



Submission to the Department of Justice and Equality: Towards the Development of a Strategy for the Criminal Justice System

About the Reporting Organisation and our Submission

Pavee Point Traveller and Roma Centre is a national NGO committed to the realisation of human rights for Irish Travellers and Roma in Ireland. Established in 1985, the aim of Pavee Point is to contribute to the improvement in quality of life and living circumstances for Travellers and Roma by working for social justice, solidarity and human rights.

Pavee Point welcomes the consultation process to contribute to the direction of this first ever Strategy for the Criminal Justice System. Our submission gives context to the experience of Travellers and Roma with the criminal justice system in Ireland, and in taking into account its intended vision, mission and high level outcomes, puts forward principles and actions to be incorporated within the forthcoming Strategy.

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Introduction

Data and research available on the experiences of Travellers and Roma with the criminal justice system paint a stark picture in terms of over-representation, ethnic profiling, racism and discrimination (see tables 1-3). This makes it imperative for the forthcoming Strategy to incorporate clear principles, objectives and actions to address these issues and to bring the criminal justice system in line with government obligations under various international human rights treaties and public sector duty under the Irish Human Rights and Equality Act (2014).

Table 1. Over-representation of Travellers in prisons, probation services and children's detention:

- Although Travellers account for 0.6 % of the Irish population, Travellers account for 22% of the female prison population and 15% of the male prison population¹
- A fifth of young people in custody in Oberstown Children Detention Campus are Travellers²
- Almost 10 per cent of the people under probation supervision are Travellers³

Table 2. Evidence of anti-Traveller and Roma prejudice, racism and discrimination:

- 53.9% of Roma respondents said they felt discriminated by An Garda Síochána or in the courts⁴
- In 2019, social media video footage emerged where a member of An Garda Síochána and fire brigade services engaged in impersonating and mocking the Traveller community.⁵
- District Court judge and former Fianna Fail member: "[Travellers are] Neanderthal men ... abiding by the laws of the jungle".⁶ Dublin Circuit Criminal Court Justice: "I assume from his appearance that he's from the Roma community who came here to do what all of them tend to do, to use the streets to beg"⁷
- Traveller women report abusive, discriminatory and racist language and physical violence by some members of An Garda Síochána,⁸ and in prison can experience discrimination from other prisoners and/or prison staff.⁹

Table 3. Evidence of ethnic profiling:

- 77.5% of Roma report being stopped by An Garda Síochána for an ID, and of those, 56% report being stopped four times or more¹⁰
- In 2013, in two separate instances two Roma children were removed from their biological parents by An Garda Síochána under Section 12 of the Child Care Act 1991 under a suspicion the children had been abducted -¹¹ the removal of one of the children amounted to ethnic profiling.¹² A further audit of the use of the Section 12 of the Child Care Act found that crucial demographic data to draw conclusions about ethnic profiling is not recorded in the PULSE.¹³
- Traveller children aged 4 and 5 were recorded and given criminal tag numbers in the PULSE in 2011 after their parents visited a Garda station in relation to passport applications. The mother was not aware of this until informed by a freelance journalist in 2014. In 2014, a Garda whistle-blower alleged that up to 40 Traveller families were entered on the PULSE system, including a 16 days old baby, and that these registrations on PULSE were made without any proper foundation, criminal or otherwise.¹⁴

¹ Irish Prison Service, cited in Lalor, T., *Travellers in Prison Initiative: Ethnic Identifiers in Irish Prisons*, 2017.

² In the first three months of 2019 the campus housed 72 individuals, of these 14 (19 per cent) were Travellers or from a Traveller background. There was a similar rate in 2018 and 2017', Irish Prison Service, 2019.

³ Irish Penal Reform Trust, *Oberstown Children Detention Campus: Key characteristics of young people in detention for Q1 2018*, June 2018.

⁴ Curran, S., A. Crickley, A., R. Fay, F. Mc Gaughey (eds), *Roma in Ireland - a National Needs Assessment*, Department of Justice and Equality and Pavee Point Traveller and Roma Centre, 2018.

⁵ 'Garda Commissioner Includes Traveller Community in 'Increased Diversity' Message', *Independent*, 26 Sep 2019. The seriousness of the incident was acknowledged by both the Garda Commissioner and the individuals involved in producing the footage.

⁶ 'Calls for judge to resign over 'Neanderthal' comment on Travellers', *The Journal*, 12 September 2012.

⁷ McMahon, C., 'He should never have been in our country', *Irish Mirror*, 21 March 2013.

⁸ Doyle, R., *Hearing their Voices – Traveller Women in Prison*, Travellers in Prison Initiative, 2017.

⁹ Irish Penal Reform Trust, *Travellers in the Irish Prison System: A Qualitative Study*, 2014.

¹⁰ Curran et al, 2018.

¹¹ 2 year old Child A in Athlone and 7 year old Child T in Dublin both had blonde hair and looked different from their parents. They were subsequently returned back to the parents. Section 12 of the Act authorises An Garda Síochána to remove a child from the care of his/her family in circumstances where a police officer believes there is an immediate and serious risk to the health or welfare of a child and where it would not be sufficient to await the making of an application for an emergency care order.

¹² Ombudsman for Children, *Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*, 2014.

¹³ Shannon, G., *Audit of the Exercise by An Garda Síochána of the Provisions of Section 12 of the Child Care Act 1991*, Department of Justice and Equality, 2017.

¹⁴ Barry, A., 'Garda Síochána "does not engage in ethnic profiling"', *The Journal.ie*, 26 March 2014.

1. Implementation and Monitoring Framework for the Criminal Justice Sector Strategy

It is understood and welcomed that the forthcoming Strategy will be accompanied by an associated implementation plan. Current strategies led by the former Department of Justice and Equality have come under criticism by international human rights bodies for lacking concrete implementation plans and mechanisms to coordinate and monitor their implementation.¹⁵ Therefore, it is important that the priorities, objectives and actions of this Strategy will be strategic and realistic and the implementation plan robust with clear targets, indicators, outputs, outcomes, timeframes and budget lines.

Reforms to be implemented through this Strategy also need to be undertaken in partnership with a range of agencies and representative organisations at local and national levels. Partnership arrangements with Traveller and Roma organisations act as vital components in identifying implementation issues as well as barriers and solutions for effective delivery of policies and programming.

Recommendation:

- **Develop a robust implementation plan for the Strategy with clear targets, indicators, outputs, outcomes, timeframes and budget lines**
- **Prioritise partnership approach in the forthcoming Strategy by ensuring meaningful participation of Traveller and Roma representative organisations in its implementation and monitoring**

2. Ethnic Equality Monitoring

Pavee Point welcomes the focus of the Strategy on improving data and evidence-led policy actions. Data collected and disaggregated by ethnicity is crucial in facilitating research, informing evidence based policy making and equality proofing budgets and programming. Ethnic data collection is in line with existing government policies¹⁶ and obligations set out in Section 42 of the Irish Human Rights and Equality Act (2014). A number of international human rights monitoring bodies have urged the government to make disaggregated data by ethnicity available.¹⁷

We have welcomed that the Prison and Probation services have introduced an ethnic identifier in their data collection systems, but regret that despite Section 42 of the Irish Human Rights and Equality Act (2014) An Garda Síochána and the Courts Service continue to cite a perceived lack of legal basis for recording ethnicity or fear that such practice may constitute ethnic profiling.¹⁸

Progress on ethnic equality monitoring is needed across the criminal justice system. Training is needed for all data collectors on how to collect, disaggregate, analyse and use ethnic data; awareness raising actions need to be taken with minority ethnic communities to encourage individuals to self-identify; and all agencies in the criminal justice sector must introduce ethnic identifiers in their data collection systems. More recently, the Policing Authority has highlighted the

¹⁵ The lack of robust implementation associated with the National Traveller Roma Inclusion Strategy has been noted by the following human rights bodies: UNCEDAW, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland*, CEDAW/C/IRL/CO/6-7, 9 March 2017; UNCRC, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland*, CRC/C/IRL/CO/3-4 4, 1 March 2016; ECRI, *Fifth Report on Ireland*, CRI(2019)18, 4 June 2019; FCPNM, *Fourth Opinion on Ireland*, ACFC/OP/IV(2018)005, 20 June 2019; CERD, *Concluding Observations on the Combined Fifth to Ninth Reports on Ireland*, CERD/C/IRL/CO/5-9, 12 December 2019. In 2019, the Advisory Committee on the FCPNM called on the State to implement both the NTRIS and the NSWG in a coordinated and consistent way and to adopt an implementation plan with clear targets, indicators, timeframes and resources for the Strategies.

¹⁶ As per the National Traveller and Roma Inclusion Strategy (2017-2021); Second National Strategy on DSGBV; Migrant Integration Strategy 2017-2020; The National Strategy for Women and Girls 2017-2020.

¹⁷ UNCERD, 2019; UNCEDAW, 2017; UNCRC, 2016; UNCESCR, 2015; HRC, 2014; FCNM, 2019; ECRI, 2019; ECRI, *Second Report on Ireland*, CRI (2002) 3, 23 April 2002.

¹⁸ As reported by the Courts Service and An Garda Síochána through monitoring committee meetings of the *National Strategy on Domestic, Sexual and Gender-based Violence*. All State agencies initially committed to developing a 'gold standard of data collection, including by ethnicity, through this Strategy.

need for ethnic data for internal and external oversight and to provide assurances of the fair and proportionate application of police powers.¹⁹

Recommendation:

- **Introduce an ethnic identifier in services and data sets across the criminal justice system**
- **Provide adequate resources to ensure the implementation of an ethnic identifier takes place in line with human rights standards, including resources to support the development of data sets, provision of training and awareness raising for data collectors, and awareness raising with service users, victims of crime and offenders**

3. Coordinated Response Across the Criminal Justice System and Government Departments in relation to Targeted Measures and Early Intervention

The Criminal Justice Strategy should have a central focus in diverting individuals and members of communities away from crime by recognising the links between offending and intergenerational experiences of poverty, social exclusion and discrimination. To adopt a preventative approach to crime, the implementation of key strategies that relate to the inclusion of Travellers and Roma need to be stepped up. In addition, sentencing of non-violent and poverty related offences needs to be reviewed; implementation of restorative justice model needs further enhancing; and collaboration between various agencies to work together to address offending behaviour and reduce reoffending needs improving.

Legislative and policy measures that adequately address racial discrimination, educational disadvantage, homelessness and accommodation situation, mental health problems, access to safety and protection from domestic and sexual violence, and services related to alcohol and drug dependency, need urgent prioritisation and resourcing in already existing strategies (particularly the National Traveller Roma Inclusion Strategy, National Strategy for Women and Girls, National Strategy on Domestic, Sexual and Gender-based Violence, and the National Drugs Strategy). Targeted initiatives for Travellers and Roma should have a focus on areas such as formal and informal education (such as youth and community projects and Garda diversion projects), mental health, domestic and sexual violence, drugs and alcohol, accommodation and housing, and employment and training to avoid reoffending and ensure the rehabilitation of those who have already come to contact with the criminal justice system.

We welcome that the National Traveller Roma Inclusion Strategy 2017-2021 (NTRIS) and National Strategy on Domestic, Sexual and Gender-based Violence 2016-2021 (NSDSGBV) have actions related to policing and Traveller and Roma communities. However, we regret that implementation of the actions has been slow and the actions have not been met with adequate resources or clear targets, indicators or outcomes. We also regret that the Garda Diversity Strategy 2019-2021 contains no targeted actions to address policing issues in the context of Traveller and Roma communities, and are unaware whether a strategy committee to support and monitor its implementation has been established or convened its work.

Recommendation:

- **Address the contributing factors for the overrepresentation of Travellers in the criminal justice system by significantly stepping up the implementation of the NTRIS and increasing resources allocated for the social inclusion of Travellers**
- **Introduce alternative community-based responses for Travellers and Roma who have committed non-violent poverty related offences**

¹⁹ Policing Authority, [Policing Performance by Garda Síochána in relation to COVID-19 Regulations](#), May 2020.

- **Ensure that the new Strategy is implemented and monitored in a coordinated and consistent way with the National Traveller Roma Inclusion Strategy, Garda Diversity Strategy, National Strategy on Domestic, Sexual and Gender-based Violence, and the National Drugs Strategy**

4. Promotion of Anti-racism, Anti-discrimination and Human Rights

Considering the experiences of Travellers and Roma with the criminal justice system, the Strategy should explicitly include principles of anti-racism and anti-discrimination in its mission, vision and objectives. Despite efforts to deliver training on human rights, anti-racism, anti-discrimination and anti-profiling for members of the public service, it is clear that the current standardised anti-racism and cultural diversity training doesn't address the experiences of Travellers and Roma in Ireland and is not adequate, effective or ongoing. We are also concerned that such training isn't consistently delivered across all agencies, ranks or units; is not incorporated into initial and ongoing training of professionals in the criminal justice system for new recruits; and is not incorporated into performance assessments and promotion and assignment processes within the criminal justice system.

Recommendation:

- **Make human rights, anti-racism, anti-discrimination and anti-profiling part of normal business for everyone in the criminal justice system by:**
 - a) Ensuring human rights, anti-racism, anti-discrimination and anti-profiling training in initial and ongoing training for agencies in the criminal justice system, with a specific focus on human rights of Travellers and Roma**
 - b) Include human rights, anti-racism, anti-discrimination and anti-profiling metrics in performance assessments, promotion and assignment processes within the criminal justice system**

5. Recruitment of Travellers and Roma within the Criminal Justice System

Increased visibility of Travellers and Roma within the workforce of the criminal justice system would provide a sustainable means to promote inclusion and diversity within the system and its services, and support to improve relations between members in the criminal justice system services and Traveller and Roma communities. Currently there are no special measures or dedicated quotas set for Travellers and Roma in the recruitment policy and practice in the criminal justice system.²⁰

Recommendation:

- **Adopt special measures to train and employ Travellers and Roma in the criminal justice system by including dedicated quotas, processes and supports for members of the communities to uptake such training and employment opportunities**

6. Supporting Victims of Crime and Reporting of Crime

Relations between criminal justice agencies and Traveller and Roma communities have historically been poor and continue to be characterised by mistrust and conflict. There are significant concerns with regards to Traveller and Roma victims of crime in terms of low levels of reporting crime and victim satisfaction. Negative stereotypes and prejudice against Travellers and Roma are often manifested in under-policing (not providing sufficient support and protection); over-policing in certain situations and crimes; or using excessive force. While positive developments have taken place in Garda responses to domestic violence during the pandemic, the Policing Authority and reports by Traveller organisations highlight ongoing issues with enforcing domestic violence

²⁰ NTRIS, Action 28 calls for proposals to be developed for internships for Travellers and Roma in Government Departments, Local Authorities and other Public Bodies. To date, no progress has been made on this action.

orders.²¹ As a result, crimes, such as hate crime and domestic and sexual violence, often go underreported by Travellers and Roma.

Building trust and satisfaction with the criminal justice system will encourage Travellers and Roma to engage with the system both in seeking support and reporting crime. In the policing sector, the work of the Garda National Diversity and Integration Unit (GNDIU) and Ethnic Liaison Officers has not been granted the authority or importance it needs, has been undermined by inadequate human and financial resources, and, as a result, has not provided a solution to addressing policing issues with Traveller and Roma communities.²² In this light, Pavee Point and other Traveller organisations across the country have welcomed the shift towards community policing style and many new emerging examples of positive and respectful treatment of Travellers as part of policing measures and style during the pandemic.

Recommendation:

- **Build on community policing style witnessed during the pandemic by adequately resourcing this**
- **Undertake positive action measures to encourage Travellers and Roma to report crime, seek justice and engage with complaints mechanisms**
- **Introduce/enforce disciplinary measures for failure to administer justice, enforce judgements, and for discriminatory treatment by agencies in the criminal justice sector**

7. Legislative Measures

Evidence points to concerns around ethnic profiling in the delivery of policing services with Traveller and Roma communities, as well as evidence of anti-Traveller and Roma prejudice and racism amongst some individuals within the criminal justice system (see Table 3). A criminal justice system which does not adequately deal with various forms of discrimination within its own system cannot hold up to human rights standards or increase confidence of minority ethnic communities in the system. In 2019, the European Commission against Racism and Intolerance (ECRI) and UN Committee on the Elimination of Racial Discrimination raised concerns about ethnic profiling of Roma by An Garda Síochána, and urged the State to clearly define and prohibit it with legislative measures.²³

Recommendation:

- **Introduce a specific and timebound action in the forthcoming Strategy to clearly define and prohibit ethnic profiling in the administration of justice**

²¹ Policing Authority, *Policing Performance by Garda Síochána in relation to COVID-19 Regulations*, reports covering May to July 2020.

²² FCNM, 2019.

²³ ECRI, *Fourth Report on Ireland*, CRI(2013)1, 19 February 2013; ECRI, *Fifth Report on Ireland*, CRI(2019)18, 4 June 2019. CERD, *Concluding Observations on the Combined Fifth to Ninth Reports on Ireland*, CERD/C/IRL/CO/5-9, 12 December 2019