

Submission of the NGO Alliance Against Racism (NAAR)

To the UN Committee on the Elimination of Racial Discrimination

List of Issues

**With regard to the examination of Ireland's joint third and fourth
periodic reports under Article 9 of the UN Convention on the
Elimination of All Forms of Racial Discrimination**

10 December 2010

The NGO Alliance Against Racism (NAAR)

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

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

The following organisations from the NAAR Steering Committee endorse this submission:

Africa Centre
AkiDwA
Anti Racist Network (ARN)
Crosscare Migrant Project
Dominican Justice Office
Equality & Rights Alliance
European Network Against Racism (ENAR) Ireland
FLAC (Free Legal Advice Centres)
Immigrant Council of Ireland
Irish Traveller Movement (ITM)
LIR Anti-Racism Training and Education Centre
Louth African Women Support Group
Mercy Justice Ireland
National Traveller MABS
New Communities Partnership (NCP)
Pavee Point Travellers' Centre
Sport Against Racism Ireland (SARI)
The Integration Office of the Irish Inter-Church Committee
The Refugee Project of the Irish Bishops' Conference

¹ NAAR Shadow Report *In Response to the Irish Government's First National Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination*, November 2004

<http://www.immigrantcouncil.ie/research-publications/archive/269-ngo-alliance-shadow-report>

² NAAR, *One Year On: Comments on the Implementation by the Irish Government of the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD)*, June 2006

<http://www.integratingireland.ie/userfiles/File/Database/NGO%20Alliance%20Against%20Racism%20%201%20Year%20On%20Report.pdf>

Contact information

NGO Alliance Against Racism (NAAR)
C/o Dominican Justice Office
All Hallows College
Drumcondra
Dublin 9
Ireland

Email: justiceop@eircom.net
Tel: + 353 (0)1 857 4654

Editorial Committee

Marian Tannam

Dominican Justice Office³

Catherine Cosgrave

Immigrant Council of Ireland

Edel Quinn

Project Consultant

³ NGO Alliance Against Racism (NAAR) Coordinator

Introduction

This list of issues submission has been prepared to highlight principal concerns of NAAR relating to Ireland's obligations under the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the State's upcoming review by the CERD Committee (hereafter referred to as 'the Committee').⁴ A comprehensive Shadow Report is being finalised and will follow in due course.⁵

The Concluding Observations of the Committee on Ireland's joint first and second periodic report under Article 9 of CERD together with the Report of the CERD Follow-Up Coordinator highlight over 20 concerns/recommendations on measures the State should take in order to meet its obligations under the Convention, many of which have been ignored by the State. This list of issues submission has been compiled in order to assist the Committee in its work to prioritise areas of law and practice of concern in Ireland today which are relevant under the Convention.

The concerns as laid out in this document have been identified by NAAR in consultation with its member organisations.⁶ Moreover, NAAR organised several consultations with Black and ethnic minority people throughout the country in 2010, in association with its partner members, in order to inform the present document.

⁴ Submissions to NAAR, many based on consultations with member organisations also highlighted the issues identified in this List of Issues document.

⁵ This List of Issues is one strand of NAAR's Shadow Reporting process. Other strands include: consultations; submissions and informational seminars on CERD and using CERD's Concluding Observations in advocacy, legal and campaigning work.

⁶ The member organisations of NAAR recognise the unique ethnicity of Irish Travellers.

1. Provision to withdraw reservation to Article 4 of the Convention, incorporation of the Convention and ratification of others. (Article 2)

Ireland's reservation and declaration to CERD

Ireland has entered into a reservation under Article 4 of the Convention and has lodged a declaration in relation to Article 14, both of which are reproduced here:

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

“With reference to Article 14, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature at New York on 7 March 1966, Ireland recognizes the competence of the Committee on the Elimination of Racial Discrimination, established by the afore-mentioned Convention to receive and consider communications from individuals or groups of individuals within Ireland claiming to be victims of a violation by Ireland of any of the rights set forth in the Convention.

Ireland recognizes that competence on the understanding that the said Committee shall not consider any communication without ascertaining that the same matter is not being considered or has not already been considered by another international body of investigation or settlement.”

In relation to the reservation under Article 4, the State adopts a wide interpretation of the constitutional provision relating to freedom of expression⁷ even though there is very little jurisprudence on this article. In any case, the Oireachtas (Irish Parliament) Joint Committee on the Constitution has recommended reform of this provision, describing it as “unsatisfactory” with an “undue prominence” given to the limitations on free speech. They recommend that provisions relating to express restrictions on free speech based on blasphemy, sedition or the publication of indecent material be removed and that the provision be brought into line with Article 10 of the European Convention on Human Rights,⁸ with the aim of bringing clarity to the text.⁹ It is worth noting that under the Defamation Act 2009, the State introduced a crime of blasphemy which provides for a penalty of up to €25,000.¹⁰ The State has shown its willingness to introduce legislation relating to blasphemy but not in relation to enhancing incitement to hatred legislation.

Recommended Question

In a previous submission to the Committee, the State noted that it would review its reservation to Article 4 in light of the findings of a study, we ask the Committee to request evidence of this review.¹¹ What is the State’s justification for its continued declaration to article 14?

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

In spite of repeated requests¹² to consider incorporation of CERD into its domestic legal order, the State refuses to do¹³ so on the grounds that there is adequate provision to address racism,

⁷ Article 40.6.1.i of Bunreacht na hÉireann 1937, the Constitution of Ireland

⁸ Article 10, European Convention on Human Rights and Fundamental Freedoms 1950,

<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

⁹ Joint Committee on the Constitution, First Report, Article 40.6.1.i – Freedom of Expression, July 2008, chapter 5, paras. 5.1, 5.6

¹⁰ Defamation Act 2009, section 36 — (1) A person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable upon conviction on indictment to a fine not exceeding €25,000.

(2) For the purposes of this section, a person publishes or utters blasphemous matter if—

(a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and

(b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.

¹¹ Comments by the Government of Ireland to the concluding observations of the Committee on the Elimination of Racial Discrimination, 16 June 2006, para 22 UN Doc: CERD/C/IRL/CO/2/Add.1

¹² Concluding observations of the UN Committee on the Elimination of Racial Discrimination, para. 9 UN Doc: CERD/C/IRL/CO/2. Report, Visit of Co-ordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69/Misc.9 para. 5

¹³ First and Second Report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 24 June 2004 paras. 97-101 UN Doc: CERD/C/460/Add.1, Comments by the Government of Ireland to the concluding observations of the Committee on the Elimination of Racial Discrimination, 16 June 2006, para 19 UN Doc:

and racial discrimination under current legislation. However, the State has failed to produce any evidence, such as an audit of current legislation, to ensure that this is the case.

Recommended Question

We urge the Committee to highlight the importance of the incorporation of CERD into the domestic legal order of the State and to seek evidence of any reviews/audits demonstrating that the Convention is fully protected domestically.

Ratification of the UN Migrant Workers Convention and a related ILO Convention

In its report, the State noted that it was keeping under consideration¹⁴ the ratification of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the ILO Migration for Employment Convention (Revised), 1949 (No. 97).

Recommended Question

We encourage the Committee to ask the State whether there has been any progress in its consideration of the ratification of the UN Migrant Workers Convention and the related ILO Convention in the intervening period, and if so to produce evidence of audit it has undertaken in advance of ratifying the Conventions.

CERD/C/IRL/CO/2/Add.1, Third and fourth periodic report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 21 December 2009, para. 49 UN Doc: CERD/C/IRL/3-4

¹⁴ Third and fourth periodic report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 21 December 2009, para. 86 UN Doc: CERD/C/IRL/3-4

2. Lack of criminal legal provisions on racist offences (Article 2)

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

...to provide that where a court is determining the sentence to be imposed for any offender, and it appears to the court that the offence was one which was committed with racial or religious hostility, then the court must treat that hostility as an aggravating factor.¹⁵

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

Recommended Question

NAAR encourages the Committee to ask the State to explain why it has failed to amend the criminal law to allow for a more severe punishment for offences committed with a racist motivation.

¹⁵ Schweppe J., Walsh D., "Combating Racism and Xenophobia through the Criminal Law", Centre for Criminal Justice Research, University of Limerick, December 2008, page 179

3. Attack on the human rights infrastructure of the State (article 2)

Both the Committee and Follow-Up Coordinator have praised the State for its establishment of several of independent institutions and adjudication bodies with a human rights and non-discrimination focus. Despite this and the Committee's recommendation¹⁶ for the State to provide adequate resources to ensure the full exercise of the statutory functions of these bodies, together with providing support to the non-governmental organization (NGO) community, it has done the opposite. In the context of the recent recession in Ireland, austerity measures have been endured across a range of bodies and functions funded by the State. However, the budgets of these bodies have been disproportionately affected when compared with other sectors and the cuts have left them deprived of the ability to fully carry out many of their functions. For example, the Equality Authority and Irish Human Rights Commission had their budgets cut by 43% and 24% respectively in the October 2008 budget. The National Consultative Committee on Racism and Interculturalism (NCCRI) closed due to a loss of departmental funding leaving the State without an independent monitoring body of racist incidents or national provider of anti-racism training. The National Action Plan Against Racism (NPAR) has also ceased operating.

Recommended Question

We request that the Committee question the State as to its justification for disproportionately attacking institutions which monitor and promote human rights and anti-discrimination in Ireland and their functions?

How does the State intend to promote anti-racism and interculturalism with the closure of the NCCRI?

¹⁶ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, para. 12 UN Doc: CERD/C/IRL/CO/2. Report, Visit of Co-ordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69/Misc.9 para. 8

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

In spite of concerns raised by the Committee and the Follow-Up Coordinator concerning the State policies of dispersal and direct provision,¹⁷ there is no evidence that the State has taken the requisite measures to ensure that the system of direct provision and dispersal does not have the negative impact envisaged by the Committee. These concerns remain as relevant today as they were in 2005. Denied access to the labour market and having to wait, in many cases, a number of years for a decision as to their asylum applications,¹⁸ asylum seekers in Ireland face discrimination,¹⁹ poverty,²⁰ exclusion²¹ and both physical and mental health issues²² as a result of this policy.

Recommended Question

We ask the Committee to inquire as to the assessment of direct provision recommended by the Follow-up Coordinator in his 2006 report.

Lack of adequate complaints mechanism for those living under direct provision

The negative consequences of living in direct provision are exacerbated by the lack of an independent, transparent and adequate complaints system.²³ All complaints which are not dealt with informally by the centre manager are forwarded to the Reception and Integration Agency (RIA)²⁴ for a decision. According to organisations and asylum seekers consulted for the present report, there is a lack of confidence in the current complaints system. This is due to the

¹⁷ Concluding observations of the UN Committee on the Elimination of Racial Discrimination, para. 13 UN Doc: CERD/C/IRL/CO/2. Report, Visit of Co-ordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69//Misc.9 para. 5

¹⁸ Reception and Integration Agency Report, September 2010, p. 20

¹⁹ Free Legal Advice Centres, *One Size Doesn't Fit All*, 2010, Section 3.2

²⁰ *Ibid*, Chapter 2

²¹ *Ibid*, Section 2.3.1

²² Health Service Executive, *National Intercultural Strategy in Health, 2008-2010*, p. 42; *Report of Consultations for the National Intercultural Strategy in Health*, 2008, section 2.4

²³ The complaints system is set out in a document entitled *Direct Provision Reception and Accommodation Centres: House Rules & Procedures*. There are two elements to the complaints procedure: one to be invoked where a resident has a complaint against the centre and the other in relation to a breach of house rules by a resident. Available at [http://www.ria.gov.ie/filestore/publications/House_Rules_Nov_2009_\(1_of_2\).pdf](http://www.ria.gov.ie/filestore/publications/House_Rules_Nov_2009_(1_of_2).pdf) and [http://www.ria.gov.ie/filestore/publications/House_Rules_Nov_2009_\(2_of_2\).pdf](http://www.ria.gov.ie/filestore/publications/House_Rules_Nov_2009_(2_of_2).pdf)

²⁴ The Reception and Integration Agency (RIA) is an administrative unit within the Department of Justice and Law Reform and is responsible for the accommodation and care of protection applicants.

fact that residents are concerned that making a complaint could impact on their asylum case because the Department of Justice and Law Reform is responsible for their accommodation and the adjudication of their cases, albeit through two different sections.²⁵ There is no right of appeal to an independent body. No statistics are collated by RIA with regard to such complaints.²⁶ The lack of an independent complaints mechanism has resulted in the expulsion and forced destitution of a number of former residents as evidenced by the number of people who have been expelled from the system.²⁷ The Office of the Ombudsman has issued a guide to assist public bodies in establishing “efficient and credible internal complaints handling systems” to ensure that complaints are treated “properly, fairly and impartially”²⁸.

Recommended Question

We request that the Committee ask the State whether it will consider revising the complaint’s mechanism using the Ombudsman’s Guide to Internal Complaints Systems.

We would urge the Committee to ask the State how it can be sure that complaints in direct provision are adequately dealt with given that statistics are not maintained relating to such complaints.

²⁵ RIA is responsible for providing accommodation for asylum seekers and the Office of the Refugee Applications Commissioner, an independent statutory body, is responsible for processing asylum applications. Both are under the aegis of the Department of Justice and Law Reform. Decisions concerning applications for protection such as leave to remain and subsidiary protection are decided by the Irish Naturalisation and Immigration Service and granted at the discretion of the Minister for Justice and Law Reform. Most of those currently living in direct provision are at this later stage of their asylum application.

²⁶ Response by Minister for Justice and Law Reform to Dáil question no. 357 by C Deputy Caoimhghín Ó Caoláin, 8 July 2010.

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

²⁸ Available online at <http://ombudsman.gov.ie/en/Publications/Guidelines/InternalComplaints/>

5. Restrictions on foreign workers' mobility (Article 5)

The Follow-Up Coordinator welcomed the introduction of the Employment Permits Bill 2005 (which has since been enacted in 2006) for the improved protections that it offered to migrant workers.²⁹ Section 8 of the Employment Permits Act provides that an employment permit facilitates the employment of a foreign national in the State in a particular economic sector for the duration of the permit's validity. However, State policy has been to only issue an employment permit for a specific position with a particular employer for all types of employment permits.

The Act provides for a Ministerial power³⁰ which allows him or her to refuse the issuance of a new permit in the first twelve months of a permit being issued. No statutory exception is provided for in the cases of exploitation and in such circumstances, a solution for the permit-holder is dependent on the existence of an alternative offer of employment and an employer willing to apply for a permit. The inclusion of a provision allowing for mobility within an economic sector would alleviate this problem.

Recommended Question

We would ask that the State explain the rationale for legislating to provide for mobility within an economic sector whilst undermining this with a contradictory policy. On what basis was this policy introduced?

²⁹ Report on the Visit of the Co-Ordinator on Follow-Up to Ireland (21-23 June 2006), para. 10

³⁰ Section 12(1)(e)(i) Employment Permit Act 2006

6. Discrimination at Ireland's ports of entry (Article 5)

The Committee has expressed concern about treatment of foreign nationals at points of entry to the State.³¹ Yet beyond the training provided for Gardaí (Irish Police Service), immigration officers and civilian staff, the State does not expand upon this important issue in its report. A recent report concerning an enquiry by the Irish Human Rights Commission (IHRC) into the treatment of a foreign visitor to Ireland who was refused leave to land³² highlights a number of areas which could be improved in order to ensure that international human rights standards are fully respected.³³ With regard to the minimum standards of human rights to be afforded to detainees, the report notes that it is doubtful whether immigration detainees are always provided with the full range of these rights.³⁴ In relation to the right to be free from arbitrary detention the report questioned whether there are adequate safeguards against this in Irish law given that there is “no automatic review of an Immigration Officer’s decisions nor any oversight of decision-making by an independent office such as the Ombudsman.”³⁵ It queried whether the law authorising detention in this situation was sufficiently precise and accessible.³⁶ There was also concern at the lack of an available remedy where an individual had been found to have been detained arbitrarily as a result of a refusal of leave to land.³⁷ The Commission’s report goes on to point out that the lack of State disaggregated data and data collection, recording keeping, vague criteria in decision-making and a lack of safeguards raises the issue that the State would not be in a position to defend itself against any future unsubstantiated claims of racial or national discrimination in particular instances.³⁸ The Commission was informed that a new system called AVATS³⁹ would address, in part, this problem.

³¹ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, para. 16 UN Doc: CERD/C/IRL/CO/2. Report, Visit of Co-ordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69/Misc.9 para. 18

³² ³² The Minister for Justice and Law Reform stated in the Dáil (Parliament) that from 1 January to 31 October 2010, 2,597 people were refused leave to land at Ireland’s points of entry and returned to where they came from, 17 November 2010.

³³ Irish Human Rights Commission, *Report on an Enquiry into the Treatment of a Visitor Refused Leave to Land in the State*, January 2009, paras. 9.11-9.17

³⁴ *Ibid*, paras. 8.30, 8.36

³⁵ *Ibid*, paras. 8.17

³⁶ *Ibid*, paras. 8.15

³⁷ *Ibid*, paras. 8.21

³⁸ *Ibid*, paras. 8.50

³⁹ Audio-Video and Textual Synchronization system

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

Recommended Questions

We respectfully suggest that the Committee request the State to provide information on whether the new AVATS system is currently in operation and if so, has it been effective in data collection and disaggregating data?

Why has the State not addressed the Irish Human Rights Commission's recommendations in relation to the treatment of visitors at Ireland's ports of entry?

7. Discrimination by the Gardaí against minorities (Articles 5(b) and 6)

Independent Complaints

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

Recommended Question

We urge the Committee to ask the State how many complaints against the Gardaí involving incidents of alleged discrimination have been referred to the Garda Commissioner by GSOC under section 94 of the Garda Síochána Act for investigation? What was the outcome of these investigations?

Disaggregated Statistics

The State Report notes that it was not possible to elicit disaggregated information as to the type of discrimination alleged from the GSOC's current Case Management System. At the time of the Report's submission in December 2009, discussions were taking place to consider how the system may be refined to provide a more detailed breakdown.⁴⁰

Recommended Question

We request that the Committee ask the State to provide an update on the conclusions drawn from these discussions and in the event of a successful solution, for statistics on the number

of allegations of racial discrimination against the Gardaí and the outcomes of the related investigations.

Why did the Department not communicate CERD's concluding observations to GSOC upon its establishment?

Stop and Search

Section 12 of the Immigration Act 2004 empowers any member of the Gardaí or any Immigration Officer to stop and demand the production of certain identity documents of a “non national”⁴¹ “at any time”.⁴² It is an offence for the individual not to comply with the demand.⁴³ The operation of this police power in practice means that the Gardaí may single out Black or ethnic minority persons on suspicion that they are unlawfully present in the State. This could potentially lead to the detention of these individuals if they do not have the required documentation on their person at that time of the demand or naturalized Irish citizens who do not have to carry their passport on them. There is evidence to suggest that this power has been used by the Gardaí in the performance of their ordinary functions and has resulted in such detentions.⁴⁴

Recommended Question

We respectfully suggest that the Committee request the following information from the State: How many people have been detained under section 12 of the Immigration Act 2004 by members of the Gardaí in the course of their ordinary policing functions (as distinct from ports of entry or targeted immigration operations)? How many of these detentions involved EU citizens or Irish citizens?

⁴¹ Section 12 (1) Immigration Act 2004 requires the production on demand of “(a) a valid passport/travel document and (b) a registration certification where the person has registered with the National Garda Immigration Bureau.

⁴² *Ibid*, Section 12(3)

⁴³ *Ibid*, Section 12 (2)

⁴⁴ Immigrant Council of Ireland, *ICI calls for investigation of unlawful detention of Irish citizen*, 20 November 2008

8. Lack of diversity and segregation in State-sponsored schools (Article 5(e)(v))

The majority of primary and second level schools in Ireland are denominational and remain at least partially in the control of religious bodies. In spite of recommendations by this Committee⁴⁵, the UN Human Rights Committee⁴⁶ and the UN Committee on the Rights of the Child⁴⁷ that the State promote and increase access to non-denominational primary schools, there have been no significant improvements in this area.⁴⁸ While the Follow-Up Coordinator recognised the “Educate Together”⁴⁹ programme,⁵⁰ it has faced difficulties in securing funding to establish its multi-denominational schools. In one recent instance, a real opportunity to provide choice in second level education was lost when patronage of a new secondary school in Gorey, Co. Wexford was denied to the Educate Together programme in spite of support from parents in the community. It would have been the first multid denominational secondary school in the State. It was given instead to the Vocational Education Committee (VEC),⁵¹ an organisation which, provides mainly vocational education and already has seven schools in the same county.⁵²

The State has failed to amend an aspect of the Equal Status Acts 2000-2008⁵³ that allows religious institutions to give preference to people who share their religious ethos in areas such

⁴⁵ Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, 14 April 2005, para. 18 UN Doc: CERD/C/IRL/CO/2

⁴⁶ Concluding Observations by the UN Human Rights Committee on Ireland, 30 July 2008, para. 22 UN Doc: CCPR/C/IRL/CO/3

⁴⁷ Concluding Observations of the Committee on the Rights of the Child: Ireland, 29 September 2006, UN Doc.: CRC/C/IRL/CO/2, para. 60

⁴⁸ It is worth noting that the Archbishop of Dublin has also stated that he believes the system of school patronage as it stands should be reformed and that it is no longer tenable for the Catholic Church to run 92% of the schools in the State as it does not reflect the realities of the times. Raidió Teilifís Éireann (RTÉ) *Govt to consider forum on schools*, 17 June 2009

⁴⁹ Educate Together is the patron body for Ireland’s multid denominational primary schools

⁵⁰ Report, Visit of Co-ordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69/Misc.9 para. 19

⁵¹ The Vocational Education Act 1930 and VEC (Amendment Act) 2001 established a non-denominational system of secondary education in VEC schools and Community Colleges in Ireland.

⁵² Educate Together, Press Release, *Educate Together Will Continue to Campaign for First Second Level School*, 16 November 2010. Twenty out of the last twenty-three post-primary schools opened by the Department of Education have been VEC schools, Irish Times, *Educate Together in Gorey ‘concerned’*, 18 November 2010

⁵³ Section 7(3) (c) Equal Status Acts 2000-2008 ‘An educational establishment does not discriminate under subsection (2) by reason only that—[...] where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school,...’ Subsection (2) ‘An educational establishment shall not discriminate in relation to – (a) the admission or the terms or conditions of a person as a student to the establishment, (b) the access of a student to any course, facility or benefit provided by the establishment...’

as employment, as well as admittance to schools. Given that the majority of schools in Ireland are under the aegis of one religion (Roman Catholicism) children of other or no faiths have been denied enrolment because the schools can legally deny them access citing their “Catholics first” enrolment policy. Due to a lack of planning on the part of the State, a crisis situation arose in north Dublin in 2007 where an emergency school was opened to facilitate the number of migrant children who could not produce baptismal certificates in order to be admitted to a local school, leading to their effective segregation.⁵⁴ This resulted in the establishment of a new school where all the children were black, of African descent or an ethnic minority. Not only has the State failed to act upon the Committee’s previous recommendation in this area, the situation has in fact deteriorated.⁵⁵

Recommended Question

We encourage the Committee to request from the State concrete statistics and proposals on the number of non-denominational primary and secondary schools that the State will establish in the next five years.

What strategies is the Department of Education putting in place to ensure that segregated schooling does not continue in Ireland?

⁵⁴ Irish Independent, *Emergency averted at last minute as emergency school opens*, 30 August 2007

⁵⁵ Raidió Teilfís Éireann (RTÉ) Six One News interview with Minister Mary Hanafin by Bryan Dobson, 3 September 2007, in which the Minister states that the problems in the north Dublin area of Balbriggan reflected bad planning amid rapid population growth, not racist attitudes at existing schools, <http://www.rte.ie/news/av/2007/0903/6news.html#&calendar=true&page=144>

9. Narrow scope of equality legislation (Article 5)

The Committee has previously highlighted its concern that while the Equal Status Acts 2000-2008 prohibit discrimination in the provision of goods and services, it does not extend to the whole range of government functions, activities or controlling duties. No effort has been made by the State to expand the scope of the Acts in this regard. Moreover, there is a lack of clarity as to the scope of the Acts in relation to asylum seekers.

Not only has the Act not been updated but the number of complaints taken under the equality legislation has fallen in recent years⁵⁶ in spite of the increase in the number of reported incidents of racism and discrimination.⁵⁷

Recommended Question

We request the Committee to ask the State why no attempt has been made by the State to expand the scope of the Equal Status Acts 2000-2008 to include all government functions, activities and controlling duties.

Does the scope of the Equal Status Acts 2000-2008 extend to asylum seekers?

Why is the number of cases under the Equal Status Acts falling in recent years?

The right to an oral hearing before the Equality Tribunal

The Civil Law (Miscellaneous Provisions) Bill 2010 provides for the amendment of the Employment Equality Act 1998 and the Equal Status Acts 2000-2008 which would have a fundamental impact on the rights of both the complainants and the respondents before the Tribunal. Whereas the Acts previously provided that in a case referred to the Director of the Tribunal, subject to certain exceptions, the Director

shall investigate the case and hear all persons appearing to the Director or that Court to be interested and desiring to be heard,⁵⁸

⁵⁶ Equality Authority material for inclusion in 3rd and 4th National Reports by Ireland as required under Article 9 of the UN Convention on the Elimination of All Forms of Racial Discrimination., p. 2 The number of cases in 2009 was down to 87 from 123 in 2008 and 94 in 2007, Equality Tribunal, *Annual Report 2009*, p. 7, *Annual Report 2008*, p. 16 and *Annual Report 2007*, p. 9

⁵⁷ Irish Centre for Human Rights and Amnesty International, 2006: *Breaking Down Barriers: Tackling Racism in Ireland at the Level of the State and its Institutions*

the Bill proposes that in such circumstances the Director would have the discretion to hear the interested parties.⁵⁹ It further proposes the insertion of a new provision which states

where the Director considers that the case may be dealt with on the basis of written submissions only, the Director shall notify the parties in writing of his or her proposal to do so⁶⁰

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

Recommended Question

We urge the Committee to ask the State to explain the rationale for withdrawing the right to an oral hearing before the Equality Tribunal.

⁵⁸ Section 79(1) Employment Equality Act 1998. Similar amendments are proposed for the Equal Status Acts 2000-2008.

⁵⁹ Section 17(a) Civil Law (Miscellaneous Provisions) Bill 2010

⁶⁰ *Ibid*, Section 17(b)

10. Recognition of Travellers as an ethnic group (Articles 1, 5)

In spite of recommendations from this Committee, the Follow-Up Coordinator and the UN Human Rights Committee,⁶¹ the State has failed to take any measures to progress the recognition of Travellers as an ethnic group and instead questions the basis for this position.⁶² Such recognition would be in keeping with British case law on race/religion, in particular, the pre-requisite of self-identification,⁶³ and would result in the consolidation of the protection and valuing of the Traveller culture, language and lifestyle. Travellers continue to face discrimination in a range of aspects of their lives including health, accommodation, employment and education, in particular Traveller women who face discrimination on multiple levels.⁶⁴

Recommended Question

NAAR encourages the Committee to ask the State to explain its justification for its refusal to recognise Travellers as an ethnic minority group.

⁶¹ Concluding observations of the UN Committee on the Elimination of Racial Discrimination, 14 April 2005, para. 20 UN Doc: CERD/C/IRL/CO/2; Report, Visit of Co-ordinator on Follow-Up to Ireland (21-23 June 2006), UN Doc: CERD/C/69/Misc.9 para. 16; Concluding Observations by the UN Human Rights Committee on Ireland, 30 July 2008, para. 23 UN Doc: CCPR/C/IRL/CO/3

⁶² Third and fourth periodic report of Ireland to the UN Committee on the Elimination of Racial Discrimination, 21 December 2009, para. 8 UN Doc: CERD/C/IRL/3-4

⁶³ See for example the United Kingdom, *Mandla v Dowell Lee* [1983] 2 AC 548, HL (E) where the House of Lords identified a number of points to determine the characteristics that distinguish an 'ethnic group' including a long shared history and a cultural tradition of its own which the Court deemed essential. In addition also relevant are either a common geographical origin, or descent from a small number of common ancestors, a common language, a common literature peculiar to the group, a common religion different from that of neighbouring groups or from the general community surrounding it and being a minority or being an oppressed or a dominant group within a larger community.

⁶⁴ Pavee Point Fact Sheet on Traveller Women, <http://www.paveepoint.ie/publications-gender.html>

11. Immigration-related restrictions resulting in discrimination (Article 6)

Immigration appeals

The Committee has expressed concerns regarding the “fairly short time limit” that exists in respect of the judicial review of administrative immigration decisions and expressed the hope that issues relating to the appeal procedures would be resolved in the framework of the Immigration and Residence legislation. However, the revised Immigration, Residence and Protection Bill 2010 does not extend the time limit for instituting a judicial review proceeding.⁶⁵ In spite of a commitment to an independent appeal procedure against any immigration related decision in the Programme for Government, this is not reflected in the Immigration, Residence and Protection Bill 2010.⁶⁶ Where administrative review procedures are provided for, the applicant is, in some circumstances, is only allowed five working days after receiving the notification of the decision to request a review.⁶⁷ It should also be noted that a right of administrative review is not provided against all decisions, for example, there is no right of appeal or administrative review against a Ministerial determination that a marriage is a ‘marriage of convenience’.⁶⁸ The Office of the Ombudsman has no jurisdiction to deal with complaints in respect of immigration-related decisions regarding the operations (as opposed to the substantive issues) of the Irish Naturalisation and Immigration Service.⁶⁹

Recommended Question

We request that the Committee ask the State why it has maintained the current time limits on judicial review and failed to provide procedural safeguards, including independent appeals (also provided for in the Programme for Government) in the Immigration Residence and Protection Bill 2010.

Migrant women experiencing domestic abuse

Difficulties arise for migrant women who experience domestic violence because no clear remedy is available in immigration law or administrative procedures in such circumstances. Following a separation

⁶⁵ Section 133(2)(a) Immigration, Residence and Protection Bill 2010, the time limit remains 14 days after notification of a decision.

⁶⁶ Section 53(5) Immigration, Residence and Protection Bill 2010 merely provides for a review procedure by an officer of the Minister in respect of some types of residence permits and provides that administrative reviews may be conducted by an officer of the same grade as the individual who made the original decision in the matter.

⁶⁷ *Ibid*, Section 50(2)(c)

⁶⁸ *Ibid*, Section 138

⁶⁹ Section 5(1)(e)(i) Ombudsman Act 1980.

from a spouse as a result of domestic violence, it is possible to apply to the Irish Naturalisation and Immigration Service (INIS) for a residence permit to remain in the State. However, there is no public information available from Government on the procedure or the criteria used to assess applications and decisions on applications are discretionary. In addition, Community Welfare Officers have discretion as to whether to issue a social welfare payment to migrant women who may require emergency payments to access refuge accommodation and this discretion is not always used positively. The overrepresentation of minority women in the statistics of women who access the support services of Women's Aid highlights the additional barriers faced by migrant women in reaching safety from domestic abuse and also a lack of alternatives outside of emergency accommodation.⁷⁰

Recommended Question

We urge the Committee to ask the State why it has not provided for instances of family breakdown under the Immigration, Residence and Protection Bill 2010?

⁷⁰ SAFE Ireland, *Safety and Change – A national study of support needs and outcomes for women accessing refuge provision in Ireland*, 2009