

**Responding to Racist Incidents  
And  
Racist Crimes in Ireland**

**An Issues Paper for the Equality Authority**

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## **1. Purpose of the Paper**

**1.1** The purpose of this paper to the Equality Authority senior management and Board is to:

- provide a review of the policy, provisions and practices in relation to dealing with racist crimes and racist incidents in Ireland,
- specifically focus on police responses to the issue of racist incidents and racist crime in Ireland,
- consider issues of minority ethnic communities confidence in the police handling of racist incidents and racist crime, and
- identify issues for the future in supporting an appropriate criminal justice system response to racist crime in Ireland.

## **2. Methodology**

**2.1** The following research methods underpin the evidence and consideration of issues raised in the paper;

(1) desk research – including secondary appraisal of official reports and data, independent research reports and NGO reports and comparative analysis of research in other jurisdictions on issues of racist crimes and hate crimes more widely, EU level reports (e.g. Fundamental Rights Agency, FRA reports), UN reports, Organization for Security and Co-operation in Europe (OSCE) reports and International Association of Prosecutors (IAP) reports.

(2) Interviews with a range of key stakeholders including Garda representatives, Civil Servants, researchers, NGOs and legal practitioners. (A list of stakeholder organisations interviewed is outlined in Appendix 1).

**2.2** The desk research took place in July 2010, and the interviews with stakeholders took place in July and August 2010.

### **3. Crimes of Hostility and Hate in Context**

- 3.1** A concern with racist crime and with what are often termed hate crimes more widely is a particularly modern policy and legislative concern in western societies. That said, the offending behaviour which racist crime provisions seek to address is age old in its occurrence and in its multiple manifestations. Targeted violence against minority groups has been part of the experience of groups and individuals throughout history – this is clear from histories of minority ethnic and faith communities in the US, continental Europe, Britain and indeed from what is known of the minority ethnic communities experience in Ireland. This is also clear from the accounts of LGB communities and people with disabilities in Western societies (Chakraborti and Garland (2009), and Iganski (2008) and Evans (2004)). Depending on where one sets the parameters around groups affected by hate crimes/targeted violence there is also ample evidence of hostility based violence towards older people and women. There is a case to be made for many of the protected grounds identified under equality civil legislation to also be those grounds on which criminal law provisions seek to address hate crimes.
- 3.2** There is a continuum of connection between discrimination in employment and goods and services which are addressed through our civil law provisions and crimes of hate, hostility or bias such as racist crime. This is to be expected. All share a common basis in historical sets of ideas and stereotyping of groups and the enduring impact of such ideas and stereotyping on communities and individuals lived experiences. The enduring stereotyping of minority groups provides the justification for day to day discrimination in employment and services. At the same time, these same enduring ideas and stereotyping facilitate the targeting of groups and individuals via hate crime – the stereotypes help dehumanise groups and thereby provide some form of perverse rationale for such activities as denying someone a job, failing to provide an appropriate service through to such potentially criminal acts as racial attacks, ‘queer bashing’ etc. Hate crimes are at base motivated by bias and discriminatory targeting. They are often simply the criminal or violent expression of the bias and discrimination, the

addressing of which underpins much of the work of the Equality Authority. Available evidence indicates that for groups experiencing discrimination whilst low level day to day ridicule and demeaning behaviour is common the ultimate threat for all groups is serious physical violence linked to their group identity. This clearly can range from minor assault to murder and can include racist crime, religious crimes, homophobic crime, crimes against people with disabilities, elder abuse and violence against women. This raises particular issues of safety and fear of victimisation both for individuals and wider communities. (Chakraborti and Garland 2009; Iganski 2008).

- 3.3 It is possible to identify phases and trends in Western state responses to issues of minority group discrimination and protection. Initial responses tend to be in the area of civil law provisions outlawing discrimination in employment and in the provision of goods and services. It tends to be a little later that societies have begun to address such issues as hate crime. Western societies appear to follow an initial settlement phase and anti-discrimination phase and then integration or in some instances an assimilation phase. It is often in the integration phase that the issues of hate crimes arise. The existence of hate crimes are a significant barrier to delivering an integration programme and are a real threat to building a cohesive society based on mutual respect and equal opportunities. Ireland is now in an integration phase, particularly in relation to issues of ethnic diversity. Ireland has a Government-led integration strategy in place 'Migration Nation' and a series of implementation steps are underway. This is overseen with a lead Minister for Equality, Integration and Human Rights and a lead Government Department. It is timely that issues of hate crime are appropriately considered and provided for in the context of this wider focus on integration.
- 3.4 There are a number of other key issues that arise when considering hate crimes in their wider context. One relates to the issue of language and terminology, another relates to where one places the parameters and how one defines what constitutes hate crime for policy purposes; a further issue relates to the distinct qualitative

nature of hate crimes and what that means in terms of victim and community impact. These are live issues which are the subject of ongoing discussion and debate in academia and policy and practice settings. They are important to note in this review.

### **Hate Crime language and terminology**

3.5 With regard to the issue of language and terminology the terms that have become increasingly widespread in use are hate crime; racist crimes and homophobic crime. The term 'hate crime' is the term that has become widely used both in academia and in wider discussion. Hate crime is however not without problems as a term. It has the benefit of simplicity and a certain populist resonance and clarity. However the concept of 'hate' is not unproblematic both legally and from a policy perspective. Hate is a strong emotion and legally it understandably has a high threshold. Very often when people are talking about hate crimes they are in reality more concerned with hostility and bias than hate. Hostility has a different and lower legal threshold. However the conflation of hate and hostility can I would argue often lead to significant misunderstandings between academics, legislators, Civil Servants, NGO's and others working in this area. It is interesting that a number of terms have more recently emerged in the OSCE, the US and Canada to describe these range of crimes – the terms now used include bias crimes, crimes of discrimination, targeted crimes, hostility based crimes and of course hate crime.

3.6 The Organization for Security and Co-operation in Europe (OSCE) has a very well established human dimension to its wider work on security co-operation. The human dimension includes the protection of human rights and fundamental freedoms and the protection of tolerance and non-discrimination. The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) based in Warsaw focuses on matters falling within the human dimension. This includes a substantial programme of work across its 57 member states on hate crime. The

OSCE provides the following definition: “Hate crimes are criminal acts with a bias motive”. They go on to state that hate crimes comprise two key elements (1) a criminal offence committed with (2) a bias motive. The first element of hate crime is that an act is committed which constitutes an offence under ordinary criminal law. This is referred to by the OSCE as the “base offence”. The second element of a hate crime is that the criminal act is committed with a particular motive, referred to by the OSCE as “bias”. It is the element of bias motive which the OSCE indicates differentiates hate crimes from ordinary crimes. The perpetrator selects the target of the crime because of some group or particular characteristic such as race, religion, etc.

3.7 Notwithstanding the more rounded definitions such as that of the OSCE, for now however hate crime in the more populist sense continues to be most widely used. Nonetheless I would caution that in terms of law, policy and practice very often what we are concerned with is hostility and bias rather than hate, and very often what is required as evidence in more ‘routine’ crimes is evidence of hostility, not evidence of hate. It may be worth seeking to discuss these issues in future as hostility and hate crimes rather than simply as hate crimes.

### **Defining Hate Crime**

3.8.1 With regard to the issue of where one places the parameters and how one defines hate crime, this again is an ongoing issue of debate in academic, policy and practice settings. A seminal moment in the definition of hate crime was the recommendations of the Stephen Lawrence Inquiry in Britain in 1999 which recommended moving towards a victim-centred definition of hate crime. This victim centred definition was adopted by the police in Britain and by the British Government more widely. It has subsequently been adopted by An Garda Síochána. Under this definition a hate crime is defined as ‘any incident which is perceived to be racist by the victim or by any other person’. Clearly this is a very broad definition, and purposely so. It covers both incidents and crimes which will



be a subset of all incidents. It is deliberately broad in order to encourage reporting of an underreported area of crime and to help identify experiences that may be missed by relying solely on official categorisation.

- 3.9 Evaluations of the application of the victim centred definition in England and Wales identified a number of positive benefits including increased awareness, increased reporting, increased prosecutions. It also highlighted the need to supplement this victim-centred definition with an operational definition within criminal justice agencies which distinguishes between hate incidents and hate crimes. The Association of Chief Police Officers (ACPO) in England and Wales has more recently (2005) offered the following definitions of hate incident and of a hate crime:

*‘A Hate Incident is defined as any incident which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate’.*

*‘A Hate Crime is defined as any hate incident which constitutes a criminal offence, perceived by the victim or any other, person, as being motivated by prejudice or hate’.* (References: ACPO 2005; Chakraborti and Garland 2009).

- 3.10 Whilst the Gardaí as part of this review indicated satisfaction with the victim centred definition drawn from the Stephen Lawrence Inquiry, it is worth noting the operational refinement of the definition by criminal justice agencies more recently in Britain to distinguish in practical terms between incidents and crimes.

### **Which group characteristics should be covered by Hate Crime?**

- 3.11 With regard to where one places the parameters and how one defines what constitutes hate crime for policy purposes the literature indicates that is also an issue of ongoing consideration in a number of Western societies. This issue has also been addressed by the OSCE, in their report “Hate Crime Laws: A Practical Guide” (OSCE

2009). They found that in OSCE countries, of the 37 countries with hate crime legal provisions, almost all cover race and religion; significant number cover sexuality and some cover disability, and fewer cover age and gender. Whilst all hate crime laws define protected characteristics, different jurisdictions include and protect different characteristics.

3.11 In the US, Canada and Britain the grounds that now tend to be covered by criminal justice provisions to address hate crime are race; religion; disability; sexuality; gender identity and age. It is worth noting that there is a significant overlap here with the protected grounds under the Irish equality legislation.

3.12 The issue of violence against women raises specific issues for consideration in the debate about defining hate crime. Clearly violence against women in terms of domestic violence and sexual assault including rape are very serious forms of targeted violence. They have a basis in unequal power relationships and a direct relationship to pervasive sexism. In this respect they share many similarities to racial violence and other form of hate related violence. However violence against women is not violence targeted against a minority group – rather it is violence targeted against a majority group. Furthermore the dynamics of hostility and hate have been identified as different in violence against women. Whilst in some jurisdictions, violence against women is included in policy terms with the hate crimes identified earlier there are in fact relatively few jurisdictions which do include violence against women crimes within hate crimes. That said a number of clear similarities exist and a number of the responses required from the criminal justice system are the same. What seem most appropriate in terms of responses are distinct strategies to address both hate crimes and violence against women which share a parity of priority.

**Hate Crimes have a different and significant impact – both personal and community impacts.**

3.13 Finally with regard to the distinct qualitative nature of hate crimes this is a very significant issue. It is central to recognising what hate crime means, for both victim and wider community impact. There is significant evidence which indicates that hate crimes have a particular impact on victims linked to the nature of these crimes as an attack on a personal attribute or group identity such as one's ethnicity, disability, age or sexuality. They can have a particular and significant impact on self esteem and personal confidence. Alongside this hate crimes are also 'message crimes' more widely – they seek to send a message to a community of identity about who belongs, who is an insider and who is an outsider. In doing so they can undermine community cohesion and solidarity. Iganski has undertaken important research in Britain which compares and contrasts the impact of offences on victims which are racially aggravated with the same offences which are not racially aggravated. This research includes comparing a range of offences including public order offences, criminal damage and assault. This research was based on the Home Office's British Crime Survey, and it found a different and more significant impact on victims when offences were racially aggravated (Iganski 2008). See Section 5.2.2 for a fuller consideration of the issues raised, and their implications.

3.14 Hate crimes can aim to foment negative community relations between peoples of diverse identities. They can undermine both individual and community safety. They can threaten community trust and confidence in public services if they are tolerated and not responded to rigorously and robustly. The response to hate crimes can be taken as a litmus test of society's commitment to building unity through diversity. It is important to bear in mind these particular features of hate crimes, their victim and community impacts as we consider the provisions and proposed provisions in Ireland.

## **4. The Developing Policy and Legislative Context**

**4.1** There are a range of international, European and national instruments and policy statements which relate to issues of racist crimes. These include:

- The UN Declaration on Human Rights.
- The European Convention on Human Rights.
- The UN Convention on the Elimination of all forms of Racial Discrimination.
- The EC Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- The current EU Framework Decision on Combating Racism and Xenophobia.

**4.2** This is not an exhaustive list. These instruments, Directives and Decisions help provide a useful benchmark of minimum standards for Ireland's criminal law provisions in relation to racist crimes.

**4.3** Ireland also has a number of European level and wider international reporting requirements and arrangements on aspects of racist incidents and racial discrimination. These international reporting arrangements are to the EU Fundamental Rights Agency (FRA) via what is termed the National Focal Point and to the UN Committee on the Elimination of Racial Discrimination (CERD). The current National Focal Point for Ireland is a consortium comprising the Irish Council for Civil Liberties, the School for Social Justice, UCD and the Immigrant Council of Ireland. Under the terms of the FRA contract, the RAXEN National Focal Point submits annual data on experiences of racism, xenophobia and discrimination to the FRA annually. This year's report is currently under production. The data upon which the report is based is drawn from available data sources in the country in the year under report. Until recently the reports on Ireland have been greatly assisted by the data collected under the previous National Consultative Committee on Racism and Interculturalism (NCCRI) racist incidents reporting and data collection system. However with the demise of the NCCRI this data system no longer exists and notwithstanding the thoroughness of the current work the RAXEN National Focal Point consortium will face an

additional challenge in delivering this year's report. Additionally, this year, the Irish National Focal Point is commissioned to produce a thematic study on racist and related hate crimes. It will feed into a European Union wide FRA thematic report on racist and related hate crime in the EU. These challenges will be even further heightened in delivering this report to the FRA.

- 4.4 The other key international reporting mechanism is the requirement for periodic country reports to the UN Committee on the Elimination of Racial Discrimination (CERD). Ireland last reported in 2004 - 05 and is due to have its next report considered in early 2011. Following consideration of the country report the CERD Committee tend to note any positive aspects of the country's position and they also make a series of observations and outline a set of recommendations. At the time of the last country report by Ireland in March 2005 the CERD noted the position with regard to ongoing racist and xenophobic attitudes and incidents and made a recommendation that Ireland make a specific criminal law provision to provide for racially aggravated offences and to provide for racist motivation to be taken into consideration in the penalties handed down.
- 4.5 In June 2006 Ireland underwent a follow up process in relation to action taken on the recommendations from the earlier CERD observations. To facilitate this Ireland prepared an update report for a follow up evaluation in 2006. In the follow up report Ireland maintained its earlier position in relation to racially aggravated offences and sentencing uplift provisions and in doing so referred to research from the University of Limerick undertaken for the National Action Plan Against Racism. This current Issues Paper has available more recent evidence on the impact of aggravated offences and success in prosecuting such offences. See in later Section 5.2.11
- 4.6 The most recent and current European level initiative is the EU Framework Decision on Combating Racism and Xenophobia. It has to be transposed into Member States domestic provisions by November 28<sup>th</sup> 2010. It imposes a number

of legally binding obligations on member states. It however leaves it to member states to decide how best to implement the obligations within their own domestic system. The current Framework Decision outlines a number of offences concerning racism and xenophobia. These include:

- (1) Incitement to hatred offences and
- (2) Offences where racist or xenophobic motivation is an aggravating circumstance.

Member states are expected to have in place responses to both sets of offences by Nov 28<sup>th</sup> 2010. These responses are expected to provide ‘effective, proportionate and dissuasive penalties’ for those guilty of such offences.

4.7 This is possibly the most significant development impacting on the criminal justice system response to issues of racist crime in Ireland to date.

4.8 These categories of offences in relation to racism and xenophobia which member states are required to address are basically based in 2 categories of:

- (1) Expression offences, and
- (2) Racially motivated offences or racially aggravated offences.

4.9 The Department of Justice and Law Reform considers that Ireland is compliant with the provisions of the Framework Decision on Combating Racism and Xenophobia through existing legislation. The legislative provisions which the Department of Justice and Law Reform view as meeting the Framework Decision are;

- (1) The Prohibition of Incitement to Hatred Act 1989, and
- (2) Ireland’s constitutional and legal framework which provides for judicial discretion in sentencing, which is perceived as enabling racial motivation to be taken into consideration by the court in the determination of penalties.

There are provisions of other Acts such as The Criminal Justice (Public Order) Act 1994, The Non-Fatal Offences against the Person Act 1997, and the Criminal

Damage Act 1991 which may be able to be used to protect persons and their property against attack including racist attack or threatening behaviour.

- 4.10** At this stage it is worth noting that Ireland has specific incitement to hatred provisions, whilst it does not have any specific provisions in relation to racially motivated or aggravated offences.

## **5. Key Issues for Consideration**

A number of key issues for consideration have emerged in researching this paper and these are:

1. The issue of the nature, reporting and recording of racist crimes in Ireland
2. The issue of racially aggravated/motivated offences and the linked issue of sentencing uplift provisions
3. Incitement to hatred provisions and understanding
4. Community confidence in the police and beyond.

A number of these issues were considered in a substantial detailed report entitled 'Combating Racism and Xenophobia through the Criminal Law' written by Jennifer Schweppe and Dermot Walsh from the University of Limerick and published under the auspices of the National Action Plan Against Racism in 2008. This paper is informed by this earlier work. It is also informed by more recent evidence on victim and community impact of Hate Crimes (Iganski 2009) and more recent data on outcomes and success in prosecuting Hate Crimes (CPS 2007, 2008, 2009). The more recent evidence informs the different conclusions reached in relation to the specific issues of aggravated offences and sentencing uplift provisions in this paper.

This paper now addresses each of these issues in turn under the following structure: an overview of the current position, the issues raised, looking to the future.

### **5.1 The nature, reporting and recording of racist crimes in Ireland.**

An Overview of the Current Position

- 5.1.1** The Central Statistics Office (CSO) publishes annual data on nationally reported racially motivated incidents. The data are publicly available on the CSO website. The data is presented in terms of an overall annual total and year to date total for the current year. This is an annual national total of reported racially motivated incidents. The data is only disaggregated in terms of anti-semitism and racism



which together provide the overall totals. The total CSO figures for the years since 2006 to March 2010 are:

2006	173 incidents
2007	214 incidents
2008	172 incidents
2009	128 incidents
2010 (1 <sup>st</sup> Quarter to March)	26 incidents

This data is based upon Garda records drawn from the Garda PULSE (Police Using Leading Systems Effectively) recording systems. There is apparently no published disaggregation of the data in terms of types of incidents or offence e.g. public order; criminal damage; there is also no published data on victim profiles or perpetrator profiles in terms of age profile, geographical locations, ethnicity, socioeconomic status, context or trends.

This data could be considered in part in the context of wider complaints of racial discrimination, reported to the Equality Authority, the Equality Tribunal and NGO's. They are in part a subset of overall reports of incidents of racial discrimination, and are at the criminal end of the continuum of bias and discrimination motivated incidents and crimes. Total casefiles dealt with by the Equality Authority in these years were:

2006	853
2007	737
2008	736
2009	878

5.1.2 Previously the data on racially motivated incidents was published via The Garda Commissioner's Annual Report and via queries to the Garda Racial and Intercultural Unit. The move to public reporting annually via the CSO was put in place as a measure underpinned by CSO data verification and controls.

5.1.3 The Gardaí currently operate a general computerised recording system for all reported incidents and crimes. This is known as PULSE. Any reported racist

incidents are meant to be recorded on this system. It appears that the racist aspect of any reported incident is recorded in the narrative section of the PULSE incident recording system.

### **The Issues Raised**

There is no distinct mandatory category for recording the racist aspect of a reported incident. There is no mandatory field which must be completed at the recording stage to note whether an incident had a racist aspect. As a result a lot depends upon the victims reporting and insistence on identifying the racist aspect, and furthermore a lot depends on Garda discretion as to what is written into the narrative section of the PULSE recording system.

Whilst the Garda Racial and Intercultural Unit exercise an oversight function, there is still a very significant discretion / gatekeeper role at the first stage of Garda contact and recording. There is significant concern amongst stakeholders that many incidents are not being recorded appropriately at this first stage.

5.1.4 Alongside the Garda recording on the PULSE system a number of NGO's undertake individual agency based recording. This includes discrete and valuable recording by agencies such as the Migrants Rights Centre; the Immigrant Council of Ireland and The National Immigrants Support Centre (NASC) (Cork). Until its demise in 2008 the NCCRI operated a system for recording, reporting on a 6 monthly basis incidents related to racism in Ireland. It covered both crime related and civil law related issues of racial discrimination. The NCCRI system was largely based on reporting via NGO's such as those cited above and also direct from victims. It was a qualitative system and did not aim to be comprehensive. It was not without shortcomings. Nonetheless it complimented Garda PULSE data and it provided a very helpful annual indication of issues to be considered and addressed. It also highlighted the significant under-reporting of racist incidents to the Gardaí, a phenomenon, not unique to the Garda, and one that is prevalent in many jurisdictions.

- 5.1.5 The NCCRI system also contained valuable disaggregated data on victim profiles, geographical location of incidents, ethnicity profile of victims. Overall the NCCRI system whilst not comprehensive did provide a valuable overview of reported racist incidents, allowed key issues to be drawn out and allowed appropriate actions and recommendations to be considered, framed and addressed.
- 5.1.6 There are currently two significant gaps in the recording and reporting of racist incidents and racist crime in Ireland. The first significant gap relates to the shortcomings in the Garda recording and reporting systems. It is valuable data, but it is of very limited value, in that it is summary headline data. It does not contain sufficient breakdown by offence categories, victims or perpetrator profiles, or crucially the outcome of reported incidents in terms of convictions secured etc. There is furthermore no published analysis of data provided. The second significant gap relates to the absence of any annual national picture of racist incidents which sets Garda recording in a wider context and which provides an analysis of both Garda and other data on incidents.

### **Looking to the Future**

- 5.1.7 As part of researching this paper an initiative supported by Dublin City Council to pilot a racist incidents recording system in Dublin in autumn 2010, with a view to early evaluation and potential national roll out was brought to the author's attention. This initiative is coordinated by the European Network Against Racism (ENAR Ireland), and has support from key agencies including the Migrants Rights Centre, The Immigrant Council of Ireland and NASC (Cork). The intention is to train participating agencies in September 2010, conduct the pilot from October to the end of December and to have a final pilot document and way forward by March 2011. The planned pilot is informed by 5 underpinning principles of data collection and usage, namely: Credibility, Independence, Trust, Access and Sustainability.

- 5.1.8 Significant planning has gone into the pilot project to date and with wider support it has in my view the potential to provide an independent national source of credible data on racist incidents in Ireland. The aim must be to reach the position where there is an annual Irish Racist Incidents Monitoring Report which is published annually and which has an established place and authority in Irish society. Such a report would also greatly assist Ireland's international reporting requirements and arrangements including the annual reporting by the ICCL-led RAXEN National Focal Point to the EU Fundamental Rights Agency.
- 5.1.9 Particularly impressive is this project's strong emphasis on multi-agency working and its emphasis on the local ground up collection of data on racist incidents.
- 5.1.10 It is worth considering Irish recording and reporting of racist incidents and crimes in the context of identified good practice in other countries. Available evidence points to aspects of best practice on the recording and monitoring of racist incidents and recording racist crimes in the following jurisdictions: United States, Britain, Sweden and to a lesser extent, Finland. The EU Fundamental Rights Agency identifies Britain, Sweden and Finland as the 3 EU States producing comprehensive data in 2009.
- 5.1.11 In the United States, the recording, monitoring and public reporting of racist crimes is underpinned by the US wide Hate Crime Statistics Act of 1990. This Act requires the US Attorney General to collect data "about crimes that manifest evidence of prejudice, based on race, religion, sexual orientation or ethnicity". The Attorney General delegates the responsibilities of developing the procedures for implementing, collecting and managing hate crime data to the Director of the FBI, who in turn, assigns the tasks to the US wide Uniform Crime Reporting (UCR) Programme. Under the direction of the Attorney General, and with involvement of State and local law enforcement agencies, the Uniform Crime Reporting Programme created a hate crime data collection system, which complies with the Hate Crime Statistics Act. The first nationwide Hate Crime

Statistics Report was published in 1992 and annually thereafter. There have been some more recent changes to the Hate Crime Statistics Act and hate crime data collection. The Act was amended in 1994 to include bias crime against persons with disabilities. The data published annually under the Uniform Crime Reporting Hate Crime Statistics Programme includes data on

- Types of incidents and offences
- Bias motivation – race, religion, sexuality, disability
- Victim data – individual, institutional, business or other
- Offender data – numbers, age, race, gender
- Location data – residence, school, college, parking lot etc.

Law enforcement agencies report hate crimes brought to their attention usually quarterly to the FBI, either directly or through their state Uniform Crime Reporting Programmes.

Although amongst the most defined and comprehensive hate crime recording systems, the Uniform Crime Reporting System faces ongoing challenges. The central technology now lags behind many state systems; there have been concerns around turnaround times for publication of data, and concerns regarding providing greater data accessibility for external users. A re-development project has been undertaken recently to improve all of these areas and wider improvements in data collection, processing, analysis and dissemination.

5.1.12 In Sweden, there is a comprehensive range of data available on hate crimes including racist crimes. Responsibilities for the collection of data on hate crimes lies with the police, the Prosecutor's Office and with the Government-backed specialised body, the National Council for Crime Prevention. The hate crimes covered in official data collection include race, religion, sexuality, transgender based hate crimes. Within religious crimes, there is data collected specifically on anti-semitic crimes and anti-muslim crimes. Within racist crimes, there is data collected specifically on anti-Roma crimes and crimes against Afro-Swedes. A

series of national reports are published annually by the National Council for Crime Prevention, on Hate Crimes in Sweden, drawing on this data collection. These include a full report, a summary report and a technical report. The data in these reports draw largely upon data collection by the police, the Prosecutor's Office and the National Council for Crime Prevention. These reports provide an authoritative annual public account of the situation in Sweden in relation to a range of hate crimes.

5.1.13 Britain is regarded as one of the countries's producing comparatively good quality data on racist incidents nationally and to European and international bodies. The nature and extent of progress in Britain on this specific issue has only been achieved by a number of actions, including systematic frontline monitoring by the police and public prosecutors. It has also been made possible by previously putting in place in every local authority area a multi-agency racist incident recording system in line with a Code of Practice issued by the Home Office. This Code of Practice set minimum standards for data recording in all local areas and left implementation up to local multi-agency participants with the local council in each area holding the ring. This system of recording of racist incidents has become increasingly mainstreamed throughout Britain. I would advise that given the similarities with the ENAR Ireland – Dublin City Council initiative that the Home Office Code of Practice be considered for its value in informing moves to a common national recording system in Ireland.

5.1.14 Alongside these local improvements in data collection in Britain, there has been significant improvements in national reporting via the Home Office Criminal Justice Statistics Reporting and via the Crown Prosecution Service. The Home Office produces an annual public report on Race and the Criminal Justice system (often referred to as the Section 95 report) and this includes data on racist incidents and racist crimes. The Crown Prosecution Service also publishes an annual report on hate crime prosecutions covering race, religion, disability,

sexuality and age related hate crimes. They also publish a separate annual public report on violence against women prosecutions.

5.1.15 It is worth noting in relation to the specific issue of the reporting and recording of racist incidents and racist crimes that throughout the research underpinning this paper, those interviewed commented in a consistently favourable way on the work of the Garda Racial and Intercultural Unit. This Unit was singled out by many of those interviewed as a small beacon of good practice and committed individuals. However equally almost all those interviewed questioned the mainstreaming of race equality into wider Garda operations and leadership. I will return to this in the later section on addressing community confidence.

## **5.2 The issue of racially motivated / aggravated offences and the linked issue of sentencing uplift provisions.**

### **The Current Position**

5.2.1 Available evidence from other jurisdictions and based on what is available here indicates that the vast majority of offences with a racial dimension tend to be public order, criminal damage or common assault type offences. These tend to be lower order – mid-level offences in which hostility or bias based on race aggravates or motivates the offence.

5.2.2 There are two key issues to be considered here. These are:

- (1) Whether there should be a substantive offence of racially aggravated crime. A substantive offence is a separate offence that includes the bias motive as an integral element of the legal definition of the offence. Such substantive offences exist in the United States, in Britain and in the Czech Republic. This kind of hate crime law is not as common as the second
- (2) Whether there exist provisions for what are called either ‘aggravating sentencing clauses’ or ‘sentencing uplift clauses’. These forms of hate crime laws increase the penalty for a base offence when it is committed

with a bias motive. The OSCE indicate that the majority of hate crime laws in the OSCE region fall within this description. There are advantages to enacting a law making hate crime a substantive offence. It explicitly condemns the prohibited bias motive. It fulfils what the OSCE describes as the expressive function of criminal law. It is argued that without explicit recognition of the bias motive, hate crime law can lose much of its important declaratory weight. There are also advantages of enacting a law based on aggravated sentencing/sentencing uplift. Sentencing enhancement/penalty enhancement are usually relatively easy to incorporate into a country's penal code. Penal codes can list certain factors that increase a sentence or penalty for a crime.

Rather than viewing the issues of aggravated offences and aggravated sentencing as either/or provisions the OSCE identify that a combination of approaches is possible. The US and the UK have both specific substantive offences and have penalty enhancement statutes. The OSCE indicate that in order to effectively combat hate crimes, a state can choose to adopt a range of provisions (OSCE 2009).

**5.2.3** In relation to Ireland the key features of the current situation are that there is no criminal law provision for racially aggravated offences in Ireland, there also is no statutory provision prescribing aggravated sentences/ sentencing uplift for offences committed with a racist motive. Such provisions existed in 37 out of the 57 OSCE member states in 2009. They exist in Britain and in Northern Ireland. It is at the judge's discretion in Ireland to treat a racist motive as an aggravating offence when determining sentence in a case. There is no statutory authority requiring the judge to do so.

**5.2.4** As was noted earlier the EU requires all Member States to transpose the Framework Decision on racism and xenophobia into domestic provisions by November 28<sup>th</sup> 2010. This includes having 'an effective, proportionate and



dissuasive penalty provision in place for offences where racist or xenophobic motivation is an aggravating circumstance.

- 5.2.5** Ireland's position is that judicial discretion in sentencing enables racial motivation to be taken into consideration by the courts in the determination of penalties.

### **The Issues Raised**

- 5.2.6** It is noteworthy that whilst the Department of Justice and Law Reform officials consider Ireland to be compliant with the Framework Decision on Racism and Xenophobia, civil society stakeholders are not convinced that the proposed response is sufficient. Civil society stakeholders interviewed expressed a view that Ireland should provide in its criminal law for both racially aggravated offences and for aggravated sentencing. It was clear that many of the stakeholders had thought about this issue in a considered way. Whilst some initially queried the appropriateness of aggravated offences and sentencing provisions, they concluded that given the particular nature of racist crime, its victim and community impacts, that these offences and sentencing provisions were warranted in Ireland.

- 5.2.7** It is also noteworthy that the UN Committee on the Elimination of Racial Discrimination in its last report on Ireland recommended that
- “The State party introduce in its criminal law a provision that makes committing an offence with a racist motivation or aim as aggravating circumstance allowing for a more severe punishment”*. (CERD, Report of 66<sup>th</sup> session 2005).

- 5.2.8** There are arguments for and against providing for racially aggravated offences and aggravated sentences.

**5.2.9** The arguments against such provisions include:

- Such provisions can be perceived to amount to preferential treatment for minority offences.
- Such provisions can be viewed as divisive in a wider population.
- Such offences are regarded by some as impossible or very difficult to prosecute.
- Such offences and provisions are viewed by some as merely pacifistic – they never are and cannot be implemented.
- Such offence provisions just don't work in practice.

**5.2.10** The arguments for such provisions include:

- The particular victim impact of hate crimes merits the provision of aggravated offences and sentencing which recognised these impacts.
- The wider community impact of hate crime merits provisions in order to send a message about the type of communities and society we are committed to.
- The recent evidence from Britain, Canada and the US shows that such crimes can be prosecuted successfully and with significant rates of success. The Crown Prosecution Service in England and Wales through a dedicated work programme delivered over a 10% improvement in outcomes in hate crime cases between 2004-05 and 2008 (CPS 2008) and has achieved a conviction rate of over 80% in hate crime cases. This is significant evidence not necessarily known at the time of earlier work. It questions the view that such offences are impossible or very difficult to prosecute. It demonstrates that through a strategic sustained focus a high level of successful prosecutions can be achieved.
- The provision of aggravated offences and sentencing builds community cohesion rather than undermines it – it sends a strong message that all belong equally and all will be protected equally and appropriately.
- The provision of aggravated offences and aggravated sentencing do not

signal preferential treatment. Rather they are appropriate provisions which provide for the current reality of unequal experiences. They are based on the difference principle which recognises that in a diverse society groups and individuals and issues may need to be treated differently in order to treat them equitably.

- The provision for aggravated sentencing does not interfere inappropriately with judicial discretion, it simply ensures that appropriate issues are automatically and explicitly brought to the judge's attention at the sentencing stage.

5.2.11 In terms of the arguments for providing for racially aggravated offences and aggravated sentences core arguments relate to the particular victim impact and wider community impact of hate crimes. These impacts have been subject to substantial analysis by Dr Paul Iganski from Lancaster University. Iganski has undertaken analysis of the data from the Home Office's British Crime Survey. The British Crime Survey is the national government survey of public experiences and perceptions of crime. Iganski analysed British Crime Survey data for the years 02-03, 03-04 and 04-05. His analysis included:

- (1) comparing reported behavioural reactions following racially motivated and non-racially motivated crime
- (2) comparing reported types of emotional reaction following racially and non-racially motivated crime, and
- (3) comparing victims of racially and non-racially motivated crime in terms of worries about future victimisation.

Iganski found that for each of the main types of crime reported in the survey higher proportions of victims who believed that incidents were racially motivated reported an 'emotional reaction' compared with victims of incidents that were not believed to be racially motivated and the strength of the emotional reaction was consistently greater in racially motivated incidents.

Iganski also found that for each main crime type, high proportions of victims of those crimes which were believed to be racially motivated feared future victimisation compared to victims experiencing the same offences which were not believed to be racially motivated. The fears of future victimisation mainly related to fears of future physical attack, insults and racial attacks (Iganski 2009)

Iganski also addresses a number of research findings on the wider community impacts of hate crimes. He in particular refers to Home Office research and to research undertaken in London in the early 90s. Iganski identifies a number of issues which emerge from these research studies. These include evidence related to the 'spatial and terroristic' impact that such crimes can inflict on individuals and communities. Home Office research as far back as 1981 found that 'Attacks on Asians in one place can cause great concern to Asian communities elsewhere' (Home Office, Racial Attacks 1981). Iganski also highlights the wider community impacts of hate crime identified by the work of Hesse and Rai. Their London based research in the early 1990s found evidence of Black and Asian people forming "mental maps of the distribution of racial harassment in communities with people perceiving social spaces in 'racially' particular ways". That is locations which allow freedom of movement and those which inhibit and locales which are no go areas or relatively safe to live' (Hesse and Rai 1992). They found that a wider community impact of racist crime was to restrict the spatial mobility of Black and Asian people, to undermine those communities capacity to live normally and lead to restricted use of public facilities

### **Looking to the Future**

5.2.12 Taking into account the arguments for and against aggravated offences and sentencing and in particular Iganski's significant research on individual and community impacts, the many valued points raised by stakeholders interviewed and the author's experience in directing this area for the Crown Prosecution Service in England and Wales over a recent 5 year period I would advise that provision for racially aggravated offences and aggravated sentencing is appropriate in an Irish context. In terms of a wider vision of building a successful

cohesive Ireland, an opportunity is potentially being lost by Ireland solely relying on existing judicial discretion. The evidence points to very few cases where judges positively exercise such discretion in these cases to recognise the racist motivation, and minority ethnic communities express low levels of confidence in a criminal justice system which they view as not protecting them adequately from criminal behaviour.

- 5.2.13 On a continuum from a minimalist to a maximalist response to the EU Framework Decision requirements in relation to racist motivation, the evidence would point to Ireland's response tending towards the minimalist.

### **Incitement to Hatred Provisions**

#### **The Current Position**

- 5.2.14 The Prohibition of Incitement to Hatred Act 1989 is the sole Act of the Oireachtas which combats aspects of racist behaviour in Ireland through the criminal law. It is designed to deal with what are often termed 'expression offences'.
- 5.2.15 The Prohibition of Incitement to Hatred Act was largely formed in response to the requirements of international human rights instruments and in particular the UN International Covenant of Civil and Political Rights (ICCPR). Article 20.2 of the ICCPR states that "*any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*".
- 5.2.16 Significantly as it went through the Oireachtas its coverage was extended beyond national, racial or religious origin to include the Traveller community and to include sexual orientation.
- 5.2.17 The Prohibition of Incitement to Hatred Act was in line with best international

practice when it was introduced in 1989. In significant respects it is still in line with the better criminal law provisions in the area of expression offences.

### **The Issues Raised**

- 5.2.18 Notwithstanding this alignment with good practice internationally, concerns remain. One of the most frequently cited concerns in relation to what is perceived to be the lack of implementation of the legislation – in particular the very few prosecutions brought under its provisions. In the 15 years between 1989 and 2004 it appears that there were 18 prosecutions.
- 5.2.19 Incitement to Hatred provisions raise significant challenges in all liberal democracies such as Ireland. They raise fundamental questions about the role of the criminal law in addressing race hate, and in particular, they raise the fundamental issue of the balance to be struck between freedom of expression and the need to protect groups from hate speech and its potential impacts.
- 5.2.20 From my appraisal of the Irish incitement legislation and my experience of working with the incitement legalisation in Britain which is very similar to the Irish legislation, this legislation has a very specific and narrow focus, and purposely so. It is designed to deal with those very specific and narrow set of circumstances where racist behaviour is such that it is designed to incite hatred in another or likely to incite such hatred. It is about these very specific circumstances where the incitement of hatred leads to or is likely to lead to a breakdown in public order including a possible riot or violent behaviour. Hatred is a very strong emotion, with a very high legal threshold. It goes significantly beyond hostility. Incitement also has a very high threshold. The reality is that there are likely to be relatively few circumstances where both are met. However that said, I would conclude based on this research that in the absence of more routine criminal law provisions to deal with racial aggravation minority ethnic people and NGO's working to promote their wellbeing are resorting to using the Incitement to Hatred provisions with a range of cases, some of which are

inappropriate. I make this conclusion based on my interviews with Gardaí and with NGO representatives. I sense that there is some misunderstanding of the very narrow and specific provisions of this legislation. I think this misunderstanding stretches to Gardaí in the community, who seem to refer routine racially aggravated cases to headquarters colleagues for consideration as cases of incitement to hatred.

5.2.21 Given this misunderstanding of the very specific focus of this legislation I witnessed what I would describe as ‘an expectations gap’ and ‘a frustration gap’ between community aspirations from this legislation and the reality of its limited application and implementation to date. This expectation gap is not insignificant and potentially undermines social cohesion, and a sense of the system working for all. There is an opportunity and a need to address this gap with information and public education.

### **Looking to the Future**

5.2.22 In line with its Mission, Mandate and Strategic Goals there is a potential role for the Equality Authority to support other agencies and Departments in progressing work on these issues in Ireland.

5.2.23 There was an earlier recommendation from Schweppe and Walsh (2008) which recommended the publication of guidance on the principles that will govern the DPP’s decision to prosecute in such cases. Based on this review I would support their earlier recommendation.

5.2.24 There are a number of other concerns which have been raised by community stakeholders as part of this review with regard to both the extent to which the Prohibition Incitement to Hatred Act meets the Framework Decisions requirements and regarding the implementation of the Act.

These include:

- (1) the apparent under usage of the Act since 1989 – between 1989 and 2004 there were reported to be 18 prosecutions under the Act.
- (2) the use of the terms ‘hatred’, ‘incitement’ and ‘stirring up’ in the legislation. It is pointed out that hatred is used but not defined. This however is common in similar legislation elsewhere. Incitement as a term is used in the title but not in the body of the Act. The term ‘stirring up’ is seen to be a relatively alien concept in the criminal law. As a result the overall terms of the Act can be unclear.
- (3) the need for training on the Act for Gardaí, NGOs and other interested parties.
- (4) the Act predates the widespread usage of the internet and the fact that the internet is where it is at in terms of being the main medium for expressing race hate today. The Act is perceived to be unclear on how incitement offences committed via the internet will be handled. Yet the Framework Decisions deems that internet based expression offences be addressed within member state responses.
- (5) the need for an appropriately resourced intermediary body including a helpline to explain the Act to interested parties including rank and file Gardaí, NGOs etc. This was a role that the NCCRI may have taken on in the past, but in the current context, an appropriate alternative would need to be identified and resourced. It was felt that this was a role that an adequately resourced Garda Racial and Intercultural Unit could take on.

5.2.25 Based on the wider evidence gathered in this review and on the author’s experience in this area in Britain, I would concur with points (3), (4) and (5) above. There is a need for training to be addressed. There is a question mark as to whether Ireland’s position in relation to prosecution of internet crime is sufficiently defined and clear. There is a need for an appropriate intermediary



body including possibly a helpline facility, and an appropriately resourced Garda Racial and Intercultural Unit should be well placed to undertake this role.

5.2.26 Based on wider evidence gathered and also on the author's experience, I would not concur with points (1) and (2) above. The fact that there are few cases is in keeping with figures on incitement to hatred cases in other jurisdictions. It may be that few cases reflect reasonably specific and targeted application of the Act by Gardaí and the DPP's office. With regard to the issues related to the use of specific terms such as hatred and incitement this is similar to other incitement to hatred legislation in other jurisdictions. I would anticipate that such attempts would meet with significant resistance, as these will be seen as matters for courts to decide over time in the application of the Act.

### **5.3 Community Confidence**

#### **The Current Position**

5.3.1 The issue of community confidence in the police and wider criminal justice systems handling of racist incidents and racist crime was raised in the Equality Authority consultation meeting in May. It was raised by almost all the stakeholder interviews with NGOs.

5.3.2 The issue of minority ethnic community confidence in the police and other criminal justice agencies is not unique in Ireland. It is an issue in most Western democracies.

5.3.3 The issue of minority ethnic communities confidence in the police and the criminal justice system has been identified in a number of pieces of research over the past 10 years. It has been established both in the Garda's own research and in research external to the Gardaí. The position was covered in some detail in the Human Rights Audit undertaken for the Gardaí by Ionann Management Consultants (June 2004). It reported a very significant gap in general crime reporting rates from the overall population and reporting rates for racist crimes.

The overall reporting rate was 84%, and for racist crime was 11%. The low reporting rate for racist crime was identified as being linked to low levels of confidence in the Garda response to racist crime; negative policing experiences in home countries; negative policing experiences with the Garda Immigration policing function; experience of racism from the Garda themselves. (Ionann 2004). The Human Rights Audit drew upon on a range of research and work which point to lower levels of confidence and differential experiences of minority ethnic communities in the Gardaí. They highlight negative experience for minority ethnic communities in general, and they highlight particular negative experiences for the Traveller community and the Nigerian community. The findings in relation to the Travellers are supported by findings from work undertaken by Pavee Point. Amongst the issues highlighted in the Ionann research are: perceptions of unfair treatment by the Gardaí; perceptions that Gardaí did not take racist incidents seriously and a perception that minority ethnic members would not be welcome as members of the Gardaí (Ionann 2004).

- 5.3.4 This research was published 6 years ago and substantial work has been done since then in terms of responding to the Human Rights Audit findings with the establishment of the Garda Ombudsman Commission; establishment of the Garda Inspectorate; taking forward human rights and equality and diversity within the Gardaí in terms of training; recruitment; and more recently the development of an equality and diversity strategy.

#### **The Issues Raised**

- 5.3.5 It is interesting to note the views of stakeholders interviewed as part of this research on the current position and on the nature of progress made, and progress yet to be made in relation to community confidence. Without exception all stakeholders strongly commended the work of the Garda Racial and Intercultural Unit. They commended the dedication, commitment, responsiveness and competence of the Unit. However it was pointed out that this Unit comprise two Gardaí and one civilian support staff, and that the Gardaí working in the Unit are

relatively junior in the overall Garda hierarchy. Stakeholders often commented that alongside the Garda Racial and Intercultural Unit, there were a small number of pockets of good diversity practice in policing – identified were Dún Laoghaire – Rathdown and Blanchardstown. Stakeholders commented that they did not consider that there was any effective mainstreaming of equality and diversity strategy in the Gardaí more widely beyond pockets of good practice. Stakeholders felt that the Gardaí lacked explicit strategic leadership on this issue. Though there was a recent equality and diversity vision and strategy put in place there was limited evidence of active implementation. Stakeholders expressed a concern and fear that the leadership of the Gardaí appear not to conceive of the issue of policing diversity as sufficiently top priority, and may not act until a major issue emerges as has happened in other jurisdictions. Concerns were expressed that this may be a lost opportunity given Ireland’s early stage in the journey to a successful cohesive society.

5.3.6 Stakeholders were broadly welcoming of the community policing approach adopted by the Gardaí, and for the provision of Ethnic Liaison Officers within the community policing approach. Many spoke spontaneously of positive contacts with individual Garda Ethnic Liaison Officers. However many also commented that the experience varied from one individual Garda to the next. Comments were also made that this was but one small part of a wider community policing role.

5.3.7 Stakeholders highlighted two other issues which they viewed as significantly impacting on minority ethnic community’s confidence levels in the police. These were:

- (1) Garda responses to racist incidents, and
- (2) Garda role in relation to immigration.

5.3.8 With regard to Garda responses to racist incidents and minority ethnic community’s confidence stakeholders reported that in general Gardaí are still not seen to respond seriously to reported racist incidents. Incidents are seen

sometimes as just something to ‘take on the chin’, or on other occasions the investigations go nowhere and on occasions Gardaí go through the motions but with little or no follow-up actions. This is seen to be corrosive of minority community confidence and community cohesion – stakeholders reported that minority ethnic communities feel that their experiences of racist incidents are not being offered appropriate seriousness by the Gardaí. This can have a ripple effect into their wider confidence in the Gardaí overall, and the Garda ability to police fairly. This research found that stakeholders reported a perceived wider lack of confidence in the Gardaí – a concern that for comparable offences, minority ethnic suspects are generally treated more harshly, more likely to be charged and receive stiffer penalties. Left unchecked, such perceptions can become reality and with potential serious consequences for policing by consent. This is a wider priority issue to be addressed.

5.3.9 With regard to the Garda role in relation to immigration, clearly the Garda currently play a key formal role in the immigration process in Ireland. This can be on occasion a tense policing context between the Gardaí and minority ethnic community members. For many minority ethnic community members their only contact with the Gardaí is in relation to their immigration status. This can give for a range of experiences and perceptions – including avoidance and fear. These can on occasions be added to by earlier negative policing experiences in home countries. Whilst stakeholders, including Gardaí themselves identified this as a real issue, given the current formal policing role in immigration there is no immediate resolution of this tension – unless of course the policing role was removed from immigration. This was mentioned by a number of stakeholders and this is the position in a number of other Western jurisdictions.

5.3.10 A number of initiatives have been developed and progressed over the past 10 years which individually and cumulatively seek to improve aspects of policing diversity and minority community confidence. These include:

1. establishment of Garda Racial and Intercultural Office

2. recording of racist incidents on Garda PULSE System
3. reporting of racially motivated incidents annually via the CSO
4. establishment of Garda Ethnic Liaison Officers (400 plus) across the country
5. diversity training for the Gardaí
6. increased recruitment of minority ethnic Garda recruits
7. more recent establishment of Garda Diversity Vision and Strategy and oversight by a Garda Diversity Strategy Board

5.3.11 All of these are worthwhile initiatives and a number have made a significant positive contribution, including the work of the Garda Racial and Intercultural Unit and the Ethnic Garda Liaison Officers.

#### **Looking to the Future**

5.3.12 However evidence from other jurisdictions indicates that more is needed – a step change in prioritisation and focus is needed to secure significant improvements in community confidence.

5.3.13 Based on experience in other jurisdictions and the author’s experience in Britain, the following issues merit consideration. In identifying the following issues for consideration I am acutely aware of the resource constraints within which the Gardaí and other criminal justice agencies are currently operating and the extent to which Gardaí often identify their service as a ‘fire fighting’ service as opposed to the quality of strategic policing they might aspire to. That said an enhanced strategic focus can lead to greater efficiencies as well as effectiveness in terms of fewer ‘fire fighting’ demands on the service.

- (1) **The location, resourcing and remit of the Garda Racial and Intercultural Unit.** It is located as a 3 person unit in the Community Relations Division in Harcourt Street headquarters. It should be located more strategically reporting directly to the Commissioner or an Assistant Commissioner. It is under-resourced for the scale of its current and future

challenges, both in terms of numbers and rank of staff. Its remit is also limited to one strand of diversity. Its remit should be extended to cover race, faith, age, disability, gender and sexuality. It should have a role across the range of hate crimes not just racist crimes. Many of these issues have been flagged previously including in the Garda Human Rights Audit (2004) and in the Garda Diversity Strategy (2009).

- (2) **The Garda Diversity Strategy in place since 2009.** The strategy is a welcome development. The strategy contains much in terms of good practice proposals and plans. However the strategy has a strong human resources – employment focus. It merits review and rebalancing to also focus on core diversity issues in day to day policing such as ethnic monitoring of victims and defendants; checking for and acting on any significant disproportionality. It then should be subject to annual review and public reporting on progress.
- (3) **Recruitment of minority ethnic recruits and career progression.** Progress has been made in recent years in increasing diverse intake. Published data indicates there are 46 non Irish national members of an Garda Síochána, 20 of whom are of Chinese origin; 6 Polish, and the rest from a range of countries including the US, Canada and other EU states. However this needs to continue, and specific positive action should focus on communities with no or significant under-representation including Nigerian and Traveller communities. A specific focus also needs to be applied to the career progression of minority ethnic recruits. Available evidence internationally points to a relationship between diversity in employment and more appropriate service provision and increasing confidence levels.
- (4) **The resolution and adequate resourcing of the Ethnic Liaison Officers role, and building on this, to mainstream an equality dimension into all community policing roles.** The specialist Ethnic Liaison Officer role is

important and valued, but not at the expense of a wider mainstream appropriate service across all community policing.

- (5) **Positive action to target minority ethnic community members to join Local Joint Policing Boards.** Some areas have local consultative fora with diverse communities. However they must be seen as complementary to securing ethnic diverse representation on Local Joint Policing Boards.
  
- (6) **Establishing systematic ethnic monitoring of core Garda activities, in both Garda operations and employment; regular analysis of the data and publications of results** – this is fundamental to future progress and to demonstrating fairness in policing. Minority ethnic communities are reported as lacking confidence in policing practices currently. This includes a lack of confidence in handling of racist crimes. It extends beyond this to a lack of confidence in fair treatment more widely – some communities report feeling targeted; some communities perceive that for like for like offences, a minority ethnic suspect gets a stiffer charge and penalty than a white Irish suspect. This is serious confidence challenge. It can only be addressed by evidence, by ethnic monitoring of decisions, analysis and publication of results. Experience from other jurisdictions points to the centrality of addressing in a transparent and accountable way this aspect of policing practice.
  
- (7) **The prioritisation given to policing racist crime.** The importance of affording strategic importance to these crimes cannot be underestimated. Policed effectively they help build community affinity with the police; they enhance trust and confidence and a willingness to work within and with the police. This review would indicate there is some way to go before racist crime is policed rigorously and robustly and with sustained priority.
  
- (8) **The issue of strategic leadership and leadership messaging on issues of racist crimes and diversity.** Garda leadership have made a number of

positive statements on aspects of policing diversity in recent years. These are to be commended and welcomed. However there is a need for sustained and visible leadership reflected in such tangible issues as the resourcing of the lead police unit on this issue; the implementation of the Diversity Strategy; systematic ethnic monitoring and publication of results and increased workforce diversity at all levels.



## **6. Looking to the Future**

**6.1** Crime affects all communities as does the work of the Gardaí and all criminal justice agencies. Racist crime disproportionately affects some communities but can have a wider corrosive effect on community relations between all communities. It is important that the Gardaí and all criminal justice agencies hold the trust and confidence of all communities to police and prosecute crimes fairly and in the interests of justice. This is central to the rule of law. It is important that all communities view the Gardaí as their police force acting in the interests of justice. To achieve this trust and confidence it is important to recognise that there is a clear link between equality in police employment and equality in policing practice and confidence. The police need to reflect in their ranks the communities they serve. The police also need to take seriously and be seen to take seriously local policing priorities and concerns, including local minority ethnic concerns regarding racist crimes. The policing and prosecution of racist crimes may increasingly become a litmus test of our society's commitment to appropriate, inclusive and fair policing for all. Communities need to have trust in the overall fairness of policing – whilst communities may disagree and feel an individual case was dealt with less well than it might have been, they still need to have a minimum level of trust in the policing system overall. This is part of the basis of policing with consent – it is at the heart of policing in liberal democracies.

**6.2** Looking to the future, those overall responsible for the Gardaí and criminal justice system response to issues of diversity might wish to paint a picture that will resonate credibly with communities and staff and frame a vision of the outcomes of successful policing in a diverse Ireland. The following are offered as some of the outcomes that may be appropriate to work towards:

- a police workforce that reflects the diversity of Irish society at all levels
- a police service which holds the confidence of all communities – held in equal high regard by all communities
- a police service which has an earned reputation for rigorous and robust handling of racist crimes, and a track record of successful convictions

- a police service which can demonstrate no significant disparities in police decision making for comparable offences between different population groups.

If adopted such high level outcomes could become the focus of a revised Diversity Strategy over a 3 – 5 year period, with strategic efforts focussed on these few key areas, and regular progress checks and reports against these key outcomes.

**6.3** Successfully policing a diverse Ireland and securing a wider criminal justice system held in high regard by all communities is one key plank in a wider national diversity and cohesion programme. Work in the areas of community development, education and employment are of equal and, in some instances, greater significance as preventative measures. It must be seen and accepted as one key part of a progressive social policy agenda focussed on building a cohesive Ireland underpinned by reducing inequality, increasing opportunities and genuine recognition and respect for all.

## **7. Recommendations**

In line with its Mission, Mandate and Strategic Goals, that the Equality Authority take forward, as appropriate, and in partnership with other agencies and Departments, the issues raised in this paper.

## **Appendix – list of stakeholders interviewed**

- ENAR Ireland
- Gardaí Racial and Intercultural Unit
- Department of Justice and Law Reform, Criminal Law Division
- Immigrant Council of Ireland
- Irish Council for Civil Liberties
- Migrants Rights Centre Ireland
- NASC (Cork)
- Irish Traveller Movement, Independent Law Centre
- Crown Prosecution Service, England and Wales

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