

Summary

Foreword

The NGO Alliance consists of over 40 independent Non-Governmental Organisations (NGO's) working on the ground in Ireland on issues such as anti-racism, community development, and human rights, all of whom have a common interest in the prevention of racial discrimination, and in working together on anti-racist principles and actions. This Shadow Report is the product of a consultation process undertaken by the Alliance during late 2003 and 2004.

Introduction

As a result of Ireland's dualist system of laws, the Convention is not directly enforceable through the courts in Ireland. Vindication of the rights contained in it is dependent on the will of the Government. This is particularly significant in view of the fact that the Minister for Justice, Equality and Law Reform has stated that he does not believe that economic, social and cultural rights are justiciable. The Committee must consider why, if the Government believes that the rights enshrined in the Convention are sufficiently important for Ireland to ratify, it has refused to bring the Convention fully into Irish law. The Government's argument that there is no need for full incorporation of the Convention into Irish law since domestic law provides all the protections necessary under the Convention must in particular be considered in light of the views of the Minister on economic, social and cultural rights.

General Comment

The NGO Alliance is of the view that the Government's First Report to the Committee was produced without sufficient consultation with Black and minority ethnic groups and with relevant NGO's.

The NGO Alliance believes that the

Government's First Report should be read in light of the views of the Committee on the rights of non-citizens under the Convention, as recently outlined in General Recommendation 30.

Article One

The NGO Alliance is concerned that the Government's First Report was drawn up on the basis of an incomplete picture of Black and minority ethnic groups in Ireland. This is as a result of Government's failure to gather the necessary data via the Census and other Government statistical tools.

In particular, it has not properly recognised the intersection of racism and other discrimination, such as discrimination against women, and it has refused to recognise Travellers as an ethnic group, which may deny them the protection of the Convention.

Article Two

One of central planks of the Government's anti-racism policy is the Equal Status Act 2000. However, this Act does not cover Government functions. In addition, public servants carrying out functions of the state have in most cases received very little or no anti-racism training, and there have been consistent reports of problems with racist attitudes in such areas as the judiciary, local government and the prison service.

There is a need for proper coordination of research to ensure collection of baseline social and economic data on Black and minority ethnic groups, data on systems, organisations and structures impacting on equality, data on changing social attitudes, and data on the development of resources within Black and minority ethnic communities. This data should be disaggregated by gender. Recommendations resulting from the collection of data of this kind must be seen to result in changes in Government policies.

The Government has failed to adequately resource Black and minority ethnic led

organisations and sustainable anti-racism initiatives. In addition, the Government has done little to introduce positive discrimination programmes to correct the lack of representation of Black and minority ethnic groups in political life, the courts system, the police or the civil and public service.

The Arts Council, which is the Irish state's principal instrument of arts funding and an advisory body to Government on arts matters has as one of its aims the promotion of equality and diversity in the arts. It should be asked to undertake research into the cultural needs of Black and minority ethnic groups new to Ireland.

Article Three

Government policies of dispersal and direct provision have resulted in the segregation of asylum seekers from the community by sending them to designated accommodation units around the country and refusing them the right to work. This has isolated them from the rest of society, and helped to foster resentment against them as 'spongers.' The 'comfort money' which is given to asylum seekers under direct provision is insufficient to cover basic necessities not provided by the State, and unlike other national welfare payments, has had no annual increase since it was initiated in 2000.

The hostel accommodation and level of care provided for separated children seeking asylum in Ireland is inferior to that provided to other children in the care of the State and would not meet the national standards for children's residential centres. Adequate counselling and support services have not been provided for these vulnerable children. In addition, there is a growing number of incidences of separated children being reported missing from care placements. There is a fear that some of these children may end up being exploited for work or sexual purposes.

Segregation of Travellers has been the result of a failure to implement agreed programmes for Traveller accommodation, in many cases in the face of opposition from the settled community. Many Traveller families remain living in totally inadequate and unhealthy roadside conditions without access to water, sanitation or electricity.

Article Four

To date, little real attempt has been made by the Government to curb racism in the media and to prohibit incitement to hatred. The promised review of the Prohibition of Incitement to Hatred Act, 1989 has not taken place, and the promised Press Council is not yet established. Debate on some Government policies have fuelled racism in Ireland, and little attempt has been made to censure politicians who added to this.

Article Five

With regard to equal treatment before tribunals and other organs administering justice, the lack of an Immigration Appeals Tribunal and a 14 day time limit for foreign nationals to apply for judicial review on matters concerning their immigration status, and on asylum matters, are of major concern.

A failure to gather adequate data on racist incidents has led to a significant underestimate of their impact on victims and society in general. Victims of racist incidents have expressed lack of confidence in the manner in which the police respond to racist incidents. The current police complaints mechanism is widely recognised as inadequate to meet the needs of victims of police malpractice. The Equal Status Act 2000 does not cover most police functions. While the police are beginning to set up a system of liaison with Black and minority ethnic groups, 20% of those chosen as ethnic liaison officers are also immigration officers. Members of Black and minority ethnic groups are unlikely to feel comfortable about reporting racist

incidents to Immigration Officers who are charged with directly monitoring their immigration status. The system of ethnic liaison officers is also insufficiently resourced. There is currently a serious lack of anti-racism training within the force.

Irish children whose parents are migrants have been liable to be removed from the state with their parents, who are no longer allowed a right of residence in the state following a Supreme Court ruling early last year and a change in Government policy. This has resulted in the effective deportation of Irish citizens from the State because of the nationality of their parents.

In spite of the recommendation from the National Economic and Social Forum, the Government's National Anti-Poverty Strategy does not include provision for equality proofing of its policies, which would include ethnic origin as one of the grounds. Little data has been collected on poverty levels of foreign nationals in Ireland, and little attempt has been made to ensure the representation of Black and minority ethnic groups in all Government fora where service needs are discussed. Unemployment and general poverty levels among Travellers are particularly high, and further positive action on these issues, in keeping with the principles of the Convention, is urgently needed.

The Government still does not have a comprehensive policy on immigration, or adequate immigration legislation. Immigration policy is piecemeal and market driven, aimed at attracting temporary workers to fill shortages in the labour market. As a result, there is no proper integration policy in place for migrants, and there are persistent complaints of discrimination against them in relation to labour legislation and regulations which are not complied with consistently by employers. This situation is made worse by the fact that work permits are held by employers, not workers. In addition, workers

with professional qualifications gained abroad often have difficulties getting them recognised in Ireland. There is a particular concern about women migrants who are dependent spouses and have no entitlement to residence in their own right, and who may be subject to domestic violence. There is also concern about women and children who are the victims of trafficking, and who may face deportation if they report this.

Members of Black and minority ethnic groups have reported discrimination in trying to find and access affordable accommodation in the private rented sector. Asylum seekers have repeatedly complained about the quality of accommodation provided under the dispersal and direct provision system. There is a major and persistent problem with lack of suitable accommodation for Travellers, in spite of Government policies, research and legislation on this issue.

Lack of suitable accommodation could be a major contributing factor to the serious health problems experienced by members of the Travelling Community. For all members of Black and minority ethnic groups the lack of culturally appropriate health care is a problem, particularly for women, whose childcare responsibilities bring them into regular contact with the health services.

Most schools in Ireland still reflect the ethos of the majority Catholic Church, and give preference to children from Catholic families. This presents problems for some foreign national parents, and other parents, who are not Catholic. The schools curriculum still does not adequately reflect the diversity of current Irish society, which makes it even more difficult for migrant children to integrate. Language support teaching for migrant children who do not have English as a first language is insufficiently resourced and restricted. Access to grants at third level is currently restricted to Irish and EU citizens, and asylum seekers cannot attend third level

colleges. The education levels in the Traveller community are generally very low, and are an ongoing cause for concern.

There is a long history of Travellers having problems with access to hotels, bars, restaurants, etc. There is concern that asylum seekers are not able to access adequately the services they need in the areas of legal assistance, health care, education, religious observance, and community and linguistic support as a result of the dispersal and direct provision systems.

Article Six

The Immigration Act 2004 introduced new requirements for foreign nationals to register and carry identification at all times, unlike Irish citizens. It gave the right to police to stop foreign nationals and ask for such identification at any time. A similar problem is experienced by those travelling to Ireland, since those who are perceived as being 'visibly' different or 'not Irish' are constantly stopped by immigration officers at ports, airports and on trains from Northern Ireland and asked to show a passport, whilst White people are more rarely stopped.

There have also been many concerns raised about the lack of transparency in the asylum determination process, and the failure to give proper anti-racism training to those who administer it. This lack of transparency is also a feature of decisions concerning family reunification, and on decisions concerning leave to remain in Ireland.

Article Seven

The Government has done little to ensure awareness among the general public of the fact that Ireland is a party to the Convention. Even less is known about the right of individual petition under Article 14. It is part of the remit of the Irish Human Rights Commission to disseminate information on human rights in Ireland, but it does not have the staffing and resources to do it appropriately.

The Government not only fails to acknowledge the seriousness of racism in Ireland today, but on occasion seeks to deny its existence. In addition, policies it has introduced have acted to increase racism, and statements it has made have reinforced the perception that many migrants are 'bogus' asylum seekers' or are here for 'citizenship shopping'. The Government's failure to show political leadership in the fight against racism in Ireland is a major cause of concern to the NGO Alliance

In view of the lack of acknowledgement or understanding on the part of the Government of racism in Ireland today, the Government's First Report should be regarded as aspirational, rather than an accurate reflection of the current reality on the ground.

Key Recommendations

1) Who is covered by the Convention and how they are covered

(Main text: para. 10-13, 27-32)

The Government has refused to recognise Travellers as an ethnic group, thus denying them the protection of the Convention. Travellers have identified themselves as an ethnic group, outlining the criteria which support this. Their view has been backed up by objective evidence, and supported by decisions made on Traveller ethnicity in the UK. The Government should recognise Travellers as an ethnic group.

While the Convention allows for distinctions to be made by states between citizens and non-citizens, the Committee has stated in the recently published CERD General Recommendation 30 on discrimination against non-citizens that such distinctions must not result in the undermining of the basic prohibition of discrimination. The NGO Alliance notes that not all fundamental rights under the Constitution attach to non-citizens. Furthermore, certain legislation currently in force discriminates against non-citizens; for example, in relation to access to third level education, and in the requirement that non-citizens must carry identification at all times.

RECOMMENDATION:

- The Government should recognise the Traveller Community as an ethnic group.
- The Government should recognise the rights of non-citizens under the Convention as outlined in CERD General Recommendation 30.

2) Data collection, research and monitoring (Main text: para. 14-23, 38-41, 65, 76, 79, 97, 101-102, 111, 128, 144)

The major sources of data for social statistics in Ireland are censuses and household surveys. Data collected in this way in Ireland is not disaggregated by ethnic origin. There is therefore a lack of adequate data on what Black and minority ethnic groups there are in Ireland, how many members of them there are, and what their needs are.

Government research on racist attitudes in Ireland and the effectiveness of Government policies in combating racial discrimination is similarly lacking. Surveys undertaken by NGO's, the media, academics and the EU show increasing levels of racism and hostility towards Black and minority ethnic groups, at all levels of society. There is a need for proper coordination of research to ensure collection of baseline social and economic data on Black and minority ethnic groups, data on systems, organisations and structures impacting on equality, data on changing social attitudes, and data on the development of resources within Black and minority ethnic communities. This data should also be disaggregated by gender. Recommendations resulting from the collection of data of this kind must be seen to result in changes in Government policies.

RECOMMENDATION:

- The Government should develop and implement a strategy to ensure the collection of proper social statistics on Black and minority ethnic groups in Ireland.
- The Government should draw up and implement a plan to coordinate research and monitoring of racist attitudes and racial discrimination in Ireland.
- Recommendations resulting from this research and monitoring must be reflected in changes in Government policy.

3) Representation and full participation (Main text: para. 7-9, 42-44)

Anti-racism initiatives and agencies working against racism have seen their funding seriously reduced in recent times. Much is made in the Government's First Report of the importance of the Equality Authority and the National Consultative Committee on Racism and Interculturalism (NCCRI) in its anti-racism strategy, but both have had their funding cut, and the NCCRI has far too few staff for the tasks it is given.

The chronic underfunding of Black and minority ethnic led organisations has resulted in difficulties in the development of adequate staffing and professionalism. The Government has failed to recognise that the development of such organisations, and their participation in the development of Government anti-racism policies, is essential to their success. The Government does not have adequate mechanisms in place to ensure proper consultation with Black and minority ethnic led organisations in the policy-making process.

RECOMMENDATION:

- The Government should ensure adequate funding of Black and minority ethnic led groups.
- It should also ensure adequate funding of organisations and agencies working against racism, and proper support for sustainable anti-racism initiatives.
- The Government should ensure full consultation and participation of Black and minority ethnic groups in its anti-racism policy.

4) Anti-racism proofing, institutional racism and racism in the administration of justice

(Main text: para. 24-26, 32-37, 72-100, 104, 170-172)

Under its National Anti-Poverty Strategy (NAPS), the Government has introduced a requirement that its policies be poverty-proofed. A recommendation was made by the National Economic and Social Forum, which monitors NAPS, that this be expanded to include equality-proofing, which would include ethnic origin as one of the grounds, and should focus particularly on the intersection of racism and other discrimination, such as gender discrimination. The Government rejected this.

The Government's First Report makes little mention of institutional racism, even though current equality legislation does not cover Government functions. Submissions of members of the NGO Alliance to this Shadow Report are unanimous in highlighting the need to address the problems of racism within the administration of Government in Ireland, and particularly within the administration of justice. Concerns have been expressed at the failure of police to respond adequately to racist incidents, and at the lack of adequate anti-racism training at all levels of the justice system, including the courts system and the prison system.

Immigration legislation, aimed at controlling the entry of foreign nationals to Ireland rather than at providing a comprehensive immigration policy, gives immigration officers and police powers over foreign nationals which have alienated many of them from the police. Attempts to address this are under-resourced and given insufficient weight within the police system.

The administrative systems whereby decisions are made on the status of foreign nationals in Ireland are perceived by both

applicants and NGO's as lacking transparency, and in some cases reliant on the discretion of the Department of Justice, Equality and Law Reform, rather than on clear and well-recognised, objectively testable criteria. The lack of an independent Immigration Appeals Tribunal is a major cause of concern in this regard.

RECOMMENDATION:

- The Government should acknowledge the existence of institutional racism within the administration of Government in Ireland.
- It should introduce statutory-based equality proofing of all legislation and Government policy, which should focus in particular on racism, and the intersection of racism and other discrimination, for example gender discrimination. Such obligation should commence with extending the current equality legislation to cover all Government departments and services. In particular, it should take direct and practical steps to eliminate institutional racism in the administration of justice. This should include adequate professional anti-racism training of all agents involved in the administration of justice.
- An independent Immigration Appeals Tribunal should be set up, which operates in a transparent manner, and on the basis of clear criteria.

5) Segregation and access to services (Main text: para. 50-61, 104-108, 117-125, 138-143, 158-169)

A large number of organisations which are part of the NGO Alliance have highlighted the problems caused by the segregation of asylum seekers from the rest of Irish society by means of the dispersal and direct provision systems. This system has acted in many cases to feed the growth of racism by reinforcing the belief that asylum seekers, who are forbidden to work, are 'spongers.' For the asylum seekers, it has meant that their access to services such

as legal representation, health care, education, religious services and appropriate food has been limited.

A similar problem with access to services has been experienced by the Traveller Community, who are in many cases segregated from the rest of society as a result of the failure of Government to implement an appropriate Traveller accommodation programme as outlined in their own research and legislation. Too many Travellers are still living in unsafe, unhealthy and poorly maintained accommodation. As a result, Traveller health status and educational standards are well below what they should be in a country as wealthy as Ireland.

RECOMMENDATION:

- The Government should act to end the segregation of asylum seekers and Travellers from the rest of the community.
- It should replace the dispersal and direct provision system for asylum seekers by provision of community-based housing and the restoration of social welfare benefits on a par with the rest of the population.
- It should ensure delivery of the required Traveller accommodation by obliging local authorities to deliver on their five-year plans for Traveller accommodation. Mechanisms should be put in place to ensure that no Traveller accommodation is sited in unhealthy or dangerous locations.

6) Political leadership (Main text: para. 4-6, 70-71, 81, 177-183, 179-181)

There is currently a view in Government that there is very little or no racism in Ireland at present, and that therefore this is not a problem that should be high up the Government's agenda. This view has been articulated in the statements of Ministers (para.179-181). Furthermore, some Govern-

ment policies and some statements made by politicians have served to fuel racism, rather than contain it (para.180-181). Similarly, statements made by some Government Departments, particularly around the area of asylum, have served to exacerbate resentment against foreign nationals in Ireland (para.181). It is extremely important that Government Ministers should show leadership on the issue of racism in Ireland, and that Government officials and politicians at all levels should acknowledge their responsibility in challenging racism and engendering a positive view of the presence, contribution and rights of Black and minority ethnic groups in Ireland.

In order to foster this process, the Government, in consultation with Black and minority ethnic groups and relevant NGO's and other agencies, should evaluate the impact of racism at all levels in Irish society. The information thus gathered should be distributed throughout the administrative and political system in Ireland, together with appropriate professional training on how to mitigate its effects. This initiative must be properly resourced, and given the priority it deserves on the Government's agenda.

RECOMMENDATION:

- The Government should publicly acknowledge that there is a growing problem of racial discrimination in Ireland.
- The Government should evaluate the impact of racism at all levels in Irish society and devise appropriate practical responses to it in consultation with Black and minority ethnic community groups and relevant NGO's and other agencies.
- Politicians and Government officials should acknowledge their responsibility in challenging racism and engendering a positive view of the presence, contribution and rights of Black and minority ethnic groups in Ireland.
- Effective sanctions should be taken against politicians and Government officials who use discriminatory or inflammatory language.

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This report is a compilation of efforts from a broad range of anti-racist, community and human rights non-governmental organisations (NGO's). The participating organisations are each concerned with some but not all of the issues covered in this report, and the views expressed do not necessarily reflect the policies and positions of each of the contributing organisations. Rather, the report reflects a collective vision of human rights and anti-racism in Ireland.