



european network against racism

ENAR Shadow Report 2006

ENAR SHADOW REPORT 2006

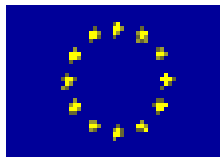
RACISM IN IRELAND

Catherine Lynch

Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it. Even where there is extensive official data, NGOs offer a vital alternative data source that comes directly from experiences of those individuals and communities experiencing racism on a daily basis.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

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Table of contents

Table of contents	2
1. Executive summary.....	4
2. Introduction	6
3. Communities vulnerable to racism	8
4. Manifestations of racism and religious discrimination	10
4.1 Employment.....	10
4.2 Housing	12
4.3 Education.....	13
4.4 Health	14
4.5 Policing and racial profiling	16
4.6 Racist violence and crime.....	16
4.7 Access to goods and services in the public and private sector	18
4.8 Media, including the internet.....	19
5. Political and legal context	22
5.1 Anti-discrimination	23
5.2 Migration and integration	25
5.3 Criminal justice	28
5.3.1 Racism as a crime.....	28
5.3.2 Counter terrorism	30
5.3.3 Racial profiling	31
5.4 Social inclusion	32
6. National recommendations	34
6.1 General.....	34
6.2 Anti-discrimination	34
6.4 Criminal justice	35
6.4.1 Racism as a crime.....	35
6.4.2 Counter terrorism	35
6.4.3 Racial profiling	35
6.5 Social inclusion.....	36
7. Conclusion	37
8. Bibliography	38
9. Annex 1: List of abbreviations and terminology.....	41

1. Executive summary

Ireland is a multi-ethnic society with ethnic diversity increasing significantly over the past decade through immigration. While there has long been racism in Ireland, it is in the context of recent immigration that debate on racism has come to the fore. This report demonstrates that racism is evident across all sectors of society and impacts significantly on the lives of ethnic and religious minority groups. The report focuses on manifestations of racism as well as policy and legislative developments for the period January 2006 to December 2006 and complements previous Shadow Reports including the *2005 Shadow Report*.

While a number of positive measures have been put in place by Government, they have been undermined by contradictory legislation and policy such as that seen in 2006 in the area of immigration. The report expresses concern at the limited progress in developing policy and legislation in certain areas such as integration and at the problems associated with the implementation of existing policies.

2006 was a significant year in Ireland in terms of demonstrating the important role that international bodies can play. In this year, the UN Committee on the Elimination of all forms of Racial Discrimination (CERD) conducted a follow-up visit.¹ The European Council on Racism and Intolerance (ECRI) published its third report on Ireland and the Advisory Committee for the Protection of National Minorities (ACFC) delivered its opinion in relation to Ireland's commitment to the Framework Convention. These provide key tools with which to reflect on racism in Ireland today and assess the Government's response.

Positive developments at a national level include the inclusion for the first time of a question on ethnic background in the Census and the launch of the Traveller Education Strategy. However, positive developments are marred by a disappointing, long-awaited Scheme for an Immigration, Residence and Protection Bill, slow progress in relation to developments to address racist crime and a piecemeal approach to the implementation of the National Action Plan Against Racism (NPAR).

The role of NGOs is particularly evident in the responses by ECRI, ACFC and CERD. NGOs have been crucial in the development of anti-discrimination and related policy and legal developments at all levels and in the past there have been a range of mechanisms nationally designed to consult with NGOs. However, in recent years there have been concerns that the role of NGOs has been somewhat sidelined and undermined at a national level.

¹ The follow-up visit is a new procedure which was implemented for the first time through the visit to Ireland.

Two important developments in 2006 illustrate the validity of this concern by NGOs. Firstly, the High Level Group on Travellers has been established without the inclusion of Traveller representation, which signifies a major step backwards. Secondly, NGOs expressed grave concern that the Scheme for Immigration, Protection and Residency Bill had not taken into account the submissions made by them in the consultation process in any meaningful way. The ECRI report encourages the Government to ensure it includes the input from NGOs in this process.

The report makes a number of recommendations, some of which are highlighted below.

The Government should:

- Recognise the distinct ethnic identity of Travellers;
- Re-draft the Immigration, Residence and Protection Bill to reflect submissions by NGOs;
- Extend the definition of services in the equality legislation to include immigration and law enforcement;
- Grant family reunification rights to migrants;
- Extend the powers of the Ombudsman to include immigration functions;
- Provide sufficient resources to equality bodies to ensure effective implementation of equality legislation;
- Ensure greater commitment to and efficiency in the implementation of the National Action Plan Against Racism;
- Ensure that all policies that impact on the lives of ethnic and religious minority groups are equality proofed and take account of multiple forms of discrimination, such as those experienced by women.

2. Introduction

Ireland is a multi-ethnic society with ethnic diversity increasing significantly over the past decade through immigration. While there has long been racism in Ireland, it is in the context of recent immigration that debate on racism has come to the fore. This report demonstrates that racism is evident across all sectors of society and impacts significantly on the lives of ethnic and religious minority groups. The report focuses on manifestations of racism as well as policy and legislative developments for the period January 2006 to December 2006 and complements previous Shadow Reports including the *2005 Shadow Report*².

There has long been a denial of the existence of racism in Ireland but recent years have seen a recognition that it does exist as well as the emergence of anti-racism initiatives. However, as positive measures are put in place by Government, they are being undermined by contradictory legislation and policy such as in the area of immigration. The report expresses concern at relatively slow progress in some policy and legislative areas including inertia in the implementation of existing policies.

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Positive developments at a national level include the inclusion for the first time of a question on ethnic background in the Census and the launch of the Traveller Education Strategy. However, positive developments are marred by a disappointing, long-awaited Scheme for an Immigration, Residence and Protection Bill, slow progress in relation to developments to address racist crime and a piecemeal approach to the implementation of the National Action Plan Against Racism (NPAR).

Section 2 of the report provides information and data on communities that are vulnerable to racism in Ireland. Manifestations of racism and religious discrimination are outlined in Section 3, focusing on key problems in the areas of employment, housing, education, health, policing and racial profiling, racist violence and crime, access to goods and services and the media.

² Lynch, Catherine, *ENAR Shadow Report 2005 – Racism in Ireland* (2006)

³ The follow-up visit is a new procedure which was implemented for the first time through the visit to Ireland.

Section 4 provides an overview from an NGO perspective, of political and legislative developments in Ireland in 2006 in four key policy areas, namely anti-discrimination; migration, family reunification and integration; racist violence and crime; and social inclusion. On the basis of assessments by NGOs and building on recommendations from key bodies including relevant international bodies, the report offers a series of recommendations. The report concludes by highlighting particularly critical developments in 2006 and reflecting on the significance of civil society responses and contributions.

3. Communities vulnerable to racism

Ireland is a multi-ethnic society with ethnic and religious diversity increasing significantly over the past ten years through immigration. Many ethnic minority groups in Irish society are vulnerable to racism. A recent study by the Central Statistics Office (CSO) shows that persons from 'other ethnic backgrounds' reported the highest rate of discrimination with 31% having experienced discrimination in the previous two years.⁴

A key development took place in 2006 with the inclusion for the first time in the census of a question on ethnic background. The 2006 census is the most comprehensive and recent source of information on diversity in Ireland, collecting data on religious belief, nationality, country of birth and membership of the Traveller community. While the introduction of a question on ethnic background is significant, some have argued that the question formulation is limited and might be improved in the future.

The question of the recognition of the distinct ethnic identity of the Traveller community came again to the fore in 2006. The State acknowledges a distinct Traveller culture, that Travellers experience racism and provides protection to Travellers from discrimination through the equality legislation. However, it does not recognise Travellers as an ethnic group. CERD encourages the State to work 'more concretely towards recognising the Traveller community as an ethnic group'.⁵ This view was echoed in the Opinion of the Advisory Committee for the Protection of National Minorities (ACFC).⁶ The Equality Authority also supports the recognition of the Traveller community as a distinct ethnic group.

The largest group of migrants coming to Ireland in 2006 were EU citizens, followed by non-EEA migrant workers and asylum seekers. The number of EU citizens coming to Ireland has increased over the past three years. On the other hand, the number of asylum seekers has decreased. In 2006, 4241 claims for asylum were lodged compared with 4304 in 2005.⁷ These figures represent a significant decrease on earlier figures, e.g. 2003 when the number of claims stood at 7483. It should be noted that the discrepancy between recognition rates at first instance and at appeal continues. The top five nationalities of those seeking asylum in 2006 were Nigeria, Romania, Somalia, Sudan and Iran.

⁴ Central Statistics Office, *Quarterly National Household Survey. Equality. Quarter 4 2004* (Dublin: Central Statistics Office, August 2005)

⁵ UN Committee on the Elimination of all forms of Racial Discrimination, *Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination* (CERD, 10 March 2005) CERD/C/IRL/CO/2 at para. 20

⁶ Advisory Committee for the Protection of National Minorities, *Second opinion on Ireland* (Strasbourg: Council of Europe, October 2006). The opinion states, '31. The Irish authorities should refrain from conclusive statements affirming that the Travellers do not constitute an ethnic minority in so far as such a position is not based on clear criteria and does not result from a dialogue with the minority concerned, taking into account the principle of self-identification stemming from Article 3 of the Framework Convention.

⁷ Office of the Refugee Applications Commissioner (ORAC), *Annual Report 2006* (ORAC 2006), p. 37-42.

Though Ireland continues to be a predominantly Christian, largely Catholic country, there is evidence of increasing religious diversity within the population. The Census 2006 reveals that Muslims are the third largest religious group in Ireland.⁸

The Roma community has been represented in Ireland for decades. However, the community has grown considerably with the recent wave of immigration since the mid 1990s.

The 2006 Census reveals that non-Irish nationals account for 10% of the Irish population with the highest proportion (150,000) living in Dublin, the capital city. It also revealed that the number of mixed nationality families has increased from 70,721 in 2002 to 95,635 in 2006. The census demonstrates that the majority of immigrants are young, single people. Of the 122,000 persons who immigrated into Ireland in the twelve months before the census, 68.2% were single and of these 62.2% were in their twenties. The census also recorded a population of 22,400 Irish Travellers.⁹

EU migration counts for a significant amount of the immigration into Ireland particularly from the new EU member states who joined the EU in 2004. There is evidence of EU migrants being denied their rights as EU citizens and complaints have been made to the European Commission in this respect.

There are also minorities within minorities. There are some provisions for the disaggregation of data by gender across categories such as ethnic background, religious belief and membership of the Traveller community within the census data collection and reporting mechanisms. However, data collection mechanisms are not consistent across the board. Concerned by instances of multiple discrimination, CERD encourages the State to take measures regarding the special needs of women belonging to a minority and other vulnerable groups. Publications from the Equality Authority and the Migrant Rights Centre Ireland in 2006 highlight the experience of discrimination experienced by ethnic minority women including migrant women.

⁸ Census 2006, available at <http://www.cso.ie/statistics/Population.htm>

⁹ Ibid.

4. Manifestations of racism and religious discrimination

4.1 Employment

Ethnic minority groups experience discrimination both in accessing employment and while employed. Manifestations include underemployment, poorer working terms and conditions and unequal opportunities for promotion. It should be noted that asylum seekers do not have the right to work in Ireland, a situation that many NGOs and independent research highlight as having a negative impact on integration and personal health.

The Employment Equality Acts of 1998 and 2004 outlaw discrimination in the area of employment on the grounds of 'race', membership of the Traveller community and religion. The Equality Authority reports that the two grounds relating to racism, the 'race' ground and membership of the Traveller community, continued to dominate their case files in 2006.¹⁰

A number of interesting conclusions were drawn by the Equality Tribunal in 2006 and included the recognition that an employer failed in his duty to his employees as he did not translate contracts.¹¹ The requirement for two references was also found to be indirectly discriminatory on the 'race' ground.

The Equality Authority highlighted the continuing vulnerable position of migrant workers. In the context of Anti-Racism in the Workplace, it published a report focusing on the experiences of female migrant workers who constitute a particularly vulnerable group in the Irish labour market.¹²

Despite increased reports of workplace exploitation of migrant workers, it is difficult to provide quantitative data on this matter due to a lack of comprehensive and consistent data collection mechanisms. Lack of accurate and accessible information about employment rights, fear and lack of faith in the system along with concerns such as cost mean that many cases of exploitation go unreported and unnoticed. There have been calls for increased capacity of the Labour Inspectorate to enable them to step up their inspections in order to identify and respond to instances of exploitation of migrant workers.

The vulnerable position of undocumented workers, who frequently are not aware that they have become undocumented, has been highlighted by NGOs.

¹⁰ Equality Authority, *Annual Report 2006* (Equality Authority, 2007)

¹¹ Equality Authority, *Annual Report 2006* (Equality Authority, 2007), p. 18.

¹² Equality Authority, *Introduction to the Situation and Experience of Women Migrant Workers in Ireland* (Equality Authority, 2006), available at <http://www.equality.ie/index.asp?locID=106&docID=577>, accessed 22 May

Trafficking for forced labour is also an issue of grave concern to NGOs working with and for the rights and protection of migrants.

Examples of NGO Good Practice

7th Anti-Racist Workplace Week, 6-10 November 2006

Anti-Racist Workplace Week is an all-island initiative taking place simultaneously in Ireland and Northern Ireland. It reflects a commitment in the National Agreement 'Towards 2016' that '*racism in the workplace will be proactively addressed in the context of the Anti Racist Workplace Week in keeping with best international practice in this area*'. The core theme for the 2006 Anti-Racist Workplace Week was integration.

Anti-Racist Workplace Week is about organisations and enterprises taking initiatives to celebrate cultural diversity in the workplace and to lay foundations for a workplace that is intercultural and integrated. These initiatives will lead to longer term initiatives to create and sustain such a workplace.

The Week is co-ordinated by the Equality Authority and partner organisations include IBEC, Congress, Small Firms Association, Construction Industry Federation, Irish Farmers Association, Chambers Ireland and the Department of Justice, Equality and Law Reform. NGOs support, promote and participate in the Week which seeks to stimulate and support workplaces to:

- Be free from discrimination and harassment;
- Be welcoming to Black and minority ethnic (including Traveller) employees and customers/service users;
- Take into account and make adjustments for and value cultural and linguistic diversity among employees and customers alongside a wider accommodation of diversity, including making reasonable accommodation for people with disabilities;
- Take practical steps to achieve full equality in practice;
- Communicate a message promoting greater equality within their wider community.

See www.equality.ie for further information.

Migrant Rights Centre Ireland Domestic Workers Support Group (DWSG)

The DWSG is made up of women working in the private home, as carers or child-minders who also do cleaning and housekeeping work. This group meets to discuss issues relevant to them and aims to build leadership, develop a shared analysis and take action on the issues affecting them.

For further information, see www.mrci.ie.

4.2 Housing

Accommodation continued to be a problematic area for ethnic minority groups during 2006. Problems have been reported in relation to discrimination in accessing private rented accommodation, discrimination in the allocation of local authority accommodation, discrimination in accessing financial services which impacts on a person's capacity to purchase property, racist incidents in residential context and failure by public bodies to provide adequate accommodation including accommodation for Travellers, the impact of the Habitual Residency Condition (HBC) which is leading to homelessness, as well as continued concern around dispersal and direct provision arrangements for asylum seekers.

The Equal Status Acts 2000 and 2004 prohibit discrimination on the grounds of 'race' and membership of the Traveller community in the provision of goods and services including accommodation. However, statutory agencies are not sufficiently included within the remit of the Act. This is very problematic in the area of housing as many of the problems occur in areas that are the responsibility of statutory agencies, including policy makers and local authorities, and often derive from actions taken by them, e.g. the policy of dispersal and direct provision of the Department of Justice, the HBC implemented by the Department of Social and Family Affairs and the inertia at delivering under commitments made around Traveller accommodation by local authorities.

The HBC, which limits social welfare entitlements of all those who have not been resident in Ireland for two years previously, continued to cause severe problems for immigrants including EEA nationals through 2006. The problems with the HBC have been highlighted by both statutory agencies and NGOs. It has presented a particular concern in the area of housing. The Homeless Agency reports that it has resulted in homelessness and also limits the provision of emergency accommodation to immigrants¹³.

The dispersal and direct provision also continues to be a concern for asylum seekers and NGOs supporting the rights and welfare of refugees and asylum seekers.

Despite commitments at a national level and concern voiced by international bodies such as CERD, ECRI and ACFC, the provision of appropriate accommodation remains problematic for Travellers. As a result of the equality legislation, the Equality Authority reports that in 2006 three Traveller families were provided accommodation on foot of complaints brought under the Equal Status Acts.¹⁴ However, the scale of the problem requires immediate action by

¹³ Homeless Agency, *Away From Home and Homeless* (Dublin: Homeless Agency, 2006)

¹⁴ Equality Authority, *Annual Report 2006* (Equality Authority, 2007)

Government and local authorities to provide appropriate accommodation to Travellers.

4.3 Education

Education was a key area of concern identified by ECRI in its Third Report on Ireland. It highlighted in particular concerns around provision of education to religious minority groups¹⁵ and called for consideration of the provision of non-denominational education institutions¹⁶.

The Irish Constitution does not allow for the establishment of non-denominational primary or post-primary schools. Schools in Ireland are either of a single denomination or multi-denominational. The majority of schools in Ireland are Catholic with a small number of Islamic and Protestant schools. There are also multi-denominational schools but as demand increases and supply remains low, access to multi-denominational schools can be an issue in certain areas. This is a particular issue in light of the intersectionality of discrimination on the basis of 'race' and religion.

As reported in the *2005 Shadow Report*, there are no baseline figures to assess outcomes for ethnic and religious minority groups from the Irish education system¹⁷. While some data is collected, it is inconsistent. For example, post-primary schools collect data on country of origin whereas primary schools do not. At primary school the focus for the collection of data is on language needs rather than nationality or other factors relating to racism.

There is therefore no quantifiable means of assessing the extent to which existing education strategies are benefiting minorities nor of effectively evaluating new strategies. Not knowing how many students from underrepresented groups including ethnic minority groups access education, complete course of study or receive an award makes it difficult to assess progress or to make the case for continued or increased resources to achieve equity.

One initiative, however, provides us with some quantitative data with regard to the education status of Travellers. The Survey of Traveller Education Provision (STEP) which was published in 2006 reveals that Traveller attendance rate in primary schools is 80% but in some areas, the rate is as low as 35%. The lowest recorded figures were for Travellers in unofficial halting sites. This demonstrates the impact of a lack of appropriate accommodation on others areas of a person's well-being such as education and health. In terms of basic educational outcomes,

¹⁵ In its Observations published in 2005, CERD also encourages the promotion of the establishment of non-denominational or multi-denominational schools in view of the intersectionality of racial and religious discrimination.

¹⁶ ECRI, *Third Report on Ireland* (Strasbourg: ECRI, 2006)

¹⁷ Lynch, Catherine, *ENAR Shadow Report 2005 – Racism in Ireland* (2006)

more than 60% of Traveller pupils are below the 20th percentile in English reading and in mathematics. 2% are in the top quintile (80-100).¹⁸

While at a national and departmental level there is some recognition of a need to provide structures to support children from ethnic and religious minority groups and their parents, in practice relatively little has been achieved at implementation level to date.¹⁹ For the most part intercultural issues are left to individual schools. While there are a number of good initiatives within particular schools, this is somewhat ad hoc. The *2005 Shadow Report* highlighted the introduction of intercultural guidelines for primary and post-primary schools²⁰. However, as these are only guidelines their implementation cannot be enforced.

A positive development that should be noted was the launch of the Traveller Education Strategy in November 2006.²¹

Examples of NGO Good Practice

Éist is a pilot project that has developed an anti-bias approach to early years care and education in the Irish context. The project has taken a leadership role in promoting diversity and equality awareness and training in the early childhood sector. The project has laid the groundwork for mainstreaming equality and diversity training. The training approach has been promoted, developed and tested across the sector at pre-service, in-service and at supervisory level.

See www.paveepoint.ie for further information.

4.4 Health

There is a range of issues affecting ethnic minority groups in relation to accessing healthcare and securing equal outcomes from healthcare. Members of minority ethnic groups who have a low level of income and therefore hold medical cards, report difficulty in securing a doctor locally. The problem can be exacerbated for recent migrants who are new to an area and will therefore not already have a local doctor. Other problems within the health system include lack of availability of translators, which impacts on the standard of care that a person can receive. Some migrants require specialised healthcare and there are difficulties within the healthcare service when trying to accommodate culturally appropriate healthcare or specialised services.

¹⁸ Cited in an article by Philip Watt, Director of NCCRI, in Pavee Point Newsletter. Watt, Philip, 'The Hard Road to Traveller Inclusion', in *Pavee Point Newsletter* (Pavee Point, December 2006), p. 19-20.

¹⁹ This conclusion is drawn from a piece of research on how public authorities provide services to minority ethnic groups in Northern Ireland, Republic of Ireland and Scotland, published by NCCRI. NCCRI, *How Public Authorities Provide Services to Minority Ethnic Groups, Northern Ireland, Republic of Ireland, Scotland* (Dublin: NCCRI, 2006)

²⁰ Lynch, Catherine, *ENAR Shadow Report 2005 – Racism in Ireland* (2006)

²¹ For more information, see <http://www.education.ie/servlet/blobservlet/tes%20chapter1.htm>

A positive development in 2006 was the announcement by the Health Service Executive of their intention to draw up an Intercultural Health Strategy and their invitations for submissions through a national consultation process.

When assessing manifestations of racism in health, it should also be remembered that the healthcare sector is an area in which many migrants have found employment. Ironically, although the healthcare system is dependent on migrant workers, immigrants have been made scapegoats in the public discourse where they have been blamed for the strain on the system.

It should also be noted that immigration legislation potentially impacts on all areas including health. Clarification has been sought by NGOs with regard to the obligation to report on undocumented migrants as contained within the Immigration Act 2004 and it has been emphasised that this should not include health care providers.

In its election manifesto published in preparation for the anticipated national election in 2007, the Irish Traveller Movement (ITM) called for a commitment to carrying out a national survey on Traveller health.²² The provision of appropriate accommodation cannot be overlooked when considering Traveller health and lack of accommodation invariably has a negative impact on health status.

Examples of NGO Good Practice

Cairde's Women's Health Action (WHA)

Women's Health Action (WHA) is a programme developed by Cairde to respond to the health needs of women from ethnic minority groups, including asylum seekers, refugees and other immigrants. It supports the participation of women from ethnic minority groups in identifying and addressing their own health needs.

The **objectives** of the programme are as follow:

- To support ethnic minority women to identify their health needs;
- To build the capacity of ethnic minority women to address their health needs;
- To raise awareness of the issues affecting the health of ethnic minority women;
- To support ethnic minority women to influence policy that impacts on their health;
- To support ethnic minority women to build solidarity with other groups experiencing inequality.

See www.cairde.ie for further information.

²² Irish Traveller Movement, *Election Manifesto 2007 letter* (ITM, Nov 2006), available at <http://www.itmtrav.com/pdf/ITMElectionIssuesletter.pdf>, accessed 23 May 2007

Akidwa

Akidwa is a national organisation and network of African women that provides a range of services and information to African women and migrant women.

See www.akidwa.ie for further information.

4.5 Policing and racial profiling

There is anecdotal evidence of racial profiling. However, it is difficult to prove this or test cases due to the limited legislation to monitor the practice of the police force. For example, the police force is not covered under the equality legislation. Some legislative progress was made late in 2006 with regard to the establishment of a Garda Inspectorate and enactment of legislation to enable the establishment of a Garda Ombudsman.

Racial profiling at entry points and border controls is a very serious matter, accentuated by the extent of power given to immigration officers including discretionary powers, the lack of procedural safeguards or appeal mechanisms and the fact that immigration officers do not come under the jurisdiction of the Ombudsman or the remit of equality legislation.

ECRI recommends the close monitoring of the implementation of the Immigration Acts 2003 and 2004 in the interest of safeguarding against racial profiling.²³

Examples of NGO Good Practice

Training for the police force, An Garda Síochána

A number of NGOs provide pre-service training for the police force including on anti-discrimination. Pavee Point, a national Travellers' centre, is one such NGO that provides training to new police recruits every year.

5.6 Racist violence and crime

Racist crime is primarily dealt with through a range of legislation including Criminal Justice (Public Order Act) 1994, the Non-Fatal Offences Against the Person Act 1997, the Criminal Damages Act 1991 and the Prohibition of Incitement to Hatred Act 1989. There is no provision for aggravated sentencing on the grounds of racism in Irish law and the Incitement to Hatred Act has long been considered ineffective.

²³ ECRI, *Third Report on Ireland* (Strasbourg: ECRI, 2006)

The extent of racist crime can be measured through statistics from An Garda Síochána (the national police force), NCCRI's Racist Incident Reporting System and the media. However, underreporting is a significant issue.²⁴ According to An Garda Síochána 85 offences with a racist motive were recorded in 2005, an increase on the 66 offences recorded in 2004. This compares to 81 offences in 2003, 102 in 2002, 43 in 2001, 65 in 2000, and 12 in 1999. 2003 was the first full year in which racially motivated incidents were clearly defined to members of the force and recorded through PULSE.²⁵

PULSE statistics reveal that the total number of incidents recorded in 2006 stood at 159. This compares with a figure of 83 in 2005. A further breakdown of data is provided in Table 1 below.

Table 1: Offences recorded which are racially motivated for 2006

Offence Type	Detected	Undetected	Total Recorded
Public Order	55	8	63
Criminal Damage	8	25	33
Assault minor	19	19	38
Assault Causing Harm	11	6	17
Harassment	1	1	2
False Imprisonment	1	0	1
Robbery from Person	2	1	3
Road Traffic Offences	1	0	1
Firearms Offences	1	0	1
Totals	99	60	159

Source: Crime Statistics Office, An Garda Síochána.

The NCCRI data and media reports reveal that 2005 saw ongoing racist violence and crimes mostly resulting in property damage and also including some physical assaults.²⁶ The total number of racist incidents reported to the NCCRI in 2006 (preliminary figures) stands at 65 with 25 incidents reported between January and June 2006 and 40 between July and December 2006.

²⁴ Underreporting is evident in many jurisdictions. In Ireland a victimisation survey carried out by the Central Statistics Office in July 2004 showed that 74% of violent theft victims who were non-EU nationals did not report the crime to the Gardaí. Central Statistics Office, *Module on Crime Victimisation Q4 1998 and Q4 2003*, released 29 July 2004.

²⁵ Crime Statistics Office, An Garda Síochána

²⁶ NCCRI, *Racist Incidents Report, January 2006-June 2006* (Dublin: NCCRI, 2006).

4.7 Access to goods and services in the public and private sector

A number of important instruments facilitate the recording of experiences of racism in accessing goods and services in the public and private sectors. These include the case load of the equality bodies and the Labour Court as well as the racist incident recording system of NCCRI. The process of identifying the extent of racism in service provision has become more complicated since the introduction of the Intoxicating Liquor Act in 2005.

The Equal Status Acts 2000 and 2004 outlaw discrimination in the provision of goods and services across nine grounds. The two grounds relating to racism, namely the 'race' ground and membership of the Traveller community dominated the case files of the Equality Authority in 2006.

A number of the functions of public bodies are exempt from the provisions of the equality legislation. Particularly noteworthy and problematic in this context are exemptions relating to the provision of public services to certain groups of non-Irish nationals. While nationality was covered in the Equal Status Act 2000, exceptions were introduced in the Equality Act 2004. The EU 'Race' Directive was weaker than previously existing Irish legislation in this regard.

Prior to 2004 cases relating to discrimination in licensed premises were heard by the Equality Tribunal. The implementation of the Intoxicating Liquor Act 2003 meant that such cases would be heard in the District Court. NGOs report that this poses a difficulty for vulnerable groups. The Equality Tribunal is more accessible than the District Court setting. Vulnerable groups had previously benefited from information provision and assistance from the Equality Authority but this a service that is no longer available to them. Costs may need to be borne by the unsuccessful party which is a significant disincentive, discouraging victims of discrimination from bringing cases under the Act.

A comparative analysis of the case load of the Equality Authority shows that while the Traveller ground counts for a small proportion of the cases taken under the Employment Equality Act, the highest number of cases taken under the Equal Status Act and the Intoxicating Liquor Act are taken on the grounds of membership of the Traveller Community. The 'race' ground is also high; however, cases taken under the ground of 'religion' are relatively low.²⁷

Government departments, local authorities and state agencies are the focus of 40% of Equality Authority case files under the Equal Status Acts.²⁸

²⁷ Equality Authority, *Annual Report 2006* (Dublin: Equality Authority, 2007)

²⁸ *Ibid.*

Concern regarding access to financial services came to the fore in 2006, highlighted through a MRCI Migrant Rights Forum and by the NCCRI which published an Advocacy Paper on the issue.²⁹

The Equality Authority reports that its work under the Intoxicating Liquor Act continues to be hampered by the failure to transpose all of the powers and functions of the Equality Authority into this area.

Examples of NGO Good Practice

MRCI collaborates with the Comhairle and the Citizens Information Centres

Throughout the country there are Citizens Information Centres (CICs). The MRCI has developed alliances with and offers supports to the CICs to help increase the capacity of both organisations to reach migrants and help ensure greater access for migrant workers across the country.

For further information, see www.mrci.ie and www.oasis.gov.ie

4.8 Media, including the internet

The media can play a positive and negative role in the struggle against racism. In fact, the media is a key mechanism for bringing our attention to racist incidents and crime. It is also a powerful mechanism for the promotion of positive images of ethnic minority groups. The internet has been very useful to underresourced NGOs who can use it relatively inexpensively to disseminate information. However, it can also play a negative role. In the Irish context this negative role has included scapegoating and inciting hatred against ethnic minority groups through scaremongering, biased and inaccurate reporting.

The Irish Star, a tabloid newspaper, was the only Irish newspaper to publish the offensive cartoon of the Prophet Mohammed. However, further attention was drawn to the cartoon through interviews of the journalist in question on radio and television. The Imam of a Dublin Mosque said that while the violent protests against the cartoons were regrettable and not acceptable, the whole situation surrounding them had not been handled well.³⁰

There was a peaceful march in Dublin on Friday 10 February 2006, attended by approximately 300 to 500 participants. The organiser denounced violence and thanked the Irish media for responsibly using their right to freedom of speech.

²⁹ The Advocacy Paper can be found at appendix 1 of the NCCRI Submission to the Homeless Agency. NCCRI, *Submission to the Homeless Agency* (NCCRI, 2006), available at <http://www.nccri.ie/submissions/06Aug-Homeless-Agency.pdf>, accessed 22 May 2007

³⁰ See for further details, Breaking News, 'McDowell praises Muslims Restraint' at www.breakingnews.ie/2006/02/06/story243410.html, accessed 23 May 2007

The Minister for Justice praised the Irish Muslim community for their peaceful response to the publication of the cartoons.³¹

In its report of racist incidents from January to June 2006, the NCCRI highlights a range of misinformation and the circulation of offensive materials including an article in the *Irish Independent*, 'Diluting Dublin'; an article by the *Star*, 'Death Smack Foreign Link, immigrants involved in 1 in 3'; the *Irish Examiner* which published a letter with the headline 'Deport immigrants who commit crime'. A report was also sent to the NCCRI about a website, Stormfront, that hosted a number of racist comments about Travellers in Dundalk.³²

Where incidents have occurred in the Irish context, little has been achieved in addressing them, as infrastructure to ensure responsible reporting in the media is limited. There are no provisions in the equality legislation against racist materials. The Prohibition to Incitement to Hatred Act 1989 is the principal piece of legislation for tackling racism in the media. However, this legislation has proven to be ineffective in this task as no case in relation to the media brought under the Act has been successful.

The research commissioned through the NPAR on effective legislation against hate crime is awaited and has the potential to provide some protection against racism in the media. This was due in June 2006 but due to delays in the project starting, this will not be available now until late 2007. The National Union for Journalists in Britain and Ireland (NUJ) has a code of practice which should prevent against such reporting.³³ However, it is not binding. NGOs have noted also that the NUJ is primarily a trade union and therefore a different body needs to have this role.

A number of NGOs and politicians have called for the establishment of a Press Council that would be sufficiently representative and have sufficient powers.³⁴

Globally, the Internet is proving to be another tool for the distribution of racist materials and messages and is difficult to control. Ireland is no exception in this struggle. An Internet Advisory Board has also been set up as highlighted in the *2005 Shadow Report* and includes representation from the NCCRI.

³¹ Ibid.

³² NCCRI, *Racist Incidents Report January – July 2006*, (Dublin: NCCRI, 2006), available at www.nccri.ie, accessed 22 May 2007

³³ For more information, see <http://www.nuj.org.uk/inner.php?docid=59>

³⁴ The establishment of the Press Council was finalised in 2007 and on 4 July 2007, the members of the Press Council were announced.

Examples of NGO Good Practice

Guidance for Journalists in relation to reporting on asylum matters

A Publication offering guidance for journalists in reporting in relation to asylum matters was published in 2006 through a partnership between the Irish Refugee Council and the National Union of Journalists.

For further information, see www.irishrefugeecouncil.ie

5. Political and legal context

2006 was an important year at a national level in terms of national policy development and planning. The National Social Partnership Agreement, *Towards 2016*³⁵ was agreed in November 2006. *Towards 2016* makes a number of references and commitments to the rights of minority ethnic and religious groups including Travellers, immigrants and particularly vulnerable groups. 2006 also marked the beginning of a new anti-poverty strategy, NAPS Inc. 2006-1013. These were key opportunities to ensure the inclusion of ethnic and religious minority groups on the national agenda and in mainstream policy developments. The census was carried out in 2006 and for the first time, a question on ethnicity was included. The results should help inform developments to ensure inclusion of ethnic minority groups into the future.

There were also a number of key targeted policy and legislative developments including the publication of the Scheme for an Immigration, Residence and Protection Bill and the Traveller Education Strategy. The National Economic and Social Council (NESCC), a government advisory body, also published a comprehensive report, *Migration Policy*, which sets out a range of recommendations on migration policy and highlights the importance of ensuring the centrality of integration within migration policy³⁶.

The National Women's Strategy was due to be published in 2006 but this did not happen until 2007. A range of other policy and research documents were also due but were not concluded in 2006 such as research into effective hate crime legislation in the context of the NPAR. Ongoing debates reached new heights including debate around the recognition of the distinct ethnic identity of the Traveller community.

International bodies continue to play an important role, monitoring the protection of minorities and in 2006 the ACFC and ECRI both produced reports on Ireland. Overall, ECRI acknowledged some progress with regard to a number of recommendations from their second report on Ireland but regrettably, also highlighted the fact that many recommendations have not yet been acted upon or have only been partially implemented.

There was no election in Ireland in 2006.

The role of NGOs has been crucial in the development of anti-discrimination and related policy and legal developments and in the past there have been a range of mechanisms designed to facilitate consultation with NGOs. However, in recent

³⁵ Government of Ireland, *Towards 2016 – Ten-year Framework Social Partnership Agreement 2006-2015* (Dublin: Government Publications Office, 2006)

³⁶ NESCC, *Migration Policy* (Dublin: Government Publications, 2006)

years there have been concerns that the role of NGOs was somewhat undermined. Two developments in 2006 illustrate the validity of this concern. Firstly, the High Level Group on Travellers has been established without the inclusion of Traveller representation, which signifies a major step backwards. Secondly, NGOs expressed grave concern that the Scheme for Immigration, Protection and Residency Bill had not taken into account the submissions made by them in the consultation process in any meaningful way. ECRI encourages the Government to ensure it includes the input from NGOs in this process³⁷.

The difficulties for NGOs in participating in national policy making are numerous. Structural changes have been taking place that in effect are directly excluding the participation of NGOs. Even where consultation and representation feature, resource issues effectively exclude NGOs from participating. There continues to be a lack of funding to anti-racism NGOs including migrant-led NGOs.

5.1 Anti-discrimination

Commitments made at international level, including those made at the World Conference Against Racism in Durban in 2001 and through the ratification of ICERD, have been key drivers in the Irish Government's anti-discrimination measures. Two key developments in this area in 2005 include the Observations of CERD on the Government's *First National Report* and the launch of the National Action Plan Against Racism (NPAR). It is also worth noting progress since the enactment of the Equality Act 2004, which the Government advocates provides for the transposition of EU Directives under Article 13 of the Amsterdam Treaty, including the 'Race' Directive.

The Irish Government submitted its first National Report under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in January 2005. The report was considered by the Committee on the Elimination of Racial Discrimination (CERD) at its 66th Session on 2-3 March 2006. This was a key benchmark in Irish history in terms of commitments to the struggle against racism at an international level. However, an NGO Alliance described the Report as reflecting an aspiration rather than the reality of racism in Ireland³⁸.

The Government launched the National Action Plan Against Racism (NPAR) on 27 January 2005 following commitments made at the World Conference Against Racism in Durban in 2001. The NPAR, *Planning for Diversity*, aims to provide strategic direction to combating racism and developing a more inclusive, intercultural society and emphasises the development of reasonable and common sense measures throughout. It is underpinned by an intercultural

³⁷ ECRI, *Third Report on Ireland* (Strasbourg: ECRI, 2006)

³⁸ NGO Alliance, *NGO Alliance Shadow Report In Response to the Irish Government's First Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination* (Dublin: NGO Alliance, 2004)

framework built around protection, inclusion, provision, recognition and participation. The NPAR is overseen by a Strategic Monitoring Group and is supported by the Department of Justice, Equality and Law Reform.

The NPAR identifies actions that have the potential to respond in part to a range of the issues highlighted in section IV. However, to date only moderate achievements have been realised. Key weaknesses include the lack of timeframes, commitment to resourcing or sanctions for government departments and agencies that fail to implement measures.³⁹ Many of the provisions made in the Action Plan are potentially undermined by poor legislation and policy in other areas, e.g. asylum and immigration.

As the *2004 Shadow Report* explains, the Equality Act was signed into law on 18 July 2004. The Act amends a number of provisions of the Employment Equality Act 1998 and the Equal Status Act 2000 to give effect to EU Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of 'racial' or ethnic origin; EU Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation; and EU Directive 2000/73/EC of the European Parliament and of the Council, amending Council Directive 76/20/EEC on the implementation of the principle of equal treatment for men and women. There has been a mixed response to the Act, with a number of NGOs expressing disappointment about how the Directives have been implemented.

Issues of concern in terms of implementation of the equality legislation relate to costs; anonymity and the right to privacy; waiting lists and delays by the Equality Tribunal; awards; enforcement; failure to respond (particularly by public bodies); requirement to threaten litigation; mediation process; and procedures.⁴⁰ The provision of exemptions has also been criticised.⁴¹ CERD urges the State to consider expanding the scope of the Equal Status Act to cover the whole range of Government functions and activities including controlling duties.⁴²

While the equality bodies, the Equality Authority and the Equality Tribunal strive to be as effective as possible, there are a number of obstacles in their way including lack of resources and inadequacies in the law itself. The lack of sufficiently dissuasive redress mechanisms are also an obstacle to the effectiveness of equality bodies. The Equality Authority has expressed concern that the 2004 Act fails to ensure that the redress provided is sufficiently dissuasive.⁴³ Members of the judiciary share these concerns.

³⁹ NGO Alliance, *NGO Alliance Briefing Update. Events from December 2004 – February 2005* (Dublin: NGO Alliance, March 2005)

⁴⁰ Equality Authority, *Annual Report 2006* (Dublin: Equality Authority, 2007)

⁴¹ Barry, Eilis, 'The Equality Bill 2004' in Equality Authority, *Equality News Summer 2004* (Dublin: Equality Authority, 2004).

⁴² CERD, *Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination* (CERD, 10 March 2005)

⁴³ Equality Authority, *Annual Report 2006* (Equality Authority, 2007)

While some attempts have been made to make the general public aware of racism, anti-racism and the equality legislation, the CSO reports that almost one in five persons do not know their rights under Irish equality law. 42.1% of people from 'other ethnic backgrounds' reported that they had no understanding of their rights, more than twice the national average.⁴⁴ However, the increase in the use of the Equality Authority website gives some indication that awareness of the equality legislation may be on the increase. There were 471,679 visits to the homepage of the Equality Authority website which represents an increase of 68% compared to 2005.⁴⁵

The first case of indirect discrimination on the religious ground reached a successful conclusion in 2006 when the Equality Tribunal found that Western Union had indirectly discriminated against Mohammed Haji Hassan on the grounds of his Muslim religion when they refused to release money sent through their service.⁴⁶

An important development in terms of testing the powers of the Equality Authority was the granting of leave to appear as *Amicus Curiae* by Order of the High Court (Quirke J) on 22 May 2006.⁴⁷ The Order was subsequently appealed to the Supreme Court by the Minister for Environment, Heritage and Local Government and the Attorney General. The Supreme Court dismissed the appeal.

It should be noted that while January 2006 was the deadline for the transposition of the EU Directive on Third Country Nationals, Ireland has opted out of implementing this Directive amongst others.

In summary, the approach to anti-discrimination by the State has tended to be individualistic rather than institutional, addressing discrimination on a case by case basis but not sufficiently proactive in terms of preventive measures such as a statutory duty would provide. The remit of equality legislation is also narrow where the onus to comply is on private institutions but only on certain public bodies. The role of the State in terms of compliance is less explicit with many institutions and policies of the state, e.g. immigration, remaining exempt from requirements under equality legislation.

5.2 Migration and integration

The most significant developments in 2006 included the publication of the Scheme for an Immigration, Residence and Protection Bill; the finalisation of the Employment Permits Act and the publication of the Criminal Law (Trafficking in

⁴⁴ Central Statistics Office, *Module on Crime Victimisation Q4 1998 and Q4 2003*, released 29 July 2004 (Dublin: CSO, 2004)

⁴⁵ Equality Authority, *Annual Report 2006* (Equality Authority, 2007)

⁴⁶ Equality Tribunal, *Annual Report 2006* (forthcoming)

⁴⁷ Equality Authority, *Annual Report 2006* (Dublin: Equality Authority, 2007)

Persons and Sexual Offences) Bill 2006.⁴⁸ Opportunities were missed in 2006 when new legislation with regard to employment permits and free movement was introduced and with regard to the Scheme for an Immigration, Residence and Protection Bill.

The Scheme for an Immigration, Residence and Protection Bill was to be a key outcome of the consultation process conducted in 2005 and was to bring all aspects of immigration under one Act. However, NGOs have responded by highlighting the fact that there is little evidence that their input has been taken into account. The ECRI report encourages the Government to ensure that the resulting Bill reflects the input of NGOs.⁴⁹ It is recommended in this report that the Irish Government redraft the Bill (which was later published in 2007 prior to the national election).

The Employment Permits Act 2006 was a key Act completed in 2006. As it only came into effect in January 2007, it did not impact on the situation of immigrants in 2006. NGOs have expressed concerns, amongst which have been the need for clarification on family reunion, as the conditions for applying for family reunion and permanent residency are not contained in the Act, and the fact that an employee cannot change employer for the first 12 months. In addition, the cost of applying for a work permit is excessive and this cost can fall to the migrant worker.

The implementation of the European Communities (Free Movement of Persons) Regulations was announced in May 2006. The Regulations introduce new procedures relating to the freedom of movement of EU citizens and their families. However, NGOs have noted that EU citizens have experienced difficulties in accessing their right to family life as EU citizens and complaints have been lodged with the European Commission in this respect. Family reunion is also a difficulty for Irish citizens who have no guarantee that their application for family reunion will be successful if their spouse is from outside of Europe. In fact, in this instance Irish citizens have lesser rights than EU citizens working in Ireland.

Family life was the focus of NGOs working with migrants in 2006. The Immigrant Council of Ireland (ICI) for example reports that enquiries to their Centre mainly relate to family life. Research published by the ICI reports that families are being denied a right to family life and calls on the Government to introduce a statutory entitlement to family reunion for all legal non-EU migrants and Irish citizens, that is set down in primary law and therefore open to discussion by the Oireachtas (National Parliament). The European Commission holds that family reunion measures are essential to facilitate integration and social inclusion in society.⁵⁰

⁴⁸ Available at: [http://www.justice.ie/80256E010039E882/vWeb/flJUSQ6RVJ88-en/\\$File/trafficking.pdf](http://www.justice.ie/80256E010039E882/vWeb/flJUSQ6RVJ88-en/$File/trafficking.pdf)

⁴⁹ ECRI, *Third Report on Ireland* (Strasbourg: ECRI, 2006)

⁵⁰ Immigrant Council of Ireland, *Family Matters: Experiences of Family Reunification in Ireland* (Dublin: ICI, 2006)

An important ruling by the High Court in relation to non-EEA parents of Irish Citizen Children in November 2006 has since been referred to the Supreme Court. The outcome from the High Court hearing was that, in refusing a person residency on the ground of lack of continuous residency, the Minister had failed to consider the right of the Irish citizen and the child's rights under the Irish Constitution and the European Convention on Human Rights and Fundamental Freedoms.⁵¹

In its publication *Embedding Equality in Immigration Policy*, the Equality Authority argues that where the State imposes a formal process on a migrant, the migrant should be entitled to the advantages of the principle of equality. They recommend the introduction of a positive duty on public bodies with responsibilities in the area of immigration and the expansion of the definition of services in the Equal Status Acts to include the functions of the State explicitly so as to bring immigration control and police powers within the ambit of the Acts.⁵²

The Irish Government does not have a comprehensive integration policy despite increasing ethnic diversity in Ireland today. Some integration initiatives and other social inclusion mechanisms have been developed. The NPAR promises to address this situation. However, the continued treatment of migrant workers as economic units, the lack of any policy on integration for asylum seekers, the deportation of Irish children of non-Irish national parents and other conflicting policies seriously undermine any initiatives that are in place. There is also criticism that the Government is actively encouraging segregation through its accommodation policy for asylum seekers.

The Government established the Reception and Integration Agency (RIA) in 2001. Much of the focus of RIA's work has been on the reception of asylum seekers. In the area of integration, their remit extends only to those who have been recognised as refugees by the State. Asylum seekers are excluded from a majority of integration initiatives developed by government and government agencies. While there is mention of possible integration measures for other migrants and some actions identified in the National Action Plan, the Employment Permits Act 2006 reveals a general consideration of migrant workers as economic units. The lack of guarantees around family reunification also questions how seriously integration is taken and acts as a serious barrier to integration as well as a potential violation of people's right to a family life. Limited rights with regard to family reunification impact on both immigrants and Irish citizens.

While there are some initiatives in different sectors and at different levels, these remain ad hoc in the absence of a legislative basis for integration and a similarly ad hoc implementation of the National Action Plan Against Racism. It is of

⁵¹ Immigrant Council of Ireland, Press Release: *Implications of the High Court Ruling in Bode & ors. V. Minister for Justice, Equality & Law Reform on 14th November 2006*, available at www.immigrantcouncil.ie, accessed 23 May 2007

⁵² Equality Authority, *Embedding Equality in Immigration Policy* (Dublin: Equality Authority, 2006)

concern that the Government continues to exclude asylum seekers from integration initiatives. Indeed, the Scheme for Immigration, Residence and Protection Bill suggests that the government considers integration as necessary only in terms of the inclusion of 'permanent residents'.⁵³

NESC, in its publication on migration policy, states that 'integration of migrants is one of the core factors determining the overall success or failure of migration'.⁵⁴ The NESC highlights the necessity of working with NGOs if a successful migration policy is to be developed and implemented. The role of NGOs has been important in the development of anti-discrimination and related policy and legal developments. If engagement with civil society is to be achieved, the Government will need to demonstrate that there are outcomes for NGOs which justify the resources they invest in the process. Government needs to provide core funding to anti-racism NGOs and other NGOs working with and supporting ethnic minority groups.

5.3 Criminal justice

The area of criminal justice is a particular area of concern in the context of monitoring racism due to a relative inertia in policy and legal developments in this area. The Incitement to Hatred Act has been under review without conclusion for over six years. The Garda Síochána (the national police force) is not covered by the equality legislation.

The police force has been given extra powers in relation to the implementation of immigration legislation through the 2005 Immigration Act but with no additional safeguards against potential abuse. This area was highlighted by CERD in 2005; their concerns as addressed in the 2005 Shadow Report are echoed through the observations and recommendations by ECRI in their third report on Ireland which was published in 2006.

ECRI reports that the criminal legislation has not been amended to include sufficiently strong provisions for combating racist acts which affect in particular visible minorities and Travellers. It adds that further measures are necessary to raise members of minority groups' awareness of existing mechanisms for seeking redress against racism and racial discrimination.⁵⁵

5.3.1 Racism as a crime

Racist crime is primarily dealt with through a range of legislation including Criminal Justice (Public Order Act) 1994, the Non-Fatal Offences Against the

⁵³ Migrants Rights Centre Ireland, *Submission to the Department of Justice Equality and Law Reform on Scheme for an Immigration, Residence and Protection Bill*, December 2006, available at www.mrci.ie, accessed 22 May 2007

⁵⁴ NESC, *Migration Policy* (Dublin: Government Publications, 2006)

⁵⁵ ECRI, *Third Report on Ireland* (Strasbourg: ECRI, 2006)

Person Act 1997, the Criminal Damages Act 1991 and the Prohibition of Incitement to Hatred Act 1989. There is no provision for aggravated sentencing on the ground of racism in Irish law and the Incitement to Hatred Act has long been considered ineffective. A committee established under the NPAR has commissioned research into effective hate crime legislation which was due to be completed by June 2006 but, due to delays, will now be completed in 2007.

The NPAR established a committee under the theme 'Protection and Redress against Racism'. The committee has commissioned a piece of research to consider effective legislation against hate crime. The terms of reference for the research require it to consider three key areas including the effectiveness of current legislation, the concept of 'hate' and aggravated sentencing. CERD recommends that Ireland introduce a provision in its criminal law that committing an offence with a racist motivation or aim constitutes an aggravating circumstance allowing for a more severe punishment.⁵⁶

The research, which was initially expected to be completed by June 2006 but is now likely to be completed by the end of 2007, will be much anticipated as a review of the existing Incitement to Hatred Act has not reached completion. The Incitement to Hatred Act has been under review since September 2000 but no conclusions have yet been drawn. Prior to the start of the review no case had been successful, since that date seven of the 18 cases brought under the Act have been successful. The Act will now be considered in the context of the committee's research.

The data collection systems of police force include data on racist incidents. However the accuracy of the figures, as is the experience in other countries, is limited as it is estimated that many crimes and incidents go unreported. Some people feel that they will not be taken seriously. Others do not know their rights. Racist crimes and incidents against migrants who are undocumented are likely to go unreported. It is also important to recognise and devise systems to detect and monitor incidents where the police themselves may be the perpetrators. The establishment of the Garda Ombudsman in 2006 by the passing of An Garda Síochána Act 2005, which provides a mechanism for independent investigation of the activities of the police, is welcome in this regard.⁵⁷

While initiatives are being developed, they will need significant resourcing and commitment to ensure they are implemented satisfactorily. The Racial and Intercultural Office of the police has been in place since 2000 but is understaffed and while some anti-racism training is available to police at pre-service training and to Ethnic Liaison Officers (ELOs), it is neither comprehensive nor compulsory. Nor is anti-racism training readily available to other members of staff.

⁵⁶ CERD, *Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination* (CERD, 10 March 2005)

⁵⁷ For more information, see <http://www.gardaombudsman.ie/>

There are ELOs around the country but approximately 20% of them are immigration officers which NGOs feel undermines ELOs' capacity to develop good relations with immigrant communities. ECRI recommends that ELOs be recruited from outside the police service and that efforts be made to hire members of minority groups in these positions.⁵⁸

As those responsible for protecting human rights and recording racist crime, it is critical that racism within the police force be monitored. The Human Rights Audit of the service, published in 2005, confirms the existence of institutional racism within the police force.⁵⁹ An Garda Síochána has drawn up an Action Plan to implement the recommendations arising from the report.

5.3.2 Counter terrorism

The situation with regard to political and legal developments in the area of counter terrorism has not changed significantly since that reported in the *2005 Shadow Report on Ireland*. However, it should be noted that the 2005 report highlighted the impact that the climate around countering terrorism was having on immigration policy and legislation. This has continued and is at risk of becoming more entrenched as the consultation process around the anticipated immigration and residence Bill came to a close in 2006 and the Scheme for an Immigration, Protection and Residency Bill was published in November 2006. This Bill, as was the case with the previous *Immigration and Residence Discussion Document*, is clearly security conscious at the expense of other more inclusive measures.

A number of newspaper articles concerning terrorism were published in 2006 that signals the need to monitor the media and the role that the media can play in terms of raising concern in public opinion about terrorism. It should be noted that the Irish public is exposed daily to Irish and British media and therefore British media can also impact on Irish public opinion. Examples of such articles include, 'We are the Weakest link', published in the Daily Star on 11 August 2006 and a number of articles were published following the arrest of two Dublin based Algerians arrested in the UK on suspicion of terrorist activities including an article entitled 'Dublin Based Algerians held in UK terror Swoop', published by the Irish Independent on 22 August 2006, and a front page article entitled 'Irish Muslim Terror Plot' which was published by the Irish Daily Star on 21 August 2006.

As the *2005 Shadow Report* explains, Amnesty Ireland⁶⁰ and ICCL⁶¹ are two lead organisations that have cautioned around the Criminal Justice (Terrorist Offences) Act 2002 and its application. The question of countering terror is

⁵⁸ ECRI, *Third Report on Ireland* (Strasbourg: ECRI, 2006)

⁵⁹ Ionann Management, *An Garda Síochána Human Rights Audit* (Dublin: Ionann, 2004)

⁶⁰ www.amnesty.ie

⁶¹ www.iccl.ie

having an impact on immigrants also through the negative slant it is giving to other areas of policy and legislation.

In recent years, the powers of the Gardaí have been increased in the area of immigration.⁶² These developments, combined with the institutional racism within the Gardaí, give rise to serious concerns around racial profiling. The CERD recommends a review of security procedures and practice at entry points to ensure they are carried out in a non-discriminatory manner. It invites the State to include data on the number of complaints against members of the Gardaí concerning discriminatory treatment and decisions made.

The Irish Government submitted its first National Report under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in January 2005. The report was considered by the CERD at its 66th Session in March 2006. This was a key benchmark in Irish history in terms of commitments to the struggle against racism at an international level. CERD invites the State to include data on the number of complaints against members of the Gardaí concerning complaints on discriminatory treatment and decisions made. It also encourages the State to provide adequate resources and funding to newly established institutions in the field of human rights and non-discrimination.

5.3.3 Racial profiling

There has been little progress with regard to racial profiling since the situation described in 2005. The ECRI report highlights the risk of racial profiling through the implementation of immigration legislation and recommends that the implementation of Immigration Acts 2003 and 2004 be monitored in this regard.⁶³

In recent years the powers of the police have been increased in the area of immigration.⁶⁴ Within immigration legislation, there is also a lack of procedural safeguards or right to appeal decisions made by immigration officers. These developments, combined with the institutional racism present within the police force, give rise to serious concerns around racial profiling. CERD recommends a review of security procedures and practice at entry points to ensure they are carried out in a non-discriminatory manner. It invites the State to include data on the number of complaints against members of the police force concerning discriminatory treatment and decisions made.⁶⁵

Some legislative progress was made in 2006 with regard to the establishment of a Garda Inspectorate and enactment of legislation to enable the establishment of a Garda Ombudsman. However, these measures were new in 2006 and their effect could not yet be seen by the end of 2006. The point of entry into the

⁶² Including Immigration Act 2004

⁶³ Ibid.

⁶⁴ Including Immigration Act 2004

⁶⁵ CERD, *Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination* (CERD, 10 March 2005)

country is a key area of concern with regard to racial profiling. However, the Ombudsman has no jurisdiction in this regard.

5.4 Social inclusion

The framework underpinning the NPAR provides a useful basis for ensuring social inclusion for ethnic and religious minority groups. However, little progress has been made in relation to the implementation of the NPAR. Also, the overall timeframe of the Action Plan is quite short, particularly in light of the time it has taken to implement actions. It should be noted that while the framework and actions contained within the NPAR are positive, implementation has been limited by the fact that no targets, benchmarks or timelines are identified in the Plan.

A positive development is that with the census data the State will be able to establish a baseline data that can help, in time, measure the position and progress or otherwise of ethnic minority groups in Irish society. However, complementary data collection systems should be developed that focus on outcomes for ethnic minority groups.

While there have been significant policy developments with regard to social inclusion for Travellers, the most significant being the report of the Taskforce on the Travelling Community in 1995, the reality of Travellers' lives has not improved substantially particularly in areas such as accommodation. For example, poor progress in reaching targets set with regard to Traveller accommodation is worrying. On launching the Traveller Education Strategy, the then Minister of State for Equality, Minister Fahy, said, 'We must bow our heads in shame ...'.⁶⁶

The lack of guarantees around family reunification also questions how seriously the social inclusion of migrants is taken. Limited rights with regard to family reunification impact on both immigrants and Irish citizens.

There is a risk that where there is only a focus on so-called 'new communities', the message is sent out that all solutions rest with the provision of information but can ignore the discrimination and exclusion experienced by ethnic minority groups. This approach cannot address deeper issues with regard to integration including racism and the inter-generational exclusion that has existed for ethnic minority groups in Ireland prior to the more recent wave of immigration. The Government should not ignore the fact that an ad hoc, superficial response will let this continue for all, including new, immigrants.

It is important to ensure that all minority ethnic groups are socially included in Irish society. Therefore, it is critical to ensure that integration policies and

⁶⁶ Minister Fahy is cited in 'Long-awaited Launch of Traveller Education Strategy' in *Pavee Point Newsletter* (Pavee Point, December 2006)

initiatives are also underpinned by social inclusion principles (see also section VI. ii above).

6. National recommendations

6.1 General

- Policies need to be developed in a consistent manner, underpinned by human right principles and equality;
- Disaggregated data is necessary in order to identify and respond to the particular experiences of minorities within minorities and those experiencing multiple forms of discrimination;
- Where rights are guaranteed in law, people need to be able to access these rights. Therefore, there must be adequate information provision, real results and little delay.

6.2 Anti-discrimination

- Accelerate the implementation of the NAPR;
- Include all statutory bodies and the police force within the remit of the equality legislation;
- More resources are necessary for the equality bodies to improve their capacity and cut down on waiting lists;
- Review the Intoxicating Liquor Act, which is impacting negatively on Travellers and other ethnic minority groups and extend the powers of the Equality Authority in relation to their role with regard to the Act;
- Introduce a positive duty on government bodies, similar to UK legislation, that focus on *outcomes*;
- Develop consistent data collection systems that focus on outcomes;
- Resource NGOs to provide advocacy support to those wishing to assert their rights under equality and other anti-discrimination legislation;
- The Irish Government should recognise Travellers as a distinct ethnic group and this recognition should be reflected in all policies, programmes and institutional practices that impact on the Traveller community;
- Legislation should ensure the same rights for same sex couples as for heterosexual couples in the immigration process;
- The issue of resources should be addressed as part of implementing the commitment in *Towards 2016* to review expenditure on the equality infrastructure provided by the equality legislation.

6.3 Migration and integration

- Implement all aspects of the NPAR;
- Develop an integration policy that builds on and complements the NPAR and includes all of Irish society in order to enable the social inclusion of all ethnic and religious minority groups;

- All government departments need to be made accountable for integration;
- The Immigration, Residence and Protection Bill should be redrafted to reflect the views of NGOs in their submissions. This needs to have more of a humane focus rather than a security focus;
- Ensure that immigration legislation is underpinned by a human rights framework and that it is not in contradiction with integration policy;
- Include equality proofing in the Immigration, Residence and Protection Bill;
- Impose a positive duty on public bodies with responsibilities in the area of immigration to eliminate discrimination and to promote equality and good relations in relation to migrants;
- Expand the definition of services under the Equal Status Acts to explicitly include the functions of the State so as to bring immigration control and police powers within the ambit of the Equal Status Acts;
- Ensure rights and entitlements for all migrant workers and their families including the right to marry and introduce a statutory entitlement to family reunification through primary legislation;
- Ensure the protection of persons who become undocumented in Ireland;
- Introduce procedural safeguards including an independent appeals mechanism, particularly in relation to decisions of immigration officers;
- Extend the power and remit of the Ombudsman.

6.4 Criminal justice

6.4.1 Racism as a crime

- Conclude review of Incitement to Hatred Act as soon as possible;
- Immigration Officers should not also be appointed as ELOs.

6.4.2 Counter terrorism

- Put in place proofing mechanisms.

6.4.3 Racial profiling

- Extend the definition of services in the Equal Status Acts to ensure that An Garda Síochána and all with responsibility around security and law enforcement need to come under the remit of the equality legislation;
- Introduce procedural safeguards including the right to appeal;
- Extend the powers of the Ombudsman;
- Extend the definition of services in the Equal Status Acts to include the police.

6.5 Social inclusion

- Accelerate the implementation of the NPAR;
- Provide core funding for anti-racism NGOs to help build their capacity to promote and enable social inclusion;
- Recognise the diversity within ethnic and religious minority groups;
- As recognised by NESC, social inclusion requires the involvement of NGOs on the ground. NGOs need to be resourced to play an effective role in ensuring the social inclusion of ethnic and religious minority groups.

7. Conclusion

2006 was a significant year in Ireland, demonstrating the important role that international bodies play. In this year, CERD conducted a follow-up visit, ECRI published its third report on Ireland and the ACFC delivered its opinion in relation to Ireland's commitment to the Framework Convention. These provided key tools with which to reflect on racism in Ireland today and assess the Government's response.

Positive developments at a national level include the inclusion for the first time of a question on ethnic background in the Census and the launch of the Traveller Education Strategy. However, these developments are marred by a disappointing, long-awaited Scheme for an Immigration, Residence and Protection Bill, slow progress in relation to developments to address racist crime and piecemeal implementation of the NPAR.

The key areas of concern currently include the need to recognise Travellers as a distinct ethnic group; the need to extend the definition of services in the equality legislation; the need to redraft immediately the Immigration, Residence and Protection Bill; the need to intensify work on developing a legislative basis to effectively address racist crime; and the need to accelerate the implementation of the NPAR.

ECRI's third report on Ireland reports that in Ireland a National Action Plan Against Racism was launched in 2005 and a number of recommendations made by the Human Rights Audit on the police force regarding combating racism and racial discrimination are currently being implemented. However, it reports that a number of recommendations have not been implemented and highlights the fact that criminal legislation has not been amended to include sufficiently strong provisions for combating racist acts which affect in particular visible minorities and Travellers. It also argues that further measures are necessary to raise members of minority groups' awareness of existing mechanisms for seeking redress against racism and racial discrimination.

The role of NGOs is particularly evident in the responses by ECRI, ACFC and CERD. The role of NGOs has been crucial in the development of anti-discrimination and related policy and legal developments at all levels and in the past there have been a range of mechanisms in place to facilitate consultation with NGOs. However, in recent years there have been concerns that the role of NGOs has been somewhat sidelined and undermined. Their role must be safeguarded and enhanced through recognition and the provision of sufficient resources to enable the continuation of their work to address racism.

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9. Annex 1: List of abbreviations and terminology

ACFC	Advisory Committee on Framework Convention on the Protection of National Minorities
CEDAW	Committee for the Elimination of Discrimination Against Women
CERD	Committee for the Elimination of All Forms of Racial Discrimination
CPA	Combat Poverty Agency
CSO	Central Statistics Office
DEIS	Delivering Equality of Opportunity in Education
ECHR	European Convention on Human Rights
ECRI	European Council on Racism and Intolerance
EEA	European Economic Area
ELO	Ethnic Liaison Officers
EUMC	European Union Monitoring Centre on Racism and Xenophobia
GNIB	Garda National Immigration Bureau
GP	General Practitioner
HRC	Habitual Residency Condition
HSE	Health Service Executive
IBEC	Irish Business and Employers Confederation
ICCL	Irish Council for Civil Liberties
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICI	Immigrant Council of Ireland
IHRC	Irish Human Rights Commission
INTO	Irish National Teachers' Organisation
IRC	Irish Refugee Council
MRCI	Migrants' Rights Centre Ireland
NESC	National Economic and Social Council
NCCA	National Council for Curriculum Assessment
NCCRI	National Consultative Committee on Racism and Interculturalism
NPAR	National Action Plan Against Racism
NTACC	National Traveller Education Consultative Committee
NUJ	National Union of Journalists
ORAC	Office of the Refugee Applications Commissioner
PPF	Programme for Prosperity and Fairness
RIA	Reception and Integration Agency
VEC	Vocational Education Committee

Note on terminology: the terms 'ethnic and religious minority groups', 'ethnic minority groups' and 'religious minority groups' are used throughout the report in the interest of facilitating consistency at a European level. However, other terms are used when necessary where referring to specific pieces of legislation, e.g. 'race' is one of the grounds on which discrimination is prohibited in the equality legislation; the Scheme on Immigration, Residence and Protection Bill refers to

the term 'foreign nationals'. Where the term ethnic and religious minority groups is used, Travellers are included. However, as the Government does not recognise Travellers as a distinct ethnic group it is sometimes deemed necessary to use the term 'ethnic minority groups including Travellers' to ensure that it is understood that the point is also relevant to Travellers.

