

# **ICCL SUBMISSION TO THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)**

## **Contribution to inform the upcoming visit to Ireland and the 6<sup>th</sup> country report**

7 June 2024

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## LIST OF ACRONYMS

ACLU	American Civil Liberties Union
AGS	An Garda Síochána
AVMSD	Audiovisual Media Services Directive
AWG	Abortion Working Group
CAHC	Coalition Against Hate Crime
CAJ	Committee on the Administration of Justice
CTA	Common Travel Area
CESCR	Committee on Economic, Social and Cultural Rights
DPC	Data Protection Commission
DPIA	Data Protection Impact Assessment
ECRI	European Commission Against Racism and Intolerance
EEA	European Economic Area
FLAC	Free Legal Advice Centres
FRT	Facial Recognition Technology
GDPR	General Data Protection Regulation
GRP	General Policy Recommendation
ICCL	Irish Council for Civil Liberties
IHREC	Irish Human Rights and Equality Commission
INAR	Irish Network Against Racism
ILGA Europe	European Region of the International Lesbian, Gay, Bisexual, Trans, and Intersex Association
LGBTI+	Lesbian, Gay, Bisexual, Transgender, and Intersex
NAPAR	National Action Plan Against Racism
NGO	Non-governmental organisation
NGS	National Gender Service
PSC	Public Services Card
UN	United Nations

## INTRODUCTION

1. This submission for the European Commission against Racism and Intolerance (ECRI) is written by the Irish Council for Civil Liberties (ICCL), an Irish NGO with a broad mandate to promote and protect human rights in Ireland and a particular focus on criminal justice, democratic freedoms, equality and digital rights. It is intended to assist ECRI with its sixth-cycle country monitoring work on Ireland and inform the upcoming visit in November 2024, as well as the final country report.
2. **ICCL was made aware that the information provided by State authorities in response to the list of questions submitted by ECRI will not be made public or at least made available to other stakeholders - including civil society and national human rights institutions - taking part in the monitoring work on Ireland. We urge ECRI to revisit this approach for current and/or future cycles.** Access to such information would provide an insight into the State's self-assessment of the legislative and policy landscape and overall context and inform the provision by stakeholders of additional and/or parallel information. **We recommend that ECRI adopts a similar approach to the one taken in the context of United Nations (UN) reviews by treaty-monitoring bodies, where all information provided by State authorities is made public.** Other stakeholders - especially civil society organisations - should, however, still be given the opportunity to provide information in a confidential manner.
3. This contribution focuses on issues covered by ECRI's examination, as well as providing information on additional issues that ICCL has identified as pressing and falling under ECRI's mandate. The submission does not provide comprehensive information on all items covered by the examination but rather focuses on issues falling under ICCL's mandate and work.
4. In many ways, the Ireland that ECRI is about to visit, and review is different from the country encountered in the 2019 Fifth Cycle Report. We note with concern that Ireland is currently facing a growth of far-right<sup>1</sup> (particularly anti-immigrant<sup>2</sup>) actions and actors exploiting, among other factors, socio-economic discontent<sup>3</sup>. A key example is the episode known as the 'Dublin Riots, which involved violent clashes between large groups of people and An Garda Síochána (AGS, members of the Irish police) in Dublin in November 2023. Following a stabbing attack on several schoolchildren on Parnell Square, a riot broke out on O'Connell Street, the city centre's main thoroughfare, and surrounding streets<sup>4</sup>. As analysed in detail by the Hope and Courage Collective, a civil society group monitoring far-right activity in the country: *'within minutes of the initial reports of an incident on Parnell Square, prominent actors in the white supremacist movement in Ireland were trying to exploit news of the attack before the circumstances were known'*<sup>5</sup>. The episode left the migrant community *'stressed, afraid and traumatised'* after the

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<sup>1</sup> Conor Gallagher, ["The far right rises: Its growth as a political force in Ireland"](#), *The Irish Times*, 19 September 2020.

<sup>2</sup> Sorcha Pollack, ["Analysis: Ireland waved goodbye to its world-famous welcome last year as anti-immigrant rhetoric gained foothold"](#), *The Irish Times*, 3 January 2024.

<sup>3</sup> See Eoin Burke-Kennedy, ["Ireland's economic divide providing a lit match for far right"](#), *The Irish Times*, 5 February 2023.

<sup>4</sup> Jack Power, ["Dublin's streets ablaze: Rioting, looting and vehicles set alight on the streets of Ireland's capital"](#), *The Irish Times*, 23 November 2023.

<sup>5</sup> Hope and Courage Collective, [Timeline and Brief Analysis of Dublin Riot](#), 30 November 2023.

riots<sup>6</sup>. Overall, far-right groups – including political parties – that have anti-LGBTQ+<sup>7</sup>, anti-immigrant and conspiracy agendas have grown in recent years<sup>8</sup>.

5. ICCL remains available to provide additional information and to meet with the ECRI delegation in November 2024.
6. While this contribution is written by ICCL, we note that ICCL is also the Chair of the Coalition Against Hate Crime (CAHC) Ireland and subject to interest, can also organise a meeting with a delegation of its members<sup>9</sup>.

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<sup>6</sup> SORCHA POLLAK, "[Migrant community 'stressed, afraid and traumatised' after Dublin city riots](#)", *The Irish Times*, 30 November 2023.

<sup>7</sup> Anti lesbian, gay, bisexual, transgender and queer.

<sup>8</sup> "[Far Right Hate and Extremist Groups: Ireland](#)", Global Project Against Hate and Extremism, accessed 6 June 2024.

<sup>9</sup> See "[The Coalition Against Hate Crime](#)", ICCL, accessed 6 June 2024. Members of the coalition are: Age Action Ireland; Belong To; Doras; Dublin LGBTQ+ Pride; Immigrant Council of Ireland; Inclusion Ireland; Independent Living Movement Ireland; Intersex Ireland; Irish Council for Civil Liberties; Irish Council for International Students; Irish Network Against Racism; Irish Traveller Movement; LGBT Ireland; LGBT Travellers; Nasc – Migrant and Refugee Rights Centre; National LGBT Federation; National Traveller Women's Forum; National Women's Council; National Youth Council of Ireland; Outhouse LGBTQ+ Centre; Pavee Point Traveller & Roma Centre; Sport Against Racism Ireland; and Transgender Equality Network Ireland.

## AREA 1: EFFECTIVE EQUALITY AND ACCESS TO RIGHTS

### 1.1. Equality strategies and action plans: delivering on policy implementation

7. Ireland has a set of strategies and plans that aim at addressing challenges in achieving effective equality. ICCL notes with concern that a recent report on the evaluation of the three national equality strategies - the Migrant Integration Strategy, the National Strategy for Women and Girls and the National Traveller and Roma Inclusion Strategy - evidenced a failure to apply sufficient attention and effort to the implementation phase and a failure to adequately address intersectionality in the development of public policy<sup>10</sup>. **In reviewing Ireland's actions to respond to and prevent racism and intolerance, ICCL strongly encourages ECRI to assess the delivery of commitments in the different plans and strategies.** Without full implementation and delivery, Ireland risks falling into a 'policy rich, action poor' trap. **The State should fully implement, properly resource, and keep these strategies and action plans under active review in close collaboration with civil society and marginalised communities. Where relevant, new strategies should be developed.**
8. The new National Action Plan Against Racism (NAPAR)<sup>11</sup> - published after 15 years since its predecessor - is a welcome development in addressing systemic and institutional racism but it should be fully implemented to have a lasting impact, including by ensuring its full resourcing and annual monitoring, review and evaluation<sup>12</sup>. **The State should evaluate, monitor and review the NAPAR on an annual basis.** We note that while the process to form an Advisory Group on Racial Equality and Racism to support the Implementation of the NAPAR<sup>13</sup> and the to identify a Special Rapporteur on Racial Equality and Racism were initiated, ICCL is not aware of any appointments and timeframes for the beginning of their work.

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<sup>10</sup> Kavanagh, L et al (2023). [Realising the promise of equality policy: An evaluation of the processes of implementation of three national equality strategies](#). Dublin: Centre for Effective Services.

<sup>11</sup> Department of Children, Equality, Disability, Integration and Youth, [National Action Plan Against Racism 2023-2027](#), 21 March 2023.

<sup>12</sup> See the recommendations of the Coalition for the Implementation of the National Action Plan Against Racism, of which ICCL is a part, at "[National Action Plan Against Racism](#)," INAR, accessed 6 June 2024.

<sup>13</sup> See Department of Children, Equality, Disability, Integration and Youth, [Expression of Interest application for an Advisory Group on Radical Equality and Racism to support the Implementation of the National Action Plan Against Racism](#), last updated on 6 February 2024.

## **1.2. Snapshot of advocacy and stakeholder engagement from a 2024 research study**

9. In May 2024, ICCL published a research report entitled “That’s Not Your Role”: State Funding and Advocacy in the Irish Community, Voluntary and Non-Profit Sector<sup>14</sup>. The publication follows a large-scale survey of Irish NGOs and other community and voluntary organisations from April-June 2023. The report found that a significant proportion of NGOs and other community and voluntary organisations receiving State funding are curtailing their advocacy and campaigning efforts due to implicit and explicit restrictions associated with the government funding they receive.
10. Almost two-fifths (37%) of the research participants reported that they have curtailed their advocacy, campaigning or communications efforts for fear of the impact it could have on their funding. NGOs and community and voluntary organisations form a critical part of the social care, health and disability service delivery landscape in Ireland and the voices of community and voluntary organisations are central to the policy-making process. The findings of the report suggest that the rights of public participation, freedom of association and freedom of expression for the sector are being inappropriately restricted through explicit and implicit threats to withdraw funding from organisations who criticise public policies.
11. Looking specifically at organisations involved in anti-discrimination, anti-racism and refugee-asylum work, the findings largely mirror overall trends. 80% of respondents working on these issues are in receipt of state funding and 34% report that there are explicit restrictions in these funding contracts which limit their ability to make public comment on government policy. 44% of these organisations also said they have curtailed advocacy, campaigning or communications for fear of risk to their organisation’s funding. One respondent working on these topics noted:
 

*‘There is a cultural tendency in most organisations to do nothing that is likely to upset or challenge authority such that if you stand out and voice concerns or take a differing perspective you can be silenced, side-lined or ignored. There is no obvious threat but there is an implicit culture of compliance with government departmental objectives that effectively ensure that the more critically-minded are kept out of the picture. As funding is awarded by these offices and we are delivering services and supports on behalf of the government all activities are necessarily going to be formed to ensure we do not jeopardise our working relationship with our future paymasters.’*
12. The report also examined the perception among civil society of the effectiveness of the State’s stakeholder engagement on policy making. More than two-thirds (70%) of participants reported missing out on an engagement process because they found out about it too late. Among organisations working on in anti-discrimination, anti-racism and refugee-asylum work, this figure rises to 86%. 57% of respondents working in this area also report that they ‘strongly agree’ with the statement that ‘The government would prefer if we engaged in no advocacy and only in service delivery’.

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<sup>14</sup> ICCL, [Community and voluntary organisations afraid to criticise the State for fear of financial implications](#), 1 May 2024.

13. More than one-third (35%) of all respondents reported that the issues they raised were rarely or never taken on board in stakeholder engagements. The research findings also point to a mismatch between the efforts expended on taking part in stakeholder engagement and the benefits of same. While participation is viewed by research participants as moderately resource intensive, the benefits are not seen as worth the effort. All participants were ambivalent about taking part in future stakeholder engagement initiatives.
14. It should be noted that the findings on funding and stakeholder engagement were not uniform across all government agencies and departments, or geographically. This suggests a lack of clear and centralised guidelines, resulting in uneven standards and approaches.
15. **The report made seven recommendations<sup>15</sup>, four related to reducing advocacy restrictions and three related to improving the quality of stakeholder engagement. ICCL encourages ECRI to review these as part of its monitoring work on Ireland.**

### 1.3. Equality legislation: status of the review

16. In 2019, ECRI made a series of recommendations on amending the Equal Status Acts and Employment Equality Acts (hereinafter referred to collectively as 'Equality Laws')<sup>16</sup>. In July 2021, the State launched a consultation on the first comprehensive review of such laws. While a report on the submissions to the public consultation was published in July 2023<sup>17</sup> - two years after the launch of the consultation - there are ongoing delays in bringing forward proposals on legislative change and there is no clear timeframe for the actual reform<sup>18</sup>. Based on the most recent legislative programme, the Heads - the structure of legislation, often published ahead of draft legislation - for the 'Equality Acts Amendment Bill' are still in preparation<sup>19</sup>. With a general election fast approaching in Ireland, ICCL does not believe changes will be made in the timespan of the current Government.
17. **It is ICCL's view that the delivery of the review must respond to the lived experiences of discrimination of marginalised group by introducing new grounds (including socio-economic status, sex characteristics, intersectional discrimination, discrimination based on a criminal conviction) and by expanding existing grounds (including the recognition of carers, gender identity and gender expression, and the strengthening of the obligation to provide reasonable accommodation to people with disabilities).** The review should include a detailed examination of the introduction of additional grounds to address obstacles

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<sup>15</sup> ICCL, ["That's Not Your Role": State Funding and Advocacy in the Irish Community Voluntary and Non-Profit Sector](#), May 2024, pp. 45-46.

<sup>16</sup> See [ECRI Report on Ireland \(fifth monitoring cycle\)](#), CRI(2019)18, adopted on 2 April 2019, published on 4 June 2019, para 17.

<sup>17</sup> Department of Children, Equality, Disability, Integration and Youth, [Minister O'Gorman publishes report on the submissions to the public consultation on the Review of the Equality Acts](#), last updated 11 August 2023.

<sup>18</sup> The delay was also acknowledged by the Irish Human Rights Equality Commission in IHREC, [Policy Statement on Socio-Economic Status as a ground of discrimination under the Equality Acts](#), April 2024, p. 5.

<sup>19</sup> Department of the Taoiseach, [Government Legislation Programme Summer 2024](#), April 2025, p.9.



to access to justice and effective remedies by removing unnecessary exemptions and procedural barriers<sup>20</sup>.

18. ICCL notes that in the most recent review by a UN treaty monitoring body, the UN Committee on Economic, Social and Cultural Rights (CESCR) expressed concern in relation to the '*continued absence of comprehensive anti-discrimination legislation in the State party*', making a series of recommendations on legislative changes, as well as calling on the State to take all necessary measures to prevent and combat the persistent discrimination, racism and inequality faced by marginalised groups, in particular in the areas of decent work, social security, health care and services, adequate housing and education<sup>21</sup>. **The State should expedite the ongoing review of the Equality Acts, expand the list of discrimination grounds, and ensure access to justice and effective remedies.**

#### 1.4. Specific issues affecting LGBTI+ people

19. In 2019, ECRI noted the progression of Ireland's score on the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe) Rainbow Europe Map reflecting countries' legislation and policies guaranteeing LGBTI+ human rights<sup>22</sup>. Ireland's score had gone from 30% in 2010 to 52% in 2018. Figures from 2024 show that in the six years since 2018, there has only been 5% progress, with Ireland's score now being 57%<sup>23</sup>. This reflects a general stagnation in legislation and policy addressing issues affecting LGBTI+ persons.
20. In relation to intersex bodily integrity, Ireland scored 0% in this year's Rainbow Europe Map<sup>24</sup>. The category covers the prohibition of any kind of surgical or medical intervention on an intersex minor before a child is able to give informed consent. It also takes into account whether the prohibition is universal to all persons, establishes a monitoring mechanism, and provides access to justice for victims and reparations. Over the years, several human rights monitoring bodies have expressed concern regarding such practices in Ireland<sup>25</sup>. Most recently, in 2022 the UN Human Rights Committee expressed concern that irreversible and invasive medical interventions continue to be performed on intersex children, and recommended the State to '*take all steps necessary to ensure that all acts relating to the assignment of a sex to intersex children performed without their free and informed consent are specifically prohibited, except in cases in which such interventions are absolutely necessary for medical reasons and the best interests of the child have been duly considered*'<sup>26</sup>. **The State should ensure that such practices are not performed and fill the existing legislative gap in the area of intersex**

<sup>20</sup> See Free Legal Advice Centres, [FLAC Submission to the Department of Children, Equality, Disability, Integration and Youth's Consultation on the Review of the Equality Acts](#), December 2021, as endorsed by ICCL.

<sup>21</sup> CESCR, Concluding observations on the fourth periodic report of Ireland (20 March 2024), [E/C.12/IRL/CO/4](#), para 23.

<sup>22</sup> See ECRI, ECRI Report on Ireland (fifth monitoring cycle), [CRI\(2019\)18](#), 4 June 2019, para 126.

<sup>23</sup> "[Rainbow Map, Ireland](#)" ILGA Europe, accessed 6 June 2024.

<sup>24</sup> "[Rainbow Map, Ireland](#)" ILGA Europe, accessed 6 June 2024.

<sup>25</sup> Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations on the combined sixth and seventh periodic reports of Ireland (9 March 2021), [CEDAW/C/IRL/CO/6-7](#), para 25(b); Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (1 March 2016), [CRC/C/IRL/CO/3-4](#), para 40(b) and 40(c); Human Rights Committee, Concluding observations on the fifth periodic report of Ireland (26 January 2023), [CCPR/C/IRL/CO/5](#), para 20.

<sup>26</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Ireland (26 January 2023), [CCPR/C/IRL/CO/5](#), para 20.

**bodily integrity.** This call for a legislative ban has been voiced by the intersex community in response to international developments<sup>27</sup>. ICCL also notes that a recent report on the implementation of the National LGBTI+ Inclusion Strategy (2019-2021) gave Ireland an F – the worst possible score, in relation to the only intersex-specific action in the strategy<sup>28</sup>. This was due to the State’s lack of implementation of the commitment to ‘conduct a scoping exercise on intersex conditions in Ireland to determine and document prevalence, current practice, clinical governance and compare against international evidence and guidelines’<sup>29</sup>. The scoping exercise was supposed to include key recommendations, ‘which may include the establishment of an expert working group to develop clinical guidelines’. **It is ICCL’s view that an intersex-led and human rights compliant working group on intersex rights should be established in the HSE to address current deficiencies in care.**

21. Ireland has committed to prohibiting the promotion or practice of conversion practices<sup>30</sup>. In February 2023, the government published a report indicating that while such practices take place in Ireland there is a commitment to use new research to inform legislation to prohibit them<sup>31</sup>. To date, legislation has not been published and such practices are still legal in Ireland. The structure of the legislation is reported to be in preparation<sup>32</sup>.
22. Access to gender-affirming care is of key importance to the health and wellbeing of transgender people, and this access is severely limited in Ireland. Ireland has the worst healthcare system for trans people among the 27 European Union Member States in relation to the availability and accessibility of trans-specific healthcare<sup>33</sup>. The provision of gender-affirming care is primarily available through the Dublin-based National Gender Service (NGS). As of May 2023, there were over 1,400 people on the waitlist for the NGS<sup>34</sup>. This amounts to a ten-year waiting time for transgender adults to access hormone treatment, meaning that this healthcare is effectively unavailable through the public healthcare system. This failure of the public system also means that transgender people in Ireland are often forced to travel abroad to access private surgery, at significant financial cost. While noting plans to introduce changes<sup>35</sup>, **ICCL is concerned about the current standards of care for trans and non-binary people in Ireland and urges the State to address the issue systemically and in line with international best practice**<sup>36</sup>. Policies and services should be designed and delivered in coordination with civil society and people with lived experience. **Ireland should take all reasonable steps to**

<sup>27</sup> Intersex Ireland, [Intersex Ireland calls for IGM ban following new legislation in Greece](#), GCN, 21 July 2022.

<sup>28</sup> LGBT Ireland, [Progress Made. Renewed Efforts Required. A Shadow Report of Ireland’s First National LGBTI+ Inclusion Strategy](#), January 2024, p.76.

<sup>29</sup> Department of Children, Equality, Disability, Integration and Youth, [LGBTI+ Inclusion Strategy 2019-2021](#), 28 November 2019, p. 24.

<sup>30</sup> Including in the Department of Children and Youth Affairs, [LGBTI+ National Youth Strategy 2018-2020](#), 29 June 2018; Department of the Taoiseach, [Programme for Government – Our Share Future](#), 29 October 2020; Department of Children, Equality, Disability, Integration and Youth, [LGBTI+ Inclusion Strategy 2019-2021](#), 28 November 2019.

<sup>31</sup> Department of Children, Equality, Disability, Integration and Youth, [Minister O’Gorman announces the publication of the report ‘An Exploration of Conversion Therapy Practices in Ireland’](#), 17 February 2023.

<sup>32</sup> Department of the Taoiseach, [Government Legislation Programme Summer 2024](#), April 2025, p.9.

<sup>33</sup> [“Trans Health Map 2022”](#), Transgender Europe, accessed 6 June 2024. Ireland also did not meet any “health” indicator in the [“Trans Rights Map 2024”](#), TGEU, accessed 6 June 2024.

<sup>34</sup> Ellen Kenny, [“Waiting Lists for the National Gender Service ‘likely to get worse’](#), *Newstalk Ireland*, 9 May 2023.

<sup>35</sup> Beatrice Fanucci, [“HSE to establish new gender-affirming healthcare service in Ireland”](#), GCN, 27 February 2023.

<sup>36</sup> [“Gender incongruence and transgender health in the ICD”](#), World Health Organisation, accessed 6 June 2024. WHO reclassified gender-affirming healthcare, moving it from psychiatry to sexual health.

**ensure that transgender people and non-binary people have publicly available, accessible, and high-quality healthcare services, eliminate unnecessarily long waiting lists for services, and introduce a national action plan to institute better trans healthcare.**

23. In the 5th report on Ireland, ECRI noted that there were no official data on the size of the LGBT population in Ireland<sup>37</sup>. There are currently no questions on sexual orientation, gender identity and sex characteristics in the national Census. **As part of a public consultation on the content of the form for the 2027 Census, ICCL and Intersex Ireland jointly called for the inclusion of specific questions on variations of sex characteristics, as well as gender identity and sexual orientation, in the next Census to address the existing gap in official data**<sup>38</sup>.

### **1.5. Access to and equal treatment in education**

24. Many schools in Ireland continue to be run by religious orders, in particular those belonging to the Catholic Church. While noting the introduction of the Education (Admission to Schools) Act 2018<sup>39</sup> that amended the Equal Status Acts 2000-2015, the Irish Human Rights and Equality Commission (IHREC) has informed UN bodies that religious discrimination in school admissions is still permitted. According to IHREC: *'privately funded primary schools and secondary schools which purport to be providing education in an environment which promotes religious values can give preferential treatment to students of a particular religion, and publicly-funded schools providing education in an environment which promotes religious values can refuse to admit students on the basis of religion, where doing so is considered essential to maintain the 'ethos' of a school'*<sup>40</sup>. **ICCL echoes IHREC's recommendations to formally review the Education (Admission to Schools) Act 2018 and the Equal Status Acts to ensure that:**

- (a) the exemption for refusal of admission on the basis of religion does not adversely impact access to education;**
- (b) there is appropriate balancing between the right to equal treatment and the right to free practice of religion; and**
- (c) 'ethos' is clearly defined, in addition to what is required in order to establish that a refusal is 'essential' to maintain the ethos of a school.**<sup>41</sup>

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<sup>37</sup> ECRI, ECRI Report on Ireland (fifth monitoring cycle), [CRI\(2019\)18](#), 4 June 2019, para 118.

<sup>38</sup> ICCL and Intersex Ireland, [Joint ICCL and Intersex Ireland submission to the Central Statistics Office on the Census 2027 Public Consultation](#), January 2023.

<sup>39</sup> See [Equal Status Acts 2000-2018](#), Section 7(3)(a), as amended by the [Education \(Admission to Schools\) Act 2018](#), Section 11(b).

<sup>40</sup> See IHREC, [Ireland and the International Covenant on Civil and Political Rights - Submission to the Human Rights Committee on Ireland's fifth periodic report](#), June 2022, p. 78; IHREC, [Submission to the Committee on Economic, Social and Cultural Rights on Ireland's fourth periodic report](#), January 2024, p. 139.

<sup>41</sup> See IHREC, [Ireland and the International Covenant on Civil and Political Rights - Submission to the Human Rights Committee on Ireland's fifth periodic report](#), June 2022, p.78.

## 1.6. Access to relationship and sexual education

25. In 2019, the Joint Committee on Education and Skills produced a report with recommendations to update the curriculum and delivery of relationship and sexual education in Irish schools, focusing on the importance of LGBTI+ inclusion<sup>42</sup>. In May 2023 a new curriculum for Junior Cycle students, inclusive of LGBTI+ identities and experiences was introduced<sup>43</sup>. Updated curricula are expected for senior cycle students at second level (2024) and at primary level (2025)<sup>44</sup>. The Joint Committee also recommended that a curriculum for people with an intellectual disability that is accessible and appropriate, and deals with sexuality and contraception, should be developed at the earliest possible date and that funding for education programmes for school leavers and older adults who may have missed out on sexual education, or may need reinforced education, should be made available. Any such programme should contain the same range and depth of information as programmes for those who are not disabled, produced in a format that is accessible to people with an intellectual disability. ICCL is unaware of any progress to this end. **Ireland should ensure that the recommendations from the 2019 Oireachtas Joint Committee on Education and Skills report on Relationships and Sexual Education are implemented in full and in a timely manner.**

## 1.7. Disproportionate impact of Covid-19 and State responses to at-risk groups

26. The Covid-19 pandemic – and consecutive State responses – did not affect people equally. In a 2021 report outlining a human rights analysis of the Irish Government’s response to the pandemic, ICCL dedicated an entire chapter to the disproportionate impact of the pandemic on at-risk communities and State responses<sup>45</sup>. This included communities impacted based on their race and ethnicity, migrant status, sexual orientation and gender identity. **ICCL has called on the government repeatedly during and after the pandemic response to engage in a human rights impact assessment of the State response to the pandemic**<sup>46</sup>. Such a review is vital to ensure any future emergency response is informed by lessons learned. The review should include a human rights impact assessment and consider the impact of Covid-19 and State measures (including vaccine passports to travel into and/or within the European Union<sup>47</sup>) on a wide set of rights<sup>48</sup>, an assessment of the use of emergency powers, and the disproportionate impact of the pandemic on at-risk groups, coupled with the State’s responses. This is a crucial opportunity to undertake an assessment of the extent to which the response complied with Ireland’s human rights obligations.

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<sup>42</sup> Houses of the Oireachtas, [Joint Committee on Education and Skills Report on Relationships and Sexuality Education](#), January 2019.

<sup>43</sup> Belong To, [New Junior Cycle SPHE Curriculum has Youth Voice at its Core](#), 30 May 2023.

<sup>44</sup> Ellen O’Donoghue, Carl O’Brien, [“New sex education curriculum reflects ‘real lived experience,’ says Minister”](#), The Irish Times, 16 May 2023.

<sup>45</sup> ICCL, [Human Rights in a Pandemic](#), May 2021, p. 65-75.

<sup>46</sup> ICCL, [ICCL writes to Taoiseach about Covid Review](#), April 2023.

<sup>47</sup> ICCL, [ICCL says vaccine passports contrary to equality law](#), 2 July 2021.

<sup>48</sup> Including the right to protest, the right to free movement, and the right to privacy. See ICCL, [Human Rights in a Pandemic](#), May 2021.

27. Discussions around an official review of the State response to the pandemic were initiated<sup>49</sup> and draft terms of reference for an 'Independent Pandemic Evaluation Panel' were circulated in early 2024<sup>50</sup>. In June 2024 the government committed to holding an inquiry before the next general election. ICCL is not aware of any developments since a meeting held in February to discuss the draft terms of reference.

28. **The State should conduct a human rights impact assessment of Covid-19 and the State's responses, including the use of emergency powers and an assessment of the extent to which the response complied with international, regional and domestic human rights obligations, and take into account the disproportionate impact on at-risk groups. Such a review should focus on learning and embrace the principle of 'building back better'.**

29. **More broadly speaking, evidence-based human, rights proofed legislative reform is needed in Ireland. The State should commit to implementing human rights impact assessments in its policymaking processes with a view to certifying legislation and policies that may impact rights as being human rights compliant.**

### **1.8. Access to the rights of 'irregularly present migrants': the regularisation scheme**

30. In 2022, the Minister for Justice launched a scheme for long-term undocumented people in Ireland<sup>51</sup>. The scheme was broadly welcomed by ICCL, which took part in a Department of Justice consultation to shape it. However, the scheme had potential financial barriers (a cost of 550 euro per adult and 700 euro per family)<sup>52</sup> and technological barriers (applications could only be submitted online) that may have prevented people from accessing it. **It is ICCL's position that any regularisation schemes should be fully accessible to achieve successful outcomes and that financial and technological barriers should be removed.**

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<sup>49</sup> Jennifer Bray, [Covid-19: Inquiry into Ireland's handling of pandemic to hear from bereaved families](#), *The Irish Times*, 4 January 2024.

<sup>50</sup> Jack Horgan-Jones, [Ireland's Covid inquiry to adopt 'no-blame' approach and will not be 'UK style'](#), *The Irish Times*, 25 January 2024.

<sup>51</sup> Department of Justice, [Scheme for long-term undocumented migrants now open for applications](#), 31 January 2022.

<sup>52</sup> The scheme included a separate strand for people in the International Protection system. There were no fees for people seeking international protection.

## AREA 2: HATE SPEECH AND HATE-MOTIVATED VIOLENCE

### 2.1. Legislative framework and implementation of the interim recommendation on hate speech and hate crime legislation

31. ICCL has long called for hate crime legislation in Ireland, along with the Coalition Against Hate Crime (CAHC) – a group of 23 civil society organisations representing communities impacted by hate crime and hate speech in Ireland – which is currently chaired by ICCL<sup>53</sup>. The following contribution represents the views of ICCL, except where indicated.
32. Ireland has been unable to address hate crime through the criminal justice system: research by ICCL has shown that in the absence of legislation, the element of hate – which makes a crime a hate crime – is not addressed in a consistent way and often disappears as a case goes through the criminal justice system<sup>54</sup>. Legislation will help to make the invisible visible and recognise the additional harm caused by a crime that targets a person's inherent identity, thereby sending a clear message that such behaviour is not tolerated. ICCL has also recognised the limits of existing legislation on extreme forms of hate speech<sup>55</sup>.
33. In its latest report on Ireland (5<sup>th</sup> monitoring cycle), ECRI strongly recommended that: *'new hate speech and hate crime legislation is enacted in consultation with relevant civil society actors. Inspiration should be taken from ECRI's GPR Nos. 7 and 15, and hate based on the following grounds should be included: race, colour, ethnic/national origin, citizenship, language, religion, sexual orientation and gender identity'*<sup>56</sup>. This recommendation was identified as one of two interim follow-up recommendations in 2019, and an update on the status of its implementation was included in the ECRI Conclusions adopted in December 2021 and published in March 2022<sup>57</sup>.
34. As noted in the ECRI Conclusions, in April 2021 the government published the General Scheme of the Criminal Justice (Hate Crime) Bill 2021. The approach adopted by the government was to legislate on incitement to hatred and hate crime within the same piece of legislation. At the time, ICCL recommended that incitement to hatred and hate crime should be addressed in separate legislation or, alternatively, the inclusion of a reference to incitement to hatred in the title to properly reflect the contents<sup>58</sup>. The latter approach was adopted.

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<sup>53</sup> See "[The Coalition Against Hate Crime](#)", ICCL, accessed 6 June 2024. Members of the coalition are: Age Action Ireland; Belong To; Doras; Dublin LGBTQ+ Pride; Immigrant Council of Ireland; Inclusion Ireland; Independent Living Movement Ireland; Intersex Ireland; Irish Council for Civil Liberties; Irish Council for International Students; Irish Network Against Racism; Irish Traveller Movement; LGBT Ireland; LGBT Travellers; Nasc – Migrant and Refugee Rights Centre; National LGBT Federation; National Traveller Women's Forum; National Women's Council; National Youth Council of Ireland; Outhouse LGBTQ+ Centre; Pavee Point Traveller & Roma Centre; Sport Against Racism Ireland; and Transgender Equality Network Ireland.

<sup>54</sup> Haynes, A., Schweppe, J. (2017). [Lifecycle of a Hate Crime: Country Report for Ireland](#). Dublin: ICCL.

<sup>55</sup> ICCL, [Incitement to Hatred Act doesn't work](#), 12 February 2020.

<sup>56</sup> ECRI, ECRI Report on Ireland (fifth monitoring cycle), [CRI\(2019\)18](#), 4 June 2019, para 35.

<sup>57</sup> ECRI, ECRI Conclusions on the Implementation of the Recommendations in Respect of Ireland Subject to Interim Follow-Up, [CRI\(2022\)02](#), Adopted on 7 December 2021, Published on 3 March 2022.

<sup>58</sup> ICCL, [ICCL Submission to the Oireachtas on the Criminal Justice \(Hate Crime\) Bill 2021](#), August 2021, p. 7 and p. 15.



35. Three years after the publication of the General Scheme, the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 has yet to be enacted. In terms of legislative progress, following pre-legislative scrutiny of the General Scheme legislation was introduced at the Oireachtas (the Irish Parliament) in November 2022. It has since then completed its legislative journey at the Dáil (lower chamber) and is currently at Committee Stage at the Seanad (higher chamber)<sup>59</sup>.
36. ECRI was informed that the drafting of new legislation was the result of '*comprehensive public consultation*'<sup>60</sup>. While acknowledging the 2019 public consultation on incitement to hatred<sup>61</sup> and the subsequent outcome report published in 2020<sup>62</sup>, a further consultation on hate crime has not been advanced, despite a public indication from the Department of Justice that it would take place<sup>63</sup>. ICCL is therefore concerned that the description of the public consultation as 'comprehensive' is misleading, as it only focused on one of the elements of the legal framework (incitement). It is also worth noting that while written submissions were requested to inform the pre-legislative scrutiny of the General Scheme, concerns regarding the hosting of only one hearing to discuss the Heads of Bill were voiced by civil society in 2021, calling for a wider involvement of civil society in the development of hate crime legislation in Ireland<sup>64</sup>.
37. The Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 has two main aims:
- (a) reviewing existing provisions on extreme hate speech which date back to 1989<sup>65</sup>; and
  - (b) introducing hate crime legislation to Ireland for the first time.
38. ICCL has engaged with the legislative process at every stage since the public consultation, producing extensive policy analysis both independently<sup>66</sup> and together with CAHC<sup>67</sup>. The

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<sup>59</sup> The history of the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 can be seen on the dedicated Oireachtas page. The Bill is currently at stage 8 out of 11. See "[Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#)", Houses of the Oireachtas, accessed 6 June 2024.

<sup>60</sup> ECRI, ECRI Conclusions on the Implementation of the Recommendations in Respect of Ireland Subject to Interim Follow-Up, [CRI\(2022\)02](#), Adopted on 7 December 2021, Published on 3 March 2022.

<sup>61</sup> Department of Justice and Equality, [Review of the Prohibition of Incitement to Hatred Act 1989, Public Consultation](#), October 2019.

<sup>62</sup> Department of Justice, [Legislating for Hate Speech and Hate Crime in Ireland](#), 17 December 2020.

<sup>63</sup> Department of Justice and Equality, [Review of the Prohibition of Incitement to Hatred Act 1989, Public Consultation](#), October 2019: "The Department of Justice and Equality is conducting research on the effectiveness of approaches to hate-crime legislation in other countries. This research will conclude in November 2019 and the results will inform the development of new legislation to deal with hate crime in this jurisdiction. As part of the development of that legislation, a specific, separate consultation will be held, and experts and members of the public will be invited to submit their views."

<sup>64</sup> ICCL on behalf of the Coalition Against Hate Crime Ireland, [Calling for a wider involvement of civil society in the development of hate crime legislation in Ireland](#), letter to the Chair of the Joint Committee on Justice, 15 December 2021.

<sup>65</sup> [Prohibition of Incitement to Hatred Act, 1989](#).

<sup>66</sup> In chronological order: ICCL, [Review of the Prohibition of Incitement to Hatred Act 1989, Submission to the Department of Justice and Equality](#), 13 December 2019; ICCL, [ICCL Submission to the Oireachtas on the Criminal Justice \(Hate Crime\) Bill 2021](#), August 2021; ICCL, [ICCL briefing note on Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#), 7 November 2022; ICCL, [Irish Council for Civil Liberties 2nd Stage Briefing Note for Senators on Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#), 9 June 2023.

<sup>67</sup> In chronological order: Coalition Against Hate Crime, [Submission to the Oireachtas Joint Committee on Justice on the General Scheme of the Criminal Justice \(Hate Crime\) Bill 2021](#), August 2021; Coalition Against Hate Crime, [Coalition](#)

submissions outline concerns and suggested changes. **Disappointingly, both the ICCL analysis of the Bill and the suggested amendments are overwhelmingly still relevant as a minimal number of changes have been made.**

39. ICCL has relied heavily on human rights law and standards – including ECRI General Policy Recommendation (GPR) No15<sup>68</sup> – in making recommendations on amendments. These include:

- (a) The need for a new definition of ‘hatred and a definition of ‘incitement’ for incitement offences, in line with definitions contained in GRP No15<sup>69</sup>, as well as a definition of ‘hate’ for hate offences (hate crime);
- (b) the replacement of the defences for literary, artistic, political, scientific, religious or academic discourse in section 7 (incitement to violence or hatred) with an amended freedom of expression defence which expressly references the Constitution and the European Convention on Human Rights;
- (c) the removal of offences of preparing or possessing material likely to incite violence or hatred from the Bill, which do not meet the requirements identified in GPR No15 for hate speech to reach the criminal threshold<sup>70</sup>;
- (d) the introduction of a statutory requirement for the review of the legislation<sup>71</sup>.

40. ICCL notes that the inclusion of new protected grounds (disability, gender as including gender expression and gender identity, descent, sex characteristics and the inclusion of Travellers under the ‘national or ethnic group’ ground) in addition to those previously recognised under the Prohibition of Incitement to Hatred Act 1989 is very positive. However, the inclusion of additional characteristics (e.g. migration status) should be considered, as well as ensuring that the definitions of the protected characteristics are updated and fit for purpose (e.g. by explicitly including non-binary people and perceived membership of a protected group, as well as actual membership).

**41. Overall, while welcoming the progress of the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 and calling for its prompt introduction<sup>72</sup>, ICCL stresses the need to ensure that the Bill is proportionate in striking a balance between**

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[Against Hate Crime Briefing Note for TDs on Incitement to Hatred and Hate Crime](#), 7 November 2022; Coalition Against Hate Crime, [Coalition Against Hate Crime Ireland Suggested amendments to the Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#), 8 February 2023; Coalition Against Hate Crime, [Coalition Against Hate Crime Second Stage Briefing Note for Senators on the Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#), 8 June 2023.

<sup>68</sup> ECRI, ECRI General Policy Recommendation No. 15 on Combating Hate Speech, [CRI\(2016\)15](#), Adopted on 8 December 2015.

<sup>69</sup> ECRI GPR No15, para 7(m).

<sup>70</sup> ECRI GPR No15, para 173.

<sup>71</sup> See ICCL, [ICCL briefing note on Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#), 7 November 2022 for the analysis. CAHC suggested language on amendments in Coalition Against Hate Crime, [Coalition Against Hate Crime Ireland Suggested amendments to the Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#), 8 February 2023. ICCL views changes to Section 10 (preparation and possession) as a second-best option to the full removal of the offence from the Bill.

<sup>72</sup> The legislation has not been discussed in the Oireachtas since June 2023.



**different rights at stake, that it is in line with human rights standards<sup>73</sup>, and that criminal law is a last resort, especially for hate speech.**

## **2.2. The need for a comprehensive approach to tackling hate: an action plan**

42. The newly published draft recommendation of the Council of Europe Committee of Ministers on hate crime expressly calls on Member States, including Ireland, to adopt a holistic and multifaceted approach in combating and preventing hate crime<sup>74</sup>. In ICCL's view, this requires public institutions to engage with one another, as well as civil society and impacted communities for the purpose of understanding, responding to, combating, and preventing hate crime. The importance of supporting measures and a comprehensive approach has also been recognised by the Committee of Ministers' sister recommendation on combating hate speech<sup>75</sup>.

43. In the 2021 Conclusions on the implementation of the recommendations in respect of Ireland, ECRI took positive note of a series of encouraging steps and initiatives taken by the Irish authorities beyond legislation<sup>76</sup>. The setting up of the online crime reporting system<sup>77</sup> and the launch of a third-party referral system for civil society are both positive developments<sup>78</sup>.

**The government has also made a commitment in relation to a public campaign on hate crime but has yet to respond to the civil society call for the adoption of an action plan against hate to combat hate crime and hate speech beyond criminal law,<sup>79</sup> as part of a holistic and comprehensive approach.**

44. It is ICCL and the CAHC's view that an action plan against hate should be underpinned by an understanding that prejudice occurs across communities and on an intersectional basis, and should address the following areas at a minimum:

- (a) preventing hate crime and hate speech by challenging the beliefs and attitudes that can underlie such crimes, including through education measures;
- (b) building understanding of hate crime and hate speech through monitoring and improved disaggregated data;

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<sup>73</sup> Human rights standards include the [Recommendation CM/Rec\(2022\)16 of the Committee of Ministers to Member States on combating hate speech](#) (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers), [Recommendation CM/Rec\(2024\)4 of the Committee of Ministers to member States on combating hate crime](#) (Adopted by the Committee of Ministers on 7 May 2024 at the 1498th meeting of the Ministers' Deputies) and ECRI GPR No 15.

<sup>74</sup> [Recommendation CM/Rec\(2024\)4 of the Committee of Ministers to member States on combating hate crime](#) (Adopted by the Committee of Ministers on 7 May 2024 at the 1498th meeting of the Ministers' Deputies).

<sup>75</sup> [Recommendation CM/Rec\(2022\)16 of the Committee of Ministers to Member States on combating hate speech](#) (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers).

<sup>76</sup> ECRI, ECRI Conclusions on the Implementation of the Recommendations in Respect of Ireland Subject to Interim Follow-Up, [CRI\(2022\)02](#), Adopted on 7 December 2021, Published on 3 March 2022, p.5.

<sup>77</sup> "Hate Crime Online Reporting", An Garda Síochána, accessed 6 June 2024.

<sup>78</sup> The process is referred to in An Garda Síochána, [An Garda Síochána – 2023 Hate Crime Data and Related Discriminatory Motive](#), 7 May 2024.

<sup>79</sup> As outlined in the Coalition Against Hate Crime, [Second Stage Briefing Note for Senators on the Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#), 8 June 2023.

- (c) increasing and improving the reporting of hate crime and hate speech and actively working with affected groups who may under-report;
- (d) improving victim support and support to and funding of service providers;
- (e) developing effective criminal justice interventions such as restorative justice options, effective community sentencing, periodic reviews of legislation and guidance policies, and training programmes for police, prosecutors, and judges on addressing hate crime and criminal hate speech;
- (f) undertaking actions designed to tackle the use of hate speech across media, the political sphere, social media and other public spaces, including via codes of conduct for media, public bodies and elected representatives, education, and awareness raising.

45. While welcoming the delivery of AGS training covering the nature and impact of hate crime, information needed to identify and record hate crimes, elements of community engagement and risk assessment, as well as considerations for investigating and prosecuting hate crimes, ICCL notes that the training takes place online for a total of four hours<sup>80</sup>. **It is ICCL's view, informed by regular work with impacted communities, that online training alone is not sufficient and should be combined with in-person learning.**

46. In a separate but related development, the national Diversity and Integration Strategy 2019-2021 is out of date and there is currently no timeframe for a new strategy, grounded in an evaluation and assessment of implementation of the first one. **The implementation of the Strategy should be assessed and inform follow-up and new actions, to be delivered either as a new Strategy or as part of a wider action plan against hate crime and hate speech.**

47. Notably, the National Action Plan Against Racism (NAPAR) contains a series of commitments in relation to reporting and responding to racist incidents and crimes<sup>81</sup>. These include: the establishment of a specialist unit within each Garda Division for the purpose of developing and disseminating expertise and best practice in dealing with hate crime and racist incidents; and the introduction and publicising of safeguards so that all victims of, and witnesses to, racist incidents and crimes can feel safe in reporting to AGS, irrespective of their immigration status.

48. **To conclude, it is ICCL's position that the State should progress new legislation on hate crime and extreme hate speech, ensuring it is in line with human rights standards. It should keep the legislation under review, implement it in full, ensure it is widely understood through a public awareness campaign, commit to a comprehensive action plan to tackle hate crime and hate speech beyond criminal law, and ensure that the actions identified under the NAPAR are fully implemented.**

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<sup>80</sup> "[National frameworks to address hate crime in Ireland, Hate Crime Capacity Building](#)". Organization for Security and Cooperation Office for Democratic Institutions and Human Rights (ODIHR), accessed 6 June 2024.

<sup>81</sup> Department of Children, Equality, Disability, Integration and Youth, [National Action Plan Against Racism 2023-2027](#), 21 March 2023.pp. 17-18.

## 2.3. Comprehensive data

49. Official statistics<sup>82</sup> published by AGS show that there has been a 12% increase in recorded hate crimes and hate related incidents in 2023, on the back of a 29% increase observed in 2022 from 2021<sup>83</sup>. As outlined by AGS, the most prevalent discriminatory motive was anti-race (36%), followed by anti-nationality (18%) and anti-sexual orientation (16%). These three motives have been the most common in the past three years, however, anti-nationality overtook anti-sexual orientation to become the second most prevalent motive in 2023. Hate motives were evident in a variety of reported crime incident types, the largest percentage being public order offences (27%), minor assaults (16%), criminal damage not by fire (9%), and criminal damage by fire (3%). The largest proportion (44%) of hate related incidents occurred in the Dublin Metropolitan Region.
50. While noting positive measures that have been undertaken, such as the introduction of new recording options on the Garda crime reporting system PULSE and the publication of AGS statistics on hate crime and incidents since 2021, the availability of disaggregated data on causes and experiences of hate crime and hate speech is still limited. Hate crime discriminatory motives are currently recorded on any incidents perceived by the victim or any other person to be, in whole or in part, motivated by hostility or prejudice, based on actual or perceived colour, disability, ethnicity, gender, nationality, race, religion or sexual orientation<sup>84</sup>. **Based on the information made available to the public, further disaggregation is not possible and would be beneficial on:**

- (a) gender identity and expression (currently under gender) and being a Traveller (as far as ICCL is aware, currently under ethnicity).**
- (b) intersectional or multiple motives.**
- (c) the incidence of offences targeting specific communities.**

While information on the type of crimes reported is currently only available for the 'top' incident types (those that have  $\geq 20$  cases), a full picture on relevant offences should also be made available.

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<sup>82</sup> See analysis of the data by An Garda Síochána in An Garda Síochána, [An Garda Síochána – 2023 Hate Crime Data and Related Discriminatory Motive](#), 7 May 2024.

<sup>83</sup> ["Statistics - Hate Crime Statistics, Hate Crime and Hate Related Incidents reported in 2021"](#), ["Statistics - Hate Crime Statistics, Hate Crime and Hate Related Incidents reported in 2022"](#), ["Statistics - Hate Crime Statistics, Hate Crime Online Reporting Statistics 2023"](#), An Garda Síochána, accessed 6 June 2024.

<sup>84</sup> ["Statistics - Hate Crime Statistics, Hate Crime and Hate Related Incidents 2023"](#), An Garda Síochána, accessed 6 June 2024.

51. Incitement to hatred – which has specific provisions in Irish criminal law, unlike hate crime – is included in the data on hate crime and hate incidents<sup>85</sup>. It is unclear whether extreme hate speech is treated as a hate crime under the AGS policy definitions for the purposes of data collection<sup>86</sup>. **Considering the different nature of hate crime and extreme hate speech, statistics and data on hate crime and hate speech should be separate, in line with the Committee of Ministers 2024 Recommendation on Hate Crime<sup>87</sup>.**
52. Information on hate crime statistics is currently made public by means of the publication of two infographics, with no additional analysis made public<sup>88</sup>. Beyond the data collected by AGS, there is no information on the number of prosecuted or sentenced hate crimes due to the absence of relevant legislation. As for incitement to hatred, according to the Department of Justice, as of 2022, about 50 prosecutions were brought under the Prohibition of Incitement to Hatred Act since its enactment in 1989<sup>89</sup>.
53. An Garda Síochána recognises that hate crime and hate related incidents are under-reported<sup>90</sup>. Data collected by the Irish Network Against Racism (INAR) through the iReport mechanism<sup>91</sup> shows that there were 600 reports received from the public about racism in 2022<sup>92</sup>. This included 223 reports about criminal offences (excluding incitement to hatred). There were 190 reports of discrimination and 42 reports of other recordable racist incidents. There were 136 further reports of racist hate speech. A further 10 reports could not be categorised. Most crimes and incidents of discrimination were not reported anywhere else and only 20 percent of crimes were reported to AGS. INAR data for 2023 is not publicly available yet.
54. **It is ICCL's view that the State should ensure that disaggregated data collection mechanisms are in place at all stages of the criminal justice system, in addition to an effective reporting system for hate crime, hate incidents, and incitement to hatred.**

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<sup>85</sup> ["Statistics - Hate Crime Statistics, Hate Crime and Hate Related Incidents 2023"](#), An Garda Síochána, accessed 6 June 2024. Prohibition / Incitement to Hatred is documented as the fifth most commonly occurring crime incident with 23 episodes.

<sup>86</sup> An Garda Síochána, [Responding to Hate Crimes and Non-Crime Hate Incidents](#), 2021. Hate crime is defined as "Any criminal offence which is perceived by the victim or any other person to, in whole or in part, be motivated by hostility or prejudice, based on actual or perceived age, disability, race, colour, nationality, ethnicity, religion, sexual orientation or gender".

<sup>87</sup> [Recommendation CM/Rec\(2024\)4 of the Committee of Ministers to member States on combating hate crime](#) (Adopted by the Committee of Ministers on 7 May 2024 at the 1498th meeting of the Ministers' Deputies), para 53.

<sup>88</sup> The Committee of Ministers Recommendation on Hate Crime states that statistics should be made publicly available in both raw and analysed formats, with caveats if required. See [Recommendation CM/Rec\(2024\)4 of the Committee of Ministers to member States on combating hate crime](#) (Adopted by the Committee of Ministers on 7 May 2024 at the 1498th meeting of the Ministers' Deputies), para 53.

<sup>89</sup> Department of Justice, [Press Release: New Bill to tackle hate crime and hate speech includes clear provision to protect freedom of expression](#), 27 October 2022.

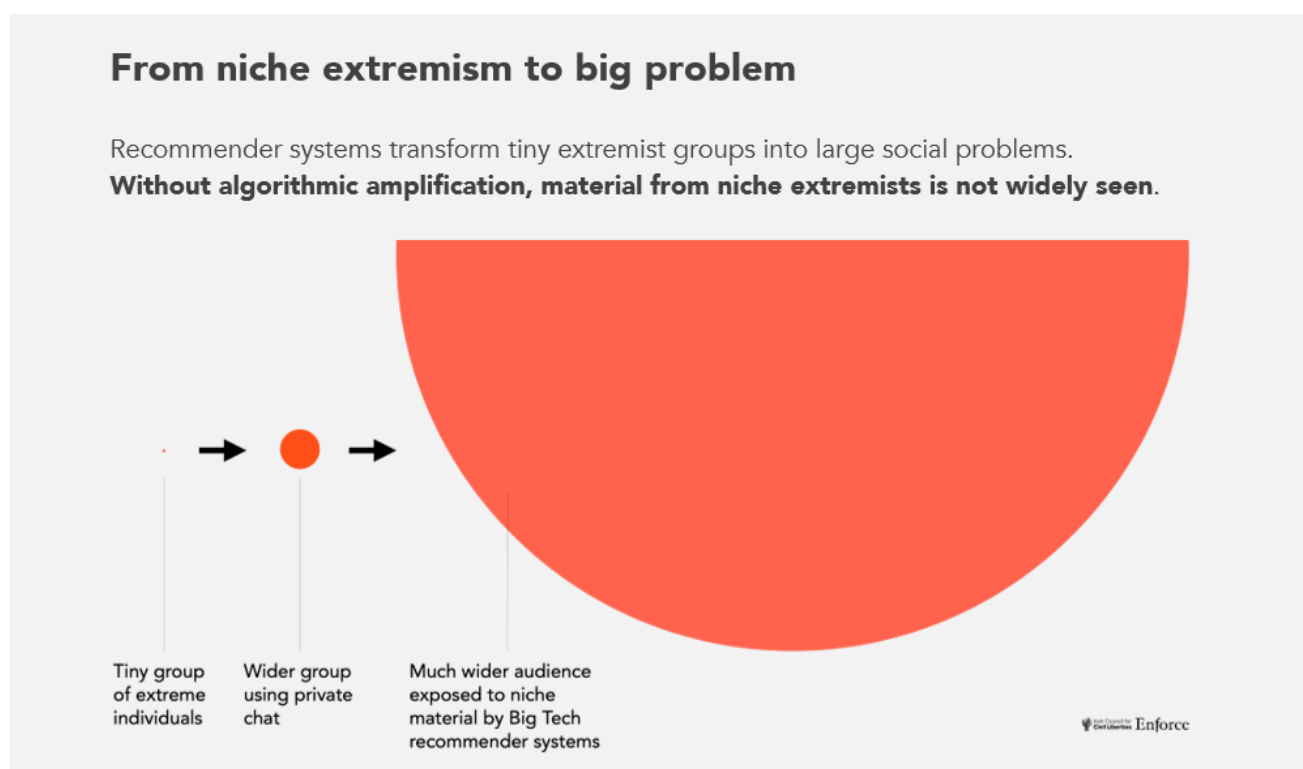
<sup>90</sup> ["Statistics - Hate Crime Statistics, Hate Crime and Hate Related Incidents 2023"](#), An Garda Síochána, accessed 6 June 2024.

<sup>91</sup> ["iReport.ie - Reporting Racism in Ireland"](#), INAR, accessed 6 June 2024.

<sup>92</sup> INAR, [Reports of racism in Ireland - Data from iReport.ie](#), 2022.

## 2.4. Algorithmic amplification of hate online

55. Polarising hate speech and hysteria are artificially amplified by digital platforms' algorithmic 'recommender systems'. Recommender systems process two main sets of data: data about each item of content uploaded to a platform, such as how many times each item is viewed; and personal data about each person who uses a platform, such as their viewing habits and interests<sup>93</sup>. The recommender system then selects items of content that it estimates will keep the person engaged (i.e. watching, commenting, sharing) for as long as possible so that the platform can make more money by showing ads. These systems select emotive and extreme content and show it to people they estimate are most likely to be outraged. Without such algorithmic amplification, material from niche extremists is not widely seen.



56. It is ICCL's view that recommender systems that use information about people's political and philosophical views should be off by default in order to comply with Article 9 of the General Data Protection Regulation (GDPR)<sup>94</sup>, and Article 6a(1) and Article 28(1) of the Audiovisual Media Services Directive (AVMSD)<sup>95</sup>. Article 9 of the GDPR prohibits the processing of such data

<sup>93</sup> Davidson et al., [The YouTube Video Recommendation System](#), RecSys '10: Proceedings of the fourth ACM conference on Recommender systems, September 2010. See also Cristos Goodrow, [On YouTube's Recommender Systems](#), 15 September 2021.

<sup>94</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC](#) (General Data Protection Regulation).

<sup>95</sup> See [Directive \(EU\) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services \(Audiovisual Media Services Directive\) in view of changing](#)

about a person unless the person has given ‘explicit consent’, which is understood by data protection authorities to mean consent and separate confirmation of that consent<sup>96</sup>.

57. This is an efficient and rights-respecting approach. Switching off recommender systems by default prevents algorithmic amplification of hate, hysteria, and disinformation without requiring burdensome moderation of individual items of content. A 2019 internal Meta document (leaked by whistle-blower Frances Haugen) affirmed that content moderation is impossible, and the focus should instead be on stopping artificial amplification: *‘We are never going to remove everything harmful from a communications medium used by so many, but we can at least ... stop magnifying harmful content by giving it unnatural distribution’*<sup>97</sup>.

58. The Irish Data Protection Commission has taken no action to address this infringement of the GDPR. However, Coimisiún na Meán, Ireland’s audiovisual media regulator, has issued a draft binding code for video platforms under the AVMSD<sup>98</sup>. The draft Code requires them to stop automatically using recommender systems based on special category personal data. A national poll conducted by Ireland Thinks in January 2024 shows overwhelming popular support across all ages, education, income, and regions of the country for the measures: across Ireland 82% are in favour<sup>99</sup>.

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[market realities](#). AVMSD, Article 6a1: ‘Member States shall take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme. The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures’. See also AVMSD, Article 28b(1): ‘Without prejudice to Articles 12 to 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect: (a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1); (b) the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter; (c) the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

<sup>96</sup> Article 29 Data Protection Working Party, [Guidelines on Consent under Regulation 2016/679 \(wp259rev.01\)](#), 6 July 2018.

<sup>97</sup> The Facebook Papers, [We are Responsible for Viral Content](#), 11 December 2019, p.17, quoted in Natasha Lomas, [“Meta urged to pay reparations for Facebook’s role in Rohingya genocide”](#), *TechCrunch*, 29 September 2022.

<sup>98</sup> See Coimisiún na Meán, [Draft Online Safety Code](#), 8 December 2023, p. 28: ‘Coimisiún na Meán therefore considers it appropriate that supplementary measures to the Code should require VSPS providers to prepare, publish and implement a recommender system safety plan that includes effective measures to mitigate the main risks and, at a minimum, explains the choices that have been made about whether and how they have implemented a number of specified measures.’ See also pp 77-78: ‘In preparing a recommender system safety plan, a video-sharing platform service provider must at a minimum consider the following measures and explain whether and how it has given effect to them: ...

- measures to ensure that recommender algorithms based on profiling are turned off by default;
- measures to ensure that algorithms that engage explicitly or implicitly with special category data such as political views, sexuality, religion, ethnicity or health should have these aspects turned off by default;’

<sup>99</sup> ICCL, [82% of the Irish public wants Big Tech’s toxic algorithms switched off](#), 22 January 2024.

59. **It is the European Commission DG Connect's<sup>100</sup> stated position that the Digital Services Act precludes Ireland's regulator from introducing this measure under the AVMSD<sup>101</sup>. It is ICCL's position that this view is unlikely to be correct and frustrates the speedy reversal of the artificial amplification of hate speech.**
60. Furthermore, digital platforms should not be allowed to build intimate profiles about any person, including children in order to manipulate them for profit by artificially amplifying hate, hysteria, and disinformation in their personalised feeds. The African Union has shown how Europe should proceed, by explicitly banning the processing of special category data for recommender systems in its new 'Principles and Guidelines for the Use of Digital and Social Media in Elections in Africa'<sup>102</sup>. **Ireland should contest the European Commission's position. The Irish Data Protection Commission should also enforce GDPR Article 9 to ensure that recommender systems that process intimate profile data do not operate without first receiving the required double opt-in.**

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<sup>100</sup> The Directorate-General for Communications Networks, Content and Technology.

<sup>101</sup> Oonagh Smyth, "[Poll shows majority want end to behavioural profiling by default on social media](#)", RTE, 16 May 2024.

<sup>102</sup> [Principles and Guidelines for the Use of Digital and Social Media in Elections in Africa](#), Adopted by the Association of African Electoral Authorities General Assembly in Cotonou, Benin, 3 November 2023.



## AREA 3: INTEGRATION AND INCLUSION

### 3.1. Policing of the border

61. Operation Sonnett is the government's long-standing policy of conducting immigration checks by stopping and boarding buses and trains close to the border between Ireland and Northern Ireland. The volume of spot checks has increased significantly in 2024. AGS is responsible for conducting these checks.<sup>103</sup>
62. In practice, it is impossible to have selective border checks without racial profiling as Irish and British citizens do not need to provide a passport or other identification document to cross the border under the Immigration Act 2004. Due to racism and discriminatory practices within AGS, many people who are not white feel compelled to carry their passport and identification documents while travelling through the Common Travel Area (CTA), even if they are British or Irish citizens. As documented in a recent report by ICCL and the Committee on the Administration of Justice (CAJ), civil society described this as 'a 'hard border' based on skin colour<sup>104</sup>. **ICCL and CAJ have recommended that Irish legislation governing checks on CTA journeys requires root and branch reform. Specifically, the duty for certain categories of person (i.e., non-European Union/European Economic Area (EEA) and non-British citizens) to carry and produce passports on the land border should be removed.** There is no way to stop racially discriminatory cross-border checks without this change.

### 3.2. Integration and inclusion of migrants, asylum seekers and refugees

63. Ireland's reception system for asylum seekers - known as Direct Provision - was designed as a short-term measure in the year 2000 but is still in place. The current government has promised to abolish Direct Provision and replace it with a non-profit approach<sup>105</sup>. The State issued a White Paper on the issue<sup>106</sup>, which has yet to be implemented, and no information is available on the timeframe to replace the current system. During the Covid-19 pandemic there were significant outbreaks in some direct provision settings<sup>107</sup>, with people feeling unsafe there.<sup>108</sup> The pandemic also highlighted the failure of the government to collect data on health issues and the vulnerabilities of people applying for international protection.
64. **It is ICCL's position that Ireland should abolish the current Direct Provision system, substituting it with a not-for-profit model with regular rights-focused inspections, and address the ongoing rise of anti-immigration actions that are contributing to a growing climate of unsafety for impacted groups.** This should be undertaken alongside a thorough review and reform of asylum, immigration and citizenship related administration and policy to address significant deficiencies. It must include a review of relevant legislation to determine whether it is fit for purpose, in consultation with civil society, legal professionals, and migrant

<sup>103</sup> Tadgh McNally and Sarah Horgan, "[Border checkpoints 'practical measure', says Taoiseach](#)", *Irish Examiner*, 26 May 2024.

<sup>104</sup> ICCL and CAJ, [Racial Profiling in Law Enforcement](#), May 2024, p. 5.

<sup>105</sup> Government of Ireland, [Programme for Government 2020, Our Shared Future](#), 29 October 2020, p. 88.

<sup>106</sup> Department of Children, Equality, Disability, Integration and Youth, [White Paper on Ending Direct Provision](#), 26 February 2021.

<sup>107</sup> ICCL, [Human Rights in the Pandemic](#), May 2021, p. 74-75.

<sup>108</sup> Irish Refugee Council, [Submission to the Special Committee on Covid-19](#), 26 May 2020, p. 6.



communities. Furthermore, it should be recognised that the government's reliance on for-profit providers of homeless accommodation is at odds with the goal set in the White Paper<sup>109</sup>.

65. In a 2024 report to UN CESCR, ICCL highlighted that marginalised groups such as asylum seekers – but also Travellers, Roma, transgender people and persons with disabilities – do not enjoy equal protection of their economic, social and cultural rights in law and in practice and that their rights are consistently denied<sup>110</sup>. Access to housing is a particular problem. In a joint civil society statement in May 2024, 29 organisations – including ICCL – expressed deep concern regarding the situation of persons experiencing homelessness, including international protection applicants<sup>111</sup>. As of May 2024, there were 1,939 international protection applicants waiting for accommodation from the State<sup>112</sup>. **The joint statement calls on the government to provide people who are street homeless with safe and secure accommodation, give international protection applicants who are homeless the option of postponing their asylum interview, and reduce over-reliance on NGOs, homeless service providers and volunteers, which are already over stretched.**

66. Other key issues include the following:

- (a) Civil society has reported significant differences in access to healthcare, labour and education between Ukrainians with temporary protection and other asylum seekers in Ireland and urged the State to apply some of the successes of the Temporary Protection Directive for Ukrainians to other asylum seekers<sup>113</sup>. The difference in treatment was remarked on during the last UN Human Rights Committee State review<sup>114</sup> under the International Covenant on Civil and Political Rights. **We echo immigration organisations in recommending the State to apply some of the successes of the Temporary Protection Directive to other asylum seekers.**
- (b) At the end of 2023 ICCL wrote to the Minister for Justice regarding the current review of the family reunification policy for non-EEA migrants by the Department of Justice. **As part of this review, ICCL supports the Migrant Rights Centre Ireland's<sup>115</sup> call to extend the right of immediate family reunion to all those in full-time employment in Ireland with the removal of associated barriers.**

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<sup>109</sup> Laoise Neylon, "[Advert for Homeless Hostel Estimates Profits of €250,000 a Year](#)", *Dublin Inquirer*, 27 January 2021. There have been informal reports that it is the same companies who are profiting from Direct Provision and homeless centres.

<sup>110</sup> ICCL, [Alternative to the State Report for Ireland's Fourth Periodic Review under the International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#), January 2024.

<sup>111</sup> Irish Refugee Council et al, [Joint Statement by Civil Society on Homeless International Protection Applicants](#), 29 May 2024.

<sup>112</sup> Irish Refugee Council et al, [Joint Statement by Civil Society on Homeless International Protection Applicants](#), 29 May 2024.

<sup>113</sup> Jade Wilson, "[Europe's two-tier asylum system: doors open for Ukrainians as others seeking refuge face barriers](#)", *The Irish Times*, 22 May 2023. Asylum seekers are subjected to poor living conditions and strict restrictions on accessing employment, social security, healthcare and education. See Irish Refugee Council and Doras, [Joint Submission on Ireland's 3rd Periodic Report to the International Covenant on Economic, Social and Cultural Rights](#), 2020.

<sup>114</sup> United Nations, [In Dialogue with Ireland, Experts of the Human Rights Committee Praise Legislation Combatting Hate Crimes, Raise Issues Concerning Rights Abuses at Institutions](#), July 2022.

<sup>115</sup> "[Families Belong Together](#)", Migrant Rights Centre Ireland, accessed 6 June 2024.

### 3.3. Integration and inclusion of Roma and Travellers

67. Anti-Traveller and anti-Roma discrimination continues to be prevalent in Ireland, including in relation to accessing culturally appropriate accommodation, education, employment and health services<sup>116</sup>.
68. Travellers were recognised as an ethnic group in Ireland in a 2017 statement by the Irish Taoiseach (Prime Minister). This recognition was socially and symbolically significant, however to date there has been no legislative action to enshrine this in law. ICCL notes the relevance of the explicit inclusion of Travellers in the upcoming hate crime legislation as a positive development in relation to the recognition of Travellers as an ethnic minority<sup>117</sup>. However, as detailed in Section 2.1, relevant legislation is still undergoing legislative scrutiny.
69. As described above, there is still much work to be done to address the broader housing crisis and this extends to those living in unsuitable halting sites. **The State must take further steps to protect Roma, Travellers and other ethnic minorities, including by ensuring access to own door accommodation, adequate sanitation and culturally appropriate accommodation.** Travellers are overrepresented in homelessness figures, with 39% of Travellers meeting a European definition of homelessness<sup>118</sup>. Roma and Traveller organisations have reported that *'local authorities continuously fail to meet their legal duty to ensure adequate, safe and culturally appropriate accommodation for Travellers and - despite the Traveller accommodation budget having slowly increased - in the past, a significant portion of Traveller accommodation budgets remained unspent by Local Authorities'*<sup>119</sup>. The 2019 recommendations from the Expert Review Group on Traveller Accommodation have not been fully implemented and require a time bound implementation plan, tangible targets, budget line and oversight<sup>120</sup>. In relation to Roma accommodation, community organisations report that inadequate and insecure housing, sanitary and living conditions also expose many Roma, particularly Roma women and children, to further health and safety hazards and interruptions in school attendance.<sup>121</sup>
70. The National Traveller and Roma Inclusion Strategy (2017-2021) is outdated. It is essential that the long overdue new strategy - currently under preparation - is published and fully implemented, including by developing concrete action plans with clear targets, indicators, outcomes, timeframes, and associated budget lines. While Roma-specific actions were not

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<sup>116</sup> For an extensive overview of the issues of concern for Travellers and Roma in the area of economic, social and cultural rights, see International Covenant on Economic, Social and Cultural Rights Ireland, [Joint Alternative Report by a Coalition of Traveller and Roma Organisations](#), January 2024.

<sup>117</sup> [Criminal Justice \(Incitement to Violence or Hatred and Hate Offences\) Bill 2022](#), Meaning of Protected Characteristics, 3(2)(c) references to "national or ethnic origin" include references to membership of the Traveller community (within the meaning of section 2(1) of the Equal Status Act 2000).

<sup>118</sup> Pavee Point, [The Traveller Community and Homelessness](#), 2021 as quoted in [International Covenant on Economic, Social and Cultural Rights, Joint Alternative Report by a Coalition of Traveller and Roma Organisations](#), January 2024, p. 10.

<sup>119</sup> [International Covenant on Economic, Social and Cultural Rights, Joint Alternative Report by a Coalition of Traveller and Roma Organisations](#), January 2024, p. 10.

<sup>120</sup> Independent Expert Group, [Traveller Accommodation Expert Review](#), July 2019.

<sup>121</sup> [International Covenant on Economic, Social and Cultural Rights, Joint Alternative Report by a Coalition of Traveller and Roma Organisations](#), January 2024, p. 11.

included in the existing National Traveller and Roma Inclusion Strategy, the State commitment to include specific actions in the next iteration of the strategy <sup>122</sup>.

71. In a positive step, Ireland's first National Traveller Health Action Plan (2022 - 2027) was launched at the end of 2022 <sup>123</sup>. The plan recognises that Travellers are falling further behind the health of the general population. Among other alarming statistics, Travellers' suicide rate is six times that of the general population, and suicide accounts for 11 per cent of Traveller deaths. The average life expectancy among Travellers is more than 14 years less than the general population. Travellers were also among those disproportionately impacted by the Covid-19 pandemic<sup>124</sup>. ICCL welcomes the publication of the strategy, but also notes the importance of funding, implementing and monitoring it, with special attention given to mental health.
72. **To conclude, the State should take further action to combat all forms of discrimination against Travellers and Roma, including ethnic equality monitoring across all government services. Travellers should be recognised as an ethnic minority by law. Recommendations from the Expert Review Group on Traveller Accommodation should be fully implemented. The State should fund, implement and monitor the National Traveller Health Action Plan (2022 - 2027) and the new National Traveller and Roma Inclusion Strategy should be published and fully implemented. The NAPAR, which includes Roma and Travellers within its scope, must also be fully implemented.**

### 3.4. Intersectionality and gender mainstreaming

73. ICCL understands that ECRI's country report will include a gender perspective and highlight intersectional issues and multiple discriminations.
74. A recent report on the evaluation of the three national equality strategies documented that there are two main reasons why equality policies fail to realise their ambitious visions in Ireland:
  - (a) a failure to apply sufficient attention and effort to the implementation phase of the policy cycle; and
  - (b) a failure to adequately address intersectionality in the development of public policy<sup>125</sup>.

The study recommended that 'further research should be carried out to explore how an intersectional approach can be effectively incorporated into various phases of the policy

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<sup>122</sup> [International Covenant on Economic, Social and Cultural Rights, Joint Alternative Report by a Coalition of Traveller and Roma Organisations, January 2024, p. 11.](#)

<sup>123</sup> Department of Health, [National Traveller Health Action Plan \(2022 - 2027\)](#), November 2022.

<sup>124</sup> ICCL, [Human Rights in a Pandemic](#), May 2021, p. 74.

<sup>125</sup> Kavanagh, L. et al (2023). [Realising the promise of equality policy: An evaluation of the processes of implementation of three national equality strategies](#). Dublin: Centre for Effective Services, p.148. The three strategies evaluated are the Migrant Integration Strategy, the National Strategy for Women and Girls and the National Traveller and Roma Inclusion Strategy.

cycle<sup>126</sup>. It is ICCL's position that intersectional discrimination should be tackled in Ireland through legislation and policies, as part of drafting, delivery, monitoring and implementation. Furthermore, considering the number of strategies and actions plans that are either existing or under preparation, it is key that these policy tools are designed, implemented, delivered and monitored in a cohesive way that is sensitive to in concerns regarding intersectionality. People affected by inequalities should be actively consulted in these processes, particularly women from minority groups, who should be actively encouraged to participate in decision-making.

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<sup>126</sup>Kavanagh, L. et al (2023). [Realising the promise of equality policy: An evaluation of the processes of implementation of three national equality strategies](#). Dublin: Centre for Effective Services, p.149.

## AREA 4: OTHER TOPICS

### 4.1. Policing, racial discrimination, racial profiling and diversity in the police force

75. Racial and ethnic profiling is not prohibited by law in Ireland. There is also a lack of official government data on racial profiling and significant evidence that it occurs<sup>127</sup>. An example of racial discrimination is the case of George Nkencho, a young Black Irish man who was experiencing severe mental health difficulties and was shot six times by AGS in December 2020. In April 2024, the Office of the Director of Public Prosecutions decided not to prosecute the Gardaí involved in the fatal shooting. George was the first person of colour to be shot by AGS<sup>128</sup>.

76. A recent report published by ICCL and INAR explored the perceptions and experiences of racial discrimination in policing by members of ethnic minority communities<sup>129</sup>. The report found that overall, participants perceived unfair treatment of members of racialised groups by AGS which led them to feel unsupported, unprotected and unrepresented by Gardaí. Participants also noted the lack of diversity within AGS and felt that this may contribute to the possibility of racial profiling.

77. Research by the Central Statistics Office published in 2023 compared diversity within AGS to the general Irish population and found that 98% of employees were white Irish, 98% were Irish nationals, 89% were Roman Catholic, 64% were male and 4% had a disability<sup>130</sup>. In contrast, the most recent Census results (2022) found that 77% of the general population identified as white Irish, 84% identified as Irish nationals, 69% identified as Roman Catholic, 49% were male, and 21.5% identified as having a disability<sup>131</sup>. This demonstrates that significant work remains to make AGS representative of Irish society.

78. **The joint ICCL and INAR report, as well as recent ICCL research assessing the progress of police reforms<sup>132</sup> made a number of recommendations for the government and AGS related to racial profiling.** These include the following:

- (a) Prohibit racial profiling in law, including all forms of direct and indirect racial discrimination by AGS;
- (b) Meaningfully implement Action 1.5 of the NAPR, to eliminate any type of policing practice that targets specific racial and ethnic minority groups by 2025;
- (c) Immediately mandate the collection of disaggregated data pertaining to race, ethnicity, religion, gender and disability across the entire Irish criminal justice system, including in all policing operations, the courts and crime statistics, to properly understand how racial and ethnic minorities are treated at each stage of the justice system;
- (d) Prioritise diversity in recruitment to AGS and take steps to incorporate equality, diversity and inclusion best practice in its recruitment and hiring practices to ensure that AGS

<sup>127</sup> ICCL and INAR, [Policing and Racial Discrimination in Ireland: A Community and Rights Perspective](#), April 2024, p. 17.

<sup>128</sup> Jade Wilson, ["Family of George Nkencho to appeal decision not to prosecute gardaí involved in fatal shooting"](#), *The Irish Times*, 24 April 2024.

<sup>129</sup> ICCL and INAR, [Policing and Racial Discrimination in Ireland: A Community and Rights Perspective](#), April 2024.

<sup>130</sup> ["Diversity in An Garda Síochána 2023"](#), Central Statistics Office, 14 June 2023.

<sup>131</sup> ["Census of Population 2022 - Summary Results"](#), Central Statistics Office, 30 May 2023.

<sup>132</sup> ICCL, [Human Rights in Irish Policing: Analysing the Implementation of the Recommendations from the Commission on the Future of Policing in Ireland](#), May 2024.

reflects the diversity of Irish society, including intersectional identities. Consider the use of special measures, such as affirmative action policies, to recruit people with different socio-political identities;

- (e) Ensure the AGS Human Rights Unit works with other relevant units and bureaus, including the Garda National Diversity and Integration Unit, to ensure all aspects of policing align with human rights;
- (f) Facilitate anti-racism and anti-oppression training for members to understand how systems of oppression work and how they relate to power and privilege; the role of AGS in furthering systems of oppression; and how policing may disproportionately affect certain communities. The training should address stereotypes, racism and conscious and unconscious bias.

## 4.2. Facial Recognition Technology

79. There are plans in motion to introduce Facial Recognition Technology (FRT) into Irish policing. ICCL is deeply concerned about these plans as they will result in a step change in the surveillance capabilities of AGS. ICCL's concerns are manifold, but one aspect is the seeming lack of consideration from the Irish authorities of the discriminatory aspects of FRT.

80. A Joint Oireachtas Committee on Justice recently called on the Minister for Justice to address the inherent discrimination concerns in FRT<sup>133</sup> but ICCL has yet to see progress in this area.

81. FRT is a flawed but very powerful technology that, when used by law enforcement directly or indirectly, risks the misidentification of individuals, but also the creation of an enduring and long-term chilling effect on individuals' ability to freely participate in public protest and move freely in publicly accessible places<sup>134</sup>.

82. An FRT search generally results in the production of potential candidates accompanied by similarity scores. A threshold value is fixed to determine when the software will indicate that a probable match has occurred. Should this value be fixed too low or too high, respectively, it can create a high false positive rate (i.e. the percentage of incorrect matches identified by the technology) or a high false negative rate (i.e. the percentage of true matches that are not detected by the software). There is no single threshold setting which eliminates all errors<sup>135</sup>. There is also no guarantee that a 'true match' will be at the top of the FRT search return list, or that a law enforcement official will choose the correct 'true-match' from the list,<sup>136</sup> if one is present<sup>137</sup>.

83. The discriminatory effects of the technology are well documented. Error rates vary depending on the multiple factors which can affect the performance of an FRT system including, but not limited to, the quality of images used, the lighting, the pose of the person in the image/video,

<sup>133</sup> ICCL, [Justice Committee highlights serious deficiencies with Facial Recognition Technology Bill](#), 27 February, 2024.

<sup>134</sup> ICCL, [Leading experts warn against Garda use of FRT](#), October 2023,

<sup>135</sup> Buolamwini J., et al, [Facial Recognition Technologies: A Primer](#), 29 May 2020.

<sup>136</sup> Eyal Press, ["Does A.I. Lead Police to Ignore Contradictory Evidence?"](#), *The New Yorker*, 13 November 2023.

<sup>137</sup> Gerchick, Marissa and Cagle, Matt., [When it Comes to Facial Recognition, There is No Such Thing as a Magic Number](#), American Civil Liberties Union (ACLU), 7 February 2024.

the creation of the database of images against which an image will be compared, and the selected threshold setting for 'similarity'.

84. As has been clearly documented these errors do not affect all individuals equally. Scientific studies have clearly demonstrated deeply inherent racial and gender biases in FRTs due to, in part, how they have been trained,<sup>138</sup> meaning that women and people of colour are more likely to be misidentified,<sup>139</sup> and therefore wrongly accused by police who use FRT, than light-skinned men. Computer vision models, the basis for FRT, have demonstrated how they are more likely to mislabel and mischaracterise Black men and Black women as a 'chimpanzee', 'gorilla', 'orangutan', 'suspicious person', 'criminal', and 'thief'<sup>140</sup>; and, disturbingly, how a Black man has a much higher chance of being classified as a 'criminal' than being classified as a 'human being'<sup>141</sup>.
85. Research shows<sup>142</sup> how, while early coverage of racial and gender disparities in FRT false-match rates focused on the lack of equal representation by race and gender in photo datasets used to train the algorithms,<sup>143</sup> it has become clear that ensuring more diverse representation in training datasets will *not* eliminate the problem of demographic disparities in false-match rates. While other factors may also be at play, this is partly because the colour-contrast settings in digital cameras disproportionately result in underexposed images of darker-skinned people,<sup>144</sup> which reduces FRT accuracy when attempting to process and match those images<sup>145</sup>.
86. The real-life racial discriminatory impact of the biases in FRT is devastating. In the US alone, there are, at the time of writing, six known cases of law enforcement wrongfully arresting and incarcerating Black people based on the police using error-prone FRT<sup>146</sup>. It is unknown how many people who were wrongfully arrested and incarcerated may have taken plea deals in the US<sup>147</sup>.

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<sup>138</sup> Buolamwini Joy and Gebru Timnit, [Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification](#), Proceedings of Machine Learning Research 81:1-15, Conference on Fairness, Accountability and Transparency, 2018. See also Inioluwa, Deborah Raji and Buolamwini, Joy, [Actionable auditing: Investigating the impact of publicly naming biased performance results of commercial AI products](#), proceedings of the AAAI/ACM Conference on AI, Ethics, and Society, January 2019.

<sup>139</sup> Eyal Press, "[Does A.I. Lead Police to Ignore Contradictory Evidence?: Too often, a facial-recognition search represents virtually the entirety of a police investigation](#)", *The New Yorker*, 13 November 2023.

<sup>140</sup> Agarwal, Sandhini, et al., [Evaluating CLIP: Towards Characterization of Broader Capabilities and Downstream Implications](#), 5 August 2021.

<sup>141</sup> Birhane, Abeba, et al., [On hate scaling laws for data-swamps](#), June 2023.

<sup>142</sup> ACLU, [ACLU Comment re: Request for Comment on Law Enforcement Agencies' Use of Facial Recognition Technology, Other Technologies Using Biometric Information, and Predictive Algorithms](#) (Exec. Order 14074, Section 13(e)), 19 January 2024.

<sup>143</sup> Grother Patrick, et al., [Face Recognition Vendor Test Part 3: Demographic Effects](#), National Institute of Standards and Technology (NISTIR 8280), US Department of Commerce, December 2019.

<sup>144</sup> See Sarah Lewis, "[The Racial Bias Built into Photography](#)", *New York Times*, 25 April 2019.

<sup>145</sup> See Haiyu Wu, et al., [Face Recognition Accuracy Across Demographics: Shining a Light into the Problem](#), arXiv No. 2206.01881, 16 April, 2023.

<sup>146</sup> American Civil Liberties Union, [ACLU calls on Detroit Police Department to end use of faulty facial recognition technology following yet another wrongful arrest](#), 7 August 2023.

<sup>147</sup> Press, Eyal, [Does A.I. Lead Police to Ignore Contradictory Evidence?: Too often, a facial-recognition search represents virtually the entirety of a police investigation](#), *The New Yorker*, 13 November, 2023.



**87. To conclude, FRT is a dangerous, unreliable and discriminatory tool, which could pave the way for mass surveillance in Ireland. It should not be introduced into Irish policing and the Irish Government should abandon its plans to introduce it.**

### 4.3. Public Services Card

88. ICCL has long held that Ireland's Public Services Card (PSC), a domestic digital identity scheme initiated by the State to demonstrate proof of identity for a vast range of public services, has no clear legislative basis,<sup>148</sup> targets vulnerable people<sup>149</sup> who are dependent on access to State assistance, and that it is not a necessary or proportionate tool for the State's stated aims of reducing welfare fraud and error<sup>150</sup>. These concerns were shared by the UN Special Rapporteur on Extreme Poverty and Human Rights Philip Alston<sup>151</sup> and the UN Human Rights Committee in its 2022 review of Ireland<sup>152</sup>.

89. ICCL is concerned that obtaining a PSC requires a biometric facial scan and that each person's information is then stored in an electronic database that is accessible by numerous state bodies<sup>153</sup>.

90. ICCL welcomed the Department of Social Protection's decision to withdraw its appeal against the Data Protection Commission's (DPC) findings in respect of the PSC in December 2021<sup>154</sup>. The Commission found that it was unlawful for the State to force people to obtain a PSC to access public services, other than social welfare payments<sup>155</sup>. The DPC is due to issue findings in a separate investigation into the biometric element of the card and the use of the PSC's database by the Department of Public Expenditure and Reform, following a complaint by Digital Rights Ireland that its use is unlawful<sup>156</sup>.

91. In June 2023, ICCL revealed, following information obtained via a Freedom of Information request, that a Data Protection Impact Assessment (DPIA) of the facial matching software upgrade for the PSC in 2021 showed for the first time that the Department of Social Protection has known that its biometric processing of personal data arising from the PSC project is

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<sup>148</sup> ICCL, [Submission to Joint Committee on Employment Affairs and Social Protection: The Public Services Card](#), 6 February 2018.

<sup>149</sup> ICCL, [The Public Services Card: Enforced Digital Identities for Social Protection Services](#), 7 June 2019.

<sup>150</sup> ICCL, [ICCL Submission to Joint Committee on Employment Affairs and Social Protection: The Public Services Card](#), 7 February 2018.

<sup>151</sup> Alston, Philip, [Letter from the UN Special Rapporteur on Extreme Poverty and Human Rights Philip Alston to the Irish Government, OL IRL 1/2020, 14 April 2020](#).

<sup>152</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Ireland, [CCPR/C/IRL/CO/5](#), 26 January 2023.

<sup>153</sup> The PSC requires users to provide a photo and a facial image biometric scan via the Standard Authentic Framework Environment registration system. This data is combined across agencies into the Single Customer View (SCV) database accessible by certain public agencies.

<sup>154</sup> Will Goodbody, ["Appeal over use of Public Services Card dropped by Dept"](#), RTE, 10 December 2021.

<sup>155</sup> See ICCL, [DPC report devastating for Government: ICCL](#), 18 September 2019. The DPC also found the functioning of the card was not sufficiently transparent and ordered the Department to delete the supporting documentation that some 3.2 million card holders gave the department as part of their PSC application.

<sup>156</sup> Jack Power, ["Data protection watchdog launches new inquiry into Public Services Card"](#), The Irish Times, 24 August 2021.



illegal<sup>157</sup>. The DPIA failed to identify any legal basis under Article 9 of the GDPR for the creation of a biometric photo and template database of 3.2 million cardholders; admitted that individuals were not given information on the legal basis of processing at the time of the PSC biometric photo data collection and acknowledged this to be a breach of transparency; and identified a risk that sensitive personal data is being held for longer than necessary or lawful.

92. On 29 May 2024, the DPC revealed in its 2023 Annual Report<sup>158</sup> that it provided the Department of Social Protection with a Draft Decision in respect of its investigation into the biometric element of the PSC in November 2023. There is no indication that the Department has responded. It is a matter of urgency that this matter be concluded and that the DPC's decision is published. This is essential because Head 4 of the Draft Scheme of the Garda Síochána (Recording Devices) (Amendment) Bill 2023<sup>159</sup> provides for gardaí to use images that have 'already been gathered and are legally held or legally accessed by An Garda Síochána'.
93. **Given this arguably unlimited provision, there is a concern that the biometric database underpinning the PSC could become a de facto national police database for the purposes of Garda use of FRT. The State should discontinue the PSC in its current form given privacy concerns and the DPC's findings into the biometric element of the PSC should be published as soon as possible.**

#### 4.4. Biometric data collection to monitor student attendance

94. In December 2023, a Dublin newspaper reported that a private English-language school in Dublin, NED College, is using a biometric system and app to scan international students' fingerprints and faces for the purpose of tracking their attendance at the school<sup>160</sup>. It was reported that the school submits attendance logs to the Department of Justice's Immigration Service Delivery and that these logs play a crucial role when the students seek to renew their immigration status. Students are also required to submit a medical certificate to the school via the app when they are unwell and unable to attend.
95. ICCL is concerned about NED College's processing of special category data and what, if any, legal basis, the school is relying on to carry out this processing. It is also unclear to ICCL if any Data Protection Impact Assessment (DPIA) has been carried out. ICCL is also concerned about the Department of Justice's approval and role in the roll-out of this system and how widespread the use of such a system is in English-language schools in Ireland. We believe this practice gives rise to serious data protection concerns and welcome the DPC's investigation of the matter, following a request from ICCL.

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<sup>157</sup> See ICCL, [Assessment of PSC facial recognition software reveals Department of Social Protection has known its biometric processing arising from the PSC is illegal](#), 9 June 2023.

<sup>158</sup> Data Protection Commission, [Annual Report 2023](#), 29 May 2024. .

<sup>159</sup> [Draft Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill 2023](#).

<sup>160</sup> Shamim Malekmian, "[Some students whose immigration status depends on their class attendance rate wrestle with a biometric clock-in system](#)", *Dublin Inquirer*, 20 December 2023.

96. **It is ICCL's position that the State should take the following steps:**

- a) **Identify the legal basis for the processing of biometric data in this manner;**
- b) **Demonstrate how this processing is necessary and proportionate;**
- c) **Confirm whether a DPIA has been carried out in respect of the system and publish the same;**
- d) **Confirm how widespread this system is in schools aiming to comply with the Department of Justice's attendance requirements.**

## About ICCL

The **Irish Council for Civil Liberties** (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped decriminalise homosexuality, divorce and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality, data protection and reproductive rights.