bring the above recommendation to the Committee's attention.

Recommendation:

The State should amend the criminal law to allow for a more severe punishment for offences committed with a racist motivation.

Attack on the human rights infrastructure of the State

Both the Committee and Follow-Up Coordinator have praised the State for its establishment of several of independent institutions and adjudication bodies with a human rights and non-discrimination focus. Despite this and the Committee's recommendation for the State to provide adequate resources to ensure the full exercise of the statutory functions of these bodies,³⁵ it has done the opposite. In the context of the recent recession, austerity measures have been endured across a range of bodies and functions funded by the State. However, the budgets of human rights and anti-racism bodies have been disproportionately affected when compared with

other sectors³⁶ and the cuts have left them deprived of the ability to fully carry out many of their functions.

Efforts to combat and monitor racism in Ireland were seriously undermined in 2008 when the State discontinued funding to the National Consultative Committee on Racism and Interculturalism, which led to its subsequent closure. The resources and some of the functions of the NCCRI were to be transferred to the Office of the Minister for Integration but no staff was assigned to that Office and there is no evidence that the resources or functions have been transferred. The budget of this Office was cut by 26% the same year and by 22% in the budget for 2011.³⁷

The closure of the NCCRI represents a huge loss of resources and expertise developed over the decade of its operation. It left the State without a countrywide independent monitoring body of racist incidents or national provider of anti-racism training at a period of increasing incidence of reported cases of racism to the body. There were 66 cases reported in 2004 and 200 in 2008.³⁸ The dearth of an instrument to monitor racist incidents in the State has led a number of NGOs to establish such services.³⁹

Box 2: National Consultative Committee on Racism and Interculturalism

The National Consultative Committee on Racism and Interculturalism (NCCRI) was established in 1998 as an independent expert body on racism and interculturalism, with an annual budget from the Irish Government of €500,000. It was established as a partnership body, bringing together government and non-government organisations to combat racism, contribute to policy development on racism and interculturalism, to provide advice and technical assistance to government and to provide support for community organisations and training. The NCCRI played an important role in carrying out research and monitoring. A Monitoring Racist Incidents Unit was established in 2001 for the confidential reporting of racist incidents.

32 The European Commission against Racism and Intolerance also recommended that the Irish authorities include in the criminal legislation provisions which allow for the racist motivation of a crime to be considered as an aggravating circumstance at sentencing and that they envisage providing that racist offences be defined as specific offences, European Commission Against Racism and Intolerance, Third Report on Ireland, 15 December 2006, para. 26

33 Now the Department of Justice and Law Reform

34 Schweppe J., Walsh D., *Combating Racism and Xenophobia through the Criminal Law*, Centre for Criminal Justice Research, University of Limerick, December 2008, page 179

35 Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, para. 12 UN Doc: CERD/C/IRL/CO/2. Report, Visit of Coordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69//Misc.9 para. 8

36 Other cuts within the Minister for Justice, Equality and Law Reform's remit at the time amount to between 2-5%, see Department of Finance, *Estimates for Public Services and Summary Capital Programme, 2009*

37 Department of Finance, *Estimates for Public Services and Summary Capital Programme, 2009*, p. 19; 2011 *Estimates for Public Services and Summary Public Capital Programme*, section 27, Equality.

38 Irish Times *Budget cut backs weaken the State's capacity to combat racism*, 11 November 2008

39 For example, Immigrant Council of Ireland's Racist Incidents Support and Referral Service and Show Racism the Red Card's service.



Racist graffiti. Photo: Derek Speirs

“A decision has clearly been made that we can no longer afford to confront the potential for racism.”

Lucy Gaffney, Chairperson of National Action Plan Against Racism, 2005-2008, *Not an End – Just the Beginning*, 2009.

National Action Plan Against Racism

The National Action Plan Against Racism (NAPR) (2005–2008) ceased operation in 2008.⁴⁰ Since then, the State has no integrated, strategic mechanism or stated goals for government action to address racism in Ireland. Under NAPR, funding was provided for over 110 organisations and groups working with a specific remit to combat racism. This support is no longer available. The Chair of the NAPR, Lucy Gaffney, stated in 2009 that the momentum and many of the actions that had been developed under the Plan needed to continue with a distinct focus on anti-racism as a key aspect of interculturalism, and that a new NAPR working across all government departments should be put in place.⁴¹ Public awareness of anti-discrimination, racism and negative

⁴⁰ The funding of the NAPR remained static while it was in operation. The 2006 Budgetary Estimates saw the amount of money allocated under the National Action Plan Against Racism increased by only 1% between 2005 and 2006.

⁴¹ Department of Justice, Equality and Law Reform, *Planning for Diversity – National Action Plan Against Racism (NAPR) 2005-2008, Not an End – Just a Beginning*, 2009, p.2-3

stereotyping has been dealt a blow with the cessation of the NAPR ‘Know Racism’ initiative, which comprised a public information campaign to raise awareness of racism and discrimination in Ireland.⁴²

Box 3: National Action Plan Against Racism

The National Action Plan Against Racism for Ireland was drawn up as a result of the commitment given by the Irish government at the UN World Conference Against Racism, September 2001. *Planning for Diversity: The National Action Plan Against Racism 2005–2008*, was launched by the Government in 2005 with the aim ‘to provide strategic direction to combat racism and to develop a more inclusive, intercultural society in Ireland’. The plan was based on the five key objectives: protection, inclusion, provision, recognition and participation.

Mergers and Funding Cuts

In 2008, the Department of Justice, Equality and Law Reform (now the Department of Justice and Law Reform) proposed to merge five independent statutory bodies (Equality Authority, Equality Tribunal, Irish Human Rights Commission, National Disability Authority and Data Protection Commissioner).⁴³ In addition, an amendment to the 2004 Equality Act imposed controls on the terms of the CEO’s appointment, including the removal of the CEO from the Board of the Equality Authority. The merger did not happen. However, the Department imposed a 43% budget cut to the Equality Authority and a 24% cut to the Irish Human Rights Commission⁴⁴. The CEO of the Equality Authority subsequently resigned in protest. In his resignation letter, he accused the Government of cutting the Equality Authority’s budget due to its successful and high profile work combating discrimination in Ireland. In particular, he alleged that the Equality Authority’s work threatened the work of civil servants.⁴⁵ Research commissioned by the Equality and Rights Alliance⁴⁶ has highlighted the fact that the cuts were imposed following systematic attempts by the government to interfere with and undermine the independence of the Equality Authority and the IHRC⁴⁷. The Equality Authority’s

⁴² Department of Justice, Equality and Law Reform, *Planning for Diversity – National Action Plan Against Racism, 2005-2008*, p. 65

⁴³ Irish Times, *Equality, data protection and human rights bodies to merge*, by Deaglán de Bréadún, 7 July 2008

⁴⁴ Irish Times, *Human rights groups criticise savage cuts*, 10 October 2008

⁴⁵ Irish Times, *EA chief resigns over budget cuts*, 12 December 2008

⁴⁶ ERA is an alliance organisation of over 145 civil society groups and individuals which works ‘to strengthen and protect Ireland’s statutory human rights infrastructure.’

⁴⁷ Harvey, B. and Walsh, K., *Downgrading Equality and Human Rights: assessing the impact*, Equality & Rights Alliance, 2009

2008 submission to the Government's Combined Third and Fourth Periodic Report highlighted the importance of access to adequate resources to enable it to exercise the full range of its functions and powers. While the national Budget 2011 provides for an increase in the funding of the Equality Tribunal, the budget of the IHRC has been cut by a further 5% and the Equality Authority by 4%.⁴⁸

The IHRC has warned of the threat to human rights protection following funding cuts⁴⁹ which have resulted in a decrease of spending on legal work from €11,589 in 2008 to €4,888 in 2009⁵⁰. The embargo on public sector recruitment has led to reduced levels of staffing, with four members of staff who left employment, out of a total of seventeen staff, not being replaced as a result of the embargo. The severe reductions in staffing levels have resulted in the Commission currently having no policy and research officers or legal advisor on staff. There are serious concerns that the IHRC will be unable to carry out the same level of legal support, independent legal reviews, provision of information and awareness raising on human rights issues that it has carried out in the past and for which it was recognised. The cuts came in spite of high praise and commendation for the Commission in its work.⁵¹

In April 2010, an external review of the work of the Equality Authority, the Equality Tribunal and the IHRC was signalled by Ms Mary White TD, the Minister of State for Equality, Integration and Human Rights⁵². The Minister has indicated that the assessment will entail an analysis of the resources required to effectively promote equality and human rights but will not pre-empt a merger of the bodies.

Recommendation:

The institutions of the State that monitor and promote human rights and anti-discrimination should be provided with adequate funding to carry out their functions effectively.

The State should explain its strategy to ensure that anti-racism and interculturalism are given prominence in these times of economic crisis.

The State should provide the number and synopsis of cases supported by the Equality Authority from 2008-2011.

The State should revert to the Committee indicating the funding to be made available to address all of the cuts to the equality and anti-racism bodies and the national strategies to be put in place to deal with racism.

Government funding of and engagement with NGOs

The largest contributors of funding for NGOs working with minority ethnic and migrant groups have been philanthropic organisations and many NGOs receive no state funding at all.⁵³ The two major donor organisations will exit the sector by 2016.⁵⁴ With the winding-up of the NAPR together with the global and national economic recession, grassroots groups have experienced a severe loss of funding and funding opportunities. The termination of the Community Development Programme also threatens a number of projects.⁵⁵ It has been estimated that the cumulative effect of the loss of State spending on the Community and Voluntary Sector over 2009-2010 is 15%, representing an expected loss of over 4,778 jobs.⁵⁶ The former Chair of the NAPR has expressed her concern that 'organisations working in the area of integration and interculturalism are the first victims of government cutbacks.'⁵⁷ For organisations that are not forced to close, the implications of significant funding loss at a time with increased demand for services have pointed to a decrease in capacity to represent and deliver services to those in need.⁵⁸ A lack of funding for

48 Department of Finance, 2011, Estimates for Public Services and Summary Public Capital Programme, section 27, Equality, Other Services

49 See: Irish Times, *Warning of erosion of human rights*, 10 October 2008
Irish Times, *Cutbacks warning on Human Rights Commission*, 17 September 2008

50 Irish Human Rights Commission, *Annual Report 2009, 2010*

51 Irish Times, *Human rights cut harms image*, by Alison Healy, 25 November 2009; Address by UN High Commissioner for Human Rights, Ms Navanethem Pillay, at Annual Human Rights Conference of the IHRC and the Law Society of Ireland, 21 November 2009

52 Irish Times, *State equality agencies to be assessed*, by Deaglán de Bréadún, 24 April 2010

53 Report commissioned by State carried out by Prospectus, *Analysis of New Communities Sector in Ireland*, 2008, p. 85

54 *Ibid*, p. 90

55 IMPACT Boards and Voluntary Agencies Branch, *Analysis of implications of 2010 budget for the voluntary and community sector*, 2010, p. 9

56 *Ibid*, p. 10-11

57 Department of Justice, Equality and Law Reform, *Planning for Diversity – National Action Plan Against Racism (NAPR) 2005-2008, Not an End – Just a Beginning*, 2009, p.2

58 *Ibid* at n-55, p. 15

organisations working on issues of violence against women was found to be key barrier in addressing related issues.⁵⁹

Recommendation:

The State should provide adequate funding to NGOs working with minority ethnic and migrant groups in order to ensure their work can continue effectively.

Racist and xenophobic incidents and attitudes

The State's Report does not address the issue of the growing evidence and incidence of racism in Ireland. A recent survey conducted by the European Union Fundamental Rights Agency (FRA) showed Ireland as ranking in the "top ten" of EU States with the highest level of discrimination in everyday life over a twelve-month period and the highest level of discrimination at work relating to the experience of Sub-Saharan Africans in the State.⁶⁰ More than one in four Sub-Saharan Africans in Ireland responded that they had been the victim of 'racially-motivated' in-person crime in the last 12 months. Only 16% reported the discrimination that they had experienced.⁶¹ In a report compiled by the Immigrant Council of Ireland, racist incidents, stereotyping and harassment were experienced by many of the respondents, particularly among Nigerian, Chinese and Indian respondents.⁶² Only 14% of Nigerians and 31% of Chinese reported no incidents of harassment at work.⁶³ Further research on discrimination in the employment recruitment process showed that regardless of the industry or sector, whether a person had an African, Asian or German name, an Irish named person was twice as likely to be invited to interview.⁶⁴

The final report of the NCCRI's now defunct Report Incidents function, reported that while 2006 had seen a drop in the number of incidents reported to the body from a high of 116 in 2005, by the final report of the body in December 2008, this number had risen again to 106.⁶⁵ Information collected over the latter part of 2008 shows that 42% of incidents of racism were reported by Black Africans, 10.5% by Travellers and others including Polish, French, Jewish and Muslim people.⁶⁶ There has been a serious curtailment

of the coordinated collection of such information in Ireland as a result of the withdrawal of funding by the State to the NCCRI, discussed above, which carried out the function of independent monitoring and recording of racist incidents in Ireland. As noted above, NGOs have taken up the mantle to monitor and collect information on racist incidents, some with limited public funds to do so. Data from the Central Statistics Office shows that in 2009, 128 racially motivated incidents were recorded.⁶⁷

Travellers are among the most marginalised groups in Irish society. According to a recent study, 42% of Travellers felt that they were discriminated against often or very often because of being a Traveller.⁶⁸ They experience discrimination across a range of everyday areas such as health,⁶⁹ education,⁷⁰ access to suitable accommodation⁷¹ and access to venues which include pubs or hotels.⁷² A recent report showed that 60% of settled people would not welcome a Traveller as a member of their family.⁷³ Despite a previous recommendation by the Committee⁷⁴ to address the paucity of political representatives from the Traveller Community, the situation has not improved in the intervening period. Roma people also experience high levels of discrimination in Ireland and are consistently ignored in the development of State policy and resource allocation. The most recent State-backed report on Roma people in Ireland, which focused on Roma related policies in the EU, had no empirical data from the Irish context.⁷⁵

59 National Women's Health Council, *Translating Pain into Action: A Study of Gender-based Violence and Minority Ethnic Women in Ireland*, February 2009, p.25

60 European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey 2009*, p. 9, 10

61 *Ibid* at p. 82

62 Immigrant Council of Ireland, *Getting On: From Migration to Integration*, 2008, p. 122-123

63 *Ibid* at p. 94

64 The Economic and Social Research Institute and the Equality Authority, *Discrimination in Recruitment: Evidence from a Field Experiment*, 2007 p. 35

65 National Consultative Committee on Racism and Interculturalism, *Reported Incidents Related to Racism and strategic responses from NCCRI*, July-December 2008, p.3

66 *Ibid*, p. 2

67 Central Statistics Office, *Yearly National Reported Racially motivated incidents - 2006 - 31 March 2010*.

68 School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, Technical Report 1, p. 86

69 The *All Ireland Traveller Health Study*, based on interviews with over 1000 Travellers in Ireland, found that 40.1% of respondents agreed that discrimination in the use of health services generally occurred sometimes, while 26.6% agreed that it occurred more often than that. Travellers also reported higher levels of discrimination in the interface with services than expected and lower levels of trust in others, including health service providers. School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, p. 150; Also Pavee Point, *Fact Sheet on Traveller Health*, http://www.paveepoint.ie/fs_health_a.html

70 Irish Times, *Traveller wins discrimination case over school's 'father rule'* 10 December 2010

71 Pavee Point, *Fact Sheet on Accommodation*, http://www.paveepoint.ie/fs_accom_a.html

72 Irish Traveller Movement, *Because I'm a Traveller*, Survey, in which 89.7% had said they'd been discriminated against in going to the pub for example, 77.2% said they'd been asked to leave the pub by staff.

73 Micheál MacGreil SJ, NUI Maynooth, *Emancipation of the Travelling People*, 2010

74 Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, 14 April 2005, para. 22, UN Doc: CERD/C/IRL/CO/2

75 Houses of the Oireachtas Joint Committee on European Affairs, Eleventh Report, *The position of Minority Groups in Europe - an examination of Roma policies in the European Union* (Rapporteur: Senator Terry Leyden), December 2009.



Irish Traveller Movement protest. Photo: Derek Speirs

Migrants who do not have access to social welfare are not given access to homeless services on an equal footing with Irish people. In practice in the Dublin area such migrants are often refused emergency homeless accommodation. The provision of homeless services is complex as it is a mix of voluntary and statutory bodies although the bulk of the funding for the voluntary bodies comes through local authorities.

“As soon as they [the employer] sees that you’re not Irish or you’re not EU, they just say that it’s okay because we don’t know the laws, so they think they can get away with this...they think we don’t know about the law and we don’t know our own rights.”

Participant in focus group for NAAR CERD Shadow Report, Doras Lumni, 17 June 2010.

Box 4: Discrimination against Roma people

In 2007, there was what Traveller organisation Pavee Point termed a ‘humanitarian crisis’ when a group of 50 Roma people, including families, children and toddlers, gathered at a roundabout on one of Dublin’s major motorways. The group set up camp without any facilities which resulted in very poor living conditions. In spite of the fact that these families remained on the roundabout for approximately two months and the high profile of the case, the authorities with the capacity to provide basic shelter failed to act.

In what was largely seen as a chastisement by the State during this incident, the then Minister for Justice, Equality and Law Reform ordered a report into Traveller organisation Pavee Point’s involvement. The report was ordered under the pretext of concern that an organisation which received funding from the State was involved in encouraging the Roma group to flout the immigration laws. The Minister asked his officials to investigate the role played by the organisation.⁷⁶ This is vehemently denied by Pavee Point who merely provided the humanitarian assistance to the group that the State did not.⁷⁷



Roma families living inside the Ballymun M50 motorway, June 2007. Photo: Derek Speirs

A recent survey found that nearly 50% of teachers that responded were aware of a racist incident in their school or college in the month prior to the survey being carried out.⁷⁸ An appreciable number of respondents (32%) stated that their school had no formal procedures on how a teacher should deal with such an incident. 49% of Vocational Education Committee schools⁷⁹ reported that they had no anti-discrimination or intercultural schools policy.⁸⁰ The survey points to a significant increase in racism in schools and particularly in areas of Dublin where job losses have taken place. It was found that in general, the recent increased incidence of bullying of a racist nature in schools can be attributed to higher levels of racism in Irish society since the recession.⁸¹

⁷⁶ Lally, C., & Healy A., *Pavee’s Roma role questioned*, Irish Times, 27 July 2007

⁷⁷ *Ibid*

⁷⁸ Results of the Behaviour and Attitudes (B&A) Survey on Racism, Interculturalism, and Resources for Minority Ethnic Students incorporating the Recommendations of the TUI Equality Council, April 2010, p. 10

⁷⁹ The Vocational Education Act 1930 and VEC (Amendment Act) 2001 established a non-denominational system of secondary education in VEC schools and Community Colleges in Ireland.

⁸⁰ Results of the Behaviour and Attitudes (B&A) Survey on Racism, Interculturalism, and Resources for Minority Ethnic Students incorporating the Recommendations of the TUI Equality Council, April 2010, p. 15-20

⁸¹ Irish Times, *Bullying marked by ‘racial aspect’, conference told*, by Louise Holden, 9 April 2010, Results of the Behaviour and Attitudes (B&A) Survey on Racism, Interculturalism, and Resources for Minority Ethnic Students incorporating the Recommendations of the TUI Equality Council, April 2010, p. 22

Recommendation:

Intercultural strategies with the principle of anti-discrimination at its core should be implemented in schools, youth work settings (non-formal education settings) and work places and the State should ensure that they are adequately resourced.



Diversity in schools. Photo: Derek Speirs

Box 5: Case Study on Racism from the Immigrant Council of Ireland Racist Incidents Support and Referral Service

Hope contacted the ICI in January 2011 concerning racial abuse she had been subjected to by her landlord. She is originally from Kenya and has been residing in Ireland for the past one and a half years. She recently moved into new accommodation in Athlone town. She found the accommodation to be sub standard and complained to the landlord, in particular about the bathroom. The landlord came to the house

and immediately exhibited intimidating and aggressive behaviour. He stated that Hope 'should have learned to speak English' before coming to Ireland, he stated that she was stupid and didn't know how to read, and when Hope asked for a refund of her money as the accommodation was substandard, he refused and stated to the effect that 'maybe that's how it works in Nigeria, but not here'. Hope is literate and can read, write and speak English very well. She is also originally from Kenya, not Nigeria as stated by her landlord. Hope asked him if he thought all black people in Ireland came from Nigeria, to which he stated that he 'didn't care'. Hope reported the issue to the Gardaí, who took a statement but to date have not followed up with her concerning the issues she has raised. Hope feels that nothing will happen and has stated that she is very fearful of her landlord and depressed in her situation. The ICI have taken a record of Hope's incident and are currently assisting her in raising her issue to the Private Residential Tenancies Board and in liaising with the Garda in Athlone and with the Garda Racial and Intercultural Office if required. Hope stated to the ICI that she feels there is an inadequate system of dealing with these issues from a State perspective, and that she finds it difficult to know how to address her concerns.

Reporting of racist incidents

In the 2009 FRA survey noted above only 16% of minorities surveyed reported the discrimination that they had experienced to the Gardaí.⁸² Only 18% of those who had admitted to experiencing a racist attack reported the incident to police according to a 2008 survey by the Gardaí, with just one third of these individuals being happy with the way in which the incident was subsequently handled by police.⁸³ It has been reported that NGOs working in this area find it difficult to report racist incidents to the Gardaí.⁸⁴ There is reluctance among the migrant community to report these incidents to Gardaí, who may also act as immigration officers, for fear that it could impact or jeopardise immigration status. While not strictly within the remit of ICERD, members of NAAR's Steering Group feel this contributes to an underreporting of the reality of racism in Ireland and the lack of governmental support.

⁸² European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey 2009* p. 82

⁸³ Browne, C., Garda Research Unit, *Garda Public Attitudes Survey 2008*, Research Report No. 1/08, p. 32

⁸⁴ Migrant Rights Centre Ireland, *Racism and Migrant Workers in Ireland*, Policy Paper 2010, p. 3

It has been reported that the GSOC has encouraged Black and ethnic minority led organisations to increase their levels of complaints of racist incidents to that body.⁸⁵ There were 2,331 admissible allegations made against Gardaí in 2009,⁸⁶ 24 related to discrimination on the ground of race or religion. There were 10 relating to discrimination against members of the Travelling Community by Gardaí.⁸⁷ There were 24 discriminatory complaints made against immigration officers. From mid-2007 to end 2010, there were 234 complaints of discrimination made against the Gardaí and immigration officers relating to discriminatory behaviour.⁸⁸ The statistics of the Commission still do not allow a breakdown of the type of discrimination in spite of the State's note of a discussion on this issue in its 2009 Report.⁸⁹

Recommendation:

For the purposes of documenting the type and frequency of discriminatory or racist acts, the State should support the creation of a national independent entity to which racist incidents can be reported and to promote awareness of such an entity once it is in existence.

⁸⁵ New Communities Partnership and Networks submission to NAAR Shadow Reporting process under ICERD, prepared in furtherance of consultation held on 21 June 2010, 3-5.30pm.

⁸⁶ Garda Síochána Ombudsman Commission Annual Report 2009, executive summary.

⁸⁷ GSOC, 2011, Unpublished statistics

⁸⁸ *Ibid*

⁸⁹ Third and fourth periodic report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 21 December 2009, para. 79 UN Doc: CERD/C/IRL/3-4

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Negative consequences of the policy of dispersal of and direct provision of asylum seekers (Article 3)

Box 6: Direct provision and dispersal

The policy of direct provision involves the accommodation of asylum seekers and people seeking other forms of protection on a full board basis whilst notionally providing for all of their basic needs directly. The scheme was introduced in late 1999 and due to high demand on accommodation in the capital, Dublin, the policy of dispersal was introduced to spread the housing of these groups across the country.

The Committee's General Comment 30 calls on states to 'guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing'.⁹⁰ In spite of this and concerns raised by the Committee and the Follow-Up Coordinator concerning the State policies of dispersal and direct provision,⁹¹ there is no evidence that the State has taken the requisite measures to ensure that the system of direct provision and dispersal does not have the negative impact envisaged by the Committee. These concerns remain as relevant today as they were in 2005. Denied access to the labour market and with significant numbers having to wait a number of years for a decision as to their asylum applications,⁹² as a result of this policy asylum seekers in Ireland face discrimination,⁹³ poverty,⁹⁴ exclusion⁹⁵ and both physical and mental health issues.⁹⁶ In April 2010, there were 6,360 people living in direct provision accommodation; more than half of these people have been living there for more than two years and

more than a third for more than three. In 1992, 39 people applied for asylum in Ireland, while in 2002, 11,634 applied. The total number of applications for asylum in 2010 was 1,939 representing a fall of 83% since 2002.⁹⁷ The disparity between the high numbers of residents in comparison to the low number of applications is due to delays in the status determination procedure⁹⁸ as well as difficulties that arise in the transition from direct provision to living in the mainstream community.

Recommendation:

The State should provide details of the assessment of direct provision recommended by the Follow-Up Coordinator in his 2006 report.



Protest against deportations. Photo: Derek Speirs

The Reception and Integration Agency (RIA) is an executive agency of the Department of Justice and Law Reform and is responsible for sending asylum seekers to

90 CERD General Recommendation No.30: *Discrimination Against Non Citizens*: 10/01/2004, paragraph 32

91 Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, para. 13 UN Doc: CERD/C/IRL/CO/2. Report, Visit of Coordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69/Misc.9 para. 5

92 Reception and Integration Agency Report, September 2010, p. 20

93 Free Legal Advice Centres, *One Size Doesn't Fit All*, 2010, Section 3.2

94 *Ibid*, Chapter 2

95 *Ibid*, Section 2.3.1

96 Health Service Executive, *National Intercultural Strategy in Health, 2008-2010*, p. 42; *Report of Consultations for the National Intercultural Strategy in Health, 2008*, section 2.4

97 Office of the Refugee Applications Commissioner, *Monthly Statistical Report*, December 2010, p. 1

98 For a breakdown of processing times see response to Parliamentary Question by Minister Dermot Ahern, 9 June 2010

designated accommodation units across the country.⁹⁹ The policy of dispersal has isolated asylum seekers from the rest of the community and from others of their own nationality, sometimes including members of their own families. The segregation of asylum seekers, in many cases away from major population centres, together with their impoverishment, has meant that they are unable to interact or engage fully with other members of Irish society.

“It appears that prolonged length of stay of people within the direct provision system may have a direct negative effect on overall wellbeing.” Health Service Executive, National Intercultural Health Strategy 2007-2012.

The accommodation provided to asylum seekers under direct provision is often unsuitable to their needs. Converted hostels or tourist accommodation, designed for short stays, have in many cases become long-term homes for asylum seekers. The physical and psychological well-being of asylum seekers has been affected by unsuitable and often overcrowded accommodation, where lack of privacy, especially for families and children as well as a lack of space are major problems.¹⁰⁰ Poor recreational facilities for children, lack of childcare and crèche facilities, make parenting and family life difficult and affect the positive development of children. While some women seek asylum in Ireland on gender violence grounds, there is no women’s only accommodation centre available under direct provision. Some asylum seekers find themselves having to eat food which they regard as unsuitable or inappropriate. Residents find themselves restricted to stringent meal times and face a loss of autonomy in the choice of food which is not always culturally appropriate or varied.¹⁰¹

Recommendations:

The processing of asylum applications should take no longer than six months. In cases where the processing time exceeds six months, the applicant should have the right to access employment.

In view of the significant decrease in numbers of new asylum applicants, the Direct Provision system, designed to cater for much larger numbers of applicants, should now undergo a radical review in light of the serious concerns as to its negative impact on residents.



Food queue at Direct Provision Centre. Photo: Derek Speirs

Lack of adequate complaints mechanism for those living under direct provision

The negative consequences of living in direct provision are exacerbated by the lack of an independent, transparent and anonymous complaints system.¹⁰² All complaints which are not dealt with informally by the direct provision centre manager are forwarded to the Reception and Integration Agency¹⁰³ for a decision. According to NGOs and asylum seekers consulted for the present report, there is a lack of confidence in the current complaints system. This is due to the fact that residents are concerned that making a complaint could impact on their asylum case because the Department of Justice and Law Reform is responsible for their accommodation and the adjudication of their cases, albeit through two different sections.¹⁰⁴ There is no right of appeal to an independent body. No statistics are collated by RIA with regard to such complaints.¹⁰⁵ The lack of an independent complaints mechanism has resulted in the expulsion and forced destitution of a number of former residents as evidenced by the number of people who have been expelled from the system.¹⁰⁶ The Office of the Ombudsman has issued a guide to assist public bodies

¹⁰² The complaints system is set out in a document entitled *Direct Provision Reception and Accommodation Centres: House Rules & Procedures*. There are two elements to the complaints procedure: one to be invoked where a resident has a complaint against the centre and the other in relation to a breach of house rules by a resident.

¹⁰³ The Reception and Integration Agency (RIA) is an administrative unit within the Department of Justice and Law Reform and is responsible for the accommodation and care of protection applicants.

¹⁰⁴ RIA is responsible for providing accommodation for asylum seekers and the Office of the Refugee Applications Commissioner, an independent statutory body, is responsible for processing asylum applications. Both are under the aegis of the Department of Justice and Law Reform. Decisions concerning applications for protection such as leave to remain and subsidiary protection are decided by the Irish Naturalisation and Immigration Service and granted at the discretion of the Minister for Justice and Law Reform. Most of those currently living in direct provision are at this later stage of their asylum application.

¹⁰⁵ Response by Minister for Justice and Law Reform to Dáil question no. 357 by C Deputy Caoimhghín Ó'Caoláin, 8 July 2010.

¹⁰⁶ Eleven people were expelled from direct provision centres in 2008 and seven people were expelled in 2009 - Smyth, J., Irish Times, *Criticism of new asylum seeker rules*, 27 April 2010

⁹⁹ For a full description of the operation of the scheme see FLAC report, *One Size Doesn't Fit All: A legal analysis of the direct provision and dispersal system in Ireland, 10 years on*, 2009

¹⁰⁰ *Ibid*, section 3.6.1-3.6.2

¹⁰¹ *Ibid* at section 3.8.1

in establishing “efficient and credible internal complaints handling systems” to ensure that complaints are treated “properly, fairly and impartially”¹⁰⁷.

Recommendation:

An independent complaints mechanism should be established for those in direct provision in line with guidelines of the Ombudsman.

Box 7: Expulsion of an asylum seeker suffering from a mental illness from direct provision

In October 2008, leave was granted to judicially review a decision of RIA to expel an Afghani asylum seeker from direct provision accommodation. The man suffered from a mental illness and was forced to sleep rough in a derelict factory.¹⁰⁸ Counsel for the man alleged that the State had breached Article 3 of the European Convention on Human Rights as his expulsion from direct provision and the failure to offer him alternative accommodation amounted to “inhuman and degrading treatment”. The case was settled out of court and the man was readmitted to direct provision accommodation on foot of undertakings that he would abide by the house rules.¹⁰⁹ However, people expelled from direct provision are unable to access vital services available to other homeless people. When a person is expelled he or she is not entitled to any social welfare assistance (see section below on HRC). The Minister for Justice stated in October 2008 that:

*No other State body is obliged to provide accommodation to asylum seekers, even when – through their own actions – they effectively lead to their own departure from a centre.*¹¹⁰

Recommendation:

No-one should be expelled from the direct provision system without being provided with a suitable alternative.

107 Available online at <http://ombudsman.gov.ie/en/Publications/Guidelines/InternalComplaints/>

108 Carolan, M., “Refugee who sleeps in factory seeks subsistence aid” *Irish Times*, 24 October 2008

109 This situation has come before the British courts in a case called *R. v Secretary of State for the Home Department, Ex p. Adam, Limbuela and Others*, more commonly referred to as the *Limbuela* judgment. The House of Lords found in this case that the actions of the State in creating a situation whereby a person was left entirely destitute, could amount to “inhuman and degrading treatment” and constitute a violation of Article 3 of the European Convention on Human Rights.

110 Response by Dermot Ahern, Minister for Justice, to a Parliamentary Question no. 254 by Deputy Dennis Naughton on 8 October 2008



Family in Direct Provision. Photo: Derek Speirs

Separated children

Separated children are defined as ‘children under 18 years of age who are outside their country of origin and separated from both parents, or previous/legal customary primary care giver’.¹¹¹ Between 2000 and 2010, 512 children went missing from care in Ireland. Only 72 of these children were later accounted for, leaving 440 children still missing from the care of the Health Service Executive.¹¹² *Children Missing from Care; A Joint Protocol between An Garda Síochána and the Health Service Executive*, was set up to ensure a consistent and coherent response for every missing child, and to maximise inter-agency cooperation and promote the safety and welfare of children. The Protocol, though certainly a step in the right direction, does not adequately address the specific issues associated with separated children. A review of the protocol was due to take place after six months and at appropriate intervals thereafter. It is not clear if any review has been carried out to date. From 2004 to the end of June 2009, 611 separated children applied for asylum in Ireland. 260 were granted refugee status.¹¹³ From 2000 to 2010, 5,952 children were referred to the HSE, and 2,865 of these were placed in care.¹¹⁴

While a commitment has been made to appoint a social worker to all separated children and while the situation has improved, it is not acceptable that there are still separated children without an allocated social worker.¹¹⁵ While the role of a social worker is not to be underestimated, it does not replace the role of a *guardian ad litem*. The lack of a

111 Save the Children and The Separated Children in Europe Programme, *Position Paper on: Returns and Separated Children*, September 2004

112 *Irish Times*, *Number of missing children falls as new policies adopted*, by Jamie Smyth, 11 January 2011

113 This figure does not account for the people who claimed asylum initially as minors but were subsequently deemed to be adults. Ombudsman for Children, *Separated children living in Ireland: A Report by the Ombudsman for Children’s Office*, 2009, section 3.4

114 Irish Refugee Council, *Closing a protection gap*, 2010, p. 14

115 *Ibid*

guardian ad litem system for separated children has been highlighted as a concern¹¹⁶ and indeed the appointment of an independent guardian or adviser as soon as a separated child is identified has been recommended.¹¹⁷

Recommendation:

Each separated child should be immediately provided with a *guardian ad litem* upon their identification as such.

¹¹⁶ Ombudsman for Children, *Separated children living in Ireland: A Report by the Ombudsman for Children's Office*, 2009, section 6.9, 6.5, 5.4 p. 23. Irish Refugee Council, *Closing the protection gap*, 2010, section 5. Though there is no official legal definition of a *guardian ad litem* nor is there a nationally agreed standard, his role is broadly understood as 'independently establish[ing] the wishes, feelings and interests of the child and present[ing] them to the court with recommendations' – Children's Acts Advisory Board, *Giving a voice to children's wishes, feelings and interests*, Guidance on the Role, Criteria for Appointment, Qualification and Training of *Guardians ad Litem* Appointed for Children in Proceedings under the Child Care Act 1991, May 2009, p. 3

¹¹⁷ Separated Children in Europe Programme, *Statement of Good Practice*, Third Edition, 2004, p. 16; Report by the Council of Europe High Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland, 26-30 November 2007, paras. 48-50

Article 4

States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination.

Ireland's declaration under Article 4

This is dealt with under Article 2 above.

Incitement to hatred

The Incitement to Hatred Act 1989 was enacted in order to prohibit certain forms of expression and behaviour that may cause incitement based on race, colour, nationality, religion, ethnic or national origins, membership of the Traveller community or sexual orientation. Concerns persist as to the implementation and effectiveness of the Act, which has yielded very few successful prosecutions.¹¹⁸ This legislation is under ongoing review for over a decade¹¹⁹ and indeed, the European Commission against Racism and Intolerance were advised in 2006 that it was near completion.¹²⁰

There have been calls for the State to address the issue of violence against non-Irish nationals after the publication of statistics that showed that almost a quarter of all stabbing victims in Ireland between 2003 and 2008 were non-Irish nationals.¹²¹ Whether carried out by other non-nationals or the domestic population, the State has done little to respond to these incidents.

Recommendation:

The State should release to the public the conclusions that have been drawn from the decade long review of the Incitement to Hatred Act. It should publish its considered response to the research on racism and the criminal law and explain the steps that are being taken to strengthen anti-incitement and anti-racism legislation in light of these conclusions.

Racism and the media

The Press Council and Press Ombudsman were established in 2008. The Ombudsman investigates complaints of a breach of the Code of Practice signed by the press industry in 2007. The Press Council makes decisions on complex cases and appeals referred to it from the Ombudsman. While the introduction of these mechanisms is a welcome development, the media in Ireland continue to vilify and promote negative stereotypes of certain groups in society, in particular members of the Traveller community, immigrants and asylum seekers. In 2007 and 2008, 'prejudice' was the second highest ground for complaints to the Press Council.¹²²

A complaint was upheld by the Press Council against the *Irish Independent* newspaper relating to an article entitled "Africa is giving nothing to anyone – apart from AIDS"¹²³ which it viewed to be in breach of the 'prejudice' principle of the Code of Practice for Newspapers and Periodicals in that it was likely to cause grave offence.¹²⁴ The complaint was referred from the Press Ombudsman to the Press Council, a decision he or she may take in the instance of a significant or complex complaint. The Press Council noted:

¹¹⁸ Schweppe J., Walsh D., *Combating Racism and Xenophobia through the Criminal Law*, Centre for Criminal Justice Research, University of Limerick, December 2008 p. 56

¹¹⁹ *Ibid*

¹²⁰ European Commission against Racism and Intolerance, *Third Report on Ireland*, 15 December 2006, para. 22

¹²¹ Sunday Times Survey, *Stab cities, quarter of knife victims are foreign nationals*, 22 June 2008

¹²² Press Council of Ireland, *Annual Report 2009*, p. 22, *Annual Report 2008*, p. 33

¹²³ The article was written by Kevin Myers in the 10 July 2008 edition of the *Irish Independent*.

¹²⁴ Press Council of Ireland, *Complaints and the Irish Independent*, 10 October 2008

...beginning with the headline “Africa is giving nothing to anyone – apart from AIDS”, the mode of presentation was marked by rhetorical extravagance and hyperbole which used the failings of some to stigmatise whole societies, employing a level of generalisation that was distorting and seriously insulting to Africans as a whole. In addition the article resorted, in several instances, to language that was gratuitously offensive and was, in the view of the Press Council, likely to cause grave offence to people throughout sub-Saharan Africa and to the many Africans in particular who are now resident in Ireland.¹²⁵

Other examples of the exaggerated, offensive and projective rhetoric employed by certain media include articles in the Irish Independent entitled “We have created a legal apartheid for Travellers, in which aberrant behaviour is actually called ‘culture’”¹²⁶, “Bogus Asylum Seekers Escaping Deportation”¹²⁷ and “Bogus refugees return home”.¹²⁸ Offensive statements by local county councillors have also gone unchecked. At a county council meeting in Carlow in 2009, Cllr David O’Brien stated “if you see a Traveller walking down the road, there’s a woman in fear” in a statement support Cllr Arthur MacDonald who referred to Travellers as “dirty people” and “scoundrels”.¹²⁹

Racism online

With the advance of the use of internet technology, a range of new fora now exist for expression such as websites, blogs, social networking sites and instant messaging. Due to its seemingly unlimited and borderless nature, it is feared that the internet is and will be used as a means of expressing and disseminating racist and xenophobic material.¹³⁰ The Taxi Regulator was forced to shut down an online forum which used by taxi drivers to make racist remarks and comments.¹³¹ Social networking sites such as Facebook have also been used as a vehicle of disseminating racist and vitriolic abuse in Ireland such as a Facebook page entitled ‘The invasion of Jews in Middleton’¹³² and ‘Setting Aside Monday Afternoons to Hunt Knackers’¹³³.

A 2008 report, which the State refers to in paragraph 51-53 entitled ‘Combating Racism and Xenophobia through the Criminal Law’, recommended that legislation be amended to specifically address racism online and include a compulsory measure to eliminate the dissemination of threats that are of a racist or xenophobic nature.¹³⁴

Recommendation:

The State should support and encourage local and national media to promote interculturalism and non-discrimination.

¹²⁵ Press Council of Ireland, *Complaints and the Irish Independent*, 10 October 2008.

¹²⁶ By Kevin Myers, *Irish Independent*, 17 July 2009

¹²⁷ Irish Independent, *Bogus Asylum Seekers Escaping Deportation*, 5 January 2008

¹²⁸ Irish Independent, *Bogus Refugees Return Home*, 18 November 2008

¹²⁹ Carlow Nationalist, *New row over Traveller remarks by councillors*, by Joe Cahill, 4 March 2009

¹³⁰ Council of Europe, *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*, Preamble. ‘Aware that computer systems offer an unprecedented means of facilitating freedom of expression and communication around the globe’. Ireland has not yet ratified this protocol.

¹³¹ National Consultative Committee on Racism and Interculturalism, *Reported Incidents Relating to Racism and strategic response from the NCCRI Jul - Dec 2007*, p. 6. 10% of all racist incidents reported to the NCCRI from January-July 2008 related to abuse from taxi drivers.

¹³² Irish Central, *Irish Facebook page claims invasion of Jews in Cork*, 4 August 2010. This page has since been removed by Facebook.

¹³³ Irish Times, *Danger of currency break-up, says Ross* by Jimmy Walsh, 21 May 2010

¹³⁴ Schweppe J., Walsh D., *Combating Racism and Xenophobia through the Criminal Law*, Centre for Criminal Justice Research, University of Limerick, December 2008 p. 161

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- | | |
|---|---|
| <ul style="list-style-type: none"> (a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (d) Other civil rights, in particular: <ul style="list-style-type: none"> (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country; (iii) The right to nationality; (iv) The right to marriage and choice of spouse; (v) The right to own property alone as well as in association with others; (vi) The right to inherit; | <ul style="list-style-type: none"> (vii) The right to freedom of thought, conscience and religion; (viii) The right to freedom of opinion and expression; (ix) The right to freedom of peaceful assembly and association; (e) Economic, social and cultural rights, in particular: <ul style="list-style-type: none"> (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) The right to form and join trade unions; (iii) The right to housing; (iv) The right to public health, medical care, social security and social services; (v) The right to education and training; (vi) The right to equal participation in cultural activities; (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks. |
|---|---|

The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration

Restrictions on foreign workers' mobility

Between 2006 and 2009, over 250 exploited foreign workers in Ireland were provided assistance in lodging formal

complaints and achieved settlements and awards worth €1.3 million for unpaid wages and other violations of their employment rights.¹³⁵ In 2005, the Committee expressed concern with regard to the exploitation of foreign workers by some employers and violations of labour regulations prohibiting discrimination.¹³⁶ The Follow-Up Coordinator welcomed the introduction of the Employment Permits Bill 2005 (which has since been enacted in 2006) for the

¹³⁵ This assistance was provided by the Migrant Rights Centre Ireland, see MRCI, *Work Permits and Exploitation: Time for Reform*, Policy Paper 2010.

¹³⁶ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, 14 April 2005, para. 14 UN Doc: CERD/C/IRL/CO/2

improved protections that it offered to migrant workers.¹³⁷ Section 8 of the Employment Permits Act provides that an employment permit facilitates the employment of a foreign national in the State in a particular economic sector for the duration of the permit's validity. However, State policy has been to continue to issue an employment permit for a specific position with a particular employer for all types of employment permits.¹³⁸

The Act provides for a Ministerial power¹³⁹ which allows him or her to refuse the issuance of a new permit in the first twelve months of a permit being issued. No statutory exception is provided for in the cases of exploitation and in such circumstances, a solution for the permit-holder is dependent on the existence of an alternative offer of employment and an employer willing to apply for a permit. Allowing for mobility within an economic sector, as actually provided for in the relevant legislation, would alleviate this problem.

Recommendation:

The State should explain the rationale for legislating to provide for mobility within an economic sector whilst undermining this with a contradictory policy. It should clarify the basis upon which this policy was introduced.

Domestic workers

On account of the private and isolated nature of their work in private homes, domestic workers can be particularly vulnerable to exploitation. The Follow-Up Coordinator highlighted the insufficient protection provided by the State to domestic workers with reference to the Committee's General Recommendation XXX on discrimination against non-citizens.¹⁴⁰ According to a recent survey, domestic workers in Ireland are mostly women who are involved in childcare services.¹⁴¹ Sixty per cent of those surveyed had experienced exploitation which for the most part related to excessive working hours without adequate compensation or additional pay for extra hours worked. Forty per cent of respondents had no contracts.¹⁴² Given that an employee's work permit and thereby her immigration status is linked to her employer,¹⁴³ a worker who asserts her right to leave because of a denial of her employment rights for example, risks losing her

immigration status and in the case of a live-in worker, her home. Particularly vulnerable are domestic workers employed by foreign diplomats in Ireland;¹⁴⁴ for example they are not permitted to seek alternative employment if they leave their diplomat employer.¹⁴⁵ There is no domestic legal remedy for exploited workers employed by Embassies if diplomatic immunity is invoked (it is not always the case that immunity is invoked, and in these cases workers may access legal remedies through the Labour Relations Commission) and if they are not employed under Irish law.¹⁴⁶ In other cases, privileges and immunity provided to foreign diplomats under the Vienna Convention 1963 are being used to deny domestic workers basic legal remedies and due process in having their grievances heard.¹⁴⁷

Recommendation:

Adequate legal remedies should be introduced to ensure that exploited workers employed at embassies can assert their rights and have their grievances heard.

Work permit holders should have the freedom to change employers to any job on the eligible category list.



Migrant rights protest. Photo: Derek Speirs

¹³⁷ Report on the Visit of the Coordinator on Follow-Up to Ireland (21-23 June 2006), para. 10

¹³⁸ Department of Enterprise, Trade and Innovation, *Employment Permit Arrangements, Guide to Work Permits, May 2010, p. 3; Guide to Green Card Permits, August 2010, p. 4*

¹³⁹ Section 12(1)(e)(i) Employment Permit Act 2006

¹⁴⁰ CERD, General Recommendation No.30: Discrimination Against Non Citizens: 01/10/2004.

¹⁴¹ Migrant Rights Centre Ireland, Domestic Workers Action Group, *Summary of Domestic Workers Survey, April 2010*. This sample survey involved a group of 50 domestic workers.

¹⁴² Migrant Rights Centre Ireland, Domestic Workers Action Group, *Summary of Domestic Workers Survey, April 2010*

¹⁴³ Section 4, Employment Permits Act 2006

¹⁴⁴ Irish Times, *Embassy's boycott of hearing criticised*, by Mary Fitzgerald, 29 November 2010; *Hidden abuse of diplomats' domestics*, by Jamie Smyth, 27 November 2010

¹⁴⁵ Migrant Rights Centre Ireland, *Protections for Migrant Domestic Workers in Ireland Employed by Foreign Diplomats in Ireland: Time for Reform*, December 2010, sections 3 and 4

¹⁴⁶ For more information, please see response by Minister of State for with special responsibility for Public Service Transformation and Labour Affairs, Department of Enterprise, Trade and Employment; Minister of State, Department of An Taoiseach; Minister of State, Department of Finance, Mr. Dara Calleary T.D., to Parliamentary Question, 13 October 2010, 36394/10 and 36395/10.

¹⁴⁷ Article 41 of the Vienna Convention on Diplomatic Relations given effect in Irish law through the Diplomatic Relations and Immunities Act 1967

The right to equal treatment before the tribunals and all other organs administering justice

Special detention facilities for asylum seekers

The State has not responded to the Committee's request for further information on the conditions of detention of asylum seekers and undocumented migrants awaiting deportation¹⁴⁸ and special detention facilities for such groups have not been established. There were 673 committals to prison involving 669 detainees relating to immigration offences in 2009, a decrease of 30.4% from 2008.¹⁴⁹ Twenty seven per cent were detained for eight days or more. A small percentage of those detained were in prison for 51 days or more.¹⁵⁰ The majority of males awaiting deportation are detained in Cloverhill Prison, though they may be held at other prisons as well as Garda stations,¹⁵¹ and women awaiting deportation are detained at the Dóchas Centre in Dublin. Prisons are not suitable for detaining asylum seekers as they are neither suspected nor convicted of committing a criminal offence.

Recommendation:

The practice of detaining asylum seekers in prisons should cease.

Treatment of foreign nationals at ports of entry to the state

The Committee has expressed concern about treatment of foreign nationals at points of entry to the state.¹⁵² Yet beyond the training provided for Gardaí, immigration officers and civilian staff, the State does not expand upon this important issue in its Report. A recent report concerning an enquiry by the IHRC into the treatment of a foreign visitor to Ireland who was refused leave to land¹⁵³ highlights a number of areas which could be improved in order to ensure that

¹⁴⁸ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, 14 April 2005, para. 15, UN Doc: CERD/C/IRL/CO/2

¹⁴⁹ Irish Prison Service, Annual Report 2009, p. 22

¹⁵⁰ For a full breakdown see, Irish Prison Service, Annual Report 2009, Chart 2, page 23.

¹⁵¹ Jesuit Refugee Service Ireland, *Becoming Vulnerable in Detention: Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (the Devas Project), Report on Ireland*, June 2010, p. 236. Those awaiting deportation may only be detained at Garda stations for a limited period not to exceed 48 hours or for more than two consecutive overnight stays.

¹⁵² Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, para. 16 UN Doc: CERD/C/IRL/CO/2. Report, Visit of Coordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69//Misc.9 para. 18

¹⁵³ The Minister for Justice and Law Reform stated in the Dáil (Parliament) that from 1 January to 31 October 2010, 2,597 people were refused leave to land at Ireland's points of entry and returned to where they came from, 17 November 2010.

international human rights standards are fully respected.¹⁵⁴ With regard to the minimum standards of human rights to be afforded to detainees, the report notes that it is doubtful whether immigration detainees are always provided with the full range of these rights.¹⁵⁵ In relation to the right to be free from arbitrary detention the report questioned whether there are adequate safeguards against this in Irish law given that there is "no automatic review of an immigration officer's decisions nor any oversight of decision-making by an independent office such as the Ombudsman."¹⁵⁶ It queried whether the law authorising detention in this situation was sufficiently precise and accessible.¹⁵⁷ There was also concern at the lack of an available remedy where an individual had been found to have been detained arbitrarily as a result of a refusal of leave to land.¹⁵⁸ The Commission's report goes on to point out that the lack of State disaggregated data and data collection, recording keeping, vague criteria in decision-making and a lack of safeguards raises the issue that the State would not be in a position to defend itself against any future unsubstantiated claims of racial or national discrimination in particular instances.¹⁵⁹ The Commission was informed that a new system called AVATS¹⁶⁰ would address, in part, this problem.

In spite of the training on non-discrimination and human rights received by immigration officers, it is clear from the report of the IHRC that a number of outstanding issues beyond training needs, require attention and detailed recommendations were made to address these.

Recommendation:

The State should provide access to the disaggregated data collected under the new AVATS system.

The State should address the recommendations made by the Irish Human Rights Commission's in relation to the treatment of visitors at Ireland's ports of entry

Removal of the right to an oral hearing before the Equality Tribunal

The Civil Law (Miscellaneous Provisions) Bill 2010 provides for the amendment of the Employment Equality Act 1998 and the Equal Status Acts 2000-2008 which would have a

¹⁵⁴ Irish Human Rights Commission, *Report on an Enquiry into the Treatment of a Visitor Refused Leave to Land in the State*, January 2009, paras. 9.11-9.17

¹⁵⁵ *Ibid*, paras. 8.30, 8.36

¹⁵⁶ *Ibid*, paras. 8.17

¹⁵⁷ *Ibid*, paras. 8.15

¹⁵⁸ *Ibid*, paras. 8.21

¹⁵⁹ *Ibid*, paras. 8.50

¹⁶⁰ Audio-Video and Textual Synchronisation system

fundamental impact on the rights of both the complainants and the respondents before the Tribunal. Whereas the Acts previously provided that in a case referred to the Director of the Tribunal, subject to certain exceptions, the Director shall investigate the case and hear all persons appearing to the Director or that Court to be interested and desiring to do so,¹⁶¹ the Bill proposes that in such circumstances the Director would have the discretion to hear the interested parties.¹⁶² It further proposes the insertion of a new provision which states where the Director considers that the case may be dealt with on the basis of written submissions only, the Director shall notify the parties in writing of his or her proposal to do so.¹⁶³

The investigation conducted by written submission alone denies those involved the right to an oral hearing including the right to cross examine parties which is particularly important where a respondent faces sanction.

Recommendation

Provisions removing the right to an oral hearing before the Equality Tribunal should not be included in the final Civil Law (Miscellaneous Provisions) Act.

The right to security of person and protection by the State against violence or bodily harm

Discrimination by the Gardaí against minorities

Irish immigration legislation remains piecemeal and market-driven. The State is currently on its third attempt at consolidating immigration legislation with the Immigration, Residence and Protection Bills 2007¹⁶⁴, 2008¹⁶⁵ and 2010.¹⁶⁶ The most recent incarnation still fails to stipulate who is entitled to come to Ireland, the length of time and the conditions under which they can stay.¹⁶⁷ It also leaves the State without sufficiently comprehensive same-sex immigration legislation¹⁶⁸. The legislation is unlikely to be introduced given the expected impending dissolution of the Dáil (lower house of parliament).

¹⁶¹ Section 79(1) Employment Equality Act 1998. Similar amendments are proposed for the Equal Status Acts 2000-2008.

¹⁶² Section 17(a) Civil Law (Miscellaneous Provisions) Bill 2010

¹⁶³ *Ibid*, Section 17(b)

¹⁶⁴ Bill No. 37 of 2007

¹⁶⁵ Bill No. 2 of 2008

¹⁶⁶ Bill No. 38 of 2010

¹⁶⁷ See Immigrant Council of Ireland, Immigration, Residence and Protection Bill 2010 – a critical overview, September 2010

¹⁶⁸ National Gay and Lesbian Federation, Submission to NAAR CERD Shadow Report, p. 2

Independent Complaints

Since Ireland's last examination, the Garda Síochána Ombudsman Commission (GSOC) has been established to independently investigate complaints from members of the public against the Gardaí. This is a very welcome development given that the previous Garda Complaints Board used members of the Gardaí to investigate such complaints resulting in few negative findings against the Gardaí, and an overall perception that the Board was not independent. Section 91 of the Garda Síochána Act 2005 requires GSOC to launch an investigation into incidents involving the death or serious harm of person. However, section 94 of the Act enables GSOC to refer the investigation of complaints to the Garda Commissioner, albeit under its supervision. In practice, this means that while under the supervision of the GSOC, certain complaints are being investigated by members of the Gardaí. For example, while a complainant may make the complaint to GSOC, the investigating officer is a Garda which may result in the complainant questioning the independence of the investigation.

Recommendation:

The practice of referring incidents of alleged discrimination to the Garda Commissioner by GSOC should cease.

Box 8: Unjustifiable arrest of an Irish citizen

In July 2010, the High Court found that the arrest of an Irish citizen, born in Nigeria, at a check-point in Dublin was unjustifiable.¹⁶⁹ He was arrested at a check-point in Dublin on his way home from work after complaining that a Garda was behaving like a bully and had said to him that as a Garda "he could be a racist any day of the week he liked". The man was awarded €6,000 compensatory damages and €4,000 in exemplary damages.

Stop and Search

Section 12 of the Immigration Act 2004 empowers any member of the Gardaí or any Immigration Officer to stop and demand the production of certain identity documents of a "non national"¹⁷⁰ "at any time".¹⁷¹ It is an offence for the individual not to comply with the request.¹⁷² The

¹⁶⁹ Irish Times, *Nigerian-born Irish citizen awarded €10,000 over arrest*, 14 July 2010

¹⁷⁰ Section 12 (1) Immigration Act 2004 requires the production on demand of "(a) a valid passport/travel document and (b) a registration certification where the person has registered with the National Garda Immigration Bureau.

¹⁷¹ *Ibid*, Section 12(3)

¹⁷² *Ibid*, Section 12(2)

operation of this police power in practice allows for the possibility of racial profiling. It means that the Gardaí may single out Black or individuals from minority ethnic groups on suspicion that they are unlawfully present in the State. This could potentially lead to the detention of these individuals if they do not have the required documentation on their person or of Irish or EU citizens who do not have to carry their passport with them. There is evidence to suggest that this power has been used by the Gardaí in the performance of their ordinary functions and has resulted in such detentions.¹⁷³ A 2009 survey by the EU Fundamental Rights Agency noted that Sub-Saharan Africans in Ireland reported very high rates (59%) of being stopped on at least one occasion by Gardaí in the previous year.¹⁷⁴ Ireland had the second highest stop rate of Roma in the countries surveyed.¹⁷⁵

Section 131 of the Immigration, Residence and Protection Bill 2010 relates to the powers of immigration officers. It allows an immigration officer to stop and demand of "any person" at any reasonable time documents in that person's control as well as any other information which the officer "may reasonably require."¹⁷⁶ Clearly, it is the State's intention to continue the operation of this power into the future.

Recommendation:

The stop and search of Black and minority ethnic individuals on suspicion of being illegal immigrants by ordinary members of the Gardaí should not be allowed under proposed immigration and residence legislation, particularly where this could lead to detention.

The right to education and training

Lack of diversity and segregation in State-sponsored schools

The majority of primary and second level schools in Ireland are denominational and remain at least partially in the control of religious bodies. In spite of recommendations by this Committee¹⁷⁷, the UN Human Rights Committee¹⁷⁸

¹⁷³ Immigrant Council of Ireland, *ICI calls for investigation of unlawful detention of Irish citizen*, 20 November 2008

¹⁷⁴ European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey 2009* p. 17

¹⁷⁵ *Ibid*

¹⁷⁶ Section 131(1)(e), (g), Immigration, Residence and Protection Bill 2010

¹⁷⁷ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, 14 April 2005, para. 18 UN Doc: CERD/C/IRL/CO/2

¹⁷⁸ Concluding Observations by the UN Human Rights Committee on Ireland, 30 July 2008, para. 22 UN Doc: CCPR/C/IRL/CO/3

and the UN Committee on the Rights of the Child¹⁷⁹ that the State promote and increase access to non-denominational primary schools, there have been no significant improvements in this area.¹⁸⁰ While the Follow-Up Coordinator recognised the "Educate Together"¹⁸¹ programme,¹⁸² it has faced difficulties in securing funding to establish its multi-denominational schools.



Children at an Educate Together School in Dublin, 2007. Photo: Derek Speirs

The State has failed to amend an aspect of the Equal Status Acts 2000-2008¹⁸³ that allows religious institutions to give preference to people who share their religious ethos in areas such as employment, as well as admittance to schools. Given that the majority of schools in Ireland are under the aegis of one religion (Roman Catholicism) children of other or no faiths have been denied enrolment because the schools can legally deny them access citing their 'Catholics first' enrolment policy. Due to a lack of planning on the part of the State, a crisis situation arose in north Dublin in 2007 where an emergency school was opened to facilitate the number of migrant children who could not produce baptismal certificates in order to be admitted to a local school,

¹⁷⁹ Concluding Observations of the Committee on the Rights of the Child: Ireland, 29 September 2006, UN Doc.: CRC/C/IRL/CO/2, para. 60

¹⁸⁰ It is worth noting that the Archbishop of Dublin has also stated that he believes the system of school patronage as it stands should be reformed and that it is no longer tenable for the Catholic Church to run 92% of the schools in the State as it does not reflect the realities of the times. Raidió Teilifís Éireann (RTÉ) *Government to consider forum on schools*, 17 June 2009

¹⁸¹ Educate Together is the patron body for Ireland's multid denominational primary schools

¹⁸² Report, Visit of Coordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69//Misc.9 para. 19

¹⁸³ Section 7(3) (c) Equal Status Acts 2000-2008 'An educational establishment does not discriminate under subsection (2) by reason only that—[...] where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school...' Subsection (2) 'An educational establishment shall not discriminate in relation to – (a) the admission or the terms or conditions of a person as a student to the establishment, (b) the access of a student to any course, facility or benefit provided by the establishment...'

leading to their effective segregation.¹⁸⁴ This resulted in the establishment of a new school where all the children were Black, of African descent or from a minority ethnic group. Not only has the State failed to act upon the Committee's previous recommendation in this area, the situation has in fact deteriorated.¹⁸⁵

Recommendation

The Department of Education and Skills should put strategies in place to ensure that segregated schooling does not continue in Ireland.

The State should support the broader establishment of non-denominational or multid denominational schools.

Traveller education and employment

The educational status of Travellers has been a consistent concern of Traveller organisations. To highlight the ongoing need for change in the area, it is worth noting that more than half of the total number of recommendations in the 1995 Task Force Report on the Traveller Community related to education. The 2006 census shows that 63.2% of Traveller children under the age of 15 had left formal education. This compares with just 13.3% of the general population. Just 8 in 1,000 (0.8%) Travellers went on to higher education compared with 302 in 1,000 (30.2%) nationally.¹⁸⁶

In 2006 (the year for which most up-to-date figures are available) just 1,815 (8%) of Travellers were working.¹⁸⁷ A recent study showed that only 3.4% of those surveyed were employed and just 4.1% had gone on to third level education.¹⁸⁸ It also highlighted the fact that Travellers are discriminated against in both the formal and informal (such as labouring) route of seeking employment and tend to hide their identity when applying for a position.¹⁸⁹ As a result, poverty and a lack of choice can be a serious problem among Travellers.



Traveller protest. Photo: Derek Speirs

Box 9: Discrimination against Travellers in accessing secondary education

In December 2010, the Equality Tribunal found that a school had indirectly discriminated against a Traveller boy by operating a "Father rule". This rule gave priority for admittance on three grounds one of which (the "Father rule") gave preference to children whose father or brother had attended the school. The boy in question had satisfied the two other requirements and as the eldest child in his family could not have had a brother upon whose admittance he could rely. Given the low level of Travellers of his father's generation who had attended secondary school, it was found that the prioritisation system disproportionately affected Travellers.¹⁹⁰

The Budget 2011 states that the 42 Visiting Teachers for Traveller Posts in Irish schools will be removed and that Language Support Teachers will be reduced by 500 over four years in a phased reduction. Resource teachers at post primary level and Senior Traveller Training Centres are also affected.¹⁹¹ This proposal therefore indirectly discriminates against these groups of children and will affect their ability to enjoy their right to education.

¹⁸⁴ Irish Independent, *Emergency averted at last minute as emergency school opens*, 30 August 2007

¹⁸⁵ Raidió Teilifís Éireann (RTÉ) Six One News interview with Minister Mary Hanafin by Bryan Dobson, 3 September 2007, in which the Minister states that the problems in the north Dublin area of Balbriggan reflected bad planning amid rapid population growth, not racist attitudes at existing schools, <http://www.rte.ie/news/av/2007/0903/6news.html#&calendar=true&page=144>

¹⁸⁶ Statistics Office, Volume 5, *Ethnic or Cultural Background (including Irish Travellers)*, Table 24, p. 45

¹⁸⁷ Central Statistics Office, Volume 5, *Ethnic or Cultural Background (including Irish Travellers)*, Table 19, p. 41

¹⁸⁸ School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, Technical Report 1, p. 73

¹⁸⁹ School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, Summary of Findings, p. 121-122

¹⁹⁰ Irish Times, *Traveller wins discrimination case over school's 'father rule'*, by Carol Coulter, 10 December 2010

¹⁹¹ Department of Education and Skills, *Information Note regarding main features of 2011 Estimates for Education and Skills Vote*, p. 3

Recommendations:

The State should provide more investment in intercultural education and peer-led education.

The State should explain how the Department of Education and Skills will meet the education and language needs of Traveller children and linguistic minorities given that it will lose a major cohort of designated Traveller teacher and language support posts.



Reflecting diversity. Photo: Derek Speirs

Language support teachers

Approximately 10% of primary school children and 12% of post-primary school children in Ireland come from a migrant background. About 70-75% of children do not speak English as a first language.¹⁹² The Follow-Up Coordinator expressed concern about the limited number of language support teachers for migrant children in school and welcomed the State's commitment to increasing it.¹⁹³ In 2009, a cap of a *maximum* of two language teachers per school was set by the Department of Education and Science (now Department of Education and Skills).¹⁹⁴ Pupils who have been in Ireland for longer than two years are not automatically entitled to support and must pass an assessment in order to continue

¹⁹² Department of Education and Skills, *Better Literacy and Numeracy for Children and Young People – A Draft National Plan to improve Literacy and Numeracy in Schools*, November 2010, p. 35

¹⁹³ Report, Visit of Coordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69//Misc.9 para. 21

¹⁹⁴ Department of Education and Science Schools Division, Circular 0015/2009, p. 1

to receive it.¹⁹⁵ If a child has a standard of A2 proficiency,¹⁹⁶ she is deemed to no longer require language support.¹⁹⁷ Such pupils are counted on a 3 for 1 basis when determining the allocation of teachers (a minimum of 14 pupils are required for the first language teacher) making it very difficult for schools to qualify for further teachers.¹⁹⁸ These measures leave many pupils for whom English is not their mother tongue without adequate English language training to allow them to be adequately prepared to sit school state examinations on an equal basis with their native English speaking peers.¹⁹⁹

Recommendation:

The cut-off point for language support at post primary level should be raised to B1 standard. Students who have not reached this level of proficiency should receive support until they have acquired this level regardless of how long they need it (if necessary more than two years). The two-year rule should be waived for students who have little or no literacy in their mother tongue to protect vulnerable children such as Roma children.

Narrow scope of equality legislation

The cornerstone of the State's legislation against racial discrimination is the Equal Status Acts 2000-2008 and the Employment Equality Acts 1998-2008. The Acts prohibit discrimination on nine separate grounds: age, race, disability, family status, gender, marital status, membership of the Travelling Community, religious belief and sexual orientation. The Equal Status Acts ban discrimination in the provision of goods and services, access to accommodation and educational establishments. The Employment Equality Acts concern, among other things, access to employment, job advertising, dismissal, vocational training and work experience, pay, collective agreements.

The Committee has previously highlighted its concern that the provisions of the Equal Status Acts 2000-2008 do

¹⁹⁵ *Ibid* at p. 3. Years of support received at primary school level count toward the two year cut off point for post primary support.

¹⁹⁶ While the Circular states that B1 level is the cut off point, in practice it is interpreted as meaning below B1, ie. A2. These proficiency levels are based on the Common European Language Framework http://www.coe.int/T/DG4/Portfolio/?M=/main_pages/levels.html, which states that A2 is the next level lower than B1 and is the second lowest on the scale of language proficiency. Users who have an A2 level are described as 'basic users' as opposed to 'independent' or 'proficient' users which are the levels of B1-B2 and C1-C2 respectively. An A2 standard means the person 'Can understand sentences and frequently used expressions related to areas of most immediate relevance (e.g. very basic personal and family information, shopping, local geography, employment). Can communicate in simple and routine tasks requiring a simple and direct exchange of information on familiar and routine matters. Can describe in simple terms aspects of his/her background, immediate environment and matters in areas of immediate need.'

¹⁹⁷ Department of Education and Science Schools Division, Circular 0015/2009, p. 3

¹⁹⁸ *Ibid* at p. 4

¹⁹⁹ Children require five to ten years of language support before they are as adequate prepared as a mother-tongue child academically. Cummins, J., Prof., *BICS and CALP: Clarifying the Distinction*, University of Toronto, 1999, p. 2

not extend to the whole range of government functions, activities or controlling duties.²⁰⁰ No effort has been made by the State to expand the scope of the Acts in this regard. Moreover, there is a lack of clarity as to whether the scope of the Acts extends to asylum seekers. While amendments have been made to the Acts to reflect aspects the EU Race Directive,²⁰¹ certain provisions have been excluded such as those that would extend the scope of the Act to include all sovereign functions.

Not only have the Acts not been updated in this regard but the number of complaints taken under the equality legislation has fallen in recent years²⁰² in spite of the increase in the number of reported incidents of racism and discrimination.²⁰³

Recommendation:

The State should expand the scope of the Equal Status Acts 2000-2008 to include all government functions, activities and controlling duties.

The State should clarify whether the provisions of the Equal Status Acts 2000-2008 extend to asylum seekers.

The State should introduce preventative measures such as equality proofing, to deal with underlying inequality.

The right to housing

Traveller accommodation

Nomadism is an inherent aspect of the Traveller Community. In spite of legislation providing a legal obligation on local authorities for Traveller-appropriate accommodation,²⁰⁴ many Travellers still live without basic facilities. A lack of willingness to act on the part of both the local authorities and communities to accept Travellers are significant factors in the lack of progress on this issue. There are no sanctions against a local authority that fails to adequately provide suitable Traveller accommodation under the legislation.

According to the All-Ireland Traveller Health Survey,²⁰⁵ 73.3% of respondents lived in houses and 18.25% in a trailer, mobile home or caravan; 55.3% of these were parked on a halting site. Almost 24% were parked on unofficial/roadside sites and 6.8% on a transient site.²⁰⁶ Just over 57% of houses were provided by a local authority with 12.8% in ownership of their property.²⁰⁷ Furthermore, with regard to trailer, mobile home or caravan accommodation, 35.7% had no access to running water, 12.4% had no bath or shower, 39.8% had no flush toilet and 27.8% had no toilet at all.²⁰⁸ The study shows that there is a direct link between poor housing conditions and poor health among Travellers – a quarter of Travellers considered where they lived to be unhealthy or very unhealthy, and similar numbers considered their home to be unsafe.²⁰⁹

The Housing (Miscellaneous Provisions) Act 2002 criminalises the entering of private or public land without consent. This had previously been a civil offence. This creates a particular problem for Travellers who may be charged with trespass for parking their caravan without specific permission. The Act also gave increased powers to the Gardaí who are permitted to impound the caravans thereby removing the homes of Travellers from the land²¹⁰ or they may evict the families involved.²¹¹ While this legislation was intended to be directed at large groups of Travellers camped on unsuitable land, it has been reported that the Act has been used to move on small groups of families, including those on local authority housing waiting lists. No statistics are available from the Gardaí on the number of arrests or prosecutions under this legislation.

Recommendation:

Adequate Traveller-specific alternative accommodation should be provided to Travellers who are forced to live without basic facilities.

The provisions of the Housing (Miscellaneous Provisions) Act 2002 should be reviewed to ensure that they do not disproportionately and negatively affect Travellers.

²⁰⁰ For example, the Acts extend to all activities by public authorities are covered by the Acts but not to Government-funded or managed activities.

²⁰¹ EU Race Directive, Council Directive 2000/43/EC of 29 June 2000

²⁰² Equality Authority material for inclusion in Third and Fourth National Reports by Ireland as required under Article 9 of the UN Convention on the Elimination of All Forms of Racial Discrimination., p. 2 The number of cases in 2009 was down to 87 from 123 in 2008 and 94 in 2007, Equality Tribunal, *Annual Report 2009*, p. 7, *Annual Report 2008*, p. 16 and *Annual Report 2007*, p. 9

²⁰³ EU Fundamental Rights Agency, *Annual Report 2009*, p. 25

²⁰⁴ Housing (Traveller Accommodation) Act 1998

²⁰⁵ The All Ireland Traveller Health Study is the first study of Traveller health status and health needs that involves all Travellers living on the island of Ireland, North and South. It arose from a recommendation in the Department of Health and Children's National Traveller Health Strategy - 2002-2005 (Department of Health and Children, 2002). 9,056 families participated in this major comprehensive study which had a phenomenal response rate of 80%.

²⁰⁶ School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, Technical Report 1, p. 76

²⁰⁷ *Ibid*

²⁰⁸ *Ibid* at p. 82

²⁰⁹ School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, Technical Report 3, p. 39-44, Summary of Findings, p. 46

²¹⁰ Section 19F Housing (Miscellaneous Provisions) Act 2002

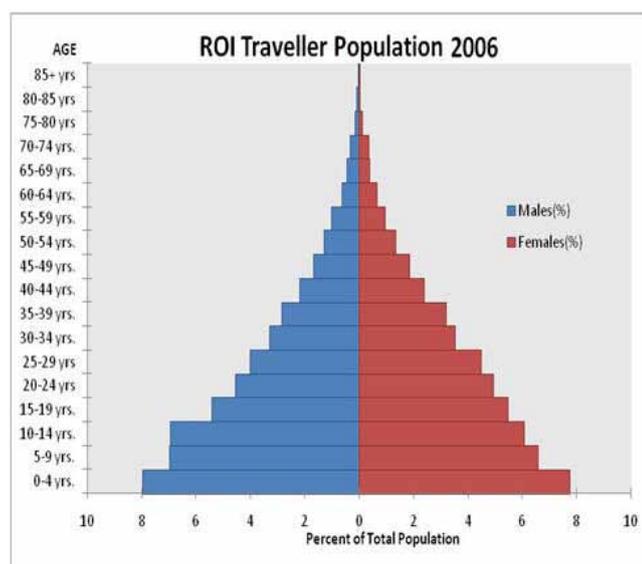
²¹¹ Section 19 Housing (Miscellaneous Provisions) Act 2002

The right to public health and medical care, social security and social services

Traveller health

A census carried out as part of a study in 2008 shows that there are 36,224 Travellers living in the Republic of Ireland.²¹² The study showed that, unlike the general population of Ireland, the population profile of the Traveller Community is akin to that of a developing country.²¹³ The study further showed that the mortality rate for male Travellers was slightly higher in 2008 (3.7 times the settled population) than in 1987 (2.2 times the general population) while there has been a major improvement in the general male population in that period. Female Travellers have seen a welcome 35% reduction in mortality over the same twenty year period compared with 33% of the general female population though the mortality rate is still three times the national figure.²¹⁴ The disparity with the general population in life expectancy stood at 15 years for men and 11 years for women Travellers in 2008. The Traveller infant mortality rate is 3.6 times that of infants nationally.²¹⁵ The suicide rate in male Travellers is 6.6 times that of the general population.²¹⁶ At 60.5 years, life expectancy for male Travellers today is the same as for males generally in 1945-47 and for female Travellers at 71.9 years; it is the same today as of women of the general population in 1960-62.²¹⁷

Table 1: Central Statistics Office, Census 2006



²¹² School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, Summary of Findings, p. 85

²¹³ See Tables 1 and 2.

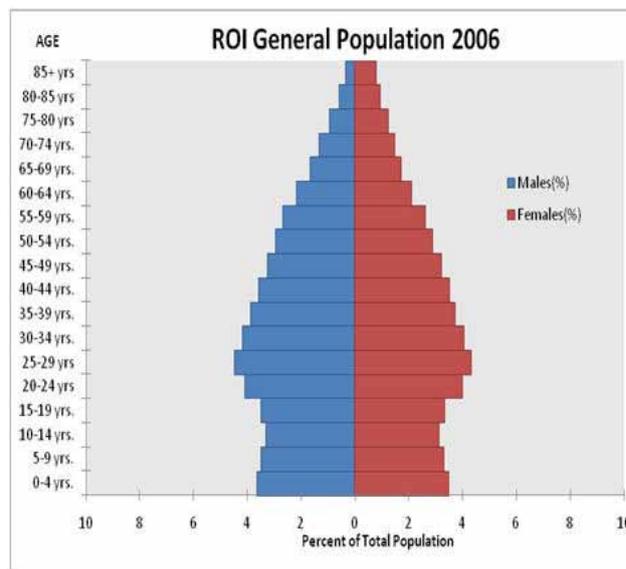
²¹⁴ School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, Summary of Findings, p. 90-91

²¹⁵ *Ibid*, p. 87

²¹⁶ *Ibid* at p. 94

²¹⁷ *Ibid* at p. 95

Table 2: All Ireland Traveller Health Study Report, (Summary of Findings) 2010²¹⁸



A quarter of Travellers were diagnosed with high cholesterol and a third had high blood pressure.²¹⁹ Almost thirty one per cent said that price is a barrier which prevents them from eating healthily.²²⁰ Sixty six per cent reported illicit drug use as a problem in the community.²²¹ Barriers in accessing adult health services included waiting lists (67.2%), embarrassment (47.8%) and lack of information (37.3%).²²²

Recommendation:

The State should address the content and recommendations of the All Ireland Traveller Health Study with a view to improving the health of all Travellers.

The health of asylum seekers in direct provision

The living conditions and isolation of asylum seekers in direct provision impacts negatively on their physical and mental state and there is significant evidence of the detrimental impact of direct provision on the emotional and mental health of women, men and children.²²³ Many asylum seekers also suffer mental health problems from their

²¹⁸ School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, Summary of Findings, p. 10

²¹⁹ School of Public Health, Physiotherapy and Population Science, University College Dublin, *All Ireland Traveller Health Study*, September 2010, Summary of Findings, p. 66

²²⁰ *Ibid* at p. 71

²²¹ *Ibid* at p. 67

²²² *Ibid* at p. 76

²²³ Health Service Executive (2008) *Consultation Report for the National Intercultural Strategy in Health*, HSE: Dublin p. 27-33. This shows the link between prolonged stays in direct provision and negative health impact and issues such as isolation, boredom, depression and a loss of self-esteem. The Health Service Executive (HSE) runs the public health services in Ireland. HSE (2008) *National Intercultural Strategy in Health, 2008-2012*, HSE: Dublin p. 42; AkiDwA, *Am Only Saying It Now: Experiences of Women Seeking Asylum in Ireland*, March 2010, section 2.1

experiences in their countries of origin.²²⁴ Other concerns such as food poverty²²⁵ and malnutrition²²⁶ as well as gender-specific issues faced by women who may have to assume new responsibilities as head of a family without a support structure which may occur in a hostile environment.²²⁷ Issues also arise relating to personal and family privacy, fear for their children growing up in direct provision and women with special needs.²²⁸ Direct provision is not well designed for, nor supportive of, children or parenting, and there are significant child protection risks associated with this accommodation. Children are also at risk of psychological trauma and behavioural problems due to the disruption and uncertainty in their developing years.²²⁹



Direct Provision Accommodation, Mosney, Co Meath. Photo: Derek Speirs

Migrant, minority ethnic or trafficked women who experience violence and harm or who may be the victims of female genital mutilation are indirectly discriminated against under the right to public health and medical care as there is a failure to legislate to provide adequate support in this regard.²³⁰

²²⁴ FLAC, *One Size Doesn't Fit All*, 2009, s. 3.9.2.1; AkiDwa, *Am Only Saying It Now: Experiences of Women Seeking Asylum in Ireland*, March 2010, section 2.1.1.1

²²⁵ Health Service Executive, *National Intercultural Strategy in Health*, 2008-2012, p.41

²²⁶ In its submission to the to the Department of Health and Children Statement of Strategy 2008-2010, the Institute of Public Health in Ireland called for the life expectancy and health status of Travellers, asylum seekers and refugees to be monitored so that targets can be set that can be reviewed and revised, 28 September, 2007. Studies of the health status of asylum seeking children have found a trend among asylum seeking parents of going hungry in order to ration limited food for their children, Fanning, B. et al. (2001), *Beyond the Pale - Asylum Seeking Children and Social Exclusion in Ireland*, Irish Refugee Council, Dublin

²²⁷ Health Service Executive (2008) *Consultation Report for the National Intercultural Strategy in Health*, HSE: Dublin p. 51-52

²²⁸ AkiDwa, *Am Only Saying It Now: Experiences of Women Seeking Asylum in Ireland*, March 2010, section 2.1.4, 2.1.2 and Case Study 2.

²²⁹ FLAC, *One Size Doesn't Fit All*, 2009, section 3.9.4

²³⁰ For example, the National Women's Health Council, *Translating Pain into Action: A Study of Gender-based Violence and Minority Ethnic Women in Ireland*, February 2009, section 10.6, recommended that a Domestic Violence Concession should be added to the Immigration, Residence and Protection Bill to allow victims of domestic violence leave to remain where their legal status is dependent on their continued relationship with their spouse. Another such concession is recommended to be added to the Habitual Residence Condition to allow victims of domestic violence to leave a violent relationship. The report further called for an "interculturally competent national strategy on all forms of GBV to be developed which would be underpinned by a conceptual framework recognising GBV as a human rights abuse.

Recommendation:

The State should increase self-catering accommodation options for asylum seekers to address food poverty and malnutrition.

More supports for asylum seekers (including preventive care) with regard to both mental and physical health should be explored.

The State should explore alternatives to direct provision in consultation with stakeholders (NGOs, residents, housing experts, etc.) in order to minimise institutionalisation and physical and mental health problems.

"How can a child reach its potential on €9.60 per week? This does not even cover the cost of after school activities, where integration happens."

Participant at Integration Centre Regional meeting Galway, Consultation for NAAR Shadow Report, 7th August 2010

Habitual Residence Condition

The Habitual Residence Condition (HRC) was introduced in May 2004 as an additional qualifying condition for certain social welfare payments. The rationale was to prevent "welfare tourism" following the enlargement of the EU.²³¹ Before the introduction of the HRC, direct provision residents were entitled to a small number of social welfare payments²³² including universal Child Benefit²³³ if they met the other qualifying criteria attached to the payment. However, the introduction of the condition effectively led to a blanket ban on granting any direct provision resident a social welfare payment which was subject to the condition.²³⁴ As direct provision residents are wholly reliant on social welfare payments, the HRC has had a negative impact on this group in spite of its original aim. Social welfare payments they receive amount to €19.10 per adult per week and €9.60 per

²³¹ For further information, see Free Legal Advice Centres, *One Size Doesn't Fit All*, 2010, s. 2.1.1

²³² For a full list of these payments see FLAC, *Direct Discrimination? An Analysis of the Scheme of Direct Provision in Ireland*, 2003

²³³ Child benefit is a state payment to a parent on a monthly basis. It is usually paid to the child's mother.

²³⁴ It is worth noting that those in receipt of a payment continued to receive it as did parents already in receipt of Child Benefit payments for one or more child before the introduction of the HRC.

child, figures which have not, at any time, been raised in line with inflation.

The State submits that direct provision is available to anyone who has applied for protection. The introduction of the HRC has created a difference in treatment between children of protection applicants and other children living in Ireland. Article 2 of the UN CRC prohibits discrimination on any grounds including the status of a child's parents but in the case of Child Benefit, children in the direct provision system are denied this former universal payment precisely because of their parents' immigration status.

In 2008 and 2009, a series of administrative appeals to the Social Welfare Appeals Office (SWAO)²³⁵ were taken.²³⁶ In four of these cases, the Social Welfare Appeals Officers held that a person in the asylum or leave to remain process could satisfy the HRC. The Department of Social and Family Affairs²³⁷ applied for a review of these decisions. In these cases, together with a further five cases in which a Social Welfare Appeals Officer had refused payment due to the applicant's status as a person in the asylum or leave to remain process, it was held that a direct provision resident could satisfy the HRC. It was further held that each case had to be decided on its own individual circumstances and there was no legislative provision to refuse a protection applicant simply on the basis that he or she was awaiting a decision on his or her status.²³⁸

However, in December 2009, in direct response to these decisions, the State amended the law to exclude anyone awaiting a decision on a claim for asylum, leave to remain or subsidiary protection from being capable of satisfying the HRC.²³⁹ This means that a person living in direct provision can no longer satisfy the HRC despite the fact that he or she may spend a number of months or even years awaiting a final decision on his or her status.²⁴⁰ A person who has been granted refugee or leave to remain status also may not satisfy the HRC because the years spent in direct provision are not counted as contributing to qualification under the condition.²⁴¹

²³⁵ The SWAO is not genuinely independent of the Department of Social Protection as Appeals Officers are appointed by the Minister for Social Protection. Further, it is a section of that department and records of decisions are held by the department and not by the office. State funded legal aid is not available to anyone appealing to the SWAO.

²³⁶ These cases were taken by the Free Legal Advice Centres.

²³⁷ Now the Department of Social Protection

²³⁸ FLAC issued a briefing note on the decisions in September 2009 which was updated in December 2009, available at <http://www.flac.ie/publications/briefing-note-on-the-habitual-residence-condition/>

²³⁹ Section 15 of the Social Welfare and Pensions (No 2) Act 2009

²⁴⁰ 2,707 (41 %) of direct provision residents have been there for more than 3 years, 1280 (19.5%) for 2 – 3 years, 1128 (17%) for 1-2 years and 995 (15%) for less than a year – Reception and Integration Agency, *Monthly Statistics Report*, October 2010, p. 20

²⁴¹ Free Legal Advice Centres, *Briefing Note on the HRC*, September 2009, p. 3

Recommendation:

Section 15 of the Social Welfare and Pensions [No. 2] Act 2009, which denies any direct provision resident the right to be recognised as habitually resident in Ireland, should be repealed. Each case should be decided on its own individual merit.

Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

Travellers and minority ethnic people in public life

No measures have been introduced to improve the representation of Travellers in political life and public affairs in Ireland and political representation of Travellers has remained very low.²⁴² This is in spite of the 2005 invitation by the Committee to the State to consider adopting affirmative action programmes to improve their political representation.²⁴³

Neither have efforts been made to increase the numbers of representatives from Black and other minority groups or women from these backgrounds.

Recommendation:

Affirmative action measures should be introduced to increase the political representation of Travellers and persons from minority ethnic groups in Irish public life.

Discrimination against Black and minority ethnic women

The State continues to fail to recognise the nexus between race and other types of discrimination such as gender discrimination. This relates not only to disaggregation of data which may have implications for service delivery but

²⁴² Report by the Council of Europe High Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland, 26-30 November 2007, para. 96

²⁴³ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, 14 April 2005, para. 22 UN Doc: CERD/C/IRL/CO/2

also to legislation and policy. This intersectionality means that Black and minority ethnic women, including Traveller women,²⁴⁴ face multiple discrimination, not only on the basis of their ethnicity or race but also because they are women. No special measures have been introduced to target their specific needs.

For example, as a consequence of the often domestic role that women play in Traveller life, Traveller women are particularly impacted by the lack of basic facilities and services detailed above.

Recommendation:

Special measures should be introduced to address the particular discrimination faced by Black and minority ethnic women.

²⁴⁴ Pavee Point Fact Sheet on Traveller Women, <http://www.paveepoint.ie/publications-gender.html>

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Immigration-related restrictions resulting in discrimination

Immigration appeals

The Committee has expressed concerns regarding the “fairly short time limit” that exists in respect of the judicial review of administrative immigration decisions, and expressed the hope that issues relating to the appeal procedures would be resolved in the framework of the Immigration and Residence legislation.²⁴⁵ However, the revised Immigration, Residence and Protection Bill 2010 does not extend the time limit for instituting a judicial review proceeding which currently stands at fourteen days.²⁴⁶ This is also in spite of a commitment to an independent appeal procedure against any immigration related decision in the Programme for Government.²⁴⁷ Where administrative review procedures are provided for, the applicant, in some circumstances, is only allowed five working days after receiving the notification of the decision to request a review.²⁴⁸ It should also be noted that a right of administrative review is not provided against all decisions, for example, there is no right of appeal or administrative review against a Ministerial determination that a marriage is a ‘marriage of convenience’.²⁴⁹ The Office of the Ombudsman has no jurisdiction to deal with complaints in respect of immigration-related decisions of the Irish Naturalisation and Immigration Service.²⁵⁰

The Office of the Ombudsman has observed that the Ombudsman (Amendment) Bill 2008 will not extend the remit of the Ombudsman to complaints regarding decisions in relation to immigration matters.²⁵¹ Moreover, the Ombudsman has expressed concern regarding the restriction of jurisdiction in this area on numerous public occasions and in several submissions.²⁵² In these various submissions, the Ombudsman has highlighted the fact that most Ombudsman Offices in Europe have jurisdiction in this area of administration and has stressed a number of points about this lacuna in jurisdiction. The Ombudsman has rightly identified that it is an area of administration which impacts very significantly on the lives of a vulnerable group of people, many of whom face significant challenges in dealing with organs of state and complex administrative processes which they know little about, while also being faced by barriers such as a lack of independent appeals.

The Office of the Ombudsman has expressed the view that the current restriction is unwarranted, particularly given that the legislation provides that an examination or investigation by the Ombudsman does not affect the validity of the action being investigated nor does it affect any power or duty of the person who took the action to take further measures in relation to the subject matter of the examination or investigation.

²⁴⁵ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, 14 April 2005, para. 24 UN Doc: CERD/C/IRL/CO/2

²⁴⁶ Section 133(2)(a) Immigration, Residence and Protection Bill 2010, the time limit remains 14 days after notification of a decision.

²⁴⁷ Section 53(5) Immigration, Residence and Protection Bill 2010 merely provides for a review procedure by an officer of the Minister in respect of some types of residence permits and provides that administrative reviews may be conducted by an officer of the same grade as the individual who made the original decision in the matter.

²⁴⁸ *Ibid*, Section 50(2)(c)

²⁴⁹ *Ibid*, Section 138

²⁵⁰ Section 5(1)(e)(i) Ombudsman Act 1980

²⁵¹ Annual Report of the Ombudsman 2007, Introduction

²⁵² See Address by Emily O'Reilly, Ombudsman at Launch by the Immigrant Council of Ireland of a Policy Paper on Family Reunification (June 2006). See also Annual Report 2007, which refers to Submissions of the Office of the Ombudsman to the Government's Proposals for an Immigration and Residence Bill and submission to the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights on the Immigration, Residence and Protection Bill 2008. The Ombudsman has also raised concerns regarding the lack of jurisdiction in a letter to Thomas Hammarberg, Council of Europe Commissioner for Human Rights (November 2007)

Recommendation:

The State should repeal the current time limits on judicial review and provide procedural safeguards, including independent appeals (also provided for in the Programme for Government) in the Immigration Residence and Protection Bill 2010

Zero tolerance to alleged fraudulent visa applications by Nigerians

Individuals from Nigeria have been singled out to face a zero-tolerance policy which applies with respect to alleged fraudulent visa applications. A fraudulent visa application includes one involving a deception such as a false document, a false statement or withheld information. A note on the Embassy of Ireland to Nigeria website states that such applications will be refused, and no appeal will be permitted.²⁵³ Furthermore, if an application is submitted as part of a group all applications in that group will be refused with no appeal. This policy is even applied in cases where documents are merely suspected of being false and are not actually proven to be false. Since 1 September 2008, where applications have been rejected on grounds of a deception, a visa ban of five years has been applied. This information is not outlined in consular information relating to Embassies of Ireland in any other countries.

Recommendation:

The principle of fair procedures should apply in all cases and given the serious nature of an allegation of fraud, a right to reasons for a decision and to some form of an administrative appeal should be allowed to those accused of submitting a fraudulent visa application from Nigeria and any other state.

Remedies for discrimination

The maximum upper limit on the amount of compensation that may be awarded in cases of discrimination, other than sex discrimination, is just €6,350 under the Equal Status Acts and €12,700 under the Employment Equality Acts.²⁵⁴ These sums are not dissuasive and do not constitute an effective remedy in a situation where the limit prevents a higher award of damages where the severity of the discrimination and loss caused would warrant such an award.

Recommendation:

Equality legislation should not cap an award of compensation so as to rule out the possibility of adequate compensation in severe cases.

Migrant women experiencing domestic abuse

Difficulties arise for migrant women who experience domestic violence because no clear remedy is available in immigration law or administrative procedures in such circumstances and permission to remain in the State is entirely discretionary. Women who are resident in Ireland as a dependent spouse of either a citizen or a legally resident foreign national may face deportation if they separate from their spouse, which may leave women in a particularly vulnerable position if they are experiencing domestic abuse. Following a separation from a spouse as a result of domestic violence, it is possible to apply to the Irish Naturalisation and Immigration Service for a residence permit to remain in the State. However, there is no public information available from Government on the procedure or the criteria used to assess applications and decisions on applications are discretionary. In addition, due to the Habitual Residence Condition, discussed above, migrant women may not be entitled to social welfare. Although Community Welfare Officers have discretion as to whether to issue a social welfare payment to migrant women who may require emergency or supplementary payments to access refuge accommodation, this discretion is not always used positively. The overrepresentation of minority ethnic women in the statistics of women who access the support services of Women's Aid highlights the additional barriers faced by migrant women in reaching safety from domestic abuse and also a lack of alternatives outside of emergency accommodation.²⁵⁵

Recommendation:

The State should provide adequate protections for all migrant women who experience domestic abuse under the Immigration, Residence and Protection Bill 2010.

²⁵³ Website of Embassy of Ireland in Nigeria, (last accessed 18 January 2011) <http://www.embassyofireland.org.ng/home/index.aspx?id=51314>

²⁵⁴ Section 27 of the Equal Status Acts 2000-2008 and section 82 of the Employment Equality Acts 1998-2008

²⁵⁵ SAFE Ireland, *Safety and Change – A national study of support needs and outcomes for women accessing refuge provision in Ireland, 2009*; National Women's Health Council, *Translating Pain into Action: A Study of Gender-based Violence and Minority Ethnic Women in Ireland*, February 2009, p. 5

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Dissemination of information relating to the Convention

The Committee encouraged the State to make its Report readily available to the public from the time of its submission and that the Committee's Observations be publicised. While the reports and Observations of the Committee are published on the State's website, no other effort is made to bring these documents to the attention of the public, to groups that are particularly affected by the subject matter involved, or to the media.

Youth

It is worth noting an inaccuracy in the State's Report at paragraph 434, where it reads that the National Youth Council of Ireland (NYCI) published a Report and Recommendations for an Intercultural Strategy for Youth Work 2008-2011 in 2008. NYCI published the results of a consultation process used in developing the Strategy. The Strategy was submitted to the Office of the Minister for children and Youth Affairs but currently remains unpublished.

National leadership in anti-discrimination

Ireland has failed to proactively portray a strong vision of an intercultural, egalitarian society in which racial discrimination is not acceptable or condoned at any level. Despite the increase in reported racial violence, the State has not responded swiftly to investigate the climate of racial hatred and discrimination out of which these incidents have emerged.

With the cuts to funding of major anti-racism bodies, came the loss of key political leadership in the anti-discrimination field such that provided by as Mr. Philip Watt, former Director of the NCCRI and Mr. Niall Crowley, former Chief Executive Officer of the Equality Authority. Both men formed part of the cornerstone of anti-discrimination movements in the State and provided key voices on these issues. Mr. Watt's position was lost with the closure of the NCCRI in December 2008. As noted above, Mr. Crowley resigned his position in protest at the budget cuts made to the Equality Authority and accused the Government of instigating the cuts to that body due to its successful and high profile work combating discrimination. The lack of a replacement for the expertise and authority of these men has left a vacuum in the high level representation of these issues in Ireland.

Recommendation:

The State should launch an internal human rights awareness programme targeted towards key decision-makers and officials tasked with law reform, policy and service management.

The State should report back to the Committee to indicate the initiatives and resources it intends to make available for the dissemination of information to the public relating to ICERD and other human rights instruments.

Appendix 1: Endorsing organisations

Africa Centre

AkiDwA

Anti Racism Network (ARN)

Cairde

Catholic Bishops' Refugee and Migrant Project

Churches' Asylum Network (CAN)

Clare Intercultural Network

Comhlámh

Crosscare

Dominican Justice Office

Doras Luimni

Educate Together

Equality & Rights Alliance

European Network Against Racism (ENAR) Ireland

Free Legal Advice Centres (FLAC)

Galway Refugee Support Group

Immigrant Council of Ireland (ICI)

Insaka-Ireland

Integration Centre

Integration Office of the Irish Inter-Church Committee

Irish National Organisation of the Unemployed (INOUE)

Irish Penal Reform Trust (IPRT)

Irish Refugee Council (IRC)

Irish Traveller Movement (ITM)

LIR Anti Racism Training and Education Programme

Mercy Justice Office

Mercy Refugee Network

Migrant Rights Centre Ireland (MRCI)

Nasc, The Irish Immigrant Support Centre

National Traveller MABS

National Women's Council of Ireland (NWCII)

National Traveller Women's Forum

National Youth Council of Ireland (NYCI)

New Communities Partnership (NCP)

Pavee Point Travellers' Centre

Presentation Justice Network

Show Racism the Red Card

Sport Against Racism Ireland (SARI)

Vincentian Refugee Centre

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Appendix 3: Glossary of Terms

Definitions taken from:

Guidelines on Anti-Racism and Intercultural Training. NCCRI, 2001

Different types of Racism

Racism can be a direct or an indirect form of discrimination and can occur at an individual, institutional and cultural level.

• Racism as a direct form of discrimination:

It is about unequal treatment. It occurs when a person is treated less favourably than another, in similar circumstances, because of his or her 'race', ethnicity, national origins, nationality or colour. Racial abuse constitutes a form of direct racism, but it can also be reflected in less immediately obvious ways, including recruitment, promotion and retention in the workplace.

• Racism as an indirect form of discrimination:

It is about practices or policies, which may seem fair at first sight, but which in effect, either intentionally or more often unintentionally results in discrimination against some minority ethnic group or groups.

Racism can occur at a number of levels, including:

- Individual racism: Individual racism is understood as attitudes, beliefs and behaviour of individuals. For instance through verbal or physical attacks.
- Institutional racism: Institutional racism happens when the practices, policies and attitudes of institutions result in the systematic exclusion of some minority ethnic groups, again either consciously or unconsciously. It is a difficult type of racism to recognise and it can manifest itself in many areas of life including employment, education, accommodation and other opportunities to which the general public usually have access. Racism is often an institutional issue.
- Cultural racism happens when the values and/or beliefs systems of one ethnic group (or so-called 'race') are considered inherently superior and the values and belief systems of minority ethnic group are considered inherently inferior.

Anti-Racism Training

Anti-racism training seeks to challenge racism and to contribute to creating the conditions within an organisation which make it more difficult for racism to exist.

Anti-racism training has three key purposes:

- To challenge and change racist attitudes, beliefs and behaviour.
- To contribute to a broader range of policies and strategies to address racism and/or promote equality within the whole organisation.
- To promote the positive inclusion of minority ethnic groups and intercultural interaction between ethnic groups based on the principles of equality, cultural awareness and respect.

Anti-racism training is not an end in itself but is a valuable tool in an overall package of measures to address racism and promote the inclusion of minority ethnic groups. The role of the trainer is to facilitate and where appropriate guide this process and to work towards not only changing attitudes, but also behaviour, practices, policy and ethos. Anti-racism training seeks to challenge racism by:

- Dismantling assumptions, stereotypes and labelling.
- Providing an awareness of the outcomes and impact of racism.
- Recognising the power relations between the dominant group and the minority ethnic groups in society.
- Changing behaviour, practices and policies within an organisation.

Anti-racism training can serve as a way of providing participants with the necessary knowledge required for working with minority ethnic groups. It can also allow participants to acquire the skills and confidence to promote and implement equality and intercultural policies.

Anti-racism training should be:

- Integrated into all relevant staff training and human resource policy.
- Provided to everyone within an organisation, whether they are directly working with 'customers' or not.
- Incorporated into strategic, customer action and business plans of institutions.
- Part of staff development.

Ethnic Group and Ethnicity

An ethnic group is a group of people sharing a collective identity based on a sense of common history and ancestry. Ethnic groups possess their own culture, customs, norms, beliefs and traditions. Other relevant characteristics shared in common could be language, geographical origin, literature, or religion. An ethnic group can be a majority or a minority group within a larger community.

All people belong to one or more ethnic groups but are often unaware of their ethnicity if they are part of the dominant ethnic group. Ethnicity is a cultural phenomenon that is distinct from the concept of 'race', which has a perceived biological basis. Culture is learned and passed on from generation to generation, culture also evolves and changes and the recognition of this fluidity is important so as not to stereotype an ethnic group into one fixed set of expressions of its cultural identity. In a society that values interculturalism, changes in the cultural practices of an ethnic group come from the experience within the ethnic group and from its interaction with other ethnic communities, as distinct from change that is forced on the ethnic group by the values and 'norms' of the dominant ethnic group in the society.

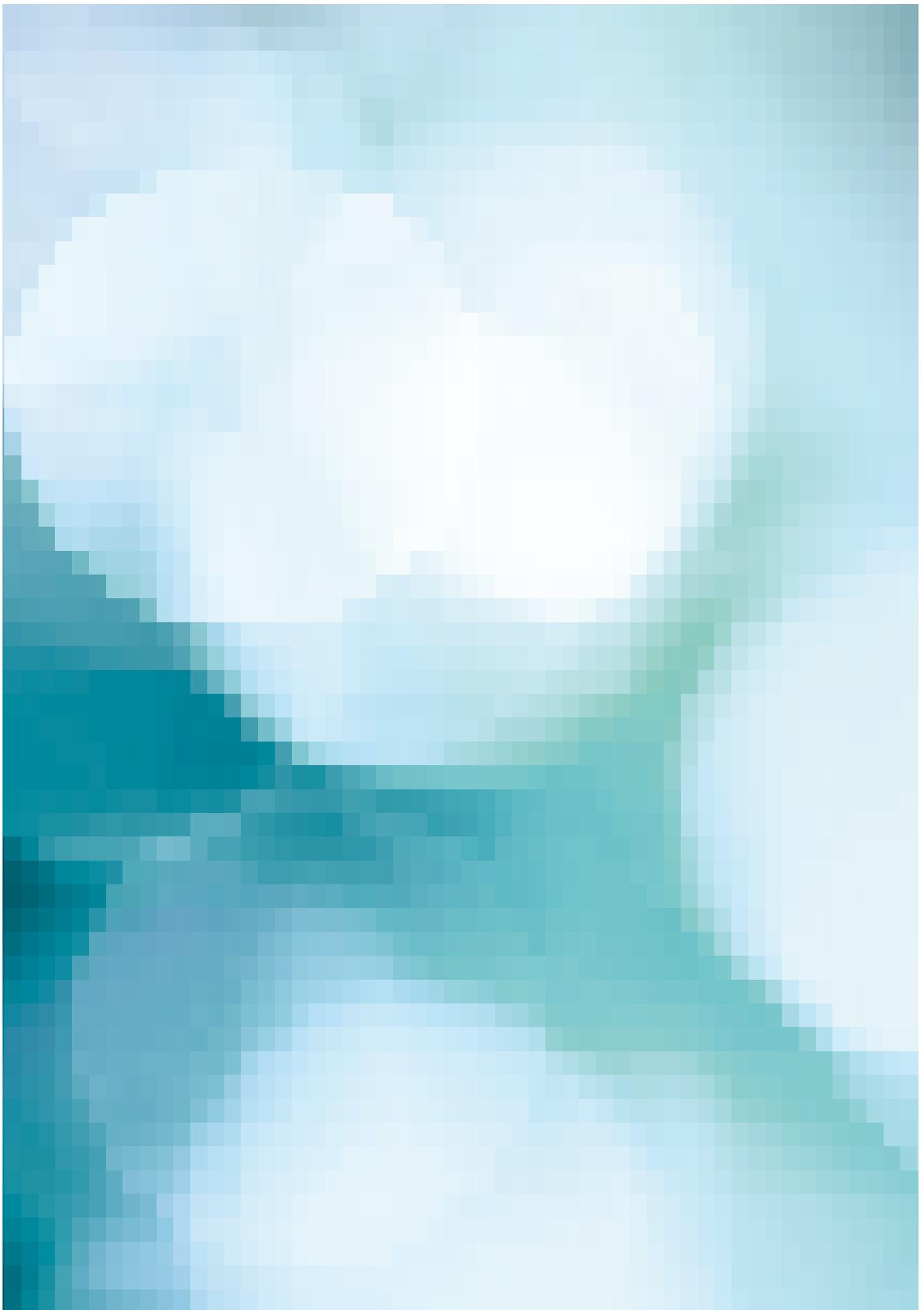
Interculturalism

Interculturalism suggests the acceptance not only of the principles of equality of rights, values and abilities but also the development of policies to promote interaction, collaboration and exchange with people of different cultures, ethnicity or religion living in the same territory. Furthermore interculturalism is an approach that sees difference as something positive that can enrich a society and recognises racism as an issue that needs to be tackled in order to create a more inclusive society. The concept of interculturalism has replaced earlier concepts of assimilation and multiculturalism.

Equality

Equality is not about treating people the same, because different groups of people have different needs; different groups, including minority ethnic groups experience discrimination in different areas of life and in different ways. Treating everyone the same can have the effect of being an indirect form of discrimination when it is clear that some groups have much greater needs than others. Equality is about securing equality of opportunity, equality of participation and equality of outcome. The Equal Status legislation (2000) prohibits discrimination on the grounds of:

- Gender
- Marital Status
- Family Status
- Sexual Orientation
- Religious Belief
- Age
- Disability
- Race
- Membership of the Traveller Community



NGO Alliance Against Racism

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