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**International Convention on the Elimination of All Forms of
Racial Discrimination**

Comment on the Combined First and Second Reports by Ireland

National Consultative Committee on Racism and Interculturalism

Dublin, January 2005

Introduction

The National Consultative Committee on Racism and Interculturalism (NCCRI) 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 organizations, and is core funded by the Department of Justice, Equality and Law Reform. Further information can be found at www.nccri.ie

Ireland's first report under the Convention on the Elimination of all Forms of Racial Discrimination reflects the wide range of developments which have taken place in Ireland in recent years. In particular there has been the development of an anti-discrimination legislative framework; the establishment of key bodies including the Equality Authority, the Irish Human Rights Commission and the NCCRI; and the completion of a three year public awareness campaign, Know Racism. Ireland, like all countries, cannot afford to be complacent about racism and the government has recognised the need to maintain a continued focus on racism through the development of a National Action Plan against Racism.

The NCCRI actively participated in the Government's consultation process on its First Report; it provided the Government with written comments on the draft report. In preparation for the Committee on the Elimination of all Forms for Racial Discrimination's consideration of Ireland's Report the NCCRI, in partnership with the Irish Human Rights Commission, coordinated an information briefing for NGOs in November 2004. The meeting was well attended by a range of actors including those who were preparing written material for consideration by the Committee. The NCCRI also coordinated an information meeting shortly after the ratification of the Convention.

The NCCRI welcomes the consultation undertaken by government in the preparation of the State Report, and the significant engagement of the NGO community in the process and in the preparation of material for the Committee. The NCCRI looks forward to the continued engagement with CERD by all the relevant stakeholders in Ireland.

This comment is based on the NCCRI's ongoing work with both the statutory and non-statutory sectors and considers a range of issues which have concerned the NCCRI in recent times. While this comment is not an exhaustive analysis of all the issues facing minority ethnic groups in Ireland, it intends to supplement the material which has been submitted by the Irish Government and non-governmental actors, and to provide an analysis of some of the policy options which are open to the Government

This comment will look at a number of key issues which could be addressed by the Committee in its consideration of Ireland's first report. These are:

1. Promoting interculturalism in the Irish context
2. Benchmarking and data collection
3. Special measures
4. Issues facing non-citizens
5. Enhancing protection against racism
6. Travellers as an ethnic group
7. Follow-up and implementation

1. Promoting Interculturalism

As underpinned by Article 7 of the Convention, the fight against racism and discrimination has two fronts: one negative, the other positive. In other words, as well as legislative instruments combating discrimination, states must undertake positive activities which seek to combat prejudice and promote understanding, tolerance and friendship. While relatively recent, Ireland has a significant anti-discrimination legal framework, though initiatives to combat prejudice and promote interculturalism are less developed.

However the outlook is positive, particularly with the publication of the National Action Plan against Racism (publication of the Plan is scheduled for 27 January 2005). According to *Diverse Voices* (summary of the consultation for the National Action Plan), interculturalism is defined in the Irish context as:

essentially about interaction, understanding and respect. It is about ensuring that cultural diversity should be acknowledged and catered for. It is about inclusion for minority ethnic groups by design and planning, not as a default or add-on. It further acknowledges that people should have the freedom to keep alive, enhance and share their cultural heritage.

Table 1 contains the framework for an intercultural society which was proposed during the consultation process as it is summarized in *Diverse Voices*.

Table 1: Intercultural framework

Protection	Enhancing protection against racism, including a focus on combating discrimination, assaults, incitement and abuse.
Inclusion	Ensuring economic inclusion and equality, including a focus on poverty, employment and the workplace.
Provision	Seeking equality of access to, participation in and outcomes from service provision for minority ethnic groups.
Participation	Supporting the full participation of minority ethnic groups in Irish society, including a focus on participation in decision making.
Recognition	Recognizing and building respect for cultural diversity and promoting interaction and understanding.

The NCCRI welcomes the Government's initiative in drafting the National Action Plan and looks forward to working closely with all the key actors in promoting its implementation. The NCCRI is concerned that the Plan is implemented in the most effective way possible, consequently it should:

- Be allocated adequate funding
- Include groups who experience racism in its implementation structures
- Be given priority in terms of the implementation of its objectives.

Recommendations

- Recalling Article 2(1)e of the Convention, the National Action Plan against Racism provides a framework for inclusion and interculturalism, this framework must be underpinned by a substantial commitment to implement its objectives as a matter of priority.
- In order to promote Article 7 of the Convention the Plan must include a substantive public awareness element. Key work undertaken by the 'Know Racism' and March 21 campaigns should be built upon and enhanced; the next

periodic report of the Irish Government should include an analysis of the impact of the Plan with reference to Article 7 of the Convention.

- The Government must ensure active and participatory monitoring of the implementation of the Plan by all the key stakeholders including governmental and non-governmental actors.

2. Benchmarking and data collection

In Ireland data is not disaggregated by ethnicity, however the national Census of 2002 did include data on nationality, religion and membership of the Traveller community. Ethnic data is also largely absent from administrative records. In September 2003 the Central Statistics Office published a review of the statistical potential of the administrative records of six government departments. Of the 132 data sources which were examined 60.6 per cent collected data on nationality, while 9.09 per cent collected data on race/ethnicity and 11.36 per cent collected data on membership of the Traveller community.

Following consultation with a range of stakeholders, including the NCCRI, the Central Statistics Office piloted an ethnicity question in April 2004. The pilot was successful. Following the decision by government not to include an ethnicity question in the 2002 Census, the time has come for positive political leadership on this issue.

There is no tradition of ethnic equality monitoring in Ireland, and recent events have highlighted serious levels of confusion regarding the collection of data on ethnicity. Most organisations do not monitor their recruitment procedures, and where they do this has sometimes led to misinterpretations of the purpose of ethnic monitoring.

Recommendations

- Recalling General Recommendations IV and XXIV the Government should include a comprehensive ethnicity question in the next national Census.
- Existing administrative records should be used to enhance the statistical picture of diversity in Ireland in order to benchmark progress in combating racism.
- The Government should take measures to enhance the understanding of the importance of ethnic equality monitoring in Ireland, particularly in the labour market.

3. Special measures

During the public consultation on the National Action Plan against Racism, one of the key findings was that positive action measures should be considered to 'ensure that the diversity of public representatives is more reflective of the diversity in Ireland and that the interests of minority ethnic groups are effectively represented at political level'.

In line with Article 1(4) of the Convention positive discrimination is permitted under both the Employment Equality Act and the Equal Status Act, however, unlike in the Northern Irish context there is no statutory obligation upon public authorities to engage in any positive measures. While such initiatives are still relatively new, concern has been expressed that where they exist they are not sufficiently effective. For example in its Shadow Report to the Committee, Pavee Point Travellers Centre points to the deficiencies of the scheme to recruit Travellers into the Civil Service identified in the State Report.

In light of the statutory obligation which exists in Northern Ireland, a number of NGOs and other actors have advocated that the Government look at adopting a similar approach in Ireland. The Equality Authority has called for the development of new equality legislation which would include a responsibility for employers to take 'positive steps' to promote equal rights in the work place. This idea has been described as a 'worthwhile suggestion' by the Minister for Justice, Equality and Law Reform (Irish Times, 28.05.2004).

In the context of the National Action Plan against Racism particular attention must be given to addressing the funding needs of community and voluntary groups concerned with racism and anti-discrimination. At present there is a serious problem in terms of the impact of under funding; the NGO Alliance Shadow Report concludes that:

This under funding has prevented migrants and refugees from responding to the needs of their own communities, and from participating in decision-making, and in campaigning and lobbying.

Recommendation

- Recalling articles 1(4) and 2(2) the Government should conduct an analysis of international models of positive duties, with a view to introducing such a mechanism to combat the under representation of minority ethnic groups in key sectors of Irish society.
- The Government, in the context of the National Action Plan against Racism, must ensure that there is adequate funding (including core funding) to ensure the effective participation of minority ethnic groups in Irish society.

4. Issues facing non-citizens

Given the significant demographic change which has taken place in Ireland over the last decade it is fair to say that the question of discrimination against non-citizens has come to the fore in recent years. Many of the concerns and issues raised in General Recommendation 30 are of relevance in the Irish context, however in the context of Ireland's First Report it is worth stressing a number key areas.

Paragraph 7 of the General Recommendation points out that states must ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status. As described in the State report the Irish anti-discrimination framework is comprised of the Employment Equality Act 1998, the Equal Status Act 2000, and the Equality Act 2004. The introduction of the 2004 Act stimulated debate on a number of key provisions of the equality legislation, these include:

- The 2004 Act allows for ministers, health boards, immigration officials, local and other 'public authorities' to discriminate against non-citizens who have applied for refugee status. This includes a nationality exemption for the provision of third level education grant assistance.
- While protection of domestic workers was improved by the abolition of the absolute exemption in relation to employment for the purposes of private household, employers can still discriminate in hiring but not in the other terms and conditions of employment. Exploitation of domestic workers is a priority concern for migrant rights organisations in Ireland.

The NCCRI is concerned that there has been an increase in xenophobic attitudes and behaviour towards non-citizens, particularly those who are perceived to be asylum seekers. The NCCRI noticed an upward trend in the number of racist incidents recorded in the four months between May and August 2004. While cautioning against simplistic explanations and direct causal factors being attributed to the apparent increase in the number and seriousness of incidents the NCCRI believes that the number of racist incidents appears to increase at times of heightened public discourse in relation to issues such as immigration, citizenship and asylum policy. Special measures need to be introduced in order to counter this tendency.

A recent development which has negatively impacted migrants is the introduction of the Habitual Residence Condition (HRC). On 24 February 2004 the Department of Social and Family Affairs announced changes in the social welfare code in light of concerns regarding the impact of EU accession and UK moves to restrict access to social welfare, largely in reaction to unfounded fears which were articulated in the British tabloid press. On 2 March 2004 the Minister issued a statement detailing a series of restrictions aimed at 'securing and protecting the social welfare system'. The NCCRI is concerned that the implementation of the HRC is causing unnecessary hardship, including homelessness.

Following a Supreme Court ruling in 2003 the parents of Irish citizen children are no longer able to apply for residency on the basis of having an Irish child; prior to the enactment of the Irish Nationality and Citizenship Bill 2004, anyone born on the island of Ireland was entitled to Irish citizenship. The judgment had the effect of negating approximately 11,000 applications for residency on the basis of having an Irish born child. The government has recently announced a scheme to allow each of these cases to reapply for residency. This development has been welcomed by the NCCRI, which has advocated for the need for such action along with other NGOs.

The NCCRI also expressed concerns in relation to the rights of non-citizens in its comment on the Immigration Bill 2004. When the Bill was published the NCCRI pointed out that the powers which it confers on immigration officers, an Garda Síochána (police), and registration officers could inadvertently lead to discrimination against minority ethnic groups. For example section 12(1) of the Act allows members of the Gardaí to stop anyone they 'reasonable believe to be a non-national' and request to see identity documents. The NCCRI has advocated for the need for adequate checks and balances to ensure that the Act is implemented in a non-discriminatory manner.

The NCCRI has advocated for a number of changes within the employment permit system. Of particular concern to organizations working with migrant workers is the impact of the work permit system. Under the work permit system the permit is held by the employer and not the employee. NGOs have documented many cases where this system has led to particular hardship, for example where an employer neglects to renew a permit, having told the migrant worker they will do so, the worker can through no fault of their own become illegal. The NCCRI is also concerned that there are less than 20 Labour Inspectors in Ireland; consequently workplaces are inadequately monitored. Delays and the absence of clear policies on family reunification have been highlighted as concerns by a number of actors in the Irish context. These issues need to be addressed when the government introduces comprehensive immigration and residency legislation in 2005, in order to protect vulnerable migrant workers from racism and discrimination.

While the numbers seeking asylum in Ireland have dropped in recent years, the 1990s witnessed a significant increase in the numbers of asylum seekers coming to Ireland. There are aspects of the asylum procedures which give rise to concern. First is the system of Dispersal and Direct provision under which asylum seekers receive a residual income maintenance payment of €19.05 per week for an adult and €9.52 for a child. Asylum seekers are not allowed to work and there are many documented cases where this has caused high stress levels and problems with integration for those subsequently recognised as refugees. Media reports during 2003-2004 continued to highlight resistance of local populations to the location of asylum centres in their area.

Recommendations

- Recalling paragraph 29 of General Recommendation 30 the Government should remove obstacles that prevent the enjoyment of economic, social and cultural rights, including the nationality exclusion for the provision of third level grants for Irish residents, and review the current system of direct provision for asylum seekers.
- The Government has stated that it will introduce comprehensive immigration and residence legislation in 2005. Given that a substantial period of time has elapsed since the consultation on immigration policy (2001/2002), this consultation should be updated. The legislation should address the concerns relating to work permits and family reunification.
- The Government should increase the number of labour inspectors to 100 and give them a particular responsibility to protect migrant workers.
- The Government should undertake a substantive review of the efficacy of the Habitual Residence Condition.
- The Government should sign and ratify the International Convention on the Rights of Migrant Workers and their Families.

5. Enhancing protection against racism

The Irish Government has a reservation on Article 4 of the Convention. The justification for this reservation refers to the Irish Constitutional requirements regarding freedom of speech; as outlined in the State Report the Government has no plans to review this reservation. The NCCRI is concerned that this position is not in line with international best practice, and notes that General Recommendation XV points out that Article 4 *is* compatible with the right to freedom of opinion and expression.

In addition, the protections which do exist in relation to Article 4 of the Convention have not proved as effective as they should be. 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. As described in the State report the Prohibition of Incitement to Hatred Act is currently being reviewed by the Department of Justice, Equality and Law Reform with a view to improving its effectiveness. This review has been linked to a number of developments at the European level. The NCCRI has advocated that the review should be completed as a matter of urgency.

In relation to Article 6 a number of concerns have been raised that remedies for discrimination and racism in Ireland are not sufficiently effective. For example awards in cases of discrimination by the Equality Tribunal are linked to the District Court awards,

in other words there is a maximum award of €12,697. It has been questioned whether this award could be considered effective and dissuasive (as is called for under EU legislation which Ireland has implemented).

There is no specific offence of racist assault or harassment in Ireland. Racially motivated incidents are normally prosecuted under mainstream legislation. In particular these include the Criminal Justice (Public Order) Act 1994, and the Non Fatal Offences against the Person Act 1997. The racist motivation is recorded by the police however it is at the discretion of the judge in question whether or not to account for the racist motivation in sentencing.

Recommendations

- Noting General Recommendation XV and General Recommendation XXVIII the Irish Government should reconsider its reservation under Article 4 of the Convention.
- Recalling General Recommendation I the Government should complete, as a matter of urgency, the review of the Prohibition of Incitement to Hatred Act 1989.
- Recalling paragraph 22 of General Recommendation 30 the Government should consider the introduction of enhanced sentencing for racially motivated crime.
- Considering Article 6 and General Recommendation XXVI the Irish Government should review current penalties provided for under the equality legislation to ascertain whether they fully represents just and adequate reparation or punishment.
- The government should sponsor baseline research on the situation relating to racism on the internet in Ireland, this research would serve as an important tool for tracking developments in this area.

6. Travellers as an ethnic group

During the Government's consultation meeting on the State Report, the question of the exclusion of the discussion of the Traveller community from the body of the report proved one of most controversial aspects of Irish Government policy in this area.

The NCCRI contests the Government's position that the Traveller community does not constitute an ethnic group. In a submission to the Joint Parliamentary Committee on Human Rights in March 2004, the NCCRI noted the concern amongst Traveller groups that the hardening of the Government's position on this question is symbolic of a regressive step in Traveller policy which reflects the assimilationist approach which dominated state policy in the past.

There are a variety of difficulties with the government position, many of which have been detailed in the material provided to the Committee by the Traveller organisations. In summary the Government's position is not consistent with case law in other jurisdiction, the definition in the Irish equality legislation, previous policy, or international human rights policy. In particular the Durban Declaration states that:

We recognize with deep concern the ongoing manifestations of *racism*, racial discrimination, xenophobia and related intolerance, including violence, against Roma/Gypsies/Sinti/*Travellers* and recognize the need to develop effective policies and implementation mechanisms for their full achievement of equality (emphasis added).

The appendix which contains a description of initiatives taken to combat discrimination against the Traveller community begins with a definition of Travellers as “an indigenous Irish community with a shared history of a nomadic way of life and cultural identity”. Thus even regardless of the ethnicity debate the discussion of the Traveller community should be included in the body of the report as they are an indigenous community. In General Recommendation XXIV “The Committee stressed that, according to the definition given in article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relates to all persons who belong to difference races, national or ethnic groups or to indigenous peoples”.

The Government’s position is that to define Travellers as an ethnic group would not entitle Travellers to any additional rights or protections, this is not a view which is shared by the Traveller community in Ireland. As the Shadow Report by Pavee Point Travellers Centre points out:

The continued lack of recognition of Travellers as an ethnic group and the lack of explicit acknowledgement that they experience racism, has much deeper consequences than an abstract sociological debate and is a major contributing factor to the slow pace of change and the confused and sometimes contradictory policy approaches of government interventions relating to Travellers in recent years.

This is a general theme which the Committee has addressed on a number of occasions. General Recommendation XXIV points out that “the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country’s population”.

The Traveller community has suffered from a long history of discrimination and racism in Ireland, both direct and indirect. Public surveys demonstrate that Travellers are consistently the group against which there is most prejudice. Racism and discrimination undermine the enjoyment of civil and political, as well as the economic, social and cultural rights of the Traveller community. Many of these concerns have been raised in the NGO shadow reports, particularly those by Pavee Point Travellers Centre and the Irish Traveller Movement.

Recommendations

- Recalling General Recommendation XXIV there can be no justification for the exclusion of the Traveller community from the body of the State report. The Government should include a comprehensive analysis of the situation of the Traveller community in its next report which fully reflects the reporting guidelines.

7. Follow-up and implementation

As an independent expert body the NCCRI very much welcomes the Committee’s emphasis on follow-up activities, and has been involved in similar initiatives under the Council of Europe’s Framework Convention on National Minorities. The NCCRI is committed to assisting the Government in the coordination and implementation of such activities.

In light of the National Action Plan against Racism the NCCRI would recommend that the Government establish an interdepartmental committee, with NGO and other

representatives (including the Human Rights Commission) to monitor the implementation of the Committee's Concluding Observations; assess Ireland's obligation under CERD in light of the National Action Plan; and to assist in the coordination of Ireland's next report under the Convention.

Given the concerns which have been expressed in relation to the consultation process on Ireland's First Report, this structure would serve to enhance NGO cooperation in the preparation of future State Reports. By building on the experience of consultation in the preparation of the first State Report this structure would allow for more active NGO participation in the preparation of the next and subsequent reports.

Recommendation

- Recalling Part II of General Recommendation XXVII the Government should establish a mechanism to monitor and evaluate the implementation of the Concluding Observations in light of the National Action Plan against Racism.