

An Coiste Comhairleach Náisiúnta  
ar Chiníochas agus Idirchultúrachas

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## **National Consultative Committee on Racism and Interculturalism**

### **Response by Ireland to the OSCE Notes Verbales Regarding Tolerance and Non-Discrimination:**

#### **Hate crime, including violent manifestation of racism, xenophobia, discrimination and anti- Semitism**

**Ireland, October 2004**

Following Decision No. 4/03 on Tolerance and Non-Discrimination, adopted by the Ministerial Council in Maastricht on 2 December 2003, and material submitted by Ireland in advance of the OSCE special meeting on the relationship between racist, xenophobic and anti-Semitic propaganda on the Internet and hate crimes in Paris on 16-17 June 2004, the following is submitted in response to the OSCE request for updates on the situation relating to racist crime in Ireland.

## **1. Legislation**

There is a range of legislation in Ireland that provides protection against discrimination, assault and incitement in Ireland. Despite the fact that 'there is no provision in the law for racially aggravated offences attracting heavier penalties',<sup>1</sup> there are a range of legal instruments which have been used in cases of racist violence or crime.

### *i. Anti-discrimination legislation*

The government presented the Equality Bill 2004 on 13 January 2004, it was signed into law as the Equality Act 2004 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 Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation; and Directive 2002/73/EC of the European Parliament and of the Council, amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women.

The Employment Equality Act 1988, and in 2000, with the Equal Status Act prohibits both direct and indirect discrimination in the areas of employment and access to goods and services on nine grounds; gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. There are also in place the necessary institutional structures, in the shape of the Equality Authority and the Equality Tribunal, to ensure effective implementation of the statutes.

### *ii. The Prohibition of Incitement to Hatred Act 1989*

The use of words, behaviour or the publication or distribution of material which is threatening, abusive or insulting and are intended, or are likely, to stir up hatred are prohibited under the Prohibition of Incitement to Hatred Act 1989. A person found guilty of an offence under the Act is liable to a fine or 6 months imprisonment or both, and on conviction on indictment a fine or imprisonment for up to 2 years, or both. The Prohibition of Incitement to Hatred Act, is currently being reviewed in the Department of Justice, Equality and Law Reform with a view to improving its effectiveness.

The term "hate crime" is not generally used in the Irish context to describe racist, xenophobic or anti-Semitic incidents. The Act provides a definition of hatred in Section 1(1) as follows: 'The Act interprets hatred to be hatred against a group of persons in the

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<sup>1</sup> Haughey, N. (2002) Gardai to record racially motivated incidents, in: The Irish Times (10.12.02) [PUBIE0200]

State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of travelling community or sexual orientation’.

### *iii. Video Recording Act 1989*

The Video Recording Act 1989, aims to prevent generally undesirable video works from being supplied to the public. Among the grounds on which the censor can conclude that a video recordings should not be classified as fit for viewing are that the viewing of the video would be likely to stir up hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins.

### *iv. Criminal Law*

There is a range of legislation in Ireland that protects people from different forms violence in Ireland, include homicide, assaults, criminal damage, incitement, protection against offensive and abusive behaviour. There is no separate legislation covering racist violence. The Irish Constitution guarantees a range of other rights including: protection from unjust attack, freedom of expression, freedom of association, rights to primary education, and freedom of religion.

The Public Order (Criminal Justice) Act, 1994 deals with offences such as:

- Disorderly conduct in public place
- Threatening, abusive or insulting behaviour in public place
- Distribution or display in a public place of material which is threatening, abusive, insulting or obscene
- Entering buildings etc., with intent to commit an offence
- Riot
- Violent disorder
- Affray
- Blackmail, extortion and demanding money with menaces
- Assault with intent to cause bodily harm
- Assault or obstruction of a police officer

The Non Fatal Offences against the Person Act 1997 created several new assault and other offences. This comprehensive Act has updated and modernised the existing law relating to various forms of assault, threats to kill or cause serious harm, poisoning, false imprisonment and abduction of children as well as introducing a number of new offences.

The Act has measures dealing with:

- Assaults
- Offences relating to violence or threats of violence involving syringes and/or blood
- The offence of harassment which is aimed at what is commonly known as 'stalking'
- Debt collection with threats or menaces
- Coercion
- Endangerment
- Poisoning or administration of substances intended to interfere with bodily functions
- The use of reasonable force in protecting oneself, ones family and property from criminal activity.

The Criminal Law Act 1997 abolished the distinction between a felony and a misdemeanour, and provides for a range of offences generally relevant to prosecution against violence and crime in Ireland.

*v. International developments*

Ireland ratified the United Nations International Convention on the Elimination of all Forms of Racial Discrimination in December 2000. The Convention entered into force on 28 January 2001.<sup>2</sup> Ireland has signed up to the Article 14 complaints mechanism, and entered one reservation, in relation to freedom of speech, on ratifying the Convention. Under Article 4 of the Convention states are obliged to make it an offence to disseminate ideas based on racial superiority and ban all organisations that incite racist discrimination. Article 5(b) provides for the right to security of the person and the protection by the State against violence or bodily harm.

Protocol 12 to the European Convention on Human Rights is designed to strengthen the protection against discrimination on the grounds of race, colour, language, religion or national or ethnic origin. Ireland has signed Protocol 12 but it has not yet come into force. Under the current equality legislation freedom from discrimination on grounds of language, political or other opinion, social origin, property or birth are not covered.

Ireland ratified the Council of Europe Framework Convention for the Protection of National Minorities on 7 May 1999. Ireland submitted its first report under the Framework Convention on 13 November 2001. In Article 4.1 of the Framework Convention the Parties undertake to guarantee to persons belonging to national minorities the right to equality before the law. In this respect, any discrimination based on belonging to a national minority is prohibited. Article 6.2 states that the parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

The European Convention on Human Rights Act was signed into law by the President on 30 June 2003. The main purpose of the Act is to give further effect in Irish law to certain provision of the European Convention on Human Rights (ECHR). The implementation of this Act means that people who wish to claim that these rights are being breached may now do so, in accordance with the provisions of the Act, before the national courts. Article 14 of the Convention states that the rights and freedoms set forth in the convention shall be secured without discrimination on any ground including race, colour, national minority status or national or social origin.

## **2. Statistics**

While the introduction of an official system for recording racist incidents in 2002 has led to the development of some data on racist crime and racist violence, anecdotal evidence

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<sup>2</sup> The Irish Government's delay in ratification was in latter years due to the need to bring in domestic legislation that would give the Convention substance in Ireland, i.e. the equality legislation in the form of the Employment Equality Act and the Equal Status Act.

and qualitative studies indicate that there is significant underreporting of racist crime in Ireland. In 2002 the An Garda Síochána<sup>3</sup> internally circulated its policy on recording racist incidents, according to the Garda Racial and Intercultural Office work is ongoing to promoting this policy and highlighting the importance of recording crimes as racist where appropriate.

In particular there appears to be significant discrepancies in terms of the reporting rates amongst the general population and reporting rates amongst minority ethnic groups. A specific focus is needed on data generation regarding actual reporting rates amongst minority ethnic groups in order to facilitate a better understanding of this phenomenon.

The government's Know Racism campaign published research findings on racism and attitudes to minority groups in February 2004. The study found that 18 per cent of respondents had personally witnessed racist behaviour. Of the 36 per cent of respondents who had experiences of minority groups, 19 per cent said this experience was very positive, while 5 per cent said it was very negative. 48 per cent of respondents believe that Irish society is racist to some degree, while 20 per cent believe that Ireland is not racist. 48 per cent of respondents disagreed with the statement that the Traveller community make a positive contribution to Irish society, while 72 per cent agreed that the settled community is not willing to accept the Traveller community living among them.<sup>4</sup>

*i. Prohibition of Incitement to Hatred Act 1989*

There were seven offences under Section 2 of the Prohibition of Incitement to Hatred Act, 1989 recorded for 2002 and eight offences recorded for the previous year. The number for 2003 is provisional/operational and not yet available.

*ii. An Garda Síochána*

2003 was the first full year in which racially motivated incidents was clearly defined to members of the force, and recorded through PULSE. According to An Garda Síochána 81 incidents of racist motive were recorded in 2003. This compares to 102 in 2002, 43 in 2001, 65, in 2000 and 12 in 1999.

The most common forms of incidents were criminal damage, assault and public order offences (see Table 1).

**Table 1: Provisional figures for racially motivated incidents in 2003, Source: An Garda Síochána (August 2004)**

Assault - harm	7
Assault - minor	16
Sexual assault	0
Public mischief	0
Arson	2

<sup>3</sup> An Garda Síochána is the national police force of Ireland, this Irish term literally means 'Guardians of the Peace'. This term is often used in its shortened version: the 'Garda' (singular) or the 'Gardaí' (plural). In popular discourse the police force is also referred to as the 'Guards'.

<sup>4</sup> Millward Brown IMS (2004) *Presentation of Research Finding on Opinions on Racism and Attitudes to Minority Groups*, 26 February 2004, Dublin: Know Racism

Theft from person	2
Robbery from person	1
Manslaughter	0
Possession of weapon	1
Public order offence	13
Criminal damage	27
Incitement to hatred	2
Attention and complaints	9
Harassment	0
Burglary	1
Total	81

*iii. NCCRI racist incident reports*

In May 2001 the National Consultative Committee on Racism and Interculturalism (NCCRI) established a voluntary procedure for reporting racist incidents in Ireland. It publishes a report every six months of the incidents logged. Table 2 provides a summary of the number of incidents reported to the NCCRI since May 2001. The majority of the incidents that are included in these reports have been forwarded by non-government organisations working closely with the NCCRI, including key organisations working with Travellers, refugees and asylum seekers, and migrants. Other incidents are reported directly to the NCCRI. The data that is generated by this reporting system is primarily qualitative and indicative of key issues that need to be addressed. The NCCRI states that:

The reports do not seek to provide a comprehensive list of every racist incident in Ireland, indeed the evidence from other countries tends to show that with all racist incidents reporting systems, there is likely to be significant under-reporting of incidents.<sup>5</sup>

**Table 2: Summary of incidents reported to the NCCRI to August 2004**

May 2001- October 2001	41
November 2001- April 2002	40
May 2002 - October 2002	67
November 2002 - April 2003	48
May 2003 - October 2003	46
November 2003 - April 2004	42
May 2004 - end of August 2004 (NOTE: For 4 Month period)	50

*iv. Victim Support Service*

In 2002 the Victim Support Service identified 5 cases as racist in motive, this increased to 8 in 2003. In the first six months of 2004 the service has recorded 11 cases which were identified as racist in motive. The Tourist Victim Support Service has not recorded any incidents as racist.

<sup>5</sup> NCCRI, Report of Incidents Related to Racism in Ireland, available at: [www.nccri.com](http://www.nccri.com) (03.12.03)

### 3. National initiatives and good practice

In recent years there have been a number of developments aimed at tackling racist violence and racist crime in Ireland. These include legislative and policy developments, initiatives by the Gardaí, the establishment of specialised bodies with a remit in this area, public awareness campaigns and initiatives by civil society and NGOs which specifically target racism.

#### *i. An Garda Síochána*

As a consequence of increased awareness of the need to collect data the Gardaí approved a definition of what constitutes a racist incident. According to the new definition, which draws on the report of the Stephen Lawrence Enquiry in the United Kingdom, a racist crime is any incident which is perceived to be racially motivated by:

- The Victim
- A member of An Garda Síochána
- A person who was present and who witnessed the incident
- A person acting on behalf of the victim.

The Garda Victims Charter outlines Garda commitments with regard to the victims of crime. This commitment includes the provision of free translation services for those unable to communicate fluently in English and Irish. In addition in the Garda Customer Charter there is a commitment to publishing customer charters for specific groups including ‘ethnic and vulnerable’ minorities.

The Garda Racial and Intercultural Office was established in July 2000. The Office operates under the auspices of the Garda Community Relations Section and is responsible for coordinating, monitoring and advising on all aspects of policing in the area of racial, ethnic and cultural diversity. The office has developed a training video and resource booklets that inform members of the force about cultural diversity in Ireland.

The Gardaí published two booklets in September 2002. ‘Intercultural Ireland – Your Changing Community’ is intended as a guide for all members of An Garda Síochána to enable them to understand and deliver a better policing service to people with diverse cultural ethnic and religious backgrounds.<sup>6</sup> The second booklet ‘Your Police Service in Intercultural Ireland’, aims to provide a source of information for all minorities in Ireland to facilitate an understanding of the role of An Garda Síochána. The booklet gives a brief guide to the police service, those aspects of Irish law which affect people in their daily lives, what they can expect if they have a complaint to make and what structures are there to deal with such complaints.<sup>7</sup>

In March 2002, the Racial and Intercultural Office announced that 145 Garda Ethnic Liaison Officers were being appointed across the country who will be given training in dealing with people who have been the victims of racism and who will make proactive

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<sup>6</sup> An Garda Síochána (2002) Intercultural Ireland Your Changing Community, Dublin: Garda Racial and Intercultural Office

<sup>7</sup> An Garda Síochána (2002) Your Police Service in Intercultural Ireland, Dublin: Garda Racial and Intercultural Office

linkages with community and voluntary groups working closely with minority ethnic groups in their areas.

As a core part of the training of new police recruits there is a module regarding obligations under international human rights instruments including CERD. The Garda Racial and Intercultural Office have an ongoing anti-racism training programme for immigration officials (who are members of the force).

#### *ii. National Action Plan against Racism*

The decision to draw up the National Action Plan against Racism arises from Ireland's commitments from the World Conference against Racism (WCAR) in Durban 2001. Following Durban the Department of Justice, Equality and Law Reform initiated a wide ranging consultation process to identify the key issues relating to racism in Ireland and what the priorities of the plan should be. The consultation process was overseen by a steering group, and its findings have been published and widely disseminated. The National Action Plan against Racism is expected to be published by the end of 2004.<sup>8</sup>

#### *iii. Know Racism*

In order to increase awareness of racism and racial discrimination, a national anti-racism awareness programme called "Know Racism" was launched in October 2001 and completed in 2003. The aim of the programme was to stimulate awareness of racism and a respect for cultural diversity through advertising, publicity events and other activities.

### **4. Relevant authorities**

The mandate given to the **Equality Authority** under the Employment Equality Act 1998 and the Equal Status Act 2000 is both to combat discrimination and to promote equality of opportunity, and takes account of the nine grounds identified in the legislation. The work of the Equality Authority includes to:

- Work towards the elimination of discrimination and prohibited conduct under equality legislation
- Promote equality of opportunity in relation to the matters to which equality legislation applies
- Provide information to the public on the working of equality legislation, to keep this legislation under review and to make proposals for necessary change in the legislation.

In recent years the casework of the authority has dealt with a number of cases concerning harassment on both the Traveller community and race grounds.

The Employment Equality Act 1998 established **The Equality Tribunal**, a quasi-judicial body that appoints Equality Officers to hear and decide claims of discrimination in employment under equality legislation.

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<sup>8</sup> The summary of the consultation process, *Diverse Voices*, identifies the first objective of the NPAR as protection against racism, including protection against discrimination, assaults, incitement and abuse. The consultation also highlighted the weaknesses of the use of criminal legislations and proposed the use of race as an aggravating factor in sentencing. In addition it suggested the close monitoring of the experience of minority ethnic groups.

The **National Consultative Committee on Racism and Interculturalism** was established in 1998 as an independent expert body focusing on racism and interculturalism. The NCCRI is a partnership body which brings together government and non-government organisations to:

- Develop an inclusive and strategic approach to combat racism by focusing on its prevention and promoting an intercultural society
- Contribute to policy and legislative developments and seek to encourage dialogue and progress in all areas relating to racism and interculturalism
- Encourage integrated actions towards acknowledging, celebrating and accommodating cultural diversity
- Establish and maintain links with organisations or individuals involved in addressing racism and promoting interculturalism at national, European and international level
- Provide a national framework for responding to and consulting with key European and international bodies on issues related to racism and interculturalism.

The **Irish Human Rights Commission** is an independent body charged with the task of keeping under review the adequacy and effectiveness of Irish laws in relation to the protection of human rights in their widest sense. It is within the competence of this body to commission surveys on discrimination. To date the Commission has been active on the issue of racism, including:

- The establishment of a sub committee on racism drawn from its own membership and the members of the Northern Ireland Human Rights Commissions
- Participating in the development of the NPAR.

The **Ombudsman's Office** was set up in 1984 to examine complaints from members of the public who feel that they have been unfairly treated in their dealings with public bodies. The Ombudsman has extensive powers in law. She can demand any information, document or file from a body complained of and can require any official to give information about a complaint. The Ombudsman has no power to force a body to accept or act upon her recommendation. However if it does not, she may find it necessary to make a report on the matter to Parliament.

The **National Crime Council** was established as an independent body that would provide a forum for the development, expression and contribution of a wide range of views on anti-crime strategies and serve as an important aid to policy formulation of crime issues. The key roles of the National Crime Council are to focus on crime prevention, raising public awareness about crime, examine the fear of crime, and identify research priorities and to undertake in-house research.

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