

Analytical Report on Legislation

RAXEN National Focal Point IRELAND

National Consultative Committee on Racism and
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1. Executive Summary

Legislation provides an important framework for the fight against racism and discrimination; though not the end in itself a strong legislative framework provides the means for facilitating anti-discrimination and interculturalism. This approach should be broad and encompass all forms of law and policy, as the European Commission against Racism and Intolerance (ECRI), in its General Policy Recommendation No. 7, has argued that, ‘appropriate legislation to combat racism and racial discrimination should include provisions in all branches of the law, i.e. constitutional, civil, administrative and criminal law.’

Part one of this report examines the background to the development of the anti-discrimination legislation in Ireland in relation to black and minority ethnic groups including the Traveller community. This background represents the context which both necessitated and made possible the emergence of a substantive anti-discrimination legal system in Ireland.

There has always been cultural diversity in Ireland however the past decade has seen the emergence of new minority populations. Existing diversity has been augmented by increasing numbers of migrant workers, asylum seekers, refugees and other immigrant groups. Evidence demonstrates that Ireland has not escaped the problem of racism, though by and large racist incidences tend to be isolated and uncoordinated.

As strengthening diversity in Ireland has been facilitated by changing immigration patterns, increased attention has been directed towards the restructuring of immigration policy. Policies on integration, aimed at facilitating this transition have also emerged in recent years. Initiatives have targeted both specific groups such as refugees, as well as more generic tools such as the National Action Plan against Racism (NPAR). In parallel with the increased political attention on legislation and integration studies have emerged aimed at promoting the debate on both of these areas. A number of research initiatives have been aimed at addressing the lack of data on the experiences of minority ethnic groups in Ireland in key thematic areas, though much remains to be uncovered.

Part two of this report outlines the legislative mechanisms for combating discrimination in Ireland. The Irish government intends to fully implement the EU Article 13 Directives by the end of 2003; a government decision has been taken to introduce a single Bill to amend the Employment Equality Act 1998 and the Equal Status Act 2000, in order to bring them into line with the Directives. These Acts identify nine grounds for discrimination.

The two most relevant grounds in respect of this study are ‘Race’ and membership of the Traveller community. The Employment Equality Act covers employment and related areas such as vocational training or membership of trade and professional bodies. The Equal Status Act covers the provision of goods and services, and of a wide range of services available to the public or to a section of the public including access to places, transport, banking, insurance, cultural activities, refreshment, and many aspects of education. Some disposals of property and the provision of accommodation are also covered. There are a number of

exceptions and exclusions to both Acts. Earlier anti-discrimination legislation covered only the gender and marital status grounds.

In addition to these two core anti-discrimination measures there are a range of other protections and rights guaranteed within the Irish legal system. These include: the 1937 Constitution, international commitments, the European Convention on Human Rights Act 2003, the Prohibition of the Incitement to Hatred Act 1989, the Human Rights Commission Act 2000, and the National Action Plan against Racism. Additionally legislation has been enacted in special areas which contain important anti-discrimination provisions notable examples include legislation on housing, employment and education.

The relatively recent nature of a lot of these developments mean that detailed evaluation of their effectiveness has only just begun to emerge. The implementation of the Article 13 Directives has provided an impetus for much of this activity. Monitoring and evaluation needs further expansion in order to secure the effect review and implementation of the existing legislation.

Part three of this report examines the impact of the anti-discrimination legislation, in terms of the development of specialised bodies, as well as the effect which the legalisation has had on complaints reporting and the development of anti-discrimination jurisprudence.

A number of key equality bodies have emerged in recent years. These include organisations specifically designed to implement the provisions of the legislation including the Equality Authority and the ODEI – The Equality Tribunal. As well as other bodies whose mandate includes functions relevant to the scope of this report for example the National Consultative Committee on Racism and Interculturalism (NCCRI), the Irish Human Rights Commission and the Labour Court.

Complaints of racism and discrimination are formally recorded by the Equality Authority and the ODEI - The Equality Tribunal, though this data is augmented by informal monitoring mechanisms such as that implemented by the NCCRI. In addition there is an emerging body of case law through the operation of the judicial functions of the ODEI – The Equality Tribunal, and to a lesser extent the other judicial bodies in Ireland.

Data from 2002/2003 and the identifiable trends over the last three years indicate that the legislative tools appear to be having an impact on discrimination and racism in Ireland. This is evidenced both in the perpetration of such offences and in their reporting. As jurisprudence continues to emerge increased emphasis on its review and assessment will facilitate a strong and effective anti-discrimination legislation in Ireland.

The final part of this report examines strategies, initiatives and good practices for further developing legislation against discrimination, racism and exclusion, for equal treatment, diversity and integration. Government has initiated a number of tools aimed at furthering the equality agenda. These include awareness raising strategies, equality proofing mechanisms and innovations in the social partnership arrangements. In addition the Equality Authority and other bodies such as the NCCRI have developed specific strategies aimed at furthering

the policy and legislative frameworks. Ireland has a strong non-governmental sector which has been very active with regard to the development of legislation. Actions have targeted both core equality provisions, as well as other developments which impact minority ethnic groups in Ireland.

This report concludes by making a number of recommendations for the enhancement of anti-discrimination legislation. In particular the report highlights the current opportunities for strengthening the legal provisions such as the implementation of the European Council Directive 2000/43/EC and the review of the Incitement to Hatred Act.

There is now a strong anti-discrimination framework in Ireland the challenge moving forward is to build upon this framework in the context of national, regional and international developments.

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Glossary

CERD	Convention on the Elimination of All Forms of Racial Discrimination
CSO	Central Statistics Office
CTA	Common Travel Agreement
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
EEA	European Economic Area
EUMC	European Monitoring Centre on Racism and Xenophobia
GNIB	Garda National Immigration Bureau
IRC	Irish Refugee Council
ITM	Irish Travellers Movement
IHRC	Irish Human Rights Commission
MRCI	Migrant Rights Centre Ireland
NAPS	National Anti-Poverty Strategy
NASC	Immigrant Information Centre in Cork
NCCRI	National Consultative Committee on Racism and Interculturalism
NDP	National Development Programme
NPAR	National Action Plan against Racism
NSB	National Statistics Boards
OECD	Organisation for Economic Cooperation and Development
RIA	Reception and Integration Agency
SMI	Strategic Management Initiative
WCAR	World Conference against Racism
YARD	Youth Action against Racism and Discrimination

Definitions

Refugee:	According to the Refugee Act 1996, a refugee means a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. An asylum seeker is a person who has applied for refugee status.
Traveller community:	According to the Equal Status Act 2002 ‘Traveller community’ means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland. ¹
Migrant Worker:	‘Migrant Worker’ is not defined in Irish law, in this report the term is taken to mean a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.
Discrimination:	Direct discrimination occurs when a person is treated less favourable than another, in similar circumstances, because of his or her ‘race’, ethnicity, national origins, nationality or colour. Indirect discrimination is about practices or policies, which seem, fair at first sight, but which in effect, either intentionally or more often unintentionally result in discrimination against some minority ethnic group or groups. ²
Anti-discrimination:	Anti-discrimination encompasses the range of policies and action aimed at combating discrimination, this includes both proactive measures aimed at preventing discrimination and reactive measures which seek to address existing or past experiences of racism.

¹ The term national minority is not legally defined in Irish law, though the government has recognised the special position of Ireland’s Traveller community, Ireland (2001), Report Submitted by Ireland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, p. 5.

² NCCRI (2001) Guidelines on Anti-Racism and Intercultural Training, Dublin: NCCRI, p. 5 [PUBIE0135]

Introduction

Equality legislation³ in Ireland has emerged in a context of growing awareness of the changing nature of Irish society, and the need to combat racism and discrimination against black and minority ethnic groups including the Traveller community.⁴ It is the increasing cultural diversity which has provided both the stimulus and the motivation for the emerging legislative framework. This report seeks to provide a descriptive summary of key developments, their implications and the key challenges facing the development of anti-discrimination and equality legislation.

Building on the report completed under RAXEN 3, this report involved a review of new and existing studies and resources, including academic papers, government policy documents, NGO reports, media, web sites and other data sources. The reference numbers from the RAXEN mapping exercise have been added to the relevant footnotes, these codes appear in square brackets.

The analysis contained in this report relies on the theoretical framework of ‘interculturalism’; an intercultural approach believes that the culture of the minority group is important and requires recognition and acceptance. The concept of interculturalism has evolved over time and is now replacing earlier concepts such as policies based on assimilation and multiculturalism. Intercultural approaches are increasingly being applied to policy areas in Ireland. This report is further motivated by the centrality of legislation in the development of intercultural societies; it recognises that laws alone are insufficient to eradicate racism and racial discrimination, but that they are essential in the fight against racism and intolerance.

This report has been broken down into four main parts. The first part examines the background to the development of legislation aimed at promoting interculturalism in Ireland, including a description of minority populations and a discussion of key immigration and integration strategies. The second part provides a detailed overview of the existing legislative framework. The third part examines the impact of this framework in terms of its legal and administrative implications. The final section offers a brief overview of initiatives and practice which seek to secure the effective development of equality and anti-discrimination legislation in Ireland.

³ The term ‘Equality Legislation’ is popularly used to describe legal instruments which seek to prevent discrimination in Ireland, notably the Employment Equality Act 1998 and the Equal Status Act 2000. As such this term often refers to what is generally described as ‘anti-discrimination legislation’. Consequently both terms will be used in this report to refer to the range of legislative initiatives which seek to protect minority ethnic groups.

⁴ Hereafter the terms ‘minority ethnic groups’ shall be used in reference to black and minority ethnic groups including the Traveller community.

2. Background

2.1. IMMIGRANT/MINORITY POPULATIONS

There has always been cultural diversity in Ireland, despite the widely believed myth that Ireland has been and still is a homogeneous and a mono-cultural society or the defining of diversity solely along religious grounds (Protestant and Roman Catholic). In addition to the Traveller community there is a long established Jewish community and growing Islamic, Asian and Chinese communities in Ireland. However, there has been a significant broadening of cultural diversity in recent years, both in terms of numbers of people, and national or ethnic origin.⁵ Similarly there has been a long history of discrimination in Ireland, however the recent increase in cultural diversity has led to the advent of new forms of racism and discrimination in Irish society.

2.1.1. Diversity

The Traveller community is Ireland's only nomadic community. Its members live a nomadic or semi-nomadic life, although some are settled. The 2002 Census indicates that there are close to 24,000 Irish Travellers, representing 0.65% of the population.⁶ The Traveller community are a distinct group from the Roma community in Ireland; the growing Roma community is a relatively new phenomenon which reflects wider changes in Irish society. Table 2: Travellers Classified by Sex, Age Group and Marital Status 2002, provides a break down of the Traveller population by sex, age and marital status. This table demonstrates that the Traveller community in Ireland is a very young community with approximately 63% of Traveller in the under 25 age category.

There are approximately 160 different nationalities living in Ireland. The number of non EEA nationals registered in the State in 2002 was 116,588 (Table 3: Persons Usually Resident in the State on Census Night 2002 by Nationality). The 2002 Census of Population indicates that non-nationals makeup 5.8% of the population, of which almost half were UK nationals (2.7%). By continent, 0.6% of the population stated nationalities came from non-EU European countries, 0.5% from Africa, 0.6% from Asia, 0.4% from America and 0.1% from Australia. However the 2002 Census does not provide a complete picture of ethnic diversity in Ireland because the ethnicity question, which is a separate question to nationality in the 2002 Census, was limited to a question on the Traveller Community.

The number of asylum seekers entering Ireland in 2002 was 11,634. Most asylum applications came from persons originating in Nigeria (41%), followed by Romania (11%),

⁵ Table 1: Population – Total, Natural Increase and Net Migration, 1996-2002, illustrates the nature of the populations changes in Ireland in recent years.

⁶ This figure is likely to be an underestimation and population estimates closer to 28,000 have been posited.

DR Congo (4%), Moldova (3%) and Iraq (3%).⁷ In 2002, applications were received from persons originating in 103 different countries.⁸ However of the overall increase in inward migration to Ireland in recent years only 10% are asylum seekers and almost half of all recent migrants to Ireland are returning Irish emigrants.

There were 40,321 work permits issued in 2002 to immigrants seeking work in Ireland which was an increase of 11% over the previous year (Table 4: Work Permits Issued by Year and by Category). The top five countries from which these work permits originated are: Latvia, Lithuania, Philippines, Poland and Romania (Table 5: Permits issued by Nationality: 1 January – 30 June 2003). The top five categories of employment sought were the service sector, hotel and catering, agriculture and fisheries, industrial, and medical and nursing.⁹

2.1.2. Racism and Discrimination

Incidents of anti-Semitism, relations between settled society and Travellers, and the North-South divide, all point to historic and ongoing societal difficulty with the idea of religious and social diversity. The EU survey, the ‘Eurobarometer’ (2001) shows that there is a degree of suspicion in Irish society towards ethnic diversity. Amnesty International’s Report on Racism in Ireland (September 2001) paints a stark picture: 78% of members of ethnic minorities have experienced racism, while over 80% of respondents agreed that racism is a serious problem in Ireland.

The number of Muslim people in Ireland has also changed significantly over the last 10 years. The Muslims in Ireland has quadrupled to 19,147 from the 1991 census, making Islam the fifth largest religious denomination in Ireland. The Muslim community is well organised with a number of mosques, schools and societies. According to the ECRI report on Ireland (2001), Muslims are faced with prejudice and discrimination on the basis of their religion.¹⁰ However a recent submission by the NCCRI to the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, noted that incidences of Islamophobia in the aftermath of the September 11 attacks tended to be isolated and uncoordinated. The Islamic Cultural Centre of Ireland has recently indicated that there continues to be sporadic incidents related to racism experienced by the Islamic community, possible as a result of 9/11 but that it is not at the same level as in the immediate aftermath. The Centre also said that women seem to be a particular target.¹¹

The 2002 Census demonstrated that there is now a Jewish population of 1,790 living in Ireland (Table 6: Population Classified by Religion and Sex 2002). Though there have been recorded instances of anti-Semitic behaviour in Ireland, such instances have tended to be

⁷ Integrating Ireland (2003), Sanctuary No. 23 (May 2003), available at: www.integratingireland.ie, (22.07.03) [PUBIE0137]

⁸ Know Racism (2003), Cultural Diversity in Ireland [PUBIE0145]

⁹ Know Racism (2003), *ibid.* [PUBIE0145]

¹⁰ ECRI (2001) Second Report on Ireland, p. 18

¹¹ NCCRI (2003) Report to the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, unpublished. [PUBIE0152]

sporadic and uncoordinated. A report conducted for the EUMC covering the period May/June 2002 found that:

there is no discernible increase in anti-Semitic violence or rhetoric... many incidences reported are considered to be once off and unusual occurrences, with no evidence of systematic targeting of the Jewish community in Ireland.¹²

The changing demographic and immigration context in recent years has been matched by a changing legislative environment, as the government has sought to further formalise and control population flows into Ireland.

2.2. LEGISLATION/POLICY ON IMMIGRATION

Ireland is traditionally a country of emigration, however emigration levels have declined significantly since the late 1980s and Ireland has become a country of net inward migration for only the second period since the foundation of the State in 1929 (Table 7: Average Annual Estimated Net Migration per 1,000 Population).¹³

The pattern of inward migration in relation to the origin of migrants has also changed significantly in recent years and is continuing to change. Returning Irish nationals still account for almost half (46% in 2002) of all immigration into Ireland, although this proportion has declined from a highpoint of 55% in 1999. There has also been a period of active recruitment of workers from both the EEA and non-EEA countries.

According to the NCCRI,

Irish policy on immigration has developed in a rather piecemeal way over several decades. In effect, in recent years the admission of immigrants has moved away from an almost zero immigration control policy to a largely market-led approach, with a relaxation and liberalisation of the rules taking place in 2000/2001, followed by a retightening of the rules in 2002 as a result of fears and forecasts of a significant downturn in the Irish economy.¹⁴

The Department of Justice, Equality and Law Reform is responsible for immigration law and immigration controls in Ireland. This department is also primarily responsible for the Irish contribution to developing EU and international policy on immigration and related issues, though other departments also have a role to play. The Department of Enterprise, Trade and Employment is responsible for the issuing of work permits. The Department of Foreign Affairs is responsible for certain operational aspects of the Ireland's immigration and visa

¹² NCCRI (2002), Recent Anti Semitic Acts and Attitudes in Ireland, report to the EUMC [PUBIE0152]

¹³ NCCRI (2002), Migration Policy in Ireland Reform and Harmonization, Dublin: NCCRI p. 6. [NFPIE0062]

¹⁴ NCCRI (2002), *ibid.*, p.14. [NFPIE0062]

regulations outside the country. In one specific field, that of programme refugees the Department of Foreign Affairs has been involved in a key capacity,¹⁵ while it also retains a 'watching brief' on human rights-related aspects of Ireland's immigration policy in general.

Historically the most significant legislation governing the admission of foreigners into Ireland was the Aliens Act 1935. In this Act the word "alien" meant a person who was not a citizen of Saorstát Eireann (the Irish Free State, forerunner to the present state of Ireland). The Act was extremely wide-ranging and conferred sweeping executive powers on the Minister for Justice. The Aliens Order 1946 extended the powers given to police and other authorities. Since that time various measures have been introduced which defined new rights for certain classes of people wishing to come to Ireland, such as the Common Travel Agreement (CTA) between Britain and Ireland. The CTA continues to this day and largely explains why Ireland and Britain have jointly stayed out of the most of the arrangements put in place after Schengen.¹⁶

The Irish Nationality and Citizenship Act 1956 (modified in 1986) codified rights to Irish citizenship through birth, descent and naturalisation, including the right to citizenship through an Irish grandparent.¹⁷ The Act created a general although discretionary eligibility for citizenship through naturalisation after a period of five years. With Ireland's membership of the European Community on 1 January 1973 came the right of freedom of movement of workers and, more recently (the Treaty of Maastricht 1993), the right of freedom of movement of all citizens of the European Union. Moreover, all citizens of EEA countries, which apart from EU member states also include Liechtenstein, Iceland and Norway, have had essentially similar rights since 1992.¹⁸

The Refugee Act 1996, gives effect to the 1951 Geneva Convention and its Protocol relating to the status of refugees, and the Dublin Convention, 1990, the Act contains the full text of

¹⁵ In the period 1999-2002 Ireland has resettled 124 individuals under the UNHCR's Refugee Resettlement Programme. The Irish government currently has a quota of ten cases per annum under the scheme.

¹⁶ Ireland and the UK are in a unique position in the European Union because on the one hand they need to ensure bilateral harmonisation of immigration policy in order to preserve the CTA between Britain and Ireland and on the other hand they need to ensure multilateral harmonisation with other EU States in order to preserve existing commitments arising from EU Treaties.

¹⁷ Until the Supreme Court ruling in the cases of L & O of 23 January 2003, approximately 10,000 parents have been granted leave to remain on the ground of having parented Irish citizens. The Supreme Court judgement reversed this position and confirmed that the Minister was entitled to deport the non-EU national parents of an Irish born child. On the 19 February 2003 the Minister stopped accepting new applications for leave to remain on these grounds, deciding that all outstanding cases will have to make representations to the Minister. The Supreme Court judgement does not affect non-EU parents who have already been granted residence in the State as parents of an Irish-born child. On 17 July 2003 the Minister for Justice nullified a backlog of over 11,000 claims for residency on the basis of parentage of Irish-born child, some dating back to September 2001.

¹⁸ Mac Éinrí, P. (2001), Immigration into Ireland: Trends, Policy Responses, Outlook, available at: <http://migration.ucc.ie/irelandfirstreport.htm> (19.07.03).

both conventions.¹⁹ It provides for both the application of the asylum process and the rights guaranteed to refugees in Ireland.

In May 2002, following the general election, the Irish Government renewed its promise to review immigration and residence policy. The government subsequently published the Immigration Bill 2002, which was enacted in July 2003. This new law facilitates a number of changes in Irish Law governing immigration and asylum, including the introduction of a carrier liability provision, and provision for the Minister for Justice, Equality and Law Reform in consultation with the Minister for Foreign Affairs to 'designate a country as a safe country of origin'.²⁰

2.3. POLICY FOR INTEGRATION²¹

In December 1998 the Minister for Justice, Equality and Law Reform established an Interdepartmental Working Group to formulate a strategy for implementing the Government's policy of responding positively to the needs of persons granted refugee status or leave to remain. The Working Group's Report: Integration - A Two Way Process was submitted to the Minister in 1999 and the Government subsequently decided that the recommendations contained in it should form the basis for integration policy and be implemented²².

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, established in 2001, is the vehicle for implementing this recommendation. The Agency has responsibility for:

arranging accommodation and working with statutory and non-statutory agencies to co-ordinate the delivery of other services (including health, social services, welfare and education) for asylum seekers and refugees;
co-ordinating the implementation of integration policy for all refugees and persons who, though not refugees, are granted leave to remain in Ireland;
responding to conflict crisis situations which result in relatively large numbers of refugees arriving in Ireland within a short period of time.

¹⁹ See Annex 3 on the incorporation of international law into the domestic legal context.

²⁰ Immigration Act 2003. The carrier liability and the introduction of the SCO principle through last minute amendments, have been criticised in the media and by lobby groups and NGOs. The Minister subsequently designated the ten EU accession states and Hungary and Bulgaria as 'safe'.

²¹ This report advocates an intercultural approach to accommodating cultural diversity rather than the more dated 'integration' concept or the discredited assimilation approach. However this report recognises that the term 'integration' continues to be used at both national and EU level.

²² Interdepartmental Working Group on the Integration of Refugees in Ireland (1999) Integration A Two Way Process, Dublin: Department of Justice, Equality and Law Reform [PUBIE0202]

Integration - A Two Way Process continues to be the basis for the development of integration strategies and measures.

Government officials have highlighted the role of the National Action Plan against Racism (NPAR) in promoting integration. The decision to draw up the NPAR arises from Ireland's commitments from the World Conference against Racism (WCAR), in Durban 2001. Following Durban the Department of Justice, Equality and Law Reform initiated a wide ranging consultation process to identify the key issues relating to racism in Ireland and what the priorities of the plan should be. The consultation process was overseen by a steering group, and its findings have been published and widely disseminated. Inclusion and participation are two of the five proposed strategic objectives of the NPAR. The NPAR is expected to be published by early 2004.

2.4. RELATED RESEARCH

2.4.1. Minorities

Research on immigration and minority populations in Ireland have been limited by virtue of the significant gaps in data collection on these communities, nonetheless a number of qualitative studies have emerged which highlight the situations of these groups.

Thematic studies, on the experiences of ethnic minority groups, have considered issues as diverse as health, accommodation, children, women migrants, educational achievement, employment, and experiences of racism. The Task Force report on the Travelling Community remains an important source of profile information on Travellers in Ireland, there have been a number of reports aimed at broadening and updating its analysis.

The paucity of data collection is reflected throughout the Irish administrative system. According to the National Statistic Board (NSB) the Department of Education and Science, the Department of Health and Children and the Department of Justice, Equality and Law Reform are the only government bodies to produce some, though limited, data disaggregated by race/ethnicity, though most government agencies do produce some data on the Traveller community.²³ For the first time in 2002 the Census included a question on nationality, however identification of ethnicity was not included.

2.4.2. Immigration Policy

A number of research initiatives in recent years have focused on Irish immigration policy. Contributions have analysed current policy and legislative gaps from both administrative and rights based perspectives. The need for reform has been a strong theme throughout these discussions.

²³ NSB (2003), Report of the Steering Group on Social and Quality Statistics, p. 32

Responding to Racism, edited by Farrell and Watt contains a contribution on immigration policy in Ireland which provides an overview of the historical context in Ireland, the dramatic changes during the 1990s, and the policy and regulatory implications of these changes from the range of immigrations policies in Ireland.²⁴

A further source of information is the summary of the consultation process conducted by the government on Immigration Policy, published in 2002.²⁵ This document summarises over 60 submissions. A wide range of views were expressed in the consultation process, which show the variety of opinion on immigration issues which exists in Irish society.

In 2002 the International Organisation for Migration (IOM) conducted a comparative study for the Department of Justice, Equality and Law Reform, on migration legislation and practice. The purpose of the report was to assist the Department of Justice, Equality and Law Reform in developing immigration legislation and procedures by drawing lessons from the experiences of other contexts.²⁶

In 1999 the Department of Justice, Equality and Law Reform commissioned the Faculty of Law at University College Dublin to draft a comparative study on refugee law. The purpose of the research was to examine and compare Irish legislation on refugee status determination as set out in the Refugee Act 1996 with the legislation of the other European Union members states.²⁷

The NCCRI has conducted a number of research initiatives on immigration policy in Ireland. A paper published in December 2002 entitled ‘Migration Policy in Ireland, Reform and Harmonisation’, focused on the revision of immigration policy in Ireland in the context of the then forthcoming legislation. The report originated from a roundtable seminar organised by the NCCRI in collaboration with the Joseph Rowntree Charitable Trust, and the Migration Policy Group in Brussels. The advocacy paper focuses on the development of Irish legislation in the context of emerging policy generally in the EU and specifically in the UK. Piaras Mac Éinrí in the concluding section of this advocacy paper concludes that increasing pressure on Ireland and the UK to join the Schengen arrangements will have to be paralleled with measures to protect civil rights and individual liberties in order to avoid ‘the creeping

²⁴ Mac Einri, P. (2001) Immigration Policy in Ireland, in: Farrell, F. and Watt, P. (eds) *Responding to Racism in Ireland*, Dublin: Veritas [PUBIE0134]

²⁵ Department of Justice, Equality and Law Reform (2002) *Review of the Submissions on the Public Consultation on Immigration Policy*, Dublin: Department of Justice, Equality and Law Reform, available at: www.justice.ie (11.12.03) [PUBIE0099]

²⁶ IOM (2002) *International Comparative Study of Migration and Legislation and Practice*, Dublin: Department of Justice, Equality and Law Reform [PUBIE0107]

²⁷ Faculty of Law, University College Dublin (1999) *Refugee Law Comparative Study*, Department of Justice Equality, and Law Reform. [PUBIE0160]

marginalisation of immigration and of persons of immigrant origin born within the EU',²⁸

In August 2001 the NCCRI finalised a submission to the review of immigration and residence policy. This document provides a review of key concerns and addresses recommendations to be considered in drawing up the new immigration and residence legislation and related administrative arrangements.²⁹

In May 2003 Amnesty International, the Irish Refugee Council, the Irish Council for Civil Liberties, and the Irish Commission for Justice and Peace provided a submission to the parliamentary Joint Committee on Justice, Equality, Defence and Women's Rights on the Immigration Bill 2002. This submission expressed concern that the Bill focuses on deterring immigration to Ireland without providing for legal immigration. It specifically raised concern on a number of issues including carrier sanctions, withdrawn applications, and the safe country principle.³⁰

2.4.3. Integration Policy

Given the changing nature of Irish society and the growing recognition of the need to accommodate an increasing range of cultures, a number of research initiatives have focused on the question of Irish integration policy. For example a paper by Cathal O'Regan in *Cultivating Pluralism*, looks at the context and development of immigration and integration policy in Ireland, particularly supporting resettlement through effective legislation and policy. This paper draws on research conducted on the experiences of Bosnian and Vietnamese programme refugees in Ireland.³¹

The report of the Interdepartmental Working Group on Integration provides a policy analysis of the key challenges facing the Irish government in this regard. The report which was launched in February 2000, made four key recommendations:

- Identify a single organisational structure for co-ordinating and implementing integration policy
- Raise public awareness

²⁸ NCCRI (2002) Migration Policy in Ireland, Reform and Harmonisation, Dublin: NCCRI, p. 51. [PUBIE0148]

²⁹ NCCRI (2001) *ibid.*, [PUBIE0158]

³⁰ Amnesty International et. al. (2003) Submission to the Dáil Joint Committee on Justice, Equality, Defence and Women's Rights on Immigration Bill 2002. [PUBIE0156]

³¹ O'Regan, C., Immigration and Resettlement in Ireland: Planning Services, Supporting People in MacLachlan, M and O'Connell eds. (2000) *Cultivating Pluralism*, Dublin: Oak Tree Press [PUBIE0161]

- Make mainstream services more accessible
- Conduct research to obtain information on the specific needs of refugees.³²

The Reception and Integration Agency, which was established on foot of the recommendations of this report, takes a clear view that focussed integration only applies to those with refugee status or leave to remain and it is in this context that the Agency is responsible for the co-ordination and implementation of integration policy. Integration measures for the Agency's clients are underpinned by the following general objectives³³:

- to ensure the upholding of the rights of all newcomers regardless of ethnic and cultural background.
- to create opportunities to enable newcomers to effectively participate in the economic, social and cultural aspects of Irish society and by so doing to exercise their rights and to discharge their responsibilities.
- to promote the development of a tolerant inclusive society in which both newcomers and host society, irrespective of background, can, over time, share and develop a sense of being Irish while respecting the cultures and practices inherent in the emergence of our new multicultural society.
- to encourage and assist the host population to understand and value the economic and social contribution of newcomers.

2.5. GAP ANALYSIS

Monitoring mechanisms need to be enhanced in order to effectively evaluate the impact of new and proposed legislation in the Irish context. Recent examples include the Immigration Act 2003 and the Work Permits Act 2003.

There appears to be an emerging consensus within the existing literature on the need for enhanced policies and legislation for the integration of all non-nationals in Irish society. For example Mac Éinrí argues that, failure to address the integration needs of migrants and other minority groups, as well as refugees and asylum seekers, will undermine the objective of achieving an intercultural society.³⁴ In its 2001 report on Ireland the ECRI concluded that:

³² Speech by the Minister for Justice, Equality and Law Reform, Mr. John O'Donoghue T.D., at the launch of the Interdepartmental Working Group Report on the Integration of Refugees in Ireland on Thursday, 10 February, 2000, available at:

<http://www.justice.ie/80256996005F3617/vWeb/wpJWOD4TFJH3>

³³ References for all of the above can be made to the Reception and Integration Website: www.ria.gov.ie

³⁴ Mac Éinrí, P. (2001) *ibid.*, [PUBIE0134]

Although integration measures such as language training exists for recognised refugees, the Report of the Interdepartmental Working Group on the Integration of Refugees revealed a lack of co-ordinated national integration policy, with programmes described as being only ‘partially successful’.³⁵

Despite recent initiatives there remains a data deficit with regard to minority ethnic groups in Ireland. In order to facilitate the emerging analysis of many of the issues related to these communities this gap needs to be addressed. In Ireland it would be possible to adapt the existing statistical framework in order to meet these needs, and thus facilitate legislative and policy developments which are increasing responsive to the diversity in Irish society.

3. Legislation against Discrimination

3.1. ARTICLE 13

The Irish government intends to fully implement the Council Directive 2000/43/EC by the end of 2003, however this fails to meet the deadline of 19 July 2003 as set down by the EU. It has been proposed that this will be achieved through the introduction of a Bill (the Equality Bill 2004) to amend the Employment Equality Act and the Equal Status Act.³⁶ According to a recent press release by the Department of Justice, Equality and Law Reform, in relation to the Employment Equality Act this Bill will provide for the:

- Extension of the Act to self-employed persons
- Extension of positive action provisions to all the grounds in the Act
- Extension of the Act under 18 but over the minimum school leaving act
- Amend the current exclusion of employment in private households
- Provide for reasonable accommodation for persons with disabilities
- Amend to allow members of the defence forces to access general redress mechanisms

In relation to the Equal Status Act the key provisions of the Bill are:

- Provision for the shifting of the burden of proof
- Provision for licence holders to set minimum age limits, above 18³⁷

³⁵ ECRI (2001), *ibid.*, p. 15

³⁶ The legislation in Ireland is relatively recent in respect of protection from discrimination on grounds related to racism. The first full year of operations for the Employment Equality Act was 2000 and the first full year of operations for the Equal Status Act was 2001.

³⁷ Since provided for under the Intoxicating Liquor Act 2003.

- Allow for claimants to choose any person or organisations to represent them before the ODEI – The Equality Tribunal

3.1.1. Employment Equality Act (1998)

The Employment Equality Act 1998 prohibits discrimination in relation to employment on nine distinct grounds -gender, marital status, family status, sexual orientation, religion, age, disability, race (including nationality) and membership of the Traveller community. With the exception of gender and marital status, complaints of discrimination under any of the other grounds can only be brought in relation to incidents, which occurred after 18 October 1999. Where a person considers that s/he has been discriminated against on the gender ground, the Act allows the complainant the option of applying directly to the Circuit Court for redress.

According to the Act discrimination is taken to occur where on any of the grounds in the act 'one person is treated less favourable than another is, has been or would be treated'.

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 vocational bodies i.e. trade unions and employer, professional and trade associations are also outlawed.

The Act allows for positive action specifically geared towards the integration into employment of three categories of individuals, including members of the Traveller community. The act provides for redress, as well as the mediation function of the ODEI – The Equality Tribunal.

3.1.2. Equal Status Act (2000)

The Equal Status 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, education, and advertising, on the same grounds as those included in the Employment Equality Act. For the purposes of the Act discrimination is taken to occur when:

- On any of the grounds under the act, a person is treated less favourably than another person is, has been or would be treated
- A person who is associated with another persons is treated less favourably on the basis of that association, or
- A person is in a category of persons, who by reasons of that category may suffer discrimination; a service provider requires a person to comply with a requirement that

they cannot meet; or when substantially more people outside a specific category are able to comply than those within a given category, or when the obligation to comply cannot be justified as being reasonable.

The Act does contain a number of exceptions, those which are relevant to this study, including the ability of primary and post-primary educational establishments, which promote certain religious values, to maintain the ethos of the school.

The Act contained a commitment that the Minister, within two years of its commencement, shall review the act to assess whether there is a need to add to the discriminatory grounds specified in the Act.

3.2. OTHER ANTI-DISCRIMINATION MECHANISMS

3.2.1. Constitution of Ireland

Article 40.1 of the Constitution provides the overall guarantee of equality before the law:

All citizens shall, as human beings, 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.

In addition the Irish constitution guarantees a range of other rights including: protection from unjust attack, freedom of expression, freedom of association, rights to primary education, and freedom of religion. Annex 2 contains additional detail on the relevant provisions of the Irish Constitution.

3.2.2. International Developments

Ireland ratified the *United Nations International Convention on the Elimination of all Forms of Racial Discrimination* in December 2000. The Convention entered into force on 28 January 2001. The Irish Government's delay in ratification was in latter years due to the need to bring in domestic legislation that would give the Convention substance in Ireland, i.e. the equality legislation in the form of the Employment Equality Act and the Equal Status Act. Ireland has signed up to the Article 14 complaints mechanism, and entered one reservation, in relation to freedom of speech, on ratifying the convention. Ireland's first report under CERD, due in 2002, was being finalized at the time of reporting.

Protocol 12 to the European Convention on Human Rights is designed to strengthen the protection against discrimination on the grounds of race, colour, language, religion or national or ethnic origin. Ireland has signed Protocol 12 but it has not yet come into force. Under the current equality legislation freedom from discrimination on grounds of language, political or other opinion, social origin, property or birth are not covered. Although

protection from dismissal for political opinion is included in the grounds of dismissal deemed to be unfair under the unfair dismissals legislation.

Ireland ratified the Council of Europe *Framework Convention for the Protection of National Minorities* on 7 May 1999. Ireland submitted its first report under the Framework Convention on 13 November 2001. In Article 4.1 of the Framework Convention the Parties undertake to guarantee to persons belonging to national minorities the rights to equality before the law of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited. In its response to this article in its first report under the Convention the Irish government outlined the guarantees of equality enumerated in the Constitution, as well as the recent equality legislation.

Ireland ratified the International Labour Organisation (ILO) Convention No. 111, Discrimination (Employment and Occupation) Convention, 1958, in April 1999. For the purpose of this Convention the term discrimination includes - any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

3.2.3. European Convention on Human Rights Act 2003

The European Convention on Human Rights Act was signed into law by the President on 30 June 2003. The main purpose of the Act is to give further effect in Irish law to certain provision of the European Convention on Human Rights (ECHR). The implementation of this Act means that people who wish to claim that these rights are being breached may now do so, in accordance with the provisions of the Act, before the national courts. The Act contains the full text of the European Convention on Human rights.

3.2.4. The Prohibition of Incitement to Hatred Act 1989

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. The Prohibition of Incitement to Hatred Act, was at the time of reporting being reviewed in the Department of Justice, Equality and Law Reform with a view to improving its effectiveness.

According to the draft report under CERD 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.

This review of currently at an advanced stage though, as yet, there is no timetable for its completion.

Other relevant legislation includes:

- 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 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.
- *Criminal Justice (Public Order) Act* 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).

3.2.5. Human Rights Commission Act 2000

In May 2000, the Human Rights Commission Act, providing for an independent Human Rights Commission, was signed into law and, on 6 March 2001, the Commission commenced work on an interim basis. The Commission in keeping with its mandate under the Good Friday Agreement,³⁸ and with the Paris Principles³⁹ works towards the promotion, protection and development of human rights. The Human Rights Commission has establishment of a sub-committee on racism drawn from its own membership and the members of the Northern Ireland Human Rights Commissions.

3.2.6. National Action Plan Against Racism

The development of a 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. In order to take a wide-ranging approach the government has designated the Cabinet Committee on Social Inclusion (which includes representatives from all departments of State) to have oversight of the NPAR.

In March 2002, the Government published a Discussion Paper entitled ‘Towards a National Action Plan against Racism’.⁴⁰ This was followed by the publication of ‘Diverse Voices’, a summary of the consultation process.

³⁸ The Good Friday Agreement (also known as the Belfast Agreement) was reached on Friday 10 April 1998 in Belfast. It sets out a plan for devolved government in Northern Ireland that all sections of the community in Northern Ireland would be prepared to participate in.

³⁹ The U.N. Principles relating to the Status of National Human Rights Institutions, known as the Paris Principles, set out the basic guidelines recommended by the U.N. in the establishment of a national human rights institution.

⁴⁰ Ireland, National Action Plan against Racism Steering Group (2003) *Diverse Voices*, [PUBIE0131]

3.3. LEGISLATION FOR SPECIAL AREAS

3.3.1. Employment

The Unfair Dismissals Acts 1973-1993 provide that dismissal of an employee wholly or mainly on various grounds, including race and colour, and membership of the Traveller community, shall be deemed to be unfair dismissal. It also provides that the dismissal of an employee wholly or mainly on the grounds of religious opinions shall be deemed to be an unfair dismissal.

The Employment Permits Act 2003 allows nationals of the ten EU Accession States to take up unemployment in the Irish labour market after accession without requiring a work permit. The Act provides that a work permit requirement may be reintroduced for nationals of these States if the labour market suffers a very serious disturbance in the first few years following accession.

The government has recently initiated a review of the Employment Agency Act 1971. It is expected that the government will publish a discussion document for consultation in due course, though a time frame is not yet available for the completion of the review. This review will include section 7(2) of the 1971 Act which rules out the charging by an employment agency of a fee solely for agreeing to seek employment for another person.⁴¹

3.3.2. Education

The Universities Act 1997 contains an aspirational posit that the governing authority of a university shall ‘respect the diversity of values, beliefs and traditions in Irish society’. The government is currently completing an audit of university diversity policies in line with the provisions of the 1997 Act. The National Qualifications Authority of Ireland Act 1999 states that providers of education and training should ‘promote diversity’.

The Education Act 1998 was enacted to make provision for the education of every person in the state and to ensure respect for diversity. In specific sections of the Act the term ‘diversity’ is applied to the established ethos and traditions of (denominational) schools, and the place of the Irish and English languages in the school system. However, ‘diversity’ within the Act is not restricted by an explicit definition and in the light of other policies and the equality legislation, the understanding of the term can be broadened.

Under the terms of the Education Welfare Act 2000 schools are obliged to have written codes of practice, which must honour the provisions of the Equal Status Act 2000. This provides an education-specific legal basis for anti-racism and intercultural policies and codes of practice.

⁴¹ Parliamentary Debates, 12.10.00, available at: <http://www.oireachtas-debates.gov.ie/index.html?http://www.oireachtas-debates.gov.ie/D/0524/D.0524.200010120005.html>

3.3.3. Housing

The Housing (Traveller Accommodation) Act 1998 provides a legislative framework to meet the housing needs of the Traveller community. This includes the requirement that local authorities put in place Traveller accommodation programmes, as well as mechanism to provide for consultation with Traveller representatives at both the national and local level.

3.4. RELATED RESEARCH

The Equality Authority has undertaken an overview of the equality legislation in Ireland, the Employment Equality Act 1998 and the Equal Status Act 2000 in the light of the transposition of the EU 'Race' Directive, Framework Employment Directive and also the Gender Equal Treatment Directive.⁴² The Equality Authority recommends in relation to the transposition of the Directives into Irish law, that the three Directives are implemented together by way of unified primary legislation rather than by way of regulation. This report contains recommendations as to how the equality legislation should be made compatible with the European Council Directive 2000/43/EC. Areas identified include: burden of proof, indirect discrimination, harassment, positive action, remedies, and private households.⁴³

In 2002 the European Monitoring Centre of Racism and Xenophobia (EUMC) published a comparison of national anti-discrimination legislation on the grounds of racial or ethnic origin, religion or belief with the Council Directives. This study of the 15 EU member States includes a detailed analysis of the current legislative position in Ireland.⁴⁴

The Traveller's organisations have been particularly strong in lobbying for legislative change in Ireland. For example in December 2002 the Irish Traveller Movement produced a submission to the Department of Justice, Equality and Law Reform on the implementation of the European Council Directive 2000/43/EC. This submission examines the legislative gaps which will need to be addressed in order to implement the Directive and makes recommendations for how this should be achieved. Recommendations include using primary legislation rather than a ministerial regulation to implement change, and including Travellers in the race ground for the purpose of the implementation of the Directive.⁴⁵

In August 2001 the NCCRI published a submission on the review of the Prohibition of the Incitement to Hatred Act 1989. This submission provided an analysis of the current Act, as

⁴² Ireland has until 2 December 2003 to implement the Framework Employment Directive and approximately three years to implement the new Gender Equal Treatment Directive

⁴³ Equality Authority (2002), *The Transposition of EU Directives into Irish law*, Dublin: Equality Authority [PUBIE0159]

⁴⁴ EUMC (2002) *Anti-discrimination legislation in EU Member States – Ireland*, Vienna: EUMC. [PUBIE0151]

⁴⁵ Irish Traveller Movement (2002), *Submission to the Department of Justice, Equality and Law Reform on the Implementation of the European Race Directive (RD) 2000/43/EC*, available at: www.itmtrav.com (19.09.03) [PUBIE0155]

well as a comparative study of hate law in other jurisdictions. The submission concluded with a number of key recommendations.⁴⁶

For World Refugee Day, 20 June 2002, the Irish refugee Council produced a document concerning Irish asylum and refugee policy generally. While highlighting that progress has been made in recent years, there are still a range of issues which need to be addressed. These include the right to work, direct provision, the establishment of the Refugee Advisory Board, and complementary protection.⁴⁷

3.5. GAP ANALYSIS⁴⁸

Ireland is still in the process of fully implementing the European Council Directive 2000/43/EC, consequently the existing gaps in the equality legislation are being addressed. This process should be taken as an opportunity to further strengthen the legislation in Ireland, including facilitating full implementation of Protocol 12 of the European Convention on Human Rights.

The review of the Prohibition of the Incitement of Hatred Act remains one of the key concerns in the development of the Irish legislative framework, however a greater sense of urgency is needed in order to drive this process forward.

Though the Equality Authority has the power to review the Equal Employment Act 1998 and the Equal Status Act 2000, the Authority itself has identified the need to expand this mandate to cover all legislation which is relevant for equality.

⁴⁶ NCCRI (2001), Prohibition of Incitement to Hatred Act 1989: A Review, Submission by the National consultative Committee on Racism and Interculturalism. [PUBIE0157]

⁴⁷ Irish Refugee Council (2002) Statement on Irish Asylum and Refugee Policy, available at: www.irishrefugeecouncil.com (19.09.03) [PUBIE0154]

⁴⁸ As the Irish NFP has not yet received the ‘table of indicators’ from the EUMC this section does not represent the full gap analysis as described in the guidelines on the structure of national reports.

4. Impact of Anti-Discrimination Legislation

4.1. SPECIALISED BODIES

With the emergence of the equality legislation in Ireland a number of bodies have come into being which facilitate the implementation of this legislation. This includes bodies which have been specifically established such as the Equality Authority and the ODEI – The Equality Tribunal, as well as bodies which have been granted new jurisdiction under the legislation such as the Labour Court.

4.1.1. Equality Authority

The mandate given to the Equality Authority under the Employment Equality Act 1998 and the Equal Status Act 2000 is both to combat discrimination and to promote equality of opportunity, and takes account of the nine grounds identified in the legislation. The work of the Equality Authority includes to:

- Work towards the elimination of discrimination and prohibited conduct under equality legislation
- Promote equality of opportunity in relation to the matters to which equality legislation applies
- Provide information to the public on the working of equality legislation, to keep this legislation under review and to make proposals for necessary change in the legislation
- Provide information to the public on the Parental Leave Act 1998, the Maternity Protection Act 1994 and the Adoptive Leave Act 1995.

In 2002 the Equality Authority conducted a major piece of work on developing proposals for amending the Employment Equality Act 1998 and the Equal Status Act 2000. This was carried out to assist the transposition of three EU Directives – the Gender Equal Treatment Directive, the ‘Race’ Directive and the Framework Employment Directive – into the equality legislation.⁴⁹

4.1.2. ODEI-The Equality Tribunal

During 2002 the Office of the Director of Equality Investigations adopted ‘ODEI – The Equality Tribunal’, as its title. The ODEI – The Equality Tribunal is the independently quasi-judicial body which is primarily responsible under the Irish equality legislation for deciding complaints of discrimination in employment or in the provisions of goods, services and

⁴⁹ Equality Authority, Annual Report 2002, p. 9 [PUBIE0062]

facilities. It is staffed by the Director of Equality Investigations and twelve Equality Officers. The Tribunal is strictly impartial in the exercise of its functions.

The ODEI – The Equality Tribunal has jurisdiction to investigate and decide complaints of discrimination referred to it under the Employment Equality Act 1998, and the Equal Status Act 2000, based on any of the nine protected ground: gender, marital status, family status, race including nationality, religious belief, age, disability, sexual orientation or membership of the Traveller community.⁵⁰

The decisions of the ODEI – The Equality Tribunal are legally binding and it has wide ranging statutory powers to support its functions, including the power to require individuals to give evidence and to enter premises for the purposes of investigation. Legal representation is possible but not obligatory. The ODEI – The Equality Tribunal also provides a statutory mediation service, where both parties agree to resolve a complaint by alternative means.

Where discrimination is found to have occurred, an order for redress is made, including, where appropriate, one or more of the following:

- Compensation (payable by the respondent to the complainant)
- Equal Pay
- Arrears of Equal Pay
- Equal Treatment
- An order for a specified person or persons to take a specified course of action.

⁵⁰ The Intoxicating Liquor Act 2003 amends the jurisdiction of the Equality Tribunal (ODEI) under the Equal Status Act 2000. This law amends the licensing Acts 1833 to 2003 and is mainly concerned with combating drunkenness and disorderly conduct as well as addressing the problems of underage and binge drinking and is intended to improve compliance with and enforcement of the intoxicating liquor code. The Act provides for jurisdiction of the District Court in cases of prohibited conduct under the Equal Status Act 2000 on licensed premises. This involves a transfer of jurisdiction from the Equality Tribunal (ODEI) in such cases. This section of the Act will come into force on 29 September 2003, however claims which occur before that date shall be dealt with as if the Act had not been passed. There have been a number of criticisms of this move. For example a press statement release in June 2003 by 11 equality groups, outlined their opposition to the government proposals in the Intoxicating Liquor Bill. The statement argues that the removal of the jurisdiction of the Equality Tribunal (ODEI) represents a diminution of the right to redress for victims of discrimination, and expresses concern that the Bill sets a precedence whereby any interest group can successfully lobby for exemption from the equality legislation.

4.1.3. National Consultative Committee on Racism and Interculturalism (NCCRI)

The National Consultative Committee on Racism and Interculturalism was established in July 1998, with funding from the Department of Justice, Equality and Law Reform. Its functions are to:

- Act as an expert body to develop an integrated and strategic approach to racism, and its prevention, and to foster interculturalism within Ireland
- 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
- Establish links with other organisations or individuals involved in issues of racism and interculturalism arising from developments at European Union and International levels.

Of particular relevance to this report, is the NCCRI's role in informing policy decisions. In drawing up the briefing papers, the main focus has been on informing those Government departments whose operations are likely to have the most obvious impact on minority ethnic groups. These were the Departments of: Justice, Equality and Law Reform; Environment and Local Government; Social Community and Family Affairs; Education and Science; Health and Children; Enterprise, Trade and Employment; the Taoiseach, and Foreign Affairs.

The NCCRI has played a central role in the development of the NPAR, providing technical assistance and support, throughout the consultation and drafting process.

4.1.4. Irish Human Rights Commission

The Commission is an independent body charged with the task of keeping under review the adequacy and effectiveness of Irish laws in relation to the protection of human rights in their widest sense. It is within the competence of this body to commission surveys on discrimination.

To date the IHRC has been active on the issue of racism, including:

- The establishment of a sub committee on racism drawn from its own membership and the members of the Northern Ireland Human Rights Commissions
- Participating in the development of the NPAR.

4.1.5. The Labour Court

The Labour Court operates as an industrial relations tribunal hearing both sides in a case and then issuing a recommendation. It is a court of last resort – cases should only be referred to the Court when all other efforts to resolve a dispute have failed. The Labour Court’s role under the Employment Equality Act is to:

- Hear appeals of decisions and recommendations under the Employment Equality Act 1998
- Investigate complaints of dismissal under the Employment Equality Act 1998
- Hear appeals of Non-discrimination Notices and Substantive Notices issued by the Equality Authority.

The legislation proposed to implement the EU equality Directives includes provision for the transfer of jurisdiction in investigating complaints of dismissal under the Employment Equality Act 1998, from the Labour Court to the Equality Tribunal.

4.2. RECORDED COMPLAINTS

Though Police Force, An Garda Síochána,⁵¹ have recently started recording racist instances through its PULSE system, data is not yet publicly available.⁵² Nonetheless insight can be gathered into the nature of complaints through a range of other sources, including informal mechanisms such as the NCCRI’s monitoring system, and more formal sources such as the Equality Authority case load.

⁵¹ An Garda Síochána is the national police force of Ireland, this Irish term literally means ‘Guardians of the Peace’. This term is often used in its shortened version: the ‘Garda’ (singular) or the ‘Gardaí’ (plural). In popular discourse the police force is also referred to as the ‘Guards’.

⁵² Staff at the Garda Racial and Intercultural Office have developed a recording mechanism within the Pulse programme, which will capture data concerning racially motivated incidents within the Garda PULSE crime recording system. Traditionally Gardaí did not specifically categorise this type of crime, but with the development of this system they will be in a position to do so. A racial incident has been defined by gardaí as one which is perceived to be racially motivated by the victim, a member of the Garda, a witness or someone acting on behalf of the victim.

4.2.1. NCCRI Racist Incidences

In its Reported Incidents Relating to Racism Report⁵³ covering the period from November 2002 to April 2003, 48 incidences were reported to the NCCRI.⁵⁴ 75% of incidents are reported as occurring in the greater Dublin area, the majority of which are targeted at adult males, though women and children were present in the minority of incidents. This data demonstrates that racism in Ireland is experienced regardless of legal status. Racist abuse and harassment and other forms of cultural disrespect were the most common forms of incident reported to the NCCRI, though there were also a number of reports of incidents in relation to the delivery of public and private services. These included: administration of justice, education, housing, and in the workplace. There was also a report of circulation of racists and offensive material; eight examples of racist mail were forwarded to or received by the NCCRI during this period.

4.2.2. Equality Authority

The legal section of the Equality Authority had 1,284 case files in 2002, 489 under the Anti-Discrimination Pay Act 1974, the Employment Equality Act 1977 and the Employment Equality Act 1998 and 795 under the Equal Status Act 2000.⁵⁵ This is an increase of over 200 files since 2001. However these figures cannot be taken as indicative of the level of complaints of discrimination, as in 2002 the revised criteria⁵⁶ meant that in a large number of claims were not taken on in the first place.⁵⁷

Table 9 (Case work of the Equality Authority 2000-2002) summarises the emergence of the case work since the Equality Authority was established in 2000. The race ground is now the second largest under the employment legislation and the growing number of case files on migrant workers was of concern to the authority. The Race ground represents 107 cases of a total of 489 of total case work of the Equality Authority, second only to the gender ground. However the Traveller ground remains a very minor element under the employment equality case work, totally just 10 cases, or just over 2% of cases.⁵⁸

⁵³ In May 2003 the NCCRI established a system for recording incidents related to racism in Ireland. These incidents are compiled into six monthly reports. The data that is generated by this reporting system is primarily qualitative and indicative of key issues that need to be addressed. The reports do not aim to provide a comprehensive list of every racist incident in Ireland.

⁵⁴ This figure is down from the May 2002-October 2002 period (67), but up on the two earliest reports, 41 and 40 respectively.

⁵⁵ Case files do not necessarily represent legal challenges under the equality legislation, but are a reflection of the work of the Equality Authority more generally.

⁵⁶ During 2002 the Equality Authority revised its internal selection criteria in order to focus its case files on those cases which represented priority areas, or those areas which are underrepresented, as part of the implementation of a strategic enforcement policy.

⁵⁷ Equality Authority, *ibid.*, p. 18 [PUBIE0062]

⁵⁸ Equality Authority, *ibid.*, p.37 [PUBIE0062]

The Traveller ground remains the most significant in terms of the equal status legislation, totally 429 cases by 2002, or 54% of all case work. The race ground currently accounts for 66 cases, 8.3%, of the Equality Authorities case work under the Equal Status Act 2000.⁵⁹

4.2.3. Mediation

The Mediation service of the ODEI – The Equality Tribunal is in its second year. This is a voluntary procedure, which is informal and does not take written submissions. Mediation is private and the agreements are not published. In the event that agreement is not reached the complainant may seek to have the investigation resumed. During 2002 a mutually acceptable agreement was reached between the parties in 52% of 64 completed mediation cases. These figures are up from 19 cases in 2001, eight of which were resolved (Table 8: Mediation Referral 2001 and 2002).

4.3. JURISPRUDENCE

4.3.1. Race

There were five decisions by the ODEI – The Equality Tribunal on the race ground during 2002, two under the Employment Equality Act and three under the Equal Status Act. Four were decided in favour of the respondent and one in favour of the complainant. The two cases under the 1998 Employment Equality Act claimed discriminatory treatment at work on the basis of Cypriot and Spanish nationality respectively, both cases were decided in favour of the respondent.

Sajjadi v Turk's Head Bar was the only Equal Status case to be decided in favour of the complainant on the race ground. It concerned a student who was refused entry into a pub where he had arranged to meet some Irish friends. Mr. Sajjadi, though an Irish citizen is originally from Azerbaijan. When he was asked for ID he produced his student card which was not accepted, it was shown that the pub has admitted younger Irish men the same evening with no identity check. The Equality Officer noted that the complainant was visibly of Middle Eastern origin and that the refusal occurred shortly after the events of 11th September 2001 in the United States. He concluded that the refusal of access was in fact on the race ground, and awarded €1,500 compensation for distress, humiliation and loss of amenity.

⁵⁹ Equality Authority, *ibid.*, p.39 [PUBIE0062]

4.3.2. Membership of the Traveller Community

There were 56 decisions on the Traveller community ground during 2002 by the ODEI – The ODEI – The Equality Tribunal, one under the Employment Equality Act and 55 under the Equal Status Act. 24 cases were decided in favour of the respondent and 32 in favour of the complainant. The most common subject was refusal of service in pubs or hotel bars (38 decisions). However, other decisions dealt with refusal or restriction of service, or of access to premises, by service providers as varied as a chemist's shop, a department store, a children's clothes shop, a supermarket, a takeaway restaurant, an equipment hire facility, nightclubs, a taxi service, and a hairdresser.

The relatively high ratio of decisions in favour of complainants began to reduce during the last quarter of 2002. In a number of cases, respondents argued that discrimination could not have occurred because the respondent was unaware that the complainant was a Traveller. This argument was accepted in *Clear v Flannery's Hotel*, but in most cases the Equality Officer considered that the complainant was, on the balance of probabilities, recognised as a Traveller.

In *Maguire v North Eastern Health Board* the Equality Officer found that a Traveller who worked in health services has been subjected to harassment by a fellow-worker and to discriminatory treatment:

The employment decision, *Maguire v North Eastern Health Board*, concerned a member of the Traveller community who was employed on probation by a public health authority. The key facts found by the Equality Officer were that the complainant had attended the office Christmas party, where a co-worker invited other members of staff back to her house for a further party afterwards, but added, in the complainant's hearing, "The knacker's not coming"... The complainant reported the comment to his supervisor the following day, asking that his employer take steps to prevent recurrence. The supervisor declined to take any action. The Equality Officer held that the comment amounted to harassment under section 32 of the 1998 Act, and that the employer's failure to act made it vicariously liable for the comment. She also found that the employer had discriminated against the complainant in employment when it subsequently reduced his working hours, and had victimised him for complaining about the derogatory comment.⁶⁰

Among the Equal Status decision on the Traveller grounds which were found in favour of the complainant, two striking examples are *O'Driscoll v Elroy's Nightclub* and *Mary O'Reilly v Noel Ryan, Chemist*. In the *O'Driscoll* case a settled Traveller woman, had lived in a community and attended a particular night club for some time, however her neighbours would not have recognised her as a Traveller. A painter recommended to her by the doorman at the nightclub, recognised her as a Traveller when he did some work in her home. Shortly afterwards the nightclub she had regularly attended refused her entry, and her child was bullied at school for the first time and subject to verbal insults referring to her as a Traveller.

⁶⁰ ODEI – The Equality Tribunal, Legal Review 2002, pp. 11-12. [PUBIE0102]

The nightclub claimed her refusal was based on other reasons however the Equality Officer found that the real reasons she was no longer welcome at the nightclub was because the doorman had learnt that she was a member of the Traveller community. Noting that the nightclub had no policy or training for staff on discrimination, he found them vicariously liable for the discriminatory refusal on the doorman and awarded €5,000 compensation to the complainant.

In *O'Reilly v Ryan* a settled woman went to the chemist to obtain a standard prescription, on three occasions she was told, in front of other customers, to go elsewhere as the medicines were not in stock. The complainant said that the refusal was humiliating, as it was clear that such standard medicines would have been in stock. The respondent admitted that the medicines were in stock but argued that the claimant was part of a gang who had threatened him in the past, the Equality Officer found no evidence to substantiate this claim. She concluded that the refusal of service was discriminatory and awarded €4,000 compensation.

In 2002 there were no decisions by the ODEI – The Equality Tribunal on the religion ground under either the 1998 nor the 2000 Act.

4.3.3. Labour Court

In 2002 equality referrals to the Labour Court represented 10.85% (102 cases) of all referrals to the Labour Court. Direct referral seeking redress for dismissal on one or more of the nine grounds accounted for 28.8% of referrals. Appeals of decisions of Equality officers (gender of equal pay claims) or of the Director of Equality Investigation (discrimination on one of the nine grounds not involving dismissal) accounted for 36.6%, and application for an extension of the time limit accounted for the remainder. In 2002 there were 11 cases involving the race ground, down from 13 in 2001, and one case involving membership of the Traveller community down from two in 2001. There were 3 appeals on race ground in 2002 and 1 on the grounds of membership of the Traveller community.⁶¹

4.3.4. Prohibition of Incitement to Hatred

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 case law indicates that the Act is used effectively where the need arises.⁶²

⁶¹ The Labour Court, Annual Report 2002, p. 21-22. [PUBIE00100]

⁶² Ireland, Department of Justice, equality and Law Reform (2003), Draft report under CERD, paragraphs 118-120.

4.4. REPORTS

As anti-discrimination legislation is still relatively recent in Ireland the full impact of its implementation is not yet known. A full assessment of the impact of the legislation requires further research, though elements of such an analysis are beginning to emerge.

The Equality Authority keeps under review the working of the following acts: The Employment Equality Act 1998, The Equal Status Act 2000, the Maternity Protection Act 1994, the Adoptive Leave Act 1995.⁶³ In 2002 the Equality Authority produced a review of the discriminatory grounds covered by the Employment Equality Act 1998. This paper includes recommendations of the Equality Authority arising out of its experience of, and learning from, the implementation of the Employment Equality Act 1998 since its enactment. The report argues that at the current stage of implementation there are some clear patterns emerging from enquiries, casework and the exercise of the Equality Authority's current powers and functions which point to an urgent need for reform. This analysis if conducted in the context of forthcoming changes required by the European Council Directive 2000/43/EC and addresses key concern such as the need for changes in the existing grounds, and the introduction of new grounds.⁶⁴

The effectiveness of the Incitement of Hatred Act has come under significant attention. In recognition of the problems associated with the implementation of this legislation the government has initiated a review, which is currently underway. For example in 2001 the NCCRI produced a submission on the Act, this submission illustrated the weakness of the legislation by discussing a number of the cases which have been brought under it.

There are still gaps in the emerging knowledge and it has been widely accepted that the equality legislation should be continuously reviewed and assessed. For example in its consideration of Ireland's combined second and third reports, the UN Committee on the Elimination of Discrimination against Women recommended that the government, 'rigorously monitor and regularly assess the impact of such legislation and policies on achieving equality for women with a view to taking corrective action when and if necessary'.⁶⁵

4.5. TRENDS

Given the relatively recent nature of the equality legislation in Ireland, it is still difficult to identify definitive tendencies in the implementation of this legislation however a number of preliminary trends can be drawn on existing complaints, case work and jurisprudence. The following analysis is based primarily on the figures which are available from the Equality

⁶³ The Equality Authority has recommended that its mandate should be expanded to include all legislation which is relevant to equality. Equality Authority (2002) Review of Discrimination Grounds Covered by the Employment Equality Act 1998, Dublin: The Equality Authority, p. 17 [PUBIE0153]

⁶⁴ Equality Authority (2002), *ibid.* [PUBIE0153]

⁶⁵ CEDAW, available at: <http://www.hri.ca/fortherecord1999/vol6/irelandtb.htm> (13.09.03)

Authority and the ODEI – The Equality Tribunal for the period 2000-2002, as summarised in tables 9 and 10.

- Generally there has been a large increase in complaints and cases, across all nine discriminatory grounds, under the equality legislation from 2000 to 2002
- The race ground is becoming increasingly significant in terms of the employment legislation. Race has had less of an impact under the equal status legislation; while there have been proportionally important increases between 2001 and 2002, overall employment cases on the race ground have been less numerically significant
- The Traveller community ground represents a very small proportion of employment equality complaints, and between 2000 and 2002 there was no discernible pattern of change in this trend. To date the Traveller community ground has represented the vast majority of equal status claims. Though the changes in the jurisdiction of the ODEI – The Equality Authority, and the decrease in Equality Authority case work between 2001 and 2002 may have an impact on this trend in the coming years
- Mediation appears to be an increasingly attractive option for claimants and respondents, though it is not yet clear the impact this service will have on overall case load
- Generally there has been an increase in racist incidences reported to the NCCRI, though figures have fluctuated over a two year period. Though difficult to draw substantive conclusions from this informal reporting system, the NCCRI argues that these reports illustrate the need to review and enhance existing protections
- There has been an increase in the number of successful cases under the Incitement to hatred legislation since its review was initiated.

This preliminary attempt to elucidate trends under the equality legislation illustrates that it is still too early to make any substantive conclusions. However patterns are emerging, and it appears that the equality measures are becoming more effective; additional research is needed to explore many these developments. Preliminary suggestions which seek to explain some of these trends include:

- licensed premises are becoming increasingly aware of the obligations they have under the equal Status legislation
- there is growing awareness amongst minority ethnic groups about their rights under the legislation; and
- members of the Traveller community remain substantially underrepresented in the mainstream labour market.

5. Strategies, Initiatives and Good Practice

There have been a number of important awareness raising strategies with regard to the anti-discrimination legislation in Ireland. For example the Department of Justice, Equality and Law Reform has produced and disseminated a 'Guide to Employment, Equality Act, 1998', which provides a brief overview of the key provisions of the Act.

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 in 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. An interim report was circulated to the Working Group in December 2002.

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. The race ground features in all strategy plans. There are 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. For example 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.

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 observed by all the political parties in the election campaign. 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.

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. The latest social partnership agreement is entitled Sustaining Progress and covers the period 2003-2005. Under a section entitled Migration and Interculturalism the Government and the social partners:

agree on the desirability for the development of a comprehensive policy framework on migration (immigration and emigration)... 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 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.

In addition the NPAR will provide a framework for legislative and policy developments in the future.

5.1. EXISTENCE OF ORGANIZED INTEREST GROUPS

Though relatively small Ireland has a strong non-governmental sector focused on anti-discrimination and equality. Groups range from those who are more broadly involved in human rights and equality issues to those who focus on particular issues. The following sample is intended to be representative rather than comprehensive.

The Irish Council for Civil Liberties is an independent non-governmental organisation that works to promote and defend human rights and civil liberties. It was founded in 1976, and has campaigned on behalf the rights of minorities including Travellers' rights and the rights of refugees and asylum-seekers. Recently initiatives include coordinating a coalition to campaign against the change of jurisdiction in the Intoxicating Liquor Bill, and it is involved in a coalition of organisations following the Supreme Court decision in January, to deny previously granted residency rights to the parents of Irish born children.⁶⁶

Amnesty International, Irish Section has an anti-racism unit which has been involved in the debate on equality in Ireland. The central aim of Amnesty's Anti-Racism campaign in Ireland has been to explore the experiences of racism among black and ethnic minorities in Ireland.⁶⁷

⁶⁶ Further information is available at: www.iccl.ie (15.09.03)

⁶⁷ Further information is available at: www.amnesty.ie (15.09.03)

The Irish Commission for Justice and Peace is a body working on human rights, peace, development, social justice issues by advocacy, lobbying, research and education. Recently the Commission has been involved in campaigning against the Immigration Bill 2002.

Organisations which focus on other issues have also come to play an active role in promoting the right of ethnic minority groups in Ireland. For example the Children's Rights Alliance is very involved in the campaign on the rights of Irish born children to parental residence.⁶⁸

Organisations representing the Traveller community have played an active role in framing the legislative debate in Ireland. For example the ITM was established in 1990 and now has over eighty Traveller organisations from all parts of Ireland in its membership. ITM consists of a partnership between Travellers and settled people committed to seeking full equality for Travellers in Irish society. ITM published a submission in 2002 to the Department of Justice, Equality and Law reform on the implementation of the Council Directive 2000/43/EC.⁶⁹ Pavee Point, a similar partnership, works towards social justice, solidarity, socio-economic development and human rights. It has produced a range of policy submissions relevant to the achievement of equality for the Traveller community in Ireland.⁷⁰

The Irish Refugee Council (IRC) is an independent non-governmental organisation which was established in 1992. The work of the IRC on a national level includes policy, research, legal, networking and information components while the Ennis sub-office deals with the broad range of issues affecting the local refugee community. For World Refugee Day 2002 the IRC produced a statement on Irish asylum and refugee policy.⁷¹

The Migrant Rights Centre Ireland (MRCI) is a national, rights based voluntary organisation. It was established in 2002 and aims to contribute to the development of a sustainable, intercultural society which respects and promotes cultural diversity and empowers migrants to enjoy their rights and participate fully in all aspects of social, economic, cultural and political life in Ireland. A key mechanism for facilitating this aim is engaging with policy developments. The Immigrant Council of Ireland is an independent organisation working with and for immigrants in promoting their rights through information, advocacy, and awareness.⁷²

Integrating Ireland is an independent network of community and voluntary groups, working in solidarity, and committed to promoting, and realising the human rights, equality, and full integration of refugees, people seeking asylum, and immigrants in Ireland. Recent activities have included submissions to the Minister for Justice, Equality and Law Reform regarding the Supreme Court decision on the deportation of non-national parents of Irish children and to the Dáil Joint Committee on Justice, Equality, Defence, and Women's Rights on Carrier Liability and Immigration Bill 2002.⁷³

⁶⁸ Further information is available at: www.childrensrights.ie (15.09.03)

⁶⁹ Further information is available at: www.imtrav.com (15.09.03)

⁷⁰ Further information is available at: www.paveepoint.ie (15.09.03)

⁷¹ Further information is available at: www.irishrefugeecouncil.ie (15.09.03)

⁷² Further information is available at: www.migrantcouncil.ie (15.09.03)

⁷³ Further information is available at: www.integratingireland.ie

Conclusion

Despite a long history of diversity in Ireland, it has been the remarkable changes in the nature of this diversity, and the international and regional imperatives which have proved the driving factors in the instigation of an effective and substantive legislative framework in the fight against discrimination. Given the lack of statistical data on minority ethnic groups analysts have relied on qualitative and anecdotal sources in order to illustrate the problem of racism in Ireland, and promote policy and legislative development.

Anti-discrimination measures have not emerged in a vacuum, but rather have been paralleled with activities in the areas of asylum, immigration and integration, all of which continue to develop and have implications for the implementation of an equality agenda. Research and debate has focused in particular on the development of immigration legislation including most recently the Immigration Act 2003.

Legislation promoting equality can broadly be discussed according to two categories. The first contains legislation which is most directly relevant to the implementation of the Council Directive 2000/43/EC: the Employment Equality Act 1998 and the Equal Status Act 2000. Both identify nine grounds for discrimination including race and membership of the Traveller community. The implementation of the European Council Directive 2000/43/EC will serve to strengthen and broaden both of these core documents. In addition Ireland has undertaken a range of initiatives nationally, regionally and internationally which have added to the legal toolbox available in the fight against racism. Recent developments have included the incorporation of the European Convention on Human Rights into domestic legislation.

Given the relatively recent nature of many of these developments the extent of their effectiveness is not yet clear; though there is an emerging literature many questions remain to be answered. An initial analysis of the administrative and jurisdictional developments supports the largely qualitative evidence that these frameworks are having an impact on social behaviour; there are indications of changes both in terms of racist and discriminatory activities, as well as in the reporting of these activities.

Nonetheless the challenge of creating a fully effective legal standard remains. Identified and emerging gaps in the equality legislation need constant attention, as do the implications of broader changes and developments within the Irish legal system.

Annex 1: Tables

Table 1: Travellers Classified by Sex, Age Group and Marital Status 2002, Source: CSO

Age Group	Total	Single	Married	Separated	Widowed
0-4 years	3,408	3,408	NA	NA	NA
5-14 years	6,593	6,593	NA	NA	NA
15-24 years	4,850	3,725	1,040	79	6
25-34 years	3,386	976	2,090	291	29
35-44 years	2,332	335	1,688	250	59
45-54 years	1,458	187	1,069	132	70
55-64 years	878	97	604	68	109
65 years and over	776	116	347	21	292
Total	23,681	15,437	6,838	841	565

Table 2: Persons, Males and Females, Usually Resident and Present in the State on Census Night Classified by Nationality 2002, Source: CSO

Nationality	Persons	Males	Females
Total Irish	3,584,975	1,778,590	1,806,385
<i>of which</i>			
Irish	3,535,676	1,754,716	1,780,960
Irish-English	20,491	9,997	10,494
Irish-American	12,387	5,721	6,666
Irish-European	4,172	2,046	2,126
Irish-Other	12,249	6,110	6,139
Non Irish	224,261	112,593	111,668
EU	133,436	64,647	68,789
<i>of which</i>			
Austria	553	222	331
Belgium	789	391	398
Denmark	631	287	344
Finland	876	285	591
France	6,363	3,059	3,304
Germany	7,216	3,200	4,016
Greece	253	149	104
Italy	3,770	2,145	1,625
Luxembourg	16	9	7
Netherlands	3,108	1,638	1,470
Portugal	687	428	259
Spain	4,436	1,732	2,704
Sweden	1,262	425	837

UK	103,476	50,677	52,799
Rest of Europe	23,105	12,863	10,242
<i>of which</i>			
Romania	4,978	2,836	2,142
Russia	2,703	1,399	1,304
Poland	2,124	1,275	849
Lithuania	2,104	1,091	1,013
Latvia	1,797	974	823
Ukraine	1,420	828	592
Czech Republic	1,103	713	390
Other	6,876	3,747	3,129
Africa	20,981	11,039	9,942
<i>of which</i>			
Nigeria	8,969	4,271	4,698
South Africa	4,185	2,167	2,018
Other	7,827	4,601	3,226
Asia	21,779	12,014	9,765
<i>of which</i>			
China	5,842	3,424	2,418
Philippines	3,900	1,383	2,517
Pakistan	2,939	1,891	1,048
India	2,534	1,668	866
Malaysia	1,686	907	779
Other	4,878	2,741	2,137
America	15,383	7,223	8,160
<i>of which</i>			
USA	11,384	5,196	6,188
Canada	1,932	870	1,062
Brazil	1,087	713	374
Other	980	444	536
Australia	3,706	1,752	1,954
<i>of which</i>			
New Zealand	1,637	858	779
Other Nationalities	1,894	1,096	798
Multi Nationality	2,340	1,101	1,239
No Nationality	847	482	365
Not Stated	48,412	24,558	23,854
Total	3,858,495	1,916,223	1,942,272

Table 3: Permits Issued by Nationality: 1 January - 30 June 2003. Source: Department of Enterprise, Trade and Employment

Nationality	New Permits	Renewals	Group	Issued	Refused
	12294	9660	274	22228	778
Afghanistan	2	0	0	2	1
Albania	31	7	0	38	2
Algeria	30	24	0	54	0
Antigua & Barbuda	0	1	0	1	0
Argentina	36	19	0	55	1
Armenia	2	0	0	2	0
Australia	395	211	0	606	3
Azerbaijan	0	1	0	1	0
Bahamas	0	1	0	1	0
Bahrain	1	1	0	2	0
Bangladesh	247	235	0	482	17
Barbados	2	1	0	3	0
Belarus	306	251	0	557	15
Benin	1	0	0	1	0
Bolivia	0	1	0	1	0
Bosnia Herzegovina	20	16	0	36	1
Botswana	11	1	0	12	0
Brazil	311	334	0	645	15
Brunei	3	0	0	3	0
Bulgaria	259	175	0	434	5
Burma	0	1	0	1	0
Cameroon	3	3	0	6	0
Canada	90	57	0	147	1
Chile	14	3	0	17	0
China	432	303	0	735	81
Chinese	1	0	0	1	0
Colombia	7	8	0	15	1
Costa Rica	0	2	0	2	0
Croatia	84	41	0	125	4
Cuba	1	2	0	3	1
Czech Republic	362	229	0	591	9
Dominican Republic	1	0	0	1	0
Ecuador	3	2	0	5	0
Egypt	69	53	0	122	3
Eritrea	0	1	0	1	0
Estonia	216	161	0	377	6
Ethiopia	3	6	0	9	0
Fiji	0	1	0	1	0
Gambia	0	0	0	0	1
Georgia	9	0	0	9	0
Ghana	1	12	0	13	0
Guyana	2	0	0	2	0
Hong Kong	18	54	0	72	3
Hungary	83	86	0	169	0
India	218	212	0	430	40

Indonesia	17	7	0	24	0
Iran	9	6	0	15	1
Iraq	5	2	0	7	0
Israel	5	8	0	13	0
Ivory Coast	2	1	0	3	0
Jamaica	4	5	0	9	2
Japan	73	44	0	117	50
Jordan	10	6	0	16	0
Kazakhstan	10	16	0	26	0
Kenya	5	6	0	11	0
Korea (DPRK)	1	0	0	1	0
Republic of Korea	9	11	0	20	1
Kosovo	8	3	0	11	0
Kuwait	0	1	0	1	0
Kyrgyz Republic	1	0	0	1	1
Latvia	957	1059	0	2016	38
Latvian	0	1	0	1	0
Lebanon	6	4	0	10	0
Libya	5	1	0	6	0
Lithuania	1210	1003	0	2213	40
Macau	2	0	0	2	0
Macedonia (FYR)	2	0	0	2	0
Madagascar	1	0	0	1	0
Malawi	1	1	0	2	0
Malaysia	223	236	0	459	5
Malta	3	1	0	4	0
Mauritania	2	1	0	3	0
Mauritius	11	1	0	12	0
Mexico	9	16	0	25	1
Moldova	303	204	0	507	22
Mongolia	2	3	0	5	2
Morocco	31	32	0	63	0
Myanmar	7	17	0	24	2
Namibia	1	0	0	1	0
Nepal	5	13	0	18	0
New Zealand	230	129	0	359	3
Niger	2	0	0	2	0
Nigeria	21	13	0	34	9
Oman	2	0	0	2	0
Pakistan	180	195	0	375	89
Paraguay	4	3	0	7	0
Peru	5	5	0	10	2
Philippines	833	1024	0	1857	43
Poland	1331	717	0	2048	20
Republic of Ghana	1	0	0	1	0
Romania	518	594	0	1112	70
Russian Federation	178	331	0	509	20
Saudi Arabia	0	1	0	1	0
Senegal	1	2	0	3	0

Seychelles	1	0	0	1	0
Sierra Leone	0	1	0	1	0
Singapore	4	4	0	8	0
Slovak Republic	0	1	0	1	0
Slovakia	156	76	0	232	4
Slovenia	9	1	0	10	0
South Africa	813	437	0	1250	40
Sri Lanka	37	30	0	67	0
Sudan	4	0	0	4	0
Suriname	0	1	0	1	0
Swaziland	0	2	0	2	0
Syria	5	14	0	19	4
Taiwan	0	1	0	1	0
Tanzania	6	5	0	11	0
Thailand	165	84	0	249	52
Trinidad & Tobago	5	3	0	8	0
Tunisia	20	25	0	45	0
Turkey	184	37	0	221	3
Turkmenistan	0	2	0	2	0
Uganda	2	1	0	3	0
Ukraine	914	401	0	1315	28
USA	305	152	0	457	4
Uzbekistan	7	4	0	11	0
Venezuela	12	3	0	15	0
Vietnam	18	13	0	31	3
West Indies	0	1	0	1	0
Yugoslavia	0	1	0	1	0
Yugoslavia (FRY)	58	31	0	89	0
Zambia	1	2	0	3	0
Zimbabwe	48	88	0	136	5
(Group Permits)	0	0	274	274	4

Table 4: Total Work Permits issued by Year and by Category: 1999-2002. Source: Department of Enterprise, Trade and Employment

Year	New Permits	Renewals	Group Permits	Total
1999	4,328	1,653	269	6,250
2000	15,434	2,271	301	18,006
2001	29,594	6,485	357	36,436
2002	23,326	16,562	433	40,321

Table 5: Average Annual Estimated Net Migration per 1,000 Population, Source: NCCRI

Intercensal Period	Per 1,000 Population
1926-36	-5.6
1936-46	-6.3
1946-51	-8.2

1951-56	-13.4
1956-61	-14.4
1961-66	-5.7
1966-71	-3.7
1971-79	4.3
1979-81	-0.7
1981-86	-4.1
1986-91	-7.6
1991-96	-0.5
1996-2002	6.8

Table 6: Population – Total, Natural Increase and Net Migration, 1996-2002. Source: CSO

Year	Population (000s)	Total Change	Natural increase	Net Migration	Out migration	In migration
1995	3601	15	17	-2	33	31
1996	3626	25	17	8	31	39
1997	3661	35	20	15	29	44
1998	3705	44	21	23	21	44
1999	3745	40	21	19	29	48
2000	3787	42	22.3	20	22	42
2001	3839	52	26	26	20	46
2002	3897	58	29	29	19	47

Table 7: Population Classified by Religion and Sex, Source: CSO

Religious Denomination	Persons	Males	Females
Roman Catholic	3,462,606	1,702,522	1,760,084
Church of Ireland (inc. Protestant)	115,611	56,894	58,717
Christian (unspecified)	21,403	10,115	11,288
Presbyterian	20,582	10,516	10,066
Muslim (Islamic)	19,147	11,726	7,421
Orthodox	10,437	5,666	4,771
Methodist	10,033	5,012	5,021
Jehovah's Witness	4,430	2,031	2,399
Buddhist	3,894	2,052	1,842
Evangelical	3,780	1,721	2,059
Apostolic or Pentecostal	3,152	1,473	1,679
Hindu	3,099	1,970	1,129
Lutheran	3,068	1,164	1,904
Baptist	2,265	1,097	1,168
Jewish	1,790	913	877
Pantheist	1,106	523	583
Agnostic	1,028	626	402
Quaker (Society of Friends)	859	413	446
Latter Day Saints (Mormon)	833	428	405
Lapsed Roman Catholic	590	287	303
Atheist	500	356	144

Baha'i	490	248	242
Brethren	222	122	100
Other stated religions	8,920	4,903	4,017
No religion	138,264	82,262	56,002
Not stated	79,094	41,124	37,970
Total	3,917,203	1,946,164	1,971,039

Table 8: Mediation Referrals 2001 and 2002, Source: ODEI – The Equality Tribunal, Annual Report 2002, p. 17

	2002		2001	
	IC	Cases	IC	Cases
Employment	62	55	56	25
Equal Status	117	66	46	28
Total	179	121	102	53

Table 9: Case Work of the Equality Authority 2000-2002 Source: Equality Authority, Annual Reports 2000-2002

	Employment Equality Act			Equal Status Act		
	2000	2001	2002	2000*	2001	2002
Race	15	64	43		26	40
TC	4	1	9		340	89
All Grounds	202	405	489		490	305

Table 10: Referrals to the ODEI – The Equality Tribunal 2000-2002. Source: ODEI – The Equality Tribunal, Annual Report 2002

	Employment Equality Act			Equal Status Act		
	2000	2001	2002	2000*	2001	2002
Race	2	27	43	1	21	26
TC	4	3	4	4	641	741
All Grounds	139	260	309	8	854	989

* The Equal Status Act 2000 was first implemented in October 2000, and as such figures for 2000 represent the limited number of complaint made at the end of 2000. Consequently it is not possible to compare these figures with subsequent years. The Equality Authority first annual report for 2000 noted that towards the end of that year there were high levels of interest in the Equal Status Act

Annex 2: Relevant Provisions of the Irish Constitution

The Constitution of Ireland was enacted on 1 July 1937, and has been amended 26 times by referendum. The Irish constitution provides for a number of rights and responsibilities which are of central importance to any discussion of the anti-discrimination legislation. The chapter on fundamental rights includes:

Article 40.1

All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

Article 40.3.1

The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

Article 40.3.2

The State shall, in particular, by its laws protect as best it may from unjust attack and, in case of injustice done, vindicate the life, person, good name and property rights of every citizen.

Article 40.4.5

The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

Article 40.6.1

The State guarantees liberty for the exercise of the following rights, subject to public order and morality:

THE RIGHTS 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 organs of public opinion, such as radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

THE RIGHT OF CITIZENS TO ASSEMBLE PEACEABLY AND WITHOUT ARMS.

Provision may be made by law to prevent or control meetings which are determined in accordance with the law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas.

THE RIGHTS OF THE CITIZEN TO FORM ASSOCIATIONS AND TRADE UNION.

Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing rights

Article 40.6.2

Laws regulating the manner in which the right of forming associations and unions and the rights of free assembly may be exercised shall contain no political, religious or class discrimination.

Article 41.1.1

The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law

Article 42.3.1

The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

Article 42.4

The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

Article 44.2.1

Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

Article 44.2.3

The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

Article 44.2.4

Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the rights of any child to attend a school receiving public money without attending religious instruction at that school.

Annex 3: ‘Dualist’ Nature of Ireland’s Legal System

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 19.6 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 if it is contrary to domestic law or grants rights or imposes obligation additional to those of domestic law.

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. In other cases it is necessary to transpose only certain provision of an agreement because other provision 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.⁷⁴

⁷⁴ Ireland (1996), Initial Report under the International Covenant on Economic, Social and Cultural Rights

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