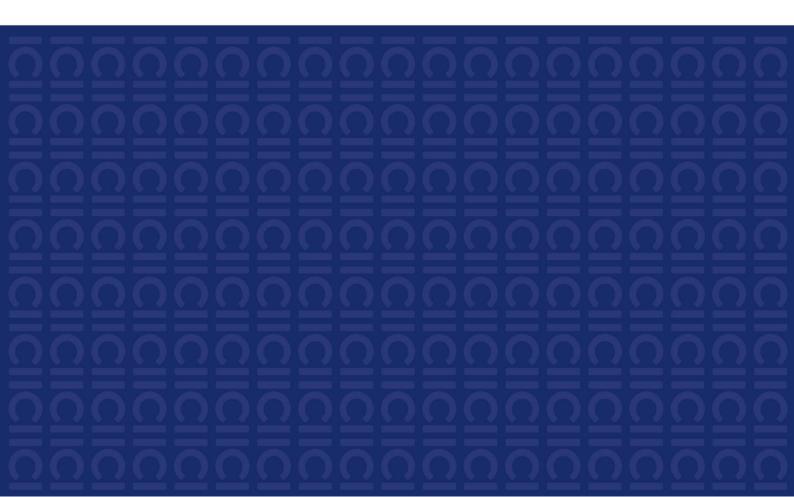# Submission to the UN Special Rapporteur on contemporary forms of racism: Thematic report on Race, Borders, and Digital Technologies

Immigrant Council of Ireland
5-8-2020

Working for equality

Immigrant
Council of
Ireland

INTRODUCTION

Founded in 2001, the Immigrant Council of Ireland is the leading voice in securing improved rights and protections in the area of immigration, citizenship and anti-racism in Ireland. It is a human rights organisation and Independent Law Centre which provides support, information, legal advice and representation. We support and advocate for the rights of immigrants and their families and act as a catalyst for public debate, legal and policy change through advocacy, engagement with lawmakers and strategic legal action. Access to justice is the cornerstone of all of the Immigrant Council's work. We support individuals and families often at a vulnerable stage in their lives, including unaccompanied children, victims of human trafficking, victims of domestic violence and stateless persons.

The purpose of this submission is to provide the Special Rapporteur with information regarding IRELAND to inform her thematic report on race, borders and digital technologies.

Please note this is not an exhaustive submission, but draws out issues upon which the Immigrant Council of Ireland has insight.

BORDERS

In Ireland, the Department of Justice and Equality oversees immigration and border controls. One of its current strategic objectives is:

To enhance immigration controls at the State's borders
- Introduce a number of technology solutions to enhance border security, including:
  - checking passenger information
  - automated checking
  - electronic gates at ports of entry
  - further civilianisation of frontline immigration controls

In 2015 civilians took over the staffing of passport control at Dublin Airport from An Garda Síochána (the police). The staff are overseen by the Department of Justice and Equality.

New eGates were introduced to Dublin Airport in 2017. They allow passport holders from the EU/EEA and Switzerland who are over 18 to apply a 'self-service' approach to clear immigration control. The eGates at the Transfer area also facilitate US, Canadian, Australian, New Zealand and Japanese citizens (in addition to EU and EEA), if not transferring.

The eGates integrate with national and international 'watch lists'. They use facial recognition technology to provide "highly secure automated passport validation and security checks on passengers".[1]

The fact only certain nationalities can adopt the 'self-service' approach, and the nationalities included are affluent and white nations (with the exception of Japan) points to issues relevant to persons from a migrant background.

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[1] Immigration in Ireland Annual Review 2018, p. 28 http://www.inis.gov.ie/en/INIS/Immigration-in-Ireland-Annual-Review-2018.pdf/Files/Immigration-in-Ireland-Annual-Review-2018.pdf

If you are a non-EU, non-EEA or non-Swiss national you must present to an Immigration Officer on arrival by air or sea from a place outside the State. If you arrive via the border with Northern Ireland, you must report to an Immigration Officer at Burgh Quay, Registration Office, Dublin, or your local Immigration Office at a Garda Síochána (police) station as soon as possible. Therefore the bulk of border immigration interaction is a face-to-face interaction.

The European Union (Passenger Name Record Data) Regulations 2018 transposes Directive 2016/681 into Irish law. It allows the use of passenger name record (PNR) data to investigate and prevent acts of crime and terrorism.[2] The Irish Passenger Information Unit (IPIU) gathers Advanced Passenger Information (API) under the European Communities (Communication of Passenger Data) Regulations 2011. This codifies the European Council Directive 2004/82/EC.

API is collected so the law can be applied in relation to:
- o   people entering the State;
- o   combating illegal immigration;
- o   people smuggling; and
- o   human trafficking.

The flights covered by the API Regulations are only those that travel outside the EU – while this likely relates to the freedom of movement rights, it raises equality concerns.

The main function of the IPIU is to identify people who require further examination by a competent authority, such as Revenue or An Garda Síochána. Information about passengers can be checked against databases or watch lists, and it can be used to automatically detect suspicious travel activity. According to the Department of Justice and Equality, "further legislation is planned to extend the scope of the checks being carried out" which would be worth investigating further.

The Irish Government works with partners in other European member states and the European Border and Coast Guard Agency (FRONTEX) in the areas of joint planning and enforcing the law.[3] An overview of the human rights law applicable to border control is set out in the report *Immigration Detention and Border Control in Ireland*.[4] Since that report was published the Data Protection Act 2018 has transposed the "Law Enforcement Directive" (Directive (EU) 2016/680)[5] and the General Data Protection Regulation.[6]

Refusal of leave to land

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[2] Ibid, p. 30
[3] Ibid, p. 31
[4] Immigration and Border Control in Ireland: Revisiting Irish Law, Policy and Practice, 2018 Nasc, the Migrant and Refugee Rights Centre available at https://nascireland.org/sites/default/files/Nasc-Immigration-Detention-Border-Control-in-Ireland.pdf,
[5] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32016L0680
[6] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679

More information on 'leave to land' decisions is required. Data on the number and nationality are provided by the Department of Justice and Equality, but only after a long delay unless specific representations are made (latest figures for 2018 was 4,797 refusals[7]).

In recent months and following specific public commentary regarding certain nationalities,[8] checks have been brought to aircraft steps.[9] This practice was identified as being illegal by internal human rights experts, raising questions regarding the right to claim asylum.[10]

DIGITAL TECHNOLOGIES

Public Services Card

We firstly refer you to fellow Special Rapporteur Philip Alston's recent detailed analysis of Public Services Card in Ireland.[11] This recent technological project pursued by Ireland required certain recipients of social welfare to consent to providing biometric data to the state agency tasked with providing social benefits, ostensibly so the state could verify their identities.[12] Professor Alston's letter to Ireland highlights that the project unfairly discriminates against disadvantaged groups including migrants and points to failures of the state to protect the human rights of those people it is obliged to protect.

The Immigrant Council is acting on behalf of a migrant who was denied access to social welfare as a result of not being in a position to prove identity in the manner required in order to obtain a PSC. We point to this as an example of a technological project that has been implemented by the state without due regard to human rights. We seek to ensure that the human rights of all groups are protected when future projects are implemented in Ireland, particularly with a mind to the planned immigration detention centre at Dublin Airport[13] and any technologies used in the design, implementation or administration of that project.

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[7] Immigration in Ireland Annual Review – Statistics 2018, p. 31, http://www.inis.gov.ie/en/INIS/Immigration-in-Ireland-Annual-Review-Statistics-2018.pdf/Files/Immigration-in-Ireland-Annual-Review-Statistics-2018.pdf

[8] 'Leo Varadkar says Georgia and Albania driving rise in asylum seeker numbers', *Irish Examiner*, 3 November 2019, https://www.irishexaminer.com/breakingnews/ireland/leo-varadkar-says-georgia-and-albania-driving-rise-in-asylum-seeker-numbers-961488.html

[9] Fiach Kelly & Connor Lally, 'Immigrant airport checks revised over destruction of fake papers', *Irish Times*, 31 December 2019, https://www.irishtimes.com/news/ireland/irish-news/immigrant-airport-checks-revised-over-destruction-of-fake-papers-1.4127470

[10] Dr Ciara Smyth, 'Ireland is illegally turning back Georgian and Albanian immigrants', *Irish Times*, 2 March 2020, https://www.irishtimes.com/opinion/ireland-is-illegally-turning-back-georgian-and-albanian-immigrants-1.4189447

[11] Prof Philip Alston, UN Special Rapporteur on extreme poverty and human rights, April 2020, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25176

[12] This practice has recently been suspended however it is understood that is due to Covid-19 measures rather than any other reason.

[13] Cormac O'Keeffe, 'Dedicated immigration detention facility due to open at Dublin Airport', *Irish Examiner*, 12 June 2019, https://www.irishexaminer.com/breakingnews/ireland/dedicated-immigration-facility-due-to-open-at-dublin-airport-930395.html