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Joint Committee on Justice
Report on Minorities Engaging with
the Justice System

33/JC/26

December 2022

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CATHAOIRLEACH'S FOREWORD

The Committee was pleased to facilitate an examination on the topic of 'Minorities engaging with the Justice system'.

In selecting this topic, the Committee recognised that individuals from minority backgrounds face additional challenges when navigating the justice system. This may include, among other factors, difficulties with language barriers; lack of familiarity with Irish law; and a fear of police or authority from previous experiences in their country of origin or from negative experiences they had with police. The Committee emphasised the importance of providing a justice system where those from minority groups are encouraged to report crimes and are supported on their journey through the criminal justice system.

In reaching out to stakeholders to gain diverse perspectives on this issue, the written submissions and witnesses provided the Committee with an insight into several areas where they deemed it was most important to improve how minority groups experience their interactions with the justice system. Among the key areas identified include the provision of adequate training, including cultural competency training, for relevant groups within the justice system; the need for there to be greater diversity within juries and greater representation within the justice sector in general; and the impact of intermediary intervention services being provided between minority groups and State agencies.

The Committee has made a number of recommendations for these areas and it is hoped that these will receive due consideration. A copy of this report and recommendations will be sent to the Minister for Justice and the Committee looks forward to working proactively and productively with the Minister to address the issues identified regarding the challenges facing minority groups when engaging with the justice system.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearing to give evidence and those who forwarded written submissions.



James Lawless TD (FF) [Cathaoirleach]
December 2022

COMMITTEE MEMBERSHIP

Joint Committee on Justice

Deputies



James Lawless TD (FF) [Cathaoirleach]



Jennifer Carroll MacNeill TD
(FG) [Leaschathaoirleach]



Patrick Costello TD
(GP)



Alan Farrell TD
(FG)



Pa Daly TD
(SF)



Aodhán Ó Ríordáin TD
(LAB)



Martin Kenny TD
(SF)



Thomas Pringle TD
(IND)



Niamh Smyth TD
(FF)

Senators



Robbie Gallagher
(FF)



Vincent P. Martin
(GP)



Michael McDowell
(IND)



Lynn Ruane
(IND)



Barry Ward
(FG)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 3rd September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25th September 2020.
3. Deputy James O'Connor discharged and Deputy Niamh Smyth nominated to serve in his stead by the Fifth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 19th November 2020.
4. Deputy Michael Creed discharged and Deputy Alan Farrell nominated to serve in his stead by the Fifteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 28th June 2022.
5. Deputy Brendan Howlin discharged and Deputy Aodhán Ó Ríordáin nominated to serve in his stead by the Nineteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 8th November 2022.

COMMITTEE RECOMMENDATIONS

The following recommendations were made by the Committee in relation to the topic:

1. The Committee recommends that Garda members engage with youth projects, particularly projects involving young people from minority backgrounds to improve relations between Gardaí and these communities.
2. The Committee recommends that Garda liaison officers should receive more training and support for their valuable role as intermediaries.
3. The Committee recommends that all people working in the courts system, including courts services staff, lawyers, and judges receive culture competency training to understand how to work across different cultures and to tackle the unconscious bias that may exist and the assumptions they may hold about those from a different background.
4. The Committee recommends that diversity training programmes should include an experiential exercise and should involve representatives from within minority communities being part of or presenting elements of this training first-hand.
5. The Committee recommends that the composition of juries be examined to ensure a broad societal representation is being achieved, inclusive of minority interests, and then identify an action plan to address gaps arising.
6. The Committee recommends that there is an adequate number of social workers available on a 24-7 basis, to provide Gardaí with the additional knowledge and support surrounding the use of section 12 of the Mental Health Acts 2001-2018.
7. The Committee recommends that the pilot crisis intervention programme for Limerick should begin as soon as possible and recommended that similar crisis intervention teams be extended to the rest of the country.

8. The Committee recommends that the Mental Health Acts 2001-2018 should define a set period as to how long a person should be kept in custody and that this should not exceed a period of three to six hours.
9. The Committee recommends that legal supports and other support facilities for victims of human trafficking should be enhanced, to encourage these victims to come forward and report these crimes.
10. The Committee recommends that the number of staff who are specifically trained to deal with victims of human trafficking should be expanded.
11. The Committee recommends increased funding for professional qualified interpretation services be provided at all levels of the justice system including Garda stations to ensure equitable and fair access to justice.
12. The Committee recommends that a 'Traveller independent law centre' be founded to address the demand for legal services among the Travelling community.
13. The Committee recommends that representation of minority groups within State bodies such as the Garda Síochána, the criminal justice or civil law system be increased, to provide more confidence to members of their communities when engaging with these bodies.
14. The Committee recommends that an independent complaints mechanism be established to deal with alleged incidents of racial profiling and to ensure oversight and transparency of complaints.
15. The Committee recommends that the legal system and courts be obligated to inform service users of their rights and entitlements.
16. The Committee recommends that in order to ensure due process and fair access to justice, the amount of time it takes for cases to go to trial and the

amount of time it takes for individuals to hear the result of their international protection application must be decreased.

17. The Committee recommends adequate resourcing is provided to organisations working directly with individuals from minority groups in order to raise awareness and ensure access to justice.
18. The Committee recommends that a task force for the migrant youth be established to understand and determine the key issues affecting this group to help inform the criminal justice system.
19. The Committee recommends that access to services should be ensured for minority groups under anti-discrimination legislation.
20. The Committee recommends that a review of the Criminal Justice (Public Order) Act 1994 and the Housing (Miscellaneous Provisions) Act 1992 be undertaken to consider whether an assessment of accommodation need should be performed prior to implementing the 24-hour removal period.
21. The Committee recommends that consideration be given to the introduction of the role of 'cultural mediator' in State Justice Agencies, to ensure an accessible service for minority communities.
22. The Committee recommends that the Minister commission a review of the asylum process, with particular emphasis on the duration of applications, cultural sensitivity and signposting to trauma-informed services.
23. The Committee recommends that the policy which allows for women in abusive relationships to apply for legal residence status independent of their abuser, be placed on statutory footing and not at the discretion of the Minister for Justice, as it currently stands.

24. The Committee recommend that the Minister commission research on racism and racial discrimination in the justice system to understand structural barriers facing migrants and all vulnerable minority communities.
25. The Committee recommends the introduction of training programmes to educate migrant women on their rights in seeking asylum and include targeted information on recognising the signs of Domestic and Sexual Gender Based Violence (DSGBV) with assurances that protection from DSGBV is available and will not affect immigration status.
26. The Committee recommends that the Minister introduce legislation to recognise Female Genital Mutilation (FGM) as a form of DSGBV and include FGM in all goals of the national strategy on DSGBV.
27. The Committee recommends that a diversion system for those with mental health issues, who comes into contact with the justice system, is put in place nationwide as a matter of urgency.

SUMMARY

The importance of a fair and accessible justice system is a fundamental right of any society. As Ireland has become more diverse in recent years, it has become more important than ever to be aware of the particular challenges facing individuals from minority groups when they engage with the justice system and to evaluate how their experiences could be improved upon. In recognising this, the Joint Committee on Justice selected the topic 'Minorities engaging with the Justice System' from its Committee Work Programme for further examination and discussion.

The Committee was informed, in written submissions and during its public hearing with stakeholders, of the various challenges and negative experiences those from minority backgrounds can encounter when interacting with the justice system, including instances of racial profiling, institutional discrimination or bias, lack of cultural sensitivity in engagements and fears these individuals have of how they will be treated by those they interact with in the justice system. Stakeholders outlined to the Committee that such experiences can significantly discourage these individuals from seeking assistance from the system or can dissuade individuals from minority groups from engaging with the justice system in the first instance.

In an effort to review and discuss relevant areas in relation to this subject, the Committee invited written submissions seeking the views of various stakeholders. Stakeholders, in addition to any general points on the topic, were asked to comment on what supports are currently available for minority groups when they interact with the justice system; the difficulties or barriers facing these minority groups; and suggestions as to how improve the experience of minority groups when navigating the justice system.

Based on the evidence to the Committee, it is clear that there are several areas where improvements could be made in order to create a more accessible and equitable justice system. Improvements suggested by stakeholders include the need to ensure the expansion of training programmes for staff within the justice sector, in particular the rollout of cultural competency training, which would inform staff how to work with

those from different backgrounds and cultures and to address and dispel the unconscious bias they may have towards individuals from a different background.

The Committee concluded that training alone will not solve this issue, with the need to increase the representation of minority groups within the justice system being emphasised. Individuals from minority backgrounds experience less trust in a system where they do not feel represented. Alongside this, the introduction of further measures to improve relations between minority communities and the Gardaí was highlighted, for example, through enhanced engagement of Gardaí with the migrant youth and increased resourcing and supports for Garda liaison officers and community police. It is only through meeting meet directly with members of their communities that it will be possible to build valuable relations and trust with their communities.

The discussion surrounding the engagement of minority groups with the justice system and potential solutions as to how to improve these relations are outlined in the following section.

CHAPTER 1 – Engagement with Stakeholders

Introduction

The Joint Committee on Justice invited submissions from stakeholders on the topic of ‘Minorities engaging with the justice system’.

On 24th November 2021, the Committee held a public engagement with several of these stakeholders, as laid out in the table below:

Table 1: List of public engagements with Stakeholders

Organisation	Witnesses
Mental Health Commission	Mr. John Farrelly, Chief Executive Ms. Orla Keane, General Counsel for the MHC (Decision Support Service).
Irish Traveller Movement	Mr. Bernard Joyce, Director Ms. Jacinta Brack, Co-ordinator of Advocacy and Communications
AkiDwA	Dr. Salome Mbugua, CEO Ms. Leina Ibnouf, Development Officer
LGBT Ireland	Ms. Collette O’Regan, Senior Training and Advocacy Co-ordinator
Department of Justice	Mr. Deaglán Ó Briain, Principal Officer, Community Safety Policy Ms. Mary O’Regan, Principal Officer, Penal and Policing Applied Policy

The primary focus of the meeting was to allow for an engagement between the Members and stakeholders to discuss how relations between minority groups and the justice system could be improved upon.

This report summarises the engagements and the key points considered by the Committee when drafting the recommendations set out in this Report.

A link to the full transcript of the engagement can be found [here](#).

CHAPTER 2 - Summary of Evidence

In the course of the public hearing, a number of important points were raised. A summary of the main areas discussed in evidence to the Committee follows.

1. The relations between Gardaí and the courts system with minority groups

Members and witnesses discussed the relations between members of the Garda Síochána and minority groups and what areas of these relations could be improved upon. They asked how low levels of trust between Gardaí and minority groups can impact on the engagement of minority communities with the criminal justice system and asked how this trust can be rebuilt.

Witnesses suggested that a reason for the aforementioned low levels of trust between the Gardaí and minority groups stems from lack of identification. In evidence from AkiDwA, the Committee was told that in 2019, only 1% of Gardaí were non-Irish. Witnesses also highlighted the difficulty that ethnic minorities face in gaining employment in the legal field, even with the necessary qualifications.

Witnesses pointed out that there are many reasons that people from minority backgrounds are afraid of reporting crimes and engaging with the justice system. This can be influenced by issues with language barriers; fear of speaking out and reporting a crime; or fear of not knowing how the person you speak with will treat you and whether they will be respectful or not. Witnesses said they have heard anecdotal evidence from individuals within minority groups about the negative experiences they had when interacting with Gardaí or other elements of the justice system.

An example of this mistrust was given by AkiDwA, who cited the Irish Network Against Racism (INAR) 2020 statistics on under-reporting of racist crimes; of 111 cases of illegal discrimination that were reported to iReport.ie, 36% were not reported to anyone else, 49% were reported to other services and just 13% were reported to An Garda Síochána.

Witnesses outlined several other factors which can affect the relations between Gardaí and minority communities and can impact on the ability of these groups to have confidence in Gardaí, including:

- **The bias within policing, both unconscious and conscious, that is held towards certain minority groups**

The Irish Traveller Movement (ITM) spoke of the ingrained negative view held by Gardaí towards members of the Travelling community and referred to an unpublished survey carried out by the Garda ethnic liaison officer from 2014, which supported this argument. This survey found that all Gardaí who were interviewed held negative attitudes towards Travellers before joining the profession and that they maintained these negative attitudes while serving as Gardaí. National studies of Travellers' own attitudes also showed that 70% of Travellers felt discriminated against by Gardaí.

- **Inconsistent approach towards members of the Travelling community**

The ITM highlighted situations where the response time to 999 callouts by Gardaí had been questionably slow and said that serious situations had occurred as a result of these delays. Witnesses argued that the Garda Síochána must ensure that they protect and serve all individuals equally and that the Traveller community must feel safe and an equal part of the community.

- **Racial profiling by members of the Garda Síochána.**

This was underlined as an ongoing problem for members of minority groups. AkiDwA outlined that there is a significant lack of trust between youth and the Gardaí, which racial profiling contributes to, as they have found that black youth can be labelled as black gangs by the Gardaí. AkiDwA said that in some areas of Dublin, black youth are targeted from a very young age and are stopped by the Gardaí for questioning disproportionately, which further discourages them from reporting crimes to the police.

- **Courts system can be a daunting and challenging environment**

Witnesses also informed the Committee that the courts system can be a daunting and challenging environment for those from minority backgrounds. It was argued that the courts are viewed as places controlled by the ‘elite’ which can feel far removed from the average person’s life. For example, the way some people dress within the High Court system can be very intimidating.

Suggested measures for how to improve the relations between Gardaí and other elements of the justice system with minority groups include:

- **Engagement with those from minority backgrounds must be sensitive and understanding**

Witnesses recommended that Gardaí and the criminal justice system should change the approach they adopt towards people from minority backgrounds as it can sometimes come across as being as racist towards a specific group.

Witnesses recommended that Gardaí should be very sensitive in the way they deal, those from different ethnic groups and religious groups. They should also adopt an approachable and understanding manner towards young people and avoid reacting to them and making assumptions about them.

- **Better engagement with the migrant youth**

Witnesses recommended the importance of Gardaí working with youth projects, particularly with those from minority backgrounds to ensure that they are engaging with members of these groups at the community level. Community leaders can also help them to shape the work they carry out with the youth.

Witnesses also highlighted the benefits of the work of community police and Garda liaison officers, outlined in the following point.

2. Intermediary intervention services between minority groups and State agencies

Members and witnesses discussed the potential benefits of having intermediary intervention services between minority groups and State agencies.

Witnesses pointed to the example of community policing services and liaison officers within community policing and spoke of how these services can be effective in building positive relationships between the Garda Síochána and minority groups in their community.

Witnesses emphasised that community policing is beneficial in terms of establishing and maintaining relationships with the community, in engaging with young people and giving them confidence, and in interacting with other organisations within the community such as youth programmes, community groups and bodies representing minority groups. This allows police to build solid relationships with these groups prior to any incidents in the community occurring.

Witnesses outlined that working with the community in this manner is important in order to develop trust and that this is essential when it comes to assisting people who are experiencing issues on the ground. Some witnesses stated that their organisation had problems in their local area with residents and they requested assistance from the Gardaí, who worked with their organisation, with the people experiencing the problems and with the wider community. Witnesses said that this approach had proven successful and that it is a useful approach in a broader sense, as it helps to address problems with more consistency when all relevant groups on the ground are involved and a discussion about the problem involving all groups occurs. They emphasised that the more communication there is between different groups within communities, the more successful relations in the community will be.

Notwithstanding this, witnesses underlined areas where the interaction between the community Gardaí and minority groups could be improved. For example, witnesses pointed out that diversity liaison officers frequently get moved to other roles. This means those within NGOs must constantly build relationships with the new individual as the relationship relies on local, institutional knowledge and previous experience.

Some witnesses suggested that a number of those who become intermediaries should be from a non-governmental organisation (NGO), as they have plenty of casework experience to draw upon. Allowing some of the NGOs to have a dedicated access to justice position would require additional resources to establish and support these intermediaries.

Other witnesses stated that the Garda liaison officers should receive more investment, training and support, due to the positive and significant role they play as intermediaries.

3. The importance of training for those within the justice sector on appropriate engagement with minority groups

Members asked what training is available for is for Garda members in terms of engaging appropriately with minority groups and what further training might be provided in this area. Questions were raised as to whether there should be training for lawyers, Gardaí and judges to help provide an insight into the perspectives of vulnerable people who come before the courts.

All witnesses emphasised the importance of training, for Garda members and for other service providers within the justice system so that they can fulfil their duty of care for all citizens. Witnesses argued that training provided to those within the justice system must be transparent and accountable. Training programmes should be structured and have a clear purpose and goals, rather than, as suggested by some, as simply being organised to pay ‘lip service’ to educating those within the justice system about diversity. Other measures to improve training for those working within the justice system include:

- **Cultural competency training**

Witnesses highlighted the importance of culture competency training and agreed that it is essential that lawyers and others working in the courts system receive such training. Culture competency training aims to help people understand how to work across different cultures and to address the unconscious bias that can exist and the assumptions that people may hold about those from a different background.

- **Importance of meeting representatives from minority communities during diversity training**

Witnesses stressed the importance of hearing from and meeting with representatives from minority communities during diversity training programmes in order to challenge any fixed attitudes that may be held towards these groups.

As an example, the ITM stated that they do not believe Garda training in relation to the Travelling community is sufficient and argued that a few hours of training are not enough to equip Garda members with the knowledge to adequately deal with the community. ITM said that they would be keen to be part of the training in relation to the Travelling Community that takes place in Templemore training college and for members of their community to go into the college and carry out the training for these modules first-hand. They recommended that this training approach should also be an embedded part of the Garda training programme and should also extend to other minority groups.

- **Experiential exercise within training programmes**

Witnesses also emphasised the need for diversity training to include an experiential element, where through a 20-30 minute exercise, those being trained can feel what it is like to live in that identity. These exercises are essential as witnesses argued that people who are not living the daily life of a member of a minority group cannot really understand what issues and challenges they face until they can spend some time in their shoes. Witnesses attested that in training workshops where participants used such exercises, they have felt how the atmosphere in the training room suddenly changes and how the participants start to better understand the issues faced by minority groups.

4. Diversity of juries

Members and witnesses discussed the jury system and its diversity in Ireland. Members pointed out that juries in Ireland appear homogenous and while they may have a good gender balance, they do not appear to be diverse in terms of the ethnicity of jury members.

Members asked what the Courts Service could do to achieve greater diversity and fairness in the jury selection system. They also asked whether witnesses would be in favour of potential jurors being surveyed regarding elements of their lives that may be diverse, e.g., sexual orientation or ethnic background.

Witnesses were unanimous in their belief that juries should be diverse, in order to accurately reflect the diversity of Irish society. Witnesses said that while they are aware that individuals from ethnic minorities are invited for jury service, these individuals do not seem to get selected during jury empanelling and do not seem to make it onto the final jury. Others pointed out that while there may be individuals on juries that are members of the LGBT or Travelling community, these individuals may not feel comfortable disclosing this information in case they may be judged differently by others as a result. Witnesses said that if inclusive cultures are created in workplaces and services, then those who enter these services will pick up on this inclusive atmosphere and feel more comfortable to be open about their minority status.

Witnesses agreed that, where possible, to enhance the diversity of juries, a question should be included for those undertaking jury duty about aspects of their lives aimed at achieving this. They argued that it is important for this data to be gathered in order to assess how diverse sitting juries are. They suggested this data could be gathered for one year and then, based on this data, further steps can be taken to determine the measures that could be introduced to address any faults outlined in these surveys and to improve the diversity of the courts system.

Witnesses urged that the same questions should be asked of everyone, rather than only being asked of minority groups, in order to be more inclusive and to ensure a level playing field where everyone has been asked and will answer the same questions. They said it is important to ask the same questions of everyone in order to switch the

current approach, as often the focus is put on minority groups and they are expected to speak of their experiences, while larger groups in society are never expected to speak about their experiences as their perspectives can be taken as a given.

In this way, witnesses stated that asking the same questions of everyone in a jury setting will create awareness and will help those present from minority groups to feel more relaxed knowing that their fellow jury members will have an understanding that not everyone is the same and that they should be respectful of all opinions. This should also help reassure them that other jury members will not demonstrate hostile attitudes towards them, which witnesses stated can be a real fear for those from minority communities.

Acknowledging that introducing such questions may have potential GDPR implications, some witnesses said that people may not want to disclose such data owing to the stigmas that are associated with certain categories e.g., having mental health difficulties. Therefore, people must be given an option of whether they disclose such data or not. In addition, witnesses pointed out that as the jury list derives from the list of Dáil electors gathering such data would cause GDPR issues in terms of proportionality, as this could result in people being obliged to disclose their personal characteristics when they register to vote. Others highlighted that there has been precedence of this practice used by other bodies such as the Central Statistics Office. As an alternative, witnesses suggested that anonymous surveys could be sent to those invited for jury duty, including those who are not selected for the jury and that this data could be used as a basis to assess the current diversity of juries.

Other suggestions on how to make the jury selection system more diverse included introducing a proportional system so that a jury must have at least two individuals from different backgrounds.

In response to the points made by witnesses, representatives from the Department of Justice highlighted some work being done in this area by the Department of Children, Equality, Disability, Integration and Youth in progressing legislation on the position of people with disabilities serving on juries. They pointed out that they would welcome

collaboration between the Courts Service and the Department in terms of looking at ways to make juries more diverse.

5. Engagement between individuals with mental illness and the justice system

Members and witnesses discussed the engagement between individuals with mental illness and the justice system and questioned how the process of involuntary admissions of individuals under section 12 of the Mental Health Acts 2001-2018 (the 2001 Act) operates and what role the Garda Síochána have in this process. They inquired what training is provided to Gardaí to equip them for this role and to inform them on how to interact appropriately with those who have mental illnesses.

Representatives from the Mental Health Commission (MHC) pointed out that they had published *the Report of the Joint Working Group on Mental Health Services and the Police* in 2009, in collaboration with the Garda Síochána. This report had made many of the recommendations that MHC highlighted during the course of the hearing with the Committee, including the establishment of a 24-7 statutory social work service, enhanced training in the areas of mental health for Garda members and the implementation of adequate diversion programmes to deal with minor criminal matters involving individuals with mental health problems. Aside from some expansion of the training provided to Gardaí, witnesses pointed out that many of the other recommendations from the report have yet to be implemented 12 years on.

In terms of the use of section 12, witnesses raised several points:

- The use of section 12 allows a member of the Garda Síochána to take a person into custody if they believe the person is suffering from a mental disorder and that there is a serious likelihood the person could cause immediate and serious harm to themselves or others as a result of this disorder.
- The Committee was told that 32% of involuntary admissions in 2020 used section 12 and that there was a 5% increase in the number of section 12 applications made in 2021 compared with 2020. Witnesses argued that section 12 should be seen as an emergency measure and that the figures of involuntary admissions under this section should be decreasing, rather than increasing.
- Witnesses stated that the criterion under the 2001 Act on how to identify a mental disorder are very complex, and that it is not clear what exact training Gardaí receive on this subject.

- Witnesses highlighted that there is a lack of transparency in how section 12 is being used by members of the Garda Síochána. For example, witnesses pointed out that in 2020, 616 admission orders to hospital were made following Gardaí applications through section 12 to voluntarily detain people. However, the Garda Síochána also said that it had initiated over 5,700 applications under section 12 during this year and witnesses questioned what happened to the other approximate 5,100 cases that were detained and whether there was information around the conditions in which these individuals were detained including whether these individuals received GP care and evaluation. Witnesses argued that this must be clarified and data involved must be made clear and transparent.
- Representatives from the MHC told the Committee that the expert group on the review of the 2001 Act stated that all applications under section 9 should be made by authorised officers. The MHC had recommended that Gardaí should not be allowed to make applications under section 9 or section 12. The Commission said that it is now being proposed that a Garda could take a person into custody but that an authorised officer would make the assessment.
- Witnesses highlighted that Gardaí would welcome a situation where they would have a role in the process but that they would not make the involuntary applications themselves, as they accept that the person making those assessments should be someone with a health or healthcare qualification.
- It was recommended that there should be an adequate number of social workers available on a 24-7 basis, to provide Gardaí with the support they need in this area.
- Witnesses also pointed out that there is no set period specified in the 2001 Act as to how long a person should be kept in custody and they recommended that this should be specified in the Act. They disagreed with the suggested period as being 12 or 24 hours and argued that the period should be three to six hours maximum.

Crisis intervention teams

Witnesses referenced crisis intervention teams, where police and mental health professions collaborate and which involves a pre-arrest diversion to a local mental health service or other community support. While a pilot programme of crisis intervention teams had been planned for Limerick, as of November 2021, this programme had not yet started. Witnesses spoke of the value of these teams, as they argued that those with mental health difficulties should be met by people who are appropriately trained when they are engaging with the justice system. Witnesses urged that this programme be put in place as soon as possible and recommended that crisis intervention teams be implemented throughout the country.

Availability of psychiatric services in prisons

Questions were raised about access to psychiatric services in prisons and whether this is sufficient, including when requested by their legal representative, for example, in order to help their representative decide whether they believe the individual had capacity to make independent decisions.

Witnesses responded that people in prison should have the same access to psychiatric services as people in the community, however, this is not the case. They underlined their belief that those who have offended because of mental illness should not enter the criminal justice system, as they argued that prison environments are not suitable for such individuals. Rather these individuals should be diverted into forensic mental health services by the Garda or the courts.

6. Approach of the system that deals with victims of human trafficking

Members raised questions about the element of the justice system that handles victims of human trafficking. It was pointed out that the Trafficking in Persons (TIP) report had ranked Ireland as a 'tier 2 watch-list country' for the second year in a row, with Ireland having dropped down the rankings in recent years.

Members asked what challenges people face when trying to engage with and seek help from the system that handles incidents of human trafficking and what changes could be made to this system in order to better support these vulnerable individuals. They asked whether authorities recognise the desperate situation these individuals are in and the fear they have of coming forward and reporting their situation in case they are sent back to the countries from where they have been trafficked.

Members also pointed out that victims of human trafficking require an alternative accommodation solution to direct provision, as they are not asylum seekers and require accommodation which caters to their particular needs.

Witnesses informed the Committee that Ireland is a transit country and that many women and girls are imprisoned in the human trafficking system. Witnesses said that human trafficking often remains hidden due to the acute fear many victims have that they will be deported if they come forward and report these crimes. Incidents of human trafficking are sometimes only revealed when the women involved are sick or their situation becomes so unbearable that they feel they have no other alternative but to report their situation.

Witnesses underlined the barriers and challenges that discourage victims from taking the difficult step to come forward and report their situation. Firstly, victims of trafficking are not familiar with Irish law or how to approach Gardaí and witnesses said that it is difficult to get support from solicitors to address this problem. Access to legal supports for these women can be limited due to language barriers, fear of alienation, lack of cultural competency or fear of stigma due to cultural and religious traditions. Witnesses recommended that legal support for victims of trafficking must be increased. The Department of Justice added that they have funded and worked with the International

Organization for Migration (IOM) in Ireland to set up a group of trained cultural mediators, whose particular focus was on victims of human trafficking.

Witnesses indicated that there is a lack of staff who specialise in human trafficking and a lack of cultural competency among staff for how to handle this issue with the sensitivity it requires. Witnesses told the Committee that in the rare instance that a victim will go to a Garda station to report an incident of human trafficking, this victim will likely meet a Garda who is not aware of how to correctly handle this issue, which can make the victim feel that they are not listened to and can make them feel humiliated and rejected. As a result, it is unlikely that this individual's case will proceed to the next stage, in which a decision is made whether to legally prosecute or not. This in turn sends a message to other victims in similar situations that there is no point in them trying to seek help or justice for their own situation.

Victims in these situations are completely isolated and lacking financial independence. In order to raise their case with authorities, victims must risk their life and witnesses said that tragically the involvement of gangs in trafficking means that a victim who is successful in drawing attention to her situation will likely be killed at some point in the trafficking system. As a result, witnesses underlined that it is difficult for them to describe the exact steps involved in handling cases of human trafficking as often the process does not get completed.

Witnesses said that victims need to receive support to help them recover from their traumatising experiences, yet often many victims of trafficking feel they are treated as criminals and that they are not supported in explaining their experiences or describe what happened during the trafficking process.

Witnesses emphasised that victims of trafficking need to be supported to report these crimes and that relevant organisations and groups must respond to them and work with the Gardaí to ensure that this is possible and that victims feel supported.

7. Translation and interpretation services

Members asked about the provision of translation and interpretation services and whether witnesses could speak to the experience of minority groups with these services.

Migrants and members of minority groups frequently experience a lack of or poor-quality interpreters and translation services when engaging with the courts. Witnesses stated that translation services are problematic. They are often provided by third parties on a voluntary basis from the non-profit sector or an informal basis from the community, friends and even children which often leads to poor outcomes. Witnesses provided examples where a woman may have experienced gender-specific harm but the translator is a young man, which they pointed out is not culturally appropriate. Similarly, witnesses outlined examples of children who have been translating for their parents following incidents of domestic violence, which they stressed is unacceptable.

Concerns were raised that there have been instances at international protection hearings where translations were different from what was actually being said.

Witnesses emphasised the need for proper translators to be provided in order to translate for various groups and individuals with different needs and to ensure equal access to justice. It is therefore important that the courts are adequately resourced to provide competent and professional translation services for all parties engaging with the courts.

8. Provision of civil legal aid for Travellers

Members asked witnesses to describe the civil legal aid made available to Travellers and to outline what challenges there are in this area and what changes witnesses suggest to improve the provision of legal aid for the Travelling community. They pointed out that there is a civil legal aid review under way and that witnesses' suggestions may prove useful to feed into this review.

Mr. Bernard Joyce of the Irish Traveller Movement shed light on why these improvements are so important, he told the Committee that 'travellers are subject to evictions disproportionate to any other group in society'. He said that under *the Criminal Justice (Public Order) Act, 1994* and *the Housing (Miscellaneous Provisions) Act, 1992*, removals of families are permitted within 24 hours' notice, the absence of alternative accommodation particularly disenfranchises families and those with disabilities.

Witnesses outlined several of the difficulties that Travellers face when trying to access legal aid:

- It was pointed out that under the *Civil Legal Aid Act, 1995*, restrictions are imposed around taking cases in relation to access to services such as housing, education, social welfare cases and employment cases. Witnesses highlighted that this is a significant problem for Travellers, given the frequency with which they need to access equality law.
- Restrictions under section 28 of the *Civil Legal Aid Act, 1995* regarding situations where individuals are served with an eviction notice, also disproportionately affect Travellers.
- Witnesses outlined the barriers facing Travellers trying to access private legal services, which include the costs involved, the lack of cultural competency that exists within these services and the fact that Travellers are often discriminated against by these services. Witnesses welcomed the ongoing review of the *Equality Acts (Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015)* in this regard.
- Witnesses said that when members of the Travelling community go to access legal aid, often the people they encounter are hostile or indifferent towards them

and are not familiar with equality law, which is the area of legal aid that Travellers more frequently require.

- There is no specialised legal service for Travellers and the services that are available are fragmented, meaning that no one body collects data in this area and the extent of Traveller's legal needs are systematically undermined.
- While agencies as the Irish Human Rights and Equality Commission (IHREC), the Free Legal Advice Centres (FLAC), Traveller legal services and independent law centres play a critical role in representing of members of the Travelling community before the courts and tribunals, it was underlined this is not sufficient to meet the current need for these services among the Travelling community.
- Witnesses recommended that a 'Traveller independent law centre' be established, in order to meet provide adequate legal services to address the demand for these services among the Travelling community. It was pointed out that the establishment of a Traveller independent law centre was supported by the Council of Europe in 2017, when it made four key recommendations to Member States in regard to the distinct and intersectional needs of access to justice for members of the Travelling and Roma communities.

9. Additional measures to improve the engagement of minority groups with the justice system

Members and stakeholders discussed what additional measures could improve the engagement of minority groups with the justice system. These included:

- Increasing the representation of minority groups within State bodies such as the Garda Síochána. Witnesses highlighted the uneven representation of minority groups within the criminal justice or civil law system and argued that increased representation of minority groups within these systems would provide confidence to their communities when engaging with these bodies.
- Witnesses argued that there must be robust oversight of complaints and that the procedures which are followed must be made transparent. It was pointed out that legislation prohibiting racial profiling does not exist and it was recommended that an independent complaints mechanism should be established to deal with incidents of racial profiling and the lack of statistics in relation to this.
- Making it mandatory for the legal system and courts to inform service users of their rights and entitlements, e.g., their right to change solicitor or to avail of a translator, as most service users are unaware of these basic rights.
- Decreasing the amount of time it takes for cases to go to trial. This causes victims to feel re-traumatised by having to keep their memories fresh for the court case.
- It was recommended that the Department of Justice needs to invest in additional human resources to decrease the amount of time individuals wait before the result of their international protection application, so that people are provided more fair access to justice. LGBT Ireland highlighted that LGBT+ applicants are spending a long time in direct provision while awaiting their results, which can be an isolated and hostile environment for LGBT+ individuals.
- Groups and organisations that work directly with victims should be adequately resourced in order to support victims and raise awareness among the people they reach on the ground.

- The importance of a task force for the migrant youth to support these youth in a meaningful way by understanding the key issues affecting them and reporting this back to the criminal justice system. This task force should help these young people feel less targeted and to educate them on important issues such as consent. Witnesses argued that if these investments were made, the State would be able to shape the education of these young people which would prevent problems from occurring down the line.
- That access to services and goods should be ensured for minority groups under anti-discrimination legislation.
- That a special independent service is established to tackle overcrowded and poor living conditions. This would need to be resourced by the State in order to give confidence to the community that people are entitled to access the services in a culturally appropriate way.
- That criminal trespass legislation be reviewed as Irish Travellers are being criminalised for being a nomadic ethnic group, despite the Dáil formally recognising Travellers as an ethnic group in 2017. The ITM pointed out that this legislation prevents Travellers from travelling across Ireland and denies them recourse to legal action when threatened with evictions from public lands.
- The Committee heard that DSGBV is a serious issue facing migrant women in Ireland and that the State should improve supports available to victim-survivors. In 2019, 92% of calls made to Women's Aid were by migrant women. AkiDwA highlighted the barriers that migrant women face when trying to leave an abusive relationship in fear that their status might be compromised. Currently, women in abusive relationships can apply for legal residence status independent of their abuser and this is approved at the discretion of the Minister for Justice. They recommend that the State make this discretionary measure a statutory one.
- The Committee heard that delays in the asylum process prolong minorities' precarious living conditions. AkiDwA told the Committee that once an interview is obtained, there is much that should be considered to ensure a smooth encounter: 'we recommend clear timeframes are set and that interviewers are culturally sensitive and aware of diverse cultural backgrounds of applicants, including consideration for different education levels or experience with trauma.'

Additionally, use of audio recording in interviews should be considered to review facts and conduct interviews after the fact. At all times accessibility to specialised support victims of torture and who have experiences trauma from conflict and other gender specific harm should be provided.'

- Similar to International Organisation for Migration (IOM), State Justice Agencies capacity to offer effective service to minority communities would greatly benefit from the employment of Cultural Mediators to liaise with relevant minority community members and sector organisations to assist in accessing justice. Such cultural mediators working in partnerships with sectoral organisations would be best placed to insight systemic changes that are required to create a more accessible justice for all.

CHAPTER 3 - Summary of Submissions

The Committee received submissions from the following stakeholders:

- Courts Service
- Irish Network against Racism (INAR)
- Mental Health Commission
- Irish Traveller Movement
- LGBT Ireland
- AkiDwA
- Garda Commissioner

Submissions highlighted in particular, the need for improved legal aid for minority groups, the need for cultural awareness, cultural sensitivity and anti-racism training for those interacting with minority groups, and suggestions for how to protect vulnerable groups from hate crime and hate speech.

1. Barriers preventing minority groups from engaging with the justice system

Stakeholders outlined the challenges and barriers experienced by minority groups when trying to engage with the criminal justice system. A lack of trust in these systems and fear of the police, for various reasons, were reported as some of the most significant barriers preventing individuals from minority communities from engaging fully with the justice system. Similarly, fear of experiencing racism was highlighted, due to a perceived lack of cultural competence, bias or institutional racism within the legal and policing systems.

Some further challenges, specific to different minority groups, are outlined below.

AkiDwA reported that lack of minority representation in the legal sectors impacts on the number of individuals from ethnic minorities who are willing to seek justice, as they experience less trust in a system where they do not feel represented. A fear of police or authority from experiences in an individual's country of origin or from negative past engagements with state officials also dissuades members of minority communities from further engaging with the justice system. AkiDwA stated that a lack of cultural understanding and awareness amongst legal service providers creates misunderstandings, negative perceptions and stereotypes, which has a negative impact on the services they deliver to members of minority communities.

LGBT Ireland stated that there are several factors which deter members of the LGBTI+ community from engaging effectively with the justice system.

- The legacy of criminalisation of homosexuality still deters many members of the community from engaging with An Garda Síochána (AGS), in particular those age groups that were directly impacted by criminalisation.
- Members fear that the services provided will not be adequately sensitive or appropriate.

- Those who present in gender non-conforming ways fear being treated disrespectfully if reporting a crime to AGS.
- Young LGBTI+ people are more likely to use drugs or alcohol as a means of dealing with stress or anxiety, which can result in some individuals developing links with criminality.
- LGBTI+ asylum seekers fear questions about their immigration status even when it's not relevant to the reason they may want to go to AGS.
- Language barrier issues can impede the ability of some LGBTI+ asylum seekers from effectively engaging with the Gardaí.

A fear of racism or anti-Traveller feelings and a legacy of mistrust between the Traveller community and AGS were highlighted as the biggest factors deterring members of the Travelling community from engaging meaningfully with the justice system. The Irish Traveller Movement highlighted the results of a study undertaken in 2014 by the then Garda Ethnic Liaison Office, which found high levels of negative attitudes towards Travellers at the time. Furthermore, all Gardaí interviewed, had held those attitudes before becoming members of AGS and remained negative of the Travelling community as serving Gardaí. It was highlighted that legislation such as the Criminal Trespass Act, and Section 19 of the Intoxicating Liquor Act 2003 are punitive and regressive in terms of their specific impact on Travellers, as they require Travellers to avail of legal recourse more frequently.

2. Access to legal aid

Several submissions highlighted the need for there to be sufficient access to legal aid for members of minority communities and better awareness of the Irish legal system and their rights under this system.

The Irish Traveller Movement made several recommendations regarding the current Civil Legal Aid Act 1995, which they stated has deficiencies in terms of its provision of legal aid services to Travellers.

- It was recommended that the scope of the Civil Legal Aid Scheme be expanded to include legal aid to equality cases before the Workplace Relations Commission in relation to discrimination of employment, goods and services, and where legal advice and representation is required in quasi-judicial tribunals and related matters, as these situations are currently not covered by the Act.
- It was recommended that the Act be amended to ensure legal aid is provided in eviction cases and to fulfil related recommendations under the European Social Charter.
- Traveller organisations should be included in the review of the Civil Legal Aid Scheme.
- Strategies should be developed to help engage members of the Travelling Community with the Scheme. A Traveller specific lead should be appointed within the Legal Aid Board and a Traveller advisory group should be established to guide engagement with the sector.

The following additional issues also make it difficult for Travellers to access legal aid:

- While FLAC Traveller legal Service, independent law centres and IHREC assisted in representing members of the Travelling community before the courts, and local based Traveller organisations acted as amicus at tribunals, it was highlighted that the burden of resources and experience of these demands is excessive and not within the scope of these organisations.
- They noted the beneficial role of the Public Interest Law Alliance (PILA) in access to strategic legal specialisation. They believe the PILA framework could

be better utilised by a dedicated and Traveller specific alliance geared towards the Travelling community's use.

- It was highlighted that there is little promotion of the Voluntary Assistance Scheme for Travellers. This Scheme should be made more visible, and access to the Scheme should be improved.
- As there is no single collective data set to work from and as services are fragmented, the extent of the need for Traveller legal aid is systemically undermined.
- As there are too few independent law centres to provide the type of equality legal support most required by members of the Travelling community, the establishment of a Traveller Independent Law Centre was recommended, which would provide a dedicated, free and specialised legal service to members of the Travelling community.

Undue Impact of the Intoxicating Liquor Acts 2003 – 2008 on the Travelling Community

The majority of Travellers said they had experienced discrimination (90%) with 53% of this experienced from pub staff, 51% from hotel staff and 43% from staff of discos or clubs. The Irish Traveller movement criticised the decision to move such cases against licensed premises from the Equality Tribunal to the District Court, which has resulted in a significant decrease in the number of complaints taken.

The diversion of cases to the District Court impacted specifically on Travellers for the following reasons:

- The District Court is a judicial body and not seen as accessible to Travellers, as prejudice and discrimination is experienced.
- The expertise of the Equality Tribunal is not available to judges of this court, who are spread across the circuit court system and may have little or no training in equality issues.
- It is recognised that the District Court is over-burdened in terms of its available capacity.

- The financial burden of taking a court case where costs may be awarded against them can deter people on low incomes, allowing discrimination to go further unchecked.
- Court proceedings are held in public and there is a burden of proof and evidence in proceedings, such as CCTV footage, required. This burden of proof can be difficult for Travellers to prove where discrimination is so widespread and commonplace.
- Proceedings are often of an adversarial rather than inquisitorial nature.

Other submissions outlined further issues with legal aid and awareness of the legal system by minority groups. AkiDwA noted that many people in minority communities struggle to access information about legal services in Ireland and are unaware of their rights under Irish law. This lack of awareness is crucial, as the Irish legal system may differ significantly from their country of origin. As a result, this impacts on the number of individuals from minority communities that seek the justice and legal redress for crimes that is due to them. An active strategy should also be put forward on how to inform minority and migrant populations on the legal services and protections that are available to them and how they can access same. AkiDwA recommended that translation and interpretation services should be provided in terms of asylum procedures, free legal aid and when seeking justice for domestic, sexual and gender-based violence (DSGBV) crimes. Members of migrant communities with no legal immigration status should also have equal access to the resources, interpretation services and preventative measures against violence that are available to other members of their community.

LGBT Ireland also highlighted that there is a lack of knowledge and understanding about current law relevant to LGBTI+ families among some staff in the court's services and legal professions. They recommended that court clerks and judges are provided with up-to-date information and training when new legislation pertaining to LGBTI+ families is enacted.

3. Engagement between individuals with mental illness and the justice system

The Mental Health Commission (MHC) made the following points and recommendations regarding the intersection of mental health services and individuals with mental illness and the justice system, in particular, regarding involuntary admissions into approved centres under the Mental Health Acts 2001-2018 (the 2001 Act).

It was highlighted that good collaborative structures and processes between the mental health system and justice system, including joint protocols between the mental health services and An Garda Síochána and associated formal liaison systems, are an integral part of assisting people with mental health issues. These should be in place to ensure that such individuals receive appropriate care in a health system rather than needing to engage with the justice system in the first instance. However, the MHC highlighted that AGS remains the only agency available 24/7 to respond to mental health crises in the community, which is unfair and inappropriate due to their limited training in this area and lack of external support available to them from other bodies.

When individuals do engage with the justice system, crisis intervention teams between police and mental health professionals are used internationally, which involves a pre-arrest diversion to a local mental health service or other community support is provided. This method reduces the arrest and detention of those with mental illness in police stations; reduces court appearances; reduces the number of people ending up in the prison service; and reduces the burden on the forensic mental health service. The MHC criticised the absence of this service in Ireland, although welcomed a pilot programme of this nature in Limerick. They recommend that an adequate diversion system for those with mental illness that come into contact with the justice system is expanded throughout the country as soon as possible.

Concerns were also raised by the MHC in light of findings that showed that members of AGS are the largest body making applicants for involuntary admission of individuals to psychiatric units, under the 2001 Act. This is despite the presumption by MHC that the majority of applications under this Act would be undertaken by appropriately trained authorised officers and that section 12 of this act was intended to be used as

an exceptional method, rather than the main method of making applications. The MHC questioned the lack of clarity and lack of independent scrutiny involved in the detention of thousands of people by AGS members. The MHC has requested further details on this process by AGS, including details on this process from the time a person is taken into custody under Section 12 until the application is made or the person is discharged, or time runs out and the person has to be released.

They pointed out that the training of Gardaí to make the relevant assessment under section 12 (1) of the 2001 Act is not clear and recommended that Garda training in this area should be expanded [\(as discussed in Point 4\)](#).

4. Cultural awareness training and other relevant training for key bodies

Stakeholders highlighted the need for cultural awareness and anti-racism training for bodies that make up the justice system, to counter the bias and institutional racism that stakeholders believe exists within the legal system and in policing.

It was recommended that cultural awareness training, anti-racism training and training on racial profiling issues should be implemented across an Garda Síochána and a review of police policy, practices and training should be undertaken with affected communities, The Bar Continued Professional Development Programme and related staff should also receive anti-racism and cultural competency training. The Irish Traveller Movement also recommended that Traveller cultural competency training be carried out for Legal Aid Board (LAB) staff, and for administration and legal staff.

AkiDwA recommended that legal professionals and decision-makers, including prosecutors, translators and judges and healthcare professionals should all receive gender and cultural sensitivity training to, ensure these staff members deliver culturally appropriate care and support. Staff working with migrants, refugees and asylum seekers should be encouraged to receive cultural competence training, which would help them to better understand cultural differences and the experience of those fleeing from violence and to understand the rights of such individuals under the EU Victim's Directive.

LGBT Ireland recommended that unconscious bias training be made available for those involved in family law dealing with LGBTI+ related cases to ensure that they are not influenced by any pre-existing biases when dealing with such cases.

In terms of additional training, the MHC highlighted an important recommendation for a 2009 Report between the MHC and AGS on mental health services and the police, which recommended an expanded training course be implemented for An Garda Síochána on community and social services and on mental illness in crisis. They stated that overall mental health training for Gardaí is limited, which is concerning given their current significant role in involuntary admissions into approved centres under the 2001 Act. The MHC is ascertaining from AGS the number of hours dedicated to mental health training in Templemore and have offered their services to AGS in

clinical, legal and human rights areas if AGS require this for an extended training programme.

5. Protections against hate crime and hate speech

Stakeholders stated that the introduction of Hate Crime legislation would be welcomed to ensure the protection of vulnerable and minority groups from these crimes.

The lack of hate crime legislation in Ireland was noted as a significant barrier that dissuades members of minority groups from engaging with the Gardaí or the justice system, as it places a limit on the ability to prosecute such crimes. This weakens the trust and perception of these individuals in the justice system and stakeholders recommended that this legislation be progressed and enacted as a matter of urgency.

Other recommendations by submissions on how to tackle hate crime and hate speech include:

- Training should be provided through the envisaged Judicial Council, for the Gardaí, prosecutors and judges on the proper methods for identifying, registering, investigating and prosecuting racist incidents and racist hate crimes, as per the recommendation of the Committee on the Elimination of Racial Discrimination of the UN Human Rights Office.
- Specific indicators in crime reporting by members of AGS should be introduced.
- Specific attention should be paid to digital and online offences against Travellers.
- That Ireland develops a comprehensive framework and strategies to address online hate speech. It was recommended that this framework should include criminal and non-legal approaches.
- A public awareness campaign should be launched to educate the public on the privilege and limits of free speech and the repercussions of hate speech.
- The education curriculum should include lessons on online safety including specific lessons on cyber bullying and hate speech.
- The list of protected categories under the Incitement to Hatred Act 1989 should be expanded in line with the Equality Status Acts to include gender, gender identity and disability.
- Support should be provided to victims of racist abuse through counselling or a telephone reporting and information service.

- Members of the media should abide by journalistic ethics and codes of practice and newspapers should not publish material they believe may incite hatred against an individual or group.

Submissions recommended other legislative amendments, including a proposal that legislation be introduced which would prohibit racial profiling and which would contain an independent complaints mechanism for this purpose.

It was also recommended that the prohibition on discrimination in the Equal Status Acts 2000 – 2018 be expanded to explicitly include the functions of public bodies, like AGS, with only necessary exemptions being applied.

6. Impact of intermediaries or voluntary groups in helping to facilitate engagement with the justice system

Stakeholders acknowledged the benefits of involving intermediary groups or bodies as a bridge between minority communities and mainstream services provided by state agencies. Intermediaries enable citizens to avail of their right to access justice by offering encouragement and support. Stakeholders pointed out that such intermediaries have a multitude of additional benefits including

- They gain the trust of the community, as they are from the community themselves and thus have keen empathy and insight into the struggles and barriers of these members when seeking justice.
- Through providing their services, they have consistent contact within their community at a national, regional and local level, which provides them with expert knowledge of the specific struggles of their community.
- They also have strong sectoral networks so that whenever someone around the country needs support, they can be put in contact with one of these networks and they have effective partnerships across all relevant sectors.
- They have strong experience of engaging with state systems in the political, health, education and other areas and intermediaries are resourceful and solution-oriented actors.

It was recommended that intermediaries need to be enabled to engage more with the justice system to ensure access to justice for all is a reality.

It was recommended that Cultural Mediators should be employed by state justice agencies to improve their services by facilitating partnerships with relevant minority community and sector organisation members, who can act as an intermediary for individuals who may have communication difficulties or who may need additional assistance when engaging with the justice system. These mediators would also be well placed to help bring through any systemic changes that may be required to create a more accessible justice system.

7. Additional Points

- Conduct of interviews during the asylum process

AkiDwA highlighted the adversarial experience of being interviewed during the asylum process. Some individuals must recount traumatic details and interviews can occasionally last a full day. Once the interview transcript is signed off there is no chance to verify its accuracy or review its content at a later date. Feedback on the process reflects the fear of some individuals that their interpreters are not exact enough in recounting what they are describing. Some individuals feel their interviews are rushed and not being taken seriously or that they experienced bias or open hostility by interviewers.

To improve this experience for individuals it was recommended that:

- The International Protection Office should be given further resources to clear the backlog in international protection claims.
- Clear timeframes should be adhered to when completing asylum applications, which would result in an individual's first interview taking place within six months and a final decision being issued on their cases within one year.
- The use of audio recordings in such interviews should be considered to review facts and the conduct of interviews after they are finished.
- Interviewees must be culturally sensitive and considerate of the diverse backgrounds of applicants and the different levels of trauma experienced by some applicants.
- Specialised supports should be made available for victims of torture and those who have experienced trauma resulting from conflict or gender specific violence.

- The importance of gathering accurate data regarding minority communities

All stakeholders spoke of the need to improve the gathering of data relating to members of minority communities.

AkiDwA recommended that, similar to the process adopted by the AGS regarding their recruitment numbers, disaggregated data should be collected and disseminated on the number of practicing professionals of the legal profession who are of ethnic minority background. This will help to ascertain the extent of institutional racism in the legal system and to address this issue and assess ongoing progress made in this area. Funding should also be put towards research on racism and racial discrimination within the justice system, to more clearly understand the structural barriers facing people of migrant communities and preventing them from engaging in an equal way with the justice system.

The Irish Traveller Movement recommended that a standardised ethnic identifier should be adopted and utilised in all administrative systems, state agencies and surveys, in line with the recommendation from the Committee on the Elimination of Racial Discrimination. This should also be reflected in Policing priorities and plans.

Submissions recommended that all reports of racist hate speech and abuse should be systematically collected and their data should be analysed to better inform the responses to hate crime.

- Protections for women from minority communities who experience domestic violence or female genital mutilation (FGM)

AkiDwA outlined that many migrant women fear reporting cases of domestic abuse due to the potential repercussions for their legal status, despite a report from Women's Aid in 2019 highlighting that 92 % (757) of calls made to their helpline were from migrant women.

AkiDwA made several recommendations to better assist victims of domestic violence from minority communities.

- All Governmental policies and laws on violence against women should be reviewed, including the Habitual Residence Condition, which can restrict women who leave their partner due to violence but do not qualify for this condition from receiving social welfare payments. This can force victims to remain living with their perpetrator as a result.
- The Government should fully incorporate articles 59-62 of the Istanbul Convention to protect migrant and refugee women from domestic violence regardless of immigration status.
- Ireland should opt into the EU Directive on Family Reunification and introduce legislation which provides for autonomous residence permits.
- The protection of undocumented women from domestic violence should also be regarded as a priority in immigration reform.

AkiDwA also recommended that the Government adopt a National Action plan on FGM to provide a coordination national response to this issue. It was recommended that this plan should be steered by an interdepartmental working group, partnered with civil society, survivors and affected communities.

APPENDICES

APPENDIX 1- ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)¹; and

¹ Retained pending review of the Joint Committee on Public Petitions

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

- (a) consents to such consideration, or
- (b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

- (a) the Committee Stage of a Bill,
- (b) Estimates for Public Services, or
- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.²

² Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory

Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,

and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State, shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).’

APPENDIX 2 - LIST OF STAKEHOLDERS AND SUBMISSIONS

- The Courts Service
- Irish Network against Racism (INAR)
- Mental Health Commission
- Irish Traveller Movement (ITM)
- LGBT Ireland
- AkiDwA
- An Garda Síochána

[Submissions are available in the online version of the Committee's Report, which will be accessible at <https://www.oireachtas.ie/en/committees/33/justice/>].



An tSeirbhís Chúirteanna
Courts Service

MJS_01

Mr. Alan Guidon,
Clerk to the Joint Committee on Justice
Joint Committee on Justice
Leinster House
Dublin 2

6th August 2021

Ref: JCJ/04/06/D/02

Dear Mr. Guidon,

I refer to your letter of 16th July 2021 inviting the Courts Service to make a written submission on the topic of “**Minorities engaging with the justice system**”.

Please find at Appendix 1 attached our submission in response to the specific areas of interest raised.

I hope that this is of assistance to you. Should you require any further information I can be contacted at officeoftheceo@courts.ie or by contacting Michelle Johnston, Principal Officer at 01-8886426.

Yours sincerely

Angela Denning
Chief Executive Officer



An tSeirbhís Chúirteanna
Courts Service

Appendix 1

1. Provide insight into the experience of a particular minority group when engaging with the justice system

The Courts Service takes its commitment to serve all persons equally very seriously and strives to ensure that our commitment to public service values ensures that the court user is at the heart of all services provided and that we foster the highest standards of ethics and integrity.

The Courts Service is in the course of finalising its assessment of the equality and human rights issues relevant to its purpose and functions, as required under section 42 of the Irish Human Rights and Equality Act 2014 and it is expected to publish its action plan over the coming weeks. Included in the assessment is a commitment to ensure that a human centred service design approach is adopted and progressed as part of our Modernisation Programme. The Plan will also include a commitment to implement training to develop awareness of human rights, equality and supporting our vulnerable court users.

We are also in the process of drafting our People and Organisation Strategy for 2022 /2024 which will include a significant commitment to embed ways of working that promote Human Rights and create an inclusive and diverse work force. By embedding human rights and creating diversity, we seek to ensure that our staff will have a greater appreciation and awareness of challenges faced by minorities accessing justice.

Justice being blind is at the cornerstone of a democratic justice system and in the majority of cases, a court user's membership of any minority or particular group is not known to the Courts Service. However, as part of its ongoing operations and modernisation efforts, the Courts Service is very mindful of the even more important principle of universal access to justice.



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Therefore, through engagement with users' groups, the Courts Service aims to identify any additional barriers faced by court users and when possible address them (e.g. providing accessibility officers, interpretation services, etc) while being faithful to the principle of impartiality.

2. What supports are currently available to minority groups when engaging with the justice system?

The Courts Service's policy on accessibility aims to provide facilities for all users of the courts, including judges, staff, legal practitioners, victims, witnesses, accused persons, media and members of the public. Everyone who attends court presents with a different set of circumstances, a varying degree of understanding and a personalised set of needs. It is recognised that access is about more than physical access to buildings.

Many in marginalised groups neither recognise their problems as legal ones nor identify the potential legal remedies for those problems. The Courts Service is conscious that access to clear easily understood information, an understanding of court processes and inclusion in court proceedings needs to be provided in an atmosphere of equality, particularly for unrepresented litigants.

We have taken the following measures to improve access to the courts:

- Members of the public and those with cases before the court can adapt hearing aids to make use of induction loops which form part of our public address system in the courtrooms of refurbished buildings
- Tactile signage at reasonable height is provided for those with impaired vision
- Wheelchair ramps and lifts are provided in many courthouses
- Users of wheelchairs can give evidence in many courthouses at the front of the court beside the witness box
- Interpreter services including for sign language are provided in an increasing range of cases



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- In late 2020 we upgraded our website www.courts.ie to make it more easily navigable for those without legal training. The new website is fully accessible and significant efforts have been made to reduce the amount of legal language used.
- The recent introduction of a style guide for documents and letters which mandates the use of plain English and fonts which are more easily read by users with literacy challenges.
- The platform used for court hearings held remotely is a leading video interoperability solution. For the court user it is very simple to use and is accessible from any device without the requirement for additional software so as to minimise potential barriers to access to justice. The Courts Service believe that the increased use of remote courts will assist those for whom the hidden cost of attending court (time off work, childcare, parking and travel costs) present a barrier.

The Courts Service also provides assistance through its Access Officer who is available to assist with individual requests for assistance. Heads of Court Offices can also assist in this regard.

3. What are the difficulties or barriers facing minorities when engaging with the justice system? (e.g. language barriers, cultural differences etc)

As part of the Courts Service's modernisation programme, engagement has taken place with representative groups and end users from many backgrounds to understand their pain points in the current civil and family law systems and/or to design an inclusive and accessible future state.

Some of the difficulties were reported as follows:

- Crowded courtrooms and courthouses are intimidating and can be overwhelming particularly for people with sensory disabilities;
- Knowing what to expect in Court, how to behave in Court and understanding the language and formal setting of Court can be difficult and intimidating for any first



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time users but particularly those from minority groups with language, literacy issues and those with limited means

- 'Last minute culture' regarding the provision of reports, the use of legal terms and the pace of court proceedings can all make it difficult for those with communication difficulties or language barriers;
- Wayfinding and acoustics particularly in heritage courtrooms are difficult for a lot of users particularly those with disabilities or language barriers;
- Lack of interpretation services in advance of court, during Court (for Civil business) and after court makes it impossible for some to engage with the system if they do not have a family member or a friend who can bridge this gap; and
- Some support services and our courts service administration are 'gendered'. Future services need to give an opportunity for people to choose how they should be addressed

4. What improvements could be made/specialised supports be provided to improve the experience of minority groups engaging with the justice system?

The objective of the Courts Service's Modernisation Programme is to focus on redesigning services around the user that will allow us to deliver services that are inclusive to all and easier, quicker and more cost efficient for all those who use our services. We are presently in the research/consultation phase of this programme to identify difficulties such as those listed above and will seek to improve on them.

The Courts Service has recently become a "JAM Card" friendly organisation. JAM Card allows people with a learning difficulty, autism or communication barrier tell others they need '*Just A Minute*' discreetly and easily. Those with a communication barrier are often reluctant or unable to tell others about their condition. JAM Card allows this to happen in a simple, effective non-verbal manner.

5. What is the impact of intermediaries or voluntary groups that help facilitate engagement between minorities and the justice system?



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We do not have any specific information on the impact of intermediaries or voluntary groups on this issue. Any feedback in this regard would be welcomed by the Courts Service.

**Submission to Oireachtas Justice Committee
August 2021**

Irish Network Against Racism (INAR)



Comments on the Elective Topic: Minorities engaging with the Justice System.

The Irish Network Against Racism ([INAR](#)) coordinates a network of over 160 civil society organisations in Ireland to share practices and develop common positions on questions relating to all forms of racism in Ireland. INAR has pioneered the [iReport.ie](#) racist incident reporting system since 2013, logging [thousands of hate crimes and racist incidents](#) and producing from their data cutting edge reports and policy submissions to national and international reporting bodies, government and media. INAR is an active member of the European Network Against Racism (ENAR), itself a civil society network across 30 European states. INAR makes submissions on racism and discrimination in Ireland to the Government, National Authorities, and the European Union, the OSCE, the Council of Europe and UN bodies. INAR prepared and presented the Irish Civil Society collective [Shadow Report](#) to the UN Committee for the Elimination of Racial Discrimination (UN CERD) hearing on Ireland in November 2019. INAR has also contributed to the Future of Policing in Ireland report, and numerous other policy submissions.

INAR is a founder member and former coordinating organisation of the Coalition Against Hate Crime Ireland (CAHC) (2017-21), an inter-NGO alliance (anti-racism, LGBTQIA+,

disability rights org) lobbying for Hate Crime Legislation and related policy in Ireland. INAR Chairs the Garda National Diversity Forum, overseeing the implementation of the An Garda Síochána Diversity Strategy (2018-21).

In 2020 INAR's Director was appointed by the Minister of Justice to advisory Government Anti-Racism Committee (ARC) (2020-21) - now under the aegis of the Minister for Equality, developing the National Action Plan Against Racism (NAPAR).

INAR is a participant in several projects in the area of hate crime and minority relations with the criminal justice system, including the 'Facts Against Hate' programme (commended by the EU Fundamental Rights Agency) with OSCE/ODIHR, the Finnish Ministries of Justice and Equality and Finnish Police Training College, and Finnish and Croatian human rights groups monitoring hate crime. Similarly, INAR is a key partner in EU-wide "[Facing Facts](#)" project led by CEJI (Jewish Contribution to an Inclusive Europe); researching and developing online training courses for NGOs, Prosecutors and Police forces (Italy, Hungary, Spain, Belgium, Ireland) in responding to, hate speech, hate crimes and monitoring hate crimes. INAR is the co-author of "[Connecting on Hate Crime in Europe, Country Report for Ireland](#)", and has subsequently co-developed the 'Facing Facts' online training module for Gardaí with Garda Síochána College and the Garda National Diversity and Inclusion Unit (GNDIU) (2021).

INAR is established as a 'trusted reporter' for hate content with Facebook, Twitter, Google/YouTube, and as the European Commission's Irish civil society partner for the EC annual hate content 'Monitoring Exercise' on Social Media platforms' adherence to EC Voluntary Code of Conduct.

Our submission to the Justice Committee here on the Heads of Bill, and other issues relating to minority access to justice, brings together findings and learnings from our collaborations, previous consultations and research, including from iReport.ie data, and from consultations with our member organisations, civil society partners and other key stakeholders.

Minorities engaging with the Justice System

Introduction

As INAR we work with people and groups from all backgrounds who experience racism, racial discrimination and hate crime - all *racialised groups* - as a result, we are unable to single out one group to focus on in our submission. In the context of Ireland, Travellers, Roma, Jews, Muslims, Black people, asylum seekers, refugees, people from an immigrant background, second, third generation, and undocumented people, etc. share experiences of racism, which suggests a common approach to tackling the root structural and institutional underpinnings is necessary. An overall principle of the criminal justice system is to provide justice for everyone in society therefore INAR suggest the following key areas of work with recommendations:

1. Policy Reform

Ethnic minorities and migrants are still experiencing challenges in accessing their rights and justice. One of the key areas to ensuring equal access to the criminal justice system is policy reform. Our findings tell us that the criminal justice system can fail minorities, especially in those places where racism and racial discrimination is normalised and embedded in the structures.

Our research has shown that most victims from minority groups do not report crimes. Minorities report to us that one of the reasons is that victims are deterred by what they regard as a hostile court system. For ethnic minorities, the apprehensiveness can start from the conduct and the treatment they receive from the police. The state should put in place policies and safeguards that empower right-holders to access their rights and justice, starting with their first contact with An Garda Síochána. The government needs to address issues of racial and ethnic equality in the justice system and ensure a proportionate representation of migrants and ethnic minorities in the criminal justice system.

Policy changes must be put in place to dismantle every barrier victims encounter in the criminal justice system. There is a need to make the system more humane and compassionate for the most vulnerable people and groups it serves. Policies must be deliberate enough to address the weaknesses and limitations of the current regulatory framework and reduce racial disparities in the criminal justice system. Laws are important in the criminal justice system because they impact individuals' lives in terms of delineating what society will and will not accept and dictates how police officers are going to conduct business.

Recommendations:

- i. Develop a National Action Plan Against Racism (NAPAR) across government departments and state functions, integrating with key initiatives including the Roadmap on Social Inclusion, the Women's Strategy and the upcoming Children's Guarantee.
- ii. Restore an independent body with functions of NCCRI as a home for anti-racism work by the State, and to oversee the implementation of a NAPAR.
- iii. Minimum examinable mandatory training standards on anti-racism and human rights for all state servants and professionals, e.g., social workers, Gardaí, Legal professionals, frontline public servants Government targets e.g., appointments in public services. (See section on Public Sector Duty below)
- iv. Publication of disaggregated data relevant to antidiscrimination and anti-racism from public bodies
- v. Provide for regular monitoring of infringements of anti-discrimination laws.
- vi. Raise awareness of anti-discrimination legislation in public and key groups including asylum seekers
- vii. Implement the Online Safety and Media Regulation Bill to be in line with international human rights standards.
- viii. In addition to Hate Crime legislation, put in place measures to tackle hateful behaviours, organising and other uses of online platforms by the far-right
- ix. Implement new hate Crime and incitement to hatred legislation, paying due regard to the test of the hate element (see above).
- x. Ensure that hate crime is properly recorded.
- xi. Ensure that cases of racism, discrimination and hate crime are thoroughly investigated and prosecuted.

- xii. Effectively investigate and, as appropriate, prosecute and punish acts of speech that incite hatred
- xiii. Support the Electoral Commission, once established, to address the prohibition of racist hate speech in line with EU protocol
- xiv. Inform and sensitize the public about racist hate speech.
- xv. Provide best practice hate crime and anti-discrimination training for the police, prosecutors, and judges.
- xvi. Monitor racist incidents and the implementation of anti-racism measures including training within the criminal justice system.
- xvii. Consider gender and other identities in consultation platforms.
- xviii. Take measures to identify and protect victims of trafficking
- xix. Adopt ethnic identifiers across government and public bodies,
- xx. Provide information and legal advice on immigration to children and those supporting them.
- xxi. Integrate restorative justice into operational practices.

1. Reform of the Criminal Justice System

The effects of racism can be devastating on individuals/ groups and have lasting consequences. Reforming the criminal justice system is key to empowering individuals and groups to seek legal redress when experiencing discrimination. The state must undertake reform of policing as the entry point to the criminal justice system to strengthen its capacity to respond to the needs of minorities.

Recommendations:

- i. Outlaw, monitor and publish regular reports on racial profiling, and other interactions between Gardaí and minorities
- ii. The government must introduce the concept of “firewall protection”, providing a clear separation between the provision of public services and immigration enforcement to ensure that migrants are guaranteed equal access to justice and basic rights should they fall victim or witness a crime.
- iii. Develop expertise appropriate for policing a highly diverse and integrated society.
- iv. Ensure effective usage by AGS of all hate crimes and incitement to hatred provisions in the law.
- v. Develop anti-discrimination plans for the police.
- vi. Strengthen human rights and equality training.
- vii. Resource and implement human rights and anti-racist work within the force.
- viii. Promote [a culture of Human Rights, Diversity, Equality and Interculturalism](#).
- ix. Provide training for all personnel across the criminal justice system to be equipped to deal with the intersectional nature of hate crime, as well as the intersectional nature of domestic violence and sexual and gender-based violence.
- x. Provide clear, simple, well communicated and accessible reporting procedures.
- xi. Establish partnerships with civil society organisations working in human rights protection to ensure the development of high quality, well-informed policies and to monitor progress on relations between police and minorities.
- xii. Ensure full implementation of Garda Diversity and Integration Strategies.
- xiii. Promote diversity and inclusion by recruiting ethnic minorities in the force
- xiv. Establish minimal professional standards for interpreting services in Ireland.
- xv. Ensure the effective implementation and monitoring of a dedicated helpline and website accessible by all to report incidents and find support.
- xvi. identify ways in which to address trial delays and improve efficiency within the criminal justice system,
- xvii. Fully implement the recommendations of [the Future of Policing in Ireland](#).

1. Public Sector Duty (Equality and Human Rights)

The Public Sector Equality and Human Rights Duty ('the Duty') places a statutory obligation on public bodies to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work. The Irish Government must ensure the full implementation of the Public Sector Equality and Human Rights Duty.

Recommendations:

- i. Public sector bodies to develop and publish strategic plans which demonstrate how they will meet their Public Sector Human Rights and Equality Duty obligations
- ii. Enhance IHREC's enforcement role vis-a-vis implementing the Public Sector Duty.
- iii. Integrating human rights and equality objectives in the implementation processes.
- iv. Build partnership with and ensure participation of organisations working in the human rights field particularly organisations representing ethnic minorities in the development and implementation of the plan.
- v. Raise awareness on the public sector duty and explore effective ways of implementing it.
- vi. The state must ensure its full and effective implementation.

1. Reform of the Workplace Relations Commission

The Workplace Relations Commission is important in the resolution of employment disputes particularly for minority groups who face significant challenges in the access of justice, therefore it is vital to ensure that the system is robust and that both parties regardless of the outcome should feel that they have received a fair hearing. To ensure that justice prevails the adjudication process must not just be efficient but must also be transparent. The WRC must be a platform for workers to have their rights vindicated and must be done in a manner that promotes fairness, justice and equality. The Government must take the necessary steps to address the challenges associated with the WRC system and ensure that it works effectively and fairly to guarantee access to justice for all.

Recommendations:

- i. Review the effectiveness of Equal Status and Equality in Employment Acts and access to justice using them, moving rapidly to reform the Workplace Relations Commission to create a body equivalent to the former Equality Tribunal with support to ensure equitable access to ensure effective uptake. This must ensure equitable outcomes of the Equality Acts on 'Race' and related grounds, and of complaints about licensed premises and other related breaches of the Equal Status Act.
- ii. Support and resource independent advocacy services such as Citizens Information Centers and Law Centers to recognise cases which come under the 'Race' and related grounds, and effectively use Equality legislation to remedy them.
- iii. Extend access to Legal Aid for cases under Equality legislation
- iv. The process of appointment of the adjudication officers must ensure independence and impartiality as these are fundamental components of the capacity to administer justice.

- v. Need for adjudicating officers to have formal legal training to ensure legal correctness of rulings.
- vi. Need to align rules of procedure with the Constitution
- vii. Need for an appeal mechanism to the Courts to resolve disputes heard by the WRC.

1. Support NGOs working in anti-racism to support victims of hate crime.

Civil society plays a key role in the progressive realisation of human rights and democratic norms. These organisations are best placed to be aware of the challenges faced and suggest viable solutions. The state should ensure adequate resourcing to allow organisations to make a meaningful contribution including grassroots communities.

Recommendations:

- i. The government should ensure that NGOs and grassroots organisations working in anti-racism are fully resourced and staffed to ensure an efficient discharge of their duties.
- ii. In partnership with civil society, the government must develop community initiatives that bring communities together in support of the recognition of minorities, integration, diversity and inclusion.
- iii. Promote synergies and linkages which enables departments, agencies and NGOs to tackle structural racism and other issues.
- iv. Create platforms for respectful dialogue among all groups and pathways towards equality and justice for all people.

Thank you for the invitation to make this submission; we are at your disposal for any further questions. We look forward to having the opportunity to discuss these proposals in person.

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INAR, Irish Network Against Racism
August 2021

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Rialtas na hÉireann
Government of Ireland



pobal

government supporting communities



Mental Health Commission (MHC) submission on

People with Mental Illness Engaging with the Justice System

Part 1: Remit of the MHC

Introduction

The MHC is the regulator for mental health services in Ireland. It is an independent statutory body that was established under the Mental Health Acts 2001-2018 (the 2001 Act) in April 2001. A core function of the MHC is to oversee and implement the process for independent review of involuntary admissions into approved centres which came into effect following full commencement of the 2001 Act in November 2006.

The MHC has a statutory mandate to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to protect the interests of persons admitted and detained under the 2001 Act.

In 2017, the MHC welcomed the establishment of the Decision Support Service (DSS) under the Assisted Decision-Making (Capacity) Act 2015, which extended the remit of the MHC beyond mental health services to include all relevant persons in Ireland who may require support in decision-making.

Mental health services and regulation

Under the 2001 Act, the statutory scope of mental health regulation is limited to in-patient services (approved centres), which are estimated to make up 1% of services nationally. However, 90% of mental health services are delivered in primary care settings. A further 10% are delivered within specialist mental health services, including 24-hour nurse staffed community residences, which are unregulated. The General Scheme to amend the 2001 Act, as approved by Cabinet on 13 July 2021, set out the intention of the State to expand the regulation of mental health services to the community.

Forensic Mental Health Services

At the outset, the MHC also welcomes the work of the Department of Health and the HSE to progress the opening of the National Forensic Mental Health Service (NFMHS) in Portrane. This is a huge step forward in terms of the delivery of a service that shall fully meet the human rights of those involuntarily detained under the 2001 Act, while also providing a service for people who have been found not guilty by reason of insanity and who also have a mental illness. The facility is world-class, and all involved should be congratulated for delivering Ireland's newest hospital on budget.

The MHC would note that since November 2006, there has been an ongoing difficulty in getting patients transferred from local approved centres to the Central Mental Hospital for treatment. It is hoped that given the expansion in bed numbers and additional step-down facilities, more people will be catered for. However, as we will still have one of the lowest in-patient bed per capita in Europe, it is the prevailing view that numbers will increase, and more in-patient forensic beds will be required. The NFMHS is only a small part of what constitutes an adequate forensic mental health service.

The MHC sought and the Department of Health agreed that there would be an amendment to the 2001 Act to address the above issue. Section 22 of the 2001 Act shall be amended to include the following -

Where a review board has authorised the transfer of the person under this section to the Central Mental Hospital, and that person has been detained for a continuous period of 3 months in the Central Mental Hospital, the detention shall not continue beyond that period unless the clinical

director of the approved inpatient facility from which the person was transferred approves the further detention and the clinical director of the Central Mental Hospital has consented in writing to the further detention. The approval and consent shall be valid for a period of 3 months and thereafter for periods of 3 months, if, in respect of each period, the approval and consent is obtained.

A report shall be provided by the clinical director of the Central Mental Hospital to the Commission each quarter regarding the status of the persons detained in the Central Mental Hospital under this Act and the status of all of the pending applications for transfer to the Central Mental Hospital.

The Commission shall publish a Code of Practice in relation to this section.

The Inspector of Mental Health Services is collaborating with the Inspector of Prisons to report on Ireland's approach to Forensic Mental Health Services.

The Inspector is acutely aware of the lack of pre-arrest diversion, police custody diversion, court diversion and post-release follow-up services nationwide. The waiting list for treatment in the Central Mental Hospital is unacceptably long for both remand and sentenced prisoners as well as those waiting to transfer from local mental health services. She is also aware of the lack of regional intensive rehabilitation and psychiatric intensive care units as well as the lack of resources in Cork and Limerick prison in-reach services.

The Inspector is concerned about the governance of forensic mental health services outside Dublin and the model of a "national" forensic mental health service that does not include Cork and Limerick.

The Inspector is happy to appraise the Committee of her findings.

Part 2: People with Mental Illness Engaging with the Justice System

People with mental illness are a significant and growing minority group in Ireland. Support, care, and treatment in the community are key to enabling recovery. The State has a mental health strategy "*Sharing the Vision*" (launched June 2020) and as noted above is also amending the mental health legislation with a view to the continuous improvement and modernisation of our mental health services. The MHC welcomes and endorses this approach.

However, a key theme that permeates most published reports over the last twenty years is the ongoing effect of stigma and discrimination experienced by people with a mental illness. In most stakeholder engagement by the MHC, people have expressed deep concerns about the ongoing impact of the stigma associated with mental illness and the discrimination experienced by people with a mental illness. Those with mental illness and who as a consequence have committed offences are doubly stigmatised.

There is clear evidence that stigma can lead to social exclusion and affect accessibility to a wide range of social and community services. The World Health Organisation advocates the establishment of strong collaborative networks across State services. This is essential to the quality of life of people with a mental illness. A key to supporting people to receive appropriate services is to ensure collaboration and integration across social welfare, labour, education, transport, justice, and health.

Good collaborative structures and processes between our mental health system and our justice system are key to ensuring people with a mental illness receive appropriate care and treatment in a health system rather than falling into the justice system. As will be evidenced later, there are now thousands of people affected by this poor collaboration between State services, with numbers significantly increasing during the COVID-19 pandemic.

The MHC advises that the best way to support people with a mental illness is through the provision of 24/7 mental health services based on clinical needs rather than the ability to pay. Ensuring all people with a mental illness have access to specialist care and treatment is the primary way to support them and to remove and/or reduce the unnecessary and potentially traumatising interaction with the justice system.

People with a mental illness and An Garda Síochána

For the purposes of this submission, the MHC wishes to focus on the interaction of people with a mental illness and An Garda Síochána. Our work has demonstrated that this area requires urgent attention.

As far back as 2009, the MHC and An Garda Síochána issued the 'Report of the Joint Working Group on Mental Health Services and the Police' which recommended a multifaceted approach to include An Garda Síochána, the Health Service Executive and service user organisations. The recommendations emphasised the importance of collaboration and joint working while respecting the different areas of expertise and responsibilities of all those involved.

The 2009 report came after a series of tragic incidents nationally involving individuals in acute social stress. Unfortunately, **over 12 years later**, we continue to observe these tragic incidents. While not all social crises in the community are of a psychiatric nature, a considerable proportion remain so. The crises involve both adults and children and are often connected; not just with mental illness but with a range of other social factors including alcohol and drug abuse and family breakdown.

The appropriate response to these crises usually involves inputs from a range of services and disciplines. Crises can occur at any time and at any place, so relevant services need to be available on a 24/7 basis, not Monday to Friday from 9am to 5pm. The need for these emergency services has been increased by the move from institutional to community care across a range of disciplines. In the case of mental health services, the shift to community care has been taking place over the last 25 years, although it is by no means even close to completion. While the previous institutional provision for mental health care has been greatly reduced, the problem is that the appropriate alternative community mental health structures have been slow to materialise.

To date, the need for cooperation and alliances with service users, families, carers, and the range of other disciplines have not been fully realised. Other professional groups such as An Garda Síochána, general practitioners, social service departments, housing agencies and a range of voluntary organisations that care for the disadvantaged in the community, all have particular relevance and a part to play in dealing with crises situations. However, despite the recommendations of the 2009 report, An Garda Síochána remains the only agency immediately available day or night to respond to crises in the community and are often unfairly and inappropriately left to deal with mental illness and associated social crises with limited training and very limited supports.

The limited degree to which the recommendations on the essential requirement for an interface between different areas of service provision have been addressed since 2009 is striking and represents a failure to assist the most vulnerable in our society.

The 2009 report recommended the creation of a 24 hour, 7-day a week statutory social work service. That the failure to put this service in place has been highlighted most prominently in recent years by several tragic instances speaks volumes.

The 2009 Report also recommended the importance of an expanded training course for An Garda Síochána on community and social services, together with mental illness in crisis. It also highlighted the importance of joint protocols between the mental health services and An Garda Síochána, together with associated formal liaison systems. The MHC's understanding is that while there has been some limited expansion of training, overall training for Gardaí around mental health is very limited and is simply not adequate.

The 2009 Report also noted the lack of adequate court diversion programmes for dealing with minor criminal matters involving individuals with mental health problems. The ascertainment of these individuals and the implementation of court diversion programmes at District Court level are sorely needed.

There are many models internationally of crisis intervention teams whereby police and mental health professionals provide a pre-arrest diversion to local mental health services and other community supports. This reduces arrest and detention of people with a mental illness in police stations; reduces court appearances of mentally ill; reduces the number of people ending up in the prison service; and thereby reduces the burden on forensic mental health services. By not providing such a service, Ireland lags far behind internationally.

Protection of Human Rights of People with Mental Illness detained by An Gardaí pursuant to the Mental Health Acts

As stated at the outset, the MHC has a mandate to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to protect the interests of persons admitted and detained under the 2001 Act. For a person to be admitted involuntarily to an approved centre under the 2001 Act, another person must make an application to a GP who then has to make a recommendation to an approved centre. The consultant psychiatrist in the approved centre then must decide to make an admission order or not. There are strict criteria set out in the 2001 Act relating to this admission process¹.

Under Section 9 of the 2001 Act, an application may be made by one of the following –

- A family member
- An authorised officer employed by the HSE
- A member of An Gardaí
- Subject to certain limitation any other person.

In addition, a member of An Gardaí can make an application to a GP under section 12 of the 2001 Act subject to certain criteria. It was expected that section 12 applications would only be made in exceptional cases.

For the purpose of this submission, the MHC has set out in full the text of section 12 of the 2001 Act as follows –

¹ Please see page X of the MHC's Annual report 2020 for further information on this process – [insert link to Annual Report]

(1) Where a member of the Garda Síochána has reasonable grounds for believing **that a person is suffering from a mental disorder and that because of the mental disorder there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons** [emphasis added], the member may either alone or with any other members of the Garda Síochána—

- (a) Take the person into custody, and
- (b) Enter if need be by force any dwelling or other premises or any place if he or she has reasonable grounds for believing that the person is to be found there.

(2) Where a member of the Garda Síochána takes a person into custody under subsection (1), he or she or any other member of the Garda Síochána shall make an application **forthwith** [emphasis added] in a form specified by the Commission to a registered medical practitioner for a recommendation.

(3) The provisions of sections 10 and 11 shall apply to an application under this section as they apply to an application under section 9² with any necessary modifications.

(4) If an application under this section is refused by the registered medical practitioner pursuant to the provisions of section 10, the person the subject of the application shall be released from custody immediately.

(5) Where, following an application under this section, a recommendation is made in relation to a person, a member of the Garda Síochána shall remove the person to the approved centre specified in the recommendation.

Of the **1,919** admission orders for involuntary detention in psychiatric units from the community in 2020³, the largest number of applications for involuntary admission – 32% - were made by An Gardaí.

It was the expectation of the MHC that the number of applications by An Gardaí, family members and others would gradually decrease, and that the majority of applications would be made by appropriately trained authorised officers.

Given the increase in the applications made by An Gardaí, the MHC contacted the Garda Commissioner and the Policing Authority and met with them in July 2021 to discuss its concerns. In that regard, the MHC wishes to acknowledge that An Gardaí have engaged in a meaningful way with the MHC and share a number of the MHC's concerns - not least the human rights aspect of Section 12 in 2021.

The statistics provided to the MHC by An Gardaí in relation to use of section 12 applications are worryingly high and may indicate a systemic issue where thousands of people are being detained by An Gardaí ostensibly with little independent scrutiny.

Year	Data Statistics
2018	4002
2019	4816
2020	5756

² <http://www.irishstatutebook.ie/eli/2001/act/25/enacted/en/html>

³ Admissions may also be made within the approved centre.

2021 (July - Year to date)	3071 (5% increase to date on figures for 2020)
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The MHC has written to the Assistant Commissioner responsible asking if section 12 was formally commenced in relation to each of the 5,726 cases in 2021.

In all these cases there is a lack of clarity of the process involved; how each case has been recorded; what paperwork has been completed (and if it has, what form the paperwork takes); and if there has been an audit/review process undertaken for these applications.

The MHC confirmed in its 2020 Annual report that 616 admission orders were made following an application by An Gardaí. What is not clear is what happened in relation to the balance of the cases in 2020 – 5,140 - that did not require hospital admission. For example, how long were people detained and in what environment; were all people seen by a GP as required; did the GP make a recommendation or otherwise?

The MHC has requested details of the documented pathway from the time a person is taken into custody under Section 12 until the application is made or the person is discharged, or time runs out and the person has to be released. This is required to ensure transparency and the vindication of the rights of the detained person.

In summary, the 2020 statistics raise a number of concerns for the MHC –

1. The applications by authorised officers **decreased** and those from An Gardaí **increased** for the second year in a row.
2. The increase in applications by An Gardaí occurred during COVID-19 when persons requiring treatment might have been even more vulnerable and intervention by An Gardaí could have caused more distress.
3. Section 12 was intended to be used as an exceptional measure, not the main method of making applications. Thousands of cases of detention by An Gardaí may indicate a systemic issue which the State needs to address.
4. The training of An Gardaí to make the relevant assessment under section 12 (1) – “...that a person is suffering from a mental disorder and that because of the mental disorder there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons” – is not clear⁴.
5. The lack of information about the pathway of persons taken into custody under section 12.
6. The length of time a person is kept in custody. Section 12 is silent on a timeline but simply states forthwith. In the MHC’s view, forthwith means immediately and therefore not longer than 24 hours.

⁴ The MHC is aware that training is provided but we understand this may be limited to a day or at most two days.

A Report in March 2015 of an Expert Review Group looking at amendments required to the 2001 Act strongly recommended that all applications should be made by authorised officers. The MHC, in its submission to the Department of Health in March 2020, supported this recommendation and expanded upon it. The MHC is glad to note that in the General Scheme to amend the 2001 Act has included these amendments with the result that only authorised officers may make applications under sections 9 or 12 of the 2001 Act.

Garda Training

The MHC is liaising with An Gardaí to understand the current number of hours dedicated to training in mental health matters either in Templemore or otherwise.

In addition, the MHC has offered its service and assistance to An Gardaí in relation to any expansion of the existing training programme given its expertise in this area from a clinical, legal and human rights perspective.

The MHC welcomes the piloting of a pre-arrest diversion project in Limerick and would expect that this will lead to appropriately staffed crisis intervention teams, made up of mental health personnel and members of An Garda Síochána.

The MHC urge that an adequate diversion system for mentally ill people who come into contact with the justice system is put in place nationwide as soon as possible.



The Joint Oireachtas Committee on Justice 'Minorities engaging with the Justice System'

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The Irish Traveller Movement welcome the opportunity to submit to The Joint Committee on Justice on the Elective topic of 'Minorities engaging with the Justice System'.

Summary recommendations

Access for Travellers to a dedicated, free and specialised service

- Resource the establishment of a Traveller Independent Law Centre to service a national demand.

To address deficiencies in Equality Legislation

- Amend Section 14 of the Equal Status Acts 2000 – 2018 to ensure an effective remedy is available for discrimination that has a legislative basis.
- Amend section 19 of The Intoxicating Liquor Acts 1987 given significant barriers for Travellers challenging discrimination experienced in accessing goods and services.
- Broaden to explicitly include (with only necessary exemptions) the functions of public bodies, including An Garda Síochána, on discrimination in the Equal Status Acts 2000 – 2018.
- Review Ireland's Equality legislation

Civil Legal Aid Scheme

- Expand the scope of the Civil Legal Aid Scheme to include provision of legal aid where legal advice and representation is required in quasi-judicial tribunals and other areas currently not covered by the Civil Legal Aid Act 1995. This includes equality cases before the Workplace Relations Commission in relation to discrimination in the provision of accommodation, in the provision goods and services and in employment.
- Amend the Civil Legal Aid Act 1995 to ensure legal aid is available in eviction cases and fulfil on the recommendations under the European Social Charter.
- Engage Traveller organisations in the proposed review of the Civil Legal Aid Scheme
- Develop engagement strategies with the Traveller community in relation to the Civil Legal Aid Scheme.
- Implement Traveller cultural competency training across LAB staff, administration and legal.
- Appoint a Traveller specific lead within the Board and establish a Traveller advisory group to inform dedicated engagement with the sector.

Hate crime and policing:

- The proposed hate crime legislation and introduction of the specific indicators in crime reporting by An Garda Síochána are urgently required.
- Introduce legislation prohibiting racial profiling with an independent complaints mechanism; a review, with affected communities, of police policy, practices and training; and to incorporate racial profiling issues into the training.
- Implement Intercultural awareness and anti-racism training across the *Garda Síochána* and broaden the prohibition on discrimination in the Equal Status Acts 2000 – 2018 to explicitly include (with only necessary exemptions) the functions of public bodies, including An Garda Síochána.

Traveller evictions:

- Repeal The Criminal Justice Act, as amended, prohibiting nomadism, a core element of Travellers culture and way of life.
- Make exemptions under Section 4 of the Planning and Development Act 2000 for a network of transient halting sites in each local authority area for short stays.

Judiciary

- Undertake CERD recommendations; ‘Provide training through the envisaged Judicial Council, for the police, prosecutors and judges on the proper methods for identifying, registering, investigating and prosecuting racist incidents and racist hate crimes.
- Implement recommendations of the Committee on Economic, Social and Cultural Rights and ‘enhance training for judges, lawyers and public officials.
- Provide anti-racism and cultural competency training as part of the Bar Continued Professional Development Programme, and for staff in other areas
- Include the theme of diversity and inclusion as it applies to human rights law in the Established Practitioners' Programme and engage with Traveller and other minority interests as partners.

Improving access in current framings

- Improve access to and the visibility of The Voluntary Assistance Scheme for Travellers.
- With PILA and legal stakeholders convene a Traveller specific legal alliance to ensure reach and make more visible access to pro bono support in the community.

Data

- Implement the following recommendation of the interim report of the Anti-Racism Committee '*We recommend that a standardised ethnic identifier be adopted and rolled out across all routine administrative systems, state agencies and surveys. This is in line with CERD Recommendation 6 (December 2019).*' This should also be reflected in Policing Priorities and Policing Plans.

Background

Founded in 1990, the Irish Traveller Movement is the national advocacy and membership platform which brings together Travellers and representative organisations to develop collective solutions on issues faced by the community to achieve greater equality for Travellers. We represent Traveller interests in national governmental, international and human rights settings. We challenge racism- individual, cultural and structural which Travellers face and promote integration and equality. We are led by our grass roots community membership, deliver expertise in shaping organisations locally and promote community leadership ensuring Traveller's voices are to the forefront of all discussions.

We are mandated by our membership of over 40 local Traveller groups to bring forward policy and related matters to national structures and are represented on national government led fora and strategies and across National Traveller policy, health, mental health, policing, accommodation, education, anti -racism and in equality, anti-racism, community and children's rights bodies. We are innovators of the Yellow Flag schools' diversity Programme, of the now independent Traveller accommodation body, Cena and the first and only Traveller Independent Law Centre 2009- 2014.

Context

1. Travellers are one of the most excluded and discriminated groups in Ireland. High unemployment, poor educational outcomes, chronic disproportionate ill-health, social exclusion and racism is widespread. 73% of the population is under 35yrs ⁽¹⁾ with life expectancy 15 years less for men and 11 years less for women compared to the general population. Suicide is six times the national average accounting for 11% of all Traveller deaths ⁽²⁾. Over 2,000 families live in inadequate, and unsafe conditions, many without access to running water or a toilet and almost 1,000 families live in overcrowded / shared housing ⁽³⁾. Only 1% of Travellers have ever progressed to third-level education across the State, with 55% overall leaving school by the age of 15⁽⁴⁾. Long term exclusion, and experience of discrimination has had a detrimental effect on Traveller's life chances, health status and is evidenced in poor outcomes from birth to death. In 2019 Travellers accounted for 19% of children in Oberstown Children Detention Campus ⁽⁵⁾. By comparison, Travellers account for just over 1% of the population aged 12 to 18.
2. Census 2016 showed 30,987 Travellers self-identified, but a closer estimation of population is found in the Department of Housing, Local Government and Heritage, (DHLGH) last available data 2019, where 10,809 families were enumerated (approx. 45,397 to 57,287 people (family or household size)) throughout the 31 local authority areas.

Access to Justice for Travellers

Travellers are recognised as one of the most excluded and discriminated groups in Ireland, endemic individual and institutional racism are reflected in life, social, health, housing and accommodation, educational and mortality outcomes.

Travellers access to the justice system in civil matters is restricted and concerns continue to be raised by the Irish Traveller Movement and legal advocates given the need to vindicate rights in the context of widespread discrimination, including online racism, access to services generally and the distinct occurrence of evictions. Concerns include:

- a) punitive and regressive legislation which impacts either specifically or more particularly on Travellers, causing an undue burden and more frequent need for legal recourse for e.g., the Criminal Trespass Act, and specifically Section 19 of the Intoxicating Liquor Act 2003
- b) a legal aid system and tribunal which do not sufficiently provide cover for Travellers or equity across all equality grounds
- c) poor understanding among judiciary, legal aid board and legal professionals on equality and lack of Traveller cultural competency, bias and institutional racism within the legal system and in policing.

Analysis of legal support sought by Travellers 2018-2021 (from only available data)

We refer here to information gathered from the ITM, the Irish Human Rights and Equality Commission, The Workplace Relations Commission and the FLAC Traveller Legal Service. Information from the civil legal aid boards is not captured for Travellers and either none or limited information is compiled by the Independent Law Centres. None of these bodies currently use an ethnic identifier in systems. **(This information is tabled at the end of the document)**

Comparative data demonstrates

- a) considerable legal support needed in the areas not covered by legal aid with the greatest need in accommodation and housing.
- b) lower than expected number of engagements by the community across other equality grounds, with a decline in both IHREC and WRC reporting for the year 2019 (reflected in 2020 annual reports).
- c) as civil legal aid is not available on claims of discrimination under the Equal Status Acts, in access to services, housing, accommodation and education, for social welfare appeals, and in employment cases, it is not known if, how and where these queries are captured and if Travellers are referred by the legal aid board(s) to other services.
- d) IHREC queries under the Intoxicating Liquor Acts 2003 – 2008, showed steep decline in the 2020 report, where further examination has been sought.
- e) Data: IHREC data is not disaggregated for Travellers in housing, accommodation and evictions and where further examination has also been sought.

Need for data Travellers are not recorded by use of an ethnic identifier across civil legal aid systems, or courts services and in a limited way in tribunals and legal advice areas. Establishing greater insights on ensuring access to justice for Travellers is impeded by a lack of insights on demands-based information, or disaggregated data to determine highest need areas, to harmonise supports and services. It is also critical to measure the effectiveness of the Public Sector Duty and to determine the practice, policy and procedure of public services towards Travellers

What supports are currently available when engaging with the justice system?

In 2009 the Irish Traveller Movement established a Travellers' right to justice initiative to challenge institutionalised and structural racism using legal recourse, which was subsequently incorporated into the ITM Independent Law Centre. This served an unmet need by providing a free, specialised and

dedicated legal service to the community. It also provided a Strategic Litigation service allowing cases which directly changed / improved Irish law or policy as it impacted on Travellers and indirectly on other groups, creating a fairer Ireland for all. It closed in 2014 due to a lack of government resourcing.

Travellers seeking their right vindicated through **private legal services** have an uneven experience and associated matters include

- Costs associated, and discrimination towards Travellers in private firms.
- Lack of cultural competency within the services, and of specialised equality law.

Access to remedies for Travellers encountering racism and discrimination, and on specific housing, accommodation and eviction matters since the Law Centre closure, has diminished. What is notable is the limited but important role being carried by

- ❑ The FLAC Traveller Legal Service with a dedicated solicitor at practice from 2020 arising from philanthropic funding advocated for by the Traveller sector.
- ❑ Independent law centres.
- ❑ Legal assistance and information offered by the Irish Human Rights and Equality Commission.

What are the difficulties or barriers facing Travellers when engaging with the justice system?

Barriers

1. In civil legal aid

There are short comings in the scheme without adequate scope to provide representation, including where Travellers

- cannot access representation in accommodation, eviction or specific equality matters.
- have no legal representation in taking a case to the Work Place Relations Commission (WRC).
- have no recourse when served with eviction notices due to restrictions under s.28 (9) of the Civil Legal Aid Act 1995
- have no recourse in claims of discrimination under the Equal Status Acts, access to services, housing, accommodation and education and for social welfare appeals, as well as in employment cases.

2. Short comings in practice

- There is lack of awareness of the service in the community and poor engagement to reach into it.
- An over emphasis on family law and less on civil matters, and limited experience in equality matters among solicitors

3. Research, education and data

- Commitments noted in the Legal Aid Board Strategy 2021 /23 are welcome, but robust oversight is required across the service with transparent annual reporting to ensure commitments are delivered, which would give confidence.
- Solicitors and administrative staff are not currently trained in cultural competency, and less equipped to deal with cases that might commonly arise for Travellers

- Community and NGO engagement and communications strategies to deepen community understanding and awareness of the services available, is not currently carried out.
- 4. In the courts and tribunals:
 - Travellers have faced a judiciary and adjudicators who operate without cultural competency training and or appropriate familiarity with related law, in equality matters. Also, there is an insensitivity to barriers faced by Traveller women seeking protection in matters of domestic violence.
 - We refer to concerns and recommendations made by the UN Committee on the Elimination of Racial Discrimination CERD December 2019, ⁽⁶⁾ see above.
 - Cases appealed under the Equal Status Act from the Workplace Relations Commission WRC are heard at the District Court where legal representation is required at a cost, and perceived unfair judgements have been made due to local bias in locations of District Courts.
 - Diversity is not reflected in law practice, across The Bar, Law Society, Courts and Library and Information Services, and there is a mono cultured norm not widely reflective of Ireland's diversity. In seeking Counsel, the State and its services does not reflect greater diversity within legal services and instructions and commissions
- 5. The lack of visibility of Travellers in Law profession is hampered by:
 - a) **At entry level:** In 2017 only 8% of working-age Travellers compared to 73% of non-Travellers had reached leaving certificate at second level ⁽⁸⁾. Given educational disadvantages, there are limited numbers of Travellers progressing to a career in law. Evidence suggests less than 7 people have a law qualification. No similar role models within Law, has an impact. Can't see it, can't be it.
 - b) **Obstacles to achieve occupation in law through** the normal pathways such as education, and related contexts of social and cultural arenas, are a restrictive barrier. For some of the few who have overcome obstacles they encounter a closed and largely mono cultured system, which places a further barrier.

Two critical barriers for Travellers – Impact of The Intoxicating Liquor Acts 2003 – 2008 and Evictions without adequate legal recourse

The Intoxicating Liquor Acts 2003 – 2008

90% of Travellers said they had experienced discrimination and of these 53% from pub staff, 51% from hotel staff and 43% from staff of discos/clubs. ⁽⁹⁾

1. The Irish Traveller Movement has consistently raised concerns in relation to Section 19 of the Intoxicating Liquor Act 2003 and where cases against licensed premises were diverted to the District Court from the Equality Tribunal, which had a disproportionate impact on Travellers who referred the majority of those complaints to the Equality Tribunal, prior to the change in jurisdiction.

2. The change, which happened without wider consultation or a review of the Equal Status Act, undermined Traveller's confidence in objective legal protection and was widely felt to have taken account of commercial and business interests and interpreted as a discriminatory act given the particular impact when contrasted with other grounds protected under the equality legislation, which remained under the then Tribunal.
3. The changes followed that complaints "*on, or at the point of entry to, to a premises that sells alcohol must be made to the District Court* versus if the discrimination happened *somewhere other than "on or at the point of entry to"* to be made to the Tribunal and currently its successor, the Workplace Relations Commission.
4. The impact for Travellers with the change of jurisdiction resulted in a significant reduction in complaints taken, evidenced in recent figures shown below in IHREC's data. In Courts data, of 2016, **26 out of 28** applications to the district courts under the provisions of Section 19 of the Intoxicating Liquor Act were lodged by Travellers, **27 out of 28** of those applications were struck out, withdrawn or adjourned. In 2017, **51 out of 52** applications were by Travellers, and **50 out of 52** were struck off, withdrawn or adjourned⁽¹⁰⁾.
5. The Advisory Committee to the Framework Convention on National Minorities 2018, questioned "whether the current legal framework provides sufficient procedural guarantees vis-à-vis the requirements of Article 4" of the Convention, and recommended the State⁽¹⁰⁾ "change the existing procedure before the district courts", or provide an alternative mechanism, so the remedy provided ensures any potential victim of discrimination the same procedural guarantees as those of an anti-discrimination body."
6. Similarly, The CERD⁽⁶⁾ in December 2019, called for the State party "to take necessary steps to ensure that the discrimination in licensed premises is covered by the Equality Status Acts 2000 to 2018 and complaints thereon are dealt by the Workplace Relations Commission with a view to enhancing the accessibility of minority groups to effective remedies".

There are no reasonable grounds for discrimination on licensed premises to be treated any differently, to other services, and the barriers noted for Travellers in the District Court include

- a) It is a **judicial body** and not deemed accessible to Travellers, where prejudice and discrimination is experienced.
- b) **The expertise** derived through the Equality Tribunal, and subsequently the Workplace Relations Commission is not available to judges dispersed across the Circuit Court service and who may have little or no training in equality issues or familiarity with equality legislation. There are also well documented weaknesses ongoing in the District court system in terms of capacity and overburden.
- c) **Affordability** Representation is only permitted by the claimant or a legal professional. Costs can be awarded against them, a burden for people on low incomes against taking further legal action, which allows discrimination to continue unchecked and protects the perpetrators.
- d) **Proceedings are held in public**, there is a burden of proof and evidence in procedures, for example CCTV footage is required, and a need for register of licences to be pursued by the claimant.
- e) **Processes are adversarial** rather than inquisitorial.

Extent of discrimination undocumented and unchallenged.

The burden of proof is an arduous and unfair for Travellers, where discrimination is so widespread across services without access to immediate remedy, for example where venues cancel for special occasions at the last minute, which all require financial burden, time and personal emotional cost which is often too great to regularly have to report and take cases.

Most Travellers indicate where advance booking is required, and where their ethnicity is obvious to the venue, they have been forced to adapt to secure a venue for a family occasions, weddings, funeral, communion, confirmation or christening. 80% of Travellers said their community must behave and present differently accessing goods and services ⁽¹¹⁾ Many people recount how they modified their accent or dress and seek support from non-Travellers in use of their address etc. to avoid discrimination at the initial enquiry stage for booking a venue.

Invidious circumventing of legislation in practice

Example 1 2019 of many noted: The Irish Traveller Movement was contacted in a case where a wedding was due to take place for 150 guests only to be cancelled with one week's notice, with an apology that there was an error resulting in a double booking. However, the Traveller family were singled out to be cancelled, and the family attest that on booking there was clarity across all of booking requirements, and deposit given well in advance.

Example 2 2015

A staff member of the Irish Traveller Movement tasked with coordinating the annual Christmas dinner called a local venue (Dame Street, Dublin 2) about availability and was told there was plenty. When securing the booking with the name of the organisation, the person then said there was reduced availability, with no dinner option and only standing room with the possibility of finger food. In seeking to establish further if the change resulted from discrimination, a non-Traveller member of staff called into the venue in person presenting the same request terms without the organisation being named and was told there was plenty of availability. This is a consistent response, when hotels take a booking for Travellers, and discover later the person is a Traveller. The common loophole used:

- A double booking
- A mistake by the staff member that took the booking in first place.
- Non-availability at the venue on dates – without evidence of proof.

Barriers on appeal

Hearings of appeals to the District Court from the Work Place Relations Commission is also very problematic for Travellers and where it is harder to get a balanced hearing.

Example: A Traveller man in a rural town was successful in a case taken to the Workplace Relations Commission where he had been discriminated against in a Licensed Premises. However, where cases are appealed by the other side, they are heard before the District Court.

The plaintiff contacted the Irish Traveller Movement for legal aid. His grounds for concern that as the appeal case was due to be held in his home town and the presiding judge was also from a well-known licensee in the town, he would

1. Not get a fair hearing
2. Would be visible in the proceedings which would impact on him personally in local settings and likely cause further discrimination
3. Would cause additional financial burden in legal representation needed to defend the appeal.

The outcome was, given the potential for unfairness, bias and costs on him personally he would not be able to counter the appeal.

Traveller Evictions: Criminal Justice (Public Order) Act 1994 and the Housing (Miscellaneous Provisions) Act 1992

Travellers are subject to evictions disproportionate to any other group in society, and legislation has been framed which in practice, unevenly impacts given nomadic traditions and due to widespread under delivery of Traveller accommodation across all types.

Currently there is no eviction register in Ireland, and so determining the extent of Traveller evictions is not possible, undermining the problem and preventing adequate redress.

1. **The basis of the first ever Traveller Complaint to The European Committee of Social Rights** ⁽¹²⁾ set forth the widespread failure on the part of the State to provide Traveller-specific accommodation, while simultaneously introducing increasingly regressive evictions legislation, in its decision concluded that there was a violation of Article 16 of the Charter on 5 grounds, and in 3 specifically in relation to evictions.
2. That “the Criminal Justice (Public Order) Act 1994 and the Housing (Miscellaneous Provisions) Act 1992 (as amended) provides for inadequate safeguards for Travellers threatened with eviction”; and “evictions are carried out in practice without the necessary safeguards”.
3. To date no remedy has been advanced by the State and a reminder of the Violations held against Ireland in 2018 and 2020.

Covid: The emergency legislation to mitigate against evictions during the pandemic did not include Travellers in Government drafting, but guidance was issued to Local Authorities recommending against undertaking evictions during the pandemic. The Irish Traveller Movement advocated with political groups and ensured Travellers were named in the Act, ⁽¹³⁾ which passed without (interim)Government support. The subsequent legislation did not however include the same protection other than where Travellers resided in the private rented sector or in approved housing body tenancies. ⁽¹⁴⁾ During that period Travellers were evicted / or threatened with, causing avoidable hardship and risk.

Samples of evictions during covid:

- o In March 2021 a family of 9 were served a warning to vacate private lands they have resided on for seven years. The family had difficulty securing legal representation and options of alternative accommodation were not provided by the Council
- o Dublin City Council: In August 2020 there was a threatened eviction by Dublin City Council of a young Traveller family (a mother and two young children one of whom has autism), from a mobile in Ballyfermot. Through interventions from Local Traveller organisations and councillors the eviction was cancelled.
- o In the South East two young couples and their young babies were served notices from a private car park in early December 2020, with nowhere to go. They were not deemed homeless by the Council when they tried to register and given only temporary accommodation over Christmas
- a) **Travellers’ access to Justice remains limited, with** no recourse under the Legal Aid scheme when served with eviction notices due to restrictions under s.28 (9) of the Civil Legal Aid Act 1995.

- b) **The Criminal Justice (Public Order) Act, 1994**, amended by Section 24 of the Housing (Miscellaneous Provisions) Act, 2002 provides for the eviction of persons without alternative accommodation, and is without an appeals procedure. Despite the impact on children and those with a disability.
- c) **Section 19 (c) of Part II A of the Criminal Justice (Public Order) Act, 1994**, is without any form of judicial oversight, monitoring or intervention. In effect this legislation has prevented nomadism and curtailed a central cultural right.
- d) **The current eviction procedure, which allows for the removal of families within 24 hours**, is inhumane and often conducted at times when families cannot access legal services, such as on Friday afternoons. This is not possible without access to a dedicated service, and many families would not be familiar with legal services or have finance to seek private legal services.

Hate Crime

The forthcoming Hate Crime legislation is welcome and urgent given the lack of protection for Travellers considering widespread discrimination, anti Traveller hostility and evidenced by 10% of hate crimes reported to iReport in 2019 ⁽¹⁵⁾. The introduction of the specific indicators in crime reporting by An Garda Síochána are urgently required and specific attention to digital and online offences against Travellers a priority.

Bias in Policing.

- a) The Irish Traveller Movement have long reported concerns and studies which show ingrained negative views towards Travellers within policing, in community engagement, civil and legal matters, of racial profiling and an inconsistent response to the community where policing is required, sometimes during times of trauma and bereavement. These have impacted in some part on Travellers ability to have confidence in policing supports and police protection.
- b) The findings of a study (undertaken in 2014 but unpublished) highlighted by a journalist in 2020 by the then Garda Ethnic Liaison Office ⁽¹⁶⁾ **found high levels of negative attitudes towards Travellers** at the time and established all Gardaí interviewed, held those attitudes in advance of taking up positions and remained negative as serving Gardaí.
- c) **Conscious or unconscious bias** has been catalogued in national studies of Travellers own attitudes where 70% have felt discriminated against by the Gardaí 48% ⁽¹¹⁾ in the past year.
- d) **Proscribing racial profiling** The high incidence of racial profiling by the Gardaí targeted at Travellers and other ethnic groups, and their disproportionate high representation in the prison system was raised by the UN CERD Committee ⁽⁶⁾, “regrets of the lack of detailed information on legislative, disciplinary or other measures taken by the State party to prevent, prohibit and monitor ethnic profiling by the police force” and raised concerns “about the absence of legislation proscribing racial profiling, and of independent complaint mechanisms dealing with racial profiling and the lack of statistics”

We refer here to additional structural barriers in the application of law for Travellers and refer to matters raised by FLAC in their submission to the Joint, Committee on Key Issues affecting the Traveller Community March 2021.

1. Equality Legislation

- a) While discrimination in the provision of accommodation is prohibited under the provision of the Equal Status Acts 2000–2018, that legislation also exempts discrimination complaints against actions required by legislation. This creates a difficulty in challenging issues in relation to the Traveller accommodation under domestic equality legislation.
- b) Secondly, the definition of “services” in section 2 of the Acts is broad enough to include the services provided by public bodies. However, the scope of the Acts does not explicitly extend to the performance of the functions of public bodies generally. Therefore, it is unclear to what extent the prohibition on discrimination and harassment in the Equal Status Acts applies to public authorities, including An Garda Síochána. Both issues have been subject to criticism and calls for reform from the United Nation Committee on the Elimination of Racial Discrimination.
- 2. **Legal Aid.** FLAC is concerned about the perception that legal aid is not available in housing and homelessness cases against the State and local authorities. The Civil Legal Aid Act 1995 allows for the Legal Aid Board to provide representation in such cases, but this is not reflected in practice.

Improvements that could be made/specialised supports be provided to improve the experience

See summary recommendations above:

Impact of intermediaries or voluntary groups that help facilitate engagement between minorities and the justice system?

- a) The role in representation before the courts and tribunals by IHREC, and more recently by the FLAC Traveller legal Service and independent law centres is critical but is inadequate.
- b) Local based Traveller organisations are required to act as amicus at tribunals such as the WRC, but the burden of resources and experience needed is problematic and not generally within the range of scope of organisations, but who have been required to meet the demand.
- c) PILA’s role in access to strategic legal specialisation is a notable advantage, and as previously referenced the centrality of pursuing better public policy is important to Travellers and society. The alliance of law interests convened under the PILA framework could be utilised to better effect by a dedicated and Traveller specific alliance from which Travellers could draw from.
- d) There is little visibility of The Voluntary Assistance Scheme for Travellers.
- e) As services are fragmented and there is no specialised Traveller law service, or a single body or collective data sets to work from, this causes the extent of Traveller legal need to be systemically undermined.
- f) Lack of spread: Given the type of equality law most notable to Traveller need, accessing legal aid is problematic due to deficiencies noted in the civil legal aid scheme, and as there are too few independent law centres.

Data compiled of legal query contacts by Travellers to Irish Traveller Movement, FLAC, IHREC and the Workplace Relations Commission.

Irish Traveller Movement Accommodation specific queries / advocacy sought

Irish Traveller Movement.	Total accommodation queries	Poor living conditions	Evictions	Homelessness	Seeking transfer, or adaptation	Overcrowding	Difficulty accessing housing list or time spent on housing list
January to July 2021	104	46	15	28	26	14	16

FLAC Traveller Legal Service Queries 2020/2021 (Information supplied by FLAC Traveller Service)

All FLAC Traveller Legal Service queries	Total number	Discrimination	Housing & Accommodation	Eviction	Horses (primarily control of Horses Act 1996)	Other areas of law
Year 2020 (April – December)	44	8	18	12	3	3
Year 2021 (January – July)	54	13	17	16	3	5
Overall total	98	21	35	28	6	8

Irish Human Rights and Equality Commission ^(17,18,19)

All queries about human rights and equality law handled by IHREC 'Your Rights'	Number	Traveller specific rights-based queries	Equal Status Acts 2000-2018	Employment Equality Acts 1998 – 2015	Intoxicating Liquor Acts 2003 – 2008
Annual Report 2020	1,732	28 (1% of total)	19	5	4

Annual Report 2019	2,165	38 (1.7% of total)	14	0	12
Annual Report 2018	1,711	37 (2.1% of total)	14	1	22

The Workplace Relations Commission ^(20,21,22)

All complaint referrals to The Workplace Relations Commission under the Equal Status Acts 2000-2015(18)	Total Number of referrals	Traveller specific referrals Equal Status Acts 2000-2015	Employment Equality Acts 1998 – 2015
Year 2020	452	51 (11% of total)	6
Year 2019	648	97(14% of total)	2
Year 2018	868	124 (14% of total)	6

1. <https://www.cso.ie/en/csolatestnews/presspages/2017/census2016profile8-irishtravellersethnicityandreligion/>
2. <https://www.gov.ie/en/publication/b9c48a-all-ireland-traveller-health-study/>
3. Department of Housing, Local Government and Heritage Annual Count of Traveller Families 2019 <https://www.gov.ie/en/organisation/department-of-housing-local-government-and-heritage/>
4. <https://www.gov.ie/en/publication/c2a87f-the-statistical-spotlight-series/>
5. <https://www.oberstown.com/wp-content/uploads/2019/10/Oberstown-Characteristics-of-Young-People-in-Detention-Report-2019.pdf>
6. https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf
7. <https://hudoc.esc.coe.int/eng#%7B%22sort%22:%20DESC%20PublicationDate%20Descending%22%2C%22ESCDcIdentifier%22:%20cc-100-2013-dmerits-en%22%2C%22ESCDcType%22:%20DEC%22%2C%22ESCStateParty%22:%20IRL%22%7D>
8. <https://www.esri.ie/system/files/publications/RS56.pdf>
9. <https://itmtrav.ie/key-reports/>
10. <https://rm.coe.int/4th-op-ireland-en/168095000c>
11. Behaviours & Attitudes (2017), Traveller Community National Survey. <https://itmtrav.ie/key-reports/>
12. <https://rm.coe.int/4th-op-ireland-en/168095000c>
13. <http://www.irishstatutebook.ie/eli/2020/act/2/enacted/en/html>
14. <http://www.irishstatutebook.ie/eli/2020/act/7/enacted/en/html>
15. https://inar.ie/wp-content/uploads/2020/03/2019_iReport_Final.pdf
16. <https://www.irishtimes.com/news/crime-and-law/garda%C3%AD-have-negative-view-of-travellers-survey-finds-1.4334274>
17. https://www.ihrec.ie/app/uploads/2019/06/IHREC_2018_AR_English_Digital.pdf
18. <https://www.ihrec.ie/app/uploads/2020/07/IHREC-Annual-Report-2019-English-version.pdf>
19. https://www.ihrec.ie/app/uploads/2021/07/IHREC_2020_AR_English_FA_pages.pdf
20. https://www.workplacereactions.ie/en/news-media/workplace_relations_notices/annual-report-2018.pdf
21. https://www.workplacereactions.ie/en/publications_forms/corporate_matters/annual_reports_reviews/annual-report-2019.pdf
22. https://www.workplacereactions.ie/en/publications_forms/corporate_matters/annual_reports_reviews/annual-report-2020.pdf

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August 2021

LGBT Ireland Submission on Minorities Accessing Justice

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Who we are

1. LGBT Ireland is a national charitable organisation working to improve the visibility, inclusion and rights of LGBTI+ people living in Ireland. Through our national helpline, online, and face to face services we provide confidential support and information to thousands of LGBTI+ people and their family members each year. Informed by the issues and experiences raised through our frontline services, we also work extensively in the area of policy and legislative reform to ensure that LGBTI+ people's voices are heard in the policy and practice developments that affect their lives. The submission below is informed by the issues and experiences of LGBTI+ people and their family members who contact us. As a network organisation with seven regional LGBTI+ member services, we also have a strong regional focus and the recommendations outlined below are deeply rooted in the knowledge and experience of our members working across the country.

Q. 1 Challenges facing the LGBTI+ community engaging with the Justice System

A target for hate crime and hate incidents

2. The National LGBT Helpline deals with approx. 2,000 contacts annually. Of these, 4% relate to 'violence'. As an expert LGBT+ Non-Government Organisation, we know from anecdotal evidence this is not reflective of the true scale of homophobic, biphobic, lesbophobic and transphobic violence that is occurring in Ireland, online and offline, on the streets and in family homes.
3. Research in 2016¹ conducted by GLEN and BeLonG To with LGBTI+ persons in Ireland reported a high percentage of participants having experienced harassment and violence over their lifetime:
 - 33.6% of respondents had been threatened with physical violence,
 - 21.1% had been physically assaulted,

- 14.9% had been sexually assaulted and
 - 6.3% had been attacked with a weapon because they were LGBTI+.
4. Gay men were most likely to report they had been physically assaulted, however transgender and intersex participants were most likely to report having been attacked with a weapon. Transgender and intersex participants were most likely to report having been sexually assaulted. Many LGBTI+ people struggle to openly express their identity:
 - 53% of LGBTI+ couples said they felt unsafe showing affection for one another in public.
 - 47.1% said they felt unsafe holding hands with their partner of the same sex in public.
 - Gay men and transgender people were more likely to report feeling unsafe holding hands in comparison to lesbians and bisexual people (Higgins et al. 2016).
 5. The 2019 Call It Hate surveyⁱⁱ by *Hate & Hostility Research Group*, University of Limerick, as part of the Call It Out campaign revealed findings upholding LGBTI+ people's levels of hate crime and incidence:
 - **only 36%** of respondents believed that violence against the LGBTI+ community is 'a serious problem in Ireland'
 - in reality, **1 in 5 or 21%** of those surveyed, have been punched, hit or **physically attacked** in public for being LGBTI+
 - of 1,395 people who replied **1 in 3** have been **threatened** with physical violence
 6. A normalisation of homophobia, biphobia, transphobia, even in the LGBTI+ community itself, almost as the price of being visible, the cost of visibility, is strongly reflected in the perceptions versus the reality of lived experiences above. LGBT Ireland believes this normalisation also underlies the low level of calls on the issue of violence to our helplines. Having said that in 2020 the National LGBT Helpline recorded a fourfold increase in calls relating to violence.

Impact of the historical legacy of criminalisation remains

7. In March 2020, the LGBTI+ sector organisations both national and regional, engaged in its first Dialogue Day with An Garda Síochána (AGS) as part of AGS ongoing

implementation and refinement of *An Garda Siochana Keeping People Safe* Garda National Diversity and Integration Strategy 2019-2021. Through the many discussions that day it was clear that the legacy of criminalisation looms large as a barrier until today if and when a member of our community needs to think about engaging with AGS. Many opt not to engage due to a lack of trust and a fear of being treated disrespectfully. This is especially true of gay men of those age groups directly impacted by criminalisation. Butch-presenting lesbian women would also fear judgement and disrespectful treatment and would opt not to report. Members of the Trans community and others who present in gender non-conforming ways equally fear engagement with AGS for similar reasons.

8. Given these barriers for victims of crime to report, once again LGBT Ireland and other sectoral organisations believe statistics on levels of crime against our community does not represent the true large scale of the problem.

Other key findings from LGBTI+ sector / AGS Dialogue Day 2020

9. Other key themes around barriers in engaging with AGS and beginning a journey of engaging with the justice system and accessing justice were:
 - Addiction issues are high in our community in those aged 40+; depending on what substance is being used, it can be difficult to seek help from AGS
 - Chemsex forms part of the social scene for many Gay men - violence and other problems at events where Chemsex is involved would present fear and barriers approaching AGS
 - LGBTI+ young people are more likely to use drugs/alcohol-
 - as an escape from stress, anxiety of their situation; this can inadvertently bring young LGBTI+ people into links with criminality
 - due to substance abuse and / or links with criminality, it's hard for young people to feel able to approach AGS
 - Vulnerable to rape/sexual assault
 - Prostitution as a means of supporting addiction or other dependencies
 - Domestic violence happens in our community as it does in the wider community; our community faces the same struggles in seeking help; plus the additional invisibility of

LGBTI+ relationships in domestic violence services making our community feel there is no support for them

- Cruising activity of some gay men, the secrecy around what they do, the fear of being discovered; these factors make it harder for gay men of a certain age to come forward to AGS
 - STAD report (Stop Transphobia And Discrimination) produced by Hate & Hostility Unit, University of Limerick and TENI
 - Stark reading- offences included rape, aggravated sexual assault, sexual assault, assault causing harm, threats to kill, and public order offences.
 - Just 10% of transphobic hate crime is reported to AGS
10. While the Dialogue Day was a very positive engagement it starkly revealed the amount of work to be done if trust and protections (laws) are to be realised for the LGBTI+ community in Ireland.

Lack of hate crime law

11. Another factor informing LGBTI+ people's decision not to engage with AGS is the knowledge that no hate crime law exists in Ireland. Even where there is positive engagement and relations with members of AGS they often express the limitation in what they can do in terms of prosecuting hate crimes against our community due to the lack of hate crime legislation. This weakens further our community's trust and belief that to report a crime and engage in the justice system will lead to a positive experience and outcome for the LGBTI+ victim of crime.
12. ILGA Europe's Rainbow Report 2021ⁱⁱⁱ saw Ireland ranked 15th in Europe in terms of equality and protection for LGBTI+ people and a significant factor in Ireland's stalled position is the lack of hate crime law.

Invisibility and vulnerability of older LGBTI+ people

13. Older people are LGBTI+ too and often live very invisible lives with diminished support networks compared to their heterosexual peers. There is limited Irish research on this group with *Visible Lives* (2011)^{iv} still being the go-to text for an

insight into the issues and needs of older LGBTI+ people. Some worrying findings around isolation and loneliness, more recently corroborated by Stonewall UK research (2015)^v, include:

- *“diminished support networks in comparison to heterosexual peers”*
 - *More likely to be single:* 40% (UK) / 43% (IRL) of gay and bisexual men are single, compared to 15% (UK) / 15% (IRL) for heterosexual men
 - *More likely to live alone:* 41% (UK) / 46% (IRL) of LGB people live alone compared to 28% (UK) / 29% (IRL) of heterosexual people.
 - *Less likely to have children:* just over 25% of gay and bisexual men and 50% of lesbian and bisexual women have children, compared to almost 90% of heterosexual men and women.
14. Living hidden lives isolated from regular contact with trusted friends leaves older LGBTI+ people vulnerable to crime. Older gay men are particularly vulnerable, many LGBTI+ organisations have dealt with cases of older gay men being blackmailed, however because many remain closeted and also because they grew up in the shadow of homosexuality being criminalised, it is often very difficult for them to feel safe in making a report to AGS and beginning the journey of trying to engage with and access justice.

LGBTI+ Family Rights

15. On the 4th May 2020 Parts 2&3 of the Children and Family Relationships Act (CFRA) 2015 came into operation. These provisions were hugely significant for LGBTI+ family rights, as it meant that for the first time in Irish law two female parents could both be registered on their child’s birth certificate. The law in relation to female same-sex parents jointly registering their children at birth relates to children conceived post commencement, however retrospective provisions under S.20 of the Act allows for the re-registration children conceived prior to the commencement (i.e.) before the 4th May 2020. The retrospective provisions allow for a declaration of parentage to be applied for by the non-birth parent through the District Court for consent applications, or the Circuit Court where a joint application

is not possible, and if granted this declaration of parentage forms the basis for an application to the General Registration Office to have the birth re-registered.

16. Since the commencement of the final parts of the (CFRA) in May last year, hundreds of same-sex female parents have been able to re-register the births of their children, ending years of legal limbo for families where only one parent was legally recognised. To expedite the process for families who had already been waiting five years for this legislation to be commenced, LGBT Ireland engaged extensively with the District Court Service which resulted in six full days of dedicated online hearings being provided by the Dublin District Court. The feedback from families who were able to avail of online hearings was overwhelmingly positive, both in terms of the speed and accessibility of the process and the affirming approach of the presiding judge.
17. However, in stark contrast families outside of Dublin had a very different and, in some cases, extremely difficult experience trying to access a parental order under the legislation. There was a general lack of awareness and knowledge about the new law by solicitors, court clerks and judges, resulting in parents having to educate their local court service about the law and in many cases having to request that they contact the Dublin District Court service to get information about the process. Based on the lack of information and confusion being experienced by parents when dealing with the court system, LGBT Ireland developed sample grounding Affidavits which parents could download from our website. Several families also experienced very negative attitudes from one judge, who refused to grant parental orders under the act, and requested that other family members (such as the birth parents' mother or aunt) return to court with the applicants to act as a next friend for the child, even though these were consent applications.
18. These experiences demonstrate the lack of knowledge and understanding about the current law as it pertains to LGBTI+ parented families. With further legislation currently being drafted to regulate Assisted Human Reproduction services in Ireland including surrogacy, more LGBTI+ parented families will be engaging with the justice system to have their families legal recognised. Therefore, it is imperative that

court clerks and judges are provided with information/training when new legislation is commenced, and we would also recommend training in unconscious bias particularly for those involved in family law.

Q. 2. What supports are currently available to minority groups when engaging with the justice system?

The current range of supports take two forms:

19. LGBT+ sector organisations none of which to date have any specific human resources or expert knowledge (lack of capacity development in this specific area) to support people as they engage with the justice system as victims of crime and hate incidents.

LGBT+ organisation rely on shared knowledge among networks and relationships they forge with local community Gardai in their communities and Garda divisions. Frequent transfers of Gardai make the building of relationships a constant part of the work and a barrier for LGBT+ organisation achieving a significant bank of knowledge and contacts to support this area of work. It is hoped that the relatively new Garda National Diversity & Integration Unit Garda National Community Engagement Bureau will help to this end.

20. Mainstream general services for all victims of crime, for example Crime Victims Helpline; and minority services which support the whole of the minority group, for example Traveller services.

Mainstream general services which our community would try to access are:

- Crime Victims Helpline
- Victim Assistance
- Victims Rights Alliance
- FLAC
- ICCL
- Various pro bono lawyers for individual case work
- AGS generally
- Garda National Diversity & Integration Unit

Minority services for the whole minority group- relevant and key examples include:

- Migrant Rights Centre Ireland
- Irish Refugee Council
- Pavee Point
- Irish Traveller Movement

21. However as elaborated in Q. 1 barriers of fear often exists between our community and such mainstream services, as well as minority services, and therefore our community often does not seek support and often does not report crime thereby forfeiting their access to justice due to a fear of a lack of appropriately sensitive and inclusive service provision.
22. LGBT Ireland, through its training department, has embarked and will continue to embark on LGBTI+ Awareness Training of these key services. Due to limited training team human and time resources to dedicate to this important service provider sector, this work will take much longer than if LGBT Ireland had a dedicated Access to Justice Capacity Development Officer focus person. Likewise, if LGBT Ireland had additional human resources to support its intersectional work, then existing bespoke supports could be further strengthened and enhanced, while mainstream support services could be trained and enhanced to better support our community.

Q. 3 Additional barriers facing LGBTI+ people with intersecting identities

LGBTI+ Travellers

23. LGBT Ireland sits on the *National Action Group for LGBT Travellers & Roma*. This group was formed in 2016 with the goal of advancing greater awareness and understanding of LGBTI +Travellers and Roma and their inclusion in their support organisations and communities. LGBTI+ Travellers experience minority stress and marginalisation on the basis of living more than one minority identity. This intersectional discrimination lays out double or more sets of barriers if an LGBTI+ Traveller thinks about accessing justice. There is little research available on LGBTI+ Travellers, but what little does exist^{vi} demonstrates high levels of mental health and

suicidality while anecdotal knowledge also suggests high levels of addiction and substance abuse, also referenced by homeless sector services. Common barriers in engaging with AGS are:

- Fear of racism; anti-Traveller feelings
- Legacy of mistrust between Travelling community and AGS

24. It should be noted that LGBT Ireland, as part of the National Action Group for LGBT Travellers & Roma, has this year secured funding to carry out peer research (Sept. 2021-Sept. 2022) into this very invisible cohort of the LGBTI+ Community and so will learn more about experiences, challenges and support needs in the coming year.

LGBTI+ asylum seekers

25. Since July 2018, LGBT Ireland has facilitated a monthly peer support group for LGBTI+ asylum seekers living in Direct Provision across the country. The group meets monthly in Dublin with LGBT Ireland providing transport fares and safe venues using grants from Community Foundation Ireland under their “Mental Health & Well-being” programme and a Community Integration Fund grant from Dept. of Justice & Equality through the Office for the Promotion of Migrant Integration. During the pandemic these meetings have been fortnightly via zoom and also involved a lot of one-to-one support work due to the levels of anxiety and isolation being experienced. The geographical spread of group members currently includes counties Cavan, Louth, Meath, Westmeath, Galway, Limerick, Wicklow and Dublin.
26. LGBTI+ asylum seekers and migrants likewise experience intersectional discrimination in their daily lives. If they think about engaging with AGS and the justice system the barriers commonly cited in discussions are:
- fears of racism
 - fear of questions about immigration status even when it’s not relevant to the reason they may want to go to AGS
 - language issues
 - legacy of police violence and criminalisation of homosexuality in countries of origin and subsequent fear of the police force in Ireland

Q. 4 What improvements could be made/specialised supports be provided to improve the experience of minority groups engaging with the justice system?

Hate Crime legislation

27. A speedy enactment of Hate Crime legislation following consultation with key stakeholders and earnest consideration of their inputs to make the legislation as effective, inclusive and durable as possible

Additional human resources in LGBT Ireland

28. A dedicated Access to Justice Capacity Development Officer who would strengthen the LGBT+ sector in their awareness of support services, including the new online reporting mechanism of AGS as well as the Third Party Referral mechanism which will soon come on stream. This ATJ Officer would also train AGS and other mainstream support services to enhance their knowledge and skills in supporting our community
29. Additional human resources- Intersectional Key Worker position- to support LGBT Ireland intersectional work so that existing bespoke supports can be further strengthened and enhanced, while mainstream support services could be trained and enhanced to better support our minorities within our community

Cultural Mediators employed by key state justice agencies

30. Similar to International Organisation for Migration (IOM)^{vii} state justice agencies capacity to offer effective service to minority communities would greatly benefit from the employment of Cultural Mediators to liaise with relevant minority community members and sector organisations to assist in accessing justice. Such cultural mediators working in partnerships with sectoral organisations would be best placed to co-develop whatever systemic changes may be needed to create a more accessible justice for all.

5. What is the impact of intermediaries or voluntary groups that help facilitate engagement between minorities and the justice system?

31. The impact of intermediaries / voluntary groups is that they are the bridge-builders between minority communities and individual in need of access to justice and the state agencies duty-bound to protect and enable citizens and residents right to access justice. Without such 'bridges' to offer encouragement and support for a crossing over to engage with mainstream services, many minorities go without access to justice, as has been elaborated above.

32. Intermediaries such as LGBT Ireland for the LGBT+ minority has:
 - gained the trust of the community as they are of the community and therefore have strong empathy and insights into the struggles and barriers for those seeking justice
 - has expert knowledge of the community and its myriad of struggles through providing their frontline services and having consistent contact with the community nationally, regionally and locally
 - has strong sectoral networks so that wherever in the country someone needs support, they can be linked in and LGBT Ireland continues to learn and share knowledge with networks
 - has effective partnerships across all relevant sectors- and with increased human resources these partnerships can be further developed, expanded and rendered even more effective
 - has long experience of engaging with various state systems (political, health, education etc.) and forging both system changes and social change; intermediaries, like LGBT Ireland, are very resourceful problem-solvers and solution-oriented actors who need to be enabled to engage more with the justice system to ensure access to justice for all is a reality for the LGBT+ community in all its diversity in Ireland.

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- ^{iv} Higgins, A., Sharek, D., McCann, E., Sheerin, F., Glacken, M. Breen, M. & McCarron, M. (2011). *Visible lives: identifying the experiences and needs of older LGBT people in Ireland*. http://lgbt.ie/wp-content/uploads/2018/06/attachment_233_Visible_Lives_-_Key_Findings_Nov_2011.pdf
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https://www.stonewall.org.uk/sites/default/files/LGB_people_in_Later_Life_2011_.pdf
- ^{vi} *LGBT Traveller Health Report EARTH* Area*” Dempsey, C. (2012)
- ^{vii} Cultural Mediator Role Description (IOM)- <http://iomireland.ie/who-are-we/vacancies/>

Submission to the Joint Committee on Justice on Elective Topic “Minorities Engaging with the Justice System”

AkiDwA Ireland

20th of August 2021

Reporting Organisation

AkiDwA has supported women and their families facing racism and sexism for twenty years, since its establishment in 2001. AkiDwA is an ethnic minority-led national network of migrant women living in Ireland and in this respect is unique domestically, and one of only a few such networks in Europe.

The organization was established by a group of African women to address issues of racism, isolation and Gender-Based Violence that the women were experiencing at the time. AkiDwA’s vision is of a just society where there is equal opportunity and equal access to rights and entitlements in all aspects of society: social, cultural, economic, civic and political. The organisation advocates for migrant women’s equal rights in Irish society, free of racial and gender-based stereotyping.

In partnership with others, AkiDwA uses a holistic and gender-specific approach to promote migrant women’s integration and provides support for access to mainstream services and initiatives. The organisation employs three key strategies to achieve its objectives; networking, policy and research work and capacity building. AkiDwA develops migrant women’s capacity for participation and representation in their communities and in decision making structures through training, consultation, focus groups and information provision.

Over the course of its twenty-year history, AkiDwA has gained trust and credibility amongst the migrant community in Ireland as being a reputable organisation, which gives us the ability to mobilise large numbers of hard to reach and marginalised communities of migrants. This allows us to provide relevant and insightful evidence-based submissions to government departments, as exemplified in our engagement with the Department of Justice and Equality on the 2019 Review of the Prohibition of Incitement to Hatred Act 1989, and the consultations we have been engaged with in the development of the Third National Strategy on Domestic, Sexual and Gender-Based Violence, to name but a few.

Executive Summary

AkiDwA welcomes this opportunity to make a written submission to the Houses of the Oireachtas Joint Committee on Justice on the topic of “Minorities engaging with the justice system”. This document consists of two main sections. **Section 1** deals with the experiences of migrant women as a minority group engaging with the structures and institutional apparatus of the Justice System in Ireland. Covered in this section is the hesitancy that this cohort demonstrated in engaging with the justice system, as evidenced by underreporting of crimes, the lack of representatives from this cohort working in the justices system (service provider perspective), the treatment that this cohort receive from justice system personnel (service user perspective) and the experience of accessing information on how to engage with the justice system.

Section 2 deals with a number of key thematic areas under which migrant women often engage with the justice system and for which the justice system often assumes legal responsibility. These areas include (A) Immigration and Asylum - addressing migrant women’s experiences of lengthy delays in application processes, as well as unfair treatment and mis-translations during the conduct of interviews. (B) Domestic, Sexual and Gender-Based Violence (DSGBV) - where migrant women’s unique experiences and challenges in accessing Women’s refuges, where a coordinated and implementation-focused National Action Plan to combat Female Genital Mutilation so that the justice system more effectively identifies and addresses such criminal cases, and where challenges facing the justice system in supporting women victims of Trafficking and rape are highlighted. (C) All forms of media and communications, including new technologies - this subject is addressed in terms of crimes being perpetrated against migrant women through these means (including abuse and hate speech), and the justice system’s role in mitigating these experiences is emphasised. (D) Health discrimination - the racial and gender-based issues facing migrant women in accessing healthcare are highlighted as relevant to the non-discrimination mandate of the Department of Justice. (E) Employment - discriminatory employment practices are highlighted so the migrant woman’s experience of the justice system and it’s treatment of this issue may be accounted for. Finally the justice system’s addressing of discrimination related to (F) Education, Accomodation, Inclusion and Participation, and migrant women’s experience in this regard are addressed.

Introduction

AkiDwA represents migrant women - a group of society which is particularly vulnerable to the limiting of their enjoyment of the justice system because of intersectional discrimination. Migrant and minority women have to deal with challenges when engaging with the justice system that are based not only on their race, but also their gender and background. They are disadvantaged in terms of access to resources, recognition, respect, and representation themselves, and see such challenges and discrimination when engaging with the justice system replicated for families.

According to CSO 2016, there were 535,475 non-Irish nationals living in Ireland with 50.1% of them being women, a first-time female majority. With their particular racial *and* gender-based needs and challenges, migrant women have reported to AkiDwA on their experience of racism and discrimination while trying to access legal services and support or enter into legal service provision, including verbal abuse, intimidation, disbelief, mis-translation and culturally insensitive behaviour, amongst other factors. To create a more equal and socially-inclusive justice system in Ireland, racism must be addressed both at the individual and institutional level and by engaging and including the experiences and voices of migrant women. Attempting to address racial and gender-based discrimination only at the level of the individual, as is the most common response, fails to recognise the structural nature of this phenomenon.

In seeking to assess the engagement of minorities with the Justice system, AkiDwA recommends that the Joint Committee on Justice should take into account the intersection of gender, migration and race and generally Intersectionality based on age, class, race, religion, oppression, disability, sexual orientation and multiple other factors. As noted by Durban Declaration Programme for Action in article 69: racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, affecting their health mental and wellbeing. They face poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights. This leads to a situation where women of ethnic minority background do not benefit fully and equally from the justice system in Ireland compared to the majority population.

Section 1: Minorities Engaging with Justice System Structures

Migrant women face major challenges in accessing legal services and support, this includes, access to information, language barriers, appropriate treatment by officials and accessibility.

Unequal treatment in accessing public services has a direct bearing on the lived experiences and social status of any individual or groups. While most frontline and service providers aim to deliver services without prejudice, direct experiences of racism are a reality for many migrant women. This according to AkiDwA members can take many different forms, such as the manner and tone used by officials, prejudiced behaviour and sometimes being denied services.

a. Underreporting - Lack of Engagement

AkiDwA has frequently noted a reluctance amongst migrant women to engage with the justice system - including approaching Gardaí and reporting crimes perpetrated against them. Such reluctance is evident as for example, in the INAR 2020 statistics on under-reporting of racist crimes. The prevalence of non-reported racist incidents were as follows: 28% of crime, 52% of discrimination, 60% of hate speech, 67% of other incidents were not reported. Of the 111 cases of illegal discrimination that were reported to iReport.ie, 36% were not reported to anyone else, 13% were reported to An Garda Síochána and 49% were reported to other organisations.¹

b. Lack of Minority Representation

Persons from ethnic minorities face significant difficulties and barriers to engaging as professionals with the justice system in Ireland. AkiDwA have received reports of solicitors from ethnic minority backgrounds struggling to gain employment in their field, despite being qualified, Irish-educated candidates. Gaining employment with Irish law firms has been cited as very difficult for ethnic minorities due to factors such as discrepancies in social connections between migrants, ethnic minorities and white indigenous Irish, as well as racial

¹ Dr. Lucy Michale (2020). 'Reports of Racism in Ireland', *INAR*, p14. See: https://inar.ie/wp-content/uploads/2021/03/2020_iReport.pdf

discrimination². In light of this, there are instances of ethnic-minority solicitors establishing their own practice³.

While the gendered breakdown of legal professionals in Ireland is widely available, this kind of disaggregated demographic data is not readily available relating to ethnic minorities. It is known that 52% of practicing solicitors⁴, 37% of Law Library members⁵ and 13 of 41 High Court judges⁶ are female. However, the lack of collection/publication on demographic data regarding the number of practicing professionals who are of ethnic minority backgrounds warrants addressing. Such absence of research and statistical data is common across European member states and makes it difficult to address racial discrimination and its consequences⁷. Such data is vital to be able to address and assess progress on what can be held up as an example of institutional racism in the legal system.⁸

Similar challenges arise in terms of Garda recruitment to that of the employment of solicitors, however data collection on ethnic minorities is happening in this area. In 2019 it was recorded that only 1% of the Garda force was non-Irish or from an ethnic minority background, and that recruitment of personnel from ethnic minority backgrounds is necessary.⁹ With such data being collected and made available, changes can be observed that include the recruitment of the first Sikh member of the Garda Reserves¹⁰.

² The Irish Legal News. 'Black solicitor calls on Law Society to conduct annual research on ethnic minority lawyers', September 2019. See: <https://www.irishlegal.com/articles/black-solicitor-calls-on-law-society-to-conduct-annual-research-on-ethnic-minority-lawyers>

³ See above. Also note Ashimedua Okonkwo, founder of Cyril and Co. Solicitors. See: <http://cyrilandcosolicitors.com/how-we-differ.html>

⁴ As of 2020. 'The Law Society Annual Report 2019-2020'. See: <https://annualreport.lawsociety.ie>

⁵ As of 2021. The Bar of Ireland Annual Report 2020/2021, p9. See:

https://www.lawlibrary.ie/app/uploads/securepdfs/2021/07/TBoI_AnnualReport_2021_web-1.pdf

⁶ As of 2021. Mary Carolan, 'Third of superior court judicial roles now held by women' (2021), March 10th. See:

<https://www.irishtimes.com/news/crime-and-law/courts/high-court/third-of-superior-court-judicial-roles-now-held-by-women-1.4506758>

⁷ Council of Europe. 'Combatting Racism and Racial Discrimination against People of African Descent in Europe', November 2020, p. 5. See:

<https://rm.coe.int/combatting-racism-and-racial-discrimination-against-people-of-african-d/1680a1c0b6>

⁸ Council of Europe. 'Combatting Racism and Racial Discrimination against People of African Descent in Europe', November 2020, p. 7. See:

<https://rm.coe.int/combatting-racism-and-racial-discrimination-against-people-of-african-d/1680a1c0b6>

⁹ Conor Lally. 'Garda recruitment drive targets people from all minority groups', April, 2019. See:

<https://www.irishtimes.com/news/crime-and-law/garda-recruitment-drive-targets-people-from-all-minority-groups-1.3849917>

¹⁰ <https://www.irishcentral.com/news/ireland-garda-reserve-sikh>

Such issues of ethnic minority representation in the *provision of legal services* hamper positive engagement of ethnic minority populations on the *service-user* end. When migrant women and those of ethnic minority backgrounds do not see themselves represented in the justice system, they experience diminished trust and willingness to come forward and seek justice, as well as the perpetuation of fear of police and authority that may extend from experiences in countries of origin, or past negative engagements with state officials in the justice or other public service systems.

c. Treatment by Justice System Personnel

AkiDwA members have expressed lack of cultural understanding amongst legal service providers and their lack of awareness of culturally sensitive issues. Many of the women feel there is a lack of understanding of their cultural background and country of origin from those working in the justice system, resulting in misunderstandings, negative perceptions and stereotypes, which then in turn hinder delivery of proper support and services.

For example, in terms of the manner in which policing is conducted in Ireland, racism has unfortunately been recorded even despite the Public Sector Human Rights and Equality Duty to carry out their functions with-out discrimination. Complaints have been expressed about refused or poor service by members of An Garda Síochána and racial profiling continues to be an issue that goes ungoverned by legislation¹¹.

d. Access to Information

Many migrant women struggle to access information about legal services in Ireland; as a result, many do not know where or how to receive legal assistance or access justice in Ireland. For example, the Irish justice system can be different from what the majority of migrant women would have been used to in their countries of origin and many are confused between the role of the solicitor and the barrister. There is often a great deal of fear of the police and other figures of legal authority within the justice system, rooted in experiences that women may have had with such figures in their countries of origin. There is often also a lack of awareness amongst migrant women of their rights under Irish law, of crucial importance as

¹¹ Dr. Lucy Michale (2020). 'Reports of Racism in Ireland', *INAR*, p13. See: https://inar.ie/wp-content/uploads/2021/03/2020_iReport.pdf

the law may differ hugely from their country of origin. Lack of awareness of their rights under such legislation as the Criminal Justice Act (FGM) 2012, or legal protections afforded to them under the Domestic Violence Act 2018, for example. These factors generally create a lower uptake of legal services among migrant women. Such women are less likely to engage with the justice system, and consequently less likely to receive legal redress for crimes committed against them. As a result, migrant women regularly do not seek or receive the legal support and justice they are often due.

Recommendations

- To ensure legal professionals and decision-makers, including prosecutors, translators and judges are trained in gender and cultural sensitivity and are delivering culturally appropriate support
- To ensure availability of Translation and interpretation services especially in asylum procedures and in seeking justice for crimes of DSGBV, and in the context of free legal aid, and concurrently adopt a proactive approach to inform migrant and minority populations on legal services and protections available in Ireland and how to access them.
- To establish specific funds for research on racism and racial discrimination in the justice system to understand structural barriers facing women migrants in engaging with the justice system in an equal way to which the majority population is afforded.

Section 2: Minorities Engaging with the Justice System: Thematic Areas

A. Immigration and Asylum

There are particular legal issues facing refugee women and those in Direct Provision centres, especially surrounding the asylum and interview processes.

i. Delays in Process

“At least as a prisoner you know when you are getting out – not when you are an asylum seeker.” (AkiDwA, 2009¹²)

Long delays in the application process, without any indication of a decision date cause demoralisation and trap people in a system without any sight of a way out. When people are placed in ‘temporary accommodation’ for months and years on end, lives are put on hold, without the possibility of truly putting down roots and integrating in society. While the right to work has improved the situation for some residents, continued delays and backlog in the processing of applications continue to cast a shadow on the lives of those awaiting a decision.

ii. Conduct of interviews

An interview to discuss an applicant's case can be an intense procedure, and once the transcript is signed on the spot, there is no verification or chance to review later. Traumatic details are recounted, in interviews lasting a full day in some instances. A translator could be present, and a lot of trust is put in them to relate the conversations fully and accurately. Some women we surveyed said they were not sure that their interpreters were exact in their translation. As per the McMahon report recommendation, having an audio recording of the proceedings allows for reflection on the events at a later stage.

Women we spoke with have felt that they were treated unfairly during the interview process. Women were sometimes rushed through their application process, feeling that some of the officials with whom they dealt were just going through the motions and dealing with them in a perfunctory manner. Some women reported bias or open hostility from the interviewer reviewing their case.

“When I went for my interview, I was very badly treated. The woman interviewing me said she doesn’t want to hear my tales. I cried a lot. Am only saying it now, have never shared with anyone.” - Applicant for international protection (AkiDwA, 2009¹³)

¹² AkiDwA (2009) ‘Am Only Saying It Now’, p.12.

¹³ AkiDwA (2009) Am Only Saying It Now, p. 20

The process should not be adversarial or make the applicant feel like they are in a criminal trial. It is a discussion to find facts for their case. Recounting these facts may be extremely distressing or traumatic and all IPO staff should be sensitive to this.

iii. ***Recommendations:***

- Provide resourcing to IPO to address backlog in international protection claims. Set clear timeframes to complete individual applications: first interview within 6 months, final decision within one year.
- It is of vital importance that interviewers are culturally sensitive and are aware of the diverse backgrounds of the applicants they speak with including consideration for different education levels or experience with trauma. Consider the use of audio recording in interviews both to review facts and conduct of interviews after the fact.
- To ensure accessibility to specialised support for victims of torture and who have experienced trauma from conflict and other gender specific harm. Services are currently limited and there is a disproportionate need among asylum seekers which is not being met.

B. Domestic, Sexual and Gender-Based Violence

Women who experience domestic, sexual and gender-based violence, especially when perpetrated by their spouse, face particular obstacles to engaging with the Irish justice system. These include financial dependence on their spouse and/or dependence on their spouse for immigration status in Ireland, stigma in their family and extended community associated with filing a complaint and fear of reprisals, including losing their children, should they bring themselves to the attention of the justice system.

i. Domestic violence

Many migrant women continue to suffer in their homes or residences. Some of the migrant women subjected to domestic violence fear to report domestic abuse they suffer for fear of losing their legal status, especially women whose status is dependent on that of their spouse, according to the Women Aid 2019 report 92 % (757) of calls made to their helpline were from migrant women. The Habitual Residence Condition (HRC) is a qualifying condition for

social welfare payments which was introduced in 2004. Women who leave their partner because of violence, and who do not satisfy the Habitual Residence Condition, may find themselves and their children destitute. Even if they enter into a women's refuge, given that the service is a temporary measure and that they are not entitled to any payment whilst in these accommodation services, the chances of these women (on their own or with their children) remaining in the centres are quite slim. In most cases, victims end up back home with the perpetrator. While Ireland has a policy which allows for women in abusive relationships to apply for legal residence status independent of their abuser, the guidelines are at Ministerial discretion and are not on statutory footing.

ii. Recommendations:

- Carry out an urgent review of all governmental policies and laws, including those on violence against women, citizenship, nationality, immigration and asylum, for the discriminatory impact on marginalised women affecting their enjoyment of gender and racial equality (this includes the habitual residence condition introduced in 2004).
- Since Ireland ratified the Istanbul convention in March 2019, government should fully incorporate the articles (59-62) of the convention that guarantee that migrant and refugee women will indeed be protected from all forms of violence and have our victims' rights properly recognized, regardless of immigration status
- Ireland should opt into the EU Directive on Family Reunification and introduce legislation which provides for autonomous residence permits. In addition to this the protection of undocumented women from domestic violence should also be regarded as a priority in immigration reform.
- Advocate and encourage frontline services and other service providers to take up training on cultural competence (already developed by AkiDwA) so as to empower professionals and frontline staff working with migrants, refugee and Asylum-Seeking women, understanding cultural differences, their experiences of fleeing violence and respecting their rights under the EU Victims Directive.

iii. Female Genital Mutilation (FGM)

In 2019 AkiDwA estimated the prevalence of women who have undergone FGM living in Ireland to be 5,795.¹⁴ According to EIGE¹⁵, almost 6,000 girls born in Ireland or originating from FGM-affected countries under the age of 15 and living in Ireland are at risk of female genital mutilation. Since 2012 Ireland has passed the Criminal Law (Female Genital Mutilation) Act 2012. It is now a criminal offence to perform or procure FGM on a girl. Further, the Act applies extraterritoriality to the offences so it is an offence to remove a girl from the State for the purpose of performing or procuring FGM. While AkiDwA welcomes this progress, and Ireland witnessed the first FGM prosecution under this law in January 2020. Highlighted in this one and only landmark case did were issues with the treatment of migrant women by the justice system - including personnel lacking cultural sensitivity, and the hesitancy of reporting amongst migrant communities (this case came out because of medical complications; without which it could have remained unnoticed). There is much more to be done beyond criminal response, in order to support the 5,795 women living with FGM and the girls who are still at risk of suffering the same. Ireland still do not have an implementation-focused plan to address FGM or coordination issues.

Efforts to support women and girls and to prevent further FGM are currently led by civil society, namely the National Steering Committee on Female Genital Mutilation. This includes a mix of healthcare providers and advocacy, development and community organisations. Together the national steering committee developed a detailed plan to prevent the practice of FGM in Ireland, to provide high quality, specialised healthcare and support form women and girls who have undergone FGM and to contribute to the worldwide campaign to end FGM.

iv. Recommendation

- The adoption of a National Action Plan on FGM to coordinate a response to this human rights abuse is needed. Implementation should be led by an interdepartmental working group to coordinate national efforts, in partnership with civil society, survivors and affected communities

¹⁴ AkiDwA (2019) *Female Genital Mutilation and the Law in Ireland*. Prevalence estimated by synthesizing Central Statistics Office data from 2016 with UNICEF and WHO global prevalence figures from 2016.

¹⁵ EIGE (2105) Estimation of girls at risk of female genital mutilation in the European Union

v. Trafficking

Trafficking of women for sexual exploitation/ prostitution remains a huge issue globally in Ireland and according to Ruhama report in provision of support in 2018 out of the 251 women supported by the organisation 201 were migrant women of which 124 were from the African continent, access to support and services, language barrier, fear of alienation, lack of cultural competency, cultural and religious traditions remain huge challenges in support of such women

Lack of recognition on gender specific harm- sexual violence, rape: intersection of discrimination on grounds of race and gender makes women and girls particularly vulnerable- this has been recognised by DDPA on women from armed conflict

vi. Recommendations

- Support for women victims of trafficking
- Provide migrant women and women who have no legal immigration status with full and equal access to all the resources and preventative measures against violence available to other women in the community, as well as access to appropriate interpretation and support facilities

C. All forms of media and communications, including new technologies

Since its foundation, AkiDwA's work has focused on racism and discrimination, and cyber abuse has been reported to be of major concern. With the evolution of modern technology and the easy access to social media, many migrant women find themselves struggling with online sexual and racial abuse.

AkiDwA has delivered training in collaboration with Google, and conducted baseline research on migrant's experience with online abuse in Ireland. Our recent seminar with Google provided a reflective space for in-depth discussion with the aim to explore the impact of online abuse on migrant women. A major concern for the organisation remains on under reporting and lack of support for the victims. Reparation and access to justice for victims are important.

i. Recommendations

- Ireland should develop a comprehensive framework and strategies to address online hate speech, with complementary criminal and non-legal approaches.
- Provide support to victims of racist abuse through counselling or a telephone reporting and information service.
- Schools need education on online safety on the curriculum, which would specifically include lessons on cyber bullying and hate speech.
- Promote public awareness campaign to educate the public on the privilege and the limits of free speech and the consequences of hate speech.
- Expand the list of protected categories under the Incitement to Hatred Act 1989 in line with the Equality Status Acts to include gender, gender identity and disability.
- Systematically collect all reports of racist and hate speech and abuse and analyse data to improve response.
- Media professionals should adhere to journalistic ethical code of practice. Newspapers should not publish material or reports likely to cause or stir up hatred against an individual or group.

D. Health Discrimination

Migrant women face major challenges in accessing health services and support, this includes, access to information, language barriers and accessibility.

Unequal treatment in accessing public services has a direct bearing on the lived experiences and social status of any individual or groups. While most frontline and service providers aim to deliver services without prejudice, direct experiences of racism are a reality for many migrant women. This according to AkiDwA members can take many different forms, such as the manner and tone used by officials, prejudiced behaviour and sometimes being denied services. In 2017 AkiDwA undertook research on migrant women and healthcare. The research found that there are gendered barriers as well as barriers to migrant women when accessing healthcare services, and that migrant women as a group have specific needs within the healthcare system which are currently not being met. This fact was reiterated by focus group findings held with migrant women as part of the research. As reported by the Irish

Examiner in May 2021, Perinatal Mortality Rates (PMRs) are highest where the mother or expectant mother is listed as national African and living in Ireland where the stillbirth rate is 6.3% compared to 3.7% for national Irish mothers.

Based on a survey carried out by AkiDwA in Sept 2020 on migrant women's health, trauma and mental health services were rated poorly by AkiDwA members. This was attributed to the lack of cultural understanding amongst health service providers and their lack of awareness of culturally sensitive issues. Many of the women feel there is a lack of understanding of their cultural background and country of origin from the healthcare providers, this resulted in negative perceptions and stereotypes and misunderstandings which consequently hamper the delivery of proper services and support.

Many migrant women struggle to access information about medical services in Ireland; similar to the lack of justice-system information, and as a result, many do not know where or how to receive medical treatment or access to the Irish health system.

There are further health issues facing refugee women and those in Direct Provision centres. As many as 80% of refugee women suffer from mental health issues as a result of fleeing from strife and the strenuous asylum process, the majority are struggling with trauma. These women need psycho-social support in order to cope and advance in life.

Training on cultural competence should be delivered to all front line and healthcare professionals in order to provide culturally appropriate services to migrant women. This includes developing strategies of dealing with culturally sensitive health related issues that are viewed to be stigmatizing, such as mental health. Extra cautions should be taken, in particular the approach and the way healthcare professionals and front-line services engage and deal with complex or gender specific issues that pertain to women from armed conflict struggling with trauma or FGM. They must deliver services with understanding of the impact of gender specific harm on women.

i. Recommendations

- To ensure front line and healthcare professionals are trained in gender and cultural sensitivity and are delivering culturally appropriate care

- To ensure availability of Translation and interpretation services especially in primary healthcare settings, and concurrently adopt a proactive approach to inform migrant and minority populations of healthcare services available and how to access them.
- To ensure accessibility to specialised support for victims of torture and who have experienced trauma from conflict and other gender specific harm. Services are currently limited and there is a disproportionate need among asylum seekers which is not being met.
- To establish primary health care champions from the migrant community. This would be a programme similar to the traveller's primary health programme

E. Employment - Discriminatory practices

AkiDwA 2017 research on migrant women and access to employment shows that while migrant women have higher levels of education than the general Irish population, they are generally living at the margin of society, struggling with unemployment, and those who find work are mainly working in precarious jobs and sectors such as home healthcare. In research by AkiDwA, 57% of respondents found that their jobs didn't match their skills. Similarly, both Black non-Irish and Black Irish employees are much less likely than their White Irish counterparts to hold managerial/professional positions. Black non-Irish are five times as likely to face discrimination seeking work as their White Irish counterparts.¹⁶

In Ireland, the proportion of men of African descent who have completed tertiary education is higher than the general population – 46% of those surveyed vs 34% of the average. However, Ireland has one of the lowest paid work rates of people of African descent of working age – only 48% in employment. Further, men have better employment rates than women. Women tend to experience discrimination when looking for work more often than men¹⁷.

Migrant women have been hindered from accessing employment because of racism. In 2018, 48% of complaints taken to the Workplace Relations Commission under the Equality Acts were because of racial discrimination. Non-Irish nationals are three times more likely to experience discrimination while looking for work, while Black people are seven times more

¹⁶ McGinnity et al (2018) Ethnicity and Nationality in the Irish Labour Market, IHREC/ESRI

¹⁷ Second European Union Minorities and Discrimination Survey: Being Black in the EU (2018)
https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf

likely to experience such discrimination. Further, people of African descent still face the highest levels of workplace discrimination including harassment and unfair treatment. Black Irish and Black non-Irish both face up to 3.4 times more discrimination in the workplace compared to White Irish¹⁸. Young migrant women of AkiDwA also have expressed concern and struggle with isolation, lack of opportunities and daily discrimination which they face. The majority continues to suffer with their identity, they find it extremely challenging to access employment. The report ‘Who Experiences Discrimination in Ireland?’ found that women face much more discrimination in the workplace than men¹⁹. This leaves migrant and minority ethnic women especially vulnerable to discrimination at their place of work²⁰.

In our work, we find that the barriers which women of African descent face include lack of recognition of their qualifications from abroad, lack of work experience in Ireland, lack of childcare, and multiple discriminations based on race, gender and religion.

i. Recommendations:

- To develop measures to reduce barriers to the labour market which are more acutely felt by migrant and ethnic minority women including measures for residents living in Direct Provision to:
 - Avoid rural isolation in future accommodation locations.
 - Improve transport links for residents.
 - Allow applicants to hold a driver’s licence.
 - Address banking institution refusal to serve applicants for international protection.
 - Educate employers and the public on work permits.
 - Improve availability of childcare to parents in Direct Provision
- To ensure the recognition of foreign qualifications, allowing women to use the skills they have already developed
- To establish support mechanism to help in job search and access for migrant women and to expand the eligibility for work permits to allow more applicants for international protection the right to work

¹⁸ McGinnity et al (2018) Ethnicity and Nationality in the Irish Labour Market, IHREC/ESRI

¹⁹ McGinnity et al (2017) Who Experiences Discrimination in Ireland? Evidence from the QNHS Equality Modules, IHREC/ESRI

²⁰ McGinnity et al (2018) Ethnicity and Nationality in the Irish Labour Market, IHREC/ESRI

- To develop positive equality measures to address structural inequalities, including for migrant women
 - A proactive policy should be adopted to increase the awareness of the Employment Equality and Equal Status Acts. The equality legislation should provide for class action as well as individual redress for discrimination while trying to access employment.
- Reform of childcare supports for women who are entering the workplace.

F. Education, Accomodation, Inclusion and Participation

Migrant women are further limited in their enjoyment of equal access to education and housing, civic engagement and participation in decision making. Traditional gender roles, gender-based stereotypes and discriminatory attitudes and norms are additional contributing factors.

The 27th Amendment to the Constitution, removing the automatic constitutional right to citizenship for all people born in Ireland, leaves the legislation for the regulation of citizenship up to the discretion of the Oireachtas. In a poll carried out by Behaviour and Attitudes for the Sunday Times in 2018, it was found that 71% of Irish voters were of the belief that citizenship should be an entitlement of anyone born in Ireland²¹. This indicates that the current state approach to citizenship is not in line with the attitudes of the general public.

i. Recommendations

- Apply positive measures to reduce structural gaps-such as quota, reserved seats. Strengthening capabilities of women, ethnic minority and marginalised groups through training and support. Education is a major segment for gender socialisation, equality and diversity should be key components of the education process.
- Ensure the integration of a gender perspective into all programmes and policies aimed at combating racism, racial discrimination, xenophobia and related intolerance
- Ensure the collection of proper data. Collect, compile and disseminate data according to race and sex. Information must be gathered on the intersection of race and gender, focusing on issues that specifically affect women of racially disadvantaged groups

²¹ <https://www.thejournal.ie/readme/immigrant-children-born-in-ireland-5276579-Nov2020/>

- Ensure the development of policies and programmes, including representation and participation of migrant women in all public spheres, positive actions such as quotas can be taken, to increase participation of migrant women in decision-making. promote the advancement of migrant women and adopt measures that enable all women to play an active role in the society.
- Ensure the development of policies and programmes, such as raised in the Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018, to provide protection to all children born in Ireland.

Written Submission by An Garda Síochána to the Joint Committee on Justice on the topic of “Minorities engaging with the justice system”.

INTRODUCTION

An Garda Síochána face the daily challenge of policing a diverse and multicultural society. By their nature these communities are often hard to reach or susceptible to hate crime / discrimination which makes them vulnerable. Our minority and diverse communities are often reluctant to come forward and report when victimised, and therefore are less likely to engage with the Criminal Justice System.

Being a victim from a diverse / minority community can bring with it added layers of fear, mistrust, re-victimisation etc., which reduces the likelihood of reporting a crime. It is widely acknowledged that there is a serious underreporting of racism, homophobia and other forms of hate crime, making the importance of understanding the problems and challenges faced by these communities all the more significant. Enhancing our ability to understand the needs of the communities we serve will encourage those from diverse backgrounds to engage with the Criminal Justice System.

GARDA SÍOCHÁNA DIVERSITY AND INTEGRATION STRATEGY 2019-2021

An Garda Síochána launched the [Garda Síochána Diversity and Integration Strategy, 2019 – 2021](#) in October 2019. The strategy has a significant focus on enhancing the identification, reporting, recording and investigating of hate crimes. It contains a working hate crime definition in line with international best practice, and recognises the current and emerging diversity of our communities. It also aims to protect all diverse and minority groups in society by increasing accessibility and improving outcomes for those in our communities from diverse and minority backgrounds.

Areas of Interest to the Committee

The following written submission on behalf of An Garda Síochána is formatted in line with the five areas of interest, as identified in the letter to the Garda Commissioner from the Joint Committee on Justice dated 19 July 2021.

1. Provide insight into the experience of a particular minority group when engaging with the justice system?

1.1 The Traveling Community, An Garda Síochána and the Criminal Justice System

1.1.1 The Travelling Community's relationship with the Criminal Justice System and An Garda Síochána has long been one characterised with feelings of mistrust, discrimination and over representation. In 2019, An Garda Síochána, in collaboration with stakeholders predominantly from within the Traveller Community, established the Garda Traveller Advisory Group (GTAG), in line with An Garda Síochána commitment to build trust and to identify the policing needs of all diverse, minority and 'hard to reach' communities. This initiative provides a platform for the frank and robust exchange of ideas and views in a spirit of critical friendship, for the common goal of improving the experience of Travellers with An Garda Síochána and the Criminal Justice System.

1.1.2 The objectives of GTAG are as follows and reflect the issues of most importance to the Traveller groups represented.

1. Strengthen relations and positive engagement between An Garda Síochána and the Traveller Community on a local and national level.
2. Embed a culture of respect, dignity and support for Garda-Traveller interactions.
3. Promote accountability within An Garda Síochána by guidance on policing best practices which adhere to ECHR.
4. Invite and support recruitment and retention of members of the Traveller Community in An Garda Síochána.
5. Identify, examine and advise on key emerging issues in Garda-Traveller interactions.
6. Advise An Garda Síochána on the policing needs of the Traveller Community.
7. Support and assist in developing the training requirements of An Garda Síochána.
8. Commitment to National Traveller and Roma Integration Strategy (NTRIS).

2. What supports are currently available to minority groups when engaging with the justice system?

2.1 The Garda National Diversity and Integration Unit

The Garda National Diversity and Integration Unit (GNDIU) plays an integral role in liaising and building robust relationships with all diverse / minority groups from across the entire diversity spectrum.

2.1.1 GNDIU operates under the control of Superintendent, Garda National Community Engagement Bureau. As a national office, GNDIU is responsible for monitoring, advising and coordinating on all aspects of diversity and integration from an external policing perspective.

2.1.2 The unit plays an integral role in liaising and building robust relationships with all diverse / minority groups from across the entire Diversity spectrum. This includes regular, ongoing engagement with representatives of all ethnic, religious, cultural groups, NGOs, Civil Society Organisations (CSOs), criminal justice partners, advocacy and support groups and religious leaders.

2.1.2 The primary functions of GNDIU include:

- **Training:** Developing and delivering training, across all ranks and grades of the organisation, on hate crime and diversity and cultural awareness. Delivering training to Garda Diversity Officers (formerly Ethnic Liaison Officers), Specialist Interviewers, Immigration Officers, and other specialist units on matters including the specific policing needs of minority communities and the barriers that exist in accessing the criminal justice system.
- **Operational Support:** Advising, assisting and supporting investigations and operational policing matters concerning reporting, recording, investigating, and prosecuting hate crime. Briefing senior Garda management on hate crime and other diversity and integration matters. Ensuring the needs of our diverse and minority communities are understood and met on an ongoing basis will ensure increased trust and confidence.
- **Victim Support:** Supporting and liaising with victims of hate crime / members of the public to ensure access to Garda or other relevant services.
- **Public Awareness Campaigns:** Developing public awareness campaigns across all strands of diversity. Utilising Garda social media platforms to support and publicise campaigns run by

stakeholder groups. These initiatives help to promote trust and confidence from within these communities to engage with An Garda Síochána and the justice system.

- **Encouraging Recruitment:** GNDIU promote An Garda Síochána as a realistic and appealing career choice to those from diverse communities. Achieving balanced representation from minority communities will build the trust and confidence required to ensure that the criminal justice needs of those communities can be met.

2.2 Garda Diversity Officers

2.2.1 Garda Diversity Officers (GDOs) formerly known as Ethnic Liaison Officers (ELOs) are members of An Garda Síochána trained, developed and supported to actively engage with and attend to the concerns of our minority, diverse and hard to reach communities - providing reassurance, building trust and extending the accessibility of the Garda service and the Criminal Justice System.

2.2.2 GDOs are supported by GNDIU, who also provide training in relation to awareness, engagement and liaison with diverse / minority communities. There are currently 310 trained GDOs across every Garda Division. A current list of GDOs is available on www.garda.ie. The role of GDOs includes the following inter alia:

- Improve accessibility of the Garda service to minority, diverse and hard to reach communities through the development of positive working relationships, carrying out engagements within these communities and providing appropriate supports.
- Promote An Garda Síochána recruitment campaigns within those community settings.
- Overcome communication / trust barriers through active engagement, open dialogue and collaboration.
- Encourage and facilitate the reporting, recording, investigating and prosecuting of hate crime.
- Support victims of Hate Crime by identifying their particular needs, providing reassurance and acting as liaison with necessary support services.
- Be responsive to emerging trends or existing needs within the community that require attention.

2.3 Garda Síochána Diversity and Integration Strategy 2019-2021

2.3.1 An Garda Síochána launched the [Garda Síochána Diversity and Integration Strategy, 2019 – 2021](#) in October 2019. The strategy has a significant focus on enhancing the identification, reporting,

recording and investigating of hate crimes. It contains a working hate crime definition in line with international best practice, recognises the current and emerging diversity of our communities and aims to protect all diverse and minority groups in society.

2.4 Garda National Diversity Forum

2.4.1 The Garda National Diversity Forum has been established in line with An Garda Síochána commitment to engage with stakeholders in a proactive and inclusive manner in order to build trust and identify the policing needs of all diverse, minority and 'hard to reach' communities.

2.4.2 The Garda National Diversity Forum is made up of representatives of all communities and key stakeholders to monitor and review the implementation of the Diversity and Integration Strategy 2019 – 2021. Ongoing communication with members of the forum allows GNDIU to maintain links with the communities it represents.

2.4.3 The aims of the Garda National Diversity Forum are;

1. Oversee the implementation of the Diversity and Integration Strategy 2019-2021.
2. Review the Diversity and Integration Strategy 2019-2021.
3. Advise on communication of Diversity and Integration Strategy 2019-2021 objectives.
4. Advise on hate crime / diversity communication, internally and externally.
5. Act as external communication channel to representative groups / communities.

2.5 Diversity Training

2.5.1 New bespoke online training programmes, aimed at meeting the policing needs of all communities are currently being developed. These training initiatives will instil confidence and increase awareness within members of An Garda Síochána of the needs of our minority communities. Increased levels of satisfaction amongst those from minority backgrounds will encourage future engagement with An Garda Síochána and the Criminal Justice System.

This training programme will include the following:

- Online Hate Crime Training
- Online Diversity and Cultural Awareness Training
- Online Leadership in Diversity Training.

2.5.2 During the development of the hate crime and cultural diversity training modules, representatives from a wide spectrum of minority representative groups were utilised to provide inputs and video content to ensure their voices are heard and that their policing needs are reflected in future diversity training.

2.5.3 To ensure inclusivity, the online hate crime module was developed in partnership with *Facing Facts* and CEJI (A Jewish Contribution to an Inclusive Europe), with the Irish Network Against Racism in a consultancy role. These partnerships ensure the training delivered is in line with international best practice and will ensure a high quality of service is delivered to victims of hate crime. Improved outcomes and experiences from those reporting hate crime to An Garda Síochána will encourage future reporting and engagement with the Criminal Justice System.

2.6 Online Hate Crime Reporting

2.6.1 A new, non-emergency online hate crime reporting mechanism was launched on 21 July 2021 and can be accessed via www.garda.ie. Hate crime can now be reported to An Garda Síochána in a safe and secure way and will allow for the appropriate response and support to be provided. This service provides increased accessibility to the Garda service, particularly for victims of hate crime who may have previously been reluctant to report to An Garda Síochána.

2.6.2 To promote this new service, an external publicity campaign was undertaken by An Garda Síochána, which included the publication of an instructional video on the use of the new online hate crime recording system and a promotional video developed in conjunction with our diverse / minority partners. The scripts of both these videos are available in 19 languages. Both videos were publicised on social media and remain available on the Garda website and Garda Portal.

2.6.3 A press conference was held on 21 July 2021 to launch the new online hate crime reporting mechanism. This date was selected to launch the new online service for reporting hate crime in support of EU Day of Action in Support of Victims of Hate Crime.

2.6.4 In addition, a hate crime information leaflet, available on the Garda website in [19 different languages](#) was also launched. The leaflets contain information on identifying hate crime, hate crime

definitions, victims of hate crime, the role of An Garda Síochána and how to report hate crime. They are being distributed around the country, to be available in the public area of Garda stations and via NGOs and CSOs.

2.7 Third Party Referrals

2.7.1 In order to further increase access to the services of An Garda Síochána and the Criminal Justice System, a formal process for receiving third party referrals of hate crime from non-government organisations or civil society organisations via GNDIU has been developed. Third party referrals provide a safe and secure way of reporting hate crime to those who would otherwise be reluctant to do so.

2.8 Update to PULSE – Hate Crime recording

2.8.1 The recording of quality and robust hate crime data allows for improved intelligence based policing responses to emerging trends and patterns. It increases An Garda Síochána effectiveness to challenge occurrences of hate crime in our society.

2.8.2 PULSE Release 7.6 occurred on 18 October 2020 and introduced a number of measures to improve the reporting and recording of hate crimes and non-crime hate incidents on PULSE. This included the introduction of a hate related tick box, the mandatory selection of discriminatory motives (now aligned with the hate crime definition), the introduction of an ‘H’ identifier for hate crimes / incidents, and changes to the ‘MO’ and motive screens.

2.9 Garda Victim Service Offices

The Garda Victim Service Offices are located in every Garda Division. These offices send out letters to victims of crimes with updates on their cases. These letters can be translated into 38 languages. An Garda Síochána offers a free translation and interpretation service for victims. The victim information booklet gives victims an overview of the entire criminal justice process and what they can expect from An Garda Síochána when they report a crime. This booklet is also available on the Garda website and is translated into 38 languages. It is also available as an audio file on the Garda website. Hard copies and copies of the booklet in braille are available on request from any Garda Victim Service Office.

3. What are the difficulties or barriers facing minorities when engaging with the justice system? (eg language barriers, cultural differences etc)

3.1 Willingness to Engage with An Garda Síochána (and the Justice System)

3.1.1 Victims and witnesses of hate crime are often reluctant to engage with An Garda Síochána, support groups or NGOs. This can be for a number of reasons, such as;

- Lack of trust in the police - (in general), based on experience from other jurisdictions.
- Lack of trust in An Garda Síochána - (specifically) based on a previous negative experience.
- Fear that their complaint will not be taken seriously.
- Lack of awareness of the law, the Criminal Justice System, the services of An Garda Síochána.
- Language barriers (see 3.3.1).
- Immigration status – if the victim’s immigration status in Ireland is undocumented, there is a low likelihood that they will engage with An Garda Síochána.

3.2 Underrepresentation

3.2.1 An Garda Síochána has a proud tradition of being representative of the communities it serves. In order to further build and maintain the trust and cooperation of all our diverse communities, efforts must be made to ensure full representation.

3.2.2 To support the Human Resources and People Development objective of attracting, developing and retaining talented individuals, representative of minority and diverse communities, GNDIU, in conjunction with the HR Equality Diversity and Inclusion Section, are actively engaging with representatives of minority groups, including the Black Community. The Glenree Centre for Peace and Reconciliation (Refugee and Intercultural Programme) have facilitated a collaborative approach to attracting candidates. Similar events are planned to coincide with the launch of the next Garda recruitment campaign, the date of which is to be confirmed.

An internship programme, designed to increase the accessibility, understanding of and potential for a career in An Garda Síochána for school leavers and graduates, particularly those from groups typically

underrepresented in the organisation, has been launched in line with commitments contained in the Equality, Diversity and Inclusion Strategy 2020-2021.

3.3 Language Barriers

3.3.1 Victims of crime from minority backgrounds may be reluctant to engage with the Criminal Justice System should the services of translators be required. Although translators are routinely utilised by An Garda Síochána when required, they are not readily available at Garda stations should they wish to make an enquiry or explore their options related to a particular scenario. This is also the case in respect of access to solicitors or court services for advice or direction.

An Garda Síochána have introduced a translation function ([recite me](#)) to the Garda website (www.garda.ie), which allows all content to be translated to a wide variety of languages.

4. What improvements could be made / specialized supports be provided to improve the experience of minority groups engaging with the justice system?

4.1 VICTIM SUPPORT

4.1.1 The strategic objectives, in relation to hate crime victims, will be to a large extent satisfied, should the Criminal Justice (Victims of Crime) Act, 2017 be implemented in full. However, the nature of hate crime is such that its effects and consequences differ from those of regular crimes, both in terms of the impact on the individual victims and of the wider community. Providing ‘appropriate support’ must involve recognition of the distinct needs and vulnerabilities of hate crime victims and their wider communities. If the vast majority of victims do not report their victimisation to An Garda Síochána, this allows offenders to go unpunished. This impunity undermines the effectiveness and credibility of the Criminal Justice System.

4.2 Undocumented Migrants

4.2.1 An Garda Síochána is a victim centred police service, focused on keeping people safe, protecting the most vulnerable and providing a consistently high standard of service. An Garda Síochána are also responsible for all Garda matters relating to immigration, including investigations into illegal immigration.

4.2.2 Undocumented migrants are highly unlikely to engage with An Garda Síochána or the Criminal Justice System for fear of their immigration status being discovered and investigated. Development of a legal basis under which undocumented migrants can, without fear of investigation, report victimisation to An Garda Síochána, is required to extend our victim centred police service to all in our society.

5. What is the impact of intermediaries or voluntary groups that help facilitate engagement between minorities and the justice system?

5.1 Building and maintaining positive working relationships between An Garda Síochána and community leaders and representative groups is essential to ensuring that trust and confidence in the justice system is developed and maintained. The exchange of information relating to community issues or tensions and third party referrals to An Garda Síochána can help those who would have otherwise been excluded access the Garda services.

5.2 The work of the Garda National Diversity Forum is an example of an open and transparent mechanism that allows for the sharing of information, ideas and issues in a spirit of ‘critical friendship’ (see 2.4). The forum representatives are regularly updated on progress and delivery of the objectives, as contained in the Diversity and Integration Strategy 2019-2021. They, in turn, can disseminate that information to the communities they represent, which promotes accessibility and confidence.

5.3 The work of the Garda Diversity Officers (see 2.2) at a local level allows for the development of trusting relationships, whereby advice and guidance can be delivered, often via the third party organisation, to the individual requiring support.

5.4 The primary function of the Victims of Crime Office is to support the development of competent, caring and efficient services to victims of crime, by State agencies and non-governmental organisations throughout the country. It uses the [Victims Charter](#) to achieve improved standards of treatment of victims by relevant State and voluntary sector organisations, and promotes awareness concerning the needs of victims of crime and the services available to them. The Victims of Crime Office recognise the impact hate crime can have on a victim and provide appropriate support. This service is essential to ensuring that the victim of hate crime is supported through the Criminal Justice process and will encourage more victims of hate crime to engage.

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