

IRELAND

**Information on the follow-up to the recommendations in
ECRI's Third Report on Ireland and information on new
developments.**

5 th DECEMBER 2011

Introduction

Ireland has undergone a phenomenal demographic and social change over a very short period of time. Between 2002 and 2006, the non-Irish national population increased from 224,000 to 420,000 (+ 87%). According to Census 2006, over 10% of Ireland's population were non-Irish nationals representing people from 188 different countries. The fastest growing categories were EU nationals, particularly from Eastern Europe and the Baltic States, along with people from Africa and Asia.

Preliminary results from Census 2011 show that the total population was 4,581,269 on 10 April 2011. This represents an increase of 8.1% over the past five years since the last Census in 2006. Nationality breakdown figures from Census 2011 are expected to be available in mid 2012.

The Quarterly National Household Survey for the second quarter of 2011 estimated that there were 373,800 non-Irish Nationals aged over 15 living in Ireland.

I. FOLLOW UP TO ECRI'S THIRD REPORT ON IRELAND

A. INTERNATIONAL LEGAL INSTRUMENTS

(1). ECRI reiterates its recommendation that Ireland ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible. ECRI also reiterates its recommendation that Ireland ratify the European Convention for the Participation of Foreigners in Public Life at Local Level, the European Convention on Nationality, the European Charter for Regional or Minority Languages, the European Convention on the Legal Status of Migrant Workers and the UNESCO Convention against Discrimination in Education. (Page 7 – I.8.)

Response:

Protocol No. 12 to the European Convention on Human Rights

As a signatory to Protocol 12 to the European Convention on Human Rights, Ireland keeps the question of ratifying the Protocol under review. The major issue is the lack of clarity as to the precise extent of the obligations imposed on States Parties by the very broad general prohibition on discrimination in Article 1 of the Protocol. It is notable also that no definition of discrimination is provided in Protocol 12. We will watch closely how the European Court of Human Rights interprets the scope of this Article when it comes to rule on individual cases. The open, non-exhaustive list of discrimination grounds in the Protocol would seem to be at variance with the prescriptive list of discrimination grounds enshrined in Ireland's Employment Equality and Equal Status Acts.

European Convention for the Participation of Foreigners in Public Life at Local Level¹

It is not envisaged at present that Ireland will ratify the European Convention for the Participation of Foreigners in Public Life at Local Level. All resident citizens have the right to vote at all elections and referenda. In addition, British citizens may vote at Dáil (Lower House of Parliament) elections, European elections and local government elections; other EU citizens may vote at European and local government elections; and non-EU citizens may vote at local government elections only.

European Convention on Nationality²

Ireland is considering ratification of this Convention.

¹ <http://www.conventions.coe.int/Treaty/en/Treaties/Html/144.htm>

² <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm>

*European Charter for Regional or Minority Languages*³

The status of the Irish language is enshrined in Article 8 of the Irish Constitution, which recognises it as the national language and the first official language of the State. Article 8 also recognises the English language as the second official language. The Official Languages Act 2003⁴, which provides a statutory framework for the delivery of public services through the Irish language, defines “the official languages” in accordance with the provisions of the Constitution. Furthermore, the Irish language has been recognised as an official and working language of the EU with effect from 1 January 2007.

In these circumstances, the Irish Government considers that it would be inappropriate to view the Irish language as having the legal status of either a regional or minority language and it is not proposed therefore to ratify the Charter in respect of the Irish language.

*European Convention on the Legal Status of Migrant Workers*⁵

There are no plans to ratify the European Convention on the Legal Status of Migrant Workers which was finalised in 1977. However, the provisions of the Convention in relation to work permits and re-employment have been largely provided for through the provisions of the Employment Permits Acts 2003 and 2006 and their implementation in practice.

UNESCO Convention against Discrimination in Education

The UNESCO Convention against Discrimination in Education was agreed in 1960. Ireland was not a member of UNESCO at that time. At present, there are no immediate plans for Ireland to ratify the Convention. However, Ireland is committed, in general, to the principle of equality of educational opportunity contained in the Convention.

(2). ECRI recommends that Ireland ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. (Page 8 – I.9)

Response:

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The rights of legal migrant workers and their families are comprehensively protected in existing legislation, the Irish Constitution and other international treaties. Ireland

³ <http://conventions.coe.int/Treaty/en/Treaties/html/148.htm>

⁴ <http://www.irishstatutebook.ie/2003/en/act/pub/0032/index.html>

⁵ <http://conventions.coe.int/Treaty/en/Treaties/Html/093.htm>

has no plans ratify this Convention. It should be noted that, so far as we are aware, no other EU Member State has ratified the convention either.

Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Under the 1989 Prohibition of Incitement to Hatred Act⁶, it is an offence to publish or distribute written material or to distribute, show or play a recording of visual images or sounds, if the written material, visual images or sounds are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred. The term “written material” includes any sign or other visual representation.

Section 2 of the Act provides for an offence of broadcasting any threatening, abusive or insulting material which is likely to or intended to stir up hatred. “Broadcast” means the transmission, relaying or distribution by wireless telegraphy or by any other means or by wireless telegraphy in conjunction with any other means of communications, sounds, signs, visual images or signals, intended for direct reception by the public whether such communication, sounds, signs, visual images or signals are actually received or not.

The Act is kept under continuing review in the Department of Justice and Equality to ensure its continuing effectiveness. The continuing review is taking into account the Protocol to the Cybercrime Convention on combating racism and xenophobia through computer systems.

(3). ECRI recommends that the Irish authorities ensure that members of the judiciary and practitioners receive initial and on-going training on the European Convention on Human Rights Act 2003 as well as on the jurisprudence of the European Court of Human Right and in particular on its case law pertaining to racism and racial discrimination. ECRI further recommends that the Irish authorities examine and take into consideration the recommendations made by the Law Society on the impact of this Act. (page 8 – I.12)

Response:

Judicial training in Ireland is organised by the judiciary itself in order to ensure that their Constitutional independence is fully respected.

The Courts and Court Officers Act 1995 introduced a number of measures to facilitate training for the judiciary. The Act provides that persons wishing to be considered for judicial appointment must agree to take training courses following their appointment. The provision of training for judges is a matter for the Committee for Judicial Studies, an independent body which is chaired by the Chief Justice. It provides for the training and on-going education of the Judiciary. Administrative, secretarial and support services are provided by the Courts Service. The State provides a budget to support

⁶ <http://www.irishstatutebook.ie/1989/en/act/pub/0019/index.html>

Judicial Training and it is a matter for the Judiciary to determine how that budget is spent.

Members of the judiciary have attended conferences at home and abroad which have considered issues such as human trafficking, human rights, Refugee law, racism and xenophobia which look at racial dimensions of crime without it being the principal subject matter of the conference. (Please find a table outlining the conferences attended from 2009 – 2011 attached at **Appendix A**).

Equal Treatment Guidelines

An Equal Treatment Guidelines bench book which provides an overview of legal procedure for a judge, is currently being prepared which will, inter alia, address matters of ethnicity. The project is being funded jointly by the EU and the Committee for Judicial Studies, (formerly the Judicial Studies Institute).

Legislation to provide for a Judicial Council will likely formalise the issue of Judicial training.

B. CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS.

(4). ECRI calls again on the Irish authorities to ensure that, in accordance with its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, the Constitution provides for: 1) the principle of equal treatment; 2) the State's commitment to promoting equality and, 3) the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin. ECRI further recommends that the authorities ensure that any exceptions to the principle of equal treatment be established by law and that it not constitute discrimination. (page 9 – I.15)

Response:

Ireland is deeply committed to the promotion and protection of human rights. The Constitution specifically provides for a large number of rights. This, in effect, constitutes a Bill of Rights for the State. These rights inform the drafting of legislation and the framing of all Government policies. As mentioned above, the Programme for Government requires all public bodies to take due note of equality and human rights in carrying out their functions.

Irish equality law has a very broad field of application. The Employment Equality Acts 1998 to 2011 prohibit discrimination in the field of employment and occupation, the Equal Status Acts 2000 to 2011 prohibit discrimination in the access to and supply of goods and services, while the Pensions Acts 1990 to 2004 prohibit discrimination in occupational pension schemes. This legislation extends to both the public and private sectors.

Exceptions to the general prohibition on differences in treatment include provisions to balance the requirements of combating discrimination and the protection of other

rights and freedoms, such as freedom of expression, freedom of association, and the right to private and family life.

C. CITIZENSHIP LEGISLATION.

The Government is committed to reducing the time taken to process applications for citizenship to an average of six months.

In March 2011, the Minister for Justice and Equality, Mr. Alan Shatter, T.D., put in train new arrangements to reduce that time to an average of 6 months. In addition to this, legislation has been introduced to establish citizenship ceremonies for the conferral of citizenship certificates on successful applicants, in order to provide a formal ceremony to mark the acceptance of the obligations of citizenship and to give formal acknowledgement by the State of the situation. These new arrangements have been welcomed both by the new citizens and by those who were issued with certificates under the old arrangements, as a recognition of their contribution made to Irish society.

Currently, there are no plans to introduce appeals in citizenship matters. Decisions are made by the Minister for Justice and Equality who considers any information put forward by an applicant.

(5) ECRI recommends that the Irish authorities ensure that Irish children of non-Irish parents are not in effect precluded from fully enjoying the right to reside in Ireland. ECRI further strongly recommends that the best interests of the child be given due consideration with regard to pending applications for leave to remain in Ireland made by non-Irish parents of Irish children. (page 10 – I.20)

Response:

The European Court of Justice Judgment in the Zambrano case, delivered on 8th March, 2011, ruled that Member States are precluded from refusing a third country national upon whom his minor children who are European Union citizens are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen. In Ireland, this ruling refers to the non EEA national parents of Irish born citizen minor children.

The Judgment means that any non-EU national parent of an Irish citizen child who can show that they meet the Zambrano criteria will have to be provided with a right of residence and the right to work. Such non-EU national parents will have to be able to produce documentary evidence that (i) their child is a minor Irish citizen, (ii) the child is resident in Ireland and (iii) the child in question is dependent on that non-EU national parent.

The Repatriation Division of the Irish Naturalisation and Immigration Service is examining all cases on hand to see where any such cases meet the Zambrano criteria. Where the Zambrano criteria are met, all other things being equal, permission to remain in the State will be granted, for a specified period, of a nature as will enable such parent(s) to work in the State without an Employment Permit or to set up in any legitimate business or profession without seeking the permission of the Minister for Justice and Equality.

D. CRIMINAL LAW PROVISIONS

(6). ECRI recommends that the Irish authorities complete their current review of the Prohibition of Incitement to Hatred Act 1989 as soon as possible. ECRI recommends in this regard that the authorities draw their inspiration from paragraph 18⁷ of its General Policy Recommendation No.7. It further recommends that the authorities not make completion of this review incumbent on a future agreement on the draft European Union Framework Decision on Combating Racism and Xenophobia. (page 11 – I.24)

Response:

An overview of the key provisions of the Prohibition of Incitement to Hatred Act 1989 can be found at **Appendix B**.

Research into Racism and the Criminal Law was undertaken by the Centre for Criminal Research Justice, University of Limerick, having been commissioned by the National Consultative Committee on Racism and Interculturalism and the National Action Plan Against Racism. The findings of the research were published on the 18th December, 2008.

The authors of the report made only one recommendation regarding the criminal law (see response to Recommendation D. 8) and stated that changes in the criminal law would be insufficient by themselves to address racism. They commented that it was clearly established, at both the national and international level, that greater dividends would ensue from more substantial investment in social and education measures. The

⁷ **IV. Criminal law**

18. The law should penalise the following acts when committed intentionally:

- a) public incitement to violence, hatred or discrimination,
- b) public insults and defamation or
- c) threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;
- d) the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;
- e) the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes;
- f) the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material containing manifestations covered by paragraphs 18 a), b), c), d) and e);
- g) the creation or the leadership of a group which promotes racism ; support for such a group ; and participation in its activities with the intention of contributing to the offences covered by paragraph 18 a), b), c), d), e) and f);
- h) racial discrimination in the exercise of one's public office or occupation.

report is available on the website of the Office for the Promotion of Migrant Integration⁸.

The report concluded that the offences in the Prohibition of Incitement to Hatred Act 1989“ reflect the minimum standards that must be respected in the public expression of race-based views and opinions on others.” It added that “they provide an essential affirmation of the importance of racial harmony in civilised societies”.

The report further concluded that “the complex nature of the offences in the 1989 Act arises primarily from the overriding need to balance fundamental rights, such as freedom of expression, privacy and basic principles of criminal liability, with the need to protect individuals and groups against vicious racist abuse”.

The approach and wording of the 1989 Act are necessary to strike a balance between protecting persons from racial abuse and safeguarding the constitutional right of freedom of expression.

This view is reinforced by the provisions of EU Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law. Article 7 of the Framework Decision protects the right to freedom of association and freedom of expression. Also, these rights are protected by Article 40, paragraph 6 of our Constitution.

Formal notification of Ireland’s compliance with the Framework Decision and supporting documentation were submitted to the European Commission by the November 2010 deadline.

With respect to General Policy Recommendation 7 concerning discrimination and defamation, any discriminatory or defamatory remarks or statements may be prosecuted under section 2 of the 1989 Act if they are intended to or likely to stir up hatred. Actions against defamatory statements which are not intended to or likely to stir up hatred may be pursued through civil law via the Defamation Act 2009. Alternatively, any statement may be prosecuted under section 5 of the Non-Fatal Offences against the Person Act 1997 (threats to kill or cause serious harm), if it constitutes a threat under that Act.

Under Section 2 of the 1989 Act, the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, may be considered a criminal offence if these statements are intended to or likely to stir up hatred.

Similarly, the provisions of the Offences against the State Act 1939 can be used to combat unlawful organisations, including those with racist aims. Section 18 of that Act provides a definition of an unlawful organisation and makes it a criminal offence for any person to be a member of such an organisation. The Act also provides for the forfeiture of the property and assets of such an organisation.

⁸ [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7UPE6D1121207-en/\\$File/Combating%20Racism%20with%20the%20Criminal%20Law.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7UPE6D1121207-en/$File/Combating%20Racism%20with%20the%20Criminal%20Law.pdf)

The outcome of the review of the 1989 Act was contingent on the conclusions of the aforementioned study by the University of Limerick. The report concluded “that it would be inappropriate to introduce racially aggravated offences into Irish law. Rather, any aggravating factor should be taken into account at sentencing.” The report goes on to say that the most effective route to combating racism through the criminal law is through sentencing.

In reaching this conclusion, the report examined the operation of racially aggravated offences in neighbouring jurisdictions. It pointed to the difficulty in proving that an offence was committed with a racist motivation and the lack of convictions in those jurisdictions. It also concluded, having regard to the scope of equality legislation in this jurisdiction, that aggravated offences would have to have a wider ambit than racist offences.

(7). ECRI recommends that, pending the review of the Prohibition of Incitement to Hatred Act 1989, the Irish authorities ensure that the existing relevant criminal law provisions are implemented more vigorously against those who commit racially motivated crimes. (page 11 – I.25)

Response:

Recent information provided by the Office of the Director of Public Prosecutions (16 June 2011) shows that the Prohibition of Incitement to Hatred Act is being used to secure convictions for racist and xenophobic offences and is being considered by the judiciary when passing down sentence.

In addition to the 1989 Act, the Criminal Justice (Public Order) Act 1994 can be used to prosecute racially motivated crime. That Act created an offence of using or engaging in threatening, abusive or insulting behaviour in a public place. It also created an offence of distributing or displaying in a public place material which is threatening, abusive, insulting or obscene. The trial judge can take aggravating circumstances, including racial motivation, into account at sentencing stage. This is also applicable to the following sample list of statutes.

1. Offences against the person

Non-Fatal Offences Against the Person Act 1997
Criminal Law (Rape) Act 1981
Criminal Law (Rape) (Amendment) Act 1990

2. Criminal damage

Criminal Damage Act 1991

(8). ECRI reiterates its recommendation that the Irish authorities include in the criminal legislation provisions which allow for the racist motivation of a crime to be considered as an aggravating circumstance at sentencing and that they envisage providing that racist offences be defined as specific offences. It recommends that they draw their inspiration from its General Policy Recommendation No.7 when making these amendments. (page 12 – I.28)

Response:

Where criminal activities are committed with a racist motive they are prosecuted as generic offences through the wider criminal law (**See Appendix C**). The trial judge can take aggravating factors, such as racism and xenophobia, into account at sentencing.

In Ireland, the legislature enacts criminal laws which usually provide for maximum penalties in the form of a fine or imprisonment, or both. In general, there are no statutory sentencing guidelines. Within our legislative framework, the determination of penalty in any individual case is largely a matter for the trial judge, taking case law, including appealed cases, into account. This allows the courts to take all the circumstances of the offence and all the relevant aggravating and mitigating factors into account. The gravity of the offence, the facts surrounding the commission of the offence, the criminal record of the accused and the impact on the victim are among the critical factors taken into account before a sentence is imposed. The judge must take into account the circumstances of the offence and the offender. Also, the Director of Public Prosecutions, can appeal against the sentence imposed if he believes it to be unduly lenient (Criminal Justice Act 1993).

Moreover, it would be very difficult to justify legislative provision for racially aggravated sentencing without introducing similar provisions to deal with crimes (possibly numerically greater and just as reprehensible) against other vulnerable groups, for example, children and the elderly.

In all the circumstances, there are no plans, at present, for statutory guidelines for the purpose of racially aggravated sentencing.

Research Outcome

In Chapter 9 of the Report entitled “ Combating Racism and Xenophobia through the Criminal Law⁹” (Conclusions and Recommendations), the authors of the University of Limerick research (2008) weighed the arguments for and against introducing aggravated sentencing provisions and recommended a provision, taking section 11(4) of the Criminal Justice Act 1984 as a guide, that judges must consider racism as an aggravating factor which increases the seriousness of the offence when determining sentence.

The aggravated sentencing provision in the 1984 Act (consecutive sentences) was introduced to deal with a very specific problem, i.e., persons before the courts on criminal charges committing offences - often multiple offences - while on bail. However, the introduction of racially aggravated sentencing would involve a restructuring of penalties for basic criminal offences (assault or criminal damage, for example) to increase sentences and have wider implications for the criminal law.

As stated above, it would be extremely difficult to justify racially aggravated sentencing without introducing similar provisions to deal with crimes (possibly numerically greater and just as reprehensible) against other vulnerable groups, for example, children, the elderly and the intellectually disabled.

⁹ [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7UPE6D1121207-en/\\$File/Combating%20Racism%20with%20the%20Criminal%20Law.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7UPE6D1121207-en/$File/Combating%20Racism%20with%20the%20Criminal%20Law.pdf)

E. CIVIL AND ADMINISTRATIVE LAW PROVISIONS.

(9). ECRI recommends that the Irish authorities expand the scope of the Equality Act to include governmental actions such as national policy strategies, departmental policies and decisions on the allocation of funding in relation to areas such as health, education and housing. ECRI also recommends that the Irish authorities consider extending the anti-discrimination provision concerning persons employed in the home to the recruitment process. It recommends in this respect that the authorities draw their inspiration from paragraphs 4-17 of its General Policy Recommendation No.7. (page 13 – I.33)

Response:

The European Convention on Human Rights Act 2003 places a statutory duty on organs of the state to perform their functions in accordance with the Convention.

Expansion of the scope of the Equality Act

Section 14(1) (a) of the Equal Status Act 2000, as amended, provides that the Act cannot be construed as prohibiting the taking of any action that is required by or under any enactment or order of a court, any act done or measure adopted by the European Union, by the European Communities or institutions thereof or by bodies competent under the Treaties establishing the European Communities, or any convention or other instrument imposing an international obligation on the State.

The Equal Status Act is one of a number of anti-discrimination measures which apply in the field of goods and services. Such provisions are also embedded in a number of other pieces of legislation relating to specialist areas, such as in regard to regulation of health insurance and regulation of licensed premises, many of which predate the Equal Status Act. These legislative provisions have their own redress mechanisms.

Extending the anti-discrimination provision concerning persons employed in the home to the recruitment process.

Domestic workers are protected from discrimination under the Employment Equality Acts in their terms and conditions of employment in the same way as other employees.

In the recruitment of an employee to provide certain services in a domestic context, a qualified and limited exception is provided to the general obligation under the Employment Equality Acts in order to reconcile decisions taken in the context of private and family life with the right to equal treatment. Four cumulative conditions must be met before this exception applies - regarding the nature of the services being provided, being limited to *personal services*; the context within which they are provided, which must be *in another person's home*; the persons for whom they are being provided, which must be *to persons residing in that home*; and the impact of the services, which *must affect the private or family life of those persons*.

The flexibility provided in these criteria allows for a significant element of individualised assessment in any given case and clearly enables the Tribunal or court to construe and apply the relevant provisions in a manner consistent with the human rights of the employer, employee and recipient of such personal services.

It should be stressed, however, that this exception applies only to recruitment. Once employed, such employees are protected from discrimination under the Employment Equality Acts in the same way as other employees.

(10). ECRI strongly recommends that the Irish authorities take measures to raise awareness among ethnic minority groups of the anti-discrimination legislation and the mechanisms for invoking it. It recommends that the Irish authorities involve NGOs, lawyers and other interested parties such as employers and employment agencies in this process. (page 13 – I.34)

Response:

A number of media and publicity campaigns were funded under the National Action Plan Against Racism 2005-2008. These large scale campaigns are extremely expensive and it is considered more prudent, in the current economic climate, to use available funds for more targeted initiatives.

Substantial funding is provided to Local Authorities around the country and they support local programmes that educate the public on issues such as immigration, integration and antiracism. For example, Dublin City Council ran an anti-racism campaign on the Dublin transport system in 2010 and 2011 using funding provided by the Office of the Minister for Integration (now the Office for the Promotion of Migrant Integration). Similarly, a NGO called Show Racism the Red Card was supported to run a creative competition for school children in 2010 and 2011. Funding was also provided to the Holocaust Educational Trust for educational initiatives that teach children the dangers of racism and the importance of integration and tolerance.

The National Employment Rights Agency launched a major publicity campaign "Employment Rights, your need to know" to inform workers of their rights in January 2008. The cross -media advertising campaign was designed primarily to raise the issue of employment rights with employers and employees and also to highlight the role of the Authority in providing information. The campaign, which ran for a 12 month period, included information provided online, on radio and television as well as through billboard advertising and the print media.

In 2010, the National Employment Rights Authority engaged in a pilot education and awareness campaign aimed specifically at workers in the domestic sector. This campaign was developed with the active involvement of relevant NGOs.

The Equality Authority

An Equality Mainstreaming Approach¹⁰ activity, managed by the Equality Authority and funded under the European Social Fund Human Capital Investment Operational Programme 2007-2013, is facilitating and supporting institutional change within providers of vocational education and training, labour market programmes and within small to medium enterprises. It aims to achieve this by strengthening the capacity of such organisations to combat discrimination on all nine grounds protected by law (which includes age), to promote equality and to accommodate diversity. Projects undertaken to date have ranged from enterprise level to sectoral interventions, such as the Irish Hospitality Institute's guidelines¹¹ on incorporating equality and diversity practice and principles in everyday work, now reflected in the Institute's Annual Diversity Awards. Other relevant projects included engagement with migrant workers and their employers in the mushroom industry, to inform workers and reviewing employment policies and procedures to ensure their compliance with equality legislation.

Irish Human Rights Commission

The Office for the Promotion of Migrant Integration provided a grant to the Irish Human Rights Commission to provide accessible information on rights and remedies directly to minority communities. The project would particularly focus on the rights and obligations contained in the International Convention on the Elimination of all forms of Racial Discrimination – primarily, the right to non-discrimination, which underpins the effective enjoyment of all human rights.

The project is being carried out in 2011, over a period of six months. It would begin with a needs assessment through desk research and direct contact with minority groups, in order to clearly understand what information is currently available to them and their information needs. It will also identify the most efficient way of ensuring that this information reaches those who need it in a user-friendly format. The information will link the problem to a particular right and possible remedy (e.g. suggesting pathways for individuals to access statutory mechanisms such as An Garda Síochána for racist crime reporting).

The project is aimed at particularly vulnerable communities who may not be adequately supported at present for example, those in direct provision centres and those working as domestic workers (migrant workers). While it is intended that the outcomes of the project would be of use to all such people living in Ireland, the project would focus on individuals living outside of the greater Dublin area, who may experience particular isolation from information and services.

Following the needs assessment, a series of information leaflets will be prepared for distribution, based on the assessment carried out. Needs assessment work would focus on three regions: Galway, Clare and Cork each of which have significant migrant populations according to the state's most recent census. Subject to funding, some

¹⁰ <http://www.equality.ie/index.asp?locID=322&docID=-1>

¹¹ <http://www.ihri.ie/media/documents/IHRIEquality10Steps-FinalVersion.pdf>

information meetings will be held (including on a regional level in the three areas mentioned above), tapping inter alia into the new integration structures recently established.

The Irish Human Rights Commission, as the statutory body with a mandate to promote human rights, is in a unique position to implement this project. It already has access to many of the groups concerned and has authority when it comes to the reliability of its substantive work on rights.

The Government has recently undertaken to merge the Irish Human Rights Commission and the Equality Authority to form a new, strengthened and more streamlined Human Rights and Equality Commission.

(11). ECRI recommends that the Irish authorities ensure that the remedies available under the equality legislation are effective and sufficiently dissuasive. It recommends in this regard that the maximum compensation awarded under the Equal Status Acts be substantially increased. (page 13 – I.35)

Response:

Equality legislation provides for an effective and dissuasive system of sanctions for discrimination.

The Employment Equality Acts provide that the types of redress which may be awarded include an order for compensation for the effects of acts of discrimination or victimisation on the complainant. Similarly, the Equal Status Acts provide that redress may include an order for compensation for the effects of the prohibited conduct concerned on the complainant. The principle applied is that the amount of compensation awarded is in proportion to the harm suffered by the victim. Redress is determined on a case by case basis, recognising that similar circumstances can have varying impacts on different victims. The upper limit on compensation in Equal Status cases is the maximum amount that could be awarded by the District Court in civil cases in contract.

The payment of compensation by the respondent to the victim of discrimination is, however, only one aspect of the system of sanctions.

Under both the Employment Equality Acts and the Equal Status Acts, the sanctions which may be imposed also include the making of orders for a course of action to be taken by a named person or persons. The Equality Tribunal and Labour Court have used this power extensively, for example to require employers and service providers to develop and implement equality policies, to train their staff and to change work practices.

F. NATIONAL ACTION PLAN AGAINST RACISM 2005-2008.

(12). ECRI encourages the Irish authorities to continue implementing the National Action Plan Against Racism. In this regard, it recommends that they provide sufficient funding to the bodies whose task is to implement the objectives set out therein and that a monitoring and evaluation system be established. (page 14 – I.37)

Response:

The National Action Plan against Racism ran for the period 2005 to 2008. The Plan, which was integration driven, provided support towards the development of a number of national and local strategies promoting greater integration in our workplaces, in the Police Force, the Health Service, in our Education System, in the arts and sports sectors and within our local authorities.

Many of the initiatives which were instigated through the National Action Plan against Racism 2005-2008 continue to be developed and progressed through the support and work of the Office for the Promotion of Migrant Integration (formerly the Office of the Minister for Integration). For example, an Arts and Culture Strategy¹² and an Intercultural Education Strategy were launched in September 2010 and a Workplace Diversity Strategy is ongoing. Links to these Strategies are available on the website of the Office for the Promotion of Migrant Integration¹³. The focus now is on implementation of the sectoral strategies.

The Office for the Promotion of Migrant Integration continues to work with many sectors including the Irish Police, Local Authorities, Sporting Bodies, Government Departments, the social partners and broader civil society including cultural and ethnic minorities, to further progress the integration and diversity management agenda.

In May 2008, 'Migration Nation'¹⁴, a statement on the future direction of integration policy in Ireland was launched. The policy focuses particularly on the role of local authorities and sporting bodies in building integrated communities.

While primary core funding for integration is spent by mainline Departments who provide services on a mainstream basis, the Office for the Promotion of Migrant Integration provides seed funding in key areas to facilitate integration and to address racism.

¹² <http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-strategies-nationalcultural-en>

¹³ <http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-strategies-national-en>

¹⁴ [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/\\$File/Migration%20Nation.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/$File/Migration%20Nation.pdf)

G. SPECIALISED BODIES AND OTHER INSTITUTIONS.

(13). ECRI recommends that the Irish authorities continue to support the work of the Equality Authority by providing it with the necessary human and financial resources to carry out its current workload, to provide information about its work to members of ethnic minority groups and to expand where necessary. (page 15 – I.41)

Response:

The Government has recently undertaken to merge the Irish Human Rights Commission and the Equality Authority to form a new strengthened Human Rights and Equality Commission.

The Government is determined that the new body will be able to build on the work of the Commission and Authority in advancing the Human Rights and Equality agendas. Funding will be provided to enable the new Human Rights and Equality Commission to function effectively and independently, and fully in accordance with the Paris Principles.

A Working Group on the establishment of the new, enhanced Human Rights and Equality Commission was appointed by the Minister for Justice, Equality and Defence, Alan Shatter T.D., on 6 October 2011.

The group is currently seeking input and ideas from civil society, members of the public and those interested in the future of human rights and equality in Ireland on key questions arising from their Terms of Reference. This consultation process will help to inform the Working Group's consideration of the functions, features and priorities of the new Human Rights and Equality Commission.

It is intended that the new Commission will be in place by the end of February 2012.

(14). ECRI further recommends that the Irish authorities ensure that the decision to relocate the Equality Authority outside Dublin does not result in members of minority groups having difficulties in accessing this body and in the loss of valuable institutional knowledge. ECRI further recommends that the authorities consider opening local offices in order to enable as many members of minority groups as possible to have access to the Equality Authority. (page 15 – I.42)

Response:

Please see reply to Recommendation 13.

H. EQUALITY TRIBUNAL.

(15). ECRI urges the Irish authorities to ensure that the Equality Tribunal is adequately staffed in order to enable it to clear the current backlog of cases and render its decisions or mediate settlements in a timely manner. ECRI further recommends that the authorities ensure that members of minority groups are represented in the Tribunal's staff. (page 16 – I.47)

Response:

The service provided by the Equality Tribunal is operational and is demand driven. There has been a shift in the trend of case referrals with a large increase in employment equality cases which now account for 84% of referrals. Following several years of significant increases in the rate of new claims referred to the Equality Tribunal, this now appears to have levelled off at approximately 900 per year.

The Tribunal has maintained its practice of ongoing reassessment of its work procedures to improve productivity. In 2009, it carried out a major internal review of all of its processes, resulting in a wide-ranging reorganisation plan with the potential to significantly increase the rate of case closure. Through improved case management and efficient resource allocation, the Tribunal has progressively increased its throughput of cases. A 24% increase was achieved in its case closure rate in 2010 over the previous year. The number of decisions issued alone was increased by 30%.

It should be noted that several waiting periods are built into the investigation and mediation model, for example to permit lodging and consideration of submissions by participants, clarification of ambiguities in correspondence and reactivation of complaints for investigation where mediation is unsuccessful. While time limits are specified in law for some of these steps, parties may seek further extensions of time.

At present, the average waiting time for closure of equal status cases is 18 months, with cases referred in 2009 now being scheduled for hearing. The corresponding average waiting time for closure of the more numerous employment equality cases is approximately 3 years, with cases referred in 2008 now being scheduled for hearing.

It should be noted that only a minority of cases progress to a full investigation and a hearing. The average time to closure is significantly less in respect to complaints in which parties agree to mediation, which is an option available to all. Mediation is offered as standard as an alternative to investigation and mediated settlements are currently being closed within six months.

Initiatives being taken by the Equality Tribunal in 2011 are expected to see the number of lead cases closed in the year increase to 1,200. This level of throughput, maintained to end 2013, would see the current backlog of 1,745 lead cases on hand at 01/01/2011 reduce to 845 on hand by 31/12/2013. By end 2013, therefore, and assuming no significant change in the rate of new referrals, the Tribunal aims to have reduced the average time from receipt to closing a case to 12 months.

It should be noted that proposals are being developed to amalgamate the Equality Tribunal, the Labour Relations Commission, the National Employment Rights Authority, the Employment Appeals Tribunal and the Labour Court to form a single body dealing with workplace grievances and disputes.

(16.). ECRI recommends that the Irish authorities ensure that the decision to relocate the Equality Tribunal in Portarlinton does not result in members of minority groups having difficulties in accessing this body. ECRI further recommends that measures be taken to ensure that the relocation does not lead to the loss of a valuable institutional memory and that the authorities consider the possibility of offering special incentives to that end. ECRI also recommends that the authorities examine the possibility of keeping an effective presence in Dublin to facilitate access to the Equality Tribunal for minority groups who live in that area. (page 16 – I.48)

Response:

It should be noted that proposals are being developed to amalgamate the Equality Tribunal, the Labour Relations Commission, the National Employment Rights Authority, the Employment Appeals Tribunal and the Labour Court to form a single body dealing with workplace grievances and disputes.

I. HUMAN RIGHTS COMMISSION.

(17). ECRI recommends that the Irish authorities allocate sufficient human and financial resources to the Human Rights Commission in order to enable it to, inter alia, continue providing its input on issues pertaining to racism and racial discrimination. ECRI also recommends that the authorities ensure that members of minority groups are included among this body's staff. (page 17 – I.51)

Response:

Please see reply to Recommendation 13.

J. NATIONAL CONSULTATIVE COMMITTEE ON RACISM AND INTERCULTURALISM 1998-2008.

(18). ECRI recommends that the Irish authorities provide more funding to the NCCRI to enable it to open more local offices. ECRI also encourages the Irish authorities to continue taking into account the NCCRI's recommendations on issues pertaining to racism and racial discrimination and recommends that they take into consideration its submission regarding the Scheme for an Immigration, Residence and Protection Bill. (page 17 – I.54)

Response:

The National Consultative Committee on Racism and Interculturalism was an independent expert body established in 1998 to focus on racism and interculturalism. It sponsored a partnership approach to anti-racism and intercultural initiatives and received much of its core funding from the Government.

The Policy Statement on Integration Strategy and Diversity Management *Migration Nation* which was launched in May 2008 signalled that there would be changes in integration structures.

Subsequently, and in line with the policy of a rationalisation of State funded agencies in the context of Budget 2009, the Government decided to cease funding the National Consultative Committee on Racism and Interculturalism from 2008 onwards. Some of the functions of the National Consultative Committee on Racism and Interculturalism were subsequently absorbed into the Office of the Minister for Integration (now the Office for the Promotion of Migrant Integration).

K. EDUCATION AND AWARENESS RAISING.

(19). ECRI recommends that the authorities ensure the inclusion of human rights and anti-racism in the teacher training curriculum at all levels. ECRI further recommends that they ensure the implementation of the education component of the National Action Plan Against Racism as well as the Guidelines on Intercultural Education. ECRI further encourages the authorities in their development of a National Intercultural Strategy on Education and recommends that suggestions by NGOs and other interested parties be included in the objectives established therein. (page 18 – I.57)

Response:

Human rights and anti-racism in the teacher training curriculum at all levels

Primary Teachers

The main focus of the five State funded Colleges of Education is the Bachelor of Education in Primary Teaching which is the main path for entry to primary teaching. An 18-month Post-graduate Programme in Primary Teaching is also available in 4 of the Colleges (with the exception of Church of Ireland College of Education). In

addition to the five State funded Colleges one private college offers accredited primary and post-primary initial teacher training (for graduates) and also other post-graduate courses.

A variety of courses/modules/electives are provided as part of the initial teacher education programmes at primary level including: Inclusion, Educational Disadvantage, Intercultural Education, Equality and Cultural Diversity, Social Justice (local & global)

These courses are integrated across initial teacher education courses and may be provided on either an elective or mandatory basis. Teaching methodologies implemented in each College of Education promote a focus on developing inclusive classrooms.

DICE - Development and Intercultural Education; Integrating Development & Intercultural Education in Initial Primary Teacher Education

The central aim of the DICE project, which is funded by Irish Aid, is the inclusion of development education and intercultural education as essential elements of initial teacher education in Ireland. It works with college lecturers and student teachers of the five primary teacher training colleges in the State. By targeting the skills, knowledge and values of people involved in education the project seeks to promote global solidarity, human rights and environmental awareness and it tries to develop the ability to recognise and challenge discrimination and inequality, globally and locally. The project also tries to challenge perceptions and assumptions of those engaged in education in relation to the world and the society we live in. In addition, the DICE project undertakes research in the theory and practice of development education and intercultural education. This research is framed in the global context of rapid change and of unequal development.

Post – Primary Teachers

Post-primary teachers follow one of two models of initial teacher education: a concurrent or a consecutive model. Institutions of higher education are autonomous and course content may vary. Teaching methodologies promote focus on support for the inclusive classroom. The programmes provide for a wide variety of electives/modules on: Equality & Diversity, Social Justice, Multiculturalism and Inclusion

Role of the Teaching Council

All teacher education programmes in Ireland must have professional accreditation if graduates are to be eligible for registration with the Teaching Council. Accordingly, existing and new teacher education programmes must be designed in line with new criteria published by the Teaching Council to ensure eligibility for professional accreditation.

The Teaching Council published the new criteria which must be met by Higher Education Institutions providing programmes of teacher education in Ireland earlier

this year (2011). The Council has stated that the criteria will guide Higher Education Institutions in reconfiguring their programmes to ensure that they meet its professional accreditation requirements. The duration of concurrent programmes will be a minimum of four years commencing in 2012/13 while post graduate programmes will be provided over two years commencing in 2014/15.

The criteria relate to a range of areas including programme design, areas of study, the duration of programmes, the numbers and qualifications of staff, facilities and resources. Significantly, the criteria:

- prescribe those areas of study and programmes which will be mandatory to include: numeracy and literacy, behaviour management, parents in education, ICT and inclusive education (Special Education, Interculturalism, Disadvantage etc) and legislation relevant to school and classroom.
- prescribe the learning outcomes, set out by the Council, encompassing the standards of teaching, knowledge, skill and competence together with the values, attitudes and professional dispositions which are central to the practice of teaching including the factors that promote and hinder effective learning, the impact of pupils' backgrounds and identities on learning and the need to provide for the holistic development of the learner, particularly through differentiated approaches

The criteria are set out in a document, *Initial Teacher Education: Criteria and Guidelines for Programme Providers* (2011) which has been circulated to all Higher Education Institutions providing programmes of initial teacher education. It is based on the Council's Policy on the Continuum of Teacher Education which was also published in July 2011 and which sets out the Council's vision for teacher education at all stages of the teaching career, including initial teacher education, induction into the profession and continuing professional development.

The Council began reviewing programmes for professional accreditation purposes in 2009. Since then, eight programmes have undergone its review process and reports in relation to each are published on www.teachingcouncil.ie.

Ensure the implementation of the education component of the National Action Plan Against Racism as well as the Guidelines on Intercultural Education

The education component of the National Action Plan Against Racism Plan 2005-2008 has been and continues to be implemented and includes the following developments:

- Following a comprehensive consultation process, an Intercultural Education Strategy was completed and published in September 2010 at a conference which addressed aspects of the strategy. The strategy is unusual in that it caters for all sectors of education from pre-school right through the life-long learning cycle to further and higher education. It has 10 key components and 5 high level goals. See Figure A below. The strategy is, therefore, about inclusion and integration in an

intercultural learning environment. An annual stakeholder forum is being held to determine how the intercultural approach to education is progressing. The first such forum took place in October 2011 where progress from all levels of the education sector was reported on.

Figure A Framework for intercultural education		
	Key Component	Goal
1.	Leadership	Enable the adoption of a whole institution approach to creating an intercultural learning environment
2.	Mainstreaming of education provision	
3.	Rights and responsibilities	
4.	High aspirations and expectations	
5.	Enhance the quality of teaching	Build the capacity of education providers to develop an intercultural learning environment
6.	Knowledge of the language(s) of instruction	Support students to become proficient in the language of instruction
7.	Partnership and engagement	Encourage and promote active partnership , engagement and effective communication between education providers, students, parents and communities
8.	Effective communication	
9.	Data collection and research	Promote and evaluate data gathering and monitoring so that policy and decision making is evidence based
10.	Actions, monitoring and evaluation	

- The National Council for Curriculum and Assessment’s Intercultural Guidelines for Primary and Post-Primary (2006)¹⁵, and the pre-school Guidelines by Office of the Minister for Children and Youth Affairs on Equality and Diversity (2006)¹⁶ are examples of other documents published to assist with the development of more inclusive and intercultural learning practices. In addition, the National Council for Curriculum and Assessment’s Aistear¹⁷ (*which is the curriculum framework for children for birth to six years in Ireland*) at pre-school provide advice and guidance in the area of cultural diversity within the curricula and complements the findings in the Intercultural Education Strategy.
1. All education institutions have admission policies. The Department of Education and Skills is currently examining “admission/ enrolment policies” for primary and post primary schools. In particular, the Department published a ‘Discussion Paper on a Regulatory Framework for School Enrolment’ in June 2011. (Please see below for further information).

¹⁵ http://www.ncca.ie/uploadedfiles/publications/Interc%20Guide_Eng.pdf

¹⁶ http://www.dcy.gov.ie/documents/childcare/diversity_and_equality.pdf

¹⁷ http://www.ncca.ie/en/Curriculum_and_Assessment/Early_Childhood_and_Primary_Education/Early_Childhood_Education/

2. In July 2010, the Government approved a Dormant Accounts funded initiative to support clusters of pre-school settings to undertake equality and diversity training for their staff in a coordinated manner through the existing City and County Childcare Committee network.
- The implementation of the Report and Recommendations in the Traveller Education Strategy, which was published in 2006, provides the key advice and guidance for enhancing access and education delivered to Travellers, again across all education sectors. Its key principle is inclusion through mainstreaming and this approach is being adopted whereby additional resources are allocated based on identified educational needs and not on Traveller identity.
 - Young refugees and asylum seekers have the same rights to education up to 18 years as the rest of their peers. Adult refugees and immigrants with specific immigrant status have a right to further and higher education on the same basis as their Irish peers. The Higher Education Authority's National Access Office is targeting recently arrived immigrants including refugees. There is an access programme of one year available to adult refugees to prepare them for mainstream education or work.
 - The Refugee Access Programme of the City of Dublin Vocational Education Committee Separated Children's Service is an initiative for newly arrived separated children and gives the young people an opportunity to integrate into Ireland and into our education system in a protected and supportive environment. Unaccompanied minors are also entitled to access pre-school, primary and post-primary education in a manner similar to their Irish peers. For some, because of their education background, it may be difficult to find a programme that is age appropriate but, like Irish students for whom the academic route is not so suitable, they too can access e.g. Leaving Certificate applied and Youthreach and they can gain assistance, where necessary to enhance, their language, literacy and numeracy skills.
 - Additional supports are available for students, whose first language is not English, in primary and post-primary to improve their proficiency in English as quickly as possible. Adults can attend English language classes. In addition, the library network has a wide range of resources to assist and support migrants with learning English
 - Student data are collected throughout the education sectors. Information is collected on nationality and this is being used more and more to provide data on how immigrants and the host community, including Travellers are doing.
 - In June 2009, the Economic and Social Research Institute published its report, Adapting to Diversity: Irish Schools and Newcomer Students, which used both qualitative and quantitative data to describe how newcomer students were integrating into Irish schools. Ireland participated with five other countries in the OECD's Review of Migrant Education. Their review of Ireland was published in December 2009 and concentrated on: early childhood education and care; primary

and post-primary education; partnership and engagement; access to quality education, and; data collection.

- The Department of Education and Skills has dedicated a section of its website to 'AIM' (Accessing Intercultural Materials). This section provided links to a variety of intercultural data. AIM was established following requests made during the consultations on the Intercultural Strategy.

L. RECEPTION AND STATUS OF NON-CITIZENS.

(20). ECRI strongly recommends that the Irish authorities monitor the implementation of the Immigration Acts 2003 and 2004 to establish whether any problems of human rights violations, including racial profiling, exist. It recommends in this regard that the necessary measures be taken to address any problems and that the results of this monitoring be taken into consideration when drafting the Immigration, Residence and Protection Bill. (page 20 – I.61)

Response:

It should be noted that sections 11 and 12 of the Immigration Act, 2004 were amended by section 34 of the Civil Law (Miscellaneous Provisions) Act, 2011 in response to the High Court ruling on 25 March, 2011 in the case of *Ebere Dokie v. DPP, HRC, Ireland and the Attorney General (792JR/2008)*, that the then section 12 was inconsistent with the Constitution (in particular Article 38.1 which provides that no person shall be tried on a criminal charge save in due course of law and with the guarantee in Article 40.4.1 that no person shall be deprived of his liberty save in accordance with law).

It is not the case that section 12 of the Act of 2004 requires the Gardaí (Irish Police) to engage in ethnic profiling. Section 12 of the Immigration Act, 2004 sets out the powers of an immigration officer or a member of An Garda Síochána to demand certain documents from a non-Irish national. It is a core part of the legislative framework whereby Ireland controls and regulates the entry of non-nationals into the State and their obligations while in the State. The requirement to produce a passport on seeking entry into a country is an integral feature of the control of immigration worldwide. It is important to note that Mr. Justice Kearns, in the course of his judgment in the Dokie case referred to above, stated that a criminal sanction as provided for by section 11 and section 12 of the Immigration Act, 2011 for the failure to produce a passport when entering the State or thereafter to carry both passport and registration certificate is not a disproportionate legislative response.

(21). ECRI recommends that the Irish authorities review the impact of the Habitual Residence Condition on all groups of migrants and envisage introducing the necessary amendments to ensure that it does not place members of these communities in a precarious situation. (page 20 – I.62)

Response:

Background:

In the context of the enlargement of the European Union from 15 to 25 Member States in 2004, the European Union allowed Member States to impose transitional measures under the Accession Treaties restricting the extent of access of persons from the new Member States to their respective labour markets. Unlike the majority of Member States, Ireland (along with the UK and Sweden) did not impose any restrictions in 2004 on the numbers of people from the new Member States who wished to come here and work, although subsequently some restrictions were imposed by Ireland on Bulgaria and Romania on their accession to the EU in 2007.

In order to prevent “welfare tourism”, the Irish Government introduced a habitual residence condition as an additional condition for entitlement to social assistance payments and to Child Benefit, restricting access to such payments by people who are not economically active and who have little or no established connection with Ireland. Although introduced in the context of EU enlargement, the measure is intended to be a permanent feature of the social welfare system, in order to protect Ireland from being unduly attractive also to economic migrants, whether arriving as visitors, asylum seekers, or illegal immigrants.

Legislation:

The criteria for determining “habitual residence” are set out in social welfare legislation as follows. The person must have a right to reside in Ireland. They must also be habitually resident, on the basis of the following five factors, which are drawn from European Court of Justice case law:

- (a) *the length and continuity of residence in the State or in any other particular country;*
- (b) *the length and purpose of any absence from the State;*
- (c) *the nature and pattern of the person’s employment;*
- (d) *the person’s main centre of interest, and*
- (e) *the future intentions of the person concerned as they appear from all the circumstances.”*

The rules have been discussed with the EU Commission and the Irish Government is satisfied that they are in line with EU law in this area.

A Departmental working group was set up in June 2010 to review the operation of the habitual residence guidelines. The purpose of this review was to make the guidelines clearer and more user-friendly for deciding officers and customers alike and to improve consistency in decision making across the Department of Social Protection. This review was completed in June 2011 and the updated version of the guidelines was published on the Department’s website and can be found at:

<http://www.welfare.ie/EN/OperationalGuidelines/Pages/habres.aspx> The revised guidelines were rolled out to all relevant officers in the Department at the time of publication.

M. REFUGEES AND ASYLUM SEEKERS.

(22). ECRI encourages the Irish authorities to continue providing training to persons working with asylum seekers. It recommends in this regard that a permanent mechanism offering them initial and on-going training on refugee law and issues pertaining to racism, racial discrimination, cultural diversity and gender awareness be established. (page 20 – I.65)

Response:

Training to persons working with asylum seekers

Personnel of management companies in Direct Provision centres under contract to the Reception and Integration Agency have now had almost 10 years experience of working with people from a wide and varied racial, ethnic and religious background in practically all aspects of their lives

Dealing with child protection first, in relation to Garda (Police) vetting, it was agreed with the Police (Garda) Central Vetting Unit, that the Reception and Integration Agency would act as the central conduit for all communications between the Police (Garda) Central Vetting Unit and Reception and Integration Agency accommodation centres, of which there are Unit now 40 throughout Ireland All the Reception and Integration Agency contractors and their designated contact person have been vetted. The Reception and Integration Agency's largest contractor carried out a successful pilot vetting programme for its staff, all of whom have now been vetted. This formed the basis of a training programme for all other contractors and their designated contact persons all of whom have now been trained in the Police (Garda) Vetting procedure. This, in turn, facilitated the vetting of all staff employed in centres contracted to the Reception and Integration Agency. The vetting process is now completed and all contractors are required to submit Garda (Police) Vetting Forms for all newly appointed staff members.

In relation to training generally, all centres are managed by private companies each of which has its own training programme for staff.

In collaboration with the Reception and Integration Agency, specific training has been provided to managers in the area of conflict resolution, trafficking, child protection and parenting. The Health Service Executive (HSE) has provided 'Keeping Safe' child protection training to designated officers and other staff members in accommodation and reception centres. The Reception and Integration Agency has, with the Health Service Executive organised ASSIST Suicide Awareness Training for managers in accommodation centres. The aim of that course for managers and their staff is to raise awareness when it comes to recognising and dealing with mental health difficulties in accommodation centres.

In addition, the Reception and Integration Agency has facilitated the provision of other information at interagency meetings, with presentations on matters such as mental health services, trafficking policy, the work of the International Organisation for Migration, the asylum process and so on.

(23). ECRI strongly recommends that the Irish authorities reduce the length of the asylum process and that all current procedural guarantees continue to be respected. ECRI also recommends that the appeal procedure concerning asylum claims be reformed to improve the transparency and accountability of the process. (page 21 – I.70)

Response:

Length of the asylum process

On the matter of application processing times and consequent length of time spent in the direct provision system, some cases can take significantly longer to complete owing to, for example, delays arising from medical issues or because of judicial review proceedings. All asylum applications and appeals are processed in accordance with the Refugee Act 1996 and high quality and fair decision-making in all cases continues to be a key priority at all stages of the asylum process.

For the sake of completeness, it is necessary to point out that persons who are refused a declaration under section 17 of the Refugee Act 1996, the principal Act of Parliament in Ireland dealing with asylum, enter what is commonly referred to as the “leave to remain” process which generally has two elements to it: an application for subsidiary protection and further consideration to be given under section 3 of the Immigration Act 1999. This is separate from the asylum or refugee status determination process. The processing of cases at this point is also complex and extremely resource intensive and there are no quick or easy decisions to make. Given the life changing consequences for the persons involved, these are decisions which must be taken with the most scrupulous care and attention.

The Minister for Justice and Equality has taken steps to speed up the processing of applications, primarily by redeploying staff from the refugee determination bodies. The Immigration, Residence and Protection Bill 2010 which the Minister recently restored to the Dáil (Parliament) Order Paper provides for the introduction of a single procedure to determine applications for protection and other reasons to remain in the State. This should substantially simplify and streamline the existing arrangements. This reorganisation of the protection application processing framework will remove the current multi-layered processes and provide applicants with a final decision on their applications in a more straightforward and timely fashion.

Appeal procedure concerning asylum claims

Asylum appeals are comprehensively provided for in Chapter 4 of Part 7 of the Immigration, Residence and Protection Bill 2010, which establishes the Protection Review Tribunal (PRT).

As stated previously, the Minister for Justice, Equality and Defence has restored the Immigration, Residence and Protection Bill 2010 to the Dáil order paper. The Minister is currently progressing a number of amendments to the Bill, some of which relate the Protection Review Tribunal.

The Refugee Appeals Tribunal currently operates an online system of access to previous decisions for applicants' legal representatives. The facility is designed to ensure respect for the confidentiality of the applicants, a requirement under law.

(24). ECRI reiterates its recommendation that the Irish authorities establish a system for monitoring the deportation procedure of failed asylum seekers. It further recommends that officers involved in this process receive initial and on-going training on matters relating to racism and racial discrimination. (page 21 – I.71)

Response:

Ireland has appointed a number of persons as forced return monitors and one has been present and reported on every Irish led charter since May 2011.

(25). ECRI strongly recommends that the Irish authorities ensure that proposals made by NGOs and civil society concerning the Heads of the Scheme for an Immigration, Residence and Protection Bill dealing with asylum seekers and refugees are taken into consideration. (page 21 – I.72)

Response:

Arising from a comprehensive consultation process, legislative proposals were brought forward in the Immigration, Residence and Protection Bill, 2010. The Bill is currently before the Houses of the Oireachtas (Parliament).

(26). ECRI reiterates its recommendation that the Irish authorities consider enabling asylum seekers to engage in paid employment and recommends that the allowance provided to asylum seekers be equality and poverty proofed. ECRI also encourages the authorities in their harmonisation of the management of the direct provision system and their review of the complaints procedure. ECRI recommends that this process take into account concerns expressed about its current operation and that alternatives to the direct provision system be considered. ECRI further recommends that training on anti-racism and interculturalism be provided to personnel working in accommodation centres for asylum seekers. (page 22 – I.76)

Response:

[Asylum Seekers and the Right to Work](#)

Section 9 (4) (b) of the Refugee Act 1996 provides that an applicant shall not seek or enter employment or carry on any business or profession during the period before the final determination of his or her application. This prohibition is restated in the Immigration, Residence and Protection Bill 2010.

The key concern in this regard is that both the asylum system and the wider immigration system would be undermined by giving immigrants who secure entry to the State, on foot of claims to asylum, the same access to employment as immigrants who follow the lawful route to employment. There is an effective immigration and visa system in place for those who wish to lawfully migrate to the State for employment purposes.

Extending the right to work to asylum seekers would almost certainly have a profoundly negative impact on application numbers. The concerns in this regard are not without some basis. The immediate effect of a decision in July 1999 to allow asylum seekers to work was a threefold increase in the average number of applications per month leading to a figure of 1,217 applications in December 1999 compared with an average of 364 per month for the period January to July 1999

The allowance provided to asylum seekers be equality and poverty proofed

The Direct Provision Allowance is €19.10 for adults (€9.60 for a child) which is intended to cover incidental expenses. This is paid by the Community Welfare Officers. This payment has to be seen in the overall context of the supports provided to asylum seekers under the policy of direct provision which ensures that the needs of all asylum seekers are met comprehensively and to a high standard. These supports include:

- Accommodation at designated accommodation/reception centres while their application for asylum is being processed;
- All meals;
- No utility charges (gas, electricity, TV etc.) or rent;
- Free Laundry facilities;
- Regional pre-schools/crèche facilities at larger centres;
- Free primary and post-primary education;
- Additional resources for schools with special needs in the area of English Language;
- Full access to public health service;
- Medical cards;
- Designated psychological service;
- Exceptional Needs Payments (made at discretion of the Community Welfare Service);
- Back to school clothing and footwear allowance;
- Family clothing and footwear allowance;
- Other Community Welfare Payments.

The Government has no plans to increase the level of this allowance.

Direct Provision system

The Government has no plans to abolish or reform the Direct Provision system.

The Reception and Integration Agency is responsible for the accommodation of asylum seekers in accordance with the Government policy of direct provision. The Reception and Integration Agency currently operates 39 accommodation centres across the State. Of these 39 centres, 2 are for family accommodation only, 25 (such as Mosney) are a mix of family and single accommodation and 12 are for single persons only. As at 20 November 2011, the RIA was accommodating just over 5,400 persons (a reduction of 22% since the beginning of 2009).

For those who require accommodation and associated supports from the State while

their applications are pending, the Reception and Integration Agency accommodation centres provide a secure environment. The system of direct provision allows for a level of supervision of families which would not be found in alternative living arrangements. The availability and visibility of staff, Public Health Nurses, Community Welfare Officers, General Practitioners, Community and Ethnic Liaison Gardaí (Police) and others linked in with an accommodation centre serves to help monitor domestic relationships and provides a support for families within the direct provision system.

In procuring and managing its accommodation, the Reception and Integration Agency must take into consideration overall demand for accommodation and the changing profile of family groups.

The Reception and Integration Agency is charged with providing the 'best accommodation fit' for its residents having regard to the overall business needs, logistical and value for money challenges across its portfolio generally. In that context, there is a limit to which individual preferences, whether established by direct consultation or otherwise, can be met. Moreover, these preferences are subject to constant change. The Reception and Integration Agency is mindful of the needs of men, women and children who require Reception and Integration Agency assistance and this is reflected in the accommodation structure, security, health and safety arrangements, child protection, Garda (Police) vetting and parenting policies. In addition, the Reception and Integration Agency works with the Health Service Executive services locally to facilitate access to Public Health Nurse, General Practitioner and other services on-site or in the community.

The care and protection of all residents in the Reception and Integration Agency accommodation is of the utmost importance

Independent complaints mechanism.

The issue of an independent complaints mechanism featured greatly in the discussions which led to the revised House Rules and Procedures¹⁸ which were introduced in 2010. These Rules included a working complaints mechanism for use by asylum seeker residents and staff alike in Direct Provision centres.

It was the Reception Integration Agency's view that no clear model was cited during these discussions as to what an independent complaints mechanism would look like, or how it could be implemented without undue cost and bureaucracy. The system of direct provision exists within its own circumstances and the Reception and Integration Agency is satisfied that the structure of the complaints procedure contained within the revised House Rules is fair and is broadly in line with the guidelines set out by the Office of the Ombudsman for internal complaints systems.

The Working Group to review Reception and Integration Agency House Rules and Procedures which had been in place since 2002, had an independent Chairman and had representation from NGO's (including the Irish Refugee Council and the Refugee Information Service), the Health Service Executive, Reception and Integration

¹⁸ http://www.ria.gov.ie/en/RIA/Pages/House_Rules_Pubs

Agency, Centre Management and An Garda Síochána (Irish Police Force). This Group met on thirteen occasions and a subgroup also met with residents and local NGO's in four accommodation centres.

As stated in the House Rules, the aim of the Reception and Integration Agency complaints procedure is to have issues dealt with quickly and efficiently. The Rules specifically state that:

- residents should not be afraid to complain when they need to, and
- that making a complaint will not affect how other official agencies consider their claims to remain in the state (i.e. on asylum, subsidiary protection or general leave to remain grounds).

The revised Rules were laid out in a new question and answer format and more clearly explained the complaints mechanism for use by residents and staff alike. The thrust of the complaints procedure is that issues which arise are best resolved quickly, locally and informally without the need to proceed formally. In the main, this is how issues are resolved. But the Rules also provide for a written complaints procedure to be followed in the event that the matter cannot be resolved informally. It also allows for direct referral to the Reception and Integration Agency in certain circumstances. It is important to note that, if a complaint is made in respect of a decision made by a particular Reception and Integration Agency official, the appeal is not dealt with by that official.

These revised Rules have been translated into twelve languages and are provided to all asylum seekers on arrival at their accommodation centres. The Rules, including all translated versions, are published on-line on the Reception and Integration Agency website - www.ria.gov.ie. The Reception and Integration Agency also held information sessions for residents on the new House Rules in 20 centres in 2010 where active participation in the complaints process, where required, was encouraged.

The Reception and Integration Agency complaints procedures do not cover the asylum process itself in respect of which an independent appeals process already exists. Nor does it cover the issue of transfers within the Direct Provision system. Over and above the House Rules themselves, the interests of asylum seekers are represented through regular 'clinics' in centres where residents can speak directly to the Reception and Integration Agency Headquarters staff without local centre management being present. Further, unannounced inspections take place in centres, by the Reception and Integration Agency staff and by a contracted independent company, to ensure that centres are adhering to their contractual obligations. Also, issues of concern are also brought to the attention of the Reception and Integration Agency by representatives of statutory or voluntary agencies working with asylum seekers.

The Reception and Integration Agency publishes on its website, aggregated monthly statistics¹⁹ on formal written complaints made under these Rules.

¹⁹ http://www.ria.gov.ie/en/RIA/Pages/2011_Statistics

(27). ECRI recommends that the Irish authorities provide for integration measures aimed at asylum seekers in order to prepare them for their possible new life in Ireland. It recommends in this regard that the authorities consider providing the Immigration Integration Unit with this task. (page 22 – I.77)

Response:

Asylum Seekers do not fall within the remit of the Office for the Promotion of Migrant Integration as their status remains to be determined. They may be declared to be refugees or given permission to remain in the State on some other basis or they may be asked to leave the State. Therefore, integration measures in respect of asylum seekers would be premature and inappropriate.

Asylum seekers in the direct provision system benefit from access to mainstream services in areas including health and education and are free to engage with the communities in which they resident.

Both State service providers and NGO's assist asylum seekers in linking into local activities and projects. Asylum seeker children avail of mainstream schools and other community services. Adults can access English language supports through the Vocational Educational Committees.

N. EMPLOYMENT.

(28).ECRI encourages the Irish authorities to continue raising awareness of the necessity of combating racism and racial discrimination in the work place. It recommends in this regard that migrant workers and ethnic minorities be provided with information on their rights and the avenues for redress such as the Equality Tribunal, the Labour Court and the Employment Appeals Tribunal. ECRI also recommends that minority and migrant-led organisations be consulted and included in any awareness-raising initiatives. (page 24 – I.81)

Response:

Ireland has in place a strong corpus of employment rights legislation across the full range of employment rights, including the setting of a national minimum wage, hours of employment, holiday entitlements, rest periods, the provision of information and consultation, which is supplemented by a strong legislative base of rights under health and safety legislation.

Workplace Diversity Initiative

Over the last number of years, the Office for the Promotion of Migrant Integration (formerly the Office of the Minister for Integration) has provided funding for the Equality Authority towards the running of a Workplace Diversity Initiative. The Workplace Diversity Initiative aims to provide practical supports to business and trades unions to enable them to promote and champion diversity within the workplace.

Some of the activities that have been supported under this initiative include the following:

- The Irish Business and Employers Confederation appointed a diversity project officer who is responsible for the administration, organisation, development and delivery of various diversity projects and initiatives. A help-desk was set up to take any queries or deal with any issues arising from employers in the area of diversity. Various initiatives have also been undertaken to communicate and promote the case for diversity including a "Diversity newsletter" circulated to employers. Networking events were organised across Ireland during 2009 and 2010 which were attended by both large and small organisations within the public and private sectors. A Human Resource Management Survey was undertaken in 2008, providing a national benchmark on a wide range of Human Resource practices and was extended to include a number of diversity issues. One of the findings which emerged was that the main challenges accompanying the employment of non-Irish nationals included language difficulties (60%) and cultural integration (54%). A framework for a mentoring process among organisations, mentor guidelines and training for mentors was developed.

- A best practice guide on diversity management and the integrated workplace was researched and developed by the diversity project office in the Irish Business and Employers Confederation.²⁰
- The Workplace Diversity project has given the Irish Congress of Trade Unions the opportunity to manage and support their affiliated unions in developing integrated workplace strategies. Work undertaken as part of the Strategy includes training and seminars which focused on developing the case for being proactive on integrated workplaces within the trade union movement and also with employers. As part of the project, challenge funds were made available to project participants. The aim of these challenge funds was to enable trade unions to implement a practical initiative to increase awareness and competency in the area of diversity and equality and they have offered individual unions the opportunity to introduce a dedicated workplace strategy for their union, and also for the workplaces they are active in.
- Also under this initiative, Congress launched a publication entitled *Towards a Strategy for the Inclusion of Migrant Workers in Trade Unions*²¹ on 12 October 2011.
- Funding was provided to the **Irish University Association Equality Network** to organise a networking event / information workshop to launch its Living Equality and Diversity (LEAD) e-learning tool which raises awareness among university staff of managing diversity issues.
- **Limerick Chamber of Commerce**²² and **Doras Luimni**²³ were also awarded funding towards the organising of a networking / training event for personnel in the services sector on workplace diversity. The event will feature training from a Human Resources consultant on this issue. They are also promoting workplace diversity through their information / communications media.
- **Wexford Chamber of Commerce** was awarded funding to host a breakfast network event in Wexford on 20 September 2011 to highlight to companies the steps that they could introduce to ensure that migrants are better integrated into the workplace. Wexford Chamber also organised an evening seminar in Enniscorthy on 5 October 2011 on the topic of diversity and inclusion in the workplace and on how to realise the benefits of diversity.
- **Clonmel Chamber of Commerce** was awarded funding to host a networking event on diversity in the workshop, the challenges that exist and the measures that companies can take to facilitate a more diverse working environment. This event took place in Clonmel on 22 September 2011.

²⁰[http://www.ibec.ie/IBEC/Publications.nsf/vPages/Human Resources Best Practice Series-diversity/\\$file/Diversity%20Report%20pages%201-8.pdf](http://www.ibec.ie/IBEC/Publications.nsf/vPages/Human_Resources_Best_Practice_Series-diversity/$file/Diversity%20Report%20pages%201-8.pdf)

²¹http://www.ictu.ie/download/pdf/ictu_migrant_workers_a5.pdf

²²<http://www.limerickchamber.ie/>

²³<http://www.dorasluimni.org/>

Further Awareness-raising initiatives

The Equality Authority used EU PROGRESS funding to produce translated guides to the Employment Equality Acts and Equal Status Acts. These guides have been produced with the aim of making migrant workers / potential workers aware of their rights under the equality legislation. The details of languages and print-runs are given below.

A total of 370 of each Guide in each language (Arabic, Chinese, Croatian, Czech, French, Irish, Latvian, Lingala, Lithuanian, Polish, Portuguese, Romanian, Russian, Spanish). 5180 Guides in total were produced. The Equality Authority disseminate the guides through participation at relevant events (information stands), through Citizens' Information Centres, through a mailing list and through an advertising campaign in relevant newspapers / periodicals (Metro Éireann / African Voice GCN and other relevant media). Internet campaigns and Social media campaigns are also used.

See also the response below on the information campaign run by the National Employment Rights Authority²⁴ (NERA).

²⁴ <http://www.employmentrights.ie/en/>

(29). ECRI recommends that the implementation of the new Employment Permits Act be monitored to ensure that employee mobility is respected and to combat any abuse and/or discrimination against migrant and ethnic minority workers. On this matter, ECRI encourages the authorities in their endeavour to increase the number of labour inspectors and recommends that they be given the necessary training and logistical support to carry out their task and enforce the necessary penalties against rogue employers. ECRI further recommends that labour inspectors collect disaggregated data by, inter alia, ethnicity, nationality and work permit status on complaints received. (page 24 – I.82)

Response:

Employment Permits Act 2006

The Government has introduced very significant improvements for work permit holders, including migrants, under the Employment Permits Act 2006. Under this legislation, workers are entitled to seek to move employers after an initial 12-month period and that has provided much greater levels of mobility for migrant workers, in particular, than was previously the case. Also, workers in potentially exploitative situations can seek to have their case brought to the Department of Jobs, Enterprise and Innovation's attention and dealt with expeditiously.

A campaign was organised in 2010 by the Migrant Rights Centre of Ireland²⁵ in support of the right to change employer without the need to acquire a new permit i.e. to have a simple notification system notifying the change of employer. In reality, this proposal represents a fundamental policy change in that a core and crucial element of the current system is that employment permits are vacancy-driven. They are only issued if the vacancy cannot be filled from within the European Economic Area or if the position on offer is highly paid and highly skilled.

When an employer completes an application for a non-EEA national to come to the State and work for his or her company, he or she is required to carry out an extensive and expensive labour market needs test. This is necessary to prove the individual's skill level and expertise are critical for the maintenance and expansion of the relevant business. The statutory fee for such an application ranges from €500 to €1,500, depending on the duration of the permit for which the employer or the prospective employee must pay. Employers can expect employees to remain with them for a reasonable length of time following the interview process, the making of the job offer and incurring the associated financial expenses. The unrestricted movement of third country nationals would have the potential to undermine the basis on which such people enter the country in the first place.

It would be unfair on employers who have identified labour market shortages that justify the issuing of work permits — and the potential arrival of third country nationals into this country's labour market on that basis — if that person were able to take up employment with a different employer where no identifiable labour market

²⁵ <http://www.mrci.ie/>

shortage has been approved. The work permit process ensures, as far as possible, that a bona fide employer exists in the first place. Unrestricted movement between employers would circumvent that part of the process. Furthermore, on renewal of a permit, the employee may not have the required documentation to show that he or she has completed up to two years of legitimate employment, thus leading to further undocumented situations.

Labour Inspectors

The National Employment Rights Authority was established on an interim basis in February 2007 following the social partnership agreement *Towards 2016* and the need to enhance employment rights compliance. The Authority was established under the aegis of the Department of Enterprise, Trade and Employment.

Since its inception, the National Employment Rights Authority has made substantial progress in its aims to secure compliance with employment rights legislation and to foster a culture of compliance in Ireland through five main functions; 1) Information, 2) Inspection, 3) Enforcement, 4) Prosecution and 5) Protection of Young Persons.

The National Employment Rights Authority currently has 61 inspectors including 8 non Irish national inspectors proficient in a range of languages.

The National Employment Rights Authority launched a major publicity campaign "Employment Rights, your need to know" to inform workers of their rights in January 2008. The cross -media advertising campaign was designed primarily to raise the issue of employment rights with employers and employees and also to highlight the role of the Authority in providing information. This campaign, included information provided online, on radio and television as well as through billboard advertising and the print media.

Employment Rights information for employees is outlined in 14 different languages on the website of the Authority²⁶.

(30). ECRI recommends that measures be taken to provide the necessary tools to assist migrants in their integration into the labour market and society, by for example ensuring that they receive free language lessons and that their prior qualifications, skills and experience are taken into consideration by employers. (page 24 – I.83)

Response:

English language training

In 2010, funding of €30 million was provided for adult literacy services nationwide and over 50,000 participants availed of tuition. Since 2000, over 400,000 participants have availed of adult literacy tuition including English Language tuition and over

²⁶ <http://www.employmentrights.ie/en/informationforemployees/>

€240 million has been invested in adult literacy services over the period. Funding of €30 million has been provided again in 2011.

Adult asylum seekers can avail of free English Language classes and adult literacy classes in the community, which are usually organised by the local VEC. Some of these classes are provided in Direct Provision Centres. They must pay the relevant economic fee if they wish to pursue other courses in the Adult, Further and Higher Education Sector. That said, NGOs and other community based organisations advertise classes in Direct Provision Centres.

There is also the Adult Refugee Programme which, in 2010, had 638 participants. County Dublin Vocational Education Committee has been the lead Vocational Education Committee with this project since 2009. City of Dublin Vocational Education Committee liaises with other Vocational Educational Committees to ensure that the programme is available for refugees who are located throughout the country.

The Office for the Promotion of Migrant Integration, (formerly the Office of the Minister for Integration), is also funding innovative projects run by organisations such as Fáilte Isteach²⁷ (Welcome Inside in Irish). Fáilte Isteach is a community project with older volunteers welcoming new migrants through conversational English classes. It is a unique project which utilises the skills, talents and expertise of older volunteers and harnesses their desire to contribute positively to society.

Fáilte Isteach works at breaking down the barriers that migrants and communities face by extending the hands of friendship and goodwill through the practical, welcoming and inclusive manner in which the programme is delivered. It is providing more than the transfer of skills and knowledge. It is making a positive difference to everyone involved

Fáilte Isteach currently has 37 projects nationwide. They have 450 volunteer tutors teaching conversational English classes to, on average, 1,000 students 50 from different countries each week.

Recognition of Qualifications

EU Directive 2005/36/EC²⁸ on the Recognition of Professional Qualifications enables professionals qualified in another EU Member State to seek recognition of their qualifications and/or experience in Ireland for the purpose of practising their profession. The Directive applies only where the profession is regulated, i.e. where the practice of the profession is confined by law, regulation or administrative procedure to persons who hold specific qualifications or registration/recognition from a specific competent authority or professional body. If a profession is not regulated in the State then

²⁷ <http://www.thirdageireland.ie/what-we-do/15/failte-isteach/>

²⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:01:en:HTML>

recognition of a qualification in terms of gaining employment is a matter for the prospective employer.

The National Qualifications Authority of Ireland²⁹ provides a service called 'Qualification Recognition Ireland', a one stop shop for enquiries regarding the recognition of awards from other countries across the globe. The service is not restricted to EU or EEA member states. Applications can be completed on line, accompanied by a certified copy of the award, a certified copy of the transcript, and certified translations of these documents into Irish or English. The applicant will receive written advice on the comparability of their qualification with Irish qualifications.

The information provided by Qualifications Recognition Ireland is advisory in nature. It is based on the award documentation presented by the applicant. No advice can be issued regarding a foreign qualification where there is no comparable Irish award type. In addition, advice cannot be provided on the comparability of an award where it is gained in, or issued by, an institution that is not recognised within its home jurisdiction as providing awards that are quality assured.

The recognition service is offered free of charge (although applicants must cover the cost of translating their application documents) and is available to individuals, employers, public bodies etc. A leaflet entitled "Qualifications Matter", which outlines the service, is available upon request and is also available in Polish, Latvian, Lithuanian and Russian.

For entry to a regulated profession where the individual holds a qualification gained outside the European Union, professional recognition is determined by a designated Competent Authority and generally made on a case-by-case basis. A list of the Competent Authorities for regulated professions in Ireland is available on the Department of Education and Skills website (www.education.ie).

In the case of entry to the teaching profession, The Teaching Council is the designated authority for the recognition of teaching qualifications awarded within the EU and the competent authority for the recognition of teaching qualifications awarded outside of the EU. All qualifications assessment applicants are subject to the same process and The Teaching Council is actively working to streamline this process.

²⁹ The National Qualifications Authority of Ireland is one of four existing national qualification and quality assurance bodies that are due to be amalgamated into a new single national agency, Qualifications and Quality Assurance Ireland (QQAI) in 2012.

O. ACCESS TO PUBLIC SERVICES – ACCESS TO EDUCATION.

(31). ECRI urges the Irish authorities to promote the establishment of multid denominational or non-denominational schools and adopt the necessary legislation to that end. The authorities should also ensure that the current opt-out system in denominational schools is implemented in a manner which does not make pupils feel singled out. (page 25 – I.87)

Response:

In February 2011, the Report of the Commission on School Accommodation on “Revised Criteria and Procedures for the Establishment of New Primary Schools” was published. The recommendations and proposals in this report are intended to “Provide for a structure that will give clarity to the process for establishing a new school and for the selection of the patron of that school while also ensuring that the principles of diversity and parental choice are provided for”.

New Arrangements for Patronage of New Schools were announced in June 2011. It is proposed to build 40 new schools in the next six years to cater for our increasing population. The new arrangements provide an opportunity for patrons to apply to be considered for the patronage of these schools.

The new arrangements, based on the Report of the Commission on School Accommodation³⁰, February 2011, outline the criteria which will have to be satisfied by prospective school patrons. They include a particular emphasis on the extent or range of diversity of patronage offered, having regard to the views of parents and of the need to provide for extending or strengthening diversity of provision in each area mindful of parental demand for plurality and diversity of patronage. Responses for the 20 primary schools were due on 7th October 2011 and for the 20 post primary schools by 18th November. Decisions on patronage of these schools are due in the next few months. A range of patrons has sought sanction to be responsible for the new schools.

A number of new initiatives have commenced in relation to school patronage and choice, enrolment/ admissions policy and the role of religious education in schools. These include:

- The **Forum on Patronage and Pluralism in the Primary Sector** launched at the end of March 2011 will seek to provide advice on how the education system can provide a diverse number and range of schools catering for all religions and none and also the Irish language. It will also examine how stand alone schools can cater for their increasingly diverse intake of students. The Advisory Group overseeing the Forum has taken a multi-dimensional approach to their work. They are consulting widely on three key themes – Establishing parental and community demand for diversity; Managing the transfer/ divesting of patronage; and Diversity within a school or small number of schools. The Group has received almost 220

³⁰ http://www.education.ie/servlet/blobServlet/des_commission_school_accommodation_2011.pdf

written submissions all of which are on the Department of Education and Skills website³¹ and are also drawing on national and international experiences. The Forum held two open sessions, one a 3-day session in June and a one day session in November. Their report is due by end of year.

- **A Discussion Paper on a Regulatory Framework for School Enrolment** which was published by Department of Education and Skills in June 2011. It suggests a common approach and supports access through inclusive, transparent and fair enrolment policies and practices in our schools which do not discriminate unfairly against students. This paper is not prescriptive but is proactively seeking engagement in the discussion. Responses to the discussion paper were due back at end of October, 2011. These responses will inform the nature and scope of the new regulatory framework for school enrolment, which is due in the next few months.

Table 1, Appendix D, provides a breakdown of the numbers of primary schools by patron body.

Table 2, Appendix E, indicates the increases in school types over the last fifteen years, most notably the increases in multi-denominational schools (including Educate Together schools) and also in schools taught through the medium of Irish.

Community National Schools³²

Currently five Community National schools have been established. The Community National School model is proceeding, since September 2008, on the basis of very clearly stated principles in respect of the availability of religious education during the school day, in conformity with the wishes of parents.

In this regard, the pilot schools welcome and respect children of all faiths and none. The religious provision is organised in the form of a common core religious education programme, known as “Goodness me, Goodness You”, with separate faith formation provision for children of different denominations over a three or four week period, during the year. This commitment is an important distinguishing feature of the model. They also seek to cater for parents who do not wish their children to receive religious education in any one particular faith. The schools operate through an ethos of inclusiveness and respect for all beliefs, both religious and non-religious.

³¹http://www.education.ie/servlet/blobServlet/fpp_main_submissions_advisory_group.htm?language=EN

³² Community schools are managed by Boards of Management representative of local interests. These schools offer a broad curriculum embracing both practical and academic subjects. They also provide facilities for adult education and community development projects. These schools are entirely funded by the State through the Department of Education and Skills.

(32). ECRI recommends that the authorities establish a consistent system of data collection to assess minority pupils' performance in education and establish the necessary policies in this area. It further reiterates its recommendation that the authorities take measures to encourage members of minority groups to enter the teaching profession. (page 25 – I.88)

Response:

All schools have policies and procedures in place that promote and facilitate the inclusion of all children, including: Socio-economically disadvantaged children, Traveller children with disabilities; immigrant children and children of asylum seekers. Pupils are encouraged and facilitated in maintaining a connection with their own culture and language through curricular activities and displays.

Language support teachers are appointed to assist schools in providing additional language support teaching for pupils in the language of instruction. Any pupils identified by the school as requiring additional English Language support, then devise appropriate language programmes, deliver programmes and record and monitor pupils' progress. The approach being recommended is that all teachers, not just language support teachers, are language teachers so that students' language skills are being enhanced by all teachers throughout the curriculum. Assessment for learning would be a normal key component of methodologies used by teachers in our primary and post-primary schools. In addition, there are two State exams at post-primary.

Teachers from non-faith backgrounds.

Five of the six Colleges which provide primary teacher education courses accept students of all faiths and none. No student is asked their religious affiliation and it has no bearing on their acceptance in the colleges. The students are selected through the Central Applications Office on the basis of their academic achievements in the Leaving Certificate. The remaining College's remit is to provide teachers for the Protestant primary school sector.

The Irish educational system is largely denominational in nature (see Table 1 – Appendix D) and this is fully supported by the Constitution. The Bachelor of Education course provided by the Colleges of Education for prospective primary teachers currently includes modules on religious education and, in two colleges, since 2010/ 2011; the students can choose to take an Ethical module instead of the Religious education module. The colleges currently aim to equip students to work in a variety of school settings and in accordance with the particular tradition or ethos of a school. The colleges concentrate on appropriate teaching methodologies for religious education not on indoctrination in the belief of one religion. To reflect the diversity in our schools, the majority of the colleges work collaboratively with Educate Together, through funding by the Department of Education and Skills, to better equip student teachers to teach in a multi-denominational setting.

In addition, and separate from the Bachelor of Education course, there is an optional extra, the Certificate in Religious Education. Students in the colleges chose to take this certificate course which addresses aspects of faith formation in Christian (Roman

Catholic and Church of Ireland) ethos. It is not compulsory. However, it will be required if they seek a teaching post in a school with a Catholic or Church of Ireland / Protestant patronage. This reflects the fact that primary schools are overwhelmingly denominational and have traditionally played and continue to play a significant role in the faith formation of their pupils and the colleges prepare their students accordingly. Currently, there is a shift in thinking with a greater emphasis for the family and faith community in the development of faith formation of the young person.

Teacher training colleges exist to provide the educational system, as envisaged by the Constitution, with teachers who have the necessary qualifications, skills and knowledge to teach the prescribed curriculum in all settings. In circumstances where religious education is an element of the primary school curriculum, it follows that it is necessary to train student teachers to mediate this element of the curriculum, like any other. Religious instruction is part of the curriculum of primary schools and must therefore be taught by appropriately qualified and trained teachers. Delivering the religion curriculum is not an occasion of religious observance by a teacher and there is no invasion of the right of the students to freedom of conscience or the free practice of religion.

P. VULNERABLE GROUPS – TRAVELLERS

Work is continuing to improve the social and economic position of Travellers in Ireland.

All- Ireland Traveller Health Study

According to the All Ireland Traveller Health Study, the Traveller population on the island of Ireland was estimated at 40,129 in 2008; 36,224 in the Republic of Ireland and 3,905 in Northern Ireland.

Between 2008 and 2010, a total of €363 million was expended on Traveller-specific programmes across a range of areas; health, education and housing in particular in the Republic of Ireland. For example, improvements in Traveller participation rates in all sectors of education have been increasing steadily over the last 25 years. Significant progress has also been made in the provision of Traveller accommodation in recent years. There is concrete evidence of a high level of delivery is apparent in the significant reduction in the number of families living on unauthorised sites.

The necessary cross-sectoral actions on a range of health, education and accommodation matters are being progressed and are outlined in this section of the report.

The findings of the All Ireland Traveller Health Study were published in September 2010. The Study was carried out on behalf of Travellers, with and by Travellers and this was an innovative approach that enabled the study to achieve a high response rate. Therefore, the results are seen as more robust and will be all the more useful to policy makers and service providers as a result. The findings of the Study provide a strong evidence base for assessing existing and future service delivery. The importance of this study to Travellers was demonstrated by their very high participation rate in the study and by the depth of information that they provided. A review of the recommendations of Traveller Health – A National Strategy 2002-2005

is currently being undertaken by the Traveller Health Advisory Committee in light of the findings of the All Ireland Traveller Health Study. The All Ireland Traveller Health Study reports can be downloaded from the Department of Health website at: http://www.dohc.ie/publications/traveller_health_study.html

(33). ECRI encourages the Irish authorities in the publication of the Traveller Education Strategy and recommends that the objectives set therein be implemented with the full involvement of national Traveller organisations. ECRI further recommends that current measures undertaken to ensure better integration and higher Traveller achievement in the education system be continued and strengthened and that the necessary human and financial resources be provided to that end. (page 26 – I.92)

Response:

Traveller Education Strategy

The Report and Recommendations for a Traveller Education Strategy³³ was launched in 2006 following wide ranging consultation with stakeholders including Traveller representatives. It covers all aspects of Traveller education from pre-school to further and higher education. A core principle of the strategy is that allocation of resources is based on 'individual educational need' rather than 'Traveller identity'. The Department's aim is to prioritise the available resources to maximum effect across the education sector to enhance educational outcomes for all children and adults including Travellers.

The aim for Traveller Education is to enable Traveller learners to participate in an equal manner with their peers through integrated mainstream educational provision. Implementation of the recommendations of the Strategy requires a phased approach to ensure that issues are addressed at every level simultaneously. This approach mirrors that being taken by the High Level Group on Traveller Issues which emphasises interagency co-operation. One of the areas of immediate priority is the mainstreaming of provision for Travellers by ending, in a phased manner, segregated provision in pre-schools, primary, post primary and further education. The provision of universal pre-school for children aged between 3 years and 2 months and 4 years and 7 months, in January 2010, has accelerated the mainstreaming of pre-school provision for all.

Engagement

The Traveller Education Strategy Advisory & Consultative Forum was established in late 2009 as a forum for consultation on the ongoing implementation of the Traveller Education Strategy. The Forum includes key stakeholders in the education sector with an interest in or a responsibility for Traveller education in Ireland as well as Traveller Representative Groups and Travellers. The object of the Forum is to identify issues, including obstacles, to the implementation of recommendations of the Traveller Education Strategy. It will also examine appropriate responses to issues identified and report to the Department's Traveller Implementation Group, from time

³³ http://www.education.ie/servlet/blobServlet/des_recom_traveller_educ_strategy.pdf

to time, to highlight key issues of concern. To date, six meetings of the Forum have been held. The next meeting is scheduled for March 2012.

In addition to the establishment of the Forum, the Department of Education and Skills continues to participate fully in National Fora including the National Traveller Monitoring and Advisory Committee, through which it routinely provides comprehensive reports on progress and engages in discussion with Travellers, NGOs and other stakeholders represented on the committee.

The National Access Office for Higher Education has identified Travellers as one of the groups needing focussed attention to access and succeed in further and higher education.

As part of Budget 2011, it was announced that integrated further education provision for Travellers will be implemented through the phasing out of Senior Traveller Training Centres by June 2012 and the provision of replacement places, prioritised for Travellers, under the Back to Education Initiative. This announcement is in line with the Report and Recommendations of the Traveller Education Strategy and the 2008 Value for Money Review of Youthreach and Senior Traveller Training Centres.

(34). ECRI recommends that the Irish authorities continue implementing current measures for including Travellers in the employment sector and that new initiatives be taken in this regard in consultation with Traveller organisations. ECRI also recommends that any policies established to improve Traveller access to the employment sector include anti-discrimination measures, gender-proofing and that they take into account the wider context of disadvantage faced by members of this community in other areas. (page 27 – I.95)

Response:

Ireland is taking proactive measures to advance the employment of Travellers in both the public and the private sector by eliminating the practical and legal obstacles that hinder full participation of Travellers in economic life, including by ensuring that their self employment and other economic activities as well as equal access to financial services are facilitated.

FÁS

FÁS³⁴, the national training and employment agency, is responsible for undertaking specific actions to improve provisions for Travellers. While all FÁS programmes are available to all suitable participants, travellers are a priority cohort for a number of schemes. For example, Travellers are prioritised in the Local Employment services and the Community Employment Schemes.

The *Community Employment Programme* is an active labour market programme designed to provide eligible long term unemployed people and other disadvantaged persons with an opportunity to engage in useful work within their communities on a

³⁴ <http://www.fas.ie/en/>

temporary basis. The programme is a major response by FÁS to tackling social exclusion, with a view to re-integration into the labour market. With the aim of continuing to develop the content of the Community employment programme. FÁS has introduced the *Individual Learners Planning Process* focused on meeting the learning needs of participants. The Individual Learners Plan provides for the planning, organising and recording of the work experience, training and development that each participant receives while working on a Community Employment Programme. It includes training and development for supervisors, a new application process and quality assurance procedures.

The *Special Initiative for Travellers* aims to redress the imbalance in Traveller unemployment. It supports Traveller already engaged in employment and provides a special training funding to address the training needs of adult Travellers. Projects are identified through the Traveller Interagency Groups. More than 350 Travellers engage in the initiative every year.

To strengthen the remit of FÁS to respond to the employment needs of Travellers, and in line with the FÁS Traveller's Strategy 2007- 2010 to mainstream the *Special Initiative for Travellers*, it was decided that the delivery of the employment element of the Special Initiative for Travellers be brought within an existing FÁS programme such as Supported Employment Services and/ or Job Clubs. FÁS has commenced this process which, when completed, will ensure that optimum employment supports will be available to job ready Travellers such as a Traveller specific Job Coach working as part of a team of experienced personnel who have at their disposal an established network of employers. During 2011, FÁS initiate the process of transferring responsibility for the enterprise element of the Special Initiative for Travellers from FÁS to the City and County Enterprise Boards. In this way, Travellers enterprises can link into the full range of entrepreneurial supports available through the City and Council Enterprise Boards.

Traveller Internship Programme.

The Department of Finance initiated a *Traveller Internship Programme* in the Civil Service (2006- 2007) which provided work experience for 23 Travellers. They gained clerical experience in government departments (20 participants) and manual operative skills in the Office of Public Works (3 participants). Some have gone on to other employment in both the public and private sectors. Other have opted to seek further education. An evaluation report on the *Traveller Internship Programme*, which will support consideration of how this initiative can be built on for the future, is available on the website of the Department of Justice and Equality³⁵.

Local authorities (in particular South Dublin and Clare County Councils) have provided more than 40 full time positions and a similar number of part time positions over the last three years. Work on a new pilot initiative to provide training/work experience for Travellers in South Dublin County Council is at an advanced stage.

³⁵ http://www.justice.ie/en/JELR/Pages/Not_Like_Usual

Workshop to Promote Traveller Employment in the Private Sector

The Equality Authority is organising a workshop on promoting Traveller employment in the private sector, with the support of the National Traveller Monitoring and Advisory Committee. The workshop will take place in Dublin on 8 December 2011. The workshop will be opened by Minister Kathleen Lynch, T.D., Minister for Disability, Equality, Health and Older People. It will also feature inputs by Travellers on their experience of salaried and self-employment, of Traveller organisations, of support structures, of employer networks and of employers.

(35). ECRI recommends that the Irish authorities continue ensuring better Traveller access to adequate accommodation. To that end, it calls on the authorities to continue implementing the recommendations made by the National Travellers' Accommodation Consultative Committee regarding all issues pertaining to Traveller accommodation. (page 28 – I.99)

Response:

Government Policy on Travellers

Government policy in relation to the accommodation of Travellers is implemented through the Housing (Traveller Accommodation) Act 1998. This Act requires each major housing authority to draw up, adopt, and implement multi-annual Traveller accommodation programmes, with the aim of accelerating the provision of accommodation for Travellers.

Results of Annual Count of Traveller families

The Government remains committed to the provision of Traveller accommodation and significant progress has been made in recent years. The data below is derived from the *Annual Count of Traveller Families* (the “Annual Count”) which takes place at the end of November each year. It shows the number of Traveller families recorded has increased by almost 2,500 between 2004 and 2010. This equates to a 35 percent increase in just six years. Despite the challenges raised by this rate of increase, the accommodation position of Travellers in the State has improved during this period.

A comparison of the accommodation position of Traveller families from 2004 to 2010 is available at Appendix F.

Main Headlines

- The number of families living on unauthorised sites has reduced from 601 in 2004 to 444 in 2010 – a 45% decrease. It should be noted that, in 1999, prior to the first Traveller Accommodation Programme, the Annual Count recorded 25.2 percent of Traveller families living on unauthorised sites. By the end of 2010, this figure was reduced to 4.69% despite the significant increase in the number of Traveller families.
- An additional 626 Traveller families were permanently accommodated in standard local authority housing, a further 105 were assisted in purchasing their own home by their local authority and an additional 127 families were accommodated in Traveller specific group housing. The numbers sharing all types of accommodation decreased in percentage terms.

- There has been a significant increase in the number of families living in private rented accommodation demonstrating that the private rental market has become much more open to Traveller tenants, the majority of which receive assistance in meeting their accommodation costs either through the payment of rent supplement (by the Department of Social Protection) or through the Rental Accommodation Scheme administered by local authorities.
- Notwithstanding the good progress which has been made, the Department of Environment, Community and Local Government continues to encourage local authorities to reduce the number of families living on unauthorised sites or sharing accommodation and monitors the situation, in conjunction with the local authorities and the National Traveller Accommodation Consultative Committee.

Traveller-specific accommodation

Traveller Accommodation Programmes are based on the Assessment of Needs conducted by local authorities. It is open to Travellers to opt for any form of accommodation and the assessment of needs process points, in some areas, to a preference among Travellers for standard housing. There is very little demand for Traveller specific accommodation in some local authority areas. Nevertheless, Traveller specific accommodation continues to be provided where required and forms a significant part of many local authority Traveller Accommodation Programmes, as outlined below.

During the second round of Traveller Accommodation Programmes (2005-2008), 775 units of new and refurbished Traveller specific accommodation were provided.

Government commitment to providing Traveller-specific accommodation is supported by the level of funding made available for such accommodation. The Department provides 100% capital funding for Traveller-specific accommodation which comprises Permanent, Temporary, Emergency and Transient Halting Sites and Group Housing Schemes for Travellers. During the period 2005 – 2010 (inclusive), a total of €178 million was expended on the provision of new and refurbishment of existing, Traveller-specific accommodation.

Provision for Nomadism

The Housing (Traveller Accommodation) Act, 1998 specifically requires local authorities to have regard to the provision of transient sites when preparing their Traveller Accommodation Programmes.

In August 2008, the Department of the Environment, Heritage and Local Government issued a memorandum to all local authorities on the preparation, adoption and implementation of their Traveller Accommodation Programmes for the period 2009-2013, requesting them to have regard to the need for transient sites in the preparation of their Traveller Accommodation Programmes. However, responsibility for the provision of accommodation for Travellers including the option of transient sites, rests with individual housing authorities.

The issue of transient sites was considered by the third National Traveller Accommodation Consultative Committee and is also included on the work programme of the fourth committee. It is hoped that some progress will be made towards the proposed provision of transient facilities at major events which attract large numbers of visiting Travellers e.g. the annual Novena in Knock. Progress on this matter is being closely monitored by the Department of Environment, Community and Local Government and the National Traveller Accommodation Consultative Committee.

(36). ECRI strongly recommends that the implementation of the Housing (Miscellaneous Provisions) Act 2002 be closely monitored to ensure that Travellers and especially vulnerable members of the group such as women and children are not placed in a difficult situation. It further recommends that measures be taken to ensure that this piece of legislation is reviewed and amended where necessary to ensure its conformity with international human rights standards.

Response:

The Department of the Environment, Community and Local Government has advised local authorities in relation to this provision that:

- They should, as far as practicable, not request Police Officers to use their powers under the 1994 Act to remove families who are on local authority lands and are awaiting accommodation from the local authority. Where there are exceptional circumstances, and a family has to be moved it should be done under the powers available to the authority under the Housing Acts
- Use of the Public Order legislation is not a ground for and should not result in a family losing its position on the housing list or being removed from it.
- Absence from the local authority area in which a family is on the list resulting from the use of the legislation should not affect the family's position on the list unless another authority accommodates them.
- While there is an onus on families affected by this legislation to maintain contact with the local authority, each local authority should ensure, as far as practicable, that it does not lose communication with a family on their accommodation list who move out of its functional area due to being moved under the 1994 Act unless the family indicates that it no longer requires accommodation within the area.

(37). ECRI recommends that a preliminary assessment of the impact of the National Traveller Health Strategy be carried out and the conclusions reached therein be taken into account during the All-Ireland National Health Study. ECRI further recommends that the authorities ensure that the study being carried out regarding Traveller health needs closely involve Traveller organisations and include the gender dimension. (page 29 – I.105)

Response:

Traveller Health Advisory Committee

The Traveller Health Advisory Committee was established in 1998. This Committee comprises of representatives of the Department of Health, the Health Service Executive, Travellers and Traveller organisations. At central policy level, the Traveller Health Advisory Committee advises the Minister for Health on policy in relation to Traveller health. The work of the Traveller Health Advisory Committee was crucial to the preparation of “Traveller Health - A National Strategy 2002-2005”³⁶. This is the Strategy which continues to guide current policy.

An internal review of the progress being made on implementing the recommendations of the Traveller Health strategy, Traveller Health – A National Strategy 2002 -2005, was conducted in 2005. It revealed that of the 122 recommendations, 44 were found to have been completely or substantially implemented. However, it was found that, due to interdependencies, many of the recommendations could not be progressed. For example, a lack of up to date data on Traveller health meant that it was not possible to evaluate how effective the implementation of those recommendations that had been implemented had been.

Therefore, many of the findings were not of a strategic nature and have not been directly addressed. However, other recommendations relate to matters that are part of mainstream service delivery and are addressed by mainstream services rather than as dedicated Traveller services.

All Ireland Traveller Health Forum

The commitment to Traveller health is also reflected in the significant resources allocated to the commissioning of the *All Ireland Traveller Health Study*, the findings of which were published on 2 September 2010. It was the first such study of the health status of travellers since 1987 and the first that involved Travellers living in both the North and South of Ireland. It was jointly funded by the Department of Health and the Department of Health and Social Services and Public Safety in Northern Ireland and Supported by the Health Service Executive.

The study was carried out on behalf of Travellers, for and by Travellers, in order that the results would be more robust and more useful to policy makers and service providers. Using innovative new methods, Travellers themselves, together with

³⁶ http://www.dohc.ie/publications/pdf/traveller_health.pdf?direct=1

frontline service providers worked as peer researchers with the researchers to collect the data. The significant overall response rate of 80 percent reflected the extensive preparation together with collaboration of all stakeholders in conduction of the study.

The study included a census of the Traveller population and an examination of their health status and utilisation of health services in order to identify the factors which influence mortality and health status. The results of the study place a strong emphasis on the impact of the social determinants of health, particularly on the importance of education. The findings will provide a framework for future policy development and practice in relation to Traveller health.

One of the key findings from the study is that Travellers of all ages continue to have much higher mortality rates than people in the general population, with Traveller men living on average 15 years less than men in the general population and traveller women living on average 11.5 years less than women in the general population. Deaths from respiratory diseases, cardiovascular diseases and suicides were markedly higher in travellers compared to the general population. Among the positive results from the study were evidence of good access to health services and improvements in Traveller women's health.

The Traveller Health Advisory Committee and the Health Service Executive are working together to devise a list of priority actions which will focus service provision based on the findings of the *All Ireland Traveller Health Study*. This will build on existing structures and processes, in line with the findings of the study and form a platform to continue to seek to improve the health status of the Traveller community. Priority areas for attention in 2011 included:

- Mental Health
- Suicide
- Men's Health
- Addiction/ Alcohol
- Domestic Violence
- Diabetes
- Cardiac Health; and
- Mapping of Traveller Health Unit work to Primary care Teams and Networks

Traveller Health Forum –Terms of reference.

The Social Inclusion Unit in the Health Service Executive includes within its remit the issue of Traveller health.

The National Traveller Health Advisory Forum was established in early 2011. This forum links in to the National Social Inclusion Governance Group and also links to the Department of Health's Traveller Health Advisory Committee.

The Terms of Reference are as follows:

- Advise on the key priorities for Traveller Health as they relate to all health providers, including findings of the All Ireland Traveller Health Study.

- Set guidelines and Principles to inform the allocation and accountability principles of the Traveller Health Budget."
- Highlight emerging needs and issues and possible responses
- Share knowledge, experience and good practice in relation to Traveller health and seek to replicate where appropriate
- Advise on the cultural appropriateness of services
- Advise on best practice standards to be implemented nationally taking a community development approach
- Act as an effective link between National, Regional and Local levels
- Discuss issues that are common to all Traveller Health Units
- Contribute to the decision making process in relation to Traveller Health
- Support partnership working
- Advise on implementation of National Strategy, including linking with and supporting implementation of prioritised recommendations of the HSE National Intercultural Health Strategy, with particular reference to actions contained in the HSE National Service Plan.
- To promote and support development of data collection aimed at facilitating evidence based planning, monitoring and reporting around the health needs and outcomes of service users from the Traveller community.

Membership of the group

Membership of the group comprises the Health Service Executive Regional Specialists for Social Inclusion; Traveller membership consists of representation from each Traveller Health Unit, i.e. a Coordinator, a Traveller representative and a Traveller from each. (This last is still being built to ensure support for this representation). Pavee Point, a Traveller NGO is also represented.

The group meets every 2 months - alternating between Dublin and Athlone to facilitate travelling of members.

(38). ECRI strongly recommends that the Irish authorities ensure that Traveller organisations are key partners in all aspects of the work of the High Level Group on Traveller Issues and that members of the Traveller community are represented in this Group. (page 29 – I.106)

Response:

The High Level Group on Traveller Issues is intended to provide a forum for senior policy makers and service providers to meet to discuss barriers to service delivery and explore possibilities of approaching service delivery in a more integrated way. The Group is considered as an extension of the *Strategic Management Initiative* process, and aims to join up service delivery and to ensure that intended service delivery and to ensure that intended service outcomes for Travellers under the various sectoral strategies are achieved.³⁷

³⁷ The Strategic Management Initiative deals with the modernisation of the civil service and affects all Departments and offices. It aims to make improvements in such areas as customer support, computer based- service delivery and expenditure management. Further details may be found on the website maintained by the Department of the Taoiseach www.taoiseach.gov.ie

While Travellers are not included in the membership of the High Level Group, they continue to be included in a number of national consultative fora and are closely involved in a range of discussions on policy development.

The National Traveller Monitoring and Advisory Committee, established in March 2007, provides a broadly based and inclusive forum for dialogue between the relevant social partners. The National Traveller Monitoring and Advisory Committee, which includes five national Traveller organisations along with a number of prominent individual Traveller representatives, has a specific remit to advise on policy in relation to the Traveller Community. The Committee presented its first report to the Minister in 2009. This will be an essential input to the ongoing process of improving and refining the effective delivery of supports and services to the Traveller Community.

The High Level Group on Travellers and the National Traveller Monitoring and Advisory Committee now exchange minutes of meetings to ensure effective communication. In addition, the High Level Group has agreed to provide time at their meetings for presentations by Traveller Groups on issues of importance to these groups. Pavee Point made a presentation to the High Level Group in September which was followed by a discussion.

Q. VISIBLE MINORITIES

(39). ECRI encourages the Irish authorities to continue their anti-racism awareness measures and recommends that minority-led organisations be consistently involved in these initiatives from inception to implementation. (page 30 – I.109)

Response:

See response to recommendation 10 above.

R. MEDIA

The Press Council of Ireland and the Office of the Press Ombudsman safeguard and promote professional and ethical standards in Irish newspapers and magazines. The Office of the Press Ombudsman ensures that everybody now has access to an independent press complaints mechanism that is quick, fair and free. These structures are designed to ensure that the freedom of the press is never abused, and that the public interest is always served.

(40). ECRI recommends that, while fully respecting the principle of freedom of expression and editorial independence, the authorities encourage fairness when issues pertaining to ethnic minority groups, asylum seekers, refugees and immigrant communities are discussed by the media. (page 30 – I.112)

Response:

Print Media

On 2 January, 2008, the Office of the Press Ombudsman and the Press Council of Ireland were established as an initiative of the press industry. They provide a new system of independent regulation for the printed media in Ireland. The Press Council of Ireland is the body that appoints the Press Ombudsman. It takes decisions in cases of significance or complexity which have been referred to it by the Press Ombudsman. It also decides on appeals from decisions of the Press Ombudsman. The job of the Press Ombudsman is to investigate complaints that breach a new Code of Practice which the press industry signed up to in 2007.

Broadcasting Act 2009

The Broadcasting Act 2009 consolidates the corpus of broadcasting legislation in Ireland and revises the law relating to broadcasting services and content generally.

The Broadcasting Act 2009 provides inter-alia for the continuation of independent regulation via the Broadcasting Authority of Ireland the continuation and preparation of Broadcasting Codes and Rules by the Broadcasting Authority Ireland, and provides for a right of reply.

The Broadcasting Act, 2009 revises the law relating to broadcasting services and content generally. The Act established a new broadcasting content regulator to be known as the Broadcasting Authority of Ireland. The Broadcasting Authority of Ireland will perform the existing functions of the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission.

Codes

The Broadcasting Act 2009 provides inter-alia for the continuation of independent regulation via the Broadcasting Authority of Ireland, the continuation and preparation of Broadcasting Codes and Rules by the Broadcasting Authority Ireland, and provides for a right of reply.

The Broadcasting Act 2009 revised the law relating to broadcasting services and content generally. The Act established the Broadcasting Authority of Ireland as the regulator of broadcasting content.

Codes

The Broadcasting Authority of Ireland has a range of Codes governing programme and advertising content on radio and television. The principal Codes are:

- 1) The Code of Programme Standards (10 April 2007),
- 2) The Children's Advertising Code (Revised 27 April 2011), and
- 3) The General Commercial Communications Code (Revised 27 April 2011).

These codes provide inter alia that "Programme material shall not support or condone discrimination against any person or section of the community, in particular on the basis of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race or religion" and that " Commercial communications shall not support or condone discrimination against any person or section of the community, in particular on the basis of age, gender, marital status, membership of the Traveller Community, family status, sexual orientation, disability, race or religion" and that " Children's advertising shall not reflect a range of values which are inconsistent with the moral or ethical standards or diversity of contemporary Irish society. It shall respect human dignity and not discriminate on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. Nor shall it be offensive to religious or political beliefs or encourage behaviour which is damaging to the environment. It shall respect the principle of equality and avoid sex stereotyping and any exploitation or demeaning of men, women or children"

Public Service Statement

The Broadcasting Act 2009 required that RTÉ (National Radio and Television Broadcaster) prepare a Public Service Statement by 12th July 2010. The purpose of the Public Service Statement was to explain to the public what is expected of RTÉ in return for the significant public support it receives in the form of the television licence fee. It replaced the existing Public Service Charter which was published in July 2004.

The Statement was informed by a public consultation process and is subject to Ministerial review, following consultation with the Broadcasting Authority Ireland; a copy (or revision thereof) is required to be laid before the Houses of the Oireachtas (Parliament) and the Statement is to be reviewed and updated every five years, or as required by the Minister.

This Public Service Statement was approved by the Minister and laid before the Houses of the Oireachtas (Parliament) in February, 2011.

S. CONDUCT OF LAW ENFORCEMENT OFFICIALS.

(41). ECRI encourages the Irish authorities in their establishment of a Garda Ombudsman Commission and recommends that they continue to provide it with the necessary financial resources to enable it to function to its full capacity. ECRI further recommends that the authorities ensure that staff at the Commission receive training on issues pertaining to racism and racial discrimination. (page 31 – I.118)

Response:

The economic situation in Ireland has resulted in a moratorium on recruitment to public service bodies including the Garda Síochána (Irish Police Service) Ombudsman Commission. That said, it is the view of the Irish Government that Garda Síochána (Irish Police Service) Ombudsman Commission has, since its inception, been provided with sufficient resources to enable it to carry out its functions effectively. It currently has a staff of 85 of whom 35 are investigators and its annual budget was €9.4m in 2009; €9.2m in 2010 and €9.2m again this year.

The Garda Síochána (Irish Police Service) Ombudsman Commission would not condone behaviour of a racist/discriminatory nature by any member of its staff. The Commission provides training in human rights to all members of its staff including investigators and caseworkers; such training encompasses issues relating to racism and racial discrimination. The organisation also has a specific policy on the importance of upholding human rights, the overarching spirit of which pervades all of the Commission's activities.

(42). ECRI encourages the Irish authorities to continue striving to implement the recommendations contained in the Garda Human Rights Audit and recommends in this regard, that representatives of minority groups be consulted and involved in this process. (page 31 – I.119)

Response:

The Garda Human Rights Audit referred to was conducted in 2003. Since that time, there have been a number of developments within An Garda Síochána in recent years designed to put regard for human rights at the core of policing in Ireland.

- Section 7 of the Garda Síochána Act 2005³⁸ set out the functions of the Garda Síochána on a statutory basis for the first time. These functions include (a) the protection of life and property and (b) vindicating the human rights of each individual.
- Section 16 of the Act of 2005 provides a **revised form of declaration** for persons joining the Force, which specifically directs each new member's

³⁸ <http://www.irishstatutebook.ie/pdf/2005/en.act.2005.0020.pdf>

attention to the need to have regard for human rights in carrying out policing duties.

- a 32 page **guide to the European Convention on Human Rights Act 2003** has been distributed to each member of the force. The guide outlines the key principles of human rights obligations as they apply to operational policing.
- **Code of Ethics:** Section 17(1) of the Garda Síochána Act provides that the Minister for Justice and Equality shall by regulation establish a Code of Ethics that includes standards of conduct and practise for members of the Garda Síochána. The Commissioner, having consulted with the Human Rights Commission and the Equality Authority as obliged, has prepared and submitted a draft Code of Ethics. The necessary regulations are being drafted by Parliamentary Counsel. Section 123.2.b of the Act provides that a breach of a specified provision of the code of ethics shall be a disciplinary offence.
- **Professional Values:** A Garda Declaration of Professional Values and Ethical Standards has been published and distributed to each member of the force, to underpin all Garda practice, policy and procedure.
- Human rights compliance also features strongly in the Garda Síochána's recently published "**Corporate Strategy 2010 – 2012**"³⁹. At the heart of this strategy are four core values of honesty, accountability, respect and professionalism. These values specifically include having respect for all people, their human rights and their needs and providing a professional policing service to all communities.

Specific Garda Human Rights Training

The Garda Síochána (Irish Police Force) has a comprehensive education, training and information system for the professional development of all members. This development programme incorporates human rights training.

- A 'first steps' training programme in human rights and anti-racism has been developed and is operational for Garda (Police) trainers.
- There is a two and a half day human rights and anti-racism input on the Sergeant and Inspector Development courses.
- Human rights and anti racism training has been integrated into the Student/Probationer Education/Training Programme.
- A programme of Human Rights Training has been developed for all Senior Garda (Police) managers of the rank of Chief Superintendent and above.

³⁹ http://www.garda.ie/Documents/User/GardaStrategy2010_ENG.pdf

Practical initiatives at operational level

At an operational level, there are a number of practical initiatives underway involving the Garda Síochána (Irish Police Force) and various groups within society to ensure that every effort is made to uphold individual human rights and tackle racist and homophobic incidents.

These initiatives include:

- ongoing liaison between An Garda Síochána (Irish Police Force) and the Office for the Promotion of Migrant Integration in relation to the integration of migrants and in relation to monitoring of incidents of racism.
- the training of over 600 Ethnic Liaison Officers to link with members of ethnic minority communities and the Traveller community.
- the adaptation of the Garda (Police) PULSE computer incident recording system to record incidents of a racist nature.
- active interaction with members of ethnic minority communities as part of the Garda Síochána's (Irish Police Forces') commitment under the National Action Plan against Racism 2005-2008.
- Two legally qualified officers, each with a Masters Degree in Human Rights and Criminal Justice, human rights-proof all policy documents adopted by An Garda Síochána (Irish Police Force).

Racist Incidents

The Police (Garda) Racial, Intercultural and Diversity Office is also constantly working through community engagement to urge people to come forward and report any suspected racist crime to their local Police (Gardaí). It advises the public about the existence of Ethnic Liaison Officers and also of the services available to victims of hate crime at Garda Racial Intercultural and Diversity Office. The services of Ethnic Liaison Officers are advertised on the Garda (Police) website and appointed officers are named with details of their station.

(43). ECRI recommends that the authorities continue to support the work of the Garda Racial and Intercultural Office by providing it with the necessary resources to carry out its tasks. ECRI further recommends that ethnic liaison officers be also recruited from outside the police service and that efforts be made to hire members of minority groups in these positions. (page 31 – I.120)

Response:

The Irish Police Force has set out to deliver on its commitment to champion, value and accommodate, all aspects of diversity as laid down in the Equal Status Act 2000.

The Police Diversity Strategy Implementation Plan 2009-2012⁴⁰ emphasis is on developing reasonable measures to accommodate cultural diversity and to promote strategic direction to combat racism in all its forms.

Consultation with Minority Communities

Constant consultation with minority communities at national and local level is a key strategy to building trust in the community. This consultative process is monitored by the Garda (Police) Racial, Intercultural and Diversity Office through contact with front-line Ethnic Liaison Officers. The Garda (Police) Racial, Intercultural and Diversity Office provide advice to the Ethnic Liaison Officers on best practice in policing diverse societies. A policy of encouraging anti – discriminatory policing techniques has been put in place by the Garda (Police) Racial, Intercultural and Diversity Office to ensure fair treatment and delivery of service to all.

The Garda (Police) Racial, Intercultural and Diversity Office through national and local consultation process with minority communities, urges representatives present to bring to the attention of An Garda Síochána (Irish Police Force) any act or attempted act of racism. Local Ethnic Liaison Officers engage with minority communities and likewise encourage minority members of the communities within their sub-district to come forward and report racist crime.

The Garda (Police) Racial Intercultural and Diversity Office oversees the appointment and training of Garda Ethnic Liaison Officers throughout the country. Ethnic Liaison Officers are now in place in most Garda (Police) stations nationwide and can be contacted if a victim requires a more sensitive service. Through national and local consultation processes with An Garda Síochána (Irish Police Force), representatives of minority groups are encouraged to report any suspected racist crime to their local Gardaí (Police). The Garda Racial, Intercultural and Diversity Office delivers the same message to representatives at a national level.

There are currently (November 2011) 349 members of the Irish Police Force serving as Ethnic Liaison Officers.

As from the start of 2011, there were 46 foreign nationals currently serving as members of the Irish Police Force.

There are currently (November 2011) 64 Foreign Nationals in the Police Reserve.

⁴⁰ <http://www.garda.ie/Documents/User/DiversityStrat.pdf>

T. MONITORING THE SITUATION.

(44). ECRI reiterates its recommendation that the Irish authorities establish and implement a system of ethnic data collection to assess and redress any racial discrimination that may exist in the country, in full compliance with all the relevant national laws as well as European and international regulations and recommendations on data protection and the protection of privacy, as stated in ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. (page 32 – I.124)

Response:

The Equality Tribunal collects statistics and information on cases taken under the Employment Equality and Equal Status Acts, disaggregated by discriminatory ground. The full texts of all its decisions are available on the Equality Tribunal website at www.equalitytribunal.ie together with summaries and indexes for ease of reference. Hard copies of each decision are also available on request from the Equality Tribunal. As part of the Equality Tribunal's overall policy of seeking to ensure that its decisions are as accessible and as transparent as possible to the general public, overviews of the legal issues arising in the decisions issued by the Equality Tribunal in the previous year has been published in a series of annual Legal Reviews. These Legal Reviews are arranged thematically, by discriminatory ground and are also available on the website of the Equality Tribunal⁴¹.

Population statistics⁴² collected and published by the Central Statistics Office are, where appropriate, disaggregated by nationality and ethnic or cultural background.

The Quarterly National Household Survey (QNHS), a large-scale, nationwide survey of households in Ireland, interviewing 39,000 households each quarter, has included special modules on the topic of equality and discrimination. The most recent such module⁴³ was conducted in 2010 and published in July 2011. This module repeated questions that were previously asked in 2004 and provides an indication of discrimination as perceived by the respondents, action taken and knowledge of rights.

⁴¹ <http://www.equalitytribunal.ie/Publications/Annual-Legal-Reviews/>

⁴² <http://www.census.ie>

⁴³ http://www.cso.ie/releasespublications/documents/labour_market/2010/qnhs_equalityq42010.pdf

(45). *The Irish authorities should ensure that data collection is carried out in full compliance with the Data Protection Act 2003. In this regard, ECRI recommends that the Irish authorities continue taking measures to raise minority groups' awareness of the existence and work of the Data Commissioner. Furthermore, the data collection system on racism and racial discrimination should take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination. (page 32 – I.125)*

Response:

In 2007, the Office for Data Protection produced a copy of the rights booklet entitled “A guide to your rights⁴⁴” in the following languages, Polish⁴⁵, Slovak⁴⁶ and Czech⁴⁷.

Data collection system on racism and racial discrimination

Statistics on reports of racially motivated crime are collated by the National Central Statistics Office and the data sets are made available on the website of the Office for the Promotion of Migrant Integration⁴⁸. Racist incidents are broken down into 10 different classes of crime. This breakdown is only available for incidents from 2006 onwards. The Central Statistics Office have indicated that further breakdown of the data in relation to gender and geographic location is not made publicly available, since it may lead to the identification of individual cases.

The 2010 Fundamental Rights Agency Assessment of the Status of official criminal justice data collection mechanisms on racist crime in the EU27⁴⁹ categorized Ireland as having in place “a good system to register crimes, and/or system focuses on right-wing extremism and/ or anti-Semitism”.

In addition to this, statistics on the number of complaints to the Garda Síochána (Police Force) Ombudsman Commission, alleging discrimination on the grounds of race and/or religion is available on the website⁵⁰ of the Office for the Promotion of Migrant Integration. A Gender breakdown of these statistics is not made publicly available.

Statistics on the total numbers of cases taken under the race ground of the Employment Equality and Equal Status Acts are also available on the website of the Office for the Promotion of Migrant Integration⁵¹.

⁴⁴ <http://www.dataprotection.ie/documents/forms/NewRightsBooklet.pdf>

⁴⁵ <http://www.dataprotection.ie/viewdoc.asp?Docid=412&Catid=49&StartDate=1+January+2007&m=p>

⁴⁶ <http://www.dataprotection.ie/viewdoc.asp?Docid=492&Catid=49&StartDate=1+January+2007&m=p>

⁴⁷ <http://www.dataprotection.ie/viewdoc.asp?Docid=491&Catid=49&StartDate=1+January+2007&m=p>

⁴⁸ <http://www.integration.ie/website/omi/omiwebv6.nsf/page/statistics-RacistIncidentsstatisticscrime-en>

⁴⁹ <http://fra.europa.eu/fraWebsite/attachments/annual-report-2011-chapter6.pdf>

⁵⁰ <http://www.integration.ie/website/omi/omiwebv6.nsf/page/statistics-RacistIncidentsstatistics-GSOCDiscrimcases-en>

⁵¹ <http://www.integration.ie/website/omi/omiwebv6.nsf/page/statistics-RacistIncidentsstatistics-EqTribcases-en>

Multiple Discrimination

Ireland has embedded a multi-ground approach in equality legislation and infrastructure. Irish equality law provides explicitly for the submission and investigation of complaints of discrimination covering more than one ground. Amendments to the Employment Equality Acts and the Equal Status Acts by the Equality Act 2004 included a change in the provisions for complaints taken on more than one ground. The new arrangements provided that claims to have been discriminated against on more than one of the discriminatory grounds, or of having also been victimised, in the same set of circumstances would be investigated as a single case, while a decision would be made on each of the claims.

The caselaw of the Equality Tribunal has established an understanding of the concept and illustrates that this mechanism has proved sufficiently flexible to cope with complaints involving issues of cumulative discrimination on multiple grounds, and of intersectional discrimination on multiple grounds.

In its recent decision in *Luzak v Sales Placement Ltd* (case reference DEC-2011-10) concerning the discriminatory dismissal of a pregnant female Polish agency worker, the Equality Tribunal found that the discrimination on grounds of gender was compounded by discrimination on grounds of race (i.e. nationality).

The Equality Tribunal has also developed the use of a hypothetical comparator on multiple grounds to allow cases of direct intersectional discrimination to be considered. This approach is illustrated in the case below, in which the treatment of a black Zimbabwean female is contrasted with that of a hypothetical white Irish male.

In the complaint **Nyamhovsa v Boss Worldwide Promotions** (case reference DEC-E2007-072), the Equality Officer created a multi-dimensional hypothetical comparator (of a white Irish male) to establish whether a prima facie case existed in a complaint lodged by a black Zimbabwean female employee of direct discrimination on the grounds of both gender and race.

Ms Nyamhovsa worked in a commission-based sales role for the respondent company. She submitted that her employer subjected her to a derogatory remark in front of one of her trainees; that he treated her differently from white staff on his team in terms of team assignments; that he demoted her without explanation and that he dismissed her without notice or explanations, in circumstances which amounted to discrimination on the grounds of both gender and race.

The Equality Officer in this case cites the Labour Court's recommendation on use of hypothetical comparators in complaints of direct discrimination, as outlined in the appeal hearing on the case *Citibank v Ntoko* (Determination no. EED045), and develops this precedent to encompass a multi-dimensional hypothetical comparator.

Proportion of complaints on multiple-grounds

Approximately 20% of all complaints of alleged discrimination referred to the Equality Tribunal reference more than one of the nine grounds. For example, in the period between its establishment in 1999 and the end of 2007, a total of 6,078 cases

were referred to the Equality Tribunal for investigation under the new equality legislation, of which 2,751 concerned employment equality and 3,327 were taken under equal status legislation. Of these, 1,208 complaints (or 20% of the total, 23% of employment cases and 18% of equal status cases) involved multiple grounds.

Multiple grounds and the question of aggravated damages

On the question of aggravated damages for discrimination occurring on more than one ground, policy in the law in Ireland is that the multiplicity of grounds does not form a basis for either the taking of more than one action on the same set of facts, or for the level of compensation.

The Employment Equality Acts, for example, provide that the types of redress which may be awarded include an order for compensation for the effects of acts of discrimination or victimisation on the complainant. Similarly, the Equal Status Acts provide that redress may include an order for compensation for the effects of the prohibited conduct concerned on the complainant.

The principle applied is that the amount of compensation awarded is in proportion to the harm suffered by the victim, rather than a factor of the multiplicity of grounds on which the complaint is made. Redress is determined on a case by case basis, recognising that similar circumstances can have varying impacts on different victims.

(46). ECRI recommends that the Irish authorities use data gathered in the 2006 census to garner information on the situation of ethnic minorities and non-nationals in various areas and identify possible problems of racial discrimination that may require further investigation. (page 32 – I.126)

Response:

A census of population is carried out every five years in Ireland and provides an account of everybody in the country on census night. As part of the information collected, the following questions specifically address the issues of national, ethnic and religious diversity;

- Nationality,
- Place of birth (country and county),
- Religion,
- Ethnicity,
- Foreign language spoken at home/ ability to speak English

Census data on all of the above variables can be cross- tabulated with other census variables and the results can be made available subject to confidentiality. This will enable users to analyse any or all ethnic minorities at a very detailed level both through multi – dimensional analysis and geographically. All data analysis can and will be provided with a gender dimension.

The enumerated population of Ireland in April 2006 amounted to 4.24 million persons. This represented an increase of 323,000 persons or 8.2 per cent compared with the April 2002 Census figure, leading to the highest population since 1861.

Of the 4.17 million usually resident persons present in the State on 23 April 2006, 420,000 (or 10%) had a nationality other than Irish – up from 224,000 (or 5.8%) four years earlier.

The predominance of persons of working age accounts for other differences between the Irish and non-Irish groups in areas such as labour force participation rates and levels of educational attainment

The Central Statistics Office published a report in June 2008 entitled '*Census 2006 – Non – Irish Nationals living in Ireland*⁵²', presenting a thematic examination of the non – Irish national population living in Ireland at the time of the 2006 Census. The information in the report is sourced entirely from the census and deals with persons who were usually resident in Ireland in April 2006.

The report, which is in two parts, gives an overview of the total non-Irish population comparing their characteristics with those of the resident Irish population, and follows this with an in depth profile of the ten largest nationality groups (UK Nationals, Poles, Lithuanians, Nigerians, Latvians, US Nationals, Chinese, Germans, Filipinos and French).

According to the Census, the non-Irish national population had a strikingly different demographic profile to that of the Irish. The non-Irish were dominated by people in their twenties and thirties with significantly more men than women. The sex ratio disparity was most marked among the younger age groups, where the largest numbers were found, though there were more men than women in every age group under 70 years (except for the 15-19 age group). There were few children and elderly among the non-Irish nationals.

The Central Statistics Office also published a report in November 2007 entitled; "Equality In Ireland 2007"⁵³, which examines the demographic and economic situation of people in Ireland across the nine equality grounds. The report was prepared to mark the European Year of Equal Opportunities for All 2007.

Some of the key findings of the report include that 88.8% of the population were Irish nationals, 2.7% were from the UK, 3.9% were from other EU countries and 3.5% were from outside the EU. 96.5% of the population has a white ethnic background (Irish, British, Polish, etc), with "Other Whites" (excluding Irish and Irish travellers) concentrated mainly in the 25 -44 age group (50.5%). People with Black ethnic backgrounds were concentrated in the 0-14 (40.9%) and 15-44 (44.5%) age groups.

The question on ethnicity / cultural background in Census 2011 is the same as in Census 2006.

Preliminary results from Census 2011 show that the total population was 4,581,269 on 10 April 2011. This represents an increase of 8.1% over the past five years since the last

⁵² <http://www.cso.ie/releasespublications/documents/population/non-irish/nonirishnationalscomplete.pdf>

⁵³ http://www.cso.ie/releasespublications/documents/other_releases/2007/equalityinireland.pdf

Census in 2006. The Quarterly National Household Survey for the first quarter of 2011 estimated that there were 357,300 non-Irish nationals aged over 15 living in Ireland. Other official information available shows that there were approximately 190,000 non-Irish children (under the age of 18) in Ireland in January 2011.

Module on Equality and Discrimination.

A module on the topic of equality and discrimination among people aged 18 years and over was included in the Central Statistics Office “Quarterly National Household Survey (QNHS)” in the fourth quarter (October – December) of 2010⁵⁴. The module was a repeat of the module asked in the fourth quarter of 2004⁵⁵ with some additions to the questionnaire.

12% of people aged 18 or over said that they felt discriminated against in the two years prior to the fourth quarter of 2010 (Q4 2010). The rate was unchanged since the previous equality module in 2004.

In 2010, the highest rates of discrimination were reported by people from non-White ethnic backgrounds (29%), unemployed people (22%), non-Irish nationals (20%) and people who were not Catholic (18%). The most common grounds identified by people who had experienced discrimination were race (22%).

II. SPECIFIC ISSUES.

A. THE SCHEME FOR THE IMMIGRATION RESIDENCE AND PROTECTION BILL.

The Government is committed to the introduction of comprehensive legislation setting out in one statute the conditions for entry, residence and protection in Ireland.

(1). ECRI recommends that the Irish authorities take into consideration the various comments and suggestions made by NGOs and civil society organisations regarding the Scheme for an Immigration, Residence and Protection Bill and continue the consultative process on this Bill. (page 34 – II.130)

Response:

See reply to previous comment No. 25.

⁵⁴ http://www.cso.ie/releasespublications/documents/labour_market/2010/qnhs_equalityq42010.pdf

⁵⁵ http://www.cso.ie/releasespublications/documents/labour_market/current/equality.pdf

(2). ECRI strongly recommends that the authorities ensure that the subsequent Bill takes into consideration existing international standards and include provisions against discrimination based on, inter alia, race, colour, language, religion, nationality or national or ethnic origin. (page 34 – II.131)

Response:

Please see reply to point 44 above.

B. THE NEED FOR AN INTEGRATION STRATEGY.

(3). ECRI urges the Irish authorities to establish and implement an integration strategy aimed at ensuring the full and equal participation of the various minority communities living in Ireland into all areas of Irish life, including education, employment, access to public services and participation in the political life. It recommends in this respect that combating racism and racial discrimination form the backbone of this strategy and that the authorities provide the necessary funds to that end. ECRI further recommends that the objectives set out in the National Action Plans Against Racism and Poverty also be included in this strategy and that they be more actively implemented. (page 35 – II.136)

Response:

Ireland adopts a policy of mainstream service provision in the migrant integration area while recognising the need for targeted initiatives to meet specific short-term needs. The policies apply to all groups (however certain distinctions apply in relation to access to services depending on legal status etc.).

A mainstream approach to service delivery means that relevant Departments and Agencies are responsible for developing integration policies in their areas of responsibility, for making services more accessible to migrants and for developing appropriate funding streams etc.

Mainstream services in Ireland continue to respond and adapt to the needs of migrants. Migrants from a wide variety of backgrounds and religions have been consulted in the development of these strategies. For example, the Intercultural Health Strategy and also the Intercultural Education Strategy which was published in September 2010.

Our migrant integration policy recognises that there is a need to promote measures which ensure that migrants participate more fully in the social, cultural and civic life of Ireland. The policies outlined in the strategy statement on Integration and Diversity Management called 'Migration Nation' (published in 2008) continues to be implemented (see the website of the Office for the Promotion of Migrant Integration for this policy document and information about the work of the Office⁵⁶). The policy

⁵⁶ [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/\\$File/Migration%20Nation.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/$File/Migration%20Nation.pdf)

identifies effective and equitable provision of core services as key levers in achieving integration objectives. It also emphasises the concept that integration is a two-way process requiring mutual adaptation. It states that everyone has a role to play in facilitating integration including the new communities, the host community, corporate sector, national and local government, trade unions, media and community and voluntary organisations.

The primary core funding for migrant integration is spent by mainline Departments who provide services on a mainstream basis. The Office for the Promotion of Migrant Integration (formerly the Office of the Minister for Integration) provides funding in key areas to facilitate integration. The funding focus is to encourage migrant participation in Irish society. Accordingly, funding has been channelled to local authorities, national sporting bodies, other national bodies and faith-based bodies to facilitate integration initiatives.

A wide variety of migrant communities benefit from the initiatives supported.

(4). ECRI strongly recommends that minority groups be involved throughout the process leading to the establishment and implementation of any future integration strategy. They should in this regard be provided with sufficient funding to enable their active participation in this process. ECRI also recommends that Immigration Integration Unit which could be a possible central point for the implementation and coordination of the strategy be provided with sufficient human and financial resources to do so. The Unit's staff should further receive training on issues pertaining to racism and racial discrimination as well as on interculturalism. ECRI recommends on this point that efforts be made to recruit members of minority groups among its staff. (page 35/36 – II.137)

Response:

The Irish Government appointed the first Minister of State for Integration in June 2007 in conjunction with the establishment of a new Office of the Minister for Integration. The Minister had a cross Departmental mandate to develop, drive and co-ordinate integration policy across Government Departments, agencies and services.

In May 2008, the then Minister of State for Integration launched ‘*Migration Nation; Statement on Integration Strategy and Diversity Management*⁵⁷’. This document sets out key principles underpinning integration policy in Ireland and focuses on the role of local authorities and sporting bodies in building integrated communities. The outcomes of wide-ranging consultations over a number of years by the Reception and Integration Agency, and later the Office of the Minister for Integration, helped inform the policy approach set out in Migration Nation. Consultations with civil society (including ethnic minority groups), trade unions, local authorities, sporting bodies and statutory bodies took place on an ongoing basis prior to the development of the document. For example, in February 2007, the Government undertook consultation with NGOs and other stakeholders by holding a major conference on Integration

⁵⁷ [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/\\$File/Migration%20Nation.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/$File/Migration%20Nation.pdf).

Policy, and in May 2007, a conference on providing information for new communities was held. A follow-up workshop on developing integration policy took place in December 2007.

Other key national integration strategies were informed by widespread consultations, including the National Intercultural Education Strategy, launched September 2010, (see point 19 - Section K for details on the consultation process) and the National Intercultural Health Strategy, launched February 2008. In the case of the latter, its development was informed by national, regional and local consultation events, surveys and focus groups. Consultations took place with a range of minority ethnic organisations, community-based and advocacy organisations, individuals, migrant workers, refugees, asylum seekers, Travellers and staff within the Health Service Executive. The consultations highlighted the range of cultural, information and communications barriers to the provision of intercultural health services, as well as specific priorities and themes which should underpin the development of the strategy. A report detailing the outcomes of the consultations is at the link below:
http://www.hse.ie/eng/services/Publications/services/SocialInclusion/NIHS_Consultation_Report.pdf,

The development of local level strategies has also been informed by consultation. Migrant representatives were consulted in the development of local integration and anti-racism plans through focus groups, interview surveys and through their involvement in the Steering Groups co-ordinating the development of local plans.

With the recent restructuring of Government Departments, following a change of Government, the Office of the Minister for Integration was re-named the Office for the Promotion of Migrant Integration and the Office now reports directly to the Minister for Justice and Equality.

While primary core funding for integration is spent by mainline Departments who provide services on a mainstream basis, the Office for the Promotion of Migrant Integration provides funding in key areas to facilitate integration and to address racism. The Office continues to work with many sectors including the Irish Police, Local Authorities, Sporting Bodies, Government Departments, the social partners and broader civil society including cultural and ethnic minorities, to further progress the integration and diversity management agenda. The Office also acknowledges the important work of civil society in supporting integration and tackling anti – racism and maintains a good working relationship with groups in this area.

The importance of human rights training for civil and public servants is acknowledged. The Irish Human Rights Commission recently published a “*Human Rights Guide for the Civil and Public Servants*” and they provide training to civil and public servants on their human rights obligations. Staff of the Office for the Promotion of Migrant Integration have participated in this training and individual staff members have also participated in intercultural training. Since the establishment of the Office, a number of non-Irish nationals have also worked in the Office.

APPENDIX A

CONFERENCES / SEMINARS ATTENDED BY MEMBERS OF THE JUDICIARY IN 2009, 2010 AND 2011 IN RELATION TO RACIAL DISCRIMINATION

- Seminar on “50 years of the European Court of Human Rights viewed by its fellow international Courts” in Strasbourg on 30th January 2009.
- ERA Conference on “The Jurisprudence of The European Human Rights in the area of Migration” in Strasbourg on 17th March 2009.
- Committee for Judicial Studies Institute Annual Supreme and High Court Conference in Adare, Co. Limerick on 19th June 2009. Session topic: “The European Convention on Human Rights Act 2003”.
Speaker: The Hon. Ms. Justice Mary Finlay Geoghegan.
- ERA Seminar on “Fundamental Rights Protection in EU Law under the Lisbon Treaty” in Trier on 22nd – 23rd April 2010.
- ERA Seminar on “The Procedure and Jurisprudence of the European Court of Human Rights” in Strasbourg, 8th & 9th June 2010.
- Judicial Studies Institute Annual Circuit Court Conference – 9th & 10th of July 2010. Session Topic: “Human Trafficking Investigation”. Speaker: Detective Superintendent Noel Clarke, Garda National Immigration Bureau.
- An Irish Human Rights Commission Annual Human Rights Lecture in Dublin, on 3rd November 2010.

- ERA “Recent Jurisprudence of the ECHR in the Area of Criminal Law” Seminar in Strasbourg, 7th & 8th December 2010.
Irish Centre for European Law Seminar on “The Right to a Fair Trial _ Article 6 ECHR” in Dublin on 18th February 2011.
- Law Society of Ireland Annual Human Rights Conference in Dublin on 22nd October 2011.
- Committee for Judicial Studies Annual National Conference – 18th November 2011. Session topic: “Anti Human Trafficking”.
Speaker: Judge Susan Oki Mollway, Chief United States District Judge for the District of Hawaii and Detective Superintendent Noel Clarke, Garda National Immigration Bureau.

Appendix B

Key provisions: Prohibition of Incitement to Hatred Act 1989

Under the Prohibition of Incitement to Hatred Act 1989, hatred is defined as:

“hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation”.

Section 2 of the Act provides for offences of using words, displaying, publishing or distributing written material which is likely to or intended to stir up hatred. The section also provides for an offence of engaging in behaviour which is likely to or intended to stir up hatred.

Section 3 of the Act provides for offences of broadcasting any threatening, abusive or insulting material (including words or visual material) which is likely to or intended to stir up hatred. Section 5 of the Act provides for offences concerned with the preparation and possession of material likely to stir up hatred.

Under Section 6 of the Act, a person convicted of an offence may be liable to imprisonment for a maximum term of 2 years and/or a maximum fine of €25,000. The maximum fine has been almost doubled from €12,700 with effect from 4 January, 2011 following the commencement of the indexation provisions of the Fines Act 2010. The summary fine - previously a maximum fine of €1,270 - is now a Class C fine, which is a maximum fine of €2,500.

Appendix C:

Non-exhaustive list of offences where racism and xenophobia may be taken into account as an aggravating factor

These can be divided into 3 main categories.

1. Offences against the person

Non-Fatal Offences against the Person Act 1997

Criminal Law (Rape) Act 1981

Criminal Law (Rape) (Amendment) Act 1990

- Assault
- Sexual assault
- Harassment
- Poisoning
- Endangerment
- Threatening, abusive or insulting behaviour in a public place
- Robbery from the person
- Theft from a person
- Blackmail
- Conspiring or soliciting to commit murder
- Coercion
- Menacing phone calls

2. Criminal damage

Criminal Damage Act 1991

- Damaging property
- Arson
- Threatening to damage property
- Killing or maiming animals

3. Public Order Offences

Criminal Justice (Public Order) Act 1994

- Disorderly conduct in a public place
- Distribution or display in public place of material which is threatening, abusive, insulting or obscene
- Public mischief
- Trespass on a building
- Violent disorder
- Riot
- Affray
- Discharging a firearm
- Possession of an offensive weapon
- Unauthorised taking of a vehicle

APPENDIX D

Table 1: Total Number of Primary Schools by Patron Body (2011/2012)

Patron Body	No of Schools	% of Total
Catholic	2,833	89.57%
Church of Ireland	176	5.56%
Presbyterian	14	0.44%
Methodist	1	0.03%
Jewish	1	0.03%
Islamic	2	0.06%
Quaker	1	0.03%
John Scottus Educational Trust Ltd	1	0.03%
Lifeways Ireland	2	0.06%
An Foras Pátrúnachta na Scoileanna Lán-Ghaeilge		
Teo	58	1.83%
Educate Together Ltd (national Patron Body)	46	1.45%
Schools in Educate Together network with their own patron body	14	0.44%
Minister for Education and Skills *	14	0.44%
Total	3,163	

The Minister for Education and Skills is patron of the nine Model Schools and is interim patron of the five Community National Schools, with Co Dublin, Meath and Kildare VECs as patron-designate.

APPENDIX E:

Table 2. Breakdown of New Schools Opened by Patron Body

Year	Catholic	Educate Together	Foras Patrunachta	Schools in the Ed-Together	Other denominational bodies	Other denominational bodies	Other multi-denominational bodies	Total
1997/98	0	0	1	2	0	0	0	3
1998/99	0	1	6	0	0	0	0	7
1999/00	1	1	3	0	0	1	0	6
2000/01	1	1	2	0	0	0	0	4
2001/02	3	2	2	0	1	0	0	8
2002/03	0	7	3	0	0	0	0	10
2003/04	3	3	1	0	0	0	0	7
2004/05	0	4	1	0	1	0	0	6
2005/06	6	4	3	0	0	0	0	13
2006/07	2	2	5	0	0	0	0	9
2007/08	6	3	4	0	1	1	0	15
2008/09	3	12	3	0	0	3	0	21
2009/10	0	0	0	0	0	0	0	0
2010/11	2	2	0	0	0	3	0	7
2011/12	0	2	1	0	0	0	0	3
Total	27	44	25	2	3	8	0	119

APPENDIX F:**Table 3: Comparison of Accommodation Position of Traveller Families 2004 and 2010**

Number of families in:	Nov 2004	%	Nov 2010	%
Standard Houses (including Voluntary Housing)	2,827	40.44%	3,453	36.46%
Unauthorised Sites	601	8.60%	444	4.69%
Permanent Halting Site Bays	743	10.63%	619	6.54%
Group Housing	582	8.32%	709	7.49%
Own Resources	464	6.64%	561	5.92%
Basic Service Bays/Transient Halting Site Bays	363	5.19%	207	2.19%
Private Houses assisted by Local Authorities	376	5.38%	481	5.08%
Sharing Housing (categories a,d,e,g,i)	334	4.78%	451	4.76%
Private rented accommodation	486	6.95%	2,380	25.13%
Sharing Permanent Halting Site Bays	128	1.83%	136	1.44%
Sharing Basic Service Bays/Transient Halting Site Bays	87	1.24%	29	0.31%
Total	6,991	100%	9,470	100%