ENAR SHADOW REPORT

Racism and related discriminatory practices in employment in Ireland

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Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism in the EU and its Member States. NGO reports are, by their nature, based on many sources of data - official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by racism. It is this that gives NGO reports their added value, complementing academic and official reporting.

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Executive summary

This report gives an overview of racism and related discriminatory practices in Ireland, with particular reference to the reporting period from March 2012 to March 2013. Key points raised in this report include:

- Given that few of the social surveys in Ireland gather data on ethnic identity, much of the discussion around discrimination is based on nationality. As more migrants become Irish citizens, it becomes increasingly important to measure the experiences of naturalised or second-generation migrants.
- The gap in unemployment rates between Irish and non-Irish nationals has widened in times of recession, standing at 18.4% for non-Irish nationals in 2012, compared to 14.4% for Irish nationals for the same period – a difference of 4 percentage points, as against 1.9% points difference in 2008.
- Black Africans, Travellers and Ethnic Minority EU individuals suffer the highest rates of discrimination, as demonstrated by both objective measures of discrimination such as unemployment, wages and occupational groups, and by subjective self-reporting mechanisms.
- Black African individuals in particular reported levels of discrimination seven times higher than those of White Irish identity in accessing work and in the workplace. The relatively high rate of self-employment among Black Africans is at least in part a response to this.
- While Ireland has a robust employment equality legal framework, the delays in processing cases are a cause for concern, and it has yet to be established how the proposed merger of the Equality Tribunal with other bodies to form a Workplace Relations body will affect the timely administration of justice in this regard.
- Similarly, the merger of the Equality Authority with the Irish Human Rights Commission has been condemned by NGOs, trade unions and independent observers, who feel that fundamental rights will be weakened by the move.
- There are some encouraging initiatives by public service bodies, NGOs, trade unions and employers which may bear replication.

Based on the research carried out, and in particular having consulted ENAR Ireland members and reviewed their publications, the following recommendations can be made:

To the Irish government:

1. The Irish government should institute the collection of reliable disaggregated equality data to allow for clearer measures of possible discrimination. (see Section 1.1)
2. The Irish government should recognise Travellers as a distinct ethnic minority group. At present, Travellers are recognised as a separate group worthy of protection under Irish equality legislation, but not as an ethnic minority. This means that Travellers are not guaranteed protection in future legislation, and are not specifically covered by international treaties such as CERD. (see Section 1.1)
3. The Irish government should put in place a national action plan for Travellers in training and employment in order to concentrate policy efforts on lowering the current Traveller unemployment rate of 84.3% (see Section 2.1)
4. The Irish government should improve its system for the reporting and recording of racist incidents, e.g. recording of racist incidents that do not constitute a breach of the criminal code through; recording ethnic origin of all victims of crime; more availability of Ethnic
Liaison Officers in the Garda Síochána and training for Gardaí on how to identify and properly record racist incidents. (see Section 3.1)

5. The Irish government must ensure, through adequate funding and proper oversight, that the remedies afforded by the Employment Equality Acts are not weakened by the merger of the Equality Tribunal with other bodies into a Workplace Relations body; and that the lengthy time delays in processing cases is reduced (see Section 4.2.1)

6. The Irish government must ensure that the Irish Human Rights and Equality Commission is adequately resourced so as to allow it to carry out its functions effectively. (see Section 4.2.2)

To public service bodies:

7. The Garda Síochána and other public service bodies should permit appropriate uniform variations to accommodate religious dress, in line with a liberal pluralist approach which is more in keeping with Ireland’s ethos than strict secularism. (see Section 3.5)

8. Public service employers should ensure that employees are well versed in internal equality policy relating to anti-racism, for example by including it in induction training, displaying policy prominently in the workplace, including diversity management in performance reviews, and ensuring a cultural diversity aspect to social activities. (see Section 4.1)

9. Public service employers should make greater efforts to recruit from ethnic minority groups. The successful recruitment of Travellers by South Dublin County Council could serve as a model. (see Section 4.1)

To employers:

10. Employers should be encouraged to sign the Diversity Charter and to ensure that all their employees have a meaningful understanding of what this commitment entails (see Section 4.3.3)

To civil society and public sector:

11. State bodies and NGOs should continue to promote greater awareness amongst ethnic minority groups as to what constitutes discrimination in employment and how to report it, for example through workshops, posters and public campaigns. (see Section 3.1)

12. Civil society organisations should encourage migrants to report instances of being forbidden to speak their own languages during breaks at work, as this may constitute discrimination (see Section 3.5)

13. The EPIC (Employment for People from Immigrant Communities) programme should be continued and its geographic scope widened. (see Section 4.3.4)
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1. Introduction

Racism is a reality in the lives of ethnic and religious minorities in Ireland. The extent and manifestations of this fact are often unknown and undocumented, especially with regard to official data sources. As a consequence, it can be difficult to analyse the situation and to establish solutions. Even when there is extensive official data, NGOs offer a vital alternative data source which comes directly from the experiences of individuals and communities experiencing racism on a daily basis. The ENAR Shadow Reports have become a major tool for monitoring the situation of racism and xenophobia in EU Member States. Both ENAR’s national and European Shadow Reports have proved to be an invaluable documented starting point for strategic and coordinated action, particularly for anti-racist civil society advocacy towards national governments, the European institutions, bodies and the media.

The aim of this report, therefore, is to contribute to knowledge and to provide insight from activists and professionals on the ground working to combat racism and discrimination in Ireland as an advocacy tool by which to influence policy. This report takes on a more narrow focus than previous reports, by exploring the situation of racism and discrimination in the field of employment in Ireland for the period of March 2012 to March 2013. The results will be used at national level to influence policy developments and will be further compiled into a European comparative report to influence European policies. With improved statistical and comparative data, the Shadow Reports will have a demonstrable impact for changing policy and bringing about necessary policy reforms.

1.1 Definitions

Much of the discussion on racism and discrimination in Irish society focuses on foreign-born migrants, as most social surveys do not collect information on ethnicity. Until recently, the proportion of naturalised citizens and second generation migrants has not been large, but with more migrants becoming eligible for citizenship\(^1\) and a much faster administrative process in place, this is changing rapidly, making it a matter of some concern to NGOs that ethnic identifiers are being used in areas such as healthcare and social surveys.\(^2\) An exception is the National Census, where a question on ethnic origin was first introduced in the 2006 Census and remained unchanged in the 2011 census to facilitate comparison.\(^3\) The Council of Europe however, has stated that “the mandatory nature of the question on ethnic origin and the limited choice of available options infringed on the right to self-identification guaranteed by Article 3.1 of the Framework Convention [for the Protection of National Minorities]”\(^4\)

The Irish government does not officially recognise Irish Travellers as an ethnic minority group and the campaign to have the ethnic identity of Irish Travellers recognised continues. The Irish government rhetoric on the subject has changed in recent years. While the Irish government has stated in its report to the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 2004 that Travellers “do not constitute a distinct group from the population as a whole in terms of race,

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\(^1\) An application for citizenship can be made after 5 years’ residence in the Irish State. As is shown in the table overleaf, the largest peak in inward migration occurred in 2007, so these migrants became eligible for citizenship in 2012.

\(^2\) Pavee Point Travellers and Roma Centre (an ENAR Ireland member) are currently leading a discussion on putting in place ethnic identifiers, having successfully piloted ethnic identifiers with several leading hospitals.

\(^3\) Central Statistics Office, Census 2011, Question 11.

colour, descent or national or ethnic origin, the Irish government’s response to the Universal Periodic Review in March 2012 was that: “there are a number of issues around the proposal of recognition of Travellers as a separate ethnic minority which need to be further considered and addressed and it is an area which is currently being given serious consideration.” This process of consideration has commenced with the Oireachtas’ committee hearings in April and May 2013 from academic experts and Travellers organisations. The Oireachtas committee is currently reviewing submissions on the matter.

1.2 Statistical overview

Figure 1: Immigration, emigration and net migration 1987 - 2012, reproduced from the Annual Monitoring Report on Migration 2012, p15.

As illustrated in the table above, Ireland went from being a country experiencing net emigrant outflows in the eighties, to a steady increase in immigration in the nineties, peaking sharply in 2007, after which immigration fell dramatically and emigration rose, leaving Ireland once more in a period of net emigration. Ireland’s economic success, coupled with the right of newly acceded EU members in 2004 to unrestricted access to the Irish labour market, all contributed to the sudden increase in

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7 The Irish Parliament.
new immigration from 2004 onwards. In 2011, 12% of the Irish population were not Irish nationals, and over a fifth of the non-Irish national population was Polish, after which the top nationalities were UK nationals, Lithuanians, Latvians, Nigerians and Romanians. While non-Irish males exceeded non-Irish females in 2002 and 2006, the genders were fairly evenly balanced in 2011, indicating perhaps a settling of the migrant population. The working age (25-44) is overrepresented in the migrant population, accounting for 60% of all non-Irish nationals, compared to 32% of the Irish population. The share of foreign-born (which includes foreign-born Irish nationals) among the total population is relatively high in Ireland - over 17%, compared to an OECD average of under 14%, or under 12% in the UK.

The proportion of ethnic minorities among the native-born population is much lower. 84% of the population in Census 2011 identified themselves as White Irish, accounting for over 95% of the native-born population. Irish Travellers accounted for 0.6% of the population (29,573) and have a very different demographic from the general population. The average age of an Irish Traveller is 22.4, compared to 36.1 for the general population. This is due to a very large young population, and a very small older population (2.3% of male Irish Travellers are aged 65 and over, compared to 10.7% of the general population). Irish Travellers have large families – the average number of children per mother in the general population is 2.9, compared to 4.7 amongst Traveller mothers. Education levels, while improving, remain lower than the general population – 55% of Travellers had completed their education by age 15, compared to 11% of the general population.

The majority religion in Ireland is Roman Catholic, with 84.2% (3.86 million people) of the population self-identifying as Roman Catholic in Census 2011. 6% declared themselves as having no religious affiliation or identified themselves as either agnostic or atheist. Church of Ireland and other Protestant religions represented 2.92% of the population, followed by Muslims (49,204 adherents representing 1.1% of the population), Orthodox Christians (45,223 adherents), Apostolic/Pentecost (14,043), and Hindu (10,688).

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15 Ibid, p32.
2. The context: labour market and legal framework

2.1 Outlook of the labour market

Ireland’s economy remains unpromising, with figures for the first quarter of 2013 showing that the country has slipped back into recession. Unemployment tripled between the first quarters of 2008 (5%) and 2012 (15%). The gap in unemployment between Irish and non-Irish nationals has also widened, standing at 18.4% for non-Irish nationals in 2012, compared to 14.4% for Irish nationals in the same period – a difference of 4 percentage points, as against 1.9 percentage points difference in 2008. The disproportionate impact of the recession on migrants is further illustrated when we look at the ratio of unemployment to the adult population – in 2012, non-Irish nationals accounted for 14.7% of the total adult population, but 18.7% of total unemployment. Employment rates (the proportion of working adults in the working-age population) are not significantly different for Irish and non-Irish nationals, and the labour force activity rate is higher for non-Irish nationals. Analysis shows however that this is due to the over-representation of working age migrants in the population. While youth unemployment is in fact slightly lower for non-Irish nationals than it is for Irish nationals, it is substantially higher for those of prime age (25-44) and more than double at 45-64, with 21.9% unemployment among non-Irish nationals at this age group, compared to 10.3% for Irish nationals. The gap in unemployment rates between Irish and non-Irish females is wider than for males, and the 2012 Integration Monitor speculates that this may be due to the underrepresentation of non-Irish women in the public sector, which is a large employer of Irish women, and a decline in the food and accommodation sectors.

Within the immigrant population, members of the pre-enlargement EU group, excluding the UK (EU13), have the highest employment rate (67.7%), and Africans the lowest (41.9%). Analysis of a special Equality Module attached to the Quarterly National Household Survey in 2010, which provided information not usually collected on ethnicity, further reveals that unemployment is particularly high among Black Africans and Ethnic Minority EU individuals. Traveller unemployment, however, is highest of all, at 84.3% in Census 2011, up from 74.3% in 2006. Pavee Point Traveller and Roma Centre have indicated that the best way to tackle this would be by drafting a National Traveller Employment and Training Plan, similar to those that exist for Travellers’ health, housing and

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19 McGinnity F., Quinn E., Kingston G., O’Connell P., Annual Monitoring Report on Integration 2012, Economic and Social Research Institute and the Integration Centre, Dublin, June 2013, p28. Much of the data in this chapter is drawn from the 2012 Integration Centre, which was able to draw on special analysis of the Quarterly National Household Survey (Ireland’s official labour force statistics) run by the Central Statistics Office to the authors’ specifications. The data refers to Q1 2012, unless otherwise stated.
20 Ibid., p29.
21 Ibid.
22 Ibid., p31.
23 Ibid.
24 Ibid., p29.
However, they also highlight that improvements in Traveller employment rates will not happen without a focus on education, and that the modest gains in education made risk being lost in light of stringent cuts being made to Traveller education since 2008, 85% to date. 

In Ireland, migrants tend to be employed in lower grade jobs, particularly relative to the level of their qualifications. Analysis in a recent NGO study shows that holders of third level degrees are almost twice as likely to be unemployed if they are not Irish than if they are Irish. A report on the 2010 Equality Module of the Quarterly National Household Survey shows that White ethnic groups (apart from White EU New Member State) were considerably more likely to be employed in managerial and professional roles than non-White nationality groups. White EU New Member State individuals were concentrated in the occupational categories: other, plant and machine operatives, sales, personal and protective services, and craft. The main occupation for Black Africans was personal and protective services (31%) and for Asians, associate professional and technical jobs (45%). In order to establish whether the differences could be attributed to discrimination, the authors of the report then controlled for factors such as age and educational attainment and found that, even when such differences are accounted for, White EU New Member States, Black Africans, Asians, and to a lesser extent Ethnic Minority EU all have a lesser chance of securing a managerial or professional role in the Irish labour market.

Self-employment is relatively low among migrants, with a smaller proportion of migrants engaged in self-employment than native-born individuals, while the reverse is true in most OECD countries. The self-employment rate of Africans in Ireland is relatively high, which must in part be attributed to the experience of discrimination in accessing employment (see section 3.2 below). A survey of ethnic entrepreneurship in 2008 showed that the majority of ethnic businesses had a sales turnover of €50,000 or less, and that three quarters of ethnic businesses were not in existence two years after creation.

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28 Pavee Point Traveller and Roma Centre, “Pavee Point calls for action to address Traveller unemployment of 84.3%”, 18 October 2012.
31 Ibid.
32 Ibid.
35 65% of ethnic business owners surveyed indicated that their business has a sales turnover of €50,000 or less. There is no meaningful national comparator but as the authors indicate: ‘The preponderance [of] ethnic businesses are very small scale operations.’ Cooney, T and Flynn A, A mapping of ethnic entrepreneurship in Ireland, Dublin Institute of Technology, Dublin, 2008, p64.
2.2 Legal framework

The Employment Equality Acts 1998 - 2011 (“the Acts”) regulate discrimination in employment in Ireland. Although it is generally accepted that European law was instrumental in bringing a more “meaningful concept of equality” to Irish law upon joining the European Communities in 1973, by expanding the narrow remit of equality before the law under the Irish Constitution, it also rings true that the introduction of the Acts actually set an example for Europe to follow, which significantly predated the imposition of similar obligations by the Race Directive and the Framework Directive.

The Equality Tribunal, which offers the possibility for appeals to be brought to the Labour Court, is the independent quasi-judicial statutory body set up to administer the Acts.

There are nine specific prohibited grounds of discrimination under the Acts, including: “the religion ground”, “the ground of race” and the “traveller community ground”. The ground of race under the Acts includes “race, colour, nationality or ethnic or national origins” – in fact “going considerably beyond the obligations imposed by the European Race Directive by extending the race ground to cover differences in, inter alia, nationality.” Discrimination is broadly defined under the Act as where “a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds” – extending to situations where the discriminatory treatment no longer exists, may exist in the future, or where a person is wrongly “imputed” with being a member of a protected class.

The Acts cover direct discrimination, discrimination by association and indirect discrimination. With regard to indirect discrimination, where an apparently neutral provision or practice has a discriminatory impact, the burden of proof was lessened with the introduction of the Equality Act 2004 (amending the Employment Equality Act 1998), from a “substantially higher” disadvantage to that of a “particular disadvantage”; taking account of the new definitions of indirect discrimination in the Equality Directives. The Acts prohibit less favourable treatment in all significant aspects of the employment process, including: access to employment (both interview and recruitment process), conditions of employment, equal pay, training in employment, promotion or re-grading, vocational training, the classification of posts and dismissal (including constructive dismissal).

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41 The nine grounds are specified under Section 6(2) of The Acts: “the gender ground”, “the civil status ground”, “the family status ground”, “the sexual orientation ground”, “the race ground”, “the age ground”, “the disability ground”, “the ground of race” and “the traveller community ground”
43 Section 6(1)(a) of The Acts.
48 Section 8 of The Acts.
To constitute discrimination, a complainant must establish less favourable treatment compared to another person, “a comparator”. However, in the context of discriminatory harassment\textsuperscript{49} or “victimisation”\textsuperscript{50} under the terms of the Acts, there is no requirement under the law to demonstrate less favourable treatment than a comparator, owing to the particularly serious nature of such adverse behaviour. “Victimisation”\textsuperscript{51} under the Acts does not carry the same colloquial meaning, but rather prohibits an employer from adversely treating an employee who raises an issue of discrimination in the workplace, for example, by bringing a case to the Equality Tribunal.

The concept of an “employee”\textsuperscript{52} under the Acts is broadly defined in terms of a “contract of service”, so that apprentices and the self-employed are protected against discriminatory treatment. The Acts also explicitly covers “agency workers”\textsuperscript{53}, although the protection offered to that class of employee is significantly limited by the fact that it is only in circumstances where that “worker is treated less favourably than another agency worker”, rather than in comparison to those in direct employment.\textsuperscript{54}

The Acts even goes as far to cover former employees in particular circumstances.\textsuperscript{55} One class of worker that the Acts has been found not to cover is volunteers,\textsuperscript{56} which is certainly very problematic, as it leaves such workers open to the possibility of experiencing discriminatory treatment in the workplace without having recourse to any protection. The outcome of the recent High Court case of Hussein v The Labour Court & Younis,\textsuperscript{57} is of even greater concern, where it was found that an undocumented worker (unaware of his illegal status), who was forced to work for 55 cents per hour for up to 77 hours per week, had no right to legal redress (having been awarded €92,000 by the Labour Court), as his contract of employment was substantively illegal in the absence of an employment permit. Indeed, the Migrants Rights Centre, which took the case on behalf of the exploited worker, has noted that “the law as it is now interpreted gives a green light to exploitative employers. Other countries have protections in place where undocumented workers, who have had their employment rights violated can seek legal redress. The Government must act immediately to guarantee that undocumented workers are protected under employment law.”\textsuperscript{58} There has been no legislative response at the time of writing although it is understood to be a ‘priority issue’.\textsuperscript{59}

Section 82 of the Acts sets out the redress that may be ordered. Section 82 of the Acts allow for a maximum of 104 weeks remuneration by way of compensation for any discriminatory treatment,

\begin{itemize}
  \item Section 32 of The Acts.
  \item Section 74(2) of The Acts.
  \item Ibid.
  \item Defined as “a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment” under Section 2 of The Acts.
  \item Section 2 of The Acts.
  \item However, the introduction of the Protection of Employees (Temporary Agency Workers) Act 2012, entitles such class of workers to the same employment conditions as direct employees.
  \item For example, the refusal to provide a reference by a former employer may be considered “victimisation” under the Acts. See Connerty v Caffrey Transport Ltd. DEC-E2008-018.
  \item See Ravinder Singh Oberoi v The Commissioner of An Garda Síochána [2102 No.136 MCA], where the High Court found that volunteer members of the Garda Reserve force are not “employees”, nor engaged in “vocational training” for the purposes of the Acts. See further at section 3.4 below.
  \item [2012] IEHC 364 (31 August 2012). It was found that at paragraph 77 that: “[I]n the present case the Oireachtas has declared that a contract of employment involving a non-national is substantively illegal in the absence of the appropriate employment permit, so that, accordingly, a contract of this kind has been expressly prohibited by statute….the reasons for the employee’s failure to secure a work permit are irrelevant to that substantive illegality.”
  \item Migrant Rights Centre Ireland, “High Court decision leaves undocumented migrant workers without protection”, 31 August 2012.
  \item Interview with Síle Larkin, Legal Advisor, Equality Tribunal, 22 August 2013.
\end{itemize}
where the complainant was in receipt of remuneration, and a further 104 weeks compensation specifically for victimisation – therefore there is an absolute maximum of 4 years in compensation. Under the Section 25 of terms of the Civil Law (Miscellaneous Provisions) Act 2011, there is now the possibility of greater redress for those in low paid employment, of two years or €40,000, whichever is greater. Where the complainant was not in receipt of remuneration, for example where the discrimination was in the context of access to employment, the maximum compensation that may be awarded is €13,000.60 The Acts also allows for compensation in the form of arrears up to three years for equal pay claims. 61 It must be noted that the fixing of upper limits on compensation is clearly prohibited by European Law, 62 as continually highlighted by the European Committee of Social Rights absolute maximum compensation limits “may preclude damages from making good the loss suffered and from being sufficiently dissuasive”. 63

3. Manifestations of racism and structural discrimination in employment

3.1 Perceptions of discrimination in employment

Perceptions of discrimination and racism in employment in Ireland vary quite widely. For example, the Irish Business and Employers’ Confederation (IBEC) has seen a sharp decrease in the number of calls made by employers to their diversity hotline, and feel that issues of cultural diversity have bedded down within organisations. 64 However, ENAR Ireland members feel that the recession may have contributed to migrants in employment not wishing to call attention to themselves, and employers possibly perceiving diversity issues as something of a “luxury”. 65 “There’s this idea now, especially in the recession, that people shouldn’t complain about working conditions or low wages, that they should just be lucky to have a job.”66

Under-reporting of racism seems to be a problem in Irish society in general. A recent ENAR Ireland member report explored the very low levels of racist crime reported to the Gardaí 67 (142 incidents in 2011-27 times lower than the equivalent statistics for England and Wales) 68 and concluded that racism is both under-recorded (incidents are not recorded unless they are deemed criminal acts and specifically racist) and under-reported (only 13.3% of 150 victims of racism interviewed by the NGO in 2012 had reported the incident, most believing either that there was no point or that the incident wasn’t serious enough). 69 The recent ECRI report on Ireland also said that, while the racist crime reporting system in itself is robust, a comparison of the low racist crime statistics from a survey

61 Section 82 of The Acts.
62 See Marshall v Southampton and South-West Hampshire Area Health Authority (C-271/91) E.C.R. 1-04367. Where the Court found, that “discriminatory dismissal may not be limited to an upper limit fixed a priori” and “a person who has been injured as a result of discriminatory dismissal may rely on the provisions of Article 6 of the Directive as against an authority of the State acting in its capacity as an employer in order to set aside a national provision which imposes limits on the amount of compensation recoverable by way of reparation.”
64 Interview with Kara McGann, Irish Business and Employers” Confederation, Dublin, 1 July 2013
65 Interview with Peter Szlovak, The Integration Centre, Dublin, 8 July 2013.
66 Michael Taft, Unite trade union, Migrant Rights Centre Ireland, “Food for Thought” (short social justice film), 2012.
67 Irish police force.
69 Clarke, Helena, Recording Racism in Ireland, The Integration Centre, Dublin, July 2013
conducted in 2009 by the FRA, lead ECRI “to consider that the official statistics do not reflect correctly the reality of the number of racially motivated offences in Ireland.”\textsuperscript{70} Another ENAR Ireland member, Migrant Rights Centre Ireland, stated that at a recent Migrants Forum, there appeared to be a level of misunderstanding about what constitutes racism, with many migrants shrugging off racist comments as the price they pay for living and working in Ireland.\textsuperscript{71} The Migrant Rights Centre feel that a great level of awareness and understanding concerning what constitutes racism – both amongst migrants but even in their own operations – would be beneficial.\textsuperscript{72}

GOs are making efforts to improve the reporting of racism. Following a high profile public campaign in early 2013, the Immigrant Council of Ireland has seen the number of racist incidents reported increase five-fold from one per week to five per week.\textsuperscript{73} ENAR Ireland’s new reporting system, which makes it easier for ENAR Ireland members to file an incident using an integrated reporting system, has also led to a sharp increase in recorded incidents. 60 reports were filed in the first four weeks of the new system, compared to just 15 cases recorded by the Gardaí in the first three months of 2013.\textsuperscript{74}

3.2 Incidence of discrimination in employment

“Measuring discrimination poses considerable challenges to researchers, as discriminatory behaviour is rarely observed directly.”\textsuperscript{75} A 2012 report by the Equality Authority and the Economic and Social Research Institute (ESRI) takes a dual approach to measuring discrimination in employment in Ireland, looking at both objective labour market outcomes to determine if there was a difference between immigrant and native-born employment prospects, and subjective, self-reported instances of discrimination, as collected and reported in the special 2010 Equality Module of the Quarterly National Household Survey.\textsuperscript{76} In both measures, immigrants fare worse than native-born White Irish and there is also a substantial variation between ethnic groups in terms of the level of discrimination experienced, with Black Africans and Ethnic Minority EU individuals faring worst of all.\textsuperscript{77} Black African, Asian, Ethnic Minority EU, White UK and White non-EU individuals all have lower chances of employment than White Irish nationals, even after controlling for age, gender, educational attainment and other factors.\textsuperscript{78}

The results from the self-reporting Module are particularly stark, showing that Black African individuals are over seven times more likely to experience discrimination when looking for work and

\textsuperscript{70} European Commission Against Racism and Intolerance, ECRI Report on Ireland (Fourth Monitoring Cycle), Council of Europe Publishing, Strasbourg, 19 February 2013, para 22.
\textsuperscript{71} Interview with Virginija Petrauskaite and Sancha Magrat, Migrant Rights Centre Ireland, Dublin, 15 August 2013.
\textsuperscript{72} Interview with Virginija Petrauskaite and Sancha Magrat, Migrant Rights Centre Ireland, Dublin, 15 August 2013.
\textsuperscript{73} Fidele Mutwarisabo, Immigrant Council of Ireland, email correspondence, 1 August 2013
\textsuperscript{74} ENAR Ireland, “Reports of racism flood in 4 weeks since iReport.ie launch”, 11 August 2013.
\textsuperscript{76} Ibid.
\textsuperscript{77} It should be noted, however, that Travellers are not represented in the survey, owing to difficulties with the methodology. Pavee Point are working with the Central Statistics Office to address this issue. Interview with Martin Collins, Pavee Point, 13 August 2013.
\textsuperscript{78} Kingston G. et al, op. cit. pix.
almost seven times more likely to report discrimination in the workplace. The particular challenges faced by Black Africans were highlighted by an incident in January 2013, where an Irish parliamentarian made clearly racist remarks during a parliamentary debate. Speaking in the Senate on the need for a more rigorous knowledge test for taxi drivers, Senator Paschal Mooney said:

There is more than anecdotal evidence that people are driving taxis around the city who do not know one street from the other...I am not being discriminatory when I say that it has nearly always been non-nationals who do this. It has got to the point, and I make no apologies for it, that I prefer to go to a local taxi driver rather than somebody who is obviously a non-national.

The senator’s remarks (for which he subsequently apologized) were just a particularly public manifestation of an on-going problem with racism in the taxi industry. A report by the Irish Centre for Human Rights in 2010 highlighted endemic racism in the Galway taxi industry. All of the African taxi drivers interviewed had experienced racially motivated harassment, both from public users and other taxi drivers. 46% of public users interviewed said that they had been advised not to take taxis driven by African drivers and researchers for the report witnessed several incidents where users opted not to take the taxi at the head of the queue when it was driven by an African. Incident reports from 2012 of minority taxi drivers experiencing discrimination and abuse discrimination / racial hatred has also been confirmed by Cork-based NGO Nasc (an ENAR Ireland member) which stated that this is both a widespread and on-going phenomenon.

Irish taxi drivers are clearly aware of these preferences and some choose to exploit them. The Galway report showed a picture of a taxi cab with an Irish flag painted on the side and suggested that some Irish taxi drivers left their inside light on after dark while waiting for a fare, so that they could be readily identified as white. More recently, an article for The Journal.ie explored the alleged use of green roof lights to indicate that the driver was Irish.

All of this, however, masks a much larger institutional problem. In response to the “green light” story, one Irish taxi driver responded:

It seems to me to be obvious that the reason why anti-immigrant sentiment is increasing in the taxi industry, is that other industries have always firmly closed their doors to immigrants... It is pretty galling then to hear the hypocrisy of people who do the least to help integrate immigrants, criticise those in the industry that does the most.

As noted above, Black Africans are the exception to the generally low rate of self-employment among migrants in Ireland, and a large number of them are engaged in the taxi industry. In the Galway research paper, although the researchers’ observations seemed to indicate that there were as many

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83 Jaichand V., Riding Along with Racism, op. cit, p22.
84 Ibid, p25.
black drivers, if not more, operating in Galway as white drivers\textsuperscript{87}, they could find evidence of only one driver of African origin being employed by one of the five taxi companies in Galway. Of the 34 African taxi drivers interviewed, all were self-employed. Five of these said that they had previously been employed by a taxi firm, but had been “dismissed for being African” on a change of ownership in 2007.\textsuperscript{88} More than half of those interviewed had never attempted to gain employment, saying that it was well-known that African drivers would not get a job. By contrast, 83\% of the Irish taxi drivers were with a taxi firm.

The Galway taxi research was prompted by concerns within the Irish Centre for Human Rights that the taxi firm under contract to the National University of Galway, the Centre’s parent body, was refusing to employ African drivers.\textsuperscript{89} The evidence uncovered suggested that not only the taxi company in question, but virtually all those operating in Galway, were loath to employ African drivers.\textsuperscript{90} This illustrates not only the depth of discrimination in accessing employment, but also the possibility for further indirect or inadvertent discrimination by institutions or companies retaining taxi firms.

\textbf{3.3 Patterns of inequality over the course of time}

It seems that public perceptions towards migrants have hardened since the onset of the recession. In a recent analysis of the European Social Survey, the Integration Centre found that overall attitudes to migration have become less positive over time, and that this is particularly noticeable with regard to the impact of immigration on the economy; declining from a mean score of 5.9 on an 11 point scale in 2006, to 4.2 in 2010.\textsuperscript{91} When mapped against four other European countries (Germany, Spain, UK and the Netherlands), Ireland’s score is the lowest on this particular issue.\textsuperscript{92} When the public was asked whether immigrants of a different race/ethnic group as majority should be allowed to come and live in Ireland, 19\% answered none, compared to 8\% in 2006.\textsuperscript{93} While the percentage of respondents who would allow no immigrants of the same race/ethnic group as majority has also risen steeply, at 15\% it remains lower, and the gap between the two has widened.\textsuperscript{94} Even more worryingly, a survey conducted in 2011 found that almost two thirds of TDs\textsuperscript{95} surveyed had encountered racist sentiments while canvassing in the previous General Election and that only 4\% felt it would benefit their electoral prospects to support migrant rights.\textsuperscript{96}

\textsuperscript{87} Of the 211 cars observed during research, 55\% were driven by black drivers.
\textsuperscript{89} Ibid, p4.
\textsuperscript{90} Ibid.
\textsuperscript{91} The question reads “Would you say that it is generally bad or good for [Ireland’s] economy that people come to live here from other countries?”, where 0 is least positive and 10 is most positive. McGinnity F., Quinn E., Kingston G., O’Connell P., \textit{Annual Monitoring Report on Integration 2012}, Economic and Social Research Institute and the Integration Centre, Dublin, June 2013, p63.
\textsuperscript{92} The questions read “To what extent do you think [Ireland] should allow people of the same race or ethnic group as most [Irish] people to come and live here?” “How about people of a different race or ethnic group from most Irish people?” Ibid. p69.
\textsuperscript{93} Ibid, 65.
\textsuperscript{94} A gap of 5 percentage points in 2010, compared to a gap of 2 percentage points in 2006, between those allowing none from same race/ethnic group and those allowing none from different race/ethnic group.
\textsuperscript{95} Teachta Dálá, member of the Irish Parliament.
\textsuperscript{96} Millward Browne Lansdown survey 2011, cited in Clarke, Helena, \textit{Recording Racism in Ireland}, The Integration Centre, Dublin, July 2013
3.4 Discrimination in access to employment

In a field experiment carried out in 2009, researchers replicated the CV exercise which was carried out in a number of European countries. They created sets of CVs tailored to match a particular job, where the names were the only significant difference – the fictional candidates were otherwise matched in terms of age, gender, education (in Ireland) and work experience (in Ireland). The researchers found that CVs with identifiably Irish names were almost twice as likely to be invited for interview as those with Asian, German or African names, despite having equally good credentials. The authors posit two possible explanations:

Firstly, a strong preference for Irish candidates on the part of employers/recruiters [is] known as “in-group favouritism”. Favouring the in-group is consistent with the Irish situation of a strong, cohesive national identity and a very recent history of inward migration of non-Irish nationals. The second explanation is that employers may never have read past the names on the CVs, and thus failed to appreciate that the minority candidates had qualifications and experience obtained in Ireland that were equivalent to the Irish candidates.

The experiment clearly shows widespread discrimination on the basis of ethnicity, but probably does not reveal the full extent of actual discrimination in access to employment. The data shows no significant difference between the three non-Irish ethnicities – CVs with Asian, German or African names were all just about half as likely as Irish names to secure an interview. In reality, however, a large number of job applications are expected to be made in person, rather than through a CV process, and while it is more difficult to measure, discrimination is probably even more likely to occur on the basis of accents and skin colour. In fact, in the self-reporting 2010 Equality Module of the Quarterly National Household Survey, White EU-13 (EU-15 – the “old” EU group - excluding Ireland and UK) were slightly less likely than White Irish to report discrimination in looking for work – 4.6% as opposed to 5.4%. 22% of Black Africans, on the other hand, reported discrimination in looking for work and 17.3% of Ethnic Minority EU individuals. One African taxi driver looking for work commented “once they hear your voice you get nowhere”. Travellers, more ethnically similar to White Irish, often resort to hiding their identity to get a job and often continue to hide their identity in the workplace. One Traveller bus driver says: “[the first 12 months] were a bit iffy, I was a bit insecure, I didn’t want it coming out I was a Traveller, because it was the first good, permanent job that I had”. When asked why, he responded that “[f]rom experience with other Travellers losing their jobs when they’re identified and....minor experiences myself, with people giving you jobs, finding out who you are and then backing off – not actually getting rid of you, but backing off, you

98 Ibid, pvi.
99 A significant number of EU-15 nationals in Ireland are employed in call centres, working through their own native language, which may tend to lessen the likelihood of discrimination.
102 Unedited video footage of “Christy: Traveller and Bus Driver” provided by Pavee Point, August 2013.
can tell, you can tell the difference. Similarly, a Roma client of NGO Nasc reported hiding his Roma identity to gain employment.

The Equality Module of the Quarterly National Household Survey mentioned above also recorded respondents’ religion, and analysis of that module showed that religion was associated with discrimination while looking for work, although not with discrimination in the workplace. The researchers found that respondents of ‘no religion’ reported higher levels of discrimination while looking for work, after factors such as education and age and sector and occupation were controlled for. Muslims reported a high raw rate of discrimination – 19.5% reporting discrimination, as against 5.3% of Catholics, the reference group, but once other factors were controlled for, the levels were not statistically significant.

### 3.5 Discrimination in the workplace

Discrimination in the workplace itself is even more widespread than discrimination faced whilst looking for work, according to the recent Equality Authority/ESRI report. Again, Black Africans are almost seven times more likely to experience discrimination than White Irish, and Ethnic Minority EU and Asian almost twice as likely. Objective measures of discrimination also show that, even after age, gender and education are controlled for, White EU New Member State, Black African, Asian and Ethnic Minority EU individuals are less likely to secure high grade positions in the occupation structure, and White EU New Member State and Black African individuals are less likely than White Irish individuals to be high earners.

NGO reports give us some indication of the type of racism experienced in the workplace, sometimes by individual staff members, but often also by the employer. Even where reports relate to harassment by just one individual in the workplace, the fact that management does not intervene, or that the victim does not complain for fear of losing his/her job, makes the problem an institutional one. “In some cases, African women reporting racial abuse were asked to provide evidence or witnesses, but found it difficult to do so – often the abuser feels secure to discriminate in the knowledge that the migrant does not feel secure enough to complain.” Reports include derogatory comments by other staff members, a perception that harder or dirtier jobs are given to Black

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103 Ibid.
106 Ibid. The reference group is Catholic, the religious belief indicated by the majority of respondents. Other variables controlled for included ethnicity, age, marital status, sector, occupation etc.
107 Ibid.
110 Ibid, p32.
111 Ibid.
112 Racism reports from Doras Luimni
Africans\textsuperscript{113} and discrimination vis-à-vis Irish colleagues in terms of obtaining annual leave e.g. at Christmas.\textsuperscript{114}

The Irish Business and Employers’ Confederation advise their members that requiring employees to speak English at work is acceptable, where English is the business language at work. They add, though, that “employees should be allowed to speak their own languages at break time as long as they are not deliberately excluding any other members of staff in a way that could be construed as bullying.”\textsuperscript{115} However, a recent survey of migrant care workers found that over a quarter of the research participants were not allowed to speak their native language, even on a personal break.\textsuperscript{116} A racism report from NGO Doras Luimni highlights that forbidding the speaking of a native language was one aspect of a campaign of harassment and intimidation: \textquote{Once when he was speaking Nepalese to another guy she interrupted and said he wasn’t allowed to speak his own language, he can only speak in English and if she ever catches him speaking Nepalese she said she will sack him.}\textsuperscript{117}

There has been little testing of policy on the wearing of religious symbols at work, either in the private or public sector. The Irish Business and Employers\textquotesingle Confederation currently advises its members as follows:

Q: \textit{Can an employee be required to remove religious head scarves or turbans, symbols or jewellery if it conflicts with a uniform/wearing of jewellery policy?} A: Organisations need to ensure they are being reasonable and flexible in this regard as there are certain items which are highly symbolic and traditional in some religions and beliefs. Unreasonable or unjustifiable policies may constitute indirect discrimination unless health and safety or other justifiable reasons can be given.\textsuperscript{118}

In 2007, a trainee volunteer member of the Garda Reserve was told that he could not continue his training while wearing his Sikh turban.\textsuperscript{119} In the debate that ensued, the Gardaí stated that: “the Garda Síochána has, historically, been seen as providing an impartial police service, policing all sections of society equally. By accommodating variations to our standard uniform and dress, including those with religious symbolism, may well affect that traditional stance and give an image of An Garda Síochána which the Commissioner feels the public would not want.”\textsuperscript{120} Mr Singh alleged that he was discriminated against on the grounds of race and religion under the Employment Equality Act. The case was referred to the High Court and was dismissed in May 2013, on the grounds that the individual was a volunteer and not, as such, protected by the Equality Acts.\textsuperscript{121} The substantive issue of the claim, therefore, has not been addressed, and it remains to be seen whether the case will be taken further. European policy on accommodating uniform variations (or, indeed, permitting any ostentatious religious symbols by public servants) varies greatly – however, given that the Irish


\textsuperscript{114} Interview with Virginija Petrauskaite and Sancha Magrat, Migrant Rights Centre Ireland, 15 August 2013.

\textsuperscript{115} Diversity FAQs, provided to the researcher by IBEC, July 2013.

\textsuperscript{116} Migrant Rights Centre Ireland, \textit{Who Cares? The Experience of Migrant Care Workers in Ireland}, Dublin, November 2012, p15.

\textsuperscript{117} Doras Luimni, Report 103, provided to the researcher by Doras Luimni, August 2013.

\textsuperscript{118} Diversity FAQs, provided to the researcher by IBEC, July 2013.

\textsuperscript{119} Irish Independent, “Sikh member of the Reserve is banned from wearing turban”, Sheahan, F., 13 August 2007.


\textsuperscript{121} Ravinder Singh Oberoi v The Commissioner of An Garda Síochána [2102 No.136 MCA]. See footnote 27 above.
state’s historic close relationship with the Catholic Church, a liberal pluralist approach would seem to be more appropriate than a rigidly secularist one.

3.6 Economic sectors

The statistical evidence does not highlight any economic sector as being more prone to discrimination and racism than others. In the CV exercise outlined above, the discrimination was equally strong across sectors (industry; transport/distribution/communication; other business services and non-market services) and across all occupations tested (lower accountancy, lower administration and retail sales). However, the work of ENAR Ireland member NGOs would testify that, as might be expected, discrimination occurs most frequently in sectors employing large numbers of migrants, such as domestic and care work, contract cleaning, restaurant and hospitality, taxi driving as mentioned above, and low grade agricultural work. Mushroom picking, in particular, is an occupation where migrant workers have endured pay, hours and conditions of employment which would not be tolerated by native employees, and a large amount of work has been done to improve conditions in this industry by the Migrant Rights Centre Ireland, trade union SIPTU, and the Equality Authority.

4. Tackling the challenges

4.1 Public policies

The Equality Authority (Ireland’s equality body, discussed in more detail at 4.2.2.1 below), has undertaken a variety of initiatives to combat discrimination in employment, including “valuable training and consultancy support for small and medium size enterprises.” However, since the abolition of the National Consultative Committee on Racism in 2009 and a 43% budget cut to the Equality Authority in the same year, public policy measures on combating racism and discrimination in all areas, including employment, have been severely limited. The National Action Plan on Racism expired in 2008 and has never been renewed. Both the Equality Authority and the Equality Tribunal will soon be undergoing mergers, discussed in more detail below.

There have been some positive developments in public policy in the period under review which, whilst not directly aiming to combat discrimination, should have a beneficial impact on migrant integration. The first is the fast-tracking of the naturalisation process, with 23,800 certificates of

123 eg. Interview with Virginija Petrauskaite and Sancha Magrat, Migrant Rights Centre Ireland, 15 August 2013.
124 Workers paid rates of €2.50 per hour (less than one third of minimum wage); working in excess of 16 hours per day; expected to be on call around the clock, seven days a week. The Mushroom Workers’ Support Group, Harvesting Justice: Mushroom Workers Call for Change, Migrant Rights Centre Ireland, Dublin, November 2006, p 4.
125 Migrant Rights Centre Ireland established a Mushroom Workers’ Support Group in 2006, which, with the support of SIPTU, was successful in negotiating a Registered Employment Agreement for mushroom workers, regulating terms and conditions in the industry. The Equality Authority has funded health and safety training for migrant workers in the mushroom industry. See, eg. Philips, S., Towards a Strategy For the Inclusion of Migrant Workers in Trade Unions, The Irish Congress of Trade Unions, Dublin, 2011, p21.
127 See Equality and Rights Alliance, http://eracampaign.org/about-era
naturalisation issued in 2012 alone. Another is the lifting of work permit restrictions for Bulgarians and Romanians in July 2012 which “was met with joy by the Roma”. In April 2012, two new schemes were added to the standard business permission scheme for non-EEA persons wishing to become self-employed in Ireland. The first, an Immigrant Investor Scheme, grants approved investors and their immediate family the right to live and work in Ireland for five years, with possibility of renewal. The second, a Start Up Entrepreneur Programme, allows immigrants with a high potential project and funding of €75,000 to establish a business in Ireland – crucially, no initial job creation targets have been set.

Perhaps the most useful public policy which could be instituted would be to lead by example in ensuring greater diversity and instituting a non-racist culture within the civil service itself. Migrants are under-represented in the public service, one of the biggest employers in the State. A recent study by the Public Service Executive Union (PSEU) showed that, while 10 out of 16 civil service departments surveyed have equality policy with specific anti-racism measures in place, only 35% of nearly 500 public service employees were aware of such a policy in their department. While few incidents of racism/racist remarks had been witnessed against other members of staff (perhaps because of the lack of diversity), the most shocking statistic is that 26.4% of respondents had witnessed racist remarks by a colleague about clients/customers. As remarked by a member of the Roma community: “If they treat us differently in offices like social welfare then people think they can treat us badly.”

One public service body where a concerted effort to employ Travellers within the organisation has been met with great success is South Dublin County Council. The Council put in place two schemes in 2005. For the first scheme, a formal training programme for General Operatives within the Parks Department had been set up, where participants trained for six months- three days a week training with the FAS, the National Training Body, and two days a week working as part of teams in the Council’s Parks Department. They were fully paid during these six months and were promised permanent employment upon successful completion of the programme. Twelve participants were given a place on the programme, eight of whom completed it, and seven were on track to become permanent employees in April 2006. The second, designed for Clerical Officers, involved offering promising candidates work experience or temporary contracts, and working with them on a one-to-one basis to prepare them for the Clerical Officer competitions. By early 2006, “two young women had successfully moved into full-time permanent positions and a further two women and one man were in full-time temporary positions, with the Council optimistic that they would become.

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131 Ibid.
134 Ibid., p 25.
135 Larkin, C. In from the Margins: Roma In Ireland – Addressing the Structural Discrimination of the Roma Community in Ireland, Nasc: The Irish Immigrant Support Centre, 2013, p70.
permanent after the next Clerical Officer competition.\textsuperscript{137} A 2006 study of the initiative concluded that: “While modest in itself, if the project was replicated by other local authorities, it has the potential to make a good contribution to tackling unemployment in the Traveller community."\textsuperscript{138} Pavee Point Travellers and Roma Centre confirmed in an interview the outcome of this research, highlighting that 13-15 Travellers are still employed in South Dublin County Council and that it is especially successful in that Travellers have not been ‘ghettoised’, but instead work alongside settled people in the parks and offices.\textsuperscript{139} However, much of the success of the project can be attributed to there being a strong ‘champion’ providing leadership within the Council. While a few similar schemes were established in 2006-2007, including within the Department of Finance, recommendations that such schemes be replicated on a wider basis were not followed.\textsuperscript{140}

4.2 Access to effective remedies

4.2.1 Judicial remedies

The Equality Tribunal is the independent statutory quasi-judicial body of first instance that deals with cases of discrimination in employment on the grounds of religion, the traveller community ground and the grounds of race, which includes “colour, nationality or ethnic or national origins”.\textsuperscript{141} The legally binding decisions of the Equality Tribunal are open to appeal to the Labour Court, within 42 days of the issuing of a decision. The Labour Court appeals are heard afresh, \textit{de novo}, in that both parties are called to make new submissions and all aspects of the case are reconsidered. The Circuit Court, having the powers of a constitutional court, unlike the aforementioned statutory quasi-judicial bodies of the Equality Tribunal and the Labour Court, has the power to enforce decisions of the Equality Tribunal and indeed of the Labour Court, in circumstances\textsuperscript{142} where the parties have not been compliant. The High Court maintains a certain oversight over the enforcement of employment rights by administrative courts by hearing appeals on points of law only\textsuperscript{143} – in general the High Court is deferential to the expertise of the Equality Tribunal and the Labour Courts.\textsuperscript{144}

There is no procedural fee for taking a claim to the Equality Tribunal and parties are not required to have legal representation during this relatively informal procedure. Complaints must be lodged within six months of the most recent occurrence of discrimination through a complaint form; although a 12 month extension for “reasonable cause” can be granted. The complaint form must outline the broad nature of the complaint, which can then be expanded upon at the hearing, “so long as the general nature of the complaint remains the same”\textsuperscript{145} – so as to comply with fair procedure. After the complaint form is submitted, the employer is invited to respond. The complainant may request certain “material information” relevant to their case from the employer, for example, information regarding pay scales of other employees in the context of an equal-pay claim.\textsuperscript{146}

\begin{thebibliography}{99}
\bibitem{137} Ibid.
\bibitem{138} Ibid, p.4.
\bibitem{139} Interview with Martin Collins, Pavee Point Traveller and Roma Centre, Dublin, 13 August 2013.
\bibitem{141} Section 6(2)(h) of the Acts.
\bibitem{142} Section 91 of the Acts provides for enforcement by Circuit Court.
\bibitem{143} Section 90(1) allows an appeal to the High Court from the Labour Court “on a point of law”. There is also an appeal “on a point of law” directly from the Equality Tribunal to the High Court.
\bibitem{145} Endorsed by the \textit{High Court County Louth VEC v Equality Tribunal and Brannagin} [2009] IEHC 370.
\bibitem{146} The Equality Officer may draw certain inferences for a failure to provide documentation, endorsed by the High Court in the case of \textit{Iarnród Eireann v Mannion} [2010] IEHC 326.
\end{thebibliography}
Equality Tribunal will always offer the parties the option of resolving the dispute through mediation and attempt to come to a legally binding agreement between the parties at if possible. If mediation fails, or one of the parties objects to mediation, the case proceeds to a full hearing. At the hearing, the Equality Officer (the adjudicator) takes a proactive and investigative approach to proceedings, asking questions to the parties, seeking the facts, attempting to establish the veracity of the evidence given, and has the power to call witnesses\textsuperscript{147} – it is an offence to mislead the Tribunal.\textsuperscript{148} The Tribunal proceedings are held in private, while the decisions are publicised on the website. The Tribunal can decline to investigate a claim at any stage if it is found to be "frivolous, vexatious or misconceived or relates to a trivial matter\textsuperscript{149}, although in practice this has been invoked by the Tribunal on very few occasions.\textsuperscript{150}

At present, the average length of the entire proceedings is two and a half to three years. From the time a complaint is lodged, further submissions are received and exchanged, a hearing takes place and a decision is then issued. While the Equality Tribunal is certainly accessible, its effectiveness has been thwarted to some degree, as it has been “characterised by a very heavy case load relative to the available resources and by resultant lengthy delays in the processing of complaints”.\textsuperscript{151} The Tribunal has come under significant pressure to investigate and determine complaints within a reasonable time\textsuperscript{152} and as a result, there have been significant improvements in this regard since 2008 – during the same period in which the Equality Tribunal lost approximately 10 of its adjudicating staff.\textsuperscript{153}

It is hoped that with the establishment of the Workplace Relations Commission, where all employment rights issues, including those under discrimination grounds, will be dealt with under one single streamlined system, the length of the proceedings will be lessened.\textsuperscript{154} The Workplace Relations Bill is currently in the final stages of negotiation, and aims to amalgamate all the industrial relations bodies and create one body to deal with the first instance claims. It proposes that the new body will be established by the end of 2013 but it will not affect the substantive content of the equality legislation. However, many NGOs feel that the merger, coming after a significant number of budget cuts and recent loss of staff, "reflects a lack of commitment by the Irish government to the protection of rights and equality in Ireland".\textsuperscript{155}

The Equality Authority in its 2007 Annual Report highlighted that there had been a reduction in the number of claims using the ground of race, “not due to a reduction in allegations of discrimination on the race ground but on account of perceived delays in the Equality Tribunal".\textsuperscript{156} Subsequently, however, “perhaps the outstanding feature of the Tribunal case law during the reporting period [2008-2011] has been the sharp rise in complaints of discrimination on the race ground, especially

\begin{itemize}
\item[147] Section 95 of the Acts.
\item[148] Section 81 of the Acts.
\item[149] Introduced by Section 33 of the Equality Act 2004.
\item[152] After the decision of Kelly v Director of the Equality Tribunal [2008] IEHC 112, although the High Court found that the delay of four years and six months was not a breach of the plaintiff’s rights under Article 6(1) of the European Convention on Human Rights
\item[153] Interview, Síle Larkin, Legal Advisor, Equality Tribunal, 19 August 2013.
\item[154] The optimum length of proceedings may be something between six and nine months. Interview with Síle Larkin, Legal Advisor, Equality Tribunal, 19 August 2013.
\item[155] Larkin, C. In from the Margins: Roma In Ireland – Addressing the Structural Discrimination of the Roma Community in Ireland, Nasc: The Irish Immigrant Support Centre, 2013, p169.
\end{itemize}
but not exclusively under the Employment Equality Acts”.¹⁵⁷ This sharp increase in cases filed on the race ground is reflected in the table below, as is the relatively modest increase in successful cases:

![Decision in Employment Equality Cases on Race Grounds by the Equality Tribunal 2003-2011](image)

*Source: Equality Tribunal, Annual Reports*

**Figure 2:** Reproduced from Power J., Szlovak P., Migrants and the Irish Economy, The Integration Centre, 2012, p42.

In the early years of the Tribunal there were relatively few cases on the race ground, while it is now the single most common ground of discrimination invoked by complainants, although most of the cases have been unsuccessful – owing, it seems, to poor preparation of claims, in terms of a “lack of detailed consideration of the facts” and a failure “to establish a link between the impugned conduct and the complainants race”.¹⁵⁸ The Labour Court has long since established, with regard to the burden of proof, that the facts must be of “sufficient significance” and not merely “speculation or assertions” upon which an inference of discrimination may be drawn¹⁵⁹ – the onus is still squarely on the complainant to establish a *prima facie* case of discrimination.

However, there have been a quite a number of successful cases between 2010 and 2013,¹⁶⁰ demonstrating the effectiveness of the Tribunal in combating discrimination on the grounds of race and in employment, for example:

- In the case of *Nikolais & Celdako*¹⁶¹ the failure to provide understandable health and safety training was found to be discriminatory and compensation of €5,550 and €500 was awarded.

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¹⁵⁹ *Melbury Developments Ltd. v Valpeters*, Labour Court, [2010] EDA0917. The Court found that the complainant had been discriminated against on the race ground, as he had not been provided with a safety statement in a language that he was competent.
¹⁶⁰ Equality Tribunal Annual reports for 2012 and 2013 are not yet available.
to the complainants;

- In *Vaicikauskas & Anor*\(^{162}\) the dismissal of the entire non-Irish workforce was found to be discrimination, each complainant was awarded €2,500;
- In *Kuda & Others*\(^{163}\) the Latvian complaints were found to have been discriminated against, using hypothetical Irish workers as a comparator, as they were required to work one extra day per week for “exceptionally cramped accommodation”\(^{164}\) and were dismissed in an “extraordinary manner”\(^{165}\). They were each awarded €5000 for the discriminatory conditions of employment and amounts ranging from €3000 to €17,000 for the discriminatory dismissal;
- In *Kazolailis*\(^{166}\) the Latvian complainant was subject to extremely poor working conditions that no hypothetical Irish comparator would have accepted, and was subject to verbal and racial harassment. He was awarded €7000 in total.
- In *Kapusta, Rutkowski & Smolarek*\(^{167}\) the complainants were not given annual leave nor had their employment been regularised. It was found that Irish workers would not have been treated the same way – they were each awarded €15,000.
- With regard to discrimination based on religion, in *A Complainant*\(^{168}\) it was found that the retraction of an offer of a permanent teaching post at a national school had been influenced by the complainant not having a Catholic Religious Certificate – she was awarded €12,697 for discrimination on the ground of religion.

It has been observed that, while the Equality Tribunal and the Labour Court have been quite proactive in terms of protecting non-Irish employees, for example relying on hypothetical Irish comparators to establish discriminatory treatment, a “high level of unfavourable treatment” must be established and that levels of compensation “have tended to be quite low” – raising the possibility “that victims of race discrimination are second class citizens in the hierarchy of protected classes in Irish employment law”\(^{169}\).

Síle Larkin, Legal Advisor at the Equality Tribunal disputes this assertion.\(^{170}\) Ms Larkin points out that upon careful analysis of the cases taken on the race ground, particularly the large numbers lodged in 2008 and 2009, which were heard in 2010 and 2011, a significant percentage of the complaints were found at the hearing to be ‘mere assertions’, entirely lacking in evidence, and with a certain degree of generic replication of complaints. It was these cases that significantly attributed to the sharp increase in cases on the race ground. Ms Larkin highlighted recent cases where there has been considerable compensation awarded on the grounds of race, such as in *A Domestic Worker v An Employer*,\(^{171}\) where the complainant was awarded €46,486 for discrimination regarding conditions of employment and discriminatory dismissal. Ms Larkin notes that generally the higher amounts awarded by the Tribunal are often in relation to harassment, victimisation and dismissal, which have tended to arise more frequently on the grounds of gender (pregnancy/maternity leave) and

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\(^{162}\) Equality Tribunal, *Vaicikauskas & Anor v Ashfield Builders Ltd.*, DEC-E2010-156.


\(^{164}\) Ibid para 5.3.

\(^{165}\) Ibid para 5.4.


\(^{170}\) Interview with Síle Larkin, Legal Advisor, Equality Tribunal, 19 August 2013.

\(^{171}\) Equality Tribunal, DEC-E2011-117. The case concerned a nanny from South Africa who was paid as little as €200 per week for a six day week and dismissed without any due process, the Tribunal found that no Irish worker would have been treated in the same way. The complainant was supported by the Migrants Rights Centre Ireland.
disability. Ms Larkin also highlighted that a large number of the complaints on the race ground concerned nationality, not covered by many other jurisdictions, rather than dealing with racism in the workplace.

4.2.2 Non-judicial remedies

4.2.2.1 Ombudsman or equality body

The Equality Authority is the body charged with promoting equality and combating discrimination under the Employment Equality Acts (“the Acts”) and other equality legislation, and provides both information and legal support on the application of the Acts. For example, in 2010 and 2011 the Equality Tribunal processed some 2,830 and 1,946 telephone queries regarding the Acts, a substantial increase to previous years, predominantly attributed to the publication of an Employment Rights Rule Book in 2010. In 2011, 149 queries related to the race ground, making it the fourth most common ground (with gender, disability and age being the top three grounds); 25 to the religion ground and 7 to the Traveller Community Ground. The top three categories of query were general information (485); working conditions (264); access to employment (237). The Equality Authority has an in-house legal section, which may, in accordance with the provisions of the equality legislation, give free legal assistance. This includes situations where the facts of the case could raise an “important matter of principle” or where it is not reasonable to expect the person to present the case without assistance. In 2011, the Equality Authority provided legal representation, for the circumstances prescribed for under the Acts, in five Equality Tribunal decisions, ten settlements and one Labour Court determination, of which one case was successful on the grounds of race. Besides supporting a claimant bringing forward a case, the Equality Authority itself has legal standing to bring discrimination cases or to intervene in the proceedings with an amicus curiae brief. The Equality Authority is a specialised body for the purposes of enforcing the Council Directive 2000/43, the Racial Equality Directive.

The Equality Authority also has research and development functions and some of its recently sponsored research has been cited throughout this report. The Authority launched the Equality Small Grants Scheme in July 2012, funding various equality initiatives of 23 NGOs, for example, the Irish Traveller Movement which ran workshops to promote how to run successful campaigns nationally and locally. In 2012, The Equality Mainstreaming Unit also funded the Galway Traveller Movement, which developed an equality mainstreaming toolkit for enterprise and employment programs. The Equality Mainstreaming Unit also supported a project focused on female migrant workers in the mushroom sector. Generally, a key focus of the Equality Authority through the Mainstreaming Unit is supporting trade union and civil society organisations promote best practice in the workplace through joint initiatives. This can be a more effective solution than the limitations of individual legal remedies.

174 Ibid.
175 Ibid, p18.
177 Weronica Zanievska v Laurel Lodge Nursing Home, Equality Tribunal, DEC-E2011-166. The complainant was awarded €5000 for discriminatory treatment suffered with regard to conditions of employment.
179 Interview with Renée Dempsey, CEO, Equality Authority, 22 August 2013.
As with the Equality Tribunal, the Equality Authority is poised for a merger, in this case with the Irish Human Rights Commission. This has been subject to lengthy delays and has been a source of great concern to NGOs, trade unions and independent observers. The Equality and Rights Alliance, a coalition of concerned NGOs (including ENAR Ireland and its members) has remarked: “It is difficult to see how a body, composed of two merged organisations that have seen their budgets and their staffing level devastated, could be expected to work more effectively.”

### 4.2.2.2 Mediation or conciliation

The Equality Tribunal will invariably attempt to mediate, where possible, disputes related to discrimination in employment, before the case proceeds to a full hearing. Mediation agreements are not limited to the redress options under the Employment Equality Acts (“the Acts”) and can include any terms to which both parties agree. The agreement is legally binding and enforceable by way of court order. Mediation is private and agreements are not published. Under the 2010 Mediation Review, the last available review by the Equality Tribunal, it was found to be a very valuable resource, where 69% of cases involved bona fide mediation, resulting in an agreed settlement. Significantly, mediation agreements were achieved in less than a third of the time it would take to go to a full hearing and investigation—a particularly effective and expeditious solution.

In 2010, the highest number of employment agreements was on the race ground, with 19 successful agreed settlements, while neither the Traveller Community nor religion ground featured. A sample of the type of employment agreements under in 2010 included: the offering of a full-time contract to a shop worker and assurance of occasional weekends off; a salary increase; reassignment of an employee to night shifts and a financial gesture of goodwill; and agreement to facilitate an employee with a further disciplinary hearing. A 2009 Mediation User Survey conducted by the Equality Tribunal found that 90% of respondents found that the mediation service provided was very good or good.

### 4.2.2.3 Labour inspectorate

The National Employment Rights Authority is the body charged under national employment legislation with the inspection of workplaces with regard to conditions of employment; however it is not concerned with the discrimination in employment inspections. The Equality Authority, under Section 69 of the Employment Equality Acts, has the power to conduct a “review” of business practice and procedure, and to issue the business with an “action plan”, which is a “programme of

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180 The proposed merger was announced in October 2011, and has yet to be completed – latest information is that it will be completed by the end of 2013. Irish Times, “Big fall in equality and human rights-related cases”, O’Brien C., 24 September 2013.
182 Village magazine, “More purge than merge” Mullen R, Equality and Rights Alliance, April/May 2013..
183 Section 78 of the Acts.
185 Ibid.
186 Ibid.
187 Ibid.
actions to be undertaken in employment in a business or businesses to further the promotion of equality of opportunity in that employment”. Further, under Section 58 of the Acts, the Equality Authority also has the power to conduct inquiries and has the power to obtain information. These powers have not yet been utilised by the Equality Authority, possibly due to resource constraints, resulting in there being no labour inspectorate concerned with discrimination or racism in the workplace.

4.3 Civil society initiatives

4.3.1 Trade Unions

The Irish Congress of Trade Unions (ICTU) is very active on equality matters and has produced an in-depth strategy paper on the inclusion of migrant workers in trade unions which outlines some of the best practice examples of Irish trade unions in campaigning for migrant workers. Of particular interest are the efforts made by the SIPTU (Services Industrial Professional and Technical Union) to “build good relationships between migrant activists and to develop their leadership skills so as to ensure management could not take advantage of underlying tensions between different nationalities.”

4.3.2 NGOs activities

There is a strong network of NGOs working with migrants and Travellers/Roma at both the regional and national level, all of whom are members of ENAR Ireland. The Migrant Rights Centre Ireland (MRCI) has a particularly strong focus on employment, working on issues such as forced labour and trafficking, migration and work permits, domestic and care work and irregular migrants. MRCI operates a drop-in centre for migrant workers and their families, and in the past would have represented clients in the Equality Tribunal but no longer does so due to budget cuts. MRCI builds on its case work to support collective action and advocacy to bring about change. An on-going campaign to recognise the rights of domestic workers, run by MRCI and supported by Congress and SIPTU, among others, has been successful in negotiating an Irish tripartite agreement on protecting persons employed in other people’s homes in Ireland in 2007. This was influential in the drafting of the ILO Convention 189 on Domestic Workers which was passed in 2011. In June 2013, the Irish Presidency of the EU delivered a Council Decision authorising member states to ratify the Convention and the Irish Government indicated that it will be among the first to do so.

Other NGOs (e.g. the Immigrant Council of Ireland and Crosscare in Dublin, Nasc in Cork and Doras Luimnì in Limerick) also operate drop-in or information services and collect information on racist incidents, including employment related incidents, and use them as an evidence base for their advocacy. The Integration Centre no longer provides information clinics, but is still active in research.

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190 Interview with Virginija Petrauskaite and Sancha Magrat, Migrant Rights Centre Ireland, 15 August 2013.
191 Migrant Rights Centre Ireland, Domestic Workers Newsletter, July 2013.
192 http://www.immigrantcouncil.ie/
193 http://www.crosscare.ie
194 http://www.nascireland.org/
195 http://www.dorasluimni.org/
and advocacy. Other NGOs focus on a particular ethnic group, such as Akidwa which does a lot of work around migrant women accessing employment, particularly Black African women.

4.3.3 Employers’ organisations

The Irish Business and Employers Confederation (IBEC) employs a Diversity Officer who mans a diversity helpline for employers and co-ordinates a Diversity Forum, with about 25 very active employer members and 80-90 more who are involved on a regular basis. The Diversity Officer explained that while there had been a definite focus on cultural diversity around 2007-8, in recent years much of their work has been about gender and mental health. IBEC co-ordinated the drawing up of Ireland’s first Diversity Charter which had been signed by eleven founding organisations in October 2012, making Ireland the tenth European country to institute this form of public voluntary commitment by employers. While ensuring a wide signatory of the Diversity Charter would be a useful first step, commitment to anti-racism or diversity policies is meaningless unless a concerted effort is made to involve staff in the process. As cited above, a recent survey of the public service showed that, while 10 out of 16 civil service departments surveyed have equality policy with specific anti-racism measures in place, only 35% of nearly 500 public service employees were aware of such a policy in their department, and that many public servants had witnessed racist behaviours by their colleagues.

4.3.4 Other civil society initiatives

EPIC (Employment for People from Immigrant Communities) practices a partnership approach, being funded by the Government Office for the Promotion of Migrant Integration, and managed by corporate social responsibility network Business in the Community. EPIC provides a wide range of free services, including six week training course comprising English classes for the workplace, CV preparation and computer skills, and one-to-one career guidance. In 2012, 288 individuals participated in EPIC training and 203 of them were subsequently placed in employment, training or volunteering positions. The programme has garnered high praise and it has been suggested that availability on a nationwide basis would be useful. The above mentioned NGO report on Migrants and the Irish Economy suggests that better use should be made of the expertise of the EPIC programme.

4.4 Individual employers’ initiatives

One of the most frequently cited examples of best practice is Dublin Bus, which has put in place a comprehensive Diversity and Equality Strategy. It featured as a case study of best practices in Migrants in the Irish Economy, as referred to above, which outlined that Dublin Bus employs individuals from 64 different countries of origin, comprising over 16% of their workforce.

196 Interview with Kara McGann, Irish Business and Employers’ Confederation, Dublin, 1 July 2013.
200 Ibid.
The company has run sporting events; placed a map of the world in all depots in order to raise awareness of the country of origin of fellow workers; displayed anti-racism posters on all buses; created an education support scheme to eliminate skills mismatches; written policies in ‘plain English’; and has formed a camera club. All of these activities and others have been focused on getting all staff nationalities involved.202

Independent testimony by a Traveller bus driver has been provided, who attests that a diversity culture has been embedded in Dublin Bus. He recalls his decision to hide his identity for the first 12 months of his employ: “Looking back on it now, it was senseless, because Dublin Bus and Bus Éireann...the drivers and the inspectors, are definitely not that way inclined [towards racism]”203.

Similarly, the Rotunda Maternity Hospital has put in place cultural diversity training for its staff, aimed at improving both health service user interaction and staff relations. The management of the hospital consider that the training “will help staff to attain a greater understanding of their own cultural identity and also to consider the perceptions that they hold about other cultures. This will help them to understand why as a result, disputes and frustration may emerge.”204 The training was piloted in the area of the hospital with the most diverse staff base, the neo-natal unit, where staffs were given the opportunity to talk about the challenges they faced in their work. “This was a huge learning opportunity for the hospital as the issues raised provided an insight into aspects of the challenges faced by staff on the front-line that management would otherwise have been unaware of.”205

In general, however, such good practice initiatives are often the exception, rather than the norm. A recent ENAR Ireland member report, Migrants and the Irish Economy, mentions the work of both IBEC as discussed at 4.3.3 above, and the Equality Mainstreaming Unit of the Equality Authority, at 4.2.2.1 above, and comments that “there is still scope for adopting diversity and anti-racism measures among a wider range of employers”.206

5. Conclusions and recommendations

5.1 Political and societal developments related to racism and discrimination

Concerns continued to grow in civil society during the reporting period about the level of racism and discrimination in Irish society during its prolonged economic difficulties and the decreasing capacity of the state to counteract discrimination. As stated by one ENAR Ireland member: The merger of Ireland’s primary human rights bodies coupled with the abolition of the National Consultative Committee on Racism (NCCRI), the lack of a new National Action Plan Against Racism, (which was not redrafted or monitored past 2008), the removal of the Office of the Minister for Integration and the deletion of a Ministerial post charged with promoting integration show that

202 Ibid, p43.
203 Unedited video footage of “Christy: Traveller and Bus Driver” provided by Pavee Point, August 2013.
204 Rotunda Maternity Hospital case study, provided by IBEC Diversity Officer, p1.
205 Ibid, p1.
equality and antidiscrimination appear to be viewed as luxuries that the state can ill afford in times of austerity.\textsuperscript{207}

While most of the cuts referred to above were instigated before March 2012, a further blow to integration was struck with the closure, at the end of 2012, of the Adult Refugee Programme, an intensive language and integration programme. As noted by Killian Forde, CEO of the Integration Centre, “[n]o policy is a policy”\textsuperscript{208}, the Irish government cannot continually cite its economic woes as an excuse for inaction. The Immigration, Residence and Protection Bill, now more than five years in the making, has still not materialised. Direct provision, a humiliating practice which see asylum seekers living in cramped and sub-standard living conditions, was established in 2000 as a temporary provision to last for no more than six months; asylum seekers at present are living in such conditions for up to four years.

As noted above, the 2012 Integration Monitor shows that attitudes towards migrants have deteriorated in Ireland to a greater extent than in other countries experiencing similar recession.\textsuperscript{209} Particularly worrying are a number of racist comments by politicians and other public figures made during the reporting period, including the comments regarding taxi drivers mentioned in Section 3.2 above. While such comments are not condoned by the political parties, no real moves have been made by the parties to condemn their members for such racist behaviour.

There have also been some positive developments in the reporting period, as noted in Section 4.1 above. In particular, the fast-tracking of the naturalisation process will greatly enhance the potential for integration and lessen the probability of discrimination in employment. The softening of the government line on Travellers as a minority ethnic group is promising, and it is to be hoped that the on-going consideration of this measure will rapidly lead to a positive conclusion.

\section*{5.2 Conclusions and recommendations}

This report has attempted to give an overview of racism and related discriminatory practice in Ireland, with particular reference to the reporting period from March 2012 to March 2013. Based on the research carried out, and in particular having consulted ENAR Ireland members and reviewed their publications, the following recommendations can be made:

To the Irish government:

1. The Irish government should institute the collection of reliable disaggregated equality data to allow for clearer measures of possible discrimination. (see Section 1.1)
2. The Irish government should recognise Travellers as a distinct ethnic minority group. At present, Travellers are recognised as a separate group worthy of protection under Irish equality legislation, but not as an ethnic minority. This means that Travellers are not guaranteed protection in future legislation, and are not specifically covered by international treaties such as CERD. (see Section 1.1)

\textsuperscript{208} Remarks by Killian Forde at the launch of the Integration Monitor 2012, 26 June 2012.
3. The Irish government should put in place a national action plan for Travellers in training and employment in order to concentrate policy efforts on lowering the current Traveller unemployment rate of 84.3% (see Section 2.1)

4. The Irish government should improve its system for the reporting and recording of racist incidents, e.g. recording of racist incidents that do not constitute a breach of the criminal code through; recording ethnic origin of all victims of crime; more availability of Ethnic Liaison Officers in the Garda Síochána and training for Gardai on how to identify and properly record racist incidents (see Section 3.1)

5. The Irish government must ensure, through adequate funding and proper oversight, that the remedies afforded by the Employment Equality Acts are not weakened by the merger of the Equality Tribunal with other bodies into a Workplace Relations body; and that the lengthy time delays in processing cases is reduced (see Section 4.2.1)

6. The Irish government must ensure that the Irish Human Rights and Equality Commission is adequately resourced so as to allow it to carry out its functions effectively (see Section 4.2.2)

To public service bodies:

7. The Garda Síochána and other public service bodies should permit appropriate uniform variations to accommodate religious dress, in line with a liberal pluralist approach which is more in keeping with Ireland’s ethos than strict secularism. (see Section 3.5)

8. Public service employers should ensure that employees are well versed in internal equality policy relating to anti-racism, for example by including it in induction training, displaying policy prominently in the workplace, including diversity management in performance reviews, and ensuring a cultural diversity aspect to social activities. (see Section 4.1)

9. Public service employers should make greater efforts to recruit from ethnic minority groups. The successful recruitment of Travellers by South Dublin County Council could serve as a model. (see Section 4.1)

To employers:

10. Employers should be encouraged to sign the Diversity Charter and to ensure that all their employees have a meaningful understanding of what this commitment entails (see Section 4.3.3)

To civil society and public sector:

11. State bodies and NGOs should continue to promote greater awareness amongst ethnic minority groups as to what constitutes discrimination in employment and how to report it, for example through workshops, posters and public campaigns. (see Section 3.1)

12. Civil society organisations should encourage migrants to report instances of being forbidden to speak their own languages during breaks at work, as this may constitute discrimination (see Section 3.5)

13. The EPIC (Employment for People from Immigrant Communities) programme should be continued and its geographic scope widened. (see Section 4.3.4)
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