

ALTERNATIVE
REPORT ON

RACIAL
DISCRIMINATION

IN IRELAND

COLLECTIVE CIVIL SOCIETY PERSPECTIVE



To the Committee on the Elimination of Racial
Discrimination (CERD) for its Consideration of the
Combined Fifth to Ninth Periodic Reports of Ireland
(CERD/C/IRL/5-9), November 2019

Submitted following a civil society consultation process
by INAR, the Irish Network Against Racism
(formerly ENAR Ireland)



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About INAR

The Irish Network Against Racism, INAR (formerly ENAR Ireland) is a membership organisation which coordinates a national network of 100 Civic Society Organisations in Ireland. Member organisations include grassroots anti-racism groups, Traveller and Roma rights organisations, migrant and refugee rights organisations, intercultural associations, minority LGBTQ+ groups, community associations, local authority initiatives and student bodies. Membership also includes most of the principal trade unions in Ireland, covering most of the workforce nationally. Members of the INAR connect the struggle against racism to related struggles including struggles against oppression and marginalisation based on gender, LGBTQI+ identities, disability and socio-economic status.

Members of the INAR work collectively and in solidarity to combat all forms of racism and racist discrimination at a local, national and EU level. INAR uses network collaborations and cutting edge technologies to produce analysis and fill data gaps, foregrounding the voices of minority groups. It coordinates advocacy on local and national levels and shares best practice.

The INAR is in turn an active member of the European Network Against Racism (ENAR), a network of 160 organisations from 30 European States, with its secretariat in Brussels. INAR actively collaborates with the ENAR to coordinate research initiatives, campaigns and mobilisations, bringing a European dimension to Ireland and vice-versa.



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In the aim of full implementation of ICERD, this Alternative Report provides the Committee information on the situation and concerns of civil society in Ireland. During 2019, the Irish Network Against Racism (INAR) carried out consultations across Ireland, including formal submissions from NGOs, experts and members of the public, as well as public consultations in Dublin, Cork, Limerick and Galway. A full list of contributing organisations is at the end of the report.

Protections against Racism: Articles 2, 4 and 6

With recent surveys showing that positive attitudes in Ireland to immigration in Ireland are now lower than the Western European average, it is essential that the State demonstrates leadership in the fight against racism. There is a need for a more robust human rights structure around racism, to include a renewed and inclusive **National Action Plan Against Racism**, an independent agency with powers to oversee State action in this area and address racism through discrimination recording functions, publication of key statistics, training and coordination of high profile campaigns and events to address racism. The Migrant Integration Strategy published by Government in 2017 is welcome, but does not go far enough on anti-racism, and ignores the maturity of Ireland as a diverse society and our indigenous ethnic minority- Irish Travellers.

The establishment of the **Irish Human Rights and Equality Commission** in 2014 has provided a strong voice on equality and there is much potential for development of its role in holding public authorities to account for discrimination in policy and practice, as well as support of civil society in seeking justice. Human rights training is needed across the public sector, and it should be introduced with an effective approach to embedding the **Public Sector Equality and Human Rights Duty**. The Public Sector duty should be a core consideration in the work undertaken by all Government bodies and agencies in respect of the matters raised in this report. Enforcement of the Duty may be carried out by a number of bodies, but must be in place to give it adequate standing in policy and practice, and increase the trust of the public in its function.

Additional new legislation since 2011 includes the Criminal Justice (Female Genital Mutilation) Act 2012 and International Protection Act 2015. Access to the labour market was established (in limited circumstances) through the transposition of the 2018 EU Reception Conditions Directive into Irish law. We look forward to publication of the **review of the Incitement to Hatred Act 1989** by Government which was promised in 2011 as well as in earlier human rights hearings. The Direct Provision (DP) system for supporting International Protection applicants also remains largely without a legislative footing, and continues to be expanded, 19 years after its establishment as a temporary measure. New legislation is urgently needed to address hate crime and online hate speech, as well as to formally recognise *Traveller*¹ ethnicity in law. Preventive and concerted action, as outlined by the **Durban Declaration and Programme of Action**, is necessary to ensure that racism is tackled in every aspect of Irish society, and that there is a strong anti-racist basis for interculturalism.

There is now compelling evidence for the State to withdraw its **reservation on Article 4**, which requires states parties to outlaw incitement to racial discrimination or violence, or the propagation of ideas of racial superiority, and to prohibit organisations that promote or incite

¹ *Irish Travellers* are an indigenous nomadic ethnic minority.

discrimination. There are two key concerns: (1) The spreading of prejudice and stereotypes about refugees and asylum seekers among the general public, particularly young people, through websites and social media, as well as increased attacks through e-mails or on social networks on people who defend the rights of minorities, including activists from non-governmental organisations; and (2) The increase in expression of anti-refugee, anti-Traveller and anti-Roma sentiment, which is openly supported by some politicians, including members of parliament, as well as the increase in racially motivated violence against African and Muslim communities. The increase in **online hate speech** in Ireland is a cause for deep concern. Hate speech is not prohibited in Ireland. The State must take responsibility for addressing online hate speech in Ireland.

Key issues in Ireland today

The recognition of **Traveller ethnicity** by the Irish State on 1 March 2017 was momentous and provides a key opportunity for a changed relationship between Travellers and the State. Policies and practices which force assimilation are increasingly understood as problematic, and there is growing understanding of Traveller history and culture. Nonetheless there are extremely serious failures in housing, education and health provision for Travellers. Increased efforts to ensure participation in public life and resourcing of the supports identified by the State as essential will create a significant impact if effected.

Ireland has yet to standardise **ethnic data collection practices** and incorporate an ethnic identifier across all routine administrative systems, causing challenges for policymakers in assessing equality issues. Disaggregated data is needed on education, health and employment outcomes as well as crime.

The position of ethnic minority and migrant **women** must be understood particularly in respect of labour market participation, discrimination in healthcare, and access to safety and services for victims of domestic violence. Gender and equality proofing should be built into policy processes from design stage.

The **International Decade for People of African Descent** provides an opportunity to examine significant concerns about the levels and severity of racist violence against people of African origin, as well as concerns about discrimination in policing, public services, education, employment and health. The ability to self-identify and the right to expression of identity, as well as the right to safety and protection from racism, are also highlighted by the position of **'Mixed Race'** survivors of Ireland's industrial schools and Mother and Baby Homes, to whom birth and adoption records (including birth names), and adequate recognition of the institutional racism, and torture, they experienced continues to be denied.

Ireland is almost alone in Europe in its **lack of Hate Crime legislation**, and leadership is needed to introduce the standards of recording, investigation and prosecution, as well as victim support, to bring Ireland into line with international good practice. Legislation is needed to increase confidence of victims and their communities in the criminal justice system. Information must be made public on training, guidance and recorded incidents. **Racial profiling** by An Garda Síochána must be prohibited immediately, in line with previous CERD and ECRI recommendations, and guidance provided for identification stops, immigration checks and child protection. Victims concerned about their migration status must be able to safely report hate crimes.

Applicants for **International Protection** have benefited from some improvements introduced with the International Protection Act 2015, but key issues warrant attention, including access to legal aid, housing in Direct Provision, length of claims, and access to interpreters. Decision time limits are necessary as well as assessments for vulnerability and need of special procedural

guarantees. There are inadequate supports for **unaccompanied children** both in foster care and aged out minors in Direct Provision.

There are some improvements in the **system of 'Direct Provision' (DP)** for asylum seekers since the UN CERD's last review, but the extensive use of 'emergency accommodation' has made those unavailable to a significant number. The range of rights which cannot be exercised makes the system not fit for purpose, including the right to security of person and protection from violence or bodily harm, and the suitability of the system to adequately ensure access to services and support integration. We call on the State to close down the current system of Direct Provision and replace it with a regulated, planned humane asylum system which focuses on integrating asylum seekers into society.

Family reunification is restricted severely by Irish immigration legislation, which discriminates on the basis of income and gives inadequate recognition to reunification needs of international protection applicants.

Child protection is an area where racial stereotypes come into play in ways that deeply affect family life. Ethnic minority children are disproportionately represented in the child protection system. Improvements in social work and policing responses to child protection must be based on appropriate guidance and evidence, and equality proofing of policies.

The effects of the 2004 constitutional referendum on citizenship have now become apparent, with threatened deportation of children born in Ireland and precarious access to services for **Irish-born children without citizenship**. These have prompted a change of attitudes amongst the Irish public which warrant a review of the present law and advice available to children in this position.

The **current housing crisis** in Ireland creates enormous challenges for vulnerable migrant and minority communities who experience discrimination in accessing private sector housing, and often experience poorer housing conditions and overcrowding. Travellers are particularly in need of safe and appropriate accommodation, experiencing the failure of local authorities to spend allocated Traveller accommodation budgets.

Discrimination in the public sector is highest in **healthcare**, but access to health is crucial for marginalised groups. It is essential that the State ensures immediate and adequate access to primary care, sexual and reproductive health care and mental health services, which are culturally and linguistically competent and adequately resourced, and addresses the issues of discrimination in access and treatment as well as differential outcomes.

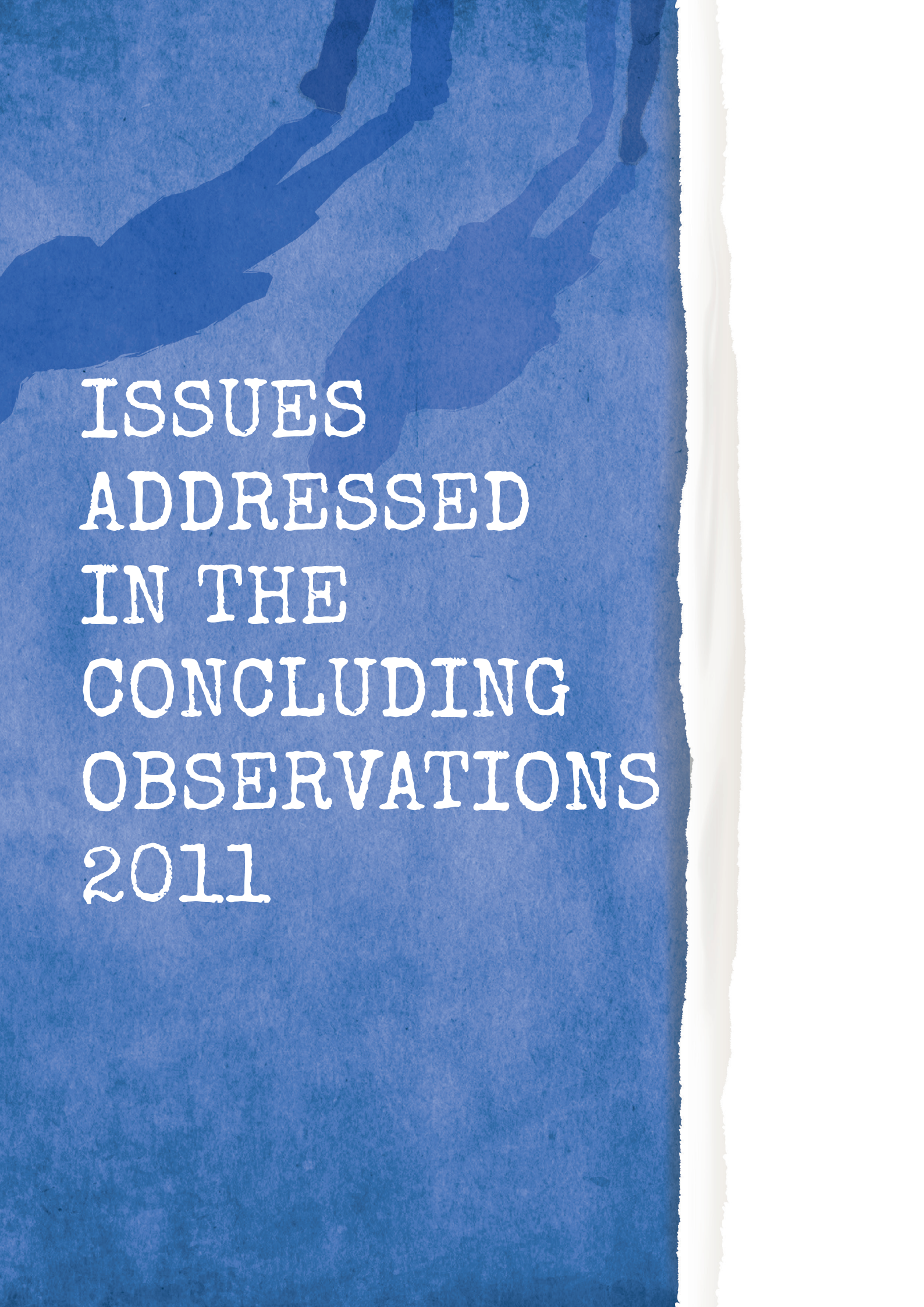
Although **employment discrimination** is outlawed by Irish equality legislation, it remains a persistent feature of the labour market. Ireland continues to operate a guest worker model with few rights enshrined in law. Migrant workers (particularly women and the undocumented) are over-represented in low paid and precarious sectors of the labour market. As part of a new National Action Plan against Racism, the State should introduce targeted measures to strengthen access to the labour market to address discrimination and progression, as well as measures to address exploitation. There are positive measures being undertaken in recruitment to public bodies.

The **education** policy of successive governments to promote plurality of patronage in schools in Ireland has resulted in the segregation of children along religious, ethnic and nationality lines. Minorities are concentrated in a small number of schools which are enormously diverse in ethnicity, nationality, language and cultures. There are low numbers of ethnic minority teachers. Equal access and employment in the education system requires guarantees of the right to Freedom of Conscience, religion and belief.

Implementation of 2011 CERD recommendations

Para	Issues	Recommendations in the previous cycle	Implementation as of 1 October 2019			Assessment	
			None	Partial	Done	Insufficient	Inappropriate
11	Human Rights bodies	Functions of closed human rights bodies fully transferred		✓			
12	Self-identification	Ensure self-identification for ethnic groups		✓			
13	Livelihoods of the Traveller community	Undertake concrete measures to improve livelihoods of Traveller community		✓			
14	Participation of Traveller community	Adopt affirmative actions to improve representation of Travellers in political institutions	✓				
		Adopt measures to encourage Traveller community participation in public affairs	✓				
15	Protection from racial discrimination through legislation	Strengthen protection of all people from racial discrimination through legislation		✓			
		Improve Immigration and Residence Protection Bill 2010 to provide (a) judicial review and (b) separate residence permits for migrants in abusive relationships		✓			
		Progress Criminal Justice (Female Genital Mutilation) Bill 2011			✓		
		Update Prohibition of Incitement to Hatred Act 1989	✓				
16	Incorporation	Incorporate Convention into Irish legal system to ensure application before Irish Courts	✓				
17 & 18	Article 4 reservation	Provide compelling reasons for maintaining reservation/interpretative declaration on article 4	✓				
18	Racial profiling by police and other law enforcement personnel	Legislate to prohibit racial profiling by police and other law enforcement	✓				
		Promote humane treatment of migrants and people of non-Irish origin by police and other law enforcement		✓			
		Establish appropriate mechanisms to encourage reporting of racist incidents and crimes	✓				
18 & 19	Racist motivations to crime	Legislate to declare illegal and prohibit racist organizations	✓				
		Legislate to ensure racist motivation consistently taken into account as aggravation in sentencing of criminal offences	✓				
		Legislate for judicial training on racial dimensions of crime	✓				
20	Processing asylum applications	Expedite processing of asylum applications to reduce periods of time in asylum centres		✓			

20	Direct Provision for asylum seekers	Improve living conditions of asylum-seekers by providing adequate food, medical care and other social amenities, including review of direct provision system		✓		✓	✓
22	Separated & unaccompanied children	Legislate to protect rights and welfare of separated and unaccompanied children seeking asylum		✓			
		Ensure guardian ad litem or advisor appointed for all separated and unaccompanied children	✓				
25	Family reunification	Address absence of a legal framework		✓			
		Review narrow meaning ascribed to 'family'	✓				
		Legislate to elaborate principles, rights and obligations governing family reunification		✓			
		Responsibility for applications to independent authority	✓				
21	Disaggregated data	Provide disaggregated data on racial discrimination	✓				
		Compile disaggregated data on racial discrimination against persons of African origin	✓				
23	Racist violence against persons of African origin	Ensure investigation and prosecution, with appropriate penalties, of reported violence against persons of African origin	✓				
24	Human rights training for civil service	Mainstream human rights training in civil service	✓				
		With the Irish Human Rights Commission (IHRC), raise awareness and provide human rights training to all civil servants including Garda Síochána (Police) and judiciary	✓				
26	Non/multi-denominational education	Accelerate efforts to establish alternative non-denominational or multi-denominational schools and amend legislation inhibiting enrolment on basis of belief		✓			
		Monitor incidents of discrimination on the basis of belief in education	✓				
27	Women	Ensure migrant and minority women are focus of target actions and objectives of National Women's Strategy		✓			
28	Ratifications	Ratify outstanding international human rights treaties including the International Convention on the Protection of All Migrant Workers and their Families		✓			
29	Durban Declaration and Programme of Action	Develop action plans and other measures to implement DPPA at national level		✓		✓	✓
30	IDPAD	undertake and publicize appropriate programme of activities to commemorate the International Decade for People of African Descent		✓		✓	
31	Civil society	Continue consulting and expanding dialogue with civil society organizations in combating racial discrimination		✓		✓	



ISSUES
ADDRESSED
IN THE
CONCLUDING
OBSERVATIONS
2011

1.

Transfer of functions from closed human rights bodies to new institutions

CERD/C/IRL/CO/3-4 paragraph 11

State report: CERD/C/IRL/5-9 paragraph 24-26

Partially implemented

A number of key changes to the equality infrastructure of the state undertaken after 2008 resulted in reduced access to remedies for affected groups, difficulties in accessing information about remedies, and some functions not being transferred to any other body. These remain outstanding issues of concern.

The closure of the National Consultative Committee on Racism and Integration (NCCRI) has not resulted in its functions being fully subsumed by any other public body. This is exemplified by the failure to renew the National Action Plan Against Racism (NAPAR) for over ten years. The Migrant Integration Strategy does not adequately replace the National Action Plan Against Racism, in scope or depth. It does not reflect the inclusion of Travellers or other Irish-born ethnic minorities. The discrimination and violence recording functions of the NCCRI have not been adequately subsumed by any other body, including publication of statistics on both. This has resulted in civil society data recording providing the most consistent (though still significantly under recorded) picture of discrimination. Most importantly, Ireland has not renewed its National Action Plan against Racism which ended in 2008.

We highlight particularly a number of roles which the NCCRI undertook of importance which have been adopted only in part by the Office for the Promotion of Migrant Integration (OPMI), situated within the Department of Justice. These included: the collation of racist incident reports, the implementation and monitoring of the National Action Plan Against Racism, training for the Office of the Refugee Applications Commissioners, delivering research such as the report *Developing Quality Cost Effective Interpreting and Translating Services for Government Service Providers*, and its various roles as National Coordinating body for the 2008 European Union Year of Intercultural Dialogue in Ireland, assisting with the Football Association of Ireland's Intercultural Football Plan and the co-ordination of Intercultural and Anti – Racism Week on an annual basis.

The functions of the former Equality Tribunal vis-a-vis the Equal Status Act (ESA) sits uneasily among the other functions of the Workplace Relations Commission where they have now been placed. The removal of licensed premises from access to the facilities of the (then) Equality Tribunal have had the effect of reducing access to the equality infrastructure. This regressive action needs to be reversed. Discrimination cases involving licensed premises can still only be heard by District Courts, which may be a barrier to access to justice for members of the Traveller community. Civil legal aid is not available for proceedings before the Workplace Relations Commission. There are concerns about the low proportion of cases brought to the WRC on discrimination

or equality (11% in 2017¹). WRC complaint forms are difficult to complete. Victims of discrimination have a low awareness of the full range of its roles² and ECRI has noted that they may be misled by the name of the Commission.³

We note the State report includes reference to the IHREC and the fact that it includes all the mandates (as well as a number of new functions) of the previous Human Rights Commission and the Equality Authority and we welcome this development. However, the process of the merger has led to a situation that there are no longer any trade union or employer representatives on the Commission and there has been a subsequent dilution of the focus on workplace issues.⁴

Recommendations

- The restoration of a statutorily guaranteed and independent National Consultative Committee on Racism and Interculturalism (NCCRI). The NCCRI should develop and monitor the implementation of a new National Action Plan Against Racism, as one of its functions, explicitly including Irish Travellers (an indigenous ethnic minority) and other Irish-born ethnic minorities
- A guaranteed minimum ring-fenced budget for IHREC, to be set at a minimum to the levels of the combined pre-austerity budgets of both the former Equality Authority and Human Rights Commissions
- In respect of the WRC: a promotional campaign to highlight its non-workplace related functions; improvement and improve its complaint procedures, including its complaint form; and consideration of a name change to promote and reflect its equality enforcement function
- Return of complaints about licensed premises and breaches of the Equal Status Act within the remit of the WRC
- Human Rights & Equality Impact Assessments (HREIAs) and regular reviews (internal & external) to become mandatory for all government departments and state agencies (Gardaí (the Police), local authorities, the Health Service Executive (HSE), Education and Training Boards (ETBs), the Further Education and Training Authority, WRC, etc.) and state-funded organisations like schools

2.

Protection from racial discrimination through legislation

CERD/C/IRL/CO/3-4 paragraph 15

State report: CERD/C/IRL/5-9 paragraph 57-70

Partially implemented

The International Protection Act 2015 has introduced some welcome improvements which address some of the previous CERD observations. However these improvements are piecemeal, and we believe do not adequately address rights, entitlements and obligations as set out in Paragraph 14 of the Concluding Observations. Issues of refugee poverty continue to be of concern. We welcome the inclusion of the right to judicial review. In 2012 the Irish Nationalisation and Immigration Service (INIS) published a guideline for victims for domestic violence who wish to attain independent immigration status. However there is insufficient clarity as to what residency stamp will be afforded to approved applicants.

We welcome the publication of the Criminal Justice (Female Genital Mutilation) Act 2012. We are however concerned that despite reports that FGM is being practiced in Ireland and abroad on girls resident here, with up to 1600 girls currently at risk endnote (5), there have been no convictions under the legislation.⁶

The review of the 1989 Incitement to Hatred Act has been ongoing for more than 18 years, according to state reports to international bodies. Recent increased activity of organised far-right organisations in Ireland and attacks on proposed Direct Provision centres highlight failure to employ existing legislation and the necessity of measures to augment and increase use of existing legislation on incitement to hatred and on the activities of racist organisations. Effective responses must be developed to address online hate speech.

Efforts to invoke the Prohibition of Incitement to Hatred Act (1989) Act in cases of crime where racism was claimed as a motivating factor have been largely unsuccessful.⁷ The Act was not designed to apply in such cases. The Law Reform Commission (2016) has described it as particularly ineffectual in combating online hate speech. In the absence of adequate legislation to identify, investigate and prosecute the bias element of hate crimes, the State has taken few measures to address the widely documented hate crimes against ethnic minorities, migrants, refugees and asylum seekers. These concerns have also been expressed by the European Commission against Racism and Intolerance in its latest report⁸. We note that the Migrant Integration Strategy⁹ document contains a commitment to review current legislation on racially motivated crime with a view to strengthening the law against hate crime.

Enforcement of the Equal Status Acts: The enforcement of rights and obligations under the Equal Status Acts is critical to access to justice for a range of ethnic minority groups, as it prohibits a wide range of service providers, including the state, from discriminating on a number of grounds, including the ground of membership of the Traveller community and related grounds such as gender and the disability ground. The scope of the legislation also extends to all kinds of educational establishments, from playschools to third level, and the provision of accommodation by the state, local authorities and the private sector. There is currently no legal aid available for people to bring claims of discrimination under the Equal Status Acts or the Employment Equality Acts to the Workplace Relations Commission. There is particular concern about the documented level and extent of unmet legal need that Travellers experience, particularly in the areas of: access to Traveller-specific housing, standards of accommodation, evictions and discrimination in access to goods and services, including licensed premises. Access to justice is essential to addressing unmet legal and is integral and essential for social inclusion.¹⁰

Action against discriminatory legislation: Section 14 of the Equal Status Acts precludes legal actions against legislative provisions. In practical terms, this means that any action that is required on foot of legislation which discriminates against Travellers, or has a disproportionately negative impact on Travellers, for example the Criminal Trespass legislation, falls outside the scope of the Equal Status Acts and cannot be challenged under domestic equality legislation.¹¹

Public Sector Equality and Human Rights Duty, or Public Sector Duty (PSD):

A significant addition to the range of legislation providing protection from racial discrimination is Section 42 of the Irish Human Rights and Equality Commission Act 2014. Section 42(1) requires public bodies, in the performance of their functions, to have regard to the need to eliminate discrimination, promote equality and protect human rights of staff and people availing of their services. Section 42(2) requires public bodies to assess, address and report on progress in relation to equality and human rights in their strategic plan and annual reports in a manner that is accessible to the public. A key objective is to design an efficient regulatory framework that would drive effective and transparent equality policies at national, regional and local levels to meet wider social, economic and cultural requirements of migrant communities in Ireland.

The duty is essential to address the widespread racial discrimination in the provision of services to individuals and communities as well as in the planning and resourcing of services evidenced by civil society.¹² It has been warmly welcomed. It is essential, however, not to lose the trust of ethnic minorities through slow action to implement training in public bodies on the duty, and to provide mechanisms of accountability. Public servants and public bodies (including Government Departments and An Garda Síochána) have not yet been adequately informed of their obligations under the Duty nor resourced to undertake the training and review processes necessary to fulfil it. The importance of the Public Sector Equality and Human Rights Duty is reflected in the number of later sections of this report which make reference to it.

Recommendations

- Publication of the review the Prohibition of Incitement to Hatred Act 1989 as a matter of urgency, ensuring that new or revised legislation will address online hate speech (a need identified by the Irish Law Reform Commission), and annual publication of the number of arrests, prosecutions and outcomes under the 1989 Act
- Conduct a review to consider incorporating the Optional Protocol to the Convention on Cybercrime
- Conduct a targeted coordinated information campaign about the rights and resolutions available via the Equal Status Acts by bodies such as IHREC, the WRC, and the Citizens Information Board and Traveller NGOs
- Access to legal aid to be made available and effective by enabling the Legal Aid Board to provide legal aid in discrimination claims by designating the Workplace Relations Commission, under section 27 of the Civil Legal Aid Act 1995 as amended, and by amending the Act to ensure it is available in eviction cases
- Section 14 of the Equal Status Acts 2000 – 2015 to be amended to ensure that an effective remedy is available for discrimination that has a legislative basis
- Reform immigration law to provide formal recognition of domestic violence by

making provisions that enable dependent family members to apply to remain in Ireland as victims of domestic violence (a 'Domestic Violence Concession'), and pending the determination of applications to remain in Ireland, and ensuring that victims of domestic violence can access safe emergency housing and essential welfare benefits to meet basic needs

- The Public Sector duty should be a core consideration in the work undertaken by Government bodies and statutory agencies in relation to the recommendations of this report
- IHREC should be encouraged and supported to move to an enforcement role vis-a-vis implementing the Public Sector Duty
- Public sector bodies should include in their strategic plans an assessment of human rights and equality issues relevant to the functions of their body, and the incorporation of such issues in policies, plans and action plans
- Government departments, agencies and statutory bodies that come within the scope of the Public Sector Duty should report annually on their work to meet their section 42 obligations, beyond the provision of cultural and awareness training to their staff
- The State should provide in its periodic report:
 - details of the procedures adopted to ensure that all public bodies carry out an assessment of the human rights and equality issues relevant to their functions, and the policies, plans and actions being taken or proposed to be taken to address those issues
 - information on what legal, policy and practice initiatives have been put in place pursuant to the public sector duty to ensure effective mainstreaming of anti-discrimination and equal treatment for migrants and minorities, including Roma and Travellers
 - information on how it is monitoring the implementation of the Section 42 Public Sector Duty across the public sector, including the delivery of specific training for staff

3.

Incorporation of the Convention on the Elimination of Racial Discrimination into Irish law

CERD/C/IRL/CO/3-4 paragraph 16
State report: CERD/C/IRL/5-9 paragraph 71

Not implemented

In the absence of effective Incitement to Hatred or of any Hate Speech legislation, failure to produce legislation on hate crime, and evidence of continued State disregard for the protection of minorities and migrants, it is necessary for the Convention to be explicitly incorporated in domestic law.

As a result of Ireland's dualist system of laws, the Convention is not directly enforceable through the courts in Ireland. Vindication of the rights contained in it is dependent on the will of the Government. The Committee must consider why, if the Government believes that the rights enshrined in the Convention are sufficiently important for Ireland to ratify, it has not yet sought to bring the Convention fully into Irish law.

Recommendations

- The State should consider the CERD Committee's comments on the need to incorporate the Convention into the Irish legal system, and further conduct an analysis of public knowledge on the possibility of complaints being submitted by individuals and groups of individuals under Article 14 of CERD.
- The State should provide a detailed account of how, in the absence of direct incorporation, the protections under ICERD are mirrored in domestic legislation, also addressing the accessibility of any such remedies and any gaps in protection.



4.

State's reservation on incitement to hatred and prohibition of organisations promoting discrimination

CERD/C/IRL/CO/3-4 paragraph 17 and 18

State report: CERD/C/IRL/5-9 paragraph 72-74 on the reservation; CERD/C/IRL/5-9 paragraph 93-94 on the prohibition of organisations promoting discrimination

Not implemented

The current legal position on incitement to hatred and the State's continued reservation on Article 4 is a matter of deep concern to civil society. The situation in Ireland today means that reasons which might have been 'compelling' at previous CERD hearings are no longer so. The State's reservation on Article 4, as well as its inaction on updating Incitement to Hatred legislation since the review of the legislation began in 2000, leaves ethnic minorities and migrants with severely inadequate protection against the establishment and operation of racist organisations and increasing hate speech and discrimination.

In the last 3 years, we have evidenced a significant rise in arson and criminal damage against buildings associated with asylum seekers, refugees and Travellers, violent protests against minorities (many prompted by online hate), and the open

establishment and operation of racist groups.¹³ The recent Presidential election saw a number of candidates who openly declared support for drastic anti-immigration measures and used racist language to describe Travellers, refugees and migrants. Increases in discrimination and stereotyping were recorded as a result of these public statements.¹⁴ More recent public actions against the location of Direct Provision centres have caused concern due to links with known far-right organisations and individuals and increasing use of online platforms to stir fears about 'anti-social behaviour', 'crimes', 'economic migrants' and the impact of centres on 'local life'.¹⁵ There are also concerns about the migration of far right discourse into the political mainstream.

We are particularly concerned about

- (a) The spreading of prejudice and stereotypes about refugees and asylum seekers among the general public, particularly young people, through websites and social media, as well as increased attacks through e-mails or on social networks on people who defend the rights of foreign nationals, including activists from non-governmental organisations;
- (b) The increase in expression of anti-refugee, anti-Traveller and anti-Roma sentiment, which is openly supported by some politicians, including members of parliament, as well as the increase in racially motivated violence against African and Muslim communities.

Recommendations

- The State should withdraw its reservation on Article 4
- The State should firmly condemn hate speech by public officials and politicians
- The State should promptly produce proposals for legislation to replace the ineffective Incitement to Hatred Act 1989
- The State must effectively investigate racist hate speech and prosecute perpetrators of Incitement to Hatred
- New hate speech and hate crime legislation should be enacted in consultation with relevant civil society actors¹⁶

5.

Implementing the Durban Declaration and Programme of Action (DDPA)

CERD/C/IRL/CO/3-4 paragraph 29

State report: CERD/C/IRL/5-9 paragraph 163-165

Partially implemented

The Government's failure to show political leadership in the fight against racism in Ireland is a major cause of concern. We draw the Committee's particular attention to recent research findings that show positive attitudes to immigration in Ireland are now lower than the Western European average.¹⁷

There are two key areas of the Durban Declaration and Programme of Action which we wish to highlight:

The DDPA calls for comprehensive national action plans to eradicate racism, racial discrimination, xenophobia and related intolerance. It calls for the reinforcement of national institutions and it formulates concrete recommendations in the areas of national legislation and the administration of justice. There is an urgent need for a renewed national action plan to combat racism and promote interculturalism to be developed with civil society stakeholders. The recent government document "Migrant Integration Strategy" published in February 2017 failed to meet the standards of a UN Durban Declaration-compliant National Action Plan Against Racism. Further, the framing of anti-racism measures entirely within the focus of 'migrant integration' ignores the maturity of Ireland as a diverse society and the presence of indigenous ethnic minorities. The re-establishment of an independent body for advising the government on racism and to fund a range of anti-racism initiatives is also desirable.

The DDPA emphasizes the importance of preventive and concerted action, especially in the field of education and awareness-raising, and calls for the strengthening of human rights education. There continues to be an unacceptable level of racism in Irish schools¹⁸ and a lack of intercultural and particularly anti-racism training for teachers and school staff. There are no national anti-racism supports for schools to plan for and implement school ethos which value diversity and tackle racism appropriately.

Recommendations

- The State must commit to a renewed National Action Plan Against Racism (NAPAR) which is compliant with the DDPA
- The State must through its educational authorities develop a plan for training and supporting teachers and school management to plan for and implement anti-racist ethos in schools and assist schools to meet their Public Sector Equality and Human Rights obligations
- The State should consider how to resource a national programme of support for schools
- The State should re-establish a NCCRI-style independent body for advising the government on racism and independently collect data on racist discrimination.

6.

Self-identification of people as an ethnic minority group

CERD/C/IRL/CO/3-4 paragraph 12

State report: CERD/C/IRL/5-9 paragraph 28

Partially implemented

Irish Travellers are an indigenous Irish ethnic minority. We welcome the historic recognition of Traveller ethnicity by the Irish state on 1st March 2017, but caution on its utility without any legal protections to give meaningful effect to this recognition. Traveller ethnicity must be given statutory footing.

Self-identification is limited in a context where some members of ethnic minorities have direct experience of inter-generational discrimination. Past and present experiences of discrimination encourage some Travellers to hide their identity. We acknowledge the role of shame as well as structural barriers in the current rates of Traveller suicide and of mental health support need. There is a need for a range of well-designed programmes to support and resource Traveller heritage and language in order to address the historical and contemporary impact of state and societal discrimination on Traveller knowledge of and pride in their ethnic identity.

We also draw the Committee's attention to the particular difficulties associated with identifying as 'mixed race Irish' in Ireland today.¹⁹ These issues are related to the concerns raised about the historical denial of the 'mixed race Irish' category.²⁰ It is important that the Irish state appropriately recognise the historical presence of self-defined 'mixed-race' people in Ireland, and reflect that appropriately in its approaches to diversity.

There are also concerns raised by mixed-race survivors of Mother and Baby Homes about the lack of access to birth records, and to their African names, as well as to information about their non-Irish families, which prevent them adequately enjoying their rights to family life and expressing their identities equally as both African and Irish.²¹

Recommendations

- Traveller ethnicity must be given statutory footing to give legal effect to Traveller ethnic recognition
- Design and resource a programme of Traveller cultural heritage activities, to include archival and teaching activities
- Raise positive awareness of Traveller heritage and culture amongst public bodies and service providers, particularly with respect to horse ownership and nomadism
- Recognise the historical presence of mixed-race Irish people in Ireland in diversity strategies and in data collection



7.

Measures to improve the livelihoods of the Traveller community

CERD/C/IRL/CO/3-4 paragraph 13

State report: CERD/C/IRL/5-9 paragraph 29-55

Partially implemented

Lack of Traveller Accommodation: Traveller accommodation is at a crisis point. The State has continuously failed to provide adequate levels and standard of Traveller accommodation, and serious concerns about the impacts of the Housing (Traveller Accommodation) Act 1998 and the Housing (Miscellaneous Provisions) Act 2002 have been well established in recent reports of international human rights bodies,²² as well as by the independent Expert Group on Traveller Accommodation established by the Minister of the Department of Housing, Planning and Local Government.²³ Recent research commissioned by a government body shows that the number of families living on unauthorised sites has increased by 20% between 2010 and 2015. The Traveller accommodation budget has been significantly reduced (From €40m in 2008 to €13m in 2019). Importantly, there has also been consistent and significant underspend by local authorities (e.g. 52% in 2018), and inadequate accountability for this. Action by the State on this problem has already been urged by other international bodies.²⁴

The lack of accommodation provision has pushed many Travellers into shared and overcrowded accommodation, unauthorised sites, the private rented sector and/or homelessness.²⁵ The criminalisation of trespass in the Housing (Miscellaneous Provisions) Act 2002 has severely impacted on Travellers' nomadic tradition, but particularly also on Travellers who are waiting to be accommodated by a Local Authority and are left with no option but to camp on roadsides or live on unauthorised sites, and then experience forced evictions by the same local authorities under this act.²⁶ We welcome the legal request by the Irish Human Rights and Equality Commission made in June to every local authority in the State to undertake an equality review on their provision of Traveller accommodation,²⁷ and urge the use of the Commission's compliance/enforcement powers where necessary.

Education: Issues of attendance, attainment and progression for Travellers and Roma in school remain of significant concern. Children from these communities experience high levels of bullying, racism and discrimination in schools²⁸, and regularly cannot access the supports they need to succeed. There have been cuts to essential services such as the Visiting Teachers for Travellers scheme and the posts of Resource Teachers for Travellers were abolished after 2011, replaced with a Home School Community Liaison scheme which is not available in many schools. Capitation grants are allocated to qualifying schools rather than individual Traveller pupils, and are not available for Roma.²⁹ There are concerns about the prolonged use of 'reduced' timetables³⁰ and their impact on retention.

We welcome the Traveller Culture and History Bill³¹ currently going through parliamentary approval. It is important that this is matched with appropriately resourced anti-racism work in schools which is inclusive of Traveller and Roma.³²

Mainstreaming strategies addressed at inclusion are welcome, but have focused almost exclusively on access to third-level rather than issues at earlier stages.³³ Traveller children are still also disproportionately excluded from schools on the basis of the 'past pupil' enrolment criteria (still allowed under the Admissions to School Act 2018). There has been no publication of the 2006 report on a Traveller Education Strategy nor its 2017 review, and there is now a significant need for a Traveller and Roma Education Strategy.³⁴

Health: Social exclusion is a key determinant of health inequalities, and a driver particularly of mental health needs. There are stark inequalities for Travellers in relation to access, participation and outcomes in health. Both Traveller and Roma groups experience high levels of discrimination in healthcare³⁵. Travellers experience a six

times higher suicide rate than the general population (11% of all Traveller deaths). There is a lack of follow-on supports or referrals for Travellers who suffer from mental health issues or have been bereaved through suicide³⁶. We welcome the commitment to develop a targeted National Traveller Health Action Plan currently underway. However, it is imperative that the Plan have robust implementation plan with associated resources and a consultative structure to drive its implementation³⁷.

Employment: Travellers and Roma experience disproportionately high rates of unemployment due to low educational attainment, discrimination, childcare and family commitments, and being placed in a poverty trap due to welfare issues. Roma who do not meet the right to reside or Habitual Residence Condition (HRC) are not considered job seekers and therefore are not eligible for many training and employment supports. The Special Initiative for Travellers (SIT) employment and recruitment initiative has suffered from both cuts to budgets and significant underspend³⁸. Successful targeted training programmes cut due to austerity have not been re-introduced. As well as supporting apprenticeships and Traveller specific economies for entrepreneurship³⁹, there is a need to take seriously the admission and retention of Travellers into mainstream employment.⁴⁰

Social Inclusion: Despite Travellers and Roma being identified as a vulnerable group in need of targeted social inclusion programmes, investment towards Traveller and Roma inclusion has been dismal.⁴¹ Roma and Travellers are under-represented in national social inclusion programmes related to employment, training, health, accommodation and education.⁴²

Recommendations

- Full implementation of the National Traveller and Roma Integration Strategy (NTRIS) and regular reports on progress, with bodies held accountable for failure to implement measures
- Publish the 2017 review of the Traveller Education Strategy and develop a Traveller and Roma Education Strategy with appropriate resources and implementation plan
- Resource the re-establishment of the Visiting Teacher Service for Travellers
- Re-introduce ring-fenced educational supports for Travellers and extend to Roma
- Establish a National Traveller Education Advisory group in the Department of Education and Skills
- Develop a comprehensive Traveller and Roma training, employment and enterprise strategy with a robust implementation and monitoring plan, and ensure Travellers and Roma are included in key mainstream policy initiatives, including the forthcoming Pathways to Work Strategy
- Repeal the Criminal Trespass Act, and replace it with new legislation drawing on international good practice
- Amend with respect to the rights of Travellers, the Housing (Traveller Accommodation) Act 1998, the Housing (Miscellaneous Provisions) Act 2002 and other relevant legislation and policies which impact on accommodation provision for Travellers
- Travellers and Roma should be included at all stages in the development of the new Action Plan on Social Inclusion currently being drafted by the State

Participation of the Traveller community in public affairs and political institutions

CERD/C/IRL/CO/3-4 paragraph 14

State report: CERD/C/IRL/5-9 paragraph 56

Partially implemented

Political participation is necessary to address the overwhelmingly negative attitudes to this indigenous ethnic minority and help to address the impact of public policies which directly and disproportionately negatively impact the Traveller community. We welcome the inclusion of actions to support participation in political processes in the National Traveller and Roma Inclusion Strategy (NTRIS)2017-2021. We note however that while there is a tentative timeframe for actions, there are no indicators, targets, outcomes or budget lines for the same.

We welcome the support of the State party for the first National Traveller Political Participation Conference and launch of a Traveller political participation handbook in early 2019, and note the significance of having 5 members of the Traveller community as local election candidates in 2019 and its positive impact on Traveller registration and voting rates. Visibility in roles representing both the Traveller community and wider Irish constituencies is key. There is a need for affirmative action programmes to include designated Traveller representation in mainstream institutions (not just consultative committees) and state-sponsored bodies.

Any consultation that contains the goal of supporting increased involvement of Travellers in decision making processes within the public sphere, and increasing the inclusion of Travellers within civil structures, governmental agencies and Departments will be a key instance in which the Public Sector Equality and Human Rights Duty will apply. They must be required to take a proactive approach to tackling institutional discrimination against Travellers, and promote the mainstreaming of an equality perspective in all their functions.

There is a need to create designated places on Public Participation Networks (PPNs), strategic policy committees, and on Local Community Development Committees (LCDCs), and create mechanisms for advising the work of State partners and regulating bodies. These should help to develop Traveller participation in a wide range of settings such as in tourism, heritage, sports, the arts, community development, enterprise and social inclusion.

Recommendations

- Ensure that an implementation mechanism is created for NTRIS sections 132-136 on political participation.
- Provide details of a strategy to support the development of Irish Traveller political participation and political representation within the Irish political arenas.
- Support the networks of independent local and national Traveller and Roma-led community development organisations
- Ensure that gender and other identities within the community are considered in all consultation platforms around decision making, include the unique perspectives of Traveller women, men, as well as LGBT Travellers and Travellers with disabilities

9.

Recording, prosecuting and sentencing racist motivations to crime

CERD/C/IRL/CO/3-4 paragraph 18 and 19

State report: CERD/C/IRL/5-9 paragraph 93-97

Partially implemented

Ireland is almost alone in Europe in its lack of Hate Crime legislation. While there has been some excellent leadership shown recently in An Garda Síochána on developing a strategy on hate crime for the service⁴³, in the absence of framing legislation, leadership in the Department of Justice and Equality and across government will be necessary to give this the legislative basis which will make it part of an effective system. The lack of leadership, legislation, political will, policy and strategy on hate crime in Ireland has created confusion about the standards that victims should expect from public authorities. Ireland needs a national strategy and action plan on hate crime, adopting a strategic victim and outcome focused approach, where safety, security and justice for the victim are paramount.

From reporting and recording hate crime to investigation and prosecution, and sentencing, the Irish criminal justice system is not configured to recognise hate crimes. The lack of specific legislation causes a “policy vacuum” such that the “hate” aspect of crimes is filtered out of the narrative as investigations or complaints make their way through the criminal justice system⁴⁴. Effectively addressing this situation requires improved institutional frameworks to identify, understand and address legal, policy, data collection and capacity-building issues across the hate crime agenda.⁴⁵

Until October 2019, there were basic questions outstanding about the status of the Macpherson definition and training of Gardaí on hate crimes, although it is hoped that the newly introduced Diversity and Integration Strategy 2019-2021 will put these on a new standing and address the issue of under-reporting.⁴⁶ Although general trust levels

in police amongst ethnic minorities are good, evidence collected over the last 5 years by iReport.ie suggests that the service received by victims of racist crime is very mixed, with many victims not receiving the service to which they are entitled and some even suffering abuse by Gardaí.⁴⁷ This needs to be monitored closely and reported upon by the relevant oversight bodies.⁴⁸ The Commission on the Future of Policing in Ireland has emphasised the need for a focus on victims, recommending that compliance with victims' rights is embedded in all processes and training.⁴⁹

Statistics on hate crime data are not shared regularly or consistently with the public or on the request of NGOs working in this area, and there are concerns about the reliability of the data released to international bodies. High quality hate crime data-collection mechanisms in the force are needed to understand the prevalence and nature of hate crimes, improve responses in support of victims, measure the effectiveness of initiatives to address hate crimes and communicate the criminal justice response to hate crimes to a wide range of stakeholders, such as victims, affected communities and the wider public.

Recommendations

- Make available all information on hate crime data, training materials and programmes, and recording policy and guidance, to be easily accessible to the general public and affected communities
- Make all data already compiled and submitted to intergovernmental organisations and agencies easily accessible to the general public
- Develop a national strategy and action plan on hate crime, including specific strategic actions to move from informal to institutional cooperation with expert and skilled NGOs on victim support, hate crime training and hate crime monitoring, fairly compensating relevant NGOs
- Demonstrate leadership in the area of hate crime, introducing legislation based on evidence from Ireland and meeting international standards, to increase confidence in the criminal justice system's ability to address the problem
- Trust by victims should be increased through improved training and liaison, and an immigration firewall to protect undocumented and migrant victims, and through improved cooperation with victim support services

10.

Racial profiling by police and other law enforcement personnel

CERD/C/IRL/CO/3-4 paragraph 18

State report: CERD/C/IRL/5-9 paragraph 75-92

Partially implemented

There is no legislation proscribing racial profiling by An Garda Síochána and other law enforcement officers, nor mechanism for complaint for those experiencing racial profiling. There is no official data on racial profiling available, nor is it clear that this information is collected in any way except by civil society.

A recent report for the Irish Council for Civil Liberties notes that “[t]he relationship between the Garda and Travellers and Roma is particularly worrying and requires close attention”, with trust significantly eroded by instances of profiling and recording of Traveller children on the PULSE system and the removal of Roma children from their parents based on racial stereotyping and without adequate investigation, and the recording of extensive stops by Gardaí of Roma people⁵⁰. 70% of Travellers⁵¹, and over 53% of Roma⁵², have experienced discrimination from Gardaí. More than 77% of Roma surveyed have reported being stopped on the street for ID by Gardai, 56% being stopped four times or more. An Garda Síochána routinely confiscate IDs, without issuing receipts or informing the person of their rights. Roma trying to retrieve ID cards fear approaching police, and struggle with language barriers when they do.⁵³

There are fears amongst Travellers that even reporting racial profiling to civil society organisations may prompt retaliation by Gardaí against their communities⁵⁴. Public consultations ahead of CERD have raised current issues including lack of translation services during arrests and questioning, and even threat of deportation, Garda sharing of information on Travellers for the purpose of civil actions against them, Garda involvement in illegal evictions, and disproportionate use of the Armed Response Unit to respond to Traveller incidents.

The effects of racial profiling are also felt by other groups. 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”, and 28% answered ‘Yes’.

One consequence of racial profiling is in the over-representation of Traveller and non-Irish groups in the prison system. Although only accounting for 0.7% of population in the Republic of Ireland, Travellers account for an estimated 10% of the entire prison population and 15% of the female prison population⁵⁵, and Traveller children made up 21 percent of the population of Ireland’s only child detention facility. A further 10 percent of children were from non-Irish backgrounds. Almost 10 per cent of the people under probation supervision are Travellers.⁵⁶

Racial profiling in child protection: The Logan Report 2013 concluded the removal of Roma children by Gardaí from their parents on suspicion of abduction was unwarranted, exceeded the available evidence and was tied inextricably to the fact that the family was Roma, conforming to the definition of ethnic profiling. An Garda Síochána failed to critically evaluate the information provided to them about the children and families in question, and the use of DNA testing to establish parentage in these cases represented a disproportionate interference in the family members’ private lives. It is not known how racial profiling affects Gardaí involvement in other child protection cases and across other ethnic groups.

Racial profiling in immigration checks: Ethnic minority citizens of Ireland, the UK and EU on public transport between the Republic of Ireland and Northern Ireland have been subject to racial profiling in passport checks which have no basis in Irish or UK law, and removed and detained even where they have been able to provide photo ID as legally required.⁵⁷

Racial profiling of ethnic minority Irish citizens carrying Irish passports at Dublin Airport has been commonly reported to iReport.ie, with harassment of both adults and children, including inappropriate separation of children with disabilities from their parents during interview.

Recommendations

- There must be prompt implementation of previous CERD and ECRI recommendations on the immediate prohibition of racial profiling in An Garda Síochána
- Racial profiling should be incorporated in basic police training and extended to all Gardai.
- Official data on racial profiling and stop and search, by ethnic ground, reason for search and outcome should be published, including disaggregated data on the number of complaints and decisions on complaints
- An Garda Síochána should, working with the Traveller and Roma communities, forthwith commence a review of its policy, training and practices with a particular focus on their impact on Travellers and Roma. Thereafter, an action plan with time-limited targets should be published to deal with the issues identified ⁵⁸
- Legislative measures should be undertaken to allow individuals, or groups representing their interests to make complaints through the Garda Síochána Ombudsman Commission (GSOC) and the Workplace Relations Commission in relation to discrimination including discriminatory profiling that would allow for such allegations to be investigated and remedied independently. There must be strengthening of the oversight functions, reach and investigative powers of the Policing Authority and of the investigative powers of GSOC ⁵⁹
- Racial profiling in immigration checks must be prohibited and guidance given on appropriate grounds for interview and detention

11.

Processing asylum applications

CERD/C/IRL/CO/3-4 paragraph 20

State report: CERD/C/IRL/5-9 paragraph 98-99

Partially implemented

Key issues in processing international protection claims warrant attention, including access to legal aid, housing in Direct Provision (DP) length of claims, and access to interpreters.

The Legal Aid Board provides early legal advice in all cases where the applicant is an unaccompanied minor. In other cases, applicants can register with the Legal Aid Board

at the stage of the Office of the Refugee Applications Commissioner (ORAC), and are provided with information in relation to the asylum and interview process⁶⁰. Lack of access to early legal advice from qualified solicitors is often an obstacle to a positive decision⁶¹.

While applications are processed, asylum seekers are housed under a system known as Direct Provision. Brought in as a 'temporary emergency measure' in 1999, this system is unregulated, inconsistent in standards and practices, and largely contracted to the private sector. Slow and lengthy processing of asylum claims⁶² have significantly negative consequences on family life, health and general well-being. Figures from the Department of Justice (January 2019) show that out of the 5,848 people living in Direct Provision, 1,047 have spent between two to three years waiting for their asylum applications to be processed.⁶³ Wait-times for first interviews and decisions are increasing, with a recent report citing that waiting at least 18-20 months before receiving a date for their substantive interview⁶⁴. Furthermore, people seeking asylum have limited access to well trained and qualified interpreters and this may serious consequences on their claims during interview⁶⁵.

Recommendations

- Place a time limit on how long asylum seekers must wait for a decision on their case
- Opt in to the Asylum Procedures Directive (recast) which requires decisions to be made within six months and creates an assessment to establish if the applicant is in need of special procedural guarantees, to complement the vulnerability assessment in the Reception Conditions Directive⁶⁶
- Introduce a statutory provision to require the Minister to grant long-term residency/ permission to international protection applicants awaiting a final decision for at least 18 months⁶⁷
- Increase transparency in claims, through introduction of an online application tracker
- Provide appropriate early legal aid and translation during all stages of the process

12.

Direct Provision (DP) for asylum seekers

CERD/C/IRL/CO/3-4 paragraph 20

State report: CERD/C/IRL/5-9 paragraph 100-110

Partially implemented

There are significant improvements in the system of 'Direct Provision' (DP) for asylum seekers since the UN CERD's last review. The extension of the remit of the Office of the Ombudsman⁶⁸ and the Ombudsman for Children⁶⁹ to enable asylum applicants to make

a complaint is welcome. The McMahon Report,⁷⁰ which sought to make life in direct accommodation more respectful of the rights of asylum applicants, partly achieved some of its limited aims. The increases in weekly payments to asylum seekers,⁷¹ and the adoption of national standards for accommodation centres,⁷² are also welcome developments. The 2019 extension of rights for certain asylum applicants to enter University on a *free fees* basis, coupled with entitlement to an educational grant, further respects and protects access to education.⁷³

However there are well-established recommendations which have not been implemented relating to the duration of time that many people spend in Direct Provision and the type and quality of accommodation which protection applicants must stay in during the decision-making process.⁷⁴ Direct Provision remains on a very limited legislative footing⁷⁵ and the extent to which a large range of rights are inaccessible because of this system makes it ***not fit for purpose***.

Concerns remain about the ability of residents to access and exercise a wide range of rights, including the Article 5(b) right to security of person and protection from violence or bodily harm, and the suitability of the Direct Provision system to adequately address issues of access to services and issues of integration. Residents point to safety concerns including sexual exploitation, abuse, overcrowding, lack of privacy, lack of child-friendly facilities and malnutrition.⁷⁶ LGTB asylum seekers are particularly vulnerable.⁷⁷

As of 6 October 2019, there are 6,094 persons in 38 Direct Provision centres across 18 counties. As these centres are at full capacity, there are also a further 1,453 applicants residing in 35 emergency accommodation locations.⁷⁸ July figures showed that more than 59% have been in the system for 12 months or more, and more than 23% for more than three years.⁷⁹ 'Emergency accommodation' hotels and guesthouses, outside of the formal Direct Provision system, are not required to meet the same standards as Direct Provision centres.⁸⁰ This has resulted in applicants having limited access to washing facilities, food, basic needs for new-born babies⁸¹, and limited support for access to emergency or regular healthcare.⁸² The legal obligation upon the Minister for Justice and Equality is that use of emergency accommodation is for "as short as possible" and must meet all basic needs of the applicant.⁸³

People in Direct Provision experience problems with their mental health at a significant rate⁸⁴. Inordinate delays, low success rate and poor living conditions places asylum seekers at risk of health and psychological problems, which would lead to serious mental illness⁸⁵. This is further exacerbated by the social exclusion and segregation of residents from local communities due to the forced dependency on management, institutionalised living and the financial obstacles to participating in everyday activities (such as after-school activities) which would facilitate greater integration with the local community. Asylum seekers are entitled social welfare, but rates are well below the minimum rates for the others in the Republic of Ireland.⁸⁶. Applicants who do not reside in Direct Provision are not eligible. Limited access to medical cards, difficulties in accessing GP and counselling services constrain people's options in seeking professional help. The dispersal of asylum seekers at short notice and separation of families during dispersal is a cause of urgent concern.

An August 2019 commitment by the Government to review the system of Direct Provision, including establishing an interdepartmental committee exploring whether social and economic rights for asylum seekers be protected within the general Irish

social welfare system is welcome.⁸⁷ We are however disappointed by the Taoiseach's recent comments that asylum seekers could leave Direct Provision whenever they wish⁸⁸, and the suggestion that the alternative to Direct Provision would be the adoption of 'camps and containers' such as those seen recently in mainland Europe⁸⁹.

There are also concerns about the lack of transparency around deaths in Direct Provision. The Department of Justice has not released information about deaths since 2017.⁹⁰ The State has suggested that the Reception and Integration Agency, who oversee Direct Provision contracts, had "no official role" in the gathering of statistics on asylum seekers who died while living in Direct Provision⁹¹. There was public outcry after a transgender person was buried without anyone they knew present. The incident was condemned by the Irish Refugee Council, who said a review into how deaths in Direct Provision are handled was needed in order to "ensure dignity after death, openness and transparency."⁹²

Civil society organisations are concerned that the State party's current policy of contracting for Direct Provision centres in disparate rural areas, often without consultation, provides opportunities for the far right to exploit localised frustrations arising out of economic depression, underdevelopment, and poor information communication. Under such conditions the far right grows in confidence with every Direct Provision centre prevented, either through the commission of hate crimes or through racist mobilisations. Most of all, this jeopardises the safety of asylum seekers.⁹³

There is no economic argument for the retention of the Direct Provision system. The Department of Justice Spending Review estimated the cost of alternatively providing social welfare payments to applicants as lower than the €78 million cost of Direct Provision in 2018. The estimated costs of Direct Provision for 2019 are 153% those of the previous year⁹⁴, in part due to the expense of emergency accommodation.⁹⁵

Recommendations

- Abolish the current system of Direct Provision and replace it with a regulated, planned humane asylum system which focuses on integrating asylum seekers into society
- Improve housing conditions and living standards for all asylum seekers
- People should be accommodated in reception for no longer than three months before moving into housing in the community
- Develop culturally sensitive mental health services specific to the needs of asylum seekers⁹⁶
- Increase rates of social assistance for asylum seekers
- Extend the right to work to all asylum seekers
- Provide asylum seekers with access to appropriate health care and medical cards
- Develop a protocol to increase transparency around deaths in Direct Provision
- Organise diversity awareness workshops at Direct Provision centres to tackle issues of racism and hate crime towards people of other nationalities, race and sexual orientation
- Introduce formal procedures to tackle complaints of bullying and discrimination against key workers at Direct Provision centres

13.

Separated and unaccompanied children seeking asylum

CERD/C/IRL/CO/3-4 paragraph 22

State report: CERD/C/IRL/5-9 paragraph 123-125

Partially implemented

Unaccompanied children seeking asylum are protected under the International Protection Act (IPA) 2015 and Child Care Act 1991. However, separated children are without advocates or guardians to advocate on their behalf and provide necessary support. Currently appointment of such is carried out in an ad hoc and inconsistent manner and no guidance is available on their appointment, qualifications or role.⁹⁷ There is no process for identifying unaccompanied children who arrive at borders accompanied by other adults and cannot express an independent wish to seek asylum, leaving them at risk of exploitation.⁹⁸

Unaccompanied children are referred to Tusla – the Child and Family Agency that determines arrangements for care.⁹⁹ Newly arriving separated children under 12 years are placed in foster care. Those over 12 years are placed in a foster family or, less frequently, supported lodging.¹⁰⁰ Separated children who turn 18 prior to receiving a final decision on their international protection claim cannot choose to remain in foster care. Aged out unaccompanied minors may be accommodated in Direct Provision centres, in some cases, without prior assessment (including medical), increasing vulnerability to drug use, alcohol, sexual exploitation¹⁰¹ and even trafficking.¹⁰² Inconsistent after-care support for this group is a concern.¹⁰³ Understanding of the eligibility of unaccompanied minors for aftercare support varies greatly among residential care staff, a concern noted by the Health Information and Quality Authority – HIQA.¹⁰⁴ Moving into Direct Provision, a young person may be relocated to a new county and lose contact with their foster families, social workers, aftercare workers, schools, support networks and friends, significantly impacting on long-term wellbeing.¹⁰⁵

Recommendations

- Provide guidance and training to those working at ports of entry on circumstances of separated children to prevent trafficking and exploitation in children¹⁰⁶
- Ensure the appointment of a guardian ad litem or advisor to all separated and unaccompanied children irrespective of whether they have made a protection application
- Separated children who turn 18 prior to receiving a final decision on their international protection claim should be given the choice of remaining in foster care and should be eligible for aftercare services.
- End the practice of moving aged-out unaccompanied minors into Direct Provision on reaching eighteen

- Clear guidance and regulations should be developed for social workers who work with separated and unaccompanied minors, particularly in relation to after-care services

14.

Family reunification

CERD/C/IRL/CO/3-4 paragraph 25

State report: CERD/C/IRL/5-9 paragraph 131-134

Partially implemented

Despite extensive international evidence on the merits of keeping refugee families together,¹⁰⁷ the current Irish immigration legislation does not adequately support family reunification. The International Protection Act (IPA) 2015, which came into effect in 2016, has made it effectively impossible for family members outside the nuclear family to reunite with their relatives in Ireland.

The right to family reunion for immigrants is not enshrined in Irish legislation but set out in policy. There are different criteria for different income and skills groups. A person has immediate access to family reunification on a critical skills permit with an income of €30,000. For other types of employment permits a person must have a cumulative income of €40,000 over three years. The financial thresholds rises significantly where the application is made in respect of a dependent elderly parent.¹⁰⁸ It is difficult for many families to reach this threshold. In late 2017, the Irish government announced a new humanitarian admissions programme, only for people in 10 “UNHCR recognised conflict zones”, giving priority to families who can meet accommodation requirements of eligible family members.¹⁰⁹ Processing family reunification is already expensive due to travel costs, visa fees, required DNA tests and other expenses.¹¹⁰ There is a lack of legal recourse for unsuccessful family reunification applicants, apart from judicial review.¹¹¹

Recommendations

- Introduce legislation setting out the right to family reunification for all immigrants, to include a statutory right of appeal for applications refused at first instance
- Simplify the application process, increasing transparency and access to information, particularly through increased departmental cooperation
- Revise the definition of family as outlined in the International Protection Act 2015, and consider waving income requirements for those who have received international protection who apply for family reunification through non-EEA general administration mechanisms

15.

Disaggregated data on racial discrimination

CERD/C/IRL/CO/3-4 paragraph 21

State report: CERD/C/IRL/5-9 paragraph 111-122

Not implemented

Accurate data and ethnic monitoring is required in the struggle to protect the human rights of potentially discriminated minorities and to promote equality and counter discrimination. We welcome the inclusion of Roma as a disaggregated category within Census 2021, which will support in reporting to the EU Framework for the implementation of Roma Integration Strategies. However we note that the category of 'Jewish' remains absent, and is available only by 'write-in'.¹¹²

There is an evidenced need to collect and publish disaggregated data across public bodies, institutions and functions; especially around health and housing. The need to monitor access and outcomes across a wide range of areas has been highlighted by the Economic and Social Research Institute of Ireland (ESRI)¹¹³, and there is an identified need to make use of census data and an ethnic identifier in administrative data to monitor outcomes, as periodic surveys do not adequately or frequently capture ethnicity.¹¹⁴

Ireland has yet to standardise ethnic data collection practices and incorporate an ethnic identifier across all routine administrative systems and state surveys such as the Survey on Income and Living Conditions (SILC) and the Quarterly National Household Survey (QNHS). The use of ethnic statistics on an ad-hoc basis results in a significant knowledge gap about the situation and needs of Travellers and Roma and other minority communities in Ireland. This data deficit also poses significant challenges for policymakers as they lack comprehensive population data to develop and implement equality proofed policies to ensure that the needs of those communities are met.

Recommendations

- Disaggregatable data should be collected and published regularly on education, health and employment outcomes as well as crime
- Consistent ethnic identifiers should be adopted across government and public bodies, e.g. by using the Census question on ethnic identity and associated ethnic categories for the purposes of ethnic equality
- The continued under-enumeration of Irish Travellers should be redressed as a priority in the lead up to Census 2021 and resources allocated to address the issue

16.

Mainstreaming human rights training in the civil service

CERD/C/IRL/CO/3-4 paragraph 24

State report: CERD/C/IRL/5-9 paragraph 127-130

Partially Implemented

We welcome the Irish Human Rights and Equality Commission (IHREC) Act 2014, and S42 on the positive Public Sector Duty (PSD) in particular, as presenting opportunities for potential significant advances in creating a human rights and equality based culture in our institutions. There is currently no consistent framework for human rights¹¹⁵ or cultural awareness training (including Traveller-specific training programmes) in national or local public organisations.

Mainstreaming should involve the reorganisation, improvement, development and evaluation of policy processes, so that a human rights perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making.¹¹⁶ We note that IHREC currently offers training to public bodies and services¹¹⁷, albeit on a voluntary and limited basis, and suggest that this does not constitute mainstreaming in itself, but should lead to supported adoption of human rights training in public bodies.

Recommendations

- Support the mainstreaming of human rights in the training programmes of the civil and public service with a view to integrating human rights into legislation, policy and practice
- Provide accredited training courses for civil service staff on integration, diversity, anti-racism and local and global citizenship

17.

Non/multi-denominational education

CERD/C/IRL/CO/3-4 paragraph 26

State report: CERD/C/IRL/5-9 paragraph 135-157

Partially implemented

The policy of successive governments to promote plurality of patronage in schools in Ireland has resulted in the segregation of children on the grounds of religion, ethnicity and nationality.¹¹⁸ Ethnic and religious minorities, and people of no religion, compete for places at a small number of schools, and these tend as a result to be enormously diverse in ethnicity, nationality, language and cultures.¹¹⁹ A large proportion of schools have no ethnic minority pupils, and there can be differences of up to 85% in ethnic identity between neighbouring schools.¹²⁰

The majority of schools in Ireland are under religious patronage, with 90% of primary schools being Catholic. Section 7(3)(c) of the Equal Status Act permits minority faith schools with a religious ethos to give preference to co-religionists, in the event of a shortage of place and in order to uphold their ethos.¹²¹ Despite government's proposal to divest the ownership of religious schools in 28 areas to multidenominational patrons¹²², the education system in Ireland is still largely denominational, and does not meet the needs of Ireland's increasingly diverse population. Non-Catholics across the country in many cases have no access to non-Catholic schools. Minorities who attend Catholic schools are obliged to actively support the Catholic ethos that is integrated into all subjects and the daily life of the school. Furthermore, in order to get employment as a teacher in the majority of primary schools, applicants are required to have the Catholic Certificate in Religious Studies. The lack of minorities in the teaching profession is not reflective of the diverse student population in Ireland today.

Recommendations

- Guarantee the right to Freedom of Conscience, religion and belief in the education system
- Enhance schools' curricula to reflect Ireland's historical and current realities and demographics and enable students to opt-out from religious education
- Remove the Catholic Certificate in Religious Studies as a criteria to teach in schools
- Amend the Section 7(3)(c) of the Equal Status Act so that co-religionists are not given preference in the event of shortage of spaces

18.

Rights of Migrant Workers and Members of Their Families

CERD/C/IRL/CO/3-4 paragraph 28

State report: CERD/C/IRL/5-9 paragraph 161-162

Partially implemented

People born abroad account for 17.3% of the Irish population¹²³. In 2018, net inward migration stood at over 30,000, with 139,206 Non-EU migrants registered in Ireland, 24.6% of the overall migrant population. Ireland continues to operate a guest worker model with few rights enshrined in law.¹²⁴ The long overdue review of Ireland's Economic Migration Policy in 2018 contained very little by way of providing a more flexible and open system, while opportunities to address worker's mobilities (and assist in addressing exploitation) were missed, and there are new concerns about the impact of seasonal work permits.

Migrant workers are already over-represented in the agri-food - meat, poultry, pig, mushroom farming, fishing, in hotel and catering, in cleaning and in care. The vulnerabilities and precariousness associated with immigration status merits special consideration as immigration status determines rights and outcomes in the labour market. An additional group of invisible workers meeting the needs of the labour market in Ireland are undocumented workers who are vulnerable to exploitation¹²⁵.

Migrant women warrant special mention, as insufficient training opportunities, particularly for women distanced from the labour market remains a concern. This is compounded by lack of access to affordable childcare and childcare responsibilities which impacts labour market participation¹²⁶.

Lack of recognition of qualifications¹²⁷ and experience from the country of origin continue to impact on progression, causing frustration and leading to de-skilling, underemployment and unemployment among ethnic minority groups¹²⁸.

The State's response does not adequately address the Committee's previously expressed concerns with regard to the protection of migrant workers and their families.

Recommendations

- Introduce effective mechanisms to regularise undocumented migrants in Ireland
- Introduce sectoral work permits to reduce exploitation and promote progression
- Develop a central benchmarking resource to recognise overseas qualifications and prior experience
- Improve childcare services and offer training opportunities for migrants
- Introduce an employment regulations order which sets minimum situation of pay (conditions), especially in the private sector
- Introduce an in-work training scheme targeted at migrants in low waged work
- Make efforts to promote equality, inclusivity and anti-racism, with professional training at workplaces to tackle discrimination

Migrant and minority women including Traveller women

CERD/C/IRL/CO/3-4 paragraph 27

State report: CERD/C/IRL/5-9 paragraph 158-160

Partially implemented

We welcome the National Women's Strategy and the inclusion of a Gender Identity section in the National Traveller and Roma Inclusion Strategy. These demonstrate that there is a need for greater strategic focus on migrant and ethnic minority women in the national strategies and the actions that arise from them.

The lives of migrant and ethnic minority women are structured by a combination of racial and gender inequalities, even while their experiences are diverse and varied. Discrimination varies by ethnic group, migration status, income level and family status. There are nonetheless patterns of overrepresentation in categories of the lowest paid in employment, in those excluded from education by lack of supports, in reduced access to quality healthcare, precarious access to safe accommodation, and limited access to redress for abuse by public institutions.

Opportunities to access education and the labour market are deeply gendered, because of caring responsibilities, and because of the significant gap between their qualifications and their labour market position. For example, the qualification gap, restrictive policies on the part of the state and discriminatory practices on the part of employers particularly affects African women who are only about two-thirds as likely to be at work, and more than twice as likely to be unemployed, as their Irish counterparts (even factoring out migration variables, childcare and the impact of the asylum system).¹²⁹

Access to quality healthcare is a recurrent problem among migrant and ethnic minority women, and particularly women asylum seekers, due to remoteness of Direct Provision centres and poor transport links with GP practices and hospitals, and Traveller/Roma communities due to poverty and lack of automatic entitlement to social protection measures. We address these in more details in the healthcare section below.

Migrant and ethnic minority women, due to dependent residency status and social and economic exclusion, are more likely to become victims of domestic, sexual and gender-based violence. Migrant women are least likely to have extended social connections that can be used when escaping abuse. The use of emergency accommodation to house survivors of domestic violence puts them at continued risk. We welcome the National Strategy on Domestic, Sexual and Gender-based Violence, which aims to improve confidence in how the police manages domestic and sexual violence and communication particularly with Traveller and Roma groups.¹³⁰ However, as there are currently no clear implementation plan or budget lines attached to the Strategy, it is unclear how the action will be progressed. Asylum seeker women have frequently

reported incidents of sexual harassment, assault and rape by the management and other asylum seekers due to the lack of personal security and the environment of abuse in Direct Provision centres. Language issues and isolated location can prevent access to basic advice services.

There are concerns that fear of deportation prevents migrant women engaged in sex work from accessing health and sexually transmitted infection clinics, drug services, rape crisis centres and even the police when they are victims of crime.¹³¹ Migrant women are disproportionately arrested (often without interpreters present) and prosecuted for “brothel keeping” (more than one sex worker operating from the same property) where they have sought to work together for safety.¹³²

Historical treatment of women in Ireland, including forced institutionalisation, sterilisation and the removal of children born outside marriage has particularly affected women with a non-Irish parent. The under-resourcing of investigation into institutional racism and support for its victims in ongoing inquiries into Mother and Baby Homes and Industrial Schools demonstrates a failure to take historical racism seriously, and the impact that it has had on the lives of survivors¹³³.

Recommendations

- The State must ensure that the diverse experiences and needs of minority and migrant women are reflected in the implementation of the National Women’s Strategy 2017-20 and in the renewal of the strategy after 2020
- NTRIS actions on women should have a clear implementation plan and budget lines¹³⁴
- The Employment Equality Acts and the Equal Status Acts should be amended to explicitly include the ground of gender identity¹³⁵
- Short-term, solutions are needed for the lack of childcare supports in Direct Provision centres and poor transport links between Direct Provision centre and GPs/Hospitals to address the isolation of women asylum seekers from education, employment and healthcare
- Ireland should opt-in to the EU Directive on Family Reunification and introduce implementing legislation which provides for autonomous residence permits, and the protection of undocumented women from violence should also be considered as a priority in immigration reform¹³⁶
- The Housing Act 1988 should be amended to prioritise applications from victims of domestic violence regardless of local connection or residence¹³⁷
- The State must acknowledge the harms caused by prosecution of self-employed sex workers and should give due consideration to more extensive decriminalisation in line with UN reports¹³⁸

20.

Consultation with NGOs

CERD/C/IRL/CO/3-4 paragraph 31

State report: CERD/C/IRL/5-9 paragraph 169-171

Partially implemented

Considerable efforts are made by national authorities to engage with a range of civil society organisations and community groups with respect to issues of public interest, policy development and initiative launches. However, consultation processes and limited opportunities for meaningful engagement present the impression among civil society organisations that officials prefer top-down processes rather than more equitable engagement with citizens. ¹³⁹

Recommendations

- Design effective partnership-based consultation processes at local, national & international level, which are truly inclusive
- Ensure gender and equality proofing is built into the processes from the design and implementation stages

21.

Racist Violence against People of African Origin / International Decade for People of African Descent

CERD/C/IRL/CO/3-4 paragraph 23 (Racist Violence), CERD/C/IRL/CO/3-4 paragraph 30 (International Decade)

State report: CERD/C/IRL/5-9 paragraph 126, CERD/C/IRL/5-9 paragraph 166-168

Not implemented, Partially implemented

With respect to the 2011 Concluding Observations on the issue of racist violence against persons of African origin (para. 23), we are concerned about the ongoing high levels of racist violence against People of African Descent / Black Europeans in Ireland. There is no disaggregated data collected or available from An Garda Síochána


or the Department of Justice and Equality on violence against this group. The EU-MIDIS survey (2016) ranked Ireland (joint) highest among 12 EU member States with respect to racist physical attacks experienced by respondents from Sub-Saharan African backgrounds (21% compared to the group average of 9%). Fear of racist violence amongst People of African Descent in Ireland is high. Incidents of racism against women and against family groups reflect the legacy of Afrophobic discourses around the 2004 citizenship referendum, which continue to be used to justify harassment and abuse against them.

Racism against People of African Descent in Ireland continues to be widely documented in policing, public services, education, and health. Historical institutional abuse of this population has not been adequately addressed by the state.¹⁴⁰ Racial profiling by police, as well as failure to provide adequate protection to Black victims of crime and to Black young people, are increasingly documented.¹⁴¹ There are inadequate protections of this population from discrimination in public and private sector employment.¹⁴² We are concerned about the overlap for People of African Descent with issues of poverty, exclusion and profiling that are raised in other sections on citizenship, immigration control and Direct Provision.

The programme of activities planned to support the International Decade are insufficient to address and raise awareness about the issues raised by the UN in nominating the decade.

Recommendations

- The State should ensure that people of African descent as well as birth are included in all anti-racism strategies, with particular regard to the experience of young people in this group
- The State should review the issues raised by the UN in nominating the Decade for People of African Descent, and expand the range and type of activities to recognise it in Ireland
- The State should give due acknowledgement to the historic position of People of African Descent in Ireland, particularly those who were institutionalised in Mother and Baby Homes and Industrial Schools, acknowledging institutional racism in the confinement, exploitation and abuse of those children, and offering a formal apology



ISSUES
EMERGING
SINCE 2011

22.

Accommodation and Housing

Article 5(e)(iii)

The current housing crisis in Ireland is characterised by severe accommodation shortages, and high rent prices, creating enormous challenges especially for vulnerable migrant and other minority communities¹⁴³ who experience discrimination in searching for housing, and often experience poorer housing conditions and overcrowding¹⁴⁴.

Because of this persistent discrimination in the housing market, ethnic minorities are often driven to seek social housing instead. However, many of them do not qualify for social housing, due to their immigration or HRC status.¹⁴⁵ As a result, migrants are at risk of becoming homeless. Discrimination on the housing market often leads refugees, who are amongst the most vulnerable¹⁴⁶ to stay lengthy periods of time at the Direct Provision centres¹⁴⁷. Irish Travellers and Black people too are disproportionately represented amongst the homeless at 9 per cent and 11 per cent.¹⁴⁸

Travellers and Roma are particularly marginalised and excluded from the housing market and have experienced elevated levels of homelessness, separate to those living in substandard and overcrowded shared accommodation.¹⁴⁹ The National Traveller and Roma Inclusion Strategy contains no concrete implementation plan in relation to accommodation for Roma (2017-2021)¹⁵⁰.

Recommendations

- Provide affordable housing for disadvantaged groups
- Monitor equality impact of housing policies
- Monitor instances of anti-social behaviour and racism in social housing.
- Provide accessible and culturally-appropriate accommodation for Travellers¹⁵¹, in line with the recommendations in earlier sections, and improve existing halting sites to meet decent and safe living standards for Travellers

23.

Online hate speech

Articles 2, 4 and 5

The increase in online hate speech in Ireland is a cause for deep concern, particularly given Ireland's position as home to Europe, Middle East, Africa and Asia (EMEA) Headquarters all of the major social media platforms.

There are high profile examples as well as thousands of posts daily composed commonly of anti-immigrant and anti-refugee content with particular reference to access to welfare and housing, as well as (more recently) 'economic migrants' and criminality, and the impact of refugee accommodation centres on rural towns; anti-Muslim ideas referencing terrorism, a clash of civilisations, misogyny and sexual deviance, language describing Traveller and Roma people as undeserving, 'uncivilised', thugs and criminals, and even advocating their erasure, antisemitic language of the type common internationally; and content targeting Black people as 'uncivilised', 'parasites', and like 'animals'. People of African descent are also targeted in anti-refugee and Islamophobic content, and as second generation Irish people (to deny their Irishness).¹⁵²

Hate speech is not prohibited in Ireland. The Prohibition of Incitement to Hatred Act 1989 makes it a criminal offence to publish, distribute or broadcast material that *incites* hatred. 'Hatred' is defined to mean "hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation." The ineffectiveness of the Act (described earlier both in relation to racist crime and the State's reservation on Article 4), and the failure so far to review its use for online hate speech, leaves a *lacuna* into which nascent far-right movements in Ireland and their networks abroad are able to easily move and prompt widespread reproduction of hate content.

Recording of hate speech by civil society has revealed that there is much overlap between white supremacist, Islamophobic and particularly anti-refugee content in Ireland and abroad¹⁵³. While there are a small number of 'producers' of such content, there are many more reproducing that content across all social media platforms.¹⁵⁴

Social media pages of news outlets play an important role in channelling racially-loaded toxic contents through the comment threads on their posts. The way mainstream media frame and present news also has an impact on the comments posted. Expressions of racism online are punctuated with misogynist, homophobic, and transphobic attacks directly targeting women and members of the LGBT community.¹⁵⁵ There is no clear responsibility for hateful social media content amongst public authorities. The Press Ombudsman only deals with complaints about newspapers, magazines and some online news services, but not social media. There is little incentive for news outlets to moderate their social media pages for hateful content. The Broadcasting Authority of Ireland deals only with broadcast media, but has made producers responsible for audience expressions of hatred which are broadcast.¹⁵⁶ An Garda Síochána are not currently equipped with the necessary resources to undertake investigations into online harassment, and have very limited capacity to deal with the wider issue of online hate speech¹⁵⁷, although there is monitoring of the most extreme sources.¹⁵⁸ There have been calls from a wide range of digital and legal experts for the State to take a larger role in monitoring and addressing online hate speech.¹⁵⁹

A range of approaches to understanding, tracking and reporting hate speech have been undertaken by civil society and human rights institutions to tackle this problem. As examples, INAR tracks hate speech through the online iReport.ie reporting system¹⁶⁰ and periodically flags hate content to both Facebook and Twitter as 'trusted reporters'. The Irish Human Rights and Equality Commission recently funded a study to investigate patterns in online hate speech in Ireland¹⁶¹. While helping to shape discussions around online hate speech, these cannot tackle the surge in hate speech evident today. Reports of hate content to social media platforms, even by 'trusted parties', are largely deemed

not to breach community guidelines.¹⁶² Further, approaches which rely on individual reports are restricted by the burden on targeted minorities to report, the low level of bystander reporting and the harassment of those who attempt to 'call out' racism online.¹⁶³

Recommendations

- The State should take responsibility for addressing online hate speech in Ireland
- The State might seriously consider the offer of the Broadcasting Authority of Ireland to expand its role to include online hate speech ¹⁶⁴
- The review of the Prohibition of Incitement to Hatred Act 1989 should include online hate speech

24.

Language and Access to interpreters

Article 5.2

Migrants with low English proficiency need to avail of interpreting services in order to access a range of services including healthcare and the social welfare system. There is a gap in the awareness of, and access to, interpreter services by customers with language support needs.¹⁶⁵ A small proportion of groups are accessing professional interpreters, but a large proportion (including the Roma¹⁶⁶) rely on friends and children to interpret for them.

However translation errors in non-English questionnaires, lack of support for those with low literacy and lack of access to questionnaires in preferred languages have all caused significant problems for asylum seekers. Access to interpreters of certain dialects is limited.¹⁶⁷

Section 35(2) of the International Protection Act states that there is a need to ensure an appropriate communication for applicants during their interviews, and obliges the Minister or International Protection Officer to provide applicants with the services of a qualified interpreter.¹⁶⁸ As it stands, there is no recognised qualifications framework or established standards, set out in legislation or elsewhere, on the recruitment of interpreters by public bodies, including the International Protection Office. Most interpreters are sourced from private companies. The result is that the quality of interpreting varies significantly from case to case. There is a serious need for qualified and appropriate interpreters who are given training in the specifics of the asylum process and working with people who have suffered trauma¹⁶⁹.

Recommendations

- Establish recognised qualifications framework or established standards, set out in legislation or elsewhere, on the recruitment of interpreters by public bodies, including the IPO
- Professionalise, test and monitor interpreting services in Ireland, particularly where these are used for access to state services or criminal justice
- Organise cultural awareness training sessions for interpreters
- Subsidise interpretation costs
- Provide more free and subsidised English language classes across the country

25.

Habitual Residence Condition (HRC)

Article 2

Habitual Residence is a condition which applicants must satisfy in order to qualify for certain social welfare assistance payments including Child Benefit, Rent Allowance, public housing, and employment and training supports¹⁷⁰. This is provided for in law through the Social Welfare Consolidation Act (2005), and requires applicants to prove close links to Ireland through evidence of presence and links in the state, explanation of absence, proof of employment in the state, and proof of future intention to reside. Roma in particular face significant difficulties with these as well as challenges with language and literacy skills.¹⁷¹ Endemic discrimination in the education and the workplace means Roma are less likely to have a strong previous pattern of employment and therefore are not eligible for supports such as medical cards, training and employment schemes, homeless supports or social protection payments. Emergency payments for waiting applicants are discretionary and not sustainable for long waiting periods.¹⁷²

Concerns about the discriminatory effect of this condition on Roma (and other migrants) to access basic social welfare payments have been raised by a number of international human rights bodies, including UNCRC.¹⁷³ In 2012, the Special Rapporteur on extreme poverty and human rights urged the State to review the impact of the condition as a matter of priority, noting its effect not only on Roma, but also people experiencing homelessness, Travellers, asylum-seekers, migrant workers and returning Irish migrants.¹⁷⁴

Recommendations

- Review the Habitual Residence Condition with respect to the discriminatory impact it has on the above-named groups
- Make Child Benefit payment a universal payment that is not contingent on the fulfilment of the Habitual Residence Condition

Labour exploitation and right to work

Articles 2.1d and 5e

Low pay, non-compliance and exploitation all feature in Ireland's labour market. Migrant workers are more at risk of exploitation due to the sectors they work in, work permit restrictions and immigration status. Undocumented migrants are more vulnerable to exploitation and certain sectors more vulnerable to abuses. Research into the experience of migrant fishers revealed widespread exploitation in certain segments of the industry. A majority (65%) work more than 100 hours a week, average pay is just €2.82 per hour, hour (compared to the current statutory minimum wage which stands at €9.80), and discrimination, exploitation and verbal and physical abuse are common¹⁷⁵.

Labour inspections continue to be carried out with immigration officials, making those exploited also vulnerable to deportation and less likely to seek help. In 2018, the state committed to carrying out an employment rights awareness campaign aimed at employers and migrants where new work permits have been issued. This has not happened to date¹⁷⁶.

There are also growing concerns about the racialisation and stratification of Ireland's labour market with discrimination and lack of progression a key feature. Although discrimination is outlawed by Irish equality legislation in the workplace and in the provision of goods and services this remains persistent feature of the labour market. The lowest rates of employment are among Africans¹⁷⁷. Racism and discrimination are also particularly acute for Travellers and Roma preventing access to and participation in the labour market.

In 2018 the EU Reception Conditions Directive was transposed into Irish law, and a limited right to work granted to asylum seekers¹⁷⁸. As of June 2019, 2,633 international protection applicants have been granted a right to work or right to enter self-employment. 1,267 applicants have entered employment or are self-employed, including 896 living in Direct Provision. This is a significant measure contributing to protecting socio-economic rights. To be more effective, language learning supports, skills development and access to childcare need to be resourced and consistent across the country¹⁷⁹.

However only those who have not received a first decision on their case within 9 months may apply, and work permits are limited to six months before each renewal during the asylum application process. The 9-month wait is unnecessary and is the very maximum allowed under the EU directive. This has left many people without any hope of the right to work, people who have been in the system longest and whose skills, physical and psychological well-being have already been affected by the Direct Provision and asylum system.¹⁸⁰ The six month permit is overly restrictive for both applicants and employers, given the costs of recruitment and training¹⁸¹.

Recommendations

- As part of a new National Action Plan against Racism, introduce targeted measures to strengthen access to the labour market to address discrimination and progression
- Commission research into labour market stratification to inform related strategies
- Introduce effective mechanisms to regularise undocumented migrants and address exploitation
- Ensure the Atypical scheme responds to the needs of workers in the state, including increasing the timeframe for renewal
- Develop measures in labour inspections to ensure a firewall between immigration enforcement and labour inspectors
- Undertake a workplace rights awareness campaigns in at risk sectors aimed at migrants and employers
- Introduce a right to work that is (1) granted immediately on claiming asylum; (2) valid for 12 months and (3) renewable until the applicant has an alternative or is not in Ireland
- Undertake an employer awareness-raising campaign on the right to work for asylum seekers

27.

Protection of victims of human trafficking

Article 5

We are concerned about the recent downgrading of Ireland to a Tier 2 status country on human trafficking measures, after a period of clear progress in building effective responses to this issue. Key sectors where trafficking manifests in Ireland are in domestic work, fisheries, agriculture, car washes, the entertainment and sex industry and on cannabis farms. There are key problems which have emerged in this area of work, which suggest that the issue is not being tackled effectively. There are chronic deficiencies in victim identification, referral, and assistance.¹⁸² A fundamental issues is that trafficked people are not being identified with a recent report suggesting that official numbers are just half of the real number.¹⁸³

The process for victims seeking immunity from punishment for criminal activity as a result of trafficking is complex and requires early legal representation. We continue to be concerned that victims found on cannabis farms are being punished for crimes they were forced to commit. In addition, there have been no convictions since the law was amended in 2013, with only 3 prosecutions initiated in 2017, and none in 2018. In 2013, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) in its country report on Ireland called for urgent action to streamline the identification process and to ensure that asylum seekers can be formally identified as victims of trafficking even if they have an asylum proceeding pending

and for improved accommodation.¹⁸⁴ The State lacks specialized accommodation and adequate services for victims of trafficking. There are particular concerns about the accommodation of victims of human trafficking in Direct Provision centres and the lack of appropriate supports.¹⁸⁵

In response to incidents of trafficking for labour exploitation in the fishing industry, an intergovernmental governmental task force recommended the introduction of a scheme to regularise undocumented fishermen. The Atypical working scheme: Non-EEA crew in Fishing Fleet, has been widely criticised for reinforcing exploitation and continues to provide problems on renewal of permission¹⁸⁶. We are very concerned that migrant workers continue to be recruited into this sector despite the widespread acknowledgement of exploitation in this sector.

Recommendations

- Introduce a new multi-stakeholder system for the identification of victims of trafficking
- Introduce a moratorium on new work permits into the fishing sector until exploitation is systematically addressed
- Increase the time frame for renewals of current fishers under the Atypical scheme and enable those who have become undocumented to regularise their status
- Take measures to identify and protect victims of trafficking even if they have an asylum proceeding pending and prevent inappropriate prosecution of victims
- Introduce an independent special rapporteur on human trafficking to lead reform
- Provide specialised accommodation with supports to victims of trafficking

28.

Recruitment to public bodies

Article 5

We welcome the announcement in 2017 of a target to recruit migrants and ethnic minorities into the civil service under the Migrant Integration Strategy (2017-2020), as well as training programmes for unemployed migrants with poor English proficiency and initiatives to encourage the business sector to play a role in promoting integration.

We congratulate the Public Appointments Service on the conduct of its own diversity audit in 2017 and the emphasis they have put on making information available in accessible formats and languages, and on engaging with expert NGOs.

There has been discrimination in access to employment in public sector of asylum seekers and Roma/Traveller communities. Asylum seekers in Ireland are prohibited from being able to apply for any public sector job opportunity, so asylum seekers may only be employed in the private sector. Religious discrimination is a factor preventing ethnic minorities from obtaining work at the majority of primary schools.

Recommendations

- Increase the Government's target of ethnic minority and migrant appointments (to better reflect the 15% of the State population in these categories)
- Develop training for staff in public sector bodies on cultural awareness and equality to support the continued employment of those appointed to public sector jobs. Processes must be in place to support the mentoring and training of new appointees to aid their success in a (currently) highly homogenous work environment

29.

Ethnic minority and migrant health and access to healthcare

Article 5

We welcome the Health Service Executive (HSE) Second National Intercultural Health Strategy 2018-2023¹⁸⁷ and particularly its emphasis on inclusion of ethnic minorities and migrants and relevant NGOs in its revised consultation processes as well as ring-fenced investment to address Roma healthcare access (a notable model of good practice).

Discrimination in the public sector is highest in healthcare¹⁸⁸. Of particular concern for this report are the issues of access to healthcare, poor maternal and reproductive healthcare experiences of minority women of, and the impacts of discrimination on minority health. Key issues include: access to GP and hospital services, level of care evident, discrimination in health services, access to contraception and abortion, maternity care discrimination and differential outcomes, and lack of access to mental health supports. Availability of translation services is inconsistent across the health service, creating communication barriers between doctors and patients, particularly outside the hospital setting. Maternal death rates amongst non-Irish women have been high enough to prompt some concern.¹⁸⁹

Refugees and asylum seekers have rates of post-traumatic stress disorder (PTSD) up to ten times higher than in the indigenous population. Their mental health needs may be greatly increased by their loss of family structures and social support.¹⁹⁰ It is significant that the HSE recognises the significant impact that Direct Provision has on increasing health inequalities and access to services for asylum seekers, particularly in mental health. Difficulties with transport to medical facilities can limit access to care. Furthermore, where asylum seekers are moved from one Direct Provision/accommodation centre to another, continuity of care with existing healthcare providers is lost. Asylum seekers and refugees cannot routinely access specialised services for victims of torture, sexual violence and other conflict related traumas, and are often situated away from the NGOs who provide these services in urban centres. Mainstream mental health services are already overburdened and under-resourced in caring for the general population, and lack cultural or linguistic expertise, adequate resources to

liaise with the agencies responsible for asylum seekers. Refugees (including programme refugees) experience lack of access to resourced facilities and healthcare staff during orientation and as a result of dispersal. Vaccinations for asylum seekers and refugees are not funded in primary care if they fall outside pre-existing national programmes.

Roma in Ireland have very low rates of access to GP care and medical card support despite extensive evidence of poverty. The high cost of health care means that Roma cannot access the care they need. 24% of Roma women had not accessed health services while pregnant and their first point of access was to give birth. Service providers identified new born babies living in houses with no heat, food or basic supplies. The Roma Needs Assessment found that many families did not have adequate supplies for the baby after birth. Poor mental health rates were extremely high. Access to translation was low. 84% of Roma women experienced discrimination in health services.¹⁹¹

It is important to note that racial discrimination has damaging consequences for those affected – both in terms of mental and physical health, self-esteem and underperformance of the minority group¹⁹². Experiences of poor health are linked to poverty, which can be linked to a lack of access to education and employment. This means that responding to healthcare issues amongst groups experiencing racial discrimination and exclusion will need cross-departmental and inter-agency collaboration.

Recommendations

- Develop appropriate cultural awareness training available to all healthcare providers, but particularly for those who are routinely dealing with reproductive issues for minority women
- Provide immediate and adequate access to primary care, sexual and reproductive health care and mental health services, which are culturally and linguistically competent and adequately resourced
- Ring-fence funding for additional vaccinations for asylum seekers and refugees
- Make readily available translation services in primary care and to all health providers that care for asylum seekers and refugees
- Make available and accessible specialised services, such as psychotherapy for survivors of torture and other traumas, for international protection applicants and refugees
- Undertake a formal assessment of the broader health needs of asylum seekers, refugees, and relocated individuals in Ireland, and invest appropriately
- Continue to support Traveller primary healthcare teams and build on the learnings from Traveller and Roma-specific primary healthcare pilot programmes

Article 2

The removal of children from their families has been a particular cause for concern as we noted above in the section on Racial Profiling. The Shannon Report 2017, which audited police involvement in child protection, recommended a properly resourced out-of-hours social work service, specialist child protection training and the reform of the PULSE recording system in respect of child protection data.¹⁹³ The Logan Report 2013 on the removal of Roma children from their families (under s12 (1991) emergency powers) described ethnic profiling, a lack of interagency cooperation and a serious failure to act in the best interest of Roma children.¹⁹⁴

There is also a disproportionate representation of ethnic minority and migrant families in child protection proceedings. The Childcare Law Reporting Project found that a disproportionate number of the families before the child protection courts had at least one parent from an ethnic minority, including Irish Travellers. Excluding Travellers, 26.5 per cent of respondents included at least one parent from an ethnic minority. African families are about seven times more likely to face child protection proceedings than are Irish people, and more likely if the "Mixed" category includes one African parent. Eastern Europeans are 1.5 times as likely as Irish people to appear in child care proceedings.¹⁹⁵

In the past, Traveller children have been found to be about six times as likely to be taken into alternative care as other children. Traveller children are still overrepresented. Travellers' experiences in foster care include the framing of Traveller identity as a potential source of difficulty for foster carers and a lack of support for foster carers to develop Traveller identity in a rich way. Their experiences have proved indicative of the need for cultural awareness and supports in the care system for many children with a minority ethnic background.

Where minority children are at risk, there is also a need to maintain healthy links with their family/extended family/ethnic group of origin and this requires a service that can connect with their community in an informed and culturally appropriate way. There is a crucial need for data collection on ethnicity and for involvement of minorities in delivering services, since only they can effectively transmit cultural strategies for dealing with racism and its impact.

Recommendations

- A National Action Plan Against Racism must ensure that all public agencies, particularly An Garda Síochána and TUSLA will ensure all staff at all levels that completed anti-racism and intercultural training
- The State must resource an out of hours service provision for child protection measures
- Equality proofing for TUSLA and EROC staff is necessary
- Develop an inter-cultural strategy with TUSLA to inform the provision of social services to ethnic minority children and families ¹⁹⁶

Article 2

Following a 2004 constitutional referendum, children born in Ireland are only entitled to automatic citizenship if at least one of their parents is a citizen or is entitled to be. Article 9 of the Irish Constitution now limits Irish citizenship by birth to persons with at least one parent who 'is an Irish citizen or entitled to be an Irish citizen' and to those in respect of whom citizenship is provided for 'by law'. Irish citizenship is regulated by the Irish Nationality and Citizenship Act 1956, as amended by the Irish Nationality and Citizenship Act 2004. Irish citizenship can be acquired through birth, descent or naturalisation. A residence requirement applies since 2004 to the parents of any child born in Ireland¹⁹⁷. Time spent living in Ireland as an asylum seeker, undocumented migrant or resident with international student permission does not qualify as 'reckonable residence'. This means that in some cases a child may have been born in Ireland and lived his or her entire life in Ireland without being entitled to Irish citizenship, simply because the immigration status of his or her parents does not qualify.

The enjoyment of citizenship is a key element in promoting social cohesion. In addition to security of residence status, access to citizenship is regarded as an essential precondition to achieving integration.¹⁹⁸ To facilitate integration into society, migrant children should be given access to citizenship so they can enjoy the same economic and social benefits as other children. Citizenship can often be the key to accessing fundamental rights such as education, particularly higher education. It is also essential for migrant children to enjoy equal access to civil and political rights. Irish citizenship allows migrant children to contribute to, and participate more fully in, Irish society. As well as practical benefits, citizenship can also have psychological benefits for children. It can contribute to a sense of belonging, stability and certainty, and allows them to feel equal to their peers.¹⁹⁹

During 2013-2018, 134 boys and girls under the age of 18 have been deported from Ireland. In 2018, there were 285 live deportation orders against minors living in the state.²⁰⁰ It is not known how many of these were born in Ireland. In 2018, two cases in Ireland highlighted the threatened deportation of minors. Nine-year-old Eric Zhi Ying Mei Xue was born in Ireland while 14-year-old Nonso Muojeke, who has since received leave to remain in the country, has lived in Ireland since he was two years old. Asked whether they were considering an amnesty for any of those affected by the citizenship referendum, the Department of Justice said that the EU had said cases would be dealt with on a case-by-case approach as opposed to any "mass regularisation".

There is evidence of changed public opinion on citizenship for Irish-born children. A 2019 poll, conducted by Behaviour & Attitudes and published in Sunday Times, showed 71% said they believed being born here should automatically entitle a person to citizenship.

There is widespread confusion over how a child can apply for citizenship and what protocols need to be followed. The system of registration for migrant children is extremely unclear and no guidance is published by the Irish Naturalisation and Immigration Service on the residence permission that will be given in any particular

case. This lack of clarity results in inconsistency in the immigration permissions granted to children when they turn 16, even in identical circumstances. Guardians appointed by the state to children in care are not given adequate information on applications for citizenship before children 'age out'.

There is also confusion over the nature of residency, highlighted by a recent High Court ruling on residency prior to application, which ruled that applicants for citizenship must have "unbroken" residence here for a year prior to their application. The court further ruled that the Minister's discretionary practice of allowing applicants six weeks out of the country, for holiday or other reasons, and more time in exceptional circumstances, is not permitted by law. Section 15.1 provides, on receipt of an application for a certificate of naturalisation, the Minister "may, in his absolute discretion, grant the application if satisfied that the applicant has had a period of one year's continuous residence in the State immediately before the date of the application". The judge found section 15.1 allows the Minister no discretion in relation to the "continuous residence" requirement.

There are also concerns about the discretionary nature of the term 'close connections' and the recent exclusion of sibling relations from consideration in cases of children under 18.²⁰¹

Recommendations

- Nominate a single specific agency or contact point to take responsibility for providing information and legal advice on immigration to children and those supporting them
- Introduce a review of the constitutional provision on citizenship and schedule a new referendum
- Introduce legislation to regularise the citizenship residency requirement highlighted by the High Court ruling on 'reckonable residence'

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Disclaimer

All of the views expressed in this report do not necessarily reflect the policies and positions of each organisation.

Contributing organisations

- * Abolish Direct Provision
- * Abortion Rights Campaign (ARC)
- * Akidwa
- * Amal Women's Association
- * An Cosán
- * Association of Mixed Race Irish (AMRI)
- * Atheist Ireland
- * Balbriggan Intercultural Forum
- * Blanchardstown Travellers Development Group
- * Carrickmacross Welcomes
- * Centre for Human Rights (NUIG)
- * Coalition Against Hate Crime (CAHC)
- * Committee on the Administration of Justice (CAJ)
- * Cork Traveller Women's Network
- * Donegal Travellers Project (DTP)
- * Doras Luimní
- * Dublin Rape Crisis Centre
- * Dublin South City Partnership
- * End Deportations Belfast
- * Far Right Observatory (FRO)
- * Fórsa
- * Free Legal Aid Centres (FLAC)
- * Galway Anti-Racism Network (GARN)
- * Galway Travellers Movement (GTM)
- * Holocaust Education Trust (HET)
- * Ireland-Palestine Solidarity Campaign (IPSC)
- * Immigrant Council of Ireland (ICI)
- * Involve
- * Irish Congress of Trade Unions (ICTU)
- * Irish Council for Civil Liberties (ICCL)
- * Irish Human Rights and Equality Commission (IHREC)
- * Irish Penal Reform Trust (IPRT)
- * Irish Refugee Council (IRC)
- * Irish Traveller Movement (ITM)
- * Islamic Foundation of Ireland
- * Kerry Education and Training Board
- * Leitrim International Community Group
- * Mandate the Union
- * Mayo Traveller Support Group
- * Mincéirs Whiden (Travellers Talking)
- * Movement of Asylum Seekers Ireland (MASI)
- * NASC migrant and refugee rights
- * National Traveller Women's Federation
- * National Women's Council of Ireland
- * National Youth Council of Ireland (NYCI)
- * New Communities Partnership (NCP)
- * NUIM
- * Pavee Point – Traveller and Roma Centre
- * Prospect – trade union
- * Rialto Youth Project
- * St Catherine's Community Service Centre
- * St Michael's Family Resource Centre
- * Sex Workers Alliance Ireland (SWAI)
- * SIPTU
- * Traveller Visibility Cork
- * UCC
- * Union of Students in Ireland (USI)
- * UNITE the Union

