

"SOMETIMES I'M MISSING THE WORDS"

**The rights, needs and experiences of
foreign national and minority ethnic
groups in the Irish penal system**



**Maynooth
University**
National University
of Ireland Maynooth



Coimisiún na hÉireann
um Chearta an Duine
agus Comhionannas
Irish Human Rights and
Equality Commission

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The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, and building alliances.

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The research was guided by a voluntary expert steering group, chaired by Dr. Seamus Taylor (Maynooth University) and comprised of Khatuna Tsintsadze (Zahid Mubarek Trust), Dr. Lucy Michael (Diversity, Equity and Inclusion Specialist), Bashir Otukoya (Dublin City University) and Nuala Kelly (Pavee Point).

A note on language

IPRT is cognisant of the language and terminology we use in our publications. IPRT is committed to using 'person first' language as much as possible. However, for purposes of clarity, the term 'prisoner' is used often throughout this report; this is to distinguish between staff and people detained.

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Acronyms

AITHS	All-Ireland Traveller Health Study
BME	Black and Minority Ethnic
CoE	Council of Europe
CPD	Continuous Professional Development
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CERD	Committee on the Elimination of Racial Discrimination
CSO	Community Service Order
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ENAR	European Network Against Racism
EPRs	European Prison Rules
EU	European Union
FNPs	Foreign National Prisoners
ICCPR	International Covenant on Civil and Political Rights
IHREC	Irish Human Rights and Equality Commission
INAR	Irish Network Against Racism
IPRT	Irish Penal Reform Trust
IPS	Irish Prison Service
LSI-R	Level of Service Inventory-Revised
NGOs	Non-Governmental Organisations
OIP	Office of the Inspector of Prisons
PIMS	Prisoner Information Management System
PMDS	Performance Management and Development System
TPI	Travellers in Prison Initiative
TR	Temporary Release
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UN CERD	United Nations Convention on the Elimination of Racial Discrimination
WHO	World Health Organisation



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Sole responsibility for the content of this report lies with the authors and IPRT.

Executive Summary

This report considers the experiences of foreign national and minority ethnic prisoners within the context of relevant policy and law at national, European and international levels. Very little information exists on the needs and lived experiences of minority ethnic and foreign national prisoners (FNPs) in the Irish penal system. Significant demographic changes in Ireland in recent decades have led to greater diversity of the Irish population and this is reflected among those who come into contact with the law. The result is a more ethnically diverse prison population, a phenomenon also experienced by other European penal systems. There is also an indication that some minority ethnic groups – for example, those from African backgrounds or Travellers – are, in fact, over-represented in the Irish penal system. How well the needs of these minority ethnic and foreign national groups are or are not being met is the subject of this report.

This study used three different methodologies to examine both the legal and policy context pertaining to the treatment of minority ethnic and foreign national groups who are or had been in prison and/or on probation. Doctrinal analysis was used to examine relevant national, European and international law and policy with respect to the rights of foreign national and minority ethnic prisoners. Quantitative data obtained from the Irish Prison Service (IPS) and the Probation Service was analysed with a particular emphasis on the possibility of differences between sentences given by the courts to Travellers and non-Travellers; Irish nationals and foreign nationals; and individuals who identify as White and those who identify as being from ethnic groups other than White. A major part of the report was based on interviews with people in prison and those with experience of the Probation Service. Additionally, interviews were conducted with key stakeholders from both State bodies and the voluntary sector about their work with foreign nationals and minority ethnic people. As the research was conducted during the ongoing COVID-19 global pandemic, face-to-face interviews were not possible. Interviews with people in prison, people with experience of the Probation Service and professional stakeholders were conducted via video link or by telephone.

Findings from the research include:

- Based on an analysis of the quantitative data, it was found that foreign nationals may receive longer sentences than Irish nationals for controlled drug offences and sexual offences.
- Further analysis, along with interviews from professional stakeholders, established that the IPS data – while including statistics on prisoners' nationality – was deficient in the areas of ethnicity and religion of the prison population.
- Interview data revealed that there were significant challenges faced by foreign nationals and minority ethnic people in prison concerning access to services, respect for different religious backgrounds, as well as language and communication barriers.
- Experiences of racism at different stages of the criminal justice process had the effect of limiting trust with any part of the penal system.

Summary of Recommendations

This report contains 18 recommendations, which are included in detail on page 62, and are described briefly below:

1. Integrate the principle of imprisonment as a sanction of last resort in legislation. Greater use of community sanctions and less use of imprisonment as recommended by the Penal Policy Review Group (PPRG) should be implemented as soon as possible.
2. Ireland should incorporate the UN Convention on the Elimination of All Forms of Racial Discrimination (UN CERD) into domestic law as soon as possible.
3. There should be a significant improvement in data recording and ethnic equality monitoring across all penal data collections systems (e.g. Prisoner Information Management System (PIMS), Probation), and a wider range of ethnicity categories, such as those employed by the Central Statistics Office, should be incorporated.
4. Implement the Public Sector Equality and Human Rights Duty. Further steps must be taken for the Irish Prison Service to meet its obligation to eliminate discrimination under section 42 of the Irish Human Rights and Equality Commission Act 2014.
5. Staff training is a fundamental element of supporting the rights and needs of minority ethnic, migrant and foreign national prisoners. Such training will not be effective if it is not integrated into prison cultures, including the Performance Management and Development System (PMDS), promotion and overall performance appraisal.
6. The Irish Prison Service should put its commitment to diversifying its workforce into practice and recruit more staff from the same ethnic, cultural, religious and linguistic backgrounds as the prisoner population.
7. The Irish Prison Service should update and disseminate the Irish Prison Rules to include the Human Rights protections that are specific to foreign national, migrant and minority ethnic prisoners, as set out in international and European penal law.
8. The Department of Justice and the Irish Prison Service should address gaps in the interpretation needs identified in this report. English as a second language education should be fully resourced and provided consistently.
9. Relationships between the Irish Prison Service and civil society groups who particularly work with minority ethnic and foreign national prisoners must be improved and their facilitation formalised.
10. The Irish Prison Service should set up a standing consultative forum with civil society NGOs working with Black and Minority Ethnic (BME) groups. This should particularly address the specific form of racism experienced by the Traveller and Roma communities.
11. The facilities for practising diverse religions should be formalised so as not to rely on the goodwill, discretion and/or ad hoc actions of local management or staff. It is important that the Irish Prison Service normalise facilitation of the right to religious expression and practice.
12. The Irish Prison Service and Probation Service websites should be more accessible to non-English speakers to reflect the diversity of the populations they work with.
13. The *Know Your Rights: Your Rights As a Prisoner* booklet should be made available in multiple languages.
14. The Irish Prison Service should address any racism experienced by prisoners in Ireland by, for example, issuing circulars that prohibit prison officers from expressing verbal and physical racist sentiment towards prisoners. Prison monitoring bodies, such as the Office of the Inspector of Prisons, should gather and publish information on minority ethnic and migrant prisoners in relation to their inspections.
15. A reformed complaints system should include a facility for complaints from prisoners to be made in a range of languages and mediums that reflect the linguistic diversity and literacy levels of the prison population.
16. Access to single cells should be available to help alleviate the hardships experienced by minority ethnic, migrant, and foreign national prisoners in the Irish penal system.
17. Conduct further research to identify whether targeted supports and services could be introduced for foreign national prisoners and families travelling from abroad.
18. Further research is needed to illuminate the experiences of minority ethnic, migrant and foreign national people in Ireland within the wider criminal justice system (e.g. the courts, An Garda Síochána).



Introduction

Foreign national and minority ethnic prisoners face a number of specific hardships in prison that are distinct from those experienced by the general prison population. These challenges include, *inter alia*, isolation from family and friends abroad,¹ and it has been well-documented that 'different forms of prejudice and discrimination exist for foreign nationals in terms of skin colour, nationality, language skills, and residency, defining their prison experience'.² This report provides an outline of the relevant law and policy that exists at a national, European and international level, and complements these 'top-down' approaches to protecting the rights of minority ethnic and foreign national prisoners (FNPs) with a 'bottom-up' analysis rooted in the experiences of prisoners and people with experience of the Probation Service. We argue that if the Irish government are serious about practically implementing the obligations imposed by international, European and domestic law, it must gather statistical data and information on the background, lived experiences and needs of minority ethnic prisoners and FNPs, and those with experience of the Probation Service in the Irish penal system.

1 Róisín Mulgrew, 'Foreign Prisoners in Europe: An Analysis of the 2012 Council of Europe Recommendation and its Implications for International Penal Policy' (2016) 12(1) *Review of International Law and Politics* 161-200; Magali Barnoux and Jane Wood, 'The Specific Needs of Foreign National Prisoners and the threat to their Mental Health from Being imprisoned in a Foreign Country' (2013) 18 *Aggression and Violent Behaviour* 240-246; Coretta Phillips, *The Multicultural Prison: Ethnicity, Masculinity, and Social Relations among Prisoners* (Oxford University Press 2012).

2 Magali Barnoux and Jane Wood, 'The specific needs of foreign national prisoners and the threat to their mental health from being imprisoned in a foreign country' (2013) 18 *Aggression and Violent Behaviour* 240-246, 244.

Overview of the Report

Section 1 of the report sets out the wider context of the research and offers some explanations for the over-representation of minority ethnic groups within criminal justice systems. Section 2 explains the methodology used. Section 3 examines whether sentencing differences exist between the following groups: Irish nationals and foreign nationals; members of the Irish Travelling community and non-Travellers; and individuals who identify as White and those who identify as being from ethnic groups other than White. This section also investigates the ways in which these groups are engaged with the Probation Service. Section 4 provides an outline of the relevant law and policy that exists at an international, European and national level to protect the rights of minority ethnic prisoners and FNPs, while setting out the key qualitative findings under the headings of 'The international and European legal frameworks concerning foreign national and minority ethnic prisoners'; 'Non-discrimination'; 'Religious freedom and practice'; 'Recruitment, education and training of law enforcement officials'; 'The right to communicate with the outside world'; and 'Probation and community sanctions'. The final section contains a set of practical recommendations to address the issues raised by this cohort of minority ethnic prisoners and FNPs, and people with experience of the Probation Service in the Irish penal system.



1. Literature Review

Historically, Ireland was an ethnically and culturally homogenous nation, with low levels of immigration. As a result, ‘Irishness’ was synonymous with a White, Catholic and Irish-speaking identity. Indeed, such was the homogeneity of Ireland, that the 2002 Census was the first to record residents’ nationality.³ However, from the late 1990s, Ireland’s economic growth prompted sustained and diverse inward migration. This resulted in substantial changes in the population, and a broad reshaping of the social and cultural landscape.⁴ While levels of immigration have tapered off following the economic recession, Ireland is now home to those from several ethnic and national groups. The most recent Census data reported that almost 12 per cent of the resident population are of non-Irish nationality, the six largest groups of which are Polish, British, Lithuanian, Romanian, Latvian and Brazilian.⁵ Furthermore, approximately 5 per cent of the population are from minority ethnic groups (excluding White minorities). Of these groups, 1.7 per cent are from the Asian or Asian-Irish community, excluding Chinese; 1.5 per cent are of mixed ethnicity; and 1.2 per cent are from the Black or Black-Irish community or are of African descent.⁶

In tandem with the diversification of Ireland, there has been an increase in racism and discrimination towards foreign nationals.⁷ Although most immigrants to Ireland have been White-Europeans, McGinnity and colleagues reported that attitudes toward certain migrant groups were significantly more negative than toward others.⁸ For example, although 58 per cent of Irish-born respondents stated that they would welcome many or some

immigrants of White ethnicity, the equivalent figure for Roma migrants was 25 per cent. ‘Welcome’ rates for Roma were lower in Ireland than the average for the ten other Western European countries discussed.⁹ Similarly, research conducted by MacGreil reported that just 50.5 per cent of respondents would marry or welcome a Nigerian into their family, while 11.1 per cent stated that Nigerians should be deported and debarred from Ireland.¹⁰ A further 7.9 per cent stated that Nigerians should not be granted Irish citizenship. Indeed, annual reports published by the Irish Network Against Racism (INAR) since 2013 evidence an increase in the number of racist incidents reported to iReport.ie. Despite pandemic mandated lockdowns in 2020, racially motivated assaults remained as high as in 2019.¹¹ Reports of hate crime and hate graffiti also increased from 2019 to 2020.¹² People that identified as Black-African, Black-Irish, and Black-Other are the groups that were represented the most in the reports made to iReport in 2020.¹³

1.1 A changing criminal justice system

Prison systems in Europe, almost without exception, have very high proportions of FNPs – Ireland is no different. As with the wider population, the Irish criminal justice system has witnessed demographic changes in line with inward migration trends. Starting in 2001, Irish Prison Service (IPS) statistics chart a rapid increase in the proportion of foreign national people committed to Irish prisons.¹⁴ The United Nations Office on Drugs and Crime (UNODC) define FNPs as ‘prisoners who do not carry the passport of

- 3 Office for the Promotion of Migrant Integration, United Nations Committee on the elimination of racial discrimination (UNCERD) Ireland’s Combined 5th, 6th and 7th Periodic Report (Office for the Promotion of Migrant Integration 2017).
- 4 Micheál MacGréil, *Pluralism and diversity in Ireland: Prejudice and Related Issues in Early 21st Century Ireland* (The Columba Press 2011); Michael O’Connell and Nessa Winston, ‘Changing attitudes towards minorities in Ireland’ in John Garry, Niamh Hardiman and Diane Payne (eds), *Irish Social and Political Attitudes* (Liverpool University Press 2006).
- 5 Central Statistics Office, *Census 2016 Summary Results – Part 1* (Central Statistics Office 2017).
- 6 Central Statistics Office, *Census of Population 2016 – Profile 7 Migration and Diversity* (Central Statistics Office 2017).
- 7 Irish Network Against Racism, IReports annual reports since 2013.
- 8 Frances McGinnity, Raffaele Grotti, Helen Russell and Éamonn Fahey, *Attitudes to diversity in Ireland* (The Economic and Social Research Institute 2018).
- 9 Belgium, Denmark, Finland, France, Germany, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.
- 10 Micheál MacGréil, *Pluralism and diversity in Ireland: Prejudice and Related Issues in Early 21st Century Ireland* (The Columba Press 2011).
- 11 Lucy Michael, *Reports of Racism in Ireland: Data from iReport* (Irish Network Against Racism 2020) 7.
- 12 *ibid.*
- 13 *ibid.* 16. The next most prevalent group were South Asians, Chinese or Other Asians.
- 14 Avril Brandon and Michael O’Connell, ‘Same crime: Different punishment? Investigating sentencing disparities between Irish and non-Irish nationals in the Irish criminal justice system’ (2018) 58(5) *British Journal of Criminology* 1127-1146.

the country in which they are imprisoned'.¹⁵ The Council of Europe (CoE) Committee of Ministers provide a more detailed definition. It states that an FNP is 'any foreign person held in prison and a foreign suspect or offender detained elsewhere'. A foreign person is defined as 'any person who does not have the nationality of, and is not considered to be a resident by the State where he or she is'.¹⁶ Other definitions in the scholarly literature include *inter alia* that an FNP is 'one who serves time in a prison in a country of which they are not a citizen'.¹⁷ On 31 July 2021, foreign nationals comprised 15.3 per cent of those in custody in Irish prisons.¹⁸ Among these, foreign nationals from within the EU represented the largest cohort (59 per cent of all FNPs). A further 12.4 per cent were African, 11 per cent were British, 7 per cent were Asian and 5 per cent were South American. Among female FNPs in custody, the most frequently occurring nationality was Romanian (16 per cent); among male FNPs, the most frequently occurring nationality was Polish (22 per cent).

Data regarding prisoner ethnicity is not yet publicly available; however, observational research in the District Courts has suggested that certain minority ethnic groups – in particular, those from the Nigerian community – may be over-represented within Irish prisons.¹⁹ Additionally, the latest Census data indicates that Travellers are also over-represented within Irish prisons. Despite representing just 0.7 per cent of the population in Ireland aged over 15 years, they comprised almost 6 per cent of those in prison.²⁰ Previous research published by the All-Ireland Traveller Health Study (AITHS) asserted that Traveller males are 5–11 times more likely to be imprisoned than males from the Irish settled-majority community. Similarly, Traveller females are 18–22 times more

likely to be imprisoned than their Irish settled-majority counterparts.²¹

As the demographic of those going through the criminal justice system has changed, attention has turned to the ways in which these groups are treated. For example, the UNODC, in its *Handbook on Prisoners with Special Needs*, recommended that clear strategies be put in place to treat FNPs as a distinct category of individuals with particular management and welfare needs.²² To that end, there is increasing recognition in international human rights instruments that these individuals constitute an at-risk group within prisons and that they suffer multiple levels of disadvantage in terms of socio-economic status and cultural differences.²³ FNPs are less likely to receive bail, be sentenced to community sanctions and measures, or be granted conditional release. Recognising FNPs as an at-risk cohort experiencing additional challenges when compared to national prisoners, the CoE Committee of Ministers in its 2012 Recommendation concerning foreign prisoners states that 'Foreign prisoners, who in practice do not enjoy all the facilities accorded to nationals and whose conditions of detention are generally more difficult, should be treated in such a manner as to counterbalance, so far as may be possible, these disadvantages'.²⁴ Similarly, the UN Committee Against Torture (CAT) recommended that the Irish State strengthen efforts to ensure appropriate training be provided to criminal justice agents on the treatment of groups at risk of ill-treatment, such as children, migrants and Travellers.²⁵

15 United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs* (UNODC 2009) 79.

16 Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners.

17 Francis Pakes and Katrine Holt, 'Crimmigration and the prison: Comparing trends in prison policy and practice in England & Wales and Norway' (2017) 14(1) *European Journal of Criminology* 63-77, 67.

18 Irish Prison Service, 'Monthly Information Note' (Irish Prison Service, July 2021) <https://www.irishprisons.ie/information-centre/statistics-information/monthly-information-note/> accessed 14 October 2021.

19 Caroline O'Nolan, *The Irish District Court: A social portrait* (Cork University Press 2013).

20 Central Statistics Office, *Press statement census 2016 results profile 8 – Irish Travellers, ethnicity and religion* (Central Statistics Office 2017); Central Statistics Office, E8031: *Irish Travellers enumerated in communal establishments 2011 to 2016 by sex, type of establishment and census Year* (Central Statistics Office 2017).

21 All-Ireland Traveller Health Study [AITHS]. *All Ireland Traveller Health Study: Our Geels* (AITHS 2010).

22 United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs* (UNODC 2009).

23 Magali Barnoux and Jane Wood, 'The specific needs of foreign national prisoners and the threat to their mental health from being imprisoned in a foreign country' (2013) 18 *Aggression and Violent Behaviour* 240-246, 241.

24 Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners.

25 United Nations Committee Against Torture, *Concluding observations of the Committee against Torture: Ireland* (United Nations 2011).

1.2 Explaining over-representation

It can be difficult to infer causality for the over-representation of minority ethnic groups within criminal justice systems, both in Ireland and internationally. As such, attempts to explain this phenomenon have led to conflicting theories. While some researchers suggest that at least some of the observed differences are due to differential involvement in crime – i.e. that certain groups simply commit more imprisonable offences²⁶ – much empirical research has focused on how discretionary decisions within the criminal justice system may contribute to, and exacerbate, inequalities in punitive decisions and outcomes.²⁷ Based on these arguments, Brandon and O’Connell²⁸ posed three key questions: (1) Do these groups commit more crime? (2) Are these groups disproportionately policed? and (3) Are these groups sentenced more severely than the settled-majority population? The sections that follow will review these questions with reference to newer research as well as exploring whether foreign national or minority ethnic groups experience the criminal justice process differently.

1.3 Crime committals

One proposed reason for disparities in arrest and imprisonment rates has been that certain groups simply commit crime more frequently

than others.²⁹ This is referred to as the ‘differential involvement hypothesis’, or the warranted thesis.³⁰ Conversely, the differential selection hypothesis suggests that all ethnic groups are equally likely to commit crime; however, due to prejudice in the criminal justice system and macro-level risk-factors (for example, targeted policing and socio-economic status), certain groups are more likely to be arrested and prosecuted.³¹ Recent research supports this position, suggesting that a large proportion of the ethnic disparities in prisons internationally cannot be explained simply by levels of crime committal, but rather are associated with factors including poverty, employment, housing, and familial differences.³²

Looking at the social profile of prisoners in Ireland, it may be suggested that they are disproportionately more likely to have experienced these risk factors. For example, in April 2016, 64.5 per cent of those in prison had not completed the Leaving Certificate, and 60.4 per cent were in neither employment nor education.³³ Moreover, research conducted by O’Donnell and colleagues³⁴ found that prisoners were 23 times more likely to come from an area of profound deprivation, compared to the least deprived areas, while Martynowicz and Quigley reported that homelessness and the provision of suitable accommodation was the most frequently mentioned difficulty facing prisoners

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- 26 Casey T. Harris, Darrell Steffensmeier, Jeffrey T. Ulmer and Noah Painter-Davis, ‘Are Blacks and Hispanics disproportionately incarcerated relative to their arrests? Racial and ethnic disproportionality between arrest and incarceration’ (2009) 1(4) *Race and Social Problems* 187-199.
- 27 Rebecca C. Hetey and Jennifer L. Eberhardt, ‘Racial Disparities in Incarceration Increase Acceptance of Punitive Policies’ (2014) 25(10) *Psychological Science* 1949-1954; Jennifer S. Hunt, ‘Race in the justice system’ in Brian L. Cutler and Patricia A. Zapf (eds), *APA Handbook of Forensic Psychology, Vol. 2: Criminal Investigation, Adjudication and Sentencing Outcomes* (American Psychological Association 2015).
- 28 Avril Brandon and Michael O’Connell, ‘Same crime: Different punishment? Investigating sentencing disparities between Irish and non-Irish nationals in the Irish criminal justice system’ (2018) 58(5) *British Journal of Criminology* 1127-1146.
- 29 Alfred Blumstein, ‘On the racial disproportionality of United States’ prisons’ (1982) 73(3) *Journal of Criminal Law and Criminology* 1259-1281.
- 30 James Unnever, Akwasi Owusu-Bempah and Rustu Deryol, ‘A Test of the Differential Involvement Hypothesis’ (2019) 9(2) *Race and Justice* 197-224.
- 31 Alex R. Piquero, ‘Disproportionate Minority Contact’ (2008) 18(2) *The Future of Children* 59-79; Lisa Christine Walt and Leonard A. Jason, ‘Predicting pathways into criminal behavior: The intersection of race, gender, poverty, psychological factors’ (2017) 2(1) *ARC Journal of Addiction* 1-8; Clifford Stott, Matthew Radburn, Arabella Kyprianides and Matthew Muscat, *Understanding ethnic disparities in involvement in crime – a limited scope rapid evidence review* (Commission on Race and Ethnic Disparities 2021).
- 32 Ashley Nellis, *The color of justice: Racial and ethnic disparity in state prisons* (The Sentencing Project 2016); Nicola Carr and Paula Mayock, *Care and Justice: Children and Young People in Care and Contact with Criminal Justice System* (Irish Penal Reform Trust, 2019) 11; David Lammy, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System* (Ministry of Justice 2017).
- 33 Central Statistics Office. *Offenders 2016: Employment, Education and other Outcomes, 2016-2019*. (2020) <https://www.cso.ie/en/releasesandpublications/ftp/p-offo/offenders2016employmenteducationandotheroutcomes2016-2019/> accessed 2 November 2021.
- 34 Ian O’Donnell, Conor Teljeur, Nicola Hughes, Eric P. Baumer and Alan Kelly, ‘When prisoners go home: punishment, social deprivation and the geography of reintegration’ (2007) 17(4) *Irish Criminal Law Journal* 3-9.

upon release.³⁵ These challenges appear to be particularly prevalent among minority ethnic and foreign national communities who may have less social support, unequal access to services and benefits, fewer employment opportunities and poorer English language proficiency.

The most recent Census data reports that over 15 per cent of foreign nationals were unemployed, compared with 13 per cent of the Irish national population. Additionally, 14 per cent of Census respondents experiencing homelessness were foreign nationals. Looking to the Irish Travelling community, Census data reported that 7.5 per cent of Travellers were homeless (compared to 0.1 per cent of the total population),³⁶ and 80.2 per cent were unemployed (compared to 7.1 per cent of the total population in the first quarter of 2021).³⁷ As such, offences including the non-payment of fines, vagrancy and begging may disproportionately impact these groups.³⁸ To that end, although fines are the most common form of punishment in the District Court, the setting of high fines can indirectly result in imprisonment.³⁹ This may contribute significantly to the number of committals to Irish prisons. For example, Brandon and O'Connell observed that foreign nationals were disproportionately over-represented in committals associated with driving without vehicle insurance.⁴⁰ This offence is punishable by a €5,000 fine and, at the discretion of the court, imprisonment. This finding suggests that, for some, imprisonment may have been caused by the inability to pay the fine, rather than the original offence itself.

Similarly, the Criminal Justice (Public Order) Act 2011 permits police officers to arrest individuals

begging near certain areas, including vending machines, ATMs and entrances to dwellings or business premises if the person contravenes the direction of a member of An Garda Síochána to leave the vicinity. Arrests can result in a fine of up to €500 or a month imprisonment. There may be a further €500 fine for failure to provide a name and address. In its first two months, this Act led to the arrest of 177 individuals, and was met with criticism from the Irish Human Rights and Equality Commission (IHREC), who suggested that it was disproportionately penalising those most at-risk in society.⁴¹ Based on these findings, the interactions between foreign national and minority ethnic groups, and members of An Garda Síochána must be considered.

1.4 Policing of foreign national and minority ethnic groups

The differential treatment of groups within the criminal justice system is often evident at the first point of contact – their engagement with police officers. Research suggests that minority ethnic communities are frequently 'over-policed', with high levels of harassment, disrespect, confrontational policing styles and, at times, overt police misconduct.⁴² Paradoxically, these communities are 'under-protected', with their victimisation deemed less significant, or even 'deserved'.⁴³ As a result, relations between law enforcement and minority ethnic groups are often fraught with conflict, suspicion, and distrust.⁴⁴ In recent years, as incidents of police brutality towards minority ethnic groups internationally have been increasingly visible in mainstream

35 Agnieszka Martynowicz and Martin Quigley, "It's like stepping on a landmine . . ." - Reintegration of prisoners in Ireland (Irish Penal Reform Trust 2010).

36 Central Statistics Office, Press statement census 2016 results profile 8 – Irish Travellers, ethnicity and religion (Central Statistics Office 2017); Central Statistics Office, Census of Population 2016 – Profile 5 Homeless Persons in Ireland.

37 Central Statistics Office, Labour Force Survey Quarter 1 2021 (Central Statistics Office 2021); Central Statistics Office, Press statement census 2016 results profile 8 – Irish Travellers, ethnicity and religion (Central Statistics Office 2017).

38 Avril Brandon and Michael O'Connell, 'Same crime: Different punishment? Investigating sentencing disparities between Irish and non-Irish nationals in the Irish criminal justice system' (2018) 58(5) *British Journal of Criminology* 1127-1146.

39 Claire Hamilton, 'Sentencing in the District Court: "Here be dragons"' (2005) 15(3) *Irish Criminal Law Journal* 9-15.

40 Avril Brandon and Michael O'Connell, 'Same crime: Different punishment? Investigating sentencing disparities between Irish and non-Irish nationals in the Irish criminal justice system' (2018) 58(5) *British Journal of Criminology* 1127-1146.

41 Irish Penal Reform Trust, *The Vicious Circle of Social Exclusion and Crime: Ireland's Disproportionate Punishment of the Poor* (IPRT 2012).

42 Rob Voigt, Nicolas P. Camp, Vinodkumar Prabhakaran, William L. Hamilton, Rebecca C. Hetey, Camilla M. Griffiths, David Jurgens, Dan Jurafsky and Jennifer L. Eberhardt, 'Language from police body camera footage shows racial disparities in officer respect' (2017) 114(25) *Proceedings of the National Academy of Sciences* 6521-6526; Aogán Mulcahy, "Alright in their own place": Policing and the spatial regulation of Irish Travellers' (2012) 12(3) *Criminology and Criminal Justice* 307-327.

43 *ibid.*

44 Aogán Mulcahy, "Alright in their own place": Policing and the spatial regulation of Irish Travellers' (2012) 12(3) *Criminology and Criminal Justice* 307-327.

media, these relationships have become even more challenging. While law enforcement agencies often suggest that the differential involvement hypothesis is to blame – i.e. that certain communities commit more crime, and therefore necessitate more policing – previous research suggests that ethnic bias may play a modest, but significant, role.⁴⁵

As the nature of police work frequently relies on rapid judgements about the danger posed by suspects, subconscious ethnic or cultural associations may play a role in how officers perform their duties.⁴⁶ Accordingly, ‘ethnic-profiling’⁴⁷ has been cited as a contributing factor for the disproportionate contact between police officers and minority ethnic groups.⁴⁸ The concept of ethnic profiling is not defined in European law, however, one existing definition describes it as:

‘When law enforcement authorities use racial or ethnic characteristics to determine which people to subject to heightened scrutiny in order to prevent crimes from occurring. Heightened scrutiny can range from interrogation to searches of one’s person or property to arrests or even removal from the community.’⁴⁹

Notably, ethnic profiling should not be confused with criminal profiling, which is a valid, accepted and widely used means of identifying suspects through the development of a profile. Although ethnicity may be included in such a profile, it

should not become the focus of the suspect’s description, whereby everybody perceived as sharing that ethnicity is targeted.⁵⁰

In an analysis of almost 100 million police traffic stops across the United States, Pierson and colleagues observed that Black drivers were less likely to be stopped at night – suggesting that a ‘veil of darkness’ masked ethnicity, and thus, bias occurred during day-time stops.⁵¹ They reported that there appeared to be ethnic bias in decisions to search the vehicles of Hispanic drivers, and that the ‘bar’ for searching Black and Hispanic drivers was lower than for White drivers. Similarly, Hetey and colleagues found that in Oakland, California, African Americans comprised 60 per cent of police stops, but just 28 per cent of the population. Additionally, African Americans were significantly more likely to be handcuffed, searched, and arrested. Ethnic disparities remained when more than two dozen relevant factors were controlled, including crime rates and area demographics.⁵²

Following the Stephen Lawrence Inquiry⁵³ and suggestions of institutional ethnic prejudice, England and Wales began to monitor the presence of minority ethnic groups at all stages of the criminal justice system.⁵⁴ However, recent data continues to illustrate similarly disproportionate rates of stop and search among minority ethnic groups.⁵⁵ Between April 2019 and March 2020, members of the Black community (including Black, Black-African, Black-Caribbean, and Black ‘Other’) accounted for 284 stops per 1,000. In contrast,

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- 45 Belong, (2021). ‘Collaborating with people from Black, Asian and Minority Ethnic Backgrounds in Prison: Covid-19 and Beyond – A Report of Findings from Consultations in Custody’ (Belong, January 2021) <http://www.belongmakingjusticehappen.co.uk/resources/Colab.pdf> accessed 17 May 2021.
- 46 The Sentencing Project, Report of the Sentencing Project to the United Nations Human Rights Committee regarding racial disparities in the United States criminal justice system (The Sentencing Project 2013).
- 47 Sometimes referred to as ‘racial profiling’.
- 48 Andrew Gelman, Jeffrey Fagan and Alex Kiss, ‘An analysis of the New York City police department’s “stop-and-frisk” policy in the context of claims of racial bias’ (2007) 102(479) *Journal of the American Statistical Association* 813-823.
- 49 Deborah J. Schildkraut, ‘The Dynamics of Public Opinion on Ethnic Profiling After 9/11: Results from a Survey Experiment’ (2009) 53(1) *American Behavioral Scientist* 61-79.
- 50 European Network Against Racism (ENAR), ENAR Factsheet on ethnic profiling (ENAR and Open Society Justice Initiative 2009).
- 51 Emma Pierson, Camelia Simoiu, Jan Overgoor, Sam Corbett-Davies, Daniel Jenson, Amy Shoemaker, Vignesh Ramachandran, Phoebe Barghouty, Cheryl Phillips, Ravi Shroff and Sharad Goel, ‘A large-scale analysis of racial disparities in police stops across the United States (2020) 4 *Nature Human Behaviour* 736-745.
- 52 Rebecca C. Hetey, Benoit Monin, Amrita Maitreyi and Jennifer L. Eberhardt, Data for change: A statistical analysis of police stops, searches, handcuffings, and arrests in Oakland, Calif., 2013-2014 (Stanford SPARQ: Social Psychological Answers to Real-World Question 2016).
- 53 Seamus Taylor, Stephen Lawrence Inquiry 10 years on and the Crown Prosecution Service - Much, much more still to do (UK Crown Prosecution Service 2010).
- 54 William MacPherson, The Stephen Lawrence Inquiry (Secretary of State for the Home Department 1999).
- 55 William Shankley and Patrick Williams, ‘Minority ethnic groups, policing and the criminal justice system in Britain’ in Bridget Byrne, Claire Alexander, Omar Khan, James Nazroo and William Shankley (eds), *Ethnicity and Race in the UK: State of the Nation* (Policy Press 2020).

members of the White community (including White, White-British, White-Irish, White Gypsy/ Traveller, and White 'Other') accounted for just 40 stops per 1,000.⁵⁶ Despite representing just 3.3 per cent of the total population in England and Wales, members of the Black community represented 17.2 per cent of all stops. In contrast, despite making up 86 per cent of the population overall, the White community represented just 50 per cent of stops.⁵⁷ These practices have been found to 'drain trust' both in the police and the criminal justice system more generally.⁵⁸ The damaging impact of such stops is not limited to the criminal justice sphere. Rather, they carry a psychological burden, making the stopped people aware of the fact that they are perceived to be "others", not truly belonging to the country in which they live and may have been born.⁵⁹ Additionally, ethnic profiling can be intersectional in nature, with young males from minority ethnic groups particularly vulnerable to the practice. Indeed, in the second *European Union Minorities and Discrimination Survey*, younger respondents indicated being stopped more often than those who were older, and men reported having been stopped significantly more than women.⁶⁰ This was also more frequently observed among those of foreign national background.

The Committee on the Elimination of Racial Discrimination (CERD) notes that 'specific groups, such as migrants, refugees and asylum seekers, people of African descent, indigenous peoples, and national and ethnic minorities, including Roma, are the most vulnerable to ethnic profiling'.⁶¹ It recognises that ethnic profiling leads to the over-criminalisation and disproportionate incarceration of these groups, as well as harsher sentencing.⁶² Where episodes of ethnic profiling occur, they

should be investigated according to human rights standards and prosecuted where necessary.⁶³ The Republic of Ireland is a signatory to a number of international and European human rights treaties which prohibit or are incompatible with the practice of ethnic profiling. These include the European Convention on Human Rights (ECHR), the UN CERD and the UN International Covenant on Civil and Political Rights (ICCPR). In Ireland's most recent periodic report under the UN CERD, the Committee commented:

'The Committee is concerned about the reportedly high incidence of racial profiling by the Irish police (Garda) targeted at people of African descent, Travellers and Roma, and the disproportionately high representation of these minority ethnic groups in the prison system.'⁶⁴

Non-governmental organisations (NGOs) and civil society groups have documented evidence of the disproportionately high numbers of ethnic minorities being stopped and searched by An Garda Síochána⁶⁵ and these views were supported by some of the participants in this study. However, the Committee on UN CERD also noted 'the lack of detailed information on legislative, disciplinary or other measures taken by the State party to prevent, prohibit and monitor ethnic profiling by the police force'.⁶⁶ In response, the Office for the Promotion of Migrant Integration (OPMI) noted that there have been no relevant legislative, judicial or administrative changes during the period of 2010–2017; however, they asserted that An Garda Síochána does not, as an institution, 'engage in discriminatory profiling and, specifically, does not engage in data gathering or data mining based upon discriminatory profiling in respect of race,

56 Home Office, 'Stop and Search' (UK Home Office, 22 February 2021) <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest> accessed 14 October 2021.

57 *ibid.*

58 David Lammy, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System* (Ministry of Justice 2017) 7.

59 Suvi Keskinen, Alemanji Aminjeng Atabong, Markus Himanen, Antti Heikki Kivijarvi, Uyi Osazee, Nirosha Poyhola and Venla Rousku, *The Stopped - Ethnic Profiling in Finland* (University of Helsinki 2018).

60 European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey: Roma – Selected findings* (EU-MIDIS II Publications Office of the European Union 2016).

61 Committee on the Elimination of Racial Discrimination (CERD), 'General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials' (24 November 2020) CERD/C/GC/36, para 11.

62 *ibid* para 30.

63 *ibid* para 54.

64 Committee on the Elimination of Racial Discrimination (CERD), 'Concluding observations on the combined fifth to ninth reports of Ireland' (23 January 2020) CERD/C/IRL/CO/5-9, para 15.

65 See for example Lucy Michael, *Reports of Racism in Ireland: Data from iReport* (Irish Network Against Racism 2020) 13.

66 Committee on the Elimination of Racial Discrimination (CERD), 'Concluding observations on the combined fifth to ninth reports of Ireland' (23 January 2020) CERD/C/IRL/CO/5-9, para 15.

colour, language, religion, nationality, national or ethnic origin, ethnicity or membership of the Traveller community'.⁶⁷

Given the nexus between ethnic profiling at first contact with law enforcement officials and the disproportionate representation of minority ethnic groups in prison internationally, it is integral that data is gathered on the ethnicity of people subjected to stop and search by An Garda Síochána. The recently published Garda Síochána (Powers) Bill 2021, when enacted, will oblige An Garda Síochána to record the ethnicity and gender of people stopped and searched. However, there is no similar requirement included in respect of the gathering of data on the ethnicity of people in Garda custody. Accurate data on the ethnicity of people must be gathered at all stages of the criminal justice system, from first contact with law enforcement officials to sentencing and imprisonment. Issues around ethnic profiling and discriminatory policing may also occur within prison environments, wherein relationships between prison staff and certain groups may be particularly fraught with conflict. This will be discussed in section 4.4.

1.5 The court process

In addition to the role of An Garda Síochána in general policing, they also play a significant role within the Irish courts. A majority of District Court cases rely on the investigation and prosecution by a senior member of An Garda Síochána (rank sergeant or higher). As prosecution evidence is largely based on witness testimony, the word of the arresting officer is often vital. During observational research within the District Courts, O'Nolan noted that judges were at times hesitant to question the accuracy of Gardaí, and as such, defendants who argued against this officer were generally not believed.⁶⁸ Additionally, although defendants with limited English proficiency have a right to an interpreter under Article 6(3)(e) of the

ECHR, defendants do not have a statutory right to an interpreter in Ireland, with the onus often lying with the Gardaí to decide whether one is required.⁶⁹ As such, the treatment of defendants during court proceedings may significantly impact outcomes and their overall experience of the criminal justice system. In addition to language barriers, foreign nationals may be at a significant disadvantage due to their potentially limited knowledge of the Irish criminal justice system.⁷⁰ Moreover, O'Nolan suggests that foreign national defendants may be treated with a level of impatience by both the judge and their defending solicitor.⁷¹ Such discriminatory treatment may impede foreign nationals' access to supports and services, for example, by further decreasing their access to an interpreter.

Members of minority ethnic groups may also have less trust in the criminal justice system, particularly those of lower socio-economic status.⁷² Lammy noted that as a result of this, minority ethnic defendants may be more hesitant to trust the advice of legal agents or magistrates, instead opting to plead 'not guilty' and move to a jury trial.⁷³ As an earlier admission of guilt can result in a non-custodial sentence, or the reduction of a custodial sentence, plea decisions may exacerbate outcome disparities between groups. In an Irish context, the lack of trust held by Travellers regarding the criminal justice system has been documented.⁷⁴ Following qualitative research with Travellers engaged in the criminal justice system, Bracken reported that a high number of participants perceived both judges and members of An Garda Síochána to hold anti-Traveller prejudice. Furthermore, probation officers interviewed by Bracken suggested that highlighting a Traveller's ethnicity in the courtroom may not always be in the best interest of the defendant.⁷⁵

67 Office for the Promotion of Migrant Integration, United Nations Committee on the elimination of racial discrimination (UNCERD) Ireland's Combined 5th, 6th and 7th Periodic Report (Office for the Promotion of Migrant Integration 2017) 18-19.

68 Caroline O'Nolan, *The Irish District Court: A social portrait* (Cork University Press 2013).

69 Mary Phelan, 'Legal interpreters in the news in Ireland' (2011) 3(1) *Translation & Interpreting* 76-105.

70 Caroline O'Nolan, *The Irish District Court: A social portrait* (Cork University Press 2013).

71 *ibid.*

72 Senuri Panditharatne, Lisa Chant, Chris G. Sibley and Danny Osbourne, 'At the Intersection of Disadvantage: Socioeconomic Status Heightens Ethnic Group Differences in Trust in the Police' (2021) 11(2) *Race and Justice* 160-182.

73 David Lammy, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System* (Ministry of Justice 2017).

74 Aogán Mulcahy, "'Alright in their own place": Policing and the spatial regulation of Irish Travellers' (2012) 12(3) *Criminology and Criminal Justice* 307-327.

75 Denis Bracken, 'Interactions with the Traveller Community by Prison and Probation Staff' (2020) 17 *Irish Probation Journal* 238-252.

1.6 Sentencing of foreign national and minority ethnic groups

Maguire states that sentencing represents ‘a key symbolic moment in a larger criminal justice process when the outcome of this process... is declared in public for all to hear. As the declaration of sentence occurs at the end point of a process that begins with the police decision to arrest and charge, it is undoubtedly influenced by the stages that have gone before’.⁷⁶ A sentencing disparity refers to an instance wherein legally comparable offenders commit comparable offences but receive substantially different sentences. When examining sentencing patterns, it is important to note the difference between a warranted disparity and an unwarranted disparity. In the former, the difference may be attributed to defensible legal factors, for example, aggravating or mitigating circumstances. However, in cases involving an unwarranted disparity, there are no legally valid explanations.⁷⁷

International research has suggested that ethnicity may result in sentencing disparities, impacting sentences of capital punishment, sentence lengths and the type of sentence handed down. In the United Kingdom, the Hood Report in 1992 first identified differences in the sentences handed down to minority ethnic groups.⁷⁸ More recently, research conducted in the Crown Court in England and Wales observed that those self-reporting as Asian, Black, Chinese, or Other were more likely to be imprisoned than their White counterparts.⁷⁹ Similarly, previous research in England and Wales reported that when offence, criminal record and additional relevant characteristics were controlled, police-recorded ethnicity was independently associated with being sentenced to

imprisonment.⁸⁰ Although the analysis observed no effect of ethnicity within violent thefts and sexual offences, the likelihood of imprisonment for individuals from a minority ethnic background who were convicted of drug offences was approximately 240 per cent higher than for those individuals from a self-reported White background. Hopkins also noted that the likelihood of foreign nationals being imprisoned was 56 per cent higher than the likelihood for UK nationals.⁸¹

In the United States, a meta-analysis of sentencing decisions reported that, independent of other relevant factors (for example, criminal history and the severity of offence), African Americans receive harsher sentences than Whites.⁸² Similarly, Spohn found that, although relevant factors including the severity of the crime and prior criminal record are key considerations during sentencing, ethnicity does influence sentencing decisions. They concluded that Black and Hispanic offenders, particularly young males who are unemployed, are more likely to be sentenced to prison than their White counterparts.⁸³ Additionally, people from minority ethnic groups convicted of drug offences, whose victims are White or who refuse to plead guilty may also receive harsher punishments.

When reviewing sentencing in Ireland, it is important to note the ways in which the very nature of the individualised sentencing system utilised by Irish courts may invariably result in differences.⁸⁴ This individualised sentencing system uses the ‘principle of proportionality’, which considers that the sentence must be proportionate to both the circumstances of the offence and the circumstances of the offender. To that end, judges are expected to give due consideration to aggravating and mitigating

76 Niamh Maguire, ‘Sentencing’ in Deirdre Healy, Claire Hamilton, Yvonne Daly and Michelle Butler (eds), *The Routledge Handbook of Irish Criminology* (Routledge 2016) 298.

77 Jeffrey Ulmer, ‘Race, Ethnicity, and Sentencing’ (*Oxford Research Encyclopaedia of Criminology*, 26 February 2018) <https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-262> accessed 14 October 2021.

78 Roger Hood *Race and Sentencing: A study in the Crown Court* (Oxford University Press 1992) 7-23.

79 Kathryn Hopkins, Noah Uhrig and Matthew Colahan, *Associations between ethnic background and being sentenced to prison in the Crown Court in England and Wales in 2015* (Ministry of Justice Statistics Publication 2016) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/568896 accessed 12 October 2021.

80 Kathryn Hopkins, *Associations between police-recorded ethnic background and being sentenced to prison in England and Wales* (Ministry of Justice Analytical Services 2015) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479874/analysis-of-ethnicity-and-custodial-sentences.pdf accessed 14 October 2021.

81 *ibid.*

82 Ojmarrh Mitchell, ‘A Meta-analysis of Race and Sentencing Research: Explaining the Inconsistencies’ (2005) 21 *Journal of Quantitative Criminology* 439–466.

83 Cassia C. Spohn, ‘Thirty years of sentencing reform: The quest for a racially neutral sentencing process’ (2000) 3 *Policies, Processes, and Decisions of the Criminal Justice System* 427-501, 481.

84 Niamh Maguire, ‘Consistency in sentencing’ (2010) 2 *Judicial Studies Institute Journal* 14-54.

factors in determining what the appropriate sentence should be.⁸⁵ There are myriad factors that may mitigate the proportionate sentence, including a guilty plea, cooperation with the Gardaí, successful attempts at rehabilitation, remorsefulness and previous good character. However, although the judge is obliged to consider all presented mitigating factors, they may exercise their discretion in reducing the sentence. Additionally, as there are no specific guidelines regarding the severity of different offences, the appropriate sentence ranges and the weight that should be given to mitigating and aggravating factors, it is difficult, if not impossible, to determine whether a sentence is proportionate or not.⁸⁶ Finally, judges may have their own sentencing aims – for example, retribution, deterrence, or rehabilitation. As each necessitates a different approach, sentencing variations may easily arise. Notably, in February 2020, a Judicial Studies Committee was set up to improve training for judges in Ireland. Within this, training on unconscious bias is offered; however, it is vital that the success and impact of this training are monitored.

As noted, without data on mitigating and aggravating factors etc., it is impossible to definitively state that ethnic bias is occurring in sentencing, but anecdotal evidence of differences in sentencing outcomes for minority ethnic groups and migrants were offered by some of the project participants.⁸⁷ Furthermore, research carried out by Brandon and O’Connell observed that there was a modest, but statistically significant difference between sentence lengths for Irish and foreign nationals for certain offences, with foreign nationals receiving longer sentences than their Irish counterparts.⁸⁸ These disparities remained when sex and previous custodial sentence were controlled, with foreign nationals, in both male and female groups, receiving statistically significantly longer sentences. Section 3 will replicate this study using recent data provided by the IPS and the Irish Probation Service.

85 Niamh Maguire, ‘Sentencing’ in Deirdre Healy, Claire Hamilton, Yvonne Daly and Michelle Butler (eds), *The Routledge Handbook of Irish Criminology* (Routledge 2016) 298.

86 Thomas O’Malley, *Sentencing law and practice* (Round Hall 2000).

87 Professionals 2, 5, 9; Participant 2.

88 Avril Brandon and Michael O’Connell, ‘Same crime: Different punishment? Investigating sentencing disparities between Irish and non-Irish nationals in the Irish criminal justice system’ (2018) 58(5) *British Journal of Criminology* 1127-1146.



2. Methodology

This study adopted a combination of doctrinal, qualitative and quantitative methodologies. Doctrinal analysis – the core legal research methodology⁸⁹ – comprised detailed examination of the relevant law and policy that exists at a national, European and international level to protect the rights of minority ethnic prisoners and FNPs. Case law, legislation and the Prison Rules were accessed via the relevant databases (i.e. Irish Statute Book, Westlaw, VLex, LexisLibrary etc.) and complemented with other “soft-law” (e.g. recommendations, rules, observations) and pertinent documents (e.g. position papers, annual reports and state reports etc.).

Semi-structured interviews – the strengths of which are well-rehearsed in the social scientific literature⁹⁰ – were conducted with 24 people in prison and people with experience of the Probation Service, along with 12 professional stakeholder interviews to provide a counterbalance to these ‘bottom-up’ perspectives. Ethical approval was granted by the Maynooth University Research Ethics Committee and the IPS Research Committee. 10 of the people in prison were convicted at the time of the interview and 5 were awaiting trial, while the remaining 9 participants were subject to supervision by the Probation Service. Where quotes from participants in this research are used in the report, they are italicised, for ease of reference. Purposive sampling was used to identify the sample of people with experience of the Probation Service, which included those with a Probation Order, a Community Service Order (CSO) and whose work was therefore supervised by the Probation Service, and those subject to probation supervision following release.⁹¹ Professional stakeholder interviewees comprised a purposive sample on the basis of their extensive practical experience of assisting and working with minority ethnic prisoners and FNPs. These participants also suggested other potential interviewees (snowball sampling). The prisoner interviewees, by contrast, were recruited

by teachers in the respective institutions and the interviews were facilitated by the IPS.

The research was conducted during the ongoing COVID-19 global pandemic and regrettably the unprecedented public health crisis made the physical interviewing of participants a practical impossibility. All interviews – people in prison, people with experience of the Probation Service and professional stakeholders – were conducted privately and remotely by telephone or via video link (specifically the IPS secure link and Zoom), while durations ranged from 9 minutes to 55 minutes. The qualitative empirical research was then read in conjunction with statistical information provided by the IPS and the Probation Service. Using this data, the researchers sought to ascertain the ways in which groups are engaged with the Probation Service and to examine whether sentencing differences exist between the following groups: Irish national prisoners and FNPs; Travellers and non-Travellers; and individuals who identify as White and those who identify as being from ethnic groups other than White. Data was analysed using t-tests and analyses of variance, to identify whether sentence length differences were occurring between the groups for individual offences.

The prisoner and people with experience of the Probation Service participants in this study came from Africa, Europe, the Middle East and South America. Like many minority ethnic prisoners and FNPs in the Irish penal system, a number of the prisoner interviewees had ‘limited knowledge of English, as it is not their first language’,⁹² and these language barriers ‘permeate and exacerbate almost all the other problems faced by this section of the prison population’.⁹³ Despite these linguistic challenges, ‘conceptual equivalence’,⁹⁴ was pursued with support from professional interpreters – with existing working relationships with the university and who adhere to a defined code of ethics – in six of the interviews.

89 Terry Hutchinson and Nigel Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) 17(1) *Deakin Law Review* 83-119.

90 Andrea Fontana and James H. Frey, ‘The Interview: From Neutral Stance to Political Involvement’ in Norman K. Denzin and Yvonna S. Lincoln (eds), *The Sage Handbook of Qualitative Research* (3rd edn, Sage Publications 2005); Steinar Kvale and Svend Brinkman, *InterViews: Learning the Craft of Qualitative Research Interviewing* (Sage Publications 2009); Jennifer Rowley, ‘Conducting Research Interviews’ (2012) 35(3-4) *Management Research Review* 260-271.

91 Most of the sample had experience based on at least two of these criteria.

92 Mona Almalik, Alice Kiger and Janet Tucker, ‘“What Did She Say? What Did She Say?” The Impact of Interpretation on Recruiting and Interviewing European Migrant Women in the United Kingdom’ (2010) 9(3) *International Journal of Qualitative Methods* 252-269, 253.

93 Magali Barnoux and Jane Wood, ‘The specific needs of foreign national prisoners and the threat to their mental health from being imprisoned in a foreign country’ (2013) 18 *Aggression and Violent Behaviour* 240-246, 242.

94 *ibid.*

It must be acknowledged that these perspectives may not necessarily be representative of the experiences of all minority ethnic prisoners and FNPs and people with experience of the Probation Service in the Irish penal system. Nonetheless, these are the participants' perspectives, and as such, they represent an important first step in understanding the experiences of these 'forgotten' prisoners and people with experience of the Probation Service.⁹⁵ Prison scholarship often reflects the pervasive negativity of prison environments. Appreciative Inquiry (AI) aims to account for the subjectivity, complexity, and diversity of human behaviour by identifying good practices and conceptualisations of what might be achieved rather than merely highlighting the failings and impossibilities.⁹⁶ Cognisant of prison researchers' positionality,⁹⁷ the integration of elements of AI did not minimise or obfuscate the pernicious experiences and/or effects of prison life for these prisoners. Rather it served as a counterintuitive tool to create a space to examine the under-represented aspects of their experiences while providing a heuristic device to analyse the generated data.

Inductive and deductive thematic analyses were employed to synthesise existing themes with themes, concepts and theories emerging from this study.⁹⁸ Prior to delving into these themes, the next section provides an overview of sentencing patterns with respect to minority ethnic prisoners and FNPs and compares these trends with those pertaining to Irish nationals, individuals who identify as White and non-Travellers. This forms the necessary foundation for the subsequent socio-legal analysis.

95 Prison Reform Trust, *Forgotten prisoners – The plight of foreign national prisoners in England and Wales* (Prison Reform Trust 2004).

96 Charles Elliott, *Locating the Energy for Change: An Introduction to Appreciative Inquiry* (International Institute for Sustainable Development 1999); Alison Liebling, David Price and Charles Elliott, 'Appreciative Inquiry and Relationships in Prison' (1999) 1(1) *Punishment & Society* 71–98.

97 David Scott, 'Prison research: appreciative or critical inquiry?' (2014) 95(1) *Criminal Justice Matters* 30–31.

98 Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3(2) *Qualitative Research in Psychology* 77–101; Alan Bryman, *Social Research Methods* (5th edn, Oxford University Press 2015).

3. Findings and Analysis (Part 1)

UN CERD contains a series of provisions that concern racial discrimination. Article 1(1) of the Convention defines racial discrimination as:

‘... [A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.’

States parties to UN CERD, such as Ireland, are obliged to take positive action to eliminate racial discrimination through their laws, policies and institutions. The collection of data and statistics on migrants and racial and ethnic minorities in the criminal justice system is integral to assessing and responding to racial disparities within the system. In particular, the CERD has reiterated the importance of collecting data on peoples of African descent,⁹⁹ Roma,¹⁰⁰ indigenous people,¹⁰¹ and women from racial and minority ethnic groups.¹⁰² In January 2020, the non-collection of consistent data on ethnic groups in the Irish State was noted in the CERD’s Concluding Observations during Ireland’s most recent periodic report under UN CERD.¹⁰³ Recently, IHREC recommended that the State set a clear directive to all bodies subject to the Public Sector Equality and Human Rights Duty that they collect and process ‘data on racial or ethnic origin’.¹⁰⁴ The IPS and the Irish Probation Service are bound by this public sector duty, but information pertaining to minority ethnic prisoners and FNPs in Irish prisons is still relatively limited.

Using committal data provided by the IPS, this section examines whether sentencing differences exist between the following groups: Irish nationals and foreign nationals; Travellers and non-Travellers; and individuals who identify as

White and those who identify as being from ethnic groups other than White. The section builds on previous research by Brandon and O’Connell,¹⁰⁵ which observed statistically significant sentencing differences between Irish nationals and foreign nationals for certain offences. It must be noted that in the absence of data on mitigating and aggravating circumstances, this analysis cannot determine whether disparities are warranted or unwarranted. Rather, it can only identify if and where differences arise.

To further examine the representation of minority ethnic groups within the Irish penal system, data has also been provided by the Irish Probation Service. Through this, we are able to ascertain the ways in which groups are engaged with the Probation Service. Notably, while prison data related largely to nationality, probation data provided insights regarding ethnicity. The role of the Irish Probation Service is further discussed in Section 4.6.

99 Committee on the Elimination of Racial Discrimination (CERD), ‘General Recommendation No. 34 on racial discrimination against people of African descent’ (3 October 2011) CERD/C/GC/34, para 9.

100 Committee on the Elimination of Racial Discrimination (CERD), ‘General Recommendation No. 27 on Discrimination against Roma’ (16 August 2000) A/55/18, para 46.

101 Committee on the Elimination of Racial Discrimination (CERD), ‘General Recommendation No. 24 concerning article 1 of the convention’ (27 August 1999) A/54/18.

102 Committee on the Elimination of Racial Discrimination (CERD), ‘General Recommendation No. 25 on gender-related dimensions of racial discrimination’ (20 March 2000) A/55/18, para 6.

103 Committee on the Elimination of Racial Discrimination (CERD), ‘Concluding observations on the combined fifth to ninth reports of Ireland’ (23 January 2020) CERD/C/IRL/CO/5-9, para 6.

104 Irish Human Rights and Equality Commission, Developing a National Action Plan Against Racism: Submission to the Anti-racism Committee (IHREC 2021) Recommendation no. 4.1.

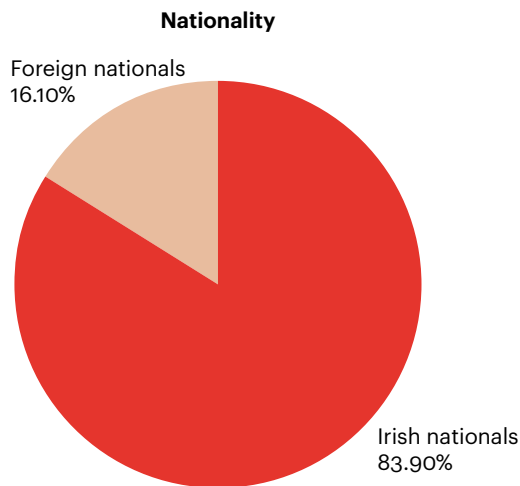
105 Avril Brandon and Michael O’Connell, ‘Same crime: Different punishment? Investigating sentencing disparities between Irish and non-Irish nationals in the Irish criminal justice system’ (2018) 58(5) British Journal of Criminology 1127-1146.

3.1 Data analysis: Irish Prison Service data

An initial dataset comprising all committals that occurred in a 12-month period was provided by the IPS. This period took place before the COVID-19 pandemic, during which sentencing trends may inevitably have changed. The dataset detailed the nationality and ethnic background of the individual, in addition to their broad offence, age range, number of previous committals and sentence received. To facilitate comprehensive data analysis, offences were grouped according to the Irish Crime Classification System (ICCS), resulting in 13 large categories. All other cases were removed from the analysis, including cases with mandatory life sentences. Average sentence lengths were recoded into months. Additionally, unique identifying codes were allocated to each committal. This enabled us to identify repeat committals within the 12-month period. Analysis was completed both with these repeat committals, and without.

The revised dataset, including repeat committals, comprised 5,572 cases. Of these, 83.9 per cent were recorded as Irish nationals and 16.1 per cent were foreign nationals (See **Figure 1**)

Figure 1. Nationality breakdown for the full dataset

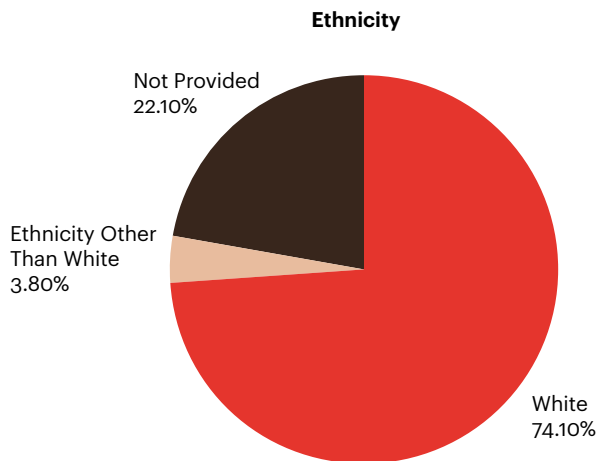


Also of these committals, 70 per cent reported as non-Travellers and 7.8 per cent were Irish Travellers (see **Figure 2**); 74.1 per cent were recorded as White and 3.8 per cent were recorded as being of an ethnicity other than White. No ethnic data was recorded for 22.1 per cent of committals (see **Figure 3**). The impact of these gaps in data will be discussed in the findings.

Figure 2. Ethnicity breakdown for the full dataset (Membership of the Travelling community)

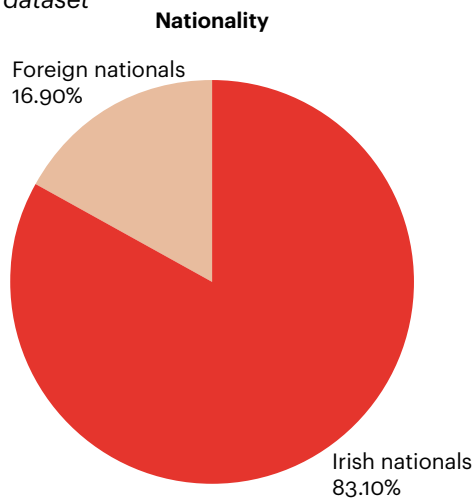


Figure 3. Ethnicity breakdown for the full dataset



Looking to sex, 88.1 per cent were male (of which 17.2 per cent were foreign nationals, 3.8 per cent were of an ethnicity other than White, and 6.9 per cent were Travellers) and 11.9 per cent were female (of which 8 per cent were foreign nationals, 3.6 per cent were of an ethnicity other than White, and 14.7 per cent were Travellers). When repeat committals from within the same 12-month period were removed from the sample, a total of 4,356 cases remained. Of these, 16.9 per cent were foreign nationals (see **Figure 4**).

Figure 4. Nationality breakdown for the revised dataset



Also, of these, 7.7 per cent were recorded as Irish Travellers (see **Figure 5**); and 3.8 per cent were recorded as being from an ethnic group other than White. No ethnic data was recorded for 24.5 per cent of committals (see **Figure 6**).

Figure 5. Ethnicity breakdown for the revised dataset (Membership of the Travelling community)

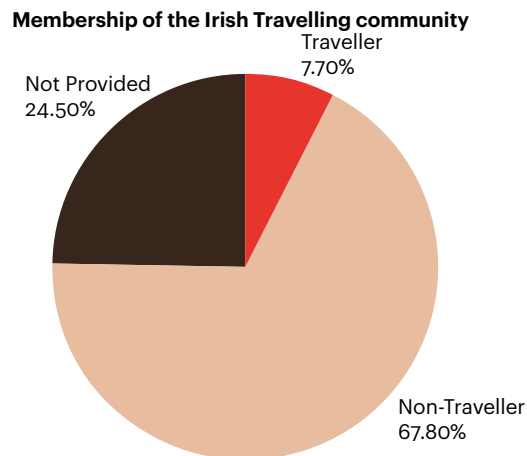
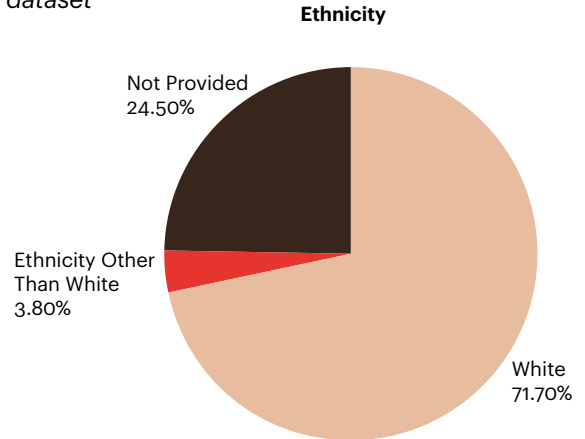


Figure 6. Ethnicity breakdown for the revised dataset



Of this sample, 88.7 per cent were male (of which 17.9 per cent were foreign nationals, 3.8 per cent were of an ethnicity other than White, and 7.1 per cent were Irish Travellers) and 11.3 per cent were female (of which 8.7 per cent were foreign nationals, 3.7 per cent were of an ethnicity other than White, and 12.4 per cent were Irish Travellers). On average, Irish nationals had 6.2 previous custodial sentences while foreign nationals had 2.5. Among foreign nationals, 61.6 per cent were reported as White, 19.8 per cent reported that they were from an ethnic group other than White, and 18.7 per cent had no ethnic data provided.

3.2 Sentencing differences: nationality

Using t-tests, the researchers examined whether the average sentence length received for each offence differed significantly between Irish and foreign nationals. Using the full, revised dataset with repeat committals, statistically significant sentencing differences were observed for controlled drug offences ($p = 0.003$) and sexual offences ($p = 0.027$), with foreign nationals receiving longer sentences in both offences.

Recognising that the inclusion of the same individual multiple times may skew the findings, repeat committals were removed and the analysis was repeated. Again, statistically significant sentencing differences were observed for controlled drug offences ($p = 0.004$) and sexual offences ($p = 0.028$). Additionally, small but statistically significant sentencing differences were observed for dangerous or negligent acts ($p = 0.043$). Table 1 illustrates the average sentences received by each group.

Table 1. Average sentences per national group (Excluding repeat committals within the same 12-month period). Statistically significant differences are marked with *.

Offence Category	Average Sentence (Months)		Number of Cases	
	Irish Nationals	Foreign Nationals	Irish Nationals	Foreign Nationals
Attempts/threats to murder, assaults, harassments, and related offences	19.2	17.5	360 (84.9%)	64 (15.1%)
Burglary and related offences	21.3	18.6	260 (87.8%)	36 (12.2%)
Controlled drug offences*	23.1	32.0	317 (74.1%)	111 (25.9%)
Damage to property and to the environment	15.7	11.2	174 (86.6%)	27 (13.4%)
Dangerous or negligent acts*	20.3	11.4	156 (85.2%)	27 (14.8%)
Fraud, deception, and related offences	19	18.4	35 (57.4%)	26 (42.6%)
Offences against government, justice procedures and organisation of crime	3.6	3.6	742 (86.3%)	118 (13.7%)
Public order and other social code offences	5.0	5.4	234 (87.0%)	35 (13.0%)
Road and traffic offences (NEC)	4.7	4.6	389 (78.0%)	110 (22.0%)
Robbery, extortion, and hijacking offences	40.1	37.8	204 (93.2%)	15 (6.8%)
Sexual offences*	52.1	68.0	143 (79.0%)	38 (21.0%)
Theft and related offences	9.9	10.3	504 (81.6%)	114 (18.4%)
Weapons and explosives offences	21.92	17.89	94 (87.9%)	13 (12.1%)

To control for the impact that sex may have on sentencing outcomes, the researchers then compared males only, and females only. In the male-only sample, statistically significant sentencing differences were again observed for these offences. For controlled drug offences ($p = 0.003$), foreign national males received an average of 9.42 months longer than Irish national males; for sexual offences ($p = 0.028$), foreign national males received an average of 15.99 months longer than

Irish national males. Conversely, for dangerous or negligent acts ($p = 0.012$), Irish national males received a sentence averaging 10.84 months longer than foreign national males. In the female-only sample, a modest but statistically significant sentencing difference was observed in the category of Theft Offences ($p = 0.044$), with foreign national females receiving an average sentence of 4.6 months longer than Irish national females.

3.3 Sentencing differences: ethnicity

To examine whether sentencing differences occurred based on ethnicity, committals were recoded to either 'White' or 'Ethnicity other than White'. Missing data was removed from the analysis. Using the dataset with repeat committals in the 12-month period removed, statistically significant sentencing differences were observed for controlled drug offences ($p = 0.014$), with those of an ethnicity other than White receiving an average of 14.34 months longer than those recorded as White. For sexual offences, a statistically significant sentencing difference was also observed ($p = 0.015$), with those of an ethnicity other than White receiving an average of 32 months longer than those of White ethnicity. Notably, an analysis of variance did not reveal a statistically significant interaction between ethnicity and nationality. Table 2 illustrates the average sentences received by each group.

No statistically significant differences were observed in a female-only sample; however, for the male-only sample, males of an ethnicity other than White received an average of 15.9 months longer than White males for controlled drug offences ($p = 0.016$) and 32.05 months longer for sexual offences ($p = 0.015$).

Table 2. Average sentences per ethnicity group (Excluding repeat committals within the same 12-month period). Statistically significant differences are marked with *

Offence Category	Average Sentence (Months)		Number of Cases	
	White	Ethnicity Other Than White	White	Ethnicity Other Than White
Attempts/threats to murder, assaults, harassments, and related offences	17.8	22.6	313 (95.1%)	16 (4.9%)
Burglary and related offences	20.3	20.8	216 (96.6%)	7 (3.1%)
Controlled drug offences*	24.0	38.4	293 (92.4%)	24 (7.6%)
Damage to property and to the environment	15.3	19.0	157 (98.1%)	3 (1.9%)
Dangerous or negligent acts	19.7	30.3	133 (95.7%)	6 (4.3%)
Fraud, deception, and related offences	18.2	15.2	39 (83.0%)	8 (17.0%)
Offences against government, justice procedures and organisation of crime	3.6	4.0	599 (95.4%)	29 (4.6%)
Public order and other social code offences	4.8	7.1	186 (93.9%)	12 (6.1%)
Road and traffic offences (NEC)	4.7	5.1	335 (93.6%)	23 (6.4%)
Robbery, extortion, and hijacking offences	41.0	36.0	158 (95.8%)	7 (4.2%)
Sexual offences*	49.2	81.2	134 (93.7%)	9 (6.3%)
Theft and related offences	10.1	6.2	476 (96.6%)	17 (3.4%)
Weapons and explosives offences	30.5	6.0	87 (96.3%)	3 (3.8%)

3.4 Sentencing differences: the Irish Travelling community

Irish Travellers were over-represented within the dataset, comprising almost 8 per cent of committals relative to their 0.7 per cent of the total population in Ireland. Accordingly, the researchers examined whether the average sentence length received for each offence differed significantly between Irish Travellers and members of the settled-majority Irish community. Using the revised dataset without repeat committals within the same 12-month period, no statistically significant differences were observed between the groups. Similarly, no statistically significant differences were observed in either a male- or female-only sample. Notably, significant gaps in ethnicity data may have impacted these results. This will be further discussed in section 3.6.

3.5 Data analysis: Irish Probation Service data

The Irish Probation Service provided data regarding the ethnicity of those engaged with the Probation Service over a 12-month period prior to COVID-19. Data on nationality was not provided. Looking first to the settled-majority White Irish ethnic group allows us to examine if and where differences may arise for minority ethnic groups. White Irish comprised 67 per cent of those engaged with the Probation Service. As this group make up 82.2 per cent of residents,¹⁰⁶ this figure suggests that they are under-represented among those on Probation.

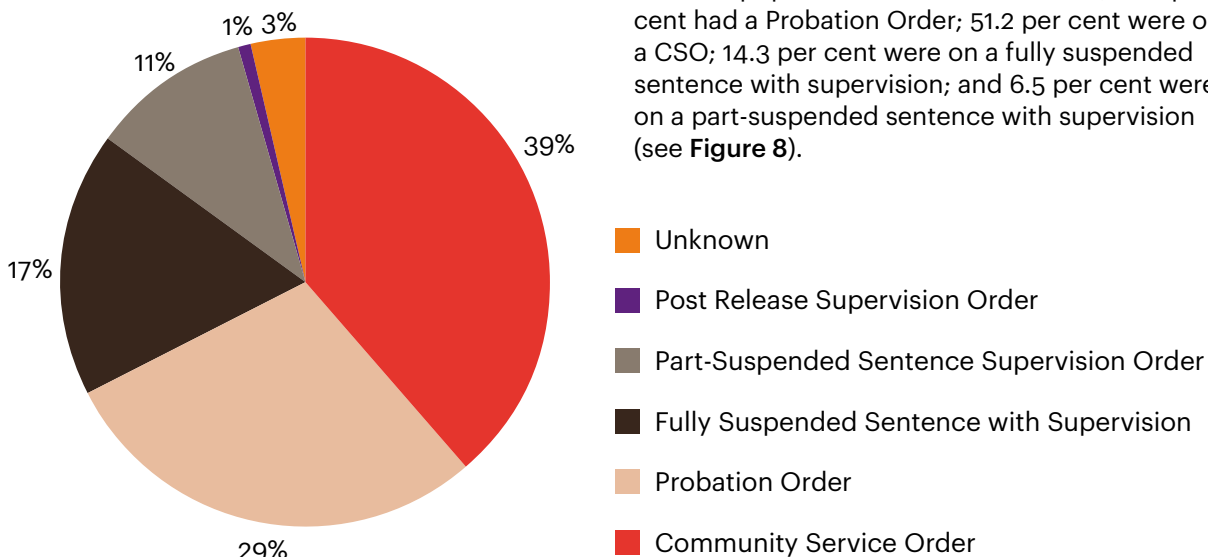
Among this group, 29 per cent had a Probation Order, 38.7 per cent had a Community Service Order (CSO), 17.5 per cent had a fully suspended sentence with supervision, 10.6 per cent had a part-suspended sentence Supervision Order, and 0.8 per cent had a post-release Supervision Order. The remaining service users had an undisclosed order (see **Figure 7**).

Females made up 16.7 per cent of White Irish service users, with 32.2 per cent of White Irish people with experience of the Probation Service being aged 22 to 29, and 27.8 per cent aged 30 to 39. The most frequently occurring offence for this group were Drug Offences (19.9 per cent), followed by Theft (17.1 per cent) and Assault (14.2 per cent). Notably, this group had the highest occurrence of drug offences, followed by the group 'Any Other White Ethnicity', for whom 19.3 per cent were charged with drug offences.

The largest minority ethnic group within the data were Irish Travellers, who comprised approximately 8.9 per cent of those engaged with the service, despite making up just 0.7 per cent of the total population in Ireland. Of these, 20.8 per cent had a Probation Order; 51.2 per cent were on a CSO; 14.3 per cent were on a fully suspended sentence with supervision; and 6.5 per cent were on a part-suspended sentence with supervision (see **Figure 8**).

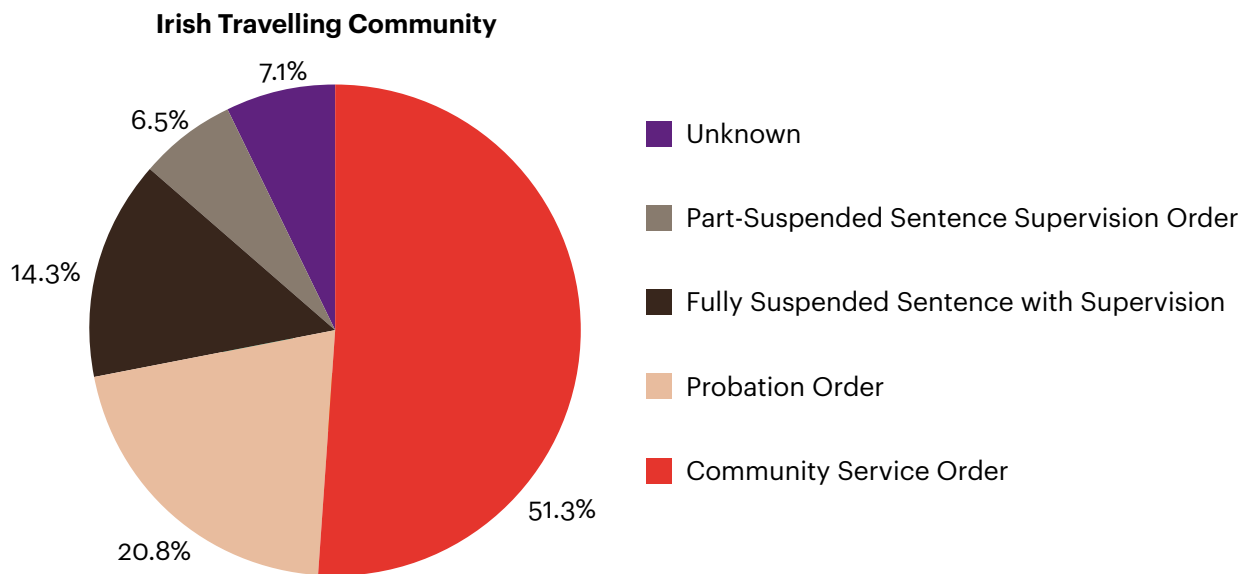
Figure 7: Settled-Majority Irish Probation Service Frequency

Settled-Majority Irish Probation Service Frequency



¹⁰⁶ Central Statistics Office (2020). Census of Population 2016 – Profile 7 Migration and Diversity. Available at: <https://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/>.

Figure 8: Traveller Service Frequency



Most Travellers engaging with the service were aged between 22 and 29 (36.8 per cent), followed by 30 to 39 (25.3 per cent), which is comparable with the White settled-majority group. Looking to the intersection between Traveller ethnicity and sex, Traveller females comprised 12.5 per cent of all females engaged with the Probation Service (23.23 per cent of all Traveller engagement), while Traveller males were 8.2 per cent of all males (76.8 per cent of all Traveller engagement). The most frequently occurring offences for Travellers were Theft offences (26.2 per cent); Public Order offences (15.2 per cent); and Assault Offences (11.7 per cent).

To protect the identity of those engaged with the Probation Service, data was not provided in cases where the number of service users was small. Limited data was provided about the Roma community; however, they appeared to account for approximately 0.3 per cent of those on probation. Of this group, 71 per cent were on CSOs. Looking to offences, 29.6 per cent of Roma engaged with the Probation Service were committed on Theft offences; no data was provided for the remaining service users. Those from the African or Black community represented approximately 1.6 per cent of those engaged with the Probation Service, a slight over-representation relative to their proportion of the overall population in Ireland (1.2 per cent).¹⁰⁷ Of these, 30.4 per cent were on Probation Orders and 42.6 per cent were on CSOs. Assault Offences accounted for 18 per cent of service users from the African or Black community, with a further 14.6 per cent related to Road Traffic Offences and 13.9 per cent related to Theft. Most of those from the African or Black community were aged between

30 and 39 (26.4 per cent) followed by the 22–29 age group (25 per cent).

To protect anonymity, no specific data was provided on those of Asian ethnicity, who comprised just 0.3 per cent of those on probation. Further, data on ethnicity was not provided for 14.3 per cent of service users. While redacting potentially identifying information is understandable, the significant gap in recorded data may disguise starker disparities in minority ethnic representation. As with IPS data, the accurate collection of ethnicity data is imperative to allow for adequate examination. Some data related to those under the age of 18, which differs from the adult-only data provided by the IPS. Notably, 8.6 per cent of Travellers were aged under 18, compared to just 3.7 per cent of the settled-Irish majority group. Similarly, 9 per cent of those from the African or Black community were aged under 18. This supports previous literature asserting the over-representation of minority ethnic groups within the youth justice system and warrants further examination. Nevertheless, it would be advantageous to have stronger links between IPS data and Probation Service data to allow for full comparative analysis.

¹⁰⁷ Central Statistics Office (2020). Census of Population 2016 – Profile 7 Migration and Diversity. Available at: <https://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/>.

3.6 Discussion

This research examined whether sentencing differences exist between groups based on nationality, ethnicity, and membership of the Irish Travelling community. Data analyses observed that for certain offence categories, there are statistically significant differences in the average sentence between Irish nationals and foreign nationals, and those who identify as White and those who do not. Disparities based on nationality remained when sex was controlled, with foreign national males receiving longer sentences for controlled drug offences and sexual offences, and foreign national females receiving longer sentences for theft offences. In contrast, Irish national males received longer sentences for dangerous or negligent acts. Looking to ethnicity, no disparities were observed in a female-only sample; however, in the male-only sample, males of an ethnicity other than White received longer sentences for controlled drug offences and sexual offences. Additionally, both foreign nationals and Travellers were over-represented within the dataset, comprising just 12 per cent and 0.7 per cent of the total population in Ireland, but almost 17 and 8 per cent of committals, respectively. Further, although they represent just 1.2 per cent of the population, members of the Black or Black-Irish community made up over 2 per cent of committals.

No statistically significant differences in sentencing were observed based on membership of the Irish Travelling community; however, it must be noted that this section of the dataset had limitations. Notably, there were large gaps in data relating to Traveller ethnicity, resulting in small datasets upon which to run analyses. This is a significant barrier to the research, and as such, these findings must be interpreted with caution. The researchers suggest that further analyses be carried out with a complete dataset.

Although these findings suggest that bias may be occurring within the Irish criminal justice system, alternative explanations must be considered. First, although this study utilised a large dataset, which enabled thorough statistical analysis, it is important to note that specific details regarding each case were not available. For example, we cannot consider the impact of various mitigating or aggravating circumstances, which may have been particularly relevant in controlled drug offences wherein drug trafficking may have taken place. This was previously noted by Brandon and O'Connell, who recommended that analysis on sentencing disparities should include more case detail. This would necessitate the collection of such data across criminal justice bodies. We echo this recommendation.

Additionally, as noted, there were significant

gaps in the data, particularly regarding ethnicity, with almost a quarter of all cases having no ethnicity recorded. The researchers also noted inconsistencies regarding, for example, the inclusion of some Roma individuals in the 'White' ethnicity category, and others in another ethnicity category. These gaps and discrepancies impede the full analysis of sentencing patterns. To fully examine this issue, it is imperative that complete data be collected.

The IPS should gather more accurate data on the ethnicity of prisoners and this information should be publicly available to support further research and evidence-based informed policy and practice. At present, the IPS publishes statistics on prisoners' nationality. However, as demonstrated here, this information does not give an accurate depiction of the ethnic, cultural and religious landscape of the Irish prison population. Data on the ethnicity and religion of the prison population must be gathered and made publicly available for the State and non-State groups to respond effectively to the cultural and religious needs of such prisoners. Consultation with the Irish Human Rights and Equality Commission (IHREC) would improve methods of collecting data on the ethnicity of the Irish prison population.

The gathering of data on prisoner activity and access to prison-based services needs to include the ethnicity, religion and cultural background of prisoners, and this information should be made publicly available to inform research, policy and practice. This information will shed light on whether minority ethnic, migrant or FNPs are disproportionately represented in certain prisoner behaviour (for example, the statistics on assault or prisoner self-harm) or in accessing prison services (for example, psychological support).

Wider ethnicity categories such as those employed by the Central Statistics Office in the Census are more appropriate for IPS data collection. It is welcome that the IPS is working with organisations such as Pavee Point in rolling out an ethnic identifier in its internal systems (PIMS) and the associated training. It is appreciated that broadening these categories takes time and requires careful consideration to be rigorous and feasible while respecting data protection concerns but this must be developed to its fullest extent across all identifiers. The IPS should also gather data on the language spoken by the prison population, as this information will give an idea of the cultural landscape in Irish prisons. Moreover, it will also identify the translation/ interpretation needs of FNPs in the prison estate.

Similarly, the Irish Probation Service should collect complete data regarding ethnicity in such a way as to transparently monitor the breakdown

of engagement and ethnicity. While some data may be redacted to protect individual identities, gaps in the data collected make it difficult to fully identify differences between ethnic groups. Finally, the cooperation between the Irish Prison Service and the Probation Service should be further developed to facilitate the integration of their datasets.

Having set out the statistical context, the following sections engage in a thematic discussion of the qualitative findings as they pertain to domestic, European and international penal law and policy.



4. Findings and Analysis (Part 2)

4.1 The international and European legal frameworks concerning foreign national and minority ethnic prisoners

All prisoners retain the human rights and fundamental freedoms codified in human rights law, except for those rights that are limited by detention.¹⁰⁸ Indeed, the international and European penal and probation standards are inspired by human rights law.¹⁰⁹ The UN Standard Minimum Rules for the Treatment of Prisoners 2015 (also known as the Nelson Mandela Rules) set out the core human rights standards for prisoners within the UN system. Within the Council of Europe (CoE) system, the Revised European Prison Rules 2020 (Revised EPRs), the Committee of Minister's Recommendation (2012)¹² concerning foreign prisoners (Recommendation CM/Rec (2012)¹²), and their commentaries set out for Member States the primary rules that apply to FNPs. Collectively, the Nelson Mandela Rules, the Revised EPRs and Recommendation (2012)¹² cover a wide range of areas including conditions of imprisonment, rehabilitation, and preparation for release. The CoE's penal law and policy heavily influence the Irish Prison Rules 2007, which are presently under review. Importantly, the Revised EPRs affirm that the management of prisons

should be in line with regional and international human rights standards,¹¹⁰ and inadequate prison conditions that impede the human rights of prisoners cannot be justified on the grounds of a lack of resources.¹¹¹ Each CoE Member States' policy concerning FNPs should be reviewed and revised at intervals.¹¹²

The content of the Recommendation (2012)¹² concerning FNPs is heavily influenced by the case law of the European Court of Human Rights (ECtHR), the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the needs of FNPs as identified in the academic research.¹¹³ The Recommendation and its commentary should be translated and disseminated widely to relevant agencies, including within prisons to staff and prisoners.¹¹⁴ The Recommendation sets out a range of rules that aim to reduce the number of FNPs in prison, alleviate the hardships that they face and best facilitate their reintegration post-prison.¹¹⁵ It also contains a number of measures that States can take to reduce the potential isolation faced by FNPs, for example, by grouping prisoners of the same national, cultural or religious background in the same area of the prison, where it is safe

108 Such as the Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), the UN core international human rights treaties, ECHR, as interpreted and enhanced by the European Court of Human Rights (ECtHR).

109 See for example, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175; Basic Principles for the Treatment of Prisoners (adopted 14 December 1990) A/RES/45/111; The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted 9 December 1988) A/RES/43/173; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (adopted 14 December 1990) A/RES/45/110; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) (adopted 21 December 2010) A/RES/65/229; UN General Assembly, Code of Conduct for Law Enforcement Officials (adopted 17 December 1979) A/RES/34/169. In the European system, see the Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners; Committee of Ministers Recommendation CM/Rec(2010)1 of 20 January 2010 to member states on the Council of Europe Probation Rules; Committee of Ministers Recommendation CM/Rec(2017)3 of 22 March 2017 to member states on the European Rules on community sanctions and measures.

110 Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 83a.

111 *ibid* rule 4.

112 *ibid* rule 108; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 41.

113 Róisín Mulgrew, 'Foreign Prisoners in Europe: An Analysis of the 2012 Council of Europe Recommendation and its Implications for International Penal Policy' (2016) 12(1) *Review of International Law and Politics* 161-200, 167.

114 Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, Preamble.

115 Róisín Mulgrew, 'Foreign Prisoners in Europe: An Analysis of the 2012 Council of Europe Recommendation and its Implications for International Penal Policy' (2016) 12(1) *Review of International Law and Politics* 161-200, 165.

and secure to do so.¹¹⁶ In this regard, there was evidence of the Irish prison authorities transferring minority ethnic prisoners from cells where they experienced racism, to cells with prisoners with a similar national or ethnic background, when requested to do so by one of the professional stakeholder interviewees.¹¹⁷ Although one of the professional stakeholder interviewees in this study observed that the prisoners *'mix in here fairly well, all nationalities'*,¹¹⁸ a variety of different views were offered by the prisoners themselves. One prisoner noted that *'just being a foreigner we all like stick together'*,¹¹⁹ while conversely, another participant stated that *'It's no different if they are Irish, they are Polish, they are just normal guys. Well, it sounds funny, but in my eyes, they are alright, it doesn't matter from which home country'*.¹²⁰ Similar sentiments were also expressed by another prisoner interviewee:

*'I obviously stay more with Romanian prisoners, we speak the same language, and we have subjects that we can speak with, speak about from back home and everything you know. But at the same time, I work with Irish, I speak a lot with Irish, I hang out with a lot with Irish. It's not only Romanians.'*¹²¹

The benefit of mixing beyond an individual's own nationality or ethnicity was captured by one prisoner interviewee who pointed out that prisoners who *'starts to mix with other people then learn English faster, their communication skills become better, you know, how they get on in prison becomes easier'*.¹²² This same interviewee noted that individual prisoners take different approaches and that *'you see some people who can mix and some groups who stick together'*.¹²³

Importantly, the Revised EPRs not only speak to the vulnerability of FNPs within the wider criminal justice system, but impose positive obligations on prison authorities to address the specific needs of minority ethnic prisoners and FNPs.¹²⁴

As they currently stand, the Irish Prison Rules contain a minimal number of rules in relation to minority ethnic prisoners and FNPs. It is recommended that the Irish Prison Service update its rules and policies concerning minority ethnic prisoners and FNPs to reflect the full range of protections afforded to these groups of people by European penal law, as part of its revision of the Irish Prison Rules.

The sections that follow focus on specific rights contained in the international and European frameworks that are pertinent to minority ethnic people and FNPs in penal detention, and on the obligations imposed on law enforcement officials.

116 Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 16.3.

117 Professional 4.

118 Professional 6.

119 Participant 15.

120 Participant 3.

121 Participant 2.

122 Participant 11.

123 Participant 11.

124 See, for example, Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 37.1; Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, Commentary, 24; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rules 7 and 9.

4.2 Non-discrimination

The principle of non-discrimination is at the core of all the prison standards in the United Nations and European systems. Rule 2.1 of the Mandela Rules affirms:

‘The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.’

This wording is mirrored in Rule 13 of the Revised EPRs, which follows the wording in Protocol 12 to the ECHR concerning the Prohibition of Discrimination and is to be interpreted as taking into account that there are groups of prisoners that have special needs which may require differential treatment.¹²⁵ Although Ireland has not ratified Protocol 12 to the ECHR, it is subject to the scope of the principle of non-discrimination within the CoE penal law system. Moreover, the State is bound by Article 14 of the ECHR on the prohibition of discrimination,¹²⁶ as interpreted by the ECtHR.

Despite these aspirations, this report illustrates the specific difficulties encountered by this cohort of minority ethnic prisoners and FNPs, which encompass, *inter alia*, language and communication barriers, limited or no contact with family and friends, access to services, discrimination and instances of racism or abuse on the grounds of ethnicity. Many of these challenges have significant implications – including but not limited to isolation, poor mental health, and self-harm – and place this cohort of prisoners in

a particularly at-risk position.¹²⁷ These difficulties have been further exacerbated with the onset of the COVID-19 public health crisis.¹²⁸ This was captured succinctly by one remand prisoner interviewee: ‘[the] first week was rough, because you were in isolation. So we had to isolation for 14, no for a week, actually. So that was really rough. So that was hard, really hard’.¹²⁹

The principle of non-discrimination under international human rights law does not mean that all people are to be treated the same, but many of the prisoner interviewees in this study felt, to use the words of one prisoner, that they were ‘treated in the same way as everybody else’.¹³⁰ One professional stakeholder interviewee observed, for instance, that the prison service endeavours to:

‘treat everybody equally, try to treat everybody fairly... like not really to distinguish one person above the other or as apart from the other or different from the other. Everybody is the same in terms of how we manage the prison.’¹³¹

While marginalised and at-risk groups in prison, such as migrants and ethnic minorities, require special treatment on occasion to acknowledge the particular difficulties that they face, one Traveller prisoner interviewee was of the view that ‘everyone is equal in here and just trying to get on with the sentence’.¹³² Human rights law takes into account that differential treatment is sometimes required to correct inequality. For this reason, international and European penal law asserts that the prison administration should take into consideration the specific needs of all prisoners, in particular at-risk categories of prisoners,¹³³ but there were conflicting opinions among some

125 *ibid* 5. Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules.

126 This reads: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

127 Magali Barnoux and Jane Wood, ‘The specific needs of foreign national prisoners and the threat to their mental health from being imprisoned in a foreign country’ (2013) 18(2) *Aggression and Violent Behaviour* 240-246, 242; Francesca Cooney, ‘Double Punishment: The treatment of foreign national prisoners’ (2013) 205 *Prison Service Journal* 45; James Banks, ‘Foreign National Prisoners in the UK: Explanations and Implications’ (2011) 50(2) *The Howard Journal of Criminal Justice* 184-198.

128 Avril Brandon and Gavin Dingwall, *Minority Ethnic Prisoners and the Covid-19 Lockdown: Issues, Impacts and Implications* (Bristol University Press 2022).

129 Participant 13.

130 Participant 15.

131 Professional 3.

132 Participant 10.

133 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175, rule 2.2; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member States concerning foreign prisoners, rule 3; Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 37.1.

of the prisoner interviewees as to whether they received differential treatment due to their ethnicity or nationality. One prisoner interviewee, for instance, argued that *'If you are from here [Ireland], they treat one way but if you're not, they treat totally different'*,¹³⁴ while another stated that *'Not every foreigner is treated differently'*.¹³⁵

While in detention, migrants and minority ethnic groups must be guaranteed all of the rights to which prisoners are entitled.¹³⁶ Upon entry to prison, all prisoners must be provided with information on the prison law and regulations,¹³⁷ his/her rights and obligations (including the right to legal advice and assistance, how to make complaints, and their right to consular assistance, where relevant),¹³⁸ and any other matter that they should be made aware of to help them adjust to prison life.¹³⁹ This information must be provided, either orally or in writing, in a language that the prisoner understands.¹⁴⁰ However, it appears that a translation of this information was not always forthcoming. One Eastern European prisoner interviewee pointed out that:

*'... when I came in prison, nobody's explained for me rules, no nothing. This was hard. It was the first time in my life in prison and nobody's explain me. I just learned it from prisoners now some rules.'*¹⁴¹

FNPs, as previous research has pointed out, may also be less likely to 'understand the penal system, their rights and even the mundane daily rules and routines of prison life'.¹⁴² One female prisoner interviewee observed that: *'I didn't know what my rights or the rules of the prison either. I didn't know anything. I had to find out from the other prisoners that you're not allowed to do this and that'*.¹⁴³

Furthermore, the Nelson Mandela Rules stipulate that where the prisoner does not speak the local language, they should be facilitated with the services of a 'competent interpreter' when communicating with their legal advisor.¹⁴⁴ There are currently no standards in the training, accreditation and testing of legal interpretation providers in Ireland.¹⁴⁵ In one case, a solicitor actually acquired a translation of the Prison Rules for the prisoner in question,¹⁴⁶ but difficulties caused by the absence of an interpreter were not limited to the Prison Rules or legal advice.

134 Participant 5.

135 Participant 12.

136 Committee on the Elimination of Racial Discrimination (CERD), 'General Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system' (17 August 2005) A/60/18, para 38(a).

137 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175., rule 54(a); Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 30.1.

138 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175, Rule 54(b); Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 37.3; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 15.1.

139 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175, rule 54(d).

140 *ibid*, rule 55; Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 30.1; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 15.3.

141 Participant 9.

142 Sarah Turnbull and Ines Hasselberg, 'From prison to detention: The carceral trajectories of foreign-national prisoners in the United Kingdom' (2017) 19(2) *Punishment & Society* 135-154, 140.

143 Participant 15.

144 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175, rule 61(2). See also Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 37.6.

145 European Commission, Ireland: Concerns raised around lack of national standard for interpreting services (European Commission, August 2021) https://ec.europa.eu/migrant-integration/news/ireland-concerns-raised-around-lack-national-standard-interpreting-services_en

146 Participant 3.

One professional stakeholder interviewee stated that *'I have never heard of a professional interpreter or translator going into... a medical appointment with a prisoner who can't speak English'*,¹⁴⁷ while a non-English speaking prisoner interviewee referred to specific difficulties that he encountered when the psychology services were provided over the phone, rather than in person, during the COVID-19 restrictions. This interviewee recalled that *'sometimes I'm missing the words. I cannot understand some of the things what he's talking to me, and there is no interpreter involved in those conversations'*. Unsurprisingly, this prisoner interviewee found *'these conversations very difficult'*.¹⁴⁸ Some non-English speaking prisoners also appear to be entirely reliant on fellow prisoners to translate communications with prison officers. This practice has also been identified in the international literature,¹⁴⁹ but as one professional stakeholder interviewee put it:

*'So, you might get a fella who would have very little English, and he would come in looking for something, but he wouldn't have a clue how to ask. So his buddy would come in with him. And he'd say look, I'm going to translate for him, perfect. And he'd ask the questions. And I say to him, ask him what his number is, or what he wants to do. And he'd speak to him in his language and come back to me in English and we'd work out that way. That's quite common.'*¹⁵⁰

This view was reiterated by another professional stakeholder interviewee who stated, *'I have never seen or heard of a professional translator actually ever going into prisons... always they try and rope them with another prisoner who might speak English and then can communicate'*.¹⁵¹ This practice was confirmed by a bi-lingual prisoner:

*'my English was pretty good you know. But I think, for example, usually I go translate for other prisoners that their English is not so good, you know... if the officer don't understand him you know, they'll call someone that they know, for example, they know me that I'm Romanian, they know some other guy is from Brazil, so he speaks Portuguese. They somebody else that is Russian and he speak Russian. So they know like 'where are you from?' Romania, okay they'll call me and translate for him. And so on.'*¹⁵²

147 Professional 2.

148 Participant 8.

149 Aída Martínez-Gómez, 'Criminals interpreting for criminals: breaking or shaping norms?' (2014) 22 *The Journal of Specialised Translation* 174-193; Emmanuelle Gallez, 'Foreigners and Refugees Behind Bars: How Flemish Prisons Tackle Linguistic Barriers' (2018) 23(7/8) *The European Legacy* 738-756.

150 Professional 6.

151 Professional 2.

152 Participant 2.

These findings correspond with those of the CPT delegates who reported that FNPs often had to 'rely on a translation provided by other prisoners'.¹⁵³ As a result, the CPT reiterated its previous recommendation for the Irish authorities to take steps to ensure that FNPs be provided with information on the regime in force in the establishment and on their rights and duties, in a language which they understand. The findings of this study fully support this recommendation.

The Irish Prison Rules are the focal point in the everyday practicalities of the functioning of the prison estate. The current Irish Prison Rules 2007 contain a minimum of provisions that speak to the specific needs of minority ethnic prisoners and FNPs. Recently, the IPS announced that the Irish Prison Rules will soon be updated to bring them in line with the Revised EPRs.¹⁵⁴ It is integral that the full range of protections available to minority ethnic prisoners and FNPs that exists under international, European and national law be recognised in the updated Irish Prison Rules, in particular those protections that stem from the European Prison Rules and the Committee of Ministers' Recommendation CM/Rec(2012)12 concerning FNPs. The recently concluded public consultation on the review of the Prison Rules will provide critical information from diverse stakeholders to support progressive reforms and offer protection from discrimination.

The vast majority of prisoners interviewed for this study received a copy of the Prison Rules and regulations on admission to penal detention. However, all of those prisoners who said that they did not receive the rules and regulations in a

language that they understand were non-English speakers. Recently, the Office of Inspector of the Prisons (OIP) recommended that:

'In line with Section 42 of the Public Sector Duty, the Irish Prison Service must ensure that Foreign National Prisoners have equal access to the provision of information.'¹⁵⁵

It is recommended that the IPS make it a priority to ensure that non-English speaking prisoners have the Prison Rules and regulations communicated clearly to them in a language that they understand in order to conform to domestic and international human rights law. In a population with lower literacy levels generally, the Prison Rules may be translated into audio or video including on the in-cell television system. Additionally, this would further mitigate the feasibility or availability of resources for translators. This approach would be effective for a range of essential materials and information for non-English speaking prisoners.

4.3 Religious expression and practice

Besides provisions relating to language, the Revised EPRs also take into account freedom of religion, freedom of thought and conscience, as established in Article 9 of the ECHR and ECtHR case law.¹⁵⁶ The prison authorities must allow prisoners to practice their religion, as far as possible, and to attend services and meetings led by leaders from their religion,¹⁵⁷ and to have private visits from their religious representatives.¹⁵⁸ Prisoners must also be allowed to possess religious literature,¹⁵⁹ and the prison authorities

153 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019 (Council of Europe 2020) 40.

154 Irish Prison Service, 'Public Consultation on the Review of Prison Rules' (Department of Justice, Summer 2021) www.justice.ie/en/JELR/Pages/Review_of_Prison_Rules accessed 14 October 2021.

155 Office of the Inspector of Prisons, Covid-19 Thematic Inspection of Cloverhill Prison (Office of the Inspector of Prisons 2021) <https://www.justice.ie/en/JELR/COVID-19-Thematic-Inspection-of-Cloverhill-Prison-18-19-March-2021.pdf/Files/COVID-19-Thematic-Inspection-of-Cloverhill-Prison-18-19-March-2021.pdf> accessed 22 February 2022.

156 Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, Commentary 19.

157 This Rule is incorporated into rule 34 (4) of the Irish Prison Rules 2007, SI 2007/252 (as amended), 'subject to good order, and safe and secure custody'.

158 Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 29.1. See also Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 30.2. This Rule is incorporated into rule 34 (10) of the Irish Prison Rules 2007, SI 2007/252 (as amended).

159 Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 29.2. This Rule is incorporated into Rule 34(3) of the Irish Prison Rules 2007, SI 2007/252 (as amended).

should respect a prisoner's religious dietary preferences.¹⁶⁰ A number of these rights have been given effect through the Irish Prison Rules including, for instance, Rule 34(1) which stipulates that 'each prisoner shall, in so far as is practicable and subject to the maintenance of good order and safe and secure custody, be permitted to practice and comply with the rules, observances and norms of behaviour of the religious denomination of which he or she is a follower or member'. The World Health Organisation (WHO) has also stated that 'Special diets must be provided for prisoners with specific cultural, religious or medical needs'¹⁶¹ and it appears for the most part, as one professional stakeholder interviewee pointed out, that the IPS is '*very good at providing the likes of halal food and kosher food and all of those different dietary requirements dependent on kind of religious observance*'.¹⁶² Although this was generally perceived to be a '*very effective practice*',¹⁶³ some of the interviewees felt that the provision could be improved in certain respects. Food in prisons is associated with health and wellbeing, and symbolically linked to the construction of identity, possessing agentic qualities,¹⁶⁴ but one prisoner interviewee felt that the prison service '*need to take them serious in terms of the food that they have to have*' and that they could '*really improve on that*'.¹⁶⁵ Similarly, another prisoner interviewee, while noting that their dietary requirements are generally met, stated that '*not everybody is well informed*' and

that this resulted in cases where '*sometimes they get the wrong food*'.¹⁶⁶ From a non-religious dietary perspective, other FNP interviewees also indicated a desire to be able to purchase some products from their home country, with one prisoner interviewee stating that this is one of the '*big issues*'.¹⁶⁷ Despite prison tuckshops operating on the basis of '*what sells*',¹⁶⁸ the use of these '*home foods*' have been viewed as a method to connect with the world outside and to remind prisoners of their families. As such, to use Ugelvik's words, food may 'become a means of "escape"'.¹⁶⁹

The significance of being able to express and practice one's religion within the prison setting was highlighted by one prisoner interviewee who observed that many individuals '*use things like faith to keep their head up*'.¹⁷⁰ The importance of the chaplaincy service has been well-rehearsed in the prison literature¹⁷¹ and this was borne out by some of the interviewees in this study. Sundt and Cullen have observed that 'chaplains perform a diverse range of activities in the modern prison'¹⁷² and the chaplains in the prisons that were the focus of this study played a crucial role in terms of both facilitating Ramadan and responding to the needs of Muslim prisoners during this period.¹⁷³ These efforts included, *inter alia*, endeavouring to obtain relevant religious prayer books in different languages for these prisoners.¹⁷⁴ Certain prison officers were also particularly proactive during this period and engaged with relevant organisations outside the prison to facilitate these

160 Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 22.1; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 20.

161 World Health Organization, Prisons and Health (WHO, 2014).

162 Professional 3.

163 *ibid.*

164 Rod Earle and Coretta Phillips, 'Digesting men? Ethnicity, gender and food: Perspectives from a "prison ethnography"' (2012) 16(2) *Theoretical Criminology* 141-156; Rebecca Godderis, 'Dining in: The Symbolic Power of Food in Prison' (2006) 45(3) *The Howard Journal of Criminal Justice* 255-267.

165 Participant 15.

166 *ibid.*

167 Participant 9.

168 Professional 6.

169 Thomas Ugelvik, 'The hidden food: Mealtime resistance and identity work in a Norwegian prison' (2011) 13(1) *Punishment and Society* 47-63.

170 Participant 11.

171 Richard D. Shaw, *Chaplains to the Imprisoned: Sharing Life with the Incarcerated* (Haworth Press 1995); Jody L. Sundt, Harry R. Dammer and Francis T. Cullen, 'The Role of the Prison Chaplain in Rehabilitation' (2002) 35(3-4) *Journal of Offender Rehabilitation* 59-86; Jessica Van Denend, 'A New Look at Chaplaincy in a Prison Setting' (2007) 61(4) *The Journal of Pastoral Care and Counselling* 395-398.

172 Jody L. Sundt and Francis T. Cullen, 'The Role of the Contemporary Prison Chaplain' (1998) 78(3) *Prison Journal* 271-298.

173 Professional 1; Professional 4.

174 Professional 4.

prisoners' religious needs.¹⁷⁵ As one professional stakeholder interviewee recognised: *'when you're in prison, you've very little control over stuff that you're asking to get done, you really do depend on someone else who's going to step up and kind of help you out'*.¹⁷⁶ Clearly, this officer excelled in what he perceived to be a 'human services' orientated role.¹⁷⁷

That said, challenges faced by Muslim prisoners as a result of the behaviours of prisoners of other religious persuasions, or of none at all, manifest in the prison environment and are exacerbated during periods of religious observance. As one professional stakeholder interviewee noted, *'sometimes they [Muslim prisoners] face struggle from the other prisoners that when they do the prayer, the other prisoners they are not happy'*.¹⁷⁸ This view-point was confirmed by one Muslim prisoner who observed that other prisoners can become *'jealous'* and engage in *'bullying tactics'* during Ramadan because they *'don't understand my religion'*.¹⁷⁹

Robinson-Edwards and Kewley have pointed out that *'Faith-based activities play an integral role within society'* and *'therefore, it is critical that faith-based interventions are a key component within the prison regime'*.¹⁸⁰ Moreover, the Nelson Mandela Rules specify that every prisoner should be able to have the needs of their religious life met, insofar as possible,¹⁸¹ and that where the numbers of prisoners justify it, a qualified representative of the non-dominant religion shall be appointed by the prison.¹⁸² Thus, in order to facilitate religious expression, prison staff will *'put two Muslims together and that releases some of the tension... between the Muslim prisoners and the other prisoners'*.¹⁸³ This is arguably a sensible short-term solution to the issue but Muslim prisoners, as one prisoner interviewee suggested, should be provided with a prayer room similar to the Christian prayer rooms in all Irish prisons.¹⁸⁴ This is a particularly pertinent remark given that previous research has observed that religious expression can ease the adjustment period of imprisonment and lessen some of the deprivations inherent in imprisonment.¹⁸⁵

175 Anja J.E. Dirkzwager and Candace Kruttschnitt, 'Prisoners' perceptions of correctional officers' behavior in English and Dutch prisons' (2012) 40 *Journal of Criminal Justice* 404-412.

176 Professional 6.

177 Marie L. Griffin, 'Job satisfaction among detention officers- Assessing the relative contribution of organizational climate variables' (2011) 29 *Journal of Criminal Justice* 219-232; John R. Hepburn and Paul E. Knepper, 'Correctional Officers as Human Services Workers: The Effect on Job Satisfaction' (1993) 10(2) *Justice Quarterly* 315-337; Alison Liebling, David Price and Guy Shefer, *The Prison Officer* (2nd edn, Routledge 2011).

178 Professional 4.

179 Participant 7.

180 Shona Robinson-Edwards and Stephanie Kewley, 'Faith-Based Intervention: Prison, Prayer, and Perseverance' (2018) 9(4) *Religions* 130.

181 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175, rule 66. See also Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 30.1. This rule is incorporated into Rule 34(1) of the Irish Prison Rules 2007, SI 2007/252 (as amended).

182 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175, rule 65. Depending on the numbers, this representative should be appointed on a full-time basis.

183 Professional 4.

184 Participant 7.

185 Harry R. Dammer, 'The Reasons for Religious Involvement in the Correctional Environment' (2002) 35(3-4) *Journal of Offender Rehabilitation* 35-58; Kent R. Kerley and Heith Copes, "'Keepin' my mind right" Identity Maintenance and Religious Social Support in the Prison Context' (2009) 53(2) *International Journal of Offender Therapy and Comparative Criminology* 228-244.

4.4 Recruitment, education and training of law enforcement officials

The term 'law enforcement official' refers to 'all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention'.¹⁸⁶ International and European penal law acknowledge the important public service role of prison staff. The UN Code of Conduct for Law Enforcement Officials, for example, affirms that all law enforcement officials shall 'respect and protect human dignity and maintain and uphold the human rights of all persons',¹⁸⁷ while the CERD has affirmed that law enforcement officials, especially those exercising powers in places of detention, 'must be properly informed about the obligations their State has entered into under the [UN CERD] Convention'.¹⁸⁸ Specifically, staff should receive training to ensure that they 'maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin'.¹⁸⁹ By ratifying Article 2(1) UN CERD, States – such as Ireland – agree that 'all public authorities and public institutions, national and local, will not engage in any practice of racial discrimination'.¹⁹⁰

The UN human rights system also affirms that States should develop targeted training programmes for law enforcement agencies that

raise awareness of the impact of bias and the promotion of non-discriminatory conduct.¹⁹¹ The Nelson Mandela Rules state that the training of prison staff shall include, at a minimum, the '[r]elevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates'.¹⁹² Such training should include information on the double discrimination faced by people within these minority groups,¹⁹³ and members of these groups should be engaged in the development and delivery of such training, where possible. Importantly, this training should be evaluated and updated regularly.¹⁹⁴

The need for prison staff who work with FNPs to receive appropriate training has been documented.¹⁹⁵ In recent years, human rights training has been elevated to a central focus of the recruitment process within the IPS.¹⁹⁶ As part of their training, Recruit Prison Officers complete a two-year Higher Certificate in Arts in Custodial Care, which is delivered jointly by the IPS and Waterford Institute of Technology. During this training, staff complete a module in 'Equality, Diversity and Cultural & Social Awareness' as well as a module in 'Human Rights'.¹⁹⁷ Under the Revised EPRs, continuous professional

186 UN General Assembly, Code of Conduct for Law Enforcement Officials (adopted 17 December 1979) A/RES/34/169, art 1.

187 *ibid* art 2.

188 Committee on the Elimination of Racial Discrimination (CERD), 'General Recommendation No. 13 on the training of law enforcement officials in the protection of human rights' (16 March 1993) A/48/18, para 2.

189 *ibid*.

190 *ibid* para 1.

191 *ibid* para 2; Committee on the Elimination of Racial Discrimination (CERD), 'General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials' (24 November 2020) CERD/C/GC/36, para 4. The definition of 'law enforcement officials' is set out in the UN General Assembly, Code of Conduct for Law Enforcement Officials (adopted 17 December 1979) A/RES/34/169 as including 'all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention'.

192 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175, Rule 76(1)(a).

193 Human Rights Council, 'Report of the Working group on the issue of discrimination against women in law and practice: Women deprived of liberty' (15 May 2019) A/HRC/41/33, para 83(f).

194 Committee on the Elimination of Racial Discrimination (CERD), 'General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials' (24 November 2020) CERD/C/GC/36, para 42.

195 Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 81.3; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 39.2. Indeed, any agency or organisation that works with foreign national offenders should receive training in working with this group, see Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 12.

196 Irish Penal Reform Trust, *Progress in the Penal System: A Framework for Penal Reform* (IPRT 2019) 100.

197 Waterford Institute of Technology, Higher Certificate in Custodial Care www.wit.ie/courses/higher-certificate-in-custodial-care accessed 10 September 2021. In order to optimise Recruit Prison Officer learning in the area of migrant and minority ethnic prisoners, the syllabus for the Human Rights module should include content on the human rights of foreign national and minority ethnic prisoners. Similarly, the module on Equality, Diversity and Cultural & Social Awareness' should include resources and information produced by minority ethnic groups in Ireland. Both modules should be revised and updated regularly.

development (CPD) must be made available to prison staff of all ages and ranks, beginning at entry into the prison service until retirement.¹⁹⁸ The role and conceptualisation of human rights as viewed through the ‘potent occupational cultural lenses’¹⁹⁹ of prison officers is critical to the analysis and likely impact of staff training. Prison officers in Ireland have nuanced perspectives on human rights and their role in everyday prison work. These range from human rights being a natural extension of officers’ duty of care of prisoners, to human rights being ‘another stick with which to beat officers’, including their weaponisation by prisoners to lodge vexatious complaints.²⁰⁰ Thus, the adoption or appropriation into practice of training in this area ‘rests upon and is mediated through the occupational cultures into which they are introduced’.²⁰¹

The importance of training in the prison environment cannot be understated given that the relationships between prison officers and prisoners are a central facet of prison life.²⁰² Within the spectrum of staff-prisoner relationships, some remain characterised by contemptuous ‘us and them’ positions while more cordial relationships exist where the barriers between prison officers and prisoners are reduced to a greater extent.²⁰³ ‘Dynamic’ relations are asserted as integral to progressive and humane relations in prison which contribute to the practice of ‘dynamic security’.²⁰⁴ This has been well documented in the academic literature, official reports²⁰⁵ and in the European and Irish Prison Rules.²⁰⁶

Prison officers hold immense power – power to reward, punish or isolate – and this was emphasised by some of the interviewees in this study. Moreover, the role of prison officers’ occupational cultures in shaping their discretionary perceptions and decisions

198 Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, Commentary 48. See below for more information on the human rights and cultural awareness CPD in the Irish Prison Service.

199 Joe Garrihy, ‘There are Fourteen Grey Areas’: ‘Jailing’, Professionalism and Legitimacy in Prison Officers’ Occupational Cultures. (2020) *Irish Probation Journal*, 17, 128–150.

200 Joe Garrihy, ‘Prison Officers’ Occupational Cultures and Identities: The Search for Meaning in Prison Work’ (PhD Thesis [Unpublished], University College Dublin 2019).

201 *ibid.*

202 Elaine Crawley, *Doing Prison Work: The Public and Private Lives of Prison Officers* (Willan Publishing 2004); Alison Liebling, Helen Arnold and Christina Straub, *An exploration of staff-prisoner-relations-HMP Whitemoor 12 years on – revised final report* (Cambridge Institute of Criminology, Prisons Research Centre 2011); Gresham Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton University Press 1958).

203 Alison Liebling and David Price, *The Prison Officer* (Prison Service Journal 2001); Ben Crewe, ‘Soft power in prison: Implications for staff–prisoner relationships, liberty and legitimacy’ (2011) 8(6) *European Journal of Criminology* 455–468; Roy D. King and Kathleen McDermott, ‘My Geranium Is Subversive’: Some Notes on the Management of Trouble in Prisons’ (1988) 41(4) *The British Journal of Sociology* 445–471.

204 Andrew Coyle and Helen Fair H, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (3rd edn, Institute for Criminal Policy Research 2018).

205 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Irish Government on the visit to Ireland carried out by the CPT from 26 September to 5 October 1993 (Council of Europe 1995); CPT, Report to the Irish Government on the visit to Ireland carried out by the CPT from 2 to 13 October 2006 (Council of Europe 2007); CPT, Report to the Irish Government on the visit to Ireland carried out by the CPT from 25 January to 5 February 2010 (Council of Europe 2011); CPT, Report to the Irish Government on the visit to Ireland carried out by the CPT from 15–10–26 September 2014 (Council of Europe 2015); Office of the Inspector of Prisons, *Inspector of Prisons Standards for the Inspection of Prisons in Ireland-Women Prisoners’ Supplement* (Office of the Inspector of Prisons 2011); Office of the Inspector of Prisons, *Report on an Inspection of St. Patrick’s Institution by the Inspector of Prisons Judge Michael Reilly* (Office of the Inspector of Prisons 2012); Office of the Inspector of Prisons, *Inspector of Prisons Annual Report 2014* (Office of the Inspector of Prisons 2014); Office of the Inspector of Prisons, *Healthcare in Irish Prisons Report* (Office of the Inspector of Prisons 2016); Office of the Inspector of Prisons and Andrew Coyle, *Culture and Organisation in the Irish Prison Service - A Road Map for the Future* (Office of the Inspector of Prisons 2015).

206 Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules; Irish Prison Rules 2007, SI 2007/252 (as amended).

is profound,²⁰⁷ and exacerbated some of the difficulties experienced by minority ethnic prisoners and FNPs in practice. One professional stakeholder interviewee observed that he had *'witnessed instances'* of what he would consider to be *'racially abusive behaviour by individual prison officers in terms of unnecessary aggression, rudeness... name calling'* and *'behaviour that you wouldn't really see manifested from one white Irish prison officer to a white Irish inmate'*.²⁰⁸ A similar sentiment was expressed by another professional stakeholder interviewee who claimed that it is the *'prison officers who are stoking up anti-Traveller sentiment... amongst prisoners'*.²⁰⁹

Gresham Sykes argues that 'the most striking fact about this bureaucracy of custodians is its unparalleled position of power – in formal terms, at least'²¹⁰ and this power imbalance is particularly evident with respect to the complaints mechanism. One prisoner interviewee noted, for example, that he did not trust the complaints process and stated that *'I wouldn't even do it. I wouldn't complain. I want to do my sentence in peace and quiet'*,²¹¹ while another prisoner interviewee revealed that prisoners *'get some pressure from staff'* after making complaints.²¹² Furthermore, certain prisoners reported that they received differential treatment from individual officers. As one prisoner interviewee put it, *'some staff, some officers are*

alright but some officers are not'.²¹³ Discretion is a core feature of prison work²¹⁴ spanning the gamut of positive and negative practices in 'getting things done' and is inexorably linked to officers' professionalism and the legitimacy of the prison regime.²¹⁵ However, discretion appears, at times, to be exercised in a subtle but deliberate way to deny basic requests from minority ethnic prisoners and FNPs. These prisoners learned to *'never ask anymore this officer'*²¹⁶ and that *'there's just some officers that won't and ones that do'*.²¹⁷ Worryingly, one professional stakeholder interviewee reported that some 'good' officers are reluctant to report these issues to prison management *'because they are their colleagues, and they don't want to talk against them'*.²¹⁸

It would, however, be wrong to judge all prison officers by the behaviour of a minority and a common feature among the prisoner interviews was positive interactions with prison staff. This was encapsulated by one prisoner interviewee who remembered *'getting help from a lot of officers'* upon first arriving in prison.²¹⁹ Similarly, in other instances, prisoners noted that it is *'very important that you can get some support from staff'*, while another prisoner interviewee felt that the prison staff respected them regardless of their ethnicity or nationality. He stated: *'I really, really appreciate them so much'*.²²⁰ Liebling

207 Joe Garrihy, 'Prison Officers' Occupational Cultures and Identities: The Search for Meaning in Prison Work' (PhD Thesis [Unpublished], University College Dublin 2019); Elaine Crawley, *Doing Prison Work: The Public and Private Lives of Prison Officers* (Willan Publishing 2004); Alison Liebling, 'Prison Officers, Policing and the Use of Discretion' (2000) 4(3) *Theoretical Criminology* 333–357; Alison Liebling, 'Incentives and Earned Privileges Revisited: Fairness, Discretion, and the Quality of Prison Life' (2008) 9(sup1) *Journal of Scandinavian Studies in Criminology and Crime Prevention* 25–41; John M. Klofas, 'Discretion among Correctional Officers: The Influence of Urbanization, Age and Race' (1986) 30(2) *International Journal of Offender Therapy and Comparative Criminology* 111–124.

208 Professional 8.

209 Professional 9.

210 Gresham Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton University Press 1958) 41.

211 Participant 12.

212 Participant 9.

213 Participant 8.

214 Ben Crewe, 'Soft Power in Prison: Implications for Staff–Prisoner Relationships, Liberty and Legitimacy' (2011) 8 *European Journal of Criminology* 455; John M Klofas, 'Discretion among Correctional Officers: The Influence of Urbanization, Age and Race' (1986) 30 *International Journal of Offender Therapy and Comparative Criminology* 111; Alison Liebling, 'Prison Officers, Policing and the Use of Discretion' (2000) 4 *Theoretical Criminology* 333; Alison Liebling, 'Incentives and Earned Privileges Revisited: Fairness, Discretion, and the Quality of Prison Life' (2008) 9 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 25.

215 Eamonn Carrabine, 'Prison Riots, Social Order and the Problem of Legitimacy' (2005) 45 *British Journal of Criminology* 896; Alison Liebling, 'Distinctions and Distinctiveness in the Work of Prison Officers: Legitimacy and Authority Revisited' (2011) 8 *European Journal of Criminology* 484; Richard Sparks and Anthony Bottoms, 'Legitimacy and Order in Prisons' (1995) 46 *The British Journal of Sociology* 45.

216 Participant 9.

217 Participant 13.

218 Professional 9.

219 Participant 10.

220 Participant 7.

draws the distinction between “good” versus “right” relationships between staff and prisoners.²²¹ “Good” relations are conceived as too close and lacking professional boundaries which do not lead to positive outcomes in prison environments. “Right” relationships, by contrast, are defined as in-between ‘formality and informality, closeness and distance, policing-by-consent and imposing order. They were respectful but incorporated a “quiet flow of power”’.²²² The importance of “right” relations was borne out in the experiences of some interviewees. One prisoner interviewee, for instance, stated that ‘[t]hey don’t mistreat us in any way’,²²³ while another prisoner interviewee felt that ‘the officers actually make it very good and open for us’.²²⁴ Importantly, the same interviewee also highlighted that the officers address their health and safety needs ‘straight away’.²²⁵

Power in prison does not rest solely in the hands of officers,²²⁶ but equally it has been reported that prison officers in Ireland receive little support for such practices, with security remaining the overwhelming priority for the IPS.²²⁷ Indeed, one officer emphasised the importance of maintaining ‘a truce’ with serving minority ethnic prisoners and FNPs. This truce operates on the basis that that prisoner ‘treats the staff with respect and treats the other prisoners around him with respect as well and keeps himself clean and tidy’.²²⁸ Conversely, prisoners appreciated staff who were both efficient and fair with ‘the simple things’ and where they ‘only had to ask the officer once’.²²⁹ It is through these

“right” relations that the moral value of authority, used appropriately, is realised and that the best officers exemplify their capacity and preparedness to use their authority but to do so well.²³⁰

CoE Recommendation CM/Rec (2012)12 contains a number of directions that apply to the functioning and administration of the prison authority. Here, cultural sensitivity, interaction skills and knowledge of languages should be included among the characteristics of staff recruited to work with FNPs.²³¹ In addition, staff should be ‘trained to respect cultural diversity and to understand the particular problems faced by foreign national prisoners’.²³² Specifically:

‘Appropriately trained specialists shall be appointed to engage in work with foreign prisoners and to liaise with the relevant agencies, professionals and associations on matters related to such prisoners.’²³³

In Ireland’s last periodic report under UN CERD, the CERD expressed its regret at the lack of information on human rights and equality training specifically on racial discrimination for public officials such as law enforcement officials,²³⁴ and this viewpoint was reaffirmed by one of the professional stakeholder interviewees in this study who observed that it was imperative ‘to bring people back in for training a little bit more regularly on that kind of cultural awareness piece’.²³⁵ This is a particularly important recommendation given

221 Alison Liebling, ‘Distinctions and Distinctiveness in the Work of Prison Officers: Legitimacy and Authority Revisited’ (2011) 8 *European Journal of Criminology* 484-499.

222 *ibid.*, 491.

223 Participant 15.

224 Participant 7.

225 *ibid.*

226 Alison Liebling, ‘Prison Officers, Policing and the Use of Discretion’ (2000) 4(3) *Theoretical Criminology* 333-357; Donald Clemmer, *The Prison Community* (Christopher Publishing House 1940); Kathleen McDermott and Roy D. King, ‘Mind Games: Where the Action is in Prisons’ (1988) 28(3) *British Journal of Criminology* 357-375; Gresham Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton University Press 1958).

227 Jesuit Centre for Faith and Justice, *The Irish Prison System: Vision, Values, Reality* (Jesuit Centre for Faith and Justice 2012).

228 Professional 3.

229 Participant 13.

230 Alison Liebling, ‘Distinctions and Distinctiveness in the Work of Prison Officers: Legitimacy and Authority Revisited’ (2011) 8 *European Journal of Criminology* 484-499.

231 Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 38.

232 *ibid.* rule 39.2. Indeed, any agency or organisation that works with foreign national offenders should receive training in working with this group, see Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 12.

233 *ibid.* rule 40.

234 Committee on the Elimination of Racial Discrimination (CERD), ‘Concluding observations on the combined fifth to ninth reports of Ireland’ (23 January 2020) CERD/C/IRL/CO/5-9, para 49.

235 Professional 7.

that these officers are the first source of support in terms of information and access to services for minority ethnic prisoners and FNPs.²³⁶

The principle of non-discrimination also applies to recruitment into the prison service,²³⁷ and to promotion,²³⁸ while the CERD has recommended that in order to prevent discriminatory behaviour, States should create internal and external oversight mechanisms with the capacity to take disciplinary action.²³⁹ UN CERD States Parties, such as Ireland, should ensure that senior law enforcement officials 'promote non-discriminatory policies and practices within their agencies, rigorously monitor the conduct of staff and hold staff accountable for misconduct through the internal, independent oversight mechanism'.²⁴⁰ Despite these overarching goals, one professional stakeholder interviewee offered anecdotal evidence of racial discrimination in the prison system:

*'... from what I'm being told, it's how ethnic minorities, in particular African prisoners, are everyday humiliated in prisons, mistreated, even though there is no physical beating... the language that is even used in the prison toward people of African descent is shameful.'*²⁴¹

Another professional stakeholder interviewee stated that 'the staff don't do it to prisoners',²⁴² but this view was contradicted by a prisoner

interviewee who observed that 'racist comments and put downs' from prison staff were often 'cloaked in banter'.²⁴³ However, for the most part, the personal recollections and experiences of racism reported in this study were, to use Phillips' words, 'more covert, less obvious, less said'.²⁴⁴ This was captured by one professional stakeholder interviewee who noted that '[i]t's [racism] not always presented in a very explicit form. More often than not, it's there in an unspoken, non-verbalised way, but yet, is still there'.²⁴⁵ Similarly, one prisoner interviewee stated that racism in the Irish penal system is 'hidden. I only can feel it in the talk'.²⁴⁶ This finding corresponds with previous research conducted on race-relations in UK prisons.²⁴⁷ Coretta Phillips, to take just one example, described how minority ethnic prisoners referred to what she termed a 'racedar', or 'an intuitive sense or belief about an individual's racism even if it was not articulated through the use of racist language'.²⁴⁸ These minority ethnic prisoners described how: 'you always have a feeling', 'you can see it in their eyes', 'he's talk to white people like, different', and 'you can just tell... it's not brain science'.²⁴⁹

The harmful effect of racism on the victim's mental health and physical health is well documented in the academic research.²⁵⁰ As Williams and others have noted, '[r]acism is considered a fundamental cause of adverse health outcomes for racial/ethnic minorities and racial/ethnic inequities in

236 Anja J.E. Dirkzwager and Candace Kruttschnitt, 'Prisoners' perceptions of correctional officers' behavior in English and Dutch prisons' (2012) 40 *Journal of Criminal Justice* 404-412.

237 Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, rule 82.

238 *ibid*, Commentary 49.

239 Committee on the Elimination of Racial Discrimination (CERD), 'General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials' (24 November 2020) CERD/C/GC/36, para 53.

240 *ibid*, para 55.

241 Professional 5.

242 Professional 7.

243 Professional 9. See also Danièle Joly and Jim Beckford, "'Race" Relations and Discrimination in Prison: The Case of Muslims in France and Britain' (2006) 4 (2) *Journal of Immigrant & Refugee Studies* 10-30, 13.

244 Coretta Phillips, *The Multicultural Prison: Ethnicity, Masculinity and Social Relations among Prisoners* (OUP, 2013) 178.

245 Professional 1

246 Professional 7

247 Coretta Phillips, *The Multicultural Prison: Ethnicity, Masculinity and Social Relations among Prisoners* (OUP, 2013) 177-178; Danièle Joly and Jim Beckford, "'Race" Relations and Discrimination in Prison: The Case of Muslims in France and Britain' (2006) 4 (2) *Journal of Immigrant & Refugee Studies* 10-30, 13.

248 Coretta Phillips, *The Multicultural Prison: Ethnicity, Masculinity and Social Relations among Prisoners* (OUP, 2013) 177.

249 *ibid*.

250 See, for example, David R Williams and Onisha S Etkins 'Racism and Mental Health' (2021) 20(2) *World Psychiatry* 194-195; David R Williams, Jourdyn Lawrence and Brigette Davis, 'Racism and Health: Evidence and Needed Research' (2019) 40 (1) *Annual Review of Public Health* 105-125; Tin Paradise and others, 'Racism as a Determinant of Health: A Systematic Review and Meta-Analysis' (2015) 10 *PloS One* 1-48; Stephanie Wallace, James Nazroo and Laia Bécaries, 'Cumulative Effect of Racial Discrimination on the Mental Health of Ethnic Minorities in the United Kingdom' (2016) 106 (7) *American Journal of Public Health* 1294-1300.

health'.²⁵¹ A 2015 study in the UK also detailed the corrosive effects of racism experienced over time on the individual, finding that '[c]umulative exposure to racial discrimination has incremental negative long-term effects on the mental health of minority ethnic people in the United Kingdom'.²⁵² Equally, it has been noted that racism experienced by prisoners can negatively impact their self-identity and self-esteem, and 'produce feelings of confusion, self-doubt, and alienation, further unsettling prisoners in their quest to survive and cope in prison'.²⁵³ As Phillips notes, '[t]he hurt and humiliation of discriminatory practices in prison, over which prisoners have little or no control, represents another layer of the diminution of the self'.²⁵⁴ Even the fear of a racist incident taking place has a negative outcome on the health of minorities.²⁵⁵ A substantial body of research has documented that structural racism exists in the prison systems across the Western world²⁵⁶ and the tragic consequences of institutional racism

if left unchecked.²⁵⁷ More in-depth research is required to explore the extent to which racism in the prison system is a microcosm of what occurs in wider Irish society²⁵⁸ or whether this phenomenon is exacerbated behind the prison walls.²⁵⁹

Finally, the CERD has recommended that States also ensure that their law enforcement agencies develop strategies to recruit a diverse workforce that represents the populations in which they work, but as one prisoner interviewee remarked, '*I don't see a Traveller being an officer*'.²⁶⁰ This view was reaffirmed by one of the professional stakeholder interviewees who observed that '*there isn't great diversity there, as in people from different ethnic backgrounds*'.²⁶¹ Here, the use of quotas and recruitment programmes targeting under-represented groups should be considered.²⁶²

251 David R Williams, Jourdyn Lawrence and Brigette Davis, 'Racism and Health: Evidence and Needed Research (2019) 40 (1) Annual Review of Public Health 105-125, 105.

252 Stephanie Wallace, James Nazroo and Laia Bécaries, 'Cumulative Effect of Racial Discrimination on the Mental Health of Ethnic Minorities in the United Kingdom' (2016) 106 (7) American Journal of Public Health 1294-1300, 1294.

253 Coretta Phillips, *The Multicultural Prison: Ethnicity, Masculinity and Social Relations among Prisoners* (OUP, 2013) 185.

254 *ibid.*

255 Stephanie Wallace, James Nazroo and Laia Bécaries, 'Cumulative Effect of Racial Discrimination on the Mental Health of Ethnic Minorities in the United Kingdom' (2016) 106 (7) American Journal of Public Health 1294-1300, 1298.

256 See for example, Committee on the Elimination of Racial Discrimination, General Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system (2005); Committee on the Elimination of Racial Discrimination, General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials, (CERD/C/GC/36, 17 December 2020). See also Danièle Joly and Jim Beckford, "'Race" Relations and Discrimination in Prison: The Case of Muslims in France and Britain' (2006) 4 (2) Journal of Immigrant & Refugee Studies 10-30; Coretta Phillips, *The Multicultural Prison: ethnicity, Masculinity and Social Relations among Prisoners* (OUP, 2013); The Honourable Justice Keith, 'Zahid Mubarek Inquiry' Vol I & II (HM Stationary Office, 2006) 421.

257 The Honourable Justice Keith, 'Zahid Mubarek Inquiry' Vol I & II (HM Stationary Office, 2006).

258 Eburn Joseph, *Critical Race Theory and Inequality in the Labour Market: Racial Stratification in Ireland* (Manchester University Press, 2020); Lucy Michael, *Afrophobia in Ireland: Racism against people of African descent* (ENAR, 2015). Data from the 2020 iReport, which monitors reports of racist incidents annually in the State, noted that '[t]he group most commonly reporting experiences of both crime and illegal discrimination is the group of Black-African, Black-Irish and Black-Other. They experienced 33 percent of all crime cases and 33 percent of all discrimination cases. The next largest group of reports came from South Asian, Chinese and Other Asian people. South Asians and Chinese or Other Asian each reported 16% of crimes, and South Asians reported 13% of discrimination', Lucy Michael, *Data from iReport. ie: Reports of Racism in Ireland* (2020) 16.

259 Professional Interview 1, 2 and 11.

260 Participant 10. Committee on the Elimination of Racial Discrimination (CERD), 'General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials' (24 November 2020) CERD/C/GC/36, para 47.

261 Professional 1.

262 Committee on the Elimination of Racial Discrimination (CERD), 'General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials' (24 November 2020) CERD/C/GC/36, para 46. Recruitment policies should be evaluated regularly, para 46. The Irish Prison Service has voiced its support for staff diversity (see for example, Irish Prison Service, Annual Report 2020 17). However, as this research demonstrates, the staff diversity remains low. The National Migrant Integration Strategy 2017-2020 set as an action, 'the inclusion of a target of 1% for the employment of EEA migrants and people from minority ethnic communities in the civil service', see Department of Justice, *National Migrant Integration Strategy 2017-2020: A blueprint for the future* (Department of Justice 2017) 4

4.5. The right to communicate with the outside world

It is essential that the prison authorities facilitate communication between FNPs and minority ethnic prisoners, and the outside world.²⁶³ Rule 37.2 of the Revised EPRs declares:

‘Special attention shall be paid to the maintenance and development of the relationships of prisoners who are foreign nationals with the outside world, including regular contacts with family and friends, probation and community agencies and volunteers, and, subject to the prisoners’ consent, diplomatic or consular representatives.’²⁶⁴

Similarly, the CoE’s Recommendation CM/Rec (2012)12 recognises *inter alia* the importance of the maintenance of communication between the prisoner, their family and other groups and organisations, such as State agencies (for example, the probation authorities) and non-State organisations (for example, civil society organisations),²⁶⁵ but notably few of the serving prisoners interviewed for this study had any interaction with any outside organisations that are concerned with the welfare of this at-risk cohort. FNPs also have the right to keep themselves informed of public affairs via media such as newspapers and other publications,²⁶⁶ and ‘shall be given access to radio or television broadcasts or other forms of communication in a language they understand’, as far as possible.²⁶⁷ The potential benefit of the latter during the public

health crisis was emphasised by one professional stakeholder interviewee who noted that ‘*Netflix has been introduced into prisons during the pandemic*’.²⁶⁸ Currently, Netflix is available on one channel of the prison television service with content selected by staff each day for all prisoners. The introduction of such streaming services may have appeared unlikely pre-pandemic but provides an opportunity to broaden the accessibility of non-English media content by extending the choice to individual prisoners or cells.

A substantial body of research has revealed that ‘families are a key source of support for many incarcerated individuals’,²⁶⁹ but one recurring theme that emerged from the interviews was the extent to which geography and finance often present insurmountable challenges for the families of ‘*an awful lot*’²⁷⁰ of FNPs.²⁷¹ Isolation from family and friends is one of the most painful features of life behind bars,²⁷² and this is undoubtedly compounded by the ‘*additional hardship*’²⁷³ of being incarcerated in a jurisdiction where ‘*their family can’t come up to see them*’.²⁷⁴ This was poignantly encapsulated by one prisoner interviewee who referred to the pains of being unable to meet with his children in person while imprisoned: ‘*especially not being able to see the kids and the kids not being able to see me*’.²⁷⁵ Maintaining familial links is inevitably more problematic for FNPs than national prisoners because their families are frequently living abroad, sometimes in very difficult circumstances, and therefore visits from family members are unlikely.²⁷⁶ This was summarised succinctly by one

263 If the FNP is detained in a country that they are familiar with, then they should be assisted in maintaining ties with their family, Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules, Commentary 23.

264 See also Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 22.1 and United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175, Rule 58 (1) (which applies to all prisoners).

265 *ibid* rules 22.1 to 23.3.

266 *ibid*, rule 23.1. This right is incorporated into the Irish Prison Rules 2007, SI 2007/252 (as amended), rule 48(2).

267 *ibid*, rule 23.2.

268 Professional 1.

269 Johanna B. Folk, Jeffrey Stuewig, Debra Mashek, June P. Tangney and Jessica Grossmann, ‘Behind Bars but Connected to Family: Evidence for the Benefits of Family Contact During Incarceration’ (2019) 33(4) *Journal of Family Psychology* 453-464, 455.

270 Professional 7.

271 Johanna Christian, ‘Riding the Bus: Barriers to Prison Visitation and Family Management Strategies’ (2005) 21(1) *Journal of Contemporary Criminal Justice* 31-48.

272 Robert Adams, *Prison Riots in Britain and the USA* (Palgrave Macmillan 1992); Gresham Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton University Press 1958).

273 Professional 1.

274 Professional 3.

275 Participant 10.

276 Magali Barnoux and Jane Wood, ‘The specific needs of foreign national prisoners and the threat to their mental health from being imprisoned in a foreign country’ (2013) 18 *Aggression and Violent Behaviour* 240-246, 242.

professional stakeholder interviewee who noted that FNPs:

*'... face all of the same challenges that white nationals face when incarcerated, plus a lot of others that domestic nationals in prison don't face. It seems that the difficulties that they face, often stem from being very much alone in the Irish system, peculiarly alone, because very often, they are people from another country, who, if they are fortunate enough to have any family or friend network of support on the outside, it is usually limited.'*²⁷⁷

The detachment from social networks and the 'removal of sources of support' is distressing and can have a detrimental impact on FNP's emotional and psychological well-being.²⁷⁸ As one prisoner interviewee noted, 'I'm so far from my family. That's the most difficult thing'²⁷⁹ In this context, the suggestion by one participant that FNPs 'need access to certain types of phone calls or communications that other people don't have'²⁸⁰ is particularly pertinent giving that there is a growing consensus in the literature that these prisoners are 'more likely to harm themselves and die by suicide than the general prison population'.²⁸¹

Prison visitation offers temporary relief from this separation and affords incarcerated people the chance to connect directly with family and friends in the prison setting. The importance of 'family ties'²⁸² as a number of the interviewees observed, is clearly recognised and facilitated by the IPS. One prisoner interviewee noted, for instance, that because their family are 'coming from a long distance, I get you know extra time. Only because

of, because I'm not an Irish prisoner',²⁸³ while another prisoner interviewee pointed out that they are able to 'arrange to get two visits in one day'.²⁸⁴ This level of flexibility was also acknowledged and appreciated by another prisoner interviewee:

*'I know on one occasion, I think they made a mistake. I think my brother made the mistake with either the date or something happened, or they were late or something happened. And because they knew they were travelling, they actually arranged for them to be let in and gave me one of the free slots.'*²⁸⁵

While other forms of communications – such as letters and phone calls – are certainly meaningful in maintaining family contact and can potentially contribute to reducing the incidence of re-offending conduct,²⁸⁶ the ability to visit, face-to-face, over the course of several hours is considered a vital bonding opportunity for confined people and their loved ones. That said, many of the prisoner interviewees in this study came 'from backgrounds with systematic patterns of pre-existing disadvantage'²⁸⁷ and many of their families, to use the words of one professional stakeholder interviewee, 'don't have the resources or the money to come over here' to visit the prisoner.²⁸⁸ The financial challenges associated with visitation were emphasised by a number of the interviewees in the study. One prisoner interviewee noted that 'the finance is a problem because it costs to come over to Ireland. It also costs to get the hotel to stay and to go back home as well'.²⁸⁹ Travel costs were proving prohibitive for another prisoner interviewee, who stated that his 'mother wants to come with

277 Professional 8.

278 Alison Liebling, David Price and Charles Elliott, 'Appreciative Inquiry and Relationships in Prison' (1999) 1(1) Punishment & Society 71–98.

279 Participant 15.

280 Professional 8.

281 Alex Till, Piyal Sen, Lucia Chaplin, Edward Grange, Tim Exworthy and Andrew Forrester, 'The mental health of foreign national prisoners' (2019) 62 Journal of Forensic and Legal Medicine 14-18, 15; Agnieszka Martynowicz, 'Not so multicultural prison: Polish prisoners in a transitional prison system' (2016) 16(3) Criminology & Criminal Justice 337-349, 338.

282 Participant 7.

283 Participant 15.

284 *ibid.*

285 Participant 11.

286 Chris May, Nalini Sharma and Duncan Stewart, Factors linked to re-offending: A one year follow-up of prisoners who took part in Resettlement Surveys 2001, 2003 and 2004 (Research Summary 5, Ministry of Justice 2008).

287 Rachel Condry, Anna Kotova and Shona Minson, 'Social injustice and collateral damage' in Yvonne Jewkes, Ben Crewe and Jamie Bennett (eds), Handbook on Prisons (2nd edn, Routledge 2016) 623.

288 Professional 3.

289 Participant 8.

my kids'.²⁹⁰ These sentiments were echoed by the prisoner interviewee who pointed to the visitation obstacles that the families of FNPs face in comparison to the families of Irish prisoners: *'because for Irish people, they are here, they are local, so they just have [to] get in the car and drive. But for the foreign people, we need to organise the flights and hotel a place to stay, so this is the problem'*.²⁹¹

Moreover, the financial strain caused by the removal of a family member to prison clearly impacted the lives of their loved ones. One prisoner interviewee highlighted that *'losing me, kind of financially it's kind of hard for my family'*,²⁹² while another prisoner interviewee outlined that their spouse now relies on social welfare payments and support from the Government since their imprisonment.²⁹³ The detrimental financial impact on their families was also captured by another prisoner interviewee:

*'I was support them when I was outside obviously but when I am in prison, I couldn't help them any longer, you know. And I think that it the worst thing with the imprisonment for me anyway.'*²⁹⁴

Families are a prisoner's 'link to the outside world'²⁹⁵ and these *'family relationships are key to many people who are in prison'*²⁹⁶ but one prisoner interviewee observed that they also could see *'how hard it is for them because obviously they're going through that as well, in my absence'*.²⁹⁷ As Maruna has persuasively argued: '[i]t is impossible to isolate punishment as practiced in most societies to a single individual, when we

are all connected in families, communities and societies'.²⁹⁸

Previous research reveals that the abovementioned difficulties can result in strained relationships,²⁹⁹ but the findings of this study indicate otherwise. One prisoner interviewee noted that his family *'feel sorry what's happened with me'* and that this resulted in a much *'stronger relationship'*.³⁰⁰ Similarly, another prisoner interviewee pointed out that his family is *'trying to support me and not to worry me'*.³⁰¹ Writing in 1995, the European Health Committee stated that '[o]ne of the inevitable consequences of imprisonment is the temporary weakening of social contacts'³⁰² and this was confirmed by one prisoner interviewee who noted that at *'the beginning of when this happen, it's very sad. It's very hard for everybody. But now, I think it's the people accepted it, my family accepted'*.³⁰³ Crucially, these 'family ties' were 'not broke off completely'.³⁰⁴

Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1998 stipulates that 'A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations'. Of particular importance in this respect has been the introduction of video calls, which a number of prisoners reported as contributing to a lessening of hardships on family members in terms of travelling long distances

290 Participant 4.

291 Participant 8.

292 Participant 13.

293 Participant 7.

294 Participant 2.

295 Rachel Condry, *Families Shamed: The Consequences of Crime for Relatives of Serious Offenders* (Willan 2007) 4.

296 Professional 1.

297 Participant 13.

298 Shadd Maruna, 'Commentary: Time to get rid of the skid bid? What good are short stays of incarceration?' (2016) 665(1) *Annals of the American Academy of Political and Social Science* 98–102, 100.

299 Creasie Finney Hairston, 'Prisoners and Their Families: Parenting Issues during Incarceration' in Jeremy Travis and Michelle Waul (eds), *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities* (The Urban Institute Press 2003).

300 Participant 9.

301 Participant 2.

302 Council of Europe, *Report on the Organisation of health care services in prisons in European member states* https://www.coe.int/t/dg3/health/Prisonsreport_en.asp accessed 12 October 2021.

303 Participant 4.

304 Council of Europe, *Report on the Organisation of health care services in prisons in European member states* https://www.coe.int/t/dg3/health/Prisonsreport_en.asp accessed 12 October 2021.

to the prison for a short visit.³⁰⁵ One prisoner interviewee noted, for example, the increased contact that he now enjoyed with family members: *'we have a video call now instead of the face to face visit, so it's actually easier because at the start of the sentence, I would only see them once or twice, but now I can see them every week if you want on a videocall'*.³⁰⁶ Furthermore, another prisoner interviewee felt that video calls created *'a little bit more of a natural environment'* when compared to screened visits, with the ability to see a larger number of family members and friends at once.³⁰⁷ The practical and organisational difficulties posed by face-to-face prison visits have been reported by families and prison staff in previous research,³⁰⁸ while the benefits of virtual visits include both a reduction in the travel time experienced by visitors³⁰⁹ and in the time spent waiting for the visit to begin.³¹⁰ These virtual visits obviously were of increasing importance to the general prison population during the restrictive measures – universally known as 'lockdowns'³¹¹ – introduced during the global public health crisis. As one chaplaincy report that focused on a male prison noted, the introduction of video visits for the wider prisoner population was *'a wonderfully innovative response by the prison service to the closure of visits by families to the prison. Staff were dogged in their persistence to make this service operational for the men'*.³¹² It is noteworthy that this innovation was implemented relatively swiftly due to the international health restrictions.³¹³ Such expediency should be ambitiously pursued in other progressive measures to ameliorate the conditions for minority ethnic prisoners and FNPs in Irish prisons.

Yet despite these positive sentiments, this is not to suggest that poor phone networks or internet connections do not hinder the maintenance of family contact for certain FNPs. As one professional stakeholder interviewee demonstrated:

*'... what I've noticed for some fellows from say, Africa, or the Middle East come in, the difficulties they have sometimes is the phone calls to their family at home. And it's probably down to the mobile networks. That seems to be a big problem, where they might only last on the phone for two minutes out of the six-minute call, and there's nothing we can do about it. And you can see it in them, because they're trying to come to you looking for help. And that's frustrating for them.'*³¹⁴

This difficulty was also highlighted by one prisoner interviewee who stated *'[s]ometimes the connection... is not good. So the link is freezing sometimes'*,³¹⁵ while another prisoner interviewee stressed that *'it's very bad internet over there. So I'm sitting there waiting 'til I get connected. Sometimes there is no internet at all'*.³¹⁶ A prison chaplaincy report from 2020 came to a similar conclusion. It noted that *'the regular failures surrounding family visits by video, whether by human error or technical, has had an enormously negative effect on some prisoners and a devastating effect on their children'*.³¹⁷ This is further compounded by the fact certain prisoners and their families find this facility difficult – even when the system is operational – because *'they can't give each other a hug'*.³¹⁸

305 Participant 7. Visits were approximately 15 minutes during the public health crisis. Standard prison visits are 30 minutes (sentenced) once per week, or 15 minutes (remand) 5 times per week.

306 Participant 11.

307 Professional 7.

308 Rachael Dixey and James Woodall, 'The significance of "the visit" in an English category B prison: Views from prisoners, prisoners' families and prison staff' (2012) 15 *Community Work and Family* 29-47.

309 Chesa Boudin, Trevor Stutz and Aaron Littman, 'Prison Visitation Policies: A Fifty- State Survey' (2014) 32(1) *Yale Law & Policy Review* 149-189.

310 Michael Grohs, 'Video Visitation: Considerations about Its Uses' (2013) 22(2) *Corrections Forum* 26-30.

311 World Health Organization, *Calibrating long-term non-pharmaceutical interventions for COVID-19: principles and facilitation tools* (WHO 2020).

312 Wheatfield Chaplaincy, *Annual Report* (2020) 8.

313 Office of the Inspector of Prisons, Joe Garrihy and Ian Marder, *Ameliorating the Impact of Cocooning on People in Custody* (Office of the Inspector of Prisons 2020) <https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf> accessed 14 October 2021.

314 Professional 6.

315 Participant 4.

316 Participant 8.

317 Mountjoy Chaplaincy Service, *Chaplain's Report* (2020) 4.

318 Professional 3.

Communication with the outside world includes engaging with community organisations in diverse forms and relationships. According to the professional stakeholder interviewees, the strained relationships between minority ethnic community groups and IPS staff were manifest through a lack of communication following their requests to prison authorities, which were reported to be not taken seriously by many prison staff.

Given that these community groups can be the only means of a prisoner's direct contact with their community, there must be clear and positive channels of communication between minority ethnic community groups and the IPS. Moreover, the maintenance and development of relationships between FNPs and the outside world are set out in the European Prison Rules and the Committee of Ministers' Recommendation CM/Rec(2012)12 concerning foreign prisoners.³¹⁹ Relationships between society groups who work with prisoners must be improved and facilitation of such formalised. For instance, civil society groups are often reliant on the Chaplaincy Service to engage with groups such as Muslim prisoners which can be problematic at times

(i.e. during COVID-19 restrictions). Access and appropriate roles for representatives of diverse faiths must also be formalised and developed to respect fundamental human rights enshrined in international and European penal law and policy.

The role of civil society groups working specifically with minority ethnic prisoners is underdeveloped in the Irish penal system as illustrated by the lack of consultation with such groups as part of the *IPS Strategic Plan 2019–2022*.³²⁰ The aim of improving meaningful external communications for minority ethnic prisoners and FNPs would be significantly enhanced by the insight of civil society groups that represent the ethnic and religious diversity of the prison population, in particular the prisoners of African descent and Muslim prisoners. Liaising with civil society groups that represent the ethnic and religious diversity of the prison population should be included in the Public Sector Duty Action Plan.³²¹ Such action will in turn allow an opportunity for the needs and experiences of these prisoners to be included within the Public Sector Duty Action Plan.

319 Committee of Ministers Recommendation Rec (2006)2-rev of 1 July 2020 to member states on the European Prison Rules, Rule 37.2; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, Rule 22.1.

320 See list of Parties Consulted- Irish Prison Service, Strategic Plan 2019-2022 (Irish Prison Service 2019).

321 As part of its commitment to the Public Sector Duty Action Plan, the IPS liaised with a number of NGOs, including Traveller and Roma groups, see Irish Prison Service, Annual Report 2020 19.

4.6. Probation and community sanctions

As noted in Section 3.5, certain minority ethnic groups appear to be over-represented among those engaging with the Irish Probation Service. Most notably, Travellers comprise 8.9 per cent of service users, despite their overall representation of just 0.7 per cent. With this in mind, it is important to consider the role of probation and community sanctions, and the ways in which they are experienced by minority ethnic groups.

The principle of non-discrimination is enshrined in the CoE's policy on probation, and probation agencies must conduct their work without discrimination 'on any ground such as sex, race, colour, language, religion, disability, sexual orientation, political or other opinion, national or social origin, association with a minority ethnic group, property, birth or other status'.³²² Similarly, the imposition and implementation of community sanctions should not be exercised on a discriminatory basis,³²³ and FNP's are entitled to the equal range of non-custodial sanctions and measures as national prisoners.³²⁴ FNP's must be able to access the services of probation agencies, especially in relation to community supervision and resettlement.³²⁵ In addition, State authorities must take positive action to respond to the 'specific problems that foreign persons may face while subject to community sanctions

or measures, in prison, during transfer and after release'.³²⁶ Furthermore, State authorities should review pre- and post-release services to make sure that they meet the needs of and are accessible to indigenous, ethnic and minority ethnic female prisoners.³²⁷ Probation staff who work with foreign national people must also receive training in working with this group.³²⁸

The Probation Service is the lead agency in the assessment and management of convicted people in the community.³²⁹ As such, it aims to reduce recidivism and improve community safety. It is involved in, for example, assessing an individual prior to sentencing,³³⁰ supervising both those who have been convicted of an offence and sentenced to a CSO,³³¹ and those who have been released from prison, for example through the Community Return Scheme, supervised temporary release (TR),³³² or supervision while out on licence (for prisoners sentenced to a life-term).³³³ Additionally, under the Transfer of Sentenced Persons Act 1995 and the Transfer of Sentenced Persons (Amendment) Act 1997,³³⁴ the Probation Service provides assessment reports on non-Irish national prisoners who are being considered for transfer to their country of origin.³³⁵

An individual who has been placed on supervision is required to maintain regular contact with their supervising probation officer, and to comply

322 Committee of Ministers Recommendation CM/Rec(2010)1 of 20 January 2010 to member states on the Council of Europe Probation Rules, rule 4.

323 Committee of Ministers Recommendation CM/Rec(2017)3 of 22 March 2017 to member states on the European Rules on community sanctions and measures, rules 6 and 7.

324 Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 4.

325 Committee of Ministers Recommendation CM/Rec(2010)1 of 20 January 2010 to member states on the Council of Europe Probation Rules, rule 63.

326 Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 7.

327 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) (adopted 21 December 2010) A/RES/65/229, rule 55.

328 Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners, rule 12.

329 Probation of Offenders Act 1907; Criminal Justice (Administration) Act 1914.

330 Niamh Maguire and Nicola Carr, *Individualising Justice: Pre-Sentence Reports in the Irish Criminal Justice System* (Irish Probation Service 2017).

331 For a historic formation and contemporary overview of the Community Service in Ireland see Eoin Guilfoyle, 'What Exactly is a Community Service Order in Ireland?' (2017) 14 *Irish Probation Journal* 189-205.

332 The Criminal Justice Act 1960 as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003.

333 Parole Act 2019.

334 Which gave effect to the Convention on the Transfer of Sentenced Persons (entered into force 1 July 1985) ETS 112.

335 The Probation Service, *Probation Service Annual Report 2020* 53, outlined the number of repatriation reports completed in 2018 (19), 2019 (12) and 2020 (9). These repatriation reports include prisoners wishing to return to Ireland from abroad and also prisoners in Ireland who wish to serve the remainder of their sentence in their country of origin.

with all conditions of the order. As an alternative to imprisonment, the court may make a CSO.³³⁶ Under this order, the person is required to complete 40–240 hours of unpaid work in the community. The Probation Service assesses the suitability of the person for community service, organises the work placement and manages the person on behalf of the court. Research in Ireland has previously concluded that CSOs are ‘under-utilised by the Irish criminal justice system’.³³⁷ Data provided by the Probation Service indicated that 42.4 per cent of those engaged with the service were on CSOs.

As outlined above, international and European documents,³³⁸ as well as Irish legislation and policy,³³⁹ all provide direction on how the Probation Service should address the treatment of foreign nationals and members of minority ethnic groups in their care. Most importantly, the CoE Probation Rules³⁴⁰ and the Rules on Community Sanctions and Measures³⁴¹ provide further support on working with offenders and victims who are foreign nationals or from minority ethnic groups. These documents stress the importance of recognising and acknowledging diversity,³⁴²

of working to end discrimination against foreign nationals and minority ethnic groups,³⁴³ and establishing practices that promote inclusion.³⁴⁴ Lastly, as probation officers are also qualified social workers,³⁴⁵ their practice is guided by the Code of Professional Conduct and Ethics for Social Workers.³⁴⁶ The Code emphasises that professional practice must ‘respect diversity, different cultures and values’³⁴⁷ and that ethical practice must not discriminate against people based on a list of different characteristics, including ‘race, colour, nationality or ethnic or national origins, or membership of the Traveller Community’.³⁴⁸ The most recent *Probation Service Strategic Statement (2021–2023)*³⁴⁹ makes clear that the service has adopted the guidance from these various documents with respect to working with foreign and minority ethnic offenders. For example, Pillar 3 in the Strategy states: ‘We will further strengthen an organisational culture that recognises and supports diversity, integration and human rights, and is reflected in all aspects of Probation Service policy and practice’.³⁵⁰ A related goal under Pillar 3 further states ‘We will fully embrace our responsibilities under the Public Sector Duty’.³⁵¹

336 The Criminal Justice (Community Service) Act 1983; The Criminal Justice (Community Service)(Amendment) Act 2011. As noted by Justin McCarthy, ‘Community Service at the Crossroads in Ireland’ (2014) 11 Irish Probation Journal 124–155, the first Community Service Order was made in 1985.

337 Irish Penal Reform Trust, Discussion Paper: Community Service in Ireland (IPRT 2017) 5.

338 For example, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) A/RES/70/175; the International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) UNTS 660; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (adopted 14 December 1990) A/RES/45/110; Committee of Ministers Recommendation Rec(2006)2 of 11 January 2006 to member states on the European Prison Rules; Committee of Ministers Recommendation Rec(2006)2-rev of 1 July 2020 to member states on the European Prison Rules; Committee of Ministers Recommendation CM/Rec(2012)12 of 10 October 2012 to member states concerning foreign prisoners.

339 The Irish Human Rights and Equality Commission Act 2014; Prison Rules 2007, SI 2007/252 (as amended).

340 Committee of Ministers Recommendation CM/Rec(2010)1 of 20 January 2010 to member states on the Council of Europe Probation Rules.

341 Committee of Ministers Recommendation CM/Rec(2017)3 of 22 March 2017 to member states on the European Rules on community sanctions and measures.

342 Committee of Ministers Recommendation CM/Rec(2010)1 of 20 January 2010 to member states on the Council of Europe Probation Rules, Rule 54.

343 *ibid* Rule 4. Committee of Ministers Recommendation CM/Rec(2017)3 of 22 March 2017 to member states on the European Rules on community sanctions and measures, Principle 6.

344 *ibid* Rules 1, 12 and 47. Committee of Ministers Recommendation CM/Rec(2017)3 of 22 March 2017 to member states on the European Rules on community sanctions and measures, Principle 50.

345 Alastair Christie, Brid Featherstone, Suzanne Quin and Trish Walsh (eds), *Social Work in Ireland: Changes and Continuities* (Palgrave 2015).

346 CORU, Social Workers Registration Board Code of Professional Conduct and Ethics (Social Workers Registration Board 2019).

347 *ibid* 8.

348 *ibid* 25.

349 The Probation Service, *Strategic Statement 2021–2023 Action Plan: Probation Works for Community Safety* (2021).

350 *ibid* 10; Section 42 of the Irish Human Rights and Equality Commission Act 2014.

351 *ibid* 11.

The issue of the role of human rights in probation work has been given attention recently.³⁵² While not focusing exclusively on human rights in the context of minority ethnic groups, it does provide a useful context within which to consider the nature of probation supervision in Ireland, and in particular the assessment of risk as part of probation work. Assessing risk and developing strategies with the dual purpose of reducing crime and managing offenders in the community has become the foundation for probation practices in many parts of the world, including Ireland.³⁵³ While van Kalmthout and Durnescu state that the core of probation work in Europe is 'to protect the public and to promote social inclusion of offenders',³⁵⁴ Cross notes in his discussion of human rights and probation that:

'[T]he conduct of the supervising officer and the nature of the relationship s/he has with the person being supervised is a significant and symbolic human rights issue... The rights of an individual can, in any context, be restricted where they interfere with the rights of others, and in the context of supervising convicted offenders in the community there is an appropriate role for assessing risk and managing it by restricting rights where necessary, but a human rights approach to this task will ensure that any limitation of such rights is proportionate, based on the principle of parsimony and the highest standards of assessment, and imposed fairly and humanely.'³⁵⁵

However, methods for assessing risk have largely relied on actuarial assessment instruments,³⁵⁶ frequently validated using large-scale samples of male prisoners. This has raised questions regarding the applicability of such risk assessments to minority ethnic offenders. For example, the use of risk assessment with minority ethnic groups has been criticised for labelling as 'criminogenic' aspects of such groups' culture.³⁵⁷ Bracken³⁵⁸ notes one such example regarding Travellers, whereby probation officers noted that the Level of Service Inventory-Revised (LSI-R) instrument for assessing risk could frequently result in higher risk scores for Travellers, based solely on their nomadism and frequent changes of address.³⁵⁹

While several participants in Bracken's research discussed using their personal judgement of risk, potentially overriding the computed score, there were opposing ideas on how best to compensate for the alleged bias in the instrument. For example, while one participant described using their professional judgement and recognising the cultural elements of nomadism, another stated 'that would be the criticism I suppose of the LSI-R is that it doesn't take into account cultural risk, cultural issues, and in general people don't override much, cause there's just research to say that that's not ideal to be overriding the system you're using all the time, there's different viewpoints on that'.³⁶⁰ To that end, it may be suggested that one's experience of probation and risk assessment can vary significantly based on the officer with whom they are working.

Considering the use of CSOs, Bracken also noted that particular issues may arise within the Travelling community.³⁶¹ For example, the

352 See for example David Cross, 'A Human Rights-Based Approach to Community Justice: Adding Value to Desistance Focused Practice' (2017) 9(2) *European Journal of Probation* 149-168 for a useful summary; Ioan Durnescu, 'Pains of Probation: Effective Practice and Human Rights' (2011) 55(4) *International Journal of Offender Therapy and Comparative Criminology* 530-545; Rob Canton, 'The point of probation: On effectiveness, human rights and the virtues of obliquity' (2013) 13(5) *Criminology & Criminal Justice* 577-593.

353 Karen Bullock, 'The Construction and Interpretation of Risk Management Technologies in Contemporary Probation Practice' (2011) 51 *British Journal of Criminology* 120-135.

354 Anton M. van Kalmthout and Ioan Durnescu, *Probation in Europe* (Wolf Legal Publishers 2008).

355 David Cross, 'A Human Rights-Based Approach to Community Justice: Adding Value to Desistance Focused Practice' (2017) 9(2) *European Journal of Probation* 149-168, 160.

356 Paula Maurutto and Kelly Hannah-Moffat, 'Assembling Risk and the Restructuring of Penal Control' (2006) 46 *British Journal of Criminology* 438-454; Wendy Fitzgibbon, Claire Hamilton and Michelle Richardson, 'A risky business: An examination of Irish probation officers' attitudes towards risk assessment' (2010) 57(2) *Probation Journal* 163-174.

357 Sam Lewis, 'Minority ethnic experiences of probation supervision and programmes' in Sam Lewis, Peter Raynor, David Smith and Ali Wardak (eds), *Race and Probation* (Willan Publishing 2006) Claire Spivakovsky, *Racialized Correctional Governance: The Mutual Constructions of Race and Criminal Justice*. (Routledge 2013).

358 Denis Bracken, 'Probation Practice with Travellers in the Republic of Ireland' (2014) 11 *Irish Probation Journal* 44-62.

359 Peter Davies, 'The Level of Service Inventory in the Republic of Ireland' (2007) 4(1) *Irish Probation Journal* 93-100.

360 Denis Bracken, 'Probation Practice with Travellers in the Republic of Ireland' (2014) 11 *Irish Probation Journal* 44-62.

361 *ibid.*

occurrence of feuds between families means that certain individuals must be kept separated while completing CSOs. As a result, the Probation Service must closely monitor which individuals are in attendance and ensure the personal safety of those at the site. While Bracken suggested that this may decrease the likelihood of Travellers receiving CSOs rather than custodial sentences, potentially disadvantaging Travellers during sentencing and increasing their numbers in prisons, this was not supported by more recent data. Notably, data provided by the Probation Service revealed that 51.2 per cent of Travellers engaged with the Service were on a CSO, compared to 38.7 per cent of White Irish.

Within the present interviews, differences in custodial and non-custodial sentencing was discussed, with one professional stakeholder stating that FNPs and minority ethnic prisoners 'are treated with such discrimination... with sentencing'.³⁶² One of the people with experience of the Probation Service interviewed for this project, for instance, relayed a comment made to him by a judge at sentencing, with words to the effect that his custodial sentence was meant as a message to 'your community'.³⁶³ In effect, membership of a minority ethnic group was seen both as a risk factor necessitating a custodial sentence, and as an opportunity to present a denunciatory message to others in this inherently risky³⁶⁴ group. Sentiments of 'anti-Traveller discrimination in court proceedings' have been explored in previous research.³⁶⁵ More broadly, reflecting our observations in the literature review, Shute, Hood and Seemungal, writing in 2005, found that in the context of racial bias, complaints raised concerned 'inequitable sentencing' that was viewed as 'more severe than would have been handed down to a similarly placed white defendant'.³⁶⁶ Similar experiences were highlighted by one professional stakeholder interviewee in the context of release from prison:

'Another issue that has come up is around early release or a temporary release and prison officer would tell me, for example, a prisoner has done everything right in prison. They've

met all the criteria, everything right for early release. But somehow they have to inform the Gardaí in the area that this person is being considered for release. And that's where it gets knocked on the head, because they're told [name] is a member of this family. No, he's not coming. He can't be allowed out. So it's not based on [name], it's based on [name's] family and possibly community.'³⁶⁷

Most of the interviewees for the present study – who had experience with probation supervision – were Travellers, and had generally positive comments to make with respect to their experience of probation supervision. One interviewee with experience of the Probation Service stated:

'I've had a few probation officers, and the last probation officer I had she was actually alright and I, it's worked out good you know. But I'm not sure that could have been maybe I was, I was ready to change and that you know. When I, when I met the last probation officer, I was in a good place and wanted to change my life. So, maybe I, I just, I co-operated with her more, because I had a few probation officers before her, and they were okay.'³⁶⁸

In previous research, it was reported that 'in showing that they respected people with experience of the Probation Service, and that they were experienced and knowledgeable, probation officers seemed to be displaying "expert qualities" which helped to convince people with experience of the Probation Service that they were being taken seriously, and that it was worth disclosing sensitive information to and listening to what their probation officers said'.³⁶⁹ An interviewee with experience of the Probation Service who was placed on supervision after release from prison explained that his experience was very positive:

'[T]he probation officer I got when I come out of jail, now, I have to say was very nice. She was very, very, very

362 Professional 2.

363 Person with experience of the Probation Service 6.

364 Gaynor Bramhall and Barbara Hudson 'Criminal justice and "risky" masculinities' (2006) in *Gendered Risks*, Kelly Hannah-Moffat, and Pat O'Malley (eds.), Taylor & Francis Group.

365 Joe Cottrell-Boyce, 'Working with Gypsy and Traveller offenders: A Case Study in Thames Valley' (2014) 61(4) *Probation Journal* 413-428.

366 Stephen Shute, Roger Hood and Florence Seemungal, *A Fair Hearing? Ethnic Minorities in the Criminal Courts* (Routledge 2005) 42.

367 Professional 9.

368 Person with experience of the Probation Service 6.

369 Sue Rex, 'Desistance from Offending: Experiences of Probation' (1999) 38(4) *The Howard Journal*, 366-383, 371.

*helpful, actually... Well, she helped me in every way she could, anything I needed. She made up CVs for me to help me get jobs... You know she helped me in every way she could, now I have to, I can't deny that about her. She's a very nice person.'*³⁷⁰

Another interviewee with experience of the Probation Service reported a bad probation experience which he attributed to discrimination against Travellers, but found that other probation officers had been very helpful:

*'[B]ut even in the past like I've had a bad probation officer, like, do you know what I mean and he looked [at] me different like do you know what I mean, because I was from the Travelling community, but I've had three other probation officers and they have – I've had a probation officer back when I was in the height of my addiction and in a very dark place and I was very down in myself, in life, and there's probation officers that helped me along, even with one of my kids... So, there is good probation officers out there...'*³⁷¹

One professional stakeholder interviewee with extensive experience working with Travellers and other minority ethnic offenders commented on the difficulty foreign nationals encounter on release. If the foreign national prisoner had a relatively short sentence, probation supervision and other supports after release may not be a part of the release plan:

'I mean, one of the big issues that we would deal with foreign nationals is that they will often especially smaller sentence prisoners in the foreign nationals who might be homeless like in the community and might not meet like habitual residency, so they can't access services, as in time for them to access hostel accommodation, and the homeless hostel accommodation or, you know, receive any kind of a welfare payment. So they commit kind of small crimes so that they can

*go to prison to get off the streets for a couple of weeks or a couple of months whatever.'*³⁷²

Although the context of probation as taking place in the community with far less interaction (possibly only once or twice a month, for an hour each time) than the constant surveillance of the prison is less restrictive, probation is not without its limitation on liberty and other 'pains of probation'.³⁷³ This highlights the importance of trust and building relationships between probation officers and people with experience of the Probation Service as necessary to assist in the movement away from crime, an issue supported by the academic literature.³⁷⁴ However, establishing trust in a context in which the person with experience of the Probation Service has been subject to discrimination, based simply on who they are, can be difficult. If their experiences with other parts of the criminal justice system have been negative – as for example with members of An Garda Síochána, prison officers, or the courts – then any representative of 'the system' such as a probation officer, would be treated with suspicion. This was expressed by one of the people with experience of the Probation Service:

*'When I [was] going to see the probation officer, I just thought like these are all part of the same system, the guards, the courts, the probation. They're all working together and then sometimes I think the probation officers were trying to catch me out. Do you know what I mean? – to give it to the guards. So, I didn't trust them. But if you can get, if you could get, a good relationship with them... when you realise that probation officer is help, is trying to help you, that's when you have a better attitude with her and that's – or him.'*³⁷⁵

370 Person with experience of the Probation Service 7.

371 Person with experience of the Probation Service 4.

372 Professional 2.

373 Ioan Durnescu, 'Pains of Probation: Effective Practice and Human Rights' (2011) 55(4) International Journal of Offender Therapy and Comparative Criminology 530-545.

374 Deirdre Healy, 'Advise, Assist and Befriend: Can Probation Supervision Support Desistance?' in Hazel Kemshall (ed), Crime and Social Policy (Wiley-Blackwell 2014); Ros Burnett and Fergus McNeill, 'The place of the officer-offender relationship in assisting offenders to desist from crime' (2005) 52(3) Probation Journal 221-242.

375 Person with experience of the Probation Service 6.

Comments such as these would not be exclusive to Travellers or any minority ethnic group,³⁷⁶ but the suspicions could be more pronounced and the relationship building all the more difficult to establish because of negative experiences during different stages of the criminal justice process. This was borne out by an interviewee with experience of the Probation Service who spoke of the lack of trust he had in his new probation officer due to bad experiences in other parts of the system, but also noted the establishment of a good relationship once he had met this officer:

*'So, one of the probation officers, I've dealt with like, you know what I mean, I could tell how much I didn't trust him over the phone or anything like that. It was very hard to trust him with things that happened to me before and that, you know, with the law and that, but then when I went in and I met this man in person and I was honest with him, he was honest back with me. He was actually a good man, like do you know what I mean.'*³⁷⁷

One professional stakeholder interviewee acknowledged the negative experiences that minority ethnic groups might have had before they get to the Probation Service and a reluctance to explicitly express such, which may have an impact on their relationship with Probation:

*'... we're a bit downstream. And sometimes I just wonder, well, what's happened before? And it's difficult to make a judgment sometimes. I mean, you do have questions, and you're wondering, but for all of that, I mean, you rarely, very rarely has anyone come in and said, due to this x, you know, due to my ethnicity, or for whatever reason, I've been discriminated against.'*³⁷⁸

This highlights the necessity for ongoing training of probation officers both to understand the nature of discrimination and exclusion that minority ethnic and foreign national people may have experienced, as well as understanding how to integrate such negative experiences into positive relationship building with minority people with experience of the Probation Service. In some instances, probation officers had prior experiences with Travellers, giving them a better understanding of the impact of discrimination and social exclusion.³⁷⁹ Three professional stakeholder interviewees emphasised the importance of staff training, both initial and ongoing, as it related to probation officers' understanding of racism and its impact on people with experience of the Probation Service:

*'That's a lack of understanding of the trauma that Travellers have experienced. The oppression and how that has, many Travellers have internalised that oppression. Lack of training around the issue [and] on anti-racism training and equality training... I suppose if you haven't had anti-racism training, and you haven't challenged your own biases and your own prejudices, they will manifest.'*³⁸⁰

According to a second professional stakeholder interviewee, training alone is insufficient but has to lead to stronger community connections with the minority populations being served:

*'They do, but I don't think, you know, it's there [Travellers being involved in presenting the training], but it's not enough. And it depends on what area you're working in. Because, you know, you can have significant, in some areas you can have significant representation in the Traveller community in terms of your client group... it's doing the community networking, I think that's the really important aspect... you can go to a training session for a half a day or whatever, but it's I think, it's that community networking in terms of our day to day work, which is much more relevant.'*³⁸¹

376 Deirdre Healy, *The Dynamics of Desistance: Charting pathways through change* (Routledge 2010) found similar sentiments expressed in her sample of Irish persons with experiences of the Probation Services.

377 Person with experience of the Probation Service 4.

378 Professional 12.

379 Denis Bracken, 'Interactions with the Traveller Community by Prison and Probation Staff' (2020) 17 *Irish Probation Journal* 238-252.

380 Professional 9.

381 Professional 12.

A third professional stakeholder interviewee mentioned the need for culturally sensitive training around the specific issue of addiction and substance abuse:

*'Yeah, but not maybe being trained effectively in supporting people from the Travelling community with addiction issues. Like it's a huge problem, because in the Travelling community is really, really, really looked down upon to use drugs. And it's very prevalent, which is unspoken about it, massive amount of shame. Massive. And I think really needs to be kind of catered for, in a way... So yeah, investing in a kind of more diverse addictions kind of support but for Travellers and yeah, kind of ethnic minorities that is culturally sensitive, but also that there is addiction counsellors or support in some kind of way for people who can't speak English.'*³⁸²

Such addiction issues have been previously reported by the Probation Service, which reported that only 11 per cent of people with experience of the Probation Service had no history of drug or alcohol misuse.³⁸³

Notably, the CoE issued Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff in October 2019.³⁸⁴ It outlines that training should include 'working effectively with different populations subject to supervision including women, juveniles, and foreign nationals'. Furthermore, it outlines that there should also be a specific focus on 'substance misuse'.³⁸⁵ Such training and cultural understanding is imperative in this context, particularly as many study participants expressed their personal

plans for after their release from prison, which mostly centred around the motivation to gain employment and to desist from crime. One prisoner interviewee stated *'I want to start work again'*.³⁸⁶ Another prisoner interviewee intended on returning to *'the same job, which one I did before'*.³⁸⁷ These objectives coincide with previous research that concludes that 'finding sustained employment is an important component of the transition from prison to the community for exiting prisoners'³⁸⁸ and that 'work provides meaning to individual lives and helps people to avoid becoming involved in offending behaviour again'.³⁸⁹ Another prisoner interviewee outlined their wish to attend higher education upon release.³⁹⁰ Some prisoner interviewees stressed that *'I'll never forget my time here, I don't want to come back here again'*,³⁹¹ while others focused on returning to their community and hoping to *'go back to normal life when I get out'*.³⁹² In this regard, a good, trusting relationship between the person with experience of the Probation Service and probation officer is vital.

It is clear from the interviewees that positive experiences with supervising probation officers generally outweighed negative ones. However, the experiences of these subjects as well as comments from the professional stakeholders interviewed raise important questions as to who among minority ethnic groups are actually placed on probation, or given community service, as alternatives to prison. The CoE Rules on Community Sanctions and Measures³⁹³ promote the idea of using community sanctions as an effective measure 'without resorting to deprivation of liberty' and the imposition of such sanctions should be in a non-discriminatory fashion. The experiences of those interviewed suggest that this may not have always been followed, although several of those interviewed had been given a CSO at some point by the courts.

³⁸² Professional 2.

³⁸³ Irish Probation Service, Drug and Alcohol Misuse Among Adult Offenders on Probation Supervision in Ireland: Findings from the Drugs and Alcohol Survey 2011 (Irish Probation Service 2012) 10.

³⁸⁴ Council of Europe, Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff (adopted 25 April 2019) CM(2019)111.

³⁸⁵ *ibid* 7.3(b).

³⁸⁶ Participant 12.

³⁸⁷ Participant 3.

³⁸⁸ Christy A. Visher, Sara A. Debus-Sherrill and Jennifer Yahner, 'Employment After Prison: A Longitudinal Study of Former Prisoners' (2011) 28(5) Justice Quarterly 698-718.

³⁸⁹ Irish Penal Reform Trust, Discussion Paper: Community Service in Ireland (IPRT 2017) 13.

³⁹⁰ Participant 11.

³⁹¹ Participant 13 and 10.

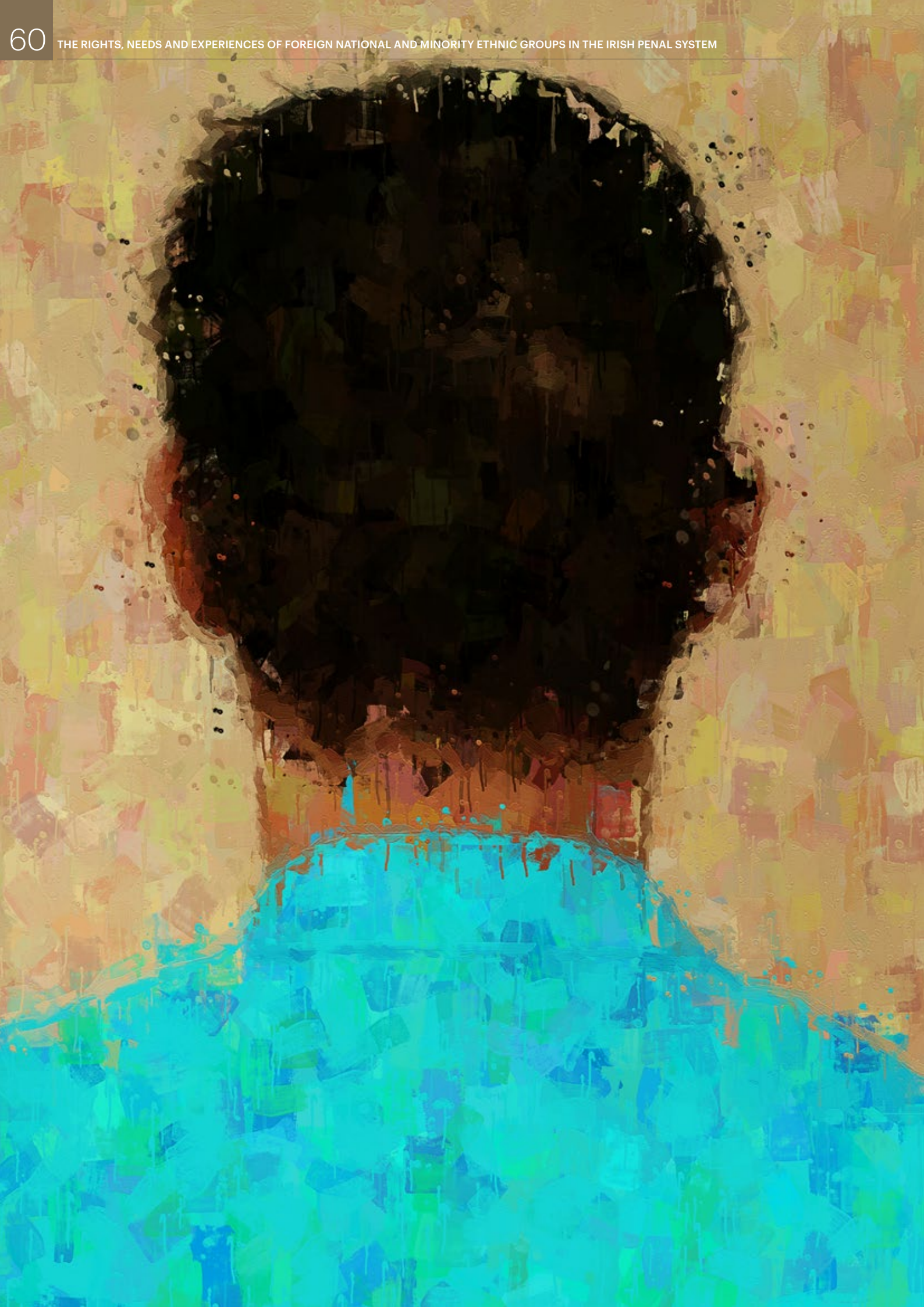
³⁹² Participant 12.

³⁹³ Committee of Ministers Recommendation CM/Rec(2017)3 of 22 March 2017 to member states on the European Rules on community sanctions and measures.

It must also be noted that all interviewees with experience of the Probation Service were male. As such, we cannot determine whether the experience is as positive for females from minority ethnic communities. Based on the data provided by the Probation Service and previous literature, we can see that Traveller women are significantly over-represented among those on probation. Further, the Travellers in Prison Initiative (TPI)³⁹⁴ note that Traveller women and women from minority ethnic groups experience racism, discrimination and oppression which are compounded by sexism, sexual stereotypes and gender-based discrimination. TPI also note the unique experience that women from minority ethnic groups have within the penal system, for example, acute stigmatisation of criminality and the impact of parental roles.

Having outlined the qualitative findings of the study, the final section of the report will make a number of recommendations that should be seen as a starting point in addressing the needs of minority ethnic groups and FNPs in the Irish penal system.

³⁹⁴ Travellers in Prison Initiative, 'Hearing their Voices' Traveller Women in Prison (2017) 16.



5. Conclusion

Minority ethnic and foreign national communities are a significant but often overlooked population in the Irish penal system. This research has found that minority ethnic prisoners and FNPs experience significant challenges across the penal system, including isolation, experiences of ethnic prejudice and discrimination, and language and cultural barriers. The participant sample was drawn from a range of minority ethnic and national groups; however, their responses were largely unanimous. Furthermore, these findings were supported by previous research, which has noted the acute difficulties faced by minority ethnic and foreign national groups engaged in prison and probation systems internationally.

The Irish Prison Rules are the focal point in the everyday practicalities of the functioning of the prison estate, outlining the rights of prisoners within the Irish system. The current Irish Prison Rules 2007 contain a minimum of provisions that speak to the specific needs of minority ethnic prisoners and FNPs. Recently, the IPS announced that the Irish Prison Rules will soon be updated to bring them in line with the Revised European Prison Rules 2020.³⁹⁵ It is integral that the full range of protections available to minority ethnic prisoners and FNPs that exists under international, European and national law (e.g. protections that stem from the European Prison Rules and the Committee of Ministers' Recommendation CM/Rec(2012)12 concerning foreign prisoners) be recognised in the updated Irish Prison Rules. Moreover, all prisoners must have access to these Rules in a language that they can understand.

This report concludes with 18 recommendations for reform. This is not an exhaustive list, but rather represents a starting point from which these proposals for reform can be expanded. Notably, these recommendations should be developed further with the direct involvement of relevant organisations, as well as prisoners and former prisoners from minority ethnic and foreign national communities, who are often best placed to determine what changes are required to address particular shortcomings within the Irish penal system.

³⁹⁵ Irish Prison Service, 'Public Consultation on the Review of Prison Rules' (Department of Justice, Summer 2021) www.justice.ie/en/JELR/Pages/Review_of_Prison_Rules accessed 14 October 2021.

6. Recommendations

1. Integrate the principle of imprisonment as a sanction of last resort in legislation

Parsimony in the use of imprisonment as punishment should be the approach for all of the community. The Penal Policy Review Group (PPRG) recommendation to enshrine the principle of imprisonment as a sanction of last resort in law should be actioned by the Department of Justice.

2. Incorporation of UN CERD into domestic law

Ireland should incorporate the UN Convention on the Elimination of All Forms of Racial Discrimination (UN CERD) into domestic law as soon as possible. This move will enshrine the position of UN CERD within the Public Sector Equality and Human Rights Duty. Failing to incorporate UN CERD poses a significant barrier to the integration of UN CERD into the Public Sector Equality and Human Rights Duty.

3. Data recording and ethnic equality monitoring

The collection and use of data must be improved to ensure that a complete dataset is publicly available for analysis to respond effectively to the ethnic, cultural and religious needs across the Irish penal system. To that end, ethnic equality monitoring must be rolled out across penal data collection systems (e.g. IPS/PIMS, Probation, etc.), inclusive of a standardised ethnic identifier, and ethnicity should be recorded for all committals, based on human rights principles. This will require appropriate training and oversight for prison staff and awareness-raising amongst the prison population. Prison staff and prisoners should also be made aware of the purpose of data collection.

It is recommended that the Irish Prison Service (IPS) consult with the Irish Human Rights and Equality Commission (IHREC) to improve its methods of collecting data on the ethnicity of the Irish prison population. The IPS should incorporate a wider range of ethnicity categories such as those employed by the Central Statistics Office in the Census. It is welcome that the IPS is working with organisations such as Pavee Point in rolling out an ethnic identifier in its internal systems (PIMS) and the associated training. It is appreciated that broadening these categories takes time and requires careful consideration to be rigorous

and feasible while respecting data protection concerns but this must be developed to its fullest extent across all identifiers. The IPS should also gather data on the spoken languages to gain an understanding of the cultural landscape in Irish prisons. Moreover, this will identify the translation/interpretation needs of foreign national prisoners.

This information will shed light on whether minority ethnic, foreign national or migrant prisoners are disproportionately represented in certain prisoner behaviour (for example, the statistics on assault or self-harm) or in accessing prison services (i.e. psychological support). Similarly, the Irish Probation Service should collect complete data regarding ethnicity in such a way as to transparently monitor the breakdown of engagement and ethnicity. While some data may be redacted to protect individual identities, gaps in the data collected make it difficult to fully identify differences between ethnic groups. Finally, the cooperation between the IPS and the Probation Service should be further developed to facilitate the integration of their datasets.

4. Public Sector Equality and Human Rights Duty

The IPS consistently demonstrates its commitment to the Equality and Human Rights Duty. This commitment is directed from senior management and is manifested primarily through staff training and penal policy. However, it is questionable whether this training and policy are impacting prison cultures and attitudes towards race and ethnicity. Public disclosures regarding social media activity, in which racist and anti-Traveller sentiment and views were expressed, shed light on the attitudes of some IPS staff to diversity and inclusion.³⁹⁶ Moreover, such evidence of express racist views puts minority ethnic groups and foreign national prisoners at risk of being subject to explicit and implicit racial discrimination.

It is impossible to address racism in prisons if the problem is not recognised as existing and further steps must be taken for the IPS to meet its obligation to eliminate discrimination under section 42 of the Irish Human Rights and Equality Commission Act 2014.

396 Gallagher, C., 'Prison Service attempts to get staff Facebook group removed over racist posts' The Irish Times (Dublin, 24 February 2021) <https://www.irishtimes.com/news/crime-and-law/prison-service-attempts-to-get-staff-facebook-group-removed-over-racist-posts-1.4493095> accessed 28 March 2022. See Irish Penal Reform Trust response to the coverage: Irish Penal Reform Trust, Statement on Irish Times report: 'Prison Service tries to stop racist staff posts' (IPRT, 24 February 2021) <https://www.iprt.ie/latest-news/statement-on-irish-times-report-prison-service-tries-to-stop-racist-staff-posts/> accessed 28 March 2022.

5. Staff training

As stated in Recommendation 4, staff training is an integral element of supporting the rights and needs of minority ethnic, foreign national and migrant prisoners. Mandatory anti-racism training and data collection, monitoring and use are ways that racism in the organisation can be addressed. While the IPS has progressed its recruit and existing staff training in recent years, the IPS Training College should approach training on anti-racism and discrimination as an ongoing project with regular reviews, updates and retraining. The IPS also needs to take positive action to ensure that its training on human rights and equality issues is implemented in the prison estate on a practical day-to-day basis. Such training will not be effective if it is not integrated into prison cultures including the Performance Management and Development System (PMDS), promotion and overall performance appraisal.

Furthermore, training should include concepts such as structural racism and must be supported in working practices while being followed with opportunities to relate what has been learned to real-world situations regularly. Within the Probation Service, attention should be given to risk assessment and the variability that may occur in individual approaches to override non-inclusive measures.

6. Recruitment of Irish Prison Service staff

The IPS should put its commitment to diversifying its workforce into practice and recruit more staff from the same ethnic, cultural, religious and linguistic backgrounds as the prisoner population. Despite increases in recent years, the overall lack of diversity among prison staff was highlighted in most of the professional stakeholder and prisoner interviews. Here, the IPS, and the public sector more broadly, should consider initiatives and targeted recruitment campaigns – such as access programmes – aimed at attracting recruits from minority ethnic communities in Ireland. In this regard, the IPS should consider looking to the suggestions on how to diversify the workforce listed in the Commission on the Future of Policing in Ireland in its report on ‘The Future of Policing in Ireland’, and adapt this guidance to align with the recruitment of prison officers. To meet its commitment to increase the diversity of its workforce, the IPS must take steps to improve equality in the working environment for staff including the ‘Dignity at Work Charter’. As stated in Recommendation 5, evidence of anti-racist practice should be included as a criterion for promotion within the organisation.

7. Update and disseminate the Irish Prison Rules to include the human rights protections that are specific to foreign national, migrant and minority ethnic prisoners

The current Irish Prison Rules 2007 contain few provisions that speak to the specific needs of foreign national and minority ethnic prisoners. The ongoing review of the Prison Rules and the announcement by the Irish Prison Service that the Irish Prison Rules will soon be updated to bring them in line with the Revised European Rules 2020 is welcome. The updated Irish Prison Rules must recognise and integrate the comprehensive protections available to foreign national and minority ethnic prisoners that exist under international, European and national law.

Many prisoner interviewees received a copy of the Prison Rules and regulations on admission, but non-English speakers did not receive the rules and regulations in a language that they understand. It is recommended, echoing the Office of the Inspector of Prisons (OIP), that the IPS expand their provisions and in so doing adhere to the section 42 Public Sector Duty and conform to domestic and international human rights law. Where literacy levels are low and/or resources or availability of translators are minimal (see Recommendation 8), the Prison Rules should be translated into audio or video including on the in-cell television system. This approach would be effective for a range of essential materials and information for non-English speaking prisoners.

8. Availability of interpretation services and English as a second language

The Department of Justice and the IPS should map out the need for interpretation services across the prison estate with a view to addressing gaps in the interpretation needs identified in this report. Though multiple hardships intersect, language barriers and the limits they place on self-expression and determination are central to the experiences and access to rights of many participants. English as a second language education should be fully resourced and provided consistently to all prisoners who request it.

9. Improving the relationships between the Irish Prison Service and minority community groups

Community groups who work with migrants, minority ethnic and/or foreign national prisoners are vital links to the outside world. The European Prison Rules and the Committee of Ministers' Recommendation CM/Rec(2012)12 concerning foreign prisoners set out the maintenance and development of relationships between FNPs and the outside world. The relationships between civil society groups that work with prisoners must be improved and their facilitation formalised. The strained relationships between community groups and prison staff/IPS – as reported by professional stakeholder interviewees – undermines prisoners' opportunities for contact with their community. Accordingly, clear and positive channels of communication between minority ethnic community groups and the IPS are essential.

10. Set up a standing consultative forum with civil society NGOs

The IPS should set up a standing consultative forum with civil society NGOs working with Black and Minority Ethnic (BME) groups, which should address the specific form of racism experienced by the Traveller and Roma communities. As discussed above the relationships with, and insights available from, civil society community groups and NGOs are imperative in addressing the experiences of migrants, minority ethnic and foreign national prisoners. The need for constructive and consistent consultation is particularly brought into sharp relief by the fact that no civil society group that works specifically with minority ethnic prisoners was consulted as part of the IPS Strategic Plan 2019–2022. A standing consultative forum with such groups would provide opportunities to introduce progressive policies and programmes for this cohort including integration into the Public Sector Duty Action.

11. Formalise facilitation of the right to religious expression and practice

The report features many proactive and positive strategies and informal practices in prisons and among prison staff. Furthermore, the right to practice religion and the freedom of expression are formalised in law and the Irish Prison Rules 2007. However, the facilities for practising diverse religions should be formalised so as not to rely on the goodwill, discretion and/or ad hoc actions of local management or staff. Diverse faith-based interventions should also be incorporated into prison regimes. This ought to be developed alongside the provision of religious education in prison that encourages open dialogue. This

would, in turn, develop relationships with external organisations and community groups while ameliorating some of the deprivations experienced by religious people in prison.

12. Accessibility of the justice agency websites

The websites of the Irish Prison Service and the Probation Service provide a wide range of important information. In order to ensure that this information is accessible to non-English speakers, it should be made available in a wider range of languages and mediums (translated audio or video) that reflect the diversity of the populations they work with.

13. Know Your Rights booklet availability in multiple languages

The provision of prison information and resources translated into languages that reflect the diversity of the prison community is imperative. The *Know Your Rights* booklet produced by IPRT provides essential information in an accessible format for people in prison. IPRT should seek funding to extend its provision to a range of foreign languages in frequent use in Ireland.

14. Monitoring and addressing any racism experienced by prisoners in Ireland

Any racism experienced by prisoners in Ireland affects their mental health. Racism may be inflicted by fellow prisoners and by a minority of staff. It is imperative that the IPS develops effective ways to address any racism experienced in prison. In particular, it should develop and implement effective procedures to respond to any racism carried out by staff, given its obligation to protect the human rights of people in prison, under section 42(1)(c) of the Irish Human Rights and Equality Commission Act 2014. Here, the IPS should consider issuing circulars that prohibit prison officers from expressing verbal and physical racist sentiment towards prisoners, as is the case in the UK. It is clear that the current complaints system is ineffective in addressing complaints concerning racism and there should be a focus on the already commenced review process (see Recommendation 15).

Given the increasing diversity of the Irish prison population, the prison monitoring bodies, such as the OIP and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), should gather and publish information on minority ethnic and migrant prisoners in relation to their inspections. In addition, the OIP should consider completing a thematic report on the experiences of foreign national and minority ethnic prisoners in Irish prisons.

15. Complaints system

All people interviewed spoke negatively of the current complaints system. The current complaints system is under review by the IPS, which is to be welcomed. In reviewing the complaints system, the IPS should consider how best the complaints system can address and investigate allegations of racism in an effective manner. Most of the FNPs interviewed for this project, whose first language was not English, spoke of the difficulty in writing complaints in English. Here, it is recommended that the reformed complaints system include a facility for complaints from prisoners to be made in a range of languages and mediums that reflect the linguistic diversity and literacy levels of the prison population.

16. Access to single cells

In recognition of the compounding hardships experienced by minority ethnic, migrant and foreign national prisoners in the Irish penal system, and the well-established benefits of access to single-cell accommodation (including reducing levels of racist violence), the need for access to single-cell accommodation is further emphasised. While it is welcomed that, if sharing a cell, this cohort is often presented with ad hoc opportunities to share a cell with a person of shared religious, cultural, nationality and/or ethnicity, this should be a choice rather than prescribed based on assumptions of profile.

17. Introduce targeted supports for families travelling from abroad

The experience of being imprisoned in a separate jurisdiction than one's family presents specific deprivations. For instance, the financial burdens of visiting a family member imprisoned abroad are insurmountable for many families. The introduction of targeted supports for foreign national prisoners and families travelling from abroad – both in terms of facilitating visits and providing information on regulations and requirements – is vital. Further research is urgently needed to identify whether supports and services, such as those provided to Irish prisoners abroad by the Irish Council for Prisoners Overseas (ICPO), could potentially be offered to foreign national prisoners in Ireland and their families. In the immediate term, links should be established with national and/or community services such as the Saint Vincent De Paul to support the provision of free short-term accommodation for families of FNPs visiting Ireland.

18. Conduct further research

This research features similarities in the experiences of minority ethnic, foreign national and migrant prisoners in Ireland and such groups

in the prison populations of other countries. International literature presents the increased likelihood of discrimination suffered by FNPs in the criminal justice system. For instance, FNPs are less likely to receive non-custodial sentences or bail. In the Irish context, more research is required concerning these and other issues, including experiences of probation and other community sanctions. Further research will illuminate the experiences of these groups in the wider criminal justice system. In particular, the negative experiences of minority ethnic groups with members of An Garda Síochána were highlighted in this work. Given that contact with the police is often the first point of contact between an individual and the criminal justice system, this area requires further research. The recent announcement of the Policing Authority to invite research on 'The experience of policing in Ireland by diverse and minority ethnic communities' is welcome.

As Ireland's national human rights institution, IHREC should continue the trajectory of this research and research the experiences of migrants and minority ethnic groups in the Irish criminal justice system, particularly concerning the increasing diversity of the Irish population and the over-representation of these groups in prison.

The small number of interviews with people of colour illustrates the necessity of further research, while the evidence of intersectional discrimination apparent in this report should be included in such analyses.



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SOME 'MISSED' THE WORDS' THEIR RIGHTS, NEEDS AND EXPERIENCES OF FOREIGN NATIONAL AND MINORITY GROUPS IN THE IRISH PERNAL SYSTEM

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