

Alternative Report on Hate Crime and Related Issues

in response to Ireland's Fifth, Sixth and Seventh
Periodic Reports to the Committee on the
Elimination of Racial Discrimination under
the United Nations International Convention
on the Elimination of All Forms of Racial
Discrimination

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on behalf of the **Coalition
Against Hate Crime (Ireland)**



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Glossary

An Garda Síochána – literally ‘the guardians of the peace’, Ireland’s national police service

ELO – Ethnic Liaison Officer within An Garda Síochána

LGBTLO – Lesbian, Gay, Bisexual, and Transgender Liaison Officer within An Garda Síochána

Gardaí – abbreviation of An Garda Síochána; also the plural of garda, when referring to more than one member of An Garda Síochána

Garda – member of An Garda Síochána (singular)

GSOC – the Garda Síochána Ombudsman Commission

1. Implementation of Previous CERD Recommendations: An Overview

We present here in table form a list of the recommendations made by the Committee in previous reporting cycles which relate to the issues addressed in this Alternative Report. The recommendations are colour coded to signify the Coalition Against Hate Crime's evidence-based evaluation of the State's progress towards their implementation. Green means that the recommendation has been fully implemented; orange indicates that the recommendation has been partially implemented, and red means that either the recommendation has not been implemented, or following a review of publicly available information, that it is not possible to determine whether the recommendation has been implemented or not.

Progress	Reporting cycle	CERD Recommendations	Outcome
	1/2	Introduce in its criminal law a provision that makes committing an offence with a racist motivation or aim an aggravating circumstance allowing for a more severe punishment.	Has not been done
	1/2	Review its security procedures and practices at entry points with a view to ensuring that they are carried out in a non-discriminatory manner	No evidence available to show that this has been done
	1/2	Include in its next periodic report data on the number of complaints against members of the police concerning discriminatory treatment as well as on the decisions adopted	Included only for Periodic Cycle 3 and 4; not included for 5-7
	1/2	Intensify its sensitization efforts among law enforcement officials	No evidence available to show that this has been done
	1/2	Setting up of an effective monitoring mechanism to carry out investigations into allegations of racially motivated police misconduct	No evidence available to show that this has been done
	3/4	Adopt legislation that prohibits any form of racial profiling	Has not been done
	3/4	Strengthen its efforts to promote the humane treatment of migrants and people of non-Irish origin by the <i>Garda Síochána</i> (Police) and other law enforcement personnel in accordance with international human rights law	No evidence available to show that this has been done
	3/4	Establish appropriate mechanisms to encourage the reporting of racist incidents and crimes	No evidence available to show that this has been done
	3/4	Racist motivation to be consistently taken into account as an aggravating factor in sentencing	Research has shown that this does not happen
	3/4	Programmes of professional training and development sensitize the judiciary to the racial dimensions of crime	No evidence available to show that this has been done
	3/4	Investigate the reports of 'knife stabbings' against people mainly from sub-Saharan Africa and ensure that the perpetrators are prosecuted and when convicted, punished with appropriate penalties	No evidence provided in current cycle that this was done
	3/4	Encourages the State party to compile disaggregated statistical data on [knife stabbing incidents], which must be included in its next periodic report	Has not been done
	3/4	Develop a coordinated work plan with the Irish Human Rights Commission (IHRC) that allows the IHRC to raise awareness and provide human rights training to all civil servants including the <i>Garda Síochána</i> (Police) and the judiciary	No evidence available to show that this has been done with reference to An Garda Síochána and the judiciary. The Prison Service and Probation Service worked with IHREC to develop pilot projects on implementing the public sector duty

2. Introduction

2.1 The Coalition Against Hate Crime (Ireland)

The Coalition Against Hate Crime (Ireland) (“the Coalition”) is comprised of fifteen civil society organisations and an academic unit. The constituent members are:

- Age Action Ireland
- Doras Luimní
- Hate and Hostility Research Group, University of Limerick
- Independent Living Movement Ireland
- Immigrant Council of Ireland
- INAR, the Irish Network Against Racism
- Inclusion Ireland
- Irish Council for Civil Liberties
- Irish Traveller Movement
- LGBT Travellers
- National LGBT Federation
- Nasc, the Migrant and Refugee Rights Centre
- National Youth Council of Ireland
- Pavee Point Traveller and Roma Centre
- Sports Against Racism Ireland
- Transgender Equality Network Ireland

The purpose of the Coalition is to promote meaningful reform of law, policy and practice as it relates to hate crime in Ireland including, but not limited to, hate crime legislation; improving data collection in the reporting and recording of hate crime and hate incidents; education; training and awareness raising activities; hate speech; cyber hate crime; supporting victims of hate crime and ensuring effective implementation of the Victims’ Directive. Thus, the remit of the Coalition goes beyond hate crime, but incorporates a multifaceted and multi-layered approach to addressing identity-based hostility as it manifests in an Irish context, State responses to same, and impacts on individuals’ access to justice.

The Coalition is not limited to addressing racist hate, but rather includes organisations representing commonly targeted groups including minority ethnic groups such as Traveller and Roma communities, LGBTQI+ communities, disabled people, and others, as well as academics and researchers concerned with cross-community experiences of, and responses to, hate crime. In this context, the Coalition has the capacity to explore shared and intersectional experiences of hate crime, and to act as a unified voice on the issue of hate crime and related manifestations of hostility in an Irish context.

2.2 The Hate and Hostility Research Group

This report was written by Jennifer Schweppe and Amanda Haynes of the Hate and Hostility Research Group at the University of Limerick on behalf of the Coalition Against Hate Crime (Ireland). The Hate and Hostility Research Group is the only research group in Ireland dedicated to the study of hate crime. Conducting translational research on hostility towards difference, it is an

interdisciplinary group led by Dr Amanda Haynes of the Department of Sociology and Dr Jennifer Scheppe from the School of Law. Members of the HHRG have been asked to present before the Irish Parliament, the European Commission Against Racism and Intolerance, and the European High Level Group on combating racism, xenophobia and other forms of intolerance.

2.3 Explaining the need for an Alternative Report on hate crime and related issues

The Coalition is fully aware that there are a number of pressing themes on which the State should be examined as part of the fifth, sixth, and seventh monitoring cycles. The theme of primary importance, we believe, is the degrading and inhumane system of Direct Provision which operates in the country. However, we also believe that other themes, such as activating the rights of the Traveller and Roma communities, the impact on minorities of the denominational nature of the vast majority of state-funded schools, and the fact that no independent organisation has been introduced to replace the National Consultative Committee on Racism and Interculturalism, could all also usefully be addressed.

That said, we would also suggest that hate crime, and issues related to hate crime, are deserving of priority attention during the course of the Committee hearings. Hate crime impacts on the daily lives of people in Ireland. EU Fundamental Rights Agency data indicates that Ireland has some of the highest rates of hate crime in Europe among some of the most commonly targeted groups. As we will show, data from the 2016 Survey of Minorities and Discrimination in the EU shows that Ireland ranks (joint) highest among 12 EU member States surveyed with respect to the percentage of respondents from a Sub-Saharan African background reporting that they had experienced physical attacks due to ethnic or immigrant background in the past five years. Ireland ranks highest among the 12 EU Member States surveyed in respect to the percentage of respondents from a sub-Saharan background reporting having experienced 6 or more physical attacks due to their ethnic or immigrant background in the 5 years preceding the survey (21% compared to the 12 country group average of 9%). In an earlier FRA study, the EU LGBT survey of 2012, Ireland ranked second with respect to the percentage of trans respondents who reported having been physically or sexually assaulted or threatened with violence because of their identity in the 12 month period prior to the survey, (13% of trans respondents in Ireland compared to the 28 country group average of 8%).

The current approach of the Irish criminal justice system has been described by globally renowned scholar Barbara Perry as a legislative ‘permission to hate’¹. This has contributed to a situation whereby the hate element of a crime has been evidenced by researchers as being ‘disappeared’ from criminal proceedings throughout the process.² In spite of these lacunae, the State has had the current legislative regime - which criminalises incitement to hatred, but does not address hate crime - under review for nearly two decades without taking action. The ongoing absence of a legislative framework, although recommended by CERD in its first set of Concluding Observations on Ireland in 2005, impacts on minority communities’ access to justice, and may be related to the demonstrably lower levels of trust of minority groups in the criminal justice process in Ireland. In addition to examining hate crime and incitement to hatred, we look at two other associated and inter-related topics, racial profiling, and training in the criminal justice process.

¹ Barbara Perry, ‘Legislating Hate in Ireland: The View from Here’ in Amanda Haynes, Jennifer Scheppe and Seamus Taylor (eds) *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* (Palgrave Macmillan 2016) 76.

² Amanda Haynes and Jennifer Scheppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017).

The evidence presented herein will demonstrate that the current legislative provisions and policing policies regarding hate crime and related issues in Ireland are inadequate and unsustainable. For this reason, the Coalition thought it would be useful to highlight this topic in a separate and discrete Alternative Report to the Committee. We hope this Report is of use to the Committee in its deliberations.

2.4 The Alternative Report: A methodology

In responding to the State Report, we have relied on a number of sources, predominantly published primary research which has been carried out by members of the Coalition on the manner in which hate crime and related issues are addressed in an Irish context. This research has been funded variously by Coalition members, the Irish Research Council, and the European Union. The Committee will also be aware of a number of reports published by the European Union Fundamental Rights Agency which seek to document and explore the experiences of members of minority communities in jurisdictions across the European Union. In this regard, we refer particularly to the EU MIDIS II report.

2.5 A note on language

In authoring this Alternative Report, we have found it necessary, in some instances, to include text which reproduces slurs. In reporting this material, we have chosen to asterisk such slurs. We have only reproduced published text which includes slurs where it was required to substantiate an important point, and in such cases have quoted the content as it appeared in the original.

3. Issue One:

Hate Speech and the Prohibition of Incitement to Hatred Act 1989

3.1 Section Highlights

- It is not clear how many convictions there have been under the Act.
- Civil society organisations, academics and practitioners have described the 1989 Act as ineffective.
- The Irish Law Reform Commission considers the Act to be ineffectual in combating online hate speech.
- According to the State in its reports to CERD, the Act has been under ongoing review for almost two decades.
- A recently announced public consultation on the 1989 Act mischaracterises its aims as addressing hate speech and asks the general population their views on protecting the rights of minority populations.

3.2 Summary Recommendations

- Publish the outcomes of the Department of Justice and Equality’s review of the 1989 Act as a matter of urgency.
- Conduct a review to consider incorporating the Optional Protocol to the Convention on Cybercrime into domestic law.
- Publish the number of arrests, number of prosecutions, and outcomes of prosecutions under the 1989 Act annually.
- Provide training on the 1989 Act across the criminal justice sector.

3.3 Ireland’s State Party Report

In Ireland’s Combined 5th, 6th, and 7th Periodic Report, it is stated that since 2010, there have been 12 cases prosecuted under the 1989 Act, resulting in two sentences of imprisonment, with a further two cases awaiting trial. The outcome of the remaining eight prosecutions is not stated. Despite stating in its 2011 State Report that the review of the 1989 Act was completed in 2008, the current State Report goes on:

“[T]he Department of Justice and Equality is undertaking a legislative review of the law relating to hate crime and incitement to hatred in order to ensure the best possible public policy response to racism and xenophobia in the context of Ireland’s integration policy, the EU Framework Decision 2008/913/JHA on Combating Racism and Xenophobia, and

legislative developments in other jurisdictions. It is anticipated that the review will be completed by the end of 2018... ”³

Notably, references to the review including the Optional Protocol are absent from the 2018 Report.

3.4 Coalition Against Hate Crime (Ireland) Response

It is commendable that the State has committed to reviewing the Prohibition of Incitement to Hatred Act 1989. However, this review has now been underway for more than eighteen years, and the State has once again failed to meet its stated deadline of finalising the review by the end of 2018. Research has been published by academics and practitioners on the 1989 Act⁴, a review of which has been published and provided to the Department⁵. In the context of the inclusion of the Optional Protocol to the Convention on Cybercrime, the Law Reform Commission has observed that the Act has proven particularly ineffectual in combating online hate speech⁶.

Furthermore, according to statistics published by the Courts Service of Ireland, there have been 44 prosecutions from which there have been only five convictions under the Act between 1989 and 2017⁷. In the initial and second periodic reports from Ireland, it was reported that there were seven convictions in 2000 and 2001 alone, and two sentences of imprisonment since 2010. Whilst some of these convictions may have been overturned on appeal (and we are indeed aware of at least one case in which this happened)⁸, reliable data are required on outcomes of prosecutions under the Act.

Despite the fact that the 1989 Act has been under review for 20 years, the Department of Justice recently announced a public consultation on the Act. The announcement, however, mischaracterised the consultation as being concerned with "hate speech" rather than incitement to hatred. Indeed, the survey instrument, the main tool by which the opinions of the general public will be gathered, does not explain the difference between the concepts and they are conflated throughout the consultation document, for example, in the linked questions "Is it necessary or right to place limits on freedom of expression by making some forms of hate speech a crime? If so, what protections do you think the law on incitement to hatred should offer?" Further, the Minister for Justice has stated that the purpose of the consultation is to ask people to consider their experiences of hate speech, and "what kinds of protections the law needs to provide". The consultation document fails to clarify the extent to which popular opinion evinced through this survey will impact on the review of the legislation and the considerations of the Department, or

³ Committee on the Elimination of Racial Discrimination, *Combined Fifth to Ninth Periodic Reports Submitted By Ireland Under Article 9 of the Convention, Due in 2014 CERD/C/IRL/5-9* (United Nations 2018), para 68

⁴ Conor Keogh, 'The Prohibition of Incitement to Hatred Act 1989 – A Paper Tiger?' (2001) 6(3) *Bar Review* 178; Tarlach McGonagle, 'Wresting (Racial) Equality from Tolerance of Hate Speech' (2001) 23(1) *Dublin University Law Journal* 21; Tom Daly, 'Reform of the Prohibition of Incitement to Hatred Act 1989 – Part 1' (2007) 17(3) *Irish Criminal Law Journal* 16; Tom Daly, 'Reform of the Prohibition of Incitement to Hatred Act 1989 – Part II' (2007) 17(4) *Irish Criminal Law Journal* 16; Jennifer Scheppe and Dermot Walsh, *Combating Racism and Xenophobia through the Criminal Law* (NCCRI 2008); *Seamus Taylor, Responding to Racist Incidents and Crime: An Issues Paper for the Equality Authority* (Equality Authority 2011).

⁵ Amanda Haynes and Jennifer Scheppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL, 2018).

⁶ Law Reform Commission, *Report on Harmful Communications and Digital Safety* (LRC 116, 2016) at para 2.245, 2.246. That said, Kane and O'Moore describe the Act as a 'technologically neutral' one, as appropriate to online expressions of hatred as it is to those occurring offline. Sinead Kane and Mona O'Moore, 'The EU Directive for Victims of Crime: how it applies to victims of bullying' (2013) 23(3) *Irish Criminal Law Journal* 83.

⁷ Conor Gallagher, 'Courts service reveals five convictions for hate crime since 1989' *The Irish Times* (Dublin, 19 July 2017).

⁸ See, for example, 'The O'Grady case', discussed by Scheppe and Walsh: Jennifer Scheppe and Dermot Walsh, *Combating Racism and Xenophobia through the Criminal Law* (NCCRI 2008), 61.

who sits on the review team tasked with analysing the responses to the consultation. Research on the impacts of the marriage equality referendum campaign in Ireland shows us that putting the rights of minorities up for public debate (even where the majority affirms those rights) can be harmful to minorities,⁹ causing distress, and can create a platform for the expression of prejudice.

Case Study: The Traveller Facebook Case¹

In 2011, an individual was prosecuted under the Prohibition of Incitement to Hatred Act 1989. Patrick Kissane, a barman from Co Kerry created a page on the social media site, Facebook. The page was entitled, “Promote the use of Knacker Babies for shark bait.”² Having used a racist slur to describe infants of Traveller ethnicity, the page suggested that Traveller babies should be used as shark bait, and to feed zoo animals. It also suggested that Travellers could be used as subjects on which to test new drugs. He invited three friends to join the page, and membership grew to 644. He was asked by Facebook to remove the page.

Two members of the Traveller community made a complaint to their local Garda (Police) Station, as they were “afraid for [their] own safety and for the safety of [their] children”, though they said to the judge that they had not been personally subjected to any hatred directly as a result of the creation of the page.

The case appears to have been the first time in which a prosecution was taken in relation to online material under the Prohibition of Incitement to Hatred Act 1989. Mr Kissane admitted creating the page, but contested the charge under the Act.

Judge O’Connor said the once-off insertion of material, while “obnoxious, revolting and insulting”, could not be deemed to be an incitement to hatred. The Judge apparently held that a negative encounter with individuals of Traveller ethnicity, which prompted Mr Kissane to create the page, was an important element of his defence. Further, the fact that he had not contributed to the page after he created it, was taken into account. Judge O’Connor ultimately held that there was reasonable doubt as to whether there had been intent to incite hatred against the Traveller community, and the case resulted in the charges being dismissed.

¹ This case study was developed by reference to the following sources: John O’Mahony, ‘Man cleared of online hatred against Travellers’ Irish Examiner (Cork, 1 October 2011); Irish Traveller Movement, ‘Press Release: Facebook case (related to Travellers) Dismissed under the Prohibition of Incitement to Hatred Act 1989 (Irish Traveller Movement 2011); Public Interest Law Alliance, ‘Irish District Court dismisses Traveller Facebook hate speech case’ (PILA 2011); Terry Gorry, ‘The Facebook Traveller Case – Implications for Social Media and Freedom of Speech’ (Terry Gorry and Partners, 30 November 2011); Law Reform Commission, Report on Harmful Communications and Digital Safety (LRC 116, 2016).

² The word ‘Kn**ker’ is a racist slur referencing Traveller identity.

⁹ Sharon Dane, Elizabeth Short, and Grainne Healy, “Swimming with sharks”: the negative social and psychological impacts of Ireland’s marriage equality referendum ‘NO’ campaign (School of Psychology Publications, The University of Queensland, 2016).

3.5 Coalition Against Hate Crime (Ireland) Recommendations

- *The Coalition recommends that the review of the 1989 Act should explicitly include reference to online incitement to hatred, and a consideration of the requirements of the Optional Protocol to the Convention on Cybercrime.*
- *The Coalition recommends that accurate data on the outcomes of prosecutions under the 1989 Act, including the protected grounds against which hatred was alleged to have been incited, number of convictions, and sentencing outcomes should be published annually. The first publication of such data should be retrospective.*
- *The Coalition recommends that training on the limitations and potentialities of the 1989 Act should be provided across the criminal justice sector.*

4. Issue Two: Hate crime

4.1 Section Highlights

- Data collected by third party hate crime monitoring mechanisms between 2014 and 2016, indicates that the majority of victims of hate crime in Ireland do not report to the police.
- Research shows that the hate element of a crime is often ‘disappeared’ through the criminal process due to a lack of training and the absence of legislation.
- Research shows that there is an absence of consistency in the way in which hate crimes are prosecuted, the approach taken regarding evidence, and/or the sentence imposed.
- There is no evidence to support the statement by the Irish state that “aggravating factors *are taken into account* at the time of sentencing *in all cases*” (emphasis added).
- According to the State in its reports to CERD, hate crime legislation has also been under ongoing review for almost two decades.

4.2 Summary Recommendations

- Publication of the Department of Justice and Equality legislative review of the law relating to hate crime and the introduction of hate crime legislation.
- Production of an operational protocol for recording crimes with a bias motivation, including definitions of recording categories and a clear explanation of the perception test.
- An immigration firewall to facilitate the reporting of crimes of all undocumented and migrant victims.
- Production and publication of guidelines for prosecuting and sentencing hate crime.
- Training for all criminal justice professionals involved in addressing hate crime.
- The establishment of specialist hate crime police and prosecution units.
- Production of an operational protocol for tracking individual cases associated with a bias motivation through the criminal justice process.
- The annual publication of data on police recorded hate crime, disaggregated by motivation, offence and year at a minimum.
- The publication of annual data on the numbers of detections, prosecutions, and prosecution outcomes for individual categories of crimes with a bias motivation.

4.3 State Party’s Report 2018

In Ireland’s Combined 5th, 6th, and 7th Periodic Report, Ireland states that where an individual has been convicted for a racist crime, the trial judge can take that motivation into account at

sentencing. Indeed, the Report confidently states, “[while aggravating factors are taken into account at the time of sentencing in all cases, statistical information on these factors is not kept by the Courts Service, just the final sentence.”¹⁰

It also states that Ireland is “unaware of any basis for the suggestion that there is a specific problem of stabbings involving people from Sub-Saharan Africa.”¹¹ Despite being asked to do so by the Committee, the State did not present any evidence that it had investigated this issue, nor did it present any data on the issue.

The Report states that Ireland “is confident that it is meeting its obligations in relation to public safety and dealing effectively with hate crime.”¹² Despite this confidence, it goes on to state that the Department of Justice and Equality is undertaking a legislative review of the law relating to hate crime which it expected to publish before the end of 2018.¹³ Further, it provides that the National Migrant Integration Strategy contains a commitment to reviewing the law in this regard.

Finally, it notes that a formal notice of Ireland’s compliance with the EU Framework Decision 2008/913/JHA on Combating Racism and Xenophobia was submitted in November 2010, followed by a letter in April 2016, and no further response has been received.

4.4 Coalition Against Hate Crime (Ireland) Response

Reporting and recording hate crime

In spite of the absence of hate crime offences, categories of discriminatory motives are recorded on the computer-based national incident recording system, PULSE. In late 2015, the police recorded categories of discriminatory motivation (bias motivations) were expanded from five to eleven, and consideration of whether or not a crime was associated with a hate motivation was made mandatory.

The changes introduced in 2015 had an impact on the number of crimes recorded as having a discriminatory motive by An Garda Síochána. Whilst in 2014, only 114 such crimes were recorded, this increased to 308 in 2016.¹⁴

Ageism	38
Anti-Disability	12
Anti-Muslim	13
Anti-Roma	*15
Antisemitism	*

¹⁰ Ibid, para 67.

¹¹ Ibid.

¹² Ibid, para 68.

¹³ Ibid. This report remains unpublished.

¹⁴ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017)

¹⁵ * Indicates that there were between 1-3 crimes recorded in this category, but that the number of cases did not meet the Central Statistics Office’s minimum frequency rules for the purposes of reporting. Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017), 115.

Anti-Traveller	25
Gender related	31
Homophobia	28
Racism	152
Sectarianism	*
Transphobia	*
Total	308

Nonetheless, the former Head of Analysis of An Garda Síochána, accepted that data on hate crime in Ireland is “not a reflection of the trends, extent, depth of hate crime in Ireland”¹⁶. The Central Statistics Office’s 2017 review of the quality of recorded crime statistics¹⁷ included two analyses relating to the recording of hate crime in Ireland. In the first instance, the Central Statistics Office carried out an analysis of 145 incidents, which were identified as involving a discriminatory motivation following keyword searches. In respect to 27 per cent of this sample, the CSO stated that the discriminatory motivation had not been recorded by the police on PULSE, the national crime incident database. In the second instance, the Central Statistics Office analysed a sample of 100 incidents which had been recorded as associated with a discriminatory motivation. The CSO in this case stated that there was some evidence of a discriminatory motivation having been recorded without apparent justification, particularly in relation to cases of sexual assault or crimes against older persons.

The Central Statistics Office has recommended a number of measures to address deficiencies in crime data, including the production of a publicly available crime recording rules document¹⁸. The absence of such rules is compounded by the fact that there are no organisational definitions of any of the eleven recording categories, no protocol for determining whether a crime should be recorded as associated with a discriminatory motivation nor any training on the circumstances in which such recording categories should be used¹⁹. There is no recording category for anti-religious hate crime which is neither anti-Muslim or antisemitic, and it is also not possible to disaggregate crimes which are motivated by prejudice against an ethnic group which is not Traveller or Roma. Whilst An Garda Síochána officially uses the perception test (also known as the Macpherson test), research has established that - in the absence of operational guidance or training - there is little understanding among the members of An Garda Síochána of either the Macpherson test, or the categories of discriminatory motivation available on PULSE²⁰. While the new Garda Síochána Diversity and Inclusion Strategy commits to developing such policies, and delivering them to all Gardaí and Garda staff, there is no stated commitment to providing the necessary training to accompany these policies. Further, despite international evidence pointing

¹⁶ Amanda Haynes, Jennifer Scheppe, James Carr, Niamh Carmody and Shannen Enright, *Out of the Shadows: Legislating for Hate Crime in Ireland – Preliminary Findings* (ICCL 2015), 15.

¹⁷ Central Statistics Office, *Review of the Quality of Recorded Crime Statistics: Based on 2017 data provided by An Garda Síochána* (CSO 2018)

¹⁸ Ibid.

¹⁹ Amanda Haynes and Jennifer Scheppe, ‘Recording Hate Crime: Technical Solutions in a Training Vacuum’ (2018) *European Law Enforcement Research Bulletin*.

²⁰ Amanda Haynes and Jennifer Scheppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017), 110-129.

to the efficacy and desirability of specialist hate crime units²¹, there is no commitment to establishing such units in the Strategy. As we will see, in fact the Strategy seeks to eliminate any such specialism in An Garda Síochána.

The quality issues identified by the Central Statistics Office have resulted in data not being published, or data being published in a limited manner. For example, in the single year for which data were made available by the CSO to researchers following the expansion to eleven recording categories, (2016), data were disaggregated only by year and discriminatory motivation. In previous years, data had been disaggregated by offence type, at least for racist crimes, and made available through the Office for the Promotion of Migrant Integration.²² However, even data which had been published on that website are now no longer available. The Garda Síochána Annual Report for 2017 published total figures for crimes with a discriminatory motivation but with no disaggregation of the data either by discriminatory motivation or offence type.²³

The State asserts to CERD in 2018 that the Court Service either cannot or will not produce data on whether or not a racist motivation was taken into account as an aggravating factor at the point of sentencing.²⁴ However, in its third and fourth periodic report, it provided data to CERD (cited again here) which sets out the path of racist hate crimes through the process.

Yearly national reported racially motivated incidents – 2003–2008

Year	2003	2004	2005	2006	2007	2008
Number of cases recorded by police (reported)	64	68	100	172	214	172
Number of cases (detected)	29	28	56	91	135	98
Number of cases prosecuted (proceedings initiated)	21	16	47	70	85	50
Number of cases in which perpetrators were sentenced (convictions)	4	9	20	26	29	3

In its report to the Office for Democratic Institutions and Human Rights in 2013 (though only for that year) the State asserted that of the 109 cases of hate crime occurring across all categories of discriminatory motivation recorded by the police, a sentence was imposed in 12 of those cases. Thus, it appears that the State is capable of generating data on the numbers of detections, prosecutions, and prosecution outcomes for individual categories of crimes with discriminatory motivations, but that it generally does not publish such data.²⁵ We further note that, when researchers sought to determine which body provided ODIHR with the data, neither the Central Statistics Office nor the Department of Justice could identify the source of the data. Since 2015, no official data has been made available to ODIHR regarding the number of hate crimes recorded by police.

²¹ See, for example, European Commission, 'Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law' [COM(2014) 27 final of 27.1.2014].

²² Ibid 115.

²³ An Garda Síochána, *Annual Report 2017* (An Garda Síochána. 2017).

²⁴ Committee on the Elimination of Racial Discrimination, *Combined Fifth to Ninth Periodic Reports Submitted By Ireland Under Article 9 of the Convention, Due in 2014 CERD/C/IRL/5-9* (United Nations. 2018), para 67.

²⁵ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017).

The State's ad hoc approach to the production of data on the progress of cases reflects the lack of an established protocol for routinely tracking individual cases associated with a discriminatory motivation through the criminal justice process. This gap in operational procedures for tracking hate crime has a number of implications:

- At the point of investigation, where the recording officer fails to recognise and flag the discriminatory motivation (or refuses to do so despite the assertion of the victim or witness), the investigating officer may fail to investigate the hate element of a crime comprehensively or quickly enough, meaning that the opportunity to evidence the hate element is lost.
- At the point of prosecution, breakdowns in the communication of the hate element can lead to a failure on the part of prosecutors to recognise and present the hate element in court.
- At sentencing stage, it is not possible to identify recidivistic behaviour on the part of offenders, which might impact the severity of the penalty imposed, or equally the direction of the offender to rehabilitative outcomes.
- Neither the Prison Service nor the Probation Service will be aware of recidivistic hate motivated offending behaviours, and thus will be unable to address the potential for further recidivism on this basis.²⁶

At a policy level, the failure to routinely collect and publish disaggregated data on the progress of crimes with a discriminatory motivation through the criminal justice process means that state actors cannot draw upon official statistics in:

- Monitoring levels of victimisation and reporting among specific communities;
- Monitoring changes in offence types associated with a hate element;
- Monitoring changes in the geographic distribution of hate crimes;
- Quantifying the presence of the hate element at key points in the criminal justice process and monitoring progress in addressing the fall out at these points;
- Establishing the size of the 'justice gap', i.e. "the number of crimes that fall out of the system from police recorded hate crime through to court conviction and declared penalty uplift."²⁷

This in turn limits the capacity of state actors to make evidence informed decisions regarding resource allocation, policy development and operational procedures with respect to addressing hate crime. Finally, it limits civil society actors' and intergovernmental bodies' capacity to monitor the efficacy of the state in addressing hate crime through the law and in meeting EU-level objectives and directives. We note that published data on police recorded crimes with a discriminatory motivation is also necessary to monitor gaps between reports to civil society organisations and police reporting.

The An Garda Síochána Diversity and Integration Strategy 2019-2021 aims to address some of the shortcomings evidenced here.²⁸ Whilst elements of the Strategy are to be welcomed, there are also deficiencies in this Strategy in the context of the issues highlighted. For example, it is useful that a new definition of hate crime has been adopted by the service, which is inclusive across a range of characteristics, and that there is now a definition of non-crime hate incidents.

²⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017); Jennifer Schweppe, Amanda Haynes and Mark Walters, *Lifecycle of a Hate Crime: Comparative Report* (ICCL 2018).

²⁷ Jennifer Schweppe, Amanda Haynes and Mark Walters, *Lifecycle of a Hate Crime: Comparative Report* (ICCL 2018) 101-2.

²⁸ An Garda Síochána, *Diversity & Integration Strategy 2019-2021* (An Garda Síochána 2019).

However, there is no definition of race or ethnicity in the Strategy, except to highlight that the term ethnicity is inclusive of Traveller and Roma populations. Thus, there is no clarity as to whether the concepts of race and ethnicity should be interpreted as inclusive of other categories, for example, colour, national origin, and nationality. Further, while the Strategy states that there is an objective of collecting and producing data in an accurate, timely, complete and accountable manner, there is no commitment to publishing disaggregated data, nor any timeline for meeting this objective.

Prevalence of hate crime in Ireland against members of racialised, ethnic, and religious communities

In the absence of prosecution and sentencing data, and reliable data on recorded hate crime from the State, we need to draw on different sources to determine the prevalence of hate crime in an Irish context. It is important to note at the outset that there is no single source which comprehensively documents rates of hate crime in racialised, ethnic and religious communities.²⁹ However, the data that we do have provides worrying insights.

The EU MIDIS II report published in December 2017 by the EU Fundamental Rights Agency (FRA), reports on the experiences of respondents with a sub-Saharan African background with respect to harassment and violence. The experiences of those who responded to the survey reflect high levels of hate crime. For example, 21% of respondents from a sub-Saharan African background stated that they had experienced 6 or more physical attacks due to their immigrant or ethnic background in the 5 years preceding the survey, compared to the group average of 9%, the highest proportion across twelve states surveyed. Nineteen per cent of respondents, compared to the group average of 8%, had been threatened with violence in person due to their ethnic or immigrant background in the last five years, the second highest figure across participating states. Thirteen per cent of respondents, compared to the group average of 4%, had experienced physical attacks due to their ethnic or immigrant background, the joint highest across the states surveyed.

The EU MIDIS II survey also explored the experiences of women with a sub-Saharan African background who usually wear a headscarf or a niqab in public. Of the respondents to the Irish survey, 46%, compared to the group average of 28%, reported that they had experienced harassment due to wearing a headscarf or niqab in the past 12 months, the third highest percentage across the group. Three per cent of that cohort of respondents had experienced a physical attack, as compared to the group average of 2%, the fifth highest percentage across the group.

Further research undertaken with Muslim communities in Ireland provides insights on the experiences of anti-Muslim hostility in the Irish context.³⁰ Based on a sample of 323 Muslim men and women across Ireland, one-in-three participants reported experiencing hostility that was specifically targeted at them on the basis of being identified as Muslim.³¹ A considerable number of those respondents who had experienced anti-Muslim hostility – 22% – reported experiences of

²⁹ For example, Muslims are exposed to anti-Muslim racism on the basis that they form a racialised community. Indeed, while the terms anti-Muslim racism are often used interchangeably, the UK All Party Parliamentary Group for British Muslims has recently defined Islamophobia as a form of racism. For more see: All Party Parliamentary Group for British Muslims <https://static1.squarespace.com/static/599c3d2febbd1a90cfd8a9/t/5bfd1ea3352f531a6170ceee/1543315109493/Islamophobia+Defined.pdf> [accessed: 12 February 2019]; James Carr, *Experiences of Islamophobia: Living with racism in the neoliberal era* (Routledge 2016).

³⁰ James Carr, *Experiences of Islamophobia: Living with racism in the neoliberal era* (Routledge 2016).

³¹ It is important to note that participants were specifically asked if they believed they were targeted on the basis of their Muslimness. Hostility as defined in the research referred to above is defined as: physical assault, theft, graffiti (home or work), damage to property, verbal assault, threats or harassment.

physical assault ranging from hijabs being torn from heads, people being punched and shoved, having bottles thrown at them, to being spat at. In terms of intersectionality of gender and racialised identities, in this study women, in particular those who wore hijab, experienced far greater rates of anti-Muslim hostility (44%) than their male counterparts (28%).

Civil society organisations operating third party reporting mechanisms also receive substantial numbers of reports of hate incidents. The iReport.ie racist incident reporting platform, managed by INAR (previously ENAR Ireland) on behalf of its 87 member organisations uses a self-reporting surveying methodology. The following annual Hate Crime data has been taken from iReport.ie data for submission to ENAR Shadow Reports and to the OSCE ODIHR:

	Racism and Xenophobia	Anti-Semitism	Anti-Muslim	Roma, Traveller and Sinti	Total
2017	110	0	22	8	140
2016	75	8	20	12	115
2015	92	0	10	6	108
2014 (Aug-Dec only)	26	1	7	3	37

Hate Crime Legislation

In its Concluding Observations to the third and fourth periodic report, CERD expressed a concern “that racist motivation is not consistently taken into account by judges in sentencing for crime.” This concern has been confirmed by research and now has a solid evidence base in two reports: *Out of the Shadows: Legislating for Hate Crime in Ireland – Preliminary Findings*³² and *Lifecycle of a Hate Crime: Country Report for Ireland*.³³ From these reports, it is clear that the hate element of a crime is not adequately addressed in the Irish criminal process. There are three primary issues of concern. The first is that where a hate element is present in a case, it is often “disappeared” in the criminal process, from the point of recording to sentencing. Second, it is not clear what level of proof is required in order to establish a hate element. In *DPP v Collins* the trial judge seems to have taken into account the fact that the offence “may have been racially motivated”³⁴ because of “a sentence in the probation report which quotes their client as saying ‘he (that is the accused) says he watched two foreign nationals cross the road to his girlfriend.’” Because of this one sentence, the judge stated that he felt that it was “highly probable that the attack had some element of racism to an unspecified degree.”³⁵ Finally, and related to the second point, as our case study presented below demonstrates, in three of the 42 cases discussed by practitioners in a study,³⁶ despite the fact that there was no evidence of a hate element being presented in the case, professionals interviewed perceived that the sentencing court treated the case as hate motivated, contrary to principles of due process. We would thus suggest that

³² Amanda Haynes, Jennifer Schweppe, James Carr, Niamh Carmody and Shannen Enright, *Out of the Shadows: Legislating for Hate Crime in Ireland – Preliminary Findings* (ICCL 2015).

³³ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017).

³⁴ *DPP v Collins* (2016) para [15].

³⁵ *Ibid.*

³⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017).

Ireland's confidence that hate crime is being dealt with effectively, and that aggravating factors are taken into account "in all cases" as stated in the State Report of 2018, is misplaced.³⁷

In the third and fourth periodic reports, three reasons were given by the State for not introducing hate crime legislation, including that the penalties for offences would have to be restructured; that there are no statutory sentencing guidelines; and that it would be difficult to address racist hate crime without addressing other manifestations of hate. In relation to the first two points, the State has unproblematically introduced legislation which provides for aggravated sentencing in section 4 of the Criminal Law (Human Trafficking) Act 2008, section 71 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, section 8 of the Criminal Justice (Offences Relating to Information Systems) Act 2017, and most recently, section 40 of the Domestic Violence Act 2018. Regarding the third point, we believe that it is in fact advisable to include other minority communities in legislation, and have advocated for such in a number of contexts.

It could be suggested the Sentencing Guidelines and Information Committee, to be established under the Judicial Council Act 2019, might well develop sentencing guidelines in relation to hate crime. However, whilst such guidelines might well be useful, it should be made clear that any such guidelines cannot act as a substitute for hate crime legislation, even where accompanied by training.

Finally, while it is true to say that a formal notice of Ireland's compliance with the EU Framework Decision 2008/913/JHA on Combating Racism and Xenophobia was submitted in November 2010, a petition to the EU PETI Committee regarding Ireland's compliance with the Decision was accepted in July 2016, and Ireland is currently under examination by that Committee in this regard.³⁸ Further, the Report Lifecycle of a Hate Crime: Country Report for Ireland evidences Ireland's lack of compliance with Article 4 of the Framework Decision in particular.³⁹

Conclusion

Again, it is commendable that the State has committed to reviewing the need for hate crime legislation. However, as with its review of the 1989 Act, this review has now been underway for nearly twenty years, and the State has once again failed to meet its own stated deadline of finalising the review by the end of 2018. The current legislative position is evidently incapable of addressing hate crime, and the criminal justice system remains silent - from a policy, training, practice, and legislative perspective - on hate crime. Arguments made by the State previously to CERD have been refuted, and the suspicion of CERD that the system is incapable of addressing hate crime now has an evidential base. The recent announcement of a public consultation on "hate speech", references plans for a separate consultation on the subject of hate crime legislation, which will elicit the views of members of the public, as well as experts. The requirement for, and aims and objectives of such a public consultation are unclear. The process, as we have asserted, is potentially harmful to minorities.

³⁷ Committee on the Elimination of Racial Discrimination, *Combined Fifth to Ninth Periodic Reports Submitted By Ireland Under Article 9 of the Convention, Due in 2014 CERD/C/IRL/5-9* (United Nations. 2018), para 67.

³⁸ <http://enarireland.org/wp-content/uploads/2016/07/PETI-commission-petition-accepted.pdf>

³⁹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017).

Case study: The Lifecycle of a Hate Crime¹

The Lifecycle of a Hate Crime project examined how the criminal justice process deals with hate crime from the point of reporting to post-conviction processes. The aim of the project was to find out if there were any particular barriers in the process which prevented the hate element of a crime being addressed. The objectives of the research were threefold:

- Detail the operational realities of hate crime legislation by gathering experiential accounts of the legislation ‘in action’ from legal professionals;
- Document differences in both victims’ and offenders’ experiences of the criminal justice process; and
- Identify shortfalls in the legislative responses to Article 4 of the Framework Decision on Racism and Xenophobia.

Data collected by third party hate crime monitoring mechanisms between 2014 and 2016, indicates that the majority of victims of hate crime in Ireland do not report to the police.² In order to access victims’ perspectives on the treatment of hate crime in Ireland’s criminal justice process, the research had specifically sought the accounts of victims of hate crime who had attempted to make a report to the police. These victims recounted varying experiences of the reporting and recording processes: some had very positive experiences, some did not. Only three of 17 self-identified victims of hate crime interviewed were certain that An Garda Síochána had recorded the crime they had reported as associated with a hate element. Whilst the “Macpherson test” or “perception test” is official police policy on the recording of crimes with a racist motivation, the research (which also interviewed 18 police officers) found that the vast majority of these officers lacked a clear understanding of the policy were unfamiliar with the range of protected categories for which the police can record a hate motivation, and were operating with varying interpretations of the categorical labels, a finding which echoed the Garda Inspectorate Report from 2014.³ The vast majority of members of An Garda Síochána interviewed stated that the hate element is not prioritised during the investigation, and the key reason they perceived for this was the absence of legislation.

¹ This case study is based on the findings of Amanda Haynes and Jennifer Scheppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017). The findings of that report support and confirm the findings in Amanda Haynes, Jennifer Scheppe, James Carr, Niamh Carmody and Shannen Enright, *Out of the Shadows: Legislating for Hate Crime in Ireland – Preliminary Findings* (ICCL 2015), particularly with reference to the “disappearing” of the hate element, and the need for hate crime legislation.

² Jennifer Scheppe, Amanda Haynes, and Emma Marie MacIntosh, ‘What is Measured Matters: The Value of Third Party Hate Crime Monitoring’ (2018) *European Journal on Criminal Policy and Research* <https://doi.org/10.1007/s10610-018-9403-4>; Amanda Haynes, and Jennifer Scheppe, *STAD: Stop Transphobia and Discrimination Report 2014-2016* (TENI 2017); Jennifer Scheppe and Amanda Haynes, *Monitoring Hate Crime in Ireland: Towards a Uniform Reporting Mechanism?* (HHRG 2016); Lucy Michael, *Afrophobia in Ireland* (ENAR Ireland 2015); Lucy Michael, *Reports of Racism in Ireland* (ENAR Ireland 2013-2018).

³ Garda Inspectorate, *Crime Investigation* (Garda Inspectorate 2014).

Further, the research observed that the tagging of a crime as having a discriminatory motive on the police database does not necessarily impact on the manner in which the crime was investigated.

In analysing the prosecution, trial and sentencing phases, the Report presented an analysis of 42 cases described by criminal justice practitioners as ones in which a hate element was present.⁴ Based on the narratives of criminal justice professionals involved in these 42 cases, the research concluded that there was no consistency in the professionals' descriptions of the manner in which the cases were prosecuted, the approach taken regarding evidence, or the sentence imposed. In some cases, interviewees recounted that the hate element was not introduced, in others it was. In some cases prosecutors agreed to 'plead out' the hate elements, whilst others took the view that the hate element should always be included in a case. At sentencing, the hate element was just as likely to be taken into account by the court as not: there was no consistency evidenced in the manner in which the criminal justice professionals understood that judges had approached this issue.⁵ In three cases, the judge explicitly referred to a racist element being present in the case though our interviewees asserted that no evidence to that effect had been presented to the court.

Ultimately, the findings of the research (which was funded by the European Union and replicated across five EU Member States) showed that the hate element of a crime is regularly "disappeared" from the process. While it is true to say that in some cases, the sentencing court treated a hate element as an aggravating factor, this finding comes with two caveats: first, criminal justice professionals' accounts indicated that the hate element was almost equally as likely to have been ignored at a sentencing stage; and second, a court can – or at least should – only sentence on the evidence presented to it. Where the hate element has been disappeared at an earlier stage in the process, the court will not be made aware of it at trial or sentencing stage.

⁴ The Director of Public Prosecutions and the Chief State Solicitor's Office declined to take part in the research.

⁵ The Chief Justice refused permission to approach judges to take part in the research.

4.5 Coalition Against Hate Crime (Ireland) Recommendations

- *The Coalition recommends that policies on the recording of hate crimes be introduced as a matter of urgency in An Garda Síochána, and training which underpins and reinforces these policies completed across the service.*
- *The Coalition recommends that similar policies and training on hate crime be introduced at a prosecutorial and judicial level.*
- *The Coalition recommends an immigration firewall to facilitate the reporting of crimes of all victims who are undocumented.*
- *The Coalition recommends the development of Specialist Hate Crime Units within An Garda Síochána.*

- *The Coalition recommends the development of Specialist Hate Crime Units within the office of the Director of Public Prosecutions.*
- *The Coalition recommends the annual publication of data on police recorded hate crime, disaggregated by motivation, offence and year at a minimum.*
- *The Coalition recommends the publication of annual data on the numbers of detections, prosecutions, and prosecution outcomes for individual categories of crimes with a bias motivation, disaggregated by protected group. The first release of such data should be published retrospectively.*
- *The Coalition recommends the introduction of hate crime legislation.*
- *The Coalition recommends the establishment of closer consultative and working relationships between An Garda Síochána and CSOs.*
- *The Coalition recommends that CSOs operating third party reporting mechanisms and AGS share analyses of hate incidents, reporting practices and experiences of reporting.*

5. Issue Three: Racial Profiling

5.1 Section Highlights

- There is no clear statement in law as to the illegality of racial profiling
- There is no official data on racial profiling available.
- There is no evidence that members of An Garda Síochána have received training in relation to racial profiling.
- 28% of respondents to the EU Midis Survey II in Ireland, who were from a Sub-Saharan African background, believed that the last time they were stopped by the police it was because of their ethnic or immigrant background.
- In October 2014 a newspaper reported that two Traveller children aged 4 and 5 were “recorded and given criminal tag numbers” in the national police crime incident database.
- A Report of the Children’s Ombudsman found that the actions of An Garda Síochána in removing a child from his Roma parents “conformed to the definition of ethnic profiling”.

5.2 Summary Recommendations

- An Garda Síochána to adopt the ECRI definition of racial profiling
- The publication of official data on racial profiling, including the publication by the Garda Síochána Ombudsman Commission of disaggregated data on the number of complaints against members of the police concerning discriminatory treatment as well as on the decisions adopted.
- The production of operational policy to prevent and address racial profiling by the police.
- Anti-racial profiling training for all members of An Garda Síochána.
- Introduce legislation clearly establishing the illegality of racial profiling.

5.3 State Party’s Report 2018

In Ireland’s Combined 5th, 6th, and 7th Periodic Report, Ireland states that in establishing the Garda Racial and Intercultural Office (GRIDO) in 2001 (now named the Garda National Diversity and Integration Unit ‘GNDIU’) An Garda Síochána “demonstrated its capacity ... to minimise any potential for illegal racial profiling”.⁴⁰ GNDIU is, according to that Report, “central to the integration, anti-discrimination and anti-profiling strategy of An Garda Síochána”⁴¹. The work

⁴⁰ Ibid, para 82.

⁴¹ Ibid, para 84.

that Ethnic Liaison Officers (ELOs) do in building confidence and trust between An Garda Síochána and Ireland’s minority communities, the State asserts, “erod[es] the potential for discriminatory profiling” in the State. The report notes that anti-profiling is a “key theme” that is “mainstreamed” throughout the two-day training programme. It also notes that GNDUI provides training on anti-profiling and anti-discriminatory policing techniques “at the request of the Garda College” to a wide range of other groups, though it is not stated how often this request has been made, what the content of this training is, or how often such training has been provided.

The Report also asserts that An Garda Síochána “prohibits discriminatory racial profiling and is acutely aware that discriminatory ethnic profiling has the potential to undermine the fundamental human rights of individuals and is never acceptable”.⁴² The Report States that GNIDU (but not An Garda Síochána) has adopted the definition of the European Commission on Racism and Intolerance on racial profiling.

An Garda Síochána does not, the Report asserts, “pursue data gathering/data mining based upon discriminatory profiling in respect of race, colour, language, religion, nationality, national or ethnic origin, ethnicity, including the Traveller Community”.⁴³ To this end, GNDIU has adopted the ECRI working definition of ‘racial profiling’. On the basis of this definition, the State Report asserts, “it is apparent that direct discrimination can never be legally justifiable, and the ‘reasonable justification’ for relying on factors of race, ethnicity or religion will only exist in specific and limited circumstances.”

5.4 Coalition Against Hate Crime (Ireland) Response

The relationship between An Garda Síochána and minority communities

While it is true to say, as the State asserted to CERD in 2004, that An Garda Síochána have widespread support and confidence from the general population, studies have shown that is not equally true for members of minority communities. Studies completed on relationships between minority communities and the police or legal system in Ireland demonstrate lower levels of trust in those institutions on the part of such communities than the majority population, and particularly for individuals of the Traveller and Roma communities.⁴⁴

Garda policy and training on racial profiling

Whilst it is clear that the 247 Ethnic Liaison Officers (ELOs) have been trained in relation to racial profiling, there is no evidence that any of the remaining members have received any training in this regard.

⁴² Ibid, para 88.

⁴³ Ibid, para 88.

⁴⁴ Aogán Mulcahy and Eoin O’Mahony, *Policing and Social Marginalisation in Ireland*, Working Paper 05/02 Dublin: (Combat Poverty Agency 2005) 5; Amanda Haynes and Jennifer Schweppe, *Gendered Policing and Policing Gender: The Trans Community and An Garda Síochána* (TENI 2018); Patrick Kennedy and Mary Walker, ‘Public Attitudes Survey & Traveller/Ethnic Minority Communities Attitudes Survey to the Garda Síochána 2007’ (2007) *Communique: An Garda Síochána Management Journal* 3-9.

Further, while the State Report rightly observes that GNDIU has adopted the ECRI definition of racial profiling, An Garda Síochána has not adopted this definition. At best, the adoption by GNDIU can be considered illustrative of the importance that the three members of that unit place on the issue of racial profiling, and the importance of adopting an international definition in this regard.

Data on racial profiling

The State provided data to CERD regarding the number of reports made to the Garda Síochána Ombudsman Commission in the third and fourth periodic reports, but did not do so in its recent reports to CERD, despite its assertion in those earlier reports that it would seek to disaggregate data. Indeed, there is no information available on the Garda Síochána Ombudsman Commission website regarding reports which included an allegation of discrimination on the part of An Garda Síochána. Thus, rather than improving the information published in this regard, the situation has worsened. The Garda Síochána Diversity and Inclusion Strategy 2019-2021 seeks to monitor the number of complaints from “people of diverse backgrounds or minority groups regarding Garda conduct and the adequacy of Garda investigations”⁴⁵, but provides no detail as to the mechanism by which this will be achieved or the timeline for developing such a mechanism.

Whilst there are no official data on racial profiling by An Garda Síochána in Ireland, the EU Midis Survey II in Ireland asked respondents from a Sub-Saharan African background, “Do you think that the last time you were stopped by the police was because of your ethnic or immigrant background”. In response to this question, 28% answered “Yes”. In response to the question “The last time you were stopped, how respectful was the police when dealing with you”, 71% answered “Respectful” and 15% answered “Not Respectful”. In its Report, *Roma in Ireland - A National Needs Assessment*, 77.5% of respondents reported being stopped by An Garda Síochána “for ID”, and of those, 55.9% “reported being stopped four times or more”⁴⁶.

In 2013, a two year old child, “Child A” was removed from the care of his parents by members of An Garda Síochána under section 12 of the Child Care Act 1991. The reason he was taken from them was that, as a blond haired and blue eyed child, he did not look like his parents. His parents are members of the Roma community. In her Report of her Special Inquiry conducted as part of her role as Ombudsman for Children, Logan states:

“To the extent that Child A’s ethnicity was so influential in determining the decision to remove him from the care of his parents, with no objective or reasonable justification, the Inquiry concludes that the actions of the Garda Síochána in this case conformed to the definition of ethnic profiling.”⁴⁷

The State asserts in its Report that An Garda Síochána does not pursue data gathering based on discriminatory profiling. However, in 2014, reports emerged that Traveller children as young as 16 days old were on the PULSE database. A newspaper report dating from October 2014

⁴⁵ An Garda Síochána, *Diversity & Integration Strategy 2019-2021* (An Garda Síochána 2019) 7.

⁴⁶ Pavee Point Traveller and Roma Centre and the Department of Justice and Equality *Roma in Ireland – A National Needs Assessment* (Pavee Point Traveller and Roma Centre 2018).

⁴⁷ Emily Logan, *Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013* (Department of Justice 2014), 56.

reports that two children aged 4 and 5 were “recorded and given criminal tag numbers” in PULSE. In a letter to the solicitor acting on behalf of the children’s mother, the Assistant Commissioner of An Garda Síochána stated:

“This matter [i.e. the details of the children] was entered into the PULSE system as a low- level intelligence item concerning the movements of your clients, whose actions are a matter of concern for An Garda Síochána in the Cork city area from a criminal perspective ... Your clients’ children’s details are now considered superfluous in this case and have been removed. The removal of your clients’ children’s details is permanent.”

This case is concerning for a number of reasons. First, it was only by accident that the children’s mother discovered her children were on PULSE. Second, we assert that there is no objective reason for including details of children well below the age of criminal responsibility on PULSE for intelligence reasons – be they low-level or not. Third, whilst the Minister for Justice stated that the Garda Síochána Ombudsman Commission would be investigating the complaint, there is no public record of the outcome of this. Fourth, from a policy perspective, there is no policy available from An Garda Síochána which addresses this issue to ensure that it does not happen again.

More recently, the Irish Council for Civil Liberties and the Northern Ireland Committee on the Administration of Justice wrote to the Garda Commissioner expressing concern about what appears to be racial profiling by the Garda National Immigration Bureau of individuals crossing the border between Ireland and Northern Ireland, while undertaking journeys within the Ireland-UK Common Travel Area:

“On some occasions, certain passengers have been singled out and removed from buses, apparently on the basis of their skin colour. On other occasions, all passengers have been asked for passports or I.D but only some have been expected to comply with the direction, apparently on the basis of their perceived ethnic group.”

There has been no public response to the letter from An Garda Síochána.

Creation of suspect communities

In the Annual Report for An Garda Síochána for 2017, Muslim communities are the only group referred to in the context of radicalisation. The report notes regular engagement with Muslim communities, Imams and youth “in order to prevent any individual or group within this community posing a threat to the State”⁴⁸. In March 2017, the Irish Government launched its Migrant Integration Strategy document.⁴⁹ Apart from the image of a hijab wearing woman on its cover, Muslim communities are only referred to once. The Strategy document states:

⁴⁸ An Garda Síochána, Annual Report 2017 (An Garda Síochána 2018).

⁴⁹ Department of Justice and Equality, The Migrant Integration Strategy: A Blueprint for the Future (Department of Justice 2017).

“Radicalisation has been a particular issue for other European societies where ideologies that seek to undermine the state have prompted some young people, particularly second-generation Muslim immigrants, to undertake terrorist actions.”⁵⁰

Responding to a media interview in early 2018, Ibrahim Noonan, lead imam in a mosque based in Galway recalled how: “After the Paris attack (in November 2015), there was a huge movement by Gardaí to interview all the imams, including myself, and it was a really long interview ... but it didn’t bother me.” Noonan continued that one of the Gardaí involved in the interview later apologised and stated: “We already know you’re a peaceful community but we have to do this.”⁵¹

The legality of racial profiling

In its 2018 Report to CERD, Ireland states that An Garda Síochána has shown its capacity to address “illegal racial profiling”. It later asserts that when the definition of racial profiling adopted by GNDIU is considered, it is apparent that direct discrimination can never be legally justifiable. It is unclear what the legal basis for this assertion is. It is certainly unlawful in the context of Article 40.1 of the Constitution, but there is no clear statement in law as to the illegality of racial profiling. Further, this definition has not explicitly been adopted by An Garda Síochána as a whole, and only a very small fraction of members of An Garda Síochána have been trained on racial profiling.

The Role of GNDIU/GRIDO in combating racial profiling

The 2018 State Report highlights extensively the work of GNDIU in this regard. The Garda website states an updated and different role for the office than that provided in the State Report:⁵²

- “Monitoring Hate Crime / Hate Related Incidents via PULSE / social and written media / third party referrals / complaints
- Developing policy, strategy and operational guidelines in all related areas of Diversity*
- Advising and supporting investigators of Hate Crime / Hate Related Incidents
- Providing training to Garda Diversity Officers
- Liaising between members of the public and the relevant Garda or other service provider.”⁵³

The Coalition asserts that it is not possible for a staff of four individuals to be effective across the range of responsibilities that GNDIU is stated to have. Further, the State’s assertion that Ethnic Liaison Officers (ELOs), in their work to build confidence between An Garda Síochána and Ireland’s minority communities erodes the potential for discriminatory profiling is deeply problematic. First, it is impossible for 247 members of an organisation of 13,000 members to be

⁵⁰ Ibid.

⁵¹ Orla Ryan, “‘I want to join ISIS’: How big a problem is radicalisation in Ireland?,” *The Journal*, 15 May 2018, <https://www.thejournal.ie/radicalisation-in-ireland-3864163-Mar2018/> [accessed: 12 February 2019].

⁵² As stated at para 85 of the State Report: Committee on the Elimination of Racial Discrimination, *Combined Fifth to Ninth Periodic Reports Submitted By Ireland Under Article 9 of the Convention*, Due in 2014 CERD/C/IRL/5-9 (United Nations, 2018), para 85.

⁵³ See, <https://www.garda.ie/en/crime-prevention/community-engagement/community-engagement-offices/garda-national-diversity-integration-unit/garda-national-diversity-integration-unit.html>

responsible for the creation and maintenance of relationships between the service and minority communities, or for those 247 individuals to erode the potential for discriminatory profiling.

Much more problematically, there is no mention of Ethnic Liaison Officers, or Diversity Officers in the Garda Diversity and Inclusion Strategy 2019-2021.⁵⁴ While the Garda website states that GNDIU is responsible for providing training to Garda Diversity Officers, there is no provision for the role of Diversity Officer (or Ethnic Liaison Officer) in the new Strategy, an omission the Coalition considers a considerable obstacle to the operation of that Strategy. Further, and just as problematically, there is no definition of racial profiling, or even an acknowledgement of the potential for racial profiling, nor any details as to how An Garda Síochána proposes to address racial profiling.

Case study: Young Travellers Experiences with An Garda Síochána

In 2019 Dr Sindy Joyce became the first Traveller in Ireland to receive a PhD. Her thesis, entitled, “Mincéirs Siúladh: an ethnographic study of young Travellers’ experiences of racism in an Irish city”¹, presents 48 young (14-21 years) Travellers accounts of moving through an Irish city in the context of culturally embedded anti-Traveller racism. While participants recount generally positive experiences with community police, Joyce’s thesis includes narratives from the young people which recount experiences of ethnic profiling and racism on the part of individual police officers.

Dr Joyce found that “Participants in this study perceived ethnic profiling to be a practice that is routinely carried out by the police in relation to Irish Travellers ... All participants held that ethnic profiling was a common occurrence and had either happened to them or known or heard of someone from the community who had experienced it.”² Boys were more likely to have experienced ethnic profiling, with 17 of 19 boys relating narratives of being profiled by the police as Travellers. Participants described ethnic profiling as manifesting particularly in surveillance, stop and search practices, and motor vehicle stops.

“They are always around where we are, if there is a few Travellers at all in any place you can guarantee there will be guards [police] around waiting to stop and search us”.³

“... [W]e in the site one day and there was some kind of celebration going on, I forget what it was for now, ... but anyway the guards [police] were parked outside the gates the whole day just sitting there ... we tried to ignore them but how can you enjoy yourself with them watching over you ...”⁴

¹ Sindy Joyce, *Mincéirs Siúladh: An Ethnographic Study of Young Travellers’ Experiences of Racism in an Irish City* (University of Limerick 2018).

² *Ibid* 125.

³ *Ibid* 126.

⁴ *Ibid* 130.

⁵⁴ An Garda Síochána, *Diversity & Integration Strategy 2019-2021* (An Garda Síochána 2019).

“I was stopped many the time for no reason but once they stop you they will try to find something to put you away, that’s why you can’t argue with them coz they would lock you up there and then.”⁵

“...once myself and ... were in Eyre Square when two guards [police] came over asking us what we were doing there as if we don’t have the right to stand there like everyone else, we said we are doing nothing, but they said ‘oh ye are always up to something, ye’re crowd are never innocent, I know ye’ Then they searched us and when they found nothing they told us to go home.”⁶

These instances of ethnic profiling provide the context in which young Travellers also report experiencing overt racism on the part of members of the police and, in the following case, excessive use of force:

“They pulled me over in the car and asked us to step out. I asked what for? We did nothing. I had tax and insurance and was not speeding or anything. I should have known not to drive down that road, they are always stopping there coz it’s close to the site [Traveller encampment]. Anyway when I asked what we had done one of them kicked the car and said ‘Get the fuck out of the car knacker [racist slur]’ so we had no choice but to step out, once I opened the door one fella grabbed me by the shoulder and kneed me into the back of my legs so I was bent over the bonnet with my hands behind my back and handcuffed. They kept me like that for twenty minutes ... saying stuff like ‘remember the master always has control over his animals and ye belong in a jungle’...”⁷

Joyce (2018) also describes overpolicing in the context of the police enforcement of eviction orders, included via the use of armed response units, an issue which has previously been raised by national Traveller advocacy organisations, the Irish Traveller Movement and Pavee Point. The young people participating in Joyce’s study had experienced police enforced evictions personally and within their family networks.

“it was freezing cold when the council turned up with a load of guards telling us to go or they will take our trailers off us so we had no choice to move on.”⁸

“they were just after getting up for school when they heard the sirens coming up the road and all the children were afraid coz the squads just came in screeching and guards jumping out of their cars, banging on the trailer doors with their batons, some of them even had guns and had balaclavas on... said it was very scary. The guards were roaring and shouting for them to leave and then they started to drag and shove the trailers with them all inside of it, beating the sides they were ...”⁹

Some participants explicitly assert that their experiences of racism on the part of the police are not the result of individual, but of institutional bias:

⁵ Ibid 126.

⁶ Ibid 127.

⁷ Ibid 129.

⁸ Ibid 124.

⁹ Ibid 124.

“they don’t even think they are being racist; they think it’s just normal to treat us like animals, always trying to control us.”¹⁰

“It’s the whole system really, they just think it’s normal to act the way they do against us like they don’t believe they are being racist and then how can you prove it when the whole system is like that, you get nowhere with it.”¹¹

Finally, Joyce’s thesis draws attention to the lack of ethnic diversity in An Garda Síochána. Although the organization is engaged in a recruitment drive targeted at minority communities, the young Travellers in Joyce’s study perceived the police force to be closed to Travellers:

“Na, why would a Traveller ever become a guard like just imagine a Traveller guard, it would be hard coz they would have to be against their own then wouldn’t they but like how could they stick it listening to the other guards talking bad about Travellers and stuff, nah I think it is impossible for a Traveller to be a guard here in Ireland.”¹²

¹⁰ Ibid 118.

¹¹ Ibid 126.

¹² Ibid 119.

5.10 Coalition Against Hate Crime (Ireland) Recommendations

- *The Coalition recommends that An Garda Síochána adopt the ECRI definition of racial profiling.*
- *The Coalition recommends the publication of official data on racial profiling, including the publication by the Garda Síochána Ombudsman Commission of disaggregated data on the number of complaints against members of the police concerning discriminatory treatment as well as on the decisions adopted.*
- *The Coalition recommends the production of operational policy to prevent and address racial profiling by the police.*
- *The Coalition recommends anti-racial profiling training for all members of An Garda Síochána.*
- *The Coalition recommends the introduction of legislation that makes a clear statement as to the illegality of racial profiling.*

6. Issue Four: Training in the criminal justice process

6.1 Section Highlights

- There are only 247 Ethnic Liaison Officers (ELOs) available across the State, and the new Garda Diversity and Inclusion Strategy omits any reference, or commitment, to the role. Publicly available information on ELOs contact details are out of date.
- Research has documented significant shortcomings in the training made available to ELOs.
- Research has documented significant shortcomings in the training made available to members of An Garda Síochána.
- There has been no relevant judicial training.

6.2 Summary Recommendations

- Develop and publish training materials for all members of An Garda Síochána, the judiciary, the Probation Service, and the Prison Service.
- Amend section 17(3)(c) of the Judicial Council Act 2019 to include diversity training.
- Training to be provided to all criminal justice professionals involved in processing hate crimes.
- Training to be shared across the process to enhance communication across services
- An Garda Síochána to commit to the development of Diversity Officers/ Specialist Liaison Officers.
- Ring-fencing of the role of Diversity Officers/Specialist Liaison Officers from other duties.
- Rostering to ensure availability of one Diversity Officer/ Specialist Liaison Officer in every district 24/7.

6.3 State Party's Report 2018

In its Combined 5th, 6th, and 7th Periodic Report, in the context of Garda training, Ireland states that members of An Garda Síochána are provided with “a range of training” programmes in the areas of equality, human rights and non-discrimination, which aim to ensure that “no element of stereotyping or prejudice consciously or unconsciously informs day-to-day policing decisions.”⁵⁵ It notes that human rights modules are “threaded through” the new trainee education programme, and that there is human rights training available as part of continuous professional development to other cohorts of members.

⁵⁵ Committee on the Elimination of Racial Discrimination, *Combined Fifth to Ninth Periodic Reports Submitted By Ireland Under Article 9 of the Convention, Due in 2014 CERD/C/IRL/5-9* (United Nations, 2018), para 79.

The State in its Report highlights the importance of the Garda National Diversity and Integration Unit (GNDIU) in this context. As well as all its other roles highlighted through this report, GNDIU is also stated by Ireland to be responsible for providing training “on policing multi-cultural Ireland” to “a number of ... dedicated specialist units”. No details regarding the content of such training, the extent of the training, or to whom the training was provided has been set out in the Report.

In relation to the judiciary, the State Report observes that training in the area of human rights “is ongoing with training organised for Judges in relation to equality issues, including in the areas of racism and xenophobia”. The State Report observes that “topics discussed” at a conference in 2017 included a number of issues related to diversity, and that representatives of the judiciary have attended conferences and trainings on EU asylum law, and the human rights implications of imprisonment. Finally, since 2017, all new members of the judiciary have been provided with Bench Books entitled “The Equal Treatment of Persons in Court”.

6.4 Coalition Against Hate Crime (Ireland) Response

An Garda Síochána, and in turn, the State, place great emphasis on the role of Ethnic Liaison Officers (ELOs) in An Garda Síochána to address the needs of minority communities. However, the role has diminished significantly in recent years. In 2009, as is stated above, there were 400 ELOs trained and working across the State. This dropped to 349 in 2011, and the website of An Garda Síochána now states that there are only 247 ELOs available across the State. Further, and problematically, the role of ELO and Lesbian, Gay, Bisexual, and Transgender Liaison Officer have been conflated, contrary to the recommendation of the Garda Inspectorate in 2014. Finally, whilst the names and stations of such ELOs are available on the An Garda Síochána website, that list is out of date. Where such ELOs are available, Haynes and Schweppe have further documented significant shortcomings in the training made available to such officers.⁵⁶

Going forward, the twelve page Garda Síochána Diversity and Inclusion Strategy 2019-2021, which outlines the manner in which the organisation intends to work with and for minority communities, makes no mention of, or commitment to, these crucial roles.

An Garda Síochána place emphasis on the importance of recruiting members of minority ethnic communities to enhance trust between members of those communities and the service itself. Whilst this is to be commended, An Garda Síochána has stated that it does not record the ethnic origin or background of applicants, and thus cannot state how many, or if any, members of such communities are members of the organisation.⁵⁷ Whilst there is some training available on human rights to specific cohorts of An Garda Síochána, it has not been rolled out across the service, and the content of such training is not publicly available.

As to the future, it is particularly noteworthy that the Commission on the Future of Policing in its recent report recommended the establishment of a Human Rights Unit, which would have particular responsibilities in the context of the development a Human Rights Strategy, delivering guidance and policing aimed at protecting the most vulnerable in the criminal justice system and

⁵⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: Country Report for Ireland* (ICCL 2017).

⁵⁷ An Garda Síochána, *Freedom of Information Request FOI-000427-2018* Request Refused available at <https://www.garda.ie/en/information-centre/freedom-of-information/decision-log/decision-letter-foi-000427-2018.pdf>

the re-establishment of the Strategic Human Rights Advisory Committee.⁵⁸ The Unit has been established, and the Strategic Committee re-established, though no details have been published as to their function or membership.

The new Garda Diversity and Inclusion Strategy 2019-2021 sets out the manner in which members of An Garda Síochána will be trained on Diversity issues.⁵⁹ The description of that training consists of the following:

“Delivery of clear guidelines regarding the identification and recording of hate crime and non-crime hate incidents to all Gardaí and Garda staff;

- Development and issue of hate crime policy and procedures to guide all Gardaí and Garda staff;
- Development of an internal ‘Diversity Toolkit’ to support An Garda Síochána in engaging with persons from diverse and minority backgrounds and in the investigation and prosecution of hate crimes;
- Conduct a review of current Garda diversity training programmes
- Develop bespoke training that will give Gardaí and Garda Staff the expertise and confidence to engage professionally with these groups;
- Development of an online directory of cultures and backgrounds with an accompanying dictionary of acceptable language, to assist Gardaí and Garda Staff in responding appropriately to the needs of persons from diverse backgrounds and minority communities.”

While the aforementioned objectives are useful in their own right, most represent the development of resources rather than training. There are no objectives associated with a timeline beyond the period of the strategy itself. The Strategy provides no commitment to providing officers involved in recording and investigating hate crime with face to face or online training to bed down proposed guidelines, policy and procedures.

Regarding the judicial branch, the State asserts that training is organised by the judiciary “in keeping with the constitutional guarantee of judicial independence and the separation of powers.” In this context, whilst it is the case as stated in the State Report that judges “discussed” issues such as whether “immigrants understand the Court system” at a conference, and that members of the judiciary were represented at various conferences and training, these fall short of the training required. Discussing a topic does not equate to training, and there is no evidence provided that judges have received any training whatsoever on issues related to equality, diversity, and inclusion generally, or specifically on the issue of hate crime and related issues.

While Bench Books have been issued entitled “The Equal Treatment of Persons in Court”, the content of these bench books have not been published, and it is not clear if they have been underpinned with training. It is anticipated that such training could be included in the training delivered by the Judicial Council, to be established under the Judicial Council Act 2019, but there is no such commitment made to date. While section 17(3)(c) of the Act sets out some particular issues which the Council may provide training on (such as European Union law and international law, information technology, and human rights and equality law), diversity training is not included in this list.

⁵⁸ Commission on the Future of Policing, *The Future of Policing in Ireland* (Commission on the Future of Policing 2018).

⁵⁹ An Garda Síochána, *Diversity & Integration Strategy 2019-2021* (An Garda Síochána 2019).

In June 2019, the authors of this report were contacted by a representative of the President of the District Court regarding the preparation of a memo intended to raise awareness among judges in the lower court as to how identify and deal with hate crimes which come before them. We provided the document 'Lifecycle of a Hate Crime: Information for Judges' (ICCL, 2017) which is based on our EU-funded research on the treatment of hate crime in the Irish justice system.

Thus, none of the highlighted agencies are complying with the Migrant Integration Strategy which requires anti-racism training to all governmental agencies staff. Finally, the Coalition would observe that all public bodies are obliged under section 42 obligations of the Irish Human Rights and Equality Commission Act 2015 to have regard to the need to eliminate discrimination, promote equality of opportunity and treatment, and protect the human rights of staff, members, and the public. The section obliges such organisations to publish a strategic plan in this regard, and report annually on these issues. The judiciary and courts service do not currently comply with section 42 in this regard. An Garda Síochána published its 2019-2021 Diversity and Integration Strategy in October 2019, and has never reported on diversity issues.

Case Study: Training on Recording Discriminatory Motives.¹

An Garda Sochána began delivering diversity training to specialist officers since 2002 through the Garda and Racial Intercultural Office (GRIDO) with the assistance of representatives of minority groups², but this training is not mainstreamed nor, according to those individuals who participated in the Lifecycle of a Hate Crime: Ireland study, does it specifically address the recording of discriminatory motives.

Interviewees unanimously agreed that neither civilian call takers nor police officers had had access to either training or documentation on protocols for recording a discriminatory motive specifically, for example the circumstances under which a discriminatory motive should be recorded, or the definitions of the various constructs referenced in the recording categories to be used. Gardaí interviewed displayed little awareness of the recording categories when asked to recall the categories of discriminatory motive available:

“Interviewer: Do you recall what the categories are?”

Interviewee: I don’t ... I can’t recall, no.” (Garda)³

“I know there are tick boxes there.” (Garda)⁴

“Interviewer: Do you know ... there are a number of motivations in there relating to the hate element – do you know what they are, would you be familiar with them?”

Interviewee: Am ... I think there is racial ... I think it just says racial motivation. I think that’s one or racially motivated ... I can’t think of others...” (Garda)⁵

¹ This case study is based on the findings of Amanda Haynes and Jennifer Schweppe, Lifecycle of a Hate Crime: Country Report for Ireland (ICCL 2017).

² Dave McInerney, 'Policing Racism on the Island of Ireland' in in Amanda Haynes, Jennifer Schweppe and Seamus Taylor (eds), Critical Perspectives on Hate Crime, (Palgrave Macmillan 2017)

³ 422. Amanda Haynes and Jennifer Schweppe, Lifecycle of a Hate Crime: National Report for Ireland (ICCL 2017)

⁴ Ibid

⁵ Ibid Indeed, the only individuals with a comprehensive knowledge of the available recording categories worked primarily with victims and in the Garda Racial and Intercultural Diversity Office.

The researchers then prompted participants by asking if they were aware of the presence of particular discriminatory motives available. Again, participants evidenced very low levels of awareness of specific categories:

*“Interviewer: Is there an anti-Traveller motivation that’s possible on PULSE?
Interviewee: I’ll have to check that and come back to you.” (Garda)*

*“Interviewer: Were you aware for example that anti-disability is listed as a discriminatory motive?
Interviewee: No.” (Garda)*

In the absence of institutional definitions, both police officers and call takers had to rely on common sense understandings and individualised interpretations of the constructs referenced.

“Interviewer: So you didn’t get any training in terms of this is what transphobia is or?”

Interviewee: No. I think it’s just taken you’d know yourself which sounds a bit weak really.” (Garda)⁶

Consequently, both groups evidenced variation and uncertainty in interpreting recording categories. These issues are exemplified in the following excerpts from interviews with police officers in which they discuss their understanding of the recording category “gender-related”:

“I don’t know whether it comes down to transsexual?” (Garda)

“I presume it’s LGBT?” (Garda)

“... if you have a female present and there is abuse hurled at her.” (Garda)

“A crime against someone because a suspected offender doesn’t like a female or a male.” (Garda)⁷

In discussing such challenges, a senior officer emphasised that:

“Training is more effective than guidelines” (Garda)⁸

Prior to any such training, however, detailed protocols for the recording of discriminatory motives are required, including agreed definitions of the eleven recording categories.

6.5 Coalition Against Hate Crime (Ireland) Recommendations

- *The Coalition recommends the development and publication of training materials for all members of the judiciary, An Garda Síochána, the Probation Service, and the Prison Service to ensure such bodies comply with their section 42 obligations under the Irish Human Rights and Equality Commission Act to eliminate discrimination, promote equality, and protect human rights.*
- *The Coalition recommends the amendment of section 17(3)(c) of the Judicial Council Act 2019 to include diversity training as a stated topic on which the Council may provide training to judges.*
- *The Coalition recommends training to be provided to all criminal justice professionals, including members of the judiciary, involved in processing hate crimes.*
- *The Coalition recommends shared training across the process to enhance communication across services.*
- *The Coalition recommends expansion of the number of specialist liaison officers.*
- *The Coalition recommends ring-fencing of the role of specialist liaison officer from other duties.*
- *The Coalition recommends rostering to ensure availability of one specialist liaison officer in every district 24/7.*