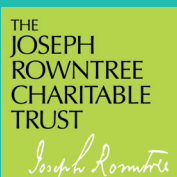


CONFERENCE REPORT
DERRY 7 JUNE 2023

ICCL-CAJ Roundtable Discussion Summary

RACIAL PROFILING IN LAW ENFORCEMENT





**The Community
Foundation for Ireland**

ICCL's 'Policing for Peace' project is supported by the Joseph Rowntree Charitable Trust.
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Executive Summary

In recent years, the Committee on the Administration of Justice (CAJ) and the Irish Council for Civil Liberties (ICCL) have held a series of conferences on the topics of embedding human rights compliant laws in the policies and practices of policing, and police oversight and reform North and South.¹

The next phase of work is to build on the learning from these conferences to delve deeper into several specific thematic areas identified as key priorities of policing oversight and reform, such as racial profiling and surveillance. This work is being advanced through a series of North-South expert roundtables and seminars with key actors and influencers in both jurisdictions. The objective of the roundtables is to convene stakeholders to discuss the identified areas for police oversight and reform with a view to producing specific recommendations

in each area, for both jurisdictions.

The first roundtable was held on the issue of Racial Profiling in Law Enforcement and took place in the Guildhall, Derry on Wednesday 7 June 2023. The first half of the event focused on racial profiling and immigration enforcement, while the second half focused on racial profiling and law enforcement generally.

While there were distinct issues identified for each jurisdiction, common themes also emerged across both, including a lack of official ethnic monitoring data on the use of particular police powers (i.e., stop and search), how racial profiling intersects with policing and immigration functions on a cross-border basis (and how Brexit has exacerbated pre-existing issues), and how racial profiling by law enforcement damages trust between the police and community.



¹ Committee on the Administration of Justice and Irish Council for Civil Liberties, *PSNI@20: Human Rights Reflections on Policing Reform North and South - Conference Report*, March 2022. Available at: <https://caj.org.uk/wp-content/uploads/2022/03/PSNI@20-HIGH-RES.pdf>.

Overview of Key Points

North and South

The provisions of the Irish immigration law that place duties on some people but not others to carry and produce passports to Gardaí on cross-border journeys invariably leads to racial profiling and are therefore inherently discriminatory. The legislation is contradictory, complex and not fit for purpose.

There is a lack of government monitoring data on the exercise of law enforcement powers which carry significant risks of racial profiling, such as stop and search. What is present is substantial documentation of racial profiling by civil society and official independent reports. The lack of monitoring data compounds a level of official government denial of the very existence of racial profiling as a problem.

The line between immigration enforcement and law enforcement functions is not always clear, for example, An Garda Síochána has both policing and immigration functions. In contrast, the Police Service of Northern Ireland (PSNI) does not formally have immigration functions and is solely responsible to the Policing Board (unlike police forces in Britain which are accountable to the United Kingdom Home Office), however, in practice this boundary can be blurred.

The Frontier Worker Permit Scheme, introduced due to Brexit, has created significant confusion around cross-border rights and further legal uncertainty for migrants crossing the border. This confusion is enhanced due to difficulty obtaining appropriate translation services for migrants. Ongoing changes in UK immigration law, including the Nationality and Borders Act and Illegal Migration Act, have unique impacts on the land border which risk worsening issues of racial profiling and discriminatory practices.

Members of ethnic minority communities feel simultaneously over-policed and under-protected by law enforcement, as they are subject to disproportionate checks, yet face huge barriers to reporting and successfully challenging racial hate crime. In Northern Ireland, the risk of reporting racial hate crime intensifies for the victim when the crime is linked to paramilitaries. The State response to paramilitary intimidation is limited and can serve to normalise and minimise the harm resulting from racial hate crime. Recent case law from the European Court of Human Rights on selective passport checks involving racial profiling has held that such practices can breach the European Convention on Human Rights and that there is a requirement to ensure allegations of racial profiling are effectively investigated.

Recommendations

Irish legislation that governs checks on Common Travel Area journeys requires root and branch reform. Specifically, the duties on certain categories of person (i.e., non-European Union/EEA/British citizens) to carry and produce passports on the land border should be removed. There is no way to stop racially discriminatory cross-border checks without this change. If there is not political will to amend the legislation, litigation may be the only option to force change.

Data on the use and frequency of Garda cross-border checks should be transparently published, as well as data from immigration enforcement at Northern Ireland ports.

There is a need for ethnic diversity in both the PSNI and An Garda Síochána.

In line with international best practice, there should be a firewall between law enforcement and immigration enforcement regarding sharing the data of victims and witnesses of crime with immigration enforcement bodies.

Human rights should become embedded in policing culture and oversight mechanisms in Ireland, as it has been in Northern Ireland.

All internal Garda policies should be published; ethnic and racial monitoring data on the exercise of powers like stop and search should be collected and published; and Garda training should be in the public domain.

The Policing Board of Northern Ireland should have oversight of immigration functions carried out in Northern Ireland.

The Home Office should be designated as a public authority under Northern Ireland equality legislation.

First Session: Immigration and Racial Profiling

CHAIR: Daniel Holder, CAJ

PRESENTERS:

Úna Boyd, CAJ

Beverley Simpson, North West Migrants Forum

Dr Lucy Michael

This session considered the impact of racial profiling in immigration enforcement, and focused primarily on the effect of racial profiling on the UK-Ireland Common Travel Area (CTA).

Immigration enforcement on the land border is primarily carried out by An Garda Síochána in Ireland, while the UK Home Office exercises immigration functions in ports between Northern Ireland and the rest of the UK, and conducts “in country” checks in Northern Ireland.

The CTA is a long-standing administrative arrangement between the UK, the Republic of Ireland and the Crown Dependencies (Isle of Man, Guernsey and Jersey). It has been described as a special travel zone and dates back to the

establishment of the Irish Free State in 1922. The UK and the Republic of Ireland maintain separate immigration policies and have different approaches to conducting controls within the CTA. However, CTA countries have a significant degree of cooperation and alignment on immigration control.

Under UK legislation, there are no statutory powers for passport or ID checks to be carried out for immigration control within the CTA, including on the land border. In the Republic of Ireland, under Section 11 of the Immigration Act 2004, Gardaí have the power to carry out checks on “non-nationals” entering the state from within the CTA. Non-nationals are defined as persons who are not Irish or British citizens or persons exercising certain



Checks within the CTA have led to concerns raised about racial profiling and discriminatory practices. In particular, the powers granted by the Immigration Act 2004 naturally raise the question: how can Gardaí tell who is an Irish, British or an EU citizen simply by looking at them?

European Union treaty rights. Section 12 of the Immigration Act 2004 also requires non-nationals to produce ID on demand in the State.

Before Brexit, exemptions to passport controls and immigration controls were the main focus of CTA discourse. Following Brexit, the CTA is frequently referred to as providing “associated reciprocal rights” for British and Irish citizens. This shift fails to recognise the importance of free movement in the CTA for many non-British and non-Irish citizens.

Checks within the CTA have led to concerns raised about racial profiling and discriminatory practices. In particular, the powers granted by the Immigration Act 2004 naturally raise the question: how can Gardaí tell who is an Irish, British or an EU citizen simply by looking at them? Concerns have been raised that this law itself leads to racism and discrimination as checks are carried out based on ethnic and racial

stereotypes about what an Irish, British or EU citizen “should” look like. Senior Gardaí have conceded before the Policing Authority that not engaging in profiling was a “challenge”.

Incidents of racism and discriminatory practices within CTA checks have led to a situation where people who are not white feel that they are required to carry passports and ID documents when travelling within the CTA, even when they are legally exempt from checks. The North West Migrants Forum (NWMF) describes this as “a ‘hard border’ based on skin colour”.

CAJ presented a summary of an independent legal opinion which examined the Irish legislation surrounding immigration enforcement of the CTA and the right of An Garda Síochána to conduct immigration checks on cross-border transport. Ultimately, the legal opinion found that the legislation underpinning these powers is extremely complex, contradictory and appears susceptible to legal challenge. The legislation is inherently racially discriminatory, as it does not appear possible to enforce it through selective passport controls without engaging in racial profiling and discriminatory practices.

Options going forward:

- CAJ and NWMF are engaged in advocating to the Irish government to reform the legislation but are also actively considering taking a legal challenge.
- Any reform to the legislation should avoid simply eliminating discrepancies and should also include proactive reform to prevent racial discrimination. “Tidying up” will not be sufficient to end discriminatory practices.



Chapter 5 of the Economic Social Research Institute (ESRI) report *Comparing Migrant Integration in Ireland and Northern Ireland*, titled ‘Migrants’ Experience of the Border in Ireland’² was presented by Dr Lucy Michael and the findings were discussed. The overall report was described as a significant compilation of evidence and data and a comprehensive analysis of issues facing

² McGinnity, F., Laurence, J. and Cuniffe, E., Comparing migrant integration in Ireland and Northern Ireland, Economic and Social Research Institute, ESRI Research Series 158, 6 March 2023. Available at: https://www.esri.ie/system/files/publications/RS158_0.pdf.

migrants which have been mentioned by NGOs. The report was described as providing the necessary authoritative evidence base for these issues.

The chapter addresses immigration enforcement on the border, including the lack of data around the practice, and the difficulty for migrants (both before and after Brexit) in accessing cross-border services such as education, healthcare and school activities. It addresses the lack of data and awareness of the frontier worker scheme, the scheme application only being available in English, and how confusion around the scheme has led to a chill factor on employers hiring migrants.

Overall, the report highlighted how complex cross-border regulations are for migrants and how these complexities are compounded by language barriers and a lack of access to translation services. As the report states, "Some migrants cannot cross the border without permission, and as there are no routine border controls those who are perceived as migrants may be checked [...] This leads to the perception among migrants, particularly ethnic minorities, that the border is open to many but not to them".³

Other points raised included:

- CAJ and NWMF have partnered on a Common Travel Area campaign which focuses on the experience of the border by people who are migrants and members of ethnic minorities. As part of this campaign, they are calling for the Irish government to reform the Immigration Act 2004, which underpins some of the worst instances of racial profiling in cross-border checks by Gardaí.⁴
- The UK and Irish governments collaborate closely on immigration enforcement within the CTA, with each country carrying out checks on travellers who may move onwards to the other. This results in, for example, Irish officials undertaking UK immigration checks when a traveller appears to be travelling onwards to Northern Ireland. There is currently no transparent oversight and scrutiny of this relationship and the policies and practices underpinning the collaborative checks.

- The Common Travel Area Forum between the UK and Ireland is a joint government body which appears to deal with a lot of the policy and practice regarding CTA immigration enforcement, including collaborative work. However, this body is shrouded in secrecy and totally lacks transparency. When one organisation requested the Forum terms of reference via a Freedom of Information request, they received an almost entirely redacted document.
- A lack of statutory data relating to the level of racial profiling and cross-border checks was highlighted as a significant issue in addressing the problem. The only data available on the checks have been obtained through journalism.
- There are similar issues with data relating to immigration checks between Northern Ireland and Great Britain. No formal power exists for these checks under UK law and authorities instead rely on “voluntary” checks. Because the checks that do occur have no lawful basis, there is no monitoring and data collection.
- There are risks of an increased use of racial profiling in light of the newly enacted UK Illegal Migration Act. The Act also contains sweeping powers of detention based on the suspicion of immigration officers and can apply to people who cross the land border.
- The Home Office is not currently designated as a public authority under Section 75 of the Northern Ireland Act 1998, which means that directly affected individuals are unable to request investigations into Home Office policies from the Equality Commission for Northern Ireland. The Secretary of State is responsible for designating public authorities.

Even amongst the participants in the room, there was an articulation of narratives that minimise racial profiling. For example, one person said that [white] people in Ireland are not used to seeing ethnic minorities. This person stated that racial profiling is a social issue which can only be changed by educating children about difference.

³ Ibid, p. 93.

⁴ Common Travel Area - North West Migrants Forum, <https://nwmf.org.uk/common-travel-area/> (Accessed 9 April 2024).



This was countered by another participant who stated that racial profiling on the CTA is not a new issue and that Black people have been in Ireland for generations. Even when a non-white person is British or Irish, they feel as though they need to carry a passport when they cross the border. There are also non-Irish and non-British people who are legally resident in Northern Ireland or Ireland but who require a visa to cross the border. These people are living restricted lives and are unable to visit family who live across the border. This participant stated that ultimately this is not a social issue that can be remedied through education, it is a legal issue that needs legislative change or litigation.

Other points raised:

- An issue (particularly in Ireland) is the overlap between policing and immigration enforcement, and the lack of data and transparency around this.
- There is a contention that these checks are intelligence-led, but this is not borne out by the lived experience of migrants, to whom the immigration checks appear to be routine in nature. This is an example of how data on the use of these checks could be used to challenge narratives about their justification.
- It is important to highlight the recent victory around electronic travel authorisations (including an exception for residents of Ireland), which demonstrates that it is possible to get movement on these issues.
- In Northern Ireland, the Policing Board does not have oversight of immigration functions, which limits the ability to address racial profiling at ports.



Second Session: Racial Profiling and Law Enforcement

CHAIR: Liam Herrick, ICCL

PRESENTERS:

Andy George, National Black Police Association
Naomi Green, North West Migrants Forum
Shane O'Curry, Irish Network Against Racism

This session considered the use of racial profiling by general law enforcement and the harms of discriminatory treatment on the basis of race.

STOP AND SEARCH: NORTHERN IRELAND

Panellists from Northern Ireland described how ethnic minority communities are both over-policed (through a disproportionate level of stop and search applications) and under-protected (particularly from racist hate crime). There was acknowledgement

that the PSNI was the only police force in the UK that used police powers against Black Lives Matter protestors. It was stated that policing cannot operate effectively without support from the community and police powers should only be used as a last resort. Training of officers can only go so far if police powers are misused. For someone who has been stopped and searched five times in a week, the fact that the officer stopping them is polite while conducting the search won't matter, the damage to that person's trust in the police has already been done.



The denial of individual racial prejudice compounds the problem of systemic racial injustice. People should acknowledge that it is impossible to grow up in a racist society and not internalise racist prejudice to a degree. To dismantle systemic racism, we do not need individuals who proclaim that they are not racist because they view racism as belonging solely to far-right extremists, rather we need individuals in systems of power such as policing to recognise and then address their own internalised prejudice.

RACIAL PROFILING AND HATE CRIME: NORTHERN IRELAND

Many ethnic minority people in Northern Ireland feel that they are treated as though they do not belong; they are all lumped into a designation of 'other' on government forms, highlighting both their separateness from the rest of Northern Irish society, and leading to a lack of acknowledgment and data about the wide range of diversity within the migrant community.

Members of the migrant community report not being able to rely on the police to protect them when they are victims of crime. When crime is reported, migrants can be assumed to be the perpetrators by the police rather than the victims. For example, in one case, a refugee couple were attacked by two local people after coming out of their GP's office. When police arrived, they handcuffed the refugee man and searched his car before asking about the attack.

Other victims of crime are asked about their immigration status, which should be irrelevant to

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the police function of investigating a crime and supporting a witness, particularly as the PSNI has no immigration function in Northern Ireland. While this often occurs when people report racial hate crime, victims are also questioned about their right to be in the country when reporting crimes such as car accidents. The information the police collect from victims and witnesses of crime may be passed on to the Home Office.

Although they have since apologised for this statement, the police have publicly stated that their rationale for sharing this information with the Home Office is to deter migrants from making "spurious claims"⁵ of domestic violence to gain some sort of immigration advantage. This logic endorses misogynistic and racist tropes and is illogical as victims of domestic violence who seek specific immigration routes are already deliberately engaging with the Home Office.

In relation to the police response when people report racial hate crime, victims who have been abused have been told that it is their fault for entering the "wrong neighbourhood". The police can shift the blame onto victims for being present in areas where "they should know" local people don't like them.

It was discussed that in many cases people do not feel protected when they report racist hate crime.

⁵ Luke Butterly, 'PSNI apologises for claiming migrants might make fake domestic abuse claims', *The Detail*, 22 March 2023, <https://www.thedetail.tv/articles/psni-apologises-for-claiming-migrants-might-make-fake-domestic-abuse-claims-to-avoid-deportation>.

For example, if you are the only Black person living in an area and you report a racist hate crime, everyone will know it was you who reported and you may receive backlash from the community who don't want police involved in the area.

The risk of reporting racial hate crime intensifies for the victim when the crime comes from paramilitaries, but the State normalisation of paramilitaries means that the State response tends to minimise this heightened risk. For example, paramilitary organisations have been attacking hostels and hotels where asylum seekers are housed, but a speaker at the event reported that activists are told by the police that isn't a significant issue because "it is just paramilitaries, not the far right".

One participant discussed how when they reported an incident of online racial abuse, the perpetrator posted a retaliatory video online, publicly naming the victim and threatening them. It took four months for the video to be removed and although the victim was an Irish citizen, they felt that they were not protected during the investigation or the subsequent court process. This person says that going forward, they are unsure whether they would report another hate crime.



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Other points raised:

- Racial bias runs all the way through the judicial system. While the PSNI has engaged with communities, there are on-going issues that require a combined approach to address racial profiling.
- There is a need for systemic change within institutions such as the Public Prosecution Service, the Ombudsman and the courts.
- Northern Ireland is a diverse society, and we need to get beyond the two-community (Protestant/Catholic) mentality.
- From a policing perspective in Northern Ireland, police acting as immigration enforcement creates tension between them and the communities they engage with, border forces and the Home Office are perceived as having a lack of accountability in Northern Ireland.
- Increasing the diversity of the PSNI will help to decrease the use of racial profiling.
- The PSNI has done a good job of mainstreaming human rights into its work, this should be done for anti-racism as well.
- The "bad apple" analogy is not appropriate; individuals operate within set boundaries and abhorrent behaviour becomes normalised. The structural boundaries have to change in order to make an impact.
- "Good relations" is an overused term that is used to mask discussions about racism and race.

RACIAL PROFILING, STOP AND SEARCH, AND HATE CRIME: REPUBLIC OF IRELAND

Regarding embedding human rights in the culture and structures of policing, Northern Ireland is significantly ahead of Ireland. Northern Ireland also has oversight of policing in structures that do not exist yet in Ireland. A lack of legislation inhibits the Gardaí from addressing the significant issue of hate crime, and there is a concerning emerging trend of anti-immigrant/anti-refugee public protests.

There is a high degree of scepticism amongst civil society in Ireland that either the government or the Gardaí have moved on from denial as the primary response to concerns about racial profiling. Ethnic and racial minorities in Ireland report difficulty being accepted and treated as Irish, particularly from the Gardaí. There is increased fear of the Gardaí on the part of ethnic and racial minorities, particularly after the murder of George Floyd and the Garda killing of George Nkencho in Dublin. The lack of diversity within An Garda Síochána may be contributing to the issue.

Shane O'Curry, Director of the Irish Network Against Racism (INAR) described the organisation's online self-reporting system, called iReport, where people can report racist incidents including racist crime, launched in 2013. The system was developed in response to the lack of disaggregated data across State functions. The Gardaí do not provide data on stop and search, and there is no national data on racialised experiences of policing. Approximately one in five race crime incidents that are reported to iReport are also reported to the Gardaí.

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Other points raised:

- Affected groups should participate in the development, monitoring and oversight of action plans to address racism, and community policing initiatives to hold the Gardaí to account.
- In line with international best practice, firewalls between the police and immigration enforcement should be established to safeguard victims.
- Rather than broad, sweeping and vague statements that police will take action to "eliminate all racism", we need legislation to implement oversight mechanisms and data on stop and searches to be collected as a first step.
- Racial discrimination is not solely a problem within policing, but across the justice system, whereby officers who engage in racial attacks are treated with leniency in the court system because they are police officers (noted as being an issue in Ireland rather than Northern Ireland).
- It was stated that there is a significant gap between the language used at the roundtable event around race and racism, and what is used by the State. The words "race" and "migration" will not be found in An Garda Síochána's *Equality, Diversity & Inclusion: Strategy Statement & Action Plan 2020-2021*.⁶ This highlights just how far we still must go in these conversations that we've been having for so long.
- INAR has a series of recommendations following the data on race crime that they have collected and these include publishing all internal Garda policies; collecting and publishing data on racial profiling like stop and search; and Gardaí training should be in the public domain.

⁶ An Garda Síochána, *Equality, Diversity & Inclusion Strategy Statement & Action Plan 2020-2021*. Available at: <https://www.garda.ie/en/about-us/publications/policing-plans/strategy/ags-equality-diversity-and-inclusion-strategy-statement-and-action-plan-2020-to-2021.pdf>.



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