

Framework Convention for the Protection of National Minorities: Second Monitoring Cycle in Relation to Ireland

Joint Submission to the Advisory Committee on the Framework Convention for the Protection of National Minorities by The Dominican Justice Office and Comhlámh, August 2005

Introduction

Comhlámh's vision is of a just and sustainable world. For the last thirty years this membership based organisation has been educating and campaigning on development justice issues. Comhlámh's Anti-Racism project raises awareness of and challenges racism and discrimination in Ireland and in its broader global context.

The Dominican Justice Office is a joint initiative by Dominican Sisters and Friars which promotes justice and equality through education, research and involvement in projects and social justice issues such as antiracism, social exclusion and homelessness.

Following the World Conference on Racism in Durban in 2001, Comhlámh and the Dominican Justice Office were involved in publishing a submission to the Irish government entitled 'Implementing Commitments From the World Conference Against Racism: Recommendations from the NGO Alliance for Ireland's National Action Plan Against Racism.' They have hosted a number of events looking at inclusion and anti-racism in Irish society and most recently were members of the Editorial Committee which produced an NGO Alliance Shadow Report to CERD under the International Convention on the Elimination of All Forms of Racial Discrimination.

Recognising the excellent work and strong submissions which other groups such as Educate Together and Traveller-led organisations are making with regard to various aspects of the Framework Convention for the Protection of National Minorities, Comhlámh and the Dominican Justice Office would like to focus on what we believe to be a key underlying issue – who is covered by the Convention.

Who is Covered by the Convention

Selected Opinions

The Irish Government View

Re the Scope of Application of the Framework Convention

“Ireland recognises that, as has been stated by the Advisory Committee, the Framework Convention was intended ‘... to protect groups which have come about as a result of political upheaval and which have historical ties to a country’. A definition of what constitutes a national minority is not fixed in international law or in the Framework Convention.

The Irish Government wishes to emphasise that the term national minority is not legally defined in Irish law. Ireland has not made a declaration on the application of the Convention to any particular national minority or minority community. However, in a range of legislative, administrative and institutional provisions, the Government has recognised the special position of Ireland’s Traveller community, in order to protect their rights and to improve their situation. As stated in previous submissions under the Framework Convention, the Irish Government also wishes to underline that not all ethnic, cultural, linguistic or religious differences point to the existence of a national minority, as established in Point 43 of the Explanatory Report concerning the Framework Convention. As such, the Government does not hold the view that immigrants and asylum seekers constitute a national minority.

This is without prejudice to the fact that groups that do not constitute national minorities may nevertheless benefit from the protection of the Framework Convention on an article-by-article basis.”

The View of Leading Experts on Minority Rights and the Council of Europe

From: Patrick Thornberry and María Amor Martín Estébanez. *Minority Rights in Europe: A Review of the Work and Standards of the Council of Europe*. Council of Europe, 2004.

“It cannot be contended without more detail that the term national minority implies only those with state citizenship. Even less can it be maintained that the Framework Convention applies only to minorities with a so-called kin-state – there is no scope for such a limitation in the text, which would disable groups without such a protector or point of reference. In assessing which groups are covered by the Convention, the Preamble’s reference to minority rights commitments pertaining to Framework Convention parties would include the ICCPR, where article 27 has been interpreted by the Human Rights Committee as meaning not to require citizenship of the state in question, and the Convention on the Rights of the Child, Article 30 of which appears to distil similar principles...

Unlike the European Convention on Human Rights, the Framework Convention makes no provision for reservations... Statements which purport to exclude or modify the legal effect of a treaty constitute reservations, irrespective of what they are called. In the case of the national minority, much will depend upon whether there is a standard from which the state in question is purporting to close down. While this may

not be crystal clear in the absence of definition, the object and purpose of the treaty will be gravely impaired if genuine minorities are excluded from its purview. Exclusion also raises issues of discrimination. International law determines that the existence of minorities is a question of fact not law...It suggests that states will not be able to justify every restrictive claim, and makes it clear that, in dialogues on the existence of groups, the state does not necessarily have the final word.

With regard to Article One the writers say:

There are other messages in Article 1. One is that minority rights do not exist in a parallel universe to human rights, but are integrated with basic concepts of human rights. This implies that interpretations of convention rights should be integrated with the general corpus of human rights.”

The View of the National Consultative Committee on Racism and Interculturalism (NCCRI)

“The NCCRI endorses the practical approach which has been adopted by the Advisory Committee which is to include ‘persons belonging to other groups in the application of the Framework Convention on an article-by-article basis’. It is the NCCRI’s position that the approach which was adopted by the Irish government, ‘that immigrant, refugees and asylum seekers cannot be considered to constitute a national minority under the terms of the Convention’ is too restrictive. Firstly, there are immigrant populations who are potentially emerging as national minorities. Secondly, the Convention has applicability to other groups under some of its articles, particularly Article 6 (racism) which references ‘all persons living on their territory’. As noted during the first round of reporting on Ireland, diversity in Ireland has changed in recent years. The Government pointed out that ‘the definition of what constitutes a national minority is dynamic and that the number and compositions of national minorities in a State may change and develop over time’. This is particularly significant in the Irish context given the rapidly changing nature of diversity. The inclusion of an ethnicity question in the 2006 national census will provide additional information in this regard. Cross referencing Irish nationality with country of birth data in the 2002 census gives a preliminary indication that there are groups who could potentially be identified as national minorities. In summary the Framework Convention has applicability to three main categories of minority ethnic groups in Ireland. These are: 1. Traveller community 2. Other emerging national minorities 3. Other minority groups on an article by article basis”

Details of Ethnic and Religious Diversity in Ireland

From: *National Analytical Study on Racist Violence and Crime: RAXEN Focal Point for Ireland*. Equality Authority & National Consultative Committee on Racism and Interculturalism (NCCRI), 2004.

“There has always been cultural diversity in Ireland, despite the widely believed myth that Ireland has been and still is a homogeneous and a mono-cultural society or the defining of diversity solely along religious grounds (Protestant and Roman Catholic). In addition to the Traveller community there is a long established Jewish community and growing Islamic, Asian and Chinese communities in Ireland. However, there has been a significant broadening of cultural diversity in recent years, both in terms of

numbers of people, and national or ethnic origin. In Ireland there are now more visible populations of black Irish and other EU and non-EU citizens.

There are approximately 160 different nationalities living in Ireland. The number of non EEA nationals registered in the State in 2002 was 116,588...The 2002 Census does not however provide a complete picture of ethnic diversity in Ireland because the ethnicity question, which is a separate question to nationality in the 2002 Census, was limited to a question on the Traveller Community.

The number of asylum seekers entering Ireland in 2002 was 11,634. Most asylum applications came from persons originating in Nigeria (41 percent), followed by Romania (11 percent), DR Congo (4 percent), Moldova (3 percent) and Iraq (3 percent). In 2002, applications were received from persons originating in 103 different countries.

The number of Muslim people in Ireland has also changed significantly over the last 10 years. The number of Muslim people in Ireland has quadrupled to 19,147 from the 1991 census, making Islam the fifth largest religious denomination in Ireland. The number of Orthodox Christians has increased from 400 in 1991 to 10,437 in 2002, representing migrants from Eastern Europe and the former Soviet Union, the sixth largest religious denomination in the State. The 2002 Census demonstrated that there is now a Jewish population of 1,790 living in Ireland.”

The figures above are drawn from the 2002 census. Other relevant statistics would include:

- The number of work permits issued to non-EEA nationals increased from 6,250 in 1999 to 47,551 in 2003 (source: Immigrant Council of Ireland)
- More than 100,000 workers have arrived here from the ten new EU states since they joined the union last year (source: Sunday Independent, 31-7-05)
- The country needs at least 50,000 immigrants a year for the next 12 years to sustain economic growth (source: Central Statistics Office)
- Since November 2000 up to the end of May 2005 more than 45,801 asylum applications have been processed in Ireland (source: Irish Refugee Council)
- Discrimination against people on the grounds of their race has again emerged as the largest single complaint under the Equal Employment Act. Almost one third of all cases taken by the authority in 2004 related to allegations of serious exploitation of migrant workers (source: Irish Times, 26-7-05)

The View of Comhlámh and the Dominican Justice Office

Comhlámh and the Dominican Justice Office endorse the views of both the NCCRI and the experts on minority rights and the Council of Europe quoted above that the Convention cannot be limited in its scope so that in effect it only applies to the Traveller community in Ireland.

As the statistical evidence makes clear, there are now sizeable and growing populations of foreign nationals in Ireland, including recognisable and acknowledged communities of Chinese, Filipinos, Indonesians, Nigerians and Romanians. If the statistical data did not make this clear, then a brief study of the Irish media, or a walk through the streets of any large Irish town would do so.

Two profound changes have occurred in Ireland in the last 15 years: in the 1990s Ireland experienced an economic boom. Following from this, in the new millennium, Ireland is changing very rapidly from being a mainly homogenous society to being a multiethnic one. The speed of this change has made it possible for some, particularly in government, to deny the extent to which this is happening. Part of this denial is based on the belief that migrants are only here for a brief time and will not become part of Irish society. This is in spite of the numbers who have Irish citizen children, who are recognised refugees, or who have established themselves in relationships and as workers here for the long term. Moreover, even in the case of those who do not remain long-term, Irish government still holds responsibilities to them under the Convention while they are in Ireland.

We would like to point out that most states who are parties to the Convention have a far more liberal approach to interpreting the notion of national minorities. For example, Lithuania has stated that all ethnic groups in the country can be regarded as national minorities, while Switzerland has stated that the existence of a national minority depends only on the factual situation in the country.

Ireland has accepted in its last report that the term ‘national minorities’ is a changing and dynamic concept. The Government pointed out that ‘the definition of what constitutes a national minority is dynamic and that the number and compositions of national minorities in a State may change and develop over time, always being subject to the individual’s right to consider him or herself as a member of a national minority.’ While this expression of flexibility of approach is to be commended, it is rendered meaningless if the very people who are developing into national minorities are then excluded because they are immigrants or asylum seekers. This is particularly the case in view of the admission of the Irish government that individuals have a right to consider themselves members of national minorities.

We would like to point out that as stated by the experts quoted above, Article 1 of the Convention implies that the interpretation of the whole Convention must be in the light of human rights law in general, and relevant human rights conventions in particular, as does the Preamble. In interpreting the International Convention on the Elimination of All Forms of Racial Discrimination, CERD has recently outlined in detail in General Recommendation 30 its view that discrimination against non-citizens does fall within its remit and is covered by that convention. It is our view that the Framework Convention should be interpreted in a similar manner.

In view of this, we are including with this submission a copy of the Shadow Report sent to CERD in March of this year by a group of forty four Irish NGOs called The NGO Alliance as a means of indicating our concerns about the levels and kinds of discrimination against Black and ethnic minorities currently existing in Ireland. Both Comhlámh and the Dominican Justice Office were members of the Editorial Committee which produced the NGO Alliance Shadow Report for CERD. This document therefore represents the views of both organisations with regard to the issues which were dealt with by CERD. The NGO Alliance Shadow Report also covers many of the areas raised in the questions sent to the Irish government by the Advisory Committee.

With regard to the interpretation of the Advisory Committee that the Convention can be applied, on an article by article basis, to other communities not just national minorities, we would like to point out the particularly relevance of Article 6 which deals with racism. The CERD hearing resulted in Concluding Observations which point to the need for considerable effort to be made by the Irish government to eliminate the growing racism here. In view of the obligations outlined under Article 6, we would like to draw the attention of the Advisory Committee to these Concluding Observations.

With regard to specific issues raised under other articles, we would like draw the attention of the Advisory Committee to the existence of substantial religious minority communities in Ireland, including Orthodox Christian, Protestant, Jewish and a growing Muslim community, and the problems they may have with regard to accessing appropriate education. This issue has been dealt with in further detail in the submission sent to you by Educate Together, another NGO Alliance member.

We would also like to express our concern at the continuing discrimination and racism faced by Travellers in Ireland. Again many of these issues are dealt with in further detail in submissions made by Traveller representative organizations.

We would like to thank the Advisory Committee for their work on the reports sent to them on Ireland, and request that when they next visit Ireland, if they consider it appropriate to do so, that they meet with representatives of the NGO community here, including ourselves, to hear our views directly on the implementation of the Convention in Ireland.

**Questions From the Advisory Committee to the Irish Government:
Selected Comments by Comhlámh and the Dominican Justice Office:**

1) Please provide your comments regarding the question of recognising Travellers as an ethnic group/national minority;

The Committee on the Elimination on Racial Discrimination has encouraged ‘the State party to work more concretely towards recognizing the Traveller community as an ethnic group’.

A number of agencies such as the NCCRI and the Irish Human Rights Commission have indicated that the State should recognise Travellers as an ethnic group. Comhlámh and the Dominican Justice Office, together with all other members of the NGO Alliance, hold the view that the State should recognise Travellers as an ethnic group.

With regard to employment, accommodation, health care and discrimination against Travellers, see the comments in the NGO Alliance Shadow Report, as well as the CERD Concluding Observations.

2) Please comment on recent changes to the equality legislation and how these changes may enhance protection for ethnic minority groups, including the Traveller community. Please comment on the transposition of Directive 2000/43/EC;

The Equal Status Act 2000 does not include coverage of government functions. Amendments have been made to this Act to bring it into line with the EU Race Directive, but not all the provisions of this Directive have been included in the amended Act. For example, Paragraph 1 of Article 3 of the Race Directive provides that the Directive shall apply to all persons as regards both public and private sectors including public bodies in relation to: (e) social protection, including security and health care; (f) social advantages; (g) education; (h) access to and supply of goods and services which are available to the public, including housing. This is one of the most significant features of the Race Directive and, if implemented fully, would mean that functions of the State should be included in the definition of “service” in the Equal Status Act. See CERD Concluding Observation No. 19 in this regard.

For those students who wish to progress beyond second level, access to grants at third level is currently restricted to Irish and EU citizens. The Equality Tribunal has judged this to be contrary to the Equal Status Act’s prohibition of discrimination based on race (which includes nationality),¹ and the Tribunal recommended that the Department of Education and Science should amend its grant scheme. Instead of doing this, the Government used the Equality Act 2004, which partly transposed the EU Race Directive², to include a new exemption allowing the Minister for Education and Science to discriminate on the basis of nationality in relation to further/higher education grants. The Minister of State, Mr. Willie O’Dea justified this amendment

¹ *Two complainants –v- the Department of Education and Science* (DEC2003- 042/043).

² 2000/43/EC, Race Directive.

by stating incorrectly that “ No other Member State has such a wide system of student support and it was considered that paying grants to all-comers could place intolerable strains on the student support system and might act as an incentive for non-EU nationals to come to the State.”³ This statement ignores the fact that migrants pay their taxes, and should therefore be entitled to the services funded by these taxes.

Complaints about discrimination by licensed premises and hotels by Travellers made up a large proportion of complaints under the equal status legislation. Section 19 of the Intoxicating Liquor Act 2003 removed the jurisdiction of the Equality Tribunal to hear these cases and transferred this jurisdiction to the District Courts. This move was made in response to complaints from vintners to the Government over the number of successful cases brought by Travellers concerning discrimination in access to their premises. The move to the District Court makes the equality legislation significantly less accessible and user friendly for those who experience discrimination.

3) In the area of law enforcement and policing, please comment on policy and practice relating to Travellers and persons belonging to ethnic minority groups; Comhlámh and the Dominican Justice Office would concur with the findings of the recent Ionnán Management Consultants’ Garda Human Rights Audit. Among other findings, this report stated that “there is a difficult relationship between the Gardaí and certain communities, in particular Travellers, the Nigerian community, and the Muslim community”.⁴ The report concluded that: “The procedure and operating practices of An Garda Síochána can lead to institutional racism particularly in relation to the Nigerian community, the travelling community (sic) and to a slightly lesser degree at present, the Muslim community.”⁵ We would be concerned that other ethnic minority groups might also suffer from institutional racism from the Gardai.

The NGO Alliance Shadow Report has highlighted the problems of inadequate procedures for reporting and dealing with racist incidents and racist violence.⁶ It also covered many of the areas examined by Ionnán Management Consultants, and came to the same conclusion that there is insufficient anti-racism training and awareness across all levels of An Garda Síochána, including senior officers. There is also an inadequate police complaints mechanism, and a lack of adequate independent oversight of the work of immigration officers. Please note CERD Concluding Observation nos. 11 and 17 on policing in Ireland and racist violence, and 16 on discrimination in immigration procedures.

As the Gardai themselves have realised, there is an almost total lack of representation among the Irish police force (including immigration officers) of members of Black and minority ethnic groups. One of the key objectives in the Garda Action Plan for the implementation of the Garda Human Rights Audit Report is to “encourage the recruitment, retention and progression of a more diverse Garda service”. While this intention is to be welcomed, it is not clear yet how this is to be achieved and it is to

³ Dáil Debate, Equality Bill 2004 [Seanad]: Second Stage (Resumed), 20 May 2004.

⁴ Ionnán Management Consultants (2005) An Garda Síochána Human Rights Audit

⁵ Ionnán Management Consultants (2005) An Garda Síochána Human Rights Audit, 140

⁶ For example, the Prohibition of Incitement to Hatred Act, 1989 has been under review by the Government for over 4 years.

be hoped that such recruitment will not distract from the broader changes and training needed within the force as a whole. There are at present a small number of ethnic liaison officers within the force, however these are rarely senior officers and in many cases they are given little support and a number of other, sometimes conflicting, areas of responsibility.

We would also like to highlight the lack of anti-racism training for the judiciary, in particular in view of certain problematic comments and decisions by judges concerning minorities. Members of the judiciary do not receive any anti-racism training from NCCRI. An example of the problems this can cause was the occasion in February 2003, when two judges had to apologise on the same day for remarks about immigrants: one for suggesting that all Nigerians drove without insurance; and the other for implying ‘coloured’ people were prone to shoplifting.⁷

With regard to incitement to hatred, a promised review of the Prohibition of Incitement to Hatred Act, 1989, which has been recognised as flawed by the Irish Human Rights Commission, has been long postponed and delayed by the Irish government.

4) Please provide your views concerning the possible collection of data on ethnicity, language and religious affiliation in the national census, and other data collection mechanisms such as administrative records;

One of the main problems identified by the NGO Alliance Shadow Report was the lack of adequate data on the numbers and needs of Black and ethnic minority groups in Ireland. CERD has also noted the need for gathering accurate and up to date data of this kind (Concluding Observation No. 6).

In September 2003 the Central Statistics Office published a review of the statistical potential of the administrative records of six government departments: Department of Education and Science; Department of the Environment, Heritage and Local Government; Department of Health and Children; Department of Justice, Equality and Law Reform; Department of Social and Family Affairs; and the Office of the Revenue Commissioners. One of the key recommendations of the report was that government departments should develop a common content of their administrative records, to ensure that core information is collected in an identical manner across all data collection schemes. Of the 132 data sources which were examined 60.6 per cent collected data on nationality, while 9.09 per cent collected data on race/ethnicity and 11.36 per cent collected data on membership of the Traveller community.⁸ Steps need to be taken to enhance administrative data collection in the context of an emerging body of census data.

⁷ Brennock, Mark / *Judges apologise to non-nationals for remarks about immigrants*. Irish Times, 21st February, 2003.

⁸ Central Statistics Office (2003), *Statistical Potential of Administrative Records: An examination of data holdings in six government departments – working report*

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