



# United Nations International Convention on the Elimination of All Forms of Racial Discrimination

## First National Report by **IRELAND**

as required under Article 9 of the Convention on the legislative,  
judicial, administrative or other measures adopted to give  
effect to the provisions of the Convention

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2.  
nó tríd an bpost ó  
51 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2.  
(Teil: 01-647 6000; Faics: 01-647 6843)  
nó trí aon díoltóir leabhar

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# Minister's Foreword

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I welcome this opportunity to introduce Ireland's First Report under the United Nations Convention on the Elimination of All Forms of Racial Discrimination.

Ireland ratified the Convention on 29 December 2000 and it entered into force on 28 January 2001. Under Article 9 on the Convention Ireland undertook to submit to the Secretary General of the United Nations a report on the legislative, judicial, administrative and other measures which have been adopted to give effect to the provisions of the Convention.

Ireland has undergone a demographic transformation in recent years, due to the success of Ireland's economy. Since the establishment of the State in 1921, Ireland has been a country where emigration has almost always exceeded immigration. This trend was reversed in the Census period 1996-2002. As a result, in 2002, over five per cent of the population of the State was foreign born. Between 1991 and 2002, the number of Muslims in Ireland quadrupled to 19,000 due to inward migration. Over the same period, the number of Orthodox Christians in Ireland grew from 400 to over 10,000 reflecting inward migration from non-EU European countries. In 1996, 11% of Ireland's inward migration came from countries outside of the EU, USA, UK or returning Irish; by 2002 this had increased to 35%.

The effect of this change cannot be over-estimated. On one hand it has brought advantages such as an increasingly cosmopolitan culture. While the majority welcome this increased diversity, some have reacted with hostility to the arrival of people from different ethnic groups. This increasing religious and national diversity raises important issues that require sensitive and considered policy responses.

Ireland has been quick to tackle this problem and this report details many of the steps which have been taken.

A key component of the fight against racism at a national level has been Ireland's equality framework. The Employment Equality Act, 1998 prohibits discrimination and provides for redress across nine grounds, including the ground of race, in regard to employment. The Equal Status Act, 2000 prohibits discrimination and provides for redress across the same nine grounds in regard to goods and services. The 1998 Act also set up two bodies, the ODEI - *the Equality Tribunal* which provides free, independent and effective means of redress for victims of discrimination on any of the nine grounds and the Equality Authority, which works towards the



elimination of conduct prohibited under the equality legislation, promotes equality of opportunity and provides information to the public.

In addition to the comprehensive equality infrastructure we have set up a Human Rights Commission and a National Consultative Committee on Racism and Interculturalism. An Garda Síochána, Ireland's national police service, has set up a Racial and Intercultural Office and has designated 145 officers nationwide to liaise with ethnic groups. As a result of Ireland's active participation in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, my Department is currently drawing up what promises to be one of the most significant strategies in this area, a National Action Plan Against Racism. Other Departments are also working on strategies and policies to tackle racism across the full range of State services. The Government has also supported and signed up to a variety of other international measures.

This is a long way from Ireland's position prior to the growth in diversity in 1996. However, progress does not represent grounds for complacency. As Ireland's first report under the Convention this document provides a comprehensive audit of the range of legislative, judicial, administrative and international measures the Government has put in place to tackle racism. It will also act as a baseline for measuring progress and an opportunity to identify gaps in our anti-racist framework.

Ratifying the Convention is only one step in the fight against racism. This Report represents another step but there is a long way to go before racism is defeated. In many ways, despite all that has been done, this is just the starting point. With this Report as a foundation, the way forward is at least clearer and I look forward to seeing our progress develop in future Reports.

A handwritten signature in black ink, appearing to read 'Michael McDowell'.

Michael McDowell T.D.  
Minister for Justice, Equality and Law Reform

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## Glossary

An Garda Síochána - The police service

CERD - Convention on the Elimination of All Forms of Racial Discrimination

CSO - Central Statistics Office

CRG - Constitutional Review Group

Dáil Éireann - Lower House of National Parliament

FÁS - Foras Áiseanna Saothair - Training and Employment Authority

IBEC – Irish Business and Employers’ Confederation

ICTU – Irish Congress of Trade Unions

IRTC - Independent Radio and Television Commission

ITM - Irish Traveller Movement

NAPS - National Anti-Poverty Strategy

NCCRI - National Consultative Committee on Racism and Interculturalism

NDP - National Development Programme

NESF - National Economic and Social Forum

NESC - National Economic and Social Council

NUJ - National Union of Journalists

ODEI - Office of the Director of Equality Investigations - Equality Tribunal

Oireachtas - Parliament

PPF - Programme for Prosperity and Fairness

RTE - Radio Teilifís Éireann (the State broadcaster)

Seanad - Upper House of National Parliament

SMI - Strategic Management Initiative

TD - Teachta Dála, Member of the National Parliament

# Executive Summary - Overview of policy to combat Racial Discrimination

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1. The Government of Ireland welcomes this opportunity to report to the Committee on the Elimination of All Forms of Racial Discrimination on the measures giving effect to its undertakings under Article 9 of the International Convention.
2. This is Ireland's first report under the Convention. As such it offers a timely opportunity to welcome the growing cultural diversity in Ireland and take stock of the progress that has been made in developing a wide-ranging and effective anti-discrimination framework. While much remains to be done, and while the Government is aware that racism is a growing issue in Ireland, the Committee should note that overall levels of hostility to ethnic minorities remain relatively low in Ireland<sup>1</sup>. This does not present grounds for complacency; the Government is determined to tackle all manifestations of racism and promote an inclusive society through a range of legislative, judicial, administrative and international measures.
3. Ireland signed the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1968. The Convention was ratified on 29 December 2000 and entered into force on 28 January 2001. Ireland entered only one reservation (in regard to freedom of speech) on ratification. Ireland was one of only a few countries to make a declaration pursuant to article 14 (1) of the Convention<sup>2</sup>, recognising the right of individuals to petition the Committee directly when all local remedies have been exhausted. Ratifying the Convention and making the declaration pursuant to article 14 sends an important signal both nationally and internationally regarding Ireland's determination to tackle racism through the most effective means at its disposal.
4. The Convention could not be ratified until 2000 because under Ireland's dualist system, legislative measures must be put in place to give effect to the Convention. With the enactment of the Employment Equality Act, 1998, which prohibits discrimination and provides for redress across nine grounds, including the ground of race<sup>3</sup>, in regard to employment, and the Equal Status Act 2000, which prohibits discrimination and provides for redress across the same nine grounds<sup>4</sup> in regard to goods and services, Ireland was in a position to give full effect to the Convention and ratified it accordingly. Ireland now has an advanced and comprehensive equality legal code which compares favourably by international standards and which provides a solid foundation for the fight against racism.

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<sup>1</sup> See Article 5 (b) for more information on crime in Ireland.

<sup>2</sup> In accordance with Article 14, Ireland recognises the competence of the Committee to receive and adjudicate on petitions from individuals or groups of individuals who claim to be victims of a violation by the State and who have exhausted all local remedies, on the understanding that the Committee shall not consider any communication without ascertaining that the matter is not being considered or has not already been considered by another international body of investigation or settlement.

<sup>3</sup> The race ground includes race, colour, nationality or ethnic or national origins.

<sup>4</sup> The Equal Status Act 2000 also prohibits discrimination on the ground of victimisation, covering situations where an individual is discriminated against because of their involvement in a case taken under the Act.

5. Building on this foundation, Ireland has established a powerful administrative framework to promote equality and ensure compliance with the legislation. The Office of the Director of Equality Investigations (ODEI - *the Equality Tribunal*) was established in October 1999. ODEI - *the Equality Tribunal* provides free, independent and effective means of redress for victims of discrimination on any of the nine grounds in the equality legislation. In the same month the Government also established the Equality Authority to work towards the elimination of conduct prohibited under the equality legislation, to promote equality of opportunity and to provide information to the public on the workings of the two equality Acts. Both bodies have a statutory basis in the Employment Equality Act 1998 and are independent of Government.
6. A Human Rights Commission was established under the Human Rights Commission Act, 2000 in line with the Belfast Agreement<sup>5</sup>. The Commission is an independent body charged with keeping under review the adequacy and effectiveness of Ireland's laws in relation to the protection of human rights in their widest sense.
7. Other bodies have also been established to provide a focus for the fight against racism in key areas. These include the National Consultative Committee on Racism and Interculturalism (NCCRI). The NCCRI is a not-for-profit independent expert body which sponsors a partnership approach to anti-racism and intercultural initiatives and receives much of its funding from the Government. The Garda Síochána (Ireland's police service) established the Garda Racial and Intercultural Office in July 2000 to co-ordinate, monitor and advise on all aspects of policing in the area of racial, ethnic and cultural diversity.
8. This expanding institutional framework reflects the significant socio-economic and demographic changes which have taken place in Ireland in recent years. In the period up to 2001, Ireland's economic growth was more than double any other member state in the EU. Demographic changes have been equally rapid. Although there has always been a level of cultural diversity in Ireland, particularly the Traveller community and a long established Jewish community, there has been a dramatic ethnic expansion over the past few years. Prior to 1996 Ireland was a country of net emigration; now migrant workers, refugees and asylum seekers from over 100 countries are represented in Ireland. The Census 2002 indicates that there were 224,300 non-Irish nationals in Ireland in 2002 (or 5.8% of the total population), less than half of which (2.7%) were UK nationals. In regard to asylum seekers, in 2002, 11,634 applications for asylum were received. The top five countries of origin were Nigeria (4,050), Romania (1,677), Moldova (536), Zimbabwe (357) and Ukraine (351). In 2001 and 2002 asylum applications were received from persons originating in approximately 100 different countries.
9. The Government is aware that the CERD Committee places particular importance on including an ethnicity question in the national census to gather statistical information on demographics. The Government decided on the questions to be included on the 2001 census form following widespread consultation by the Central Statistics Office in early 1999. This was supplemented by a pilot test carried out in September 1999. The inclusion of a question on ethnicity was considered to be a sensitive issue and it was feared that the controversy it might cause could have a detrimental effect on census response rates. Furthermore, the question being proposed was formulated at a late stage and consequently had not been pilot tested. On this basis, the Government decided against inclusion of the

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<sup>5</sup> Also known as the Good Friday Agreement, the Belfast Agreement was the product of negotiations between the Northern Ireland parties, the Irish Government and the British Government regarding Northern Ireland.



question. The census did however include a specific question on membership of the Irish Traveller community and also a question on nationality. These additional questions, taken in conjunction with questions on country of birth, religion and country of last previous residence will provide proxy information on minority sub-populations when responses are disaggregated. The intention is to continue working over the coming years on an ethnicity question which would not threaten the viability of the overall census response rates.

10. In the meantime, the Government is committed to developing other statistical sources to obtain a truer picture of ethnicity in Ireland. One of the key roles of the Office for Social Inclusion is to develop and implement a data strategy which will address such issues as gathering information on those not represented in household surveys. Separately, under the chairmanship of the Department of the Taoiseach and the National Statistics Board, a Steering Group on Social and Equality Statistics has been formed to co-ordinate the development of a system for the collection and dissemination of statistics for Social Policy.
11. Statistics also provide evidence that racist hostility is on the increase in Ireland. Growing cultural diversity has been accompanied by wider public debate and dialogue about racism in Ireland. To date, this debate has generally been constructive and reflective of the view that racism deprives people of their basic human rights, dignity and respect and is a threat to social and economic cohesion within States. Nevertheless, research and statistics from the NCCRI and ODEI - *the equality tribunal* show that the increase in cultural diversity has been accompanied by a shift in the degree of prejudice and intolerance experienced by ethnic minorities. A review of all existing surveys of attitudes towards ethnic minorities and surveys of minority experiences of discrimination commissioned by the Department of Justice, Equality and Law Reform came to a number of conclusions that support this view:
  - The degree of hostility expressed toward minority groups has increased and is particularly strong in relation to certain groups, including black people, Roma, refugees and asylum seekers;
  - Profiles of respondents show that hostility is evident at all levels of society, both rural and urban;
  - Negative attitudes experienced by minority ethnic groups now appears to be an everyday feature of many peoples lives; and
  - More hostile attitudes tend to be encountered among rural communities and among older, or less well educated persons<sup>6</sup>.
12. While the overall level of serious assaults in Ireland is lower than many other OECD countries<sup>7</sup> there are worrying signs that the levels of all assaults, including assaults motivated by racism, are on the increase<sup>8</sup>. The Government is also sensitive to the particular forms of racism facing women, for example assaults and abuse directed at Muslim women because of their dress code and abuse directed at women arising out of the presumption that non-nationals choose to have children in Ireland for the sole purpose of attempting to gain residency.<sup>9</sup>

<sup>6</sup> Garner, S and White, A. Racist Attitudes in Ireland: Baseline Research for the Anti Racism Public Awareness Programme Know Racism 2002

<sup>7</sup> National Crime Council 2002; 'Crime in Ireland, A Review of Crime Levels and Trends 1950 to 1998'

<sup>8</sup> An Garda Síochána, Annual Report, 2000 and 2001 and National Crime Statistics, 2002

<sup>9</sup> See paras 132 - 133.

13. The Government is fully committed to ensuring effective measures are in place to tackle racist behaviour however it is manifested. In addition to the Employment Equality Act 1998 and the Equal Status Act 2000, the Public Order Act, 1994, can be used to combat racist acts on public order grounds. The Prohibition of Incitement to Hatred Act, 1989 prohibits the use of words, behaviour or the publication or distribution of material which is threatening, abusive or insulting and are intended, or are likely, to stir up hatred. The Government is currently reviewing this Act in light of concerns regarding its effectiveness. Prior to the start of the review in September 2000 there had been no successful prosecution under the Act. However since then 18 cases have been taken resulting in 7 convictions. This growing body of caselaw under the Act suggests that application of the legislation is adapting to the growing problems with racism in Ireland. The review is expected to be completed soon.
14. The Government is also committed to tackling racism through national, international and local administrative initiatives. The Government is currently considering the results of an extensive consultation with the public, interested bodies and NGOs on the National Action Plan against Racism (NPAR). The National Action Plan results from Ireland's active participation in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa in September 2001. The aim of the NPAR is to produce a strategy for tackling racism and promoting an inclusive society by defining what integration actually means in practical terms, pulling together existing policies and identifying new initiatives to achieve the goal of integration. A summary of the consultation process entitled Diverse Voices has been published. The Government intends to publish the action plan in 2004.
15. The Government recognises the practical difficulties faced in tackling racism, including any institutional racism, resulting from lack of adequate planning at national and local levels. In September 2000 the Minister for Justice, Equality and Law Reform established a Working Group on Equality Proofing to commence a learning period on how to incorporate an equality perspective to all policies. The aim is to devise a comprehensive impact assessment method for public policy making across the nine discriminatory grounds provided for in Ireland's anti-discrimination legislation, including the race ground. Statutory bodies are also actively developing awareness raising programmes, providing anti-racism training for staff and bringing in anti-racism commitments as part of a broader approach to equality.
16. The Government is aware that racism is a cross-cutting issue which impacts upon other social policy areas, for example, poverty and gender. The Government's vision for tackling racism is underpinned by the National Anti-Poverty Strategy (NAPS) which provides a coherent framework for actions to tackle exclusion and disadvantage. Among the targets set in NAPS are objectives for members of ethnic minority groups, including ensuring that members of ethnic minority groups resident in Ireland are not more likely to experience poverty than majority group members. This objective is supported by NAPS commitments to tackle barriers to the integration of ethnic minority residents, including tackling intolerance, developing a new immigration legislative framework and providing the resources for an efficient, fair and independent procedure for processing asylum applications.
17. In regard to gender based racism a Gender Equality Unit has been established by the Department of Justice, Equality and Law Reform under the National Development Plan (NDP) to provide advice and support to all bodies working on the NDP to meet the requirement to mainstream gender equality issues. The Unit has produced a fact sheet covering gender issues relating to refugees in Ireland.

18. From the 1990s onwards women have formed approximately one-third of all refugees who apply for asylum in Ireland. There are a number of reasons for this under representation of women as asylum seekers, ranging from lack of financial resources to flee the country of origin, absence of power, lack of passports or family/carer responsibilities. It is also likely that many are not aware that, under the Geneva Convention, the treatment they have experienced may be a basis for protection. In Ireland the approach is to inform all adult dependents of their entitlement to make an individual application. If the male-asylum-seeker wants to make an application for himself and his female dependent, the woman must give consent. In these circumstances, the female is still required to fill in an application form and is also offered the opportunity for a personal interview.
19. Female refugees also face gender specific problems in accessing employment (for example, they are usually channelled toward specific forms of employment) in a similar manner to indigenous Irish women. There are also specific problems in regard to health. However, to date, much of the debate about asylum and racism has failed to focus on the different experiences of women and men. The UNHCR has produced guidelines on the protection of refugee women which are publicised by the NDP Gender Unit. The Unit also highlights publications by Irish Non-Governmental Organisations (NGOs), for example, a publication by the Irish Council of Civil Liberties 'Women and the Refugee Experience: Towards a Statement of Best Practice' and the Irish Refugee Council's (IRC) Guiding Principles on Asylum Seeking and Refugee Women.
20. The Government is also committed to tackling racism in the context of social partnership. In partnership with representatives of the farming sector, the community and voluntary sector, the employers and the trade unions the Government has drawn up a new national agreement entitled 'Sustaining Progress'. The agreement covers the period 2003-2005. Under the agreement ten areas of national policy were prioritised for sustained focus of effort from all of the parties. One of these key areas is Migration and Interculturalism. This includes economic migration and the labour market, integration issues, racism and interculturalism and issues affecting emigrants, implementation of an anti-racism intercultural programme at every level of the education system and expansion of literacy and language training for adult minority linguistic groups as resources become available. The social partners will engage at senior level on this initiative to assess the relevant policies and institutional arrangements already in place and identify initiatives likely to contribute to achieving the outcomes envisaged under Sustaining Progress.
21. Significant work also takes place outside of the arena of social partnership and the Government would like to take this opportunity to acknowledge the role played by Non-Government Organisations (NGOs) as important platforms for enabling the participation of minority ethnic groups. NGOs also make an important contribution to challenging racism within public policy arenas and in initiating programmes and activities that challenge racism and promote interculturalism and the Government also acknowledges the key contribution NGOs made to consultation on this report (See Part III).
22. To tackle the problem at local level the Equality Authority has worked with the City/County Development Boards to support new approaches to incorporating a focus on equality in strategic planning. These approaches are based on the nine grounds covered by the equality legislation. The Equality Authority has mapped the strategy plans of all of Ireland's 34 City/County Development Boards to capture the core elements in the plans in terms of targeting, mainstreaming and building a local equality infrastructure. All 34 plans include commitments to take action to promote equality and non-discrimination, particularly in respect of ethnic minorities. Furthermore, the Local Development Social Inclusion

Programme (LDSIP), managed by Area Development Management Ltd (ADM) and administered through thirty-eight Partnership Companies, thirty-three Community Groups and four Employment Pacts targets refugees and asylum seekers. In 2000 ADM collaborated with the NCCRI to examine how best to promote the social inclusion of refugees and asylum seekers within the LDSIP.

23. The Government is committed to the importance of supporting the vision of an inclusive society at a cultural level, particularly in regard to raising awareness among the general public. A three-year National Anti-Racism Awareness Programme entitled 'Know Racism' was launched in 2001. The initial strategy adopted by the steering group in the first phase of the programme was to engage with community groups and embark on a number of partnership ventures. The first major initiative was to launch two grant schemes to assist community groups (including ethnic minority groups) and non-governmental organisations with anti-racism initiatives. The initiative has been a notable success. Know Racism has also ran a number of high profile anti-racism advertising campaigns and produced a mailshot entitled 'What you can do against Racism' which was sent to every home in the State. A pamphlet tackling public misconceptions concerning refugees and asylum seekers was also produced by Know Racism in conjunction with UNHCR and NCCRI.



*Leaders of political parties and representatives of the NCCRI and Know Racism at the launch of the political protocol, June 2001 (see para. 192)*

24. Collectively, these measures which are covered, together with other initiatives, in more detail in the body of this Report, target racism at international, national, local and community levels through an integrated strategy. The Government is committed to harnessing statutory and administrative measures, social partnership, and public information initiatives to achieve the elimination of racism in Ireland and promote interculturalism. As part of this commitment, the Convention is available on the Department of Foreign Affairs web site. There is also a link from the Department of Justice, Equality and Law Reform website to the UN website. In addition this Report has been placed on the Department of Justice, Equality and Law Reform website and the Committee's concluding observations will also be accessible from the website to promote greater understanding of the Government's commitment to tackling racism. The backbone of this commitment is best expressed in a statement by the Taoiseach (Prime Minister), Bertie Ahern T.D. at the launch of the Government's anti-racism public awareness programme, Know Racism, in October 2001:

*Racism is wrong. Discrimination is wrong. Just as sectarian violence is wrong. They have no place in a Republic that was founded on the ideals of equality and the dignity of every member of our human family. Racism is the exact opposite of the values and welcome and fair play which Ireland is known for, and has always stood for.*<sup>10</sup>

#### A Note on the Text

25. In accordance with CERD/C/70/Rev. 5, Part I of the Report supplements and updates the information contained in Ireland's Core Report. It describes Ireland's land and people, general political structure, general legal framework and relevant information and publicity. Part II provides additional information on Ireland's ethnic characteristics, describes the policy of eliminating racial discrimination, the general legal and administrative framework supporting this policy and outlines the legislative, administrative or other measures which give effect to Articles 2-7 of the Convention.
26. Article 1, paragraph 2, of the Convention states that the definition of discrimination in Article 1, paragraph 1 does not apply to distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens. Article 1, paragraph 3, goes on to say that nothing in the Convention may be interpreted as affecting in any way the legal provisions of State Parties concerning nationality, citizenship or naturalisation, provided that such provisions do not discriminate against any particular nationality. The Committee's General Recommendation XI(42) of 9 March 1993 stated that nonetheless, State Parties are obliged to present a full report on the legislation regarding foreigners. These guidelines have been taken into account in drafting this report.
27. In regard to Appendix 1, it should be noted that some of the bodies representing Travellers claim that members of the Traveller community constitute a distinct ethnic group. The exact basis for this claim is unclear. The Government's view is that Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent or national or ethnic origin. However, the Government of Ireland accepts the right of Travellers to their cultural identity, regardless of whether the Traveller community may be properly described as an ethnic group. In line with this, the Government is committed to applying all the protections afforded to ethnic minorities by the CERD equally to Travellers. As outlined in Ireland's Report under the International Covenant on Civil and Political

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<sup>10</sup> Irish Times. October 25th 2001.

Rights, Travellers in Ireland have the same civil and political rights as other citizens under the Constitution and there is no restriction on any such group to enjoy their own culture, to profess and practice their own religion or to use their own language.

28. The Government is committed to challenging discrimination against Travellers and has defined membership of the Traveller community as a separate ground on which it is unlawful to discriminate under equality legislation. This was not meant to provide a lesser level of protection to Travellers compared to that afforded to members of ethnic minorities. On the contrary, the separate identification of Travellers in equality legislation guarantees that they are explicitly protected. The Government notes that the Durban Declaration and Action Plan recognised the need to develop effective policies and implementation mechanisms for the full achievement of equality for Roma/Gypsies/Sinti/Travellers and has included at Appendix 1 a report on legislative, administrative and other initiatives taken to combat discrimination against members of the Traveller community.
29. The Report was coordinated by the Equal Status Division of the Department of Justice, Equality and Law Reform. All Government Departments which have responsibilities under the Convention contributed material to this report.



# Part I

## General

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### Land and people

30. The island of Ireland is situated in the northwest of the continent of Europe and has a total area of 84,421 square kilometres. The Republic of Ireland consists of 70,282 square kilometres, while Northern Ireland is 14,139 square kilometres. A strong maritime influence and the presence of the Gulf Stream assure an equable moist climate free from extremes of cold and heat. The country is historically divided into four provinces, each roughly equivalent to the four primary points of the compass, i.e. Ulster (North), Munster (South), Connacht (West) and Leinster (East). The current area of application of the laws enacted by the Oireachtas (Irish Parliament) covers 26 of the 32 counties; the remaining northeastern counties form part of the jurisdiction of the United Kingdom of Great Britain and Northern Ireland.
31. Ireland has been inhabited for approximately 9,000 years and its history is marked by successive movements of peoples from continental Europe including the Celts, the Vikings, Normans and English. In 1921, after a War of Independence a treaty was signed with Britain: the Irish Free State (26 counties) gained independence from Britain while Northern Ireland (6 counties) remained in the United Kingdom. The adoption of the Constitution of Ireland in 1937 and the Republic of Ireland Act, 1948, severed Ireland's last formal links with Britain. Ireland remained neutral during the Second World War and does not belong to any military alliance. Ireland became a member of the United Nations in 1955 and joined the European Community in 1973.
32. In April 2002 the population was 3,917,203, with an age structure of *0-14 years*: 21.3% (male 425,366; female 403,268), *15-64 years*: 67.3% (male 1,307,469; female 1,305,038), *65 years and over*: 11.4% (male 191,927; female 250,091) (2002 est.). Population growth currently stands at 1.07% (2002 est.). An examination of the census records trends illustrates similarities to those in other European countries e.g. high life expectancy, low death rate, low infant and maternal mortality. The total fertility rate for Ireland in 1999 was 1.89, below the theoretical population replacement level of 2.1. There were 53,354 births in 1999. This compares with a peak of 74,064 births recorded in 1980. The infant mortality rate is 5.43 deaths/100,000 live births (2002 est.). The maternal mortality rate in 2000 stood at 1.8 per 100,000 births. The total number of private households headed by women currently stands at 338,854 (30.17%).
33. The major centres of population are Dublin (953,000), Cork (180,000), Limerick (79,000), Galway (57,000), Waterford (44,000), and Dundalk (30,000). 60% of the population live in cities and towns of 1,000 people or more. Overall population density is approximately 52 persons per square kilometre with large variations between the east and south, where densities are highest, and the less populous west of the country. Approximately 79% of all homes are owner occupied, a high figure by international standards.

34. Results from the 2002 census reveal that the majority of Irish people belong to Christian religious denominations. Roman Catholics make up 88% of the population whilst 3% belong to various Protestant denominations. There is also a small but well-established Jewish community of about 1,800 persons. In 1991-2002 the small Muslim community has increased by 400% and is now in excess of 19,000. The remainder belonged either to smaller religious groups, or have no specific religious affiliation.
35. Article 8 of the Constitution provides that the Irish language, as the national language, is the first official language, and that the English language is recognised as a second official language. The courts have recognised the rights of litigants to conduct their cases through either language. English is the more widely spoken language throughout the country, although Irish is spoken as the first language in areas known as the Gaeltacht, situated mainly along the western seaboard. However, Irish speakers are also to be found in all parts of the country. In 2002 the census showed an Irish speaking population of 1.57 million or 43% of the population. Although Irish speakers are a minority of the population as a whole, the constitutional position of Irish as the first official language and the continued policy of successive Governments to revive the Irish language ensures that their rights are protected.
36. The latest Quarterly National Household Survey indicated that in the twelve months to the quarter March to May 2002, unemployment rose by 11,900 to a rate of 4.2%. Long-term unemployment remained unchanged at 1.2%. The 2001 Exchequer Surplus was €650 million. The latest Central Statistics Office figures show that the consumer Price Index for August 2002 was 4.5%. The European Central Bank main refinancing operations interest rate currently stands at 3.25% (04.12.02). In 2001 GDP per capita was \$27,300. The Department of Finance estimate of GNP in 2001 was €95,825m. The external debt for 2001 was €36,186m, 37.8% of GNP.

## General Political Structure

### The Constitution of Ireland

37. The basic law of the State is the Constitution of Ireland adopted by referendum in 1937. It is the successor to the 1919 Constitution of Dáil Eireann (the House of Representatives) and of the 1922 Constitution of the Irish Free State. The Constitution states that all legislative, executive and judicial powers of Government are derived from the people. It sets out the form of Government and defines the powers of the President of Ireland, the Parliament (in the Irish language, Oireachtas) and of the Government. It also defines the structure and powers of the courts, sets out fundamental rights of citizens and contains a number of directive principles of social policy for the general guidance of the Oireachtas.
38. The Constitution of Ireland can be amended only following the passage of a bill to amend the Constitution by a simple majority of both Houses of the Oireachtas and the subsequent approval of the proposal by a majority of those voting in a referendum. Accordingly, the process of constitutional amendment is a difficult one and the Constitution has been amended on only 23 occasions since 1941. The Constitution cannot, therefore, be amended by ordinary legislation, and legislation which conflicts with the Constitution is invalid to the extent of such inconsistency. The High Courts are empowered to deal with the issue of constitutionality of law and legislation. Judicial review of ordinary law on grounds of alleged unconstitutionality is dealt with below.
39. On 2 December 1999, the British-Irish Agreement (the international agreement in which the Government pledged itself to give full effect to the Good Friday Agreement) entered into



force, and the amendments to the Constitution, endorsed by the people in the referendums of 22 May 1998, took effect. On the same date, political institutions established under the Agreement - an Assembly and Executive in Northern Ireland, a North/South Ministerial Council, a British-Irish Council and a British-Irish Intergovernmental Conference - came into being. The amendment to the constitution re-formatted articles two and three (dealing with Irish nationality and citizenship rights and the principle of unity by consent). The text is as follows:

#### *Article 2*

*"It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage"*

#### *Article 3*

*"It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island. Until then, the laws enacted by the Parliament established by this constitution shall have the like area and extent of application as the laws enacted by the Parliament that existed immediately before the coming into operation of this Constitution."*

## **Government**

40. Ireland is a sovereign, independent parliamentary democracy. The national Parliament (Oireachtas) consists of the President and two Houses: a House of Representatives (Dáil Eireann) and a Senate (Seanad Eireann). The functions and powers of the President, Dáil and Seanad derive from the Constitution of Ireland and law. All laws passed by the Oireachtas must conform to the Constitution.

41. The President is Head of State; the office does not have executive functions. The President must generally act on the advice and authority of the Government. On the nomination of Dáil Eireann the President appoints the Taoiseach (Prime Minister) and, on the advice of the Taoiseach and with the prior approval of Dáil Eireann, the President appoints members of the Government. Government policy and administration may be examined and criticised in both Houses, but under the Constitution the Government is responsible to the Dáil alone.

### **(a) Dáil Eireann (House of Representatives)**

42. Dáil Eireann has 166 members called Teachtaí Dála (TDs). Members are returned by the 42 constituencies into which the country is at present divided and no constituency may return less than three members. The total number of members of the Dáil may not be fixed at less than one member for each 30,000 of the population or more than one member for each 20,000 of the population.

### **(b) Seanad Eireann (Senate)**

43. Seanad Eireann has 60 members. Eleven are nominated directly to the House by the Taoiseach (Prime Minister). 43 are elected by members of Dáil Eireann, by outgoing

members of the Seanad, by county and borough Council members, from five panels of candidates - the Cultural and Educational Panel, the Agricultural Panel, the Labour Panel, the Industrial and Commercial Panel and the Administrative Panel. Each panel contains the names of persons with knowledge and practical experience of the interests represented by the panel. The remaining six are elected by the graduates of universities - three by the National University of Ireland and three by the University of Dublin.

44. The powers of the Seanad, as defined by the Constitution are, in general, less than those of the Dáil. It has complementary powers with the Dáil in broad areas such as the removal from office of a President or a judge; the declaration and termination of a state of emergency; the initiation of Bills other than Money Bills; and the annulment of statutory instruments. It has no powers in relation to financial matters.

### (c) Parliamentary Committees

45. There is a system of Parliamentary Committees in operation within the Oireachtas. Under standing orders four committees must be appointed, on Selection, on Public Accounts, on Procedure and Privileges and on Consolidation Bills. Other committees may be established by a resolution of the Dáil. To enable them to report and make recommendations to Parliament, they are empowered to request official papers and to hear evidence from individuals. Their findings are not binding. The reports of the Committees are laid before the Oireachtas which decides what action, if any, is necessary. It is a matter for the Oireachtas to decide upon the number and range of Committees which should be established, together with their terms of reference.

### The Electoral System

46. In Ireland, citizens have the opportunity to take part in the political process by casting a vote in five decision-making procedures:
- (a) The election of the President every seven years;
  - (b) Referenda on proposed constitutional amendments;
  - (c) Elections to local authorities, usually every five years;
  - (d) Parliamentary elections, which occur under present legislation at least every five years;
  - (e) Elections to the European Parliament, every five years.
47. The minimum voting age in Ireland is 18 years. The electoral system in elections to the Dáil is proportional representation by means of the single transferable vote in multi-seat constituencies. The single transferable vote is also used for the election of the President, Members of the European Parliament, Local Authorities and 49 of the 60 members of the Seanad. The remaining 11 Senators are nominated by the Taoiseach (Prime Minister).

### The Civil Service

48. The legal basis for the present Irish system of public administration is contained in the Ministers and Secretaries Act of 1924. This Act, and its subsequent amendments, provide a statutory classification of the functions of Government under the various Departments of State. Ministers are responsible for all the actions of their Departments. However, the day-

to-day administration of a Department's functions is overseen by its Secretary General, who is a civil servant. The Public Service Management Act, 1997 gives a new statutory framework for the allocation of authority, responsibility and accountability within and across Government Departments.

49. The Civil Service is independent in the performance of its functions and civil servants are precluded from involvement in party political activity. Recruitment to the Civil Service is by open public competition administered by an independent State commission. The Civil Service comprises a number of grades with different functions. The principal grade categories are: administrative, responsible for policy formulation; technical and scientific, providing specialist advice within the Civil Service; executive, involved in the implementation of policy; and clerical, responsible for general duties. At present there are approximately 27,000 people employed in the Civil Service.

### Local government

50. Local government is administered by 114 local authorities funded partly by State grants and partly by local taxes on non-residential property. Local government has responsibility for public housing, water and sanitation, road maintenance, vocational education and certain other services. Under the Health Act, 1970, statutory responsibility for the administration of health services in Ireland is vested in eight regional Health Boards with each Board having responsibility for the administration of health and personal social services in its functional area, and funded by the Department of Health and Children. Other aspects of administration operate on a regional basis include tourism promotion, industrial development and fishery conservation.

### Policing

51. An Garda Síochána is the police force in Ireland. There are currently about 11,300 Garda whose role is:
  - The prevention of crime.
  - The protection of life and property.
  - The preservation of the peace.
  - The maintenance of public safety.
52. When crimes and offenses occur the Garda investigate them with a view to bringing to justice those responsible. This is achieved through cautioning young offenders for a range of minor offenses, prosecution before the District Court for less serious offenses and reporting the results of investigations to the Director of Public Prosecutions (DPP).
53. Successive studies have shown that there is widespread support and confidence in the Gardaí in Ireland.

## GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

### A. The Irish State - legal system

54. Irish law is based on common law as modified by subsequent legislation and by the Constitution of 1937. Statutes passed by the British Parliament before 1921 have the force of law unless repealed by the Irish Parliament (Oireachtas). In accordance with the Constitution, justice is administered in public in courts established by law.

### The Constitution of Ireland

55. A large number of rights are specifically provided for in the Constitution of Ireland. They are principally, although not exclusively, to be found in the chapter headed "Fundamental Rights" which comprises articles 40-44. These include the following rights:

- (a) Equality before the law (art. 40.1);
- (b) The right to life (art. 40.3.2 and 3);
- (c) The right to protection of one's person (art. 40.3.2);
- (d) The right to one's good name (art. 40.3.2);
- (e) Property rights, including the right to own, transfer, bequeath and inherit property (art. 40.3.2 in conjunction with art. 43);
- (f) Personal liberty (art. 40.4);
- (g) The inviolability of the dwelling (art. 40.5);
- (h) Freedom of expression (art. 40.6.1 (i));
- (i) Freedom of assembly (art. 40.6.1 (ii));
- (j) Freedom of association (art. 40.6.1 (iii));
- (k) Family rights (art. 41);
- (l) The right of parents to provide for children's education (art. 42.1);
- (m) The right of children to receive a certain minimum education (art. 42);
- (n) Freedom of conscience and the free profession and practice of religion (art. 44);
- (o) The right to vote (arts. 12.2.2, 16.1 and 47.3);
- (p) The right to seek election (arts. 12.4.1 and 16.1);
- (q) The right to have votes treated as being of equal weight (art. 16);
- (r) The right to have justice administered in public by judges who are independent (arts. 34 and 35);
- (s) The right to criminal trial in course of law (art. 38.1);
- (t) The right to trial by jury (art. 38.5);
- (u) The right not to have one's acts retrospectively declared to be unlawful (art. 15.5).

56. In addition to the specified rights referred to above, the Irish courts have identified a number of rights which, although not expressly referred to in the Constitution are nonetheless protected by it. The origin of this doctrine lies in article 40.3.1 and 2 of the Constitution.
57. It should be noted that few, if any, of these rights are unlimited or absolute. In many cases they are qualified in the text of the Constitution itself. For example, the right of assembly in article 40.6.1 is qualified in the sense that the right is subject to public order and morality, applies only to peaceable assembly without arms, and that provision may be made by law to prevent or control meetings calculated to cause a breach of the peace or to be a danger or a nuisance to the general public, and to prevent or control meetings in the vicinity of the Oireachtas (Parliament).
58. Furthermore, a conflict may arise between the exercise of two constitutional rights, or between a power or duty of the State and a constitutional right, and in such cases the courts have to weigh the relative importance of such rights, powers and duties. An example was the case of *Murray v. Ireland* (unreported, Supreme Court, 14 February, 1991), where a married couple serving a sentence of life imprisonment for the murder of a policeman alleged that their imprisonment infringed their right to procreate. The Supreme Court held that while they had such a right, "the right claimed, like many other rights, is not an unqualified one; it is placed in suspense if and when one or both of the spouses is imprisoned and thereby deprived of personal liberty in accordance with law" (per McCarthy J.).

## Legislation

59. Following commitments under the Good Friday Agreement, on 7 May 1999 in May 2000, the Human Rights Commission Act, providing for an independent Human Rights Commission (which, in keeping with its mandate under the Agreement and with the Paris Principles, works towards the promotion, protection and development of human rights, including in a Joint Committee with the Northern Ireland Human Rights Commission) was signed into law. On 25 July 2001, the Minister for Justice, Equality and Law Reform signed an Order formally establishing the Commission. On 8 November 2001, the first meeting of the Joint Committee, with the Northern Ireland Human Rights Commission, took place. The Human Rights Commission is currently recruiting staff.
60. Legislation has recently been enacted which gives effect to the provisions of the European Convention on Human Rights in Irish law.
61. Ireland now has in place a broad based anti-discrimination regime in the area of (1) employment and (2) the provision of goods and services whether by the private or public sector including provision of education and accommodation and in the employment area. The Employment Equality Act and the Equal Status Act guarantee those seeking access to employment, those participating in vocational training, and those seeking goods and services, protection from discrimination in relation to many of the categories covered by and some categories beyond, the provisions of the Covenant. The nine grounds are gender, marital status, family status, sexual orientation, religion, age, disability, race, and membership of the Traveller community. Both Acts also outlaw victimisation i.e. discriminating against an individual because they are taking a case or giving evidence under the equality legislation.
62. The Refugee Act, which, inter alia, gives effect in Irish law to commitments under the

Geneva Convention, is now fully commenced since 20th November 2000. The independent offices of the Refugee Applications Commissioner and the Refugee Appeals Tribunal have been established, as has an independent Refugee Legal Service to provide legal advice to asylum seekers at all stages of the asylum process.

## The Court System

63. The courts in Ireland are structured on four levels, the District Court, the Circuit Court, the High Court and the Supreme Court. There is also a Court of Criminal Appeal. The District and Circuit Courts are courts of local and limited jurisdiction established by statute law. The High Court is, by virtue of article 34.3.1 of the Constitution of Ireland, invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal. The Supreme Court is the court of final appeal and is established pursuant to articles 34.2 and 34.4.1 of the Constitution. A more detailed description of their workings and jurisdiction is as follows:

### (a) The District Court

64. Ireland is divided into 24 districts each of which has its own District Court which sits in different venues in the district. The Court has jurisdiction in civil claims up to a value of €6,350. It can deal summarily with minor criminal offenses. It cannot impose a penalty of more than 12 months' imprisonment for any one offence, or consecutive sentences totalling more than two years, and the maximum fine that can be imposed for the offenses triable in the District Court generally does not exceed €1,905. An appeal by way of rehearing lies in all cases to the Circuit Court. The District Court can, and in certain cases must, seek an opinion from the High Court on points of law which arise in the course of hearings. This is known as "stating a case". The High Court will rule on the point of law and remit the case to the District Court to decide based on that ruling. The District Court also has an extensive licensing jurisdiction.

### (b) The Circuit Court

65. Ireland is divided into eight areas, in each of which the Circuit Court sits in a number of different venues. The Court has the appellate jurisdiction already described. When an appeal is heard the Circuit Court Judge sits without a jury. Its decision on appeals from the District Court is final. The Circuit Court has an original jurisdiction in civil matters up to a maximum claim of €38,100. It also sits with a jury to try all indictable crime except trials for treason, murder, manslaughter, rape and certain other serious sexual offenses. An appeal by way of rehearing lies in civil cases to the High Court. An appeal in criminal cases lies to the Court of Criminal Appeal. The Circuit Court may also "state a case" to the Supreme Court.

### (c) The High Court

66. It has the appellate functions from the Circuit Court and (by way of case stated) from the District Court already described. Its decisions on appeal are final. The High Court has, as already stated, a full original jurisdiction in all civil and criminal matters. When the High Court sits with a jury to try crimes it is known as the Central Criminal Court. Treason, murder, manslaughter, rape and certain other serious sexual offenses must be tried there. An appeal lies from the High Court in civil matters to the Supreme Court and in criminal cases to the Court of Criminal Appeal. The High Court is the only court with original jurisdiction to deal with a claim that a law enacted after 1937 is invalid having regard to

the provisions of the Constitution.

(d) **The Court of Criminal Appeal**

67. This consists of three judges of the Supreme and High Courts. It can hear appeals from all cases of indictable crime dealt with in the Circuit and Central Criminal Courts. It does so on the basis of a transcript from the lower court. It can vary the sentence of the lower court, and set aside a verdict and, if necessary, order a retrial. An appeal lies from its decisions to the Supreme Court where it or the Attorney-General certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that such an appeal should be taken (The Courts of Justice Act, 1924, sect. 29).

(e) **The Supreme Court**

68. It has the appellate jurisdictions already described. It has no original jurisdiction except in cases where, pursuant to article 26 of the Constitution, a bill is referred to it by the President prior to signing it for a decision on its constitutionality.

(f) **Special Criminal Courts**

69. In addition to the structure of courts described in the preceding paragraphs, provision for the establishment of special criminal courts is made in article 38.3.1 of the Constitution which states that "Special Courts may be established by law for the trial of offenses in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order." Accordingly, Part V of the Offenses Against the State Act, 1939 authorises the establishment of special criminal courts following a proclamation by the Government, in the terms required by the Constitution, "that the ordinary courts are inadequate to secure the administration of justice and the preservation of public peace and order" and ordering that Part V of the Act is to be in force. Arising out of the crisis in Northern Ireland and the incidence of violent terrorism, a proclamation was made on 26 May 1972 authorising the establishment of a special criminal court. The Special Criminal Court is empowered to try charges where it is considered that the ordinary criminal courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. The Court established in 1972 has always sat as a court of three serving judges, one from each of the High, Circuit and District Courts, sitting without a jury. The Court can act by majority decision but only one decision is pronounced. There is a right of appeal to the Court of Criminal Appeal. In May 2002 a report was published by the Committee to Review the Offenses Against the State Act 1939-1998 and Related Matters. This report is currently being considered by the Department of Justice, Equality and Law Reform.

**The Judiciary**

70. The judges in Ireland are independent both of the executive and the legislature and this independence is given full protection by the Constitution. Judges are appointed by the President on the advice of the Government, which makes its decisions with reference to recommendations from the Judicial Appointments Commission Advisory Board. Article 35.2 provides that all judges shall be independent in the exercise of their functions and subject only to the Constitution and the law. They may not be members of the Oireachtas (Parliament) or hold any other office or position of emolument (art. 35.3). They may not be removed from office except for stated misbehaviour or incapacity and then only upon



resolutions passed by both Houses of the Oireachtas calling for their removal (art. 35.4). This power has yet to be exercised. Their remuneration may not be reduced during their continuation in office (art. 35.5).

71. Judges of the Supreme, High and Circuit Courts retire at the age of 70 except for judges of the Supreme and High Courts who were serving on or before 15 December 1995, who retire at age 72. Judges of the District Court retire at the age of 65, subject to a power to extend their terms of office to age 70 conferred on a committee consisting of the Chief Justice, the President of the High Court and the Attorney-General. With the exception of the power of the Oireachtas to remove a judge, questions of discipline in relation to judges are regulated by the judiciary itself.

### *Remedies for Infringement of Rights*

## **Judicial Review**

72. Judicial review is a remedy which lies against persons or bodies exercising public functions (including the lower courts) to restrain them from acting contrary to law or to compel them to act in accordance with law. It comprehends the old common law remedies of certiorari, mandamus and prohibition. The modern system of judicial review is an expeditious means by which an order may be sought to set aside a decision or action of such a body, or to compel it to act or prevent it from acting contrary to law.
73. As has already been explained, the setting aside on constitutional grounds of legislation, or subordinate legislation, or acts of the executive, may be done on an application for judicial review. The action for judicial review is not, however, confined to cases where constitutional irregularity is involved. While an Act of the Oireachtas (Parliament) may be found invalid only for constitutional irregularity, subordinate legislation may also be set aside where the powers conferred by the enabling legislation are exceeded, i.e. on the grounds that the subordinate legislation is ultra vires the enabling Act. In the case of other Acts or decisions by the executive or administration, they may also be challenged on grounds of unlawfulness, procedural irregularity, breach of the rules of natural justice or irrationality.
74. The following remedies exist in Irish law for breaches of human rights protected by the Constitution of Ireland:
  - (a) Judicial review of legislation, or proposed legislation, for constitutional infirmity, where the legislation is, or would involve, the breach of a constitutionally protected right;
  - (b) Judicial review of delegated legislation for constitutional infirmity or incompatibility with the statutory provision which authorises the delegated legislation;
  - (c) Judicial review of administrative action for constitutional infirmity or other non-compliance with law, including a failure to observe the rules of natural justice.

### **(a) Judicial review of legislation and legislative proposals**

75. There are two separate and distinct procedures by which the validity of legislation can be tested in the courts. The first relates to proposed legislation and the second to the review of existing legislation.



76. Article 26 of the Constitution provides for the case of proposed legislation. Following the passage of a bill through both Houses of the Oireachtas (Parliament) it becomes law on being signed by the President within the time provided for in the Constitution. However, under the article 26 procedure the President may, following consultation with the Council of State, in lieu of signing a bill, refer it to the Supreme Court for a decision on the question whether it or any specified provision or provisions of it are repugnant to the Constitution. The reference must be made no later than seven days after presentation of the bill to the President for his or her signature and the Supreme Court, consisting of not less than five judges, and having heard arguments by or on behalf of the Attorney-General and counsel assigned by the Court, must pronounce its decision within 60 days. If any provision of the bill is found to be repugnant the bill does not become law. Where a provision in a bill has been referred to the Supreme Court under the article 26 procedure and not found to be repugnant to the Constitution, no court may subsequently question the constitutional validity of that provision. The article 26 procedure has been used on seven occasions since the Constitution came into force in 1937.
77. The power to review existing legislation is much more frequently used and derives from two sources. In the case of legislation dating before 1937, when the Constitution came into force, article 50.1 of the Constitution provides as follows:
- "Subject to the Constitution and to the extent to which they are not inconsistent therewith, the laws in force in Saorstát Éireann [the Irish Free State] immediately prior to the date of the coming into operation of this Constitution shall continue to be of full force and effect..."*.
78. The Courts are, therefore, empowered to declare that pre-1937 legislation which is inconsistent with the Constitution was not carried forward by article 50 and has ceased to have force or effect.
79. In the case of laws passed after 1937, the power of review derives from article 15.4 of the Constitution which provides as follows:
- "1. The Oireachtas shall not enact any law which is in any respect repugnant to this Constitution or any provision thereof."*
- "2. Every law enacted by the Oireachtas which is in any respect repugnant to this Constitution or to any provision thereof, shall, but to the extent only of such repugnancy, be invalid."*
80. In the case, therefore, of post-1937 legislation the courts can declare that a law is invalid having regard to the provisions of the Constitution.
81. Article 34.3.2 of the Constitution confers the High Court with jurisdiction to deal with the question of validity of laws having regard to the provisions of the Constitution, and prohibits the raising of such questions in any court other than the High or Supreme Court (which is a purely appellate court except in the case of the article 26 procedure). In this regard, the Supreme Court has interpreted the reference to "validity of any law" in article 34.3.2 of the Constitution to refer only to laws passed since 1937 (*The State (Sheerin) v. Kennedy* [1966] I.R. 379). In the case of pre-1937 legislation, the High Court has an undoubted power to declare that the law was not carried forward after 1937 as being inconsistent with the Constitution. It may be that in theory the Circuit and District Courts could also make such a finding in an appropriate case, but in practice such questions are always referred to the High Court.

82. The effect of a finding of inconsistency of a pre-1937 law with the Constitution is that it ceased to have effect in 1937 when the Constitution came into effect. In the case of post-1937 laws a finding of invalidity operates *ex tunc* rather than *ex nunc* - the invalid law is deemed never to have been a law, not merely to be invalid from the date of the Court's judgement. The Irish courts do not operate a system of prospective overruling, such as exists in some other jurisdictions (*Murphy v. Attorney-General* [1982] I.R. 241). However, in some cases where parties have operated on the bona fide assumption that a law was valid it may be inequitable to disturb arrangements made on foot of that assumption (*Murphy v. Attorney-General*). In that case, which condemned part of an income tax law which treated married couples less favourably than two single persons in similar circumstances on the grounds that the law contravened the constitutional obligation to guard with special care the institution of marriage and to protect it against attack, persons who had not themselves instituted proceedings were not permitted to recover taxes paid on foot of the invalid law before the date of judgement.
83. The courts in Ireland permit a considerable degree of flexibility as to the procedures by which the constitutionality of a law, or of conduct, can be challenged. Because Ireland has no constitutional court as such, and constitutional questions are dealt with in the ordinary courts, these issues may be raised and resolved in the course of different types of proceedings. In *The State (Lynch) v. Cooney* [1982] I.R. 337 the prosecutor used the very speedy remedy of certiorari (which is an order overruling the decision of an inferior court or tribunal or body exercising public function) to challenge the enabling legislation under which the Minister for Posts and Telegraphs had made an order banning an election broadcast on behalf of Sinn Féin. While the Supreme Court upheld the legislation and the Minister's action, they held that the prosecutor was entitled to use the remedy of certiorari. O'Higgins C.J. (at p. 363) stated that "while it might be preferable to have questions concerning the constitutionality of legislation dealt with by declaratory action in which the High Court, and this Court on appeal, could have the benefit of pleadings and, where necessary, submissions, I can see no real objection to the course adopted by prosecutor". Questions concerning the constitutionality of legislation can also be raised by way of habeas corpus proceedings if the constitutionality of a law under which a prisoner is detained is in question (*The State (Burke) v. Lennon* [1940] I.R. 136), or by way of prohibition to challenge a law under which an inferior court, tribunal or body exercising public functions proposes to act (*The State (Grahame) v. Racing Board*) unreported, Supreme Court, 29 May 1981), or by way of injunction to restrain conduct authorised by an allegedly unconstitutional law (*O'Boyle and Rodgers v. Attorney-General* [1929] I.R. 558).
84. Finally, questions of constitutionality of a law may arise in the context of civil proceedings. An example is *Moynehan v. Greensmith* [1977] where a plaintiff who brought an action for negligence in a motor accident case was met by a defence that the claim was statute-barred by a limitation period imposed by the Civil Liability Act, 1961. In reply, the plaintiff contested the constitutionality of the applicable provision.
85. An exception to the power to review legislation is provided for by article 28.3.3 of the Constitution which reads as follows:

*"Nothing in this Constitution shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law. In this subsection 'time of war' includes a time when there is taking place an armed conflict*

*in which the State is not a participant but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State and 'time of war or armed rebellion' includes such time after the termination of any war, or of any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist."*

86. On 1 September 1976, both Houses of the Oireachtas passed resolutions that "arising out of the armed conflict now taking place in Northern Ireland, a national emergency exists affecting the vital interests of the State". The resolutions were passed following the murder in Dublin of the British Ambassador and a Northern Ireland civil servant, and explosions at the Special Criminal Court in Dublin. On foot of this resolution, the only Act which was enacted by the Oireachtas and expressed to be for the purpose of securing the safety of the State was the Emergency Powers Act, 1976. That Act provided for the arrest and detention of persons for up to seven days. The operative part of the Act remains in force for only 12 months at a time, and may be renewed by Government order for periods not exceeding 12 months. The operative part of the Act is not at present in force, having last expired on 15 October 1977.
87. Notwithstanding the exclusion of judicial review by article 28.3.3, on 24 September 1976 the then President referred the bill to the Supreme Court under article 26. The Supreme Court held (In re Article 26 and the Emergency Powers Bill, 1976 [1977] I.R. 159) that the President was entitled to do so, but that once the Court had established that the procedural requirements of article 28.3.3 had been satisfied, that provision operated to prevent any part of the Constitution being invoked to invalidate the bill. The Court expressly reserved for future consideration the question whether it had jurisdiction to review resolutions of the Oireachtas. Finally, the Court held that article 28.3.3 had effect only to prevent a person challenging the constitutionality of the legislation in question, but in all other respects he remained free to invoke his constitutional rights - for example, to rely on the provisions of the Constitution for the purpose of construing the legislation (which must be strictly construed) and of testing the legality of what was done in purported reliance on the legislation.

#### **(b) Judicial review of delegated legislation**

88. There is no doubt that orders, regulations, by-laws and other forms of subordinate rule-making by the Government, Ministers or other public bodies can be found to be invalid on constitutional grounds. An example was *The State (Gilliland) v. Governor of Mountjoy Prison* [1987] I.R. 201 where the government order applying Part II of the Extradition Act, 1965, to the United States of America pursuant to a treaty between Ireland and the United States was found invalid because the provisions prescribed by article 29 of the Constitution had not been followed. There is some doubt whether only the High Court and the Supreme Court may consider such a question or whether any court may do so.
89. It should be emphasised that the power to review laws on grounds of unconstitutionality is not an academic one. The general view of academic commentators is that the superior courts of Ireland have been, at least since the mid-1960s, activist courts by the standards of most countries which have a system of judicial review of legislation. While there has been no comprehensive study of the numbers of cases in which there have been challenges to legislation, in a recent lecture (published as "The Constitution, Fifty Years On", Round Hall Press, Dublin, 1988) the Chief Justice of Ireland, Mr. Justice Thomas A. Finlay, stated as follows:

*"It is a matter, I think, of some interest as well as of some significance that consideration of the major cases in which since 1937 challenges have been made to statutes enacted prior to the enactment of the Constitution would indicate that a very high proportion of them have been successful on the grounds of inconsistency with the provisions of the Constitution. Out of 13 major cases I calculate that 10 succeeded and 3, only, failed. This can be compared with the experience over the same period of challenges made in the Courts to the Constitutional validity of statutes enacted by the Oireachtas after 1937. Again, on a calculation of the major cases to be found in the Reports, it appears to me that challenges were made in approximately 55 cases of which only 19 were successful and 36 failed."*

90. The Chief Justice went on to state that on his calculations, between 1937 and 1970 there had been only 13 major challenges to post-1937 statutory enactments, whereas between 1971 and 1987 there have been a further 45.

### **(c) Judicial review of administrative or executive action**

91. Any act, measure or decision of the executive may be challenged on the grounds that an individual's constitutional rights have been infringed. Furthermore, such an issue may be raised in any court in the land. Speaking extra judicially, Chief Justice Finlay, in the course of the lecture referred to in the preceding paragraph, said:

*"A major feature of the Constitution which from a practical point of view, I believe, has greatly contributed to its immediacy and effectiveness is the fact that with the exception of a challenge on the grounds of invalidity having regard to the provisions of the Constitution made to a statute passed by the Oireachtas, any Constitutional right can be asserted and, if established, made effective in any Court in the land. There are, as most of you will know, many systems of law deriving from written Constitutions which reserve exclusively to one Constitutional Court all questions of Constitutional law or the interpretation of the Constitution. Such a system has, I think, a clogging effect on the immediacy of the assertion and protection of Constitutional rights. Under our Constitution, on the other hand, as my colleagues will all have had the experience, in every type of Court, a person, for example, charged with a criminal offence who asserts an invasion of his Constitutional rights, leading to the inadmissibility of evidence tendered against him, can have that issue decided in the Court in which he is being tried. Furthermore, the immediate effect of the Constitution is not even confined to the Courts established under the Constitution but is applicable to all forms of subsidiary or administrative tribunals who must, in the course of their activities, act in a Constitutional manner, observing fair procedure."*

92. Such issues may be raised in a variety of different ways. For example, in a criminal trial, a defendant may seek to exclude evidence obtained in breach of constitutional right, as in *The People (Attorney-General) v. O'Brien* [1965] I.R. 142 where the defendant sought to exclude evidence obtained on an allegedly invalid search warrant on the grounds that the evidence was obtained in violation of the constitutionality protected inviolability of the dwelling. Or a decision may be challenged as having been arrived at in breach of the constitutional obligation to apply fair procedures. In a number of cases the Irish courts have identified "basic fairness of procedures" as a constitutional imperative which comprehends not merely the so-called "rules of natural justice" identified by the common law *nemo iudex in sua causa sit* and *audi alteram partem* but also, in appropriate cases, the obligation to give decisions with promptitude, to give reasons, to allow an oral hearing or to allow legal representation.

## 2. Injunctions

93. While an action for judicial review does not lie against a private individual or body, where a constitutional right is threatened by such a private person an action for an injunction to restrain the unconstitutional behaviour will lie (*Murtagh Properties Ltd. v. Cleary* [1972] I.R. 330, *S.P.U.C. v. Coogan* [1989] I.R. 734). Furthermore, such an action may be brought by a person or a body corporate that has a bona fide concern and interest. The right to maintain such an action is not reserved to the Attorney-General. Injunctions may also be brought against private individuals to restrain other forms of unlawful behaviour which are an interference with their civil and political rights, for example, to restrain interference with property rights or to restrain an attack on a person's good name by the publication of a libel.

## 3. Action for damages

94. An action for damages lies for breach of constitutional right (for example, *Kennedy v. Ireland* [1987] I.R. 587, *Kearney v. Minister for Justice*, [1986] I.R. 116, *Meskeil v. C.I.E.* [1973] I.R. 121). It appears that an action for damages can lie against a private individual as well as the State or a State authority.
95. An action for damages will also lie, in appropriate cases, for interference with a statutory right. For example, in *Cosgrove v. Ireland* [1982] I.L.R.M. 48, in a case where a passport was issued to children on their mother's application and despite the father's objection made known to the Department of Foreign Affairs, the father succeeded in an action for damages for breach of his statutory rights as guardian of the children.
96. It should also be noted that in many circumstances tort law still has a role in the vindication of rights. For example, if the right to inviolability of the dwelling is infringed, an action for trespass will lie. If the right to bodily integrity, or not to be tortured, is infringed, an action for assault may be brought. The law of defamation will protect the right to one's good name. Various torts are of relevance in protecting rights to privacy, in particular the tort of nuisance. Finally, there are actions for breach of statutory duty or misfeasance in public office. The emphasis placed in this report on the vindication of constitutional right should not obscure the continued importance of common law and statutory rights and remedies in the vindication of personal rights.

## B. *International human rights law in the Irish legal framework*

97. Article 29.3 of the Constitution states that "Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States". Like other common law countries, Ireland has a "dualist" system under which international agreements to which Ireland becomes a party are not automatically incorporated into domestic law. Article 29.6 of the Constitution of Ireland provides that "No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas". This provision has been interpreted as precluding the Irish courts from giving effect to an international agreement, such as the European Convention on Human Rights, if it is contrary to domestic law or grants rights or imposes obligations additional to those of domestic law.
98. Where Ireland wishes to adhere to an international agreement it must, therefore, ensure that its domestic law is in conformity with the agreement in question. In some cases the entire contents of an international agreement are transposed into domestic law by providing that the agreement shall have the force of law within the State. An example is the Diplomatic



Relations and Immunities Act 1967, which provides that the provisions of the Vienna Conventions on Diplomatic Relations and on Consular Relations have the force of law in Ireland. In other cases it is necessary to transpose only certain provisions of an agreement because other provisions are either already incorporated in domestic law or are of a nature not requiring incorporation. Sometimes it may be that for the same reason no transposition provisions at all are required. The Report of the Constitution Review Group when considering the dualist system found at page 120, *inter alia*, that it “gives the Government valuable flexibility as to the most appropriate way to implement an international agreement, not excluding making it part of domestic law”.

99. The principles of dualism apply equally to Human Rights agreements such as the International Covenants and United Nations Conventions as well as the European Convention on Human Rights and Fundamental Freedoms. Here, however, further considerations arise which make direct incorporation of such agreements into domestic law difficult to achieve. The provisions of the Covenant are, for the most part, of a type which one would expect to find already covered by the Human Rights provisions of a Constitution or a Bill of Rights, and such similar provisions are indeed contained in the Constitution of Ireland. Furthermore, as outlined in the above, the list of fundamental rights expressly protected by the Irish constitution has been strengthened by the development of the doctrine of unenumerated personal rights. Over the last thirty years the Courts have recognised as many as twenty unenumerated personal rights, including the right to found a family, the right to travel and the right to have access to the courts. Thus, it would generally be inappropriate to make provision for fundamental rights by way of ordinary legislation which would be inferior and subject to existing constitutional provisions. It has also been argued that such a two-tiered approach would be ineffective. Either the provision in ordinary law differs from the fundamental norm, in which case it is ineffective to the extent that it differs, or it is the same, in which case it is superfluous.
100. Direct incorporation could, therefore, only be achieved by way of constitutional amendment. There are a number of reasons why this course has not been taken. Firstly, where existing constitutional guarantees already cover a particular area, it would be inappropriate to amend a Constitution to insert a second parallel provision, and would be likely to prove either redundant or a source of potential confusion and even conflict. Such an amendment would also involve jettisoning sixty years of well-established and sophisticated jurisprudence built up around the existing Constitutional provisions, addressing both the specified and unspecified rights protected thereunder. In this regard, a leading commentary on constitutional issues has stated, “the overall impact of the courts on modern Irish life, in their handling of constitutional issues, has been beneficial, rational, progressive and fair”<sup>11</sup>. Furthermore, the process of amending the Constitution is a difficult one and would be particularly difficult to justify where no substantive change in the law was being sought. Finally, while it might appear that to have constitutional provisions in the precise terminology of the Covenant would be legally advantageous, the risk would remain that the domestic tribunal would interpret a domestic provision, identical to one in the Covenant, in a different way to that of the Human Rights Committee. Taking all of these considerations into account, and given the advanced system of judicial review of legislation in Ireland, the solution of direct incorporation of the Covenant into Irish law has not, therefore, been adopted. It is considered preferable in the Irish context to build on and improve the existing fundamental rights provisions of the Constitution. The Constitution

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<sup>11</sup> Kelly, J., *The Irish Constitution*, Dublin 1994 at xcii

Review Group in its report carried out a detailed analysis of the fundamental rights provisions of the Constitution in light, inter alia, of Ireland's international human rights instruments. Their findings are currently being considered by the Government.

101. It follows then from the "dualist" nature of Ireland's legal system that the provisions of the Covenant cannot be invoked before and directly enforced by the Courts, and that it is necessary to examine the extent to which Irish law itself correctly reflects the obligations of the Covenant. Ireland, in acceding to the Covenant, has undertaken a continuing obligation to examine and improve where possible the provisions of domestic law in the light of the standards laid down in the Covenant.

## INFORMATION AND PUBLICITY

102. The Universal Declaration of Human Rights has been printed in both national languages and has been widely distributed. At the time of ratification, the International Convention on the Elimination of All Forms of Racial Discrimination was distributed to government Departments. Copies have also been made available to the general public and circulated to members of Dáil Eireann. The National Consultative Committee on Racism and Interculturalism (NCCRI), the Equality Authority and the Human Rights Commission held an information seminar on the Convention in March 2002, to provide an accessible guide to the key elements of the Convention and the process of compliance under the terms of the Convention. The potential role of non- governmental bodies in respect of this process was also addressed at the seminar.



*Joe McDonagh (Know Racism), Susan Glennon (Dublin City Development Board) and Dr Katherine Chan Mullan (Irish Chinese Information Centre) at the launch of the Chinatown Festival, 2003.*

## Part II

# Information on the Implementation of Articles of the Convention

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## MEASURES TO COMBAT RACIAL DISCRIMINATION

103. Human rights and equality issues are an explicit priority in the Government's overall strategy. In particular, anti-discrimination policy is administered by the Minister for Justice, Equality and Law Reform through the Department of Justice, Equality and Law Reform. The Minister, of full cabinet rank, has responsibility for justice matters, including immigration, and for putting equality into action through institutional, administrative and legal reform.
104. Before turning to each of the Articles, an overview of the measures taken to combat racism can be summarised under eight headings.

### 1. Establishment of National Bodies

#### (i) Human Rights Commission

105. The Human Rights Commission, as provided for in the Good Friday Agreement, was formally established in July 2001 with former Supreme Court Judge, Dónal Barrington as its President. In August 2002, Dr Maurice Manning succeeded Mr Barrington as President of the Commission. Dr. Alpha Connelly was appointed Chief Executive Officer of the Commission in June 2002. The Commission is a powerful new independent body charged with the task of keeping under review the adequacy and effectiveness of Ireland's laws in relation to the protection of human rights in their widest sense. Its role is to ensure that human rights in Ireland are fully implemented in law, policy and practice, across a broad spectrum of functions. The Commission is responsible for receiving complaints, and for monitoring and recording the state of respect for human rights in Ireland. It is within the competence of this body to commission surveys on discrimination and to hold inquiries.
106. The Commission, in keeping with its mandate under the Good Friday Agreement and in line with the UN Paris Principles, works towards the promotion, protection and development of human rights. Since its establishment, the Commission has prepared and published views and submissions on important matters concerning rights. Most importantly it has established a Joint Committee of Representatives with its counterpart in Northern Ireland, as provided for in the Agreement and in legislation. Two sub-committees of the Joint Committee have been established. One sub-committee is working on the Charter of Rights. The second sub-committee is addressing the issue of Racism on the island of Ireland and both committees have met on several occasions.

#### (ii) Equality Authority

107. The Equality Authority was established in October, 1999. The functions included in the



mandate of the Equality Authority, under the Employment Equality Act, 1998 and the Equal Status Act, 2000 include:

- to work towards the elimination of conduct prohibited under the equality legislation (i.e. discrimination and harassment on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community);
- to promote equality of opportunity in relation to the matters covered under the Employment Equality Act and the Equal Status Act;
- to provide information to the public on the workings of the two equality Acts.

### (iii) Director of Equality Investigations

108. The Office of the Director of Equality Investigations (ODEI - *the Equality Tribunal*) was established in October 1999. It provides redress for victims of discrimination on any of the grounds in the Equality Legislation in employment and in the area of provision of goods and services. Anyone who feels that they have been discriminated against may lodge a complaint to the Director. The findings of the Director in each case are published. Dismissal cases are investigated and mediated on by the Labour Court<sup>12</sup>. Under the Equal Status Act, discriminating clubs are referred to the District Court.

### (iv) Garda Racial and Intercultural Office

109. The national police service, An Garda Síochána, have learned from the experience of other countries and have also taken a number of initiatives on policing in an intercultural society. The Garda are committed to the protection of human rights and the dignity of all persons.

110. The Garda Commissioner announced the establishment of the Garda Racial and Intercultural Office at an EU funded conference on Multicultural Policing in April 2000. The Garda Commissioner outlined the functions of staff at the office to include responsibility for coordinating, monitoring and advising on all aspects of policing in the area of ethnic and cultural diversity.

111. In March 2002 there were 145 Garda Ethnic Liaison Officers appointed in Garda Districts and Divisions throughout the country. The Garda Liaison Officer will link with Community leaders of ethnic minority groups in the area. They are also available to act as contact persons for people from ethnic communities.

112. The Garda Síochána has developed a working definition of a “racial incident”, which is based on the definition advocated by Sir William MacPherson’s Report (1999) into the killing by a white gang of black teenager, Stephen Lawrence in London in 1993. The Garda definition is ‘any incident which is perceived to be racially motivated by:

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<sup>12</sup> The Labour Court is not a court of law. It operates as an Industrial Relations Tribunal and provides a free, comprehensive service for the resolution of disputes about industrial relations, employment equality, organisation of working time and national minimum wage matters.

- the victim
- a member of An Garda Síochána
- a person who was present and witnessed the incident
- a person acting on behalf of the victim'.

113. The Garda Racial and Intercultural Office have raised awareness of diversity issues in a number of ways, for example:

- Publication of posters using the "Challenge It" theme illustrating diversity through pictures. In addition the poster is an example of organisational support for anti-racism in the workplace and is signed by the Garda Commissioner and each of the Garda Representative Associations;
- A "Challenge It" video which is an anti-racism training tool;
- A recently published booklet that provides information for Gardaí on the various religions, cultures and nationalities living in Ireland. The publication of the booklets was funded through the EU Innovation Prize. A further booklet for immigrants to Ireland will be available in the near future;
- The Garda Victims Charter provides for victims of crime to receive standards of service, including free translations services for those unable to communicate fluently in Irish or English;
- As part of the Council of Europe human rights and policing initiative, the Gardaí have also established a working group to develop policy and practice on human rights and policing issues;
- Training on Human Rights and anti-racism awareness is delivered to Promotion courses for Sergeants and Inspectors by the Human Rights Office staff, Garda College and the Garda Racial and Intercultural Office;
- In-Service training is provided at Divisional level to operational Gardaí.

114. In addition, the Garda Racial and Intercultural Office are partners in an EU funded project. The objective of the project is to design and develop a training course for all police including police commanders.

#### (v) The National Consultative Committee on Racism and Interculturalism

115. The National Consultative Committee on Racism and Interculturalism is an independent expert body that seeks to promote meaningful dialogue between the statutory and the non-governmental sectors on issues related to racism. It sponsors a partnership approach to anti-racism and intercultural initiatives and receives much of its core funding from the Government. In 2002 the NCCRI was formally constituted as a company limited by guarantee. The overall role of the NCCRI is:

- To act as an expert body to develop an integrated and strategic approach to racism, and its prevention, and to foster interculturalism within Ireland;
- To inform policy development and seek to build consensus through dialogue in relation to the issues of racism and interculturalism;
- To promote the understanding and celebration of cultural diversity within Ireland; and
- To establish links with other organisations or individuals involved in issues of racism and interculturalism arising from developments at European Union and International levels.

## 2. National Legislation

116. Article 40.1 of the Constitution provides the overall guarantee of equality before the law. It states:

*All citizens shall, as human persons, be held equal before the law. This shall not mean that the State shall not in its enactments have regard to differences of capacity, physical and moral, and of social function.*

117. As outlined in more detail in Ireland's First Report under the United Nations International Covenant on Civil and Political Rights (ICCPR) in 1992, the making of distinctions by the State based on race, colour, religious, political or other opinion, national or social origin, property, birth or other status which affect citizens in their dignity as human beings would amount to a contravention of this provision of the Constitution. The Report outlines the case of *Quinn's Supermarket v Attorney General* [1972] IR 1 where the Supreme Court described this provision as:

*a guarantee of equality as human persons and ...a guarantee related to their dignity as human beings and a guarantee against any inequalities grounded on an assumption, or indeed a belief, that some individual or classes of individuals, by reason of their human attributes or their ethnic or racial, social or religious background, are to be treated as the inferior or superior of other individuals in the community. This list does not pretend to be complete...*

118. Key enactments which support the overarching guarantee in the Constitution include:

### i) The Employment Equality Act

119. The Employment Equality Act, 1998, outlaws discrimination in the employment context on nine grounds including religion, race, and membership of the Traveller community.<sup>13</sup> It contains a very broad definition of race which includes colour, race, nationality or ethnic or national origins (see section 6(h) of the Act). The Act, which has been in operation since October 1999, is comprehensive and covers direct and indirect discrimination in relation to access to employment, conditions of employment, equal pay for work of equal value, training, promotion and work experience.

### (ii) The Equal Status Act

120. The Equal Status Act, 2000, complements the Employment Equality Act and protects against discrimination on the same nine grounds in regard to education, provision of goods, services and accommodation, and the disposal of property. The Equal Status Act, 2000 came into full operation in October 2000.

### (iii) Unfair Dismissals Acts 1973-1993

121. These Acts provide that dismissal of an employee wholly or mainly on various grounds, including race and colour shall be deemed to be unfair dismissal.

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<sup>13</sup> Race includes race, colour, nationality or ethnic or national origins. The other grounds are gender, marital status, family status, sexual orientation, religion, age, disability and victimisation.

#### (iv) Prohibition of Incitement to Hatred Act and the Public Order Act

122. The use of words, behaviour or the publication or distribution of material which is threatening, abusive or insulting and are intended, or are likely, to stir up hatred are prohibited under the Prohibition of Incitement to Hatred Act, 1989. Furthermore the Public Order Act, 1994 may be used in some cases to combat racist acts on public order grounds. The Prohibition of Incitement to Hatred Act, is currently being reviewed in the Department of Justice, Equality and Law Reform with a view to improving its effectiveness.

123. In announcing the Review of the Prohibition of Incitement to Hatred Act (1989) in September 2000 John O Donoghue, TD, Minister for Justice, Equality and Law Reform stated:

*'Ireland has legislation in place for the past ten years prohibiting incitement to hatred. The Prohibition of Incitement to Hatred Act, 1989 makes it an offence to incite hatred against any group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, or membership of the Traveller community. I am aware that there has been some criticism of the effectiveness of this Act and I understand that since it was enacted only one case involving an alleged breach of the Act was referred to the Director of Public Prosecutions. That case was subsequently dismissed in the District Court. At my request officials have commenced a review of this legislation and I would welcome any suggestions which may lead to an improvement to the existing provisions of the Incitement to Hatred Act'.*

124. The review is taking into account the Protocol to the Cybercrime Convention on combating racism and xenophobia through computer systems and the EU Framework Decision combating racism and xenophobia, on which negotiations are continuing. It is also taking place against the background of an increased number of successful prosecutions under the 1989 Act. Prior to the Minister's announcement of a review of the legislation in September 2000 there had been no successful prosecution under the Act. However in 2000 there were 6 cases brought under the Act resulting in 4 convictions and 2 cases which were adjourned or otherwise disposed of. In 2001 there were 12 cases taken, resulting in 3 convictions, 5 withdrawn and 4 adjourned or otherwise disposed of. This growing body of caselaw indicates that the Act is used effectively where the need arises.

#### (v) Offences against the State Act

125. The provisions of the equality legislation and the Prohibition of Incitement to Hatred Act, 1989 together with the provisions of the Offences against the State Act, 1939 prohibits organisations which promote and incite racial hatred and discrimination. Membership of such proscribed organisations is a criminal offence.

#### (vi) Video Recording Act

126. The Video Recording Act, 1989, aims to prevent generally undesirable video works from being supplied to the public. Among the grounds on which the Official Censor can conclude that a video recordings should not be classified as fit for viewing (and so should not be issued with a supply certificate) are that the viewing of the video would be likely to stir up hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins.

#### (vii) Criminal Justice (Public Order) Act

127. Criminal Justice (Public Order) Act 1994, makes threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace (or being reckless as to whether such a breach is caused) an offence (section 6). The Act also makes it an offence to distribute or display material which is threatening, abusive, insulting or obscene with intent to cause a breach of the peace (or being reckless as to whether such a breach is caused).

#### (viii) Education Legislation

128. The Education Act 1998 was enacted to provide a statutory basis for the first time for primary and post primary education, to make provision for the education of every person in the State, including any person with disability or who has other special educational needs, to ensure the education system is accountable to students, their parents and the State. The Act further provides for recognition and funding of schools and their management through boards of management and the establishment of a national council for curriculum and assessment. It stipulates, inter alia, that schools shall provide education to students which is appropriate to their abilities and needs (Section 9). The education system should respect the diversity of values, beliefs, languages and traditions in Irish society. Special consideration is given to children with special needs and children who suffer educational disadvantage.
129. The Education (Welfare) Act 2000 provides for the entitlement of every child in the State to a certain minimum education. The thrust of the Act is to ensure that all of the children in the State receive an appropriate education.

#### (ix) Citizenship, Naturalisation, Immigration and Asylum Legislation and Policy

##### (a) Immigration

130. The Irish Government has put in place a new immigration legislative framework within which fair and sensible immigration policies to meet the changing needs of Irish society can be developed and implemented. The development of this framework included widespread consultation.

##### (b) Nationality and Citizenship

131. The law on nationality and citizenship is governed by the Irish Nationality and Citizenship Acts 1956 to 2001.
132. Anyone born in the island of Ireland, its islands and seas, is thereby entitled to be an Irish citizen, irrespective of the nationality of his or her parents. Certain persons born in Ireland to non-national parents (e.g. the children of accredited foreign diplomats) need to observe procedural requirements in order to exercise this entitlement. This dates from the changes to citizenship law brought about by the 2001 Act arising out of the new Article 2 of the Constitution brought in following the Belfast Agreement. The non-national parents of an Irish born child do not enjoy an automatic entitlement to reside in the State by virtue of the parentage of that child.
133. Anyone whose father or mother (whether or not married at the time of the child's birth) was Irish at the time of the person's birth is an Irish citizen irrespective of the place of birth. This is subject to certain procedural requirements for those of the third and subsequent generations born outside Ireland.

134. The Acts also provide that the Minister for Justice, Equality and Law Reform may, in his or her absolute discretion, grant a certificate of naturalisation to a non-national who fulfils certain statutory conditions. These conditions include having a total of five years' residence in the State in the nine-year period preceding the date of the application, the last year being a period of continuous residence (an absence of a few weeks on holidays or business is not regarded as a break in residence for this purpose). The Minister has a discretionary power to dispense with the conditions in whole or in part, in certain circumstances that are defined by law, for example, if the applicant has Irish associations or is a refugee.
135. Under Irish citizenship law there is no exclusion from Irish citizenship for persons who hold citizenship of another state: thus, for instance, those who apply for naturalisation are not required to renounce any other citizenship they may hold.

### **(c) The Refugee Act 1996 (Amended)**

136. The Refugee Act, 1996 (as amended), came into effect in November 2000. It provides a strong foundation for meeting Ireland's obligations under the 1951 Geneva Convention. The Act places the procedures for processing applications for refugee status on a statutory footing and has resulted in the establishment of two independent statutory offices to provide for processing asylum applications, the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal. These offices make recommendations on applications to the Minister for Justice, Equality and Law Reform.

### **(d) Reception and Integration**

137. On 2 April, 2001 the Reception and Integration Agency (RIA) was established under the aegis of the Department of Justice, Equality and Law Reform. It replaced the Directorate for Asylum Support Services and the Refugee Agency.
138. The Government decision to establish the Reception and Integration Agency followed an earlier Government decision that the recommendations in the report of the Interdepartmental Working Group on the Integration of Refugees in Ireland should form the framework for integration policy in Ireland and be implemented. One of the key recommendations of the Working Group was the establishment of a single organisational structure - within the overall framework of structures for asylum and immigration - for co-ordinating and implementing integration policy. The Reception and Integration Agency is the vehicle for implementing this recommendation.
139. The Reception and Integration Agency has responsibility for:
- planning and co-ordinating the provision of services to both asylum seekers and refugees;
  - co-ordinating and implementing integration policy for all refugees and persons who, though not refugees, are granted leave to remain;
  - responding to conflict crisis situations which result in relatively large numbers of refugees arriving in Ireland within a short period of time.
140. In addition, the Reception and Integration Agency:
- Sources suitable accommodation and sites throughout Ireland for accommodating asylum seekers;
  - Co-ordinates the preparation of sites at which temporary accommodation for asylum seekers is to be provided;

- Contracts out the management (including arrangements for catering and security) of State owned accommodation centres;
- Monitors the operation of accommodation centres on an on-going basis;
- Accommodates asylum seekers at reception centres in Dublin for an initial period of ten to fourteen days for the purposes of orientation, information provision, voluntary health screening, needs assessment and assistance with the first stages of asylum applications;
- Disperses asylum seekers from reception centres in Dublin to accommodation centres around the country;
- Co-ordinates the provision of services at accommodation centres;
- Provides training and support to proprietors and management of centres;
- Monitors the implementation of contracts for services;
- Supports local asylum seeker support groups established to befriend and be of assistance to asylum seekers;
- Co-ordinates integration programmes for Resettlement Quota and Programme Refugees;
- Administers the European Refugee Fund in Ireland on behalf of the European Commission.

### 3. International Legal Instruments.

141. Ireland works closely with its European partners to tackle racism internationally. Building on the success of the European Year Against Racism in 1997, Ireland has signed the major universal and European human rights instruments and complies fully with their terms. These instruments include:

#### (i) European Convention on Human Rights (ECHR)

142. The European Convention on Human Rights Act 2003, incorporates the Convention into Irish law by giving further effect to its main provisions.

#### (ii) Council of Europe

##### a. Protocol No 12

143. Protocol 12 is designed to strengthen the protection offered by the Convention for the Protection of Human Rights and Fundamental Freedoms, against discrimination on the grounds of race, colour, language, religion or national or ethnic origin. Ireland has signed Protocol No 12 but the protocol has not yet come into force.

##### b. Council of Europe Framework Convention for the Protection of National Minorities.

144. Ireland ratified the Convention on 7 May 1999. It came into force here on 1 September 1999. With the recent migration of a diverse population including refugees and immigrants from over 160 countries, Ireland is not in a position to identify one particular group over another as a national minority. In addition, although the term national minority is not legally defined in Irish law the Government has recognised the special position of Ireland's Traveller community.

#### (iii) The Amsterdam Treaty

145. Article 6(2) of the EU Treaty guarantees fundamental human rights as protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms



signed in Rome on 4 November 1950.

146. Article 11 of the Treaty on European Union states that efforts to “develop and consolidate democracy and the rule of law, and the respect for human rights and fundamental freedoms” are among the objectives of the Common Foreign and Security Policy of the EU.
147. Article 12 provides that any discrimination on the ground of nationality is prohibited. Article 13 complements Article 12, it enables the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

#### (iv) EU Charter of Fundamental Rights

148. The charter of Fundamental Rights of the European Union which was proclaimed by the EU Institutions in December 2002 aims at strengthening the protection of fundamental rights in the light of changes in society, social progress, and technological developments. Article 20 lays down the equality before law of all people. Article 21 of the Charter prohibits all discrimination based in grounds such as sex, race, colour, ethnic or social origin, genetic feature, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

#### (v) EU Directives

149. In accordance with Article 13 of the Treaty of the European Union, Council Directive 2000/43/EC adopted on 29 June 2000 prohibits discrimination on the grounds of racial or ethnic origin in employment, education, social protection, including social security and healthcare, and access to goods and services including housing. A second directive prohibits discrimination in employment on grounds of religion and belief, disability, age and sexual orientation (Council Directive 2000/78/EC adopted on 27 November 2000).
150. The two Directives which have recently come into force, lay down standards which provide a common level of protection against discrimination across the European Union. In addition the €100m Community Action Programme against Discrimination allows the European Community to explore practical ways of overcoming the barriers created by discrimination in many areas of everyday life, bringing European added value by comparing and contrasting experiences in different parts of the European Union.
151. Legislation to implement the Directives in Ireland is currently before the Oireachtas..
152. This package of measures forms part of an integrated strategy, involving elements such as the European Employment Strategy and social inclusion strategies, to promote better quality of life for European citizens. By helping to eliminate discrimination and promote equal opportunities, the European Union contributes actively to the protection of fundamental rights and freedom and to reducing the human and financial costs of exclusion.

#### (vi) The Rotterdam Charter

153. The Rotterdam Charter remains the key policy document in respect of policing for a multi-ethnic society. The Rotterdam Charter emphasises the importance of the overall approach in particular placing a strong emphasis on professionalism, the building of an anti-racism dimension into broader police policies and structures and the need for an integrated and



partnership approach that involves civil society and statutory bodies, including local authorities.

154. This overall approach has been clearly established by the Gardaí, most notably through the outcomes of the conference 'Intercultural Ireland: Identifying the Challenges for the Police Service' and the establishment of the Racial and Intercultural Office and the Human Rights Unit of the Gardaí.

#### **4. Involvement in International Bodies**

155. Ireland is committed to playing its part in the international bodies which represent and encourage best practice in the fight against racism. Ireland contributes to:

**(i) The Council of Europe Commission against Racism and Intolerance (ECRI)**

156. Ireland is a member of the Council of Europe Commission against Racism and Intolerance (ECRI). Based on a country-by-country approach the Commission examines and reports on the situation of each of the member states and formulates recommendation. ECRI's Second Report on Ireland is appended at Annex 21.

**(ii) Office for Democratic Institutions and Human Rights (ODIHR)**

157. In the OSCE the Office for Democratic Institutions and Human Rights (ODIHR) organises several activities in the fight against racism and discrimination.

**(iii) European Monitoring Centre on Racism and Xenophobia (EUMC)**

158. The European Monitoring Centre on Racism and Xenophobia (EUMC) was established in 1997 with the purpose of providing the Union and Member States with objective, reliable and comparable information on the phenomenon of racism in order to assist them to take measures and formulate programmes of action. To this end it has set up an Information Network with a national focal point in each of the Member States. The Irish focal point is operated jointly by the Equality Authority and the NCCRI. The Heads of State and Government meeting within the European Council in Brussels on 13 December, 2003 decided to extend the mandate of the EUMC to become a Human Rights Agency.

**(iv) European Initiative for Democracy and Human Rights (EIDHR)**

159. In the context of the European Initiative for Democracy and Human Rights (EIDHR), the EU is financing many projects for which themed priorities have been established. The Programme for 2002-2003 has established four themes, including the fight against racism, xenophobia and discrimination towards minorities and indigenous minorities. Many projects have been financed by these initiatives.

**(v) Human Security Network**

160. Ireland is a member of the Human Security Network, which is a twelve member grouping of states who are committed to strengthening human security with a view to creating a more humane world where people can live in security and dignity, free from want and fear, and with equal opportunities to fully develop their human potential.

## 5. Funding and Support for Ethnic Minority Groups

161. The Government recognises the importance of funding and support for ethnic minority groups. The review of the National Anti-Poverty Strategy (NAPS) under the national partnership agreement, the Programme for Prosperity and Fairness (PPF), was published in February 2002. It includes specific chapters on groups which are vulnerable to poverty, including migrants and ethnic minorities.
162. The overall NAPS objective in relation to migrants and members of ethnic minority groups is to ensure that they are not more likely to experience poverty than majority group members. While there are data deficiencies in relation to the socio-economic status of foreign born residents at this time, the revised National Anti-Poverty Strategy requires that a dedicated Data Strategy, co-ordinated by the National Office for Social Inclusion, be developed to identify key issues on vulnerable groups.
163. Examples of funding include:
- the allocation of funds to community groups (including minority ethnic groups) to develop public awareness of racism; and
  - a Community Development Support Unit has been established within the NCCRI that can provide some assistance to multi-racial organisations and community organisations working with minority ethnic groups, through a) the provision of technical assistance and capacity building advice, b) adding value to support provided by other community and local development programmes c) supporting the firmer establishment of minority ethnic groups within the community sector.
164. Support is also offered through the Community Development Support Programme and the Local Development Social Inclusion Programme. These programmes have been encouraged to target minority ethnic groups within their social inclusion strategies but do not directly fund minority ethnic groups.

## 6. Anti-racism Training and Education

165. Given the recent and rapid transformation in Ireland's demographic profile over the past few years, the Government recognises the importance of using training and education to develop cultural awareness, combat prejudice and promote a more inclusive society at all levels. A number of key initiatives contribute to this strategy:

### (i) Guidelines on Equality and Diversity Training and Policies

166. A national framework committee was established under the Programme for Prosperity and Fairness to promote equality at the level of enterprise. The committee brings together Congress, IBEC, the Department of Justice, Equality and Law Reform, the Department of Finance, the Health Services Employers Agency, the Equal Opportunities Network and the Local Government Management Services Board. Its role is to assist employers and trade unions to respond to the challenges arising from the implementation of the Employment Equality Act and to promote equality in the workplace. To this end it has published two documents, 'Equality and Diversity Training at the Level of the Enterprise' and 'Guidelines for Employment Equality Policies in Enterprises'.

## (ii) NCCRI Anti-Racism Training Unit

167. In 2000, the National Consultative Committee on Racism and Interculturalism established a training unit which has provided anti-racism awareness training to over 30 Government departments and statutory agencies, to national media organisations, to trade unions and to employer and community organisations. The training unit has developed best practice guidelines for anti-racism training. The training unit has developed best practice guidelines on Anti-Racism and Intercultural Training and for developing a 'whole organisation approach' to addressing racism and supporting interculturalism.
168. The aim of the Training and Resource Unit is to develop training strategies to ensure that Government departments, statutory bodies and other organisations gain the required awareness and skills to meet the challenge associated with living and working in a multi-ethnic society. This is done by raising awareness as well as contributing to institutional or organisational change.

## (iii) Anti Racist Workplace Week

169. This is a joint venture between The Equality Authority, IBEC, ICTU, the Construction Industry Federation (CIF) and, in 2002, for the first time, the Equality Commission of Northern Ireland and takes place over a week in November. The first Anti-Racist Workplace Week took place in 2000 (for details on the activities under the various weeks see paras 367-369).

## (iv) Education

170. The curriculum at both primary and post primary level has undergone extensive revision in recent years, and at primary level a new curriculum is being phased in over a 5 year period. The new curricula provide for ample opportunity to extend children's awareness of their environment and the wider world, to learn about the lives of people in other countries, and of their contribution to art, history, music, drama etc. The Social Personal and Health Education aspects of the curriculum are designed to foster a respect for human dignity, tolerance and respect for the values and beliefs of others and a celebration of diversity. In all of these areas there are opportunities to introduce the themes of anti-racism and interculturalism. The new curricula are supported by in-service training, teacher guidelines, and full-time staff development teams.
171. At post primary level the Civic Social and Political Education programme is designed to prepare students for participatory citizenship, develop the skills of critical appraisal and decision making based on human rights and social responsibilities. The format allows scope for teachers to deal with issues such as gender equality, racism and xenophobia, interculturalism, development issues etc. Pupils are required to undertake at least two class/group action projects in such areas. There are also opportunities in other subject areas to look explicitly at the issue of interculturalism and anti-racism - all subjects can be taught from a perspective which respects and reflects cultural diversity.
172. The Leaving Certificate Applied programme includes a Social Education Module which provides for contemporary issues and human rights issues to be discussed and promoted.
173. The National Council for Curriculum and Assessment has initiated work at primary and post-primary level to examine ways in which the existing curriculum can be mediated and adapted to reflect the emergence of an expanding multicultural society. The Council is

developing guidelines on good practice for schools in this area.

174. At Further Education level, a working group has been set up and a consultancy commissioned to develop modules in interculturalism for use across the sector. The study includes a short review of relevant curriculum/assessment materials internationally, development of new modules as needed, compilation of a directory of materials and resources, and recommendations on the next steps in an implementation strategy.
175. At third level education a number of initiatives are in place such as the statutory duty on universities to promote equality under the University Act, 1997, the review of university equality policies, and the inclusion of initiatives to support Traveller access.
176. The work underway at these levels is supplemented by staff development programmes, a full-time curriculum support service, guidelines and resources issued by a range of bodies and seminars and conferences.

#### (v) Training for Criminal Justice agencies

177. There are anti-racism training initiatives in place across the criminal justice agencies, including for An Garda Síochána, for Immigration Officers, Prison Service staff and inmates and for staff dealing with asylum seekers. These programmes are dealt with in more detail under Article 5.

#### (vi) Government Departments

178. The Government has introduced a number of equality initiatives in the Irish Civil Service.
179. While these policies are primarily intended to influence human resource practices within the Civil Service, they also help to ensure that people working at all levels in Government Departments are aware of equality issues.
180. A new diversity policy dealing with equality of opportunity for the equality grounds other than gender has been drawn up and agreed with the Civil Service staff unions<sup>14</sup>. It has been approved by the Government and was announced by the Minister for Finance in July, 2002.
181. Equality/Diversity is one of 12 principles of Quality Customer Service which Departments/Public Service Offices are committed to as part of the public sector modernisation programme, the Strategic Management Initiative (SMI). This principle aims to ensure the rights to equal treatment established by Equality legislation. It also aims to accommodate diversity, so as to contribute to equality for all the groups covered by the Equality legislation including race.
182. A support pack on the Equality/Diversity aspects of Quality Customer Service was developed as part of the SMI and training is being provided. This training is geared to staff delivering front line public services. This training encompasses the equality dimensions to service delivery and contributes to the evolution of good practice in relation to equality and diversity.

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<sup>14</sup> The gender equality policy was launched in September, 2001 by the Taoiseach and commits the Civil Service to promoting equality for both men and women at all grades.

183. In addition, all existing and newly appointed staff in the Civil Service are given a booklet entitled 'Diversity in the Civil Service' which covers these principles, their operation in the workplace and accountability arrangements.
184. A clear example of the Government's approach in this area is training in the Department of Social and Family Affairs which has significant contact with the public. As a result the Department has developed a comprehensive range of training and awareness raising programmes to support its staff who deal with the public, including:
- A detailed anti-discrimination training and awareness-raising course has been developed with the assistance of the National Consultative Committee on Racism and Interculturalism;
  - Internal Guidelines for staff when dealing with non-national customers were published in early 2002;
  - The provision of translation and interpretation services is also being examined. A pilot interpretation service was underway, during the summer of 2002, in selected offices of the Department across the country;
  - Finally, the Department co-funds and participates in an integrated research partnership with 8 other organisations across the statutory, local government, voluntary/community sector and academic/educational sectors to carry out a profile of asylum-seekers, refugees and economic migrants in Cork, analyse the service responses of the statutory and voluntary sector, examine European good practice, and make recommendations. The research project is due to conclude shortly.

#### (vii) Health Sector

185. Health Boards (which deliver health and personal social services at local level) are engaged in cultural awareness, diversity and equality training programmes for staff.

## 7. Policy Initiatives

186. In addition to the legislative, administrative and other measures outlined above, Ireland has sought to integrate anti-discrimination into its policy environment. This is demonstrated both directly in terms of policies which immediately impact upon on racism such as the anti-racism protocol for political parties and indirectly through developments in customer service. The Government is also committed to learning from international best practice in terms of equality proofing. Some of these key initiatives are listed below:

#### (i) Equality Proofing Initiatives

187. A Working Group on Equality Proofing was established by the Minister for Justice, Equality and Law Reform in September, 2000 to commence a learning period on how to incorporate an equality perspective to all policies. The aim is to devise a comprehensive impact assessment method for public policy making across all nine discriminatory grounds in the anti-discrimination legislation, including the ground of race, rather than devising individual mechanisms to ensure equality for each target group. An interim report was circulated to the Working Group in December 2002.

## (ii) Equality Commitments in City/County Development Board Strategy Plans

188. The Equality Authority has worked with the City/County Development Boards to support new approaches to incorporating a focus on equality in strategic planning. These approaches are based on the nine grounds covered by the equality legislation. The Equality Authority has mapped the strategy plans of all 34 City/County Development Boards to capture some of the core elements in the plans in terms of targeting, mainstreaming and building a local equality infrastructure. It is intended that City/County Development Boards can use this document as a resource as they continue to further evolve equality proofing during the implementation phase of their strategy plans.
189. The race ground features in all strategy plans. There are many commitments to acknowledge and celebrate cultural diversity including actions such as public awareness campaigns, needs assessment exercises and research into the needs of asylum seekers and refugees. One strategy plan commits to implementing at least one annual educational initiative with schools and communities involving non-nationals in order to create awareness and acceptance of other cultures. Access to culturally appropriate health services also appear frequently. Another plan commits to developing a local Equality and Anti-Racism Strategy.

## (iii) Customer Service Initiative

190. The Principles of the Quality Customer Service for customers and clients of the public service were published in July 2000. These give a commitment under the Equality/Diversity heading, (1) to ensure the rights to equal treatment established by equality legislation, and (2) to accommodate diversity, so as to contribute to equality for the grounds covered by the equality legislation. A commitment to identify and work to eliminate barriers to access to services for people experiencing poverty and social exclusion, and for those facing geographic barriers to services is also given.
191. Several actions in the Health Strategy, *"Quality and Fairness – A Health System for You"* concern the clarification of entitlements to health and personal social services and the provision of up-to-date information on those entitlements (Actions 36-7, 44). Work is ongoing on the preparation of legislation to clarify entitlements. Health Boards are also actively engaged in communicating information on entitlements through the provision of information booklets, websites, the media and other customer service initiatives.

## (iv) Anti-Racism Protocol for Political Parties

192. The National Consultative Committee on Racism and Interculturalism (NCCRI) adapted for Ireland an Anti-Racism Protocol for Political Parties and a Declaration of Intent for Candidates for Elections in 2000. This is a Europe-wide initiative. The Protocol has been signed by all the political parties in the State and was formally launched by the Minister for Justice, Equality and Law Reform in June, 2001. It was publicised by the Know Racism campaign in the run-up to the general election in 2002 and was endorsed by all the political parties in the election campaign.
193. Signatories to the Protocol have undertaken to ensure that election campaigns including campaigns for local elections, general elections and elections to the European Parliament are conducted in such a way that they do not incite hatred or prejudice on the grounds of 'race', colour, nationality or ethnic or national origins, or religious belief. These are grounds included under the Employment Equality Act, 1998 and the Equal Status Act, 2000.



194. One of the clauses of the Protocol calls for the use of appropriate and inclusive language when referring to people of different ethnic backgrounds, in order to avoid creating prejudice or confusion.

(v) Social Partnership

195. A unique feature of the process of governance in Ireland since the mid 1980s is a firm cross-party commitment to consensus between the social partners as the basis for economic and social progress. It follows that an important source of policy innovation in the general economic and social sphere is contained in the periodic agreements reached between the social partners which is composed of four pillars: the Government, the employers; the trade unions, and the farmers and community and voluntary sector.
196. The latest social partnership agreement is entitled Sustaining Progress and covers the period 2003-2005. Migration and Interculturalism is highlighted as a Special Initiative for priority consideration. In the agreement, the Government and those social partners who signed up to Sustaining Progress:

*"agree on the desirability for the development of a comprehensive policy framework on migration (immigration and emigration). This would incorporate issues which properly fall to Government, acting in accordance with national and international law, including regulation of inflows into the State. It will also incorporate issues on which the Government will consult with the social partners – specifically, economic migration and the labour market, integration issues, racism and interculturalism and issues affecting emigrants. The policy framework will encompass the agreement of the parties to the Pay and Workplace Agreement in relation to work-related aspects. Arising from the conclusions and recommendations of the Task Force on Emigrants Abroad, a coherent set of initiatives will be developed in consultation with the relevant interests. The National Action Plan against Racism will be published by end 2003 and measures agreed by Government implemented. An anti-racism intercultural programme at every level of the education system will be implemented in line with the recommendations of the National Action Plan on Anti-Racism. This will build on existing initiatives and focus on curriculum, training and support issues. Literacy and language training for adult minority linguistic groups will also be expanded as resources become available."*

## 8. National Action Plan against Racism

197. The National Action Plan is a key commitment towards eliminating racism stemming from Ireland's active participation in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa in September 2001.
198. The development of a National Action Plan against Racism (NPAR) in Ireland represents a significant opportunity to both build upon and enhance existing policies and strategies to address racism in Ireland and to identify new priorities and aspirations.
199. In developing the National Action Plan the Government is aware that racism impacts upon all walks of life and as a result has implications for a wide range of Government Departments. In order to take a concerted approach the Government has designated the Cabinet Committee on Social Inclusion (which includes representatives from all relevant Departments of State) to have oversight of the National Action Plan against Racism.

200. In March 2002, the Government published a Discussion Paper entitled 'Towards a National Action Plan Against Racism' (annex 23).

201. The Government is currently actively consulting with Departments on the strategy. The aim is to produce a strategy for tackling racism and promoting an inclusive society, by defining what integration actually means in practical terms, pulling together existing policies and identifying new initiatives to achieve the goal of integration. A summary of the consultation process with NGOs, the public and interested parties entitled *Diverse Voices* has been published and is at Annex 28.

202. The Government intends to publish the action plan in early 2004.



*The Know Racism banner is displayed in Lansdowne Road stadium prior to an Ireland-Iran soccer match, November 2001.*

## Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
  - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
  - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organisations;
  - (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
  - (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisation;
  - (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

203. **Article 2.1(a) Undertaking not to engage in racial discrimination.** The State, Government and public bodies as employers are bound by the Employment Equality Act, 1998 (see section 2 (3) of this Act). Organisations, public bodies or other entities are defined by section 2 of the Equal Status Act, 2000 as “persons” and are prohibited from discriminating on race or other grounds.

204. **Article 2.1(b) Undertaking not to sponsor, defend or support racial discrimination.** Section 14 of the Employment Equality Act, 1998 and section 13 of the Equal Status Act, 2000 make it an offence for a person (including a public body) to procure or attempt to procure another person to do anything which constitutes racial discrimination under the Act. The Prohibition of Incitement to Hatred Act, 1989 prohibits actions by natural or legal persons likely to stir up racial hatred.

205. **Article 2.1(c) and (d) Review and amendment of racially discriminatory laws, policies and actions.** There are no explicit racially discriminatory laws or regulations which permit discrimination on the grounds of race. The Employment Equality Act, 1998 and the Equal Status Act 2000 prohibit discrimination on the grounds of race. The Employment Equality

Act, 1998 exempts differences of treatment on the grounds of race where race amounts to an occupational qualification for the post in question, for example, reasons of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.

206. Ireland has in place three main mechanisms for the review of legislation or policies:

(i) **The Ombudsman**

207. The Ombudsman investigates complaints about administrative actions, delays or inaction from members of the public who feel that they have been unfairly treated in their dealings with Government Departments, local authorities, health boards and the postal service. The investigation of complaints by the Ombudsman has brought to attention situations where anomalies in existing legislation and administrative arrangements existed to the detriment of the individuals or groups. Through her Annual Report to the houses of the Oireachtas the Ombudsman can bring these anomalies to the attention of the legislators.

(ii) **Judicial Review**

208. Existing and proposed legislation can be reviewed by the courts. Judicial review also lies against persons or bodies exercising public functions (including the lower courts) to restrain them from acting contrary to the law or to compel them to act in accordance with the law. In addition, statutory rights may be vindicated by actions for judicial review (please refer to Part I for further details on judicial review).

(iii) **Constitutional Review of Administrative or Executive Action**

209. Any act, measure or decision of the Executive may be challenged on the grounds that an individual's Constitutional rights may have been infringed (please refer to Part I for further details).

210. **Article 2.1(e) Encouragement of multiracial organisations and movements.** Ireland is committed to encouraging integration and discouraging anything which strengthens racial discrimination. Ireland is using statutory bodies, financial support and active community development, to achieve this aim. Initiatives such as the Community Development Support Programme and the Local Development Social Inclusion Programme have been encouraged to expand their programmes to support minority ethnic groups. Examples include:

(i) **Equality Authority**

211. The Equality Authority is empowered, under section 39 of the Employment Equality Act, 1998, to work towards the elimination of discrimination in relation to employment and, under section 56 of that Act, as amended by section 39 of the Equal Status Act, 2000 to draft codes of practice in furtherance of the aims of the elimination of discrimination and the promotion of equality of opportunity.

(ii) **Projects related to Reception of Asylum Seekers and Integration of Refugees.**

212. In 2001, a total of €1.3m was allocated to seventeen organisations and groups under the European Refugee Fund for projects related to the reception of asylum seekers and the integration of refugees. The purpose of this EU fund is to support and encourage the efforts

made by EU Member States in receiving asylum seekers, refugees and displaced persons. The Reception and Integration Agency is the designated authority responsible for administration of the fund in Ireland.

213. Examples of the type of initiatives being grant-aided include the development of a whole school approach to the integration of refugees, immigrants and ethnic minorities; the provision of support for single mothers and separated children; and development of a specialist centre for the care and rehabilitation of those who have survived torture in their pre-migratory environments.
214. In 2002, €965,000 was allocated under the same fund and in 2003, a total of €970,000 was made available. The Reception and Integration Agency also operate a “small grants fund” for projects which assist asylum seekers to settle in local areas and which promote intercultural activities between the asylum seekers and the local community. In 2003 a total of €140,000 was available for allocation.
215. The Reception and Integration Agency also provide integration support services for those who obtain refugee status or leave to remain.

#### (iii) Grants under the Anti Racism Awareness Programme, Know Racism

216. A third round of grant schemes was launched in 2002 under the National Anti-Racism Awareness Programme to assist community groups (including minority ethnic groups) and non-government organisations with the development of projects or activities which stimulate public awareness of racism or affirm cultural diversity as a value in our society. A total amount of €334,774 was approved for 60 groups and organisations in 17 counties who were successful under the scheme.

#### (iv) Community Development

217. A Community Development Support Unit has been established within the NCCRI to provide some assistance to multi-racial organisations and community organisations working with minority ethnic groups, through a) the provision of technical assistance and capacity building advice, b) adding value to support provided by other community and local development programmes c) supporting the firmer establishment of minority ethnic groups within the community sector. In November 1999 the Department of Social and Family Affairs in collaboration with community groups within the Community Development Support Programme produced a Code of Practice, which provides a frame work for community development projects to address racism and promote equal outcomes for minority ethnic communities.
218. Tosach Community Support Ltd., one of the Regional Support Agencies funded under the Community Development Support Programme commissioned research to identify the community development support needs of the “new communities” of non-nationals who are living in inner city Dublin. This research was funded by the Department of Community, Rural and Gaeltacht Affairs. A final report has been completed and a discussion workshop has been held to identify next steps.
219. **Article 2.2 Special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals.** Where it feels such measures are necessary the Government has adopted positive action measures to promote equality of opportunity.

220. Section 33 of the Employment Equality Act 1998 allows for the provision by or behalf of the State of training or work experience for a disadvantaged group of persons if the Minister for Justice, Equality and Law Reform certifies that, in the absence of the provision in question, it is unlikely that that disadvantaged group would receive similar training or work experience. The Minister has issued a number of certificates under this provision in respect of programmes run by FÁS (the National Training and Employment Authority) aimed at providing work experience for disadvantaged groups for example refugees who have been granted permission to remain in Ireland and on the live register. The Employment Equality Act 1998 permits positive action on grounds of gender, disability, age 50-65 and membership of the Traveller community. The Equality Bill 2004 seeks to extend this permission to allow positive action measures on all nine grounds, including race. The Equal Status Act 2000 permits positive action on all nine grounds.

### Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

221. **Article 3 Condemnation of racial segregation and apartheid.** There is no racial segregation or apartheid in Ireland. Condemnation of these practices has been Ireland's policy for many years. Ireland unreservedly condemns any policy, practice, or ideology that is conducive to racial intolerance or racial hatred.



## Article 4

States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and shall recognise participation in such organisations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

222. **Article 4 Condemnation of Racist Propaganda and Organisations:** The Government is opposed to all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.

223. Ireland's position in regard to this article is limited by Constitutional requirements regarding freedom of speech (Article 40(6)(i) of the Constitution). Accordingly, Ireland stands by its reservation to this article to make it clear the principle of freedom of speech as articulated by the Constitution must remain paramount.

224. However, within the limits imposed the Constitution, Ireland has a number of legislative measures in place which are in line both with this Article and with the Government's opposition to racist propaganda and organisations.

225. **Article 4(a) Outlaw racist propaganda, incitement to racial discrimination, violence or incitement to racist violence and assistance to racist activities.** Section 14 of the Employment Equality Act, 1998 and section 13 of the Equal Status Act, 2000 make it an offence for a person (including a public body) to procure or attempt to procure another person to do anything which constitutes racial discrimination.

226. The Prohibition of Incitement to Hatred Act, 1989 (which is currently under review to see if it can be made more effective) prohibits any advocacy of racial hatred that constitutes incitement to discrimination, hostility or violence. In particular, the Act makes it an offence to:

- (i) publish or distribute written material which is threatening, abusive or insulting, if it is

intended or likely to stir up racial hatred;

- (ii) use threatening, abusive or insulting words or behaviour or to display written material (includes banners, cartoons, graffiti, etc.), which is threatening, abusive or insulting, if it is intended or likely to stir up racial hatred;
- (iii) distribute, show or play to the public or any section of the public any visual or sound recording, which is threatening, abusive or insulting, if it is intended or likely to stir up racial hatred;
- (iv) include in any broadcast or in any cable television or radio service any item involving visual images or sounds which are threatening, abusive or insulting, if this is intended or likely to stir up racial hatred. Producers, directors and performers who actually engage in the offending conduct can be held responsible; or
- (v) to prepare or have in one's possession any written material or any visual or sound recording which is intended for distribution, publication, display, showing or playing to the public, which is threatening, abusive or insulting, if it is intended or likely to stir up racial hatred.

227. The Video Recording Act, 1989 aims to prevent generally undesirable video works being supplied to the public. Among the grounds on which the Official Censor can conclude that a video recordings should not be classified as fit for viewing (and so should not be issued with a supply certificate) are that the viewing of the video would be likely to stir up hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins.

228. The Council of Europe Draft Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems will be examined to establish what legislative changes, if any, may be required to allow for ratification. (The Protocol is not yet opened for signature).

229. **Article 4(b) Outlaw organisations and all propaganda activities which promote or incite racial discrimination.** The Prohibition of the Incitement to Hatred Act, 1989 and Part III of the Offences Against the State Act, 1939, in particular section 18(d) and (e) of the 1939 Act, make provision to declare illegal and prohibit organisations which promote and incite racial discrimination. Section 21 of the 1939 Act renders membership of such organisations a criminal offence.

230. **Article 4(c) Prohibition of public authorities to promote or incite racial discrimination.** Section 14 of the Employment Equality Act, 1998 and section 13 of the Equal Status Act, 2000 make it an offence for a person (including a public body) to procure or attempt to procure another person to do anything which constitutes racial discrimination. The Prohibition of Incitement to Hatred Act, 1989 prohibits actions by natural or legal persons likely to stir up racial hatred. Publications and broadcasts are also covered by the Prohibition of Incitement to Hatred Act, 1989.

## Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

231. **Article 5 The right to equality before the law:** Article 5 obliges State parties to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law without distinction as to race, colour, or national or ethnic origin. The Government of Ireland is fully committed to equality before the law. This principle was articulated at the inception of the State. For example see Articles 38.1 and 38.5 of the Constitution.
232. The Constitution emphasises that justice is accessible to all. A right of access to the Courts has also been held to be an unenumerated personal constitutional right under Article 40.3.
233. Article 5 refers to the enjoyment of specific economic, social and cultural rights. By ratifying the Convention Ireland is committed to ensuring that where economic, social and cultural rights are guaranteed under the current human rights framework they should be enjoyed without discrimination as to race, colour or national or ethnic origin. In this respect Ireland fully complies with Article 5.
234. **Article 5 (a) Equality before the law, including tribunals and other bodies administering justice.** The right to equal treatment before tribunals and all other organs administering justice is provided for by the Constitution. Articles 34 and 35 guarantee the right to have justice administered in public by judges who are independent and Article 38.1 guarantees the right to criminal trial in course of law.
235. Ms Justice Denham, Judge of the Supreme Court, in her judgment in the case of Howard .v. Commissioners for Public Works, reinforced the principle of equality: “The concept of equality includes the concept that, in the execution of their power, the organs of government shall act with due regard for the concept of equality”.
236. The basis and the operation of Ireland’s legal system is set out in more detail in Part I. The Government understands the administration of justice to include the judiciary, quasi-judicial tribunals such as ODEI - the Equality Tribunal, An Garda Síochána, the Prison Service, the Courts Service, the Department of Justice, Equality and Law Reform and immigration and asylum procedures. The Government is committed to ensuring that through training, policies and practices each of these parts of the justice systems should act with due regard for the principle of equality.

(i) **The Judiciary**

237. Judges in Ireland are independent both of the executive and the legislature and this independence is given full protection by the Constitution. They are appointed by the President acting on the advice of the Government (Articles 35.1 and 13.11 of the Constitution). Article 35.2 provides that all judges shall be independent in the exercise of their functions and subject only to the Constitution and the law. They may not be members of the Oireachtas or hold any other office or position or emolument (Article 35.3). They may not be removed from office except for stated misbehaviour or incapacity and then only by resolutions passed by both Houses of the Oireachtas calling for their removal (article 35.4). Their remuneration may not be reduced during their continuation in office.
238. The system of recruitment to all levels of the judiciary aims to introduce trained and experienced legal practitioners into the field. However, it is acknowledged that this training and expertise is not always sufficient. In recognition of this, the Minister for Justice, Equality and Law Reform has always assisted with initiatives which the judiciary have brought forward in the area of training, and funds have always been made available to

Judges at all levels to enable them to attend training seminars and conferences both at home and abroad.

239. The Courts and Court Officers Act, 1995 provides that the Minister for Justice, Equality and Law Reform may, with the consent of the Minister for Finance, provide funds for the training and education of judges. This Act also provides that a person wishing to be considered for judicial appointment must give his or her agreement, that if appointed, they will undertake such course or courses of training or education or both as may be required by the Chief Justice or President of the Court to which that person is appointed. The Chief Justice established the Judicial Studies Institute to oversee judicial training and to ensure that funds which are made available for training are used as effectively as possible.

240. Training was provided for circuit court judges in equality legislation in November 2000.

#### (ii) **Garda Síochána**

241. As a core part of the training of new recruits to An Garda Síochána in Templemore there is a module regarding obligations under international human rights instruments including CERD. The Garda Racial and Intercultural Office have an ongoing anti-racism training programme for immigration officials (who are members of An Garda Síochána).

242. Anti-racism awareness training is provided by officers attached to the Human Rights Unit in the police training college in Templemore. Groups such as NCCRI, Amnesty International and Comhlámh support this awareness training.

243. Gardaí are engaged in a continuing consultation process with members of ethnic minority groups and are in regular contact with community leaders. (Particular attention has been paid to reassuring leaders of the Muslim community following the events of September 11, 2001 in New York and Washington). Community groups are encouraged to report incidents to local Gardaí and are encouraged to seek assistance of the Garda Racial and Intercultural Office.

244. Ethnic liaison officers have been appointed to every Garda station to act as a focal point for information and problem solving.

245. Complaints against the police are handled by the Garda Síochána Complaints Board, a totally independent body set up under statute (the Garda Síochána Complaints Act, 1986) to investigate complaints by members of the public against the Gardaí. A complaint can be made by writing or calling to the Board's offices or, indeed, at any Garda Station. A complaint made at a Garda Station will be forwarded to the Board for attention unless the complainant indicates in writing that he or she wishes it to be dealt with by the Garda Síochána. A complaint can also be made by anyone witnessing the incident/conduct complained of and must be made within six months of the date of the incident giving rise to the complaint.

246. The Programme for Government contains a commitment to establish an independent Garda Inspectorate, which would have the power to investigate complaints and which would also have the powers of an ombudsman. Work on the preparation of a general scheme of a Bill to provide for this is well advanced, and the Minister intends bringing this to Government in the near future. In the meantime, the Garda Síochána Complaints Board continues its functions in accordance with its remit as defined in the Garda Síochána Complaints Act, 1986.

247. Although prosecuting functions are generally outside the scope of the Equal Status Act 2000, ODEI - the Equality Tribunal has held that certain policing functions such as witnessing a passport application or taking details of a complaint can amount to services provided by the State and can be investigated accordingly by the Director of Equality Investigations.

### (iii) Immigration and Asylum

248. The Government is committed to developing a new immigration legislative framework within which fair and sensible immigration policies to meet the changing needs of Irish society can be developed and implemented. Widespread consultation has already taken place, embracing a cross section of interested individuals and bodies. An Immigration Bill (2004) is currently before the Dáil.

249. Immigration officers at points of entry to the State are members of the Garda Síochána which provides training as outlined above. Members of the Garda Síochána assigned to immigration duties are subject to the normal Garda standards of conduct (including the Garda Síochána Complaints Act) and accountable through local Garda channels of command. The Garda National Immigration Bureau has an overall coordinating role in relation to controls at point of entry.

250. Immigration officials are receiving anti-racism training under the module prepared by the Garda Racial and Intercultural Office. Plans are being developed by the Office to extend its anti-racism training programme to all existing members of the force.

251. Asylum seekers have a legal entitlement to remain in the State while their applications for asylum are being processed. Ireland's asylum process is open and transparent. Currently all asylum applications are carefully considered under the Refugee Act, 1996 against the criteria set out in the 1951 Geneva Convention relating to the Status of Refugees and the related 1967 Protocol, which provide the foundation for the system of protection of refugees generally.

252. Under the Irish asylum process, asylum seekers are:

- not to be removed from the State until they have been given an opportunity to present their case fully, their application has been properly examined and a decision has been reached on it. However, if it is agreed with another Dublin Convention country that, in accordance with the provisions of the Dublin Convention it is appropriate for an application to be dealt with in that country, an asylum seeker may be transferred to that country;
- provided with an interpreter, where necessary and possible;
- entitled to consult a solicitor. The Refugee Legal Service is an independent body which provides legal assistance to persons applying for a declaration as a refugee at all stages of the asylum process. An information leaflet about the Refugee Legal Service is provided when an application is made;
- entitled to consult the United Nations High Commissioner for Refugees (UNHCR);
- entitled to accommodation, welfare support and healthcare as set out in the information pack of the Reception and Integration Agency.

253. The Government is committed to providing an efficient, fair, independent and transparent procedure for processing asylum applications within 6 months and these time scales are generally being adhered to at present, with backlogs of applications on hands almost eliminated. Asylum seekers are not entitled to seek employment during their application.



254. The Minister for Justice, Equality and Law Reform has discretion to grant exceptional leave to remain on humanitarian grounds for those who do not come under the 1951 convention.
255. Comprehensive training is provided in cooperation with UNHCR to staff working in the asylum process. Staff are trained to deal with applicants for asylum in a sympathetic manner and with respect and sensitivity and a full awareness of cultural differences. This training includes procedures to be followed when dealing with sensitive matters such as gender issues and victims of trauma and violence.

(iv) **Prison Service**

256. A number of anti-racist initiatives are taking place in the prisons. The Director General of the Irish Prisons Service introduced proposals for the development of a research and training project for staff and inmates of the prison system to increase their awareness of cultural diversity and aspects of racism that are potentially in each prison. The aim of the initiative is to ensure that the Prisons Service will be in a position to anticipate and prevent most problems of racism and to deal speedily and effectively with any problems which may arise.

(v) **Legal Aid**

257. Under the Criminal Justice (Legal Aid) Act, 1962, and the Regulations made under it, free legal aid may be granted, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings. The grant of legal aid entitles the applicant to the services of a solicitor and, in certain circumstances, counsel, in the preparation and conduct of his defence or appeal.
258. **Article 5(b) Security of the person.** The Irish Government condemns racist violence and as with other forms of violence is committed to cracking down on this form of crime.
259. The Government notes the Committee's recommendation that statistics on racially motivated crime should be provided.
260. Currently there is limited data and studies available on crime in general in Ireland and racial violence in particular. The Gardaí, as with police forces in most countries have responsibility for collecting and collating data on crime. The primary sources of information on crime in the Republic of Ireland are contained in An Garda Síochána Annual Report. These statistics, provide a valuable source of information about crime levels and trends in Ireland, although they are inevitably incomplete, due to the fact that not all crime will be reported to the Gardaí.
261. A National Crime Council has been established to advise the Government on policy matters related to all forms of crime in Ireland and has made a number of recommendations to Government including the need for regular National Crime Surveys to supplement the crime statistics recorded by the Gardaí in their annual reports.
262. It should also be noted that until very recently, crime statistics collected by the Gardaí were not disaggregated in a way that would provide information on racial incidents, including racial violence. There was no Garda definition of what constitutes a racist incident until March 2002, and there was no systematic mechanism in place of categorising and collecting statistics related to racist incidents, including racist violence.

263. The Gardaí announced on March 21st 2002, that it has adopted a definition of a racist incident adapted from the recommendations of the MacPherson Report in the UK and that the Gardaí will be recording racist incidents for the first time. The Garda definition of a racial incident is:

Any incident, which is perceived to be racially motivated by:

- The victim.
- A member of An Garda Síochána.
- A person who was present and who witnessed the incident.
- A person acting on behalf of the victim.

264. It will take some time for this change to be effected and it is unlikely that statistics will be available until the 2003 Garda Annual report at the earliest.

265. Research shows general level of homicides and assaults in Ireland are on the lower end of the scale compared with other industrialised nations.<sup>15</sup> However, recent crime statistics show that there was an increase of 16% in homicides between 1999 and 2000 and the level of assaults more than doubled in the same period. The evidence from complementary sources would indicate both similarities and divergences from this overall profile of homicides and assaults in Ireland.

266. Homicides that are principally or that are wholly motivated by racism are a rare occurrence in Ireland. In fact, prior to 2001 there is no evidence discovered for this study that would indicate that there was a homicide linked to racism that occurred in Ireland. However since the beginning of 2001 there are indications that racism has played a factor in certain cases.

267. In addition there was a marked, though temporary increase in assaults and verbal abuse linked to Islamaphobia in the aftermath of September 11th 2001 attacks on the United States.

268. This information can be supplemented by informal statistics and attitudinal surveys. The CERD Committee should note that these figures are only intended as a guide until more accurate information is processed.

269. Informal statistics collected by the National Consultative Committee on Racism and Interculturalism (NCCRI) indicate that between May 2002 and October 2002 there were 67 racist incidents reported<sup>16</sup>. Of these incidents:

- 50% of the incidents are reported as occurring in the greater Dublin area
- 15% of incidents occurred in urban areas outside of Dublin.
- 35% of incidents occurred in predominantly rural areas.

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<sup>15</sup> Analytical Study on Racial Violence; Report on Ireland (EUMC RAXEN3) by NCCRI and Equality Authority: November 2002

<sup>16</sup> The majority of the incidents are forwarded by non-government organisations working closely with the NCCRI, including key organisations working with Travellers, refugees and asylum seekers and migrants. Other incidents are reported directly to the NCCRI. There are a number of procedures put in place by the NCCRI to check the veracity of the reports.

270. This represents an increase on the previous reporting period between October 2001 and March 2002 when 40 racist incidents were reported. Of these incidents:

- 49% of the incidents are reported as occurring in the greater Dublin area
- 39% of incidents occurred in urban areas outside of Dublin.
- 12% of incidents occurred in predominantly rural areas.

271. The data generated by the NCCRI's reporting system is primarily qualitative but it is indicative of key issues that need to be addressed. For example these figures indicate that racism is an all-Ireland problem and is not restricted to urban areas. They also show that an increase in incident rates but also possibly an increased awareness of the NCCRI as a forum for receiving reports.

272. In 2002 the Department of Justice, Equality and Law Reform commissioned a review of all existing surveys of attitudes towards ethnic minorities and surveys of minority experiences of discrimination.<sup>17</sup> The review came to a number of conclusions which supported the NCCRI findings and the need for an anti-racism strategy which targets all parts of the community:

- The degree of hostility expressed toward minority groups has increased and is particularly strong in relation to particular groups, including black people, Roma, refugees and asylum seekers;
- Profiles of respondents show that hostility is evident at all levels of society, both rural and urban; and
- Negative attitudes experienced by minority ethnic groups now appears to be an every day feature of many peoples' lives.
- More hostile attitudes tend to be encountered among rural communities and among older, or less well educated persons.

273. **Article 5c: Political Rights, including participation in public affairs at any level.** Ireland recognises the right of ethnic minorities and other minority groups to play a full part in Ireland's political life. There is no discrimination in regard to voting, standing for election or entry into public affairs at any level.

(i) **The right to vote and stand for election**

274. Electoral law provides that "ordinary residence" in a constituency on a specific date is a condition for registration and voting at referenda, Presidential, Dáil, European and local elections.

275. Generally speaking, Irish citizens<sup>18</sup> have the right to stand for election to the Dáil, the Seanad Éireann and the Presidency. Irish citizens have the right to vote in Dáil elections,

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<sup>17</sup> Garner, S and White, A. Racist Attitudes in Ireland: Baseline Research for the Anti-Racism Public Awareness Programme Know Racism 2002

<sup>18</sup> There are exceptions for certain professions such as Garda or civil servant in regard to standing for election to the Dáil

in Presidential elections and in referenda. Eleven members of the Seanad are nominated by the Taoiseach, 43 are elected from panels of candidates representing specified vocational interests and the remaining six are elected by universities or institutes of higher education. The right to vote may be extended to persons ordinarily resident in the State who are nationals of other EU Member States which extend the right to vote at their national parliament elections to Irish citizens resident in those member states. **There is no citizenship requirement for voting at local elections.** Electoral law provides that a person who has reached the age of 18 years and is resident in the State on the qualifying date (always 1 September in the previous year), is entitled to be registered and to vote at local authority elections in that constituency. Citizens of Ireland and non-nationals ordinarily resident in the State who have reached the age of 18 years will be eligible for election to local authorities.

276. Every person who, on the qualifying dates for the annual register of electors, is either an Irish citizen or a national of another EU Member State, has reached the age of 18 years and is ordinarily resident in a constituency, is entitled to be registered and to vote in that constituency at a European Parliament election. Irish citizens and citizens of the European Union ordinarily resident in the State are entitled to stand for election to the European Parliament.

277. Electoral law provides that the Clerk of the Dáil shall be the Registrar of Political Parties and requires him/her to register any party applying for registration which is, in his/her opinion, a genuine political party organised to contest elections in the State. A party cannot be registered if its name is unduly long or does not clearly distinguish the party from other registered political parties. There is provision for appeal against the Registrar's proposed ruling on an application to an appeal board chaired by a High Court judge.

#### (ii) The Civil Service

278. The Civil Service equal opportunities policy provides that all eligible people must have equality of opportunity and advancement on the basis of their suitability for work. Equal opportunities in the Civil Service means that:

- All Civil Servants can be confident that their rights under the Employment Equality Act are guaranteed and that no-one will receive less favourable treatment than someone else because of their gender, marital or family status, sexual orientation, religious belief, age, disability, race or membership of the Traveller community;
- Throughout their working lives, Civil Servants can be assured of equality of participation in their Department or Office, regardless of gender, marital or family status, sexual orientation, religious belief, age, disability, race or membership of the Traveller community;
- All Civil Servants have a responsibility to create a working environment in which differences are respected and in which all people - staff, clients and customers - are valued as individuals;
- As an employer, the Civil Service strives to achieve real equality of opportunity by continuously monitoring its employment practices to ensure that they do not perpetuate existing inequalities.

279. All serving and newly appointed staff in the Civil Service are given a booklet entitled 'Diversity in the Civil Service' which covers these principles, their operation in the work

place and accountability arrangements. An Irish language requirement still applies to certain public sector posts but only those posts where it is necessary for the discharge of official duties.

280. [Article 5d \(i-iii\)](#): **Citizenship, Nationality and the Right to Freedom of Movement** are not restricted on grounds of race. The Irish Government recognises the economic and cultural contribution made by those who have migrated to Ireland.
281. Article 1, paragraph 2, of the Convention states that the definition of discrimination in Article 1, paragraph 1 does not apply to distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens. Article 1, paragraph 3, goes on to say that nothing in the Convention may be interpreted as affecting in any way the legal provisions of State Parties concerning nationality, citizenship or naturalisation, provided that such provisions do not discriminate against any particular nationality.
282. The Committee's General Recommendation XI(42) of 9 March 1993 stated that nonetheless, State Parties are obliged to present a full report on the legislation regarding foreigners.
283. The law on nationality and citizenship is governed by the Irish Nationality and Citizenship Acts 1956 to 2001.
284. Anyone born in the island of Ireland, its islands and seas, is thereby entitled to be an Irish citizen, irrespective of the nationality of his or her parents. Certain persons born in Ireland to non-national parents (for example, the children of accredited foreign diplomats) need to observe procedural requirements in order to exercise this entitlement. This dates from the changes to citizenship law brought about by the 2001 Act arising out of the new Article 2 of the Constitution brought in following the Belfast Agreement (see Core Report for background to Belfast Agreement). The non-national parents of an Irish born child do not enjoy an automatic entitlement to reside in the State by virtue of the parentage of that child.
285. Anyone whose father or mother (whether or not married at the time of the child's birth) was Irish at the time of the person's birth is an Irish citizen irrespective of the place of birth (but subject to certain procedural requirements for those of the third and subsequent generations born outside Ireland).
286. The Acts also provide that the Minister for Justice, Equality and Law Reform may, in his or her absolute discretion, grant a certificate of naturalisation to a non-national who fulfils certain statutory conditions. These conditions include having a total of five years' residence in the State in the nine-year period preceding the date of the application, the last year being a period of continuous residence (an absence of a few weeks on holidays or business is not regarded as a break in residence for this purpose). The Minister has a discretionary power to dispense with the conditions in whole or in part, in certain circumstances that are defined by law, e.g., if the applicant has Irish associations or is a refugee.
287. Under Irish citizenship law, there is no exclusion from Irish citizenship for persons who hold citizenship of another state: thus, for instance, those who apply for naturalisation are not required to renounce any other citizenship they may hold.
288. [Article 5\(d\) iv-vi](#): **The rights to marriage, to property and to inherit**. Article 40.3.2 (in conjunction with Article 43) of the Constitution protects property rights, including the right to own, transfer, bequeath and inherit property. There is no restriction on grounds of race.

289. **Article 5(d) vii-ix: The right to freedom of thought, conscience and religion; freedom of opinion and expression; and freedom of peaceful assembly and association.** The Constitution protects the freedom of expression (Article 40.6.1).

"[The State guarantees liberty for the exercise of, subject to public order and morality, of]

i) The right of citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that the organs of public opinion such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of the Government policy, shall not be used to undermine public order or morality or the authority of the State."

290. Freedom to express convictions and opinions contains the complementary right of having those opinions communicated and received by others. *Attorney General v Paperlink* [1984] I.L.R.M. 373 the Court held that "the very general and basic human right to communicate" was one of the unspecified personal rights of the citizen protected by Article 40.3.1 of the Constitution. However this is not an absolute right; laws may restrict the nature of the matter communicated or the mode of communication.

291. There is no law in Ireland which discriminates against members of minorities in their access to the media. The State broadcaster RTE endeavours to include a broad spectrum of the population.

292. The Minister for Communications, Marine and Natural Resources has responsibility for broadcasting policy. Responsibility for radio frequency management matters and the technical licensing of transmitting stations rests with the Office of the Director of Telecommunications Regulation.

293. The Broadcasting Authority Acts 1963-1999, the Radio and Television Act, 1998 and the Broadcasting Act, 2001 set out the statutory framework for broadcasting in Ireland. There is no law in Ireland which prevents access of minorities in the creation or usage of the printed media. In relation to radio and television broadcasts, applications may be made to the Broadcasting Commission of Ireland for a broadcasting contract under the Radio and Television Act, 1988 in relation to radio services or the broadcasting Act, 2001 in relation to digital television services.

294. In addition to the specific criteria which the Commission must take into account when arranging for the provision of a broadcasting service, the Commission is also obliged to:

"endeavour to ensure that the number and categories of broadcasting services made available in the State by virtue of the 2001 Act or the 1988 Act best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethnic and cultural diversity".

295. The Broadcasting Complaints Commission as provided for in the Broadcasting Act, 2001 may investigate and decide upon complaints that broadcasters have breached specified statutory obligations. Complaints may relate to inter-alia:

- a failure to maintain objectivity and impartiality with regard to the reporting of news and current affairs;



- the inclusion in a broadcast of anything which may reasonably be regarded as likely to promote, or to incite to, crime or as tending to undermine the authority of the State
- unreasonable encroachment on the privacy of an individual, or
- failure to comply with specified codes in relation to taste and decency of programme material or codes in relation to advertising or other commercial sponsorship including those directed at children.

296. In regard to the written press, at the moment, there are no statutory provisions governing the way in which complaints against the press are handled. However, the National Newspapers of Ireland (NNI), an organisation which represents national daily and weekly newspapers, does operate a Readers' Representative system which provides a degree of access to readers to voice complaints and obtain remedies such as corrections, clarifications and apologies. In conjunction with this system, the NNI has also adopted a Code of Practice on Privacy to which all of its members subscribe. The NNI is currently engaged in a process of examining how an independent self-regulatory system for press complaints might work.

297. The Agreed Programme for Government, which was published in June 2002, indicates that the Government would, in the context of a statutory Press Council and improved privacy laws, move to implement reforms of libel laws designed to bring them into line with those of other states. A Legal Advisory Group on Defamation was established by the Minister for Justice, Equality and Law Reform in mid-September, 2002. The terms of reference of the Group included the following:

*"to consider the nature and extent of any statutory intervention which might attach to the establishment of any entity concerned with the regulation of the press, to examine the particular modifications in the law which the establishment of such an entity might warrant, and, to make specific proposals in this regard."*

298. The Group reported in March 2003 and its recommendations are being considered by Government.

299. Where the matter is allegedly defamatory in nature, it is open to an individual to bring defamation proceedings before the courts. Clearly, however, not all complaints against the press will be of a kind where court intervention is appropriate.

300. There has also been considerable development of media consciousness concerning reportage in relation to racism and discrimination in recent years. This is evident in the initiatives taken by the the NCCRI and the National Union of Journalists (NUJ). The National Union of Journalists of Ireland's Code of Ethics provides under Clause 10 that:

*"A journalist shall mention a person's age, sex, race, colour, creed, illegitimacy, disability, marital status, or sexual orientation only if this information is strictly relevant. A journalist shall neither originate nor process material which encourages discrimination, ridicule, prejudice or hatred on any of the above mentioned grounds."*

301. Freedom of assembly (Article 40.6.1); freedom of association (Article 40.6.1); freedom of conscience and the free profession and practice of religion (Article 44.2). Discrimination on the ground of religious belief is prohibited under the Employment Equality Act, 1998, and the Equal Status Act, 2000.

302. **Article 5e: Economic, social and cultural rights.** Building an inclusive society is the key

priority of the Irish Government. Economic developments since 1996 have brought about significant improvements to living standards to the benefit of all groups in society. Despite these advances, tackling poverty and social exclusion remains one of the major challenges facing Irish society. The Government is committed to building on what has been achieved to date so as to move to a new phase in the development of a more inclusive society. This commitment is reflected in the National Anti-Poverty Strategy which sets:

- An objective of reducing, and ideally eliminating, consistent poverty rates in Ireland to under 2% by 2007;
- A specific target of eliminating long-term unemployment;
- A new benchmark for the lowest social welfare payments of €150 by 2007 (in 2002 terms).

303. In addition, recognising the cross-cutting nature of poverty and exclusion, the Government has set targets in the areas of education, health and housing policy. The strategy also specifically sets out to address the impact of poverty and exclusion upon migrants and ethnic minorities.

304. In regard to migrants and ethnic minorities, there is a commitment by the State, An Garda Síochána, statutory organisations and the social partners to ensuring the rights to equal treatment established by equality legislation and to accommodate diversity, so as to contribute to equality irrespective of race, religion or belief, colour nationality or ethnic or national origins.

### Support for Asylum Seekers

305. In September, 2000 the Council of the European Union adopted a decision establishing a European Refugee Fund (ERF). Its purpose is to support and encourage the efforts made by Member States in receiving asylum seekers, integrating refugees and voluntary repatriation projects.

306. Following the publication of advertisements in the national press, organisations/groups working in this area submitted proposals earlier in 2003 for funding. A Selection Committee comprising non-governmental organisations was established by the Reception and Integration Agency to assess eligible proposals and allocate the available funding. 18 organisations/groups are to receive funding under the European Refugee Fund (ERF) for projects related to the reception of asylum seekers, integration of refugees and voluntary repatriation for budget year 2002, grants range between €3,400 and €150,000.

307. Examples of the type of initiatives being grant-aided include:

- Continued support of a specialist centre for the care and rehabilitation of those who have survived torture in their pre-migratory environments;
- Provision of information, advice and support at local level by the development of 'Drop in Centres';
- Provision of support and links for women who have lodged applications for asylum or applications for leave to remain within the State with local women's networks;
- Developing stronger links and a support network for the Roma community within the State; and
- Raising better awareness and understanding among the general public to issues facing asylum seekers and refugees and explain the root causes that lead them to flee their countries of origin.

308. Turning to the rights listed in Article 5(e)(i)-(vi), the enjoyment of these rights, without discrimination on the basis of race, colour, national or ethnic origin, is protected under the Employment Equality Act, 1998 and the Equal Status Act, 2000. Cases taken under the Employment Equality Act 1998 are discussed under Article 5(e)(i). In regard to cases taken under the Equal Status Act 2000, the Act prohibits discrimination (with some exceptions) in the disposal of goods to the public, the provision of services or of accommodation to the public, in certain disposals of property and in education. Services are defined in more detail under Section 2 of the Act.

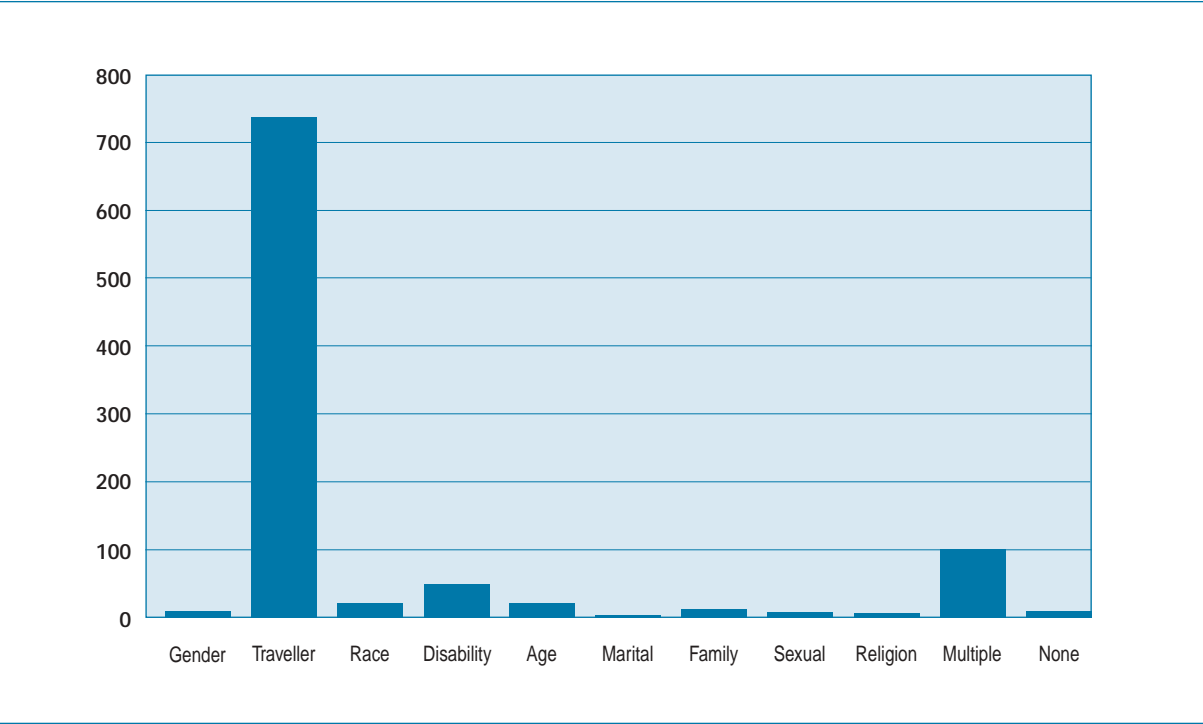
**Cases Referred to the ODEI under the ESA 2000**

309. During 2002 Equality Officers issued sixty four decisions under the Equal Status Act, covering a total of 137 individual claims. The most common subject was refusal of access to, or refusal/restriction of service in, pubs or hotel bars. (This was, moreover, the most common subject for decisions on different grounds, accounting for the majority of decisions under the Traveller, age and race grounds, and half of the decisions on the disability ground.)

310. Most Equal Status decisions were on claims on the Traveller community ground (55 decisions). There were also three decisions on the race ground, two on the disability ground, four on the gender ground and one each on the grounds of marital status, family status and age. There were no decisions on the religion or sexual orientation grounds. Moreover, very few decisions arose from complaints citing more than one ground of discrimination.

311. Only 2.6% of Equal Status cases were referred under the ‘Race’ ground for 2002. This picture also contrasts with the cases taken under the Employment Equality Act in respect of the race ground, which are documented below at paragraph 319.

**Chart One: Cases Referred to the ODEI under the Equal Status Act in 2002**

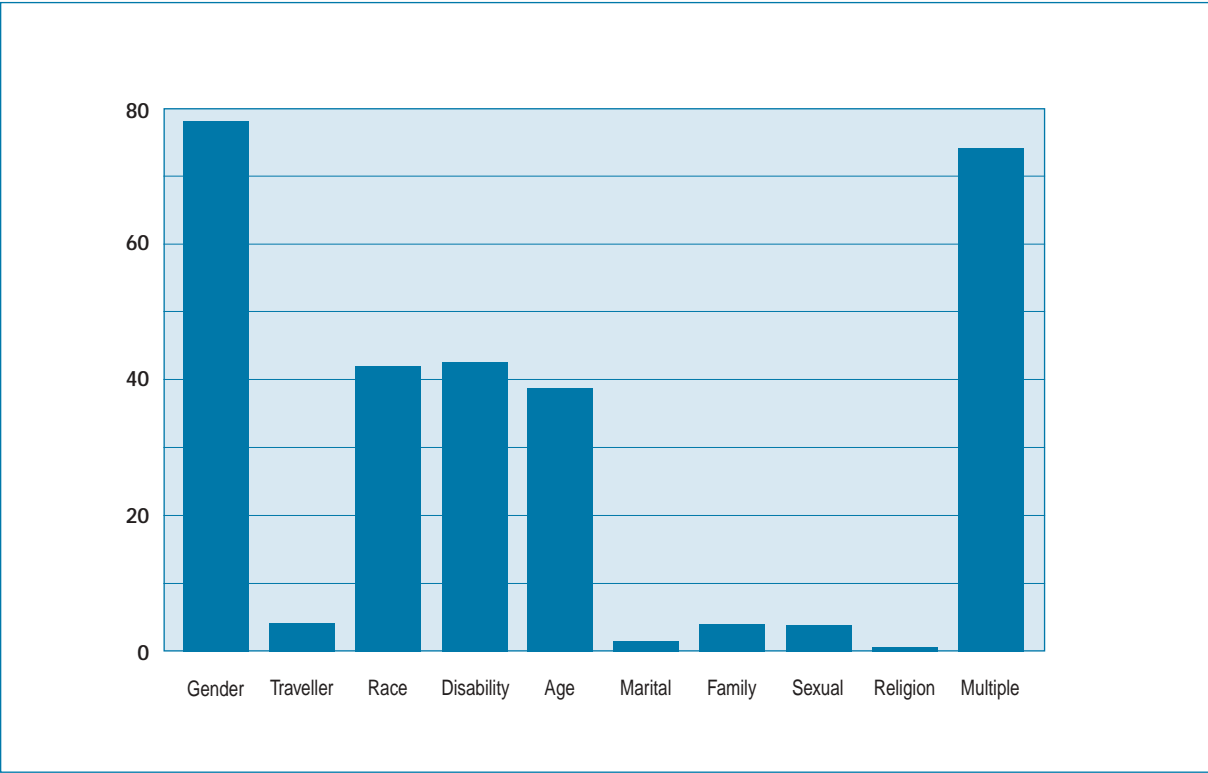


312. **Article 5.e.i The right to work.** The Employment Equality Act, 1998 prohibits discrimination in relation to employment on nine grounds including race. Requirements as to nationality on recruitment apply to a limited number of posts in the Civil Service, for example, general administrative grades and in particular posts in the diplomatic service but not to other professional and technical posts. There are no nationality requirements for posts in the local authorities or health service. There are no nationality requirements for teachers at any level, but a knowledge of the Irish language is required for certain posts, for example, primary schools. Under the provisions of the Defence Act, 1954, Irish citizens or any other person specially approved by the Minister for Defence are eligible to be appointed to be an officer of the Defence Forces. Enlisted personnel must be ordinarily resident in the State. There are no nationality requirements for entry to the Garda Síochána, but a knowledge of the Irish language is required. It would not appear that there are any nationality requirements for any post in state sponsored bodies.
313. The Employment Equality Act, 1998 covers employees in the public and private sectors as well as applicants for employment and training. The scope of the Act is comprehensive and deals with discrimination in work related areas, from vocational training to access to employment and employment conditions generally, including training, work experience and advancement within employment. The publication of discriminatory advertisements and discrimination by employment agencies, vocational training bodies and certain bodies i.e. trades unions and employer, professional and trade associations are also outlawed.
314. The number of complaints in 2002 under the Employment Equality Act, 1998 rose to 309, which was an 19% increase on the previous year. Of the total number of complaints referred to the ODEI under the Equality legislation, 309 were referred under the Employment Equality Act and the remaining 989 under the Equal Status Act<sup>19</sup>. Disability, Race and Age were the most significant grounds cited after gender in respect of employment cases.
315. The 'race' ground covers race, colour, nationality, ethnic or national origin. There were 27 in 2001 and 43 in 2002 cases referred to the ODEI. This compares with only 1 case in the year 2000.
316. Multiple ground refers to complaints that were received where more than one ground was referred. In 2002 there were 75 referred cases under this category.

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<sup>19</sup> ODEI-the Equality Tribunal, (2002) Annual Report 2002, p 11.

Chart 2. Cases referred to the ODEI (Equality Tribunal) under the Employment Equality Act, 2002.



317. The case files of the Equality Authority provide a further insight into the scale and nature of discrimination experienced in employment. Their Annual Report for 2002 indicated that 22% of their case files related to discrimination on the grounds of Race. The issues raised in these case files are outlined in the Table below.

**Discrimination Experienced in Employment on Grounds of Race Based on Case files<sup>20, 21</sup>**

Nature of Discrimination	Percentage of Relevant <sup>22</sup> Case files
Dismissal	26%
Access to employment	17%
Equal pay	13%
Working conditions	29%
Harassment	10%
Access to promotion	1%
Access to training	4%

<sup>20</sup> ODEI - Equality Tribunal. (2003) Annual Report for 2002.

<sup>21</sup> Equality Authority.(2003) Annual Report 2002

<sup>22</sup> Race Ground related to employment.

## Jurisprudence

318. In terms of decisions, the ODEI published 193 Equality Officer findings in 2002 for all Employment and Equal Status cases across the nine grounds<sup>23</sup>. A large number of other claims were withdrawn, settled, mediated or found to be inadmissible. Of the 120 cases decided, 56 were employment discrimination cases. During 2002, overall slightly more claims were decided in favour of respondents (56%), with 52 cases being decided in favour of the complainants and 68 cases in favour of the respondents.
319. There was a 59% increase in people referring claims of discrimination under the Employment Equality Act solely on the race ground, 43 complainants compared to 27 in 2001. There were five decisions in 2002 under the race ground, two under the Employment Equality Act and three under the Equal Status Act. Two concerned alleged discriminatory treatment at work of Spanish and Cypriot nationals; one dealt with allegations of discriminatory treatment and harassment of an American customer by a shop, and one with allegations of discriminatory refusal of admission to a pub to a man originally from Azerbaijan. A fifth concerned unspecified "foreign" nationality allegedly imputed to an Irish person. The two cases under the Employment Equality Act were both decided in favour of the respondents. In both cases the Equality Officer found that the complainant had failed to substantiate the allegations made.
320. One Equal Status case alleged rude and aggressive behaviour by a shop manager to a customer based on the customer's American nationality. The Equality Officer found that the manager had behaved aggressively, but that he had treated Irish customers equally badly in the same circumstances. No prima facie case of imputed discrimination was found in another Equal Status case.
321. The third Equal Status case was decided in favour of the complainant. It concerned a student who was refused admission to a pub where he had agreed to meet some Irish friends. The complainant was an Irish citizen, originally from Azerbaijan. He was asked for identification and produced a student card with photo, which was not accepted. There was uncontested evidence that the pub had admitted younger Irish men the same evening with no identity check.
322. The Equality Officer noted that the complainant was 33 and could not be mistaken for being under 18. He also noted that the complainant was visibly of Middle Eastern origin and the event had occurred shortly after the events of 11th September in the US. The complainant was awarded €1,500 compensation for distress, humiliation and loss of amenity.

## Refugee and Asylum Seekers

323. Asylum seekers who are recognised as refugees have the same entitlements to benefits or to work as Irish citizens. A failed application for refugee status may be appealed to the Refugee Appeals Tribunal and decision will be taken by the Minister for Justice Equality and Law Reform based on the Tribunal's recommendation. Applicants for asylum are not allowed to enter into employment unless/until they are granted refugee status. Asylum seekers are accommodated in full-board accommodation centres across Ireland, and

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<sup>23</sup> ODEI-The Equality Tribunal (2003) Part Two Annual Report, 2002. Legal Review and Case Summaries. Also available on website [www.odei.ie](http://www.odei.ie)



receive €19 per adult per week and €9.60 per child and child benefit. Discretionary needs payments can also be provided in exceptional circumstances.

### Anti-Racism in the Workplace Week

324. Anti-Racism in the Workplace Week is run as a national initiative as a joint venture between the Equality Authority, IBEC, ICTU and the Construction Industry Federation. Details of activities under Anti-Racist Workplace Week since its commencement are given below at paras 367-369. Employers, Trade Unions, the Equality Authority and the Government are developing specific measures to prevent racism in the workplace.

325. **Article 5.e.ii The right to form and join trade unions.** The law relating to trade unions in Ireland falls into two distinct phases: (a) statutes enacted, mainly between 1871 and 1906, to secure trade union freedom and remove trade unions and their activities from the operation of the law, and (b) statutes enacted since 1940 which have sought to introduce a measure of public regulation of trade unions. The Irish Constitution has had an important impact on industrial relations law and practice. A significant body of case law has developed around the Constitutional guarantee of freedom of association, as it applies to the activities of trade unions. Ireland's current international obligations and constitutional provisions on freedom of association, as well as the majority of statutory laws affecting that freedom are explained in detail in Ireland's first report under the International Covenant on Civil and Political Rights (paragraphs 222-236).

326. Section 13 of the Employment Equality Act, 1998 prohibits discrimination by organisations of workers or of employers, professional or trade organisations etc., in relation to the membership and benefits of such body/organisation.

327. **Article 5.e.iii The right to housing.** Section 6 of the Equal Status Act, 2000 requires non-discrimination in disposal of premises and provision of accommodation.

328. **Article 5.e.iv The right to public health, medical care, social security and social services.** Discrimination in the provision of these services is unlawful under the Equal Status Act, 2000.

#### (i) General Medical Services

329. The current system of eligibility for health services provides that any person, regardless of nationality, who is accepted by the health boards as being ordinarily resident in Ireland, is entitled to either a medical card, which grants a full range of health services free of charge, or to limited eligibility<sup>24</sup>. Health boards normally regard a person as ordinarily resident in Ireland if he/she satisfies the health board that it is his/her intention to remain in Ireland for a minimum period of one year.

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<sup>24</sup> Medical card holders are eligible for a full range of services free of charge, including general practitioner services, prescribed drugs and medicines, all in-patient public hospital services in public wards including consultants services, all out-patient public hospital services including consultants services, dental, ophthalmic and aural services and appliances, and a maternity and infant care service. Non-medical card holders have limited eligibility for health services, including all in-patient public hospital services in public wards and consultant services and out-patient public hospital services and consultant services, subject to certain modest charges. Dental and routine ophthalmic and aural services are excluded from out-patient services. However, such treatment is provided to children who have been referred from a child health clinic or a school health examination. Attendance at accident and emergency departments is subject to a charge where the patient does not have a referral note from his/her doctor. A maternity and infant care service is provided during pregnancy and up to six weeks after birth.

## (ii) General Practitioners

330. General Practitioners (GPs) providing services for asylum seekers are paid an extra “one-off” registration fee for each patient. At present this fee is in the region of €134 per patient. If a patient is transferred to the panel of another doctor, the second doctor does not qualify for this extra payment.
331. Certain health boards pay for translation service provided to GPs to overcome language difficulties.

## (iii) Health Promotion

332. There is a commitment in the National Health Strategy to undertake initiatives to eliminate barriers for disadvantaged groups in order to help them achieve healthier lifestyles (Action 19). In this regard Health Boards are actively involved in health promotion initiatives and the targeting of resources to reduce health inequalities.
333. The National Health Promotion Strategy 2000-2005 recognises that within society there exist many population groups with different requirements, which need to be identified and accommodated when planning and implementing health promotion interventions. Indeed a strategic aim of the Health Promotion Unit is to promote the physical, mental and social well-being of individuals and groups within the population, refugees and asylum seekers being one of those groups. In this regard the Unit has as some of its objectives to initiate research into the health and lifestyle behaviour of other groups within the population to prioritise health promotion programmes and to work in partnership with other groups within the population to develop and adapt health promotion programmes to meet their individual needs.
334. The Health Promotion Unit has provided support to Health Boards for Community Development projects specifically targeting refugees and asylum seekers. The Unit has further supported La Leche League of Ireland in the translation of its breastfeeding leaflets into 8 different languages and is also currently considering the expansion of its sexual health advertising campaign to these population groups.

## (iv) System wide equality/diversity initiative

335. Integrating an equality dimension into the health and personal social services is one of the policy measures to achieve the NAPS/Health Targets set out in the Report of the Working Group on NAPS and Health. Equality proofing; culturally appropriate information; awareness and sensitivity training for staff; agreed equality status protocols and codes of practice and equality impact assessment of policies are identified as key areas to be addressed. The focus is to be on nine grounds covered under the Equal Status legislation which includes race. In the context of a multicultural society the Working Group's report recommended that there would be particular attention paid to issues of ethnicity and racism. The Department of Health and Children and the Equality Authority are liaising to progress this agenda.

## (v) Human Resource Policy

336. An Equal Opportunities/Accommodating Diversity Strategy and Action Plan is currently being prepared by the Health Service Employers Agency and the office for Health Management, in line with Action 2.2.1 of the Action Plan for People Management launched in late 2002.

(vi) Asylum Seekers

337. The arrangements in place for the healthcare of asylum seekers are not subject to residency and means criteria and such persons may avail of public health services on the same basis as medical card holders, while awaiting a decision on an application to remain in this country.
338. There is an explicit commitment in the Health Strategy to addressing the needs of asylum seekers/refugees (Action 23). Health Boards provide a number of services in this regard including medical screening, and follow up services and social work services, including services for unaccompanied minors.
339. A screening service in respect of infectious diseases is offered on a voluntary basis to asylum seekers in the interest of the asylum seekers themselves and their families.
340. [Article 5.e.v](#) **The right to education and training.** The right to education is enshrined in the Constitution (Article 42). In addition, Section 7 of the Equal Status Act, 2000 requires non-discrimination by educational establishments in their admission practices etc. As regards vocational training, this is covered by the Employment Equality Act, 1998.
341. Persons belonging to a minority have the right to set up and manage their own private educational and training establishments. Free education at first and second level is available to all children, either in schools provided by the State or in schools which are privately owned but substantially funded by the State.
342. The State provides for first level education in National Schools. The majority of National Schools are state-aided schools, managed at local level under religious patronage. The State gives explicit recognition to the denominational character of these schools.
343. There are also a small number of multi-denominational schools which receive State funding on the same basis as the denominational schools.
344. The conditions to be met in order to qualify for state grants are set out in "Rules for National Schools under the Department of Education" and the *Education Act 1998*. State funding is only available to "recognised Schools" within the meaning of the *Education Act 1998*. These rules do not discriminate between schools under the management of different religious denominations. In order to receive State funding a school must be a recognised school under Section 10 of the Act or centre of education under Section 2.
345. State aid for the establishment of a new national school may be granted on application by the representatives of any religious body or any group of parents who wish to establish a multi-denominational school. The number of pupils of that religious denomination or the number of pupils for multi-denominational education in a particular area must be sufficient to warrant the establishment and continuance of such a school. The same criteria applies to all schools. The Department of Education makes no distinction between schools under the management of different religions. The majority of schools are under the management of Christian religions. The State also funds a number of Jewish schools and a recently established Muslim school.

(i) Asylum seekers

346. Free primary and post-primary education is available to all children, whether they are

nationals or non-nationals. Additional teaching resources or non-pay grants are allocated to schools at first and second level to cater for the additional needs of children for whom English is not the mother tongue.

347. In line with regulations applying to other non-EU nationals, access to third-level education for asylum seekers is on the basis of payment of the economic fee and there is no entitlement to maintenance grants. Once an asylum seeker is granted refugee status or humanitarian leave to remain, s/he is entitled to State-funded adult education on the same basis as an Irish citizen, and is eligible on the same basis as Irish students for third level student support grants.
348. Asylum seekers with the right to work (i.e who entered Ireland prior to 26 July 1999 and who have waited at least 1 year for a determination of their application) are eligible to participate in Further Education and vocational training. Other asylum seekers have free access to adult literacy and English language classes only. Over 3,200 are availing of this facility at present.
349. [Article 5.e.vi](#) **The right to equal participation in cultural activities.** 'Cultural activities' are explicitly within the definition of 'service' for the purpose of the Equal Status Act, 2000 - see clause (b)(iii) of the definition of 'service' in section 2(1) of that Act. Codes relating to standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services were drawn up by the Minister for Arts, Culture and the Gaeltacht under the Broadcasting Act, 1990 and published in September 1995. The Codes provide, inter alia, that broadcast advertising shall not prejudice respect for human dignity or include any discrimination on grounds of race or nationality. The Broadcasting Act, 2001, makes further provision regarding codes for independent radio and television commission, including a requirement to reflect diversity of society in TV programmes (see Article 5(d)(vii) for further information).
350. [Article 5.f](#) - **The right of access to places of service.** The Equal Status Act, 2000 covers all goods and services which are available to the public generally or a section of the public, whether on payment or not and irrespective of whether provided by the public sector or private sector.

## Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

351. [Article 6](#): **Effective protection and remedies.** The Government is committed to maintaining human rights and providing effective protection and remedies for violation of those rights.

(i) *ODEI - the Equality Tribunal*

352. ODEI - the Equality Tribunal is an independent statutory office established by the Employment Equality Act, 1998 to uphold the individual's right to protection against unlawful discrimination, including racial discrimination. It is empowered under the Employment Equality Act 1998 and the Equal Status Act 2000 to investigate and mediate complaints of unlawful discrimination, other than complaints in relation to the dismissal of an employee, on inter alia grounds of race. Dismissal cases are investigated and mediated on by the Labour Court. Under section 27 of the Equal Status Act, 2000 the ODEI may award compensation or a specified course of action as a result of discrimination. Section 82 of the Employment Equality Act also provides for redress, including compensation, an order for equal treatment, reinstatement or a course of action depending on the circumstances. The ODEI's decisions are enforceable at law. Its decisions may be appealed to the Labour Court or to the Circuit Court. See Part VII of the Employment Equality Act, 1998 and Part III of the Equal Status Act, 2000.

(ii) *European Convention on Human Rights (ECHR)*

353. The European Convention on Human Rights Act 2003, incorporates the Convention on Human Rights into Irish law by giving further effect to its main provisions.

354. The Universal Declaration of Human Rights has been printed in Irish and English and has been widely distributed. At the time of ratification, the International Covenants are distributed to government Departments. Copies have also been made available to the general public. Copies of the Convention on the Rights of the Child have been distributed to all primary and secondary schools (approximately 4,200) in Ireland. The reports to the United Nations treaty bodies are published and made available to the general public. Copies are also being circulated to members of Dáil Éireann, government offices and public libraries.

(iii) *Human Rights Commission Act*

355. Section 8 (f) of the Human Rights Commission Act gives the Commission the power to conduct enquiries in accordance with the detailed provisions set out in section 9. They can be in public or in private and what is most important is the fact that the Commission also has the power to obtain evidence by way of production of information or documents and to summon witnesses with backup sanctions.

(iv) *National Action Plan Against Racism*

356. The National Action Plan is a key commitment towards eliminating racism stemming from Ireland's active participation in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa in September 2001. The development of a National Action Plan against Racism (NPAR) in Ireland represents a significant opportunity to both build upon and enhance existing policies and strategies to address racism in Ireland and to identify new priorities and aspirations. The Government is committed to publishing the plan in early 2004.

## Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

357. **Article 7 Measures in the field of education and information to combat racism and promote tolerance.** There is evidence that racist hostility is on the increase in Ireland. Research and statistics from the NCCRI, ODEI - the *Equality Tribunal* and Know Racism, the anti-racism awareness programme show that the dramatic increase in cultural diversity over the past ten years has been accompanied by a shift in the degree of prejudice and intolerance experienced by ethnic minorities. Given this increase in hostility and noting that immigration is a relatively recent phenomenon in Ireland, the Government recognises the importance of maximising education and information initiatives to prevent prejudice becoming ingrained in Irish society. The Government is committed to tackling racism and promoting tolerance at all levels of the education system but also through targeted information campaigns and workplace initiatives.

### (i) Education and teaching

358. Initiatives have been taken to introduce human rights education into schools at primary and secondary level and, after a pilot scheme and delivery-training for teachers, programmes are now being phased into schools, with the emphasis on recognising Ireland as a multicultural society with a respect for diversity.

359. With the changing demographic patterns in Irish society, children of immigrant background are increasingly present in the Irish educational system. All non-citizen children have the right to attend Irish schools and measures have been put in place to assist children of immigrant background in integrating into the school system, for example, additional funding has been provided for extra teachers to provide language support.

360. Integrate Ireland Language Training was set up by the Department of Education and Science. On the basis of research into the English language needs of refugees, it has developed an employment-oriented language training programme and directs adult refugees to the appropriate courses as well as delivering language training itself.

361. A range of initiatives are under way to promote anti-racism and interculturalism in the education sector and to support the participation in education of non-nationals. These include:

- curricular emphasis on respect for the dignity and rights of others, and celebration of diversity;
- information booklets for schools on Asylum Seekers;



- development of guidelines for teachers on how the curriculum can be mediated and adapted to reflect the emergence of a multi-cultural society;
- publications, resources and conferences, staff development programmes and a full-time curriculum support service;
- extra teaching and non-pay resources for schools catering for those for whom English is not the mother tongue;
- funding for Integrate Ireland Language Training for (a) a support programme for teachers to enable them to develop immigrant children's English language skills and (b) materials and staff development for adult tutors meeting the literacy and language needs of adults;
- research on the development of a whole school approach to interculturalism, and on addressing the needs of adults;
- additional support for educational placement and summer programmes and other supports for unaccompanied minors;
- working groups with educational management and practitioners to develop best practice in this area.

362. The Department of Education and Science has also established a specific working group to co-ordinate the development of interculturalism and anti-racism at all levels across the education system, and has initiated a national consultation process with key stakeholders which will feed in the education component into the overall National Plan Against Racism being developed by the Department of Justice, Equality and Law Reform.

## (ii) Culture and Information

### (a) Anti-Racism Awareness Programme 'Know Racism'

363. The Anti-Racism Awareness Programme 'Know Racism' is instrumental in seeking to change cultural attitudes to discrimination. The Government allocated €5m to the programme over a three year period.

364. The approach of the programme is based on partnership and seeking to develop actions and initiatives, in the area of media and communications, education, community and local development, political parties, and other areas such as the workplace, policing, sport and the role of religious organisations, that have the potential to have real and sustainable impact.

365. Since the launch of the programme the main actions and initiatives which have been undertaken include: a total of €635,000 was provided to local and community anti-racism awareness initiatives through grant schemes. An advertising campaign was launched in March 2002 on radio, press and billboards to raise the visibility of the programme and to spread its messages. As part of its advertising campaign, the awareness programme delivered 1.3 million leaflets to households providing information on racism and how to deal with it as an individual. To mark March 21, International Day Against Racism, the programme launched an anti-racist emblem designed by John Rocha to be worn as a pin. The programme also participated in a number of partnership ventures including a series of multicultural programmes on national TV, the Anti-Racist Workplace Week, and a grant

scheme for political parties to raise awareness among their members and candidates of the need to use appropriate language in the approach towards the general election. An information leaflet challenging the myths and misinformation about asylum seekers was widely circulated.

366. As part of its strategy, the awareness programme commissioned quantitative and qualitative surveys to serve as a benchmark and to monitor attitudes and opinions on racism and minority groups.

#### (b) Anti-Racist Workplace Week

367. Anti Racist Workplace Week is run as a national initiative, organised jointly by the Equality Authority, IBEC, ICTU and the Construction Industry Federation. The week occurs in the first week of November and commenced in 2000. In the first year a workplace resource pack was developed and disseminated. In 2001, a panel of anti-racist workplace trainers was established and a survey of existing good practice was launched. Know Racism supported an associated advertising campaign.

368. In 2002 a further extensive billboard, radio and newspaper advertising campaign was funded by Know Racism. Research into equality infrastructures, specifically dealing with race and membership of the Traveller community was commissioned, in addition to a report on migrant workers experience of support structures. The theme of the week was the migrant worker. A seminar was held on the theme, where the voices of migrant workers were heard.

369. In 2003 the Anti Racist Workplace Week continued to explore the ethnic worker theme through building on a workplace commitment poster first disseminated in 2002. The poster was matched by an individual worker leaflet. Once again workplace activities were central. A guidance document on anti-racist practice in the workplace was prepared and published during the week.

#### (c) The Convention on the Elimination of All Forms of Racial Discrimination.

370. The Convention is available on the Department of Foreign Affairs web site. There is also a link from the Department of Justice's website to the UN website. In addition this Report has been placed on the Department's website and the Committee's concluding observations will also be accessible from the website to promote greater understanding of the Government's commitment to tackling racism.

## Conclusion

371. The progress and the challenge facing Ireland in regard to racial discrimination, as well as other forms of discrimination, can be summed up in the words of the President:<sup>25</sup>

*I am proud of the fact that Ireland has one of the most modern and comprehensive equality codes in Europe. We have a written Constitution which begins with an assertion that the people of our country seek to promote the common good so that "the dignity and*

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<sup>25</sup> Remarks by President McAleese, on formally opening the Mainstreaming Equality Conference: Models for Statutory Duty, 27th February, 2003.

*freedom of the individual may be assured and true social order attained". The section on personal rights begins by saying "All citizens shall, as human persons, be held equal before the law." We have an impressive raft of legislation designed to promote and vindicate the equality of the individual in many spheres of everyday life.*

*...But there are ...problematic, awkward stones, that have to be shifted out of the way if the journey to a decent and true social order is to be completed. They are the hearts of stone that continue to beat out of time with the equality agenda, the hearts that harbour and hand on a huge legacy of attitudes and behaviours which are the breeding ground of blinkered thinking, of bias and of exclusion. Legislation can take us or drag us to the waters of equality, it can even force the reluctant to drink those waters but it can't completely stop the poison, the contamination that leaches out of the human heart into the family, the street, the workplace and the community. That poison kills off opportunity, kills off self-confidence....And every time that poison does its worst it robs not only the individual of his or her birthright as a human being, it robs our society of the flood of talent, joy, fulfilment, creativity, and peace of mind that comes from the fullest empowerment of the human person.*

*...Ireland has embraced an astonishing level of change in recent years. There is an appetite and capacity for change that must give great reassurance to those who have been banging the equality drum for a long time... Looking back at those decades we can see that the relentless dedication of those committed to the equality agenda has been rewarded with manifest, steady progress which has given renewed hope to those who have to live the fact that we do not yet appear to cherish all the children of the nation equally. How close are we to that landscape which has inspired us for generations? What can we do in this most blessed and privileged of generations, to bridge the gap between aspiration and reality?*

372. This report outlines the measures that have been put in place to bridge the gap between aspiration and reality. Demonstrating Ireland's commitment to bridge that gap urgently, effectively and permanently, this report will be a touchstone for progress over the coming years.



Children outside Government Buildings at the Know Racism launch, October 2001.

# Part III

## Consultation with Non-Governmental Organisation Sector

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### Introduction

373. Recognising the important role that the Non-Governmental Organisation (NGO) sector plays in human rights matters, the Department of Justice, Equality and Law Reform, in the drafting of this report, consulted formally and informally with a representative cross-section of the NGO sector. A complete list of the NGOs consulted appears at the end of this section.

374. The purpose of the process of consultation was three-fold:

- To ensure Ireland's first report was an accurate reflection of the current status in Ireland of the International Convention on the Elimination of All Forms of Racial Discrimination;
- To pinpoint the key concerns of the NGO sector and to afford them a meaningful opportunity to present to Government officials their ideas on how Ireland could achieve fuller implementation of the International Convention on the Elimination of All Forms of Racial Discrimination;
- To explore the implementation by Ireland of the International Convention on the Elimination of All Forms of Racial Discrimination from an alternative perspective and to record this in a specific chapter in this report.

375. On 15 July, 2003 the Equal Status Division of the Department of Justice, Equality and Law Reform convened a consultative meeting between Government Departments involved in the drafting of Ireland's first report and prominent NGOs. In the weeks before the meeting, the participating NGOs were furnished with the draft report on a confidential basis; it was hoped that this would facilitate an in-depth examination and allow concerns to be made known from an informed position. The meeting did not set out to achieve agreement or consensus but rather to allow for a constructive exchange of views on the report.

376. The participants at the meeting proceeded to re-examine the draft report on a thematic basis.

377. It was agreed to include in the draft report revisions to facts and statistics in the draft which were either outdated or inaccurate; several omissions were also rectified. In relation to substantive comments, it was agreed that the most appropriate procedure would be to supplement the final report with a chapter recounting the principal points raised in the course of the consultation process.

378. Some of the key concerns of the NGO sector are outlined in the following paragraphs. This

is not an exhaustive analysis of all the issues raised but it illustrates some of the main areas discussed during the drafting of this report. The Irish Government's response, where given, is shown in italics.

## General Comments

379. In general NGOs felt that the report lacked a clear acknowledgement concerning the urgent problems of racism in Ireland and a strong statement of commitment from the Government. They also felt that the absence of analysis of measures contained in the report hindered an accurate portrayal of the Irish situation. In terms of the structure of the report itself it was suggested that it should be given more indexed headings to enhance accessibility and clarity.

380. It was felt that while the report provides some picture of what's in place, it does not reflect the realities of the current situation. It was suggested that a useful way to include such analysis would be through the identification of the ongoing challenges to be met or outstanding work to be completed, as would exist in any State context. It was added that it does not constitute a slur on the Government to say that more work is required. How interculturalism will be achieved needs to be more explicitly articulated.

381. Additionally, it was emphasised that there exist notable disparities between Government reporting and the experiences of people working on the ground. There is an urgent need for adequate reporting and accurate statistics. It was suggested that an independent monitoring body be established to provide such data.

## Executive Summary

382. It was felt that the Summary does not clearly identify the ills and consequences of racism and provide an effective context for establishing an immediate and accurate picture of the current situation in Ireland.

383. In particular, it was strongly felt that Paragraph 3 (which explains why Travellers are covered in an appendix) was inaccurate and misplaced.

384. *The paragraph has been revised in light of this comment. See paragraph 29.*

385. The Summary also needs to include more acknowledgement of work with NGOs with regard to addressing work done on the ground. Issues relating to resources and funding, and the challenges of creating more effective consultative and participatory structures needs to be highlighted.

386. *The Summary has been revised to acknowledge the importance of the work done by NGOs. See paragraph 22.*

387. It was noted that, in light of the present circumstances, the explanation that a question on ethnicity was not included in the 2001 Census on the grounds that it was 'too sensitive' was a poor justification. It was also felt that the lack of the ethnicity question in the Census led to inaccurate and confusing information, reflected in the Executive Summary, in which discussion of the diversity in Ireland boils down to general comments about longstanding Traveller and Jewish populations, whether people are Irish nationals or non-nationals, and a breakdown of statistics concerning countries of origin for people making applications for asylum.

388. *In regard to data, it should be noted that Pilot research on the use of ethnic questions in health statistics is currently underway. The CSO is developing an ethnicity question for use in the next census and the quarterly National Household Survey.*

389. The point was made that an increasing amount of research commissioned by various Government departments is uncoordinated, ad hoc and unmonitored. This has led to poor research practices, duplication of research and waste of funding, and contracts going to market research consultancies rather than those trained in social/policy research or practitioners working and experienced in the areas being researched. As such, and in light of other comments made with respect to the need for accurate information and statistics, in addition to a stronger statement regarding the intent to develop an ethnicity question, it was noted that the inclusion of a discussion regarding the Government's approach to developing a comprehensive and appropriate research strategy is also needed.

390. *The Government's approach to developing an effective statistical framework is outlined in paragraphs 9-11 of the Executive Summary.*

## Part II of the Report

### Target Groups

391. There was lengthy discussion concerning the definition and inclusion of target groups with regards to CERD mandates, stated Irish Government measures and the report itself.

### Travellers

392. Many NGO representatives vigorously criticised the view that 'Irish Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent, or national or ethnic origin...' on the grounds that:

- It is a bald re-statement by Government without reference to any academic or other work, and without explanation, that both fails to reflect and undermines decades of political change in response to Travellers seeking greater anti-discrimination measures;
- It was also felt that statement seems to send a contradictory message from Ireland with regard to Travellers that is inconsistent with the message conveyed in Durban and other international fora over the years;
- It contravenes existing domestic policy and legislative foundations, and fails to conform to current CERD principles and practice;
- It differs from the definition adopted by the Task Force on the Travelling Community (1995). Moreover, as the definition incorporated by the Equal Status Act was taken from the Northern Ireland Race Relations Order of 1997, in which Travellers were defined as ethnic groups, the usage in the report contravenes domestic legislation.

393. *The Government's position on Travellers is set out at paragraph 29 and Appendix 1. Irish legislation gives explicit protection to members of the Traveller community. The Government's position is consistent with the Report of the Task Force on the Travelling Community. To define Travellers as an ethnic minority would not entitle Travellers to any additional rights or protections. The claim that Irish Travellers constitute a distinct ethnic*



*group is controversial within academic research. See Appendix 1, footnote.*

#### Migrants/Migrant Workers

394. The point was made that there is absence of any mention of migrants other than refugees throughout the report, which would need to be redressed on an article-by-article basis, to include migrant workers, students, spouses of Irish/EU nationals, and so on. Regardless of the fact that the CERD focus can be interpreted as not addressing migrants in light of the separate Convention, these groups fall within the Government's mandate to address racism and discrimination.

395. *The prohibition on racial discrimination in Irish law applies to all, irrespective of citizenship or nationality. Legal migrant workers are protected by labour laws.*

396. It was mentioned that the Minister had promised to amend legislation with respect to migrant women employed in domestic work, discussion of which should be included in the report.

397. *Legislation is being prepared to amend the Employment Equality Act, 1998 and the Equal Status Act, 2000 Acts to give effect to EU Directives 2000/43/EC (Race Directive), 2000/78/EC (Framework Employment Directive) and 2002/73/EC (Gender Equal Treatment Directive). It is proposed, in the context of implementation of the Directives, to amend the current exclusion from the provisions of the Employment Equality Act 1998 in respect of employment in private households. The Government is committed in the new partnership agreement, Sustaining Progress, to have the amending legislation enacted as soon as possible.*

#### Other Groups and Categories

398. The point was made that any anti-racism or anti-discrimination measures or policies will fail if they do not acknowledge the intersection of the multiple bases of racisms and discriminations based on membership of a group, in both social and institutional contexts.

399. Participants also observed that the gender dimension was missing from the report, and should be commented on, especially in light of recent reviews by CERD itself.

400. Concerns were also raised with respect to the absence of asylum seekers from the report

401. *Irish equality legislation is particularly concerned about the risk of multiple discrimination. Irish equality law and institutions are based on the principle of a single equality standard to combat discrimination across the nine grounds, including race and gender.*

#### Establishment of National Bodies

402. In regard to the Garda it suggested that there was:

- Insufficient Reporting/Monitoring of Complaints & Racist Incidents;
- That the effectiveness of the complaints process is a factor in ethnic minorities' confidence, and there is a clear feeling that there is not a satisfactory mechanism for complaints;
- Questions were asked about the lack of availability of the actual statistics on racist incidents. An application has been made to the Commissioner to release the statistics

- from the new computer PULSE system, they are still awaiting a response;
- It was noted that certain functions of the Garda Síochána are exempt from the Equal Status Act, under the justification that they constitute ‘controlling duties’;
- Recognition was given of the Gardaí’s efforts in working with ICTU in order to disseminate information to migrant workers on their rights. The importance of developing codes of practice in employment, particularly to include religion was also noted.

## National Legislation

403. Several participants noted that, while promised for some time, the review of the Incitement to Hatred Act was not yet forthcoming. Both the Act and the review play key roles, especially given the inadequacy of the Act thus far.
404. It was suggested that the discussion of the combination of the protections of the Incitement to Hatred Act and Offences Against the State Act (to permit the prohibition of racist organisations) was problematic. Specific legislation is required in this area, rather than cobbling together other legislation.
405. The point was made that the implications of the education legislation are more complex than described with regard to schooling and ethnic minorities.

## Immigration Policy

406. While it was noted that immigration policy is currently being reviewed, this was also the position stated in the 2001 ECRI report. The statement in the report does not, therefore, realistically portray the current situation.
407. *The Immigration Bill 2003 has been developed in light of extensive consultation. This involved the establishment of a Cross-Departmental Group on Immigration, a public consultation and information gathering process, a study of international legislation and practice in the field of immigration and an internal review of practices in the Immigration and Citizenship Division of the Department with a view to improving service to the public. Implementation of the Immigration Bill 2003 will create a fairer and more transparent immigration system.*
408. It was noted that there is nothing included concerning the Reception and Integration Agency, and the inability to monitor or evaluate the ways in which it does or does not impact on racism in Ireland.
409. *Further information on the role of the Reception and Integration Agency has been included at paragraph 137.*
410. Concerns were raised regarding point of entry dimensions of the process and it was argued that while there is assistance available for people making asylum applications, there are no safeguards or monitoring procedures at the beginning of the process, at the point of entry.

## EU and International Legislation

411. Concerns were raised that Council of Europe – Protocol No. 12 will not come into force until ratified. It was noted that ratification is not in the Programme of the current government.

## Funding and Support for Ethnic Minority Groups

412. A gap was highlighted between what is on paper and reality with respect to funding organisations. Concerns were raised about the spending chart with regard to government spending in relation to Travellers, especially given that it was felt that much of it does not reach people on the ground.
413. The point was also made that the absence of mention of migrants with respect to funding indicates the ongoing view that they are temporary members of the population and supports are not required for this part of the population.
414. The point was made that the realities of NGO/minority ethnic group activities and participation were not reflected in the report. While the Government's encouragement of NGOs to participate in the CERD process, for example, is welcomed, it was noted that even the production of shadow reports would have to take place outside working hours, on an unpaid basis – on top of other work already being done in this fashion.
415. It was further emphasised that there is a need to state what is in place with regard to funding and support, and establish a marker of what Ireland would like to see in the future. It is important to have an integrated approach to the reporting and analysis of racism and measures to combat it; possibly including the wider context of the White Paper to Support Community and Voluntary Work.

## Anti-Racism Protocol for Political Parties

416. Some NGOs considered that the lack of disciplinary procedures in political parties for members violating the anti-racism protocol meant it did not have a real impact.

## CERD Convention Articles

### Article 2

417. Special and concrete measures regarding the adequate development and protection of groups/individuals mentioned under Article 2.2 need to be outlined.
418. It was stated by the NGOs that Ireland is unique in not having long term work permits, which leads to racism and sends the message that people don't belong because no long term provisions have been put in place for them.
419. *According to the Department of Enterprise, Trade and Employment Work Permits are issued initially for a period of 12 months and in the economic climate of recent years it has been easy to renew these. To date in 2003, over 18,000 permits have been renewed. After 5 renewals, a permit of unlimited duration may be issued. Furthermore, after 5 renewals, the employee in question can apply for naturalisation.*

### Article 3

420. Indirect consequences of policies must be considered under the rubric of this article, particularly with respect to asylum seekers and Travellers

## Article 4

421. As stated previously, the real issue is getting the review completed and disseminated as the existing Incitement to Hatred Act has been recognised as inadequate for a long time. A new act is necessary immediately and a timetable for its completion must be specified. There has been an increase in defamation and racist speech especially because there are no enforceable sanctions at present.
422. Despite consistent misreporting by the media, especially with regard to Government policies and practices and misrepresentation of refugees and asylum seekers, it was felt that the Government does not respond in a strong enough fashion and should pursue innovative ways of correcting misreporting.
423. It was noted that the proposed statutory press council is not mentioned here. The need for the establishment of a right of reply on a statutory basis was also emphasised.
424. *Reference to the Government's proposals for a statutory Press Council is included in the discussion under Article 5, para. 297.*

## Article 5

425. It was noted that there is an absence of immigration appeals tribunals similar to the Refugee Appeals Tribunal. It was also felt that there are also serious obstacles for migrants to take advantage of opportunities to appeal immigration decisions.
426. Complaints procedures within each relevant department are required.
427. Regarding the right to work for asylum seekers, it was noted that this statement does not reflect the fact that any asylum seeker who takes up employment is subject to arrest or imprisonment, or that employers who hire them will be severely sanctioned.
428. It was asked whether the Irish Government plans to sign the Migrant Worker Convention.
429. *It is not on the Government's current agenda to ratify this Convention for legal reasons.*
430. There are inconsistencies between asylum seekers' rights to vote and freedom of movement. While they may get status, it is then another 11 months before they receive their papers.
431. It was alleged that there is an overrepresentation of immigrants in prison. More concrete statistics are required concerning breakdown of prison populations. Prison rules have not been updated since the 1940s despite it being the responsibility of Government to do so. It was suggested that the recent Prison Inspector's report be included with supplementary CERD report material.

## Article 6

432. The National Action Plan Against Racism should be mentioned in this section.

433. *This has been included.*

## **Participation of NGOs and other Minority Ethnic Organisations**

434. Concerns were expressed with respect to the appropriateness and effectiveness of the present meeting as a consultation process as it relates to the CERD process. Questions were asked about the representativeness of the attendees, how the list was drawn up, were additional consultations being held and so on. This highlights the lack of development of effectively inclusive, purposefully established and designed representative structures that are necessary to meet the needs, objectives and mandates of both Government and NGO sectors with respect to establishing the infrastructure for implementation of anti-racist, inter culturalist and equalities initiatives.

435. *The consultation on CERD took place after exhaustive consultation on anti-racism policy for the National Action Plan Against Racism. This includes regional seminars throughout Ireland and thematic seminars covering refugees and Asylum Seekers, the Media, Religious groups, Workplace issues, Travellers, Migrants, Women, Policing/Administration of law, Crosscutting themes, Young people and children, Education and Health. A summary of this consultation was published (Diverse Voices) and the authors of the CERD report took account of that consultative process when drafting this Report. The report, Diverse Voices, is appended at Annex 28.*

## ORGANISATIONS INVOLVED IN THE CONSULTATION PROCESS

Ralaheen  
Mercy Justice Office  
Immigrant Council  
UNHCR  
Amnesty International  
ECRI  
Metro Eireann  
National Traveller Women's Forum  
Irish Traveller Movement  
Irish Centre for Human Rights  
City Bridges  
Migrant Rights Centre Ireland  
Access Ireland  
National Consultative Committee on Racism and Interculturalism  
Comhlámh  
Cradle  
Vincentian Refugee Centre  
Cairde  
Refugee Project  
Emigrant Advice  
Africa Solidarity Centre  
Pavee Point  
Baha'i Community  
African Refugee Network  
Equality Authority  
Reception and Integration Agency  
Garda Racial and Intercultural Office  
Department of Justice, Equality and Law Reform  
Department of Education and Science  
Department of Environment, Heritage and Local Government  
Department of Health and Children



# Part IV

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## Legislative, Administrative and Other Initiatives taken to Combat Discrimination Against the Traveller Community

### Background

1. Irish Travellers [population 24,000] are an indigenous Irish community with a shared history of a nomadic way of life and cultural identity. Some of the bodies representing Travellers claim that members of the community constitute a distinct ethnic group. The exact basis for this claim is unclear.<sup>26</sup> However, the Government of Ireland accepts the right of Travellers to their cultural identity, regardless of whether the Traveller community may be properly described as an ethnic group. The Government is committed to applying all the protections afforded to ethnic minorities by the CERD equally to Travellers. As outlined in Ireland's Report under the International Covenant on Civil and Political Rights, Travellers in Ireland have the same civil and political rights as other citizens under the Constitution and there is no restriction on any such group to enjoy their own culture, to profess and practice their own religion or to use their own language. The Government's view is that Travellers do not constitute a distinct group from the population as a whole in terms of race, colour descent or national or ethnic origin.
2. The Government is committed to challenging discrimination against Travellers and has defined membership of the Traveller community as a separate ground on which it is unlawful to discriminate under equality legislation. This was not meant to provide a lesser level of protection to Travellers compared to that afforded to members of ethnic minorities. On the contrary, the separate identification of Travellers in equality legislation guarantees that they are explicitly protected. The Government notes that the Durban Declaration and Action Plan recognised the need to develop effective policies and implementation mechanisms for the full achievement of equality for Roma/Gypsies/Sinti/Travellers.
3. In recognition of its commitment to improving the situation of Ireland's Traveller community, the Government set up the Task Force on the Travelling Community in 1993. The Report of the Task Force on the Travelling Community issued in July 1995. The report contained 341 recommendations on accommodation, health, education and training, employment, development of a Traveller economy, relationships with the settled community, culture, discrimination, role of Traveller women, and the need for co-ordination and monitoring.
4. In 1998, the Committee to Monitor and Co-ordinate the Implementation of the Recommendations of the Task Force on the Travelling Community was convened and chaired by the Department of Justice Equality and Law Reform with membership comprised of representatives from the Social Partners, Traveller organisations and relevant Government departments.

The terms of reference of the Committee are:

- To co-ordinate and monitor the implementation of the recommendations on the

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<sup>26</sup> According to Tovey and Share "A Sociology of Ireland" (Dublin 2002), P.470, the claim that Irish Travellers constitute a distinct ethnic group is controversial within academic research.

Report of the Task Force on the Travelling Community which have been accepted by the Government or by Ministers;

- To draw up and submit to the Government from time to time, starting in 1999, a progress report on the implementation of the recommendations, including proposals for acceleration or prioritisation of implementation of recommendations;
  - To re-examine recommendations where necessary in the light of changes in Government policy and practice and of legislative, demographic, social and economic change;
  - To serve as a forum for consultation on current issues of national importance affecting the Travelling community.
5. The First Progress Report of the Committee to Monitor and Co-ordinate the Implementation of the Recommendations of the Task Force on the Travelling Community was published in December 2000 and the Second Progress Report is currently being drafted.

The main positive developments outlined in the First Progress Report are:

- A National Strategy for Traveller Accommodation was adopted in March 1996 followed by the establishment of a dedicated Traveller Accommodation Unit in the Department of the Environment, Heritage and Local Government.
- To oversee the implementation of the National Strategy a National Traveller Accommodation Consultative Group was set up under the aegis of the Department of the Environment, Heritage and Local Government. (In April, 1999, this Group was established on a statutory basis as the National Traveller Accommodation Consultative Committee).
- The Housing (Traveller Accommodation) Act was enacted in 1998.
- Local Traveller Accommodation Consultative Committees were subsequently established in each local authority area.
- Early in 2000, local authorities adopted their five-year local Traveller accommodation plans.
- A Traveller Health Advisory Committee was established in the Department of Health and Children in 1998.
- A Traveller Health Unit was established in each of the health boards and the Eastern Region Health Area.
- A Co-ordinating Committee on Traveller Education was formed in the Department of Education and Science in 1996.
- An Advisory Committee on Traveller Education was established in 1998.
- The Visiting Teacher Service was expanded significantly during 1999 and 2000.
- Other developments in education which will have a positive impact on Travellers'

education are: the coming into operation of the National Education Psychological Service in September, 1999; the publication of the White Paper on Early Education in December, 1999; the publication of the document entitled: "A New Deal - a Plan for Educational opportunities"; the Education (Welfare) Act, 1999 and the White Paper on Adult Education, published in August, 2000.

- Legal measures to outlaw discrimination were introduced. The Employment Equality Act, 1998 provides legal protection against harassment and discrimination in the workplace on nine grounds, including membership of the Traveller community. The Equal Status Act, 2000 protects against harassment and discrimination outside of the workplace in the delivery of goods and services on the same nine grounds. Both Acts are supported by the establishment of the Equality Authority and the Office of the Director of Equality Investigations.
  - To increase awareness and develop relationships between Travellers and the settled community, £900,000 was allocated by Government over a three-year period, 1999 - 2001, to fund an information campaign, "Citizen Traveller."
  - The Report also acknowledges the ongoing work by Traveller organisations in building links with the settled community.
  - Financial support was provided by the Department of Justice, Equality and Law Reform towards a Traveller Mediation Service operated by Pavee Point, Traveller Centre.
  - The inclusion of Travellers in the Community Development Programme and in the Local Development Programme is also a significant development and it has allowed for the emergence of a stronger organisational infrastructure in the Traveller community.
6. However, the Government is concerned that the Task Force Committee found that, in general, improvements on the ground in the position of Travellers since the publication of the Task Force Report had been disappointing. More specifically, the Committee found that the monitoring of progress was difficult due to the lack of good quality data on the numbers of Travellers availing of services, such as, education and health services and main stream employment. The Committee highlighted the need for reliable information, on an annual basis, on the numbers of Travellers at schools and colleges, in employment, accessing health services, or taking up accommodation in houses, if progress is to be measured. The Committee also identified a number of other issues affecting progress, such as, the difficulties in translating policy into action; the need to understand and accept the distinct culture and identity of Travellers; resources for Traveller organisations; developing the Traveller economy; difficulties in complying with the Control of Horses Act, 1996; and the gender dimension of policies affecting Travellers.
  7. The Second Progress Report of the Committee to monitor and co-ordinate implementation of the recommendations of the Task Force on the Traveller Community is currently being drafted.

## Demographic Background

8. A question relating to membership of the Traveller community was included for the first time in the 2002 census form. Efforts to distinguish Irish Travellers in previous censuses had

relied on enumerators identifying them during the fieldwork phase of the relevant census. The Traveller community enumerated nearly 24,000 in the 2002 census (0.6% of the total population). A dedicated volume (volume 8) of the 2002 census report on the Irish Traveller community was published in January 2004 and is at Annex 32.

9. Local authorities who, under the aegis of the Department of Environment, Heritage and Local Government, are responsible for the provision of Traveller accommodation, carry out an Annual Count of Traveller families. In November 2001, 5,150 families (this does not include families who provide for their own accommodation needs without assistance from local authorities) were accommodated by or with assistance of local authorities or were on the roadside awaiting permanent accommodation. This was an increase of 832 families since the Annual Count taken in 1996. The number of families living in unapproved accommodation in November 2002 was 939, down from 1,207 in 1999.

## Education

10. The Department of Education continues to work towards meeting the recommendations laid down in the Traveller Task Force Report and the targets set under NAPS. Co-ordinating committees have been established to monitor progress in this area. The objective is *“full participation of traveller children in an intercultural education system”*. This is to be realised through a policy of full integration of traveller children into mainstream education provision. Curricular developments are to underpin the promotion of intercultural awareness, understanding and tolerance as an essential part of the education process.

The Department of Education and Science provides for education of Traveller children in:-

- Traveller Preschools
  - Special Primary Schools for Travellers
  - Primary Schools
  - Post Primary Schools
  - Junior and Senior Training Centres.
11. In regard to early childhood care and education for Traveller children, the Department of Education and Science provides grants to Local Management Committees to fund pre-schools for Traveller children from the ages of 3 years to approximately age 5. Traveller children may also access “Early-Start” pre-school schemes which are linked to disadvantaged areas.
  12. Turning to primary and secondary level, the “Guidelines on the education of Travellers in primary and second-level schools” are a key initiative in tackling educational disadvantage within the Traveller community. The aim is to facilitate greater access to schools and to ensure that Traveller children will participate in, and benefit fully from education. These guidelines promote an understanding of Traveller culture, history and language, in the context of interculturalism, and also raise issues such as Traveller accommodation and health. The guidelines also include an extensive bibliography and contact list for teachers who wish to access further information. The Department is considering in-service training for teachers in these guidelines.
  13. The Department has also asked the National Council for Curriculum Assessment (NCCA) to develop guidelines on intercultural education at primary and post-primary level and these guidelines will also include the Traveller community.

14. Teachers and other educational experts have collaborated with other EU teachers on this issue and have provided a number of publications for schools in this context. The Visiting Teacher Service for Travellers, funded by the Department and which promotes Traveller education and acts as a liaison between Traveller families, schools and the Department on education issues, also sources appropriate intercultural information for teachers.
15. Another initiative is the School Completion Programme which includes the use of tracking systems to ensure that pupils, including Travellers, are retained in school. The initiative launched recently will focus on retention levels in relation to all children including Traveller children. Currently there are 5,000 Traveller children in primary schools. There are also 1,500 Traveller children in Post-Primary schools at present out of a possible 4,000. Only a small percentage transferring to Senior Traveller Training Centres where they can access an allowance for attendance.
16. This initiative builds on a programme of support for Traveller education amounting to almost €40 million per annum (2000/2001). This includes:
  - a National Education Officer for Travellers,
  - additional resource teachers (total at primary level is 465),
  - 40 visiting teachers,
  - 52 Traveller pre-schools,
  - special transport provision
  - enhanced capitation for schools enrolling Travellers.
17. As noted above this support has seen an increase in enrolment of Traveller children to 5,000 in primary schools and 1,500 in second-level schools. For older Travellers, a network of 29 Senior Traveller Training Centres provides integrated education, vocational training and work experience for Travellers aged 15 upwards who have left school early with minimal or no qualifications, in a culturally supportive environment. There is no upper age limit on the programme, as the policy is to try to attract parents to participate in view of the impact this has on their children's participation in schooling. A training allowance is paid to participants.
18. In terms of attainment levels, including literacy levels of Travellers as compared to the population at large, the Department of Education and Science does not collate statistics specific to the Traveller community in this area. The Visiting Teachers' Service, however, indicates that Traveller children, in the main, are underachieving and a significant number are roughly two years behind their peers in attainment levels. The Department is currently examining ways to obtain more specific information in this area without individualising the statistics.
19. An officer at Principal Officer level within the Department has been designated to liaise with the Traveller community and the Government is also committed to developing a comprehensive and strategic 5-year Traveller Education Strategy (details of this strategy should be available for the Committee in time for Ireland's examination).

## Training

20. FÁS, is the state agency with responsibility for training and employment services and operates within the remit of the Department of Enterprise, Trade and Employment. Travellers are included on a range of FÁS programmes. In addition there are a number of special initiatives, which have been developed in response to approaches from Traveller

Support groups locally. It is expected that the outturn for 2002 on Traveller specific initiatives will be €4.2m.

21. Trainees from Senior Traveller Training Centres are entitled to progress to FÁS Mainstream and it is open to Centre Directors, Staff and Trainees to approach FÁS Training Centres, FÁS Placement Services and FÁS Community Services to avail of services. The Centres operate referral networks for this purpose and are supported by a FÁS Advocate service.
22. As of July 2002 there was Community Employment Projects specifically dedicated to Travellers in Kerry, Limerick, Galway, Offaly, Meath, Louth, Dublin, Wicklow and Waterford. Between these and other Community Employment projects, there are some 230 Travellers on this programme. There are some 105 Travellers in FÁS training, mainly in Community Training Workshops. There are 790 on the FÁS Employment Service caseload at present and a further 110 on the Local Employment Service Caseload.
23. Despite having a special category relating to Travellers on FÁS registration and other FÁS pro forma, such categories are not always ticked and consequently it is not possible to report accurately on the level of FÁS service availed of by members of the Traveller community.

#### Accommodation

24. Following consideration of the Task Force Report on the Traveller community, the Government adopted the National Strategy for Traveller Accommodation. All the main elements of that Strategy were incorporated in the Housing (Traveller Accommodation) Act, 1998 which put in place a comprehensive legislative framework within which the accommodation needs of Travellers are being addressed. This includes requirements on local authorities to prepare and adopt Traveller accommodation programmes within their functional areas as well as mechanisms to provide for consultation with Travellers/Traveller representatives at both national and local level. The Strategy also included a number of recommendations which were implemented but which did not require legislation:
  - The establishment of a dedicated Unit in the Department of the Environment, Heritage and Local Government to deal with Traveller accommodation;
  - Management and maintenance of Traveller accommodation to be improved, with provision for recoupment of local authority expenditure;
  - Significantly increased expenditure on Traveller accommodation;
  - The upgrading of existing Traveller accommodation.
25. The Report recommended that a total of 3,100 units of accommodation be provided to meet the then existing and projected needs. Of the 3,100 units, 1,000 units were to be transient sites and the remainder was to be accommodation of all types including permanent halting site bays, group housing and standard local authority housing. The Report also made recommendations in relation to the design and standards of Traveller specific accommodation.
26. Each local authority required to do so prepared and adopted a Traveller accommodation programme. The programmes cover the 5-year period 2000-2004.
27. In the period 1996 to 2001 inclusive a total of 1,098 units of accommodation were provided for Traveller families. Of these, 642 were standard local authority houses, 237 were new halting site bays (including permanent and emergency bays) and 219 were new



group houses. A total of 493 units of Traveller specific accommodation were also completely refurbished to modern standards during the period (375 halting site bays and 118 group houses).

28. Progress in the provision of accommodation for Traveller families is to a large extent offset by the growth in the number of Traveller families each year. However, notwithstanding the increases in the number of Traveller families, the number on the roadside has been reduced from 1,207 in 1999 to 1,017 in 2001.
29. As outlined in the table below, expenditure on Traveller specific accommodation has been increased significantly over the last number of years. The table below gives details of the outturn for the years 1996 to 2001 and the allocation for 2002.

<b>Expenditure 1996 – 2002</b>	
<b>Year</b>	<b>€</b>
1996	8,253,298
1997	12,062,512
1998	10,354,333
1999	11,266,475
2000	15,120,041
2001	23,699,661
2002	26,642,640
<b>Total</b>	<b>107,398,960</b>

30. This expenditure does not include the cost of the provision of 642 local authority dwellings allocated to Traveller families in this period.
31. The Equality Authority has worked with the City/County Development Boards to support new approaches to incorporating a focus on equality in strategic planning. The Traveller Accommodation Plan is identified as a priority for most counties. One strategy plan proposes to develop a measure to monitor the implementation of the Traveller Accommodation programme and continue to identify new needs in that county.

## Health

32. The available data on the health status of the Irish Traveller community shows that they experience a level of health which falls far short of that enjoyed by the general population. The Traveller Health Strategy 2002 - 2005 sets out clear and practical responses to this inequity, with firm proposals for action in line with the policy of social inclusion enunciated in the National Health Strategy "Quality and Fairness - A Health System for You".
33. In accordance with the Task Force Report, a Traveller Health Advisory Committee has been set up in the Department of Health and Children and Traveller Health Units have been set up in almost all Health Boards. These Traveller Health Units report to the Advisory Committee on Traveller-initiatives and disbursement of funds. The Strategy also provides for the appointment in each Health Board area of a senior manager with responsibility for

## Traveller Health.

34. An allocation of additional funding of €8.2 million is being made over the period of the Strategy (2002 – 2005) to address the issues of equity and access to services. A Traveller Ethics, Research and Information Working Group has been established. A sub-group of this Working Group is examining a pilot project to introduce an ethnic identifier question on the Hospital In-Patient and Perinatal Systems.
35. The Traveller Ethics, Research and Information Working Group and the Department of Health, Social Services and Public Safety, Northern Ireland have contracted the Institute of Public Health in Ireland to design a Travellers' All-Ireland Health Study. This study will expand on the indicators collected in the 1987 study of Traveller health and is scheduled to be completed within the life of "Traveller Health – A National Strategy 2002 – 2005."

## Employment

36. The Government is aware of the importance of removing barriers to the full participation of members of the Traveller community in the work and social life of the country as outlined in the National Anti-Poverty Strategy.
37. The latest comprehensive figures for the unemployment rate for travellers are<sup>27</sup>:

Principal Economic Status	Total	Travellers	Other
Total Aged 15+	2,766,663	5,437	2,761,226
At Work	1,307,236	471	1,306,765
Unemployed	226,728	2,718	224,010
Inactive	1,232,699	2,248	1,230,451

38. The Department of Social and Family Affairs, which administers unemployment benefit and allowance, does not collate statistics on this issue as members of the Traveller community are not distinguished in any way in Departmental records regarding unemployment claims.
39. The Government is aware that unemployment among the Traveller community remains high. This is partly due to the decline of traditional areas of economic activity and employment, such as scrap metal recycling, horse-trading and market trading. Another contributory factor as to why Travellers may be considered marginalised from the main stream workplace is the stated preference for self-employment among Travellers. The Task Force on the Travelling Community Report made a number of recommendations in the field of advancing Traveller employment and the Government is committed to implementing these recommendations.
40. As part of the service-wide commitment to promote Equality and Diversity in the Civil

<sup>27</sup> These figures are from the 1996 Census of Population. The Central Statistics Office will be publishing more recent statistics on the Traveller community in 2004. Please note that the tables on Travellers refer to the sub-group of Travellers identified by census enumerators during the fieldwork phase of the 1996 Census of Population. They lived mainly, though not exclusively, in halting sites, encampments, mobile homes and caravans. The figures do no purport to represent the totality of the Traveller community living in the State at that time.

Service, the Office of the Civil Service and Local Appointments Commission ran a campaign to encourage members of the Traveller community to apply for Clerical Officer in the Civil Service. In preparation for this, the Office met with representatives from Pavee Point to agree the best method of reaching a group who might not see the usual advertising. It has long been the policy of the Commission to provide familiarisation to people before they are assessed. This support and familiarisation is intended to assist in assuring that candidates from the Traveller community are prepared for both the test paper and for the potentially unfamiliar environment of an exam hall. Following discussion with Pavee Point on this issue, members of the Traveller community, who wish to do so, will be able to sit their tests together.

41. In addition the Civil Service Commission and the Local Appointments Commission (CSCLAC) has developed and is currently piloting a voluntary Equality Monitoring Questionnaire (EMQ). Candidates applying for positions are asked to provide information relevant to the nine grounds (including the Traveller ground) specified in the Employment Equality Act 1998. The average response rate in 2001-02 was 81%.
42. CSCLAC and the Department of Finance have been involved in a joint initiative with Traveller organisations aimed at making employment in the Civil Service more attractive and accessible to members of the Traveller community. A small number of Travellers applied for Clerical Officer positions in late 2002. Pavee Point was used as one of the test centres. CSCLAC, the Department of Finance and the Traveller organisations are currently considering further actions which could be taken to increase the participation of members of Traveller community in Civil Service competitions.
43. Unfair Dismissal legislation provides that dismissal of an employee wholly or mainly on various grounds, including the ground of membership of the Traveller community, shall be deemed to be unfair dismissal.

## Funding and Support

44. Traveller-specific funding during 2002 is set out below:

Traveller Specific Funding Allocated in 2002	
Department	€
Department of Environment & Local Government:	
• Traveller Specific Accommodation	23,121,000
• Estimated cost of providing a minimum of 150 standard local authority /voluntary housing allocated to Travellers	20,000,000
• Management of Traveller specific accommodation	2,200,000
• Recoupment of salaries of social workers to local authorities	1,968,000
Department of Health & Children	
Traveller Health - A National Strategy 2002 - 2005	1,900,000
Department of Community, Rural and Gaelteacht Affairs	
Community Development Programme (2002)	1,371,106
Department of Justice, Equality and Law Reform	
Citizen Traveller (3 Year Programme + 4th Year for evaluation)	380,000
Traveller Mediation Service (Pavee Point) (available to both Traveller and settled communities)	127,000
Department of Education and Science	
Traveller specific initiatives estimated outturn expected to be in excess of 40 million	40,000,000
Department of Enterprise, Trade & Employment	
Social Economy Programme (take up 1% of €20.55m) for Traveller initiatives in 2002.	205,500
FÁS Traveller related initiatives 2002 estimated outturn	4,200,000
Total for Traveller Specific Funding Allocation in 2002	95,472,606

## Cross-cutting issues

### National Anti-Poverty Strategy

45. The National Anti-Poverty Strategy (NAPS) highlights the importance the Government places on tackling the levels of disadvantage faced by the situation of the Traveller community. Key commitments include improving the life experience of Travellers through the appropriate education, health and housing services and removing any remaining barriers to the full participation of members of the Traveller community in the work and social life of the country.
46. NAPS was reviewed under the national partnership agreement, the Programme for Prosperity and Fairness (PPF). The overall objective in relation to Travellers is to improve the life experience through the provision of appropriate education, health and accommodation services and to remove any remaining barriers to the full participation of members of the Traveller community in the work and social life of the country.

National Anti-Poverty Strategy sets key targets for Travellers:

- To reduce the gap in life expectancy between the Traveller community and the whole population by at least 10 per cent by 2007;
- To achieve age appropriate placement of all Travellers in primary schools by 2003;
- To increase the transfer rate of Travellers to post-primary schools to 95% by 2004;
- For each third-level institution to double the participation by mature disadvantaged students, including Travellers and refugees, by 2005 (within the 15% quota);
- All Traveller families identified in the local authority five-year Traveller accommodation programmes process as being in need of accommodation will be appropriately accommodated by the end of 2004.

To help meet these targets approximately €98 million was assigned across a number of Departments in 2002.

### Elections

47. However, The Electoral Act, 1992 also recognises that a person may be ordinarily resident in more than one place and thus have a prima facie claim for registration in respect of more than one premises (in law "premises" does not necessarily imply a structure of any kind). The law provides that, in such circumstances, a person may only be registered once and the decision on where the person is to be registered is "subject to any expression of choice by such person". These provisions enable Travellers to be registered as electors, even where they have a nomadic lifestyle.
48. In response to the relevant recommendation in the Task Force on the Travelling Community, the Department of Environment, Heritage and Local Government has advised local authorities, in preparing the register of electors, to contact those sections of the local authorities and urban district councils in their areas having responsibility for Traveller accommodation or any other matter concerning Traveller affairs with a view to maximising the number of Travellers registered as electors, whilst ensuring that each elector is registered

once only and, in appropriate cases, in the registration area of his/her choice.

## Media

49. The National Union of Journalists have Guidelines on Reporting Issues which involve members of the Traveller community. These guidelines cover issues such as accurate terminology, awareness of community tensions, balanced reporting and the need to show respect for Travellers as full citizens of the state. Reference to an individual's ethnic origin should only be made where relevant and appropriate.
50. There are no statutory provisions governing the way in which complaints against the written press are handled. However, the National Newspapers of Ireland (NNI), an organisation which represents national daily and weekly newspapers, operates a Readers' Representative system which provides a degree of access to readers to voice complaints and obtain remedies such as corrections, clarifications and apologies. In conjunction with this system, the NNI has also adopted a Code of Practice on Privacy to which all of its members subscribe. The NNI is currently engaged in a process of examining how an independent self-regulatory system for press complaints might work.
51. The Agreed Programme for Government, which was published in June 2002, indicates that the Government would, in the context of a statutory Press Council and improved privacy laws, move to implement reforms of libel laws designed to bring them into line with those of other states. A Legal Advisory Group on Defamation was established by the Minister for Justice, Equality and Law Reform in mid-September, 2002.
52. Where a matter is allegedly defamatory in nature, it is open to any individual including members of the Traveller community to bring defamation proceedings before the courts. It is also recognised that not all complaints against the press will be of a kind where court intervention is appropriate.

## Conclusion

53. The Government is aware that many Travellers feel that the Traveller community has suffered a number of high profile reversals such as the amendment of the public order legislation through the Housing (Miscellaneous Provisions) Act 2002, the removal of discrimination cases involving licensed premises from the Equality Tribunal to the District Court and failure to achieve recognition as an ethnic minority in this Report. The Government considers that there is no linkage between these developments; that each of the legislative provisions referred to is justified in itself and that the original Task Force Report on the Travelling Community 1995 did not define Travellers as an ethnic minority.
54. These issues should not overshadow the considerable progress which has been made as outlined above. In this regard the development of a Traveller Health Strategy and the commitment to a Traveller Education Strategy are particularly notable. Both the Health Strategy and the proposed Education Strategy represent an opportunity to drive forward Traveller issues in a comprehensive and strategic way in two key areas.
55. However, while this report shows that while much has been achieved on the ground there is much that still needs to be done to make Ireland a better place for Travellers. The Government reiterates its commitment to meeting this challenge.



## International Convention on the Elimination of All Forms of Racial Discrimination

*Adopted by General Assembly resolution 2106(XX) of December 21, 1965*

**ENTRY INTO FORCE: 4 January, 1969, in accordance with Article 19**

### PREAMBLE

The States Parties to this Convention,

**Considering** that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organisation, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

**Considering** that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

**Considering** that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

**Considering** that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

**Considering** that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII) ) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

**Convinced** that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

**Reaffirming** that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

**Convinced** that the existence of racial barriers is repugnant to the ideals of any human society,

**Alarmed** by manifestations of racial discrimination still in evidence in some areas of the world

and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

**Resolved** to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

**Bearing** in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organisation in 1960,

**Desiring** to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

## PART I

### Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalisation, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

### Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities

and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organisations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisation;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

### Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

### Article 4

States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and shall recognise participation in such organisations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

## Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;
- (c) Political rights, in particular the rights to participate in elections--to vote and to stand for election--on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

## Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

## Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

## PART II

### Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilisation as well as of the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5.
  - (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
  - (b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

### Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for

consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

#### Article 10

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

#### Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognised principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

#### Article 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the

States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention.

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.
5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.
6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.
8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

### Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.
2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.
3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

### Article 14

1. A State Party may at any time declare that it recognises the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth



in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications.

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged.

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

## Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialised agencies.
2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies.  
  
(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in sub-paragraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.
3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.
4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

## Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialised agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

## PART III

### Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialised agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

## Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

## Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

## Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two-thirds of the States Parties to this Convention object to it.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

## Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

## Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

### Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

### Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Convention under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

### Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.



