



**Irish Travellers Access to Justice:
Alternative Report for the United Nations Human Rights Committee
on Ireland's Fifth Periodic Report under the
International Covenant on Civil and Political Rights 2022**

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Headline recommendations

While this report contains key recommendations throughout, we propose three key headline recommendations in this submission to address the experiences and perceptions of Travellers of the criminal justice process in Ireland:

1. We recommend the introduction of an ethnic identifier throughout the criminal process from the point of reporting to the point of sentencing, including entry and search of homes and stops and searches which must be recorded. A commitment to make the resultant data available to independent researchers. The publication of an annual report on ethnic minorities in the criminal process.
2. We recommend the development, publication, funding and implementation of a strategy within and across each branch of the criminal process to address gaps in trust, legitimacy and accountability impacting the Traveller community. This strategy should include the development of an independent Traveller justice advisory group to provide advice on justice related issues and to monitor implementation of the strategy.
3. We recommend the establishment of a robust and effective independent complaints body operating across the criminal legal process and staffed by a dedicated team of investigators with no continuing connection to any of the criminal justice agencies. This body should be able to accept and respond to complaints regarding any criminal justice agency or professional including customs officers and judges.

We also endorse the recommendations of the Irish Council for Civil Liberties *Alternative Report for UN Rights Committee for Ireland's ICCPR Review 2022*.

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Introduction

The Irish Travellers Access to Justice project sought to document Travellers' perceptions of, and experiences with, the criminal justice process, specifically policing and the courts system. The impetus for the research came from previous research which reported perceptions of both over and under-policing (see Joyce 2018, Mulcahy 2012, Drummond, 2007, Mulcahy and O'Mahoney 2005), as well as the documented overrepresentation of Irish Travellers in the Irish prison system (Irish Penal Reform Trust, 2022). The purpose of the research was to explain how Travellers experiences and perceptions of the criminal justice process impact on their trust in and strategies towards the justice system, with a view to producing recommendations for criminal justice policy, practice and training which seek to support the operationalisation of the rights of access to justice on the part of the Traveller community.

The research was carried out by a team of six researchers, four of whom are Dr. Sindy Joyce, Olive O'Reilly, Margaret O'Brien and David Joyce, who are all Travellers, with Prof Jennifer Schweppe and Prof Amanda Haynes.¹ Located in the European Centre for the Study of Hate at the University of Limerick, the project was actively supported by an Advisory Committee consisting of representatives of five national Traveller organisations: the Irish Traveller Movement, Minceirs Whiden, the National Traveller Women's Forum, Pavee Point, and the Traveller Mediation Service, alongside representatives of the Department of Justice and An Garda Síochána.

This submission highlights key aspects of the research that are particularly relevant to the UN Human Rights Committee. Set out under thematic headings, the report outlines key ways in which the Irish indigenous ethnic minority, the Traveller community, is treated by and through the criminal justice process. Following this thematic analysis, general statistical information on the perceptions of the Traveller community of key criminal justice institutions are included.

Thus all findings to this report relate directly to rights under **Article 2, Article 3, Article 9, Article 10, Article 12, Article 14, Article 17, Article 24, and Article 27.**

¹ The team wish to gratefully acknowledge the assistance of Prof. Ross Macmillan and Lisa Skilton both of the University of Limerick in supporting the preparation of this report.

Methodology

The Irish Travellers Access to Justice project adopted a mixed methods approach. The project commenced in December 2020, and fieldwork started in May 2021 with interviews with representatives of 29 Traveller organisations across Ireland. These interviews, in addition to generating rich qualitative data in their own right, informed the development of a survey instrument designed to gather the perceptions and experiences of grassroots, people of the Traveller community with the criminal justice process. The survey was administered by telephone and video call via MS Teams due to COVID-19-related restrictions on travel and research. The research team was additionally conscious of the particular vulnerability of the Traveller community to Covid where they endure accommodation which is overcrowded or provides poor sanitation, compounded by the higher prevalence of chronic health conditions compared to the general population (Joint Committee on Key Issues Affecting the Traveller Community, 2021).

There were 326 participants to the survey, which was administered between July and December 2021. The resulting data was weighted for age, gender and county to be representative of the Traveller population as enumerated in the 2016 Census, the latest census for which data is currently available.²

² Decimal numbers are rounded to the nearest whole. The weighted data omits 3 cases who could not be weighted because they declined or were unable to provide information on their date of birth.

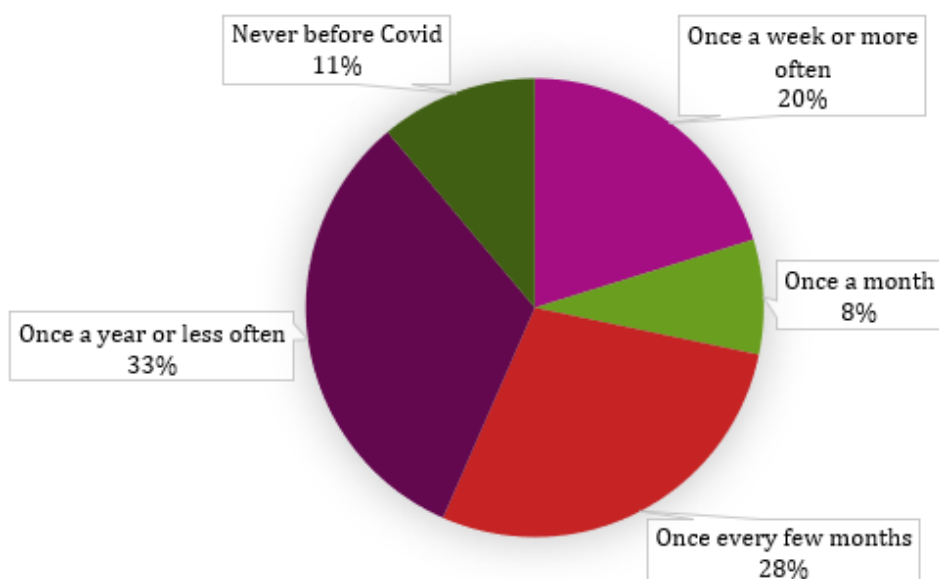
Part A: Ethnic/Racial Profiling

Though the State has repeatedly denied to the United Nations that ethnic/racial profiling is conducted in Ireland, studies by the EU Fundamental Rights Agency have queried that assertion. Expanding on the work of FRA, the ITAJ project sought to document first *where* and *how* Travellers report being stopped by Gardaí, second, to address the question of *whether* Travellers in Ireland report that they are subject to ethnic/racial profiling, and third to examine *why* those who report ethnic/racial profiling were of the view that the reason they were stopped was because they were a Traveller.

Garda stops - prevalence

We asked participants to the survey if they had been stopped by the Gardaí for any reason in the past five years. Of the sample, 80% had been stopped by the Gardaí in the 5 years prior to the survey. Recognising that Covid-19 restrictions resulted in an increased number of checkpoints nationally, participants who said they had been stopped in the previous five years were asked how often they were stopped prior to the pandemic:

Before covid, about how often were you stopped by the gardaí?



Context of garda stops

We asked participants to think of the *last* time that they had been stopped by gardaí within the five years previous to the survey: 71% stated that they were last stopped in a private vehicle and 17% reported that they had last been stopped on the street. The remainder were stopped in a variety of contexts including on halting sites, at shops, and in public parks. Of those who were stopped in a private vehicle, 41% were stopped at a normal checkpoint; 37% were followed and stopped; 9% were stopped at a checkpoint on the way to a Traveller wedding or funeral; and 5% were stopped at a checkpoint located outside of a halting site [a form of Traveller specific accommodation].

When asked to think about how they were treated, 45% of those who had been stopped in the previous five years, stated that gardaí treated them respectfully, 51% stated that they were not treated respectfully: 54% of those who were stopped in a vehicle said they were treated respectfully, compared to 23% of those who were stopped on the street.

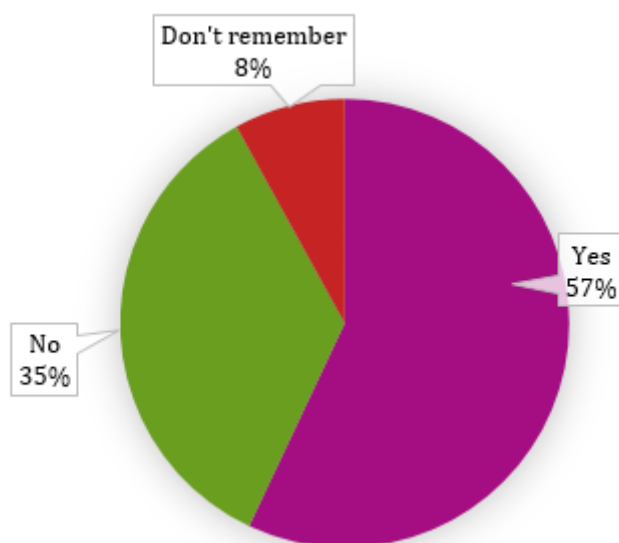
In recalling impactful negative experiences, a number of respondents highlighted an experience of stop and search as their worst encounter with gardaí in the five years prior to the survey. Some of the themes reported by respondents in this context include excessive use of force; the use of overtly racist anti-Traveller language; threatening prosecution; and seeking to have Travellers act as informants:

*"I'm with a settled girl so they pick on her knowing that that would annoy me, like saying stuff to her and calling her names and things and then 'what you doing with the smelly k*****r' [racial slur] 'how can you do that on your own, how can you be with a k*****r' ... I'd be getting sneered and go 'Come on, we'll leave' and we'd go to walk off and then they just kick lumps out of me, do you know what I mean? There's nothing that we can do about that." (Survey participant)*

"[The garda said]'What are you doing here?' I said I'm dropping my brother off out to his house and he is like 'Get out of here' and I said to the guards 'Can I ask you one question, what am I doing to you? What reason have you to be so angry with me and be so aggressive?' and he said 'Oh, get out of the estate, if you're not out of here in the next five minutes, I'll see your car removed in the next five minutes that I'll seize your car and if I find nothing wrong with you or car', he said, 'I'll make a reason, I'll create something so I can get you.'" (Survey participant)

We asked respondents if gardaí had provided them with a reason as to why they were stopped. Only 57% of those who were stopped stated that the garda had explained why they were being stopped.

Did the gardaí explain why you were stopped?



Of those who recall being given a reason for the police stop, 62% understood the reason given in its entirety; 24% only understood some of the reason given; 13% understood none of the reason given; and a small number did not recall whether they understood the reason given.

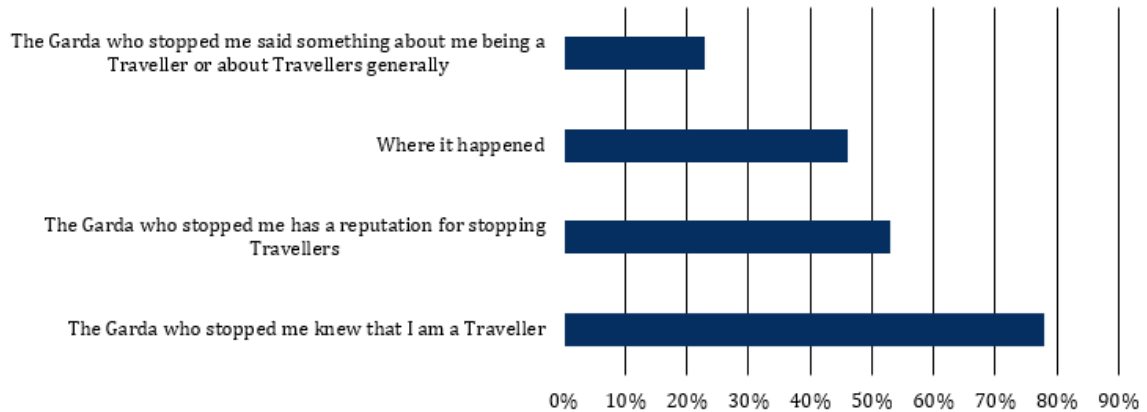
Ethnic/Racial profiling

We asked respondents who reported being stopped within the five years prior to the survey whether they thought their most recent experience of a police stop was because they are a Traveller. In this context, it is useful to note that in the European Union Fundamental Rights Survey, of those Travellers who were stopped by the police in the 12 months before the FRA survey, 58% thought they were stopped because they are Travellers. Our survey found very similar levels of reporting in respect to ethnic/racial profiling. Of the respondents to our survey who had been stopped by a garda in the five years prior to the ITAJ survey, 59% stated that they believed they were stopped because they are a Traveller. A further 11% were unsure as to whether this was the reason for the stop. When we look at those individuals in more detail, 78% of those who said they were not given a reason for the stop by gardaí believed they were stopped because of their Traveller identity, compared to 47% of those who said they were given a reason for the stop.

Clearly, a majority of Travellers to our survey were of the view that they were stopped by the gardaí because they are a Traveller. Our research crucially went on to ask *why* respondents were of the view that they were racially profiled when stopped by the gardaí. In some cases respondents provided multiple justifications for their assertion of ethnic profiling. Of those respondents who stated that they believed they were stopped because they are a Traveller, 78% explained that the Garda who stopped them knew that they were a Traveller; 53% stated that the particular Garda who stopped them has a reputation for stopping Travellers; 46% stated that the location of the police stop contributed to their conviction that they were ethnically profiled; and 23% stated that

the Garda who stopped them said something about their Traveller identity or about Travellers generally.

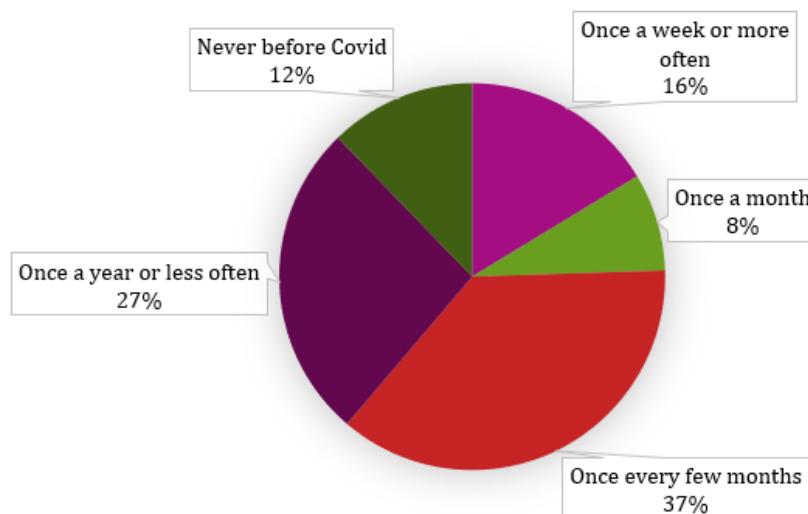
Why did you think that you were stopped because you are a Traveller?



Garda searches – prevalence

We asked participants to the survey if they had been searched by the Gardaí for any reason in the past five years. When asked if they, their belongings or property (including their car but excluding their home) had been searched by the police in the five years prior to the survey taking place, 42% of the ITAJ sample reported experiencing such searches in the five years prior to the survey. Again, recognising that Covid-19 restrictions may have impacted on the prevalence of garda searches, respondents who said they had been stopped in the previous five years were asked how often they were searched prior to the pandemic.

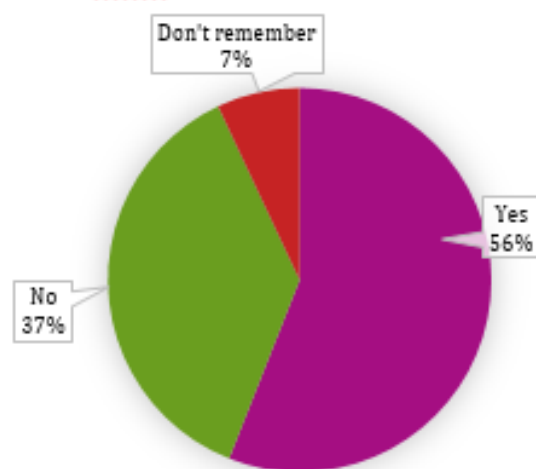
Before covid, about how often were you, your belongings or property searched by the gardaí?



Context of garda searches

We asked participants to think about the last time they had been searched. Clothes and vehicles were the most common searches performed. When asked about their last experience of being searched, the majority stated that they did not feel that they were treated respectfully by the gardaí; 77% stated that the gardaí *did not treat them respectfully* and only 17% stated that they were treated respectfully. A very small number could not recall or chose not to respond. A majority, 56% stated that gardaí provided them with a reason for the search. 37% stated that no explanation was provided.

Did the gardaí explain why they were doing a search?



Of those who were provided with an explanation, a majority, 55% understood all of the explanation given, 32% understood some of it, and a small number understood none of it. A very small number could not recall.

We asked whether, following the search, the gardaí took anything belonging to the survey participant away with them: 12% of respondents answered in the affirmative, and 85% of our sample said that following the search, nothing was taken by the gardaí.

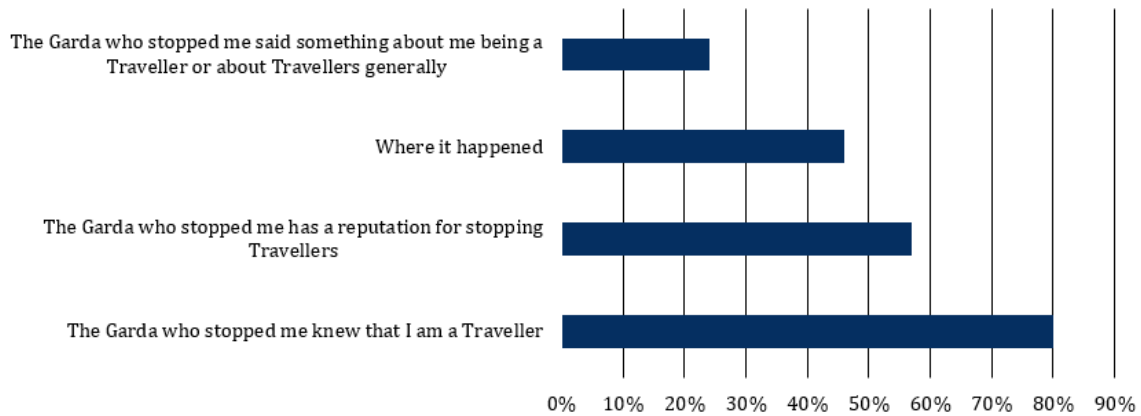
Racial profiling

Of those who had been searched or had their belongings searched in the previous five years, 89% thought they were searched because they are a Traveller. A small number were unsure and a very small number thought that their Traveller identity had nothing to do with their being searched.

Respondents who said they believed they had been searched because they are Travellers were asked why they held this conviction. Again individual sometimes respondents provided multiple justifications for their assertion. 80% said that the Garda that stopped them knew that they were a Traveller, 57% stated that the Garda in question is known

for stopping Travellers, 46% said the location of the search caused them to believe that their Traveller identity was a factor, and 24% stated that the garda had said something about their Traveller identity or about Travellers generally.

Why did you think that you were searched because you are a Traveller?



Harassment

In recalling impactful negative experiences with police, harassment arose as a key theme – that is, being repeatedly stopped and/or searched by the gardaí. A small number of these experiences highlighted an individual garda who harassed Travellers generally or a particular family:

“I suppose there was a detective guard [police officer], [a] certain detective guard in my family’s area and he seems to be constantly on a power trip. He is constantly intimidating Travellers of all ages, young fellas [fellows] as young as twelve, thirteen and fourteen walking on the footpath. He do be pulling up and asking what are they doing for the day and curb crawling beside them and intimidating these young fellas.”
(Survey participant)

The majority of those who spoke about harassment, however, spoke about being harassed by gardaí generally, rather than a particular individual:

“...there has been aggression and there has also been intimidation in terms of calling out on a nightly basis, searching the house without a search warrant, threatening, comments, especially towards Travellers that are underage and making them aware that as soon as they come of age they’re going to be in big trouble and then harassing the family members as well in terms of continuous harassment to the degree they have to seek medical help interventions.” (Survey participant)

A small number of individuals spoke about gardaí provoking Travellers – particularly young male Travellers – and then arresting them:

“... there is a lot of intimidation with guards, provoking young fellas to get into an argument because I seen that first hand, to get into an argument and then when they get into an argument they’re arrested and they’re charged and they’re intimidated and they’re made to feel this way and you’d hear some young lads saying look you’re better off dead than putting up with this country, the law in this country.” (Survey participant)

Discussion and recommendations

The ITAJ project suggests that Travellers perceive that ethnic/racial profiling exists in Ireland, a practice which is contrary to international human rights standards. We recommend that policies be introduced to measure and address ethnic/racial profiling. We endorse the recommendations of the ICCL with respect to police powers.

In particular, we recommend the following:

- An Garda Síochána adopt the ECRI definition of racial profiling;
- The publication of official data on ethnic/racial profiling, including the publication by the Garda Síochána Ombudsman Commission of disaggregated data on the number of complaints against members of the police concerning discriminatory treatment as well as on the decisions adopted.
- The production of operational policy to prevent and address ethnic/racial profiling by the police
- Anti-racial profiling training for all members of An Garda Síochána.
- The introduction of legislation that makes a clear statement as to the illegality of ethnic/racial profiling;
- A receipt system for stops and searches so that all persons stopped or searched will be given a paper record of the search including the lawful basis and cause for reasonable suspicion and if searches the object that was being sought.

Part B: Covid-19 and policing

An Garda Síochána were granted a range of unprecedented powers under section 31A of the Health Act 1947, as inserted by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 to enforce covid-19 related restrictions. These restrictions included travel limitations which were strictly enforced by Gardaí, and during the strictest lockdowns, there were criminal prohibitions on leaving one's home without reasonable excuse. Doyle et al (2021) discuss the operation of the garda operations, as well as the legislative provisions for enforcing same. In the context of on the spot fines, they note:

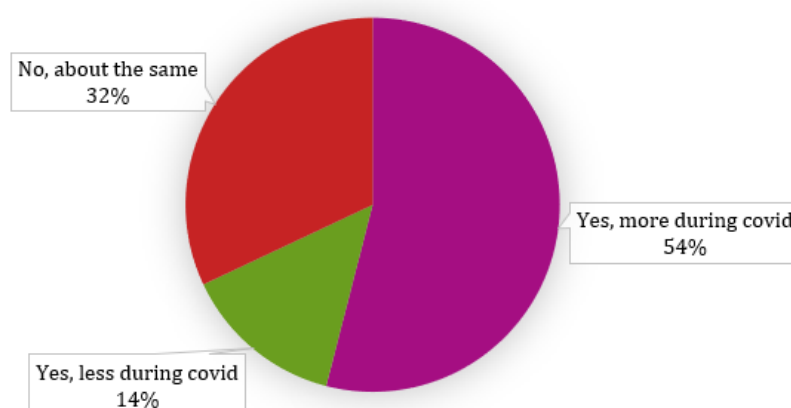
“As of 13 May 2021, 21,417 fines have been issued, meaning potentially over 10,000 offences are due to be brought to court, in addition to prosecutions that are not designated as fixed penalty provisions. As a point of comparison, 226,692 separate offences came before the District Court in 2019 related to road traffic offences.” (2021, 38).

We explored the impact of COVID-19 on the operation of garda in the ITAJ survey.

Prevalence of garda stops during covid

Despite the extensive and unprecedented powers introduced to enforce travel restrictions associated with COVID-19, 32% said they were stopped with about the same frequency; and 14% said they were stopped less during Covid.

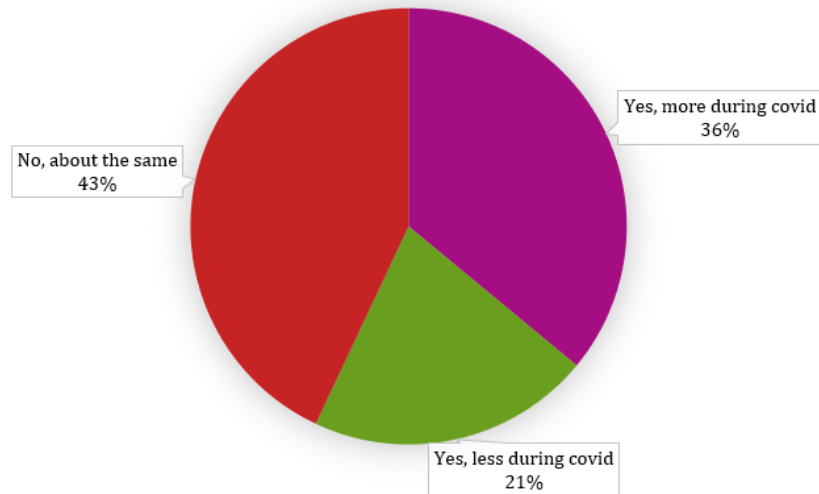
Do you think that the number of times you've been stopped by gardaí changed during Covid?



Prevalence of garda searches during covid

We sought to determine if the prevalence of garda searches was impacted by Covid-19. Of those who had experienced a search, 36% said that they were searched more during Covid, 43% said they were searched with about the same frequency.

Do you think that the number of times you've been searched by gardaí changed during Covid?



Relationship between Travellers and the gardaí during covid

We asked Travellers whether they believed the community's relationship with the Gardaí had changed during the pandemic. Half of the ITAJ sample were of the view that the relationship had disimproved. Of the ITAJ sample, only 2% stated that the relationship between Travellers and gardaí had improved during the pandemic; 26% thought that it had stayed the same; 50% thought that it had disimproved; and 22% did not express an opinion.

Discussion and recommendations

The relationship between Travellers and the gardaí has evidently disimproved over the course of the last two years as a result of COVID-19. A review of how garda powers and practices introduced to address the COVID-19 pandemic should be undertaken, with specific emphasis on the experiences of Travellers. We endorse the recommendations of the ICCL in this regard.

In particular, we recommend the following:

- A review of the use of garda powers and practices introduced as a result of COVID-19 should explicitly include an assessment of Travellers' experiences;
- An Garda Síochána should develop and implement a dedicated policing plan to foster and improve the relationship between members and the Traveller community.

Part C: Search of the Home

As well as being protected under ICCPR, the right to inviolability of the dwelling is protected under Article 40.5 of the Irish Constitution which provides:

“The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.”

This provision has been interpreted by the courts as “substantively protecting the dwelling” rather than simply requiring that any entry into the dwelling is done in accordance with the law (Hogan et al, 2018). Equally, it does not only apply in the context of forcible entry, and the circumstances in which the gardaí can enter a dwelling in the absence of the consent of the occupier are limited, and even further limited where the gardaí do so in the absence of a search warrant (see further, Hogan et al 2018 [7.5.15] to [7.5.37]).

In interviews with Traveller organisations, the issue of forcible entry by gardaí into dwellings was highlighted as a key issue which concerned Travellers:

“I think that we've heard enough from Travellers who said that guards came into the site, had nothing to do with them, and their homes were torn apart. Yeah, so we hear that. So we hear that and the guards may have come in for an issue that had nothing to do with the majority of people in this site and their homes could be torn apart.”
(Representative of Traveller Organisation)

“On one particular occasion when somebody had been followed into this site because they had committed, whatever they committed ... I know that then there was a follow-up raid and everybody's, everybody's trailer ... was broken into ... there was no warrants or there was no kind of search warrants or 'I have the authority to do this.'” (Representative of Traveller Organisation)

Prevalence of home searches

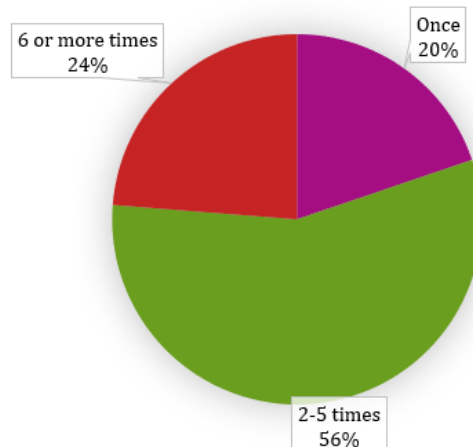
We asked in the survey if respondents had been present in a home when the gardaí entered without having been invited in. Of our sample, 50% stated that they had been present in a home when the gardaí entered without having been invited in.

In the last five years, have you been present in a home when the gardaí entered it without being invited in?



Of those who were present in a home when the gardaí entered without invitation, 20% stated that they had experienced this on one occasion, 57% reported they had experienced this on 2-5 occasions, 24% stated that they experienced this 6 or more times.

In the last five years, how many times have you been in a home that the gardaí have entered without permission?



Provision of search warrants

We asked respondents about their most recent experience of being present in a home which the gardaí entered uninvited within the previous five years. Only 11% said that the gardaí presented a search warrant to them or another person present.

Of those who stated a warrant was provided where someone present could read the warrant:

- Just under a third stated that the warrant did not include a detailed address like a bay number or house number.
- Just over half still thought that gardaí had come to the wrong home.

- Just over a third said that they or someone else told gardaí that they were in the wrong place.

No search warrant provided

In the vast majority of cases where a home was entered by gardaí without permission, 82%, no search warrant was shown.³ Of those individuals who were present in a home when it was entered without permission or a search warrant:

- 61% stated that they or someone else present told the gardaí not to come in, but only a very small number of participants said that the Gardaí left immediately after they were instructed not to enter.
- 47% said the gardaí did not give a reason for entering the home.

Literacy and search warrants

Recalling that a search warrant was provided in only 11% of the cases recounted by participants, in just under one third of those cases, the participant stated that nobody present could read the warrant. This issue was raised by representatives of Traveller organisations in the context of home searches, who highlighted the reluctance of Travellers to assert their rights in these scenarios:

“If I cannot read or write, you could be presenting me a page of a Beano magazine or whatever you know, it could be anything. ... I have family members, not all elderly people or young people, who cannot read and write ... So, if you present them with a piece of paper, it could be anything, literally anything. You're not going to question the guard. They are not going to disagree or annoy the guard or provoke him in any other way. So, but just say, yes, thank you.” (Representative of Traveller Organisation)

This perspective was evidenced through our survey. Of those who stated that they had been present in a home when the gardaí entered and presented a search warrant, just under one third of individuals stated that no one present could read the warrant:

“... they'd only show it to you for a second, just hold it out in their hand, then put it back into the case and that's it then, they'll just show it to you in his hand, he won't give you it to read, they just show it to you, and put it back into the thing. Just take it out, flash it, and put it back into the thing ... It can be any kind of a piece of paper, so that's what I said, I can't read and write, all I know is my name ... So it can be anything, they could show you anything, it could be anything...” (Survey participant)

³ An additional small number of participants were unsure whether a warrant was shown.

Execution of searches

In recalling impactful negative experiences with the gardaí in the last five years, a key theme recalled by participants was the garda “raids” on their homes.

“I have very rarely been in situations on sites [halting sites: Traveller specific accommodation] when the gardai [police] don’t turn up with guns ... like when they go to sites and Traveller specific kind of housing, they always, they come in with guns you know and I can’t see that being any way verifiable policy because that is a deliberate choice and that really shifts how you engage, because when someone turns up with a gun you’re going to talk to them very differently say if they just turned up and say we want entry but when they turn up with a gun and want entry you’re kinda going, well I don’t feel I have any choice because they’ve a gun in their arm.” (Survey participant)

In recalling impactful experiences, that is, the most positive or negative experience that participants had with the gardaí in the last five years, a number of people described the impact this had on the children present.

“Well, the most issues I had with the Gardaí [police] is coming into my home, when the kids getting ready for school at all hours in the morning. I have no issue in the world with any Gard coming to my place, I understand they’re only doing their job. That’s their job. That’s what they’re there for. But it’s not that. They’re coming into your home, they’re putting you into a room, all the kids and yourself into a room ... Then mostly what the problem is, the kids is going to school then, about half nine, twenty to ten, could be half ten some mornings, then the kids is going to school, then the teachers are ringing back, ‘Ah, the kids told me the Gards we’re out on the site this morning, and what were they doing,’ and all this kind of craic.” (Survey participant)

“The children are crying, they want to know what’s happening, they don’t understand the situation coz they’re too young. Then your little children is gone out trying to get a bus to school and they’re stopping them up while their friends is on a bus looking at them, taking their school bags off their back and searching them.” (Survey participant)

Discussion and recommendations

The prevalence with which the homes of the Traveller community are entered by police is deeply troubling and a cause of significant concern, as are testimonies recounting excessive use of force and resulting trauma caused to families and children. The fact that the provision of search warrants was reported by relatively few respondents is equally concerning.

In particular, we recommend the following:

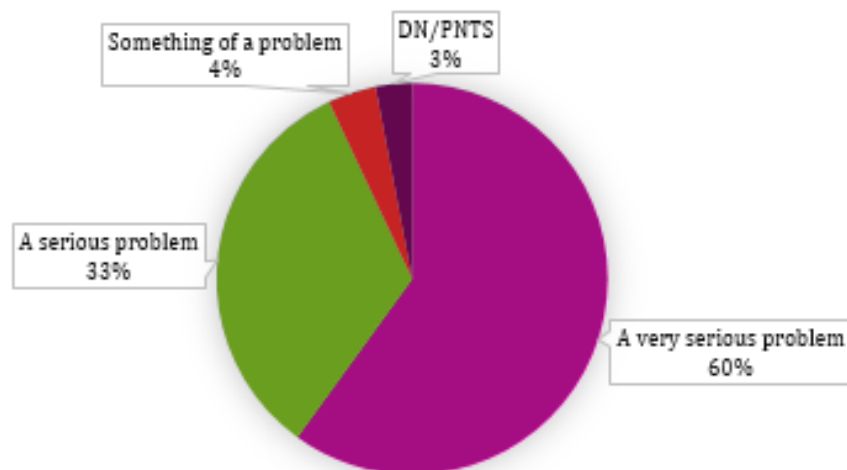
- An independent investigation into the provision and enforcement of search warrants, as well as the circumstances in which homes are entered in the absence of a search warrant;
- The prevalence of police entry to homes with and without a search warrant must be tracked through the system including the power invoked to search, and the resultant prosecution (if any);
- An ethnic identifier, to allow for tracking of entry into Traveller homes with and without search warrants must be introduced;
- The entry of gardaí into homes in the absence of search warrants should be done in only the most exceptional of circumstances and strictly in accordance with common law and statutory powers;
- Joint garda/judicial training on the request for, provision of, and enforcement of search warrants for homes must be provided.

Part D: Hate crime and awareness of the policing of hate crime

Hate crime legislation has not yet been introduced in Ireland, but from our research, the warrant for that legislation is clearly established (Haynes and Schweppe 2017). The General Scheme of the Criminal Justice (Hate Crime) Bill 2021 was published by the Department of Justice which is to be welcomed. We broadly welcome the scope of the General Scheme though highlight the need for consistency of the legislation with criminal justice practices, as well as for a large scale implementation strategy for operationalizing the legislation when enacted.

The ITAJ survey further evidences the need for the urgent introduction of such legislation. The overwhelming majority of Travellers, 93%, think that hate crime directed at Travellers is either a very serious problem or a serious problem. Indeed, 60% of our sample were of the view that hate crime directed at Travellers is a very serious problem.

In Ireland, how serious of a problem is hate crime directed at Travellers



With respect to the particular inclusion of the Traveller community in the General Scheme of the Criminal Justice (Hate Crime) Bill 2021, we note that no framework for in/exclusion has been published to accompany the legislation to determine its scope with respect to protected characteristics. That said, the intention of the General Scheme to make the term 'ethnicity' inclusive of the Traveller community is to be commended. Our understanding is that this is the first time that Travellers will be legislatively recognised as an ethnic minority.

Though Travellers clearly see hate crime as a huge issue for the community, only 20% of respondents were aware that it is possible for gardaí to record a crime as an anti-Traveller hate crime. A National Action Plan Against Hate crime, which is tasked with ensuring appropriate implementation of the legislation, as well as a public awareness campaign and anti-bias training across all criminal justice institutions are vital.

Discussion and recommendations

The introduction of hate crime legislation must be given legislative priority, with the necessity for robust implementation measures. We endorse the recommendations of the Irish Council for Civil Liberties with respect to hate crime.

In particular, we recommend the following:

- A public awareness campaign to accompany the introduction of the legislation should be considered vital to its successful introduction;
- Legislation should commit to the development and implementation of a National Action Plan Against Hate Crime;
- Legislators should be aware that robust implementation measures are crucial to the success of hate crime legislation, and in their absence, legislation is likely to fail;
- Legislation should be accompanied by robust and regular anti-bias training across criminal justice institutions;
- Restorative justice should be recognised as a key means of addressing hate crime and included in restorative justice strategies.

Part E: Community Gardaí

McInerney (2020) found in his research that, while frontline gardaí's [police] opinions of Travellers deteriorate over time in the organisation, the opinions of ethnic liaison officers – a speciality within community policing in Ireland – become more favourable in relation to the Traveller community over time. We note that Ireland's Policing Authority (2022) has selected community focused policing as one of the five strategic themes that will shape its work over the next three years. In recalling impactful positive experiences with the gardaí [police], the most common positive experience recounted by participants with the gardaí involved community gardaí, or demonstrably engaging in community policing practices.

"Yeah, there is some guards who come up to the site [halting site: Traveller specific accommodation] where I live and they are, they are actually, they're very community orientated, they really are and they are very good, you know the chatting, they just come in and drop in for chats, see if everything is ok, ... there's good ones." (Survey participant)

"I've a lot of experiences with guards, with certain guards you know I do. Like even where I'm from there's two or three guards there which are very positive to be honest, you know they're always positive. They contact you, see if you need anything or, like the time I'd the covid, that time they were constantly ringing me [to] see if I need anything or stuff like that." (Survey participant)

A number of individuals working with Traveller organisations equally referred to community gardaí as critical contact points between those organisations and Travellers. They recounted both Traveller organisations and community gardaí working together to build up relationships:

"Yes, I had one positive, just recently we held a Traveller Pride and we had a community guard that works with Travellers through [sports activities]. And he supported us well, very friendly guard, well known in the family and we have great support from him." (Survey participant)

In recalling some of these impactful positive encounters, participants testified to extraordinary displays of care, generosity, and humanity, in which gardaí went far beyond the call of duty in engaging with Travellers – described by one participant as going "above and beyond":

"In work, it's been like, some of the conflicts, situations we're in have been very bad, but with the support of some of the Guards [is] unbelievable, some of them actually stepped above and beyond what they had to do. (Survey participant)

“I’m coming from addiction so trying to move into recovery so and this one guard helped me get a lot of things sorted and get me onto a day programme and that, know what I mean and he helped me turn things around d’you know but he’s one in a million and he wasn’t respected by the other guards, he was the community warrants officer, or community guard at the time d’you know what I mean and you’d hear them ‘Oh is this another one of your little boys’? You know these kind of remarks, you know what I mean. So he was even judged for helping people.” (Survey participant)

The extraordinary actions of these gardaí which help the lives of many, and foster long-lasting positive relationships between gardaí and Travellers must be commended. However, it should also be noted that simple civility, respectful treatment, and taking reports of crime seriously also featured among the most positive experiences that Travellers had of gardaí: it is not necessary to go “above and beyond” for Travellers to perceive their experiences with gardaí as positive:

“Like I did have a good experience with one Gard. I was having a few problems with my son, and he helped me out with it like. Do you know what I mean? He told me what to do, and told how to go about it and everything. He was lovely about it like, he didn’t treat me disrespectful or nothing like. He treated me like a human being like.” (Survey participant)

“A positive experience for me now is when they pull you [over] and they’d be nice to you and they just don’t break your heart, do you know what I mean? That’s a positive experience for me being honest with you. It’s just getting treated with a bit of respect.” (Survey participant)

Discussion and recommendations

Community gardaí, and community policing practices, feature as one of the most significant positive aspects of Travellers experiences with gardaí.

In particular, we recommend the following:

- Investment in a Traveller community rights awareness campaign.
- The introduction of dedicated community gardaí for Travellers in areas with significant Traveller populations.
- The extension of crisis-intervention teams nationwide and the training of members of the Traveller community as mental health workers including for the purpose of joining these teams.
- The extension of the Midlands mediation programme nationwide.

Part F: Accessing Justice in the Courtroom

As well as exploring Traveller-garda interactions and engagements, we investigated the experiences of Travellers in court as both victims and defendants. The data here presents some key aspects of how both victims and defendants experience the courtroom in terms of understanding criminal proceedings; their treatment by criminal justice professionals; and whether they heard anyone using anti-Traveller language in the courthouse.

Victims

Only a small percentage of the ITAJ sample had been in court as a victim of a crime in the five years prior to the survey. Of these, more than three quarters had been in court as a victim of crime on more than one occasion. A large majority stated that the case in which they appeared was heard in the district court.

On the question of how much the victims understood of what was said in court, slightly less than half understood everything that was said by the judge, the prosecutor and the solicitor or barrister for the defence. A minority understood nothing of what was said by any of these criminal justice professionals. Levels of understanding expressed were similar regardless of the role in question.

Only a minority of those who required clarification stated that they asked for any explanation of points they did not understand. Although these clarifications helped somewhat, none of those who asked for an explanation felt they achieved full understanding. Reasons provided by victims for not asking for clarification included a lack of knowledge of how to ask for an explanation, embarrassment, and the fear that a request for clarification might be held against them.

Victims were divided on the question of respectful treatment. More than half felt they had been treated respectfully by the solicitor or barrister for the defence. Just over half said that they had been treated respectfully by the prosecutor. Half said that the presiding judge had treated them respectfully. Just over a third stated that the Gardaí present had treated them respectfully.

All those who answered questions about being in court as a victim of crime stated that the presiding judge was aware of their Traveller ethnicity. Half of crime victims thought that the fact they are a Traveller had an effect on the case.

Defendants

In the five years prior to the survey, 8% of the sample had been in court as a defendant in a criminal case. Just over half of these had been in court more than once as the accused. Just under half had appeared in the district court. Almost three quarters said that no victim was involved in their case.

Just under half of the accused understood all of what was said by the judge, the prosecutor and the defence solicitor or barrister. A sizable minority understood nothing of what was said by the judge or the prosecutor. The vast majority understood at least some of what the solicitor or barrister for the defence said. Under a third asked anyone to explain what they did not understand. Afterwards, only half of these achieved full understanding, the remainder was divided between having achieved some understanding and still not understanding at all.

“Interviewer: And did you feel you had a negative experience with the judge”

Interviewee “I couldn’t understand so I wouldn’t really know, it was mostly the solicitor who was talking.” (Survey participant)

We asked whether the judge in the case was aware of their Traveller ethnicity: 96% of the accused in the ITAJ sample stated that the presiding judge was. A small number of respondents stated that a jury was present for their court appearance, and all stated that the jury was aware of their Traveller ethnicity.

With regard to respectful treatment, almost three-quarters stated that they were treated respectfully by the solicitor or barrister for the defence. In contrast, only a minority of the accused considered that they were treated respectfully either by the judge, the Gardaí present or the prosecutor. Just over a third of the accused believed their identity as a Traveller had an impact on the outcome of the case.

Legal Representation

Legal aid is a cornerstone in securing the right of access to justice. Of the ITAJ sample who had been in court as a defendant, 78% accessed their legal representation through legal aid; a small number sourced their own solicitor; and an equal number to these represented themselves. The majority of those individuals who represented themselves said they were refused legal because the case was not regarded as sufficiently serious.

Of those accused who commented on their satisfaction with the service they received from their solicitor, the majority stated that they were quite or very satisfied with the service they received, but just under a third were quite or very dissatisfied. All of those who paid for their own solicitor were very or quite satisfied with the service they received.

Sentencing

In recounting their most negative experience with judges in the past five years, survey participants highlighted judicial sentencing practices as a key concern. A key theme arising was the conviction that Travellers receive disproportionately high sentences as compared to their settled counterparts:

“I felt I was treated wrongfully, I was treated very, very harshly ... I had six previous charges which were minor offences. So, no tax on a car ... for speeding, that was it

really, two or, two or three other little bits and pieces ... So, my solicitor said, look, plead guilty. You're up for two or three months, you'll be out or whatever. And I said, fair enough, that was fine. Then the judge looked down ... Ten months, for a first offence in court, where the maximum was twelve." (Survey participant)

Discussion and recommendations

Understanding what is happening during legal proceedings is vital to accessing justice, as is being treated respectfully by all legal practitioners in the courtroom. We endorse the ICCL recommendations with respect to legal aid and the right to a solicitor during questioning, as well as the use of custodial sentences and non-monetary sentencing options.

In particular, we also recommend the following:

- The development of training packages and face to face CPD for all judges, legal professionals, and court staff with respect to anti-Traveller racism and discrimination.
- The introduction of a dedicated legal accompaniment service for Travellers victims and defendants attending court.
- The introduction of an ethnic identifier across the criminal process including for data relating to convictions and sentences;
- A register of legal practitioners who have completed anti-racism training specific to Travellers.
- The development of training packages and face to face CPD for legal professionals with respect to anti-Traveller racism and discrimination.

Part G: Overt Racism

“K*****r is a racist term” (ENAR 2013) which is deeply offensive to the Traveller community. The racial slur is arguably ‘place-specific’ to Ireland. In 2013, an Irish district court judge used the term to describe defendants of Traveller ethnicity (Joyce 2018). Representatives of Traveller organisations described the impact of the racial slur when used against Travellers, and particularly its impact both on children, and when it is used by those in authority:

“But I know that is the most degrading - awful, awful. ... You actually do believe you are the dirt under somebody’s shoe ... It’s not a word, it’s a whole thing. It’s everything about it. ... You’re made feel as if you’re totally unworthy. You’re nothing, ... You have no value to nobody or to nothing. ... we should be grovelling for to even be allowed speak. We should be grovelling to be allowed exist, we should be thanking these people for letting us be here.” (Representative of Traveller organisation)

“... like since I was a small child, you know it’s derogatory. You know it’s bad and you just get that pain the minute you hear it. And that’s the way it makes me feel. And that’s the way it makes my husband feel. And same with my children. But yeah, it’s just it’s the worst word that can ever be used against a Traveller. And to hear people saying it, and especially people of authority like specially with guards [police]... just like a kick in the teeth to you.” (Representative of Traveller organisation)

In the early part of the last decade, there were a couple of highly publicised incidents of judges displaying overt racism towards racialised and ethnic minority communities in courtrooms (see Joyce, 2018). A minority of ITAJ respondents who had been in court as a defendant in the five years prior to the survey stated that they had heard anti-Traveller language used in the court or courthouse. The source of this language included a prosecutor, people working in the courthouse, Gardaí, or someone else. One respondent who was in court as a victim in the five years prior to the survey stated that they heard the judge use anti-Traveller language.

In recounting impactful negative experiences with judges, a small number of participants to our research recalled racist comments being made from the bench in the last five years.

“... my daughter was waiting with her solicitor, there is a case being heard and the case that’s being heard is about a woman that breached covid restrictions and she was some place she should not have been so the judge was giving out to her and he gave her a fine and he knew that on the list ... that Traveller discrimination case was the next case so then he started sprouting all this thing ‘No more than the Travellers thinking that they can get away with everything and Travellers having parties and Travellers doing this and that big Traveller wedding...’ (Survey participant)

“Yes I would have had very negative experiences ... again the generalisation that was used the word member of the Travelling community or Traveller, there was no one individual doing something wrong, it was an entire community.” (Survey participant)

A larger number of participants to the survey recalled gardaí using explicitly racist language to Travellers while performing policing duties, which ranged from using the ‘k word’ during stop and searches, to using the racist slur in the course of arresting Travellers.

*“Participant: “And, just saying that ‘it’s always the same with ye dirty k*****rs [racial slur], ye never have nothing, and things like that.*

*Interviewee: Em, so, I just want to ask you this again, did that Guard [police officer] actually say, use the word k*****rs [racial slur] to you?*

Participant: He did, yeah.” (Survey participant)

*“And he said to me, is that the k*****r [identifying information] ? ... and he said, ‘Yeah’, you know what I mean? ‘K*****rs, cream crackers. That’s who ye are.’” (Representative of Traveller organisation)*

Discussion and recommendations

The use of explicitly racist language on the part of criminal justice professionals can never be tolerated, and this issue must be addressed as a matter of urgency.

In particular, we recommend the following:

- The introduction of anti-racism training specific to the Traveller community across the legal profession which specifically addresses prejudice and discrimination not just cultural awareness.
- A register of legal practitioners who have completed anti-racism training specific to Travellers.
- The development of training packages and face to face CPD for legal professionals with respect to anti-Traveller racism and discrimination.

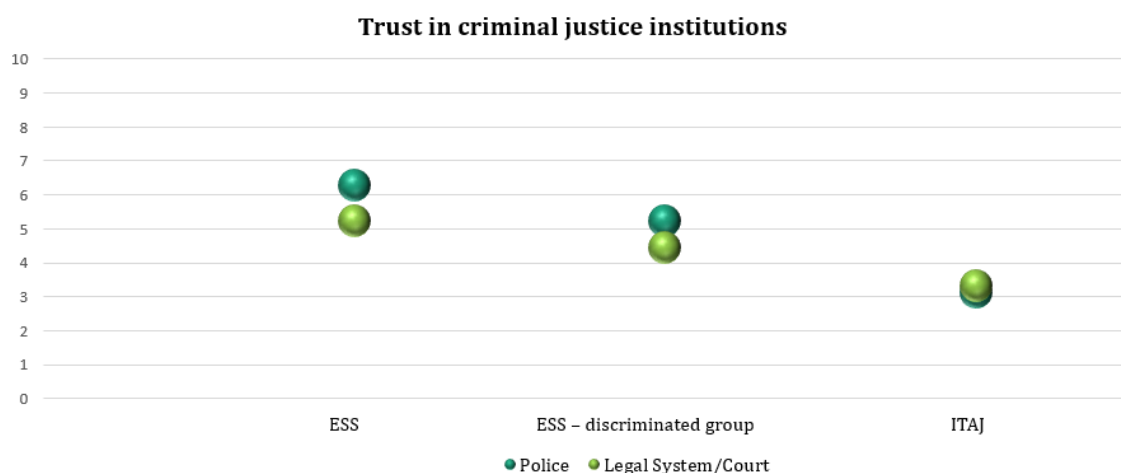
Part H: Broader Context – Trust and Perceptions

The direct experiences of individual Travellers having been set out above, the final section of this submission details the broader perception of Travellers of the criminal justice system as a whole. In the survey, we addressed Travellers' perceptions of the gardaí, the courts and judges. We drew on a variety of questions asked of the general population in the European Social Survey (ESS) and the Garda Síochána Public Attitudes Survey (GPAS) to develop the questions asked of respondents.

Trust in the Criminal Justice System

The European Social Survey measures the trust of populations in key state institutions, including the gardaí, the courts, politicians, and the parliament. Drawing on these questions we asked survey respondents to tell us, on a score of 0-10 how much they trust both the gardaí and judges.

On a scale of 0-10 where 0 equates to no trust and 10 equates to complete trust, average trust in the police was low with mean trust in the police of 3.12. 35% of the ITAJ sample stated that they have no trust in the police and less than 5% stated that they have complete trust in the police. Mean trust in the police of 3.12 among the ITAJ sample of Travellers compares to mean trust in the police among the general population of Ireland of 6.28 according to the latest data available from the European Social Survey (where only 3% of the sample had no trust at all in the police) (ESS 2018). In the European Social Survey, people who report being a member of a group that is discriminated against have a mean trust in the police of 5.25 (ESS 2018).



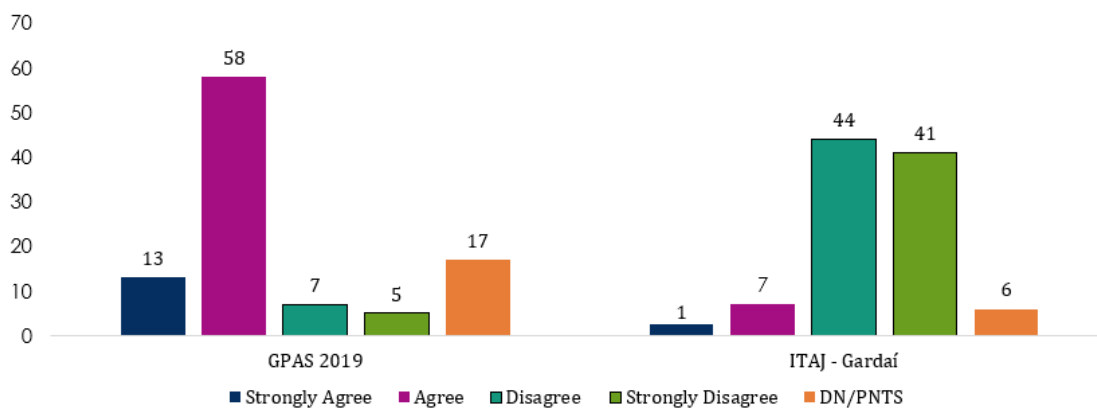
On a scale of 0-10 where 0 equates to no trust and 10 equates to complete trust, average trust in the courts was low with mean trust in the courts of 3.33. 30% of the ITAJ sample stated they have no trust in the courts and less than 5% stated that they have complete trust in the courts. Mean trust in the courts of 3.33 among the ITAJ sample of Travellers compares to a mean trust in the legal system among the general population of Ireland of 5.25 according to the latest data available from the European Social Survey where only

6% of the sample had no trust at all in the legal system) (ESS 2018). In the European Social Survey, people who report being a member of a group that is discriminated against have a mean trust in the legal system of 4.44 (ESS 2018).

Fairness of treatment

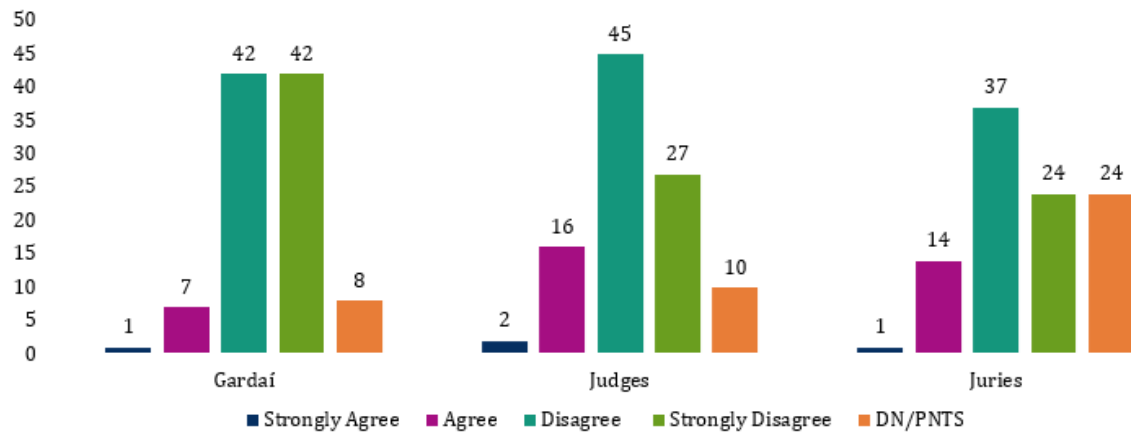
The Garda Public Attitudes Survey explores whether the general population are of the view that the gardaí treat everyone fairly – that is, “whether they treat everyone fairly regardless of who they are” (GPAS 2019: 42). In the general population the answer is overwhelmingly positive – 71% of the general population agree that the gardaí treat everyone fairly regardless of who they are, with no notable difference across gender or social class groupings. When presented with precisely the same statement, the Traveller population answers differently. In response to the same statement, only 8% agreed, and more than 80% of the ITAJ sample disagreed.

“The gardaí in this area treat everyone fairly regardless of who they are”



We then used that same statement from GPAS and applied it to judges and then juries. While we do not have comparative data for judges and juries from the general population, the findings are similarly instructive in terms of expectations of fair treatment. When presented with the statement that judges in this area treat everyone fairly regardless of who they are, more than 70% of the sample disagreed; more than 60% of the sample disagreed with the statement that juries in this area treat everyone fairly regardless of who they are.

“... in this area treat everyone fairly regardless of who they are”



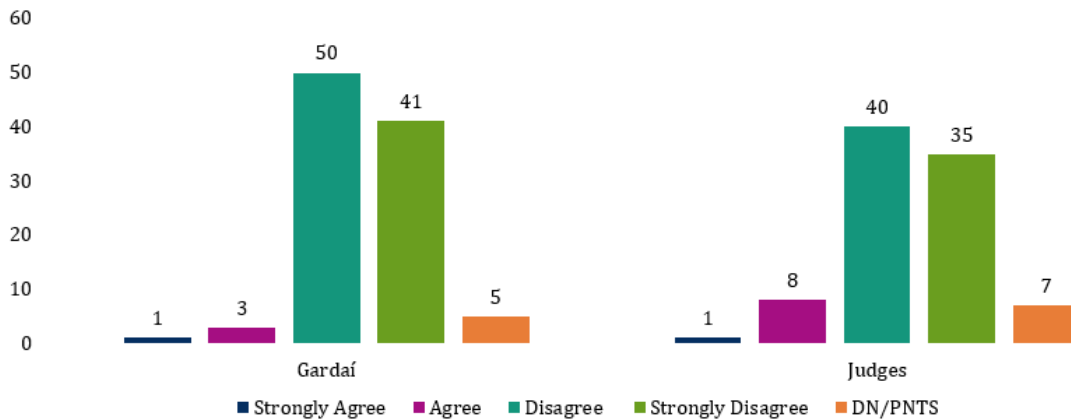
One survey respondent spoke explicitly to how juries see the Traveller community in court:

“I mean the judges and the jury, and juries as well and they’re supposed to be judging as our peers, they’re not really our peers, it’s hard to be judged by people that knows nothing about us and they just seen negative things constantly in the media.” (Survey participant)

Respectful treatment

The Garda Public Attitudes Survey similarly explores whether the general population are of the view that the gardaí treat people respectfully – that is, “the gardaí would treat you with respect if you had contact with them for any reason” (GPAS 2019: 42). In GPAS, 95% of the population agree, with 23% strongly agreeing with the statement. We asked ITAJ participants whether they thought the gardaí and judges treat Travellers with respect. Thus, while the data is not directly comparable, the findings are again deeply concerning: while 95% of the population think that the gardaí treat everyone with respect, more than 90% of ITAJ respondents thought that Gardaí do not treat Travellers with respect; almost three quarters of ITAJ respondents thought that that judges do not treat Travellers with respect.

“... in this area treat Travellers with respect”

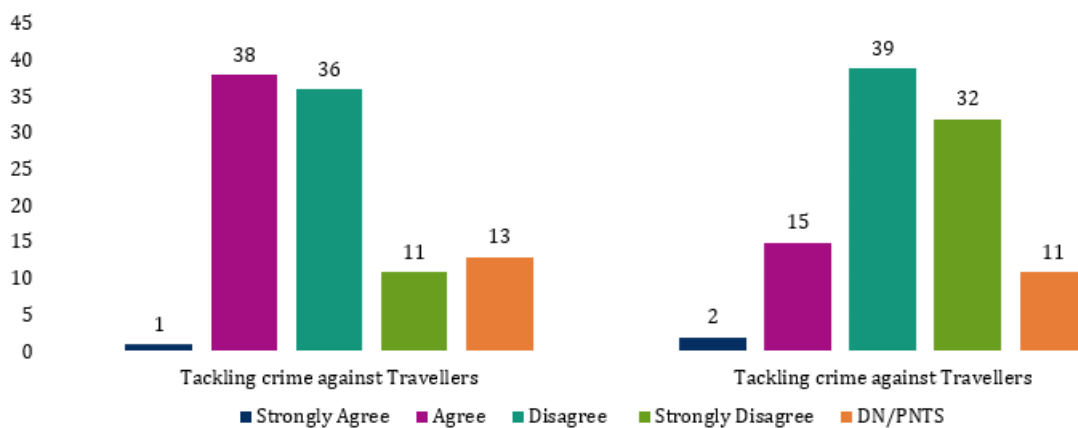


Effectiveness

Again, drawing on GPAS data for the purposes of comparability between samples, we asked ITAJ participants whether they thought the gardaí are effective in tackling crime *generally* and then asked whether they are effective in tackling crime against Travellers. In GPAS, 68% of the population agree that the gardaí are effective in tackling crime (GPAS 2018: 48). This is slightly higher for individuals who were not a crime victim (69%) and significantly lower for those who were victims of crime (49%).

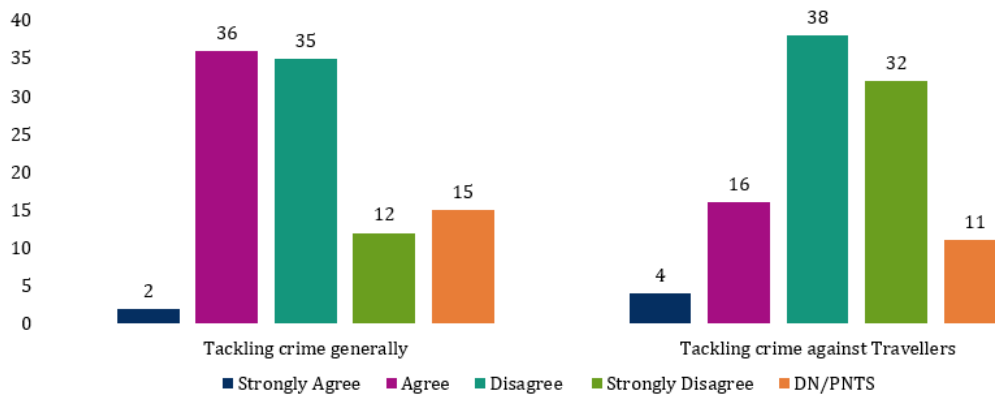
ITAJ respondents were divided on the question of whether the Gardaí are effective in tackling crime generally. As compared to the general population agreement levels of 68%, 39% of the ITAJ sample either strongly agreed or agreed that the Gardaí are effective in tackling crime; 47% either disagreed or strongly disagreed with this statement. By contrast, only 17% either strongly agreed or agreed with the statement that Gardaí are effective in tackling crime against Travellers. 72% of respondents disagreed with this statement.

“The gardaí are effective in tackling crime generally/against Travellers.”



Respondents were equally divided on the question of whether the ***courts*** are effective in tackling crime generally. 38% agreed or strongly agreed, and 47% either disagreed or strongly disagreed. By contrast, only 20% either strongly agreed or agreed with the statement that the courts are effective in tackling crime against Travellers.

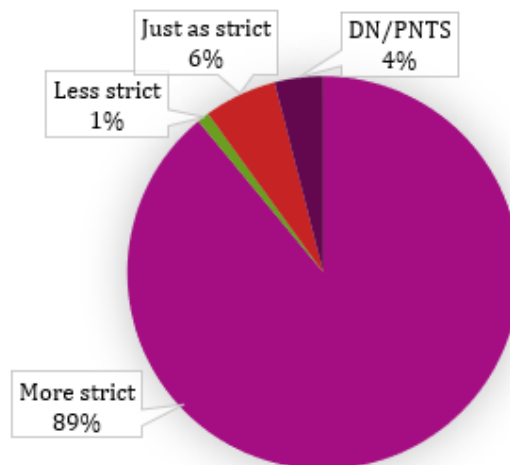
“The courts are effective in tackling crime generally/against Travellers.”



Strictness

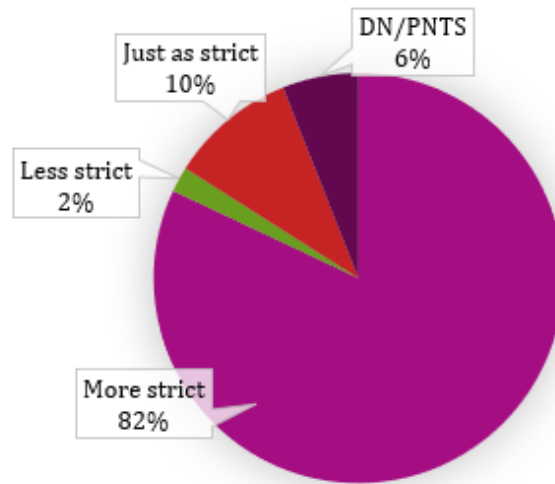
Travellers overwhelmingly believe that the Gardaí and judges are more strict when dealing with Travellers as compared to when dealing with settled people. 89% of the ITAJ sample believed that Gardaí are more strict when dealing with Travellers compared to settled people.

In your opinion, how strict are the gardaí when dealing with Travellers compared to when they are dealing with settled people?



Respondents answered similarly with respect to strict treatment from judges: 82% of the ITAJ sample thought that judges are more strict in dealing with Travellers

In your opinion, how strict are judges when dealing with Travellers compared to when they are dealing with settled people?



Conclusion

The Irish Travellers Access to Justice project sought to understand the relationship between Travellers and the criminal justice process, to better understand the experiences of Travellers with criminal justice professionals, as well as explore perceptions of the justice system on the part of Travellers. It is clear from the findings of this research that the relationship between Travellers and both the gardaí and judges leaves much room for improvement, with extremely low levels of trust on the part of Travellers in those institutions designed to protect the rights of all people in the State. A substantial amount of work is needed on the part of those criminal justice institutions to ensure that Travellers in Ireland experience the criminal justice process in a manner which is compliant with the provisions of the ICCPR.

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The image on the front of this Report is by Leanne McDonagh, and called 'Police presence':

"Police presence was created in response to a heavy patrol of police officers at Chairmee horse fair in Buttevant, in 2014. I had attended with family and friends after several years of missing the annual event due to other commitments. I immediately felt that the number of police officers on duty had doubled if not tripled since I had last been there, which, was frustrating to me because I felt they were adding to the perceived stereotypes of the community by displaying such a substantial presence at a fair. It felt as if the officers were assuming and expecting the worst to happen when in fact it was their presence that was making the crowd feel uneasy and causing the tension that was present on the day." - Leanne McDonagh

