

Irish Travellers' Access to Justice

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Dedication

This report is dedicated to the indigenous ethnic minority community of Travellers in Ireland, especially those who gave so generously of their time in recounting their experiences to us.

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Foreword by the Chief Commissioner, Irish Human Rights and Equality Commission

We believe, at the Irish Human Rights and Equality Commission ('IHREC'), that access to justice is crucial to ensure that people's voices are heard, their rights exercised, discrimination tackled and decision makers held accountable. Access to justice is a fundamental human right, and protected by a range of international agreements and conventions as well as through the Constitution of Ireland. It is an essential component of functioning, equitable, and sustainable democracies, and we know that inequitable access to justice threatens the social cohesion of society, fosters minority disenfranchisement and alienation, and contributes to the conditions for conflict.

Indigenous and ethnic minority communities frequently experience difficulties in activating these rights, with barriers including a history of discrimination, lack of information about rights, and a justice system that is hard to access. By providing, for the first time in an Irish context, an extensive exploration of Travellers' experiences of the criminal justice process, Irish Travellers' Access to Justice represents an important contribution to the evidence base on access to justice among Ireland's national ethnic minority, Irish Travellers.

The methodology is ethically grounded in human rights principles of participation, and the study employed researchers from the Traveller community. Therefore, it is a landmark study in both its conduct and findings. This research marks an empirical leap in delivering an authoritative analysis and evidence based recommendations for measures to tackle the institutional racism in the criminal justice system towards Travellers.

Today, Travellers in Ireland live their lives experiencing racism daily. This research documents Travellers' experiences and explores their perceptions of the criminal justice system, especially of policing and the courts system. It is abundantly clear that the relationship between Travellers and criminal justice institutions is deeply problematic, and informed, as this research makes clear, by practices from both judges and gardaí which are grounded and founded in institutional racism. Particularly important is the research's findings on the impact of this on Traveller children. While we also witness examples of caring and equitable treatment for Travellers by individuals within the criminal justice system, this is clearly not enough. What shines through is the desire for Travellers to be protected throughout the criminal justice system, as well as the importance of Travellers being part of that system as professionals.

A criminal justice system is a production of the State and those of us who live here. We know that those who work in the criminal justice system have the same biases and racisms that all people possess. However, those that are gifted with the power to protect people in the state and uphold rights must recognise and eliminate racism when carrying out their duties.

Sections of this report are incredibly distressing, and paint a depressing picture, with multiple examples of trauma experienced by the Travelling community, particularly with regards to the cumulative effects of micro and macro aggressions on children and adults.

This report strengthens further the case for introducing an ethnic identifier throughout the criminal process from the point of reporting to the point of sentencing, including entry and search of homes and stops and searches which must be recorded. Disaggregated equality data can, in essence, expose inequalities, the first step in understanding the problems that need to be tackled. A commitment to make the resultant data available to independent researchers is also important, as is the publication of an annual report on ethnic minorities in the criminal process.

The research underscores the need for the development, publication, funding and implementation of a strategy within and across each branch of the criminal process to address gaps in trust, legitimacy and accountability impacting the Traveller community. This strategy should include the development of an independent Traveller justice advisory group to provide advice on justice related issues and to monitor implementation of the strategy.

The findings point to the requirement for a robust and effective independent complaints body operating across the criminal legal process and staffed by a dedicated team of investigators with no continuing connection to any of the criminal justice agencies. This body should be able to accept and respond to complaints regarding any criminal justice agency or professional including customs officers and judges.

For too long, damning reports relating to racism faced by Travellers in Ireland have been left to gather dust. As Chief Commissioner, I know it is crucial that the State and its criminal justice institutions and individuals listen to the voices of participants and the weight of evidence, and that their shared experiences lead to meaningful change.

I would like to thank the research team, and particularly acknowledge the expertise of Dr Sindy Joyce, Olive O'Reilly, Margaret O'Brien, and David Joyce as members of the Traveller community. I would like to also thank Prof. Amanda Haynes and Prof. Jennifer Schweppe, the principal investigators. IHREC is proud to provide funding for important, independent research which investigates and challenges State narratives and provides authoritative evidence for how rights are realised.

Sinéad Gibney

Chief Commissioner, Irish Human Rights and Equality Commission

Executive Summary

Traveller language, culture and traditions, rich in their tapestries, rooted in community, and embedded in oral traditions are a vital part of Ireland's history. Irish Travellers share a distinctive lifestyle and culture based on a nomadic tradition and have been documented as part of society in Ireland for centuries (Irish Traveller Movement 2018). Although the vast majority of Travellers no longer practice a nomadic lifestyle, nomadism is still regarded as a vital part of Traveller identity, with McDonagh (1994, p.95) asserting that the nomadic mindset continues to be a crucial aspect of Traveller culture even when Travellers are not practising nomadism.

Although there have been recent promising developments in this regard, Traveller culture and traditions have survived in spite of, rather than with the support of, State policies. McVeigh (2008, p. 100) describes the official response to Travellers as a state policy of "assimilation and cultural genocide", including through the criminalisation of nomadism. Among the Irish public, anti-Traveller racism is embedded, accepted and normalised. The persistence of Traveller culture speaks to the strength and depth of the Community's connections and traditions.

Given the role that Ireland's legal system has played in enforcing laws which criminalise nomadism and undermine key pillars of Traveller culture, it is perhaps unsurprising that the relationship between Travellers and Ireland's criminal justice system is a subject of concern. We have little official data in Ireland on Travellers' experience of the criminal justice system; only the prison service has introduced an ethnic identifier. As a consequence, we know that Travellers are vastly overrepresented in Ireland's prison population.

This research concerns itself with Travellers' access to justice. Access to justice means having the ability to use the tools of the legal system to protect one's rights. It is a fundamental human right protected by and through national and international law. Indigenous and ethnic minority communities often experience difficulties in activating these rights. Analyses of the barriers to minorities' access to justice often focus on accommodating communities' educational and socio-economic disadvantage and these are significant obstacles to Travellers' access to justice as this research documents. This report also addresses even more fundamental barriers to accessing justice, including Travellers' trust in the criminal justice system and its' institutions, the legitimacy of that system among the community, and experiences of hostility and discrimination from criminal justice professionals. "There is no access to justice when, for economic, social, or political reasons, people are discriminated against by law and justice systems" (Lima et al 2019, p.1).

We adopt the Graz Recommendations on Access to Justice and National Minorities (OSCE High Commissioner on National Minorities 2017) as our guiding principles. The Graz recommendations foreground the principle of non-discrimination, and the principles of equality in law and equal protection of the law and include positive obligations (such as those included in section 42 of the Irish Human Rights and Equality Act 2014), as well as access to a remedy in case of breach or to support access to or enforcement of rights.

This research finds that Travellers' trust in the Irish criminal justice system is low. Its roots lie in fears of wrongful arrest, excessive use of force, wrongful conviction, disproportionately high sentences, and wrongful imprisonment, that frame the way Travellers engage with and

experience the criminal justice system. These fears are well-founded. Our research shows that Travellers are simultaneously overpoliced as suspects and underpoliced as victims, and the overrepresentation of Travellers in prison is long acknowledged. This research, by meticulously documenting Travellers' own accounts of their experiences with the police and the courts, contributes to explaining this phenomenon. The criminal justice system is built by and for settled people, and Travellers perceive that settled people are seen as more trustworthy than Travellers, believed over Travellers, and protected more than Travellers. These perceptions are reinforced by experiences lived by the individual and shared within the community, through generations. Despite this, Travellers express a commitment to the legal system, and a desire to be protected and acknowledged by that system.

The findings of this research are based on a survey conducted with the Traveller population in Ireland about their experiences with the police and courts in this country in the period 2016-2021. The data was collected July-December 2021. During the course of conducting that survey, we spoke with 1 in every 100 Travellers in Ireland. We also conducted 29 interviews with people working in Traveller organisations across Ireland, and focus groups with younger and older generations of Travellers. These data include Travellers from all over Ireland, with Travellers in 25 of the 26 counties included in the survey. The findings from the ITAJ survey closely reflect and expand on the findings of the EU FRA Roma and Travellers in Six Countries (2020). For example, of those Travellers who were stopped by the police in the 12 months before the FRA survey, 58% thought they were stopped because they are a Traveller; of the respondents to our survey who had been stopped by a garda in the five years prior to the ITAJ survey, 59% believed they were stopped because they are a Traveller.

The report documents Travellers' perceptions and experiences of criminal justice institutions as suspects, victims, and those who are the accused in criminal cases. Its key findings reflect a need for radical changes in the way in which criminal justice institutions engage with, perceive, and address Travellers.

Key findings of the research include:

- Half of the Travellers responding to the ITAJ survey were victims of criminal offences in the five years prior to the survey; only one-fifth had been arrested in that time period;
- Travellers report hearing expressions of overt racism by gardaí and judges;
- The levels of trust that Travellers have in the gardaí is approximately half that of the general population; Travellers have a significantly lower level of trust in judges than the general population has in the legal system; trust levels in the police are lower among Travellers who have been victims of crime.

Perceptions of criminal justice institutions

- The Garda Public Attitudes Survey 2019 (GPAS) measures general population attitudes towards the gardaí. When we compare GPAS findings to those of the ITAJ survey with Travellers, we see inverse patterns:
 - 71% of the general population agree that with the statement “the gardaí in this area treat everyone fairly regardless of who they are, while 84% of Travellers disagree;

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- 95% of the general population agree with the statement that the gardaí would treat you with respect; while 91% of Travellers do not believe that the gardaí treat Travellers with respect; 75% of Travellers believe that judges do not treat Travellers with respect.
 - 89% of Travellers believe that the gardaí are more strict in dealing with Travellers compared to settled people; 82% of Travellers believe that judges are more strict in dealing with Travellers compared to settled people;
 - 39% of Travellers agree that the gardaí are effective in tackling crime generally; less than half that amount – 17% - agree that they are effective in tackling crime against Travellers;
 - 38% of Travellers agree that the courts are effective in tackling crime generally; less than half that amount – 20% - agree that they are effective in tackling crime against Travellers.

Positive experiences

- 36% of respondents shared a positive experience with a garda that had occurred in the five years prior to the survey; 8% shared a positive experience with a judge;
- Travellers described positive experiences with criminal justice professionals as characterised by the professional treating them respectfully; listening to them; being compassionate; vocally defending their rights and dignity; and being responsive;
- A positive experience with one or two individuals from a criminal justice institution, being for most respondents the exception rather than the rule, did not alter respondents' perceptions of the institution as a whole.

Victims of crime

- 83% of Travellers who reported a crime to the gardaí said that their report was not taken seriously;
- 67% of Travellers who reported a crime to the gardaí said that the garda who took the report of their crime did not treat them respectfully;
- While 61% of the general population were satisfied with the service provided by the gardaí after they reported a crime, only 15% of Travellers who reported a crime felt the same way;
- 60% of Travellers believe that hate crime against Travellers is a very serious problem;
- 31% of Travellers had experienced a crime that they did not report to the gardaí in the last five years;
- Of those who chose not to report a crime that they experienced, 87% stated that they did not believe that the gardaí would do anything; and 63% cited a lack of trust in the gardaí as reasons for not reporting.

Racial profiling:

- When asked about the last time they were stopped by a garda in the five years prior to the ITAJ survey, 59% stated that they believed they were stopped because they are a Traveller.
- Of those who believed that they were racially profiled;
 - 78% explained that the Garda who stopped them knew that they were a Traveller;

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- 53% stated that the particular Garda who stopped them has a reputation for stopping Travellers;
 - 46% stated that the location of the police stop contributed to their conviction that they were ethnically profiled;
 - 23% stated that the Garda who stopped them said something about their Traveller identity or about Travellers generally;
 - In the context of stop and search, Travellers recounted experiences of garda harassment; threats to abuse power; garda provocation, gardaí deliberately escalating conflict; and degrading treatment;
 - 32% of respondents said they were stopped with about the same frequency before and after the introduction of COVID-19 restrictions; 14% said they were stopped less during COVID-19 restrictions. Only 54% stated that they were stopped more during COVID-19 restrictions.

Custody

- 64% of Travellers who were in garda custody in the five years prior to the survey did not feel safe the last time they were in custody;
- 81% of those who were on regular medication on the last occasion of being held in a garda station stated that they did not get their medication on time, the majority of whom stated that the delay in taking the medication made them feel unwell.

Search of the home:

- 50% of ITAJ respondents had been present in a home that was entered uninvited by the gardaí in the 5 years prior to the survey;
- 20% stated that they had experienced this on one occasion, 56% reported they had experienced this on 2-5 occasions, 24% stated that they experienced this 6 or more times in that 5 year period;
- Only 11% said that the gardaí presented a search warrant to them or another person present on the last such occasion;
- Respondents stated that these garda “raids” on homes are particularly impactful for children.

Bail

- Interviewees from Traveller organisations stated that some Travellers were granted bail only on the condition that they did not return to the town or townland in which they lived;
- This included young people who were told they would be held on remand in Oberstown if they could not secure alternative accommodation.

The Traveller defendant in court

- The vast majority of interviewees from Traveller organisations believe that Travellers are presumed guilty, and have to prove their innocence;
- Of those Travellers who had appeared in court as the accused in the five years prior to the

survey, just under half understood all of what was said by the judge, the prosecutor and the defence solicitor or barrister on the last such occasion. A sizable minority understood nothing of what was said by the judge or the prosecutor;

- Only a minority of the accused considered that they were treated respectfully either by the judge, the Gardaí present or the prosecutor. By contrast, almost three-quarters stated that they were treated respectfully by the solicitor or barrister for the defence;
- Of those Travellers who had supported a defendant in a criminal case in the five years prior to the survey, approximately a third said that they had heard anti-Traveller language in the courthouse on the last such occasion: the majority of these had heard it from a garda, with a minority stating that they had heard it from the judge; a solicitor/barrister; a prosecutor; people working in the courthouse; or someone else;
- A majority of interviewees from Traveller organisations were of the view that the sentences imposed on Travellers were higher than those that would be imposed on settled people.

The Traveller victim in court

- Of those Travellers who had attended court as a victim in the five years prior to the survey, slightly less than half understood everything that was said by the judge, the prosecutor and the solicitor or barrister for the defence in the last such case. A minority understood nothing that was said by any of these criminal justice professionals. Levels of understanding expressed were similar regardless of the professional role in question;
- A majority of victims felt they had been treated respectfully by the solicitor or barrister for the defence. Just over half said that they had been treated respectfully by the prosecutor. Half said that the presiding judge had treated them respectfully. Just over a third stated that the Gardaí present had treated them respectfully;
- Half of victims felt they were treated fairly in court;
- Of those Travellers who had attended court to support a Traveller victim of crime in the five years prior to the survey, a majority stated that they heard anti-Traveller language used in the court or courthouse; in this context, legal professionals, courthouse staff and gardaí were mentioned. One victim said that they heard anti-Traveller language used by the judge.

Entry to criminal justice professions

- The majority of survey respondents were of the view that if a Traveller joined the ranks of the criminal justice professions, they would not be treated well by their colleagues;
- With respect to a Traveller who became a garda, 8% agreed or strongly agreed that a Traveller who joins the Gardaí would be treated well by other Gardaí. 72% disagreed, of which 29% strongly disagreed;
- With respect to a Traveller who became a solicitor or barrister, 18% agreed or strongly agreed that a Traveller who becomes a solicitor or barrister would be treated well by other solicitors or barristers. 56% disagreed, of which 17% strongly disagreed;
- With respect to a Traveller who became a judge, 15% of the sample agreed or strongly agreed that a Traveller who becomes a judge would be treated well by other judges. 62% disagreed, of which 19% strongly disagreed.

Complaints

In order to learn more about practices which Travellers experience as supportive or challenging, survey respondents were given the opportunity to tell us about the most positive and most negative experience they had with a member of An Garda Síochána and with a member of the Irish judiciary in the five years prior to the survey. Where a negative experience was described, participants were asked whether a complaint was made.

- 16% shared a negative experience that they had had with a judge in the five years prior to the survey. Of those who shared a negative experience, only a very small minority of those individuals said that a complaint was made; 93% stated that no complaint was made;
- 55% shared a negative experience about Gardaí. Of those who shared a negative experience about Gardaí, 35% stated that a complaint was made about the experience. 63% stated that no complaint was made; the remainder were unsure;
- Fear of retaliation by a judge/garda or the gardaí/judiciary generally was a key reason provided for not making a complaint; other stated reasons for not doing so include the belief that nothing would come of it as well as a lack of awareness of how to make a complaint.

Key recommendations

1. We recommend the introduction of an ethnic identifier throughout the criminal process from the point of reporting to the point of sentencing, including entry and search of homes and stops and searches which must be recorded. This includes a commitment to make the resultant data available to independent researchers and the publication of an annual report on ethnic minorities in the criminal process;
2. We recommend the development, publication, funding and implementation of a criminal justice strategy for the Traveller community, with a remit within and across each branch of the criminal process to address gaps in trust, legitimacy and accountability impacting the Traveller community. This strategy should include the development of an independent Traveller justice advisory group to provide advice on justice related issues and to monitor implementation of the strategy;
3. We recommend the establishment of a robust and effective independent complaints body operating across the criminal legal process and staffed by a dedicated team of investigators with no continuing connection to any of the criminal justice agencies. This body should be able to accept and respond to complaints regarding any criminal justice agency or professional including customs officers and judges.

Background, acknowledgments and language

About us

The research team for the Irish Travellers' Access to Justice project comprised of Dr Sindy Joyce (postdoctoral researcher to the project, appointed as Lecturer in Traveller Studies at the University of Limerick during the course of the project), Olive O'Reilly, Margaret O'Brien, and David Joyce (research assistants), and Prof. Amanda Haynes and Prof. Jennifer Schweppe (principal investigators). The postdoctoral researcher and research assistants who led the research are Travellers. The principal investigators are settled women and acknowledge their position and privilege as members of the settled majority.

Acknowledgments

First and foremost, we would like to thank all the participants to this research who spoke with us over the past two years. Travellers up and down Ireland gave up their time and told us about their experiences, and we hope that we have done justice to their testimony.

We would also like to thank members of our Advisory Committee, Maria Joyce, Martin Collins, Kathleen Sherlock, Jacinta Brack, Chris McDonagh, Michael Corbett, Bridget Canning, Sarah Sherdian, Iris Elliot, and Jennifer Cassidy.

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We are also grateful to the President of the University of Limerick, Prof Kerstin Mey, the Dean of the Faculty of Arts, Humanities, and Social Sciences Prof Shane Kilcommins, and our Heads of Schools, Prof Ross Macmillan and Prof Raymond Friel who supported this research from inception. We would also like to thank the students who were on cooperative placement with us over the course of the two years of this project: Ashna Ephraim, Alex Carroll Tully, Rebecca Murray, Eva West, Sarah A. Taylor, Ryan Kennedy, Niall Gannon, Shauna O'Mahoney, Josie Bauman, Siobhan Quigg, Fintan Bracken, and Elisha Gale. In their fourth year of study, Jennifer Wyse, Majella McDonagh, Nicola O'Loughlin, Ryan Kennedy, and Simon Good, University of Limerick law students who took the module "Travellers and the Legal System" and informed the work of the project.

We would like to extend particular thanks to Prof Ross Macmillan, Department of Sociology, University of Limerick, for developing the weights that we use in this study. His commitment to this project has been unwavering.

All responsibility and any errors lie with the principal investigators to the project.

Funding

This project was funded by the Irish Research Council and the Irish Human Rights and Equality Commission under the COALESCE scheme. We are extraordinarily grateful to the IRC and IHREC for providing funding for this type of independent research which explores, unpicks, and challenges narratives which are asserted at State level. Due to the impact of COVID-19 on the research, the researchers to the project secured funding under the COVID-19 Disruption Fund and were further supported by the President of the University of Limerick through her Strategic Fund.

A Note on Language

This report incorporates direct quotations from interviews with members of the Traveller community, and in so doing, uses vernacular terms:

“ITAJ” is to be understood as “Irish Travellers’ Access to Justice”.

The Report uses “Traveller”, “Travellers” and “Traveller community”. We acknowledge that this is a description imposed on the indigenous ethnic minority community of Ireland by the majority population, and that other terms such as “Mincéir” and “Pavee” are used by some community members.

‘Settled people’ and ‘country people’ are terms used by Travellers and understood as referring to people who are not Travellers.

“The guards” and “a gard” are to be understood as members of An Garda Síochána. “Gard” is short for “a garda”.

“Shades” is a term used by some Travellers to refer to An Garda Síochána. This is a term which is based on the Cant word for police, ‘shedog/s’ or ‘sedog/s’, pronounced as ‘sha-dooog/s’.

In some interviews, terms in Cant/Gammon/Shelta are used. Where this occurs, the term in Cant/Gammon/Shelta is un-italicised, with an English translation following:

“... then the shades [gardaí] will come and they’re not going to meet us with any compassion or anything ... so we just might as well misli [go] and go on...” (Survey respondent)

Finally, some quotations recount the use of slurs referencing Traveller identity. In the context of this report, the term most commonly used is a racist slur which is highly offensive to the Traveller community. In recognition of the unacceptability of the term, we have chosen not to reproduce it in full but to denote it as “k*****r” or “k*****rs” in the plural.

Rather than use gendered pronouns when referencing participants to the research, we use they/them pronouns for all individuals to protect their identity.

Chapter 1: Introduction and methodology

Introduction

Access to justice means having the ability to use the tools of the legal system to protect one's rights. It is a fundamental human right protected by a range of international agreements and conventions as well as through the Constitution of Ireland. Indigenous and ethnic minority communities often experience difficulties in activating these rights, and solutions often focus on providing additional supports ranging from translation services to assistive technology, depending on the barriers which the community encounters. However, such interventions often operate on the assumption that the communities in question already trust the criminal justice system sufficiently to engage with it. For minority communities this is not always the case. This is particularly true with respect to Ireland's indigenous ethnic minority, Travellers.

Funded by the Irish Human Rights and Equality Commission and the Irish Research Council, the Irish Travellers' Access to Justice (ITAJ) project sought to document Travellers' perceptions of, and experiences with, the criminal justice process, specifically policing and the courts system. Its purpose was to explain how these experiences and perceptions impact on trust in and strategies towards the justice system, with a view to producing recommendations for criminal justice policy, practice and training which seek to support the operationalisation of the rights of access to justice on the part of the Mincéir/Traveller community.

This report outlines the main findings of the research, drawing from the findings of our mixed-methods research. The report has 18 chapters, the last of which sets out our key recommendations. For the first time in an Irish context, our research extensively explores Travellers' experiences of, and relationship with, the criminal justice process.

This report is at times a distressing read, but throughout we see shining examples of caring, thoughtful, and equitable treatment of Travellers by some members of criminal justice professions. We also see throughout the report Travellers' desire to be protected by and through a justice system that respects and upholds their rights, as well as a desire to be part of that system as criminal justice professionals.

Over the last number of decades, we have seen reports such as this languish on shelves, or similar research year-on-year reproducing the same unimplemented recommendations with no change seen on the ground by Travellers. It is our sincere hope that the Irish state and the institutions of the criminal justice system in Ireland will ensure that this is not the case in this instance, and that the testimonies and experiences of our participants will be heard, resulting in meaningful change across the criminal process, in the short, medium and long term.

Aims and objectives

The Irish Travellers' Access to Justice (ITAJ) Project was funded by the Irish Human Rights and Equality Commission and the Irish Research Council as part of the COALESCE funding programme. The stated aim of the project was to "document Travellers' accounts of experiences with, and perceptions of the criminal justice process (specifically policing and the courts system), and ...

explain how these experiences impact on trust in and strategies towards the justice system.” The research project was conceived and the funding secured in a pre-COVID-19 environment, but the research was conducted in the midst of COVID-19 restrictions and uncertainty. By adjusting the methodology to the realities of COVID-19 restrictions, the aim of the research was fulfilled, with the generation of rich qualitative and quantitative data reflecting Travellers’ perceptions and experiences of criminal justice institutions.

The aims of the project were fulfilled through the collection of original qualitative and quantitative data with members of the Traveller community. While the ITAJ team acknowledge historic harms to the community and their importance to future relations with the institutions and representatives of the criminal justice system the data gathered for this report relates to the period 2016-2021 specifically.

Three modes of data collection were utilised.

- Commencing in June 2021, 29 interviews were conducted with individuals with expertise in Travellers’ interactions with the criminal justice system, particularly employees of organisations working with Travellers. The purpose of these interviews was (a) to gather data from key stakeholders on facilitators and barriers to Travellers’ access to justice and (b) to inform the design of the survey. These are identified in this report as “Interviewee of a Traveller organisation”.
- A survey, administered during the period July –December 2021, was conducted with members of the Traveller community to ascertain their experiences with and perceptions of the criminal justice system, and facilitators and barriers to Travellers’ access to justice. The survey consisted of both closed and open-ended questions. Participants to the survey are identified in this report as “Survey respondent”.
- Two focus groups were held: one with a group of older Travellers women, and one with a group of younger Travellers men. The purpose of these focus groups was particularly to examine the intergenerational transmission of perceptions and strategies. These research participants are identified in this report as “Focus group participant”.

Finally, the Irish Prison Service (IPS) generated statistics relating to the demographic profile, sentences and offences of Travellers in the prison population on November 30th 2021 at the request of the ITAJ team. We are grateful to the IPS for their assistance.

Advisory Committee

The stated purpose of the Advisory Committee was to inform the research methodology, review research findings, and develop research-led recommendations. Its membership envisaged a process whereby the research would be informed by practice within the criminal justice profession, and the experiential knowledge and expertise of Traveller community groups and activists. Thus, the project was supported by an Advisory Committee made up of members of national Traveller organisations and representatives of criminal justice/state institutions.

The Traveller organisations that were represented on the Advisory Committee were:

- The National Traveller Women's Forum
- The Irish Traveller Movement
- Pavee Point
- Minceirs Whiden
- The Traveller Mediation Service.

Formal emails of invitation were sent to the Commissioner of An Garda Síochána, the Minister for Justice, the Chief Justice, and the Director of Public Prosecutions. The institutions who appointed representatives to the Advisory Committee were:

- An Garda Síochána
- The Department of Justice

Finally, representatives from our funders, the Irish Human Rights and Equality Commission and the Irish Research Council sat on the Committee.

Meetings were held at key stages over the course of the research, and members of the Advisory Committee also individually made themselves available to the research team on an ongoing basis, and were a source of huge support throughout the research. The ITAJ team are grateful to all of those institutions and organisations who contributed to the research through the advisory committee, and to their representatives who provided invaluable expertise to the research team.

The Advisory Committee first met in March 2021, prior to the start of fieldwork which commenced in June 2021. Survey fieldwork commenced in July 2021. As a collective, the Advisory Committee reviewed adjustments to the methodology to facilitate the completion of the research during COVID-19 restrictions, assisted with the recruitment of researchers, and reviewed the research instruments. Traveller organisation members facilitated a pilot of the survey and facilitated access to the Traveller community for the purposes of the survey proper. The Advisory Committee was presented with headline findings of the research for feedback prior to the finalization of the report and members had an opportunity to provide feedback on a full draft of the final report prior to its publication. The involvement of the Advisory Committee was invaluable to the ITAJ research team, however, and all decisions regarding the research were ultimately made by the research team and responsibility for any errors or omissions rests with us.

The Director of Public Prosecutions, while commending the project and the proposed composition of the Advisory Committee, declined to nominate an individual to the Advisory Committee for reasons relating to resource capacity, but as an alternative, offered to make individuals available for us to interview on a one-to-one basis. The research team gave due consideration to this offer, but as the stated purpose of this funded research was to ascertain the perceptions and

experiences of Travellers, and not criminal justice professionals, this proposed change to the methodology was outside the scope of the project.

The Principal Investigators to the project, Professor Haynes and Professor Schweppe emailed the Chief Justice and offered him, or his nominee, a position on the Advisory Committee. We did not receive an answer to this email, and so sent follow up reminders between February and June 2021. While it was confirmed that the Chief Justice was sent the correspondence, the emails were not acknowledged by the Chief Justice, and we did not receive a response to the invitation.

Data and policy documents from An Garda Síochána

The ITAJ project incorporated two aims relating to hate crime: to examine how recorded hate crimes against Travellers manifest in an Irish context; and to explore how recorded hate crimes against Travellers progress through the criminal justice process. To facilitate attainment of these aims a request was submitted to An Garda Síochána to provide the researchers with access to redacted and anonymised PULSE reports relating to crimes reported to An Garda Síochána which had been identified as having a discriminatory motivation, or classified as a hate crime, during the period 2016-2020; disaggregated statistics on police recorded hate crime for the same period; and, in order to contextualise this data, documents pertaining to hate crime, non-hate crime incidents and discriminatory motivations that are produced for the use of Garda members and call takers.

Following 12 months of communications between An Garda Síochána, IHREC and the researchers, all of these requests were denied. An Garda Síochána stated:

“Due to ongoing work on PULSE data, 2021 is being used as a new baseline year and AGS intend to release figures thereafter. Data from before and after the change are not comparable. With regard to documents (training or policy etc.) requested, these have not yet been approved by the Executive therefore also cannot be provided” (Email communication December 16 2021).

We note that the researchers had clarified that comparability was not required for the purposes of the research.

Irish Prison Service Data

The Irish Prison Service has introduced an ethnic identifier that facilitates the production of data on the ethnicity of the prison population and the disaggregation of data of that population based on ethnicity. This innovation has been welcomed both by Traveller organisations (Pavee Point 2015) and the Irish Penal Reform Trust (2019). Travellers’ experiences in prison are beyond the scope of this research, but given the absence of any ethnic identifier linked to sentencing data, we sought data on the prison population as a means of gaining insight into sentencing patterns as well as with respect to non-custodial committals. Given the importance of such patterns to understanding Travellers’ access to justice, we asked the Irish Prison Service to provide summary statistics on prison data. We are enormously grateful to the Irish Prison

Service for producing these statistics, which are set out in chapter 13 entitled “Sentencing.”

Interviews with Traveller organisations

The original methodology to this project envisaged a mixed methods approach including an interviewer-administered survey and some focus groups. With the approval and support of the Advisory Committee, the methodology was expanded to include interviews with individuals from Traveller organisations. These semi-structured interviews took place over MS Teams and were, on average, 90 minutes long. A purposive sampling strategy was utilised, which consisted of inviting the participation of identified individuals who fulfil criteria which establish the relevance of their expertise to the research objectives. In this context, those criteria included supporting and working with Travellers across Ireland. Qualitative data collected through these semi-structured interviews was transcribed and subject to thematic analysis.

Interviewer-administered surveys

The core of the ITAJ methodology involved the administering a survey instrument designed to understand Travellers’ perceptions and experiences of criminal justice institutions. A total of 326 interviewer-administered surveys were carried out remotely using video or phone call facilities via MS Teams.

Based on data from Census 2016, targeted optimal sample sizes were determined for gender, age group and county. These were applied as soft quotas. The inclusion criteria were identification as a Traveller and having reached 18 years of age. To generate a sample in the midst of COVID-19 restrictions, the researchers used both exponential snowball sampling and volunteer sampling. In the period July-December 2021 the research was advertised via Traveller organisations and social media. In the period September –December 2021, when travel restrictions were limited by the University, the research was also advertised through visiting Traveller organisations and Traveller-specific accommodation to inform potential participants about the research.

The survey instrument included both closed- and open- ended questions. Responses to closed-ended questions were simultaneously entered into a Qualtrics survey by the researchers, and the answers to open-ended questions were recorded via MS Teams and later transcribed. Qualitative data collected from survey respondents was subject to thematic analysis using QSR NVivo.

As in the case of the EU FRA (2020) Roma and Travellers Survey, the data was weighted to be better representative of the Traveller population. As per best practices, data is weighted according to Census (2016) estimates of the relative population proportions of women and men for age-intervals 15-34 years old, 35-49 years old, and 50 or older for the set of Dublin counties, Limerick county, and all other counties combined. The weighted data provides estimates that are better representative of the underlying populations under the assumption that there is not strong selection bias for groups participating in the survey relative to the same groups not participating in the survey. The weighted data is used throughout this report. It omits quantitative data for 3 respondents who declined to provide their age beyond confirming that they were over 18.

Profile of survey respondents (weighted data)

Having weighted the data:

- 48% of the sample are men and 52% are women.
- 17% are aged 18-24, 57% are aged 24-44 and 26% are aged 45 or older.
- 25 of 26 counties are represented in the sample. 20% of the sample are from Dublin.
- 56% said that they can read and write very well, 22% said they can read and write well, 15% said they cannot read and write well, and 7% said they cannot read and write at all.
- 18% are unemployed, 19% are looking after home or family, 47% are employed or self-employed, 10% are in education, 6% are unable to work due to permanent sickness or disability.

Critical incident testimonies

The survey included four sub-sections which we refer to in this report as “critical incident testimonies”. The purpose of these questions was to give Travellers, who are the experts in their own lived experience, the opportunity to tell us in their own words about their experiences with gardaí and judges. This data proved invaluable to understanding the basis for Travellers’ subjective assessments of their experiences of seeking to access justice.

The four sub-subsections gave Travellers an opportunity to describe their most positive experience with a garda and with a judge in the five years prior to the survey and their most negative experience with a garda and with a judge in the five years prior to the survey.

- 18% of respondents had not had any experience with the gardaí in the last 5 years.
- 43% stated that they had no positive experiences with the gardaí in the last five years (and 3% said that they would prefer not to say). 36% stated that they had a positive experience that they would be willing to share.
- 20% had no negative experiences with the gardaí in the last five years (7% said that they would prefer not to say); 55% stated that they had a negative experience that they would be willing to share.
- Of those who shared a negative experience about Gardaí, 35% stated that a complaint was made about the experience. 63% stated that no complaint was made. The remainder were unsure.
- 59% had not had any experience with a judge in the last 5 years.
- 31% stated that they had no positive experience with a judge in the last five years (and 3% said that they would prefer not to say); 8% stated that they had a positive experience that they would be willing to share.
- 19% had no negative experiences with a judge in the last five years; 6% said that they would prefer not to say; 16% stated that they had a negative experience that they would be willing to share.
- Of those who shared a negative experience, only a very small minority of those individuals said that a complaint was made. 93% stated that no complaint was made.

Other relevant datasets

Much research has been done in Ireland which assesses the general population's perceptions of An Garda Síochána, primarily through the Garda Public Attitudes Survey (GPAS). The last such survey was conducted by Amárach Research for An Garda Síochána in 2019, which we use to illustratively compare how a representative sample of the Traveller population responded to questions asked of a similarly representative sample of the general population:

Irish Travellers' Access to Justice 2021 (ITAJ)

Garda Public Attitudes Survey 2019 (GPAS 2019)

Ethical Approval

All aspects of this research complied with the ethical regulations of the University of Limerick and all aspects of the design were approved by the University's Faculty of Arts, Humanities and Social Sciences Ethics Committee (Approval Numbers 2021-02-06-AHSS and 2021-03-15-AHSS).

Identifiability

Over the course of all phases of the research, Travellers spoke of their fear of retaliation by representatives of criminal justice agencies were it known that they participated in the research. Indeed, Travellers provided fear of retaliation as a reason for their decision not to participate. In presenting raw data to support our findings, our priority has been to ensure that no participant to this research is identifiable. Therefore, we have focused on common experiences rather than descriptions of outlier events. In some cases, this has required that we omit details of some of the most concerning experiences that were recounted to us by retracting information and replacing it with "[identifiable information]".

A note on the involvement of settled researchers

The two principal investigators to this project, Prof. Amanda Haynes and Prof. Jennifer Schweppe are white, settled women and at all stages through this project were deeply aware of our privilege and positionality. Aware of Elliot's (2021) caution against being "parasitic swallows" we are determined that the research is used to "record, to inform, to direct, to persuade" those working for and in criminal justice institutions as to how Travellers experience and understand their practices, and the case for reform. We acknowledge the overwhelming underrepresentation of Travellers in the academy and the impact that this has on access to research funding directed at permanent faculty located in higher education institutions. Echoing the call of Professor Zoë James (2020), for the diversification of the academy to include more Traveller and Roma scholars, we hope that in the future, independent and evidence-based academic research such as this will be led by Travellers working in academia.

Chapter 2: A Short Introduction to Travellers-Mincéirs

Irish Travellers are recognised as Ireland's oldest indigenous ethnic minority who are traditionally nomadic and share a common ancestry, culture, traditions, beliefs and language. Mincéir Thari (Traveller talk) called Shelta (by academics), De Cant or De Gammon (two different dialects), is an ancient indigenous language formed using the Ogham technique that gradually developed towards its present form under the pressure of contact with Irish and Hiberno-English (NCCA 2019). The language is distinct and it is unique where it is used as a linguistic tool of inter-community engagement. Like many other indigenous languages Mincéir Thari has suffered from oppression where the use of language has diminished through the generations of political turmoil in Ireland. Through the resilient campaigning of Traveller activists, it has been accepted into the UNESCO Inventory of Intangible Culture (INIICH).

The culture and traditions of Travellers are rooted in oral tradition where stories, songs, prayers, poems, spiritual teachings and histories are passed down from one generation to the next. Travellers are a people who are social and festive, where music and story-telling is a vital part of culture. These re-told words provide the community with a baseline of self-preservation of identity and culture in the face of persecution. The primary means of cultural transmission is through the oral tradition. The rich distinguished story-telling and musical talent of Travellers is well renowned and is referenced in "Irish oral history from the earliest of times with references to "fir siúil" and "mna siúil" (O'hAodha 2020, p.167).

Although the vast majority of Travellers are no longer nomadic, it is still a vital part of their identity and culture. As the Roma scholar Liégeois (1994, p.79) noted: "whereas a sedentary person retains a sedentary mind-set even when travelling, ...Travellers, even when not travelling remain nomadic. Even when they stop they are still Travelling People". Irish Traveller Michael McDonagh (1994, p.95), argued that the nomadic mindset continues to be a crucial aspect of Traveller culture even when Travellers are not practising nomadism. He stated:

"When Travellers speak of travelling, we mean something different from what country people [settled people] usually understand by it... Country people travel to get from A to B but for Travellers, the physical fact of moving is just one aspect of a nomadic mind-set that permeates every aspect of our lives. Nomadism entails a way of looking at the world, a different way of perceiving things, a different attitude to accommodation, to work and to life in general."

Deleuze and Guattari (1987) used the term "Nomadology" to describe this particular mind-set or a way of viewing the world. For Travellers the cultural aspect of nomadism is linked to how they view and experience the world and even if the physical action of moving is limited or non-existent, nomadism is still highly valued as an important component of the culture and identity. MacLaughlin (1995 p.16) avows that Irish Travellers have a highly developed 'geographical imagination' (see also Harvey, 1973). In other words, 'they think across time and place and regard geographical mobility as an integral, but by no means defining, feature of their way of life' (MacLaughlin, 1995 p.16).

Traditionally, Travellers practised nomadism for economic, social and personal reasons. As nomadic peoples, historically, Travellers were either self-employed or employed for seasonal periods working on farms. Providing such essential crafts as tin-smithing, horse dealing, chimney-cleaning, selling domestic ware (hawking), carpentry, and seasonal agricultural labour, Travellers were a vital addition to rural economy. Rural depopulation, increased mobility on the part of the rural community, and the advent of plastic, mechanisation and urbanisation, meant that Travellers' way of life changed profoundly and the economic relationship between Travellers and the settled population rapidly declined.

Lentin (2002 p.232) states that Travellers are "Ireland's largest racialised ethnic group". Globally, clashes of culture between nomadic and sedentary populations have a long history (McVeigh 2007 and 2012). However, the racialisation of Irish Travellers cannot be ascribed in its entirety to outside forces. From the early days of the 'Free State', the Irish government began a long process of ideological and political racialisation which focused on state building and re-inventing the national identity and culture (Mitchell 2011; MacLoughlain 2010). McVeigh (2007, p.92) argues that "we measured ourselves against who we were not as citizens – neither having English values or the stigmatised view they had of the general population thereby permitting a racist dialogue in the public mentality in discourse regarding Travellers". The process of building an Irish national identity thus involved the transfer of 'colonial racialised stereotypes' about the majority Irish onto Travellers (Fanning 2012; Ó hAodha 2006).

By the 1940s it became common practice to move Travellers off the land that was needed for building which would support the Irish state's agenda of nation building and 'civic evolution' (see O'hAodha 2006), and a national state assimilation and settlement policy for Travellers was established in the 1960s (GOI 1963). Thus, the first systematic attempt by the Irish government to settle Travellers began with "the ultimate goal of settlement and spatial fixity which has remained the cornerstone of government policy towards Travellers ever since" (Crowley 1999, p.4). Increased conflict between Travellers, non-Travellers and local officials brought about a review of the settlement policy and, a decade or so after the Commission on Itinerancy sat, the Travelling People Review Body was established. This Body acknowledged that Traveller assimilation was unacceptable and suggested "that it is better to think in terms of integration between the Traveller and the settled community" (cited in Crowley 1999). The review body also acknowledged Traveller identity, culture and traditions, yet retained "a commitment to Traveller settlement as necessary to Irish modernization" and to working with local authorities to provide basic facilities and serviced halting sites (cited in Crowley 1999, p.8).

A unique feature of the evolving relationship between the Irish State and Travellers in Ireland is the contradictory and simultaneous process of racialisation and de-ethnicisation. In the UK, Travellers had been recognised as an ethnic group since 2000 and in the North of Ireland since 1997 (McVeigh 2008). By 2000, Ireland's equality legislation (Equal Status Acts) defined Travellers, not as an ethnic minority, but as a separate group meriting protection (McVeigh 2007, p.96). In 2006 the Equality Authority recognised Travellers as an ethnic minority and recommended the Irish government do the same (Crowley 2006, p.65). In 2011, scientists from the Royal College of Surgeons in Ireland and the University of Edinburgh elucidated that the common lineage between Travellers/Mincéirí and the settled community was no closer than that of Norwegians and Icelanders (See Hough, J. 2011)) and, in a further follow-up study, in 2017, revealed that Travellers "are now as genetically different from the settled Irish as are the Spanish". The persistent refusal of the Irish State to recognise Traveller ethnicity in the face of these internal pressures elicited an international response. For example, the Committee on the

Elimination of Racial Discrimination (CERD) and the European Commission against Racism and Intolerance (ECRI) expressed concerns regarding the Irish authorities' position on Traveller ethnicity. The Irish State persisted in an official denial of Traveller ethnicity until March 2017. Crowley (1992) asserts that within that period the debate over ethnicity recognition was "constructed as if occurring between two compact and discrete contenders: The Irish state on one side and the Traveller community on the opposing one" (cited in Brandi 2013). The risks in this debate were, and are still, high – the collateral damage is Traveller culture, and concurrently the legitimacy of assimilation as a policy objective.

Comprising of just 0.7% of the general population at 30,987 in 2016 (CSO, 2016), Travellers experience significant disadvantage in terms of education, employment, accommodation, and health, as well as facing extreme racism, discrimination and prejudice (AITHS, 2010; Watson et al., 2017; MacGréil, 201; Houses of Oireachtas 2022). Characterised by a much younger demographic profile than the general population, nearly 60% of Travellers are under the age of 25 and just 3% of Travellers live over the age of 65. The infant mortality rate for Traveller children is 3.6 times the rate for the general population and suicide rates are 7 times higher. Compared to one per cent of the general population, 28% of Travellers leave school before the age of 13; just 8% of Travellers complete education to Leaving Certificate level, compared to 73 per cent of non-Travellers; and only one per cent of Travellers aged between 25-64 have a degree, compared to 30 per cent of non-Travellers. Half of Travellers have poor functional literacy (Joint Committee on Key Issues affecting the Traveller Community 2021). Scholarly research on Travellers in Ireland provides insights into the persistence and virulence of anti-Traveller racism (Helleiner 2003; McCann et al 1994; Fanning 2002). Drawing on a national survey of attitudes towards various groups, MacGréil (2010) reports that 60 per cent of the settled population in Ireland would not welcome a Traveller as a member of the family; 64 per cent reject Travellers on the basis of their 'way of life' and 18 per cent would deny Irish citizenship to Travellers. The National Traveller Community Survey 2017 found worrying statistics where 55% of the general population would not have Travellers as Community Members; 35% would avoid Travellers; 75% wouldn't have a Traveller as a co-worker; 78% wouldn't have a Traveller as a Neighbour; 83% wouldn't employ a Traveller; 91% wouldn't have a Traveller as a family member, and 85% wouldn't have a Traveller as friend. Tormey and Gleeson (2012) found that attitudes towards Travellers among young people are less favourable than attitudes towards any other group.

Chapter 3: Irish Criminal Justice and “Access to Justice”

“Without access to justice, people cannot make their voices heard, exercise their rights, cope with discrimination or hold decision-makers accountable” Paragraphs 14 and 15 of the Resolution adopted by the General Assembly of the 30 November 2012.

At its core, access to justice relates to the ability to use the tools of the legal system to protect one’s rights. Access to justice is an essential component of functioning, equitable and sustainable democracies (Lima and Gomez, 2019). This Report addresses access to justice among a marginalised national ethnic minority, the Irish Traveller community. It is founded on the understanding that inequitable access justice threatens the social cohesion of society and fosters minority disenfranchisement and alienation, and contributes to the conditions for conflict (OSCE High Commissioner on National Minorities 2012). Moreover, we understand that lack of access to justice, manifesting as barriers to accessing the means to protects one’s rights, contributes to the perpetuation of minority groups’ marginality and disadvantage (Meçe 2016 p.216).

This research marks a significant development in terms of scholarship and evidence in an Irish and global context with respect to how those who use the criminal justice process experience pathways of accessing justice. Though the term “access to justice” is not used in the Irish Constitution, throughout its articles, the Constitution protects a panoply of rights which collectively ensure protection in the context of criminal processes, from the moment of suspicion to appeal. Admittedly, these generally are focused on those suspected of criminal offences (rather than those who are victims), but are nonetheless broad in their scope. Rather than look exclusively at the operation of individual rights, we frame this research from the perspective of access to justice. This allows us not only to explore how those who use the criminal justice process experience pathways of accessing justice, but also their relationship with the criminal justice process, and how this impacts on their engagement with that process and the people who work within its institutions. Prior to describing our understanding of access to justice, a short articulation of the rights recognised in criminal proceedings is set out, followed by a description of international and regional dimensions to the issue.

Access to justice? Constitutional and statutory rights in Ireland

In exploring rights in a criminal context, Article 38.1 of the Constitution is crucially important, which provides that no person shall be tried on any criminal charge save in due course of law. This right is a broad one, involving not only rights with respect to trial procedure, but as was made clear in *State (Healy) v Donoghue*, it is:

“A phrase of very wide import which includes in its scope not merely matters of constitutional and statutory jurisdiction, the range of legislation with respect to criminal offences, and matters of practice and procedure, but also the application of basic principles of justice which are inherent in the proper course of the exercise of the judicial function”.

Thus, through Article 38.1, Irish courts have found that the presumption of innocence has a constitutional basis, as does, for example, the rule against double jeopardy, the principle of certainty, the right to silence, and the right to legal representation. That said, while broad in its scope, Article 38.1 is not the only constitutional provision which applies in the case of criminal matters in Ireland – the rights of victims, suspects and defendants are protected across the Constitution, recognised through the courts, including the right to a trial by jury (Art 38.5); a right to liberty (Art 40.4); and the protection of the inviolability of the dwelling (Art 40.5). In the context of criminal proceedings, the right to liberty is perhaps particularly relevant, operating as it does in the context of detention by the State (encompassing arrest, detention, and questioning), but also the right to bail, protection against surveillance by the state, and the circumstances in which stop and search are permissible.

The importance of the recognition of these rights cannot be overstated, and indeed, they are crucially important in going some way to establish an “equity of arms” between the state and defendant in criminal matters. As Lima et al (2019, p.1) underscore, however, “There is no access to justice when, for economic, social, or political reasons, people are discriminated against by law and justice systems.” Equally *effective* access to justice equally attainable for all persons regardless of disadvantage, requires not only the absence of discrimination, but also positive measures to recognise and remove barriers to access. For example, according to Article 13 of the UN CRPD, access to justice on “an equal basis with others” requires both accommodations and training. A civil society contribution to the Second Session of State parties lists nine “essential components of an accessible justice system” which include facilitating accompaniment during investigation and testimony, the provision of information in plain language, and using experts to dispel myths about disability, which may dissuade courts from accepting their testimony. The document also specifies training for law enforcement and legal professionals regarding accommodations and accessibility, and awareness raising campaigns in the community regarding the rights of people with disabilities. The UN CRPD underscores that effective access to justice rests not only on eliminating discrimination but on acknowledging, respecting and accommodating difference. In this sense the UN CRPD serves to highlight not only operational barriers to accessing justice but structural barriers linked to the very organisation of society, its embedded hierarchies and inequalities, the vulnerability of disadvantage, and the barriers that this vulnerability creates in respect to claiming ones rights (Abregu 2001). Structural disadvantage is linked to lower levels of awareness of one’s rights, barriers to accessing and understanding information about the legal mechanisms available to protect them; lack of necessary supports to interact with legal systems, and psychological barriers to interacting with the justice system, in addition to experiences of discrimination (Meçe 2016 p.219).

While O’Malley is of the view that “[a]ccess to justice should not ... depend on wealth, status, age, education or any other social or economic factor” (2009: 1-1-06), and sees the merits of the arguments of critical legal studies movement, he ultimately sees those arguments as having failed to “give due weight to the importance of rights and to acknowledge what has actually been achieved through the judicial elaboration and enforcement of rights.” (2009: 1-1-07) While we concur that much has that there have been important advances in the elaboration of mechanisms by which individuals can claim their rights, this Report focuses on identifying the barriers to accessing those mechanisms, and the criminal justice generally, on the part of a national ethnic minority - Irish Travellers. It asks whether those mechanisms are (a) sufficient to the needs of this community in respect to access to justice and (b) accessible to them on an equal basis.

Looking at access to justice from the perspective of victims, Charleton et al note that while the rights of the accused can be characterised as “enduring and immovable”, victims of crime are “less certain in the assertion of rights” (2020). A product of the traditional side-lining of the victim to the role of witness in criminal proceedings, this generated what Walsh describes as “frustration” among victims who felt victimised twice over: “once at the hands of the offender and again at the hands of the State by their virtual exclusion from involvement in the ... handling of the prosecution ...” (Walsh 2002, pp.8-9)). There has been a growing acceptance of victims’ rights – at least from a statutory perspective – with the introduction of victim impact statements, and the appointment in limited circumstances of separate legal representation for victims of sexual offences. Ultimately, however, it is through the transposition of the Victims’ Directive that victims’ rights have been most widely recognised, through the introduction of the Criminal Justice (Victims of Crime) Act 2017. Thus, while the rights of suspects, offenders, and defendants have been most commonly recognised through judicial elaboration, the recognition of victims’ rights was a product of statute, prompted by a European Directive.

In an Irish context, we agree that the importance of the recognition of a broad swathe of constitutional rights cannot be overstated, and the statutory recognition of the rights of victims is equally important. However, the recognition and acknowledgement of these rights does not equate to their *operation* and *implementation*. Crucially, where there are significant gaps in trust between those who are the subject bearers of rights and those who are tasked with respecting them this has – at the very least – the capacity to be disruptive. Where a system is viewed as institutionally racist, it is legitimate that those end users of that system who identify as being a member of a racialised or ethnic minority will – at best – be concerned about how those who work within that system will treat them. Where that concern impacts on the decisions that an individual will make to secure protection where they are a victim of crime, this should be a cause for the deepest concern. Indeed, for some of those victims, Walsh’s (2016) articulation of frustrations of victims can be added to by a third victimisation: at the hands of those tasked with their protection through racism and other forms of prejudice.

Access to justice in Ireland: recent developments

While the term ‘access to justice’ is traditionally a term not commonly used in Ireland, at least in the context of criminal proceedings, as Field et al articulate, there has been an “iterative debate” around access to justice policy in Ireland recently, including an annual conference held by the Free Legal Advice Centres in 2019 on the theme of access to justice; and discussions held by the Joint Oireachtas Committee on Justice and Equality on this issue. To this, we can add a conference held by the Chief Justice’s Working Group on Access to Justice held in October 2021.

The Irish Human Rights and Equality Commission/Amárach conducted a survey of the general population in its Annual Poll 2021, in which participants were asked a range of questions regarding human rights. One third (32%) of all participants had witnessed or directly experienced racism in the last twelve months. Half of respondents disagreed with the statement “everyone in Ireland enjoy the same basic human rights”, with a significantly higher number of people who had witnessed racism (63%) disagreeing as compared to those that had not witnessed racism, or did not know if they had witnessed or experienced racism (43%). When asked to rank, on a scale of 1-5, if participants thought that the efforts made in Ireland to fight all forms of discrimination were effective, those with experience of or having witnessed racism (66%) were among the highest for rating efforts as not really/not at all effective. While many of the questions regarding accessibility of justice in the survey related to civil, rather than criminal proceedings,

participants were asked to respond to the statement “people with less money generally get a worse outcome in a legal challenge” on a scale from strongly agree to strongly disagree. A significant majority of the population as a whole (79%) agreed with the statement that people with less money generally get a worse outcome in a legal challenge, with 37% of those strongly agreement with the statement. Again, those who had experienced or witnessed racism were more likely to agree with the statement, with 86% agreeing. Thus, when an individual either experiences or witnesses racism, this seems to impact on their impression of how the justice system operates.

Access to justice in a global context: operationalisation of rights

In considering how constitutional and statutory rights are operationalised in practice, we believe it is useful to use “access to justice” as rights-based analytical and evaluative framework. At first glance, Irish law and policy provides much to be celebrated in this context. The right to legal aid, recognised as being constitutional in its origin, is of fundamental importance to accessing justice, and the reforms introduced by the Criminal Justice (Victims of Crime) Act 2017, for example, have set in place a range of supports for victims to promote their experiences through the criminal process. The simple recognition of rights, however, does not, as the Global Access to Justice Project states, “automatically imply their practical implementation.” Thus, for a system which is committed to providing for access to justice for all members of the community, a deeper and more textured analysis is required than the simple articulation as to which rights have been recognised as worthy of protection.

The Global Access to Justice Project builds on the work of Cappelletti and Garth, who conducted a comparative study on access to justice (1977), and, *inter alia*, categorised developments in the area of access to justice into three waves: the first wave involving provisions for legal aid; the second including more substantive and procedural reforms; and the third labelled by Cappelletti and Garth as the “access to justice” approach, which “goes *beyond advocacy*” and encourages experimentation in reforms, including in procedure, and alternative forms of dispute resolution (1977, p.222). Building on that research, the Global Access to Justice Project seeks to research and identify solutions to barriers to access to justice, “gathering the very latest information on the impact of the world’s major justice systems, analysing legal, economic, social, cultural and psychological barriers that prevent or inhibit many, and not only the poor, from entering and using the legal system.”

Though the Global Access to Justice project is still in the process of developing its work in these themes, particularly relevant to the seventh wave and the two named themes above, the Ljubljana Guidelines on Integration of Diverse Societies highlight the importance of understanding access to justice as more than the articulation of rights, particularly with respect to minority communities (OSCE High Commissioner on National Minorities, 2012). The Guidelines form part of a series of thematic Recommendations emerging from the Office of the high Commissioner on National Minorities of the OSCE. In relation to access to justice, the guidelines provide that States should develop a “comprehensive strategy and policies aiming to guarantee effective access to justice for all.” (p.59) Crucially, the Ljubljana Guidelines highlight trust in the system as vital in realising access to justice:

“Trust in an impartial and effective judicial system and the availability of accessible remedies regardless of legal status are vital to the integration of society ... Lack of trust in

the system or a perception that the system favours members of the majority undermines social cohesion, fosters alienation and can increase the risk of conflict, including of an inter-ethnic nature.” (p.59)

The Ljubljana Guidelines are necessarily wide in their scope, with access to justice just one theme amongst many. Thus, the Graz Recommendations on Access to Justice and National Minorities (OSCE High Commissioner on National Minorities 2017) are, we believe, centrally important and directly relevant to understanding access to justice in an Irish context with respect to Travellers in Ireland. Indeed, we would argue that many, if not all, of the principles are relevant when articulating and understanding the principles required to underpin and operationalise the right of access to justice more generally.

The Graz recommendations foreground the importance of the principle of non-discrimination, and the principles of equality in law and equal protection of the law. This requires that the law should not treat a person less favourably because they are a member of a minority group; requires that the State refrain from violating the rights of people in that state based on their identity; but also requires the State “to take positive measures to ensure that persons belonging to minorities can effectively obtain a remedy if their rights have been violated or need enforcing.” (p.6) Not only that, but it also requires access to a remedy if an individual’s rights have been violated or not enforced, to courts or other mechanisms such as human rights institutions. Thus, access to justice includes positive obligations (such as those included in section 42 of the Irish Human Rights and Equality Act 2014), as well as access to a remedy in case of breach or to support access to or enforcement of rights.

The ten Graz Recommendations on Access to Justice and National Minorities are as follows:

1. Access to justice for persons belonging to national minorities should be underpinned by the principles of the rule of law, non-discrimination and equality, including gender equality, the right to a fair hearing within a reasonable time by an independent and impartial body established by law, the right to legal assistance and the right to an effective remedy.
2. Measures to guarantee access to justice for national minorities should be broader than providing access to courts. States should establish, strengthen and fund independent human rights institutions that can secure effective remedies for all complainants, including persons belonging to national minorities.
3. States should ensure that when persons belonging to national minorities engage with judicial and national human rights institutions and take part in proceedings, they are able to do so in a language they understand, and preferably in their language, as well as in an environment that is respectful of their identity.
4. States should make legal assistance available to national minorities in a way that addresses the obstacles they face in accessing justice.
5. The composition of courts, tribunals, prosecution offices, law-enforcement agencies, correctional services, enforcement agencies (or bailiffs) and human rights institutions, should aim to reflect the diversity of the population at all levels.
6. To facilitate access to justice for national minorities, States should ensure that law-

enforcement agencies work to build trust with minority communities and enforce the law in an impartial and non-discriminatory manner, free of prejudice and gender bias.

7. Victim support services and witness protection measures should be sensitive to the needs of persons belonging to national minorities, and of minority women in particular.
8. States should ensure that court orders and judgments affecting persons belonging to national minorities are executed effectively, impartially and within a reasonable time.
9. States should ensure that persons belonging to national minorities held in detention or imprisoned are treated with humanity and respect for their identity.
10. States should, as a matter of urgency, provide effective redress to persons belonging to national minorities who have suffered serious human rights violations as a result of inter-ethnic conflict.

The New Zealand Law Society advocates the use of what it describes as a model of person-centred access to justice (New Zealand Law Society, 2020). In articulating its definition of a person-centred approach to access to justice, the New Zealand report states that such an approach, “... seeks to reflect the diverse needs of individuals when they encounter the systems aimed at delivering justice”, and acknowledges that barriers to accessing justice exist in part because of people’s circumstances, including “how vulnerable they may be because of discrimination, disability or from other causes.” (2020, p.4) The Report highlighted the role that institutional racism plays in building barriers to accessing justice, especially for minority communities. Thus, according to the New Zealand Law Society, it is not simply the case that those from minority communities need particular supports to access justice given, for example, language or cultural differences: rather, institutional racism builds barriers which prevent those communities from accessing justice.

The Report divides the barriers to access to justice into two main categories: cultural/social (which includes poverty, discrimination, literacy, and education) and institutional (including insufficient governmental resources to guarantee, or facilitate, access to justice; the organisational structure of justice institutions; limited legal assistance and representation to everyone; and the lack of enforcement of decisions). It states that these societal and institutional barriers “can overlap to create intersectional barriers such as lack of trust in the justice system, or corruption.” (p.10) The report lists a range of interventions designed to address the more significant barriers to accessing justice. With respect to cultural and social barriers, for example, the initiatives recommended include the development of cultural awareness and bias training for professionals involved in the justice system (including the judiciary, court and tribunal staff, lawyers), as well as programmes of work to transform the criminal justice system, with a strong focus on more equitable outcomes for Māori.

Irish Travellers’ Access to Justice

Drawing on the work of the New Zealand Law Society (New Zealand Law Society, 2020), we adopt a person-centred model of access to justice. In line with the *Graz Recommendations on Access to Justice and National Minorities* (OSCE High Commissioner on National Minorities 2017), the *Global Access to Justice Project* (Global Access to Justice Project nd) and the *Ljubljana Guidelines on Integration of Diverse Societies* (OSCE High Commissioner on National Minorities 2012), we understand access to justice to requiring sufficient trust in the system of justice and

those who operate it to engage with it; awareness and understanding of one's rights within that system; accessible processes and supports; being heard, being treated respectfully, and being treated fairly. At a fundamental level, as is stated by the New Zealand Law Society, it is not simply the case that those from minority communities need particular supports to access justice, for example, language or cultural differences: rather, states must guard against and address barriers associated with institutional racism which prevent those communities accessing justice:

“Systemic racism in our institutions (including the justice system) perpetuates unjust outcomes. It can also lead to feelings of alienation, mistrust, fear and lack of participation in justice processes. The disproportionate impact on tangata whenua is a key focus of recent Government reports.” (New Zealand Law Society 2020, 12).

Thus, we argue that it is not the responsibility of minority communities to be more trusting of the criminal justice system, or to compensate for the barriers to access that this creates. Rather, it is the responsibility of the State, and particularly those who work in the criminal justice system to *earn* the trust of minority communities. Trust-building requires reforms which address the practices which engender mistrust. More generally, it requires an acknowledgement of the permeability of our criminal justice institutions to the impacts of prejudices and inequalities that pervades wider society. Any misconception that are institutions are impervious to such realities would be a barrier to making them so.

The remainder of this report documents how Travellers in Ireland perceive and experience criminal justice institutions: it provides an evidence-base for change, designed to inform how the right of access to justice can be realised for all.

Guiding principles

A guiding principle of this work is that minority communities are experts on their own experiences and needs should be involved in identifying and generating solutions to blocked access to justice. At the same time, the research recognises that barriers to accessing justice are located in criminal justice processes and structures, thus the responsibility for reform lies with the institution of criminal justice.

Chapter 4: Travellers and Irish Criminal Justice Institutions

In 1945, the then Minister for Justice proclaimed ‘Tinkers are a nuisance ... They give trouble in some areas but I do not think they are a very big problem yet. The police have instructions to pay special attention to them’ (Minister for Justice 1945, quoted in Kilcommins et al. 2004, p.67). As a stigmatised ethnic minority and suspectified community, Irish Travellers have a history of difficult relations with the institutions of criminal justice, which is by no means exclusive to the jurisdiction of Ireland, and which has historically evidenced patterns of racial profiling, overpolicing and underpolicing (Drummond 2007). Costello (2014) notes that the overrepresentation of Travellers in the prison system parallels the overrepresentation of minority ethnic groups and indigenous minority ethnic groups in penal systems internationally. This chapter provides a brief introduction to the historic and contemporary relationship between Travellers and the criminal justice system in Ireland, drawing on interviews with individuals from Traveller organisations.

Mulcahy and O’Mahony (2005, p22), based on interviews with gardaí and Travellers conducted between 2002 and 2004, described relations between Irish Travellers and An Garda Síochána to be “extremely difficult and contentious”. Mulcahy (2012) again documented Travellers distrust of gardaí and Bracken (2014) extended this to distrust of the criminal justice system as a whole. The 2004 An Garda Síochána Human Rights Audit characterised the relationship between Travellers and gardaí as difficult and defined by mutual suspicion. Of over 800 gardaí surveyed for the purpose of that audit 35% responded that the relationship between An Garda Síochána and Travellers was poor, and 13% rated their personal relationships with Travellers as poor. Both organisational and personal relationships with Travellers were characterised by garda respondents as the worst among all minority groups addressed by the survey (Ionann Management Consultants Limited 2004, p.84).

Mulcahy (2012, p.309) notes that as traditional nomads, Travellers’ historical experience with the institutions of criminal justice “largely involved efforts to control their mobility, and ensure they remained in locations which would not cause concern for settled people.” He asserts that “... despite the expansion of legal protections and promotion of the doctrine of ‘policing by consent’, this relationship has remained largely unchanged to the present day” (2012, p.309). Participants to this research concurred with this assessment.

“There is also a, a core of racism within sections, particular sections of Irish society and the Gardas. ... In a way, it’s almost understandable that it is given the way that the state has used the law to enforce its policies on Travellers and known that it was not treating Travellers equally at the same time.” (Interviewee from Traveller organisation)

“So because of that, the relationship, we’ve tried through the police reforms and other arenas ... to build up the relationship with the gards and the settled people – our Travellers and the community gards in particular – but it seems to be a very, very long process, and it’s a slow process, and it’s probably because of the historical relationship between the gards and Travellers.” (Interviewee from Traveller organisation)

The Policing Authority has praised An Garda Síochána for recent policy developments in respect to diversity noting the innovation of the Diversity and Inclusion Strategy, a Diversity Forum

and the enshrining of the principle of non-discrimination as central to the Code of Ethics. They caution however that “The issue in how policing is being experienced in these communities does not derive from an absence of policy or stated intent that they receive an effective policing service. It derives from the experience of interactions with some members of the Garda Síochána – the attitude, language and demeanour of the individual Garda - which erodes the goodwill generated by the efforts of their colleagues.” (Policing Authority 2021, p.16)

A number of interviewees from Traveller organisations described good relationships with particular gardaí or between their organisation and gardaí in their particular area, however the dependence on particularism over universalism is apparent in the data.

“With relationships with one particular - a few particular gards in the community - that’s a better relationship, but that’s not about a relationship as a member, and it has to be an institutional relationship. Because we know that gardaí get shifted from one area to another area and once then that relationship’s gone and you someone new coming in.” (Interviewee from Traveller organisation)

The vast majority of interviewees from Traveller organisations described the relationship between gardaí and Travellers generally as negative. While, Mulcahy (2012, p.319) previously reported that garda interviewees characterised the relationship as “usually uneasy and occasionally hostile”, this research finds that Travellers most commonly characterise their perception of gardaí generally (as opposed to particular gardaí) as one of fear:

“... [G]enerally I would say it’s a relationship of ... fear, and whether it’s ... whether there’s a real reason to be fearful or perceived reason to be fearful, something that’s just inherited, we don’t know, but there is definitely an anxiousness and fear about the gards.” (Interviewee from Traveller organisation)

“... I’ve never ever felt that ... the gards was there for my protection. I always felt fear. Now, I never done anything wrong. I never broke the law or anything, but to me it was you fear the gards you - they’re not there for your protection. You fear them.” (Interviewee from Traveller organisation)

Both Mulcahy (2012) and Bracken (2014) link Travellers low levels of trust in the criminal justice system to their observations of the treatment of their community by its institutions. Bracken (2014, p.61) recounts criminal justice professionals’ perception that Travellers are subject to individual and institutional discrimination in the criminal justice system.

Two interviewees from Traveller organisations spontaneously and separately equated the policing of Travellers in Ireland to the policing of Catholics in Northern Ireland by the RUC, although for different reasons – in the first case underpolicing and in the second case overpolicing:

“... Northern Ireland is as close as I can see, for people who don’t feel protected ... Cause people, they wouldn’t feel they were protected by the gards and didn’t feel that the gards were going to interfere, and in a lot of cases they didn’t, and so a family was very vulnerable.”

So ... they did the best they could and they said, well, look, you know we need to kind of be able to protect ourselves. We have this situation then where people are actually you know, kind of responding to it, but ... they weren't protected by the State, you know. And the same thing, something similar thing happened in Northern Ireland in a different way in terms of you know where that's where you had – you know, communities having to say 'Well look we need to protect ourselves if the state isn't there to protect you.' (Interviewee from Traveller organisation)

"I'd describe the relationship [between Travellers and the gardaí as] similar to that between the RUC and the nationalist community in the north ... The lack of trust. You know, the way the community was treated, that when the gards did come down, they usually came down in force. You know, they didn't see Travellers as victims. You know, there seemed to be no victims in the Traveller community as far as the Gards was concerned. It was they're all perpetrators, you know, that they didn't mind who they arrested, and I've seen that happen, you know?" (Interviewee from Traveller organisation)

With respect to the courts, perceptions of Travellers' access to justice were similarly pessimistic. A small minority of the individuals from Traveller organisations interviewed for this research were of the view that judges are impartial in engaging with Travellers:

"I think judges are a little bit more impartial, and when I say that, I mean that they're there to uphold the law, and within the parameters of what the law is they are very respectful ... and I think that's the experience that most Travellers." (Interviewee from Traveller Organisation)

Some, who asserted a more nuanced position, cited media reports about individual judges' expressions of anti-Traveller sentiment:

"Again, you can't stereotype them all the same. Yeah, we've all read the headlines and we've all seen you know that some judges would have been perceived to be much, much harsher than others..." (Interviewee from Traveller organisation)

Many, however, were of the view that the relationship between Travellers and judges is of concern generally. One interviewee characterised the relationship as:

"Not good. No, it's – it's really, really bad. Really, really bad." (Interviewee from Traveller organisation)

"My impression from what I've read, from what I've heard, and from my engagement with people who have been through the courts is that the judges kind of – are not that sympathetic to Travellers, and some of them are kind of – not only are they not sympathetic, they're quite racist ... There's a historical racism there for Travellers that's gone back a very long time ... So I think that's been – that's in – in the institutions. I think it's also under judicial

institutions as well. I don't think justice is blind." (Interviewee from Traveller organisation)

As in discussions of Travellers' relationship to gardaí, this interviewee characterised Travellers' attitudes towards the wider criminal justice system, including the courts, as fearful.

"Interviewer: Can I ask how you think the relationship between Travellers and judges is then?"

Interviewee: ... they're very well educated, and anything they've ever heard about me has been negative and wrong, so I have no hope here ... I have actually seen Travellers going to the court system and ... as soon as they walk in the door they fall apart because the fear and the - there's nothing of equality ... There's nothing of an understanding of a community. This man is going against me or woman is going against me and that's it." (Interviewee from Traveller Organisation)"

This fear should be interpreted in the context of the overrepresentation of Irish Travellers in Ireland's prison population, which has been documented on multiple occasions, including by the Costello (2014), Kennedy et al (2005) and Linehan et al (2002), with Kennedy et al underscoring overrepresentation both among remand and sentenced prisoners. In 2022 Doyle et al (p.28) published an analysis of prison data which again found that Irish Travellers were over-represented, "comprising almost 8 per cent of committals relative to their 0.7 per cent of the total population in Ireland". The authors also document the overrepresentation of Travellers in the youth justice system noting that "8.6 per cent of Travellers were aged under 18, compared to just 3.7 per cent of the settled-Irish majority group." (Doyle et al 2022, p.29).

Conclusion

The historic relationship between Travellers and the Irish criminal justice system has been shaped by the role of its institutions in enforcing laws which have contributed to the decline of the traditional Traveller way of life, threatening Traveller culture. The legitimacy of legal systems rests upon the perception that the system upholds the shared values of its people and, in modern democracies, the perception that the system offers equality under the law (Tankebe 2014). Ireland's legal system has historically given primacy to the values of settled people over nomads. This is a difficult foundation upon which to build trust in the institutions of the criminal justice system. The individuals from Traveller organisations whom we interviewed did not, however, justify pessimistic assessments of their community's relationship to the criminal justice system solely by reference to the historical or contemporary treatment of nomadism. Rather, in characterising the relationship as one built on fear, interviewees from Traveller organisations reference concerns regarding the contemporary treatment of Travellers, as an ethnic group, by individual criminal justice professionals and, in some instances, by the institutions of criminal justice.

Chapter 5: Recognising and Naming Anti-Traveller Racism

Introduction

This chapter situates the findings of this report in a broader social context, which recognises the prevalence of anti-Traveller racism in Irish society generally. In light of the longstanding denial of Traveller ethnicity by the state, which was reversed only in 2017, it also recognises the historic denial of anti-Traveller racism as racism (McVeigh 2016) and hence underscores for the reader, particularly the international reader, (a) the presence of racist slurs in the Irish vernacular which specifically target the Traveller community and (b) the impact of the use of such racist epithets on Travellers. Finally, this chapter documents the use of such racist slurs by members of the criminal justice institutions who are the focus of this study. Where those who work in criminal justice institutions use language which is explicitly racist, it reinforces, as the New Zealand Law Society (2020) would state, “feelings of alienation, mistrust, fear”, impacting on access to justice.

Public attitudes

Widespread anti-Traveller racism has been documented by many Irish researchers (cf MacGréil, 2010). This section sets out recent findings on public attitudes to Travellers produced by the EU funded project *PolRom: Identifying evidence-based methods to effectively combat discrimination of the Roma in the changing political climate of Europe*, funded by the Rights, Equality and Citizenship (REC) Programme (2014-2020) of the European Union. This project conducted a survey with a nationally representative sample of the Irish population in 2019 with the specific purpose of better understanding the factors that contribute to anti-Traveller racism. Conducted more than two years after the recognition of Traveller ethnicity by the Taoiseach of Ireland, this survey found that more than half of the survey respondents did not acknowledge the existence of Traveller culture. Almost a quarter of the sample agreed with negative statements about Travellers and an additional 42% indicated that, at the least, they would not condemn such statements. 17.6% of respondents stated that they would be uncomfortable having a Traveller as a work colleague, and 43.2% did not want a family member to be in a relationship with a Traveller. Almost a quarter of the sample, 23.6%, “endorsed hostile, anti-Traveller political discourse” (O’Connor et al, p3).

In interpreting ITAJ data we encourage the reader to reflect on the evidence of embedded anti-Traveller racism in Irish society and Mulcahy’s (2012) point that political, media and public discourses have long stereotyped Travellers as criminal and Traveller culture as criminogenic. As such those working in criminal justice institutions, being drawn from the general population cannot be expected to be impervious to prejudices and stereotypes embedded in our culture: “... there is nothing to suggest that the ‘genetic make-up’ of those working within criminal justice systems ‘is such that they are immune or protected from prejudice or racism or assumptions and stereotypes’” (Drummond 2007, p.315). Hence, Mulcahy and O’Mahony (2005) found that interviews with police officers highlighted “a strikingly negative depiction of Travellers that circulates within police culture (one that also finds close parallels within the attitudes of settled communities generally)” (p.27). They elaborate that “This hostility towards Traveller is based on a view that mirrors the dominant social imagery of Travellers as being grossly irresponsible, innately criminal and violent, and of little consequence to the settled population” (Mulcahy and O’Mahony 2005, p.27-28). The 2004 An Garda Síochána Human Rights Audit concluded that “Some statements made by senior officers and the organisational responses to some groups,

such as Travellers ... could be said to amount to institutional racism” (Ionann 2004, p.128). There is an onus and indeed a public sector duty on criminal justice institutions to prevent individual and cultural prejudices impacting on the services experienced by Travellers and to ensure that they are absent from the organisational culture.

Racist slurs and their impacts

“K*****r is a racist term” (ENAR 2013) which is deeply offensive to the Traveller community. The racial slur is arguably ‘place-specific’ to Ireland. Interviewees from Traveller organisations described the impact of the racial slur when used against Travellers, particularly its impact on children, and when it is used by those in authority:

“But I know that is the most degrading - awful, awful. ... You actually do believe you are the dirt under somebody’s shoe ... It’s not a word, it’s a whole thing. It’s everything about it. ... You’re made feel as if you’re totally unworthy. You’re nothing, ... You have no value to nobody or to nothing. ... we should be grovelling for to even be allowed speak. We should be grovelling to be allowed exist. We should be thanking these people for letting us be here.” (Interviewee from Traveller organisation)

“... like since I was a small child, you know it’s derogatory. You know it’s bad and you just get that pain the minute you hear it. And that’s the way it makes me feel. And that’s the way it makes my husband feel. And same with my children. But yeah, it’s just it’s the worst word that can ever be used against a Traveller. And to hear people saying it, and especially people of authority like specially with gards ... just like a kick in the teeth to you.” (Interviewee from Traveller organisation)

In his research Mulcahy (2012, p.315) found: “Interviewees spoke of gardaí calling them ‘k*****rs’, its rhyming alternative ‘cream cracker’, or other derogatory terms. One garda officer noted that official discouragement of the term ‘k*****rs’ had led some officers to substitute it with ‘stills’, on the basis that Travellers are still ‘k*****rs’.” A number of participants to the ITAJ survey recalled gardaí using explicitly racist language to Travellers while performing policing duties, which ranged from using the ‘k word’ during stop and searches, to using the racist slur in the course of arresting Travellers.

*“Participant: “And, just saying that ‘it’s always the same with ye dirty k*****rs, ye never have nothing, and things like that.*

*Interviewer: Em, so, I just want to ask you this again, did that Gard actually say, use the word k*****rs to you?*

Participant: He did, yeah.” (Survey respondent)

*“And he said to me, is that the k*****r [identifying information] ? ... and he said, ‘Yeah’, you know what I mean? ‘K*****rs, cream crackers. That’s who ye are.”* (Interviewee from a Traveller Organisation)

The use of racist slurs by gardaí is discussed again in chapter 9 in relation to practices that contribute to provocation and escalation. This interviewee from a Traveller organisation spoke of their physical response to the K word when used by those in authority:

“... you hear that word and then they call it to me, and I put up the defences and I react my angry way and my annoyance – I get really emotional. I get upset so everything they said about me, the loud, arrogant, ignorant, unruly Traveller is there in front of them. So, they’re right you know, just that’s the awful thing, so they use this powerful tool by using this awful word that they see as a tool against me and other Travellers to get a reaction to prove that they were right all along.” (Interviewee from Traveller organisation)

The use of racist language is not exclusive to members of the gardaí. Beirne and Jaichand assert that: “The Irish state has failed to sanction judges who made racist remarks in court in high profile instances in 2003. While this inaction has serious potential to undermine the confidence of people from minority ethnic communities in the judiciary, it may also play a considerable role in perpetuating popular racism, given the role of the judiciary in ruling on what is acceptable behaviour” (2006, p 6). In the early part of the last decade, there were a couple of highly publicised incidents of judges displaying overt racism towards racialised and ethnic minority communities in courtrooms (see Joyce, 2018). In 2012, Judge Seamus Hughes of Athlone District Court was reported as having said of a defendant:

“Nobody has indicated it to me, but I suspect he comes from a certain ethnic background that would give him even more form given the type of behaviour in which some of them engage... As I’ve described it before, they are like Neanderthal men living in the long grass, abiding by the laws of the jungle.”

In 2013 Judge Geoffrey Browne used the racial slur k*****r. He used the term to describe those who commit burglaries and advised people to use the maximum force against them.

A minority of ITAJ respondents who had been in court as a defendant in the five years prior to the survey stated that they had heard anti-Traveller language used in the court or courthouse. The source of this language included a prosecutor, people working in the courthouse, Gardaí, or someone else. One respondent who was in court as a victim in the five years prior to the survey stated that they heard the judge use anti-Traveller language. A small number of participants to our research recalled racist stereotyping from the bench in the five years prior to the survey.

“... my daughter was waiting with her solicitor, there is a case being heard and the case that’s being heard is about a woman that breached covid restrictions and she was some place she should not have been so the judge was giving out to her and he gave her a fine and he knew that on the list ... that Traveller discrimination case was the next case so then he started sprouting all this thing ‘No more than the Travellers thinking that they can get away with everything and Travellers having parties and Travellers doing this and that big Traveller wedding...’ (Survey respondent)

“Yes I would have had very negative experiences ... again the generalisation that was used the word member of the Travelling community or Traveller, there was no one individual doing something wrong, it was an entire community.” (Survey respondent)

Doyle et al (2022) describe many of the accounts of racism in the Irish prison system as relating to covert and coded forms of racism. Many participants to this research also recounted this type of coded racism within the last five years:

“... some of the language that probably the judges would use in the courtroom it would be ‘ye people’, ‘ye people are up here again’ so that’s a word – straight away they are identifying that we are ‘ye people’. You know, coming from the Traveller community.” (Interviewee from Traveller Organisation)

“sometimes they might even be so improper to make statements about ‘your crowd’, or ‘your crowd’, or you know, ‘you’re all the same’ kind of thing, yeah?” (Interviewee from Traveller Organisation)

Conclusion

In contextualising the recommendations of the Stephen Lawrence Inquiry, Macpherson concluded:

“... that there is a striking and inescapable need to demonstrate fairness, not just by Police Services, but across the criminal justice system as a whole, in order to generate trust and confidence within minority ethnic communities, who undoubtedly perceive themselves to be discriminated against by ‘the system’. Just as justice needs to be ‘seen to be done’ so fairness must be ‘seen to be demonstrated’ in order to generate trust” (Macpherson 1999, para 46.30)

The use of racist slurs and expressions of racist stereotyping by criminal justice professionals in the course of their work is directly contradictory to the goal of demonstrating fairness. This goal is further undermined where those professionals are neither rebuked nor challenged by other criminal justice professionals present. Their silence understandably reinforces perceptions that it is not only the individual, but the system, that is racist. The apparent impunity with which racist language and comments can be made further reinforces such beliefs. Macpherson’s (1999) caution that justice must be seen to be done is equally relevant to the need for those criminal justice professionals who overtly engage in racist stereotyping and use racist slurs to be transparently held accountable.

Chapter 6: Travellers' Perceptions of Criminal Justice Institutions

Introduction

The relationship between criminal justice institutions and Travellers has long been recognised to be problematic. The high levels of trust and confidence enjoyed by An Garda Síochána among the general population are not reflected in the Traveller population, and as we have noted in Chapter 4 of this report, the 2004 An Garda Síochána Human Rights Audit characterised the relationship between Travellers and gardaí as difficult and defined by mutual suspicion.

This view was echoed by some of the interviewees from the Traveller organisation who participated in our research:

"The relationship between Travellers and gards in this country? I don't think it's very much trust on both, from both sides ... What I know is Travellers don't really have much trust in gards, you know, and gards don't trust Travellers and they don't ... they just they look down at Travellers. They have a very bad opinion of Travellers. That's the that's the impression I got anyway. They ... do, they have a bad opinion of Travellers." (Interviewee from Traveller Organisation)

Some interviewees from Traveller organisations explicitly described the criminal justice system as institutionally racist; others pointed to the fact that criminal justice institutions have been used to enforce the assimilationist policies of the State and laws criminalizing the traditional Traveller way of life as a cause of the poor relationship:

"Institutionalised racism has been there for generations. You know, I think there's institutionalised racism in – in – in the gards and in the judiciary." (Interviewee from Traveller organisation)

"There is also a, a core of racism within sections, particular sections of Irish society and the gards. It is absolutely without question within the gards as well, you know, and – and that's not to be stereotyping and blaming ... In a way, it's almost understandable that it is, given the way that the State has used the law to enforce its policies on Travellers and known that it was not treating Travellers equally at the same time." (Interviewee from Traveller organisation)

In order to inform our understanding of how and when Travellers access justice, we first looked to how Travellers *perceive* criminal justice institutions. The first block of questions asked of members of the Traveller community in the ITAJ survey related to Travellers' perceptions of the gardaí, the courts and judges, and in some instances, juries. We drew on a variety of questions asked in the European Social Survey and the Garda Síochána Public Attitudes Survey (GPAS) as a means of allowing us to draw comparisons between a representative sample of the Traveller population as compared to a representative sample of the general population. Only data from the 2019 iteration of GPAS is available.

Trust in the Criminal Justice System

The Fundamental Rights Agency (FRA 2020) survey of Travellers and Roma across six countries, conducted in 2019, found that average trust in the police among Traveller respondents in Ireland was 3.5 on a scale of 1-10. According to FRA (2020) trust in the police among Traveller respondents in Ireland was lower than among Traveller and Roma respondents in Sweden, the UK, Belgium and France, and higher only than in the Netherlands. FRA (2020, p.39) note that Travellers' trust in the legal system is also low and of a similar pattern to trust in the police.

We asked ITAJ survey respondents to tell us, on a score of 0-10 how much they trust both the gardaí and the courts. On a scale of 0-10 where 0 equates to no trust and 10 equates to complete trust, average trust in the gardaí was low among Travellers with mean trust of 3.12. 35% of ITAJ respondents stated that they have no trust in the gardaí and less than 5% stated that they have complete trust in the gardaí. Mean trust in the gardaí of 3.12 among Travellers compares to mean trust in the gardaí among the general population of Ireland of 6.3 according to the latest data available from the European Social Survey (where only 3% of the sample had no trust at all in the police) (ESS 2018). In the European Social Survey, people in Ireland who report being a member of a group that is discriminated against have a mean trust in the police of 5.3 (ESS 2018).

With respect to the courts, on a scale of 0-10 where 0 equates to no trust and 10 equates to complete trust, average trust was low among Travellers with mean trust in the courts of 3.33. 30% of ITAJ respondents stated they have no trust in the courts and less than 5% stated that they have complete trust in the courts. Mean trust in the courts of 3.33 among Travellers compares to a mean trust in the legal system among the general population of Ireland of 5.25 according to the latest data available from the European Social Survey where only 6% of the sample had no trust at all in the legal system) (ESS 2018). In the European Social Survey, people who report being a member of a group that is discriminated against have a mean trust in the legal system of 4.44 (ESS 2018).

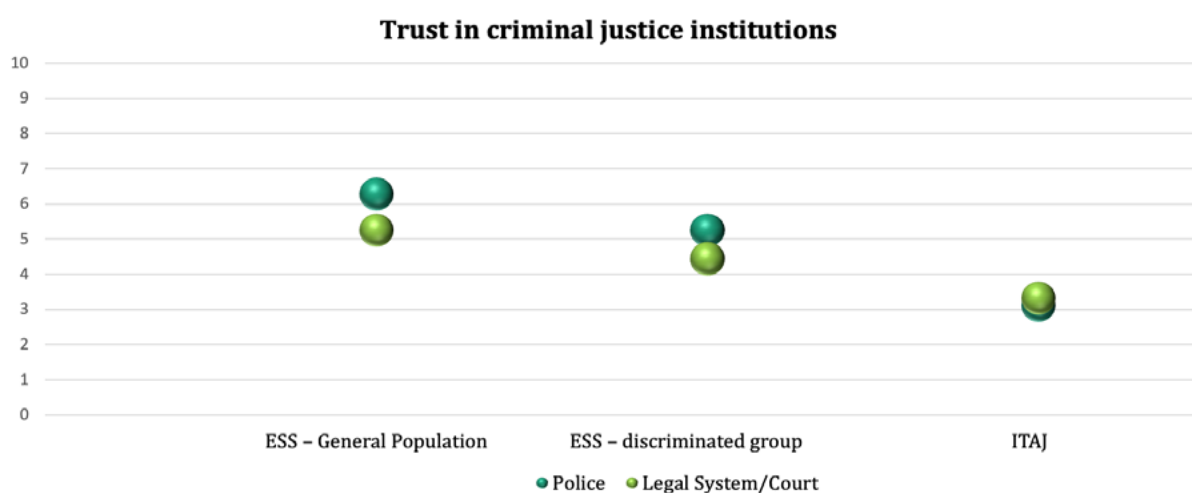


Figure 1: Trust in criminal justice institutions as measured in ESS and ITAJ

Fairness of treatment

Kunard and Moe (2015, p4) note that “Perceptions of fairness are driven not only by outcomes but also by the fairness and consistency of the processes used to reach those outcomes” and often the latter is more important to evaluations of fairness than the former.

The Garda Public Attitudes Survey explores whether the general population are of the view that the gardaí treat everyone fairly – that is, “whether they treat everyone fairly regardless of who they are” (GPAS 2019: 42). In the general population the answer is extremely positive – 71% of the general population agree that the gardaí treat everyone fairly regardless of who they are, with no notable difference across gender or social class groupings. When presented with precisely the same statement, the Traveller population answers very differently. In response to the same statement, only 8% of ITAJ respondents agreed, and more than 80% disagreed.

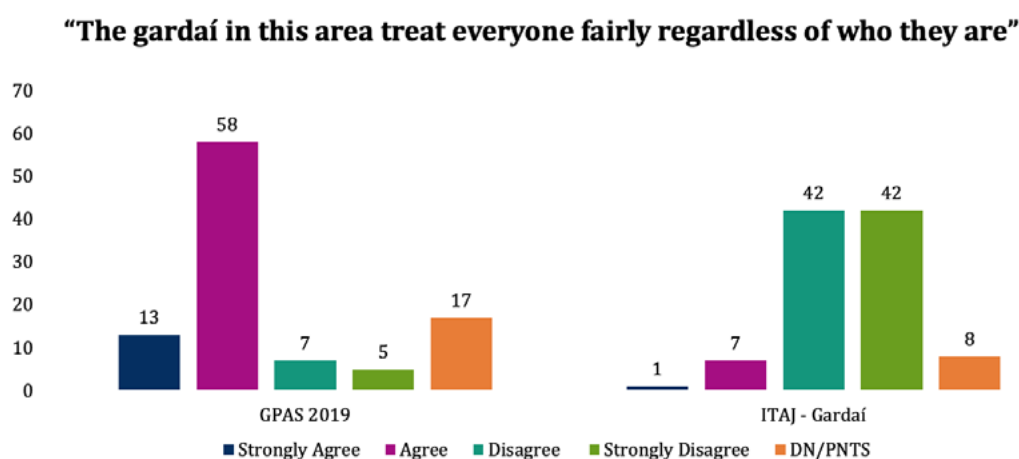


Figure 2: Perceptions of fair treatment for all by gardaí as measured by GPAS 2019 and ITAJ

We then adapted that same statement from GPAS to judges and then juries. We do not have comparative data for judges and juries from the general population in Ireland. However, the European Commission Flash Eurobarometer 2022 found that the general population’s perception of the independence of the judiciary in Ireland, which is key to trust, was higher in Ireland than the EU average. In fact, 73% stated that they would rate the justice system in Ireland very or fairly good in terms of the independence of judges and courts, compared to 53% across 27 EU member states.

On the other hand, when presented with the statement that “judges in this area treat everyone fairly regardless of who they are”, 18% of Traveller agreed and 72% disagreed. 15% of Travellers agreed that juries treat everyone fairly regardless of who they are and 61% disagreed.

“... in this area treat everyone fairly regardless of who they are”

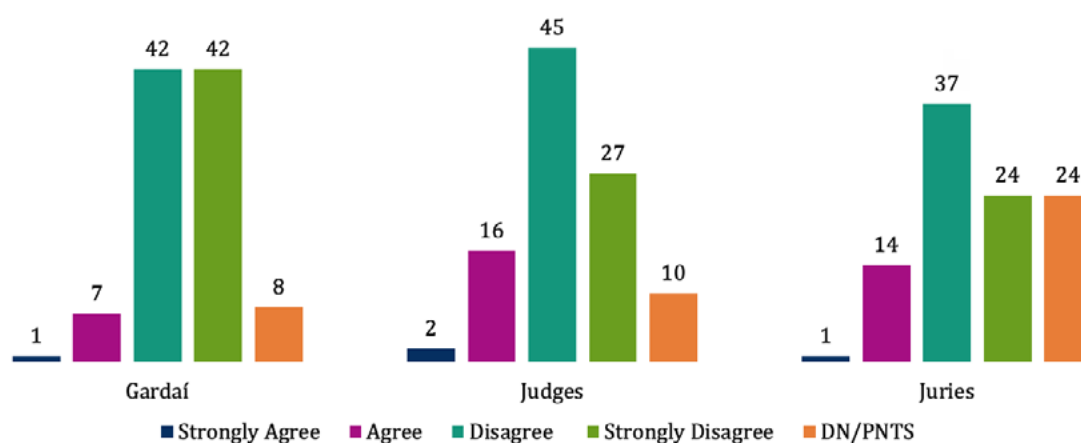


Figure 3: Perceptions of fair treatment for all by gardaí, judges and juries as measured by ITAJ

We note that focus groups with Irish Travellers conducted in 2019 by the Traveller Equality Justice Project (2022 p.29) documented participants’ “lack of trust in Court system and ... possible issues with racism or discrimination within the Judiciary.” They assert a general distrust of the system, including of judges, to uphold Travellers’ rights.

Mulcahy (2012) explains that Travellers feel treated less well compared to settled people, perceiving that in disputes with settled people gardaí invariably take the part of the sedentary majority and respond disproportionately to Travellers engaged in such conflicts. Likewise, Beirne and Jaichand (2006, p.36) found that “... it was felt that in incidents involving a settled person and a Traveller, the Gardaí seem to operate under the presumption that the Traveller is at fault.” Although Mack and Roach Anleu (2010, p.140) note that “Both the institutional-positivist and the fair-treatment conceptions of legitimate judicial authority rest on the core value of impartiality”, some interviewees from Traveller organisations participating in the ITAJ research raised this issue of impartiality extending its application to judges, and to juries.

“It takes longer for the gards to come maybe to the scene to the incident, whereas if a Traveller was having an argument with a settled person, they may be on the scene a lot quicker because protecting that settled person, he assumed straight away it’s the Traveller is the instigator in the act.” (Interviewee from Traveller organisation)

“There is a bias in the court that the judge has, you know, the language that judges have used to and towards some Travellers just unbelievable. They have their own bias for Travellers. So how can you have a fair and open hearing when you have a judge that can be biased or prejudiced?” (Interviewee from Traveller organisation)

“I mean the judges and the jury, and juries as well and they’re supposed to be judging as our peers, they’re not really our peers, it’s hard to be judged by people that knows nothing about us and they just seen negative things constantly in the media.” (Survey respondent)

One interviewee who had extensive experience supporting Traveller defendants in criminal cases, questioned whether Travellers can consider juries comprised exclusively of settled people a jury of peers:

“I’ve never saw one Traveller – because we’ve often had this discussion – if you’re meant to be tried by your peers why are there no Travellers? And why is there no Traveller on the jury? ‘Cause my peers are the Travelling community, people from within my community, I’ve never seeing one Traveller [sitting on a jury].” (Interviewee from Traveller organisation)

Speaking to the question of impartiality, Travellers overwhelmingly perceive both Gardaí and judges as more strict with Travellers than settled people. 89% of the ITAJ survey respondents believed that Gardaí are more strict when dealing with Travellers compared to settled people.

In your opinion, how strict are gardaí when dealing with Travellers compared to when they are dealing with settled people?

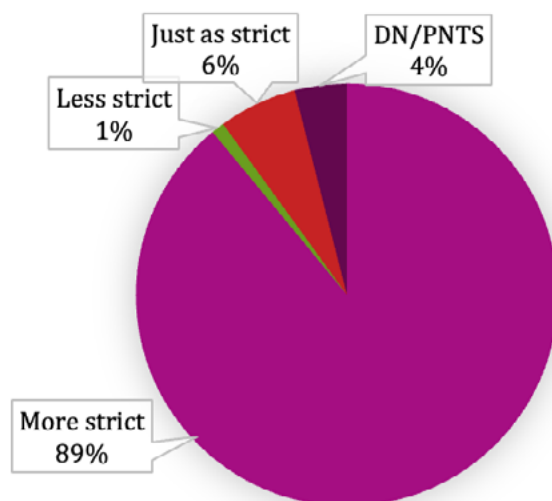


Figure 4: Strictness of treatment by gardaí of Travellers as measured by ITAJ

Respondents answered similarly with respect to strict treatment from judges: 82% of the ITAJ survey respondents thought that judges are more strict in dealing with Travellers compared to the settled majority.

In your opinion, how strict are judges when dealing with Travellers compared to when they are dealing with settled people?

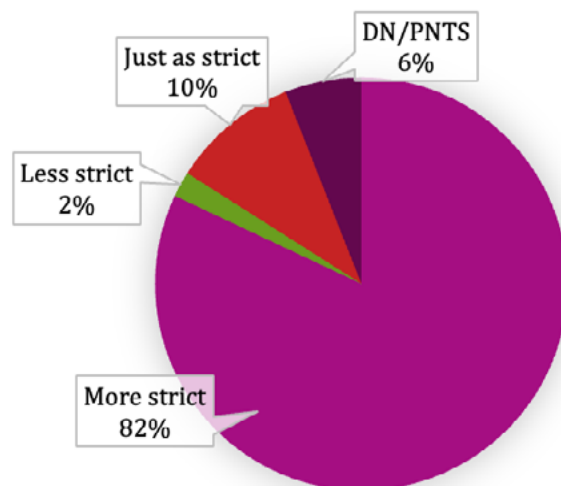


Figure 5: Strictness of treatment by judges of Travellers as measured by ITAJ

Respectful treatment

International research cites the importance of respectful treatment to positive encounters with law enforcement, to legitimacy and to compliance (cf Mastrofski et al. 1996; McCluskey 2003; Dai et al. 2011). Judges do not require consent to ensure compliance, however, the legitimacy of the judge is bound up with impartiality and rationality. Thus, displays of disrespect which are directed not at the individual but their ethnicity which speak to bias, undermine the legitimacy of the office holder in the eyes of those who are subject to such prejudice, even if their compliance is guaranteed (cf Bergman Blix and Wettergren 2016; Marchetti and Ransley 2005).

We asked ITAJ respondents to indicate their level of agreement with the statement that gardaí in their area treat Travellers with respect. As context, the Garda Public Attitudes Survey (GPAS) finds that 95% of the general population agree, of which 23% strongly agree with the statement that “the gardaí would treat you with respect if you had contact with them for any reason” (GPAS 2019: 42). More than 90% of ITAJ respondents thought that Gardaí do not treat Travellers with respect; 75% felt the same way about judges.

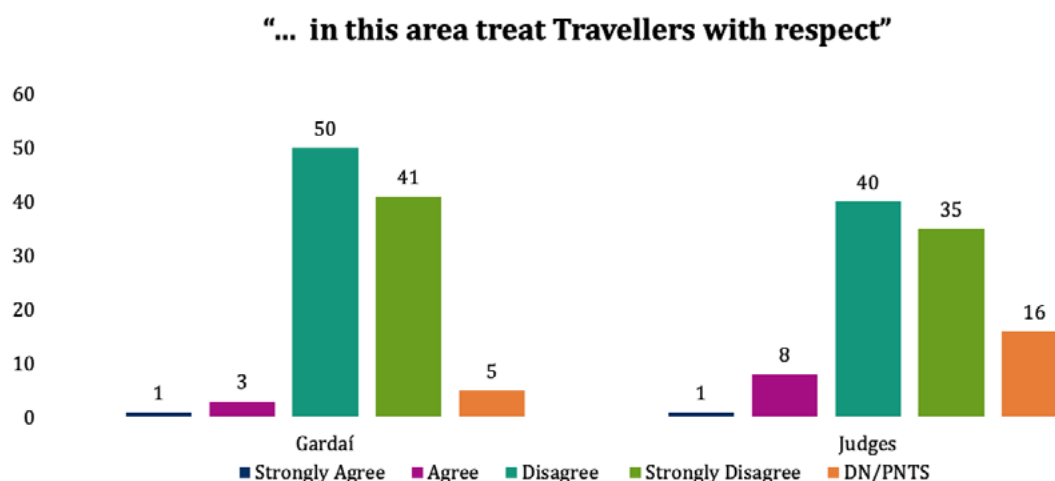


Figure 6: Respectful treatment by gardaí and judges of Travellers as measured by ITAJ

The findings of the ITAJ research regarding gardaí reflect the assessment of the Policing Authority:

“The relationship between policing and the Traveller Community is, from what the Authority has consistently heard from that Community – strained, and the police service is not one on which many members of Traveller Community believe can be relied on for service or to be treated with respect.” (2002, p.16)

According to Stoutland (2001) respect is a fundamental to trust in the police. Bracken (2020) documents prison officers views that when they treat Travellers with respect, they receive respectful treatment in return.

Three quarters of ITAJ respondents thought that judges in their area do not treat Travellers with respect. Although, disrespect may be demonstrated in many ways, we note that The Travellers Equality Justice Project, which conducted research with Traveller women in 2019, notes:

“The majority of those surveyed reported that they had experienced prejudiced or racist remarks from the bench during their interactions with the Court’s system (both civil and criminal).” (TEJP 2021 p.8).

More generally in its work the Travellers Equality Justice Project (TEJP) notes:

“ ... issues within the legal system as reported by Travellers involve racist comments and statements made by both practitioners, court staff and unfortunately, also by members of the judiciary. The TEJP has received complaints about such occurrences within both civil and criminal cases at both the High Court and District Court levels. This speaks to the ongoing debate around centralised judicial training and monitoring to ensure that

racial discrimination has no place within the Court room” (TJEP 2021 p.11)

The project recommends, in addition to judicial training, “enhanced monitoring and recording of District Court cases” (TJEP 2021, p12).

Effectiveness

Although not as important as perceptions of legitimacy, perceptions of effectiveness have a role to play in public compliance (Tyler and Jackson 2014). Again, drawing on GPAS data for the purposes of comparability between samples, we asked ITAJ participants whether they thought the gardaí are effective in tackling crime *generally* and then asked whether they are effective in tackling crime against Travellers. In GPAS, 68% of the population agree that the gardaí are effective in tackling crime (GPAS 2018: 48). This is slightly higher for individuals who were not a crime victim (69%) and significantly lower for those who were victims of crime (49%).

ITAJ respondents were divided on the question of whether the Gardaí are effective in tackling crime generally. As compared to the general population agreement levels of 68%, 40% of the ITAJ sample either strongly agreed or agreed that the Gardaí are effective in tackling crime generally; 47% either disagreed or strongly disagreed with this statement. By contrast, only 17% either strongly agreed or agreed with the statement that Gardaí are effective in tackling crime against Travellers. 72% of respondents disagreed with this statement.

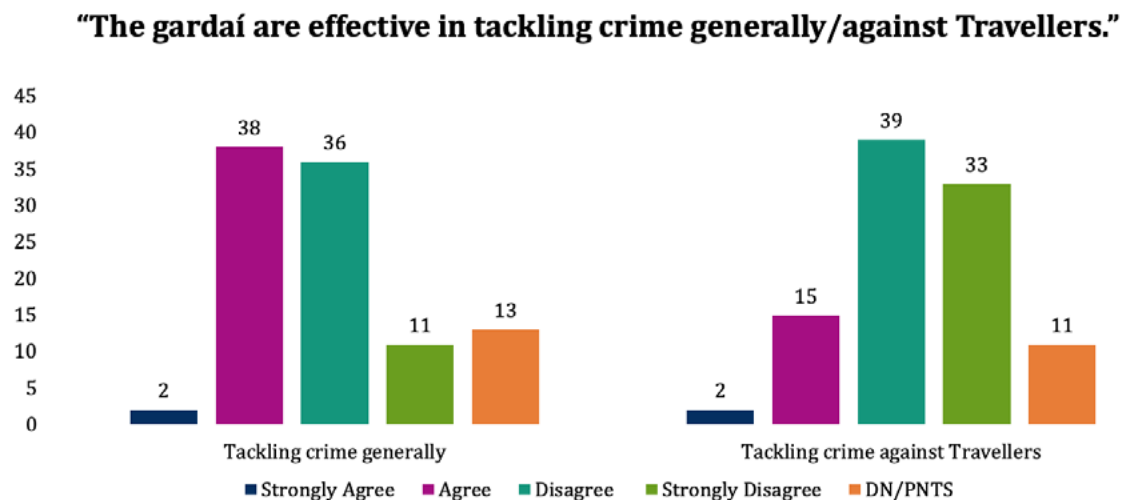


Figure 7: Perceptions of effectiveness of gardaí in tackling crime generally, and in tackling crime against Travellers

Respondents were equally divided on the question of whether the courts are effective in tackling crime generally. 38% agreed or strongly agreed, and 47% either disagreed or strongly disagreed. By contrast, only 20% either strongly agreed or agreed with the statement that the courts are effective in tackling crime against Travellers.

“The courts are effective in tackling crime generally/against Travellers.”

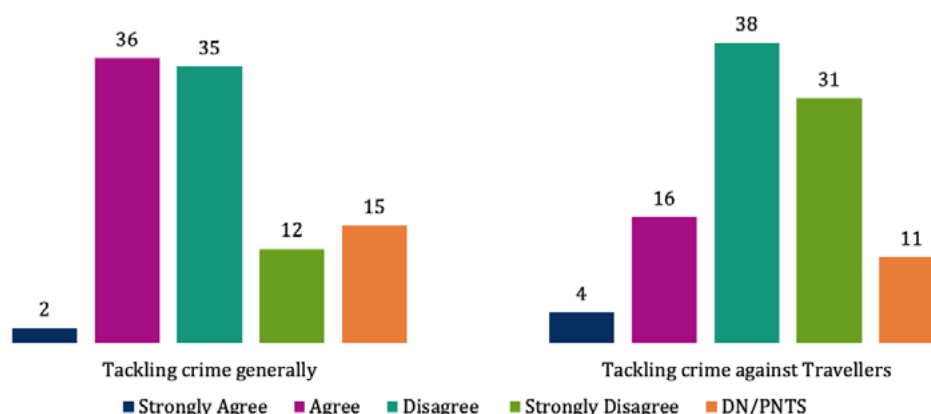


Figure 8: Perceptions of effectiveness of courts in tackling crime generally, and in tackling crime against Travellers

Contact with criminal justice institutions and trust

Analysis of the data shows that a large majority – 75% of respondents – had contact with gardaí in the past 5 years. For this reason it is unsurprising that the average level of trust among those with contact with gardaí is 3.13, compared to 3.12 overall. However, it is useful to compare the perceptions of those with and without contact in the past five years.

When we separated out the data between those who had contact with the gardaí and those who did not, the level of trust among those with no contact was somewhat higher than the overall average and the average among those with contact at 3.59. Further, those who had contact with the gardaí in the five years prior to the survey were more likely to say that gardaí do not treat Travellers with respect: 92% of those who had contact with the gardaí thought that gardaí do not treat Travellers with respect compared to 85% of those who had no contact. Similar percentages agreed that gardaí treat Travellers with respect, but those without contact were much more likely to say that they didn’t know – 12.4% - compared to 2.6% of those with contact.

Those who had contact with gardaí were also more likely to disagree that gardaí treat everyone in their area fairly regardless of who they are – 87% – compared to those without contact with gardaí - 72%. Among those with contact, 8% agreed that gardaí treat everyone in this area fairly, compared to 16% with no contact in the previous five years. 6% of those with contact declined to answer compared to 13% of those with no contact.

Among those who had contact with a judge in five years prior to the survey average trust was 3.19, compared to 3.51 among those who said they had no contact with a judge in that period. 81% of those with contact perceived that judges do not treat Travellers with respect compared to 71% of those with no contact; 5% of those with contact thought that they do treat Travellers with respect compared to 10% of those with no contact. 78% of those with contact disagree that judges in their area treat everyone fairly regardless of who they are compared to 60% of those with no contact. 15% of those with contact agree that judges treat everyone fairly compared to 20% of those with no contact.

Intergenerational and intracommunity transmission of knowledge

Weitzer and Brunson (2011) demonstrated “the existence of a code of conduct designed to reduce the chances of unwanted police contact and also shows that males and African Americans who disregard the code face a unique risk”. Joyce (2018) found that young Travellers are equipped by their community with effective tactics for coping with involuntary police contact. Researchers use the term “armouring” to describe the process where parents teach their children “to be resilient and emotionally tough when they encounter racism” (Brunson and Weitzer 2011, p.427). Faulkner (1983, 196) characterised the concept of armouring as “specific behavioural and cognitive skills used by Blacks and other people of colour to promote self-caring during direct encounters with racist experiences and/or racist ideologies”. As in Joyce (2018), the process of armouring is evidenced in ITAJ research:

“I do tell them not to talk to them, don’t say nothing to them, don’t talk to them because I’d be afraid it would get back that they are saying or doing something to them.” (Focus group participant)

According to Brunson and Weitzer (2011, p.436) the “tool kit” provided by parents, includes signalling respect and compliance to officers. To stay safe it is perceived as necessary “to act in a deferential, obedient, and compliant manner, even if provoked” (Brunson and Weitzer, 2011, 436). This mother articulated the very young age at which negative impressions of the gardaí are passed to members of the Traveller community:

“... she’s a four year old one ... when she sees gards now she goes shouting ‘Guards Mummy Guards, we’re malyaed Mummy, we are malyaed’ [taken away or arrested]. That’s not fair ... [t]hey have no trust in the gards and I’ve explained to gards this.” (Survey respondent)

One interviewee from a Traveller organisation spoke about the role that mothers play in trying to prepare young people not to respond to provocation:

“I think a lot of Traveller mothers and sisters and wives, we play that role and lot of trying to calm down or lessen the impact of what the Gardaí, how they speak to us with the males in our life ... You know, because we’re afraid, we know that we’d be treated a bit better, but that the male would be provoked and or could be jailed or could be put his handcuffs behind his back or whatever you know.” (Interviewee from Traveller organisation)

Notably young people who participated in a focus group for this research also noted that the community share information on specific individuals who are perceived as particularly risky:

“You say what kind of gards to avoid or what gard would do what like...one gard would more more famous than the next, keep away from him like.” (Focus group participant)

Proactive avoidance is another tactic taught when interactions with law enforcement are perceived as risky (Brunson and Weitzer 2011):

*“Interviewer: Do ye ever get any advice from older Travellers about gards or anything?
Focus group participant: Yeah, keep away from them”* (Focus group participant)

Other tactics they discussed included avoiding being in a group of Travellers.

In their study, Brunson and Weitzer (2011) highlight that several respondents believed that “youth risked serious physical injury or unfavourable criminal justice outcomes if officers perceived them as disrespectful” (p.450). Among respondents in this study, there was a perception that unfavourable outcomes were likely to result from challenging gardaí.

“Focus group participant: Because if you’re a Traveller, you’re the lowest of the lowest to the gards, you’re the lowest of the lowest for most of the settled people, but - what I mean - you’re very low altogether for the gards. So you feel you kind of have to keep your mouth shut ... you feel you have to let them away with things.

Focus group participant: You can’t challenge them.

Focus group participant: Yeah because you’ve no power behind you.” (Focus group)

Intergenerational trauma disguises itself by acting as a social protection that can negotiate spatial encounters by enlightening the young Travellers with tactics. However, authorities’ failure to acknowledge the impact of their anti-Traveller attitudes creates yet another layer of trauma by silence (Joyce 2018) and reliance on ‘armouring’ speaks to the responsabilisation of Travellers to cope with racism.

Conclusion

The general population’s high levels of trust in An Garda Síochána and the legal system are not reflected among Travellers. Travellers have low levels of trust in both the gardaí and the courts. Findings regarding trust in the police mirror those of FRA (2020). A large majority of Travellers disagree that gardaí in their area treat Travellers fairly. A majority disagree that judges and juries in their area treat Travellers fairly. Interviewees raised concerns regarding the impartiality of gardaí, judges and juries with respect to Travellers, while a large majority of survey respondents believe that both gardaí and judges are more strict with Travellers than with settled people. A majority of ITAJ survey respondents disagreed that gardaí and judges in their area treat Travellers with respect. Only a minority of Travellers perceive the gardaí and the courts are effective either in tackling crime generally or crime against Travellers specifically. Travellers are more than twice as likely to perceive the gardaí as being effective in tackling crime generally, compared to crime against Travellers, and almost twice as likely to perceive the courts as effective in tackling crime generally compared to crime against Travellers. It is particularly concerning that perceptions of criminal justice professionals are worse among those who have had recent contact with them.

Clearly, there is a significant task ahead of the state in addressing these gaps in trust between the general population and the Traveller community. The gaps in trust are deep and extensive. Given that research suggests they are also longstanding, trust building will require engagement, commitment, consistency and time. As this research demonstrates, Travellers' mistrust of the criminal justice system is not a groundless perception. It is informed by experience and, therefore, it is those experiences that must to be addressed.

If the state commits to addressing Travellers' mistrust of the criminal justice system, it is important that monitoring and measurement of change over time does not rely on occasional research. Making and monitoring progress in building trust with the Traveller community should be a priority for the state.

Chapter 7: Positive Encounters with the Criminal Justice Process

Introduction

An important goal of this research was to identify examples of good practice within the institutions of An Garda Síochána and the judiciary, and on the part of individual members of those institutions. Towards this end we specifically asked survey respondents if they would tell us about the most recent positive experience which they had with (a) a garda and (b) a judge in the five years prior to the survey. This section of the report analyses their accounts with a view to identifying structures, roles, policies, processes and practices that shape Travellers' positive encounters with the criminal justice system. Of the ITAJ sample:

- 18% had not had any experience with the gardaí in the last five years; 43% stated that they had no positive experiences with the gardaí in the last five years and 3% said that they would prefer not to say; 36% stated that they had a positive experience that they would be willing to share.
- 59% of survey respondents had not had any experience with a judge in the last 5 years; 31% of individuals stated that they had no positive experience with a judge in the last five years and 3% said that they would prefer not to say; 8% stated that they had a positive experience that they would be willing to share.

The key themes that arose in accounts of positive encounters with gardaí and judges related particularly to perceptions of procedural justice

Procedural Justice

Donner et al's (2015, p.153) state of the art review of empirical research on procedural justice and policing concluded that where members of the public regard their interactions with police to be just and fair, that is procedurally just, this positively impacts the public's perceptions of "police legitimacy, satisfaction with police services, satisfaction with interaction disposition, trust in the police, and confidence in the police". The significance of procedural justice lies not only in its potential to enhance the public's perceptions of their treatment by criminal justice professionals, but moreover that it has the capacity to do so regardless of whether or not the outcome of the interaction is advantageous to them or whether it involves their sanction (Tyler et al., 2007), as is exemplified by this positive encounter related by a survey respondent:

"... an officer came into the house coz she called the gards on me to get me out of the house and the gard came upstairs, told me that I had to leave the house ... he advised me the best thing to do is go to the family courts, put in for access to see your child ... so I appreciated what he did, what he said, he was only carrying out his duties but he tried to give me a bit of advice at the same time." (Survey respondent)

Importantly, perceptions of procedural justice are not determined by the policies or protocols that a police force puts in place (although these certainly play a role), but by what actually happens in encounters between criminal justice professionals and members of the public.

Procedural justice is therefore multidimensional, consisting of such practices as: “the officer treating people with dignity and respect, treating people as if they can be trusted to do the right thing, acting properly during the encounter, taking the time to listen to citizens, making fair decisions, and considering the citizen’s feelings during the encounter” (Donner et al 2015, p.155).

As is set out in the following sections, these practices were prominent in Travellers accounts of positive experiences with gardaí and judges:

Respect

Mulcahy highlighted an interviewee’s equation of being treated ‘like a human being’ with a positive encounter with gardaí: “he actually talked to me, I found, like a human being, not as a Traveller” (interviewee, cited in Mulcahy 2012, p.315). Basic respect arose as a defining characteristic of positive encounters reported by participants to the ITAJ research.

“[The garda said] ‘When you speak to people, it’s your manner and the way you talk to people, having respect, and if you give respect that person will also give you back respect’, so I remember having that conversation and I said to myself when he went out, he was an aged gard as well, I said to myself, if all gards was like that and understood, it would be a different story for Travellers or any other community” (Survey respondent)

By far the largest number of positive accounts of encounters with gardaí related to perceptions of respectful treatment during involuntary contacts, particularly stops and checkpoints.

“He told me what to do, and told how to go about it and everything. He was lovely about it like, he didn’t treat me disrespectful or nothing like. He treated me like a human being.” (Survey respondent)

“A positive experience for me now is when they pull you and they’d be nice to you and they just don’t break your heart do you know what I mean, that’s a positive experience for me being honest with you, it’s just getting treated with a bit of respect.” (Survey respondent)

“... a member of the Gard’s would have kind of stopped me and I was out of, and again I think I was out of tax. ... But it ended up, that he ended up stopping me, but we ended up having a conversation about other things, ... to me it was kinda the relationship part, about having a conversation, and that not kinda authoritarian, but just do you know, just in terms of relationship building.” (Survey respondent)

“I’m not known to the gards, or you know what I mean, but he was very respectful towards us so I would say that he was a good man. There was an incident here where the [object] was stolen ... and that same gard came up and he dealt with it in a, in a really good way like, he was really good like. You know even he didn’t come into the house unless I invited him, well we invited him in. He was very good. I didn’t feel like he was a gard, I just felt like

we were one-on-one do you know what I mean? That he was there to defend us.”
(Survey respondent)

Respectful treatment was also a theme in positive experiences with judges:

“... he respected that I didn't have the money to pay the fines. And he said, 'Sure, if you don't have it, sure that's understandable, I respect that as well.' And he said, 'Would you do a bit of community service?'. And I said, 'I will.' And he said, 'well, that's fair enough, I respect your honesty, and I respect that you're not wasting time. And I'll take it all into consideration.' And he gave me sixty hours of community service, and he said not to start 'til after the new year. So I said, that was fine with me.” (Survey respondent)

Listening

The theme of listening also arises in positive encounters with gardaí and judges. It is a minority theme in relation to gardaí and a common theme in relation to judges. Having a voice, being listened to, and heard, is key to procedural justice and clearly an impactful experience for Travellers interacting with the criminal justice system.

“He [garda] sat us down, and he listened to me while I was explaining about my son, like. He understood what I was saying about my child, like. He didn't judge me and say, well he's a scumbag, look he's gonna go out and do this, and do that. He understood that, do you know what I mean like? ... He came to my home, he sat us down, he had a cup of tea with me. And everything like, he listened to everything I had to say, and he understood everything I was saying to him.” (Survey respondent)

“The [the judge] heard the evidence from both sides and he gave a fair, fair judgement, assessment like, I was happy enough with the judgement like.” (Survey respondent)

“... so then the judge 'Have you anything to say'? And I stood up and I said that, 'I said listen your honour I said like I've spent me whole life fucking acting the bollox fucking enough and now I'm spending, trying to spend the second half of me life helping people not to go down the road that I went down, I said I did have tax in my car, I said it hadn't arrived, I'm trying to study [course] and help people the whole lot and he, he turned around and said 'D'you know what [name of interviewee] it's not everyday people come in here and change their lives around and you know you've done good for yourself, I'm going to let you off here today', You know, it was one of those so I was like 'ah aright' so that's been the first and last positive experience I've ever had.” (Survey respondent)

Compassion

Compassion was a common theme in the positive experiences recounted by survey respondents of encounters with both judges and gardaí. These narratives often relate to the sensitive manner in which some gardaí and judges have dealt with people in crisis in a community which is characterised by low life expectancy, high rates of chronic illness and disability and exceptionally high rates of suicide.

“Like, they [gardaí] were coming in, paying their condolences and they were stopping the traffic for us, because they were letting the horses up and down the road, so they were stopping the traffic. They let us do that, blocking off the road and stuff for us to do it. They showed the height of respect like.” (Survey respondent)

“The family member with the mental health issues ... he was at home anyway after that and the gard that was involved in dealing with the incident, he was calling out every few days to see how he was getting on and was he doing ok.” (Survey respondent)

“I’m coming from addiction so trying to move into recovery so and this one [community] gard helped me get a lot of things sorted and get me onto a day programme and that, know what I mean? And he helped me turn things around.” (Survey respondent)

Compassion to defendants in crisis was a particularly strong theme among those recounting positive experiences with a judge:

“... it was a Traveller family who were being threatened with eviction and they were fighting the eviction and there was some compassion shown by the judge and he put a stay on the eviction to basically allow the parties to negotiate a settlement or somewhat terms of accommodation. So I witnessed compassion.” (Survey respondent)

“... my son who got mixed up on drugs and things, couldn’t be no good got of him and the judge sectioned him to go to rehab and counselling and to get himself in order and to change his life around and things like that, like when he was very down, like he was putting him into prison to get help and ordered him to (name of facility) to get on back on track and things which I found was helpful. ... he was trying to commit suicide and I brought him to, there over in [name of facility], they’re over mental health issues, and they just shut the door in your face and because he wouldn’t cooperate that he needed help they couldn’t do anything for him. So the judge then dealt with it in his way”. (Survey respondent)

Responsiveness

Responsiveness to victims of crime was an apparent theme among positive experiences with gardaí. Among a community which, as this research demonstrates, has a high level of underreporting, often related to anticipation of a less than satisfactory response from gardaí, these experiences are notable.

“... we were all young at the time and the garda went over to them and told them to stay away from us and actually the garda came back over to us ... and asked us did we want a lift home, if we were ok to go home and they said that if we needed a lift back up home, they could call our parents to come down and collect us, they’d wait with us till someone collects us, asked us if we were ok and stuff and we thanked the garda and told him that we would be ok and stuff, we went on about our day.” (Survey respondent)

“We got in contact with a Gard, he was absolutely lovely. He helped us out from the last, he transferred me literally to somebody - that wasn’t his job, but he was taking on the complaint - and then he transferred us to somebody in the Phoenix Park which was the headquarters, who actually dealt with the [incident]. And I have to say, it was very positive because they actually did deal with it.” (Survey respondent)

Community outreach

A more common theme among accounts of positive experiences with gardaí was that of community outreach. This theme related to proactive efforts by gardaí, almost exclusively identified as community gardaí, to build relationships with the local Traveller community, rather than just individuals. Some of these examples relate to gardaí supporting Traveller community initiatives, particularly sporting and youth initiatives:

“One of the local [community] gards here is very supportive of that and he speaks very well of the Travellers and he also goes to the council on our behalf, he also shows up at all our events, he takes part in our events and he is part of a Traveller [sports] club here as well for training young boys and he played [sport] with the young Traveller boys and he is one garda that I don’t see any prejudice from and it has been very positive working with him over the last few years and also with the elderly Traveller he [was] putting in alarms for them and stuff like that as well.” (Survey respondent)

One of the survey respondents highlighted the potential of such initiatives to create lasting relationships between gardaí and Travellers to positive effect.

“... there’s a community gard and like there is a [sport] team, years ago there was [sport] teams for them and they, the boys and that, was on a team against the gards so there was kind of, I wouldn’t say a relationship there but, if they seen a gard down town they know the gard’s name and it’s ‘How are you such a one’ and all that back, that kinda thing.” (Survey respondent)

A far smaller number of survey respondents related experiences of gardaí conducting outreach on Traveller halting sites. One of the respondents suggests that this form of outreach is unusual:

“A positive experience, and it could be going back more than five [years] would be with a local community gard who was willing to come up onto a site and explain the work they do and as a community gard, you know working with young people and just I suppose trying to reassure people and build up a little bit of trust with Travellers, and the young Travellers as well. This particular person was quite open to that and able to take the stick [banter], as we’ll call it, from Travellers but those [experiences], they can be few and far between, ... even gards sometimes, without having a lot of support, would be reluctant to walk into a halting site or come up to a halting site on their own ...” (Survey respondent)

Defending rights and dignity

A minority theme among accounts of positive encounters was the experience of having of having one's rights and/or dignity vocally defended by a member of the gardaí or judiciary. These experiences were particularly salient in their emotional resonance with respondents.

"... one of my friends had got caught with drugs but they were just arresting everyone d'you know what I mean and this one garda came and he searched me, you know he let me empty out my own pockets and he let me take off my own jacket and instead of pulling me around the place he said 'look relax', d'you know what I mean? 'if you give me respect' ... he literally just looked at me and said 'it's clear to see that you're not involved in this' you know and allowed me to walk away and when another gard went to stop me again he stood in front and said 'I literally just, I've done it, I've searched him, let him go'. ... So that was my positive experience where he believed me and it was the first time, it was the first time I was ever believed by a gard." (Survey respondent)

*"... there was a drunken argument up the top of the street and a couple of gards were coming up the hill to it like but a couple of people that shouted across the road 'oh, it's the k*****rs again but the gard shouted, stopped that on his tracks and addressed the person and said - you know I could kind of hear the conversation, not fully - but he stopped the person from saying those words and said 'oh, it's very disgraceful of you and you shouldn't be using those words' ... I just felt it was the very first time I heard a gard at least acknowledging it and questioning it and saying don't be using that language so I was kinda impressed with him now that night coz he coulda easily let it go ... he could easily just agree with it maybe or else walk on past it but he didn't".* (Survey respondent)

"The judge, gave out like hell to the Gard and said that it was a disgrace that he [the defendant, was] dragged through so many courts for months and months, when it clearly wasn't him, when the video came out at the end. So, she literally gave out to the Gard's. ...

Interviewer: And was there an apology made to your [relation]?

Respondent: Yeah.

Interviewer: Who, who made this apology?

Respondent: The judge, not the Gards." (Survey respondent)

"... a solicitor asked a Traveller, 'Well, if you were living in the real world like the rest of us'. So, the judge asked him 'What do you mean the real world? We're all living in the real world'. And he actually gave the case to the Traveller because of the solicitor's comments." (Survey respondent)

Trusting people to do the right thing

Again, a minority theme in the data, but one that was impactful for respondents, were examples of where gardaí, rather than treating Travellers as a suspect community, trusted Travellers to do the right thing.

“Em, we, we lost our [relative] there six or seven weeks ago and the gardaí couldn’t have been better, could not have been better around and I mean that from my heart. ... one of them came up on the morning of the funeral and there was two horses there with sulkies, you know the traditional thing, and he said ... ‘We are going to let ye do your own thing today’, he said ‘We are not going to get involved’ he said ‘and we know there won’t be no hassle’. they actually helped us with the traffic because it was a large, large funeral, there was heavy traffic at the crossroads , you know what I mean, they helped with the traffic you know what I mean so we’re thankful for that”. (Survey respondent)

Individual or Institutional Practices

In reporting on research conducted between 2002 and 2004, Mulcahy and O’Mahony (2005) underscored that Travellers’ accounts of positive experiences with gardaí referenced specific members and units of the gardaí rather than institutional practices or improvements. Elaborating on this finding, Mulcahy (2012) underscored “... the manner in which these individuals and units were singled out for praise frequently highlighted the broader failings associated with the police organisation as a whole” (Mulcahy 2012, p.315). Importantly, this was a key theme in the vast majority of accounts of positive experiences of both gardaí and judges. A positive experience with one individual, being for most respondents the exception rather than the rule, did not alter respondents’ perceptions of the institution as a whole. This finding was true even in relation to those occupying specialist roles:

“I suppose a few years ago we would have a great relationship through our organisation with the local community gards, and they used to visit the organisation regular and just maybe link in with the organisation, you know but I’m sure that gard has retired since and at the moment especially pre-covid anyway there hasn’t been much connection with the community gards in the area.” (Survey respondent)

Notably, a very small number of respondents recounted examples of supportive gardaí being derided by other gardaí for their positive orientation to Travellers:

“... he wasn’t respected by the other gards, he was the community warrants officer, or community gard at the time, d’you know what I mean, and you’d hear them ‘Oh is this another one of your little boys’, you know these kind of remarks, you know what I mean so he was even judged for helping people”. (Survey respondent)

Specialist policing roles

The positive experiences recounted by survey respondents most commonly involve rank and file gardaí or community gardaí. A minority of experiences involve senior gardaí or gardaí in specialist roles other than that of community garda. There are a small number of references, using shorthand terms, to what is identifiable as the Garda National Diversity and Integration Unit References. There are fewer references to liaison officers:

“the few we work with in Dublin, diversity group, they’re brilliant. You can never put them down, they’ve helped us out so much, even with other Gard’s around the country.” (Survey respondent)

We note that Ireland's Policing Authority (2022) has selected community focused policing as one of the five strategic themes that will shape its work over the next three years.

A number of individuals working with Traveller organisations referred to community gardaí as critical contact points between those organisations and Travellers. They recounted both Traveller organisations and community gardaí working together to build up relationships:

"I think our position ... has been really unique, and we put a lot of effort and a lot of years developing our organisation ... where Travellers voices were heard in the forum in the community where we were treated – where our voices would be treated as equal."
(Interviewee from Traveller Organisation)

We underscore, however, that in addition to the benefits of community policing roles, that community should be able to expect satisfactory service from all members, a point also made by the Policing Authority:

"... particular reference was made to juvenile diversion officers or particular Community Gardaí or Gardaí working in the area of diversity, whose relationship with the community was of a different and much more positive character. But the inability to be able to rely on, or have an expectation of consistency of treatment, service or respect from all members of the police service was strongly communicated." (Policing Authority 2021)

Historical harms

Although this research related to the period from 2016-2021, some individuals raised the historical treatment of Travellers by the criminal justice system and their direct negative experiences with the criminal justice system, particularly the gardaí, including during their childhood, as an obstacle to building trust in the present day. These accounts raise the issue of historic ill-treatment as an obstacle to future relationship building. This is a theme in research on community-police reconciliation. This body of work recognises that to move forward in building relations of trust and perceptions of legitimacy with historically discriminated against groups, it is first necessary to acknowledge and accept responsibility for past harms and injustices:

"The exact actions can vary, but they should display recognition of the past injustice; acknowledgment of the past harm; and either acceptance of responsibility, an apology, or both. It is key that authorities confront the past, not simply move beyond it." (O'Brien and Tyler 2019, p.38)

One survey respondent in recalling their most positive experience with a judge recounted one judge's apology for their past treatment of Travellers:

"[The judge] went so far as saying that he was sorry for in the past what he had done. ..."

That was very big, yes that was a very big thing and now he's since retired that judge but I actually met him, I've seen him, maybe I met him over the course of my work, maybe on, maybe eight or nine occasions and when I met him one day ... and he ... admitted that he had been wrong to many a Traveller". (Survey respondent)

O'Brien and Tyler (2019) suggest that without such efforts at reconciliation, future initiatives to enhance trust through procedural justice are less likely to be effective.

Conclusion

Rosenbaum and Lawrence (2017) note that despite extensive research demonstrating the positive impact of procedural justice in police encounters there is little training in the skills, particularly the interpersonal communication skills, require to operationalise the concept in the field. They are critical of the adequacy of popular training initiatives in promoting procedural justice:

“Cultural awareness training, for example, has sought to improve police–community relations through general knowledge of diverse groups, but these efforts generally do not target specific behaviors and have not been well received by officers. ... The new Fair & Impartial Policing training program (Fridell 2016) is helpful for allowing officers to acknowledge implicit biases that we all share about various segments of society, but is not easily transferable into social interaction skills that can correct this unconscious problem and has yet to be rigorously evaluated” (Rosenbaum and Lawrence 2017, p.297).

They attest to the potential to teach procedural justice, but also the requirement for dedicated training programmes, time and an organisational culture which promotes and supports procedural justice over toughness. We note that McInerney (2020) found in his research that frontline gardaí's opinions of Travellers deteriorate over time in the organisation, while the opinions of Ethni4 Liaison Officers (now Diversity Officers) improve over time. Dai (2021, p.492) identifies a number of effective training programmes, and concurs that key to their success is that the organisation takes “a systematic approach and create a culture of support for officers to utilise the procedural justice elements during their interactions with citizens.”

The positive experiences highlighted by Travellers in this chapter attest to the capacity of gardaí and judges to make Travellers feel protected by and connected to the criminal justice process. Procedural justice training has the capacity to be transformative, not just at an individual level, but across criminal justice institutions and the systems as a whole. In considering the negative experiences set out in this report of Travellers, these positive experiences should be seen as a guiding light for criminal justice institutions in how to engage with, work with, and police Travellers in a way which is compliant with human rights practices.

Structures must also be established to ensure that proactive engagement with the Traveller community is institutionalised rather than individualised. The Garda Traveller Advisory Group, which focuses on “How to strengthen relations and positive engagement between An Garda Síochána, nationally and locally, and the Traveller Community; [and] How to promote accountability within An Garda Síochána by guidance on best policing practices which adhere

to human rights” (An Garda Síochána 2021) is a welcome example of such a structure; however, the work of the group could be further supported by expanding the remit of the group to address the cross-cutting themes raised by this report, involvement of senior garda management, and regular minuted meetings. To our knowledge the Group, established in 2019 has met only once since its inception.

At city and county levels, Joint Policing Committees are key structures through which community involvement in policing can be facilitated. The terms of reference of the Joint Policing Committees state that the selection of members should give due regard to the inclusion of ‘particular communities, (e.g. Traveller or immigrant communities) (Department of Justice 2014, p.13), but the inclusion of Traveller representatives or indeed representatives of minority communities is not a requirement. The ITAJ team also acknowledges the inclusion of representation from the Traveller community on the Garda National Diversity Forum established by The Garda National Diversity and Integration Unit (GNDIU) to monitor and review the implementation of the An Garda Síochána Diversity and Integration Strategy 2019-2021. The team proposes that representatives of minority communities on such national fora, given the responsibilities of representation they are accorded, be resourced by those bodies to reach out and feedback to their communities on their work. The Traveller Dialogue Days, established by An Garda Síochána in 2019, but interrupted until 2022 by the COVID-19 pandemic, have particular potential in this regard and might specifically include those Travellers who represent their community in national criminal justice fora. Traveller Dialogue Days are held nationwide to facilitate members of the Traveller Community and local Gardaí to come together to communicate and collaborate. The ITAJ team note that the terms of the Joint Policing Committee provide for more permanent local fora of these kind and recommend that this is explored as a means of structuring ongoing communication between local gardaí and the local Traveller community. The initiative might be replicated by, or expanded to include, the judiciary.

Chapter 8: Victims of Crime and Reporting

Although the Although the Ionann Management Consultants 2004 An Garda Síochána Human Rights Audit found that many gardaí perceived that Travellers do not want to engage with the police, this research finds instead that most Travellers very much want access to an *equitable* policing service. Travellers participating in this research expressed a commitment to the idea of policing, as exemplified by the fact that 45% of crime victims who were dissatisfied with their most recent experience of reporting would still encourage others to report to the police. This finding mirrors those of Mulcahy (2012, p.320) that “Travellers’ experiences of contacting the police often prove unsatisfactory and yet Travellers also describe the need for appropriate and effective policing (Ellis, 2005; Pavee Point, 2002, 2007)”.

Mulcahy (2012) reported Travellers’ perceptions that, as victims of crime, either gardaí did not respond to their calls or they responded disproportionately. He notes that “The belief that the police will fail to intervene or, if they do, may do so ineffectively, leads to an acute sense of vulnerability” (Mulcahy 2012, p.320). Mulcahy (2012, p.319) found that Travellers “view police behaviour on encampments as less attentive to due-process than would be expected in other locations.”

The Ionann Management Consultants 2004 An Garda Síochána Human Rights Audit reported that community members interviewed for the purpose of the audit raised the issue of a failure by gardaí to respond to Traveller victims of crime, particularly where the offenders were from the settled community. ITAJ research further reflects O’Mahoney’s (2012, p.321) finding that “The necessity for an appropriate garda response was described on several occasions in terms of the growing impact that illegal drugs were having within the Traveller community as well as concerns about escalating levels of violence (see also Ellis, 2005; Pavee Point, 2002, 2007). Moreover, research suggests that other issues, such as domestic violence, also warrant a sustained policy response.”

In this chapter we document the experiences of Traveller victims of crime, those who had reported, but also those who did not report – that is, who did not access the criminal justice process in order to have their experience recognised by the State. Thus, in the survey we sought to understand both the experiences of those who had reported a crime, as well as the reasons given as to why victims did not report their experience to the police. Of the respondents to the survey 45% had been the victim of at least one crime in the five years preceding the survey. We asked respondents if they had reported their experiences to the police. 33% reported an experience of being a victim of crime to the Gardaí, and 31% had been the victim of a crime and not reported that experience. Of those surveyed, 18% people had experience of both reported and unreported crimes. This compares to figures from the Garda Public Attitudes Survey of 2019, where the victimisation rate was 4.4%. Reporting rates amongst the general population are significantly higher, at 80% in 2019.

Victims’ perceptions of gardaí

Analysis of the data shows that 45% of respondents had been a victim of crime in the five years prior to the survey. This cohort was even more negative in their perceptions of gardaí than the general population of Travellers, a pattern also reflected in the Garda Public Attitudes

Survey. Their average trust in the gardaí was lower at 2.86, compared to 3.12 among the general population; 95% do not think gardaí treat Travellers with respect compared to 91% of Travellers generally; 89% do not think that gardaí in their area treat everyone fairly regardless of who they are, compared to 84% of Travellers generally.

When we break down that cohort between those who reported their experience to the gardaí and those who did not, 33% of respondents had reported a crime to the gardaí in the last five years: their average trust in the gardaí was lower at 2.85, compared to 2.86 among victims generally; 93% felt that gardaí do not treat Travellers with respect; and 86% felt that gardaí do not treat everyone in the area fairly regardless of who they are. Victims who reported a crime to the gardaí are the most likely to consider gardaí to be effective at tackling crime against Travellers (20%). Analysis of the data shows that 31% of respondents had not reported a crime to the gardaí in the last five years; their average trust in the gardaí was 2.41, compared to 2.86 among victims generally; 100% felt that gardaí do not treat Travellers with respect; and 93% felt that gardaí do not treat everyone in the area fairly regardless of who they are.

Experiences of reporting crime

In our survey, 33% of respondents had reported a crime in which they were the victim in the last five years to An Garda Síochána; 31% of the sample agreed to answer questions about *the last crime in which they were a victim* that they reported to the gardaí. Of those individuals who answered questions regarding their last experience reporting a crime, 58% stated that the crime was committed against their person and 41% stated that the crime was against their property. Of those individuals who reported their experience of victimisation, only 56% recalled that the gardaí asked if they wanted to make a signed statement regarding their experience of being a victim. A small number of individuals chose not to make a statement because, they stated, they did not trust the Gardaí.

In recounting their most negative experience with the police in the last five years, a theme which emerged among survey respondents was a failure on the part of the gardaí to take the report of a crime seriously, either through not engaging with the victim, or by explicitly stating that they would not take a report of the crime:

“So, the Gards came out, and they said they’d be back in a few weeks’ time, to see if there was any, if there was any update on it. But never came back, that was three years ago.”
(Survey respondent)

“The negative experience that I’ve had in this last five years is the unwillingness of the gardaí to respond to my effort to make a statement in relation to an altercation and an assault and their refusal to even engage with me and to look at me as a victim.” (Survey respondent)

“[Two men] took into arguing and fighting and I rang [name of station] and I told them and they said ‘look we can’t babysit no-one for you,’ she says ‘we’ve something, we’ve something else to be doing.’” (Survey respondent)

This individual tried a number of times to report a serious incident to the gardaí where they and their children were victims. The garda in question told the individual to “go home, and write it down in a book”:

“I got, I got a hold of him twice, and he told me that he hadn’t got time both of them times, and for to come back. And for to just jot it down.” (Survey respondent)

It must be noted, however, that an almost equal number of individuals recalled their experience of reporting a crime as their most positive experience with the gardaí in the five years prior to the survey:

“My most positive experience with a Gard was eh, receiving assistance from Gardaí in helping me in an incident. And I found that they were really responsive, and they helped solve the issue. Yeah, I just felt it was done like, they responded quickly, and I felt they were just very helpful for me in, in, with that incident.” (Survey respondent)

“I rang the gards because there was damage done to my car and there was a gard there and he was helpful, he was, he tried to get the licence plate off the van to see where the van had come from, to get CCTV of it and he came back and said that he couldn’t but at least he was, he tried, he was helpful you know.” (Survey respondent)

Treatment of victims who reported their experiences

We asked participants to the survey if they felt that the Gardaí took their report seriously: 83% stated that they did not believe that the gardaí took their report seriously. Only 17% were of the view that the Gardaí took their report seriously.

Do you feel that the Gardaí took your report seriously?

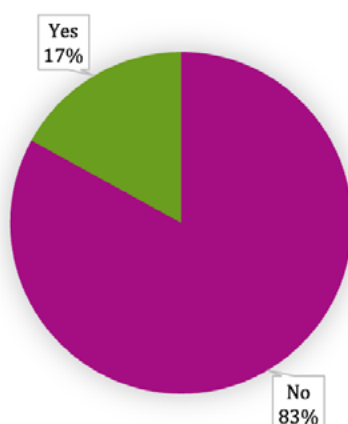


Figure 9: Seriousness with which gardaí took report

We asked if Travellers believed they were treated respectfully when they made the report. 67% felt that they had not been treated respectfully by Gardaí. Only 27% felt that the Gardaí treated them respectfully and 6% did not recall.

Did you feel that the Gardaí treated you respectfully?

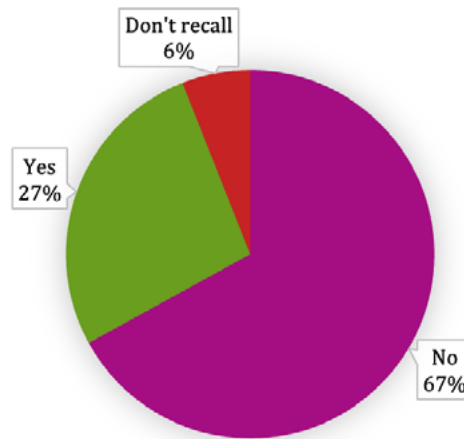


Figure 10: Respectful treatment when reporting a crime

Satisfaction following the making of a report

We asked whether, having made the report, the respondents were satisfied with the service provided by the Gardaí following their report. The vast majority of respondents were very dissatisfied with their experience: Excluding prefer not to say, 85% were either dissatisfied or very dissatisfied, with 66% stating they were very dissatisfied. 4% were very satisfied with the service provided, and 11% were quite satisfied. These responses provide a stark contrast to GPAS data in its 2019 iteration:

Overall, how satisfied were you with the service provided by the gardaí after you reported a crime?

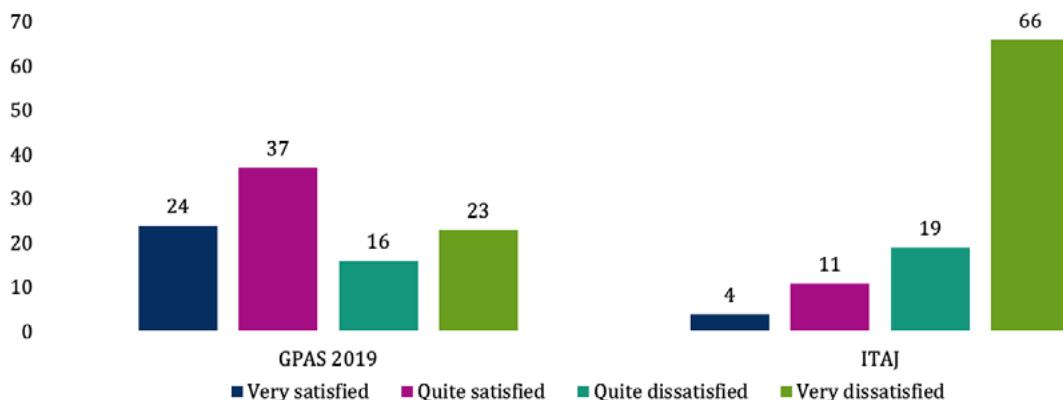


Figure 11: Satisfaction levels with service following the reporting of a crime as measured by GPAS 2019 and ITAJ

Encouraging other Travellers to report based on experience

We further asked whether, based on their experience, they would encourage other Travellers to report crimes. Despite the fact that the vast majority of those who reported a crime were dissatisfied with their experience, more than half of participants stated that they would encourage other Travellers to report crimes:

Based on your experience, would you encourage other Travellers to report their experience of being a victim of a crime?

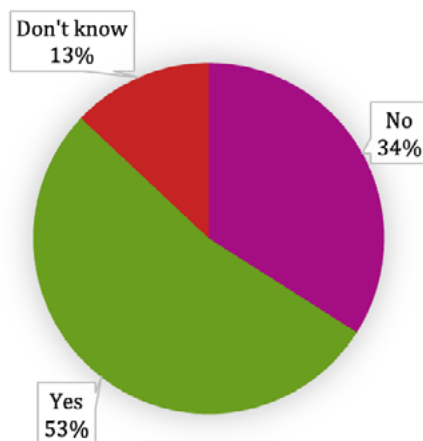


Figure 12: Likelihood of encouraging other Travellers to report a crime

It is important to note that 100% of those crime victims who said they were satisfied with their last experience of reporting a crime to the police said that they would encourage other Travellers to report crimes in which they were victims.

Behaviours and practices of attending gardaí

In documenting negative experiences of Travellers who reported their victimisation to the gardaí, we were aware that Mulcahy (2012, p.318) had found that “Many Travellers believe that the police view any contact with them as an opportunity to trawl for evidence of illegal behaviour.” Mulcahy and O’Mahony’s (2005, p22) participants described the use of incidents which require gardaí to attend Travellers’ halting sites to search for evidence of illegal behaviour across the site. This practice was highlighted by interviewees from Traveller organisations as a deterrent to Travellers living in close proximity to other members of the community calling members of An Garda Síochána to an incident.

Interviewees from Traveller organisations spoke to a particular issue regarding the response times and response rates of Gardai to crimes reported by Travellers:

“I think they’d be at standard accommodation a lot faster than to the site ... you might have to ring them two or three times before anyone would ever come out. You could say look there’s a serious incident, like there’s so and so happened up here or whatever. And still could be after an hour and there still could be no gards. Where I don’t think that that

would happen in [a named local housing estate]. I don't think that would happen."
(Interviewee from Traveller organisation)

"It takes longer for the gards to come maybe to the scene to the incident, whereas if a Traveller was having an argument with a settled person, they may be on the scene a lot quicker because protecting that settled person, he assumed straight away it's the Traveller is the instigator in the act." (Interviewee from Traveller organisation)

Interviewees from Traveller organisations highlighted that where gardaí did come to a site, they would not just with the incident in question, but look around the site for instances of criminality, which in turn means that Travellers are slower to call the gardaí for fear of having other residents on the site investigated:

"... people would call the gards of course, and something going on or whatever you know. And the gards might turn up and then they might not turn up or they might turn up two hours later, you know. And then when they turn up, it wasn't always good for everybody. You know what I mean? It wasn't coming down to investigate a single issue. It was like a lot of the time, it is just coming in kind of a blanket attitude." (Interviewee from Traveller organisation)

"... they're going around the site and then other Travellers were going to us 'why are ya bringing the gards in? That's only bringing the heat on us'. We have found that where they go around for one thing, before you know it, they're checking cars and they're checking this, old tires just stupid things." (Interviewee from Traveller organisation)

This individual recounted a specific example of underpolicing in which gardaí explicitly referenced the ethnicity of the crime victim in their refusal to respond to a report of criminality:

*"I reported an incident of conflict that my extended family were involved in with another extended family and the gards specifically said, 'once you keep it on the k*****r site, we don't care.'" (Interviewee from Traveller organisation)*

All of these practices lead to underreporting of crime, and a feeling amongst Travellers that they are not protected by the gardaí:

"... and then we there's a frustration within the Traveller communities, as well, that the Traveller community can't trust the Gardaí if they want to make a report, for instance about drug deal, extortion, intimidation, 'cause they feel like it's not dealt with." (Interviewee from Traveller organisation)

Policing of intra-community conflicts

Traveller participants to Mulcahy and O'Mahony's (2005) and Drummond's (2007) research asserted that the gardaí under-police incidents that happen within the community and that community do not trust gardaí to respond or to respond effectively which sometimes led individuals to take matters into their own hands. Drummond (2007, p.263) asserts that under-policing and the concomitant requirement for self-reliance "Consequently, ... become the taken-for-granted social histories of Travellers, known as feuds." Likewise, some of the participants to the ITAJ research perceived that intra-community conflict was particularly under-policed:

"There was a sense from the gards of let it, let them fight it out and we come down later."
(Interviewee from Traveller organisation)

"sometimes the gards are slower to respond to that halting site. It's kind of an attitude is if it's in the site, leave it on the site." (Interviewee from Traveller organisation)

"And there is a notion out there that within the Traveller community, when they call, you know, if a Traveller seeks protection, they are very slow to respond or they take a step back because y'know there is a notion that, 'ah if they kill each other than there's one less to worry about', y'know? And there is that feeling from the community." (Interviewee from Traveller organisation)

"We could be intimidated to death, and it's kind of, you'd nearly have to be murdered there inside in it for them to intervene, and even then, it's only to contain you all. It's not even to solve your problems, its only to contain them." (Interviewee from Traveller organisation)

Domestic violence

Participants spoke to the particular vulnerability of victims of domestic violence who, given this pattern of capitalising on call outs to seek for evidence against neighbours, are reluctant to 'bring the gardaí down' on their community. This is an obstacle of the reporting of domestic violence by Travellers which was previously documented by the Galway Traveller Movement (2006) and by the 2004 An Garda Síochána Human Rights Audit which also reported that community members highlighted that calling gardaí to a domestic violence incident could exacerbate the risk to the victim, as gardaí called to an IPV incident might use the opportunity to check people's car insurance, a practice which pitted the victim against other members of the community (Ionann 2004, p.91). Participants to ITAJ research clearly articulated this as an issue:

"You could be killed in your own home. It could be domestic violence sufferer and you're afraid to go to the gards now, because maybe your son has no tax on his car." (Interviewee from Traveller organisation)

"If a woman goes to the Garda or makes a report [about domestic violence] to the Garda, its generally dealt with well. The problem is that sometimes women, they don't want to be making reports on the site or at home because they're perceived as bringing the, drawing

the gards.” (Interviewee from Traveller organisation)

“I hear other situations from some of the women, they’d say, they call the gards and in a situation of domestic violence, family members again, but when the gards come out they’d actually ask the gards to leave their home because the gards is more concerned with, you know, tax, insurance, everything that’s in the house, their belongings, where did they get the money from rather than intervening in the situation of domestic violence.” (Survey respondent)

In recounting their most negative experiences with the gardaí in the last five years, these individuals spoke of garda responses to domestic violence:

“ ... there was a family home where there was a domestic happening, the mom called the police for the dad which he was drinking and she wanted him removed and the police came, the dad was quite calm and obedient to the gards, they actually was very insulting, abusive and aggressive towards the mom ... The mom was explaining her story and they just told the dad to go in the sitting room, he went in, the mom was saying that he needed to be removed, he wasn’t even on the lease of the house, and they threatened that they’d arrest her on several occasions, shouted at her to shut her mouth or she’d be arrested and the dad was fine for the night, he’d sleep it off.” (Survey respondent)

“One of my family members would have been again in a situation of domestic violence and she would have went to ... the garda station with a broken face. Like her nose was broke, her jaws were broke like her whole face was broke, and the gards gave her no information ... She got no supports whatsoever, they didn’t give her any, they didn’t signpost her to Women’s Aid or anything, you know they didn’t give her information around a barring order, you know a safety orders, they just told her to go home.” (Survey respondent)

Generally speaking, interviewees from Traveller organisations were of the view that the garda responses to domestic violence was an issue that urgently needed to be addressed:

“I do believe there are very [poor] responses to domestic violence as well and Traveller women, if they’re at risk or they need the husband removed from the house or the partner removed from the house, they’re very slow at responding and when they do respond, it’s like ‘can you not sort it out?’, you know, and they don’t want to remove the man and leave it – leave him in that situation.” (Interviewee from Traveller organisation)

Hate crime

Hate crime legislation has not yet been introduced in Ireland, but from our research, the warrant for that legislation is clearly established (Haynes and Schweppe 2017). An Garda Síochána is to be commended for introducing a means by which a crime can be recorded as a hate crime, a process of recording non-crime hate incidents, as well as a means by which victims of hate crime can report their experiences of victimisation online. These developments are particularly welcome given the absence of hate crime legislation in Ireland.

The introduction of the General Scheme of the Criminal Justice (Hate Crime) Bill 2021 was published by the Department of Justice as an important step, and we broadly welcome the scope of the General Scheme though highlight the need for consistency of the legislation with criminal justice practices, as well as for a large-scale implementation strategy for operationalizing the legislation when enacted.

The ITAJ survey further evidences the need for the urgent introduction of such legislation. The overwhelming majority of Travellers, 93%, think that hate crime directed at Travellers is either a very serious problem or a serious problem. Indeed, 60% of our sample were of the view that hate crime directed at Travellers is a very serious problem.

In Ireland, how serious of a problem is hate crime directed at Travellers

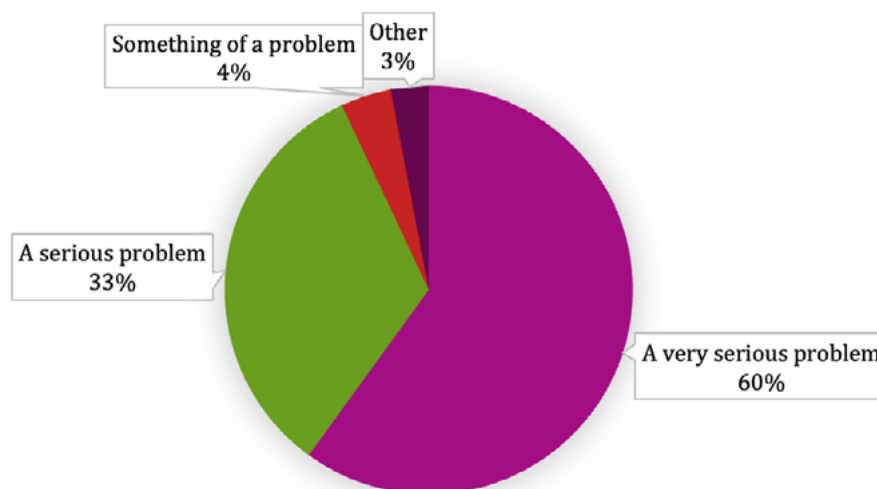


Figure 13: Perceptions of severity of hate crime against Travellers in Ireland

With respect to the particular inclusion of the Traveller community in the General Scheme of the Criminal Justice (Hate Crime) Bill 2021, we note that no framework for in/exclusion has been published to accompany the legislation to determine its scope with respect to protected characteristics. That said, the intention of the General Scheme to make the term 'ethnicity' inclusive of the Traveller community is to be commended. Our understanding is that this is the first time that Travellers will be legislatively recognised as an ethnic minority.

Though Travellers clearly see hate crime as a huge issue for the community, only 20% of respondents were aware that it is possible for gardaí to record a crime as an anti-Traveller hate crime. A National Action Plan Against Hate crime, which is tasked with ensuring appropriate implementation of the legislation, as well as a public awareness campaign and anti-bias training across all criminal justice institutions are vital.

Reasons for not reporting experiences of crime to An Garda Síochána

Analysis of the data shows that 31% of respondents had experienced a crime that they did not report to the gardaí in the five years prior to the survey. Thus, slightly more victims of crime reported their experiences of victimisation to An Garda Síochána than did not (33% for those

who reported, 31% for those who did not report). Those ITAJ survey respondents who were a victim of a crime and did not report it were asked to share their reasons for not reporting.

In GPAS 2019, victims of unreported crime were asked for their reasons for not reporting their experiences: in that survey, 37% stated that they did not believe the gardaí *could* do anything, with 26% believing that the gardaí would not do anything. By contrast, 87% stated that they did not believe that the gardaí *would* do anything; and 63% cited a lack of trust in the gardaí as reasons for not reporting. Absence of trust in the gardaí was not a response available to participants in GPAS 2019.

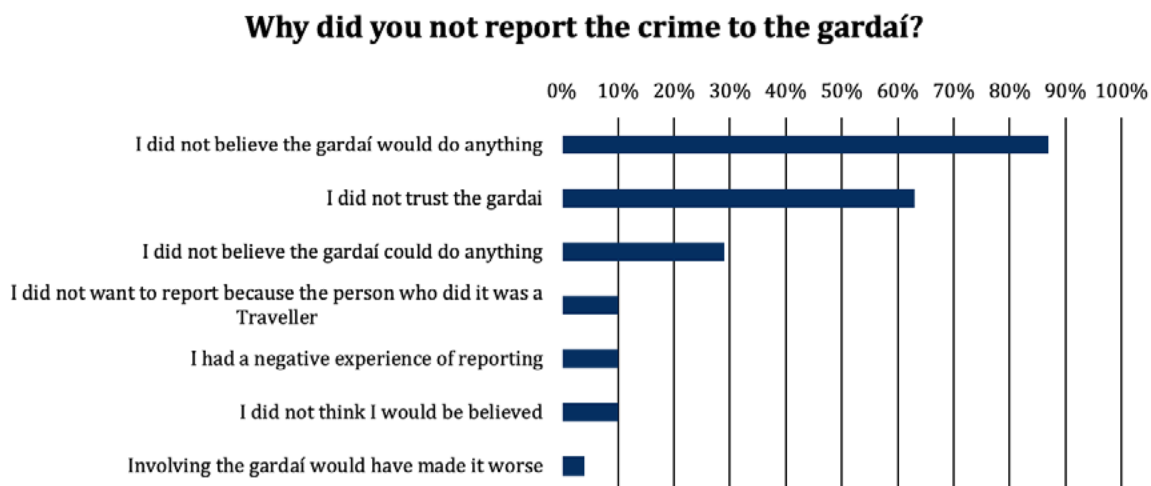


Figure 14: Reasons for not reporting experience of being a victim of crime to the gardaí

Analysis of the data shows that 87% said that they didn't believe that the gardaí would do anything:

"... it's weird because I'm giving an opinion now that I'm so against; I'm always like 'Oh don't be brainwashed into believing... no-one is going to be there for you and you can't get support, you won't be believed'. But I've never realised that in this situation I have that opinion. I don't have a lot of trust at all. If I went to the police and said the gards are saying certain things to me in my home and I'd no proof, I wouldn't have any trust that I would get anywhere at all, I just wouldn't." (Survey respondent)

Another of the most common reasons given by Travellers as to why they did not report was trust: 63% said that the reason they did not report was that they did not trust the gardaí:

"... it's all got to do with the racism on Travellers, say, do you know what I mean? Like I've watched my family, my cousins and nephews being discriminated [against] and myself many, many, times been discriminated [against] and being treated differently, you know what I mean, and to be honest, like, it makes you feel like dirt, you know what I mean, and, like, you're not even a person, do you understand what I'm saying? So that's why I don't trust the gardaí, you know what I mean." (Survey respondent)

Less common reasons were that the respondent did not believe that the gardaí could do anything - 29% gave this as a reason; 10% stated that they did not want to report because the person who did it was a Traveller; and 10% stated that they chose not to report as a result of previous negative experience of reporting.

"It's because when I contacted the time I was just talking about, they didn't really take anything serious about it and it took twenty-four phone calls to come up and it was a bit of a serious matter as well so the second time that we needed them, I didn't feel like that we should contact them coz [because] they weren't going to be in any hurry and it wasn't going to do anything about it" (Survey respondent)

"From previous experiences, before the five years, I'd ring the gards and they never respond, don't take anything serious and they kind of have the perception, you know, they are Travellers, they can deal with it their selves." (Survey respondent)

Of the ITAJ sample, 10% of respondents stated that the reason they did not report their experience to the gardaí was that they did not think they would be believed. Most of the statements relating to this response referenced being believed relative to a settled person or a garda:

"I didn't report because the Gard's wasn't going to do anything about it, and it was against a settled person again, and their story is always believed over ours. So, I just didn't bother reporting it." (Survey respondent)

"If I went to the police and said the gards are saying certain things to me in my home and I'd no proof, I wouldn't have any trust that I would get anywhere at all, I just wouldn't." (Survey respondent)

Analysis of the data shows that 4% said that they believed involving the gardaí would have made the situation worse:

"I actually feared more the fact that when I was walking down the street that they'd [the gardaí] stop me and harass me for the simple fact that I was giving them more work to do because it was said an awful lot by gards ... 'we've just too much work', you know? They don't like dealing with us because just too much trouble comes out ... so I've always lived my life in fear, the minute that feud started right up until now you know, I wouldn't report anything. If I was kidnapped in the morning I wouldn't report it if I got away because I know myself there'd be something turned around in it where the Traveller is the reason it happened." (Survey respondent)

Conclusion

Almost half of the respondents to the ITAJ survey reported that they were victims of crime. When those individuals report their experiences to An Garda Síochána, however, their experiences are generally negative, with victims feeling unprotected by the State. These experiences lead to significant levels of underreporting, with victims citing reasons for that underreporting which are not seen in general population surveys conducted through the Garda Public Attitudes Survey. Victims of hate crime and domestic violence are particularly under-served by the gardaí, despite the provisions of the Victims Directive which provides that such victims deserve special protection. These victims remain unprotected by the criminal process, which should be of the deepest concern for all.

Chapter 9: Involuntary contact with An Garda Síochána

Worden and McLean (2017, p.6) highlight that the public's perceptions of the police are shaped by their subjective experiences with the police. Contact with the police can take the form of voluntary contact, for example when people seek assistance from the police or through involuntary contact such as the use of stop and search powers. Encounters initiated through involuntary contact are, by their nature, particularly liable to be experienced as negative, and negative experiences impact not only the perceptions of those directly affected, but also those with a similar identity who learn of the experience vicariously.

Stop and search practices, as a key form of involuntary contact, are particularly important to shaping minority communities' subjective perceptions of the police. At the same time, they are internationally acknowledged as a key site for discriminatory policing, particularly in the form of racial profiling. This pivotal form of police-citizen encounter is particularly vulnerable to manifesting both individual and institutional discrimination.

The significance of stop and search lies not only in its potential to generate experiences and perceptions of unfair treatment, however. Racial disparities in the use of stop and search powers are linked qualitatively and quantitatively to disparities in arrest rates and therefore rates of conviction and committal. Where racial profiling leads to the disproportionate use of stop and search powers in relation to a specific minority group, the likelihood that that group will be overrepresented in the rest of the criminal justice system is increased. This pattern is exacerbated where the prejudices that inform racial profiling antagonise those who have been racially profiled and inform a disproportionate response on the part of police; escalation ensures making a negative outcome more likely.

Garda stops – prevalence

We asked participants to the ITAJ survey if they had been stopped by the Gardaí for any reason in the past five years. Of the sample, 80% had been stopped by the Gardaí in the 5 years prior to the survey. Recognising that COVID-19 restrictions resulted in an increased number of checkpoints nationally, participants who said they had been stopped in the previous five years were asked how often they were stopped prior to the pandemic:

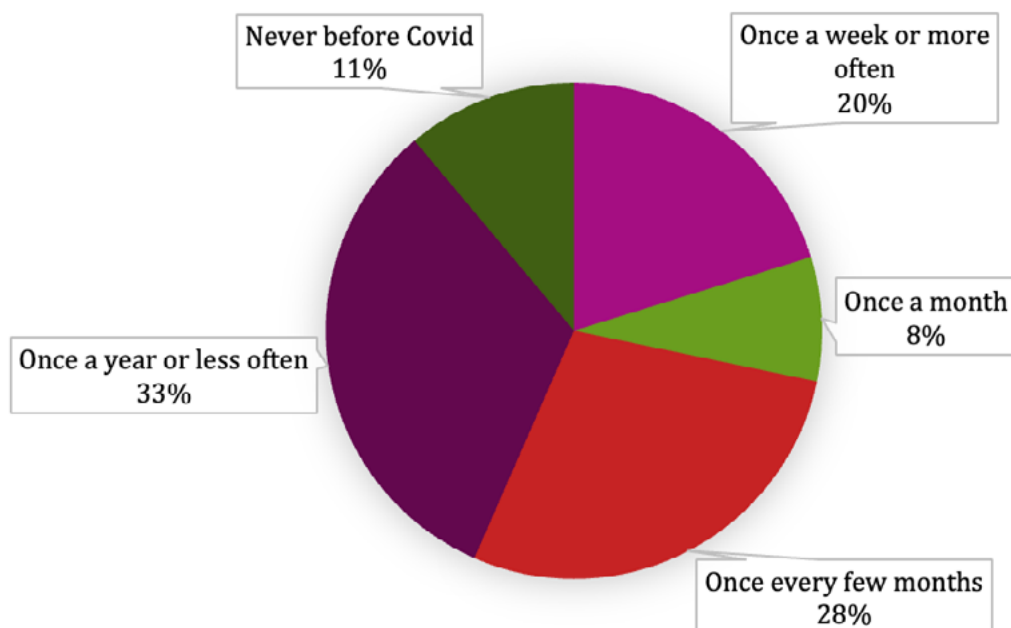


Figure 15: Regularity of being stopped by gardaí prior to COVID-19

The vast majority of interviewees from Traveller organisations were of the view that Travellers were stopped more often than settled people:

“... we’re stopped more often and then stopped and searched more often. Yeah, even on the street, the Traveller children. Now I know gard has the right to ask you, you know, who you are, where you’re coming from, whatever, has certain rights to ask you but ah, the young children are always stopped by the Gardaí, and the Gardaí can make personal comments about their hair and makeup, and their attire, that I’m sure they wouldn’t make other people or I’d hope they wouldn’t make to other people. Totally inappropriate.” (Interviewee from Traveller organisation)

“Traveller young fellas would always be, always be, stopped wherever their going.” (Interviewee from Traveller organisation)

Context of garda stops

We asked participants to think of the *last* time that they had been stopped by gardaí within the five years previous to the survey: 71% stated that they were last stopped in a private vehicle and 17% reported that they had last been stopped on the street. The remainder were stopped in a variety of contexts including on halting sites, at shops, and in public parks. Of those who were stopped in a private vehicle, 41% were stopped at a normal checkpoint; 37% were followed and stopped; 9% were stopped at a checkpoint on the way to a Traveller wedding or funeral; and 5% were stopped at a checkpoint located outside of a halting site.

When asked to think about how they were treated, 45% stated that gardaí treated them respectfully, 51% stated that they were not treated respectfully. Demonstrating the importance

of context, 54% of those who were stopped in a vehicle said they were treated respectfully, compared to 23% of those who were stopped on the street.

In recalling impactful negative experiences, a number of respondents highlighted an experience of stop and search as their worst encounter with gardaí in the five years prior to the survey. Some of the themes reported by respondents in this context include excessive use of force; the use of overtly racist anti-Traveller language; threatening prosecution; and seeking to have Travellers act as informants:

*“I’m with a settled girl so they pick on her knowing that that would annoy me, like saying stuff to her and calling her names and things and then ‘what you doing with the smelly k*****r’ [racial slur] ‘how can you do that on your own, how can you be with a k*****r’ ... I’d be getting sneered and go ‘Come on, we’ll leave’ and we’d go to walk off and then they just kick lumps out of me, do you know what I mean? There’s nothing that we can do about that.” (Survey respondent)*

“[The garda said] ‘What are you doing here?’ I said I’m dropping my brother off out to his house and he is like ‘Get out of here’ and I said to the gards ‘Can I ask you one question, what am I doing to you? What reason have you to be so angry with me and be so aggressive?’ and he said ‘Oh, get out of the estate, if you’re not out of here in the next five minutes, I’ll see your car removed in the next five minutes that I’ll seize your car and if I find nothing wrong with you or car’, he said, ‘I’ll make a reason, I’ll create something so I can get you.’” (Survey respondent)

We asked respondents if gardaí had provided them with a reason as to why they were stopped. Only 57% of those who were stopped stated that the garda had explained why they were being stopped.

Did the gardaí explain why you were stopped?

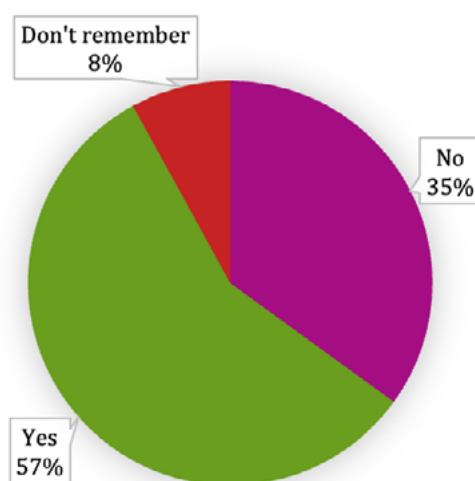


Figure 16: Provision of reason by gardaí of reason for stop

Of those who recall being given a reason for the police stop, 62% understood the reason given in its entirety; 24% only understood some of the reason given; 13% understood none of the reason given; and a small number did not recall whether they understood the reason given.

Ethnic/Racial profiling

Though the State has repeatedly denied to the United Nations that ethnic/racial profiling is conducted in Ireland, studies by the EU Fundamental Rights Agency have countered that assertion. In *Roma and Travellers in Six Countries* (2020) 58% of those respondents who had been stopped in the twelve months prior to the survey thought that, the last time they were stopped, it was because of their Traveller identity. Expanding on the work of FRA, the ITAJ project sought to document not only *where* and *how* Travellers report being stopped by Gardaí, but also to address the question of *whether* Travellers in Ireland report that they are subject to ethnic/racial profiling, and third to examine *why* those who report ethnic/racial profiling were of the view that the reason they were stopped was because they were a Traveller.

We asked respondents who reported being stopped within the five years prior to the survey whether they thought their most recent experience of a police stop was because they are a Traveller. In this context, it is useful to note that in the European Union Fundamental Rights Survey, of those Travellers who were stopped by the police in the 12 months before the FRA survey, 58% thought they were stopped because they are Travellers. Our survey found very similar levels of reporting in respect to ethnic/racial profiling. Of the respondents to our survey who had been stopped by a garda in the five years prior to the ITAJ survey, 59% stated that they believed they were stopped because they are a Traveller. A further 11% were unsure as to whether this was the reason for the stop. When we look at those individuals in more detail, 78% of those who said they were not given a reason for the stop by gardaí believed they were stopped because of their Traveller identity, compared to 47% of those who said they were given a reason for the stop.

Clearly, a majority of Travellers who responded to our survey were of the view that they were stopped by the gardaí because they are a Traveller. Our research crucially went on to ask *why* respondents were of the view that they were racially profiled when stopped by the gardaí. In some cases, respondents provided multiple justifications for their assertion of ethnic profiling. Of those respondents who stated that they believed they were stopped because they are a Traveller, 78% explained that the Garda who stopped them knew that they were a Traveller; 53% stated that the particular Garda who stopped them has a reputation for stopping Travellers; 46% stated that the location of the police stop contributed to their conviction that they were ethnically profiled; and 23% stated that the Garda who stopped them said something about their Traveller identity or about Travellers generally.

Why did you think that you were stopped because you are a Traveller?

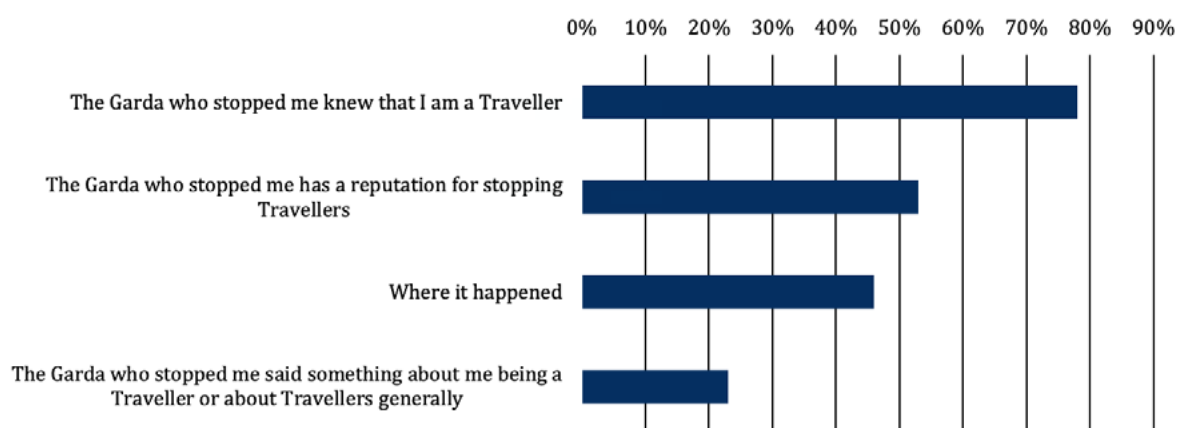


Figure 17: Reasons for perception of racial profiling at garda stop

Interviewees from Traveller organisations spoke to racial profiling in the context of stop and search:

“... you drive past the gard or he’s behind you and he recognises you and he recognises that you’re a Traveller or the group of Travellers in the car. It’s a good chance, very good chance you’re gonna get pulled over. And just because you’re Travellers.” (Interviewee from Traveller organisation)

“If a gard sees a car, five Traveller men in the one car, they’re guaranteed to be pulled.” (Interviewee from Traveller organisation)

Garda searches – prevalence

We asked participants to the survey if they had been searched by the Gardaí for any reason in the five years prior to the survey. When asked if they, their belongings or property (including their car but excluding their home), had been searched by the police in the five years prior to the survey taking place, 42% of survey respondents reported experiencing such searches in the five years prior to the survey. Again, recognising that COVID-19 restrictions may have impacted on the prevalence of garda searches, respondents who said they had been stopped in the previous five years were asked how often they were searched prior to the pandemic.

Before covid, about how often were you, your belongings or property searched by the gardaí?

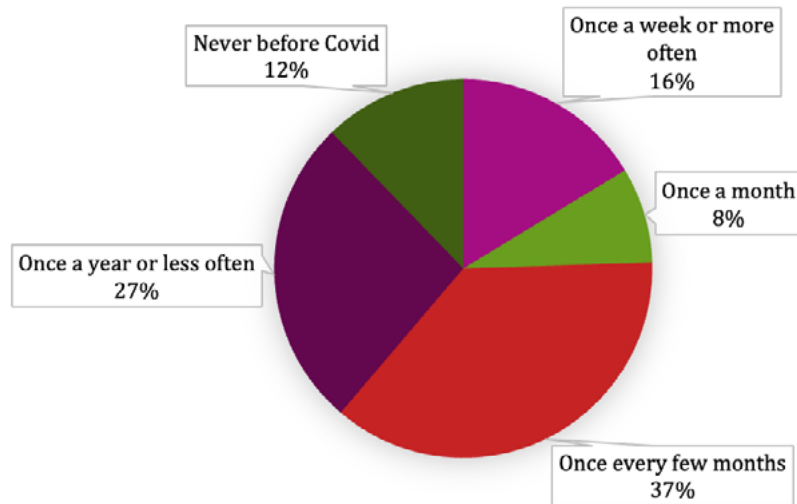


Figure 18: Regularity of being searched by gardaí prior to COVID-19

Context of garda searches

We asked participants to think about the last time they had been searched. Clothes and vehicles were the most common searches performed. When asked about their last experience of being searched, the majority stated that they did not feel that they were treated respectfully by the gardaí; 77% stated that the gardaí *did not treat them respectfully* and only 17% stated that they were treated respectfully. A very small number could not recall or chose not to respond. A majority, 56% stated that gardaí provided them with a reason for the search. 37% stated that no explanation was provided.

Did the gardaí explain why they were doing a search?

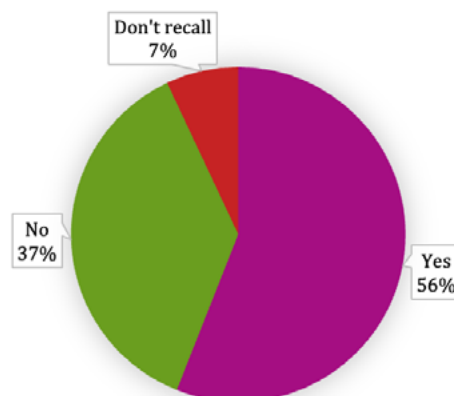


Figure 19: Provision of reason by gardaí of reason for search

Of those who were provided with an explanation, a majority, 55% understood all of the explanation given, 32% understood some of it, and a small number understood none of it. A very small number could not recall.

Racial profiling

Of those who had been searched or had their belongings searched in the previous five years, 89% thought they were searched because they are a Traveller. A small number were unsure and a very small number thought that their Traveller identity had nothing to do with their being searched.

Respondents who said they believed they had been searched because they are Travellers were asked why they held this conviction. Again sometimes individual respondents provided multiple justifications for their assertion. 80% said that the Garda that stopped them knew that they were a Traveller, 57% stated that the Garda in question is known for stopping Travellers, 46% said the location of the search caused them to believe that their Traveller identity was a factor, and 24% stated that the garda had said something about their Traveller identity or about Travellers generally.

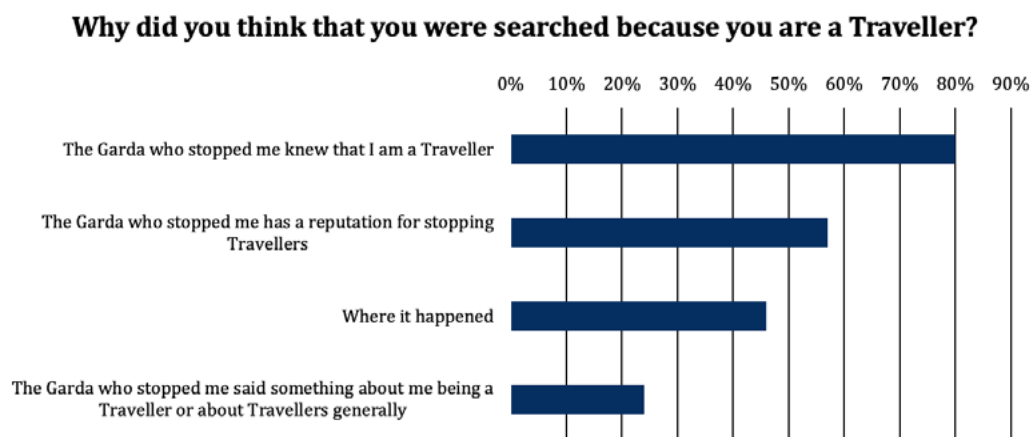


Figure 20: Reasons for perception of racial profiling at garda search

Seizure of personal items

We asked whether, following the search, the gardaí took anything away with them. The confiscation of mobile phones by gardaí has long been a theme among young Travellers. Drummond (2007) includes an example of this practice:

“My young fellas and their friends would all have mobile phones, and the officers, gards are stopping them, searching them and taking their phones off of them and telling them ‘if you have the receipt come down to the station. (Traveller Y, RoI)” (cited in Drummond 2007, p.266)

In the ITAJ sample, 17% of respondents stated that following a search the gardaí took something away with them, and 80% of our sample said that following the search, nothing was taken by the gardaí; 4% could not recall.

“I was in my car, and the gards stopped me in the street, two more in the car, coz my young fella and his friends play [a sport] and I’d two [pieces of sports equipment] in the car so

they took the two [pieces of sports equipment] and said they were weapons and I never got [them] back and I never got no answer to why they even took them or why I was even stopped or why they took [them]. I asked them am I going to get the [them] back or who's paying for them, they just said they're weapons and they have to be taken." (Survey respondent)

"... these two gards tried to put me out of business by seizing my equipment that I needed to work with... tried to seize some of my tools, now some of the tools were too big and too heavy for him to manage to get out of the van but the ones he could take, he took them." (Survey respondent)

Harassment and threats to abuse power

Mulcahy and O'Mahony's (2005, p.22) participants described police harassment of Travellers. Drummond (2007, p.265) also recounted allegations of harassment by gardaí:

"During another interview, a mother indicated that some police focus their attentions on and harass Traveller boys, recalling that: "Police can come to you and they can be very nice to you like [yet] ...any Traveller boys they see round the town, they will pull them in and search them." (Traveller Y, RoI)

In recalling impactful negative experiences with police, harassment arose as a key theme in the ITAJ research – that is, being repeatedly stopped and/or searched by the gardaí. A small number of these experiences highlighted an individual garda who harassed Travellers generally or a particular family:

"I suppose there was a detective gard [police officer], [a] certain detective gard in my family's area and he seems to be constantly on a power trip. He is constantly intimidating Travellers of all ages, young fellas [fellows] as young as twelve, thirteen and fourteen walking on the footpath. He do be pulling up and asking what are they doing for the day and curb crawling beside them and intimidating these young fellas." (Survey respondent)

The majority of those who spoke about harassment, however, spoke about being harassed by gardaí generally, rather than a particular individual:

"...there has been aggression and there has also been intimidation in terms of calling out on a nightly basis, searching the house without a search warrant, threatening, comments, especially towards Travellers that are underage and making them aware that as soon as they come of age they're going to be in big trouble and then harassing the family members as well in terms of continuous harassment to the degree they have to seek medical help interventions." (Survey respondent)

Travellers also spoke in their testimonies about gardaí threatening to abuse their powers when engaging with them:

“It happened in the main street where I live, he pulled me in a legal cooperative order and I asked him why you stopping me for he said if I don’t shut me mouth, he’ll give me a public order, I said why, so why give me a public order, I’m minding my business walking in the street and for giving, walking a public road and he gave me a public order so it’s not fair there.” (Survey respondent)

“[S]he was telling us that the reason that covid is still going around was because of our kind of people, they can’t stay away from people and they’re out drinking and all this and telling us that we are no good and that we’re only known for walking around the street trying to get boys attention, dressing like whores and telling us that the make-up we had on our faces needed to be wiped off immediately and sent us all home and told us if she sees us again, in the next, in the next couple of days that she was going to arrest us.” (Survey respondent)

Mulcahy (2012, p.318) explained that “Within Traveller communities for whom vehicles are essential, a police preoccupation with vehicle tax and insurance has a clear symbolic and material significance, and it was depicted as one of the routine forms of harassment which defined their relations with the police.” Again, this is reflected in ITAJ research, where this garda threatened to take away the car of the survey respondent:

“I said to the gards can I ask you one question, what am I doing to you like what reason have you to be so angry with me and be so aggressive and he said ‘oh, get out of the estate, if you’re not out of here in the next five minutes, I’ll see your car removed in the next five minutes that I’ll seize your car and if I find nothing wrong with you or car he said I’ll make a reason, I’ll create something so I can get you’ he said.” (Survey respondent)

Provocation and escalation

Mulcahy (2012, p.319) reported that garda interviewees perceived relations between Travellers and gardaí as “usually uneasy and occasionally hostile” and reported that garda interviewees described their response to Travellers as mediated by a belief that Travellers are more likely to escalate an encounter to a physical altercation. In the course of the ITAJ research, a small number of individuals spoke instead about gardaí provoking Travellers – particularly young male Travellers – and then arresting them:

“... there is a lot of intimidation with gards, provoking young fellas to get into an argument because I seen that first hand, to get into an argument and then when they get into an argument they’re arrested and they’re charged and they’re intimidated and they’re made to feel this way and you’d hear some young lads saying, ‘look you’re better off dead than putting up with this country, the law in this country.’” (Survey respondent)

This finding reflects those of Costello (2014) who notes that some prison officers were reported to deliberately use racist taunts to instigate or escalate conflict with Travellers. This included use of the K-word, mimicking Travellers’ accents and referring to cells as caravans (Costello 2014). Both Costello (2014) and Doyle et al (2022) underscore that Travellers provoked by racist slurs would then be sanctioned.

Interviewees from Traveller organisations who took part in the ITAJ research also spoke about gardaí using racist language to provoke a physical response, particularly from young men, which would justify the garda arresting the Traveller:

“Interviewee: [The k word] – it’s very hurtful. It’s very demeaning. It’s derogatory ... when somebody is calling you that name, they are doing it for a for a couple of reasons. They’re doing it to demean you, to devalue you, to try and put you in your place when they’re doing that. Or what they think your place is ... [O]r they’re trying to provoke a response.

Interviewer: What sort of response?

Interviewee: A negative response. And you know, if you press somebody’s spot and you keep pressing somebody’s buttons, they’re going to retaliate and might retaliate with language. Or they might retaliate just with frustration on it. And then you’re playing into the hands of, you know, of a, you’re playing into the hand of a gard or gards, a number of gards with an agenda.

Interviewer: What’s that agenda?

Interviewee: Well, that agenda can be taking you, that agenda can be taking you down to the, to, it might get you a fine, might get you imprisonment. And, more than once, we’ve been aware that it’s taking people down to give them a beating inside the cell if they’re young boys.” (Interviewee from Traveller organisation)

“I would hear reports from Travellers of being treated very differently. Particularly mothers tell me about their sons being almost provoked by the Gardaí to respond in a particular way compared with non-Traveller friends.” (Interviewee from Traveller organisation)

“... they came out onto the site one time, just strolling around in their cars, which that’s allowed but there was four young boys against the wall and I was witness to this, there’s one young boy [identifiable information] ... and the two gards that was in the car actually called him by his name and made a laugh of him, started jiving him and when that young boy said something back to them, they threatened to put him into the back of the car and arrest him but they provoked him.” (Interviewee from Traveller organisation)

*“... so the gards now have this young man they pulled to the side of the road, and probably knows he’s- knows he’s nothing on him. Do you know what I mean, he knows there’s a young fella standing in front of him with- probably similar in age but because he’s a badge on, he obviously has the authority- calling him a k*****, so it gets them really fired up. It gets them really angry. It gets them ... they’re embarrassed, actually. And embarrassing sometimes brings outrage. Now from the sideline you have- see this young Traveller boy getting search really angry, an expression- loads of anger, but you don’t see what’s happening, what the gards after doing, do you know what I mean?” (Interviewee from Traveller organisation)*

Donner et al (2021 p.161) note that just as embedded stereotypes may prime police officers to anticipate hostility from minority communities, so too experiences of police discrimination may prime members of minority communities to anticipate ill-treatment from police officers. Doner at al (2021, p.161) warn of a possible “... feedback loop built into the didactic encounter

between police and citizens, whereby disrespect from either party will adversely affect the other party and will likely leave the citizen feeling as though s/he was treated unfairly by the police.”

Crisis Intervention Team model

All Ireland Traveller Health Study (2010) noted high rates of mental health difficulties among Travellers in prison 62% of their sample of 26 prisoners had engaged with psychiatric services in the past 12 months. The Oireachtas Joint Committee on Issues Effecting the Traveller Community has acknowledged “a mental health crisis facing the Traveller community” (Final report, 2021, p.25). O’Mahoney (2017) found that 90% of Travellers agreed that mental health difficulties (including depression/ anxiety) are common in the community and 26% had been affected by suicide in their own immediate family. 45% identified their own mental health as an issue.

Globally, the Crisis Intervention Team (CIT) model is “designed to improve officers’ ability to safely intervene, link individuals to mental health services, and divert them from the criminal justice system when appropriate” (Watson 2012, p.71). Campton et al.’s (2008) review of CIT programs indicates that the training component of this model have positive effects on officers’ overall attitudes toward individuals with mental illnesses and prepare them better to handle calls with such individuals. In 2012, Watson highlighted that “CIT has been called both a “Promising Practice” (International Association of Chiefs of Police, 2010) and a “Best Practice” model for law enforcement (Thompson & Borum, 2006).” (71, see also Bonfine et al. 2014)

Arising from Recommendations of the Commission of the Future of Policing in Ireland, which in recommended “Crisis Intervention Teams should be established at divisional level, with round the clock response capabilities to serve every part of the country.” (Commission on the Future of Policing 2021 p.3) According to the Drogheda Report Implementation Plan (2021), these Teams will involve collaboration between An Garda Síochána and mental health professionals to oversee the training and formation of multi-agency intervention teams “to provide a rapid and integrated response to persons with mental health issues” and (p.7) and “ensure that all people with mental health needs receive the support they deserve, and are diverted from the criminal justice system wherever possible” (Parliamentary Question 1201, 19 January 2022).

A pilot project under the auspices of the Assistant Commissioner for Roads Policing and Community Engagement is being undertaken in Limerick. According to the Minister for Justice it will be implemented in Q3/4 2022. The evaluation period will consist of 2-3 years. The ITAJ team warmly welcomes the piloting of Crisis Intervention Teams. We recommend that given that they were first recommended by the Commission on the Future of Policing in 2018, they urgently need to be rolled out nationwide, and that this rollout should not await the conclusion of a 2-3 year evaluation. We further recommend that, given high levels of both mental health difficulties and involuntary police contact, in the Traveller community training of Crisis Intervention Teams should incorporate cultural competency training with respect to Traveller ethnicity. We further recommend that the Teams should incorporate Traveller mental health workers. Finally, we recommend that additional members of the Traveller community should be trained as Traveller mental health workers in recognition of the role of mental health in negative outcomes in interactions with criminal justice.

Ceremonies of degradation

Garfinkel defined degradation ceremonies as “any communicative work between persons, whereby the public identity of an actor is transformed into something looked on as lower in the local scheme of social types” (1956: p.420). In the context of policing, “police stops, frisks, and automobile searches are common degradation ceremonies” (Gustafson 2013: p.303) that target minority groups more than dominant groups. The concept of ceremonies of degradation highlights that depending on the content of the interaction, a routine police encounter can become a site of public humiliation. Drummond spoke of degradation in the context of police-Traveller encounters, where in full view of bystanders at funerals and weddings, a participant had witnessed “children getting searched, nappies getting took off children” (2007: p.264-5).

A minority of survey respondents recounted experiences that we understand as ceremonies of degradation:

“... it was anything that I had on me that was searched, my wallet, the back of my phone would be opened up you know it would be every single possible place, my hat would be taken off, my shoes would be ripped off, my socks were ripped off and this would never happen in a station, it was always in town if front of everyone, I was standing there bare-foot one day and they, they wouldn't give them back to me for like twenty minutes, just, it's so embarrassing, it's really embarrassing” (Survey respondent)

“They got me to take off my shoes and socks, got me to pull down my trousers in the middle of the street and I was wearing a shorts, in front of my girlfriend and everything, just made a show of me in the street like and got me to pull out my boxer shorts and everything to look down” (Survey respondent)

Parents spoke about degrading treatment involving children, and occurring in view of their children's schools:

“I've never been up in court before and it's very embarrassing, like they're pulling, like you. could be driving out in your motor and they're picking your children out of the car standing on the side of the road, you're standing out at the side of the road and there's people passing in cars, they're literally, what you have in your car they'd just leave it on the floor, d'you know even you could have personal documents in your car or letters and things like that, they'd be reading them and they just throw them on the floor like they're nothing.” (Survey respondent)

“It was when they followed me ... from a town to ten mile to my kids local school, no need to use blue lights or the sirens but used them to intimidate me and my children and my husband. And then to take a big mad drug search, and my children and other children watching them from the schoolground, that was disgusting... in front of my children, in front of the principal of the school, in front of me child, the resource teacher ... watching everything from the school.” (Survey respondent)

Although recounted by a minority of participants, the potential for degrading treatment to impact on community relations cannot be understated.

Arrest

The 2006 Morris Tribunal found that in 1998 seven Irish Travellers were arrested and detained, following a search justified by 'confidential information', which found a loaded firearm planted by a Detective Sergeant. The Tribunal found that the detainees were subject to derogatory comments about their culture by gardaí interviewers, naming this as racist abuse and stating, "Although the Tribunal believes that such utterances were more reflective of societal prejudice than specific police interviewing techniques at the time, they are nonetheless entirely unacceptable, and can only serve to foster the sort of climate in which physical abuse can take place" (Morris 2006, p.201). The fifth report of the Morris tribunal highlights that "It took some years for anyone to come forward and to allege disgraceful Garda conduct to secure the arrest of seven innocent members of the Irish Traveller Community. When, however, the allegations were made, other members of An Garda Síochána, who are named in this report, and who had no actual knowledge or evidence as to the veracity or otherwise of the allegations, entered into a disgraceful conspiracy to pervert the course of justice by attempting to rubbish the allegations" (Morris Tribunal 2006, p.2).

The use of racist language during the course of arrest, as well as the use of excessive force, was highlighted by a small number of individuals in ITAJ research:

"Yeah, I was in town walking home and they pulled me in, arrested me and trying to hit me then as well and my hands, handcuffed me..." (Survey respondent)

"I had informed the male gard that [I have a physical vulnerability], he told me that he didn't fucking care, were his exact words, he put pressure on [me] with his knee and I said to him please get off me, can you please get your knee off me and he told me 'I don't care, can you make me', so I started crying, I tried to shove him off me and he tried, just pressed harder." (Survey respondent)

As we have noted earlier, some Travellers who participated in ITAJ research highlighted the use of racist language to provoke a response from Travellers in order to give the garda a justification for arresting them:

*"Gards will pull up and knock -if you were drinking, they'd knock the drink out of your hand. They call you k*****rs, they push you around. And ... if you give out, answer back to them for asking what would they do, they'd twist your hand around your back and handcuff you."* (Survey respondent)

There are clear constitutional limitations on the circumstances in which a member of An Garda Síochána can arrest an individual and clear procedures which must be followed. Again, we sought to determine the extent to which these rights were respected in the engagements our survey respondents had with An Garda Síochána, as well as whether they perceived that those

arrests were carried out because they were a Traveller – that is, that the arrest was part of a process of racial profiling.

Analysis of the data shows that 22% of participants reported that they had been arrested by Gardaí in the five years prior to the survey. Of those who had been arrested in the five years prior to the survey, 48% had been arrested once, 32% had been arrested 2-5 times and 19% had been arrested 6 or more times. Of those that had been arrested, only 68% stated that they were given a reason for their arrest, 22% stated that no reason was provided. A very small number could not recall whether a reason was given or chose not to respond. Of those who said they were given a reason for their arrest, 60% understood all of the reason given, a small number understood some of it and a very small number understood none of it.

We asked whether those who had been arrested thought that they had been arrested because they are a Traveller: 59% thought that they were arrested because they are a Traveller. 31% thought that their Traveller identity was not a factor in their arrest. A very small number were unsure or chose not to respond. All of those who said the police did not explain to them why they were being arrested believed that the reason involved their Traveller identity, compared to 52% of those who said they had been given a reason by the police.

Custody

Again, constitutional rights protect the circumstances in which an individual can be held in custody, and further processes protect the rights of individuals when held in custody. Much research has been conducted recently on the rights of those in garda custody, particularly with respect to access to a solicitor (see eg Conway and Daly 2019). We sought in this research to explore how custody rights more broadly were respected within garda stations, including access to solicitors and medical attention.

Of the participants to the survey, 19% had been brought into custody. Of those who had been brought into custody, for 46% it had happened once; for 40% it had occurred 2-5 times, and for 15% it had happened six or more times. Of those that had been brought into custody, only 60% stated that they had been given a reason for being held; 34% stated that no reason had been provided; and 6% stated that they could not recall. Of those who said they were given a reason for their arrest, 60% understood all of the reason given, a small number understood some of it and a very small number understood none of it.

Safety in custody

In qualitative interviews, we asked participants if they would have any concerns as to the safety of a Traveller if they were in police custody. A majority stated that they would be worried about their safety, which ranged from concerns about not getting medication to being physically attacked:

“I’d be worried that ... they wouldn’t be able to make a call. I’d be worried that the way they’d be treated within the cell. If there was a person for instance maybe was on medication, would the gards ... inform us that that person was locked up in order that we

could get the medication to them? If they couldn't make a call you know?"

(Interviewee from Traveller organisation)

"I don't think they feel safe 'cause ... you have a system that doesn't accept Travellers. Within the system there is an ignorance and prejudice ... If you're not accepted on your identity how can you feel safe environment that doesn't accept you?"

(Interviewee from Traveller organisation)

In describing their most negative experience with gardaí, a very small number of survey respondents asserted that they were attacked by gardaí in garda stations:

"... one gard start beating me inside in the cell and then another gard came along, I got a beaten anyway, black and blue." (Survey respondent)

"I couldn't breathe, they, they sat on top of me, they called me names, and simply, degraded me very badly being honest, and just left me there then, then, until the medic came around some time later." (Survey respondent)

"They tried to dislocate my shoulders, they danced all over my feet. Took my shoes off, dance over the back of my heels, my feet. Eh, broke my ribs." (Survey respondent)

In the survey, we asked if those who had been in garda custody felt safe when in garda custody. The majority of those who had been in garda custody did not feel safe when detained:

While you were in garda custody, did you feel safe?

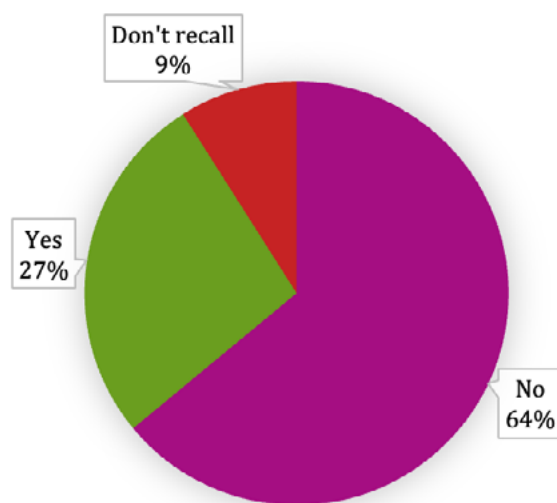


Figure 21: Perceptions of safety while in garda custody

We also asked if those who were on regular medication had been able to access that medication when in garda custody. Of those who had been in custody in the relevant time period, 39% were on regular medication. Of those, 81% reported that they did not get their medication when being held in the garda station; and the majority of those who reported that they did not get the medication on time stated that time without the medication made them feel unwell. We also asked whether those in custody required medical attention when in custody – 70% stated that they did not, with a minority of respondents reporting that they did require medical attention. Of those that required medical attention, the majority did not receive it.

Questioning

Again, constitutional rights protect the circumstances in which an individual can be questioned, and further processes protect the rights of individuals when held in custody. Much research has been conducted recently on the rights of those being questioned, particularly with respect to legal representation (see eg Daly and Conway 2021). Here, we sought to establish if the right of accessing solicitors was offered to those being questioned.

Of the ITAJ respondents, 19% had had been questioned by gardaí in a garda station in the relevant timeframe. The majority of those had been arrested prior to being questioned, but an equally small number were asked to attend the garda station for interview; asked by gardaí to attend the garda station to give a statement; or decided themselves to attend. Of those who were questioned, 20% were charged with an offence before being questioned; 59% were not charged; and 21% could not recall whether they had been charged with an offence or not. Of those who had been questioned, 26% reported that the garda questioning them had said something about them being a Traveller, or about Travellers generally.

We asked about the making of statements following questioning: 57% of those who were questioned were asked to sign a statement. Almost half of those stated that the statement matched what they had said “very well” or “well”; with a quarter stating that the statement did not match what they said “well” or “at all”. The vast majority of those who were asked to sign a statement signed it, though less than half were able to read it before signing it. A significant minority could not read the statement themselves because they have difficulty reading. Over half of those who signed the statement said that they were put under pressure to sign it, with almost all of them stating that the pressure to sign the statement came from the garda.

Referrals of incidents of deaths or serious injuries to the Garda Síochána Ombudsman Commission

Mulcahy (2012, p.318) reported that Traveller participants made “allegations of clear misconduct on the part of police officers, including allegations of being ‘beaten physically’ while in police custody.” One of the participants to Mulcahy’s (2012, p.318) research reported that “when people said they would like to make a complaint or were interested in how they would make a complaint or something like that, they were told they could be detained even longer.” Again, these findings are reflected in ITAJ data, with some suggestions from a minority of interviewees from Traveller organisations that Travellers have been subjected to serious injuries at the hands of gardaí, with reports of Travellers deaths in garda custody circulating in the community.

Section 102(1) of the Garda Síochána Act, 2005 provides that “the Garda Commissioner shall refer to the Ombudsman Commission any matter that appears to the Garda Commissioner to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person”. This power is in practice delegated by the Garda Commissioner to Superintendents, who decide whether or not it is appropriate to refer an incident to GSOC.

We asked GSOC for details of deaths or serious injuries of Travellers in garda custody for the period 2016-2020. In response, GSOC made it clear that ethnic identifiers are not collected with respect to these data. We were provided with the following breakdown of referrals received by GSOC, the number of deaths in custody, and the number of cases of serious harm in custody:

Year	Referrals Received	Deaths in custody	Serious harm in custody
2020	43	0	5
2019	40	2	3
2018	38	0	6
2017	24	1	3
2016	51	1	6

Figure 22: Breakdown of referrals received by GSOC including deaths in custody and serious harm in custody

Following this communication, we asked that GSOC if it could analyse those cases involving death or serious injury in garda custody to assess whether the ethnicity of the injured person was recorded, or to determine the number of cases which involved Travellers. GSOC stated that it was not in a position to carry out this analysis.

Conclusion

The 2020 UN CERD periodic report on Ireland expressed concern regarding racial profiling in Ireland, stating, “The Committee is concerned about the reportedly high incidence of racial profiling by the Irish police (Garda) targeted at people of African descent, Travellers and Roma, and the disproportionately high representation of these minority ethnic groups in the prison system.” The ITAJ project suggests that Travellers perceive that ethnic/racial profiling, police harassment and the excessive use of force, practices which are contrary to international human rights standards should be of immense concern to An Garda Síochána as an organisation which acknowledges that “human rights are the foundation and purpose of policing” (Commission on the Future of Policing in Ireland, 2021 p.ix).

The UN CERD has recommended that Ireland addresses the issue of racial profiling through legislation (IHREC 2019, p.9), and the Oireachtas Committee on Justice (2022) has further recommended that An Garda Síochána should record the ethnicity of those subject to stop and searches. Doyle et al likewise recommend,

“Given the nexus between ethnic profiling at first contact with law enforcement officials and the disproportionate representation of minority ethnic groups in prison internationally, it is integral that data is gathered on the ethnicity of people subjected to stop and search by An Garda Síochána. Accurate data on the ethnicity of people must be gathered at all stages of the criminal justice system, from first contact with law enforcement officials to sentencing and imprisonment” (2022: p.17).

We recommend the introduction of policies to measure and address ethnic/racial profiling and the strengthening of complaints mechanisms. We are deeply concerned about the perceptions that those who were in custody in the past five years had in relation to their safety while in custody, and recommend that this be addressed as a matter of urgency.

Chapter 10: Search of the Home

The principal of the inviolability of the dwelling is protected under Article 40.5 of the Irish Constitution which provides:

“The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.”

This provision has been interpreted by the courts as “substantively protecting the dwelling” rather than simply requiring that any entry into the dwelling is done in accordance with the law (Hogan et al, 2018), and does not only apply in the context of forcible entry. The definition of a dwelling has been found to include a mobile home (*Wicklow Co Co v Fortune (No 3)*, 2013 para 41) and extends to “every person’s private property” (*Creaven v Criminal Assets Bureau*, 2004). The circumstances in which the gardaí can enter a dwelling in the absence of the consent of the occupier are extremely limited, and even further limited where the gardaí do so in the absence of a search warrant (see further, Hogan et al 2018, paras [7.5.15] to [7.5.37]; Walsh, 2016, Chapter 10). Further, as Hogan et al note, “if an owner opposes the presence of gardaí in his driveway, the gardaí become trespassers absent specific statutory authority for their entry” (Hogan et al 2016, para [7.5.40]).

In interviews with Traveller organisations, the issue of entry by gardaí into dwellings was highlighted as a key issue of concern:

“I think the gards because they’re wearing the uniform they think that if they land to a door that they can do what they want. They can walk into that house without being invited in.” (Interviewee from Traveller Organisation)

“I think that we’ve heard enough from Travellers who said that gards came into the site, had nothing to do with them, and their homes were torn apart. Yeah, so we hear that. So, we hear that and the gards may have come in for an issue that had nothing to do with the majority of people in this site and their homes could be torn apart.” (Interviewee from Traveller Organisation)

“On one particular occasion when somebody had been followed into this site because they had committed, whatever they committed ... I know that then there was a follow-up raid and everybody’s, everybody’s trailer ... was broken into ... there was no warrants or there was no kind of search warrants or ‘I have the authority to do this.’” (Interviewee from Traveller Organisation)

The use of the term “raid” by this last interviewee was not uncommon: indeed, survey respondents commonly used this term to describe the search of their homes by members of An Garda Síochána.

Prevalence of home searches

We asked in the survey if respondents had been present in a home when the gardaí entered without having been invited in. Of our sample, 50% stated that they had been present in a home when the gardaí entered without having been invited in.

In the last five years, have you been present in a home when the gardaí entered it without being invited in?



Figure 23: Experiences of being in a home entered by gardaí without permission

Of those who were present in a home when the gardaí entered without invitation, 20% stated that they had experienced this on one occasion, 56% reported they had experienced this on 2-5 occasions, 24% stated that they experienced this 6 or more times.

In the last five years, how many times have you been in a home that the gardaí have entered without permission?

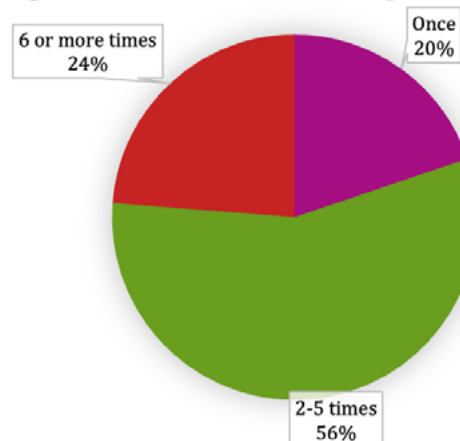


Figure 24: Regularity of being in a home entered by gardaí without permission

Provision of search warrants

We asked respondents about their most recent experience of being present in a home which the gardaí entered uninvited within the previous five years. Only 11% said that the gardaí presented a search warrant to them or another person present. Of those individuals, just over half believed that the gardaí had come to the wrong home.

Of those who stated a warrant was provided where someone present could read the warrant:

-
- Just under a third stated that the warrant did not include a detailed address like a bay number or house number.
 - Just over a third said that they or someone else told gardaí that they were in the wrong place.

Literacy and search warrants

Recalling that a search warrant was provided in only 11% of the cases recounted by participants, in just under one third of those cases, the participant stated that nobody present could read the warrant. This issue was raised by interviewees from Traveller organisations in the context of home searches, who highlighted the question as to whether Travellers are in a position to assert their rights in these scenarios:

"If I cannot read or write, you could be presenting me a page of a Beano magazine or whatever you know, it could be anything. ... I have family members, not all elderly people or young people, who cannot read and write ... So, if you present them with a piece of paper, it could be anything, literally anything. You're not going to question the gard. They are not going to disagree or annoy the gard or provoke him in any other way. So, but just say, yes, thank you." (Interviewee from Traveller Organisation)

This perspective was evidenced through our survey. Of those who stated that they had been present in a home when the gardaí entered and presented a search warrant, just under one third of individuals stated that no one present could read the warrant:

"... they'd only show it to you for a second, just hold it out in their hand, then put it back into the case and that's it then, they'll just show it to you in his hand, he won't give you it to read, they just show it to you, and put it back into the thing. Just take it out, flash it, and put it back into the thing ... It can be any kind of a piece of paper, so that's what I said, I can't read and write, all I know is my name ... So it can be anything, they could show you anything, it could be anything..." (Survey respondent)

No search warrant provided

In the vast majority of cases where a home was entered by gardaí without permission, that is 82%, no search warrant was shown. In these cases, nearly half of those individuals (47%) stated that the gardaí did not give a reason for entering the home; 38% stated that the gardaí gave a reason for entering the home; and 15% stated that they did not remember. The reasons given varied, with the most popular being that the gardaí were searching for a particular person, or were there in relation to drugs/firearms offences.

Of those individuals who were present in a home when it was entered either without permission or a search warrant, only 28% stated that they believed the gardaí had come to the right home.

Of those individuals who were present in a home that the gardaí entered without permission

or a search warrant, 61% stated that they or someone else present told the gardaí not to come in, but only a very small number of participants said that the Gardaí left immediately after they were instructed not to enter.

Search of incorrect home

Whether the gardaí had a search warrant or not, the majority of individuals who were present in a home when the gardaí entered without permission were of the view that the gardaí had come to the wrong home: 65% thought that the gardaí had come to the wrong home, and only 32% thought that they had come to the right home. This survey respondent is clear that even though the gardaí had come to the wrong home, at least a cursory search of the home was conducted:

“They came in anyway... they came into the house. It was the wrong house as it turned out, but they came in anyway and they were kind of scoping the place out while they were in there, do you know what I mean. I don’t think they officially searched it but I’d say they were still like high on the lurk (looking/searching).” (Survey respondent)

Where a search warrant was shown, half of those present were of the view that the gardaí were in the wrong home; where a search warrant was not shown, 68% believed that the gardaí had not come to the right home. Of those who did not think that the gardaí had come to the right home, whether a search warrant was shown or not, 88% told the gardaí that they were in the wrong place. These two individuals had similar experiences – in the first case, a search warrant had been shown; in the second, it had not:

“...when I opened the door, they walked straight in, they were looking for one of my [family members] which I’ve told them a hundred and one times he don’t live there, he lives somewhere in [name of country] and yet they keep coming back, twice on different occasions, two different guards had walked in, inside my front door, they were saying to me, they were looking for, and I said he was in [name of country] somewhere, he don’t live here.” (Survey respondent)

“... we told them that we weren’t that name ... when they came and all but they still stayed there anyway and they searched down our whole home and cars and all our private things and rooted out everything, literally we done nothing wrong but we were raided for nothing.” (Survey respondent)

Execution of searches

In recalling impactful negative experiences with the gardaí in the last five years, a key theme recalled by participants was the garda “raids” on their homes.

“I have very rarely been in situations on [halting] sites when the gardaí [police] don’t turn up with guns ... like when they go to sites and Traveller specific kind of housing, they always, they come in with guns you know and I can’t see that being any way verifiable policy because that is a deliberate choice and that really shifts how you engage, because

when someone turns up with a gun you're going to talk to them very differently say if they just turned up and say we want entry but when they turn up with a gun and want entry you're kinda going, well I don't feel I have any choice because they've a gun in their arm." (Survey respondent)

"There's one particular fella that used do a bit of work with us. Yeah, and he's a worker like he's a hard worker. You know he works 5-6 days a week and he actually rang us one day. And he was that pissed off and upset and he said why is it that I'm being raided? Every time this site's being raided I'm being raided, he said. You know, and he kind of had that - the word I'm looking for - like he was giving up, kind of a thing, if you know what I mean. And he said what's the point of me being honest, showing my kids the right road if I'm painted with the one brush like the rest of them. So why not just do it?" (Interviewee from Traveller organisation)

Search of the home in the presence of children

As is evidenced in the quote above, children were stated to be impacted by garda entering and searching on their homes, and was said by interviewees of Traveller organisations to be significant, impacting on their education:

"one woman said to me, she said my children have to go to school in the area. She said, like them police turning up out there. Her children have gone to school up the road like what's going to be like for them going into school and all the other schoolchildren's saying there were armed police outside your, outside your place the other day, you know, kind of, the consequences, you know of that for, for local families, you know." (Interviewee from Traveller organisation)

A number of Travellers discussed Gardaí searching children's school bags while the children were on their way out to school during the course of a search of their home:

"I know the gards was raiding our site...three gards came into my house, now at the time... the children was going out to school and they were looking in their school bags, see if there was anything in their school bags and things like that...searching children's school bags going out the door, that's wrong..." (Focus group participant)

In recalling impactful experiences, that is, the most positive or negative experience that participants had with the gardaí in the last five years, a number of survey respondents also described the impact this had on the children present.

"Well, the most issues I had with the Gardaí [police] is coming into my home, when the kids getting ready for school at all hours in the morning. I have no issue in the world with any Gard coming to my place, I understand they're only doing their job. That's their job. That's what they're there for. But it's not that. They're coming into your home, they're putting you into a room, all the kids and yourself into a room ... Then mostly what the problem is, the kids is going to school then, about half nine, twenty to ten, could be half ten some mornings,

then the kids is going to school, then the teachers are ringing back, 'Ah, the kids told me the Gards we're out on the site this morning, and what were they doing,' and all this kind of craic." (Survey respondent)

"The children are crying, they want to know what's happening, they don't understand the situation coz they're too young. Then your little children is gone out trying to get a bus to school and they're stopping them up while their friends is on a bus looking at them, taking their school bags off their back and searching them." (Survey respondent)

These members of a focus group highlighted the impact on children in particular in the starkest way:

"Participant 1: It's sad, so it is ... Children getting traumatised, the shades [gardai] coming in, they don't know what's going on.

Participant 2: It's not good for the mental health, is it?" (Focus group participant)

Conclusion

The prevalence with which the homes of the Traveller community are entered by police is deeply troubling and a cause of significant concern, as are testimonies recounting excessive use of force and resulting trauma caused to families and children. The fact that the provision of search warrants was reported by relatively few respondents is equally concerning. The comparison to the policing of Catholics in by the RUC in Northern Ireland in this particular context is striking, whereas O'Keefe states, "House raids have historically been a central part of security force strategies of harassment and intimidation. The procedures used in searching residences have raised substantial human rights questions" (2017: p.72). We believe that that there are significant human rights concerns attaching to the misuse by garda of their powers of home entry.

Chapter 11: Bail

The right to liberty is a constitutionally protected right, and any decision to restrict access to bail is an infringement on that right in a context where an individual has not been convicted of the offence in question. Indeed, as Walsh notes, even if an individual is released on bail, “his other personal freedoms may be restricted and his presumption of innocence dimmed by the imposition of terms and conditions on the bail” (2016, p.1059). Bail is typically granted at the garda station (often called station bail) or by the district court, though both the Special Criminal Court and High Court have original jurisdiction with respect to the granting of bail in limited circumstances (see further, Walsh 2016, pp.1075-1083). Data is not available regarding bail conditions imposed on Travellers, either through ‘station bail’ or when bail is granted in the court, and so we probed this issue with survey respondents and interviewees working in Traveller organisations.

Granting of bail

Bail can be granted in garda stations (‘station bail’) or by a judge, and generally speaking, two key decisions have to be made in this context: first, whether bail should or should not be granted; and second, if bail is granted, what conditions, if any, should attach to that bail. With respect to the first key decision, decisions as to whether bail should be granted are based on what are referred to as the *O’Callaghan* principles, along with the provisions of the Bail Act 1997. Generally speaking, where a court refuses to grant bail, it should provide the ground upon which is refusing bail (see, Walsh 2016, p.1071). While there can be conditions imposed on the granting of bail, they must be articulated by the court and justified “by reference to the general principles relating to the granting of bail” (see generally, Hogan et al 2018). Thus, the conditions attaching to bail must be just and reasonable in all the circumstances, and cannot, as stated in *O’Callaghan* “in effect amount to a denial of bail and in consequence lead to inevitable imprisonment” (1966, p.518). For example, in *Ronan v Coughlan* (2005) a condition of bail which required the accused to remain in the home for 16 hours a day, and thereafter within a limited geographic area amounted to an unlawful restriction on his right to liberty; similarly, in *Brennan v District Judge Brennan*, the granting of bail on the condition that the accused remained under 24-hour house arrest was similarly outside the jurisdiction of the court.

We asked survey respondents if they had applied for bail in the five years prior to the survey: 11% of the sample was willing to answer questions about the last time that they had applied for bail. A slight majority were granted bail in a court, with the remainder granted bail in a garda station; a very small minority was denied bail. Of those that were granted bail, half could take it up immediately, with half being held until they could comply with the conditions.

We asked survey respondents if anyone said that they shouldn’t be given bail because they are a Traveller: a small number stated that either a garda or a solicitor/barrister stated that they shouldn’t be given bail because they are a Traveller. The most common thing said in this regard was that the accused was a flight risk because Travellers move around; though other reasons given were that the accused would be hard to find because many Travellers share their names. This interviewee from a Traveller organisation also cited the absence of a fixed abode as an issue which resulted Travellers in being held on remand:

"[The gards] wouldn't consent to bail, yeah? And ... one of the key reasons he used to give wasn't NFA. Yeah, no fixed abode. If you're living even, you might be living on, you know on an unofficial site for 10-15 years ... Your children might be going to school in the area, you know, but they used to use that ... So you were put in remand and you were remanded into custody here." (Interviewee from Traveller organisation)

Conditions for bail

The second key decision to be made in the context of bail is, when bail is granted, what, if any, conditions, should be attached to the granting of bail. We asked ITAJ survey respondents about the conditions that were set for their bail. The most common conditions set were that the individual had to pay money; that someone had to pay money on their behalf; that there was a curfew set; or that they had to sign on at a garda station near to where they live. In setting the amount for bail, either through station bail or by the court, the financial sum required for bail must be reasonable in the circumstances. In particular, as stated by Walsh J in *O'Callaghan* (1996), the amount set for bail must not be an amount so high that it would "in effect amount to a denial of bail and in consequence lead to inevitable imprisonment" (1966, p.518). He went on:

"If persons come from a humble walk of life or are of little means it is most likely that their friend or those of them who are prepared to go as surety for them are of the same condition and the amount of bail required must be just and reasonable in all the circumstances having regard to the condition and ability of the accused..." (1996, p.518)

Thus, in setting the amount of bail, the financial circumstances of the accused must be considered; though, as Walsh observes, this does not mean that the amount set must be an amount which the accused can easily satisfy, but rather must be "suitably" high, relative to the means of the applicant. As this interviewee from a Traveller organisation made clear, however, for some Travellers, securing any funds is impossible:

"Interviewer: When people are in police custody, say if they've been arrested, do you think that they require any particular supports?"

Interviewee: Yeah, like we've helped them with- sometimes they wouldn't have the money to get out of there, do you know what I mean? Our organisation, in extreme cases, would try and help out. Do you know what I mean? We try and - money is a big thing among some of them, do you know what I mean? Severe poverty. and they wouldn't have their money to get out of jail.

Interviewer: And if you weren't able to help them, where would they get the money?"

Interviewee: They wouldn't." (Interviewee of Traveller organisation)

Conditions attaching to residency and travel

The O'Callaghan principles dictate clearly that conditions that attach to the granting of bail cannot be such as to amount to an effective denial of bail. Those who worked in Traveller organisations spoke of significant conditions imposed, such as the exclusion of the individual from entire counties or townlands. In some cases these were counties or townlands that the individual did

not live in, but had family or friends. Some were restricted from travelling far from their home, or had strict limitations on when they could leave their home: this interviewee from a Traveller organisation referred to an individual who was restricted from leaving his halting site:

“There’s this Traveller who ... can’t leave the site. He’s barred from the townland, he has to stay in the site. He has a specific hour or two that he can go to do the shopping.” (Interviewee from Traveller organisation)

However, a number of interviewees working for Traveller organisations discussed a concerning practice: Travellers were granted bail only on the condition that they did not return to the town or broader townland in which they lived. The practice of excluding an individual from a county was considered in *Rice v Mangan* (2009). In this case, the Court was of the view that the word “place” in the 1997 Act can include a county, and in “an appropriate case” such a restriction could be imposed. The court did not state what such an appropriate case might be, but it should be noted that in *Rice v Mangan*, evidence was provided by a Garda Inspector that the applicant was an active member of the anti-Iraq war movement, and that he was from Newry, with no family or business connection to Clare, the county from which he was restricted from entering. The scenario presented by interviewees working in Traveller organisations was quite different:

“... [n]ow the new bail conditions is, among Travellers, is that the judge will bar them from their hometown so they have to get up and leave their family, and they have to leave their hometown to stay out of prison until after their court case. This has happened to numerous amount of Traveller men.” (Interviewee from Traveller organisation)

“[They will be told] ‘[I]f you can’t get us an address that you can be bailed to outside of [the major townland which is the individual’s home] then we will remand you.’” (interviewee from Traveller organisation)

This individual was aware of a child who was “barred” from his hometown as a condition of his bail. Having no family close to that hometown, he had to live with a family member in a different county. In the event that he had no family living outside the town, the interviewee was clear what would have happened:

“He would have been sent on remand is what I was told – sent to Oberstown.” (Interviewee from Traveller organisation)

The impact on Travellers is significant:

“[I]t’s the biggest impact. We live – we live as a family pack here. And to ... remove somebody from their security and remove them from their safe place and to leave... Like there’s loads of boys now, they’re living on their own in apartments because they can’t come back into their hometown and it’s having a major effect on them.” (Interviewee from Traveller organisation)

Conclusion

Though *Rice v Mongan* provides precedent for the exclusion from a county as a condition of bail, it is difficult to reconcile the experiences of the individuals discussed here with the general principle of O’Callaghan that conditions which attach to bail, that it cannot “in effect amount to a denial of bail” (1966, p.518). In placing geographical restrictions on these Travellers when granting bail, they were forced to move from their homes, move away from their families; if such conditions have attached to even just one child, it is quite simply unconscionable. This issue requires clear guidance, either through a policy statement, a legislative amendment to the Bail Act 1997, or judicial guidelines to ensure that the exclusion of a person from their home as a condition of their bail conditions is done only in the most extreme of circumstances.

Chapter 12: The Traveller Defendant in Court

Although there is little pre-existing data on Travellers' perceptions of their treatment by the courts, the All Ireland Traveller Health Study (AITHS, 2010) found that of 1604 Traveller respondents from the Republic of Ireland, 52.3% felt they had experienced discrimination from either the courts or the police because of their Traveller identity (Kelleher et al. 2012); of those, 29.3% felt they had experienced it 4 or more times. Bracken's (2014) research with Travellers who engaged with the Irish probation service notes participants' perceptions of "negative biases of judges and police" along with "recognition of the occasional judge or member of An Garda Síochána who appeared to understand Travellers and treat them with respect" (Bracken 2014, p.59).

In his work, Bracken (2016) notes that probation officers recognised the importance of including an ethnic identifier for the purposes of presenting a "complete picture" of the offender to judges; but equally expressed concern that "discrimination exists, and that identifying an ethnicity, *especially Traveller background*, might not always be in the best interest of the offender" (2016, p.581, emphasis added). SSchweppe and Haynes (2021), in their research which involved interviewing solicitors and barristers in relation to the treatment of hate crime in the criminal justice system, probed the question as to whether minority groups received equal treatment in the Irish criminal justice process. A majority of those criminal justice professionals who addressed the issue of equal treatment before the judiciary were of the view that minority communities did not receive equal treatment, with this criminal justice professional stating:

"I think [the criminal justice system is] set up by settled people for settled people. I don't think they really understand the Travelling community, I don't think they understand or make any effort to understand the culture. I think that the justice system in Ireland works well for a particular type of person."

Presumption of innocence?

Central to the Irish criminal justice process, and the constitutional structure which underpins it, is the presumption of innocence: that is, that an individual should be presumed innocent until proven guilty beyond a reasonable doubt. As part of ITAJ research, we asked interviewees from Traveller organisations if they thought Travellers are presumed innocent in the criminal justice system. The vast majority disagreed:

"No, my experience will tell me that Travellers are presumed guilty until proven innocent. That's my experience." (Interviewee from Traveller organisation)

"It's automatically, they're a Traveller, they done it ... I would say the majority of gards and judges and even solicitors would think, 'Oh c'mon, this fella's a Traveller', now do you know. 'More than likely done it.'" (Interviewee from Traveller organisation)

“This is – now this may not be true, but the fact that I have to almost plead to be treated in my own right as an individual rather than the Community I come from, so I’m not going in and I don’t believe for a minute that I’m in front of that judge as [name] and I did this or I did that I’m going in first and foremost as a Traveller and by the very fact that I’m a Traveller, I – I – I’m guilty.” (Interviewee from Traveller organisation)

“Because there is a immediate assumption of guilt. There’s an immediate assumption of guilt, and that’s this- maybe it’s a natural thing, I don’t know, but I feel it’s an assumption of guilt straight away. You have to prove your innocence the whole way through.” (Interviewee from Traveller organisation)

Like the last participant quoted above, this interviewee from a Traveller organisations went so far as to say that, rather than being presumed innocent, Travellers are presumed guilty of criminal offences, and have instead to actively prove their innocence by invoking the authority of a settled person:

“My experience and my understanding and my experience of working with our community is absolutely not, no. I think that it’s the opposite. I think Travellers have to prove who they are. They have to prove where they live. They have to, almost get affidavits from people in the settled community to prove that these things are true about us.” (Interviewee from Traveller organisation)

Experiences in the courtroom

In the ITAJ survey, we asked participants about their experiences as a defendant in criminal proceedings in a court, or if they had not had direct experiences in a courtroom, about their experiences supporting someone who had been a defendant in a criminal case.

In the five years prior to the survey, 8% of the ITAJ sample had been in court as the accused. Just over half of these had been in court more than once as the accused. Just under half had appeared in the District Court the last time that they had appeared in court. Almost three quarters said that no victim was involved in that case. Of those who had no direct experience in a criminal case, 24% stated that they had been in court supporting someone who was a defendant in a criminal case: of those, 85% involved defendants who were 18 years or older, with a majority of cases heard in the District Court. There was a victim in just under half of those cases.

We asked whether the judge in the case was aware of their Traveller ethnicity: 96% of the accused in the ITAJ sample stated that the presiding judge was aware that they are a Traveller. A small number of respondents stated that a jury was present for their court appearance, and all stated that the jury was aware of their Traveller ethnicity. Of those who were supporting defendants, 85% stated that the judge was aware the person they were supporting was a Traveller; when a jury was sitting in the case (though this was true for only a minority of cases), three-quarters stated that the jury was aware that the person they were supporting was a Traveller. Clearly there is a widespread conviction that Travellers in court are identifiable.

Legal representation

Legal aid is a cornerstone in securing the right of access to justice. Of the ITAJ sample who had been in court as a defendant, 78% accessed their legal representation through legal aid; a small number sourced their own solicitor; and an equal number to these represented themselves. The majority of those individuals who represented themselves said they were refused legal aid because the case was not regarded as sufficiently serious. Research conducted by the Travellers Equal Justice Project with the Cork's Traveller Women's Network documents Travellers' accounts of difficulties in accessing legal representation in cases relating to discrimination and shortfalls in the quality of representation provided:

“those surveyed ... noted that they felt that there was a lack of engagement from legal practitioners and where they did manage to secure representation this was often sub-par and below the standard which should be provided” (TEJP 2021, p.8)

Just over three-quarters of those who those who appeared in court had secured representation by a solicitor through legal aid. An equally small number either paid for their solicitor themselves, or represented themselves. Of those who got the solicitor themselves, all stated that they were entitled to legal aid but wanted their own private solicitor. The majority of those who were represented by a solicitor were either very or quite satisfied with the service they received, though almost a third were either quite dissatisfied or very dissatisfied with the service they received.

Interviewees from Traveller organisations discussed legal aid, and the attitude of solicitors. A majority were of the view that there are some solicitors that Travellers trust, while there are others that would be avoided by community members:

“... because you would know that this solicitor or barrister ... doesn't like Travellers. And wouldn't put the effort and energy into the case that they should. So, I have seen many cases where they were [saying] 'Do not get that guy or do not get that woman because ... she doesn't like Travellers ...' That the words. On the other hand ... they say 'He's a lovely man. He knows about Travellers or she knows about Travellers. You should try this guy and you know go to a solicitor in such and such a town because they've worked with Travellers over the years.'” (Interviewee from Traveller organisation)

“... [if] he's a barrister that or solicitor that does not like Travellers well then, I'm going to avoid him like the plague because I know that he's not going to put the energy and it's very, very common. It's a very common practice that many people involved in the legal system do not ... - they do not believe that Travellers have any rights at all, so they're not putting the energy and resources into their cases. So many Travellers would say, 'listen I - I know straight away if I get your man or get your woman I'm gonna get jail. So listen, let's we'll try and get a private solicitor', and that has happened in many cases.” (Interviewee from Traveller organisation)

Of those accused who commented on their satisfaction with the service they received from their solicitor, the majority stated that they were quite or very satisfied with the service they received, but just under a third were quite or very dissatisfied. All of those who paid for their own solicitor were very or quite satisfied with the service they received.

For those who had legal representation in their case, and a statement was made by the court on their behalf, almost three quarters of the ITAJ sample were either very satisfied or quite satisfied with what was said. In response to the question as to whether the *sentence* that was imposed was fair, for those who were defendants in criminal cases, just half felt that it was, with half stating that it was not. However, by contrast, a large majority were of the view that the *outcome* of the case was fair. For those who were supporting defendants in criminal cases, a large majority were of the view that the *sentence* was not fair. By contrast, only a majority were of the view that the *outcome* of the case was fair. Thus, both for those individuals in court as defendants or supporting defendants, there are clear differences in perceptions of fairness: while the outcome of the case may have been perceived to be fair, the sentence was not.

Understanding of defendants of crime of criminal proceedings

Just under half of the accused understood all of what was said by the judge, the prosecutor and the defence solicitor or barrister. A sizable minority understood nothing of what was said by the judge or the prosecutor. The vast majority understood at least some of what the solicitor or barrister for the defence said. Under a third asked anyone to explain what they did not understand. Afterwards, only half of these achieved full understanding, the remainder was divided between having achieved some understanding and still not understanding at all. Of those who did not ask for something to be explained, common reasons were that they were too embarrassed to ask for it to be explained, or that they thought asking for it to be explained would be held against them.

“Interviewer: And did you feel you had a negative experience with the judge”

Interviewee “I couldn’t understand so I wouldn’t really know, it was mostly the solicitor who was talking.” (Survey respondent)

This interviewee from a Traveller organisation articulated the reasons that Travellers did not ask for something to be explained, indicating that this deprived them of an ability to engage and understanding the proceedings against them:

“I am uneducated Traveller. And you are using words, and by me even asking you to explain what you’re saying is absolutely only even proving more of my ignorance, so I will try and suppress it. I will try and hide it and I do, and I’ve seen it so many times. I’ve often said, well, maybe we ask what they’re saying at the break, or we ask how solicitor to call for five minutes break to explain what happened? No way. No way. It only makes me look more ignorant and it only makes me show my lack of education so I will just sit there and nod quietly until they make a decision about me.” (Interviewee from Traveller organisation)

Pleading guilty

The majority of those who had legal representation stated that the solicitor or barrister advised them to plead guilty. The most common reason was that they were told they would get a lower sentence if they pleaded guilty, though a small number stated that they were told that the judge would treat them unfairly because they are a Traveller. The majority pleaded guilty, with half of those who pleaded guilty stating that the fact that they are a Traveller effected their decision to plead guilty.

Respectful treatment

With regard to respectful treatment, almost three-quarters stated that they were treated respectfully by the solicitor or barrister for the defence. In contrast, only a minority of the accused considered that they were treated respectfully either by the judge, the Gardaí present or the prosecutor. Where the individual was present in the courtroom supporting the defendant, just over half stated that they were not treated respectfully by the judge; and three-quarters stated that they were not treated respectfully by the prosecutor.

Impact of Traveller ethnicity on proceedings

It is fair to say that, overall, defendants in criminal proceedings often have a range of experiences with the criminal justice process, and as well as asking about particular aspects of their experience, we asked survey respondents whether they thought that they had been treated fairly overall.

Just over a third of the accused believed their identity as a Traveller had an impact on the outcome of the case. Among those respondents who were not themselves the accused, but who attended court to support a defendant, 78% were of the view that the fact that they are a Traveller had an impact on the case.

When the person who was the defendant in the criminal trial was asked why they thought the fact that they are a Traveller had an impact on the outcome of the case, in some cases the reason given related to a perception of bias on the part of the judge:

“I knew her by name, she knew me by name. I knew her over the last twenty years and as soon as I came in front of her through court, then I’m a Traveller, not a person ... ” (Survey respondent)

Some said that they chose not to contest the charge because they anticipated anti-Traveller racism affecting the case. One person said that their identity as a Traveller advantaged them in securing a more favourable outcome, but in doing so emphasised the influence that they perceive that gardaí have in determining a sentence:

“... it isn’t the judges in the courts, it’s the gards, if the gards want you in prison, you’re going to prison, if the gards don’t, you’re out. Like I said, the last time I was in court, this gard, he

apologised for a case that went very, very wrong for me at a very, very rough time in my life, a very hard time in my life and the case went very wrong and he felt guilty for it and he apologised and he told me that he would get me a suspended sentence, so like that. He just turned around and said 'You know what, this [person] isn't a menace, blah de blah'. Like you've no - really and truly your solicitor can stand up and say well - when the gard says you're a menace, you're a menace that's it. It's what they say, it's how they approach the courts, judges and everyone's hand are tied, if they want, you're not going to prison, if the gards do, you are, that's the highs and lows of it like." (Survey respondent)

A minority of those who were defendants stated that they had heard anti-Traveller language used. The source of this language included a prosecutor, a judge, people working in the courthouse, Gardaí, or someone else. Approximately a third of those who were supporting a defendant in a criminal case said that they had heard anti-Traveller language in the courthouse: the majority of these had heard it from a garda, with a minority stating that they had heard it from the judge; a solicitor/barrister; a prosecutor; people working in the courthouse; or someone else.

Conclusion

The experiences of those who appeared as defendants and who supported defendants in criminal proceedings are mixed, and in some cases deeply concerning. Where members of an ethnic minority group are of the view that one of the cornerstones of a modern and democratic criminal justice system – the presumption of innocence – does not apply to them, their family, or their community, this will impact, not only on the way in which that community perceives the system, but also on their every decision as they process through that system. It will impact on the way in which they experience the rights which are afforded to them, but also their activation of those rights, and the expectations they have of the system with respect to the protection of those rights.

Chapter 13: Sentencing

The overrepresentation of Travellers in Irish prisons cannot solely be the responsibility of judicial sentencing practices, but sentencing, and the sentencing process is a core aspect of the criminal process and crucial to exploring in the context of Travellers' relationships with, and perceptions of, the criminal justice process. It must be further noted that the sentencing decision relies upon the decisions and observations of other criminal justice professionals: Bracken (2014) documents the assertion of Irish probation officers that the risk assessment instruments used in Ireland to inform sentences may indirectly discriminate against Travellers. Specifically, they note that the instrument scores accommodation and change of address, and indeed employment, in a manner that may disadvantage Travellers and "easily result in a higher risk score for Travellers" (Bracken 2014, p.52).

"I'm just thinking 'Have you had two or more address changes in the last seven years', like the Travelling communities a lot of them would have moved a lot and that would be the norm for their culture, whereas we're scoring that negatively for the ordinary population, you know we've had five address stages in the last year, so I wonder have you had a job, have you had you know all the things that are scoring people on, you know that the Traveller people find harder to achieve a lot of the time. just by virtue of the fact of the lifestyle, education and not working and into substance abuse, they'll [Travellers] all score fairly high." (Focus group participant, cited in Bracken 2014, p.52).

The UNOCD (2004) indicates that the courts awareness of the ethnicity of indigenous minorities can facilitate culturally appropriate communication and decision making. Bracken's (2014) research with probation officers in Ireland addressed the question of how the identification of the accused's Traveller ethnicity at the pre-sentence stage might impact sentencing. One probation officer in his research, for example, noted that the barriers to employment which Travellers face as a result of anti-Traveller racism are an important context in interpreting the success or failure of accused Travellers' engagement with the probation services at the pre-sentencing stage. Some probation officers, however, expressed the view that identifying the accused's Traveller ethnicity might also open the door to the potential for prejudice to impact the courts decisions, "possibly increasing the possibility for discrimination" (Bracken 2014, p.61):

"I can see the purpose but I am also a bit uncomfortable with identifying people for everything that they are, you know that kind of way, or where they are coming from. I'm not saying that it can prejudice [others] but on some level it might" (Focus group participant, cited in Bracken 2014, p.50).

Bracken (2014) notes that in Canada, for example, pre-sentence reports must include relevant information on social, cultural and historical contexts but also that there is a legislative requirement that imprisonment be the sanction of last resort, particularly in the case of members of indigenous ethnic minorities.

That said, Beirne and Jaichand (2006) underscore that: "A lack of accountability for personal racism within the judiciary also creates significant potential for institutional racism" (p.65-66)

and that in an Irish context, this lack of accountability is sustained by “a lack of transparency and data”. They highlight in particular the fact that District Court judges are not required to provide written reasons for their sentencing decisions “does not offer sufficient safeguards against racism [and] ... constitutes a significant obstacle to the collection of data on ethnicity and sentencing.” (p.66)

Data from the Irish Prison Service

Given the documented overrepresentation of Travellers in Irish prisons (Doyle et al, 2022; Costello, 2014), we approached the Irish Prison Service for their assistance in making summary statistics available to us for the purposes of informing this research. The data we were provided from the Irish Prison Service relates to the population of Irish Prisons on 30th November 2021. Data relating to the custodial population were disaggregated by the classifications of ethnicity employed in the Irish census and by binary gender, as well as the most serious offence of that person in the custodial period. The categories of ethnicity for which disaggregated data are provided are:

- Asian or Asian Irish (Sub-categories: Chinese; Any other Asian Background)
- Black or Black Irish (Sub-categories: African; Any other Black Background)
- White (Sub-categories: Irish; Irish Traveller; Roma; Any other White Background)
- Blank
- Other

On 30th November 2021, Travellers accounted for 7.3% of the prison population. This compares to 8% in 2019 (Doyle, 2022): for context, Travellers make up just 0.7% of the general population according to CSO 2016 Census data. Traveller men account for 7% of that male prison population, and Traveller women account for 14.4% of the women prison population. By comparison, white Irish prisoners account for just under 69% of the male prison population, and 67% of the women prison population, but 82.2% of the population of Ireland.

Male Travellers in prison are most commonly aged between 21 to < 25 (11%); and least commonly aged 40 < 50 (3.5%). When we similarly disaggregate by age for women, Traveller women in prison are most commonly over 50 years of age (33%); there are no Traveller women in the 18 to >21 age category. This figure is particularly striking given the age profile of the Traveller population: only 5.7% of Traveller women in the general population of Ireland are over the age of 50 (Census 2016); the most recent data on life expectancy, which unfortunately dates from 2010, calculates Traveller women’s life expectancy as 70.1 years in contrast to 81.6 among the general population, defining Travellers aged 40 and older as ageing (Healthy and Positive Aging Initiative 2018).

We asked the Irish Prison Service to provide us with the top 5 offences for which male Travellers were carrying out a sentence; and the top five offences for which non-Traveller males were carrying out a sentence. The top five offences for which each category are in prison, with the numbers in custody are:

Traveller Rank	Non-Traveller Rank		Travellers	Non-Travellers
	1	Murder	*	321
	2	Rape	*	217
4	3	Assault Causing Harm	15	210
2	4	Robbery	20	172
3		Burglary	18	*
5		Burglary - Full	12	*
1		Theft	23	*
	5	Possession of drugs for the purposes of sale or supply	*	158
		Total	88	1078

* denotes that this offence does not feature in the top 5 offences for which this category is in prison

Figure 25: Top five offences for which Traveller/non-Traveller men were in custody in Irish Prisons on 30th November 2021, as provided by Irish Prison Service

The Irish Prison Service highlighted in its data that the 88 Traveller men who feature above had a combined total of 885 committals into custody compared to 4,691 for the 1078 non-Traveller men. However, as we are not comparing like offences, it is unclear the extent to which this data is useful for comparison purposes.

We asked the Irish Prison Service to provide us with the top 5 offences for which women Travellers were carrying out a sentence; and the top five offences for which non-Traveller women were carrying out a sentence. The top five offences for which each category are in prison, with the numbers in custody are:

Traveller Rank	Non-Traveller Rank		Travellers	Non-Travellers
	2	Murder	*	11
	=5	Manslaughter	*	4
	=4	Assault Causing Harm	*	5
=2	=4	Assault	1	5
=2		Indecent assault	1	*
=2	3	Robbery	1	7
	=4	Burglary – Full	*	5
1	1	Theft	11	26
	=5	Possession of drugs for the purposes of sale or supply	*	4
=2		Criminal damage	1	*
=2		Failure to comply with a direction of a member of An Garda Síochána	1	*
		Total	16	67

* denotes that this category does not feature in the top 5 offences for which this category is in prison

Figure 26: Top five offences for which Traveller/non-Traveller women were in custody in Irish Prisons on 30th November 2021, as provided by Irish Prison Service

The Irish Prison Service highlighted in its data that the 16 Traveller women who feature above had a combined total of 201 committals into custody compared to 487 for the 67 non-Traveller women. Again, as we are not comparing like offences, it is unclear the extent to which this data is useful for comparison purposes.

The data presented here is simply a snapshot of those individuals in prison on a single day in November 2021, and in some cases includes very low numbers of individuals, meaning that we cannot make claims or draw conclusions based on the information requested and provided. We would suggest however that preliminary observations regarding the profile of Travellers in prison could be that, first, Travellers are more likely to be in prison for less serious offences than non-Travellers; second, Travellers are more likely to be in prison for property offences than non-Travellers; and there third, when we look at the most common offences for which people are in custody, there are more commonalities across Traveller ethnicity between men and women Travellers and non-Travellers, as opposed to commonalities across genders.

Doyle et al's (2022, p.28) analysis of data from the Irish prison service did not observe statistically

significant differences between the average sentence length received by those identifying either as Irish Travellers and non-Travellers in their dataset, taking into account gender and the broad category of offence in question. The analysis was based on a dataset of all committals over a 12-month period prior to the COVID-19 pandemic. The authors urge caution in the use of this finding however: “Notably, there were large gaps in data relating to Traveller ethnicity, resulting in small datasets upon which to run analyses. This is a significant barrier to the research, and as such, these findings must be interpreted with caution. The researchers suggest that further analyses be carried out with a complete dataset.” (Doyle et al 2022, p.30). We agree that further research on this is necessary which seeks to explore the impact of Traveller ethnicity on sentencing practices and imprisonment.

Fairness of sentence

Mulcahy (2012, p.312) asserts that historically “Travellers were disproportionately subject to punitive sanctions.” In the contemporary period, Costello’s (2014) research on Travellers in Irish prisons found that two of ten interviewees believed that they had received disproportionate sentences because of their Traveller identity.

“One, who had pleaded guilty, was given an 11 month sentence for trespassing with intent to burgle (his first conviction). He was also warned that if he intended to appeal the sentence, the sentence would be increased. When asked why he felt he was given what he felt was such a harsh sentence, the interviewee said, It’s just, standing in front of the judge, I think, he looks down [and thinks], ‘yeah these are real like stubborn people’, you know? That do nothing and cause trouble. INT004.” (Costello 2014, p.42)

The second case highlighted by Costello (2014) involved a Traveller woman who was given a sentence of three years, the maximum possible sentence, for social welfare fraud despite having paid back the amount owed prior to her case coming before the judge.

“She also felt that her harsh sentence was based on the judge’s prejudiced view of the Traveller community and his misunderstanding of the nature of the offence; in sentencing her, he described her as a ‘ringleader of the family’, meaning her husband’s family. This was despite the fact that she had references from Women’s Aid during her court case confirming she was a victim/ survivor of domestic violence and had lived in their refuge accommodation for significant periods of time.” (Costello 2014, p.42)

In qualitative interviews with people from Traveller organisations, a majority of participants were of the view that the sentences imposed on Travellers were higher than those that would be imposed on settled people (see also, Schweppe and Haynes 2021).

“Well in my particular area if anybody was in court they’d say, ‘Aw well - I’m destroyed, such and such a judge is up this week:” (Interviewee from Traveller organisation)

“We have more severe sentencing, and you can see that in the local courthouse, up to the ... Circuit Court, up to the High Court, you know there’s - there’s complete disparity in the sentencing.” (Interviewee from Traveller organisation)

“... you know the judge won’t be aware of all Travellers going in front of them, you know, because you don’t look a particular look. But I do believe the name or address and, and I think you know, we’ve huge examples. A judge has used particular members of families in this county as an example to teach the rest and use that language. You know, that’s reality.” (Interviewee from Traveller organisation)

This interviewee from a Traveller organisation was of the view that solicitors were aware of the biases that judges might have towards members of the Traveller community, and thus frame their statements before the judge in that light:

“[[J]ust take this for example. The solicitor will say ‘your honour, this is a Traveller man and he’s a widow and living at the side of the road with seven children.’ Just take this example, that scenario. But there’s times then that the same solicitor, depends on the case, depends on whose judging, will not say he’s a member of the Traveller community. You know what I’m saying. So, he knows unconsciously, you know, he knows he knows the judge. Whether to say that or rather not say it.” (Interviewee from Traveller organisation)

In recounting their most negative experience with judges in the past five years, survey respondents highlighted judicial sentencing practices as a key concern. A key theme arising was the conviction that Travellers receive disproportionately high sentences as compared to their settled counterparts:

“I’ve seen it and I seen Travellers up in court and only because they’re Traveller they’re treated completely differently. You can sit in a courthouse and you can see people up for maybe a serious crime and you see a Traveller up for a less serious crime and the Traveller up for less serious crime definitely get more sentencing than the other person, just have to sit in the court and you’ll see.” (Survey respondent)

This individual who had supported a young Traveller in a court case recalled the difference in attitudes the judge had to the young Traveller as compared to what they perceived as a middle-class college student. It was the first offence for the Traveller, who had been caught with a small amount of “weed” for personal use worth under €20:

“... there was a young man who was up before him who was non-Traveller I think, he was very like middle class, do you know, and he was in University. And this was - it was either his second or his third time, it wasn’t his first time anyway that he was caught with drugs on him. And it was cocaine ... And when he went before the judge. The judge was going on like, you know, how he is in University and if he had a jail sentence how it would impact his future and if he ever wanted to travel. So the judge went through all of this with him and then, so you could kinda tell by the build of the young fella – you know, he was dressed in

his suit and everything, he looked very well, you could tell by him that he was into sports, and then the judge started asking him about what he played, then they had a conversation, this was a conversation like you'd have in a pub, do you know? Like in the court ... and the judge was lovely to the young fella, like he was really softly spoken to him, and went out of the way to explain to him like the impact that a criminal record would have on him. And then he was saying because it was his second time you know he couldn't turn a blind eye to it but the conversation went on anyway about the sports and the judge got to know the young fella and built up a feel for the young fella where he was going to go with his future and then he, he changed the sentence so your man had to pay something to the poor box, but didn't go on [his] record, do you know? And like as I said it wasn't his first time, so I remember when I was watching that happening I was saying, look this is a fair judge like, he is nice, he is genuine, do you know? He understands the impact of this. And I was there with this young fella, and I was saying sure this is his first time and he was so quiet do you know and he was very softly spoken like as well, a lovely, lovely young man. And like he went up and there was none of that conversation, the judge did not have that conversation with him at all. And he gave him a record – while he didn't get a sentence, he still came out with a record, do you know? There was no option of the poor box for that young fella. And he never said to the young man, do you know, what this can do to your life ... And I was like it would have been such a strong moment for the young fella to be treated the same as the first young fella, and it would have done an awful lot for us. Cause you know kind of, this is your chance, like you know? But ... he was treated like – like he was invisible you know? And no one cared about the sentence that he got, and just to see how he was spoken to so differently, do you know? There was no affection, there was no kindness, it was just this is the way it is, in and out.” (Survey respondent)

This survey respondent, in describing the most negative experience they had with a judge in the past five years described the impact of what they perceived to be a very harsh sentence in his case:

“So, my solicitor said look, plead guilty. You're up for two or three months, you'll be out or whatever. And I said, fair enough, that was fine. Then the judge looked down [and said identifiable information] ... And eh, that was it really ... Ten months, for a first offence in court, where the maximum was twelve. I done my ten months, and lost my family home, my kids were affected, they were victimised then ... the Gard's used to stop [him] regularly because he was my son.” (Survey respondent)

Recalling Mulcahy's (2012, p.318) observations about the importance of vehicles to the Traveller community, these two survey respondents highlighted what they perceived as disproportionate penalties for motor tax offences:

“I was up in court just for a tax fine. And I didn't think it was right, just for to be told that eh, that you should get a, a twelve month ban for the next tax fine that'd you'd be up in court for.” (Survey respondent)

“I was up for no tax in the vehicle, and [the judge] fined me [thousands of euro] and total 3 months disqualification, and 3 months imprisonment for no tax which was a bit over the top really. But even the lady garda said later on, like do you what I mean, she said that's a

bit – you’ve been treated very bad in there, she said, it’s only 60 pound for fine for tax she said that’s disgraceful.” (Survey respondent)

Conclusion

Drummond (2007, p.315), rehearsing the warning from Macpherson (1999), warns that “every institution needs to examine their policies and the outcomes of policies and practices in order ‘to guard against disadvantaging any section of our communities.’” The experiences and perceptions of Travellers of the sentencing process are of significant concern. Judicial training, sentencing guidelines, placing the principle of imprisonment as a sanction of last resort, cultural audits for the judiciary, and the use of an ethnic identifier and the collection and publication of ethnically disaggregated sentencing data for courts at all levels would go some way to engendering trust by Travellers in sentencing decisions of the courts. “ In the short term, the Midlands mediation programme should be appropriately funded and extended nationwide, to reduce Travellers’ contact with the formal justice system where mediation is acceptable to all parties. Full implementation of the Graz principles in this context is vital.

Chapter 14: The Traveller Victim in Court

As well as exploring interactions with gardaí on the part of Traveller victims of crime, we investigated the experiences of Travellers in court as a victim of crime. This section presents some key aspects of how victims experience the courtroom in terms of understanding criminal proceedings; their treatment by criminal justice professionals; and exposure to anti-Traveller language in the courthouse.

We asked respondents both to relate their direct experiences as victims in court and, if they had no such direct experience, about experiences of attending court to support other Travellers who were in court as victims of crime. It is worth restating at this point that while almost half of the ITAJ sample had been a victim of a crime in the five years prior to the survey, in line with the accounts of underpolicing and underreporting that respondents to this research relate, only a small minority of respondents had been in court as a victim of a crime or to support a victim of crime in the five years prior to the survey. More than three quarters of direct victims had been in court as a victim of crime on more than one occasion within that five-year period. Direct victims were almost equally divided among men and women. The majority of those who accompanied a victim to court were men. As the number of respondents with such experiences were small, we present this data with caution.

Respondents were asked to speak to the last case for which they were in court as a victim or to accompany a victim. A large majority of direct victims reported that the case in which they appeared was heard in the District Court. Among those accompanying victims, cases were divided between the District Court and the Circuit Court. A very small number of respondents, including direct victims, were unclear as the level of court at which the case was heard.

Respectful treatment of victims

We asked victims if they felt they had been treated respectfully in court. Direct victims were divided on this question: a majority felt they had been treated respectfully by the solicitor or barrister for the defence; just over half said that they had been treated respectfully by the prosecutor; half said that the presiding judge had treated them respectfully; just over a third stated that the Gardaí present had treated them respectfully.

Those who had accompanied victims to court were less positive. With respect to the treatment of the victim by the judge, the prosecutor and the solicitor or barrister for the defence, a majority said that the treatment received was not respectful, with respondents being most likely to perceive treatment by the judge as respectful, and least likely to perceive treatment by the solicitor or barrister for the defence as respectful.

Understanding of victims of crime of criminal proceedings

Direct victims were asked how much they understood of what was said in court. Slightly less than half understood everything that was said by the judge, the prosecutor and the solicitor or barrister for the defence. A minority understood nothing of what was said by any of these criminal justice professionals. Levels of understanding expressed were similar regardless of the

role in question.

Only a minority of those who required clarification stated that they asked for any explanation of points they did not understand. Although these clarifications helped somewhat, none of those who asked for an explanation felt they achieved full understanding. Reasons provided by victims for not asking for clarification included a lack of knowledge of how to ask for an explanation, embarrassment, and the fear that a request for clarification might be held against them.

Fair treatment

Direct victims were equally divided on the question of whether they were treated fairly in court. All those who answered questions about being in court as a victim of crime stated that the presiding judge was aware of their Traveller ethnicity. Just over half of victims felt that the fact that they were a Traveller had an impact on the case.

A majority of those who were in court to accompany a victim stated that the victim they were supporting was treated very unfairly. This group included a majority of those who said that the judge was aware that the victim was a Traveller and all of those stated that the jury was aware that the victim was a Traveller. A large majority held that the fact that victim was a Traveller affected the case.

Anti-Traveller language

One victim said that they heard anti-Traveller language used by the judge. A majority of those supporting victims stated that they heard anti-Traveller language used in the court or courthouse. None of them mentioned the use of anti-Traveller language by a judge, but legal professionals, courthouse staff and gardaí were mentioned.

Conclusion

The barriers which victims face in accessing justice are multifaceted. In its Preamble, the Victims' Directive states that victims should be treated in a "respectful, sensitive and professional manner without discrimination." While the Criminal Justice (Victims of Crime) Bill 2017 has gone some way to addressing barriers that victims of crime face when accessing justice, it is clear that these are not sufficient for a community which suffers the levels of exclusion, marginalisation, and deprivation that exist within the Traveller community. This report makes a number of suggestions for targeted initiatives to support Travellers who are victims of crime in accessing justice, and full implementation of the Graz principles in this context is vital.

Chapter 15: Entry to the Criminal Justice Professions

A lack of diversity in the criminal justice professions has been identified as a factor impacting the legitimacy of the system among minority communities. Members of minority communities discuss the lack of visible representation of their communities in criminal justice systems as a factor in their lack of trust in the system, and States internationally have adopted the goal of diversification as a means of improving the relationship between minority communities and the criminal justice system and enhancing minority communities' access to justice. At the same time, critics argue that diversification of personnel is not a panacea. People from minority communities do not necessarily receive better treatment from professionals from the same community (BA, Knox et al. 2021). Minority members who join criminal justice institutions experience pressures to conform to occupational and organisational cultures, arguably more as relative outsiders in institutions dominated by personnel from majority backgrounds (Unhnoo 2015). Critics of the emphasis on diversification as a solution to poor relations between minority communities and criminal justice institutions argue that these cultures, and the written and unwritten policies of the organisations, are more influential than a minority of diverse personnel. Others point out the burden of representation that a reliance on diversity policies for change places on minority members.

The 2020 *Programme for Government: Our Shared Future* includes a commitment to “[i]ncrease the diversity within An Garda Síochána, prioritising the identification and removal of barriers to recruiting and retaining people from diverse and minority backgrounds” (Department of the Taoiseach 2020, p.84). Mulcahy (2012) notes that An Garda Síochána has in fact pursued a diversity agenda since 2001 when the Garda Racial and Intercultural Unit, and then the role of Ethnic Liaison Officer (now Diversity Officers) were established. He argues, however, that Travellers were not central to this agenda.

In 2021, An Garda Síochána (2021) announced the *Diversity Internship Programme 2021* in which 26 individuals were selected from a pool of almost 500 applicants for a paid placement with the service. The purpose of the internship is to “increase the accessibility, understanding of, and potential for a career in An Garda Síochána for school-leavers and graduates, particularly those from groups typically underrepresented in the organisation” (An Garda Síochána 2021). Applicants were required to self-identify as part of a group “recognised as facing a greater risk of inequality or social exclusion in Irish society”, including members of the Traveller community. Garda Commissioner Drew Harris is quoted as expressing his confidence “that the learnings which will derive from both sides will serve to strengthen and enhance the relationship between An Garda Síochána and the communities we serve” (An Garda Síochána 2021).

Subsequently, the 2022 Garda Recruitment Campaign made a direct appeal for applicants from members of minority communities noting that the Commission on the Future of Policing “calls for a reflection of the diversity of Irish Society within An Garda Síochána, ‘diverse not only in gender and ethnicity, but also in socio-economic, educational and geographical background’” (Commission on the Future of Policing in Ireland 2018, p.67 cited in Public Appointments Service/ An Garda Síochána 2022, p.3). This call was echoed by the Minister for Justice, Helen McEntee. A Department of Justice Press Release (2022) noted that “An Garda Síochána, supported by the government, will be reaching out to all of Irish society – English and Irish speakers; women and men; migrant, Traveller and LGBTI+ people – encouraging them to think about a career in the Gardaí.” The success of these campaigns is reflected in the 44 applications received from Travellers in the most recent garda recruitment drive.

Eligibility criteria

Beirne and Jaichand (2006, p.29) explain that the barriers to entry to criminal justice professions can be multiple and include culturally biased assessments, conscious or unconscious bias on the part of selectors, and educational disadvantage including as a result of structural racism. While educational disadvantage in the context of the Traveller population is a clear obstacle to eligibility (see, eg Watson, Kenny and McGinnity, 2017), interviewees from Traveller organisations more commonly drew attention to the requirement that trainees “be of good character”, the first criterion listed in the information booklet for candidates. Quite apart from concerns relating to how an applicants’ own exposure to over-policing or credit history might affect their eligibility to be a member of An Garda Síochána, participants to the ITAJ research highlighted a concern that applicants may be deemed ineligible based on *family members’* criminal history. The precise criteria applied in establishing the ‘good character’ of applicants to An Garda Síochána is unclear.

Aspirations

Interviewees from Traveller organisations held that despite the complex and often difficult relationship between the Travellers and the police documented in this report and others (Mulcahy 2012, Mulcahy and O’Mahony 2005, Drummond 2007, Walker and Kennedy 2007, Joyce et al 2017), young people in the community continue to express interest in joining An Garda Síochána.

“Do you think that young Travellers would want to join the gards?”

Some young Travellers do. Some young Travellers do want to join the gards.” (Interviewee from Traveller organisation)

Perceptions of acceptance

Beirne and Jaichand (2006, p.29) note that entry to criminal justice professions may be hindered by hidden as well as overt barriers. Hidden barriers, they note, “may include the fact that a particular organisation would not be considered an attractive or welcoming place to work for people from minority ethnic groups”. An Amnesty International Irish Section (2001) survey published in 2001 found that 57% of Black and minority respondents surveyed believed they would not be welcome as members of An Garda Síochána.

In the survey, we probed whether participants felt Travellers would be accepted by colleagues within the professions. The majority of respondents were of the view that if a Traveller joined the ranks of the criminal justice professions, they would not be treated well by their colleagues. With respect to a Traveller who became a garda, 8% of the sample agreed or strongly agreed that a Traveller who joins the Gardaí would be treated well by other Gardaí. 72% disagreed, of which 29% strongly disagreed. 20% did not express an opinion. With respect to a Traveller who became a solicitor or barrister, 18% of the sample agreed or strongly agreed that a Traveller who becomes a solicitor or barrister would be treated well by other solicitors or barristers. 56% disagreed, of which 17% strongly disagreed. 26% did not express an opinion. With respect to a Traveller who became a judge, 15% of the sample agreed or strongly agreed that a Traveller who becomes a judge would be treated well by other judges. 62% disagreed or strongly disagreed, of which 19% strongly disagreed. 23% did not express an opinion.

Travellers as criminal justice professionals would be treated well by colleagues

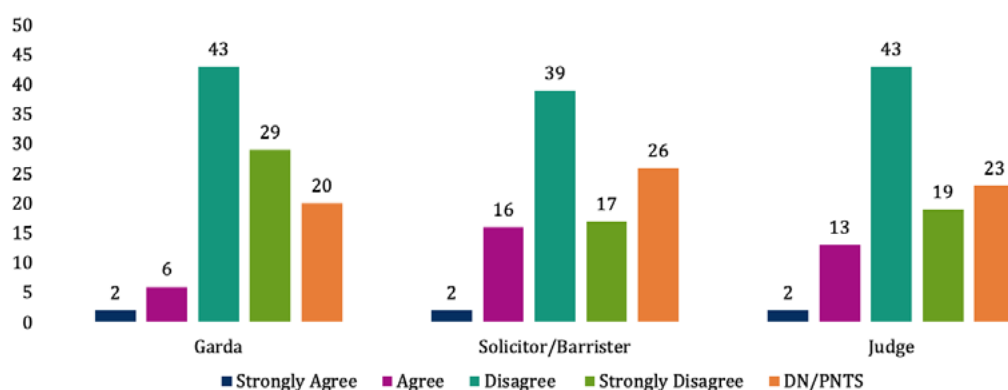


Figure 27: Perceptions of treatment by criminal justice professionals of Travellers as colleagues

This issue was discussed in our focus group with young people:

“I feel like they’d be isolated from the group [all agree], they’d be isolated from the group, gards looks at Travellers like they’re all the one, that’s the way they look at them...” (Focus group participant)

This survey respondent reflected on the issue and said:

*“[T]o a Traveller I don’t want to be a shade and to a gard I don’t want to be a k*****r.”* (Survey respondent)

We asked interviewees from Traveller organisations how they felt Travellers would be treated by the gardaí if they revealed their ethnic identity.

*““I think there would be a lot of young other gards who will discriminate and say this is, you’re only a k*****r ... ‘How do you think you can be a gard? You only just came from the side of the road?’ He’s only this now and he’s only this, that and the other- that’s the reality. But I do think there are many great people out here who would say listen it’s wonderful to have your voice heard. It’s, you know, it’s great to have Travellers involved and the only way forward is to be inclusive. And I do think when Travellers get in there it would be tough. It could be. It’s not gonna be an easy and it’s gonna be tough on their own people as well as regards, I mean I can imagine the reaction from a lot of our own ... but I think if you’re willing to stick it out it will bring about huge positive change.”* (Interviewee from Traveller organisation)

"I have [number] young boys- to ask them to try to join the gards, they would look as if I'd two heads like 'Mom, you're a Traveller, how could I be a gard?' You know what I mean? They have that - they have that vision that the gard ... they wouldn't be accepted. [T]hey'd be a Traveller before they'd be a gard, but it- that's among the other gards that are going to - for example, if I walk into [name of town] station as a gard, I'm still going to be different because I'm the Traveller." (Interviewee from Traveller organisation)

Masking of identity and emotional burdens

While some interviewees from Traveller organisations were clear that there were Travellers who had aspirations to be members of An Garda Síochána, many were of the view that if a young person were to become a garda, they could not be open about their Traveller identity. They spoke of the burden of hiding one's identity, and the emotional toll that this places on individuals:

"I mean, you know, kind of you're denying part of who you are for whatever reasons, and many Travellers has to do it, you know. Younger Travellers I think, you know, moreso maybe, you know, kind of, than some older Travellers, you know, to get jobs or whatever ... So you can imagine the discussions you know and and in a lot of cases that really damaged younger Travellers. And in the end they'd just leave, you know, just couldn't stay in those positions 'cause they wouldn't tolerate it. That was, just was torture, like it mental torture, you know, that's what it is, you know." (Interviewee from Traveller organisation)

"Now I'm, this is where I see the rise is the ripple effect, as in, true mental health issues, an orderly and distribution, and intake and outtake of drugs, now, in our community is because when you try to be something you're not, and if you try to suppress your identity and hide who you are, you can only do that so far ... until it catches up in here." (Interviewee from Traveller organisation)

Conclusion

The absence of diversity in many facets of the criminal justice system is a cause of considerable concern, as are the structural and perceived barriers to entrance into the professions. These issues must be addressed. However, in order for those professions to be accessible to Travellers, the embedded and institutionalised racism which exists in those institutions must be addressed. This report makes a number of suggestions for measures to support Travellers seeking entry to criminal justice professions, but unless those professions are perceived as welcoming to Travellers, such initiatives are unlikely to have much effect on recruitment, or at least retention. The diversification of the criminal justice system will be as much a reflection of an improvement in trust between Travellers and the criminal justice system as a means to achieving it.

Chapter 16: Complaints

Introduction

Given the range of negative experiences Travellers testified to during the course of ITAJ research, the question as to the accessibility and suitability of complaints mechanisms for both judges and the gardaí requires exploration. At the outset, we note that an effective and independent complaints procedure for judicial and policing practice is vital to the functioning of independent democracy. Beirne and Jaichand (2006) assert, “The fact that judges may have faced an internal disciplinary procedure, but no details of such a process, if indeed any did occur, were made public, is not satisfactory. The independence of judges should not act as a cloak over their lack of public accountability for statements they might make in their courts, which are public institutions. There is a need for greater transparency within the judicial system in order to ensure the effectiveness of human rights and antiracism training. While judges undergo a certain amount of awareness raising relating to racism, there is no information available in the public domain detailing the nature of this training, how widespread it is or follow-on evaluation on the impact of this training” (Beirne and Jaichand 2006 p.91).

Formal processes: the Garda Síochána Ombudsman Commission

It was apparent both through responses to open ended survey questions, and in interviews with interviewees from Traveller organisations, that some members of the Traveller community lack awareness of the formal mechanisms available to the public to register and address complaints about gardaí. Survey respondents and interview participants spoke about making complaints via their local station, or via approaches to individual gardaí with whom they had a pre-existing relationship.

... so if you made a complaint about a gard you have to go into the garda station and you had to make the complaint and, you know, the Superintendent and that.” (Survey respondent)

The stated function of the Garda Síochána Ombudsman Commission is to “deal with matters involving possible misconduct by members of the Garda Síochána, in an efficient, effective and fair manner.” It is proposed that the functions and operation of GSOC will be significantly changed under the Policing, Security and Community Safety Bill 2021, and so for the purposes of this report, we will not delve too deeply into the operation of the Commission.

Ethnicity of complainants to GSOC

It is crucial to understand that GSOC does not collect information regarding the ethnicity of a complainant at the point at which a complaint is made, and thus cannot either collect or publish demographic information regarding the ethnicity of complainants. Thus, it is impossible to know what percentage of complaints are made by Travellers to GSOC as compared to other ethnic groups, or the settled white Irish majority. In response to our query to GSOC with respect to the ethnicity of those who make complaints, we were told “GSOC does not specifically ask for ethnicity status on our complaint forms or record it on our internal Case Management System as a category” (Communication from GSOC).

GSOC does, however, publish demographic data on complaints in its annual reports. Crucially, it is not possible to connect this demographic data to the complaints made. In response to our request for demographic data on complaints, GSOC stated:

“GSOC issues survey forms to complainants at the start of the complaints process which asks for ethnicity, education level, gender etc. These surveys are returned on a voluntary and anonymous basis in order to generate a complainant profile and cannot be linked to individual cases. The results are published every year in the Annual Report based on the results of this survey alone and not from any processing of complaints/investigation data.” (Communication from GSOC).

Appendix 2 of the *Garda Síochána Ombudsman Commission 2021 Annual Report* sets out the profiles of people who responded to this survey when they submitted a complaint. Less than a quarter of those who complain respond to this voluntary survey: the data published for 2021, for example, relates to just 21% of the complainants who submitted a complaint in that year. It is not in any way possible to link the ethnic identity of complainants to the complaints, or even complaint categories.

Reported ethnicity of those who responded to the survey in 2021 as reported in the 2021 Annual Report:

Reported Ethnicity of Complainants- GSOC Annual Report 2021

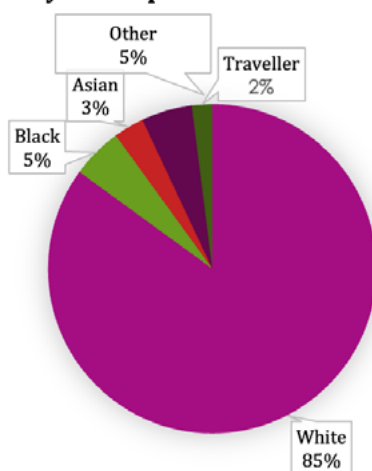


Figure 28: Reported ethnicity of complainants to GSOC, GSOC Annual Report 2021

The data presented in the 2021 Annual Report is largely reflective of data from previous years: in the 2019 Annual Report (which sets out data from 2019), 2% of complainants self-identified as Travellers; in the 2018 Annual Report (which sets out data from 2018), 2% of GSOC survey respondents self-identified as Travellers; in the 2017 Annual Report (which sets out data from 2017), 4% self-identified as Travellers; in the 2016 Annual Report (which sets out data from 2016), 3% self-identified as Travellers. Again, it is important to recall that Travellers make up 0.7% of the population according to the 2016 Census and are therefore overrepresented even among respondents to the GSOC survey, which are in turn a minority of those who submitted a complaint.

Complaints against Judges

It is a long-recognised issue that, besides from the standard appeals, case stated, or judicial review procedures, there is no means by which a formal complaint can be actioned upon with respect to judicial misconduct in Ireland. Scheweppe and Haynes (2021) recall the frustration of one criminal justice professional on this precise issue:

“There’s nowhere to complain. You know, it’s obviously not done in a completely blatant way. So if you complain directly to the particular judge ... you couldn’t and all clients would pay the price. You couldn’t. I mean if you’re gonna accuse the judge of being racist, you couldn’t. There is nowhere else to go.”

Section 43 of the Judicial Council Act 2019 establishes the Judicial Conduct Committee, the function of which is to “promote and maintain high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts.” The complaints procedure has not yet been finalised, but the Guidelines Concerning Judicial Conduct and Ethics have been published.

The Guidelines Concerning Judicial Conduct and Ethics set out expected standards for those holding judicial office in the context of impartiality, integrity, propriety, competence and diligence, and equality. Principle 2 of the Guidelines Concerning Judicial Conduct and Ethics is entitled “Impartiality”, and that principle describes the standards expected of judges including, but not limited to, an obligation to perform their duties “without fear or favour, affection or ill-will, bias or prejudice”. Principle 6, “Equality” states, “Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.” The Guidelines state that in applying this principle:

“6.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, gender, religion, national origin, ethnicity, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).

6.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

6.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

6.4 A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground immaterial to the proper performance of their role.

6.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.”

Accessibility of the complaints process

Though the formal complaints process for judges envisaged by section 43 of the Judicial Council Act 2019 has not been introduced, an established mechanism is in place regarding formal complaints about gardaí to GSOC. We probed the accessibility of complaints processes with survey respondents and interviewees from Traveller organisations:

- 16% of the sample shared a negative experience that they had had with a judge in the previous five years. Of those who shared a negative experience, only a very small minority of those individuals said that a complaint was made; 93% stated that no complaint was made.
- 55% of the sample shared a negative experience about Gardaí. Of those who shared a negative experience about Gardaí, 35% stated that a complaint was made about the experience. 63% stated that no complaint was made. The remainder were unsure.

Both respondents who did not make a complaint against judges and those who did not make a complaint against gardaí provided among their reasons the belief that nothing would come of it; they would be targeted by a judge/garda in particular or the gardaí/judiciary generally; and a lack of awareness of how to make a complaint: respondents could select multiple reasons in response to this question.

Nothing would come of it

Analysis of the data shows that 60% of those who chose not to complain against a judge and 75% of those who chose not to complain against a garda stated that they believed nothing would come of it:

“And no one ever wins with them, do you know? They all stick together, do you know, the judges and the Gards and all them.” (Survey respondent)

“We wouldn’t get heard ... We talk. but do we get heard? I mean do we get heard, do anyone listen to me? I’m just another Traveller trying to make a complaint.” (Survey respondent)

Fear of being targeted

Analysis of the data shows that 57% of those who chose not to complain against a judge and 57% of those who chose not to complain against a garda stated that they were afraid of being targeted as a consequence.

“I was not allowed to make a complaint. The solicitor just said that I was better to leave it or she’d [the judge] make my life a living hell every time I was up in front of her.” (Survey respondent)

The lack of independence in the complaints process for both gardaí and judges was highlighted by these interviewees from Traveller organisations:

“Well people can make a report to the – I can’t think what it’s called now. It’s like a committee – it’s like an overseer of judges. But even then, it’s – they’re just judging themselves. You know? So ... you might write a letter. ... You might get a nice letter back, ‘Thank you for your ...’ or ‘We will look into it’, or you know ‘It’s not our role to do that’, or you know or this kind of thing. You know nobody ever really got any - how would I say, you know - any joy from it, you know, or any satisfaction, or any kind of response that was satisfactory from it.”
(Interviewee from Traveller organisation)

“We’re saying we used the Garda Ombudsman there a lot and encourage people to do it, but sometimes the Garda that’s investigating or called out to take a report could be from the same county or could be could have trained with him or worked with the other Garda. So, the person making the report is not always, doesn’t always feel like they’re from such an area, or if they’re known to them, they might feel safe and secure in doing it so it’s really important from our point of view that for the Garda Ombudsman, that it could be somebody from Dublin, anonymous coming out you know somebody that has that role, that has no connection to any Garda on the ground.” (Interviewee from Traveller organisation)

We discussed with interviewees from Traveller organisations whether Travellers would make a complaint about bad practices from criminal justice professionals. The vast majority were of the view that if a complaint were made, it would have negative consequences, not just for the complainant, but for their family and community:

“And some Travellers say to us you now such Gardaí did such a thing. And [colleague] will say ‘Right, and did you report that, didn’t you report it?’ And sure what’s the point? Sure the police are getting policed by the police ... like if I complain about [a garda who] is a Sergeant yeah and he finds out that I’d made a complaint against him, then I could be a target. Or my brothers and sisters could be a target, or my kids, you know.” (Interviewee from Traveller organisation)

Clearly, the anticipation of retaliation against, not only the complainant but their family and neighbours, is a significant barrier to accessing the formal complaints mechanism.

Unaware of complaints process

45% of those who chosen not to complain against a judge and 22% of those who chose not to complain against a garda said that they didn’t know how to make a complaint. A very small number of respondents said that they didn’t know that it was possible to make a complaint against a judge.

Emotional labour

A very small number of respondents spoke about having run out of the energy required to pursue a *complaint*:

“... people are battle weary, people are worn, people have just post-traumatic stress syndrome, all of that comes to the fore and I gave up ...” (Survey respondent)

Conclusion

This interviewee from a Traveller organisation highlighted the need to consider the accessibility of complaints processes to Travellers, and indeed to more disadvantaged communities in general:

“I think we need to look at how we make it as easy as possible for people to make a complaint and as less laborious as possible because people don't hardly know that process for starters. I think it's made - I don't think it's designed that way purposely, but I think I think it's designed from an ethnocentric perspective. And sometimes from a class perspective, as well, as a middle class ethnocentric perspective. ... It's based on the norm. You know, based on certain norms of a certain class of settled person... And I think that needs to be addressed in terms of access to justice. If you're talking about access to justice, I think the ethnocentrism and class issue needs to be addressed, you know.” (Interviewee from Traveller organisation)

They suggested that Travellers be supported by way of an independent pre-assessment of the viability of their complaint given the repercussions that would ensue following the making of that complaint:

“I think there should be maybe a little bit of support about assessing the viability of a case before it actually goes to the situation where it actually goes to a complaint, because that can have a negative impact if you're dealing with a gard that's in the local town or local area that you're actually living in, that you're making the complaint against, because that can have serious repercussions for not just the individual but for the whole family that might be living in that area or that site.” (Interviewee from Traveller organisation)

Clearly, in order to address the fears that Travellers express in respect to making complaints it is also necessary to ensure truly and visibly independent complaints mechanisms for both gardaí and judges.

Chapter 17: COVID-19 and Policing

An Garda Síochána was granted a range of unprecedented powers under section 31A of the Health Act 1947, as inserted by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 to enforce COVID-19 related restrictions. These restrictions included travel limitations which were enforced by Gardaí, and during the strictest lockdowns, there were criminal prohibitions on leaving one's home without reasonable excuse. In its report on policing performance during COVID-19, the Policing Authority noted the impact of the pandemic on the relationship between minority communities and the gardaí:

“... the exigencies of the pandemic exposed or exacerbated tensions and difficulties in relationships with the Garda Síochána that already existed. This was particularly the case in certain inner-city communities across a number of areas of the country, in Traveller communities; and in the relationship too between young people and policing, which emerged as an issue that cut across social class, geography, ethnicity and sexuality. For some of these communities, policing during the pandemic did little to dissuade them of the view that they were over-policed but under-protected.” (Report on Policing Performance by the Garda Síochána during COVID-19, March 2021, p.16)

We explored the impact of COVID-19 on Travellers' experiences of garda operations in the ITAJ survey.

Prevalence of garda stops during COVID-19 restrictions

Responding to a question about the relative frequency with which they were stopped during Covid, 54% of respondents said that they were stopped more often by gardaí during Covid. Despite the extensive and unprecedented powers introduced to enforce travel restrictions associated with COVID-19, 32% of respondents said they were stopped with about the same frequency; and 14% said they were stopped less “during Covid.”

Do you think that the number of times you've been stopped by gardaí changed during Covid?

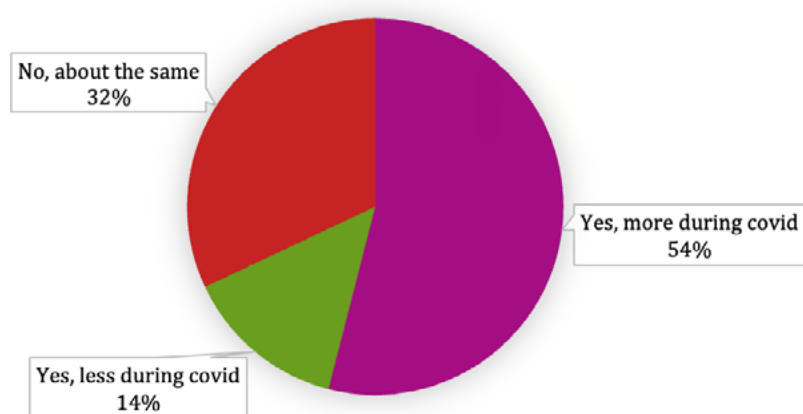


Figure 29: Impact of COVID-19 restrictions on experiences of prevalence of garda stops

Prevalence of garda searches during COVID-19 restrictions

We sought to determine if the prevalence of garda searches was impacted by COVID-19. Of those who had experienced a search, 36% said that they were searched more 'during Covid', 43% said they were searched with about the same frequency, and , 21% stated that they were searched less often.

Do you think that the number of times you've been searched by gardaí changed during Covid?

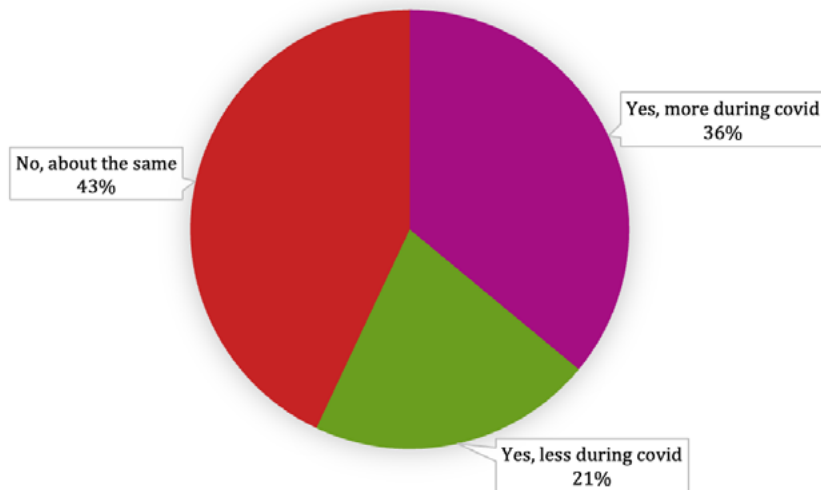


Figure 30: Impact of COVID-19 restrictions on prevalence of garda searches

Relationship between Travellers and the gardaí during COVID-19 restrictions

We asked Travellers whether they believed the community's relationship with the Gardaí had changed during the pandemic. Half of the ITAJ sample were of the view that the relationship had disimproved. Analysis of the data shows that only 2% stated that the relationship between Travellers and gardaí had improved during the pandemic; 26% thought that it had stayed the same; 50% thought that it had disimproved; and 22% did not express an opinion.

Do you think that the relationship between Travellers and the gardaí has changed during covid?

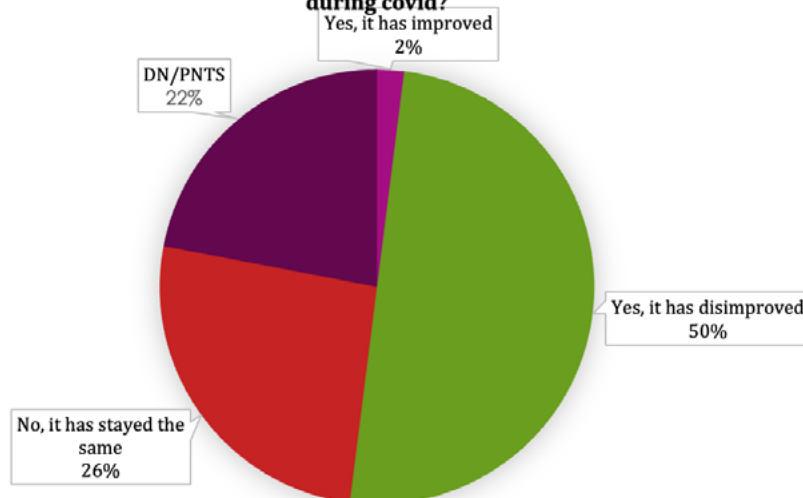


Figure 31: Impact of pandemic on the relationship between Travellers and gardaí

Conclusion

The Irish Human Rights and Equality Commission's report *Ireland's Emergency Powers During the COVID-19 Pandemic* (Casey et al 2021) found that in all probability the enforcement of restrictions by gardaí weighed more heavily on Travellers and other ethnic and racialized minorities, as well as young people. This supposition could neither be definitively proved nor disproved, however, because of the absence of police recorded data on ethnic disparities in the exercise of enforcement powers. This research provides an alternative source of evidence on the impact of emergency powers on Travellers and on Travellers' relationship with An Garda Síochána. Half of respondents said they were stopped more during Covid and a third said that they were searched more. In themselves, these figures arguably say more about the frequency with which Travellers are stopped excepting the use of emergency powers than about the impact of COVID-19 enforcement powers on the Community. However, half of respondents told us directly that the relationship between gardaí and Travellers further disimproved during Covid. This finding is concerning both because, as this research shows, the relationship between Travellers and gardaí was already fraught, and because the general populations' perceptions of gardaí during the COVID-19 restrictions were so contrastingly positive (Policing Authority 2020). These findings underscore the importance of disaggregated data on the exercise of police powers towards minorities. The importance of this data lies not only in relation to monitoring the direct impacts of enforcement on Travellers, but also the indirect impacts – "In the absence of ethnic identifiers being used in Garda Síochána's data system it remains impossible to monitor policing responses when it comes to minority ethnic women and domestic violence responses during the pandemic" (National Traveller Womens' Forum and Pavee Point 2021, p.3).

Chapter 18: Conclusions and Recommendations

The Irish Travellers Access to Justice research project has evidenced the relationship between Travellers and Ireland's criminal justice institutions as deeply problematic. Travellers' documented mistrust of that system is the legacy of a justice system constructed by settled people for settled people, and which has contributed to undermining key pillars of Traveller culture. It is perpetuated by ongoing discrimination against Travellers within that system, by individual gardaí and by individual judges certainly, but also by institutional processes, and indeed the absence of institutional processes, that facilitate disparities in Travellers' access to justice based on their ethnicity.

The United Nations (A/HRC/27/65) highlights that "... access to justice is inextricably linked to other human rights challenges that indigenous peoples face, including poverty, lack of access to health and education and lack of recognition of their rights related to lands, territories and resources". Like other disadvantaged groups, Travellers' access to justice is impinged by the systems' failures with respect to people with lower levels of literacy and few economic or social resources.

This research shows that Travellers' experiences of the criminal justice system are defined moreover by their ethnic identity as Travellers. This should mean that the context of Travellers' culture, history, and social and economic position is constructively taken account of - whether in determining the sentence of a convicted offender, or assessing the needs of a victim of crime - to ensure access to justice. However, Travellers experiences, documented in this research, show that we have yet to achieve a system in which Traveller ethnicity is consistency valued and respected.

A criminal justice system should be a production of the State and its people. To date Travellers have been the object of the Irish criminal justice system, not participants in its making. It is our sincere hope that the evidence-based recommendations which follow will contribute to changing that position such that Travellers' will be and will perceive themselves to be stakeholders in our shared system of criminal justice. Full implementation of the Graz principles, and an appreciation for the importance of person-centered justice is vital.

While each section of the Report has individual recommendations which accompany that section, we have three headline recommendations designed to address the experiences and perceptions of Travellers of the criminal justice process in Ireland:

1. We recommend the introduction of an ethnic identifier throughout the criminal process from the point of reporting to the point of sentencing, including entry and search of homes and stops and searches which must be recorded. A commitment to make the resultant data available to independent researchers. The publication of an annual report on ethnic minorities in the criminal process.
2. We recommend the development, publication, funding and implementation of a strategy within and across each branch of the criminal process to address gaps in trust, legitimacy and accountability impacting the Traveller community. This strategy should

include the development of an independent Traveller justice advisory group to provide advice on justice related issues and to monitor implementation of the strategy.

3. We recommend the establishment of a robust and effective independent complaints body operating across the criminal legal process and staffed by a dedicated team of investigators with no continuing connection to any of the criminal justice agencies. This body should be able to accept and respond to complaints regarding any criminal justice agency or professional including customs officers and judges.

Our extensive and evidence-based recommendations are set out here thematically:

Legislative and policy development

- The introduction of legislation that makes a clear statement as to the illegality of ethnic/ racial profiling and which provides for the collection of data regarding the ethnicity of all individuals who are stopped, searched, arrested, or detained by members of An Garda Síochána;
- The production of operational policy to prevent and address ethnic/racial profiling by the police;
- An Garda Síochána should:
 - develop and implement a dedicated policing plan to foster and improve the relationship between members and the Traveller community;
 - adopt the ECRI definition of racial profiling.
- The introduction of written decisions at district court level which are made available to defendants;
- The principle of imprisonment as a sanction of last resort should be implemented through legislation, policy and judicial guidelines;
- The prevalence of police entry to homes with and without a search warrant must be tracked through the system including the power invoked to search, and the resultant prosecution (if any);
- Clarification issued regarding the circumstances in which ‘place’ as per the Bail Act 1997 can be understood to mean “the county, townland, or place of residence in which the bailee is resident” as a matter of urgency;
- The review and diversity proofing of the risk assessment instruments used by the probation service;
- The extension of the Traveller Mediation Service nationwide, to reduce Travellers’ contact with the formal justice system where mediation is acceptable to all parties.;
- We recommend that findings of this report are addressed by:
 - The next National Traveller and Roma Inclusion Strategy;
 - The Joint Oireachtas Justice Committee;
 - The Anti-Racism Committee, in developing the forthcoming national Anti-Racism Plan.
- We support the recommendations of the Irish Traveller Movement’s submission Towards a National Action Plan Against Racism for Ireland Public Consultation 2021 with reference to access to justice.

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- Complete NTRIS actions and fully implement the Garda Diversity and Integration Strategy 2019-2021.

Implementation of existing policy

- We endorse the recommendations of the Irish Traveller Movement's submission Towards a National Action Plan Against Racism for Ireland Public Consultation 2021 that actions towards compliance of the Public Sector Duty in 2014 should also be reflected in Policing Priorities and Policing Plans;
- In implementing pillars 4 and 5 of the Criminal Justice Sectoral Strategy 2022-2024, findings and recommendations of this report should be taken into account;
- The entry of gardaí into homes in the absence of search warrants should be done in only the most exceptional of circumstances and strictly in accordance with common law and statutory powers.

Transparency

- The use of data generated via the implementation of an ethnic identifier to produce and publish annual reports on Travellers in the criminal justice system, including official data on: ethnic disparities in stop and search; entry into Traveller homes with and without search warrants; data on bail decisions disaggregated by ethnicity and bail conditions; the recording of prosecutions in court, as well as the outcome of those prosecutions, the ethnicity of those prosecuted in court, as well as the outcomes of those proceedings; ethnically disaggregated sentencing data for courts at all levels;
- The collection and publication by the Garda Síochána Ombudsman Commission of disaggregated data on the ethnicity of all complainants and the number of complaints against members of the police concerning discriminatory treatment as well as on the decisions adopted;
- The use of diversity boosters to ensure that the experiences and perceptions of Travellers are represented in Garda Public Attitudes Surveys (PAS);
- The introduction of similar Public Attitudes Surveys in relation to the legal system and judiciary, with a diversity booster to ensure representation of the Traveller community;
- The publication of annual data for the recruitment, hiring and promotion of underrepresented groups, particularly Irish Travellers, disaggregated by ethnicity and gender;
- The publication of the criteria used by An Garda Síochána for establishing 'good character'.

Accountability

- The establishment of a robust and effective independent complaints body operating across the criminal justice legal process and staffed by a dedicated team of investigators with no continuing connection to any of the criminal justice agencies. This body should be able to accept and respond to complaints regarding any criminal justice agency or professional including customs officers and judges;
- The publication of data on the number of complaints made, in which areas, and the sanction applied, disaggregated by the ethnicity of the complainant.

Review

- An independent and human rights informed investigation into the failure on the part of the gardaí to respond to victims of crime appropriately, particularly in the context of domestic violence;
- An independent and human rights informed investigation into the provision and execution of search warrants, as well as the circumstances in which homes are entered in the absence of a search warrant;
- A review of the use of garda powers and practices introduced as a result of COVID-19 should explicitly include an assessment of Travellers' experiences;
- The assessment of An Garda Síochána hiring policies, particularly eligibility criteria, for cultural bias and for their impact on underrepresented groups, particularly Irish Travellers.

Monitoring systems

- A receipt system for stops and searches so that all persons stopped or searched will be given a paper record of the search including the lawful basis and cause for reasonable suspicion and if searches the object that was being sought;
- The recording of decisions regarding bail as well as the conditions attaching to bail, with the introduction of an ethnic identifier for same;
- The introduction of cultural audits for the judiciary.

Training

- The introduction of cultural competency training, including CPD, which specifically addresses the experiences and needs of the Traveller community, across the legal profession, including the judiciary, court staff, and garda call-takers/dispatch. That training to include discussion of the needs of Traveller victims of crime across the criminal justice process;
- The introduction of anti-racism and equality training, including CPD, which specifically addresses anti-Traveller racism, across the legal profession, including the judiciary, court staff, and garda call-takers/dispatch. We endorse the recommendations of the Irish Traveller Movement's submission Towards a National Action Plan Against Racism for Ireland Public Consultation 2021 to:
 - o "Provide anti-racism and cultural awareness training as part of the Bar Continued Professional Development Programme, and for staff in other areas, and across the Legal Aid Board;
 - o Include the theme of anti-racism and inclusion as it applies to human rights law in the Established Practitioners' Programme and engage with Traveller and other minority interests as partners."
- The introduction of anti-racial profiling training for all members of An Garda Síochána;
- The introduction of evidence-based procedural justice training for members of An Garda Síochána and the judiciary;
- Joint garda/judicial training on the request for, provision of, and execution of search warrants for homes.

Collaboration/Community Engagement

- Investment in a rights awareness campaign tailored to the needs of the Traveller community and focused on criminal justice issues;
- Review of the terms of reference and meeting schedule of the Garda Traveller Advisory Group in light of the findings of this report; the representation of senior garda management on the Group;
- The inclusion of Traveller representation on all Joint Policing Committees.

Specialist supports

- The introduction of a dedicated legal accompaniment service for Travellers victims and defendants through the criminal process, including but not limited to the making of statements and attending court;
- The creation of a Traveller Suspects of Crime Support Service for those who are arrested or held in custody which provides information as to the rights of suspects in custody, as well as ensuring that all Travellers receive a written and recorded oral account of their arrest, custody and questioning, including the custody record and information provided at the time of arrest, detention and questioning;
- The creation of a Traveller Victims of Crime Support Service for those who are victims of crime which provides information as to the rights of victims of crime, as well as ensuring that all Travellers receive a written and, where appropriate, recorded oral account of their statement to gardaí, and secure support in articulating a victim impact statement;
- The introduction of dedicated community gardaí for Travellers in areas with significant Traveller populations;
- The extension of crisis-intervention teams nationwide and the training of members of the Traveller community as mental health workers including for the purpose of joining these teams;
- The creation and publication of a register of legal practitioners who have completed anti-racism, equality, and cultural competency training specific to Travellers;
- The extension of legal aid to Travellers for all criminal cases;
- We endorse the recommendation of the Irish Traveller Movement for the establishment of an independent Traveller Legal Aid Centre (ITM 2021b);
- The expansion of the Garda internship programme;
- The funding of preparatory courses for Travellers applying to join An Garda Síochána, complete FE1 exams, or to sit the examinations for the Bar Council of Ireland;
- Mentoring programmes for all new Traveller entrants to An Garda Síochána or the legal profession.
- The payment of all Traveller trainees across the legal profession.

Further research

- Further research be carried out by way of a rights-based analysis of the arrest, detention, and questioning of Travellers, including their safety when being held in garda custody;

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- Further research to be conducted on the quality of legal representation made available through legal aid, including an exploration of the particular experiences of Travellers;
 - Further research to be carried out on intersectionality in Travellers' experiences with the criminal justice process and institutions, including on the basis of sexual orientation, gender and disability.

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The image on the front of this Report is by Leanne McDonagh, and called 'Police Presence':

"Police presence was created in response to a heavy patrol of police officers at Chairmee horse fair in Buttevant, in 2014. I had attended with family and friends after several years of missing the annual event due to other commitments. I immediately felt that the number of police officers on duty had doubled if not tripled since I had last been there, which, was frustrating to me because I felt they were adding to the perceived stereotypes of the community by displaying such a substantial presence at a fair. It felt as if the officers were assuming and expecting the worst to happen when in fact it was their presence that was making the crowd feel uneasy and causing the tension that was present on the day." - **Leanne McDonagh, 2022.**

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