

ENAR Ireland's submission on
Integration, Multiculturalism and Combating Racism
to the Oireachtas Joint Committee on Justice, Defence and Equality
October 2013



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ENAR Ireland's Submission

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i) Executive Summary

ENAR Ireland is a national network of NGOs and community organisations which works at both a National and European level to combat racism. It uses **iReport.ie** and a range of other measures and instruments to monitor racism, influence debate and make policy recommendations for positive change locally, nationally and in Europe.

There is currently a policy vacuum on racism and xenophobia in Ireland, at the same time, racism is a far greater problem than is acknowledged. There is not enough data on racism and discrimination, due to under reporting and insufficient resourcing for monitoring. Racism occurs at 3 interlocking levels; personal, structural and institutional. ENAR Ireland and its membership favour an approach to tackling and monitoring these interlocking levels of racism through a coordinated approach, which is comprehensive, systematic and holistic, and uses a wide range of measures and instruments. These measures are set out under the headings: Institutions, Legislation, Policy and Practice. These measures ought to be coordinated as part of **a renewed National Action Plan Against Racism** and would include the following recommended changes:

- The reestablishment of an independent body for advising the government on racism
- The resourcing of an independent institution to monitor and report on racism
- To fund a range of anti-racism initiatives
- To adequately resource the new Equality and Human Rights Commission to ensure the Human Rights of all minorities.
- To ensure that all minorities, including Asylum Seekers are covered by equality legislation
- To ensure that all state institutions are covered by Equality Legislation
- To ensure full State compliance with all EU Directives, UPR, ECRI, UNCERD, Framework Decision and the Good Friday Agreement with regards equality, discrimination and racism.
- To Establish an independent Judicial Council
- To review the Judges Benchbook
- To make racism a crime by legislating both for Racially Aggravated Offences AND by providing for judges to 'Uplift' sentences where Racism is a factor
- To abolish Direct Provision and the Habitual Residence Condition and bring forth an Immigration, Residence and Protection Bill
- To resource An Garda Síochána and the Courts Service adequately to counter Institutional Racism and deal with victims of hate crime
- To recognise Traveller ethnicity
- To develop a progressive National Traveller Roma Integration Strategy
- To ensure Traveller and minority ethnic representation at the High Level Official Group
- To collect disaggregated data on ethnicity across all state bodies and administrative systems

ii) Introduction

The State has no current plan and only the scantest legislative measures for combating racism. At the same time, the lack of effective resources for the monitoring of racism and discrimination allows the State to remain blind to racism, in spite of the repeated concerns of international bodies and national and international NGOs. Outside the state, the results from a number of studies and instruments all indicate that attitudes towards Migrants, Travellers and other minority ethnic groups in Ireland are hardening fast as the recession bites. NGOs are recording more racially motivated incidents than ever before, with the greater proportion of these being violent crimes.

“

I came to Ireland 5 years ago from South Africa to work. I want to speak out against racism as I like living here but I'm afraid of racists. I was slapped, kicked, and spat on by an older Irish man at a Luas stop at 10 O' Clock in the morning. When I moved away he followed me and told me he "hated black people" and I should "tell my brothers and sisters to go back to Africa".

I put my hands over my head and pleaded with him to leave me alone. I was afraid. I think it is dangerous to walk in the street now. I am fearful of talking to people.

Racism and ethnic strife are the scourge of civilisation. They tear at the very fabric of society, undermining efforts to establish the good life for all citizens, making life miserable for the most vulnerable, and threatening peace and stability. Across Europe, with unemployment and social deprivation rising, the spectres of racism and xenophobia haunt as far-right parties use racism to skew rational political debate, and minority groups are further neglected, marginalised, scapegoated, in far too many cases, attacked, and even murdered. Closer to home, the history of Northern Ireland ought to serve as a salutary lesson against allowing ethnic strife and discriminatory practises to go unchecked while unemployment and financial insecurity generate resentment.

“

*I am a black African father. My neighbour will not let my children play outside, she said they are black and have no business being here. She calls my 12 years old daughter a fat black b*t*h. She threatens to bring her family to come trash my house and set it on fire, so I am doing everything humanly possible to avoid them.*

We sleep with one eye open not knowing if the house will be set on fire while we are asleep as she threatens. They say we don't deserve to live here. We feel helpless, frustrated, abused, and violated, even in our own home.”

Three events in the recent history of the State serve as portents of the spectre of racism if, to paraphrase Edmund Burke, “great women and men stand idly by do nothing”; the murder of Nigerian-Irish teenager Toyosi Shitta-Bey in 2010, the vehement racist attack on

Vietnamese-Irish blogger Una Minh Kavanagh in the summer of 2013, and the events at Portmarnock Strand, also in the summer of 2013, all remind us that Irish society is at a crossroads in race relations.

When Ireland passed the first Equality Act in 1998, it became the benchmark for best practise in equality across the EU. Now the situation is that we have slid down the scale across a range of measurements. Legislators have an opportunity here to put Ireland in the lead again in terms of race relations.

iii) ENAR Ireland membership



Akidwa, Anti Racism Network (ARN), Ballymun Intercultural Group (BIG), Ballyfermot Travellers Action Project (BTAP), Cairde, Canal Communities Partnership, Claire McCarthy Solicitor, Comhlámh, Community Workers Cooperative (CWC), Crosscare, Cultúr, Donegal Failte Project, Doras Luimni, Equality and Diversity Early Childhood National Network (EDEN), ELSTA (English Language Support Teachers' Association), European Anti Poverty Network (EAPN) Ireland, Fashion Against Racism, Galway Traveller Movement, Immigrant Council of Ireland (ICI), The Integration Centre, IPGSA (Immigrant Parents & Guardians Support Association), Irish Refugee Council, Irish Traveller Movement, Jesuit Refugee Service, Lir Anti Racism Training Project, Louth Minority Ethnic Consortium, Mayo Intercultural Action (MIA), Migrant Rights Centre Ireland (MRCI), Nasc Immigrant Centre, National Traveller Women's Forum, National Women's Council Ireland, National Traveller MABs, National Youth Council of Ireland, New Communities Partnership, Offaly Travellers Movement, Pavee Point (Traveller Centre), ROI Against Racism, Roma Integration Association, Show Racism the Red Card (SRRC), Sport Against Racism Ireland (SARI), Union of Students in Ireland (USI):

iv) **About ENAR Ireland**

ENAR Ireland is the Irish Coordination of the European Network Against Racism (ENAR). ENAR coordinates over 800 anti-racist groups across 30 European States. It has its secretariat in Brussels, where it works to monitor and combat racism, xenophobia and discrimination across the European Union, at local and national levels, as well as at an EU level. ENAR Ireland has existed since 1997, when it was set up as the Irish Platform Against Racism. As a membership organisation, ENAR Ireland works to coordinate responses to racism in the form of advocacy, policy recommendations and debate. ENAR Ireland has over 30 member organisations in Ireland. ENAR Ireland works to coordinate members' responses to racism at a local, national and International level.

ENAR Ireland exists because its members believe Racism to be an enormous problem

Members of ENAR welcome this opportunity to make a submission to the Joint Committee on Justice, Defence and Equality in relation to integration, multiculturalism and combating racism. As this report shows, provision for the monitoring of racism in Ireland is grossly inadequate. What studies have been made are almost unanimous in pointing to an increase in racism being experienced by migrants, Travellers and other minority ethnic groups. For example, the UN Fundamental Rights Agency's research from 2009 shows that 73% of Sub Saharan Africans in Ireland have experienced racism. In addition to this, Teacher's Union of Ireland research from 2010 shows that 46% of teachers are aware of a racist incident at their school. Research from 2010 by the Centre for Human Rights at NUI Galway, showed that 100% of African taxi drivers surveyed had experienced direct racism. A 2013 ESRI report commissioned by the Integration Centre shows a 5-fold increase in hostile attitudes towards migrant communities since 2005. Data from ENAR Ireland's own reporting system, **iReport.ie**, shows that 75% of racist incidents reported involve violence and crime. ENAR's data also shows that 41% of reports involved incidents that were directed at youth, 25% at people because they are perceived to be African, and 12% at Muslims, 70% of whom were women targeted because of their veils (See appendix for further iReport Statistics).



*I am an Irish Muslim woman. I was walking outside Dunnes Stores with my mother, when an elderly Irish man, walking behind us, shouted, “you bloody b*****ds, f**k off, terrorist, black b*****ds”, he kicked me behind the knee and I fell to the floor. He ran away. There were so many people watching, we were outside a busy shopping centre, and everyone just kept watching.*

I felt scared, hurt, embarrassed, and angry. FYI, I'm an Irish citizen, born and bred here, the only difference is my skin colour. Do I really deserve this?

A recent report commissioned by the Socialist Group of the European Parliament found that Irish views towards Travellers, Roma and Muslims have “back-slid” in recent years. Through ENAR Ireland's member organisations, and the **iReport.ie** independent racist incident reporting system which we co-ordinate, we consistently hear reports of unacceptable experiences of racism. The quotes cited throughout this submission are taken from reports made in recent weeks to **iReport.ie**.

Consultations with our members and discussions with expert groups and interested parties consistently tells us that **racism is an ever growing issue that needs to be addressed, at all levels and in a systematic, holistic and comprehensive manner**. In these respects, ENAR Ireland's position is both consistent with current academic consensus, and with the recommendations, reports and directives of various EU and supranational bodies and conventions, including the UN's Fundamental Rights Agency (FRA), the UN's Committee for the Elimination of Racism and Discrimination (CERD), The European Commission against Racism and Intolerance (ECRI), and the International Covenant on Civil and Political Rights (ICCPR). In this submission, we give substance to the demand that racism be addressed at all levels and in a systematic, holistic and comprehensive manner.

v) **A note on definitions of racism, integration and interculturalism**

Racism

ENAR Ireland uses the definition of Racism as established by the *UN International Convention on the Elimination of all Forms of Racial Discrimination (CERD) (1969)*: 'Any distinction, exclusion, restriction or preference, based on race, colour, descent, national or ethnic origin, which has the purpose of modifying or impairing the recognition, the enjoyment or exercise on an equal footing of human rights and fundamental freedom in the political, economic, social, cultural, or any other field of public life constitutes racial discrimination.'

ENAR Ireland has developed this definition of racism and understands racism as operating at 3 interconnected levels: i) Interpersonal Racism, ii) Institutional Racism and iii) Structural Racism:

- i) Interpersonal Racism is what is understood by racism in a common, every day sense. These are the acts of racism carried out by individuals acting in a private capacity, frequently accompanied by racist-name calling etc. this is what **iReport.ie** records, primarily.
- ii) Institutional Racism means any practises, policies or acts of omission by a societal institution which has the effect of excluding or discriminating against members of an ethnic group, whether it is the intention of individuals within that institution or not to be racist.
- iii) Structural Racism refers to the different life outcomes, educational and health prospects etc. which different groups experience because of their ethnic background, in the context of the economic, social and institutional structures of society. This type of racism does not necessarily mean that there has been either overt racism or discriminatory practises by any individual, or there has been institutional racism, although these are frequently present also. An example of this would be the low numbers of Travellers and Roma with 3rd level education, or higher mortality rate for the same groups.

Following the example of the *MacPherson Report into the Stephen Lawrence Case*, ENAR Ireland understands all forms of racism to be best understood in terms of encompassing their objective effect on members of minority ethnic groups, rather than in terms of seeking to prove the intentions of the perpetrator, policy maker, decision maker or anyone else involved. Racism, particularly at an institutional or structural level, is frequently unintentional. **ENAR**

Ireland understands racism as operating at all three of the above interconnected levels in overlapping and mutually reinforcing ways. ENAR Ireland therefore favours a multi-pronged and holistic approach to combating racism through changes at Institutional, Legislative, Policy and Practice levels.

Integration

ENAR Ireland favours the sense of the use of the word 'Integration' as used by the *European Council on Refugees and Exiles (1998)*: "Integration is a two way process, the objective of which should be the establishment of a mutual and responsible relationship between [ethnic minority groups], civil society and host states which promotes equality; self-determination and sustainable self-sufficiency for [ethnic minority groups] and acceptance and positive action in favour of [ethnic minority groups] by European governments and societies at large."

In supporting **Integration** and **Interculturalism** ENAR Ireland opposes practises which amount to **Assimilation**, where the identities and cultures of minorities are expected to disappear into the dominant culture. **Assimilation** has been condemned by the UN on numerous occasions. There are concerns that **Integration** is a term that has in the past been used as a euphemism for practises which amount to **Assimilation**, particularly, but not exclusively, with regards to policies directed towards Roma and Irish Travellers. **Interculturalism**, has a connotation of dialogue and is a term used in preference to and distinction from the earlier term **Multiculturalism** which is seen as stopping short of fully embracing minority cultures as equal partners.

In the following Submission, ENAR Ireland gives substance to its call for "a multi-pronged and holistic approach" to combating racism in all its manifestations through a detailed series of recommendations for change at 4 levels: 1) Institutional, 2) Legislative, 3) Policy and 4) Practice.

1. Institutions

ENAR notes that there has been a dismantling of the equality infrastructure in recent years in Ireland. The following chart shows some of these cuts since 2008.¹ Organisations working with migrants and minority ethnic groups have also suffered similar cuts in funding, as have women's organisations, thus weakening capacity to challenge racism and promote inclusion. Because of the intersection of gender inequality and racism, women have been disproportionately hit by these cuts.

Table 8: Funding of agencies concerned with poverty, equality and rights €

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Combat Poverty	4.5m	4m	0	0	0	0
Equality Authority	5.5m	3.3m	3m	2.4m	2.9m*	}4.41m
Irish Human Rights Commission	2.3m	1.6m	1.5m	1.1m	1.4m*	}
NCCRI	0.497m	0	0	0	0	0
National Action Plan on Racism	<u>1.543m</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Totals	14.34m					4.41m

**These were not relative increases, but reflected underspends the previous year. 2013 figure: Dail Eireann, Debates, 12th February 2013, 298.*

Concern with such cuts was registered by the UN's Committee on the Elimination of Racial Discrimination (CERD) in the concluding observations on Ireland, in 2011. The Committee stated:

'The Committee notes with regret that the economic recession that has confronted the State party threatens to reverse the achievements that have been made in the State party's efforts to combat racial discrimination at all levels. The Committee expresses grave concern over the disproportionate budgets cuts to various human rights institutions mandated to promote and monitor human rights such as the Irish Human Rights Commission, the Equality Authority and the National Consultative Committee on Racism and Interculturalism.'

The Committee further states that "The State party should **ensure** that the functions of the bodies that have been closed are fully transferred and subsumed by the existing or new institutions." Similar concerns have been noted by the European Commission on Racial Intolerance (ECRI). In this context, ENAR makes the following recommendations with regard to the equality institutions in the State.

¹ Harvey, Brian, (2013) "Travelling with Austerity".

1.1 Re-establish an independent advisory body to government on racism similar to the National Consultative Committee on Racism and Interculturalism

The National Consultative Committee on Racism and Interculturalism (NCCRI) was closed down in December 2008. The NCCRI brought significant expertise in anti-racism and interculturalism that has not been fully incorporated into the operation of other institutions. The loss of the NCCRI has had a negative impact and a body with this remit needs to be re-established. A number of tasks in particular that were undertaken by the NCCRI are key to tackling and challenging racism. These include the reporting and monitoring of racist incidents, running of high profile anti-racism awareness campaigns and provision of grants for anti-racism activities.

ECRI noted in its 2013 report that “The expertise gathered by the NCCRI, the bridge between authorities and the civil society and the unique reporting system about racist incidents were lost.” This is of particular concern, as if we do not have a good understanding of the frequency and occurrence of racist incidents at an individual and institutional level, it is extremely difficult to challenge and put in place policies and practice to prevent such racism occurring. To fill one of the gaps left by the NCCRI, ENAR Ireland has since 2009 lead a civil-society based national initiative to record racist incidents, re-launched in July 2013 in the form of **iReport.ie**, an independent and accessible racist incident reporting system. In spite of having only limited funding, **iReport.ie** is able to capitalise on the resources of its network to maximum effect. However, the sector’s resources are stretched to limit and **the independent monitoring of racist incidents must be resourced in a secure and sustainable way.**

The NCCRI took a very pro-active approach in working with Travellers and Roma, as well as Third Country nationals, EU nationals and other minority ethnic Irish nationals. It was intended that its functions would be transferred to the Office of the Minister for Integration. However, this transfer has the effect in particular of excluding Travellers from the remit of anti-racism and intercultural initiatives, as this office does not include Travellers in its remit. In addition to this, the particular experience of Roma is not addressed by either the Traveller Policy Division or the Office of the Minister for Integration. These gaps have been left unfilled.

Recommendations:

- **Re-establish an independent advisory body to government on racism similar to the National Consultative Committee on Racism and Interculturalism.**
- **Fund a body to develop anti-racism campaigns and provide grants for anti-racism initiatives.**
- **Fund an independent institution to monitor and report on racism.**

1.2 New Equality and Human Rights Commission to ensure the human rights of migrants and minority ethnic groups.

The new Human Rights and Equality Commission should ensure that the human rights of migrants and minority ethnic groups are respected and realised, to ensure equality of outcomes in Irish society. The focus should be not only on civil and political human rights, but also on economic, social and cultural rights. It is important that the current remit of the

EA and IHRC is not diluted, rather that their powers are enhanced. In its 2013 report, ECRI stated that

'In line with the recommendation of ECRI 'The merger of the Human Rights Commission and the Equality Authority should result in the setting up of a body that will comply with the Paris Principles and ECRI's GPR Nos. 2 and 7 in terms of independence and having a comprehensive monitoring function in the field of discrimination on grounds of ethnic origin, colour, citizenship, religion and language.'

In line with ECRI's recommendation, ENAR also makes the following recommendations in relation to the Human Rights and Equality Commission:

- **Ensure that commitments in the Good Friday Agreement are honoured in relation to protecting human rights and promote equality, including the obligation to ensuring parity of rights north and south. Two specific examples of this are:**
 - **Remove restrictions on equality legislation so that it applied uniformly to the services and functions of all public sector organisations (including An Garda Síochána).**
 - **Equality legislation in Northern Ireland, including the *Race Relations (Northern Ireland) Order 1997*², does apply to public authorities and the Police Service of Northern Ireland.**
- **Extend all equality legislation's remit to include Asylum Seekers.**
- **The introduction of a "positive duty" on public sector organisations to have due regard to equality and human rights in carrying out their functions in line with *Section 75 of the Northern Ireland Act 1998*.**
- **Introduce positive action under equality legislation, particularly in relation to employment.**
- **Equality proof all new legislation and policies throughout the public sector.**
- **Facilitate and support data collection related to the "nine grounds" and in particular ethnicity data on Travellers and Roma, by all public authorities.**
- **Establish a users' forum to ensure on-going dialogue between the Commission and the groups covered under the nine grounds.**
- **Ensure capacity to take on individual cases and represent people (not only acting as *amicus curiae* in limited numbers of cases of interest). This has happened to some extent with the EA, but the IHRC has had a very limited role in this regard.**
- **Ensure adequate funding for the new body in line with the *Paris Principles*.**

1.3 Establishment of an independent Judicial Council.

Recently a number of comments have been made in relation to groups of migrants, Travellers and Roma by Judges. In August 2012, asked about a Polish charity in Ireland, Judge Mary Devins stated: "A Polish charity? There is. It's called the social welfare."

² As amended by the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 and Race Relations Order (Amendment) Regulations (NI) 2009.

Presiding over a case with a Traveller defendant in Athlone District Court in September 2012, Mr. Justice Seamus Hughes said:

'Nobody has indicated it to me, but I suspect he comes from a certain ethnic background that would give him even more form given the type of behaviour in which some of them engage... As I've described it before, they are like Neanderthal men living in the long grass, abiding by the laws of the jungle.'

In January 2013 in Tuam District Court, Judge Geoffrey Browne described burglars as 'Knackers' and encouraged homeowners to use maximum force against them. The word 'Knacker' is a term that is considered extremely racist and insulting to Travellers. In March 2013 Judge Patrick McCartan is said of a defendant "I assume from his appearance that he's from the Roma community who came here to do what all of them tend to do, to use the streets to beg." Judges have not been held to account for such language and this creates a fear that migrants, Travellers and Roma will not receive fair and equal treatment before the law. A judicial council that will ensure accountability for judges is needed.

“

I am a white South African mother. I went to the Garda station for my first Irish passport application (Very Proud!). There was a Black Somali family ahead of me. When they asked for an official stamp on their documents, the Garda questioned that, and then as a joke, he stamped their forms a few extra times PLUS laughingly asked the CHILD for her hand and stamped her HAND twice with his official Garda stamp. How humiliating!!!

I would not have posted this if it was not for my 12 year old child asking me why did he treat us differently than the black people? Oh my Goodness!!! I cannot report this because there is no proof of racism, it is just a "feeling" you get, even from a 12 year old!

Recommendations:

- **Set up an independent Judicial Council as a matter of urgency**
- **Ensure Travellers and Roma information and guidance is included in the Judges Benchbook and that they receive training on cultural awareness and anti-racism delivered in partnership with Traveller and migrant organisations.**

2 Legislation

The only legislation that specifically criminalises racist crime is the Prohibition of Incitement to Hatred Act, 1989. Public Order legislation and the Non – Fatal Offences against the Person Act 1997 (as amended) can be used to prosecute racially motivated offences. However, with the exception of the Incitement to Hatred Act, racist behaviour is not explicitly addressed in the Irish Criminal Justice System. Offences motivated by racism are not treated any differently from the same offence where there is no racist motivation. Legislation does not contain any specific provisions in relation to racially aggravated offences and/or aggravated sentencing where the crime is racially motivated.

In addition to this there are three aspects of the legislative framework which impact on Travellers negatively, giving rise to outcomes which evidence institutional and structural racism, and underpin interpersonal racism. The Housing and Miscellaneous Provisions Act 2002 criminalises nomadism and has been criticised for being assimilationist. The Housing (Traveller Accommodation Act) 1998, while intended to provide for the accommodation needs of Travellers, has not been implemented by local authorities. Taken together, the application of these two pieces of legislation have the effect of leaving Travellers in an accommodation limbo and vulnerable to racism and harassment from elements in the community, as well as discrimination from local authorities and other statutory bodies. The persistent refusal of the State to recognise Traveller ethnicity in law also underpins many of the legislative, policy and practise failures which give context to the institutional, structural and day-to-day racism to which Travellers are subjected. IWith regards Traveller accommodation rights, ECRI, in its 2013 report, stated that **National authorities should introduce measures binding local authorities to respect and making the public aware of the accommodation rights of Travellers.**

The EU Framework Decision was adopted by the European Parliament in 2008 and was meant to be transposed into national legislation by 28th November 2010. The Directive imposes a number of minimum standards relating to the elements of criminal acts and penalties in the area of racism. One of the provisions refers to having '*an effective, proportionate and dissuasive penalty provision for offences where racist or xenophobic motivation is an aggravating circumstance*'. In response, the Department of Justice and Equality has said³ that Ireland is compliant with the provisions of the Framework Decision through existing legislation. The Department asserts that while the incitement to Hatred Act 1989 has been in place for 20 years, it remains sufficiently robust. The Department also asserts that judges currently have discretion to take racism as a motivating factor at sentencing. However, the UN Committee on the Elimination of Racial Discrimination (UNCERD) has noted that racist motivation is not consistently taken into account by judges in sentencing⁴. Similarly NGOs and other actors have, since the 1990s, with regularity

³ Speech at Seminar on Racist Crime: Issues, Challenges and the Framework Decision on Racism and Xenophobia held in June 2010. See also statement on the government website, <http://www.integration.ie/website/omi/omiwebv6.nsf/page/Racism-eudevelopmentsEUCouncilFrameworkDecisionCombatingRacism-en>

⁴ UN Committee on the Elimination of all forms of Racial Discrimination, Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination CERD/C/IRL/CO/3-4 (CERD April 2011)

highlighted the inadequacy and unworkability of the Incitement to Hatred Act⁵. In October 2012, the EU agreed Directive 2012/29/EU, establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime. Articles 22 and 23 of this Directive make explicit reference to an obligation to make provision for responding to victims of hate crime and gender-based violence.

There are also a number of European and international instruments that provide a useful benchmark of minimum standards for Ireland's criminal law provisions in relation to racist crimes. These include, among others, the 2008 EU Framework Decision on Combating Racism and Xenophobia⁶ and the UN Convention on the Elimination of all forms of Racial Discrimination (UNCERD). **Both instruments refer to the need for new legislation providing for specific provisions in relation to racially aggravated offences and/or aggravated sentencing on the grounds of racism.**

2.1 Incitement to hatred and measures to combat hate crime

2.1.1 Provision for racially aggravated offences:



I am a black British woman living in Ireland. I was walking home when a car slowed down and a man pushed half of his body out of the window started to shout violently, "Get out, Go home!" I was afraid. I started to pray. It was pouring with rain and there was nobody around. It was like a dream. I phoned my husband who consoled me and informed that in England vans were driven around with the same words "Go home!" These men were confident and proud to do what they did. If a government is encouraging racism, they inspire the weak and feeble minded to act violently against the vulnerable, mainly women and innocent children.

I should have my liberty to walk freely in Dublin. That has been taken from me. It is a horrible sinking feeling that I would not wish on anyone. It is not a crime to be black.

ENAR Ireland calls on the government to enact the strongest measures for making racism a crime. Publicly taking strong measures to criminalise hate crime has the additional benefit of sending out a signal that racism and other forms of hate crime are socially unacceptable. In addition, a survey of common law jurisdictions on the measures taken to combat hate crime suggests that there are benefits for both, the approach of providing for separate categories of racially aggravated offences (or the equivalent bias offence), and to providing for sentencing uplift. Some jurisdictions use both types of measure successfully. ENAR Ireland favours this multi-pronged approach, as it provides the criminal justice system with a range of instruments for combating racism, and helps send a strong signal that hate crime is socially unacceptable. In this regard, the state should follow the recommendations of both

⁵ See for example, submissions by organisations such as NCCRI on the review of the Act and summary of paper presented by Siobhan Cumiskey, Irish Traveller Movement at ENAR Ireland seminar on Racist Crime: Issues, Opportunities and the EU Framework Decision, June 2010.

⁶ European Commission, Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of Racism and Xenophobia by means of criminal law.

international bodies and NGOs, and the anti-racist, disability and LGBT rights sectors to bring forth both legislation for dealing with **Offences** deemed to have been **Aggravated by Bias**, in the form of specific legislation creating a new category of aggravated offence. At the same time, implementing measures that enable judges to **'uplift' sentences** for existing offences for the offender, if in their opinion, the crime was aggravated by bias. An exploration should be made to decide which of the nine grounds set out in the Equality Act ought to be grounds under aggravated offences. Such a change would be in fulfilment of the **ECRI's** General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. It would also make Ireland compliant with the Framework Decision, UNCERD's recommendations, and Articles 22 and 23 of EU Directive 2012/29/EU, establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime.

With regards to both Hate Crime Legislation and to the Incitement to Hatred Act, serious consideration should be given to providing for **Restorative Justice** measures to be used for first time offences and where the offence is sufficiently minor.

Recommendations:

- **Bring forth legislation creating a category of Racially (or 'bias') Aggravated Offence. AND**
- **Make provision for judges to consider racial (or 'bias') motivation at sentencing, and provide for the sentence to be 'uplifted' accordingly.**

2.1.2 The Incitement to Hatred Act

The 1989 Incitement to Hatred Act, which has been under government review for a number of years, has been criticized from many quarters for its ineffectiveness and unworkability. One aspect of its unworkability is reflected the number of *Nolle Prosequi* returned by the Director of Public Prosecutions. The average number of successful prosecutions since the act stands at less than one per year. There are a number of difficulties with the operation of the Act, including; the need to demonstrate that an act was both intended to, and had the effect of, inciting hatred in others. The terms incite and hate are not defined, the consent of the DPP is required in all instances and the defences provided in the legislation are extremely broad. Another problem with the Incitement to Hatred Act is that it was not drafted with the internet age in mind; online hate speech is not catered for under the Act. In spite of its shortcomings, the Act's existence on the statute books constitutes an important signal that race hatred and other forms of hatred are unacceptable culturally. In reviewing the legislation, new provisions should put the emphasis on the demonstrable racist effect on victims, rather than putting emphasis on establishing *mens rea* or racist intent of the perpetrator.

Recommendation:

- **Conclude the review and update of the Incitement to Hatred Act**
- **Bring forth a new legislation prohibiting speech, broadcasting or the publication of material of a biased nature likely to stir up hatred against one of the named groups.**

2.2 Traveller Accommodation

S 24 of the Housing Miscellaneous Provisions Act (2002) continues to criminalise nomadism and disproportionately impacts upon Travellers. This is a form of institutionalised racism and needs to be repealed. The Housing (Traveller Accommodation) Act 1998 was developed to make provision for the accommodation needs of Travellers. However, the lack of political will and the lack of incentives or sanctions in the legislation have resulted in local authorities failing to provide adequate accommodation for Travellers under the Act. Taken together, the application of these two pieces of legislation have the effect of leaving Travellers in an accommodation limbo. In this context Traveller families often face discrimination, harassment and racist attacks by people who do not want them to live in their area. The ECRI (2013) has stated ‘National authorities should envisage introducing measures binding on local authorities and raising awareness among the general public of Traveller accommodation rights and promote respect thereof.’



I am an Irish Traveller experiencing very high levels of racism & hatred where I live. Since we moved in we have being frowned upon, the word knacker is used frequently, some residents have never spoken to us and never will. We have been demonised. The exclusion and marginalisation has severally affected our quality of life. My wife has suffered from depression and our children's confidence has being impacted. People tend to talk about us, rather than to us.

I feel angry, isolated, hurt, and alone. No support, no one to turn too, let down by the state and the people. I feel useless as human being. I have lost faith in the system and the wider settled community.

Recommendations:

- **Repeal S24 of the Housing Miscellaneous Provisions Act**
- **Introduce measures binding on local authorities to implement the Housing (Traveller Accommodation) Act 1998, including the provision of a minimum number of transient sites in each local authority area.**

2.2 Institutional racism and the law

Immigration and Protection and Racial Profiling

Another form of **Institutional Racism** is manifest in the practise of **Racial Profiling**, where ethnicity is used as a basis for authorities for differential treatment of individuals. Concern has been expressed by the UN's Universal Periodic Review (UPR), and the ECRI, that **there currently is no law in Ireland outlawing Racial Profiling**, as per international best practise.

Concern has also been expressed at anecdotal evidence that Gardaí and Immigration officers may wittingly or unwittingly engage in **Racial Profiling** in the course of their duties, notably but not exclusively in the application of **Immigration Acts 2003 and 2004**.

ENAR is concerned that the **Habitual Residence Condition (HRC)** provision with regards Social Welfare and other entitlements disproportionately precludes Travellers, Roma and other Migrants from welfare entitlements and educational opportunities due difficulty in obtaining documentation necessary to establish Habitual Residence. ENAR Ireland believes the Habitual Residence Condition to be a measure that is institutionally racist in its effect and calls for its overhaul so that criteria for the establishment of welfare entitlements does not disproportionately exclude Travellers, Roma or the children of migrants.

ENAR is concerned that the practise of Dispersal and Direct Provision (DDP) with regards to the Asylum process is not just institutionally racist, but also has the effect of criminalising as well as marginalising Asylum Seekers and their children, leaving them vulnerable to racist attack. ENAR Ireland has logged a number of such attacks through **iReport.ie**. ENAR Ireland believes that conditions in Direct Provision (DP) are so inhumane that it will be remembered as one of the darker chapters in Irish History, on a par with the clerical and institutional abuse scandals of recent decades. ENAR Ireland is concerned that the practise of DDP has no legal basis, and that it is an expensive and inhumane measure that has been allowed to continue due to political expediency. ENAR Ireland calls for a root and branch overhaul of the Asylum Process, the scrapping of DDP, the establishing of a single procedure for asylum and subsidiary protection, and for allowing Asylum Seekers the right to work and access to social welfare. ENAR Ireland notes that network member, the Irish Refugee Council (IRC), favours a root-and-branch overhaul of the Asylum Process and a re-modelling along the lines of the Portuguese model as a model of best practise.

Recommendations:

- **Review the Habitual Residence Condition and its application in Social Welfare Law.**
- **Draft and adopt an Immigration, Residence and Protection Bill so as to:**
 - (a) Put in place one single procedure for dealing with applications for asylum and subsidiary protection.**
 - (b) Asylum Seekers still awaiting a decision after 6 months to be granted rent allowance, supplementary welfare allowance, and the right to work.**
 - (c) Introduce a long-term residence status (granting same rights as those enjoyed by nationals in the field of university education);**
 - (d) Introduce procedures for registration of non-national minors under 16.**
- **Extend the definition of services in the equality legislation to include immigration and asylum processes.**

3.1 Renew or introduce a new National Action Plan against Racism and establish a national oversight committee representative of statutory and NGO sectors to implement the plan

The National Action Plan Against Racism (2005-2008) adopted as a follow-up to the United Nations World Conference Against Racism held in 2001, has not been renewed. This has been noted as a concern by ECRI in its most recent report on Ireland, 2013. In 2011, CERD noted the importance of the State giving effect to the Durban Declaration and Programme of Action and Ireland will be required to include in its next periodic report 'specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.'

In light of the recommendations of these human rights bodies, ENAR Ireland recommends the following:

- **Renew or introduce a new National Action Plan against Racism and establish a national oversight committee representative of statutory and NGO sectors to implement the plan.**
- **That a monitoring and evaluation system be established as part of the implementation of the plan.**

As part of this National Action Plan, ENAR Ireland recommend including provision:

- **For the Government to convene a national Round Table on Racism, Integration and Interculturalism, on the occasion of ECRI and Framework Convention visits to the State.**
- **Resourcing equality infrastructure to bring about timely redress in instances of equality legislation. EA/HRC to comply with Paris Principles and ECRI's GPR no 2 in terms of independence and monitoring discrimination. (ECRI)**
- **Traveller and Roma representation at High Level officials group to ensure policy development will not have potential unintended negative effects on Travellers and Roma.**
- **Public awareness campaigns to challenge Racism.**
- **Support for promotion of positive images of BMEs including Travellers and Migrants in the press, especially through events such as Traveller pride.**
- **The government to provide for increased supports for innovative educational programmes that support diversity within schools, such as the Yellow Flag programme.**
- **Cross-departmental measures, overseen by the EA/HRC, for ensuring equal access for all to education.**

- **Training for all Garda in how to treat hate crimes and the adequate resourcing, training and support for the Garda Intercultural Office and Ethnic Liaison Officers (EU Directive 2012/29/EU, establishing Minimum standards on the rights, support and protection of victims of crime, sections 22-23)**

In Addition to these measures, key planks in a National Action Plan against Racism must include:

3.2 Recognition of Travellers as minority ethnic group

Traveller and anti-racist organisations are unanimous in their call for ethnic recognition for Irish Travellers. This view is fully supported in academia by sociological and anthropological consensus, as well as by the multiple findings, directives, laws and recommendations from the European Union, The European Commission and the United Nations. In addition to this, Irish Travellers are recognised as an ethnic minority in Northern Ireland, and in Britain. In this context, an on-going problem is the persistent failure by the State in Ireland to recognise the ethnic status of Travellers, in circumstances where no clear reasonable legal argument exists for this refusal to recognise Traveller ethnicity.

This failure of the State to recognise Traveller ethnicity undermines the esteem in which Travellers should be held as citizens of Ireland. This failure gives context to the daily racism, marginalisation and discrimination faced by Travellers, and deprives Travellers of adequate recourse in law. It also gives context to the failure by wider society to recognise Irish Traveller identity and to the resulting skewing of debate in the public arena around Traveller issues, facilitating, for example, the misrepresentation of Travellers and their culture in the media and in other public fora.



I went out to a restaurant with my husband last week, where we were told to pick any of the empty booths we liked. Shortly after, a Traveller family with young children took their own booth, but were quickly asked to leave by a manager, who claimed that the booths had been reserved for a party. The Traveller family challenged the manager on this and left after protesting. Myself and my husband then offered to vacate our booth if, as the manager said, the area had been reserved for a party, only to be reassured by that we didn't need to.

I understand that management reserve the right to refuse anyone, but this was blatant racism. They were a family with two young kids out for dinner on a Sunday afternoon and they were subjected to that kind of behaviour.

Recommendation:

- **Enact new legislation and amend all relevant existing legislation to give full, legal recognition to Travellers' ethnic status**

3.3 Disaggregated Ethnic data across all administrative systems

In its third and fourth reports on Ireland, ECRI reiterated its recommendation that the Irish authorities establish and implement a system of ethnic data collection to assess and redress any racial discrimination that may exist in the country, in full compliance with all the relevant national laws, as well as European and international regulations and recommendations on data protection and the protection of privacy, as stated in ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, anti-Semitism and intolerance.

ECRI recommended also that the Irish authorities use data gathered in the 2006 census to garner information on the situation of ethnic minorities and non-nationals in various areas and identify possible problems of racial discrimination that may require further investigation.

Recommendations:

- **That the authorities process the data collected in the census with full respect for all relevant safeguards and use it to monitor the situation of groups of concern to ECRI by means of disaggregating data by ethnic origin, language, religion and nationality.**
- **That the authorities collect disaggregated ethnic data across a range of State bodies and institutions, including the Criminal Justice System (the Courts Service, An Garda Síochána, the Prison Service), Health and Education, in order to monitor and track the ethnic composition of all services with a view to making them reflective of the ethnic composition of society. The data can also be used to ensure evidence-based policy making to ensure minority groups get access to services.**

3.4 Develop a progressive National Traveller Roma Integration Strategy

Ireland has developed a 'National Traveller Roma Integration Strategy' on foot of the EU Framework for National Roma Integration Strategies up to 2020. The EU Framework document sets out a framework for addressing inequality faced by Roma (including Travellers) in the areas of education, health, accommodation and employment.

Despite the guidance of the EU in relation to the development of these strategies, Ireland's strategy needs significant improvements. The most recent assessment (2013) of the European Commission has been very critical of Ireland's National Traveller Roma Integration Strategy. Out of 22 criteria, Ireland is deemed to have met just 4.

Ireland has failed to engage with civil society and to put energy and resources into developing a progressive strategy. The current strategy needs to be developed to address the gaps in Traveller policy, to reallocate resources to Traveller initiatives and to develop initiatives for Roma in Ireland. Ireland's National Traveller Roma Integration Strategy, as it stands, mainly presents a narrative of existing Traveller policy. It contains no goals, targets,

indicators or related timeframes, funding mechanisms or monitoring and evaluation mechanisms. No consultation or facilitation of active participation of Travellers and Roma has taken place and Roma are largely excluded from this document.

Recommendations:

- **Revise the National Traveller Roma Integration Strategy in line with the guidance of the European Commission and in line with the Common Basic Principles on Roma Inclusion.**
- **Establish a steering group with an independent chair to lead the process – consisting of representatives from relevant departments, agencies and civil society, including Travellers and Roma.**
- **Ensure the strategy explicitly addresses racism towards Roma and Travellers and include measures to address gender inequality and multiple discrimination faced by women.**

3.5 Habitual Residence Condition

Habitual residence is a condition, which applicants must satisfy in order to qualify for certain social welfare assistance payments. Habitual residence essentially means an applicant must be able to prove a close link to Ireland. Application of the habitual residence condition has placed migrants, Travellers and Roma in Ireland in very vulnerable positions, whereby they cannot access any support services. HRC has a particular impact upon women experiencing violence; where a woman may be leaving a situation of violence and applies for social protection she has to meet the HRC. Essentially a woman who is deemed not to be habitually resident may have to face destitution in order to escape violence, as she will have no social protection. This will also impact upon her ability to access refuge beyond an emergency period. These are major barriers for women in moving from such situations. The guidelines on HRC have no provision for women experiencing violence. Concerns about HRC have been raised by the Special Rapporteur on extreme poverty and human rights she has stated in 2012 that,

‘This requirement can pose a significant threat to the access to essential services and thus enjoyment of human rights by members of vulnerable groups, particularly people experiencing homelessness, Travellers, asylum-seekers, migrant workers and returning Irish migrants. The Special Rapporteur encourages the Government to review the impact of the condition as a matter of priority.’

In its Third Report ECRI recommended that ‘the Irish authorities review the impact of the Habitual Residence Condition on all groups of migrants and envisage introducing the necessary amendments to ensure that it does not place members of these communities in a precarious situation.’

A review of the impact of the Habitual Residence Condition has still not taken place.

Recommendations:

- **Invest in and conduct a review and impact assessment of the habitual residence condition, in particular in relation to ethnicity and gender.**
- **Ensure that women experiencing violence are not subject to the habitual residence condition.**
- **Remove child benefit from habitual residence condition requirements.**
- **Ensure that people awaiting decisions on habitual residence are provided with adequate income supports.**
- **Provide human resources to support people in making their applications, in particular the availability of suitable translators.**
- **Collect and make public disaggregated data of applications, refusals, appeals and appeal outcomes in relation to the habitual residence condition.**

3.6 High Level Official Group

The high-level official group continues to operate as a group without Traveller representation. This has the effect of discussions and decisions being made about Travellers without their involvement. Travellers need to be included in all decision-making forums that impact upon their lives. Furthermore, there is no existing forum for Roma to meaningfully engage in policy decisions impacting upon their lives.

Recommendation:

- **Ensure Traveller representation at the High Level Official Group.**
- **Develop a national forum whereby Roma can be part of policy decisions impacting on their lives.**

4 Practice

With regards to the proposed legislative measures for tackling Hate Crime, the role of the judiciary and An Garda Síochána in combating racism and discrimination is critical to ensuring implementation and effectiveness. The legislation will not be effective if the judiciary does not apply measures afforded or if the police do not adequately record racist incidents.

ENAR Recommends that the infrastructure i.e. Garda and the criminal Justice system supporting the legislation needs to be enhanced and strengthened:

- **Adequate resourcing of Ethnic Liaison Officers (ELOs) and the Garda Intercultural Office. Expansion of number of ELOs to be proportionate with and reflective of ethnic composition of society.**
- **Disaggregated data collection of incidents of racism, looking at best practice from England, Wales, Scotland and Northern Ireland.**
- **Ensure greater awareness of the relevant legislation including by those responsible for its implementation and also by both victims and potential perpetrators of racist crime.**
- **Training for Gardai on how to treat hate crimes**
- **Targeted surveys collated on the impacts of Racism on individuals and communities.**

Greater recognition of the role of a range of stakeholders including civil society organisations and those experiencing racism, can help address the gap between the need on the ground and the legal options currently available. Effective communication between relevant government departments and statutory bodies with civil society organisations is vital to developing responses to racism including through criminal law.

Recommended changes in current practice:

- **Establish a code of conduct for elected representatives.**
- **Provide Cultural awareness training for all front line service providers.**
- **Make provision for positive action measures to compensate for identified gaps in the delivery and access to services.**
- **Provide funding for anti-racism week and a range of other anti-racism initiatives.**
- **Support for the promotion of positive images of Minority Ethnic groups including Travellers and Migrants, in the press, especially through events such as the Traveller Pride Awards.**

October 2013

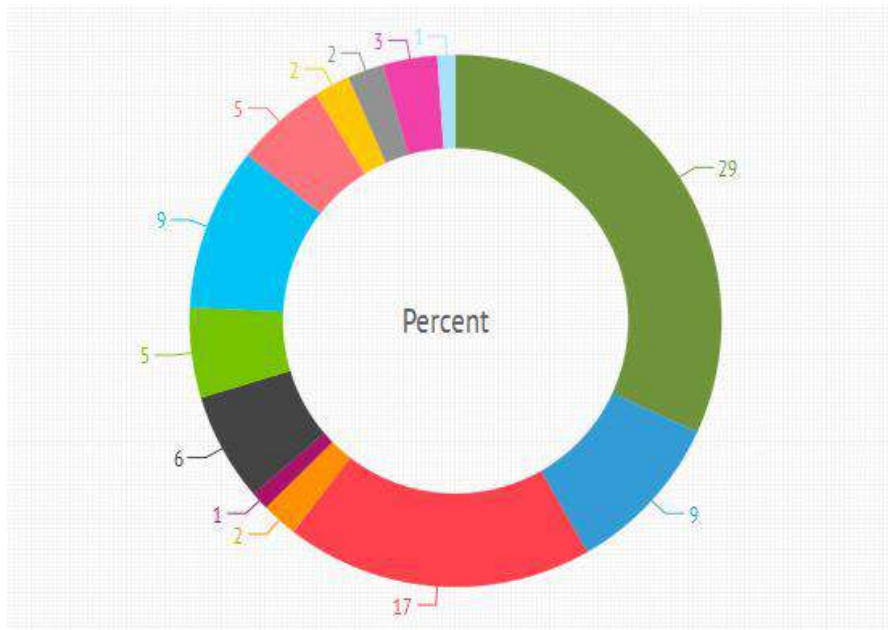
Data collected in the first four weeks of www.iReport.ie

The iReport: Documenting Racism in Ireland

**Racism:
see it
send it
end it.**

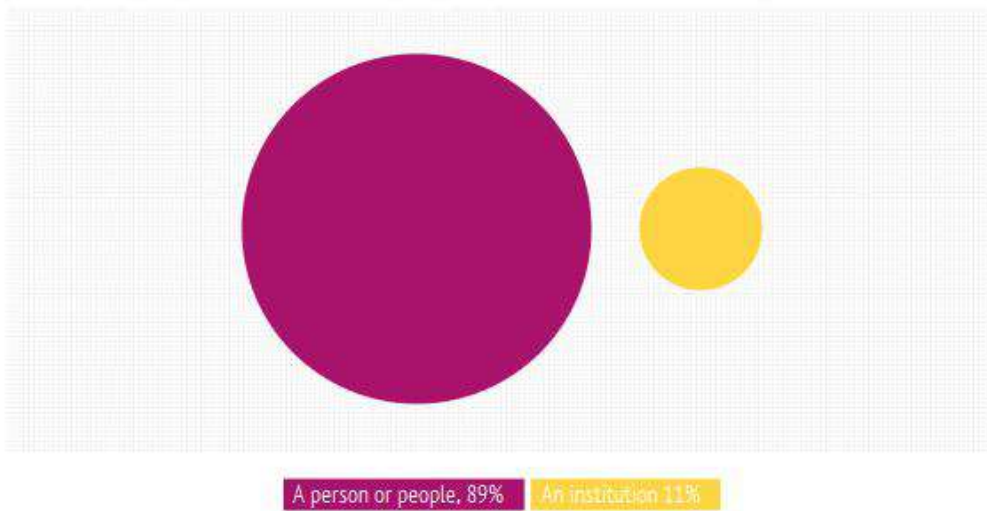


Racist incident breakdown

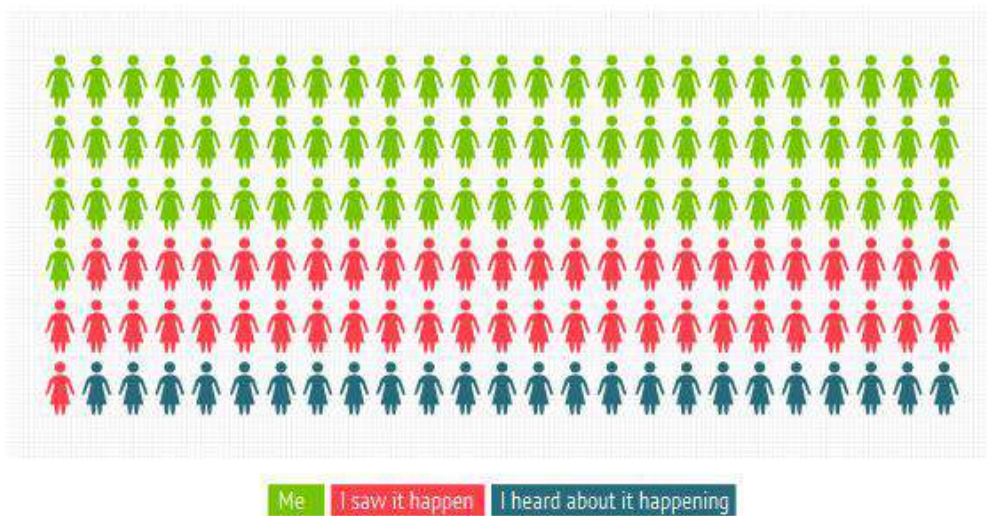


- Shouting / strong language
- Threats
- Harassment
- Spitting
- Sexual harassment
- Refused service or entry
- They targeted someone's headscarf or veil
- Being treated unfairly or differently in public (Ignored, isolated or excluded)
- Being unfairly or differently treated looking for service
- Unfair workplace conditions
- Finding work or somewhere to live
- On the internet, social media, or press media
- By phone or text

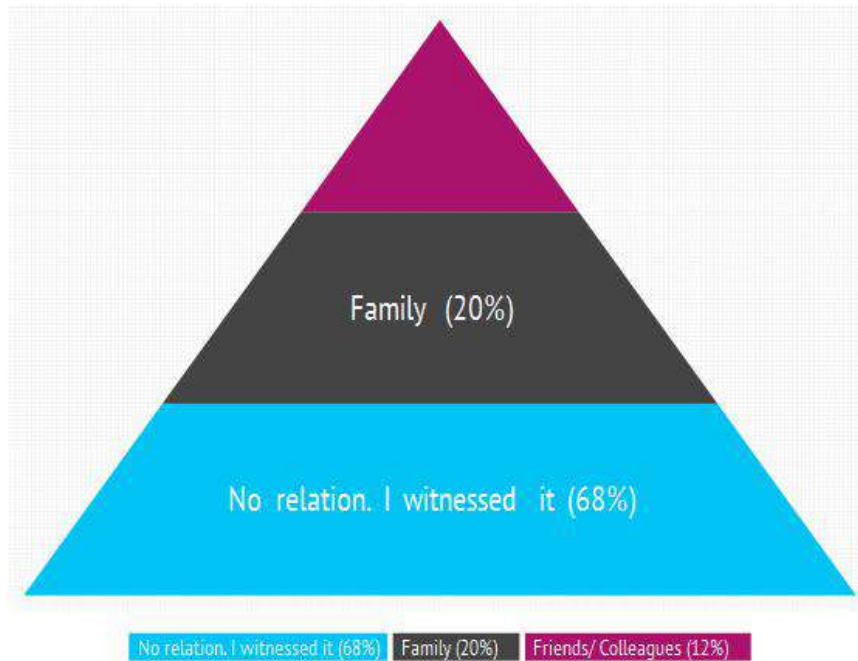
Was the incident caused by an institution or person(s)?



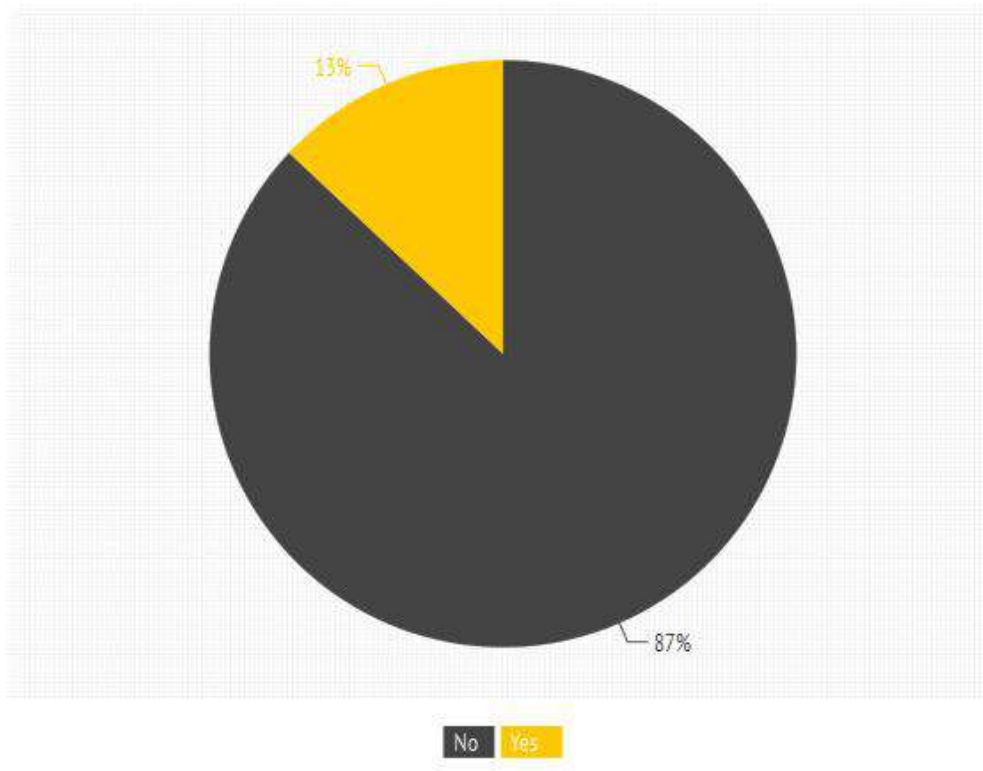
Who did this happen to?



What is your relationship to the person this happened to?



Did anybody help or intervene?

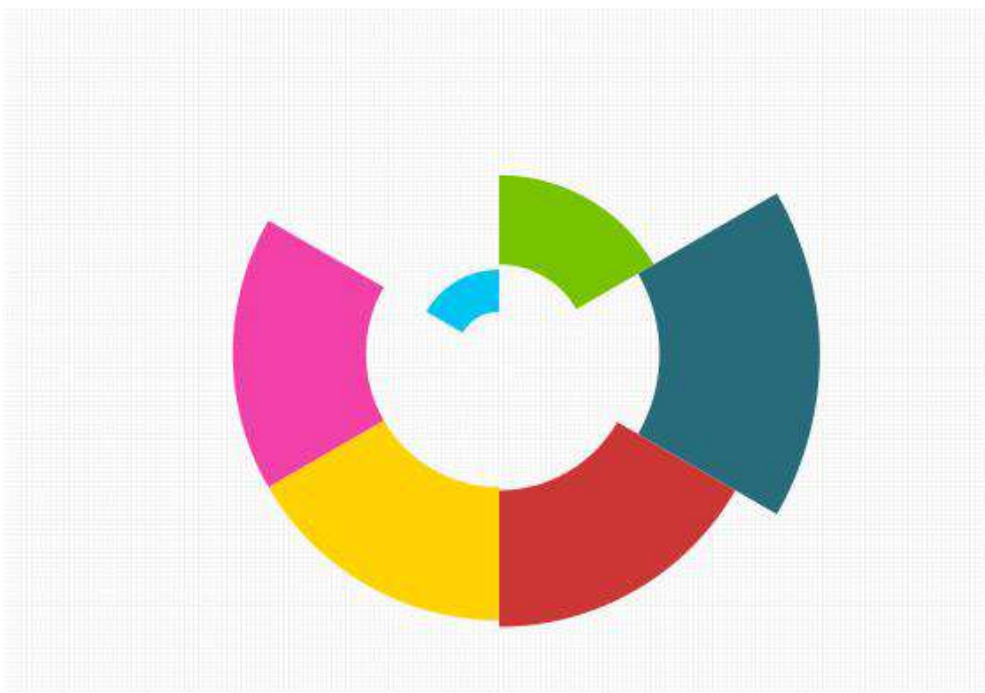




46%

Of reported racist incidents were against females

The age group of those who experienced racism:

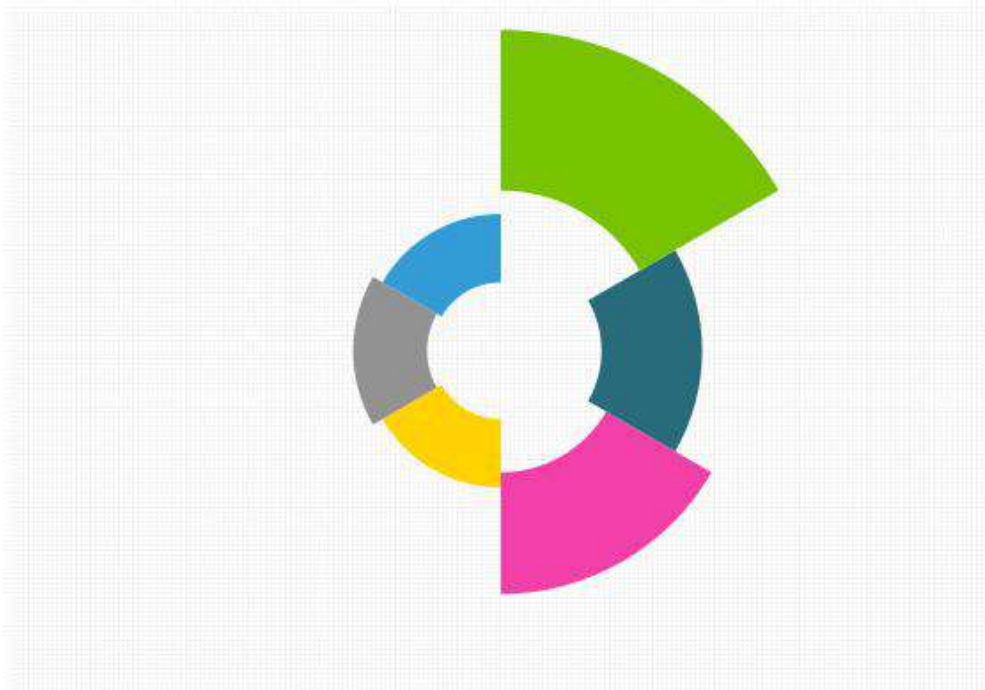


Children (1-14) 20% Young Adults (18-25) 21% Adults (25-35) 29%
Middle Aged (35-55) 9% Older than 55, 2% Mixed age group, 20%

★ 20%

of all racist incidents reported were against children aged 1-14 years old

Age groups of those responsible

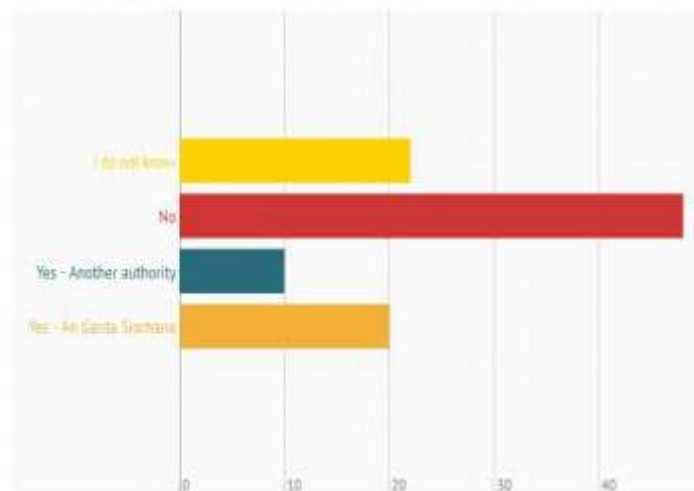


Teens (14-17) 6%	Young Adults (18-25) 6%	Adults (25-35) 13%	Middle Aged (35-55) 33%
	Older than 55, 6%	Mixed age group, 7%	

89%

Of reported incidents involved interpersonal racism, rather than institutional racism

Has the incident been reported to An Garda Síochána or any other organisation or authority?



Is this information being captured by another NGO?

