

Towards a National Action Plan Against Racism for Ireland

ICCL Submission to the National Anti-Racism Committee

JULY 2021

Introduction

The Irish Council for Civil Liberties (ICCL) welcomes the opportunity to make a submission to the National Anti-Racism Committee on the development of the new National Action Plan Against Racism (NAPAR), noting that the country has been left without such a key strategic document for far too long¹. Civil society organisations have systematically called for a renewed NAPAR and for the Government to show political leadership in the fight against racism in Ireland². 2021 marks the 13th year of an Ireland without a National Action Plan Against Racism, which, as noted by the European Commission Against Racism and Intolerance (ECRI) has “left an important vacuum contributing to a “normalisation” of racism” in the country³.

Racism is a reality in Ireland. It is experienced at every level of society and by a variety of groups. In 2020 alone, 700 reports of racist crimes and discrimination were filed through iReport.ie⁴. As repeatedly highlighted by ICCL since the beginning of the pandemic, COVID-19 has played a role in exacerbating existing inequalities and creating new challenges for specific groups, having a disproportionate impact on different groups who are the targets of racial discrimination⁵.

In its interim report, the Anti-Racism Committee pointed out that for the purpose of the development of the new Irish NAPAR, “racism” shall be understood as “the power dynamics present in those structural and institutional arrangements, practices, policies and cultural norms, which have the effect of excluding or discriminating against individuals or groups.”⁶ We welcome this definition and consider that the interim report represents a positive foundation for a progressive and far reaching National Action Plan⁷. We particularly welcome the acknowledgement of the intersectionality between racism and all other forms of

¹ The previous Action Plan Against Racism ended in 2008. It is available at <http://www.justice.ie/en/JELR/NPARen.pdf/Files/NPARen.pdf>.

² Irish Network Against Racism (INAR), National Action Plan Against Racism, available at <https://inar.ie/our-work/policy-and-advocacy/national-action-plan-against-racism/>

³ ECRI report on Ireland (fifth monitoring cycle), adopted on 2 April 2019, published on 4 June 2019, para 56, available at <https://rm.coe.int/fifth-report-on-ireland/168094c575>.

⁴ INAR, Reports of racism in Ireland - Data from iReport.ie 2020, Authored by Dr Lucy Michael, 2020, available at https://inar.ie/wp-content/uploads/2021/03/2020_iReport.pdf

⁵ See eg <https://www.thejournal.ie/travellers-mental-health-tds-oireachtas-committee-5494060-Jul2021/> and see ICCL, Human Rights in a Pandemic – A Human Rights Analysis of the Irish Government’s response to Covid-19, May 2021, available at: <https://www.iccl.ie/wp-content/uploads/2021/06/Human-Rights-in-a-Pandemic.pdf>.

⁶ Anti-Racism Committee, Interim Report to the Minister for Children, Equality, Disability, Integration and Youth, 30 November 2020, p.5, available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/132151/ed3f39e2-4aa1-4991-aa06-52beae8310db.pdf#page=null>.

⁷ We note that INAR welcomed the publication of Anti-Racism Committee Interim Report to Government, available at <https://inar.ie/inar-welcomes-publication-of-anti-racism-committee-interim-report-to-government-april-2021/>.

oppression, the recognition of the need to include all relevant groups impacted by racism, and the understanding of racism as a dynamic, living phenomenon⁸.

ICCL calls on government to ensure that the national action plan complies fully with international standards. We highlight in particular the Durban Declaration and Programme of Action⁹ (DDPA),¹⁰ which recognizes that “*combating racism, racial discrimination, xenophobia and related intolerance is a primary responsibility of States*”. The DDPA calls on States to develop national action plans that “*promote diversity, equality, equity, social justice, equality of opportunity and the participation of all.*” We note that the plans should provide for affirmative or positive actions and strategies and we call on government to ensure that the Irish national action plan contains very clear measurable actions. We would emphasise that the DDPA requires that the overarching aim should be to create conditions for everyone to participate effectively in decision-making and realize all rights “*in all spheres of life on the basis of non-discrimination.*”¹¹

The Irish NAPAR should comply with the framework of the more recent European Union Anti-Racism Action Plan (2020-2025)¹², which calls for national action plans against racism and racial discrimination in all Member States by the end of 2022. In developing the NAPAR, recommendations put forward by international¹³ and regional¹⁴ human rights monitoring bodies should be effectively implemented. It is vital that the NAPAR is rooted in human rights values, democracy and rule of law.

ICCL has a long history of advocating for human rights, and we firmly believe that there must be no place for racism in the Ireland we work for every day. Together with other Irish civil society organisations, we have previously called for the NAPAR to have concrete action plans with clear targets, indicators, outcomes, timeframes, and associated budget lines and include

⁸ Anti-Racism Committee, Interim Report to the Minister for Children, Equality, Disability, Integration and Youth, 30 November 2020, pp. 5 – 6.

⁹ United Nations, Durban Declaration and Plan of Action, Adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence, 8 September 2001, available at https://www.ohchr.org/Documents/Publications/Durban_text_en.pdf.

¹⁰ Adopted at the 2001 UN World Conference against Racism and Discrimination, to which Ireland is a signatory.

¹¹ *Ibid.* para 99.

¹² Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, A Union of equality : EU anti-racism action plan 2020-2025, available at:

https://ec.europa.eu/info/sites/default/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf.

¹³ Committee on the Elimination of Racial Discrimination Concluding observations on the combined fifth to ninth reports of Ireland, Adopted by the Committee at its 100th session (25 November – 13 December 2019), CERD/C/IRL/CO/5-9, available at:

https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf

¹⁴ ECRI report on Ireland (fifth monitoring cycle), adopted on 2 April 2019, published on 4 June 2019, available at <https://rm.coe.int/fifth-report-on-ireland/168094c575>.

measures to fund and provide for comprehensive support to victims of racism, including access to legal advice and counselling services¹⁵. With this in mind, this submission mainly addresses questions contained in the consultation paper¹⁶ that fall under our key areas of work, namely Theme 1 and Theme 2, while also providing our views and recommendations on other issues identified in the interim report.

Legal Framework

The UN Convention on the Elimination of all Forms of Racial Discrimination defines “racial discrimination” as

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹⁷

A vast number of legal instruments require Ireland to take positive steps to combat and protect people from racism and racist discrimination. At the domestic level, the Irish Constitution requires equal treatment for all¹⁸ and equality legislation¹⁹ prohibits discrimination on the basis of race. At the EU level, the Charter of Fundamental Rights of the European Union and several other instruments²⁰ reinforce that protection. Article 14 of the European Convention on Human Rights provides that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground, including race, colour, national or social origin, association with a national minority, property, birth or other status. The European Court of Human Rights has developed extensive case-law on the protection from racial discrimination on the basis of the ECHR²¹. Ireland is also bound by the obligations of the International Convention for the Elimination of all forms of

¹⁵ Submission by the Irish Council for Civil Liberties (ICCL) and Partners for the 39th Session of the UPR Working Group, March 2021, available at <https://www.iccl.ie/wp-content/uploads/2021/04/ICCL-coalition-submission-to-UPR.pdf>.

¹⁶ Towards a National Action Plan Against Racism for Ireland Public Consultation 2021, available at <https://www.gov.ie/pdf/?file=https://assets.gov.ie/132788/85f75bfc-0154-46f7-b947-f25513e9070a.pdf#page=null>.

¹⁷ UN Convention on the Elimination of all Forms of Racial Discrimination, art. 1(1).

¹⁸ See art. 40.1 “All citizens shall, as human persons, be held equal before the law.”

¹⁹ See e.g. Equal Status Acts 2000-2018, Employment Equality Acts 1998-2015. Prohibition of Incitement to Hatred, Act 1989, Irish Human Rights and Equality Commission Act 2014.

²⁰ See e.g. Racial Equality Directive, Victim’s Rights Directive, Council Framework Decision on combating racism and xenophobia by means of criminal law.

²¹ ECtHR, Factsheet on Racial Discrimination, April 2013, available at: https://www.echr.coe.int/documents/fs_racial_discrimination_eng.pdf.

Racial Discrimination (CERD), and the CERD Committee's General Recommendation 30, which underlines that the protections of the Convention apply to non-citizens.

Theme 1 - Access to Justice

A. What supports would you like to see in place for victims of racism?

People experience racism in a variety of ways: they may be victims of racist crimes, racist discrimination, or racism that does not amount to illegal behaviour but has harmful consequences. Key rights for victims of crime outlined in the Criminal Justice (Victims of Crime) Act 2017,²² including the right to information, interpretation and translation, as well as the right to access supports at all stages of the criminal justice process must be properly implemented for victims of racist crimes.

All victims of racism need clear, accessible information about where they can report incidents and find support. A dedicated helpline and website should be established with key contacts, such as NGOs that work to counter racism. Reporting mechanisms for racism and support officers in key State institutions such as An Garda Síochána and the Immigration, Irish Naturalisation and Immigration Service, as well as educational institutions and large work places should be introduced.

Reporting mechanisms should feed into a national, regular publication of disaggregated statistics so victims and other stakeholders can map key trends in racism across Ireland. Policy initiatives must respond to good quality evidence and support mechanisms should respond to proven needs.

A national campaign should be undertaken to highlight sources of information, reporting mechanisms and supports across Ireland for victims of racism.

B. What actions would be effective in removing barriers to justice for victims of racism?

Different barriers to justice exist for victims of racism. First, there is the problem of under-reporting. For example, the EU Fundamental Rights Agency found that "people from minorities did not report to the police between 57% and 74% of incidents of assault or threats even if they regarded these incidents as serious."²³ Different factors contribute to under-

²² Available at: <http://www.irishstatutebook.ie/eli/2017/act/28/enacted/en/html>

²³ Council of Europe Committee on Equality and Non-Discrimination, *Equality and non-discrimination in the access to justice*, 2015, para. 42.

reporting, such as lack of trust in the authorities and lack of legal awareness.²⁴ An effective action to address this barrier would be to increase the availability and accessibility of resources on reporting racism and supports for victims of racism.

Another barrier to justice may be the cost of legal advice. Providing legal aid for victims of racism could address economic barriers. For example, UN CERD has recommended that Ireland “extend the scope of the Legal Aid Board to the areas of law that are particularly relevant to members of the Traveller Community and other ethnic minority groups, including by designating the Social Welfare Appeals Office and the Workplace Relations Commission as prescribed tribunals under section 27(2)(b) of the Civil Legal Aid Act 1995.”²⁵ ICCL endorses this recommendation and believes that access to legal aid for victims of racism should be a part of the National Action Plan Against Racism. There are also institutional barriers to justice for victims of racism, such as discrimination by law enforcement and other justice actors, discussed further below.

C. What actions could be adopted to counter discrimination by law enforcement?

There is an urgent need to counter discrimination by law enforcement. International human rights bodies have highlighted the need to address racial profiling by AGS and made concrete recommendations for the Government to do so. For example, in 2019, UN CERD highlighted its concerns about the “reportedly high incidence of racial profiling by the Irish police targeted at people of African descent, Travellers and Roma”.²⁶ It recommended that Ireland should:

1. Introduce legislation to prohibit racial profiling;
2. Establish an independent complaints mechanism to handle racial profiling;
3. Review the policy, practices and training of AGS, in collaboration with the communities most affected by racial profiling;
4. Incorporate racial profiling issues into the training curriculum of AGS;
5. Fully implement the Garda Diversity and Integration Strategy 2019-2021;
6. Collect disaggregated data on racial profiling and publish it regularly.²⁷

ICCL endorses these recommendations and believes they should be integrated into the NAPAR.

²⁴ Council of Europe Committee on Equality and Non-Discrimination, Equality and non-discrimination in the access to justice, 2015, para. 43, 44.

²⁵ Committee on the Elimination of Racial Discrimination, Concluding Observations on the combined fifth to ninth reports of Ireland, 23 January 2020, CERD/C/IRL/CO/5-9, para. 44

²⁶ *Ibid.* para. 15.

²⁷ *Ibid.* para. 16.

Need to resource and implement human rights and anti-racism work within AGS: In relation to policing reform, ICCL reiterates its call for a human rights-based approach to policing.²⁸ AGS has established a human rights unit and has a human rights strategy 2020-2022 which outlines different action plans to develop the human rights structure within AGS, such as the delivery of training and monitoring compliance with human rights.²⁹ All members of AGS must receive ongoing and comprehensive human rights training. AGS has a Garda Diversity and Integration Strategy 2019-2021, which aims to protect the safety, wellbeing and rights of all, particularly minority and marginalized communities and vulnerable individuals.³⁰ ICCL recommends that both of these strategies and corresponding action plans be fully resourced and implemented.

Need to collect disaggregated data: ICCL reiterates its recommendation that AGS, liaising with the Policing Authority, should monitor all areas of policing.³¹ This means collecting disaggregated data on: reported incidents of crime; recording rates for hate crime; recording rates for domestic and sexual violence; use of powers to stop, search, question, and enter premises; use of security powers including surveillance and covert operations; use and deployment of cover human intelligence sources; detentions; use of force; arrest, charge and outcome rates; complaints; training delivered; and, the representativeness of the service.³² Disaggregated data includes data on the grounds under equality legislation, such as age, gender, disability, and race, and others, such as ethnicity.³³

D. Do you think racism impacts on convicted or imprisoned people in the criminal justice system, and if so, how could it be addressed?

Racism is a problem throughout the Irish criminal justice system. People of African descent, members of the Traveller Community, and Roma are disproportionately represented in the prison system.³⁴ There is a need for further research into how racism impacts on convicted and imprisoned people. Existing research indicates that racism in prisons is a pressing problem. For example, research conducted by the Irish Penal Reform Trust identified anti-Traveller discrimination in prisons, such as the use of offensive language by prison officers towards Travellers.³⁵ Similarly, the European Committee on the Prevention of Torture (CPT) received allegations of prison officers “deliberately provoking prisoners, for example, by...

²⁸ See, ICCL, Alyson Kilpatrick, [A Human Rights based approach to policing in Ireland](#), 2018.

²⁹ AGS, [Human Rights Strategy 2020-2022](#), 2020.

³⁰ AGS, [Diversity and Integration Strategy, 2019-2021](#), 2019.

³¹ See, ICCL, Alyson Kilpatrick, [A Human Rights based approach to policing in Ireland](#), 2018, p. 25.

³² *Ibid.*

³³ Equal Status Acts 2000-2018.

³⁴ Committee on the Elimination of Racial Discrimination, *Concluding Observations on the combined fifth to ninth reports of Ireland*, 23 January 2020, CERD/C/IRL/CO/5-9, para. 15.

³⁵ IPRT, [Travellers in the Irish Prison System](#), 2014, p. 17.

calling them names, notably as regards members of the Traveller community and persons of African descent.”³⁶ In February 2021, the Irish Times published reports of racist and anti-Traveller comment and material being shared in an online group for Irish prison officers on social media.³⁷ The Director General of the Irish Prison Service (IPS) acknowledged that this incident “damaged the reputation” of IPS and that an educational programme, composed of anti-racism materials, has been put in place for staff.³⁸ We recommend that this educational programme complies with human rights standards and is provided for all new prison staff and as part of continuous professional development on a regular basis for all staff across Irish prisons.

Racism and other forms of discrimination targeted towards imprisoned people may be exacerbated due to the lack of a fully independent complaints mechanism for prisoners. For example, the CPT highlighted that the current complaints system in prisons “cannot be considered fit for purpose.”³⁹ ICCL recommends that a completely independent mechanism for the consideration of prisoner complaints, such as through access to an Office of Prison Ombudsman, be established. An effective and independent National Preventive Mechanism inspecting all places of detention, including prisons, police stations, direct provision centres, and psychiatric hospitals, is also lacking. ICCL would reiterate its recommendation to ratify OPCAT and create an effective and independent National Preventive Mechanism to inspect all places of detention, including prisons, police stations, direct provision centres, and psychiatric hospitals.

E. Are there particular issues connected with racism and gender and access to justice?

Women of colour and members of ethnic minority groups may face additional barriers to accessing justice. The Council of Europe recognised this in a recommendation highlighting that “Roma and Traveller women face compounded barriers in their access to justice resulting from a number of inequalities at the legal, institutional, structural, socio-economic and cultural levels, and that these obstacles are especially serious for women and girls who are

³⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *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*, 2020, para. 33.

³⁷ Conor Gallagher, *Prison service attempts to get staff Facebook group removed over racist posts*, The Irish Times, 24 February 2021.

³⁸ Conor Gallagher, *Racist social media comments ‘have damaged’ Irish Prison Service*, The Irish Times, 19 March 2021.

³⁹ Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Government of Ireland on the visit from CPT from 23 September to 4 October 2019*, 2020, p. 5.

victims of violence.”⁴⁰ An intersectional approach to understanding the impact of inequalities, barriers to access to justice, and designing measures to address them must be taken.

Theme 2 - All forms of media and communications, including new technologies

A. What actions would you suggest to tackle racism in new and more traditional forms of media?

Expert NGOs in the area could offer rolling training to newspaper/website, editors/sub-editors/reporters about racism on the basis of Principle 8 of the Press Council of Ireland’s code of practice which states: “The press shall not publish material intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the travelling community, gender, sexual orientation, marital status, disability, illness or age.”⁴¹ Editors could benefit from learning about new and emerging language and memes used to harass and attack in this manner. This could take the form of annual reports which could feed into newspapers’/websites’ own house style guides.

B. What actions do you think would help to make broadcast media and the press more representative at all levels of everyone living in Ireland?

Outlets should be encouraged to have, publish and apply equitable internal hiring, inclusion and leadership policies which could result in more representative newsrooms and news content. NGOs could work with Newsbrands⁴², the representative body for all newspapers, print and online.

NGOs could work with journalism college course leaders to highlight to students the imbalance in our media and need for/value of inclusion of underrepresented groups. This could be done via the production of evidence-based reports outlining the exclusion.

C. What are the challenges posed by new technologies in terms of racism?

Since the foundation of the State, Ireland has attached fundamental importance to freedom of expression in our democratic society. The State has a duty to create an enabling

⁴⁰ Council of Europe, *Recommendation CM/Rec(2017) 10 of the Committee of Ministers to member states on improving access to justice for Roma and Travellers in Europe*, 2017.

⁴¹ Press Council of Ireland, Code of Practice, available at: <https://www.presscouncil.ie/press-council-of-ireland-1/code-of-practice->.

⁴² NewsBrands Ireland is the representative body for all national newspapers, print and online. Additional information is available here: <https://newsbrandsireland.ie/about-us/>.

environment for free expression, which is fundamental for a flourishing democracy, the protection of human dignity and full political participation by all members of society. All individuals within a State's jurisdiction have a right to freely exchange ideas, views and experiences without fear of discrimination or violence. This applies to digital and non-digital spaces. At the same time, ICCL has already expressed concern for the rise of hate crime and hate speech in Ireland⁴³. Online hate speech, particularly on social media platforms, is now a significant and acknowledged social problem. In 2020, the biggest increase of reports through iReport.ie related to online racism. Media and social media incidents accounted for 334 reports, compared to 174 in 2019, with Facebook, whose business model arguably incentivises salacious content, as the number one culprit (119). Recent research shows that online hate speech correlates to hate crimes offline⁴⁴. A 2019 study shows for example that as the number of "hate tweets" made from one location increased, so did the number of racially or religiously aggravated crimes at that location.⁴⁵

Private companies often make poor decisions when it comes to combating racism based on their community standards and the use of blunt instruments/algorithmic solutions⁴⁶. Automatic filters do not necessarily work, particularly because they cannot detect context, sarcasm and humour. This is an ongoing challenge for social media companies and regulators.

ICCL supports the recommendations of the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, for 'radical transparency' for corporate platforms and states⁴⁷, as well as the Santa Fe principles for explicit transparency.⁴⁸ We assert that transparency is essential for both corporate platforms

⁴³ ICCL, Review of the Prohibition of Incitement to Hatred Act 1989, submission to the Department of Justice and Equality, December 2019, available at: <https://www.iccl.ie/wp-content/uploads/2020/02/ICCL-DoJ-submission-to-consultation-on-hate-speech.pdf>.

⁴⁴ INAR, Reports of racism in Ireland - Data from iReport.ie 2020, Authored by Dr Lucy Michael, 2020, available at https://inar.ie/wp-content/uploads/2021/03/2020_iReport.pdf.

⁴⁵ Williams, Matthew L., Burnap, Peter, Liu, Han, Javed, Amir and Ozalp, Abdullah 2019. Hate in the machine: Antiracist and anti-Muslim social media posts as predictors of offline racially and religiously aggravated crime. *British Journal of Criminology* 10.1093/bjc/azz049

⁴⁶ See e.g. Sam Levin, Facebook temporarily blocks Black Lives Matter activist after he posts racist email, *The Guardian*, September 2016, available here: <https://www.theguardian.com/technology/2016/sep/12/facebook-blocks-shaun-king-black-lives-matter>;

⁴⁷ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 April 2018, A/HRC/38/35, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/096/72/PDF/G1809672.pdf?OpenElement>.

⁴⁸ See in particular 'The Santa Clara Principles On Transparency and Accountability in Content Moderation', available at: <https://santaclaraprinciples.org>. The principles state that, at minimum, companies should (1) publish the numbers of posts removed and accounts permanently or temporarily suspended due to violations of their content guidelines; (2) provide notice to each user whose content is taken down or account is suspended about the reason for the removal or suspension; and (3) provide a meaningful opportunity for timely appeal of any

and state content moderation. Transparency includes, at minimum, full disclosure of the rules used to moderate content and, crucially, how those rules are applied together with functional appeals processes and accountability for wrongful takedown. Transparency of social media companies' inner workings and recommendation systems should also allow for the interrogation of exactly how race is embedded in social media technologies' design and governance rather than just focusing on racist expressions and comments. The workplace conditions for human content moderators must also be drastically improved⁴⁹.

As highlighted by ICCL and other civil liberties organisations in a previous report⁵⁰, Facial Recognition Technology (FRT) systems perform much worse at identifying women and people of colour than male, white faces. This means that image-matching FRT systems, used by law enforcement agencies, are more likely to misidentify people of colour and females than white males. The current General Scheme of the Garda Síochána (Digital Recording) Bill will likely provide for use of FRT by the gardaí as the Bill provides for "emerging technologies". This would also tie in with An Garda Síochána's Modernisation and Renewal programme 2016-2021⁵¹, which refers to FRT explicitly and says "technologies such as face in the crowd and shape in the crowd biometrics will be used to identify key targets".

ICCL is completely opposed to the use of FRT cameras and, with over 170 civil society organisations and activists from 55 countries around the world, we recently called for an outright ban on biometric surveillance in public spaces⁵². A biometric is a way to identify someone based on physical characteristics: fingerprints, DNA, retinas, voice, face, or even gait, among others. Privacy is under threat when these measurements are collected, analysed, and stored in readily searchable databases.

content removal or account suspension. It is the position of the ICCL that states should be held to an equally high transparency standard.

⁴⁹ Foxglove, Facebook has offered \$52million to settle compensation claims with moderators in the US. But within Europe, the battle for fair compensation and improved working conditions will continue, May 2020, available at <https://www.foxglove.org.uk/news/facebook-has-offered-52million-to-settle-compensation-claims-with-moderators-in-us-but-within-europe-the-battle-for-fair-compensation-and-improved-working-conditions-will-continue>.

⁵⁰ International Network of Civil Liberties Organisations, Facial Recognition Tech Stories and Rights Harms from Around the World, January 2021, available here: <https://files.inclo.net/content/pdf/19/in-focus-facial-recognition-tech-stories.pdf>.

⁵¹ An Garda Síochána, Modernisation and Renewal Programme 2016-2021, p. 44, available at: <https://www.garda.ie/en/about-us/publications/policing-plans/strategy/modernisation-and-renewal-programme/modernisation-and-renewal-programme-2016-2021.pdf>.

⁵² Access Now and other, Open letter calling for a global ban on biometric recognition technologies that enable mass and discriminatory surveillance, June 2021, available at: <https://www.accessnow.org/cms/assets/uploads/2021/06/BanBS-Statement-English.pdf>.

D. Are there any opportunities offered by new technologies to strengthen the fight against racism?

It cannot be said “new technologies” present promising opportunities to safeguard against racism, or the protection of human rights, democracy and the rule of law. Systems will provide different opportunities or risks depending on the targeted population, context and situation in which they are deployed. They will also depend on the safeguards and/governance structures put in place.

E. What role can the regulation of tech companies play in combating racism?

Properly enforcing the right to privacy and data protection law would play an important role in protecting minorities against potentially discriminatory targeting. We are all routinely profiled online by the online advertising and data industries, including on the basis of race.⁵³ As a result, people’s ethnicities and other characteristics can be recorded by data brokers or other actors. Amnesty International has shown that it is easy to buy sensitive data about minority communities.⁵⁴

This free-for-all of personal data is only possible because of chronic under enforcement of data protection law by the Data Protection Commission (DPC), and by other European data protection supervisory authorities.⁵⁵ ICCL submitted evidence to the DPC that included the profiling of people in Ireland who suffer from AIDS/HIV,⁵⁶ but no action has been taken thus far to combat this type of discrimination.⁵⁷

This is particularly dangerous because these data are now used to inform automated decision making (or “AI”) technologies, which make important decisions behind the scenes that affect our lives. This exposes minorities to discrimination. For example, in 2019 Facebook settled a class-action lawsuit alleging that its automated “Lookalike Audiences” tool allowed

⁵³ ICCL is litigating against the global standard setter of the data broker industry. Included in our evidence is the “IAB Audience Taxonomy”, the code book that specifies what information may be bought about a person. Items available include a person’s diet, debt, faith, sport, politics, health conditions, and other sensitive characteristics. See “Landmark Litigation: Online advertising causes the world's biggest data breach. We are going to court to stop it”, ICCL, 16 June 2020 (URL: <http://iccl.ie/rtb-june-2021/>).

⁵⁴ “Muslim registries”, Big Data and Human Rights”, Amnesty, 27 February 2017 (URL: <https://www.amnesty.org/en/latest/research/2017/02/muslim-registries-big-data-and-human-rights/>).

⁵⁵ “Economic & Reputational Risk of the DPC’s Failure to Uphold EU Data Rights: Submission to the Joint Oireachtas Committee on Justice”, ICCL, 26 March 2021 (<https://www.iccl.ie/wp-content/uploads/2021/03/ICCL-submission-on-the-GDPR-to-the-Joint-Oireachtas-Committee-on-Justice-26-March-2021.pdf>), p. 6.

⁵⁶ “Two years of DPC inaction on the ongoing RTB data breach: Irish people with AIDS profiled, and Polish elections influenced”, ICCL, 21 September 2020 (URL: <https://www.iccl.ie/digital-data/rtb-data-breach-2-years-on/>).

⁵⁷ “Economic & Reputational Risk of the DPC’s Failure to Uphold EU Data Rights”, p. 6.

employers to show job ads only to candidates demographically identical to their existing workers.⁵⁸

We believe there is little to prevent a recruitment algorithm from automatically rejecting minority applicants, because the necessary information about everyone appears to be available for purchase from data broker firms.⁵⁹ Therefore, data protection law must be enforced to prevent minorities from being profiled and discriminated against. ICCL has recommended that Government appoint two additional Commissioners to the DPC, as provided for in the Data Protection Act 2018. It has also recommended that Government urgently launch an independent review of how to reform and strengthen the DPC.

Government should not rely on tech firms' internal compliance or adherence to codes of practice. It should stimulate employee whistle blowing, to increase the likelihood that dangerous behaviour will be revealed and responded to appropriately.

The Wall St Journal reported that Facebook knew from an internal 2016 study that "64% of all extremist group joins are due to our recommendation tools Our recommendation systems grow the problem". The company did nothing about this.⁶⁰ Where self-regulation, including codes of behaviour, fail, the government must do more.

Government should amend Section 5 of the Protected Disclosures Act 2014 to include reckless design of platforms that may amplify racism and discrimination. (We note that when implementing DIRECTIVE (EU) 2019/1937 (due by December 2021), Government is given the latitude in Article 2(2) to include categories of wrongdoing additional to those provided for by the new Directive.)

Where tech firms have published rules of behaviour, they should be required to regularly produce meaningful reports on the application of these standards, and how disputes relating to the application of the standards are resolved and adjudicated.

It is important that efforts to combat racism do not disproportionately impact the right to freedom of expression or unfairly impact minority groups. Radical transparency can assist in ensuring that the right balance is being struck. Those affected by decisions or omissions by social media companies that leave them exposed to extreme hate speech or unfairly impact

⁵⁸ "Beware of Automated Hiring", New York Times, 8 October 2019 (URL: <https://www.nytimes.com/2019/10/08/opinion/ai-hiring-discrimination.html>).

⁵⁹ See "Landmark Litigation: Online advertising causes the world's biggest data breach. We are going to court to stop it".

⁶⁰ "Facebook Executives Shut Down Efforts to Make the Site Less Divisive", Wall St. Journal, 26 March 2020 (URL: <https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499>).

their right to freedom of expression must always have recourse to a fair process of complaint with the judicial authorities as the ultimate arbiter. Improving access to justice is also relevant in this context.

Conclusion

The National Action Plan against Racism can play an important role in combating racism in Ireland but it must be action oriented and conform with international standards. Properly responding to institutional racism across the public and private sectors requires specific research as to the extent and manifestation of the issue. It requires disaggregated data collection and analysis to provide high quality evidence that laws and policies can respond to. It requires targeted education and training for all public sectors actors and specific measures to ensure compliance with the public sector human rights duty under s.42 of the Irish Human Rights and Equality Commission Act. Improving access to justice, ensuring victims' rights to information and support and responding to the specific problems that social media poses in a manner that properly balances the right to privacy, dignity and freedom of expression, in line with other legislative initiatives, will be key. An ongoing public campaign and educational initiatives to combat racism across all levels of society will play a crucial part in making Ireland a safer place for everyone, no matter who they are or where they are from.

About ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights.