

Submission to Oireachtas Justice Committee August 2021

Irish Network Against Racism



(INAR)

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

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

INAR is a founder member and former coordinating organisation of the Coalition Against Hate Crime Ireland (CAHC) (2017-21), an inter-NGO alliance (anti-racism, LGBTQIA+, disability rights org) lobbying for Hate Crime Legislation and related policy in Ireland. INAR

Chairs the Garda National Diversity Forum, overseeing the implementation of the An Garda Síochána Diversity Strategy (2018-21).

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

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

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

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

Minorities engaging with the Justice System

Introduction

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

1. Policy Reform

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

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

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

Recommendations:

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

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

1. Reform of the Criminal Justice System

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

Recommendations:

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

- xvi. identify ways in which to address trial delays and improve efficiency within the criminal justice system,
- xvii. Fully implement the recommendations of [the Future of Policing in Ireland](#).

1. Public Sector Duty (Equality and Human Rights)

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

Recommendations:

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

1. Reform of the Workplace Relations Commission

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

Recommendations:

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

Aid for cases under Equality legislation

- iv. The process of appointment of the adjudication officers must ensure independence and impartiality as these are fundamental components of the capacity to administer justice.
- v. Need for adjudicating officers to have formal legal training to ensure legal correctness of rulings.
- vi. Need to align rules of procedure with the Constitution
- vii. Need for an appeal mechanism to the Courts to resolve disputes heard by the WRC.

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

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

Recommendations:

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

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

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