



**IPRT Submission to the National Anti-Racism Committee:  
*Towards a National Action Plan Against Racism for Ireland*  
*Public Consultation 2021***

**14<sup>th</sup> July 2021**

**About IPRT**

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our vision is one of respect for human rights in the penal system, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system and to reducing imprisonment. We are working towards progressive reform of the penal system based on evidence-based policies and on a commitment to combatting social injustice.

IPRT publishes a wide range of policy positions and research documents; we campaign vigorously across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

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## Introduction

IPRT welcomes the opportunity to provide feedback to the public consultation of the National Anti-Racism Committee ('the Committee') on the development of a new *National Action Plan Against Racism* ('the Action Plan'). IPRT particularly appreciates that 'Access to Justice' has been highlighted as a priority theme for consideration in the consultation, and in the Committee's 2020 *Interim Report to the Minister for Children, Equality, Disability, Integration and Youth* ('the Interim Report'). This theme provides the Committee with an opportunity to address the experiences of people in prison, as one of society's most vulnerable and marginalised groups, in the national strategic approach to combatting racism.

The disproportionate representation of migrants and ethnic minorities in the criminal justice system is an issue of international concern, with disparities relating to nationality and ethnicity well documented. In the Irish context, while there has been some research on the rights and experiences of migrants and ethnic minorities at the policing and sentencing stages of the criminal process<sup>1</sup> and the experiences of Travellers in the prison system,<sup>2</sup> there has to date been a limited exploration of the broader issues facing migrants and ethnic minorities when interacting with Ireland's criminal justice and penal systems. There is particularly a dearth of research relating to racial discrimination, inequality and barriers to equality and human rights in Irish prisons and the Probation Service.

To better understand, and address, the potential inequalities facing migrants and ethnic minorities in our criminal justice system, it is crucial that further research is carried out. To this end, IPRT has recently been granted funding by the Irish Human Rights and Equality Commission (IHREC) to carry out a research project, *Access to Rights for Migrants and Ethnic Minorities in the Penal System in Ireland*. The project aims to empower and promote access to justice for migrants and ethnic minorities in the penal system in Ireland and will, through desk-based research and qualitative exploration, capture the experiences of migrants and ethnic minorities in the penal system.

Following a successful tender process, a research team from Maynooth University was contracted in early 2021 to carry out this research. The researchers are guided in their work by an expert steering committee, comprised of individuals with specialist expertise in the areas of discrimination and the criminal justice system. As research for this project is ongoing, and qualitative interviews with rights-holders are forthcoming, IPRT makes only a brief submission to the current consultation (drawing on the initial desk-based research completed and the insights of the project's expert steering group). IPRT will send the final report, and its recommendations, to the Committee upon publication (currently anticipated in October 2021).

In the meantime, if it would assist the Committee, IPRT would be happy to share the initial draft literature review which has been carried out by the research team from Maynooth University and/or arrange for the researchers to meet directly with the Committee to share and discuss their initial findings. If the Committee is interested in further exploring either of these options, please do not hesitate to contact IPRT's Senior Policy and Research Officer (whose details are set out above).

## A. Data on Migrants and Ethnic Minorities in the Irish Penal System

While there is a general scarcity of statistical data on the number of migrants and people from ethnic minority backgrounds caught up in the Irish criminal justice and penal systems, the figures that are available suggest that non-Irish nationals and members of the Irish Traveller community are

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<sup>1</sup> Brandon, A. M. & O'Connell, M., (2018). 'Same Crime: Different Punishment? Investigation Sentencing Disparities Between Irish and Non-Irish Nationals in the Irish Criminal Justice System.' *British Journal of Criminology*, 58: 1127-1146.

<sup>2</sup> Irish Penal Reform Trust (IPRT), (2019). *IPRT Submission to the Joint Committee on Key Issues affecting the Traveller Community*. [online]. IPRT. Available from: [https://www.iprt.ie/site/assets/files/6688/iprt\\_submission\\_to\\_jckitc\\_final\\_6\\_8\\_19.pdf](https://www.iprt.ie/site/assets/files/6688/iprt_submission_to_jckitc_final_6_8_19.pdf) [06 July 2021].

disproportionately represented in the Irish prison population.

For example, in respect of migrants, since 2001 IPS statistics have shown a rapid increase in the proportion of non-Irish nationals committed to Irish prisons.<sup>3</sup> According to the most recently available figures from the IPS in 2019, just over 25% of people in custody were non-Irish nationals.<sup>4</sup> This figure is particularly striking when compared to 2016 Census data which estimated that only 11.6% of the general population in Ireland are of foreign nationality.<sup>5</sup>

In regards the numbers of people from ethnic minority backgrounds in prison, a report by the Travellers in Prison Initiative (TPI) in 2017, which looked at IPS Prison Information Management System (PIMS) data, highlighted that there were 238 Travellers in Irish prisons in 2016; this accounted for approximately 5% of the Irish prison population.<sup>6</sup> Again, when compared with the 2017 Census, a remarkable disparity is identified as Travellers account for only 0.7% of the general population.<sup>7</sup> The TPI report highlighted that these percentages may not be a true representation and that – as a result of Travellers often hiding their identity in prison for fear of discrimination or a lack of trust – it may be that the numbers of Travellers in prison is even higher.<sup>8</sup>

Further reports have noted this over-representation of Travellers in Irish prisons,<sup>9</sup> and the IPS has previously estimated that Traveller women account for 22% of the female prison population and Traveller men for approximately 15% of the male prison population.<sup>10</sup> There is evidence to suggest that Travellers are also at a higher risk of imprisonment with Traveller men being 5 to 11 times more likely to be imprisoned than other men and Traveller women being 18 to 22 times more likely to be imprisoned than other women.<sup>11</sup>

This over-representation of minority ethnic groups in the prison system has been highlighted to the UN Committee on the Elimination of Racial Discrimination (CERD),<sup>12</sup> but despite these concerning findings from various reports, very little data has been published about migrant and ethnic minority prisoners by the IPS.

IPRT believes that comprehensive and robust ethnic monitoring by all criminal justice agencies, including the IPS, is a crucial first step towards addressing inequalities faced by migrants and ethnic minorities caught up in the criminal system. IPRT is also concerned that, where data is collected across the criminal justice system, it is not adequately recorded and often is not made publicly available (in an appropriately anonymised form). Without such data, it is difficult to identify any disparities in

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<sup>3</sup> Brandon, A. M. & O'Connell, M., (2018). 'Same Crime: Different Punishment? Investigation Sentencing Disparities Between Irish and Non-Irish Nationals in the Irish Criminal Justice System.' *British Journal of Criminology*, 58: 1127-1146.

<sup>4</sup> Irish Prison Service, (2021). *Nationality Group: Year 2007 to Year 2019*. [online] IPS. Available from: [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/NATIONALITY-GROUP-Year-2007-to-Year-2019.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/NATIONALITY-GROUP-Year-2007-to-Year-2019.pdf) [06 July 2021].

<sup>5</sup> Central Statistics Office (CSO), (2016). *Census of Population 2016 – Profile 7 Migration and Diversity: All non-Irish Nationals in Ireland*. [online] CSO. Available from: <https://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/p7aniij/> [13 July 2021].

<sup>6</sup> Lalor, T., (2017). *Travellers in Prison Initiative: Ethnic Identifiers in Irish Prisons - Context and recommended Practice for improving data collection on Travellers and minority ethnic groups in Irish Prisons*. [online] TPI, at p.3. Available from: <https://www.ssgt.ie/wp-content/uploads/2017/11/TPI-Ethnic-Identifiers-in-Irish-Prisons-Book.pdf> [13 July 2021].

<sup>7</sup> Central Statistics Office (CSO), (2016). *Census of Population 2016 –Profile 8 Irish Travellers, Ethnicity and Religion: Irish Travellers - Demographics* [online] CSO. Available from: <https://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8itid/> [13 July 2021]

<sup>8</sup> Lalor, T., (2017). *Travellers in Prison Initiative: Ethnic Identifiers in Irish Prisons - Context and recommended Practice for improving data collection on Travellers and minority ethnic groups in Irish Prisons*. [online] TPI, at p.3. Available from: <https://www.ssgt.ie/wp-content/uploads/2017/11/TPI-Ethnic-Identifiers-in-Irish-Prisons-Book.pdf> [13 July 2021].

<sup>9</sup> All Ireland Traveller Health Study (AITHS), (2010). *All Ireland Traveller Health Study*. [online] AITHS, at p.110. Available from: <https://assets.gov.ie/18859/d5237d611916463189ecc1f9ea83279d.pdf> [13 July 2021].

<sup>10</sup> Lalor, T., (2017). *Travellers in Prison Initiative: Ethnic Identifiers in Irish Prisons - Context and recommended Practice for improving data collection on Travellers and minority ethnic groups in Irish Prisons*. [online] TPI, at p.3. Available from: <https://www.ssgt.ie/wp-content/uploads/2017/11/TPI-Ethnic-Identifiers-in-Irish-Prisons-Book.pdf> [13 July 2021].

<sup>11</sup> All Ireland Traveller Health Study (AITHS), (2010). *All Ireland Traveller Health Study*. [online] AITHS, at p.110. Available from: <https://assets.gov.ie/18859/d5237d611916463189ecc1f9ea83279d.pdf> [13 July 2021].

<sup>12</sup> Irish Human Rights and Equality Commission (IHREC), (2019). *Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report*. [online] IHREC, at pp.137-138. Available from: [https://www.ihrec.ie/app/uploads/2019/11/IHREC\\_CERD\\_UN\\_Submission\\_Oct\\_19.pdf](https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf) [13 July 2021].

treatment and potentially discriminatory practices, and accordingly to address these issues. In line with Recommendation 2 of the Committee's Interim Report, IPRT accordingly submits that the following recommendation might sensibly be repeated in the new Action Plan:

**Recommendation 1: Ethnic equality monitoring must be adequately carried out across the Irish criminal justice system using the ethnic categories developed by the Central Statistics Office.**

## **B. The Experiences of Migrants and Ethnic Minorities in the Irish Penal System**

Research has found that prison life can be more challenging for migrants and ethnic minorities than for their counterparts.<sup>13</sup> Migrant and ethnic minority groups have been recognised internationally as a vulnerable group who experience additional and/or unique hardships in prison relating to e.g. issues of language, isolation, access to services and instances of racism.<sup>14</sup>

### **i. Migrants**

Research in the UK has found that, throughout different parts of the criminal justice process, migrants are often subject to different treatment in comparison with their national counterparts.<sup>15</sup> Examples of differential treatment included migrants experiencing:

- longer sentences;
- more time in solitary confinement;
- a higher likelihood of being held on remand while awaiting trial and sentencing; and
- a higher likelihood of being refused transition to open prisons.

Migrants also have the added disadvantage of potential language barriers and a lack of available information in their native language, which can affect their access to services in prison. Research has shown that language issues can exacerbate the already very challenging and punishing experience of prison<sup>16</sup> and contribute to poor mental health and self-harm.<sup>17</sup> In addition to language barriers, migrants in prison are often less likely to understand the prison system rules, their rights and the general culture. These conditions are worsened again by the difficulties migrant prisoners can have in accessing visits from, and communicating with, family and friends who may live abroad.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 2020 report on Ireland highlighted that migrants in prison often relied on other prisoners to translate and explain information provided to them on arrival to prison,<sup>18</sup> suggesting that difficulties in understanding the prison regime is an issue for migrants in Irish prisons. The CPT accordingly recommended that all newly admitted prisoners be supplied with information on the

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<sup>13</sup> Mulgrew, R. (2016) 'Foreign Prisoners in Europe: An Analysis of The 2012 Council of Europe Recommendation and its implications for International Penal Policy' *Review of International Law & Politics*, 12(1): 161-200.

<sup>14</sup> Croux, F., Vandeveldel, S., Claes, B., Brosens, D., & De Donder, L. (2021). 'An appreciative inquiry into foreign national prisoners' participation in prison activities: The role of language'. *European Journal of Criminology* 1-19, 3.

<sup>15</sup> Turnbull, S & Hasselberg, I. (2017). 'From prison to detention: The carceral trajectories of foreign-national prisoners in the United Kingdom. *Punishment & Society*, 19(2): 135-154, 139.

<sup>16</sup> Croux, F., Vandeveldel, S., Claes, B., Brosens, D., & De Donder, L. (2021). 'An appreciative inquiry into foreign national prisoners' participation in prison activities: The role of language'. *European Journal of Criminology* 1-19, 3.

<sup>17</sup> Barnoux, m. & Wood, J. (2013). 'The specific needs of foreign national prisoners and the threat to their mental health from being imprisoned in a foreign country'. *Aggression and Violent Behaviour*. 18: 240–246.

<sup>18</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). (2020). *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019*. [online] Council of Europe, at p.40. Available from: <https://rm.coe.int/1680a078cf> [07 July 2021].

prison regime, and their rights and duties, in a language which they can understand (a recommendation which had been similarly made in the CPT's 2011 report on Ireland).<sup>19</sup> Rule 30.1 of the revised European Prison Rules similarly states: "At admission, and as often as necessary afterwards, all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison."<sup>20</sup>

Echoing the EPR and CPT, IPRT recommends that the following be considered for inclusion in the *National Action Plan Against Racism*:

**Recommendation 2: Upon admission and throughout their period of imprisonment, migrants in prison should be given access to information, in a language they can understand, on all aspects of prison life, from their rights and duties as a prisoner to the prison regimes, services and supports.**

## ii. Ethnic Minorities

As highlighted above, Travellers appear to be significantly over-represented in Irish prisons. This over-representation is arguably a reflection of broader societal discrimination against Travellers: see, for example, the CERD's *General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, which states that a possible indicator of racial discrimination is "the number and percentage of persons belonging to those groups who are held in prison".<sup>21</sup>

In 2014, IPRT carried out a qualitative exploration of the experiences of Travellers in prison. Through this research, a number of issues relating to discrimination were highlighted, ranging from feelings of exclusion and as if people were "looking down their noses at you, because you're a Traveller", to verbal and non-verbal abuse from both other prisoners and prison staff.<sup>22</sup> This report also found that members of the Travelling community in prison sometimes held back from revealing their identity as Travellers for fear of discrimination and mistreatment.<sup>23</sup>

In the 2014 report, and again in a submission to the Joint Oireachtas Committee on Key Issues affecting the Traveller Community in 2019, IPRT made a number of recommendations aimed at improving the experience of imprisonment for Travellers. Recommendations included: developing a dedicated strategy which addresses the discrimination of Travellers in the Irish criminal justice system; training on specific areas of Traveller culture for prison officers and staff; and introducing proactive steps to ensure Travellers have equal access to culturally appropriate education, inclusive of literacy education, while in prison.<sup>24</sup>

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<sup>19</sup> Ibid. See also European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). (2011). *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010*. [online] Council of Europe, at p.48. Available from: <https://rm.coe.int/1680696c98> [07 July 2021].

<sup>20</sup> Council of Europe. (2020). *Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules*. [online] Council of Europe, Rule 30.1. Available from: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809ee581](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581) [13 July 2021].

<sup>21</sup> UN Committee on the Elimination of Racial Discrimination (CERD). (2005). *General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, [online] CERD, at pp.2-3. Available from: <https://www.refworld.org/docid/48abd56dd.html> [13 July 2021].

<sup>22</sup> Irish Penal Reform Trust (IPRT). (2014). *Travellers in the Irish Prison System: A Qualitative Study*. [online] IPRT, at p.40. Available from: [https://www.iprt.ie/site/assets/files/6339/iprt\\_travellers\\_report\\_web.pdf](https://www.iprt.ie/site/assets/files/6339/iprt_travellers_report_web.pdf) [06 July 2021].

<sup>23</sup> Ibid., at p.15.

<sup>24</sup> Irish Penal Reform Trust (IPRT), (2019) *IPRT Submission to the Joint Committee on Key Issues affecting the Traveller Community*. [online]. IPRT. Available from: [https://www.iprt.ie/site/assets/files/6688/iprt\\_submission\\_to\\_jckitc\\_final\\_6\\_8\\_19.pdf](https://www.iprt.ie/site/assets/files/6688/iprt_submission_to_jckitc_final_6_8_19.pdf) [06 July 2021].

IPRT acknowledges and appreciates the objectives of the *National Traveller and Roma Inclusion Strategy 2017-2021*,<sup>25</sup> which included the following specific actions to assist Travellers and Roma who come into contact with the criminal justice:

- provide Travellers and Roma with access to education while in prison, including literacy education;
- make specific supports and resources available for Traveller and Roma prisoners including access to appropriate in-reach services, as well as information about housing, health and social protection services; and
- implement the CERD's *General Recommendation XXXI* on the prevention of racial discrimination in the criminal justice system with a focus on data collection by an independent body for the purposes of identifying trends in racial discrimination.

Unfortunately, the mid-term review of the implementation of this strategy (planned for 2019) is overdue and the strategy implementation window is nearing its end. Consequently, IPRT suggests that the Committee considering including as a recommendation in the new Action Plan as follows:

**Recommendation 3: Actions 122-125 of the *National Traveller and Roma Inclusion Strategy 2017-2021*, relating to the interaction of Travellers and Roma with the criminal justice system, should be reviewed and fully implemented within a revised timeframe.**

## C. Sentencing Decisions in Respect of Migrants and Ethnic Minorities

When examining the reasons for over-representation of migrants and ethnic minorities within the criminal justice system in Ireland, one possible explanation is that there is a disparity in how such groups are treated by the courts. In particular, the high number of migrants in prison raises concerns regarding potential disparities between national and non-Irish nationals in sentencing outcomes in Ireland.<sup>26</sup>

In one of the very few explorations of this issue in the Irish context, 2018 research has found that non-Irish nationals receive longer sentences than their Irish counterparts and that these individuals were also over-represented in a number of specific offences, such as theft and motoring.<sup>27</sup> Particularly striking within this research was the finding that Irish nationals never received a longer sentence than their non-national counterparts in any offence category. This research raises many questions regarding bias in sentencing and shows that there is a need for further investigation into the reasons behind these apparent differences in treatment.

Given the limited data available on this issue, IPRT suggests that the following recommendations are considered for inclusion in the new Action Plan:

**Recommendation 4: Further research is carried out, in conjunction with the newly formed Sentencing Guidelines and Information Committee, to investigate the extent of any differences in sentencing decisions for migrant and ethnic minority groups in Ireland, and the reasons behind any such disparities.**

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<sup>25</sup> Department of Justice and Equality. (2017). *National Traveller and Roma Inclusion Strategy 2017-2021* [online] Department of Justice and Equality, at p.40. Available from: [http://www.justice.ie/en/JELR/Pages/National\\_Traveller\\_and\\_Roma\\_Inclusion\\_Strategy\\_2017%E2%80%932021](http://www.justice.ie/en/JELR/Pages/National_Traveller_and_Roma_Inclusion_Strategy_2017%E2%80%932021) [07 July 2021].

<sup>26</sup> See e.g. discussions regarding potential inconsistencies in sentencing in the following report: Law Reform Commission (2013), *Report: Mandatory Sentences*. [online] Law Reform Commission, at pp.33-35. Available from: <https://www.lawreform.ie/fileupload/Reports/r108.pdf> [06 July 2021].

<sup>27</sup> Brandon, A. M. & O'Connell, M., (2018). 'Same Crime: Different Punishment? Investigation Sentencing Disparities Between Irish and Non-Irish Nationals in the Irish Criminal Justice System.' *British Journal of Criminology*, 58: 1127-1146.

**Recommendation 5: Consideration is given to providing anti-racism training to members of the judiciary, in collaboration with the newly established Judicial Studies Committee.**

## **D. Lack of Redress for Victims of Racism in the Irish Penal System**

### **i. Potential Incidents of Racism in Irish Prisons**

While there is no publicly available data on the number of racist incidents in Irish prisons, there is reason to believe such incidents take place. In the most recent 2020 report on their visit to Ireland, the CPT found that a small number of prison officers verbally abused prisoners and that this verbal abuse included the use of racist language towards members of the Travelling community and persons of African descent.<sup>28</sup> Furthermore, IPRT's 2014 report on Travellers in prison highlighted the presence of potentially discriminatory practices as well as instances of offensive language being directed towards Travellers from prison staff.<sup>29</sup>

IPRT was also particularly concerned by reports in February 2021 of racist and anti-Traveller material being circulated in an online Facebook group for prison officers.<sup>30</sup> These reports detailed that there were a number of posts in the group containing racist and offensive language. While this incident likely pertained to a small minority of prison officers (some of whom may now be retired), it raises concern about the general attitude towards migrants and ethnic minorities amongst prison staff as well as the wider culture of the IPS.

According to the *IPS Prisoner Complaints Policy Document*, there are six categories of complaint, A-F, ranging from serious (Category A) to less serious (Category F). The two most serious complaint categories (A and B) include complaints potentially relating to serious incidences of discrimination.<sup>31</sup> The Office of the Inspector of Prisons' *Annual Report 2020* reported 67 Category A complaints, which is an increase from the 2019 report.<sup>32</sup> The 2020 report further recorded a combined 216 Category A and B complaints, comprising almost a quarter (23.2%) of all complaints. It is concerning that such a significant percentage of complaints could potentially relate to racism in Irish prisons and yet this data – as a result of it not being broken down into more detailed information about the nature of each complaint – is not available for scrutiny. IPRT believes that access to a breakdown of the types of complaints received would help identify the levels of racial discrimination in prisons, which in turn would enable the Department of Justice and IPS better tackle racism across the prison estate.

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<sup>28</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2020) *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 4 October 2019*. [online]. Council of Europe. Available from: <https://rm.coe.int/1680a078cf> [07 July 2021]

<sup>29</sup> Irish Penal Reform Trust (IPRT). (2014). *Travellers in the Irish Prison System: A Qualitative Study*. [online] IPRT, at pp.16-17. Available from: [https://www.iprt.ie/site/assets/files/6339/iprt\\_travellers\\_report\\_web.pdf](https://www.iprt.ie/site/assets/files/6339/iprt_travellers_report_web.pdf) [06 July 2021].

<sup>30</sup> IPRT, *Statement on Irish Times report: 'Prison Service tries to stop racist staff posts'*, 24<sup>th</sup> February 2021. Available from: <https://www.iprt.ie/latest-news/statement-on-irish-times-report-prison-service-tries-to-stop-racist-staff-posts/>.

<sup>31</sup> Irish Prison Service, (2014) *Prisoner Complaints: Policy Document*. [online] Irish Prison Service. Available from: [http://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/complaints\\_policy.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/complaints_policy.pdf) [07 July 2021]. See also Office of the Inspector of Prisons. (2020). *Annual Report 2020*. [online] OiP, at p.18. Available from: [http://www.justice.ie/en/JELR/OIP\\_Annual\\_Report\\_2020\\_\(GA&Eng\).pdf/Files/OIP\\_Annual\\_Report\\_2020\\_\(GA&Eng\).pdf](http://www.justice.ie/en/JELR/OIP_Annual_Report_2020_(GA&Eng).pdf/Files/OIP_Annual_Report_2020_(GA&Eng).pdf) [06 July 2021].

<sup>32</sup> See Office of the Inspector of Prisons, (2020). *Annual Report 2020*. [online] OiP, at p.19. Available from: [http://www.justice.ie/en/JELR/OIP\\_Annual\\_Report\\_2020\\_\(GA&Eng\).pdf/Files/OIP\\_Annual\\_Report\\_2020\\_\(GA&Eng\).pdf](http://www.justice.ie/en/JELR/OIP_Annual_Report_2020_(GA&Eng).pdf/Files/OIP_Annual_Report_2020_(GA&Eng).pdf) [06 July 2021]. Please note that the Inspector identified some discrepancies in the numbers of complaints received in 2020 – the reason for these discrepancies is explained at p.21 of the report, but for the purposes of this submission the figures used are those recorded in the monthly returns of Category A to Category F complaints at p.19.

## ii. Inadequacy of Prison Complaints System

The lack of information around the extent of racism within Irish prisons is compounded by the lack of access prisoners have to an adequate complaints system. Since 2009, IPRT has called for reform of the system of complaints monitoring and inspection in prisons.<sup>33</sup> Furthermore, since 2017, IPRT's annual report, *Progress in the Penal System*, has urged the Department of Justice and the IPS to publish and implement a new complaints policy.<sup>34</sup>

The Inspector of Prisons' *Annual Report 2020* in turn repeats the view, expressed in previous reports from the Inspector, that the current prison complaints system is "not fit for purpose".<sup>35</sup> This report rightly describes an effective complaints system as "an essential tool in the armoury of human rights protections";<sup>36</sup> the ongoing failure to reform and improve the current process is accordingly a matter which should concern us all.

The CPT states that an adequate and effective complaints mechanism must have the following features: availability; accessibility; confidentiality and safety; and effectiveness and traceability.<sup>37</sup> Unfortunately, people in prison in Ireland do not have access to such a mechanism when harm is caused or perceived to be caused to them. The current system of reporting complaints through an internal mechanism acts as a disincentive to prisoners being transparent and coming forward with concerns, which could include complaints pertaining to racism. Despite the commitment from the IPS in 2019 to establish "a fairer, simpler Prisoner Complaints System", and their recommitment to this objective in 2020, this development has yet to take place.<sup>38</sup>

IPRT asks the Committee to consider addressing this issue in the new Action Plan, specifically under the theme of 'Access to Justice'. Recommendations to be included in the new Action Plan might include:

**Recommendation 6: The Department of Justice and the Irish Prison Service should ensure that the new complaints policy is rolled out with urgency so that that all complaints, particularly those relating to racial discrimination, are fairly and adequately addressed.**

**Recommendation 7: The IPS should introduce a system for compiling statistics on all complaints made across the prison estate, and their outcomes, as recommended by the CPT.**

## Conclusion

As stated, this submission is brief and has addressed just a few of the discrimination issues arising in the criminal justice and penal system today. Upon publication of the IHREC-funded *Access to Rights for Migrants and Ethnic Minorities in the Penal System in Ireland* report, IPRT will be in a better position to make evidence-based and comprehensive recommendations on how racism in Ireland's criminal justice and penal system might be addressed. The recommendations made throughout this submission are accordingly only a preliminary starting point, but it is hoped that they are useful in flagging some of the core issues – and potential solutions – for the Committee's consideration and

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<sup>33</sup>Irish Penal Reform Trust (IPRT). (2009). *IPRT Position Paper 7: Complaints, Monitoring and Inspection in Prisons*. [online] IPRT. Available from: [https://www.iprt.ie/site/assets/files/6157/iprt\\_position\\_paper\\_7\\_-\\_complaints-monitoring\\_and\\_inspection\\_in\\_prisons.pdf](https://www.iprt.ie/site/assets/files/6157/iprt_position_paper_7_-_complaints-monitoring_and_inspection_in_prisons.pdf) [06 July 2021].

<sup>34</sup>Irish Penal Reform Trust (IPRT). (2017). *Progress in the Penal System (PIPS) A framework for penal reform* [online] IPRT. Available from: [https://www.iprt.ie/site/assets/files/6431/progress\\_in\\_the\\_penal\\_system\\_compressed.pdf](https://www.iprt.ie/site/assets/files/6431/progress_in_the_penal_system_compressed.pdf) [06 July 2021].

<sup>35</sup> Office of the Inspector of Prisons, (2020). *Annual Report 2020*. [online] OiP, at p.24. Available from: [http://www.justice.ie/en/JELR/OIP\\_Annual\\_Report\\_2020\\_\(GA&Eng\).pdf/Files/OIP\\_Annual\\_Report\\_2020\\_\(GA&Eng\).pdf](http://www.justice.ie/en/JELR/OIP_Annual_Report_2020_(GA&Eng).pdf/Files/OIP_Annual_Report_2020_(GA&Eng).pdf) [06 July 2021].

<sup>36</sup> *Ibid.*, at p.3.

<sup>37</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). (2018). *Complaints Mechanisms*. [online] Council of Europe. Available from: <https://rm.coe.int/16807bc668%20%5b07> [07 July 2021].

<sup>38</sup> Irish Prison Service. (2019). *Annual Report 2019: Creating a Better Environment*. [online] IPS. Available from: [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/IPS-Annual-Report-2019-Web.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf) [06 July 2021].

that they might help inform the new *National Action Plan Against Racism*. It is also hoped that these recommendations will be a first step towards empowering and promoting access to justice for those people from migrant and ethnic minority backgrounds who get caught up in the criminal justice and penal system in Ireland.

## Summary of Recommendations

1. **Ethnic equality monitoring must be adequately carried out across the Irish criminal justice system using the ethnic categories developed by the Central Statistics Office.**
2. **Upon admission and throughout their period of imprisonment, migrants in prison should be given access to information, in a language they can understand, on all aspects of prison life, from their rights and duties as a prisoner to the prison regimes, services and supports.**
3. **Actions 122-125 of the *National Traveller and Roma Inclusion Strategy 2017-2021*, relating to the interaction of Travellers and Roma with the criminal justice system, should be reviewed and fully implemented within a revised timeframe.**
4. **Further research is carried out, in conjunction with the newly formed Sentencing Guidelines and Information Committee, to investigate the extent of any differences in sentencing decisions for migrant and ethnic minority groups in Ireland, and the reasons behind any such disparities.**
5. **Consideration is given to providing anti-racism training to members of the judiciary, in collaboration with the newly established Judicial Studies Committee.**
6. **The Department of Justice and the Irish Prison Service should ensure that the new complaints policy is rolled out with urgency so that that all complaints, particularly those relating to racial discrimination, are fairly and adequately addressed.**
7. **The IPS should introduce a system for compiling statistics on all complaints made across the prison estate, and their outcomes, as recommended by the CPT.**