



acjrd

11th Annual Conference 2008

Minorities, Crime and Justice

Tower Hotel Dublin, Tallaght, Dublin 24

9th & 10th October 2008

CONTENTS

	Page No.
Welcome Address	
<i>Maura Butler, Chairperson, ACJRD Ltd</i>	2
Opening Address	
<i>Conor Lenihan T.D., Minister for Integration</i>	4
Crime Security and the Irish Immigration System	
<i>Pat Folan, Director General, Irish Naturalisation and Immigration Service</i>	6
Minorities and the Police Complaints Process in Ireland	
<i>Commissioner Carmel Foley, Garda Síochána Ombudsman Commission</i>	12
Crime and Ethnic Diversity	
<i>Philip Watt, Director, National Consultative Committee on Racism and Interculturalism</i>	15
Offences and Penalties in the Immigration, Residence and Protection Bill 2008: Do the punishments fit the 'crimes'?	
<i>Hilkka Becker, Senior Solicitor, Immigrant Council of Ireland</i>	17
Gender and Crime: A Cautionary Tale	
<i>Professor Frances Heidensohn, London School of Economics</i>	24
Supporting Victims of Hate Crime – Prevention, Reporting and Practical Action	
<i>Linda Hutchinson, Race Relations – Community Cohesion Unit, Northern Ireland Housing Executive</i>	28
Minorities and Youth Justice: An Irish Concern?	
<i>Nicola Carr, Children's Research Centre, Trinity College Dublin</i>	33
Marginalised Communities and Justice: An Irish Case Study	
<i>David Joyce BL, The Law Library</i>	41
Workshop Discussions	45
Conference Attendees	50

WELCOME ADDRESS

Maura Butler, Chairperson, ACJRD Ltd

This year's conference *Minorities, Crime and Justice* was influenced by Council Member awareness of a need to focus on the increasing diversity of Ireland's inhabitants. Earlier this year, during a sterling delivery of the Inaugural Martin Tansey Memorial Lecture, The Secretary General of the Department of Justice, Equality and Law Reform (DJELR), Sean Aylward, a co-founder of this Association, stated that he saw *"our jobs as public servants in the Justice Sector to help protect and vindicate people's rights, irrespective of colour or creed"*.

The designation of 2008 as European Year of Intercultural Dialogue copper-fastened our Council's intent to put a spotlight on the aspirations of the Council of Europe White Paper on Intercultural Dialogue in facilitating *"Intercultural dialogue [as] a mechanism to constantly achieve a new identity balance, responding to new openings and experiences and adding new layers to identify, without relinquishing one's roots."*

So during this conference that intercultural dialogue will occur, as we exchange expertise and opinions through a broad range of erudite speakers and participative workshops.

We are very fortunate and honoured that so many policy makers and practitioners in a diverse range of services available to our various minority groups have taken the time and effort to be with us, giving voluntarily of their time. Most particularly, we are grateful that Minister for Integration, Conor Lenihan, has agreed despite his extremely busy schedule, to launch this conference.

We look forward to embracing and integrating this broad range of views, in the hope that the resultant dialogue, throughout our engagement, will achieve an enhanced understanding of what it is like to be a member of a minority in this country, engaging with our Criminal Justice System (CJS).

Topics explored by the various papers and workshop discussions will pose questions around immigration and the attendant security concerns, proposed legislation and the interaction of police, prison and probation

services with immigrants, many of whom are linguistically challenged in an unfamiliar culture. We will look closer to home, by considering our native ethnic Traveller community and the challenges they face when confronted by the CJS. We will also learn from our neighbouring jurisdiction as we consider the particular challenges faced by women, as a minority in the prison system in the UK and views on managing the racist victimisation of those who choose to live in a country other than home, in this case Northern Ireland, without relinquishing their roots or identity.

We aim to become enabled in the identification of what works well and what we could do better thereby applying the ACJRD vision and mission statements of advancing independent criminal justice research and inter-disciplinary dialogue in Ireland.

This conference would not happen without the voluntary commitment of a magnificent team – a combination of Patron, Council and committed staff members. I therefore sincerely thank the following:

- Our Patron – The Hon. Mr. Justice Michael Moriarty
- Our Funders – Department of Justice Equality and Law Reform
- Officers of ACJRD Ltd.:
 - ◆ Finbarr O'Leary – ACJRD Vice-Chair, Children's Act Advisory Board (CAAB)
 - ◆ Norah Gibbons – ACJRD Co. Secretary, Barnardos Ireland
 - ◆ Noreen Landers – ACJRD Co. Treasurer, Office of the DPP¹
- Directors in alphabetical order:
 - ◆ Brendan Callaghan, DJELR
 - ◆ John Molloy, Courts Service
 - ◆ Gerry McNally, Probation Service
 - ◆ Professor Ian O'Donnell, UCD
 - ◆ Ann O'Gorman, National Crime Council

- ◆ Kathleen O'Toole (represented by John Brosnan),
Garda Síochána Inspectorate
- ◆ Brian Rowntree, Northern Ireland Housing
Executive
- ◆ Brian Purcell (represented by Kieran O'Dwyer),
Irish Prison Service
- Manager: Geraldine Comerford who has loyally served
the Association for nine years, by implementing
Council policy and more recently has played a vital
role in the Association's structural changes and
governance systems.
- Administrator: Linda Mooney who has streamlined
our membership process and compiled data on our
new working group structure and with Geraldine has
undertaken the administrative needs associated with
this conference.
- Researchers: Stefanie Heinrich who is doing follow-
up research on a previous ACJRD study and Emer
Meehan who has returned to ACJRD to compile
these conference papers.
- Volunteer Intern: Adele Smith and those researchers
who have agreed to assume the role of Rapporteur
reporting back on the conclusions and
recommendations of the conference workshops and
who will assist in ensuring that this 11th Annual
Conference will run as smoothly as possible.
- Bursaries: This year's bursary fund, which enables
students and staff from smaller organisations
to attend the conference when they could not
otherwise afford it, was generously provided by
the Office of the DPP and the CAAB.

We look forward to your participation in the discussions,
which will emanate from what we believe will be a most
stimulating conference.

Maura Butler

Chairperson

Notes

- 1 Jane Farrell has been nominated by the DPP's Office to replace
Noreen Landers who is retiring from the Council.

OPENING ADDRESS

Conor Lenihan T.D., Minister for Integration

Ireland has experienced remarkable immigration over the past ten to 12 years.

The 2006 Census shows that there are now in excess of 420,000 non-Irish born people living in our country and the percentage of non-Irish could be as high as 12% of our population.

However, in the current economic downturn some migrants are choosing to leave Ireland, either to return home or to secure employment in other countries. Immigration is reducing in the face of the declining job market. To the end of August this year, 41,000 fewer PPS numbers were issued to non-Irish nationals, compared to the end of August last year.

This is particularly evident in the numbers coming to work from EU countries. In percentage terms the reductions for the main Accession countries are: Romania 55%; Poland 43%; Lithuania 40%; Slovakia 36%. In addition there has been a decline of 33% in the number of work permits issued up to the end of August, compared to the number issued in the same period last year.

I believe that it will always be the case that we will need to attract experts in certain fields to this country if we are to continue to develop as a nation. It was always the case, even in the days of mass emigration that a certain number of experts came to live and work here, to help establish new industries, provide employment and contribute to social wellbeing.

Furthermore, the current worldwide turbulence on the financial markets will come to an end. When that happens we will need to make sure that Ireland remains a place where people want to work, live and enjoy what Ireland has to offer.

Migration has boosted growth, helped alleviate labour shortages and forms an essential part of what makes Ireland attractive to multinational companies. For these reasons, not to mention social stability, it is in all of our interests to ensure integration is successful.

As many of you are aware, my Office was established in June 2007 and has a cross departmental mandate to

develop, drive and co-ordinate integration policy across Government departments, agencies and services. We are currently shaping Ireland's own unique approach to integration. This involves all Government departments, all sectors of civil society including the new communities, the host communities, social partners, civic society, organisations and service providers.

We want to be pro-active and plan for an intercultural society where there is co-operation, understanding and a shared responsibility between the different cultural groups. As I have said on many occasions, we will achieve this by working in partnership.

I recently published a statement of national policy in relation to integration and diversity management. In this statement called *Migration Nation* I make the point that the key challenges facing both Government and Irish society is the imperative to integrate people of much different culture, ethnicity, language and religion so that they can become new citizens of the 21st century.

By strategic planning for the future and by setting up proper structures we can avoid the difficulties that other countries have experienced. Significantly this will be to ensure a mainstream approach in delivering services to migrants in order to avoid the advent of parallel communities.

In addition to developing a national policy on integration, my Office is in the process of setting up specific structures to achieve its core co-ordination and promotion aims. These structures include a Ministerial Council, a Task Force, and a Commission for Integration.

The Task Force will be expert based and will consult widely with immigrant and indigenous populations, visit communities, examine previous research and report back to me with specific recommendations. The role of the proposed Ministerial Council will be to provide advice directly to me on issues faced by migrants. The members of this council will be migrants. Finally the Commission on Integration will be an expert commission and will regularly review progress being made in the field of integration.

My new integration policy focuses on the role of local communities, authorities, sporting bodies, faith based groups and political parties in building integrated communities. It should also be stressed that integration is, of necessity, a two-way process with responsibilities and rights for both newcomers and the current population.

All of the available research evidence by way of public opinion polls shows that the Irish people are adapting well to what has been, by international comparison, a very rapid transformation of the country to diversity.

Professional surveys of attitudes, conducted at both European and domestic level, indicate that Irish people have a high level of day to day contact with our newcomer population and a lower incidence of racially motivated attacks on migrant individuals. Our identity and reputation as a friendly and welcoming people demand that we continue to manage immigration issues with sensitivity.

An objective of the Government's National Action Plan against Racism is concerned with effective protection and redress against racism including a focus on combating discrimination, assaults, threatening behaviour and incitement to hatred. The Justice family have a central role to play in this regard and I am aware that progress is being made.

The Gardaí have a crucial part to play in providing protection against racism and the more general challenges in policing in a diverse and multi ethnic society. Significant progress has been made to date specifically in the setting up of the Garda Racial and Intercultural Office.

I am informed that to date, over 500 ethnic liaison officers have been appointed throughout Ireland. In addition, intercultural consultative forums between the Gardaí and members of minority communities are organised locally and nationally. The Gardaí are also actively recruiting people from minority communities. I know that David McInerney from the Garda Racial and Intercultural Office will be talking to you later today about the work of his office and the training provided for Gardaí in this regard.

The prohibition of Incitement to Hatred Act 1989 is robust; however, there is currently no criminal law provision which defines racist offences. Research into

this aspect has been commissioned under the National Action Plan against Racism and is being undertaken by the Centre for Criminal Justice, University of Limerick. This research will be published later this month.

Interim findings of this research propose enabling courts to treat racist hostility as an aggravating factor in sentencing. A reference is made to Section 11(4) of the Criminal Justice Act 1984, where the court is obliged, subject to exceptions, to treat an offence committed on bail as an aggravating factor for sentencing purposes.

Anti-racism and intercultural awareness training initiatives are in place across the criminal justice agencies, including An Garda Síochána, Immigration Officers, Prison Service staff and inmates and for staff dealing with asylum seekers.

The Government of Ireland is fully committed to equality before the law. This principle was articulated at the inception of the State. For example see Article 38.1 and 38.5 of the Constitution.

Article 38.1 states 'No person shall be tried on any criminal charge save in due course of the law.'

Article 38.5 states "Save in the case of the trial of the offences under section 2, section 3 or section 4 of this Article no person shall be tried on any criminal charge without a jury."

The Constitution emphasises that justice is accessible to all. A right of access to the Courts has also been held to be an unremunerated personal constitutional right under Article 40.3. which states "The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen....The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."

The media industry also has a duty to ensure responsible reporting on matters relating to immigrants.

The conference programme over the next two days looks very interesting and I'm sure there will be a lot of lively and productive discussion.

CRIME SECURITY AND THE IRISH IMMIGRATION SYSTEM

Pat Folan, Director General, Irish Naturalisation and Immigration Service

I am very happy to accept the invitation to address the conference today.

As Director General of the Irish Naturalisation and Immigration Service (INIS) my perspective on migration and crime will I'm sure be somewhat different to that of some of our other speakers.

It has been said before but Ireland has had a massive influx of migrants in the last ten or more years, and we sometimes forget how dramatic the change has been. The 2006 census recorded 408,000 migrants, representing 188 nationalities. Eight of those nationalities have communities in excess of 10,000 people resident in this country. I think it's important to bear in mind that, while immigration from Eastern Europe and Africa has garnered most of the headlines over recent years, the number of Americans in the country, for example, has doubled. There are also 112,000 UK nationals who are not counted in any of the figures above. Added to this are those we can't count, those who came here, or have remained here, illegally. By definition it is almost impossible to even estimate how many people fall into that category.

The rapid demographic shift in this country gives all of us across the justice sector a whole range of new challenges. This is particularly the case for the immigration services which have undergone massive changes in response to these developments even though, initially, we were playing "catch up" in terms of legislation, staffing and organisational structures. Much has been done in this area in the last few years to get ourselves to a stage which has taken other countries 20-30 years. We still have plenty of work ahead of us.

The immigration subject is a very broad one and I am conscious that in concentrating on migration and crime today I will not give enough emphasis to Ireland's generally very positive immigration experience and the benefits it has brought to the country.

What I am going to talk about today is how issues of security and crime impact on our immigration system and the way in which our system responds to that challenge.

Let me start by saying that, when we talk about crime in an immigration context, it is important not to forget that the underlying issue here is the criminality and not the act of migration. The State has a duty to protect itself, its citizens, visitors and foreign national residents from crime and threats to their security. Whether it is Gardaí on patrol, probation staff engaged in preventative interventions or the operation of our prisons, the justice sector provides a multi-pronged response to the challenge of criminality. It does so irrespective of the nationality of the victim or the perpetrator.

The role of the Immigration sector of the Justice family is somewhat different. We are concerned only with migrants and our brief insofar as security is concerned is to manage and minimise the potential threat that is posed to the State by immigration. That is not to suggest that migrants are anymore likely to threaten the State than citizens, that they have a higher propensity to commit criminal acts, or that if they do so their conduct is any more reprehensible than that of an equivalent Irish person. It is merely a reflection of the reality that, while we are stuck with our own criminals, we can exercise some control over the entry and presence of non-nationals who might have similar intentions.

It is also the case that certain types of criminality, which are by their nature linked with migration, such as human trafficking, trans-national organised crime and international terrorism, are real and present challenges to the safety and security of this state and we have to be alive to this threat.

That said, and despite the warnings of some, immigration has not led to a crime wave. Migrants are, on balance, no more likely to commit serious crimes than citizens. On the principle that bad news gets noticed and good news ignored, comments have been

made in the media and elsewhere, about the incidence of knife crime among migrants. It has been suggested that up to 40% of all stabbing related deaths in the last five years have involved foreigners, either as perpetrator or victim. This may well be true, but it must be seen against a backdrop of a huge increase in knife crime generally. Knife crime is a national problem, but it is not an exclusively immigrant one, and it was not invented by immigrants. It must also be borne in mind that migrants are as likely to be victims of crime as perpetrators. That is an important point. It is the crime that is the problem not migration and the society that we are seeking to protect is one in which many migrants have a stake.

To go back to the beginning and to put things in context, we should be clear as to the starting point of immigration systems. There is no inalienable right to migrate. Yes, it is generally accepted, other than by totalitarian states, that people should be free to leave their home country. However, that in no way implies a right to move to another country. Therefore migration is entirely dependent on the approach of the receiving State.

Indeed, one of the most fundamental duties, in fact one of the defining features, of any nation state is the responsibility to safeguard the security and integrity of its borders. This duty has been confirmed by the Irish courts on a number of occasions, most recently last December in the judgement of Ms Justice Denham in her ruling in the Bode case. In her words,

"In every State, of whatever model, the State has the power to control the entry, the residency and the exit, of foreign nationals. This power is an aspect of the executive power to protect the integrity of the State."

It is this power that the Irish Naturalisation and Immigration Service and the Garda National Immigration Bureau exercise on behalf of the Minister. Put at its simplest, the State can and must regulate who can and can't enter the State. Therefore permission to enter or reside in Ireland, to again quote Justice Denham, is "a determination that the common good is served by giving benefits of residency to a category of foreign nationals – as a gift, in effect".

Thereafter of course we qualify that position through entering voluntarily into international agreements. Notable

examples include international protection of refugees through the Geneva Convention and our EU membership that confers extensive, though not unqualified, rights of free movement. The State also goes on to dispense its "gift" in a more structured way by providing avenues for legal migration, for example, for workers or students.

The linkage in policy terms between migration and crime in the past has been fairly loose not only in Ireland but also in many other EU countries. I have read a recent report by GDISC on this issue. GDISC stands for General Directors Immigration Services Conference, and is an organisation led by Immigration Service Director Generals of some 30 States (including all the EU Members). Its focus is on operational co-operation particularly the pooling of knowledge and experience in the management of asylum and immigration. While the GDISC study highlights a lack of emphasis on the impact of crime on migration in the past it also identifies a more recent change with what it refers to the "migration-security nexus" becoming increasingly acknowledged and reflected in national legislation.

The report, which was based on questionnaires replied to by 20 national migration administrations was interesting in that it identified a range of issues that may impact on migration and crime. The most significant were human smuggling, trafficking, organised crime, irregular migration and terrorism. I will come back to the issue of terrorism. One thing that for me was interesting was that irregular migration had a much higher profile in people's thinking on migration and crime than might often be suggested.

The most invidious form of crime directly associated with migration is trafficking in human beings. It is little more than a form of slavery, often accompanied by brutality, abuse and suffering. I won't say too much about this because I know that is likely to come up later during the conference.

The incidence of trafficking in Ireland is never entirely clear as there is often some disagreement as to definition and the assessment of the position can be clouded by ideological considerations. However, what is clear it that the collective challenge here is to prevent Ireland becoming a target as a country of origin, transit or destination for trafficking.

There has been a lot of progress on the issue of trafficking this year with an Anti-Human Trafficking Unit established in the Department of Justice, Equality and Law Reform under the stewardship of Executive Director, Marion Walsh. The Unit's work on the development on a National Action Plan will be a vital part of the State's response to tackle a most pernicious form of exploitation. As I know Marion is taking part in a subsequent session of the conference I will stop there.

Speaking of definitions, we have tended to confuse smuggling and trafficking in the past, not least in our legislation. While Ireland's geographic location as an island thousands of miles from countries of destination clearly provides some natural help in protecting ourselves from smuggling, it is still an issue, not least in cases, probably the majority, where the ultimate destination is the UK. Ongoing Garda operations and in particular close co-operation with the UK are very important in dealing with this issue.

Most organisations keep risk registers. No great rocket science here but the standard measure is usually a product of the likelihood of the event happening and the impact if it does. In terms of security impact terrorism represents the worst case scenario. The impact will run away beyond the initial atrocity. You only have to look at 9/11 to see the profound changes in the world that are still ongoing. In the event of a terrorist outrage in Ireland or more likely in the UK, carried out by someone who was permitted to enter through Ireland's borders, none of the normally good reasons we have for facilitating migration such as tourism, the labour market, family reunification, all the way up to granting refugee protection, will offer any defence whatsoever to the immigration system or the Minister for what would be seen as failure to protect public safety. What the public would be entitled to expect is that the immigration and security authorities did everything that was reasonably possible to prevent a foreseeable event.

The more recent London bombings illustrated very graphically a different immigration related risk and the absolute need in our approach to integration and other public policies to avoid creating an alienated second generation grouping within Irish society.

There is often a perception that illegal migration is not really a problem, that if it is a crime it is a victimless one. However I think there is an increasing realisation not just in Ireland but across the EU that illegal migration is a major issue and one that has to be dealt with. Ireland spends hundreds of millions per year in combating immigration abuse, whether that is through processing bogus asylum claimants or dealing with illegal immigrants. That is money that is not available to spend in other areas where it is needed. Illegal work undermines those who work legally and gives dishonest employers an incentive to avoid hiring legal workers or paying their staff properly. We also have to be very conscious that negative perceptions of migration are fuelled by people who engage in flagrant abuse of the system. Many of my staff find themselves in a position that combines dealing with immigration abuse by the minority of migrants during the day and then outside work rebutting ill-informed claims that "all migrants are like that and should go home".

A recent Organised Crime Threat Assessment published by the European Police Office, EUROPOL, draws attention to the facts of illegal migration pointing out our attraction because of a flourishing economy, demand for low skilled workers and "the image of easy access to health, welfare and education systems", and of course it's a back door into the UK. While any report that speaks of our economy flourishing might need a little revision, there is no doubt that a serious concern exists. By its definition, illegal immigration is hard to put numbers on, but there can be no doubt that it is significant. The same report points to evidence that organised crime groups based in ethnic communities in the UK and the Netherlands have begun to extend their operations here, which is one form of inward investment we definitely don't want to encourage.

At EU level the estimated number of illegal immigrants is put at between 4.5 and 8 million. In Ireland, because of the absence of exit controls and the existence of the Common Travel Area, we don't have a reliable figure although the figures we get from some embassies as to the number of their nationals in the State is wildly different from what shows up in the census.

While Ireland has a sovereign immigration regime, there are some external drivers for our approach.

A key element to be considered in Ireland's case is the Common Travel Area with the UK and in particular our largely unpoliced land border with Northern Ireland. In short, we have not only to protect our own State but have a responsibility to our neighbours, as they do to us. This is the price we pay for the ease of movement between the two jurisdictions. A lot of undesirable people want to get to the UK and it is pretty easy to see that a person seeking to enter the UK "under the radar" would consider coming through Ireland if they thought that they would escape detection.

As I indicated earlier, our membership of the European Union brings with it freedom of movement for our citizens and the citizens of every other Member State throughout the territory of all Member States. This has brought tremendous benefit and opportunity to all concerned. Inevitably, however, a small number have chosen to misuse this freedom and have committed crimes in their adopted countries.

In one highly publicised case, a Czech national with a string of previous convictions was jailed for life for a brutal rape and murder in Longford. Understandably, the victim's family and many others questioned why such a person was ever allowed into the State. The unfortunate reality is that it is very difficult to prevent an EU citizen from entering the State, even when they have a criminal record. Under Directive 2004/38/EC, which governs free movement through the community, any such measures must "comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not, of themselves, constitute grounds for taking such measures". This is a fact of life in all EU member states.

Of course it goes both ways, I doubt the Spanish people are too happy about Irish gangsters living the high life, and continuing their feuds, on the Costa del Sol. There are public policy grounds on which States can take action to prevent such persons entering their territory but this is not an area that has much ECJ case law that would define what is acceptable. This is an area that will come to prominence in the near future.

Another important development in relation to the operation of free movement in the EU is the recent judgement of the ECJ in the Metock case. On foot of this ruling, a non-EU national who marries an EU national exercising their right to free movement can enter and reside in the EU with the minimum of immigration controls or can regularise their immigration status with impunity. Once in the EU, and irrespective of how that entry is made, the non-EU spouse and his/her family members can acquire extensive residency rights.

This ruling is very clearly at variance with the understanding of a majority of the Member States at the time of negotiation and adoption of the Directive and it was most definitely not the understanding which this state placed on the Directive. We are still exploring options as to how best to proceed in co-operation with our EU partners, many of whom feel as we do that free movement cannot come at the price of setting aside immigration controls. There is general agreement at EU level that there is a problem but not on the solution.

One thing that was made clear in the judgement is that the Directive allows Member States to adopt measures to refuse, terminate or withdraw any rights conferred by the Directive in case of abuse of rights or fraud. One particular form of fraud is the marriage of convenience. There is no doubt that marriages of convenience do happen, although they are extremely hard to prove. It is also clear that there are facilitators who will, for a price, set up a marriage. In a case successfully prosecuted in Derry earlier this year, an organised ring was exposed where a number of Chinese and Nigerian men paid a "fixer" between £3,000 and £4,000 to arrange marriages with local women. In their testimony, several of the women testified that they were coached in what to say and do, that they met their new husbands on the steps of the registry office and haven't seen them since. To add insult to injury, some of the women didn't even get paid.

Our own studies of applications received under the free movement Directive have shown some very unusual patterns. Of 4600 applications received between May 2006 and Aug 2008, almost 10% involved nationals of one particular EU country, Latvia. Fifty per cent of these Latvians were married to Pakistanis, Bangladeshis or Indians, as compared with 39% of the Latvians who

married non-EU nationals from closer to home (Latvian Aliens, Ukrainians, Belarusians, and Russians). Fifteen per cent of all the applications we received in the same period came from persons in the asylum system and another 15% from persons on student permission, that is to say, from people whose permission has a finite duration or whose future was uncertain. We have subjected the figures to statistical analysis, including comparison with registration figures and data on EU nationals residing in Ireland and the high incidence of applications from certain nationalities are so statistically abnormal that they cannot have occurred by chance.

I have outlined a number of the main challenges we currently face across the migration spectrum. For the remainder of my time I'd like to touch on some of the key elements of the State's response.

The first of these is legislation. As people will be aware, the Criminal Law (Human Trafficking) Act 2008 was enacted earlier this year. This Act creates new offences of trafficking in children and adults for the purposes of their sexual or labour exploitation or the removal of their organs. It also makes it an offence to sell or offer for sale or to purchase or offer to purchase any person for any purpose.

The Immigration Residence and Protection Bill 2008 is currently before the Oireachtas. The main thrust of the Bill is to provide a comprehensive legal framework for dealing with all aspects of immigration from initial visa application to long-term residence. All through the Bill it is made clear that migrants have certain responsibilities to the State. The Bill contains numerous provisions whereby permission can be refused on the basis of previous criminality or a threat to public order, public security or public policy.

The Bill also streamlines the process of removing persons who don't have permission to be here. It will also seek to address the anomaly where it is possible for an illegal migrant to access other State services and benefits and thus prolong their illegal stay. Entitlements to State services by foreign nationals unlawfully here will be severely restricted. The Bill also provides for more extensive exchanges of information on immigration between State agencies and with other Governments. Illegal activity in the migration area thrives on lack of communication between State agencies or inadequate international co-operation.

Information is the key. When dealing with the issue of potential migrant criminality there is an obvious difficulty. The local knowledge, access to criminal records, intelligence sources and environmental knowledge of the society in which they live are all absent. We simply don't have the sort of picture that we would have in dealing with our own nationals. The first time an immigration official comes across the non-national may be across the counter at an immigration booth at the airport. If they are visa required we are looking at a paper application from a country about which we may not have a lot of information.

To address the information deficit we have opened visa offices in six countries. These are India, Nigeria, Russia, China, Egypt and the UK. Apart from the latter which is more a reflection of the fact that many applications to come to Ireland are made in the UK, and Egypt which is in effect a regional office for the Middle East, the other 4 countries are an answer to a need to get closer to the source of the migrants and obtain local knowledge that can be used to make better informed decisions. These offices have been very effective in sifting out poor quality applications.

Local knowledge is very important. This is a lesson we have learned from our dealings in the asylum area. Like other countries, our asylum system recognises the value in acquiring what is known as country of origin information so that when the staff of the Refugee Application Commissioner hear an asylum claimant's story then can make an educated assessment as to whether this is a genuine refugee or an economic migrant spinning a cock and bull story.

International co-operation is increasingly important. Operationally this may come through police co-operation. Garda officers are also posted with EUROPOL and INTERPOL. Ireland is also active in international action against illegal migration. We participate in the operations of the European borders agency FRONTEX. Garda officers have participated as observers in operations at European airports and in joint return operations. We have a very close working relationship with the UK and have participated in joint operations with them. You cannot have too much of this form of co-operation.

This is the way things are going in terms of the migration crime security nexus from an immigration perspective. We

are not alone in this. The EU as a whole is moving in the direction of stronger co-operation on border control and in dealing more effectively with illegal migration. This point was most recently emphasised in the Immigration and Asylum Pact under the French Presidency of the EU.

The final area of activity that I want to mention is the use of technology and in particular the application of biometrics. This is happening at present via the AFIS project and the deployment of this technology in the Immigration area, as part of an overall Garda deployment, is a vital element in protecting our borders. Although it raises legitimate concerns about privacy, we must recognise the world we live in and utilise the available technologies to the benefit of the State and its people as well as lawfully resident migrants and bona fide travellers. Internationally, it is increasingly recognised that biometric information, that is details of finger or palm prints, features of the eye or the face, have an important role to play in ensuring the security and integrity of documentation. They are also an internationally accepted method of 'fixing or locking' identities. Although the legislative basis for the taking of fingerprints in respect of foreign nationals who enter the State is provided for as far back as the Aliens Order of 1946, and the fingerprints of asylum applicants have been routinely taken for some years now in accordance with the Dublin II regulation, it is only in the last few months that we have begun the process of recording the fingerprints of all persons registering with the GNIB. A new electronic system called AFIS is in the process of being rolled out at registration offices and ports of entry nationwide for this purpose. This will increase our capacity to identify people who at the extreme end pose a danger to national security down to those who are seeking to abuse our immigration systems.

Ultimately we will go further as we move into the area of E-Borders where any person engaging in air or ferry travel will be electronically recorded. Passenger information will be collected by carriers and sent to an Irish Border Operations Centre (I-BOC) where it will be screened against immigration, Garda and other watch-lists. In the event that a match occurs the relevant agency would be alerted immediately, enabling them to take appropriate measures to intercept, question, stop or arrest the individual concerned.

It would be proposed to develop such a system incrementally. It would be intended to commence with a number of long haul air routes and perhaps one watch-list, increasing over a period of two years adding more carriers and routes (air and sea) as well as watch-lists, until all passenger movements between the State and countries outside the Common Travel Area (CTA) are embraced by the system (about 15 million passenger movements annually at the present time). The capture of data by the Irish Border Information System in respect of passenger travel within the CTA would be considered when the first phase of the system, as described above, has been developed and is being rolled out.

Migrants have brought many benefits to Ireland. Although we are currently in a slump which will slow things down, the long-term projections all indicate that Ireland like the rest of Western Europe will continue to need migrants in the future. Our domestic populations are aging, in some countries at a rate that is truly alarming, and unless we want to work into our dotage and beyond we will need people from overseas to come here and work. Migration is therefore an inevitability and our policies must plan for this reality.

The huge increase in migration has not in general caused the sort of social upheaval that might be expected. Recent opinion polls, such as the one commissioned by Metro Éireann just last month, show that the public is supportive of controls, but also show that 54% of Irish people feel that immigration has been good for Ireland. There is no mass movement to stop immigration, nor is there any intention or desire on the part of the Government to do so.

That said there is a real need for efficient, effective, humane system of control and regulation. The facilitation of legal migration avenues for large numbers of overseas people who want to come here is one side of the coin. The other is firm action in dealing with those who would abuse our system. Public confidence in any immigration system is dependent on both sides of the coin being visible at the same time. The Government must not only be in control, it must be seen to be in control.

Thank you very much.

MINORITIES AND THE POLICE COMPLAINTS PROCESS IN IRELAND

Commissioner Carmel Foley, Garda Síochána Ombudsman Commission

I'm delighted to be speaking at this, the 11th Annual Conference of the Association for Criminal Justice Research and Development. The Garda Síochána Ombudsman Commission (GSOC) is a relatively new body within the Irish criminal justice landscape but in that time we have realised the wide-ranging ambit of our work through receiving complaints from all facets of Irish society. As the title of this conference suggests, the issue of minorities is one that has very much come to the fore for GSOC and raised questions of how we deliver our service. I aim to share some of our experiences in this regard with you and draw from any questions and observations you may have.

The Garda Síochána Ombudsman Commission (GSOC) was established under the Garda Síochána Act 2005 (the Act) as the oversight body to the Garda Síochána; a function which includes the investigation of allegations of Garda misbehaviour. It replaced the pre-existing Garda Síochána Complaints Board (GSCB) and the main distinction between GSOC and the GSCB is that the former has its own independent investigators. Many of GSOC's Investigators are former police officers from other jurisdictions and some have worked with the Office of the Police Ombudsman for Northern Ireland (PONI). The powers available to GSOC Investigators under the Act are quite extensive. In particular, Section 98 provides police-like powers to designated GSOC staff. These include the power to:

- arrest;
- detain for questioning;
- enter and search a place;
- take photograph or fingerprints; and
- take bodily samples.

While GSOC has yet to arrest anyone, it has already formally conducted a search in a Garda station as part of an investigation. The search in question was undertaken with the prior knowledge of the Garda Commissioner, as required by the Act. Furthermore, it was conducted with

the co-operation of Garda management in the station and in accordance with GSOC's prerogative under the Act. The search was subsequently given a negative assessment by the Garda Representative Association (GRA). The GRA represents ordinary Gardaí and if nothing else, the upshot of that criticism, and more so the search, was a realisation that GSOC had a different set of tools available to it than did the GSCB.

Turning directly to the issue of minorities and migrants, I would highlight that, since opening for the receipt of complaints in 2007, GSOC has conducted an Outreach Programme. The programme is designed to both promote public confidence in the process for resolving complaints about Gardaí and inform GSOC of diverse views on policing practice, policy and procedure in Ireland. GSOC determined to concentrate its outreach efforts for the period to spring 2008 on *New Communities*. GSOC for its part defined 'New Communities' as those non-indigenous population groups present in Ireland or those Irish-born individuals claiming attachment to a particular ethnic or religious faith not traditionally found in this jurisdiction and their representative bodies. The contested definitions and notions of minorities and new communities within research and policy circles have been much commented on and with justification. While I do not intend to re-visit or add to these, I would contend that the lack of a clear definition shouldn't act to hinder us from focusing on this important topic. Rather, as CSO data suggests large demographic changes to the Irish population, the extent of the challenge for public bodies such as GSOC cannot be overlooked. Indeed, GSOC has had and continues to receive requests in respect of issues relating to Garda interactions with minorities.

One observation emerging from the GSOC Outreach Programme is surprise among non-Irish nationals that a body like ours exists at all. It would appear that in many countries from which migrants come to Ireland police

misbehaviour is almost taken for granted. To find then that alleged misbehaviour by Gardaí can be directed to GSOC consequently generates much interest among new communities. The more so, given concerns among non-Irish nationals around issues of residency and the more common criminal law statutes pertaining to road traffic and public order matters. Taking all this into consideration, it was perhaps little surprise then that, having written to over 300 organisations in the first few months of its operation, we received more requests for the Outreach Programme from bodies representing non-Irish nationals than organisations with an issue-specific or locality-specific remit.

The Outreach Programme is only one facet from which GSOC is learning about and adapting to the non-Irish nationals using our service. We have made the basic information brochure on our service available in a range of languages on our website. Additionally, GSOC has requested interpreter services on 27 different occasions since opening for business in May 2007. These efforts aside, we are, at the same time, not so confident in our understanding of non-Irish nationals and minorities that we won't raise our hand and signal for some assistance. That is to say, GSOC is on a learning curve and in that regard we are considering the National Consultative Committee on Racism and Interculturalism's information and guidance publications, among others, as benchmarks for our own service delivery to minorities.

I should clarify that what the migratory changes have meant on the ground for GSOC. In terms of complaint throughput, we are receiving complaints from minorities. To date we have received over 4,000 complaints, approximately one-third of which have been deemed inadmissible. We have also identified that just fewer than 2% of all complaints have entailed an allegation of discrimination by a Garda against a member of the public.

Currently GSOC is dependent on complainants identifying themselves as minorities in order for us to become aware of any minority status that may be applied to them. While it is known that Census figures indicate that approximately 10% of the population in Ireland is composed of non-Irish nationals, GSOC has found that 15% of all complaints received by it originate with a person identifying

themselves as non-Irish. These complaints entail allegation types similar to those found in complaints from Irish residents including abuse of authority, discreditable conduct and discourtesy. While the proportion of non-Irish within the GSOC caseload is higher than their representation within the entire population, it is a matter of some conjecture as to what this figure tells us. Hopefully gatherings of researchers, practitioners and policy makers, such as the opportunity presented by this conference, will afford us answers and insights.

The profile of the most common category of complainant to GSOC is a male, aged 18-30. GSOC has observed this profile for both Irish and non-Irish nationals. Two examples from the GSOC caseload illustrate this most clearly. In the first case one complainant, a non-Irish national had contact with Gardaí who found a weapon on his person. The subsequent content of this man's complaint was that carrying a weapon was a normal security precaution in his home country. In the second case Gardaí broke up a fight between two groups of non-Irish nationals. A subsequent complaint about the Garda intervention focussed on the fact that Gardaí had stopped the fight at all; the complainant alleging that problem-solving via fisticuffs was a routine occurrence in his home country. Complaints such as these also highlight the prospect of minorities coming into contact with a policing culture and wider criminal law practice that differs markedly from those in their countries of origin as much as it does Gardaí facing new challenges.

This meeting of different cultures not only tests the Gardaí but GSOC as well. This was most evident in a case referred to GSOC last year when a Polish national, residing in Tralee, Co. Kerry died following a period in Garda custody. The subsequent GSOC investigation into the circumstances of his death necessitated one of our Family Liaison Officers engaging with the man's family in Poland. The interaction again brought to the fore the benefits of having in place a long-term strategy for gauging uptake of GSOC's service and appropriate response to minorities. Adoption of an appropriate and organisation-wide response in any domain is arguably best determined by need. Understandably, perhaps, this brings me back once more to the issue of data collection.

The overriding challenge for GSOC is determining whether we should ask for personal data at all. If we do decide to collect data on minorities, we must be careful to ensure compliance with Data Protection guidelines.

GSOC has come up against several challenges such as a Blue Wall in some quarters of the Garda Síochána. Thus, for example, when a complaint comes down to a Garda's word against a complainant's with no independent witness and with a Garda denying any wrongdoing it is very hard to decide on a complaint. This resistance to police oversight is not specific to Ireland but is a global phenomenon. In its crudest form, the resistance has sometimes taken the form of claims that complaint or oversight mechanisms are a haven for criminals bent on creating difficulties for police.

In response I should emphasise that GSOC has already sent over 30 files to the Director of Public Prosecutions. We have also sent files where people appear to have made a malicious complaint about a Garda. One of these complainants is an Irish national and one a non-Irish national. Knowing these developments should alleviate some Garda fears. Furthermore, GSOC has stressed time and again its intention to protect honest Gardaí as much as it will expose dishonest Gardaí.

Finally, let me say a few words on the Garda National Immigration Bureau (GNIB). We have received a small number of complaints in respect of GNIB. GSOC does not have any right of appeal on a GNIB decision to refuse a person permission to enter or reside in Ireland. However, in common with all complaints about Garda behaviour, we can look at issues such as discourtesy and treatment of persons by those Gardaí assigned to GNIB. Thus, for example, it might be queried whether the questioning of a non-Irish national by GNIB staff in the corridor of an airport in front of other passengers is appropriate. To that end, GSOC would hope for better accommodation facilities for what is a legitimate part of GNIB's work that affords all non-Irish nationals some level of privacy and respect. Additionally, it may be preferable to see Gardaí at airports wearing Garda uniforms rather than civilian clothing.

To conclude, I am grateful to the ACJRD for the opportunity to speak to you today. I hope that my observations on GSOC's work to date prove useful to the conference discussions. It leaves me only to say that I welcome the chance to engage in informal discussion with you all and invite questions from the floor.

CRIME AND ETHNIC DIVERSITY

Philip Watt, Director, National Consultative Committee on Racism and Interculturalism

This paper is structured as follows. The first section 'Changing Ireland' provides a brief overview of ethnic diversity in Ireland. The second section looks at how labelling contributes to creating the conditions for crime motivated by racism. The third section discusses the issues of crime and minority ethnic groups in Ireland from the perspective of victims and perpetrators. The final section looks at priorities for moving forward.

Changing Ireland

The current population in Ireland is 4.2 million people. More than 10% of the total population have been born outside of Ireland. Fifteen per cent of the workforce is international workers – one of highest figures in the EU and there are 150 different nationalities living in Ireland, with 160 different languages spoken.

There is evidence that the economic downturn has considerably reduced the level of inward migration into Ireland but the level of exodus by migrant workers and their families in Ireland has been comparatively limited. The biggest impact to date has been on males from eastern and central Europe working in the construction industry, some of whom may have found other jobs in Ireland in the form of temporary seasonal employment.

2008 has been designated EU Year of Intercultural Dialogue, and it is also the final year of the National Action Plan against Racism (NPAR). The issue of crime and the administration of justice have been identified as an important issue in the integration process in both the Year of Intercultural Dialogue and in the NPAR.

The approach used to discuss issues relating to crime and minority ethnic communities is an important and sensitive one. Minorities are both victims and perpetrators. It is important that such discourse should challenge, not reinforce stereotypes while at the same time be open and honest.

Labelling

The labelling of minority ethnic groups is the process by which stereotypes become accepted as fact based on repeated assertions and prejudice rather than evidence. It is deeply insulting to any group to somehow attribute the actions of some members of that group to be a defining characteristic of the whole community. Labelling helps to create the conditions for racism in Ireland.

The main targets of labelling in Ireland in recent years have been refugees and asylum seekers, Travellers, Nigerians and people who are from the Muslim community. The association of minorities with crime is one of the ways in which the labelling process takes place. The National Consultative Committee on Racism and Interculturalism (NCCRI) has worked to address this in the past by publishing information challenging some of the myths and misinformation on this issue.

As Victims of Racist Crime

The Gardaí collects data on crime motivated by racism in Ireland Garda Figures on Racist Incidents. These figures are as follows:

- 2006: 174 incidents
- 2007: 180
- 2008: circa 180
- Up from 66 in 2004

The NCCRI also collects data and from these figures the main types of crime reported are damage to property and assaults. Harassment and incitement to hatred are also recorded in these figures. Behind the statistics are personal testimonies of those who have experienced such crime, which can have a devastating impact not only on the direct victims, but also the communities to which they belong. A report on this form of crime and the relevant legislation that seeks to protect individuals will shortly be published by the National Action Plan against Racism and the NCCRI. The research was undertaken by Professor Dermot Keogh and Jennifer Schweppe in the Centre for Criminal Law in the University of Limerick.

It also needs to be emphasised that minorities are also victims of 'ordinary' crime. The fatal assaults on two Polish men in Drimnagh in 2008 by local teenagers is an example of how such a crime can impact on the victims, their relatives and friends and the wider Polish community. The response of the local community led by local priests and a local businessman who employed one of the men assaulted was exemplary and played a major role in reassuring the local Polish and minority community in the area.

As Perpetrators

Minorities can also be perpetrators of crime, but it is important to analyse the figures before jumping to hasty or tabloid-like conclusions. Figures from the Irish Prison Service in 2006 shows the number of persons in custody under sentence on 7th December

– Irish	92%
– UK	2.5%
– Other EU	2.3%
– Other Euro	0.8%
– Other nationals	2.5%
– Total non-Irish nationals in custody:	8%

Excluding UK, total non-Irish nationals in prisons is 6.5%, which is well below the non-Irish population in Ireland which is 10%. In fact these figures show it is Irish people, not non-Irish nationals who are over represented in the Irish Prison Service. In terms of committals (which can happen to the same person several times in one year, the figures would appear to show a higher proportion of non-Irish nationals, but on further analysis much of these are for immigration offences.

Committed to Prison in 2006

– Irish	70% (6,799 of total 9700)
– Non-Irish	30%
■ Other EU	10.4%
■ Other Euro	6.4%
■ African	5.7%
■ Asian	5.0%
■ S America	1.9%

According to the Irish Prison Service Report of 2006, 1196 committals in that year were for immigration offences. In short one-third of all non-Irish-nationals committed to prison are for immigration type offences. The average detention is for 45 days.

Conclusions

The following are the main conclusions from this short paper:

- Minorities are both victims and perpetrators of crime.
- Racist crime is a problem in Ireland and it and ordinary crime against minorities can have a disproportionate impact as minorities can feel they are being targeted as a group rather than as an individual.
- Non-Irish are underrepresented in Irish prisons as a proportion of the population and immigration-type offences account for a high proportion of offences by non-Irish nationals.

Moving forward key issues for service providers and those involved in advocacy and policy are as follows:

- Importance of the Irish Prison Service, Probation services, courts and prosecution services planning for diversity
- Review of collection and presentation of statistics
- Importance of discussion on issues related to minorities in an open and appropriate way
- The ongoing need to challenge myths and misinformation
- Need for further research

OFFENCES AND PENALTIES IN THE IMMIGRATION, RESIDENCE AND PROTECTION BILL 2008: DO THE PUNISHMENTS FIT THE 'CRIMES'?

Hilkka Becker, Senior Solicitor, Immigrant Council of Ireland

Introduction

Internationally, there is a worrying trend to criminalise the irregular entry and residence of immigrants as part of a policy of migration management and there is a risk that such methods of trying to control international movement will erode long established human rights and constitutional principles.

It is of course accepted that States do have the right to control their borders and that they can refuse entry and residence to persons who do not qualify for permission to be granted, in particular where they pose a threat to public security, public order or public health. However, there are binding international agreements, such as the *UN Convention on the Status of Refugees* and the *Council of Europe Convention on Action against Trafficking in Human Beings*, which must not be ignored when trying to control inward migration.

Moreover, the criminalisation of undocumented migrants who have been the object of 'smuggling', which is defined as *"the procurement, in order to obtain a financial or other material benefit, of the illegal entry of a person into a State Party"*, is contrary to Article 5 of the *UN Protocol against the Smuggling of Migrants by Land, Sea and Air*, supplementing the UN Convention against Transnational Organised Crime which has been signed but not yet ratified by Ireland. Accordingly, *"Migrants shall not become liable to criminal prosecution [...] for the fact of having been the object of*

(a) *the smuggling of migrants*

(b) *the production, provision or procurement of a fraudulent identity or travel document (when committed for the purpose of enabling the smuggling of migrants)*

(c) *Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State [...]."*

I strongly agree with the recent statement of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, that *"criminalisation is a disproportionate measure which exceeds the State's legitimate interest in controlling its borders"*.¹ To criminalise irregular migrants, protection applicants and victims of human trafficking would, in effect, equate them with the smugglers, traffickers and employers who, in many cases, have exploited them. Such a policy causes further stigmatisation and marginalisation, even though the vast majority of migrants have contributed positively to Irish society and Ireland's economy.

Immigration offences should, in my view, remain administrative in nature. Unfortunately, this is not the case in the current Irish immigration legislation, namely the

- Aliens Act 1935
- Aliens Order 1946 (as amended)
- Refugee Act 1996 (as amended)
- Immigration Act 1999
- Illegal Immigrants (Trafficking) Act 2000
- Immigration Act 2003
- Immigration Act 2004
- Employment Permits Act 2003
- Employment Permits Act 2006

Immigration Related Penalties and Offences in the Current Legislation

The majority of immigration related offences are contained in the *Immigration Act 2003* and the *Immigration Act 2004*.

Failure of compliance with a duty prescribed by either Act generally triggers the commission of a criminal offence under the relevant Act. A person guilty of an offence is liable on **summary conviction** to a **fine not exceeding €3,000** or to **imprisonment for a term not exceeding 12 months** or both.²

Certain offences, for example carriers³ not complying with a direction to remove a person they have previously brought into the State in contravention of the legislation, can lead, on **conviction on indictment**, to a **fine not exceeding €50,000** or **imprisonment for a term not exceeding five years** or both. However, to date an individual immigrant is not threatened with the same high penalties.

In addition to the penalties, pursuant to *Section 13(2)* of the *Immigration Act, 2004*, a member of An Garda Síochána may **arrest without warrant** a person whom he or she reasonably suspects to have committed an offence under the Act or the *Employment Permits Act 2003*.

Offences under the acts can generally be divided into offences arising from:

- the failure to present to an immigration officer;
- the failure to possess a visa⁴;
- the failure to report to the relevant immigration registration office;
- the failure to produce documentation or to provide information;
- the failure to leave the State; and
- The breach of conditions of a permission to enter and be in the State.

Further offences arise from:

- the landing at unapproved ports; and
- The unauthorised engagement in employment, a business or a profession.

Immigration, Residence and Protection Bill 2008

The *Immigration, Residence and Protection Bill 2008* represents an ideal opportunity to comprehensively reform outdated and inadequate immigration legislation.

However, while we in the Immigrant Council of Ireland did welcome some aspects of the Bill, such as the provision of basic protection for victims of trafficking in human beings, we continue to believe that some of the problems inherent in the current system are not adequately addressed. The Bill is therefore at risk of becoming another missed opportunity and may fall short of the Government's stated aim of setting out "*in a clear and integrated approach the whole process for foreign nationals coming to the State, staying here and, when necessary, being required to leave*".⁵

Since the publication of the Government's Immigration and Residence discussion document and the public consultation process carried out by the Department of Justice, Equality and Law Reform in 2005 and in particular since the publication of the 2008 Bill in January, we have worked hard on ensuring that Ireland has clear and transparent legislation, setting out who gets to be here and on what basis, while bearing in mind that immigration has been of great benefit to Ireland.

We believe migrants and their family members have a right to be treated fairly in legislation and practice and have therefore advocated strongly for the introduction of a right to family reunification in primary legislation as well as for the establishment of an independent appeals mechanism for the review of immigration decisions.

Moreover, it is of the utmost concern to us that the Government, through this Bill, is seeking to provide for summary deportation in situations "*where an immigration officer or a member of the Garda Síochána is satisfied that a foreign national is unlawfully present in the State*"⁶ and that a person in such situation "*need not be given notice of a proposal to remove him or her from the State*"⁷. The repeal of Section 3 of the Immigration Act, 1999 without an equivalent replacement in the new Bill is of grave concern as it may lead to the summary deportation of vulnerable migrants who may have become unlawfully resident in the State through no fault of their own and we believe that there must be an avenue to deal with and provide for persons in exceptional circumstances.

Increase of Penalties

While the *Immigration, Residence and Protection Bill 2008* retains many of the offences already contained in current legislation, it seeks to significantly increase the penalties attached to the offences defined in the new legislation.

Penalties now proposed in respect of individuals are:

- on summary conviction, a **fine not exceeding €5,000** or **imprisonment for a term not exceeding 12 months** or both;
- On indictment, a **fine not exceeding €500,000** or **imprisonment for a term not exceeding 5 years** or both.

This may be appropriate for certain offences but it certainly is not for the majority of those contained in the Bill, for example when one considers that the maximum penalty for a sex offender who fails to inform An Garda Síochána of a change of address is a **fine not exceeding €1,904.61** or **imprisonment for a term not exceeding 12 months**, on summary conviction, while a protection applicant who fails to comply with the same duty could be indicted and could end up in prison for up to five years.

Similarly, the penalties contained in the Bill can hardly be described as proportionate or even appropriate in the following situation: A French family boating on Carlingford Lough and landing in the State somewhere along the lake's shores to have a cup of tea would commit an offence and would be liable to the penalties outlined, whether or not they report to an immigration officer on arrival.⁸ The family would only be able to avoid prosecution if they could show that they were crew members or had landed at a previously approved port.

Introduction of New Offences

The Immigration, Residence and Protection Bill 2008 seeks to introduce a number of new offences.

i) Unlawful presence in the State

Most worryingly, the Bill, for the first time, makes it an offence to be unlawfully in the State. In other words, even where a person has entered the State lawfully but found himself or herself in a situation where, for example due to a severe illness, they have been unable to leave the State within the period specified in their permission to enter and be in the State, they would

be seen as committing a criminal offence.

It is my view that, unless defences are inserted into the Bill for persons such as those who are eventually granted protection in the State, victims of human trafficking, children over the age of criminal responsibility and persons who, having regard to their personal circumstances, could not reasonably be expected to leave the State, Ireland would not be compliant with its international obligations.

a. Refugees

Section 4(3) seems to be in breach of Article 31 of the *UN Convention on the Status of Refugees* which provides that:

“Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened (...) enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”.

The Bill as it is currently drafted allows the imposition of penalties on those who are refugees pursuant to the Convention, even if they have good cause for their illegal presence in the State and have reported without delay. Of course, Section 68(1) of the Bill provides that a person seeking protection in the State must be granted a protection application entry permission but it fails to specify that it is a defence applying retrospectively to a person who was unlawfully present in the State before making his or her application for protection.

b. Victims of Trafficking in Human Beings

Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings obliges Member States to identify and assist victims of trafficking. However, the possibility of prosecuting victims of trafficking for being unlawfully present in the State under the Bill seems to be contrary to the Convention which specifically provides that

*“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”.*⁹

So far, the Government has failed to transpose this provision into the *Criminal Law (Human Trafficking) Act 2008* by way of a non-prosecution clause. And while there remains a possibility of guidelines for the Director of Public Prosecutions being drafted in consultation with An Garda Síochána, advising that victims of trafficking not be prosecuted under the *Criminal Law (Human Trafficking) Act 2008* for being involved in irregular employment or prostitution, insofar as these are linked to the trafficking offence committed against them, this is far too uncertain to guarantee adequate protection of victims of this most heinous crime.

The Immigrant Council of Ireland has called on the Government to introduce a non-prosecution clause for victims of trafficking in the *Immigration, Residence and Protection Bill 2008* in relation to unlawful entry and residence as required by the Council of Europe Convention.

c. Children

Additionally, there should be an exemption from prosecution for children over the age of criminal responsibility. *Section 4(4) of the Immigration, Residence and Protection Bill 2008* provides clearly that a person, including a child, who is unlawfully present in the State, has the obligation to leave. This bears the question however, how a child can be assumed to be in a position to travel abroad or indeed to pay for such travel. I do not believe that the prosecution of a child on the basis of unlawful residence would withstand judicial challenge and on behalf of the Immigrant Council of Ireland, would call on the Minister for Justice, Equality and Law Reform to amend the Bill at Report Stage to ensure procedural fairness in this regard in compliance with Ireland's international human rights obligations.¹⁰

d. Persons unable to leave the State

And as mentioned at the outset, there should be a defence for foreign nationals who, having regard to their personal circumstances, could not reasonably be expected to leave the State. For example, a foreign national may be critically ill and unable to travel or may not be able to exercise his or right to a family life as protected by Article 8 of the European Convention on Human Rights and Fundamental Freedoms.

It might be helpful to compare the approach taken in the Immigration, Residence and Protection Bill 2008 with the legal situation in other jurisdictions. In Germany, for example, the unlawful presence in the State becomes a criminal offence only after the expiry of the relevant deadlines for appeals and a final determination by either the immigration authorities or the relevant court.¹¹ Similarly, US law penalises only those who wilfully fail to depart following a final order of removal.¹²

In this regard, the Bill may also be in breach of the Supreme Court's judgment in the cases of *Dimbo & Oguekwe v. Minister for Justice, Equality and Law Reform*¹³ in May of this year, which clearly provides that in advance of the removal of a person from the State the Minister must show that there is a *substantial* reason requiring a deportation order. In order to make this determination, the Minister is required to consider a number of factors relating to a person's constitutional and human rights, including the nature and history of the family unit as well as the constitutional rights, including the personal rights, of [an] Irish [citizen] child.

Clearly, a determination that a person's presence in the State is unlawful and constitutes a criminal offence can only come after a final determination that there are no protected rights justifying the person's presence in the State.

e. Lack of clarity

Should unlawful presence in the State be made a criminal offence in the new law, we would call on the Minister for Justice, Equality and Law Reform to, at least, ensure that the provisions of the Bill as to when a person is unlawfully present are clear, consistent and sensible.

Presently, concerns arise, for example, where a person who has applied on time for the renewal of his or her residence permit may end up being considered unlawfully present in the State simply because the Department of Justice, Equality and Law Reform has not managed to renew the relevant permission on time.

Even more worryingly, it appears that where a residence permit is revoked, this will have immediate effect, leaving the person concerned with no real opportunity to leave the State before his or her presence in the State becomes a criminal offence.

ii) Use of Tribunal decisions

Another new offence provided for in the Immigration, Residence and Protection Bill 2008 will worry those of you who practice or consider practising in the area of protection law.

Section 95 of the Bill provides that

“A protection applicant may, but only at the time of making an appeal (...), apply in the prescribed manner to the chairperson of the Tribunal for the provision to him or her [of] any decision of the Tribunal which is legally relevant to his or her appeal”.

The decision whether a case has legal relevance to a particular appeal is left to the Tribunal rather than the legal representatives of the applicant and, illogically, potential applicants are not put in a position where they can assess the merits of their case in advance of proceeding, or not proceeding, with an appeal.

Even more worryingly, *Section 95(8)* seeks to provide for regulations to be made by the Minister for Justice, Equality and Law Reform, providing that legal representatives who share precedent cases with other lawyers or researchers outside their own organisation, even where this is for the preparation or consideration of an appeal before the Tribunal, commit an offence punishable on summary conviction by a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both and on indictment, a fine not exceeding €500,000 or imprisonment for a term not exceeding five years or both.

iii) Restriction of the right to marry – Section 123

Furthermore, the *Immigration, Residence and Protection Bill 2008* seeks to restrict the right to marry as protected by *Article 41.3.1 of the Constitution* and *Article 12 of the European Convention on Human Rights and Fundamental Freedoms* (the right to marry and found a family) in connection with *Article 14 of the Convention* (the equality guarantee) and seeks to impose criminal sanctions on those failing to obey the law in this regard.

Section 123(2) of the Bill provides that a marriage contracted in Ireland between two people, one or both of whom is a foreign national, will be invalid in law unless they give three months’ notice to the Minister of their intention to marry. Additionally, and even more problematically, the foreign national, or both of them, will have to be

“The holder of an entry permission issued for the purpose of the intended marriage or a residence permission (other than a protection application entry permission or a non-renewable residence permission)”.

In other words, asylum seekers and people on a non-renewable residence permit will not be permitted to marry in the State, even where they intend to marry an Irish or EU citizen. As the Bill fails to define who will be granted a ‘non-renewable’ residence permit, it is hard to assess how this provision will affect migrants who are not protection seekers.

More eminent legal professionals than myself agree that although the Minister is given a general power upon application under *Section 123(3)* to grant an exemption to foreign nationals from this requirement, this subsection would appear to be unconstitutional.

The power of the Minister to dispense with the application of a regulatory requirement could infringe the equality clause in *Article 40.1 of the Constitution*. The Bill gives the Minister general discretion not to apply the requirement to whomsoever he chooses. However, the legislation does not give sufficient definition of the circumstances in which the Minister may exercise this discretion. While *Section 123(4)* gives some guidance about when the Minister might not choose to grant an exemption, the Bill does not provide clear principles or policies governing the exercise of this discretion. This is discretion which, after all, entitles the Minister not to apply an otherwise binding statutory regulation.

Following the *Baiai* judgment in the House of Lords in July of this year, we have made further submissions to the Select Committee on Justice, Equality, Defence and Women’s Rights seeking an amendment of *Section 123 of the Bill* to ensure that it does not infringe the right to marry as protected by Article 12 of the ECHR.

In his opinion, Lord Bingham of Cornhill stated that the right to marry protected by Article 12 was to be treated as a strong one which might be regulated by national law both as to procedure and substance but was not to be subjected to conditions which impaired its essence. Accordingly,

“A national authority might properly impose reasonable conditions on the right of a third-country national to marry in order to ascertain whether a proposed marriage

was one of convenience, entered to obtain an immigration advantage, and if so, to prevent it."

Since the effect of the UK conditions, subject to the discretionary compassionate exception, was to impose a blanket prohibition of the exercise of the right to marry by all in the specified categories, irrespective of whether or not the proposed marriages were ones of convenience, the UK scheme was held to be a *"disproportionate interference with exercise of the right to marry"*.

And lastly, to come back to the topic of today's presentation, *Section 123(7)* seeks to impose criminal sanctions against anyone who solemnises or permits a form of marriage which is not valid under this provision. This section seeks to criminalise anyone who is party to or who facilitates such marriage:

"A person who knowingly

(a) solemnises or permits the solemnisation of a form of marriage which is, under this section, not a valid marriage,

(b) is a party to such a form of marriage, or

(c) facilitates such a form of marriage,

shall be guilty of an offence".

We in the Immigrant Council of Ireland believe that if the Government's intention was to prevent so-called 'marriages of convenience' contracted solely for the purpose of circumventing immigration rules, then this level of infringement of migrants' and Irish citizens' right to marry is totally disproportionate to its aim. The Minister is given ample power in the Bill to refuse or withdraw residence permits in situations involving a 'marriage of convenience' and there is no need that could justify the draconian way in which this Bill seeks to limit the right to marry in Ireland.

Clearly, the sanctions introduced in *Section 123(7)* of the Bill are disproportionate and fundamentally wrong in that they seek to criminalise behaviour which at its essence is not criminal. This provision is in line with the overall trend in the entire Bill to force certain providers in the public sector to carry out immigration functions. The Government runs the risk of criminalising religious bodies who consider the right to marry members of their congregation as essential to their religious beliefs and, in addition to

infringing the fundamental right to marry, this constitutes a potential infringement of the right to freedom of religion as protected under Article 9 of the European Convention on Human Rights and Fundamental Freedoms and Article 44 of the Irish Constitution.

Conclusion

After a long break, the debate on the Bill is due to resume in the Select Committee on Justice, Equality, Defence and Women's Rights today and we hope that the intervening period has been used to further align the draft legislation with the Constitution, the European Convention on Human Rights and Fundamental Freedoms and international best practice.

We are particularly hopeful that Ireland's recent examination under the International Covenant on Civil and Political Rights (ICCPR) has provided the necessary impetus for the government to address particular concerns shared by the UN Human Rights Committee.

In its concluding observations¹⁴ the Committee has called on the government to, inter alia, *"amend the Immigration, Residence and Protection Bill 2008 to outlaw summary removal which is incompatible with the Covenant"* and to *"ensure that permission to remain in the State party is not dependent on the cooperation of victims in the prosecution of alleged traffickers"*.

It has also called for the introduction of an independent appeals procedure to review all immigration-related decisions, stating that *"engaging such a procedure, as well as resorting to judicial review of adverse decisions, should have suspensive effect in respect of such decisions"*.

References

- 1 Viewpoints of the Council of Europe Commissioner for Human Rights, It is wrong to criminalise migration, 29th September 2008.
- 2 Section 13(1), Immigration Act 2004.
- 3 'Carrier' in relation to a vehicle means (a) the owner of the vehicle, or (b) in relation to a mechanically propelled vehicle, ship or boat, the person in charge of the vehicle (Section 1(1), Immigration Act 2003).
- 4 A list of visa required nationals is contained in S.I. No. 657 of 2006, the Immigration Act 2004 (Visas) (No. 2) Order 2006.
- 5 Programme for Government 2007-2012.
- 6 Section 54(1), Immigration, Residence and Protection Bill 2008 (*as amended at Committee Stage*).
- 7 Section 4(5), Immigration, Residence and Protection Bill 2008.
- 8 Section 19(2).
- 9 Article 26, Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16th May 2005.
- 10 Article 3(1), UN Convention on the Rights of the Child: "*In all actions concerning children... the best interests of children shall be a primary consideration*"; Article 24(1), International Covenant on Civil and Political Rights: "*Every child, without any discrimination, is entitled to measures of protection as are required by his status as a minor, on the part of his family, society and the State*"; Article 10(3), International Covenant on Economic Social and Cultural Rights: "*Special measures of protection are to be taken on behalf of children without discrimination*".
- 11 Paragraph 95(1), Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (AufenthG).
- 12 Paragraph 1253, United States Immigration and Nationality Act, Title 8 of the U.S. Code.
- 13 [2008] IESC 26 and 27, 1st May 2008.
- 14 CCPR/C/IRL/CO/3.

GENDER AND CRIME: A CAUTIONARY TALE

Professor Frances Heidensohn, London School of Economics

This is a cautionary tale with two significant messages at its core. My subject is that of gender and crime, more specifically, the position of women in relation to crime. The concerns which I have to offer derive from study and experience in the UK, USA, most of the English-speaking world and several European countries. As we have heard throughout this conference, Ireland has come comparatively late to facing these issues and is now seeking to develop its own policies and to learn from the mistakes and achievements of others. My purpose in this paper is to offer some views on these histories and their outcomes but not to prescribe. There may be lessons to be gained from the rest of us, but you are clearly capable of working these out for yourselves. My two cautions are first, to consider with care the possible consequences of focusing on female offenders and second, to think about what, in the context of the criminal justice system, equality between women and men does and what it should mean.

Background

Some 40 years ago, in 1968, I published an article on *The Deviance of Women* in which I pointed out this was an obscure and largely ignored area of human behaviour. This was, I argued, strange for at least two reasons: the female share of crime was low, had been so for decades, yet this fact had attracted very little interest from policy makers, who might have learned something from giving it their attention, nor from scholars who could have been expected to try and explain such a robust and longstanding difference.

There were several somewhat paradoxical features of our subject to be noted then. Women and girls contributed very modestly to the totals of recorded crime: they were sometimes described as “only 10% of the trouble” since, for some offences, the gender ratio was 9:1. Barbara Wootton famously remarked that “if men behaved like women, the courts would be idle and the prisons empty”. Certainly, the numbers of women in

custody in the 1960s was low, generally fewer than 1,000, and these inmates were housed in outdated institutions which had not been designed for them. Holloway Prison had been a Victorian debtors’ prison, Styal was originally a 1930s children’s home.

The ironic consequence was that females had a Cinderella status: they were neglected by research and by penal policy. They had to endure a system which was largely run by and for males and coped very poorly with women. Some historical examples illustrate this: Mary Bell, a girl of 12, was convicted in 1968 of killing two small boys. Upon her conviction, there was nowhere within the female estate for her to be held and she was housed in an institution for boys. In 1973, Marion and Dolours Price were convicted after the IRA bombing of the Old Bailey and were then held in a special secure unit inside Brixton Prison. After prolonged hunger strikes, they were eventually transferred to Northern Ireland.

Feminist Criminology

As a result of my work and many pioneers in the field, feminist perspectives developed in criminology in the 1970s and 1980s. These produced significant shifts in the ways problems of gender and crime were approached (Rafter and Heidensohn, 1995). There was a huge growth in research studies of women’s experiences of courts, law enforcement and in prison (Heidensohn, 1985). In consequence, it became possible to make soundly based claims about the characteristics of female offenders, for example that they are

- economically motivated, rather than driven by their biological natures
- capable of committing every type of offence, although they generally commit fewer and less serious crimes, have much shorter criminal careers and are mostly convicted of fraud and dishonesty.

They fear the stigma of becoming a criminal and find it more damaging, sometimes experiencing the effects of 'double deviance', where they receive twofold punishments, as legally sanctioned law breakers and, informally, as deviant women. New perspectives brought new theories too: from the claim that 'liberation causes crime' (Adler, 1975) to more soundly based explanations of gender ratio variance in crime as due to differential social control (Hagan et al, 1979). There were also tests of old theories, such as the 'chivalry' hypothesis, to explain sex differences in punishment (Eaton, 1986).

Impact of New Perspectives

The impact of these new approaches has been considerable, long lasting and perhaps, unexpected. Criminology, as a field of study, has been enormously influenced by these developments. No textbook is now complete without extensive coverage of both these perspectives and of gender and crime (see, for example, Newburn, 2007). Key questions raised by the first pioneers continue to resonate and are pursued by new generations of scholars (Heidensohn ed., 2006). Much wider effects can be observed too: whole new areas, such as that of victimology, have some of their origins here, as do studies of masculinity.

Criminal justice and public policy show important changes in their agendas. Issues such as sex crimes, domestic violence and child abuse are all much more significant in importance today. Diversity in those working in criminal justice professions is an increasingly approved goal, with numbers of women appointed as police officers (Heidensohn, 2008) and judges growing in many jurisdictions.

Yet alongside these indicators lie a more disturbing set: one of the most striking is the near-global rise in numbers of women in prison. In England and Wales there was an increase of 173% between 1994 and 2004, the comparable male rate was 50%. Community sentences also doubled at the same time. Similar figures can be cited from many other countries. Less dramatic changes have occurred in the gender ratio, arrest rates and custody rates (Heidensohn and Gelsthorpe, 2007).

Gender and Crime in the 21st Century

Are these trends connected? These outcomes were certainly not those intended by the pioneers or their successors. For some commentators this is viewed as a 'backlash', targeted as a reaction against feminism and radical thought (Chesney-Lind, 2006), Carlen (2002) has argued that what we are observing is a 'carceral clawback' in which the state extends its control and powers over its most vulnerable and marginal citizens, even for trivial offences. She does not explicitly attribute these negative results directly to feminist work, but notes the coincidence of the rise of feminist perspectives alongside greater use of punishment. Worrall, her collaborator in many studies, is franker and links the two (2004).

Snider (2003) has argued forcefully in support of the 'Pandora Problem' (Heidensohn, 2006). She insists that feminist criminology has produced the unintended consequence of a worldwide 'incarceration spiral' of women. This is a gloomy view but one which needs to be considered. Research findings, mainly from the USA, do provide evidence for aspects of this argument. Analysing a series of databases, Steffensmeier and his colleagues (2005 and 2006) conclude that what appears to be a converging pattern of gender and crime, with females approaching male levels of activity, is based on misapprehension. Instead, they show that there have been changes not in women's behaviour, but in mechanisms of social control. These now bear more harshly on women, taking their offending, however minor, more seriously and drawing more of them into formal contact with the criminal justice system. Schwartz and Rookey (2008) draw the same conclusions in their study of arrests for drunk driving. Comparable work has not, so far, been conducted in Europe. Although there are indications from some sources that the same shifts to a more punitive turn have happened here too (Calder and Worrall, 2004), and Hedderman (2004) has suggested, after examining sentencing statistics for England and Wales between 1992 and 2000, that 'the evidence suggests that sentencing has simply got more severe'.

One scholar in the field insists that we are witnessing the rise of what she calls 'vengeful equity' (Chesney-Lind, 2006). This is, in her view, a political backlash, rooted in 21st century US culture. This does not explain why the phenomenon is so widespread and found in many other nations. Chesney-Lind perceives no unintended consequences of feminism here, but this is an important argument and one central to my cautionary theme. It was indeed raised more than 30 years ago by Carol Smart, one of the founders and key contributors to these perspectives. She foresaw the

*"problem which arises ... of making female criminality into a **visible social problem** ... if agents of social control ... and media become sensitised to a new "problem" their subsequent actions may ... lead to ... increases in the rates of crime and an escalation in **the reports of violent and criminal offences by women and delinquency in girls**"* (Smart, 1977 – emphasis added).

I have called this the 'Pandora Problem' after the first ever woman in Greek legend who opened a box in search of knowledge and released evils into the world which could not then be controlled or recaptured. It is now impossible to reverse what has happened during the past 40 years and forget all the knowledge we have gained about gender and crime. Nevertheless, it is vital to ensure that this knowledge is not misused in harmful ways.

Dilemmas of Reform

My second caution follows on from the first, especially from the questions about the ideas of equality which this raised – what we mean by equality how we achieve it between women and men and other minority groups. This is much too broad a topic for this paper, but it is a major issue in criminal justice policy and there have been two broadly distinct approaches adopted. One, mainly dominant in the USA, involves strict equality, with no concessions made to gender. (Some US states did have gender-specific 'protection' laws in the past which were aimed at women's supposed vulnerability when, for instance, consuming alcohol. They were repealed in the wake of the equality legislation of the 1960s).

Sentencing policies in US states which use guideline-grid systems are a clear example. Chaining women during childbirth in England in the 1990s was another. Many commentators and activist groups have argued against this approach insisting that it gives rise to inappropriate and oppressive policies. Equality as fairness, they stress, is best achieved not by pursuing simply equity, but by treating women offenders as a special case with distinctive needs and profile.

This case has been put forward many times and with increasing force and frequency in the 21st century. In the UK alone, we have had reports from the Prison Reform Trust, the Howard League, Women in Prison, the Fawcett Society and the Corston Report. Perhaps it is set out most cogently by the first law lord who is a lady. She notes that

- women are often victims (of child abuse and domestic violence) as well as offenders
- their offending behaviour is different (see above)
- they are thus less 'dangerous' in the eyes of the public
- they have special needs: their recorded levels of mental illness and of substance abuse are much higher than their male counterparts, they may be pregnant when committed, or be nursing babies
- their experiences on remand and as sentenced prisoners differ: they are likely to be much further from home and family: as more of them are first offenders, the trauma is greater too
- there are disproportionate effects on others: their children and other close relatives.

There are some signs of acceptance of this approach: the Home Office has promoted a policy on reducing women's offending which recognises, and has funded, diversionary experiments. But there are important caveats to be registered. Some 'women only' provision has resulted in net-widening and greater, if more benign-seeming, oppression. Canada saw this happen in a particularly striking way in the 1990s (Hayman, 2006), although here in Ireland the Dochas Centre proved to be a notable exception (Mason, 2006).

Conclusions and Challenges

My tale provides us with some important questions, especially relevant, I hope, here in Ireland, with the proposed move of the Dochas Centre from Mountjoy to Thornton Hall.

- Are women offenders special? Should they be treated differently and how can this approach be balanced with concerns over equality?
- Does it help to highlight gender in relation to crime? How can we forestall or mitigate unintended consequences?
- What about Ireland? Ireland is in a remarkable position, facing novel challenges to her identity and politics, as we have heard throughout this conference. All the right questions are being asked and the dilemmas faced, that must be the right direction in which to travel.

References

- Adler, F. (1975). *Sisters in Crime*. New York: McGraw-Hill.
- Calder, C. & Worrall, A. (eds) (2004). *Girls' Violence*. Albany: SUNY Press.
- Carlen, P. (ed) (2002). *Women and Punishment*. Cullompton: Willan.
- Chesney-Lind, M. (2006). Patriarchy, Crime and Justice. *Feminist Criminology*, 1 (1), 6-26.
- Eaton, M. (1986). *Justice for Women?*. Buckingham: Open University Press.
- Hayman, S. (2006). "The Reforming Prison: A Canadian Tale", in F. Heidensohn (ed.), *Gender and Justice: New Perspectives* Cullompton: Willan.
- Hedderman, C. (2004) "Why are more women being sentenced to custody?" in *Women who Offend*, edited by G. McIvor. London: Jessica Kingsley.
- Heidensohn, F.M. (1968). The Deviance of Women: A Critique and an Enquiry. *British Journal of Sociology*, 19 (2), 160-175.
- Heidensohn, F.M. (1985 – 1st edn & 1996 – 2nd edn). *Women and Crime*. Palgrave Macmillan.
- Heidensohn, F.M. (ed) (2006). *Gender and Justice*. Cullompton: Willan.
- Heidensohn, F. M. & Gelsthorpe, L. (2007). Gender and Crime. In M. Maguire et al (Eds), *The Oxford Handbook of Criminology*. Oxford: Oxford University Press.
- Heidensohn, F. M. (2008). Gender and Policing. In T. Newburn (ed), *Handbook of Policing*. (2nd edn), Cullompton: Willan.
- Mason, B. (2006) "A Gendered Irish Experiment: Grounds for Optimism?" in F. Heidensohn (ed.), *Gender and Justice: New Perspectives* Cullompton: Willan.
- Newburn, T. (2007). *Criminology*. Cullompton: Willan.
- Rafter, N. & Heidensohn, F.M. (Eds) (1995). *International Feminist Perspectives in Criminology*. Buckingham: Open University Press.
- Smart, C. (1977). *Women, Crime & Criminology*. Routledge Kegan Paul: London.
- Snider, L. (2003) 'Constituting the Punishable Woman: Atavistic Man Incorporates Postmodern Woman', *British Journal of Criminology*, 2: 354-78.
- Steffensmeier, D. et al (2005). An Assessment of Recent Trends in Girls' Violence Using Diverse Longitudinal Sources: Is the Gender Gap Closing?. *Criminology*, 42 (2), 355-405.
- Steffensmeier, D. et al (2006). Gender Gap Trends for Violent Crimes, 1980-2003. *Feminist Criminology*, 1 (1), 72-98.
- Schwartz, J. & Rookey, B. (2008). The Narrowing Gender Gap in Arrests: Assessing Competing Explanations 1980-2004. *Criminology*, 46 (3), 637-671.

SUPPORTING VICTIMS OF HATE CRIME – PREVENTION, REPORTING AND PRACTICAL ACTION

Linda Hutchinson, Race Relations – Community Cohesion Unit, Northern Ireland Housing Executive

Thank you for inviting me along to the 11th Annual Conference on Minorities, Crime and Justice. A few years ago, Frank Mulhern, from our Community Safety Team discussed Anti-Social Behaviour and last year our Chairman, Brian Rowntree, discussed Government thinking on Social Inclusion and Shared Future. (Government Thinking in Northern Ireland on Social Inclusion and the way forward under a Shared Future paper, Oct 2007). This “Shared Future” being the vision for the future for Northern Ireland. The vision is; a peaceful, inclusive, prosperous, stable and fair society although this vision is currently being refreshed.

The Chairman mentioned some of the work the Housing Executive has been doing to advance equality, good relations and social cohesion and in particular mentioned the creation of the Community Cohesion Unit in 2004.

Good Relations and Community Cohesion depend ultimately on trust and safety and, in this vision of a shared future; there can be no tolerance of hate harassment in any form. We believe everyone has the right to be housed with a real choice of decent, accessible and affordable housing options and we promote good community relations wherever possible. We understand the impact that anti social behaviour and hate harassment can have on people’s lives, and we have introduced policies and procedures to tackle problems head on. We will work with local communities, the police and other statutory and voluntary agencies to ensure that such behaviour does not go unchallenged.

I have been asked to talk today about the actions that we are taking to work towards eradicating hate harassment, with particular emphasis on racist harassment and how we support victims. Dealing with racist violence is obviously beyond our remit as a single agency, so I will be discussing our partnership work particularly with the Criminal Justice Agencies in Northern Ireland.

The Office of the First Minister and Deputy First Minister (OFMDFM), NIO and, in particular, the PSNI have primary responsibility for dealing with racist violence. However, as I intend to illustrate, the Housing Executive has a key role to play.

Racist violence in Northern Ireland has been under the spotlight on many occasions and, even with underreporting, there is clearly a general upward trend since the new millennium although recent PSNI figures for racially motivated incidents, racially motivated criminal damage offences and racially motivated crimes in general saw a decrease from 2006/07 to 2007/08.

The majority of incidents occur in or near the victim’s home (53% in 2003 Racist Harassment in NI, Jarman and Monaghan), that is, the place where people expect to feel safest.

Additionally in a quarter of cases the perpetrator was someone identified as a neighbour or someone who lived near the victim (2003 Jarman and Monaghan). This is where our wealth of experience and our commitment to community led initiatives can focus attention at the local neighbourhood level.

Before focusing on Race Relations, I will first tell you a little about the Housing Executive, the work of the Community Cohesion Unit and then home in on Race and Hate Crime. My role within the Executive is as Race Relations Officer in the Community Cohesion Unit.

As the strategic housing authority for Northern Ireland the Housing Executive has a wide range of strategic responsibilities and an operational role in delivering services both to our tenants and to other customers across other tenures. During 2007/08, with a budget of almost £800 million and a staff of 3,400:

- 90,000 homes were managed out of a total housing stock of around 700,000

- 40,000 housing applicants are on the waiting list
- 21,000 of these applicants are in housing stress
- Over 9,000 of these are homeless
- Over 7,000 allocations
- 1.9 million telephone calls through our role as Landlord
- 320,000 people visited our local offices through our role as landlord

Our housing services are provided through a network of 35 District Offices based within each Local Government District. Our community led approach is supported by our Housing Community Network which consists of over 600 community groups. The community involvement and participation through this network is making a significant difference at a local level to tenants, to the Housing Executive and to communities.

In addition, an Intercommunity Network has been drawn from the Housing Community Network specifically to help shape the work of the Community Cohesion Unit and focus on good relations.

This work of the Community Cohesion Unit is spread over five themes, with Race Relations as one theme. However it is recognised that each of these themes are interlinked and interdependent and all contribute to building good race relations. The work of the Unit is also closely linked to other units such as the Equality Unit and the Community Safety Team.

Briefly, under **Flags and Emblems** we support local communities with removing the outward symbols of sectarianism. The Intercommunity Network has produced a Good Practice Guide for dealing with Flags, Emblems and Sectional Symbols. The aim is to create an environment where people feel safe to celebrate and respect culture within and between communities. An initial evaluation suggests a significant shift away from paramilitary displays. For example Portadown Local Action and Community Enterprise (PLACE) have seen a 90% reduction of all types of flags and agreement to fly flags for eight weeks of the year instead of 52 weeks.

Under **Residential Segregation and Integration** the Executive is progressing with building new Shared Future Housing aimed at people from different religious, political and racial backgrounds who have chosen to live

in harmony with their diverse range of neighbours rather than live in a single identity neighbourhood. Each of the tenants signs up to a voluntary charter which promotes mutual respect and understanding between them.

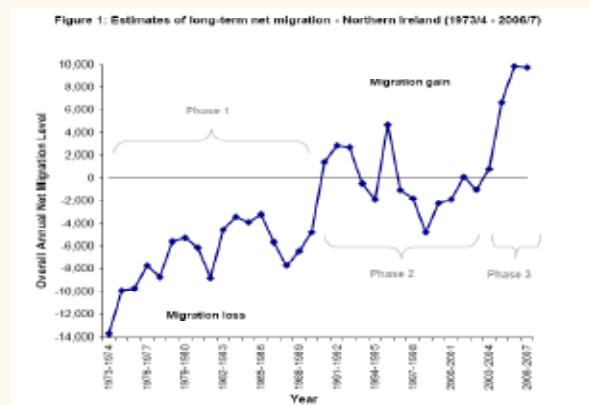
In addition the Executive has been awarded almost £700,000 from the International Fund for Ireland, over three years to support a Shared Neighbourhood programme under which 30 areas will be designated as Shared Neighbourhoods with complimentary Good Relations programmes and dedicated Community Cohesion Advisors. This programme was launched by the Department for Social Development Minister in August this year.

Under **Interface Areas** we work to develop opportunities to bring communities together and continue to invest in improvement through environmental initiatives, regeneration programmes and capacity building.

For **Communities in Transition** we identify communities at risk and engage with them and adjacent communities to foster an atmosphere of mutual tolerance and understanding, conduct regular audits and prepare local plans.

Race Relations

Before I go onto talk about the Race Relations Policy it might be useful to have a look at the recent Migration Patterns in Northern Ireland.



NISRA July 2008 Long-term International Migration Estimates for Northern Ireland (2006-7)

From this you can see that Northern Ireland has moved since the early 90s from having a Migration loss to having a Migration gain. Since 2004 this has mainly been due to A8 workers arriving: 13,000 in the first two

years, then 10,000 to June 2007 and this has fallen to around 8,000 in the year to March 2008. Additionally about 2,000 people per year come through the Work Permit system and of course there are BME individuals and communities who have lived in Northern Ireland longer for many generations. 2001 Census figures indicated about 14,000 BME individuals at that stage but this is widely accepted as being well under the true figure. Estimates of the total Black Minority and Ethnic (BME) and Migrant Worker population vary widely depending on the source.

The Executive's Race Relations Policy was launched in 2005, and is in line with the Government's Race Equality Strategy 2005-2010. It has five themes which can be summarised as follows;

- Mainstreaming black and minority ethnic issues in policy development;
- Racial Harassment and Intimidation;
- Promoting Black and Minority Ethnic Social Inclusion;
- Community Participation and Development;
- Migrant Worker Issues.

I will focus straight away on Racial Harassment and Intimidation although this will include initiatives in other areas which impact on this. As I said earlier this is a high priority for the Housing Executive, however we recognise that this can only be tackled in partnership with other bodies and a multi agency approach has been adopted where possible.

One key feature of our Race Relations Policy was the adoption of the definition of a racist incident as defined by the Report of the Stephen Lawrence Inquiry by Sir William MacPherson in February 1999.

This definition states that *"a racist incident is any incident which is perceived to be racist by the victim or by any other person."*

In fact we have expanded this definition and now apply it to all hate harassment whether this is based on disability, sectarian, political and sexual orientation. In April 2007 every tenant received a copy of the "Taking a stand against Hate Crime Leaflet" published in partnership with PSNI which clearly set out the Housing Executive's commitment to make sure that Hate Crime has no place in our estates.

Other initiatives that we are doing in the areas of Prevention, Reporting and Practical Action to Support Victims of Hate Crime include:

- BME and Migrant Worker Mapping;
- The BME Housing Forum;
- The Race Relations Charter;
- Hate Harassment Support Pack; and
- Hate Incident Practical Action Scheme (HIPA)

Firstly, BME and Migrant Worker Mapping: Staff involved at all levels whether planning, developing or delivering services need an awareness of migration patterns and the needs of BME communities in order to provide appropriate, professional services to the increasingly diverse range of customers and stakeholders. The Northern Ireland Statistics and Research Agency provides some figures and the Equality Unit of the Executive carries out an annual mapping exercise to provide an insight into the trends emerging around BME groups, particularly in relation to Migrant Workers, across Northern Ireland. This document can then give very useful figures broken down by Local Government Area. (Available through the NIHE website at www.nihe.gov.uk)

However, this is not just about numbers. It is vital that people from the Black and Minority Ethnic communities are not just statistics but are fully involved at all stages of any planning process and can contribute and shape policy to meet their needs. Therefore to increase participation and involvement, a **Black and Minority Ethnic Housing Forum** was established in 2006. The Forum has representatives from migrant worker communities and BME organisations and their contribution has been invaluable in the development of many of the initiatives I am outlining today.

For example they contributed to the **Shared Race Relations Charter for Community Groups and the Housing Executive**, which has been prepared by the Intercommunity Network. This Charter clearly sets out the minimum standards that any community group should commit to and work towards if they wish their area to be recognised as an area in which there are good race relations. 219 community groups to date have received our Intercultural Awareness Training through a partnership with Supporting Communities Northern

Ireland and to date 29 groups have signed the Charter since its launch in April this year. The Charter aims to give a clear and strong message that the group and the Executive will not tolerate hate crime in any form and will take appropriate action to effectively address and eradicate it. It promotes good relations and a “safe environment” within and around our estates where all residents can live in peace and quiet, free from harassment, intimidation and anti-social behaviour and encourages victims to report incidents to relevant agencies and support groups. Recognition of racism and community safety are key standards and there is a commitment to support victims of hate crime.

In order to support this commitment the Executive has also developed a **Hate Harassment Support Pack** which has been distributed to all community groups and other agencies. This pack is designed to help those who are experiencing or know someone who is experiencing harassment, and in particular hate harassment on any grounds again whether it amounts to a crime or not.

The pack gives information on how to report harassment occurring in any of our estates. This can be done at any Housing Executive District Office, in person, over the phone or via email. Housing Executive tenants, private tenants or owner occupiers or any other people visiting or in the locality of our property can report experiencing or witnessing harassment.

Depending on the circumstances of the harassment reported, the Housing Executive can start a range of actions aimed at supporting the victim, stopping the harassment and dealing with the perpetrator. We will use the full range of remedies available to take action against perpetrators including the use of mediation, ASBO's and injunctions.

We are also encouraging the reporting of “low level” racist harassment as this is often the first indicator that action needs to be taken before harassment can escalate.

If there has been physical damage to property the Housing Executive is involved with a range of practical support schemes. For example the **Hate Incidents Practical Action Scheme (HIPA Scheme)** has been available across Northern Ireland since February 2007. This scheme, co-funded by the Community Safety Unit of the Northern Ireland Office and the PSNI and

delivered by the Housing Executive, provides personal and home protection measures if a home has been damaged or someone from the household has been a victim where the motivation of the attack is racist, sexual, disablist, sectarian or faith related. It is available to owner occupiers and tenants in privately rented and Housing Executive properties. For example it means that peep holes and door chains can be fitted or personal safety alarms can be issued.

In more serious cases, on the recommendation of the PSNI Crime Prevention Officer, front and back doors can be replaced, external lights can be fitted or windows can be fitted with laminated safety glass. Oil tanks can also be protected. This can contribute to people being able to stay in their own homes following harassment and here the support of the local community can be invaluable.

If people are intimidated and need to move, the Executive helps through our Homelessness policy which is an important instrument in addressing, quickly and sensitively, the immediate needs of victims of racist incidents. Depending on the status of the individual victim, responsibilities between the Housing Executive, Social Services, PSNI and the Immigration Service may vary but the aim is to deliver a seamless service which is centred on the needs of the victim. In 2006/07 41 people presented as homeless through racist intimidation, in 2007/08 this was 32.

In the first year to February 2008 there were 45 incidents under HIPA Level 2 Scheme, across 18 different towns and cities in Northern Ireland. Seventy-three per cent were attacks on properties within the private sector and 27 % were attacks on NIHE owned properties. This scheme has recently been extended to March 2011.

Several new initiatives are also in the pipeline. For example, the Executive is represented on a newly established Belfast City Council Hate Thematic Group which is developing a Tension Monitoring scheme and we await its development with interest. This should provide early information about underlying trends and actions can then be taken to prevent escalation.

As the presentation has been focusing on Supporting Victims of Hate Crime, I am aware that although positive actions are being taken, this is by its very nature negative. Unfortunately I don't have the time to outline

the amazing amount of positive work happening across communities throughout Northern Ireland; the Welcome events, the Migrant Worker Information evenings, the Church and community led English language courses and the work of voluntary and charitable organisations – the list goes on and on. Many people are working together in many ways to make Northern Ireland the peaceful, inclusive, prosperous, stable and fair society of the Shared Future Vision and the Executive will continue to play its role with full commitment.

Thank you for giving me the opportunity to address you today and thank you for your interest. If I could just end with a quote that I heard recently about immigration:

Immigration – it's the sincerest form of flattery.

MINORITIES AND YOUTH JUSTICE: AN IRISH CONCERN?

Nicola Carr, Children's Research Centre, Trinity College Dublin

Introduction

This paper poses the question, whether minorities in juvenile justice are an Irish concern? It aims to set out a conceptual framework for the discussion of minorities in the Irish context, with reference to a body of international literature that has focussed on the over-representation of minorities in criminal justice systems in many Western countries, but primarily the United States and the United Kingdom. It argues that the issue of over-representation of minorities *is* a concern in the Irish context, both in terms of Ireland's changing demographic profile, but also in current and historical terms in reference to Ireland's indigenous minority, Irish Travellers. While presenting some evidence to support this view from available sources the limitations of exploration of this issue are noted – most pressingly as a result of the widely acknowledged data deficits within the Irish justice system generally (Kilcommins et al, 2004; O'Donnell, 2008) and within the youth justice system in particular (O'Dwyer, 2002; Kilkelly, 2006). This paper argues the case for the need for the consideration of minorities in the Irish youth justice system and following Phillips and Bowling (2003) advocates an approach that moves beyond the 'sterile debate' regarding race and justice to one that seeks to encapsulate *minority perspectives*.

A Note on Terminology

In most instances, the use of the term 'minority' in juvenile justice is taken to refer to minority racial and ethnic groups – the main focus in terms of policy debate and research endeavours, concerns the disproportionate numbers of members of racial and ethnic minorities at all stages of the criminal justice process. Most notably, within the United States, this has concerned the proportion of young black males who are incarcerated as a percentage of the minority population and vis-à-vis their white counterparts (Tonry, 1995; Wacquant, 2001). In the UK, the main focus of research has been on policing of racial and ethnic minorities an agenda that has been informed and influenced by key landmark

reports, such as the Scarman Report (1981), which explored the context of the policing of 'race riots' in the UK in the 1980s and the MacPherson Report (1999) into the police investigation of the murder of the black teenager Stephen Lawrence in a racially motivated attack (Bowling and Phillips, 2002).

Phillips and Bowling (2003) note that much of the research on minorities within the criminal justice system both in the UK and the US, has historically tended to focus on the issue of race and as such on a black/white dichotomy. One of the effects of this has been an approach that risks over-simplification and which masks significant *intra-racial* and *intra-ethnic* group differences – particular reference is made for example by these authors to the historical treatment of Irish people within the English criminal justice system. Phillips and Bowling (2003:272) also argue that a specific 'race' focus potentially "...obscure[s] the importance of other subjectivities such as gender, class, ethnicity, sexuality and religion."

It is important to note that there has also been some critique of the term 'minority'. Sharp and Atherton (2007) in their English study of the experiences of community policing of young people from black and minority ethnic groups note:

"...problems remain with the range of terms used to describe ethnicity, specifically with the use of the word 'minority' which has implications of such groups being 'marginal' or of a lower status."
(Sharp and Atherton, 2007:751)

It is perhaps unsurprising, given the fraught and loaded nature of this area that there are frequent discussions and concerns raised about the appropriate terminology to be used. For the purposes of this discussion, however, the term 'minority' is used to refer to different facets of minority status and with specific reference to Irish Travellers, whom are variously referred to as a 'minority group' but whose status as an ethnic minority is contested, at least in the Irish context (Equality Authority, 2006; Mc Cann et al, 1994).

Minority Representation in Criminal Justice Systems

As stated at the outset, the issue of over-representation of racial and ethnic minorities within criminal justice systems has been a concern in many Western societies. This issue has a long lineage, Kempf-Leonard (2007) in her review of this issue in the US context, notes that it was a topic of discussion in the American Journal of Sociology in the mid-1930s. In their broad review of this area, Bowling and Phillips (2002) note that at a theoretical level, notions of 'race' have infused criminological thought and debate for many years. The main source of empirical data on which this discussion is based has been official statistics, such as: recorded crime rates, criminal justice process data such as police stop and search statistics, statistics on rate of arrests; charges and disposals, sentencing decisions and prison statistics.

Numerous studies have found that *certain* minority ethnic groups are overrepresented within the criminal justice system. Beyond presenting empirical data several studies have also sought to *explain* this differentiation – the key explanatory constructs broadly cover two main areas:

- namely that over-representation of minority ethnic groups is a construct of differential or discriminatory treatment within criminal justice systems (and is reflective of wider structural issues);
- or more controversially that minority ethnic groups are over-represented in some criminal justice systems because they commit more crime (some studies leave it at that, others argue that this is in itself reflective of wider structural issues);
- some studies are less equivocal and seek to combine both of these perspectives.

In the US context a number of studies have focussed on what Americans refer to as '*disproportionate minority contact*' or 'DMC'. In relation to juvenile justice, the main areas of concern regard the over-representation of African-Americans, often followed by Hispanics and Native Americans in secure custodial facilities. Kempf-Leonard (2007) notes the longevity of this issue in the US context and the fact that despite several initiatives, there have been relatively small gains made in addressing

DMC. She makes reference to explanatory (and highly contested) theories such as the presence of an underclass to describe some of the issues of marginalisation faced by certain proportions of minority populations in the US. Her summary of the situation reflects a view that there have been limited advances despite initiatives to address disproportionate minority contact amongst juveniles in the justice system in the United States:

"Even with small gains, however, if societal ills that differentially affect minority groups continue unabated, then overrepresentation of underclass and minority groups involved in crime will become a fixed national trait." (Kempf-Leonard, 2007:77)

In the UK context concern with disproportionate representation or differential treatment of racial and ethnic minorities has been prominent since the mid-1980s. As referred to earlier, much of the literature in the context of England and Wales (but mostly England) has been concerned with aspects of policing – most notably the police use of discretionary powers, such as 'Stop and Search' procedures. A number of studies conducted in this area led Reiner (2000) to use the phrase '*over policed and under-protected*' to describe Black and Minority Ethnic groups' experience of policing within England.

In part to address some of these concerns, in the United Kingdom, the Criminal Justice Act, 1991, introduced a legislative requirement for the Home Secretary to produce and publish statistics on an annual basis on the operation of the criminal justice system – in order to:

"...avoid discriminating against any persons on the grounds of race or sex or any other improper ground." [Criminal Justice Act, 1991, Sect. 95, 1 (b)]

Therefore, since 1992 in these jurisdictions, there have been annual statistical reports produced on various aspects of the criminal justice system and the numbers of Black and Minority Ethnic people therein. Despite this legislative provision, concerns have continued regarding the perceived differential treatment of members of ethnic minorities within the criminal justice systems in England and Wales. For example the aforementioned report on race and the criminal justice system published in 2006, and reporting on 2004 / 2005 figures notes:

"The data reported show that progress continues to be made in relation to the proportion of staff from Black and Minority Ethnic (BME) groups working in the Criminal Justice System (CJS). However, other areas remain largely unchanged with BME groups continuing to be disproportionately represented in the CJS." (Criminal Justice System Race Unit, 2006:iv)

The previously referred to MacPherson Report (1999) which explored the circumstances of the police investigation of the murder of a black teenager in London, by a group of white youths, was pivotal in terms of its use of the term '*institutional racism*' [defined as: 'The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin' (MacPherson, 1999, Para: 6.34)], to describe the police approach to racial and ethnic minorities. Indeed MacPherson's (1999) descriptor of the police has since been used to refer to all aspects of the criminal justice system.

In terms of the youth justice system, the Youth Justice Board (a government appointed body, which has policy responsibility for youth justice in England and Wales), recently commissioned a study on the the treatment of minority ethnic young offenders vis-à-vis their white counterparts (Feilzer and Hood, 2004). The focus of this research was exploring whether differences in outcome related to ethnicity or gender were justifiable in terms of case-related or other legitimate factors, or whether there was evidence of discrimination.

The research collected data from eight different youth offending teams and data on 17,054 case decisions. Their study focussed on four stages in the criminal justice process, from police decision making to sentencing. The findings noted differential treatment across a range of domains based on ethnicity and inter-related with gender. For example, the chances of a case involving a mixed-parentage young male being prosecuted were 2.7 times that of a white young male with similar case characteristics (Feilzer and Hood, 2004). Significantly the authors noted that differential treatment was evidenced in a number of cases – the situation regarding young people of *mixed parentage* is particularly noted. Also there was significant intra-Youth Offending Team variations, pointing to local contextual issues playing a factor in differential treatment.

In addition to research which has tried to explore differences in treatment of minorities in the youth justice system, and to provide explanatory constructs for this, a further area of research has sought to explore how young minorities' *experience* of the youth justice system varies. For example a study commissioned by the Children's Society in the UK (Wilson, 2003) exploring the experiences of young black men in custody, explores some of the strategies the young people deploy to deal with a situation. It identifies that strategies learnt when dealing with the police 'on the street' are imported and adapted to the prison situation as a form of coping and 'resistance'.

While numerous studies have focussed on '*disproportionate minority contact*' – most notably in England and the US, it can be argued that the effect of increased knowledge and awareness in this area has had limited results. For example, Kempf-Leonard (2007) in her review of the literature in the United States, notes that after 20 years of reform efforts, the results have been limited and, she summarises that:

"...the questions are more complicated than originally appeared." (Kempf-Leonard, 2007:71)

Data on Minorities in the Irish Criminal Justice System – A Landscape in Shadows

So what then of the Irish situation? The data deficits within the Irish justice system have been widely noted; in fact it has become axiomatic to preface any discussion on aspects of the justice system with reference to '*data deficits*'. A recent exploration of Irish penal policy (O'Donnell, 2008:121) referred to '*a landscape that is mostly in shadows*'. In terms of discussions regarding minorities in the Irish criminal justice system, one can indeed see that the data deficits frustrate a comprehensive analysis of the situation.

Having referred to the data deficits and the numerous difficulties presented by this, I want to point to some data that is available to show that minorities in the justice system **should** be a concern in the Irish criminal justice context – before moving to the specific youth justice context. This cobbled picture is necessary as there is no central data source on minority groups within the Irish system – for example the crime statistics, formerly published by the Gardaí in their Annual Report, and now

published by the Central Statistics Office, do not contain any information on race and ethnicity.

The prison service reports however, provide some indication for concern in this area. The last available Annual Report of the Prison Service published in 2007 and detailing 2006 prison statistics provides a breakdown of prisoners held in Irish custodial institutions by nationality (Irish Prison Service, 2007). These statistics document the following:

- In 2005 – 25.4% of persons committed were of a nationality other than Irish.
- By 2006, this figure had risen representing 29% of all committed prisoners in that year.

The available categorisations and breakdown of the 2006 figures illustrate that the highest percentage increase of prisoners from 2005 to 2006 was seen in the prisoners categorised as 'other EU' and 'African'. From the data produced by the Irish Prison Service, one can see that a proportion of these prisoners were committed for what are categorised, as 'immigration' offences – while this is a concern in itself, if one adjusts the figures to take account of the proportion of prisoners who were subject to immigration proceedings, the proportion of 'non-Irish' committed prisoners is 17.6% – this remains a notable number given the fact that the Census conducted in the same year (albeit while using different categorisations) estimated that approximately 10.6% of the Irish population were 'non-Irish'. Significantly, to date, this issue to my knowledge has received little sustained attention.

The prison service, does not separately record the numbers of Irish Travellers within the aggregate category 'Irish'. However, a separate data source, the 2002, and 2006 Census (CSO, 2002, CSO, 2007), which includes the category of Irish Traveller in their question on ethnic and cultural background, enumerates the numbers of Travellers in 'communal establishments' such as hospitals and prisons on the evening of the census.

The 2002 census reveals that there were 194 Travellers incarcerated (of a total population of 3237 prisoners) representing 6% of the prison total.

In 2006 this figure was 145 Travellers, representing 4.6% of the total prison population on one night. These percentage totals while comparatively small,

are significant, given that according to the latest census data, Travellers constitute approximately **0.5%** of the total population in the Republic of Ireland¹.

While the available research is limited in this area, one study on admissions to the Central Mental Hospital from prisons found a "gross over-representation of Travellers in forensic psychiatry admissions", reflecting the "excess of Travellers amongst prison committals." (Linehan et al, 2002).

"The estimated annualised prison committal rate was 2.8% (95% CI 2.4-3.3) of all adult male Travellers in Ireland and 1 % for female Travellers (95% CI 0.8-1.3). Male Travellers had a relative risk of imprisonment compared to the settled community of 17.4 (95% CI 2.3-131.4), the relative risk for female Travellers was 12.9 (95% CI 1.7-96.7)." (Linehan et al, 2002:76)

The Prison Service figures, the Census data and the limited research in this area present a very partial picture, but they give us an indication that minority representation in the criminal justice system is or should be a cause for concern within the Irish Justice System.

Youth Justice System

What then of the youth justice system? Some of the prison figures referred to previously have not been disaggregated and will refer to young offenders, aged 16-21 detained in St Patrick's Institution and other custodial facilities. However, separately to this, there is a range of other facilities in the youth justice system.

Again, any attempt to discuss the operation of the youth justice system in Ireland, must be prefaced with reference to data deficits. To the best of my knowledge, data regarding the race and ethnicity of young people who come in contact with the youth justice system is not recorded in a systematic way, if at all. To explore this issue reference is therefore made to a scattering of research reports that provide some commentary on this area.

Much of the research on youth offending within Ireland has sought to describe the characteristics of young offenders (Hart 1967; Flynn et al 1967; O'Mahony et al, 1985), with measurement of IQ levels, family circumstances and some information on socio-economic backgrounds. What this body of research has consistently revealed is that young offenders in Ireland,

are overwhelmingly male, come from urban areas and are from what are loosely termed 'working class' backgrounds. The subjects of the early studies were young people, who were incarcerated in various institutions, e.g.: St Patrick's Institution (Flynn et al 1967), Upton Industrial School and Daingean Reformatory School (Hart 1967). Research studies such as these have aimed to profile characteristics of samples of young people resident in these institutions.

There has been very little primary research conducted on the operation of the system and the points and routes through which young people enter into the youth justice system, for example on the decision making process of Gardaí in relation to prosecuting young people. We, therefore, know little about the actual operation of the youth justice system, and much less in relation to minorities.

While information on ethnicity or membership of the Travelling Community is not systematically recorded, some studies make reference to the presence of Travellers at various stages of the criminal justice process. For example, O'Sullivan's (1977) study based on an analysis of the information contained in case files found that '*Itinerants*' were highly represented in the category of young people committed because of 'Lack of Proper Guardianship' and tended to be committed for longer periods, a confounding factor being their committal at a younger age, than their counterparts.

Kelleher et al (2000) in a research study on young people leaving state care in Ireland (both the care of the Health Service Executive and Children Detention Schools) similarly found that Travellers were over represented in both populations, with this group accounting for 9% of HSE Care leavers and 12% of the Children Detention School population.

A more recent study undertaken by McPhillips (2005) in the Dublin Metropolitan Children Court, on the processing of young people through the courts noted minority groups within the sample. Of a random sample of 50 cases studied, six young people were identified as being from the Traveller community, thus constituting **12%** of the sample. A further four young people were identified as 'Asylum Seekers': one was from Nigeria, and three were from Romania (two of whom were from the Roma community).

Carroll and Meehan's (2007) follow-up nationwide study, which studied a randomised sample of 400 young people who had been before the Courts in 2004, found that 26 young people within this sample were Travellers, constituting 6.5% of the total. A further nine young people were recorded as being of an ethnicity 'other than Irish (representing 2.25% of the total).

A recent report from the *High Level Group on Travellers Issues*, established by the Taoiseach and reporting to the Cabinet Committee on Social Inclusion notes:

"Travellers are included in the J.L.O. and Youth Diversion Projects, in the same way as members of the settled community. However, it must be emphasized that the success rate with Travellers is not as high as with juveniles from the settled community. Every effort is being made to afford Travellers the optimum benefit to the J.L.O. and Youth Diversion Projects."

Report of the High Level Group on Traveller Issues (2006:47)

This commentary is noteworthy in that it raises issues regarding the access to and participation of young Travellers at the first point of entry into the criminal justice system. These comments, noted briefly in this report, raise concerns regarding how Travellers are dealt with in this process. The decision to put a young person through a diversion programme or to proceed to prosecution is a key decision-making point in the youth justice system, and as such represents a key transition. Elsewhere in a study conducted on experiences of policing within socially marginalised communities in the Irish context (which specifically includes Travellers) (Mulcahy and O'Mahony, 2005) note, perhaps unsurprisingly, that negative perceptions of policing affect trust and engagement with the police. In the context, of a youth diversion programme, in which a pre-condition of entry is an admission of guilt, it is not difficult to see how negative perceptions of policing or mistrust can potentially result in unequal access to this programme.

While the decision to allow a young person take part in the juvenile diversion programme can be characterised as the 'first' decision point, there are a further series of decision making phases throughout the system, culminating at the 'end' point for under 16's – which is detention in a Children Detention School. There are

currently four children detention schools in operation in Ireland – children under-16 can be remanded or committed to them on foot of a court order for criminal charges (in some instances young people have also been sent to Children Detention Schools on High Court Orders for welfare purposes). My own research in this area has sought to explore the numbers of Travellers detained in children detention schools over a 16 year period². This has involved tracking the numbers in detention over a period. The interim data, points to evidence of over-representation of Travellers at the last (and most restrictive) stage of the juvenile justice process. While there are variations across schools and over time, the interim data shows that Travellers constitute approximately 12 % of the total male detention school population from 1991 to 2007.

The significance of these figures is stark – as already stated the last Census figures show that Travellers represent less than 0.5% of the total population, even allowing for under-counting in the Census. The fact that Traveller children represent approximately 12% of the population of detained young men under 16 years is a figure that requires explanation. Data deficits notwithstanding, all of the above certainly points to a cause for concern and supports the view that minority over-representation may be a concern in the Irish context.

Minority Perspectives

This paper began by referring to Phillips and Bowling's (2003) work which has argued for the development of minority perspectives at the interface of discussion of racism, ethnicity and criminology. I believe that these authors provide a useful framework for the discussion of this issue that seeks to move beyond what they describe as:

"...polemical and now sterile debate centred on elevated rates of offending versus discriminatory criminal justice processing." (Phillips and Bowling, 2003:270)

Phillips and Bowling's (2003) starting point is the need to reconcile criminological data with the 'lived' experiences' and the subjectivities of minorities themselves.

They argue that this can partially be achieved through both improvements in the collection, analysis, interpretation and dissemination of such data *and* by making central to our understanding the knowledge provided by minority communities themselves. Clearly there is a need to address data within the Irish context.

They further this argument by suggesting that there should be a critical deconstruction of the process of knowledge production itself in the field of criminology. In the quest for research in this area, these authors also warn of the dangers of pathologisation of particular groups – based on their analysis of how such 'knowledge' can be interpreted and operationalised. They therefore advocate a research approach that adopts an anti-discriminatory perspective. Furthermore, research should aim to consider the multi-faceted and complex nature of the issues concerned. There is evidence to support the view that *local contexts* and structural issues are important.

Noting Kilcommins et al's (2004: vii) observation that "using literature that has been produced in other countries...does not necessarily address the particularities of the Irish context." It is my contention that the issues of minority over-representation are a concern in the Irish youth justice context, and that there is a need to explore this within the particularities of this context.

References

- Bowling, B & Phillips, C (2002) *Racism, Crime and Justice*. Essex: Longman
- Carroll, J., Meehan, E. & McPhillips, S. (2007) *The Children Court: A National Study*. Dublin: Association for Criminal Justice Research and Development Ltd
- Central Statistics Office (2002) *Census 2002, Volume 8, Irish Traveller Community*. Dublin: Central Statistics Office.
- Central Statistics Office (2007) *Census 2006, Volume 5, Ethnic or Cultural Background (including Irish Traveller Community)*. Dublin: Central Statistics Office.
- Criminal Justice System Race Unit (2006) *Race and the Criminal Justice System: An Overview of the Complete Statistics*. London: Home Office

- Department of Justice, Equality and Law Reform (2006) *Report of the High Level Group on Traveller Issues*. Dublin: DJELR
- Equality Authority (2006) *Traveller Ethnicity. An Equality Authority Report*. Dublin: Equality Authority
- Flynn, A; McDonald, N & O'Doherty, E.F. (1967) 'A Survey of Boys in St. Patrick's Institution: Project on Juvenile Delinquency.' *The Irish Jurist*
- Feilzer, M and Hood, R (2004) *Differences or Discrimination? Minority Ethnic Young People and the Youth Justice System*. London: Youth Justice Board
- Gelsthorpe, L (2005) 'Book Review: Differences or discrimination? Minority Ethnic Young People and the Youth Justice System. *Youth Justice*, 5, 212-213
- Gutzmore, C (1983) 'Capital, 'black youth' and crime' *Race and Class*, 25, 2, 13-21
- Hart, I (1967) 'The Social and Psychological Characteristic of Institutionalised Young Offenders in Ireland.' *Administration*, 16, 167 –177
- Home Office (2000) *Statistics on Race in the Criminal Justice System. A Home Office Publication under Section 95 of the Criminal Justice Act, 1991*. London: Home Office.
- Irish Prison Service (2007) *Annual Report 2006*. Longford: Irish Prison Service
- Kelleher, P., Kelleher, C., Corbett, M. (2000) *Left Out on Their Own: Young People Leaving Care in Ireland*. Dublin: Focus Ireland
- Kempf-Leonard, K (2007) 'Minority youths and juvenile justice: Disproportionate minority contact after nearly 20 years of reform efforts.' *Youth Violence and Juvenile Justice*, 5, 71-87
- Kilcommins, S; O'Donnell, I; O'Sullivan, E & Vaughan, B (2004) *Crime, Punishment and the Search for Order in Ireland*. Dublin: Institute of Public Administration
- Kilkelly, U (2005) *The Children's Court. A Children's Right Audit*. Cork: University College Cork
- Kilkelly, U (2006) *Youth Justice in Ireland. Tough Lives, Rough Justice*. Dublin: Irish Academic Press
- Linehan, S; Duffy, D; O'Neill, H; O'Neill, C and Kennedy, H.G. (2002) 'Irish Travellers and forensic mental health.' *Irish Journal of Psychological Medicine*, 19,3, 76-79
- McCann, M., O'Siocháin, S. & Ruane, J (1994) *Irish Travellers. Culture and Ethnicity*. Belfast: Institute of Irish Studies, Queens University Belfast
- MacPherson, W (1999) *The Stephen Lawrence Inquiry. Report of an Inquiry by Sir William MacPherson of Cluny. Advised by Tom Cook, The Right Reverend Dr John Sentamu and Dr Richard Stone*. London: Home Office
- McPhillips, S (2005) *Dublin Children Court. A Pilot Research Project*. Irish Association for the Study of Delinquency. Dublin
- Mulcahy, A & O'Mahony, E (2005) *Policing and Social Marginalisation in Ireland*. Dublin: Combat Poverty Agency
- O'Donnell, I (2008) 'Stagnation and change in Irish penal policy' *Howard Journal of Criminal Justice* 47, 2, 121-133
- O'Dwyer, K (2002) 'Juvenile justice and crime in Ireland.' In N.C Bala; T.P. Hornick; H.N. Snyder & J.J. Paetsch (Eds.) *Juvenile Justice Systems: An International Comparison of Problems and Solutions*. Toronto: Thompson Educational Publishing
- O'Mahony, P; Cullen, R & O'Hora M.J. (1985) 'Some Family Characteristics of Irish Juvenile Offenders.' *The Economic and Social Review*, 17, 1, 29-37
- O'Sullivan, D (1977) 'The Administrative Processing of Children in Care: Some Sociological Findings.' *Administration*, 24, 413- 434
- Phillips, C & Bowling, B (2003) 'Racism, ethnicity and criminology. Developing minority perspectives' *British Journal of Criminology*, 43, 2 , 269-290
- Reiner, R (2000) *The Politics of the Police. Third Edition*. Oxford: Oxford University Press
- Scarman, Lord Justice (1981) *The Scarman Report*. Harmondsworth: Penguin
- Sharp, D & Atherton, S (2007) 'To serve and protect?' The experiences of policing in the community of young people from black and other ethnic minority groups.' *British Journal of Criminology*, 47, 746-763
- Tonry, M (1995) *Malign Neglect: Race, Crime and Punishment in America*. New York: Oxford University Press.
- Wacquant, L (2001) 'Deadly symbiosis: When ghetto and prison meet and mesh.' *Punishment and Society*, 3, 1, 95-134

Wilson, D (2003) 'Playing 'the game' inside: young black men in custody.' *Criminal Justice Matters*, no.54, Winter 2003, 30-31

Wilson, D (2006) 'Some reflections on researching with young black people and the youth justice system.' *Youth Justice*, 6,3, 181-193

Notes

- 1 It is important to note that the numbers of Travellers recorded in the Census may be an under-representation of the population total. The annual counts of Travellers conducted by Local Authorities record higher numbers of Travellers in local areas, than those reflected in the Census figures, however, taking the potential for under-counting into consideration, the total population is unlikely to be higher than 1% of the total population.
- 2 This research is part of a PhD Study exploring the experiences of Traveller young people within the Irish Youth Justice system, this research is funded by the Irish Research Council for the Humanities and Social Sciences (IRCHSS).

MARGINALISED COMMUNITIES AND JUSTICE: AN IRISH CASE STUDY

David Joyce BL, The Law Library

Introduction

I am delighted to have been invited by the ACJRD to give a presentation at this their 11th Annual Conference – and in particular I am delighted to be speaking on the theme of this year's conference 'Minorities, Crime and Justice'.

In addressing the title of the seminar, there are a broad number of areas to speak about however, the central focus of my talk will be on the Irish Traveller community and their interaction with the Criminal Justice System. The issue of Minorities in the Criminal Justice System has received much attention in many countries, in particular within justice systems of the USA and of Britain. The findings show that the experience of minorities within the justice systems is very much a negative one. In particular, where the minorities are racial minorities the racialisation of crime has presented serious problems in the administration of Justice.

As was highlighted yesterday in the presentation by Philip Watt a number of issues arise in relation to ethnic groups and justice. Most ominously, there is a prevalence of stereotypes and perceptions that ethnic minorities are inherently more likely to engage in criminal activity than other members of society. Furthermore, the contentious issue of ethnic profiling arises and we must question the extent to which law enforcement bodies act on these stereotypes.

One question which I posed for myself in preparing this paper whether or not the experience of Irish Travellers is similar to that of minorities in other jurisdictions, and particularly the two mentioned above. Does the Irish Criminal Justice system negatively stereotype minorities and do the institutions within the system engage in ethnic profiling?

Taking the Criminal Justice System as a whole, from the introduction of law by the legislature to the everyday administration of the system, obviously involving agencies such as the Gardaí, the Courts, the Prison Service, the Probation Service, and I would conclude that the simple answer is yes.

In discussing these issues I should point out that there is little empirical data on the situation of Travellers in the justice system. Much of what I will present is very much by way of anecdotal comment and experience gained from working within the area of community development with the Traveller community.

The terms Ethnic Profiling and Ethnic Monitoring have been used in the context of this discussion. My understanding of the terms is that although they are often used interchangeably and confused, they have two distinct meanings and important differences. Ethnic monitoring relates to the understanding of how members of ethnic minorities use or avail of services and how members of that community interact with state agencies. Ethnic monitoring is a useful tool for agencies to ensure that they can best direct their services to facilitate minorities. This ethnic monitoring has proved particularly useful in the areas of health and education provision. Ethnic profiling is something quite different and perhaps more sinister, and is predominantly used by law enforcement agencies to effectively discriminate against and target certain minority groups based on the agencies perception that members of such minorities are inherently more likely to be involved in criminal activity.

Irish Travellers

Travellers are citizens of the state. As citizens they are, in theory, accorded the same rights as every other citizen. Citizenship is often referred to in the context of belonging, identity, rights, equality and inclusion, but it is also about exclusion, a lack of belonging and a denial of identity. While equality and rights may exist in the formal legal sense, in reality, there are frequently vast inequalities and lack of rights. So, for example, while Irish Travellers are formally full citizens, in reality, they are denied many of the rights one normally associates with citizenship.

In terms of the historical origins of Travellers there is some difficulty finding a coherent theory. As a traditionally oral people, the written history of Travellers

has been put in writing by settled people or non-Travellers and the nature of some of this history is certainly not positive or complimentary to Travellers. The origins of the Traveller community have been linked to poverty, social upheaval, and changes in Irish society, for example famine or plantation policies by colonial powers. These sorts of theories are quite common in explaining Travellers' origins and have strong currency in influencing national social policy towards the Traveller community and in my opinion have resulted in many of the failed interventions by the State in respect of accommodation and education provision over the years.

The historical treatment of Travellers in legislation must be considered at this juncture. The reason for so doing is that the impact of the negative stereotypes and perceptions of criminality in respect of Travellers as a minority can be clearly demonstrated. It can be quite easily shown from an analysis of historical legislation that Travellers have been criminalised for many centuries and that this legacy carries over into modern legislation, both in the civil and criminal sphere. The core concept running right through this legislation¹ has been the definition and categorisation of the Traveller way of life as deviant and criminal.

Since the foundation of the State and the enactment of the Irish Constitution in 1937, which provides under Article 40 for the "equality of all citizens before the law", it has become slightly more difficult for legislators to target their legislation directly at Travellers. However it has not prevented the legislature from introducing legislation which while not specifically naming Travellers, was nevertheless aimed at proscribing the Traveller way of life. Much of this legislation has had a severe impact on the economic social and cultural elements of Traveller lives and has been disproportionately used against Travellers.

Positive Developments in Legislation

There have however been some positive developments in law making. The first explicit reference to Travellers in modern legislation occurs in section 13 of the *Housing Act 1988*, where a limited description of Travellers is set out in subsection 1: "*This section applies to persons belonging to the class of persons who traditionally*

pursue or have pursued a nomadic way of life." In 1989 and 1993 reference is again made to Travellers in the *Incitement to Hatred Act* and the *Unfair Dismissals Act*. However, it is noted that both references do not contain a definition of Travellers.

In the *Housing (Traveller Accommodation) Act 1998* the first piece of legislation to concern itself exclusively with Traveller accommodation, section 13 provides a definition of Travellers. The culmination of this recent legislative reference to Travellers has resulted in a broader legal definition of Travellers in section two of the *Equal Status Act 2000* as "*the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history culture and traditions including historically, a nomadic way of life on the island of Ireland*". It is suggested that the above definition is the legal recognition of Travellers as a distinct ethnic group, as opposed to an economically deprived group in Irish society and would appear to have been accepted by the Courts in a recent High Court case involving Traveller accommodation rights, where the Court implied that the definition contained in the Act accords with international law definitions of ethnicity.

It may have taken until the late 1980s before the first actual reference to 'Travellers' in modern legislation appears, and there have been positive developments in respect of the application of the equality legislation to Travellers, but they do not go far enough. Moreover, the introduction of legislation promoting equal treatment of Travellers sits uneasily aside the legislation which has predominately had a negative impact on the Traveller community and which remains part of the legal framework.

The rationale employed by current legislators, for the introduction of such negative legislation, appears to be the same as those employed historically. The fear and negative stereotypes conjured up by commentators are rarely challenged or condemned by those responsible for the introduction of legislation. In fact it would seem that many of the views, which treat Traveller culture as pathologically responsible for all Traveller problems and hold that Travellers are social misfits whose deviance is incurable, find louder echoes of support in the chambers

of the legislature than condemnation. It is such blatant prejudices that are more usually put forward as the cause for the introduction of specific measures, than any rational or reasonable argument for introduction.

While the impact of negative stereotypes can be found in legislation, it is more difficult to identify the effect, if any, which these preconceptions have had in other arms of the criminal justice family. This is partly due to the dearth of research on the interaction of Travellers as a community with these bodies. However, there is much subjective evidence to suggest that these agencies are influenced in their practice by the negative stereotypes and perceptions of the Traveller community prevalent in society.

Gardaí

While it is unlikely that the Gardaí as an organisation would admit to engaging in ethnic profiling of the Traveller community, it can be shown that Travellers do receive a high level of attention from the Gardaí. There is also a high level of distrust between many members of the Traveller Community and the Gardaí. Part of the reason for this distrust in my opinion does relate to how the Gardaí and the Traveller community have interacted over the years. Much of the legislation which I referred to above, which has effectively criminalised aspects of the Traveller way of life, put the Gardaí in a role which made them responsible for overseeing and carrying out evictions of families from roadside encampments. The pursuance of a nomadic way of life was a cause for constant negative interaction between Travellers and the Gardaí.

Historically Gardaí were obligated to keep track of the numbers of Travellers who came into their administrative areas. This common place practise could be considered as a form of ethnic monitoring. The well documented "operational measures" put in place by the Gardaí to deal with Traveller gatherings such as weddings or funerals also highlight a form of negative policing based on preconceptions of what may occur at those events. The steps taken by Gardaí to close pubs or premises on the day of the funerals or wedding and to police such events in large numbers also shows that some form of profiling is taking place.

The Courts

Whether a member of the Traveller community experience different treatment before the Courts again is an area where there has been very little research completed. Do Travellers who are convicted of criminal offences receive a more severe penalty by way of sentence or fine than another person charged with the same offence and in similar circumstances? While there is some evidence to suggest that a small number of judges do allow the ethnicity of the defendant influence the severity of the penalty imposed, there is no empirical research carried out to quantify how frequently this might occur.

A matter that does arise before the District courts is in regard to access to bail. It would appear that Travellers are disproportionately more likely to be remanded in custody than receive bail.

Where the offence is an indictable one, a number of other issues arise and the question of racial influence in juries cannot be overlooked. There is also concern that negative stereotypes of the Traveller Community impact whether the person receives a fair trial. Can an argument be made by a member of the Traveller community who has been accused of crime that they should be tried by a jury that has some representatives of the ethnic minority of which they are members?

In cases where the victim of a crime is a Traveller, a question also arises as to whether the jury could be influenced by the negative social attitudes in acquitting or being lenient towards the accused. A recent high profile case certainly showed that there should be concerns when the status of the victim as a member of the Traveller Community is made a central issue in a case as it could well give raise to a perverse decision by a jury.

Conclusion

I stated in the introduction that I would probably have more questions than answers on this topic and I think that has been plain from my presentation. The simple fact is that Travellers are treated differently within the Justice system. However, the effects of this differential treatment and the impact it has on general principles of justice such as the right to a fair trial and proportionality of sentencing remain to be seen. It is undoubtedly an area where serious research should be undertaken.

Notes

1 **1552 Act** *"For as much as is evident that tinkers and peddlers and suchlike vagrant persons are more hurtful then necessary to the commonwealth of this realm, be it therefore ordained that no person commonly called a tinker or peddler shall wander or go from one town to another, or from one place to another, out of town parish or village where such a person shall dwell and sell pans pots laces knives glasses tapes or any suchlike or use or exercise the occupation of tinker"*

1583 -1603 A number of statutes aimed at Vagabonds and Rogues state *"that all idle persons going about in any country of the said realm using subtle craft and unlawful games or plays and somefieging themselves to have knowledge in palmistry and all censors bearwards common plays in interludes and minstrels not belonging to any Baron of this realm all jugglers, peddlers, tinkers"*

1824 Vagrancy Act Section Four Any person (a) *pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of His Majesty's subjects; or (b) wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon, not having any visible means of subsistence, and not giving a good account of himself;*

WORKSHOP DISCUSSIONS

Workshop A: Interpretation at Garda Stations and Court

Co-ordinator: Olga Gashsi

Chair: John Brosnan

Rapporteur: Stefanie Heinrich

This workshop began with an overview of Word Perfect, a company which has provided interpretation and translation services to the Courts Service, An Garda Síochána, the Department of Justice Equality and Law Reform, the Refugee Legal Service and other agencies. The company was set up eight years ago while there was a lack in strategic approach to community interpretation. A massive influx in immigration has led to an increased demand for interpretation/translation services. The company aimed to map this demand and address it through a strategic approach.

Solutions/strategic approach developed by Word Perfect

- Word Perfect decided to use a different approach in two areas: training and employment of interpreters. The benefit of this change in method is to be able to guarantee quality of training and evaluation and debriefing of employees.
- Word Perfect provides training within the Dublin Community College to certify their employees. They also have continuous in house training to maintain high levels of performance.
- They decided to employ interpreters and not work with freelancers as is the norm. This allows the company to debrief interpreters and guarantee quality.
- Word Perfect consult with the client after the initial interpretation/translation is provided getting feedback for the interpreter, evaluating the service and if necessary providing further training where it is required.

- Since 2001 they have developed structural training in the environment where the service is required. In particular in hospitals, e.g. Mater Hospital, staff are trained to be best able to work with and benefit from interpreters.

Challenges

Quality control is up to the service provider and not the contracting authority. If the service provider does not ensure and evaluate service, it is very likely that no quality control is taking place.

- Conflict of interest not addressed, e.g. the Courts work with one specific company and others in the criminal justice sector contract on an individual basis, which might either lead to double contracting of the same person by different agencies in conflicting matters or to contracting different persons for same matter.
- Increased use of public tender is a positive development; however, without standards true comparisons are impossible.

Structural difficulties identified

- Providing services in Courts is difficult as challenges arise from overcrowding, short hearings and bad acoustics in courtrooms.
- Demand for simultaneous translation makes it difficult for interpreters to keep up with the pace.
- Quality control in this situation is difficult as no audio taping takes place, as occurs for example, in Garda Stations. This makes it difficult for the service provider and contractor to evaluate and compare services.

Workshop B: The Experience of Foreign Nationals in Irish Prisons

Co-ordinator: Mary Moore

Chair: Kieran O'Dwyer

Rapporteur: Shannon-Michael Haines

This workshop focused mainly on a report entitled 'Foreigners in European Prisons' (2006) which was financed by the European Commission to examine the experience of prisoners who are detained in the EU outside their country of origin.

The introduction of this report prompted the following issues to be considered by the group:

- 1) What are the barriers to the social inclusion of foreign prisoners?
- 2) Identify current good practices in the Prison system.

Barriers to Social Inclusion of Foreign Prisoners:

- Communication/Translation Services – The experience of foreign prisoners was likened to “watching a foreign movie without the subtitles.” Communication barriers were considered to exacerbate a prisoner’s vulnerability and isolation.
- It was noted that despite the over-representation of non-nationals in Irish prisons, these foreign prisoners came from a variety of backgrounds and didn't necessarily identify with one another, thus further adding to their sense of isolation and exclusion.
- The availability of internet access in prisons was raised as a means of communication for foreign prisoners with their family, friends and representatives abroad.
- Another member suggested the provision of worldwide radios as a means of maintaining links with their country of origin in the absence of books, newspapers, magazines in their own language.
- A dearth of any programmes designed to integrate foreign prisoners was also noted.

Good practices and policies:

- Approval was expressed in relation to the Prison Service’s attempts to translate prison manuals into a number of different languages.
- Approval was also expressed for the prison service’s accommodation of prisoners in terms of family visits and access to professionals.
- The IPS’s facilitation of communication with Consulates was also mentioned.
- Attention was drawn to ‘First Night’ Units in the UK and noted the contribution they could potentially make in Ireland.
- The training of Prison service staff was commended.
- The IPS accommodation of cultural needs was endorsed e.g. different diets, religious practices, etc.

Workshop C: Training of Garda to Work with Foreign Nationals

Co-ordinator: Sgt David McInerney

Chair: Jane Farrell

Rapporteur: Adele Smith

Two main points came from the workshop session:

- There is a need to teach guards about minority groups;
- There is a need to teach minority groups about police work in Ireland.

Training of Gardaí

- Communication: All minority groups, including Irish and non-Irish nationals agreed that they don't want any extra or special treatment, but what they do want from officers is to slow down when they are speaking. There may be some language barriers, and they need to talk slower. They also want officers to listen to them when they speak, and to treat them with some respect.
- There is a need to teach officers how to strike a balance of power, to act like a referee and ensure not to prejudice one side or be seen to take one side.

- It became evident that it was sometimes necessary to explain to officers what can amount to a racist incident. It was also necessary to explain to officers why they might receive hostile behaviour from certain minority groups, and the example of the travelling community was used. Once officers understood that many law abiding travellers are living with or may be related to members of a criminal group living within their camp, and that they cannot be seen to be talking to, or welcoming the presence of the guards, then the officers can then perhaps begin to understand the predicament that they live in.
- The introduction of ethnic liaison officers in 2002 brought a confidential personal service, where members of minority groups were encouraged to build relationships and trust with officers. It has to be remembered that non-Irish nationals will have a different experience with the police service in their home country, and a system has to be in place where they can learn that the police service in Ireland can be used to their advantage if they become victims of a crime.
- It is also necessary to teach non-Irish national minority groups the laws, customs and traditions in Ireland. This is especially true when it comes to Human rights and equality with women.
- Ethnic liaison officers can help with the on-going training of officers including: information on cultural and traditional differences which would be relevant in investigating a crime. This would include respecting and informing the head of the household of what is happening during an investigation, having in place provisions for interviewing and searching women, and dealing with the delicate topic of dealing with deceased persons.
- Many individual police stations run their own programmes, including the likes of open days for minorities which invite minority groups and their families to see the station and meet and talk to officers in an informal setting.

Workshop D: Developing a Framework for Service Provision

Co-ordinator: Marion Walsh

Chair: Gerry McNally

Rapporteur: Caroline O’Nolan

Current Legislative Framework

Criminal Law (Human Trafficking) Act 2008- creates offences of human trafficking and provides for penalties.

Immigration and Residence and Protection Bill – provides for a 45 day period for ‘recovery and reflection’ for victims of human trafficking, and when victims wish to co-operate with the Gardaí in an investigation or in taking a prosecution against traffickers, a six month period of residence in the state which may be renewed on application. Pending enactment of the IRPB these provisions are being implemented on an administrative basis.

National Action Plan to Combat Trafficking in Human Beings

A High Level Group has been established to draft a National Action Plan to Combat Trafficking. This group will also monitor the implementation of the plan. The plan is expected to be completed early in 2009 and will recommend the most appropriate way to tackle human trafficking and to co-ordinate the efforts of all interested agencies in providing the necessary services for victims.

Awareness Campaign

An awareness campaign will be officially launched on October 21st 2008. The campaign will aim to raise awareness of law enforcement officials and general public awareness about human trafficking and provide a telephone hotline and email address for the public to report any specific concerns they may have. The suggestion made during the workshop that the hotline number and email address is placed on the back of work permits may be implemented as part of future awareness campaigns.

Workshop Discussions centred on Services for Victims of Human Trafficking

Current arrangements regarding services for Victims of Human Trafficking are ad hoc and uncoordinated. The needs identified are very broad and include accommodation, psychological support/ counselling; medical; material assistance; translation and interpreting services; education/vocational training and assistance with labour market access.

Recognising people who may have been trafficked

As victims of human trafficking may be fearful of authorities as well as traffickers we cannot rely on self-identity.

- International experience suggests that the way forward is to educate people who may come into contact with victims (e.g. HSE personnel, National Government Authority Rights Inspectors) to recognise indicators of trafficking. A training programme has already begun. Budgetary considerations will dictate the pace at which it can be rolled out.
- Difficulties of identifying victims of child abuse were compared to the difficulties of identifying victims of human trafficking and it was noted that currently service providers have no obligation to report suspicions of trafficking. It was also noted that people who are the subject of trafficking may not recognise that they are being exploited. Victims of human trafficking are difficult to access and difficult to quantify; this presents problems for both research and service provision.

Identifying victims of Trafficking

- Currently victims of trafficking must be so certified by an officer of Superintendent level or higher in the Garda National Immigration Bureau. In other jurisdictions victims of human trafficking are identified by NGOs but it was felt that the template used for identifying victims was more important than who was assigned responsibility for their identification.

Barriers to Service Provision/who should provide services?

- The services needed by victims of human trafficking are very diverse and this diversity coupled with uncertainty about numbers and the variation in the length of time services are required renders the creation of a dedicated service provider problematic. Concerns about possible duplication of services were also expressed.
- The UK does have an organisation (POPPY) which has been set up to meet the needs of victims of trafficking and an Irish delegation will shortly travel to the UK to learn more about how this organisation is run.
- Government bodies and NGOs may be selective about who they assist particularly if they do not have separate funding for victims. Appointing a person to act as an advocate for each victim may provide a way of enabling victims to access services but this does not address the gaps and inadequacies in the services currently provided.

Different needs of victims of sexual and labour exploitation

- Victims will have many needs in common (such as accommodation, material assistance) but those that have been subjected to sexual exploitation may be more likely to require psychological support/ counselling. However, the needs of each individual victim should be assessed.

Workshop E: Community Service with Roma Women: A Case Study and Lessons Learned

Co-ordinator: Dorothy O'Reilly

Chair: Brendan Callaghan

Rapporteur: Tony Drummond

How the Community Service Order was initiated and delivered:

The presentation concerned a restorative and integrative Community Service Order for Roma women offenders. This pilot project was launched at the behest of a District Court judge who had raised concerns at the repeat offences (notably, shoplifting) committed by some Roma women in Tallaght.

- Rather than deliver Probation Supervision Orders requiring between 40 and 240 hours attendance, it was decided between Tallaght Probation Service and a District Court judge that the punishment for Roma women should be culturally appropriate. Thus, the Community Service Order was designed in a way that considered the unique situation of the female Roma offenders.
- Firstly, Pavee Point (an Irish Traveller organisation in Dublin) was contacted in order to ascertain more about Roma culture. Through networking it was identified that Roma women are skilled in needle work for dress making. Following on from that revelation, Tallaght Probation Service searched for a potential beneficiary of the Community Service Order that was about to be served. It was agreed that the local children's hospital would benefit from the Order. Thus, the Roma women were requested to make toys for the hospital; a discreet area was set up within Tallaght Probation Service offices whereupon the Roma women were shown how to use industrial machines in order to create the toys, and, English language lessons were also given to the Roma women. The women worked for four hours a day over a period of five weeks and the attendance rate was 100%. At Christmas, every child leaving the local hospital was given a toy that had been made by

Roma women to take home. On completion of the pilot project a presentation was made to the Roma women at the hospital in order to thank them for their work.

Issues and Concerns Identified During the Project:

- Roma women were found to be suspicious of the Probation Service and had language difficulties. Concerns were also raised as to child care when the women were due to serve their community service order. Some Roma women asked if their male partners could serve the Order on their behalf and obviously that request was declined. However, eventually the extended family members were encouraged to look after children whilst the Orders were served.
- Initially, interpreters hired by Tallaght Probation Service were found to have a bias towards the offenders and eventually, new non-biased interpreters were identified. It was also found that largely, Roma culture is patriarchal. One of the consequences of patriarchy in a hard-to-reach group is that domestic violence against women may remain hidden leaving victims vulnerable to repeat attacks (although we should all be aware that to 'stereotype' any group as patriarchal can raise risks that male victims of domestic violence remain equally vulnerable). Indeed, Roma women expressed fears for their safety should they report domestic violence. However, during the pilot project it was identified that one participant was suffering domestic violence and the Probation Service were able to find accommodation for the victim and her children in a hostel. On another occasion it was found that one Roma participant was involved in an arranged marriage which she did not want to enter into, nevertheless, the marriage went ahead.
- Tallaght Probation Service also found that Roma women lacked education, including English language skills, and many did not attend pre-natal health care checks or visit health care services for more general health care needs. The fact was also identified that many Roma people are expected to send money home to assist their extended families.

CONFERENCE ATTENDEES

Name	Organisation
Hilka Becker	Immigrant Council of Ireland
Deirdre Bigley	Copping On
Ruth Brandon	UCD
Derek Brennan	Irish Prison Service
John Brosnan	Garda Inspectorate
Ita Burke	Probation Service
Maura Butler	ACJRD
Michelle Butler	NCC
Tracey Byrne	Word Perfect
Louise Caldwell	CYC
Brendan Callaghan	Dept. of Justice
Kathryn Carolan	Restorative Justice Services
Nicola Carr	TCD
Geraldine Comerford	ACJRD
Mary Davis	Le Cheile
Ciaran Delaney	NUI
Tony Drummond	Queen's University
Jane Farrell	Office of the D.P.P.
Ursula Fernee	Probation Service
Cathal Flynn	CAAB
Patricia Flynn	Oberstown Girls
Pat Folan	INIS
Commissioner Carmel Foley	GSOC
Nadette Foley	DMCRC
Olga Gashi	Word Perfect
Norah Gibbons	Barnardos
Shannon-Michael Haynes	UCD
Prof. Frances Heidensohn	London School of Economics
Stefanie Heinrich	ACJRD
Linda Hutchinson	NIHE

Name	Organisation
Grainne Jennings	Matt Talbot Trust
David Joyce	Barrister
Helen Kealy	Office of the DPP
Sean Kinahan	Le Cheile
Conor Lenihan TD	Minister for Integration
Eddie McCaffrey	Spark of Genius
Grainne McGill	CAAB
James McGuirke	CAAB
Zak McIlhargey	Spark of Genius
Sgt David McInerney	Garda Síochána
Gerry Mc Nally	Probation Service
Emer Meehan	ACJRD
Linda Mooney	ACJRD
Mary Moore	Probation Service
Brian Moss	GSOC
Prof. Ian O'Donnell	UCD
Kieran O'Dwyer	Irish Prison Service
Siobhan O'Dwyer	Youth Advocacy Programme
Anne O'Gorman	NCC
Finbarr O'Leary	CAAB
Caroline O'Nolan	Trinity College
Dorothy O'Reilly	Probation Service
Joy O'Shaughnessy	Prisoners' Families
Michelle Shannon	IYJS
Sgt Goretta Sheridan	Tallaght Garda Station
Damon Shortt	Matt Talbot Trust
Adele Smith	ACJRD
Aoife Travers	Prisoners' Families
Marion Walsh	Dept. of Justice, Equality and Law Reform
Kate Waterhead	Trinity College
Philip Watt	NCCRI
David Williamson	Probation Service
Michael Woodlock	Oberstown Boys

© Association for Criminal Justice Research & Development Ltd

© ACJRD Ltd. All rights reserved. No part of this publication may be reproduced, stored in retrieval system or transmitted in any form or by any means, mechanical, photocopying, recording or otherwise without prior written permission of the ACJRD Council.



acjrd

Association for Criminal Justice
Research and Development Ltd