

Developing a National Action Plan Against Racism

Submission to the Anti-Racism Committee

Irish Human Rights and Equality
Commission

August 2021



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**

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1. Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the *Irish Human Rights and Equality Commission Act 2014*. In accordance with its founding legislation, the Commission is mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality.¹

The Commission welcomes the publication of the Anti-Racism Committee's Interim Report,² and this opportunity to participate in the Committee's development of a National Action Plan Against Racism. This submission follows the Commission's earlier engagement with the Anti-Racism Committee in October 2020.

The Commission's Human Rights and Equality Research Programme with the ESRI has produced extensive research demonstrating consistent and significant levels of discrimination against minority ethnic people in the State³ and has documented racist attitudes across Irish society.⁴ Other research co-funded by the Commission and the Irish Research Council has examined the nature and prevalence of racially loaded discourse across Ireland's digital sphere.⁵

¹ Section 10(2) of the [Irish Human Rights and Equality Commission Act, 2014](#).

² Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2020.

³ Publications from the Commission's Human Rights and Equality Research Programme with the ESRI research programme include: [Who Experiences Discrimination in Ireland?](#) (2017); [Attitudes to Diversity in Ireland](#) (2018); [Discrimination and Inequality in Housing in Ireland](#) (2018); and [Nationality and Ethnicity in the Irish Labour Market](#) (2018) and McGinnity, F., Creighton, M. and Fahey, E. (2020) [Hidden versus Revealed Attitudes: A List Experiment on Supports for Minorities in Ireland](#). The research study *Who Experiences Discrimination in Ireland?* found that, compared to 'White Irish' respondents, 'Black' people are three times more likely to experience discrimination in access to public services and almost five times more likely to experience discrimination in access to private services such as shops, banks, and housing. 'Asian' respondents also reported more discrimination in private services, while Travellers report very high rates of discrimination: in seeking work, they are ten times more likely than White Irish to experience discrimination, while in accessing private services they are over 22 times more likely to report discrimination, particularly in shops, pubs and restaurants.

⁴ In McGinnity et al's study [Attitudes to Diversity in Ireland](#) (2018), it was found that just under half of adults born in Ireland believe some cultures to be superior to others; that 45% believe that some races/ethnic groups were born harder working; and that 17% of adults born in Ireland believe that 'some races were born less intelligent'.

⁵ The research identified a wide range of communities to be targeted by online racist speech in Ireland: anti-immigrant and anti-refugee discourses focusing on access to welfare and housing are common; discourses stereotyping, dehumanising, and denigrating Roma and Travellers were found to be 'pervasive'; and Islamophobic, anti-Black, and anti-Semitic racist discourse was also identified. E. Siaper, E. Moreo, and J. Zhou, [Hate Track: Tracking and Monitoring Racist Speech Online](#), 2018.

Through its policy submissions and its reporting to international human rights monitoring bodies, the Commission has detailed more broadly the widespread structural disadvantage and discrimination faced by ethnic minority groups in the State, in areas ranging from the basic socio-economic rights to housing, health, education and employment, to participation in public life, access to justice and international protection.⁶ In particular, the Commission has consistently highlighted the persistence of institutional racism and a culture of discrimination against Travellers, which gives rise to increasingly urgent concerns.⁷ Recent research published by the EU Fundamental Rights Agency has identified profound levels of discrimination and disadvantage for Travellers in education, employment, health, poverty and social exclusion, and access to accommodation.⁸ The Commission notes that recommendations for State action to protect Traveller culture and history and establish affirmative action employment programmes have been framed in terms of 'reparations' by some Traveller organisation representatives.⁹

The EU is encouraging all Member States to develop and adopt a National Action Plan Against Racism¹⁰ - a comprehensive programme of activities aimed at progressively improving racial equality and better protecting the rights of persons facing racial discrimination.

Combating racism, racial discrimination, xenophobia and related intolerance is a primary responsibility of the State.¹¹ The National Action Plan Against Racism is essential to

⁶ See IHREC CERD Report 2019 and UN CERD Committee's [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9; IHREC, [UN Conclusions: Ireland Needs to Do More to Tackle Racism](#), 13/12/2019.

⁷ See IHREC: [Submission to the Joint Committee on Key Issues affecting the Traveller Community](#), February 2021; [Comments on Ireland's 17th National Report on the Implementation of the European Social Charter](#), June 2020; [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#), May 2019.

⁸ FRA, [Travellers in Ireland: Key Results from the Roma and Travellers Survey 2019](#). This study compared Traveller and Roma experiences of discrimination in six countries, namely Belgium, France, Ireland, the Netherlands, Sweden and the UK.

⁹ As raised by representatives of some Traveller organisations with a cross-party Oireachtas group of parliamentarians working on Traveller issues in 2018, and with the Oireachtas Joint Committee on Key Issues Affecting the Traveller Community in 2019. See Kitty Holland, [Call for Oireachtas group to consider 'reparations' for Travellers](#), Irish Times, 3 July 2018. See also Mr. Patrick Nevin, of the Tallaght Traveller Community Development Project, in dialogue with the [Oireachtas Joint Committee on Key Issues Affecting the Traveller Community, Tuesday 12 November 2019](#).

¹⁰ The European Commission has stated that by the end of 2021, it will put forward guidance on effective national action plans, which could serve as a basis for all Member States to develop and adopt national action plans by the end of 2022. The Commission proposes to report regularly on the implementation of national action plans against racism across Member States, with a first report at the end of 2023. See European Commission, [A Union of Equality: EU anti-racism action plan 2020-2025](#) at p. 16-17.

¹¹ World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, [Declaration and Programme of Action](#), Programme of Action, at para. 99.

meeting this obligation to combat racism and promote interculturalism and equality in Ireland.

The challenge of addressing racism in Ireland will require mobilisation across Irish society, including ensuring that anti-racism is an explicit priority in all relevant legislation, public policy, budgets, public body and data development. Anti-racism needs to be a priority across the curriculum in primary, secondary and tertiary education, including further education and training, and community education. It must be a priority in the workplace and across the professions, where diversification is needed to reflect Ireland's changing population.

This submission makes recommendations in respect of a National Action Plan Against Racism by aligning with the structure of the Anti-Racism Committee's Interim Report,¹² including its interim recommendations to Government and signposting of priority issues for consideration. There are a number of cross-cutting issues that feature across this report including the issues of poverty and socio-economic disadvantage, and the particular needs of ethnic minority children and young people. Based on the decision to align to the Committee's Interim Report structure, these themes or issues will be drawn upon across several areas of the submission.

The Commission recommends that:

- 1.1. the National Action Plan Against Racism include additional sections on [Citizenship](#), [Human Trafficking](#), Social Care and Research.**
- 1.2. the Anti-Racism Committee consider the ordering and content of the National Action Plan Against Racism to reflect the prioritisation of policing and law enforcement in the European Anti-Racism Action Plan.¹³**

¹² Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2020.

¹³ European Commission, [A Union of Equality: EU anti-racism action plan 2020-2025](#).

2. Developing a National Action Plan Against Racism

The Commission welcomes that the Anti-Racism Committee has adopted rights-based guiding principles and given consideration to international standards in its work to date.¹⁴ The National Action Plan Against Racism should be coordinated with the State's other efforts to achieve equality and human rights objectives more broadly and form part of coherent public policy framework.¹⁵ Several of the State's national equality strategies are approaching end of term.¹⁶ Any independent evaluation of these strategies needs to identify gaps in their anti-racism components and detail how these gaps can be addressed so the strategies can combat racism more effectively in future iterations.¹⁷ As a whole, the State's public policy framework must address intersectional discrimination, the ways in which ethnic and racial characteristics intersect with other personal characteristics/identities, including the grounds of gender and disability, and how these intersections contribute to unique experiences of discrimination.¹⁸

The Commission notes the intended scope of the National Action Plan Against Racism as outlined by the Anti-Racism Committee broadly aligns with emerging international

¹⁴ OHCHR, [Developing National Action Plans Against Racism](#), 2014. For example, the Committee has: adopted human rights-based guiding principles (Universality, Interdependence and Indivisibility, Participation and Inclusion, Equality and Non-Discrimination, Accountability, Progressive Realisation, and Rule of Law); adopted a clear methodology that aims to facilitate public participation via consultation; and taken clear account of Ireland's international obligations to tackle racism and the importance of international cooperation in this regard. See Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2020.

¹⁵ OHCHR, [Developing National Action Plans Against Racism](#), 2014, at p. 7. In this regard, the Commission welcomes the Anti-Racism Committee's statement that its work is informed by and will build on other policy interventions with anti-racist, inclusion and integration components. Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2020, at p. 11

¹⁶ Such as the National Traveller and Roma Inclusion Strategy, 2017 – 2021, the Migrant Integration Strategy, the National Strategy for Women and Girls 2017-2020, the National LGBTI+ Inclusion Strategy 2019-2021, and the Second National Strategy on Domestic, Sexual and Gender-based Violence 2016 - 2021.

¹⁷ The Commission notes plans for an independent evaluation of the *Migrant Integration Strategy*. As stated by the Minister for Children, Equality, Disability, Integration and Youth – see [Immigration Policy Dáil Éireann Debate, Thursday - 27 May 2021](#).

¹⁸ This definition is based on that used by the European Institute for Gender Equality, which defines intersectionality as an "analytical tool for studying, understanding and responding to the ways in which sex and gender intersect with other personal characteristics/identities, and how these intersections contribute to unique experiences of discrimination". See <https://eige.europa.eu/thesaurus/terms/1263>. This definition applies equally to any form of discrimination, as noted in the EU Anti-Racism Action Plan 2020-2025. See [EU Anti-racism Action Plan 2020-2025](#), at p. 2, footnote 6. A recent European Commission report on the Application of the Race Equality Directive and the Employment Equality Directive (19 March 2021) considers the difference between 'multiple discrimination' - which is discrimination occurring on a number of grounds - and intersectional discrimination which it defines as 'discrimination based on an inseparable combination of a number of protected grounds, rather than one of the grounds taken separately'. While the Court of Justice of the European Union has recognised multiple discrimination as encompassed by EU law, the Court has found that intersectional discrimination has no clear legal basis in the Directives. (EC Com (2021) 139 final; pg 4-5)

standards in this area,¹⁹ but does not cover several key areas, including the legislative framework on citizenship and human trafficking. The plan should also set out a research agenda to strengthen the evidence base on issues such as housing and the impact of racism on specific groups,²⁰ making use of large data sets like the Growing Up In Ireland study and Census 2022. Further, Ireland's National Action Plan Against Racism should be in step with a common European approach informed by the European Commission's guidance, which is under development and due to be prepared by the end of 2021.²¹

Effective implementation requires that the plan be structured to include clear targets, indicators, outcomes, timeframes and a budget line.²² The Commission notes the relationship between structures (international instruments, legislation and institutions), processes (public policy such as a National Action Plan Against Racism) and outcomes (impact achieved and data to measure this).²³ Implementation will also require coordination across Government and in this regard, strategic engagement across Government should start now whilst the plan is being finalised, and continue until it expires.

Mechanisms for monitoring delivery should be based on accountability and be independent from the bodies responsible for implementation. Monitoring must include participation of rights holders who must be adequately resourced to participate. The Plan needs to explicitly set out how rights holders will be involved in implementation and monitoring across its

¹⁹ European Commission, [A Union of Equality: EU anti-racism action plan 2020-2025](#), at p. 17; OHCHR, [Developing National Action Plans Against Racism](#), 2014, at p. 20-61.

²⁰ Evidence gaps in these areas have been identified. Hankir et. al report that there are approximately 63,000 Muslims living in the Republic of Ireland and no studies have been conducted to date that measure levels of psychological distress within this group. See Hankir, A., Pendegast, H., Carrick, F. R., & Zaman, R. (2017) The Federation of Student Islamic Societies Programme to Challenge Mental Health Stigma in Muslim Communities in Ireland: The Fosis Dublin Study. *Psychiatra Danubina*, 29, S279–S284.

Barry and Machowska-Kosiack, found there are no existing accounts documenting ethnic minority young people's access to housing or associated housing issues. See Machowska-Kosiack, M and Barry, M. A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

²¹ 'The [European] Commission proposes to work with Member States to identify common guiding principles for national action plans, with close involvement of civil society and equality bodies. By the end of 2021, the Commission will put forward the main principles and elements required to produce effective national action plans. This could serve as a basis for all Member States to develop and adopt national action plans by the end of 2022'. See European Commission, [A Union of Equality: EU anti-racism action plan 2020-2025](#) at p. 16-17.

²² The Commission recalls the recommendations of the UN CERD Committee regarding structural measures to improve implementation of the National Traveller and Roma Inclusion Strategy 2017-2021, namely that the State develop 'concrete actions plans with clear targets, indicators, outcomes, time frames and a budget line for the implementation' and put in place 'a mechanism to coordinate and monitor the implementation'. See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at para. 31-32.

²³ OHCHR, [Human Rights Indicators: A guide to measurement and implementation](#), 2012.

lifetime.²⁴ Monitoring should also include appropriate technical and subject matter expertise, and receive high level political and financial support from Government.²⁵ It should be an ongoing process and allow for the plan's objectives or activities to be further resourced, actively revised or modified as appropriate throughout the term of the plan.²⁶ There should be an independent evaluation of both the process and outcomes of the plan, based on human rights and equality principles.²⁷

The Commission recommends that the National Action Plan Against Racism:

- 2.1. is underpinned by international human rights and equality principles and standards.**
- 2.2. incorporates the European Commission's guidance to Member States on the common principles and elements of National Action Plans Against Racism.**
- 2.3. forms part of a coherent public policy framework on equality and human rights, across which measures to address intersectional discrimination and disadvantage must be included and interlinked. This includes but is not limited to National Equality Strategies, Equality Budgeting and the National Recovery and Resilience Plan.**
- 2.4. has scope to address all forms of racial discrimination and disadvantage, including with respect to the legislative framework on citizenship and trafficking in human beings.**
- 2.5. be structured to detail ambitious high level goals and corresponding objectives, specific actions and activities with clear timeframes and responsibility for implementation, continuous and comprehensive monitoring of implementation against target outcomes with performance indicators and metrics for delivery,**

²⁴ This is particularly important in respect of facilitating participation of groups such as ethnic minority women who are caring or have a disability.

²⁵ OHCHR, [Developing National Action Plans Against Racism](#), 2014, at p. 86.

²⁶ OHCHR, [Developing National Action Plans Against Racism](#), 2014, at p. 86. The Commission notes, as a possible example of promising practice in this regard, that continuous monitoring and tailored modification of actions have arisen in respect of the National Disability Inclusion Strategy 2017-2021, following a mid-term review which included rights-holder consultation. As detailed in Department of Justice and Equality, [Mid-Term Review of the National Disability Inclusion Strategy 2017-2021](#), January 2020.

²⁷ OHCHR, [Developing National Action Plans Against Racism](#), 2014, at p. 86-90.

and evaluation mechanisms. Targets, performance indicators, metrics and evaluation mechanisms must be group specific, while a generic anti-racism success indicator should also be developed. This information must be detailed in the published National Action Plan Against Racism and not deferred to be a post-publication activity.

- 2.6. prepares a research and data agenda to strengthen the evidence base, improve data systems and to diversify the research community in Ireland.**

The Commission recommends that:

- 2.7. the principle of participation be evident in the involvement of all ethnic minority communities in leadership and strategic oversight, evaluation, monitoring, review and implementation throughout the lifetime of the National Action Plan Against Racism. This participation needs to be directly resourced, given the low socio-economic status of many groups who are subjected to racism, and child / adult care costs must also be covered.**
- 2.8. the principle of accountability be evident in a participatory annual public forum on the advancement of anti-racism in Ireland, at which accessible annual reports on progress under the plan should be presented (see recommendation in section 4 below); and in a framework for sanctions where there are consistent inadequacies in respect of implementation by responsible bodies.**
- 2.9. Government make a clear commitment to full and effective implementation of the plan, including by way of: strategic engagement across Government as the plan is finalised; a dedicated budget line and staff resources; designation of leadership within Government; and establishment of an authoritative, participatory mechanism for coordinating and monitoring implementation, such as a dedicated work stream in the Department of An Taoiseach.**
- 2.10. an independent, human rights and equality based evaluation of the National Action Plan Against Racism is commissioned; and that annual findings regarding process and outcomes be published and reflected in dynamic revisions of the work plan.**

3. Interim recommendation 1: Remove the reservation to Article 4 CERD

The Commission welcomes the Committee's recommendation that Ireland should withdraw its reservation/interpretative declaration to Article 4 of the *Convention on the Elimination of Racial Discrimination* (CERD),²⁸ including as part of a strengthened approach to tackling racism.²⁹

The relationship between prohibiting hate speech and enabling freedom of expression to flourish should be seen as compatible and complementary:

"and not the expression of a zero sum game where the priority given to one necessitates the diminution of the other".³⁰

The protections afforded by Article 4 are particularly important in light of the growing body of evidence about significant levels of discrimination against, and troubling attitudes towards, ethnic minorities in Ireland.³¹ Ireland has persistent institutional racism and a culture of discrimination towards the Traveller community. We are also witnessing growth in racist and far right organising in Ireland.³² This context underscores the need for leadership across the State to address such movements and racist discourse, and ensure Ireland maintains its commitment to international human rights norms.

The Commission is of the view that there should be no delay in the removal of the State's reservation to Article 4 of CERD. It should be not be delayed until after the enactment of the *Criminal Justice (Hate Crime) Bill* and the *Online Media Safety and Regulation Bill*, as has been indicated.³³ The Commission notes that the State's One Year Follow Up report to the UN Committee on the Elimination of Racial Discrimination is overdue since December 2020.

²⁸ In 2000, Ireland lodged a reservation/interpretative declaration under Article 4 such that "the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised." Committee on the Elimination of Racial Discrimination, [Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014](#), CERD/C/IRL/5-9, at paras. 72-74.

²⁹ Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#) (Government of Ireland: 30 November 2020), p. 14.

³⁰ Committee on the Elimination of Racial Discrimination, [General Recommendation No. 35: Combating Racist Hate Speech](#) (2013) CERD/C/GC/35, para. 45 and IHREC, [Review of the Prohibition of Incitement to Hatred Act 1989](#) (2019), pp. 4-5.

³¹ IHREC CERD Report 2019, pp. 6, 15.

³² IHREC CERD Report 2019 pp. 3, 7, 34, 47 and 119 and Dr L. Michael, [Reports of racism in Ireland](#) (Irish Network Against Racism: 2021).

³³ Committee on the Elimination of Racial Discrimination, [Summary record of the 2784th meeting](#) (2019) CERD/C/SR.2784, para. 18 and Committee on the Elimination of Racial Discrimination, [Summary record of the 2785th meeting](#) (2019) CERD/C/SR.2785, para. 22.

The Commission recommends that:

- 3.1. the State should immediately develop and publish a roadmap and timeline to the removal of its reservation/interpretative declaration to Article 4 CERD through priority. A commitment to do this should be included in the State's One Year Follow Up report under CERD.**

4. Interim recommendation 2: Take steps to put in place ethnic equality monitoring across all public services

The Commission welcomes the prominence and priority given by the Anti-Racism Committee to the subject of ethnic equality monitoring. For without measuring discrimination and inequalities in Ireland, it is extremely difficult to effectively target policy solutions to resolve racism and racial discrimination in Irish society. The Commission has repeatedly highlighted the considerable shortfalls in equality data in Ireland, and has made specific reference to the lack of collection and processing of data on racial or ethnic origin across public bodies. This has also been highlighted elsewhere; the 2020 Equality Data Audit published by the Central Statistics Office ('CSO') found a dearth of data on racial or ethnic origin across public bodies (with data on 'nationality' collected more frequently).³⁴ The CSO recommended that race, ethnicity and nationality need to be clearly distinguished in all public data collection. This is essential given that many belonging to an ethnic minority group are Irish citizens. The overall shortfall in data on racial or ethnic origin in Ireland has profound consequences for our understanding of racial discrimination in this country – specifically in interrogating structural and institutional barriers facing ethnic minorities. It can also impact on effective monitoring of progress in respect of policy goals and targets.

A coordinated approach to equality data across the Public Sector

A coordinated and systematic approach to equality data collection is needed.³⁵ The Commission welcomes the recent National Statistics Board's ('NSB') Strategic Priorities for Official Statistics 2021-2026, which makes specific reference to "monitoring the transformations taking place" in Irish society and the need to include data on ethnicity in monitoring social integration and exclusion.³⁶

The NSB emphasises the need for monitoring social integration and exclusion across ethnic grounds and also the need to 'facilitate linkages' across data sets including education,

³⁴ CSO, [Equality Data Audit](#), 2020. The only two data sets which routinely and systematically collected data on race were the Census and Social Inclusion and Community Activation Programme (SICAP) data. The audit highlights that the other 24 cases in the audit which were marked as covering race actually contained nationality or ethnicity. Membership Traveller Community appeared in 12 data sets (typically through a yes/no question).

³⁵ This is one of the key recommendations in the EU Equality Data Guidelines, 2018, at p. 6.

³⁶ National Statistics Board, 2021, [Strategic Priorities for Official Statistics 2021-2026](#), at p. 7, 27 states: "It is important to monitor measures of social integration and exclusion across lines of ethnicity and nationality and to facilitate linkages between such data on measures like education, poverty, health, housing status, geographical location and concentration, perceptions of discrimination and experienced in the criminal justice system"

health, housing, and the criminal justice system. Such linkages could better capture how discrimination and disadvantage manifest across Irish society whilst also promoting much-needed insight into intersectional discrimination. There are a number of key government projects which can support these efforts under the Our Public Service Framework,³⁷ including the National Data Infrastructure, the *Data Sharing and Governance Act 2019*, the Open Data Strategy 2017-2022, and the Public Service Data Strategy 2019-2023. However, in spite of the stated principle across such initiatives to 'collect once, use often' and for public data to be more easily available and usable, there continues to be a severe lack of data on racial or ethnic origin, and related socio-economic data, across public bodies, - which is obscuring or overlooking dimensions of racism and racial discrimination in the State.

The Commission welcomes the NSB's recommendation that there should be a 'National Equality Data Hub' led by CSO, featuring data on equality and non-discrimination in a way that can be continuously updated over time. Such an initiative should include an advisory mechanism to ensure the participation of rights holders, civil society organisations and key stakeholders. Given the lower socio-economic status of minority ethnic groups in the State, rights holder participation in any such mechanism must be directly resourced.

Coordination should also be pursued at a European level. The EU Equality Data Subgroup is currently developing a 'Guidance Note on the Collection of Data Based on Ethnic or Racial Origin' ('EU Guidance Note') for the EU Anti-Racism Action Plan 2020-2025.³⁸ The EU Equality Data Subgroup strongly advocates for the urgent need for disaggregated data by racial or ethnic origin across European Member States to track progress in achieving goals set in EU and global commitments.³⁹

Legal basis for equality data on racial or ethnic origin

The Commission is concerned about both the apparent confusion and reluctance among many public bodies in relation to the collection and processing of 'special category' data including race, ethnicity and religion data.⁴⁰ The 2018 EU Equality Data Guidelines

³⁷ [Our Public Service 2020](#), 2018

³⁸ IHREC is represented on this group. The EU Equality Data Subgroup – which is chaired by the Fundamental Rights Agency - is a satellite group of the EU High Level Group ('HLG') on Non-Discrimination, Equality and Diversity.

³⁹ The EU Guidance Note will be presented at a major European Roundtable event on equality data in September/October 2021 and will seek to promote reliable and comparable data at national and a European level.

⁴⁰ In Article 9(1), European Union (EU) General Data Protection Regulation 2016/679, special categories of personal data are defined as data 'revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of

emphasise the legal basis for the collection of equality data, including special category data.⁴¹ The Guidelines state that all special category data can be processed when:

- the data subject has given explicit consent;
- processing is necessary for reasons of substantial public interest, statistical or historical, or archiving purposes in the public interest; and that there is a provision of suitable and specific measures to safeguard the fundamental rights and interests of the data subject.⁴²

Furthermore, Recital 26 of the General Data Protection Regulation ('GDPR') states that the principles of data protection should not apply to anonymous information and the processing of special category data is entirely permissible under the *Data Protection Act 2018*.⁴³

Under the Public Sector Equality and Human Rights Duty of the *Irish Human Rights and Equality Commission Act 2014* (Section 42),⁴⁴ there is a requirement for public services to assess and report on progress on their equality goals. Ethnicity data is a necessary dimension of this.⁴⁵ The NSB also reiterates this in its recent strategic plan, stating:

“[a]ll public bodies have a responsibility to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users, and those affected by their policies and plans”.⁴⁶

Furthermore, data is required for the State's compliance with international standards, for example international treaties such as CERD and the *Convention on the Elimination of all*

uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation'.

⁴¹ European Commission, [Data Collection in the Field of Ethnicity](#), 2017, p.15.

⁴² [EU Equality Data Guidelines](#), 2018,

⁴³ Data Protection Act 2018; Section 42 allows for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes; S.49 states that special category data is lawful when the processing respects the essence of the right to data protection and is necessary and proportion for – (a) the administration of justice, or (2) the performance of a function conferred by or under an enactment or by the Constitution.

⁴⁴ In August 2020, IHREC published a Guidance Note on COVID-19 and the Public Sector Equality and Human Rights Duty for public bodies stating that data on minority cohorts are vital for assessing and monitoring compliance to the Public Sector Duty. See IHREC, [COVID-19 and the Public Sector Equality and Human Rights Duty](#).

⁴⁵ For example, as set out in IHREC, [Assisting the Effective Implementation of the Public Sector Equality and Human Rights Duty: Tool for an evidence-based assessment of equality and human rights issues](#), p. 1, 11.

⁴⁶ National Statistics Board, 2021, [Strategic Priorities for Official Statistics 2021-2026.](#), at p. 27.

Forms of Discrimination Against Women ('CEDAW').⁴⁷ The European Commission on Racism and Intolerance ('ECRI') first advocated for comprehensive statistical data on racist and discriminatory acts and on the situation of minority groups across all domains of society in 1998,⁴⁸ but data shortcomings on racial and ethnic origin across Member States remain.

The Commission recommends that the National Action Plan Against Racism:

- 4.1. states a clear mandate and direction for the collection and processing of data on racial or ethnic origin and related socio-economic data across all bodies that are subject to the Public Sector Equality and Human Rights Duty;**
- 4.2. tasks all such bodies to undertake and publish a systematic audit of their survey and administrative data, produce a time-bound roadmap for addressing equality data gaps identified, and report on progress in addressing these gaps annually over the term of the plan;**
- 4.3. tasks the Government with the enactment of any required legislation to ensure all such bodies can collect and process this data, including An Garda Síochána;**
- 4.4. requires all public bodies to publish equality data - summary data as well as data disaggregated by racial or ethnic origin - in a standalone section in their annual reports when reporting on their performance under the national action plan.**
- 4.5. tasks Government to establish a policy framework and legal basis for the collection and processing of equality data by private bodies, including private bodies that receive the majority of their funding from Government, directly or indirectly.**
- 4.6. funding includes an action to create a ring-fenced budget line for the improvement of data on ethnic and racial origin.**

⁴⁷ Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at paras. 5-6; Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#), CEDAW/C/IRL/CO/6-7, at paras. 18-19.

⁴⁸ See, e.g. ECRI General Policy Recommendation No 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims, adopted on 6 March 1998.

- 4.7. **implements relevant guidance of the EU Subgroup on Equality data, including its ‘Guidelines on improving the collection and use of equality data’ (including establishment of a National Equality Data Hub),⁴⁹ and ‘Guidance Note on the Collection of Data Based on Ethnic or Racial Origin’ (forthcoming Autumn 2021).**

Themes / topics for monitoring

The Commission has previously called for the State to improve the collection and reporting of data on minority ethnic groups across all sectors, including in education, housing and health. In relation to racism and racial discrimination, there are particular cross-cutting topics and themes that feature across this report which require particularly urgent attention.⁵⁰

The Commission also emphasises the importance of all-island statistics, which can enhance cross-border dialogue and cooperation, and thereby progress equality and human rights. The Anti-Racism Committee could consider how the National Action Plan Against Racism connects with the government’s Shared Island Dialogues Initiative.⁵¹

The pandemic has highlighted the importance of data on racial and ethnic origin. Firstly, evidence suggests that black and ethnic minority groups are more likely to be exposed to the Covid-19 virus. Travellers have been found, for example, to be most likely to contract Covid-19, and other ethnic minorities are over-represented in Covid-19 cases.⁵² Secondly, ethnic minority groups are also more likely to experience ‘pre-existing disadvantage’ and discrimination, which is exacerbated by the pandemic and public health restrictions.⁵³ Yet the lack of disaggregated data presents significant gaps in our understanding of the differential impact across ethnic minorities during a time of rapid change – including across education, work and employment, contact with the criminal justice system, access to services, housing, access to justice, and health outcomes. Equally, due to the lack of data disaggregated by racial and ethnic origin, it is not known whether emergency powers are

⁴⁹ European Commission High Level Group on Non-discrimination, Equality and Diversity Subgroup on Equality data, [Guidelines on improving the collection and use of equality data](#), 2018.

⁵⁰ These include data pertaining to: Public Sector Equality and Human Rights Duty, gender-based violence and sexual violence data (examined in greater details in the next priority recommendation section), racist incidents and racism, policing and criminal justice system, employment, education, housing, health, access to justice, hate crime and hate speech, and human trafficking.

⁵¹ Government of Ireland, [Shared Island Dialogues Initiative](#), 2020.

⁵² Shannen Enright, Frances McGinnity Ivan Privalko, Helen Russell, [Covid-19 and Non-Irish Nationals in Ireland, December 2020](#), at. p. 11.

⁵³ NESC (2021) [Covid-19 and Migrants](#), at p. 6.

applied in a differential way across all groups of society.⁵⁴ The Commission notes that the European Commission will assess and monitor how Ireland's National Recovery and Resilience Plan impacts equality, and encourages the Anti-Racism Committee to consider the relevance of this accountability mechanism to advancing anti-racism as Ireland transitions from the pandemic.⁵⁵

The Commission recommends that the National Action Plan Against Racism:

- 4.8. publishes accessible annual progress reports to monitor targets and the progress of implementation, and present these at the annual public forum (recommended in section 2 above). Such progress reports need to present data that is cumulative, in terms of monitoring overall trends, but also data that is group-specific.**
- 4.9. adopts a cooperative, all-island approach to anonymised statistics with partners in Northern Ireland focussed on tackling racism and racial discrimination.**

⁵⁴ Casey et al (2021) [Ireland's Emergency Powers during the COVID-19 Pandemic](#)

⁵⁵ See European Commission, [The Recovery and Resilience Facility](#).

5. Interim recommendation 3: Remove all barriers to accessing support for migrant women experiencing gender-based violence

The Programme for Government has recognised that there is an epidemic of domestic, sexual and gender-based violence in the State.⁵⁶ Migrant women are disproportionately represented among those presenting to frontline domestic and sexual violence services, where they are disadvantaged in terms of accessing victim support services due to a range of administrative, cultural and linguistic barriers.⁵⁷ Human trafficking, too, is a specific form of gender-based violence, affecting mostly migrant women.⁵⁸ The Commission has highlighted the particular needs of women and communities affected by Female Genital Mutilation ('FGM') and trafficking in human beings.⁵⁹ Barriers to accessing support for migrant women experiencing gender-based violence are issues of intersectional discrimination in respect of migration, gender, ethnicity and race, which the State has been called on to address.⁶⁰ Such barriers also impact children's rights where migrant mothers and their children cannot access services such as emergency refuge accommodation. As the State's designate Independent Monitoring Mechanism for the *UN Convention on the Rights of Persons with Disabilities*, the Commission notes the State's obligations in respect of that Convention.⁶¹ The Commission also notes Ireland's obligations under the *Istanbul*

⁵⁶ [Programme for Government: Our Shared Future](#), at p. 86.

⁵⁷ IHREC CERD Report (2019) pp 102-108

⁵⁸ European Commission (2016), [Study on the Gender Dimension of Trafficking in Human Beings](#); European Commission (2020), [Data Collection on Trafficking in Human Beings in the EU](#). See section 19 for more commentary on human trafficking.

⁵⁹ [Directive 2012/29/EU of the European Parliament and of the Council \(25 October 2012\) establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#). The Commission notes the submission on Violence against Migrant Women submitted to the Citizens Assembly on Gender Equality. See Immigrant Council of Ireland et al, [Joint Submission to Citizens' Assembly on Violence Against Migrant Women: A barrier to achieving gender equality in Ireland](#).

⁶⁰ UN Treaty Monitoring Bodies have called on the State to take action in respect of the provision of specialised supports, the guarantee of legal stay regardless of residence status, and the provision of specialist training to police immigration officers, amongst other things. See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at paras. 39-40. Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#), CEDAW/C/IRL/CO/6-7, at paras. 26-27.

⁶¹ Article 16 CRPD requires that the State to 'take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects'.

Convention,⁶² which the EU signed in 2017 and is prioritising for incorporation into EU law in 2021.⁶³

Barriers to specialist services

Despite recent developments in the legislative framework,⁶⁴ there are ongoing deficiencies in the provision of supports and refuge spaces to victims of domestic violence.⁶⁵ With regards to the experiences of migrant women experiencing gender based violence, barriers to accessing support include a woman's immigration status, length of stay in Ireland vis-à-vis the Habitual Residence Condition in respect of social welfare supports, social isolation, and lack of awareness of available supports or legal remedies.⁶⁶

The Commission is of the view that a trauma-informed continuum of supports, co-designed with migrant woman and their representative bodies, should help to address the identified deficiencies in the current system. Gender sensitive immigration reform is needed to ensure all migrant women have equal access to protection and support,⁶⁷ including women whose residence status is tied to their abusive partner and women without permission to be in the State,⁶⁸ as well as women and girls in Direct Provision.⁶⁹ The findings and recommendations arising from the recent audit of the State's domestic, sexual and gender-

⁶² The Istanbul Convention contains specific measures for protecting migrant women from gender-based violence. For more information on discrimination on the grounds of migrant status, refugee status or other status, see [Council of Europe Convention on preventing and combating violence against women and domestic violence](#): Article 4, para 3.

⁶³ European Commission, [A Union of Equality: Gender Equality Strategy 2020-2025](#), at p. 3.

⁶⁴ Including the enactment of the Criminal Law (Sexual Offences) Act 2017, the Criminal Justice (Victims of Crime) Act 2017, the Domestic Violence Act 2018, the Harassment, Harmful Communications and Related Offences Act 2020, the Second National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021 and commitment to developing a successor strategy, and the ratification of the Istanbul Convention in 2019.

⁶⁵ As of 2020, the State had less than a third of the number of domestic violence refuge spaces it is required to have under European standards, and nine counties in Ireland had no refuges, presenting additional difficulties for victims living in rural areas. The Council of Europe recommends there should be one refuge place per 100,000 people, meaning there should be 446 refuge places in Ireland. See Dáil Éireann Debate, [Covid-19 \(Measures to Protect Victims of Domestic Violence\): Statements](#), 24 June 2020

⁶⁶ Maeve Foreman, [Migrant Women and Gender Based Violence in Ireland: Policy, Research & Practice](#), 2018, at p. 10.

⁶⁷ See Council of Europe [Protecting migrant women, refugee women and women asylum seekers from gender-based violence](#), 2019: p. 5.

⁶⁸ INIS has published guidelines on how the immigration system deals with cases where the victim's immigration status is derived from or dependent on that of the perpetrator of domestic violence. However, the Minister has discretion in all decisions, and the arrangements do not apply to victims without permission to be in the State. See IHREC CERD Report (2019) p. 105.

⁶⁹ Additional risk factors have been identified for women living in direct provision, including heightened tensions within families as a result of the physical space and conditions within which they are living. The State has obligations to assess the special reception needs of vulnerable persons, including people who have been subjected to violence, within a reasonable time after an application for international protection is made. See IHREC CERD Report (2019) p. 106.

based violence infrastructure,⁷⁰ and the relevant recommendations of the Citizens Assembly are relevant in this regard.⁷¹

The Commission recommends that the National Action Plan Against Racism:

- 5.1. reframes the priority group of migrant women to include migrant girls and identify child-centred measures to provide support.**
- 5.2. tasks the State to develop a trauma-informed, co-designed continuum of support and care for migrant women and girls experiencing gender based violence in order that they and children in their family group are safe, secure and fulfil their potential.**
- 5.3. provides for multi-level action in areas including awareness of rights, adequate provision of specialised services and refuge spaces, and measures to address barriers to accessing victim support services. This should include the introduction of legislation to provide for a Domestic Violence Concession to the Habitual Residence Condition.⁷²**
- 5.4. interlinks with other national strategies that address gender-based violence, including the successor strategy to the Second National Domestic, Sexual and Based Violence Strategy 2016-2021 and the 2016 National Action Plan to Prevent**

⁷⁰ This audit identified: deficits in policy, in funding arrangements for essential services and in the collection and analysis of data, leading to a lack of clarity about who is responsible for what and ultimately to gaps in services for victims; deficiencies in current strategy and its implementation structure; and fragmentation within and across the sector. The audit recommends: that policy leadership and service provision for domestic sexual and gender-based violence be placed clearly with the Department of Justice; that mainstream community services be enabled to respond to victims; and that a co-designed, dedicated office be established to lead policy implementation with oversight by a special Ministerial Committee or Cabinet committee. See Department of Justice, [Domestic, Sexual and Gender Based Violence: An Audit of Structures](#), June 2021.

⁷¹ The Citizens Assembly has recommended: Government action on domestic, sexual and gender-based violence should be coordinated by a Cabinet Minister with direct responsibility for implementation of a national strategy; development of awareness, prevention and education campaigns; review and reform of the courts system to better protect and support victims/survivors; guidelines and specialist training for judges and lawyers regarding the treatment of victims/survivors; tougher sentences and rehabilitation programmes for the perpetrators; provision of specialised confidential health care and other support services; establishment of a Victims/Survivors Commissioner; sufficient publicly funded provision of beds, shelters and accommodation for victims/survivors and their dependents; recognition of female genital mutilation (FGM) as a ground for seeking asylum; and provision of culturally sensitive specialised services for victims/survivors. See [Report of the Citizens Assembly on Gender Equality](#), June 2021.

⁷² The Commission has previously recommended that the State should review the Habitual Residence Condition and its impact on minority ethnic communities in practice. See IHREC CERD Report (2019) at p. 79.

and Combat Human Trafficking⁷³, and align with other relevant UN and Council of Europe international instruments and EU frameworks.

- 5.5. **tasks the Department of Justice to review its Victims of Domestic Violence Immigration Guidelines with a view to removing Ministerial discretion in respect of decision making, placing the guidelines on a statutory basis and ensuring that victims without permission to be in the State can access services.**
- 5.6. **tasks the Department of Justice to provide for Female Genital Mutilation to be recognised as a ground for seeking asylum, in line with the recommendation of the Citizens Assembly. The Commission recommends the development of country-wide awareness raising amongst healthcare professionals and in the international protection system, and access to specialist supports and peer-led services.**
- 5.7. **seeks to ensure that vulnerability assessments are delivered to international protection applicants within 30 days and that gender-sensitive guidelines, reception procedures, and support services are provided early and on an ongoing basis to reflect migrant women's current, including changing, needs.⁷⁴**
- 5.8. **tasks the Department of Justice to commission an independent analysis of anonymised vulnerability assessments in order to inform the proactive development of policies, practices, services and data systems in the international protection system.**

Data and recording of gender-based violence

There is limited data and research available on domestic violence in the State, with documented inaccuracies in An Garda Síochána's recording and classification of crimes involving domestic violence,⁷⁵ as well as evidence of chronic under-reporting of these crimes by victims from minority ethnic communities.⁷⁶

⁷³ The 2016 National Action Plan to Prevent and Combat Human Trafficking in Ireland is not bound by any specific timeline and remains the current strategy in operation, however the Commission understands that initial discussions have begun on the development of a renewed National Action Plan.

⁷⁴ IHREC, [White Paper Submission Direct Provision](#), 2020.

⁷⁵ Connor Lally, '[More than 3,000 domestic violence 999 calls marked 'cancelled' by Garda](#)', *Irish Times*, 24 June 2021.

⁷⁶ IHREC CERD Report (2019) pp. 103-104.

The Department of Justice has committed to undertaking regular survey research on the prevalence of sexual violence in the State.⁷⁷ However the Commission understands that the current position is that the inclusion of a representative sample of minority ethnic groups will only be considered after the completion of the first survey, which raises concerns about the potential for significant delays in the availability of the data, as well as concerns about the extent to which the data will be comparable.

The Commission recommends that the National Action Plan Against Racism:

- 5.9. tasks the Department of Justice to provide specialist training to immigration officers and police officers, with a view to improving the identification, investigation and prosecution of gender-based violence, and improving the capacity of officials in respect of responding to victims of trafficking.**
- 5.10. adopts concrete measures such as intermediary reporting to encourage and facilitate the reporting of crimes, including special measures for women and girls from minority ethnic groups.**
- 5.11. prioritises the improvement of disaggregated data with regards to gender based violence experienced by migrant women, including through the use of ethnic identifiers in gender-based violence services**
- 5.12. prioritises the inclusion of a representative sample of minority ethnic groups from the outset within the planned regular survey research on the prevalence of sexual violence in the State.**

⁷⁷ Central Statistics Office, [Sexual Violence Survey \(SVS\)](#)

6. Public services

Public Sector Equality and Human Rights Duty

People from ethnic minority and migrant backgrounds do not enjoy equal access to or outcomes from public services,⁷⁸ which are not yet sufficiently responsive and culturally sensitive to the needs of minority communities in the State.⁷⁹ The limited availability of appropriately trained interpreters with technical expertise can hinder access to public services.⁸⁰ More broadly, there is a risk that accountability mechanisms can be weakened where the State delivers its functions through private, non-State actors, particularly in contracts that are not explicitly subject to equality and human rights requirements.⁸¹ Further, there is inadequate representation of people from minority ethnic groups employed across the public sector.⁸²

The Public Sector Equality and Human Rights Duty ('the Duty')⁸³ offers a key framework for action in respect of tackling racial discrimination, promoting diversity and ensuring cultural sensitivity in public services.⁸⁴ The obligation on public bodies to report regularly under the Duty could be utilised as an implementation monitoring tool for a National Action Plan Against Racism.

There are gaps in the State's institutional anti-racism framework.⁸⁵ The Commission notes, in this regard, that the European Commission is considering the need for new EU legislation to strengthen the role of equality bodies in respect of anti-racism.⁸⁶

⁷⁸ Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2020, at p. 15. The Commission-funded research study *Who Experiences Discrimination in Ireland?* found that, compared to 'White Irish' respondents, 'Black' people are three times more likely to experience discrimination in access to public services. See F. McGinnity, R. Grotti, O. Kenny and H. Russell, [Who Experiences Discrimination in Ireland?](#) (IHREC and ESRI), November 2017.

⁷⁹ IHREC CERD Report (2019) at p. 8-9.

⁸⁰ IHREC CERD Report (2019) p. 84-85.

⁸¹ See IHREC, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#), December 2015, at p. 12; IHREC CERD Report (2019) at p. 17.

⁸² Department of Justice and Equality, [The Migrant Integration Strategy 2017-2020](#), at p. 4, 40 and C. Murphy, L. Caulfield, and M. Gilmartin, [Developing Integration Policy in the Public Sector: A Human Rights Approach](#), 2017.

⁸³ The Duty places a statutory obligation on public bodies to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work. See IHREC, [Implementing the Public Sector Equality and Human Rights Duty](#), 2019; [COVID-19 and the Public Sector Equality and Human Rights Duty](#), 2020.

⁸⁴ As is recognised by the State – see Department of Public Expenditure and Reform, [Our Public Service 2020: Promote Equality, Diversity and Inclusion. Vision Statement, Commitments, and Maturity Model for Public Service Organisations](#), at p. 2.

⁸⁵ IHREC CERD Report (2019) p. 20

⁸⁶ See European Commission, [A Union of Equality: EU anti-racism action plan 2020-2025](#), at p. 4.

The Commission recommends that the National Action Plan Against Racism:

- 6.1. should specify how the Government will address gaps in the State's institutional anti-racism framework.**
- 6.2. requires public bodies to set specific targets for diversity in recruitment, retention and progression, including intersectional diversification and to ensure a positive working environment for minority ethnic employees.⁸⁷**
- 6.3. tasks the Department of Public Expenditure and Reform to ensure that compliance with the Public Sector Equality and Human Rights Duty is included as a requirement in all procurement processes and service level agreements where the State subcontracts its functions to non-State actors.**
- 6.4. tasks the Department of Public Expenditure and Reform to set up mandatory, evidence-based Anti-Racism and cultural competency training for all grades and roles across public bodies, and require the achievement of an ambitious reach of such training (both initial and continuous professional development) during its term.**
- 6.5. requires the professionalisation and regulation of interpreting services, including through the development of a system of accreditation and training.**

The Commission recommends that:

- 6.6. public bodies be required to report on implementation of actions assigned to them under the National Action Plan Against Racism, drawing on their equality data where relevant, when reporting under the Public Sector Equality and Human Rights Duty**

⁸⁷ McGinnity et al., [Monitoring Decent Work in Ireland](#), 2021, at p. 141.

7. Information, communication, media and new technology

Tackling hate speech online

Internationally, the majority of hate speech incidents occur online,⁸⁸ and there is some evidence to suggest that this is the case in Ireland.⁸⁹ Significant reform to the policy and regulatory environment is essential to address the circulation of hate speech in the digital public sphere, made all the more urgent as Ireland is the European host to many major global social media and technology companies.⁹⁰ The Commission has made recommendations in respect of such reform, emphasising the importance of regulatory measures such as codes of practice, transparency and sanctions for non-compliance,⁹¹ and codes of conduct, counter speech, education and awareness raising and support for victims.⁹²

In the context of the forthcoming revision to the *EU Audiovisual Media Services Directive*, the State should show leadership by developing a comprehensive regulatory framework to combat online hate speech. Under this framework, the operation of notice and take-down procedures for removing illegal content online should be subject to codes of practice, compliance with which should be promoted by way of effective and proportionate sanctions. The framework should also ensure there is transparency with regard to the prevalence of online hate speech and the measures being taken by internet intermediaries to address it. The Commission supports the establishment of an independent statutory body to monitor and enforce compliance with the new regulatory framework.⁹³

⁸⁸ ECRI (2016), [ECRI General Policy Recommendation No. 15 on Combating Hate Speech](#), at p.4.

⁸⁹ INAR recorded 334 hate speech incidents in 2020, compared to 174 in 2019 and 282 of these occurred online. See L. Michael (2020), *Reports of Racism in Ireland*, p. 20; see also [IHREC and ESRI \(2020\) Hidden Versus Revealed Attitudes: A List Experiment on Support for Minorities in Ireland](#) – it examines societies' attitudes to minorities in Ireland and the extent to which people are concealing controversial opinions when afforded anonymity. See also Siapera *et al.*, [HateTrack: Tracking and Monitoring Racist Hate Speech Online](#), 2018.

⁹⁰ IHREC CERD Report (2019) p. 47.

⁹¹ See IHREC, [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#) (March 2021); and <https://www.ihrec.ie/app/uploads/2019/12/Review-of-the-Prohibition-of-Incitement-to-Hatred-Act-1989.pdf> (December 2019).

⁹² <https://www.ihrec.ie/documents/review-of-the-prohibition-of-incitement-to-hatred-act-1989/> (December 2019)

⁹³ <https://www.ihrec.ie/app/uploads/2019/12/Review-of-the-Prohibition-of-Incitement-to-Hatred-Act-1989.pdf>

The Commission recommends that the National Action Plan Against Racism:

- 7.1. takes account of the EU Audiovisual Media Services Directive (AVMS) and its transposition into Irish law.**

Media

A strong link can be observed between editorial decisions and the emergence of online and real-world hate speech and incidents,⁹⁴ meaning it is imperative that media professionals adhere to journalistic ethics and codes of practice, and that such codes of practice are responsive to the modern media environment. African-Irish young people report that negative narratives and stereotypes in the media are a pervasive barrier to integration, whereas authentic representation facilitates inclusion and has a significant impact on emotional wellbeing.⁹⁵ More diverse representation within the media professions will help to ensure more authentic representation, for example, by promoting more inclusive editorial decision making.⁹⁶ The Press Council of Ireland's Code of Practice, which prohibits the publication of material intended or likely to cause grave offence or stir up hatred based on protected characteristics,⁹⁷ will need to be updated in light of ongoing developments in respect of the legislative framework on hate speech.

The Commission recommends that the National Action Plan Against Racism:

- 7.2. includes an action for a strategy to encourage the media to promote diversity within its professions, increase the visibility and positive representation of ethnic minorities, and better equip people to discuss issues concerning race, racism and anti-racism.**
- 7.3. includes an action to encourage the media to update their codes of professional ethics and press codes to reflect the challenges of the modern media environment where the circulation of prejudicial and discriminatory content and hate speech**

⁹⁴ Siapera et al., [HateTrack: Tracking and Monitoring Racist Hate Speech Online](#), 2018, at p. 25.

⁹⁵ See Machowska-Kosiack, M and Barry. M A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

⁹⁶ Human Rights Committee, [General comment No. 34 Article 19: Freedoms of opinion and expression General remarks](#), CCPR/C/GC/34, at para. 14.

⁹⁷ Press Council of Ireland & Office of the Press Ombudsman, [Code of Practice for Newspapers and Magazines: Handbook](#), January 2014.

are concerned, and to explicitly reflect new standards on hate speech upon conclusion of ongoing legislative developments.⁹⁸

- 7.4. includes an action to encourage ongoing training for editors and journalists as to the nature and dynamics of hate speech to avoid the publication and inappropriate framing of news and editorial content that is prejudicial, discriminatory, or triggers hate speech or incidents.**
- 7.5. includes an action to encourage compliance with regulatory mechanisms aiming to prevent hate speech, such as codes of conduct, to be supported by way of dissuasive sanctions for breach of their provisions.**

Digital literacy, the digital divide and an inclusive digital public sphere

The digital divide is exacerbating existing social inequalities and further isolating already marginalised communities in the State, as has been further highlighted in the context of remote education provision during Covid-19.⁹⁹ Dimensions of digital exclusion include connectivity, material access (including ICT equipment), digital competency, and online threats, including psychological dangers due to abuse or trolling, disinformation, and the increasing use of algorithms feeding into existing biases.¹⁰⁰ Commission-funded research has emphasised the importance of promoting digital literacy as a means of combatting online hate speech.¹⁰¹

The Commission recommends that the National Action Plan Against Racism:

- 7.6. includes actions to promote and advance digital literacy as a core skill for people of all ages.**
- 7.7. includes an action for a strategy to increase access to the internet and technologies amongst minority ethnic groups in a manner that is measurable over the period of the plan. Access must address the digital divide sufficiently so that**

⁹⁸ Online Safety and Media Regulation Bill (2020), Criminal Justice (Hate Crime) Bill (2020).

⁹⁹ People who face existing social deprivation are more likely to experience digital poverty (a lack of reliable access to the internet and technology, and of digital skills). The growing emphasis on digital services as government, banking, financial services and recruitment increasingly move online, and everyday life becomes more intertwined with technology, has meant that those without access to equipment and digital skills are being left without access to these services and opportunities. See IHREC CERD Report (2019) at p. 57-58.

¹⁰⁰ NESO (2021) [Digital Inclusion in Ireland: Connectivity, Devices and Skills](#).

¹⁰¹ Siapera *et al.*, [HateTrack: Tracking and Monitoring Racist Hate Speech Online](#), 2018, at p. 5.

children and adults can fully participate in education, employment and society, and access goods and services.

Equality and non-discrimination in new digital technologies

It is essential to uphold equality and non-discrimination in new digital technologies, including the Artificial Intelligence (AI) field, which potentially impacts the full range of fundamental rights.¹⁰² The National Action Plan Against Racism needs to engage with and inform new legislation, policy development and public bodies dealing with technological developments in Ireland's digital sphere.

A National AI Strategy is being developed.¹⁰³ This should explicitly engage with the State's international obligations and provide for equality and human rights impact assessments in respect of AI technologies and their adoption.

The Commission recommends that the National Action Plan Against Racism:

- 7.8. engages with the application of international human rights standards in relation to AI, and the emerging guidance on this at EU, Council of Europe, and at UN level with a focus on a civil and anti-racist digital public sphere.**

¹⁰² While AI can do much good, including by making products and processes safer, it can also do harm. This harm might be both material (safety and health of individuals, including loss of life, damage to property) and otherwise (loss of privacy, limitations to the right of freedom of expression, human dignity, discrimination for instance in access to employment), and can relate to a wide variety of risks. See European Commission, [White Paper On Artificial Intelligence - A European approach to excellence and trust](#), Brussels, 19.2.2020 COM(2020) 65 final. For an example of the risk of racial bias and algorithmic discrimination in human resources, see ENAR, [Artificial Intelligence in HR: How to address Racial Biases and Algorithmic Discrimination in HR?](#), 2021.

¹⁰³ Department of Enterprise, Trade and Employment, [Minister Troy hosts roundtable on the National AI Strategy](#), press release, 18 February 2021.

8. Supports for victims of racism

Racism takes a significant toll on a person's physical health, mental health and well-being. Racism can result in minority ethnic persons lacking the confidence to be in public spaces or engage with strangers,¹⁰⁴ as well as giving rise to fears for the safety of children and family members.¹⁰⁵ Ethnic minority young people report that racism leads to feeling a 'constant alertness' that makes some feel anxious, depressed or insecure about their own identity, while others report internalised self-loathing or being ashamed of their identity.¹⁰⁶ Such experiences of isolation have been raised directly with the Commission in its engagement with people of African descent, where concerns were also expressed about the lack of wider awareness and understanding among the general public about racism and racist activities in Ireland.¹⁰⁷ The Commission has heard how this lack of awareness is reflected in the prevalence of 'silent bystanders', described as people who fail to challenge the racism they witness and therefore engage in passive discrimination.¹⁰⁸

NGO reports indicate that racism increased in 2020, with a particular growth in reports related to online racism via social media platforms.¹⁰⁹ The provision of services for victims of racism is, therefore, increasingly essential. Supports need to have sufficient resources and staffing to offer tailored services responding to specific intersectional experiences as well as different types of racism, such as anti-Traveller racism, anti-black racism, Islamophobia and anti-Semitism. Furthermore, the impact of experiencing racism can impact an individual's capacity or willingness to report racism or seek support. Sufficient resources are therefore required to communicate in various languages the availability of

¹⁰⁴ Anne Walsh, [Make Minority A Priority. Insights from Minority Ethnic Young People Growing up in Ireland and Recommendations for Youth Workers Sector](#), 2017.

¹⁰⁵ Lucy Michael, [Afrophobia in Ireland](#), at p. 12, 35.

¹⁰⁶ See Machowska-Kosiack, M and Barry. M. A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

¹⁰⁷ In 2021 the Commission engaged directly in consultation with young people and community leaders of African descent (this consultation is referenced throughout this report as Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area, 31 March 2021). Rights holders illustrated the lack of understanding and awareness of racism with reference to frequent experiences of situations in which 'bystanders' failed to intervene in racist incidents. Similar experiences were raised with the Commission in its consultation with young ethnic minority people in 2019.

¹⁰⁸ These concerns were raised by ethnic minority young people in the Commission's *Be Heard on CERD* consultation. See IHREC, CERD Report, 2019, at p. 35.

¹⁰⁹ Since July 2013, the Irish Network against Racism collects and publishes data on the occurrence of racist incidents, with a view to empowering victims to break the silence and enhance data collection nationwide. While the service does not replace formal reporting mechanisms via An Garda Síochána, information gathered through iReport.ie allows an additional understanding of racism in the Irish context. See: INAR, 2021, [Report on Racism in Ireland](#).

support services, for example, legal advice, practical assistance and/or accompaniment services.¹¹⁰ Concerns have been raised that increased State funding and additional resources are needed for these organisations to meet the demand for services.¹¹¹

The Commission remains deeply concerned about the history of chronic racism and discrimination against the Traveller community in Ireland. According to a recent survey by the Fundamental Rights Agency (FRA), 65% of Travellers reported discrimination in the areas of employment, education, health, housing and other public and private services.¹¹² Targeted and appropriate support services are needed to effectively address the many complex and intersectional ways in which racism and racial discrimination impedes life chances and opportunities. These services must recognise the transgenerational trauma of racism, be appropriately diverse in terms of ethnic minority representation amongst staff, and operate in a framework of cultural competency.

The Commission recommends that the National Action Plan Against Racism:

- 8.1. details a plan for increasing the allocation of State funding and resources for both provision of specialist anti-racism support services across the country and also reorientation of existing public and publicly-funded services to deliver culturally competent and appropriate support to victims of racism.**
- 8.2. supports targeted anti-racism initiatives tackling racism towards Travellers, including the development of new initiatives.**
- 8.3. includes sustained and ongoing anti-racist public messaging, awareness campaigns and education measures, all of which should promote interculturalism and anti-racism, signal available supports and encourage reporting of racist incidents. These efforts should include a tailored campaign to raise awareness of how people can respond to racism and encourage bystander action.¹¹³**

¹¹⁰ In 2011, the Immigrant Council of Ireland established the Anti-Racism Support Service to provide support to victims of racist incidents and also monitor racist activity. See: www.immigrantcouncil.ie/reportracism

¹¹¹ Immigrant Council of Ireland Press Release: [Immigrant Council calls for national support services to be developed to respond to the needs of victims of racism](#), March 2021

¹¹² Fundamental Rights Agency (September 2021) Roma and Travellers in Six Countries <https://fra.europa.eu/en/publication/2020/roma-travellers-survey>

¹¹³ Strategies for responding to racism have been set out in, for example, ENAR Ireland, [Responding to racism guide: how to report racism and where to find help](#), 2019.

- 8.4. encourages the development of initiatives to enhance social contact between different groups with a view to promoting interculturalism and greater awareness of racism and anti-racism.¹¹⁴**
- 8.5. includes an action to undertake an economic analysis of the resources involved in the identification, investigation and prosecution of racist incidents in order to inform adequate mainstream budgetary allocation for these activities.**
- 8.6. specifies that all support services to victims of racism operate through a co-designed approach, be trauma-informed, sensitive to intersectional discrimination, and offer a tailored continuum of supports that evolves to reflect evidence-based best practice.**

¹¹⁴ An example of one such initiative is a Commission-supported project which convened women working in peacebuilding across the island of Ireland, including women from new communities, for focus groups that provided a space to share their insights and experiences. See Dr Heidi Riley, [Promoting women in peace mediation across the island of Ireland](#), UCD Impact Case Study.

9. Equal participation in civil, political, economic, social and cultural decision making

Ireland's current cohort of decision makers and influencers does not reflect the ethnic diversity of its population.¹¹⁵ The Commission has consistently raised the need for representative participation in political life and in public administration more broadly.¹¹⁶ The National Action Plan Against Racism should ensure anti-racism is taken into account in current policy developments in this area, such as in the establishment of an Electoral Commission.

Political participation

There are low levels of ethnic minority representation, including Travellers, Roma, people of African descent, Mixed-Race Irish and migrant communities, in political positions at all levels in the State.¹¹⁷ Ethnic minority electoral candidates report experiences of racism and discrimination in election campaigns.¹¹⁸ Ethnic minority young people report disillusionment and fear connected to a lack of political representation for previous generations in their communities, while also feeling excluded from more local community initiatives such as Tidy Towns or Neighbourhood Watch.¹¹⁹

Political debates during elections and referendums must not be characterised by racist or discriminatory political discourse, which fosters a climate of hostility and intolerance that can exclude targeted groups from the public sphere and restrict their participation in the democratic process.¹²⁰ The proposed Electoral Commission can play a key role in the State's institutional framework to tackle racial discrimination and disadvantage in respect of

¹¹⁵ Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2020, at p. 16.

¹¹⁶ IHREC: [Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill](#), February 2021; [Recommendations on the Establishment of an Electoral Commission](#), March 2019; [Submission to the Citizens' Assembly on Gender Equality](#), March 2020, p.14-21; IHREC CERD Report (2019) pp.52-59.

¹¹⁷ Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at paras. 25. In addition to representation in parliament and local government, ethnic minority young people report a lack of representation at lower levels of public life, for example in student unions. See forthcoming Commission-funded research.

¹¹⁸ A study on minority ethnic candidate experiences in the 2019 local elections found that candidates experienced racist incidents during their election campaign and that migrant female candidates experienced sexual harassment while campaigning. See Valesca Lima, [Strength in Diversity: The Experience of Migrant Candidates in the 2019 Local Election](#), April 2020.

¹¹⁹ See Machowska-Kosiack, M and Barry, M A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

¹²⁰ IHREC, [Recommendations on the Establishment of an Electoral Commission](#), March 2019.

political participation,¹²¹ as can measures to uphold standards in public office and political discourse, and positive action measures to help achieve appropriate representation of diversity in all levels of government.

The Commission recommends that the National Action Plan Against Racism:

- 9.1. provides for a strategy to increase representation of ethnic minorities in governance, including through the use of positive action measures such as a gender-balanced quota system in political party candidate selection and reserved seats in Parliament and local government. These measures should be co-designed and implemented with rights holders and include targeted interventions for specific minority ethnic groups, for example, women, and persons with disabilities.**
- 9.2. tasks the Electoral Commission with monitoring political participation trends among minority ethnic groups and conducts research into barriers to minority ethnic electoral participation,¹²² including minority ethnic voter participation and electoral candidate experiences of racism and discrimination. Such research should inform the development of targets for increasing the political participation of members of minority ethnic groups.**
- 9.3. tasks the Electoral Commission to establish a framework for upholding equality and non-discrimination standards in political discourse during election and referendum campaigns.¹²³**
- 9.4. tasks the State to develop codes of conduct for public officials and election candidates which clearly prohibit the use or endorsement of prejudicial and discriminatory discourse and provide for appropriate sanctions for breach of their**

¹²¹ The Commission has recommended that an Electoral Commission should be mandated to promote more equal political participation for groups including minority ethnic communities. See IHREC CERD Report (2019) at p. 55-59; [Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill](#), February 2021; [Recommendations on the Establishment of an Electoral Commission](#), March 2019.

¹²² The Commission has previously noted that Electoral Commissions undertake this kind of work in jurisdictions including New Zealand and the UK. See IHREC, [Recommendations on the Establishment of an Electoral Commission](#), March 2019, at p. 10-11.

¹²³ As the Commission has previously recommended in IHREC: [Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill](#), February 2021; IHREC CERD Report (2019) p.55; [Recommendations on the Establishment of an Electoral Commission](#), March 2019.

conditions. The code of conduct should be complemented by guidance for election candidates on inclusive and diverse campaigning practices.

- 9.5. tasks the State to put in place mandatory training on equality and non-discrimination for public officials and elected representatives, with a view to ensuring they are equipped to recognise and respond effectively to prejudicial and discriminatory discourse and hate speech.¹²⁴**
- 9.6. tasks the Department of Children, Equality, Disability, Integration and Youth to promote minority ethnic participation in civic engagement and democratic mechanisms from local to national level.**

Participation in public administration

The low levels of ethnic minority employment in Ireland's public services are of concern,¹²⁵ both in terms of diversity in public service delivery and in terms of access to decent work – in respect of which public sector employment fares well on dimensions such as trade union coverage and stability and security of work.¹²⁶ In most cases, civil service employment is not open to people from outside the European Economic Area, representing a significant barrier to labour market integration.

The Commission recommends that the National Action Plan Against Racism:

- 9.7. tasks Government with opening civil and public service employment to migrants from outside the European Economic Area.**

¹²⁴ IHREC CERD Report (2019) pp. 55-57.

¹²⁵ Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at paras. 25-26.

¹²⁶ See McGinnity et al., [Monitoring Decent Work in Ireland](#), 2021.

10. Education

Education must be accessible to everyone without discrimination, acceptable in its form and substance, and adaptable to the changing needs of societies and diverse social and cultural settings.¹²⁷

Education access, participation and outcomes

Early years and school education

The *Education (Admissions to Schools) Act 2018* permits 25% of the places in a school that is oversubscribed to be reserved for children or grandchildren of past pupils.¹²⁸ This can result in the segregation of children from Traveller families and families of migrant origin in specific schools.¹²⁹

Traveller and Roma children experience low levels of participation in early childhood education and throughout school,¹³⁰ and significant barriers in accessing and completing education due to the lack of specialised supports,¹³¹ the overcrowded nature of the accommodation that many families are living in, and ineligibility for school allowances.¹³²

¹²⁷ Under Article 42A(1) of the Constitution, the State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights. Under Article 42, the State is required to provide free primary education and to ensure that children receive a certain minimum education. Ireland is also bound by the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. Committee on Economic, Social and Cultural Rights, [The Right to Education](#) (Art. 13) (1999), E/C.12/1999/10, para 6. See also, Article 28 of the Convention on the Rights of the Child.

¹²⁸ See Section 62(10) (b) of the Education Act 1998, as amended by the Education (Admission to Schools) Act 2018. This has been described as a 'discriminatory policy' by the UN Committee on the Rights of the Child. See Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#), p. 14.

¹²⁹ IHREC CERD Report (2019) pp. 61–62. In 2011, approximately seven out of ten Traveller children (67.3%) lived in families where the mother had either no formal education or a primary education only. See Department of Children and Youth Affairs (2016), [State of the Nation's Children](#), p.22. Research has also shown that 25% of children whose mothers migrated from Africa attend the most disadvantaged schools, compared to 9% of children of Irish-born mothers: M. Darmody, F. McGinnity, and G. Kingston (October 2016), '[The experiences of migrant children in Ireland](#)', pp. 182–183.

¹³⁰ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#), p. 16 and IHREC CERD Report (2019) pp. 60–65. In 2019, the CERD Committee also raised its concerns about the disproportionately low levels of school enrolments, academic achievements and progression, at all levels of the education system, for Traveller and Roma students: Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#) (23 January 2020), para. 33.

¹³¹ The Commission has noted regressive measures relating to specialised supports such as the discontinuation of the Visiting Teacher Service for Travellers in 2011. See also, IHREC CERD Report (2019) pp. 61–62.

¹³² Roma children in particular are often deemed ineligible for financial supports, such as the Back to School Clothing and Footwear Allowance, due to the Habitual Residence Condition. For further information, see IHREC, IHREC CERD Report (2019) pp. 62–63, 79. See also, Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#), pp. 110–111.

Traveller and Roma children are disproportionately represented in the use of reduced timetables,¹³³ in respect of which guidelines have not been issued nor accompanying training rolled out.¹³⁴ While the Department of Education and Skills has established a pilot programme to address the gap in educational outcomes for Traveller and Roma children, the projects have not been formally assessed and there are no interim findings available.¹³⁵ Barriers to education for children in the international protection process include inadequate resourcing of English language supports,¹³⁶ limited access to afterschool activities and insufficient IT resources,¹³⁷ the remote geographic locations of some Direct Provision accommodation, and the lack of information provided to families about registering for a school place.¹³⁸ Children in Direct Provision and children for whom English is not their first language have been more severely impacted by Covid-19 school closures.¹³⁹ Many schools rely on voluntary contributions for funding from parents.¹⁴⁰ This means schools with many students of a lower socio-economic status, including schools with large numbers of ethnic minority children, often lack resources for basic school materials.

¹³³ IHREC, IHREC CERD Report (2019) pp. 62–63 and IHREC, [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#) (July 2020), pp. 37–38. In 2020, the CRC Committee asked the State to provide information on the measures taken to prevent the disproportionate use of reduced timetables for Traveller children and to provide disaggregated data on this practice: Committee on the Rights of the Child, [List of issues prior to submission of the combined fifth and sixth reports of Ireland](#) (18 November 2020), paras. 27 and 42.

¹³⁴ Department of Education and Skills, [Schools Administration](#) (18 May 2021) and Children's Rights Alliance, [Report Card 2021](#) (2021), pp. 62–63.

¹³⁵ Children's Rights Alliance, [Report Card 2021](#) (2021), p. 86. In this regard, the Commission notes the importance that pilot initiatives be subject to independent evaluation, based on transparent and timely reporting of findings, and inclusion of a route to mainstream evidence based interventions. The Commission is concerned about endless pilot programmes, which are liable to disruption and discontinuation if mainstreaming isn't included as an option at the design stage with clear criteria for decision making in respect of core funding. This undermines sustainable funding for community organisations as they go from one pot of pilot project funding to the next.

¹³⁶ M. Ní Raghallaigh, K. Smith, and J. Scholtz (September 2019), [Safe Haven: The needs of refugee children arriving in Ireland through the Irish Refugee Protection Programme – An Exploratory Study](#), pp. 46–48. See also, Ombudsman for Children's Office, [Direct Division: Children's views and experiences of living in Direct Provision](#), 2020, pp. 27, 31.

¹³⁷ OCO, [Direct Division: Children's views and experiences of living in Direct Provision](#), 2020, pp. 4, 31.

¹³⁸ IHREC CERD Report (2019) pp. 63–64 and Irish Refugee Council (July 2019), [The Reception Conditions Directive: One Year On](#), pp. 58–59.

¹³⁹ CRA, [Report Card 2021](#) (2021), p. 93.

¹⁴⁰ Barnardos, [The Real Cost of School 2020](#), at p. 27–28.

The Commission recommends that the National Action Plan Against Racism:

- 10.1. tasks the Department of Education and Skills to review the equality implications of the use of the past pupil criterion in education admissions and remedy these as appropriate, including by amending existing legislation.**
- 10.2. tasks the Department of Education and Skills to address the use of reduced timetables, including through the provision of robust safeguards to ensure they are not used in place of the provision of appropriate supports in any circumstances.**
- 10.3. tasks the Department of Education and Skills to put in place independently-evaluated, sustainably-funded, mainstreamed programmes to improve educational outcomes for Traveller and Roma children from early years education and throughout school.**
- 10.4. tasks the State to urgently address educational issues for children in the international protection process, including adequate resourcing of English language supports, IT equipment and transport to ensure access to after-school activities, as well as provision of information resources to families about registering for a school place.**
- 10.5. reviews the resourcing of schools and in particular the reliance on voluntary contributions to fund the resourcing of activities in schools.**

Further and third-level education

Despite the introduction of specific initiatives including the Higher Education Access Fund, the participation of the Traveller community in further and third-level education remains comparatively low.¹⁴¹ Migrants, refugees and asylum seekers also face significant barriers in accessing further and third-level education and training in Ireland.¹⁴² The Commission

¹⁴¹ 167 Travellers held a third-level qualification in 2016, up from 89 in 2011. See CSO, [Census of Population 2016 – Profile 8: Irish Travellers, Ethnicity and Religion](#). See also, Department of Education and Skills, [Submission to the Joint Committee on Education and Skills](#), p. 7 and Seanad Public Consultation Committee, [Travellers Towards a More Equitable Ireland Post-Recognition: Discussion](#).

¹⁴² These include the lack of availability of affordable childcare and transport, the uncertainty or short-term nature of their visa or residential status, the lack of recognition of their existing qualifications, and the limited availability of beginner or upskilling English language classes. See IHREC, IHREC CERD Report (2019) pp. 67-68.

welcomes that the Student Support Scheme for people living in Direct Provision was placed on a long-term footing,¹⁴³ but notes that many of the children in Direct Provision are not aware of this Support Scheme,¹⁴⁴ and many who apply are not awarded support.¹⁴⁵

The Commission recommends that the National Action Plan Against Racism:

- 10.6. tasks the Department of Further and Higher Education, Research, Innovation and Science to put in place independently-evaluated, sustainably-funded, mainstreamed programmes to improve access and life-long educational outcomes for minority ethnic groups, and to remove any administrative, financial and attitudinal barriers.**
- 10.7. tasks the Department of Further and Higher Education, Research, Innovation and Science to put in place measures to raise awareness of the Student Support Scheme for people living in Direct Provision, and to revise the eligibility criteria for the scheme.**
- 10.8. tasks the State to develop a national initiative to promote the employment of ethnic and racial minority students post-college, building on the success and knowledge of the AHEAD programme for students with disabilities.**

Inclusive education

There has been slow progress in establishing more multi-denominational schools,¹⁴⁶ with 88.9% of primary schools having a Catholic ethos in the 2019/2020 academic year.¹⁴⁷ The Commission is concerned that this is a stagnant area of public policy and is of the view that it needs to be immediately and substantially addressed during the term of the National Action Plan Against Racism. It is not acceptable that children of a minority religion are still

¹⁴³ This pilot support scheme was initiated in 2015 for school leavers who are in the asylum process, and grants access to the Free Fees Initiative. See Department of Further and Higher Education, Research, Innovation and Science, [Minister Harris announces changes to the Student Support Scheme for people living in Direct Provision](#) (10 August 2020).

¹⁴⁴ Ombudsman for Children's Office, [Direct Division: Children's views and experiences of living in Direct Provision](#) (2020), p. 32.

¹⁴⁵ Out of 109 applications to the Scheme in 2020/21, only 40 students were awarded support. See Department of Education and Skills, [Asylum Seekers](#) (21 April 2021).

¹⁴⁶ In 2016, the CRC Committee called on the State to expeditiously undertake concrete measures to significantly increase the availability of non-denominational or multi-denominational schools: Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland, p. 14.](#)

¹⁴⁷ Children's Rights Alliance, [Report Card 2020](#) (2020), p. 21.

likely to be educated in line with a particular ethos, due to the integrated nature of the curriculum and the fact that few schools have the facilities or personnel to enable children to opt out of denominational teaching.¹⁴⁸

In engagement with the Commission, Travellers and Roma have reported negative experiences in school, including experiences of bullying, racism, and discrimination that can result in them hiding their identity or leaving school early. Young people of African descent reported that racism and racial discrimination are widespread in their daily life in the education system, including 'micro-aggressions' or 'sly racism'. While there may be anti-bullying policies in operation across schools, they are often too broad and do not adequately address racist bullying.¹⁴⁹

Issues relating to racial discrimination, prejudice, and cultural diversity are still not adequately addressed within teacher education programmes and the policies and curriculum in schools.¹⁵⁰ Young people have told the Commission that many teachers are ill-equipped to deal with racism in a classroom and have called for the issue of racism within the teaching profession to be addressed.¹⁵¹ Racist bullying between students is the focus of anti-racism education in the curriculum, which does not address institutional racism or different groups' specific experiences of racism.¹⁵² There is a lack of visibility of Traveller culture and history in the school curriculum,¹⁵³ with reports of poor knowledge and appreciation among the majority of the population about Traveller history, including the Cant language,¹⁵⁴ as well as lack of references in the curriculum to African history and negative representations of migrant communities in school textbooks and materials.¹⁵⁵ The

¹⁴⁸ Ibid. p. 24.

¹⁴⁹ Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area, 31 March 2021.

¹⁵⁰ Joint Committee on Education, Further and Higher Education, Research, Innovation and Science, [School Bullying and the Impact on Mental Health: Discussion \(Resumed\)](#) (11 May 2021). Despite policy commitments to provide anti-racist and intercultural training and professional development for teachers, it was highlighted in the Seanad that these measures are not being implemented: Seanad Public Consultation Committee, [Travellers Towards a More Equitable Ireland Post-Recognition: Discussion \(9 July 2019\)](#).

¹⁵¹ Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area (31 March 2021).

¹⁵² Karl Kitching, '[Racism in education](#)', in Beyond Hate Crime: Perspectives on Hate Crime in Ireland, INAR blog, 2019.

¹⁵³ In research conducted with the Traveller community, 76% of respondents reported that Traveller culture is not visible in the school curriculum: The Community Foundation for Ireland, [B&A Traveller Community National Survey](#) (2017), pp. 89, 115.

¹⁵⁴ Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Ireland](#) (10 October 2018), p. 20.

¹⁵⁵ Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area (31 March 2021).

National Council for Curriculum and Assessment has identified areas in which Traveller culture and history could be incorporated into the Curriculum, as well as a range of education bodies and agencies that could play a role in this regard.¹⁵⁶ Therefore, this is an area in which immediate action can be taken. Further, the *Traveller Culture and History in Education Bill 2018* could be used to strengthen the legislative framework in this respect.¹⁵⁷ There is a diversity gap between the student and teacher populations in Ireland,¹⁵⁸ with teachers who qualified abroad facing several administrative barriers and other difficulties in accessing employment.¹⁵⁹ Ethnic minority young people have highlighted Irish language requirements to be a barrier to entering the teaching professions.¹⁶⁰ People of African descent have highlighted to the Commission that the lack of African-Irish presence in teaching roles results in young people leaving education with unchallenged racist stereotypes of African peoples and distorted views of African history.¹⁶¹ The Migrant Teacher Project and the Bridging Programme for Migrant Teachers are important steps in addressing these issues.¹⁶² However, as with all such initiatives, it is important that innovation is mainstreamed and sustainably funded across the country.

¹⁵⁶ For example, the NCCA notes that the Teaching Council could play a role in developing Continuous Professional Development options on Traveller culture and history, and that the State Examinations Commission could ensure that the diversity in Irish society is well reflected in the assessment items, materials and examples it uses. See NCCA, [Traveller culture and history in the curriculum: a curriculum audit](#), 2019, at p. 133–136.

¹⁵⁷ As recommended in Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#) (23 January 2020), para. 34. The Traveller Culture and History in Education Bill 2019, introduced by the Private Member Colette Kelleher TD, provides for the inclusion of Traveller culture and history in the State curriculum. It was passed by the Seanad on 16 October 2019 and has been before Dáil Éireann since.

¹⁵⁸ Over 99% of entrants to primary teacher education identifying as 'White Irish Settled', while 2% of secondary school teachers come from minority ethnic backgrounds. See M. Heinz and E. Keane (2018), 'Socio-demographic composition of primary initial teacher education entrants in Ireland', *Irish Educational Studies*, 37(4), pp. 523–543; A. McMahon (10 September 2019), '[The changing face of teaching in Ireland](#)', *The Irish Times*.

¹⁵⁹ A. McMahon (10 September 2019), '[The changing face of teaching in Ireland](#)', *The Irish Times*.

¹⁶⁰ See Machowska-Kosiack, M and Barry. M A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

¹⁶¹ Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area, 31 March 2021.

¹⁶² The Migrant Teacher Project aims to address the under-representation of migrants in the teaching profession in Ireland. While 140 people applied to enrol, the course could only accommodate 40 people. More specifically, the Bridging Programme was developed for migrant teachers who have been educated and trained outside of Ireland.

The Commission recommends that the National Action Plan Against Racism:

- 10.9. tasks the Government with the development of a transparent plan as to how targets on the divestment and patronage of schools will be met. This plan should set out clear milestones for delivery and be underpinned by implementation monitoring structures and sanctions for inadequate implementation.**
- 10.10. tasks the Department of Education and Skills to develop national guidelines for the revision of school anti-bullying policies to ensure they adequately address racism. These guidelines should be co-designed with a diverse range of students including ethnic and religious minorities.**
- 10.11. tasks the Department of Education and Skills and the Department of Further and Higher Education, Research Innovation and Science to embed mandatory anti-racism programmes at all levels of the education system, as well as in initial teacher training and continuous professional development programmes. Anti-racism education should combat racism and promote intercultural understanding, and include content tailored to different groups' experiences of racism such as Travellers and People of African Descent.¹⁶³**
- 10.12. tasks the Department of Education and Skills and the Department of Further and Higher Education, Research, Innovation and Science to introduce frameworks for increasing diversity among the teaching professions, similar to that introduced across higher education for increasing the participation of students with disabilities (DARE) and people from lower socio-economic backgrounds (HEAR).**

¹⁶³ The Children's Rights Alliance has also recommended that adequate and comprehensive national training for all teachers on culturally inclusive and anti-racist whole-school approaches should be provided: Children's Rights Alliance, [Report Card 2021](#) (2021), p. 65.

11. Work and employment

Proactively advancing the socio-economic right to decent work¹⁶⁴ has been a priority for the Commission under its Strategy Statement 2019–2021,¹⁶⁵ and is an obligation on the State under the *International Covenant on Economic, Social and Cultural Rights* and the *European Social Charter*.¹⁶⁶ A National Action Plan Against Racism may include positive action measures to achieve appropriate representation in employment.¹⁶⁷

Decent work for all

Commission-funded research has identified how groups including minority ethnic and migrant communities are overlooked and under-served in the Irish labour market in terms of the dimensions of decent work; they are more likely to face restrictions in accessing the labour market, face barriers in occupational attainment, are more likely to have lower pay, lower security and stability in work, and are more exposed to work-related discrimination.¹⁶⁸ The European Committee of Social Rights has highlighted that such precarious and low-paid workers are particularly vulnerable to the impacts of the Covid-19 crisis.¹⁶⁹ Recent Commission-funded research highlights unemployment rates of 33 per cent for people of African descent and 80 per cent for Travellers, noting that ‘prejudice and discrimination are likely to play a significant role in accounting for the employment gap between Travellers and non-Travellers’.¹⁷⁰ Labour market discrimination is prevalent for minority ethnic groups in the State. Research has found that 20 per cent of ethnic minority workers report discrimination in the workplace, compared to 7 per cent of workers

¹⁶⁴ As defined by the International Labour Organisation, decent work ‘Involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men’. See <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>.

¹⁶⁵ IHREC, [Strategy Statement 2019–2021](#), at p. 8.

¹⁶⁶ See Article 7 ICESCR. Ireland will also be examined in 2022 on its implementation of the labour rights protections in the European Social Charter, including the rights to just conditions of work, to fair remuneration, to organise and bargain collectively, and to dignity at work.

¹⁶⁷ OHCHR, [Developing National Action Plans Against Racism](#), 2014, at p. 50.

¹⁶⁸ The report *Monitoring Decent Work in Ireland* identified the six dimensions of decent work to include: access to work, adequate earnings, employee voice, security and stability of work, equality of opportunity and treatment in employment, and health safety. See Frances McGinnity, Helen Russell, Ivan Privalko & Shannen Enright, [Monitoring Decent Work in Ireland](#), 2021.

¹⁶⁹ European Committee of Social Rights, [Statement on COVID-19 and social rights](#) (24 March 2021), p. 4.

¹⁷⁰ See Frances McGinnity, Helen Russell, Ivan Privalko & Shannen Enright, [Monitoring Decent Work in Ireland](#), 2021, at p. 50, 54–55.

overall.¹⁷¹ Compared to 'White Irish' people, Travellers are almost ten times more likely to experience discrimination in seeking work.¹⁷² In comparison to 'White Irish' people, Black people of Irish nationality were twice as likely to experience discrimination when seeking employment and 3.4 times as likely to experience discrimination in the workplace. Black people of other nationalities were five times more likely to experience discrimination when seeking employment, and over 2.5 times more likely to experience discrimination in the workplace.¹⁷³ Ethnic minority young people report discrimination, racism and micro-aggressions to be frequent when seeking employment and in the workplace.¹⁷⁴ Moreover, experiences of discrimination align with significant disadvantage in labour market outcomes, with Travellers experiencing chronic unemployment,¹⁷⁵ poverty and social exclusion.¹⁷⁶

In addition, there are other structural barriers to labour market access for ethnic minority groups, including issues regarding the recognition of experience, skills and education gained outside of Ireland,¹⁷⁷ English language acquisition,¹⁷⁸ Irish language requirements for entry to certain professions such as teaching and law,¹⁷⁹ and lack of familiarity with the State's job culture and employment system.¹⁸⁰ Asylum seekers face a wide range of barriers to

¹⁷¹ See Frances McGinnity, Helen Russell, Ivan Privalko & Shannen Enright, [Monitoring Decent Work in Ireland](#), 2021, at p. 104-105

¹⁷² The study [Who Experiences Discrimination in Ireland?](#) found that, compared to 'White Irish' respondents, Travellers are almost ten times more likely to experience discrimination in seeking work.

¹⁷³ [Ethnicity and Nationality in the Irish Labour Market \(2018\)](#)

¹⁷⁴ In the workplace, young participants of this study reported several examples of being directly discriminated against, or positioned as inferior, by virtue of a name, their race, skin colour or visible signifiers. See Machowska-Kosiack, M and Barry. M A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

¹⁷⁵ In comparison to the five other EU countries surveyed, Ireland had the lowest percentage of Travellers in employment (13% of Traveller men and 17% of Traveller women). See FRA, [Roma and Travellers in Six Countries](#), 2020.

¹⁷⁶ FRA found that 40% of Travellers live in households that have (great) difficulties to make ends meet; 28% of Traveller children grow up in severe material deprivation; 31% of Travellers live in households that cannot pay for basic items; 25% live in accommodation with a leaking roof or damp walls or rotting window frames or floors; and 10% reported that someone in their household went to bed hungry at least once in the month before the survey. See: [Travellers in Ireland: Key results from the Roma and Traveller survey 2019](#).

¹⁷⁷ While the Migrant Integration Strategy 2017-2020 commits to better promoting the State's system for recognising vocational skills accredited in other countries (action 43 under the strategy), stakeholders have raised concerns that more efforts are needed in this regard, including greater involvement of professional bodies in the recognition process. See Samantha Arnold et al., [Policy and Practice Targeting the Labour Market Integration of non-EU Nationals in Ireland](#), June 2019, at p. 28-29.

¹⁷⁸ English language acquisition has been identified as a prominent barrier to progression at work for migrants. See MRCI, [Access, Progress, Thrive: Towards an Inclusive Labour Market in Ireland](#), 2020.

¹⁷⁹ See Machowska-Kosiack, M and Barry. M A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

¹⁸⁰ IHREC, IHREC CERD Report (2019) p. 73-7

employment, as a result of which they have difficulty finding work in sectors of their choice or in roles commensurate with their skills or qualifications.¹⁸¹

Many migrant women in the care and domestic work sectors who have become or are at risk of becoming undocumented work in vulnerable employment conditions.¹⁸² The rights of domestic workers are set out in a code of practice,¹⁸³ but due to the isolated nature of domestic work which is carried out in private homes, these rights are at risk of being breached by employers either by intent or by lack of knowledge of legal obligations.¹⁸⁴ There is no system for the inspection of labour standards in private household settings,¹⁸⁵ nor is there regulation of the home care industry,¹⁸⁶ which is a significant component of the domestic work sector.

¹⁸¹ These include: a lack of networks and knowledge of the employment system; discrimination; problems with having work permits recognised by employers; disadvantage related to the location of Direct Provision centres; lack of access to childcare, particularly for women; recognition of qualifications and experience; lack of work references; language issues; loss of knowledge currency and confidence; difficulties coping with displacement and trauma; employer attitudes and awareness; and knowledge of employment rights. See Doras, [Getting Right to Work: Access to Employment and Decent Work for International Protection Applicants in Ireland](#).

¹⁸² IHREC CERD Report (2019) p. 77-78.

¹⁸³ [S.I. No. 239/2007 - Industrial Relations Act 1990 \(Code of Practice for Protecting Persons Employed in Other People's Homes\) \(Declaration\) Order 2007](#).

¹⁸⁴ Workplace Relations Commission, [Employment Rights of Domestic Workers in Ireland](#), 2019.

¹⁸⁵ For further information, see IHREC, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports](#), p.91.

¹⁸⁶ HIQA, [Submission to the Department of Health's consultation on homecare services](#), 2017; MRCI, [Migrant Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland](#). The Programme for Government indicates the Government's intention to legislate for regulation of the home care sector with the stated commitment to "Introduce a statutory scheme to support people to live in their own homes, which will provide equitable access to high-quality, regulated home care". See [Programme for Government: Our Shared Future](#), at p. 51.

Noting significant criticisms of the current policy framework,¹⁸⁷ and its limitations in terms of the dimensions of decent work,¹⁸⁸ future employment-focussed interventions should be centred on a 'decent work' agenda for all, especially for minority ethnic groups.¹⁸⁹ This must address access to work as a priority, but should also address the other dimensions of decent work including adequate earnings, employee voice (trade union representation), security and stability of work, equality of opportunity and treatment in employment, and health and safety at work.

The Commission recommends that the National Action Plan Against Racism:

- 11.1. includes securing decent work in all its dimensions as the top-level goal in respect of improving ethnic minority employment.**
- 11.2. requires the development of a targeted, culturally appropriate and time-bound national positive action employment programme to address the chronic unemployment faced by Travellers, including specific measures targeting the employment of Traveller women, co-designed with Travellers and their representative organisations.**

¹⁸⁷ The Commission notes concerns that key national employment strategies have not named Travellers as a target group and there has not been a national Traveller-specific training or employment strategy. See St. Stephen's Green Trust: [Mincéir Misl'er a Tom Tober. Travellers in the Mainstream Labour Market: Situation, Experience, and Identity](#), April 2021, at p. 15; [Mincéir Gruber Malaid Streed: What Next for Traveller Employment?](#), May 2019, at 25. In addition, stakeholders have noted that there has been little discernible progress on implementing the majority of employment-related actions under the National Traveller and Roma Inclusion Strategy 2017-2021. See European Commission, [Civil society monitoring report on implementation of the national Roma integration strategy in Ireland: Assessing the progress in four key policy areas of the strategy](#). Prepared by Pavee Point Traveller and Roma Centre, October 2018, at p. 14-16. Furthermore, concerns have been raised that there is no clear budget allocated to the strategy and a lack of transparency around actual spend, that the strategy lacks clear timelines and a rigorous monitoring and evaluation framework more broadly, and that the few progress indicators that have been identified under the strategy were not developed in consultation with Traveller and Roma rights holders. See European Commission, [Civil society monitoring report on implementation of the national Roma integration strategies in Ireland: Focusing on structural and horizontal preconditions for successful implementation of the strategy](#). Prepared by Pavee Point Traveller and Roma Centre, March 2018, at p. 10-11.

¹⁸⁸ Access to work is addressed under national equality strategies for groups such as migrants, lone parents LGBTI+, Roma and Travellers; however other aspects of decent work such as adequate earnings, employee voice, security and stability of work, and health and safety are largely unaddressed. The presence of significant differences in these facets of decent work between groups highlights the importance of incorporating not only access to work but access to decent work in the national equality strategies.

¹⁸⁹ The Commission notes that a number of strategies are being reviewed this year with a view to developing successor strategies, including the Migrant Integration Strategy, the National Strategy for Women and Girls 2017-2020, and the National Traveller and Roma Inclusion Strategy 2017-2021. This presents an opportunity to incorporate the notion of 'decent work' into these strategies.

- 11.3. includes concrete measures to address ethnic and racial discrimination in the labour market, including in relation to recruitment, pay, and promotion.¹⁹⁰**
- 11.4. requires the introduction of a formal recognition process for the systematic assessment and recording of education, skills, and work experience gained abroad to facilitate the transfer of qualifications into domestic equivalents as appropriate.¹⁹¹**
- 11.5. tasks the Department of Enterprise, Trade and Employment and the Department of Social Protection with dissemination of accessible information and educational materials to inform people who have migrated to Ireland about the employment system and the administrative requirements in place.**
- 11.6. tasks the Department of Children, Equality, Disability, Integration and Youth with the establishment of a framework for the continuous monitoring of effective access to decent work for asylum seekers, informed by a baseline audit of the skills, qualifications, and labour market profile of the current cohort of international protection applicants and the employment they have been able to access to date.**
- 11.7. tasks the State to develop a national positive action employment programme, in collaboration with professional and trade associations, focused on ensuring that international protection applicants can retain and further develop their qualifications, experience, and skills with a view to accessing decent work.**
- 11.8. tasks the Department of Justice to consider employment equality issues in the proposed development of a regularisation scheme for undocumented people.¹⁹²**

¹⁹⁰ In respect of discrimination in pay, the Commission notes calls for mandatory ethnicity pay gap reporting in the UK. See TUC, '[The TUC, CBI and EHRC issue joint call for mandatory ethnicity pay gap reporting](#)', 25 June 2021. The Commission also notes the European Commission's proposal for EU legislation to support equal pay for equal work, which include proposals to ensure greater pay transparency. See European Commission, [Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms](#), Brussels, 4.3.2021, COM(2021) 93 final, 2021/0050(COD).

¹⁹¹ IHREC CERD Report (2019) p. 74.

¹⁹² The Commission notes the recent announcement of a draft scheme to regularise undocumented migrants in the State. See Department of Justice, [Minister McEntee outlines draft scheme to regularise undocumented migrants to Cabinet](#), 23 April 2021. A recent survey of 1,000 undocumented persons in the State found that

- 11.9. tasks the Department of Enterprise, Trade and Employment to review the State's Critical Skills Employment Permit from a gender perspective, with a view to considering the creation of permits for domestic work.**
- 11.10. includes strengthened protections for domestic workers, including through statutory regulation of the home care industry, enhancement of labour inspections in private household settings and targeted oversight of employers of domestic workers.**
- 11.11. tasks the State with provision of certified language education for people whose first language is not English, whether they are looking for work or in employment. Employers should be encouraged to support English language acquisition, for example by giving their staff time off work to attend language training.**

75% had been in Ireland for 5 years or more, 93% were working, 46% work more than 40 hours per week, and 26% receive less than the minimum wage. See Migrant Rights Centre Ireland, [Live here, work here, belong here: A survey of 1,000 undocumented people in Ireland](#), October 2020.

12. Accommodation

The Commission welcomes the Anti-Racism Committee's recognition that unequal access to accommodation is a form of structural racism, and that this has been particularly evident during the COVID-19 pandemic.¹⁹³ Overall, the State's approach to the provision of housing is inadequate and has significant implications for minority ethnic groups.¹⁹⁴

Discrimination and inequality in housing

Commission-funded research found that Black, Non-EU national and Traveller respondents disproportionately experience housing discrimination, deprivation, overcrowding and homelessness.¹⁹⁵ Other research has found that the Roma community experience severe overcrowding, poor quality accommodation, a lack of security of tenure, homelessness, and lack of access to rent supplement.¹⁹⁶ Ethnic minority young people report being discriminated against in the housing market, and have significant concerns about minority communities being concentrated in socially disadvantaged areas and the subsequent risk of this segregating communities.¹⁹⁷

Ethnic minority groups can face barriers in accessing the social housing list, and there are frequent long delays in determining applications.¹⁹⁸

¹⁹³ Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), at p. 17.

¹⁹⁴ Forthcoming Commission-funded research has identified six dimensions to adequate housing, which include: access to housing; housing affordability; security; cultural adequacy; housing quality; and location, access to services and local environment. Helen Russell, Ivan Privalko, Frances McGinnity and Shannen Enright, *Monitoring Adequate Housing in Ireland* (forthcoming).

¹⁹⁵ 'Black' respondents are more than five times more likely to report housing discrimination than 'White Irish nationals'; 'Non-EU nationals' are more likely to experience housing deprivation than 'Irish nationals' (1.7 times as likely); 'Non-EU nationals' are more likely to live in overcrowded accommodation compared to 'Irish nationals', even when they are within the same income group (2.5 times as likely); Travellers are almost ten times as likely to report discrimination in access to housing as the 'White Irish' population; while Travellers represent less than 1 per cent of the Irish population, they make up 9 per cent of the homeless population; and that people whose nationality is other than Irish are also substantially overrepresented among the homeless population, particularly Romanians and people from African countries. R. Grotti, H. Russell, É. Fahey, and B. Maître, [Discrimination and Inequality in Housing in Ireland](#), June 2018.

¹⁹⁶ Research has also documented reports of Roma living in unsafe abandoned buildings and accommodation without basic facilities, including light and heat. See Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#). Despite these issues, there was no specific action in the National Traveller and Roma Inclusion Strategy 2017–2021 addressing the accommodation issues affecting the Roma community.

¹⁹⁷ See Machowska-Kosiack, M and Barry, M A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

¹⁹⁸ IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's combined 5th to 9th report](#), October 2019, at p. 94 and Mercy Law Resource Centre, [Minority Groups and Housing Services: Barriers to Access](#), March 2021, at p. 21.

The Commission continues to have significant concerns about the continued application of a Department of Housing, Planning and Local Government Circular (41/2012),¹⁹⁹ which has the effect of excluding certain qualified applicants (especially European Economic Area ('EEA') nationals) who would otherwise qualify for social housing supports.²⁰⁰ The Commission notes some progress, regarding the non-use and/or disapplication of this Circular in certain circumstances, by some of Dublin's local authorities on foot of the Commission's invitation to complete Equality Action Plans (2020 Annual Report pp.44 and 45). However, the Circular remains in force at the time of writing.

Current Government housing policy is now heavily dependent on the use of the private housing market, resulting in greater reliance on housing supports.²⁰¹ The Commission continues to support individuals who are experiencing discrimination in access to housing due to their receipt of the Housing Assistance Payment ('HAP'). Forthcoming Commission-funded research finds that discrimination on the housing assistance ground is often combined with discrimination on the grounds of ethnicity, resulting in an intersectional impact in additional harm and social exclusion,²⁰² as evidenced in respect of groups such as Travellers for example.²⁰³

The Commission recommends that the National Action Plan Against Racism:

12.1. recognises housing as a fundamental human right, and as a public good that should be provided through public policy rather than the private market.

12.2. tasks the Department of Housing, Planning and Local Government to urgently review the Housing Acts and associated Circulars and policy instruments to

¹⁹⁹ This Circular was issued by the Department of Housing, Planning and Local Government in December 2012 to all housing authorities in the State, to provide 'advice when considering whether to accept an application for social housing support from a non-Irish national.'

²⁰⁰ Mercy Law Resource Centre, [Minority Groups and Housing Services: Barriers to Access](#), March 2021, at p. 6-8. In April 2018, the Commission invited the four Dublin local authorities to carry out equality reviews specifically focused on EEA and non-EEA nationals' access to social housing and homeless services. These reviews raised serious concerns across the local authorities about the application of the Circular, which excludes certain applicants (especially EEA nationals) who would otherwise qualify for social housing supports: IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), October 2019, at p. 93-94

²⁰¹ IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), October 2019, at p. 95.

²⁰² In 2020, 19% or 118 of the 1,732 public queries to the IHREC's Your Rights Team concerned discrimination on the housing assistance ground under the *Equal Status Acts 2000-2018*. See IHREC, [Annual Report 2020](#), at p. 14.

²⁰³ See also, Ombudsman for Children, [No end in site: An investigation into the living conditions of children on a local authority halting site](#), May 2021, at p. 43.

reflect the increasingly diverse nature of the population in need of public housing, social housing and homelessness supports.

Traveller-specific accommodation

Travellers face egregious violations of the right to access adequate and culturally appropriate housing.²⁰⁴ The Commission has encountered Traveller families living in alarming levels of deprivation.²⁰⁵ Long-standing violations of Travellers' right to access adequate housing have been exacerbated by the impact of Covid-19.²⁰⁶ Despite the significant efforts and multiple strategies of civil society organisations, members of the Oireachtas and public bodies including the Commission, this is a matter of structural racism and discrimination, policy failures and inconsistencies, and a siloed approach by State actors that the State has failed fundamentally to address.²⁰⁷

The Commission used statutory legal powers²⁰⁸ to initiate equality reviews of all 31 local authorities focused on their provision of Traveller-specific accommodation.²⁰⁹ The accounts of these equality reviews were published by the Commission in July 2021, and found evidence that local authority underspend on Traveller accommodation is being driven

²⁰⁴ IHREC, [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#) (June 2021) and IHREC, [Submission to the Joint Committee on Key Issues affecting the Traveller Community](#) (February 2021). The European Committee of Social Rights has found that Ireland is in continued violation of the European Social Charter, with on-going evidence of a substantial deficiency in providing Traveller accommodation. See IHREC, [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#) (June 2021).

²⁰⁵ Including accommodation that is wholly unsuitable for human habitation with damp and mould; a lack of cooking facilities; inadequate sanitation, rat and fly infestations; insecure electricity; and irregular or no rubbish collections. IHREC, [Comments on Ireland's 17th National Report on the Implementation of the European Social Charter](#) (June 2020), pp. 11-12. See also, Dáil Éireann Debate, [Traveller Accommodation: Statements](#) (3 June 2021).

²⁰⁶ While the Traveller community accounts for 0.7 per cent of the general population, the evidence indicates that from 1 March 2020 to 27 February 2021, 13% of all Travellers, and 15.8% of those aged 18-64 years, have been infected with COVID-19; this compares with 4.4% and 5.4%, respectively, of the general population: HIQA, [Evidence synthesis for groups in vaccine allocation group nine - those aged 18-64 years living or working in crowded conditions](#) (31 March 2021), pp. 31, 41. See also, IHREC, [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#) (June 2021).

²⁰⁷ IHREC, [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#), June 2021, at p. 23.

²⁰⁸ Section 32 of the Irish Human Rights and Equality Commission Act (2014) provides specific statutory powers to carry out Equality Reviews and to prepare Equality Action Plans.

²⁰⁹ IHREC, [Accounts of First Council-by-Council Equality Review on Traveller Accommodation in History of State Published](#), 14 July 2021.

by both structural issues in how funding is allocated and drawn down,²¹⁰ but also by a frequently inadequate, deficient process for identifying actual and future housing needs.²¹¹ March 1, 2022 will mark five years since the State formally recognised Traveller ethnicity. However, these equality reviews also show scant evidence of a full appreciation of the practical implications of cultural difference when providing services and when engaging with the Traveller community. Aspects of Traveller culture such as ethnicity, nomadism, use of caravans and horsemanship are not adequately provided for in accommodation plans.²¹² The Commission was also particularly concerned that in most of the equality reviews, there was little or no evidence of participation by the Local Traveller Accommodation Consultative Committee (LTACC) or to any consultation with local Travellers or Traveller organisations, to inform the equality review.

The publication of the equality review accounts in July 2021, and the specific recommendations issued to each local authority do not mark the conclusion of this legal process, which remains ongoing and subject to further review by the Commission.

The Commission is of the view that the five year term of the National Action Plan Against Racism is sufficient to comprehensively deliver on Traveller-specific accommodation in Ireland. Progress in this area should be viewed as core indicator of the success of the National Action Plan Against Racism.

²¹⁰ Between 2008 and 2018, of €168.8 million allocated to local authorities for Traveller-specific accommodation, just two thirds (€110.6 million) was drawn down. Traveller specific accommodation budget provides for renovation and refurbishment work to existing accommodation. Spending may represent renovation or upgrade to existing sites, and not provision of new units of accommodation. Councils highlight difficulties with securing spending approval and reported lack of a multi-annual budget cycle. There are also stated difficulties in agreeing specifics of projects (design of site and type of accommodation) and protracted consultations and discussions with residents, and also the planning process.

²¹¹ The reviews found evidence that the process for assessing the number of Travellers in a given local authority area varies from council to council, and that the process itself can be deficient in capturing accurate information. There has been no facility for people to identify themselves as members of the Traveller community on the social housing application form, which has implications for the identification of and inclusion of Travellers within particular housing streams. Travellers' true accommodation preference (i.e. Traveller-specific accommodation v. social housing) is not adequately transparent, nor does it appear to have been independently verified over time. There is a concern that some members of the Traveller community experience a lack of Traveller-specific accommodation, or are exasperated by overcrowding or poor hygiene conditions in such accommodation, and for this reason feel that they have no choice but to apply for social housing.

²¹² By way of illustration, 22 of the 31 local authorities reviewed made no reference to the Caravan Loan Scheme, which facilitates the purchase of caravans for Travellers who wish to live on halting sites.

The Commission recommends that the National Action Plan Against Racism:

12.3. prioritises actions that will deliver Traveller-specific accommodation across Ireland during its five year term, including the implementation of the Commission's recommendations to local authorities and of those made by the Expert Group²¹³ and the CERD Committee.²¹⁴

12.4. includes actions to strengthen the legislative and policy framework regarding Traveller-specific accommodation including through legislative reform;²¹⁵ and through dissuasive sanctions for those local authorities that consistently fail to provide new and adequate Traveller-specific accommodation in areas where there is a stated need.

²¹³ Report of the Expert Review Group on Traveller Accommodation, available at: <https://rebuildingireland.ie/wp-content/uploads/2019/07/2019-July-Expert-Review-Group-Traveller-Accommodation.pdf>.

²¹⁴ Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at para. 28.

²¹⁵ The Housing (Traveller Accommodation) Act 1998 as amended (eviction powers under S32); Section 10 of the Housing (Miscellaneous Provisions) Act, 1992, gives the housing authorities power to take direct action in relation to temporary dwellings parked, without lawful authority, in a public place within five miles, of a site provided under the 1988 Housing Act.; Part 11A, inserted into the Criminal Justice (Public Order) Act 1994, which), made trespass a criminal offense. This is the legislation which is used for the removal of temporary dwellings. Section 69 of the Roads Act, 1993 empowers a member of An Garda Síochána, or an authorised person in a local authority, to order the removal of a temporary dwelling. Section 69(1) (a) takes no account of the reasons for the presence of the temporary dwelling, and there is no opportunity to provide a lawful excuse in advance of the seizure of the temporary dwelling.; The Control of Horses Act 1996, Travellers have experienced a notable increase in the seizure and impoundment of their horses.; Planning and Development Act, 2000, and Part 8 of the Planning and Development Regulations, 2001 (S.I. 600 of 2001), as amended. This is the time-limited process through which the vast majority of Traveller-specific accommodation is delivered.

13. Health

The World Health Organization defines health as:

“a state of complete physical, mental and social well-being and not merely the absence of a disease or infirmity”.²¹⁶

However, the right to health is intricately related with other social determinants including education, housing and work. The right to healthcare, including public health, medical care, social security schemes, social services and social care for ethnic minority groups in Ireland may be advanced through due regard to international standards pertaining to wider healthcare systems.²¹⁷

These standards require, for example:

- sufficient access to healthcare (based on transparent criteria);
- sharing of the cost of healthcare across the community;
- measures to ensure there are no unnecessary delays in treatment;
- conditions of stay that are compatible with humanity;
- access to interpreting services;
- greater diversity of staff across all healthcare settings; and
- improved access to mental health supports.²¹⁸

There is divided access to healthcare services between public and private patients generally,²¹⁹ which impacts ethnic minority groups disproportionately because they are less likely to have access to private healthcare services due to being over-represented in poverty and unemployment.

Whilst understanding the rationale for including a section on Health, as noted earlier, the Commission considers that the National Action Plan Against Racism would be strengthened by the inclusion of a new section on Social Care.

²¹⁶ [World Health Organisation Constitution, p1](#)

²¹⁷ European Social Charter, Article 11 – The Right to Protection of Health

²¹⁸ [European Social Charter, p240](#)

²¹⁹ Approximately 43% of the population (mainly higher income groups) are covered by private health insurance, and there is a growing body of evidence that some people are experiencing difficulties in accessing health care due to cost. See Sheelah Connolly and Maev-Ann Wrenn, [Universal Health Care in Ireland—What Are the Prospects for Reform?](#), 2019.

Implementing and monitoring such actions requires the use of an ethnic identifier across all health systems, including patients and staff across public and private healthcare, mental health care systems, social care, and social protection health provisions.²²⁰

Ethnic minority groups and women may face barriers in accessing or receiving treatment in sexual, reproductive and fertility health services. Current limitations to Ireland's abortion law disproportionately impact structurally vulnerable women, particularly among diverse migrant populations.²²¹

The Commission recommends that the National Action Plan Against Racism:

- 13.1. includes a public health approach to its Health section, and connect the measures in the sections relevant to the social determinants of health with addressing inequalities in health outcomes experienced by ethnic minority groups.**
- 13.2. tasks the Department of Health to develop policy measures and the HSE to develop service measures to increase access to, treatment in, and routes through the Irish healthcare service system for members of ethnic minority groups.**
- 13.3. tasks the Department of Health (policy) and HSE (service delivery) with improving access to, and treatment in, sexual, reproductive and fertility healthcare for ethnic minority and migrant women.²²²**

Mental health supports for ethnic minority groups

One of the strongest themes that arose from the Commission's consultations in 2019 on CERD was the significant impact of racial discrimination and prejudice on the mental health of minority ethnic communities.²²³ Racist incidents, discrimination, micro-aggressions and a lack of accurate representation have been highlighted by ethnic minority young people as having the most detrimental impact on their mental wellbeing, leading to constant

²²⁰ This is particularly important in the context of pandemic. See NESC, [Secretariat Covid-19 Working Paper Series The Impacts of Covid-19 on Ethnic Minority and Migrant Groups in Ireland](#), Research Series, Paper No.18, January 2021, at p.11, which highlights also the lack of ethnic breakdown of COVID-19 cases or deaths, as is the case in the England and Wales (which shows that black and ethnic minority ethnic groups have higher death rates due to socioeconomic factors).

²²¹ Side, K. (2020) [Abortion Im/mobility: Spatial Consequences in the ROI](#). Feminist Review.

²²² The Commission notes that the Women's Health Taskforce in the Department of Health could be an appropriate mechanism for advancing such policy measures. See <https://www.gov.ie/en/campaigns/-womens-health/>.

²²³ IHREC, Be Heard on CERD Consultation, 2019.

alertness, anxiety, depression, and low self-esteem.²²⁴ This is echoed by research which correlates experiences of racism with high levels of depression, anxiety, low self-esteem, and reduced resilience.²²⁵ Tragically the suicide rate is significantly higher amongst Traveller men than the general population and a major cause of Traveller deaths, highlighting the urgent need for suicide prevention supports and support for the suicide bereaved.²²⁶ Discrimination can lead to substance abuse, suicidal ideation, and disengagement from public services.²²⁷ The Commission has heard directly how mental health problems among ethnic minority children and young people are 'not taken seriously enough'.²²⁸

The Commission recommends that the National Action Plan Against Racism:

- 13.4. specifies a comprehensive set of actions to improve the design and delivery of mainstream and specialised mental health services to improve access and outcomes.**
- 13.5. tasks the Mental Health Commission to establish a participatory taskforce on minority ethnic mental health and the Government with implementing its recommendations.**
- 13.6. tasks the Health Service Executive to develop a designated mental health support service for ethnic minority groups, with a focus on supporting people who have experienced racist or discriminatory trauma and abuse, including children and young people.**

²²⁴ These experiences were also found to lead to imposter syndrome, internalised self-loathing and shame, being upset, angry and powerless. For instance, young people felt that they need to be '*always on guard*', attentive to peoples' reactions to their presence, always waiting for 'that' moment. Constant alertness made young people feel anxious, depressed or insecure about their own identity. See Machowska-Kosiack, M and Barry. M A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

²²⁵ Mental Health Reform (December 2016), [Ethnic Minorities And Mental Health: Guidelines For Mental Health Services and Staff on Working with People from Ethnic Minority Communities](#), p.8,

Pavee Point Traveller and Roma Centre and Department of Justice and Equality, Roma in Ireland – A National Needs Assessment, p.104 and Watson et al., A Social Portrait of Travellers in Ireland, p.11.

²²⁶ The All Ireland Traveller Health Study reported in 2010 that the suicide rate among Traveller men is 6.6 times higher than in the general population and suicide accounts for 11% of all Traveller deaths. Research conducted in 2017 identified that 82% of Travellers have been affected by suicide. See: All Ireland Traveller Health Study Team, [All Ireland Traveller Health Study](#), p. 94; Community Foundation for Ireland, [B&A Traveller Community National Survey](#), p. 48.

²²⁷ Cairde (2015), [Ethnic Minorities and Mental Health in Ireland: Barriers and Recommendations](#), p.13 and [Mental Health Reform, Ethnic Minorities and Mental Health](#), p.9.

²²⁸ Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area, 31 March 2021.

13.7. addresses the urgent need for suicide prevention supports for the Traveller community and support for the suicide bereaved.

Improving Health Outcomes for Travellers and Roma

Poor health outcomes and lower life expectancy among Travellers, are intimately linked to the cumulative effects of disadvantage, prejudice and discrimination in education, employment, and housing.²²⁹ In tandem with its earlier comments on housing, the Commission is of the view that - despite the significant efforts and multiple strategies of actors across Irish society - this is a matter of structural racism that the State has failed fundamentally to address. This failure to address decades of structural racism has meant that Travellers die younger and are sicker throughout their shortened lives. While the National Traveller and Roma Inclusion Strategy 2017–2021 includes several actions focused on the healthcare system, the implementation of the policy framework has been characterised as inadequate.²³⁰ In particular, the Commission is concerned that a National Traveller Health Action Plan is yet to be implemented under the strategy, having been deprioritised due to Covid-19.²³¹ Roma are at-risk for poor health outcomes, experiencing a higher infant mortality rate and a lower life expectancy compared to the general population.²³² Poorer health outcomes and increased exposure to Covid-19 are disproportionately impacting Travellers and Roma, likely to be linked to their poor housing conditions.²³³

²²⁹ Watson et al., A Social Portrait of Travellers in Ireland, pp.61–62, 78. Approximately 67% of service providers reported their belief that Travellers experience discrimination in their use of health services. See Department of Justice and Equality, National Traveller and Roma Inclusion Strategy 2017–2021, p.11.

²³⁰ ECRI, [Report on Ireland \(Fifth Monitoring Cycle\)](#), at p. 25.

²³¹ Action 73 under NTRIS states 'The Health Service Executive will develop and implement a detailed action plan, based on the findings of the All Ireland Traveller Health Study, to continue to address the specific health needs of Travellers, using a social determinants approach'. Progress on this action has been delayed due to Covid-19, as stated by the Minister of State at the Department of Health in April 2021. See [Mental Health Policy, Dáil Éireann Debate, Wednesday - 21 April 2021](#).

²³² Pavee Point Traveller and Roma Centre, [Roma Communities in Ireland and Child Protection Considerations](#), 2012.

p23

²³³ Shannen Enright, Frances McGinnity Ivan Privalko, Helen Russell, [Covid-19 and Non-Irish Nationals in Ireland](#), at p. 12.

The Commission recommends that the National Action Plan Against Racism:

- 13.8. tasks the Department of Health to urgently finalise the National Traveller Health Action Plan and support its full implementation by providing adequate resources where needed and establishing a participatory structure for monitoring its implementation.**

Cultural competency and peer-led provision in healthcare settings

In addition to greater access to healthcare for minority ethnic groups, there is an urgent need to expand increased cultural competency and trauma-informed training among health service providers. The Commission notes through its consultation activities reports of discrimination and/or racial stereotyping when receiving healthcare treatment,²³⁴ which is not only upsetting for a patient, but also can result in a substandard provision of care, including delayed diagnoses or misdiagnoses. Such treatment in healthcare settings can, in turn, erode trust among ethnic minority communities and the wider health care system leading to worse health outcomes. Greater diversity of healthcare staff can greatly ameliorate these dynamics.

Peer-led health support services, partnership initiatives or interventions that engage in health promotion, advocacy, and empowerment have proven an extremely important means of reducing health inequalities – including in the context of the Covid-19 pandemic.²³⁵ Further, new models of engagement with community leaders and groups can create positive dialogue on health that may overcome service barriers.²³⁶

The Commission recommends that the National Action Plan Against Racism:

- 13.9. promotes cultural competency and trauma-informed approaches to create a culturally inclusive environment and improve the quality of care in order to foster trust and improve health outcomes across minority groups.**
- 13.10. promotes peer-led approaches and partnership-working across all areas of public health and health care; as well as investment in a programme of research and**

²³⁴ IHREC, CERD Report, 2019, at p. 83.

²³⁵ Vallani, J. et al (2021) [A community-health partnership response to mitigate the impact COVID-19 pandemic on Travellers and Roma in Ireland.](#)

²³⁶ Cairde (2015), [Ethnic Minorities and Mental Health in Ireland: Barriers and Recommendations.](#)

evaluation of such initiatives with a view to scaling them up to promote systems level change.

14. Access to Justice

The Commission welcomes the inclusion of access to justice as a priority area for consideration in the development of a National Action Plan Against Racism.²³⁷ The Commission has identified a number of access to justice issues that potentially have a discriminatory impact in terms of outcomes for marginalised and discriminated against groups.²³⁸ The Commission has recommended specific measures for improving access to justice for minority ethnic and racial groups.²³⁹

Diversity within the justice system

Enhancing the level of cultural competency within the criminal justice system is an important priority.²⁴⁰ Human rights and equality standards should be central to the initial and continuous training of all members of the judiciary²⁴¹ and criminal justice personnel, including staff within the Office of the Director of Public Prosecutions, the Prison Service, and detention centres.²⁴² The staff of criminal justice agencies,²⁴³ including the judiciary,²⁴⁴ must fully reflect the diversity of Irish society.²⁴⁵

²³⁷ Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#) (30 November 2020) p. 16. Under the Commission's Human Rights and Equality Grants Scheme 2020–2021, the Commission is supporting projects, by 42 organisations, empowering rights-holders who face the greatest barriers to justice to access their rights. See IHREC, [Strategy Statement 2019–2021](#) (2019); [Human Rights and Equality Grants 2020 Announced](#) (Press release, 16 October 2020).

²³⁸ The Commission has raised a number of areas of concern in regard to access to justice: right to a fair trial and equal access before the law; access to a counsel during questioning; access to effective remedies for undue delays in civil and criminal proceedings; and the availability and resourcing of civil and criminal legal aid. See for example IHREC CERD Report (2019) pp. 11–15.

²³⁹ The Commission has recommended: interpreting services in Ireland are professionalised and regulated; the collection of data on sentencing, which is disaggregated on the grounds of ethnicity, to understand the over-representation of minority ethnic groups in the prison population; the introduction of a multi-party litigation mechanism; that the impact of High Court Practice Direction 81 on migrants be addressed; and a review of the operation of section 11 of the *Criminal Law (Sexual Offences) Act 1993* concerning the interpretation of 'brothel keeping'. See IHREC CERD Report (2019).

²⁴⁰ IHREC CERD Report (2019) pp. 139–140.

²⁴¹ The Commission has called for the Judicial Studies Committee to support the specialisation and continued training of the judiciary on human rights, equality and cultural competence. IHREC CERD Report (2019) p. 140.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ In legislative observations on the General Scheme of the *Judicial Appointments Commission Bill*, the Commission stated that the concept of diversity should be defined in the legislation. It should also recognise and seek to address diversity within equality groups, such as for example, disabled women, or women from the Traveller community. The Commission also called for the membership of the Judicial Appointments Commission to reflect the diversity of the population, and recommended the proposed legislation require the Judicial Appointments Commission to publish statements on how they will pursue the objectives of improving diversity in the judiciary and to collect and publish disaggregated equality data in relation to both candidates and appointments to the judiciary. See IHREC, [Submission to the Minister for Justice on the General Scheme of the Judicial Appointments Commission Bill](#) (April 2021) pp. 15–16, 25–27.

²⁴⁵ The Commission has recommended that public bodies in the criminal justice sector should set specific targets for diversity in their recruitment procedures. IHREC CERD Report (2019)

The Commission recommends that the National Action Plan Against Racism:

- 14.1. provides for initial and ongoing training and education on human rights and equality for all staff within criminal justice bodies, including An Garda Síochána, and the judiciary.**
- 14.2. includes specific targets to increase the diversity of criminal justice agencies and the judiciary.**

Strengthening the legislative framework on access to justice

Equality legislation

Minority ethnic groups are significantly overrepresented among people living in poverty.²⁴⁶ At present equality legislation does not prohibit discrimination on the ground of socio-economic status,²⁴⁷ nor does it, explicitly prohibit discrimination against transgender, non-binary and intersex people, or recognise intersectional discrimination where each ground adds to the other ground.²⁴⁸ There are upper limits on the amount of compensation that may be awarded to a victim of discrimination.²⁴⁹ There are wide-ranging issues regarding access to a remedy for discriminatory refusal of entry to a licensed premises under the *Intoxicating Liquor Act 2003*, which have a particular impact on Travellers.²⁵⁰ The Commission notes the State's commitment to review the Equality Acts in autumn 2021,²⁵¹ as well as the European Commission's intention to:

²⁴⁶ IHREC CERD Report (2019)

²⁴⁷ IHREC CERD Report (2019) p. 18. The programme for government contains a commitment to examine the introduction of 'socio-economic disadvantaged status' as a protected ground under equality law. See Programme for Government: Our Shared Future, at p. 12.

²⁴⁸ IHREC, [Submission to the Citizens' Assembly on Gender Equality](#), March 2020, at p. 27-28.

²⁴⁹ Section 82(4) of the Employment Equality Acts 1998–2015 provides that the maximum amount that can be paid in compensation is the greater of 104 weeks' pay or €40,000 where the complainant was in receipt of remuneration at the time of the referral of the claim or at the date of dismissal, or in any other case €13,000. Section 27(2) of the Equal Status Acts 2000–2015 provides that the maximum amount of redress is the amount that may be awarded by the District Court, currently €15,000.

²⁵⁰ Access to a remedy for discriminatory refusal of entry to a licensed premises (including bars, public houses, hotels, or clubs) is governed by section 19 of the Intoxicating Liquor Act 2003, rather than by the Equal Status Acts 2000 to 2015. Therefore, these cases must be taken to the District Court, rather than the Workplace Relations Commission. Bringing a case under the 2003 Act is procedurally complex, may involve unwanted publicity, and carries a higher risk of costs and court fees. The Commission has highlighted that the majority of applications made to the District Court under the Act have been lodged by Travellers, and have been struck off, withdrawn, or adjourned. See IHREC CERD Report (2019) p. 19.

²⁵¹ Department of Children, Equality, Disability, Integration and Youth, [Minister O'Gorman announces review of the Equality Acts](#), press release, 22 June 2021.

“assess whether to propose possible legislation to strengthen the role of national equality bodies by 2022”.²⁵²

The Commission recommends that the National Action Plan Against Racism:

- 14.3. tasks the Department of Children, Equality, Disability, Integration and Youth to strengthen the Equality Acts and their operation to provide more effective protection and redress for minority ethnic groups.**

Legal aid

The legal aid scheme provided for under the *Civil Aid Act 1995* means the Legal Aid Board is precluded from providing representation before quasi-judicial tribunals and bodies with which minority ethnic communities regularly engage, including those dealing with social welfare appeals, housing issues including eviction proceedings, employment, and equality cases.²⁵³ Travellers in particular are impacted by inadequate access to legal aid in respect of eviction proceedings.²⁵⁴ The minimum financial contribution for legal representation also represents a barrier to access.²⁵⁵ The Legal Aid Board must be adequately resourced to ensure that waiting times are reduced.²⁵⁶ The Commission notes the State’s commitment to review the civil legal aid scheme and bring forward proposals for reform in 2021.²⁵⁷

²⁵² European Commission, [Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin \('the Racial Equality Directive'\) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation \('the Employment Equality Directive'\)](#), 19.03.2021, at p. 14.

²⁵³ Human Rights Council (2011), [Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland](#), A/HRC/17/34/Add.2, p.4. The Committee on the Elimination of Racial Discrimination has recommended that the State “extend the scope of the Legal Aid Board to the areas of law that are particularly relevant to Travellers and other ethnic minority groups, including by designating the Social Welfare Appeals Office and the Workplace Relations Commission as prescribed tribunals under section 27 (2) (b) of the *Civil Legal Aid Act 1995*.” See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#) (23 January 2020) CERD/C/IRL/CO/5-9, para 44.

²⁵⁴ The Commission has highlighted that most eviction notices only give Travellers 24 hours to comply, and in this context the lack of a fast, effective legal aid system has a foreseeable consequence in that Travellers may not be represented at hearings which may result in them being directed to vacate a site that they treat as their home. See IHREC, [Comments on Ireland’s 18th National Report on the implementation of the European Social Charter](#), June 2021, at p. 21-22.

²⁵⁵ The minimum financial contribution was raised from €50 to €130 in 2013, with no automatic entitlement to a fee waiver in cases of ‘undue hardship’. See IHREC, [Submission to the Citizens’ Assembly on Gender Equality](#), March 2020, at p. 30.

²⁵⁶ IHREC CERD Report (2019) p. 13, p. 143; IHREC, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s combined sixth and seventh periodic reports](#) (January 2017) p. 39.

²⁵⁷ Department of Justice, [Justice Plan 2021](#), action 89, at p. 23.

The Commission recommends that the National Action Plan Against Racism:

- 14.4. **tasks the Department of Justice to ensure that the forthcoming review of the civil legal aid scheme extends the scope of the Legal Aid Board to areas of law that are particularly relevant to Travellers, ethnic minorities and other low-income groups. A commitment to doing this should be included in the State's one year follow up report under CERD, due since December 2020.**²⁵⁸
- 14.5. **tasks the Department of Justice to develop a tailored approach to the provision of legal aid for minority groups including Travellers, particularly given the speed at which eviction proceedings are disposed of before the Courts and the disproportionate impact this can have on Travellers.**²⁵⁹

Interpreting services

As noted in [Section 6](#) above, the limited availability of appropriately trained interpreters with technical expertise can hinder access to public services.²⁶⁰ This includes access to courts and quasi-judicial tribunals and bodies, where poor interpreting can affect a court's perception of a defendant or a tribunal's assessment of the credibility of a protection applicant.²⁶¹ The Irish Translators' and Interpreters' Association has raised concerns that the sector is unregulated, with no properly accredited course to train legal interpreters how to interpret accurately and how to behave ethically (e.g. confidentiality, impartiality, conflict of interest), and no testing system to ensure that interpreters are competent.²⁶² The Commission notes the requirement under *EU Directive 2010/64/EU* that Member States

²⁵⁸ The UN Committee on the Elimination of Racial Discrimination specifically requested that the State provide information in the one year follow up regarding efforts to implement the Committee's recommendation 'that the State party extend the scope of the Legal Aid Board to the areas of law that are particularly relevant to Traveller and other ethnic minority groups, including by designating the Social Welfare Appeals Office and Workplace Relations Commission as prescribed tribunals under Section 27(2)(b) of the Civil Legal Aid Act 1995'. See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at paras. 44, 56.

²⁵⁹ As recommended in IHREC, [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#), June 2021, at p. 22.

²⁶⁰ IHREC CERD Report (2019) p. 84-85.

²⁶¹ Irish Translators' and Interpreters' Association, [Submission to the Working Group to Report to Government on improvements to the Protection Process, including Direct Provision and Supports for Asylum Seekers](#), 2015, p.2.

²⁶² Irish Translators' and Interpreters' Association, [ITIA Submission to the Criminal Justice Strategic Committee on a new Criminal Justice Sectoral Strategy](#), August 2020, p.2

take concrete measures to ensure quality interpretation and translation in criminal proceedings, including the establishment of a register of qualified independent providers.²⁶³

The Commission recommends that the National Action Plan Against Racism:

- 14.6. tasks the Department of Justice to urgently develop a framework for the professionalisation and regulation of interpreting services for legal and administrative proceedings, including through the development of a system of accreditation and training, recalling its recommendation in Section 6 of this submission.**

Multiparty litigation

Ireland does not have a mechanism for multi-party litigation, thereby preventing victims of rights violations and discrimination from collectively seeking redress and compensation.²⁶⁴

The Commission notes that the Law Reform Commission recommended the introduction of multi-party litigation in 2005, but this recommendation was never implemented.²⁶⁵

The Commission recommends that the National Action Plan Against Racism:

- 14.7. tasks the Department of Justice to action the Law Reform Commission's recommendation on the introduction of a multi-party litigation mechanism to provide for collective redress.**

²⁶³ [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings](#), Article 5. See also Irish Translators' and Interpreters' Association: [Letter to Commissioner for Justice](#), 22 March 2021; [Submission on the Transposition into Irish law of Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings](#), 2014.

²⁶⁴ Facilitating such collective action would permit multiple claimants to share the cost of judicial proceedings and expedite the resolution of their cases, with the overall objective of expanding access to justice and procedural efficiency. See FLAC, [Submission on the Multi-Party Actions Bill 2017: A submission by FLAC to the Joint Oireachtas Committee on Justice and Equality](#), 2018.

²⁶⁵ Law Reform Commission, [Report on Multi-Party Litigation](#), 2005.

15. Policing

The Commission welcomes the focus on policing as priority area for consideration in the development of a National Action Plan Against Racism.²⁶⁶ Policing reform is a key area of interest of the Commission.²⁶⁷ The Commission notes the focus on policing in the European Action Plan Against Racism and stresses the importance of this priority being reflected in Ireland's action plan.²⁶⁸

Human rights and equality standards in policing

While the Commission has welcomed the foregrounding of human rights in policing reform initiatives,²⁶⁹ the Commission considers that there is now a need for accelerated delivery on this agenda and a greater sense of urgency and responsiveness by An Garda Síochána to advancing human rights and equality.²⁷⁰ The Commission notes the current set of prioritised legislation under development in respect of policing reform.²⁷¹

While there has been commitment to incorporating human rights within police training,²⁷² the lack of a structured and continual process of professional development has been

²⁶⁶ Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#) (30 November 2020) p. 16.

²⁶⁷ See IHREC, [Submission to the Commission on the Future of Policing](#) (February 2018).

²⁶⁸ 'Through the High level group on combating racism, xenophobia and other forms of intolerance, the Commission will support Member States in preventing discriminatory attitudes within law enforcement, developing the necessary skills for investigation and prosecution against hate crimes and ensuring a fair and adequate treatment of victims. This will include a mapping of the main gaps and needs in EU Member States, and training action to detect and prosecute hate crime. The FRA will be invited to collect and disseminate good practices promoting fair policing, building on their existing training manual and guide on preventing unlawful profiling. The agency should also continue to gather and publish data on police attitudes towards minorities. CEPOL should step up its work on comprehensive training packages on human rights, ethics and racism, and sharpen awareness of fair and inclusive policing among mid-level and senior police officers and law enforcement representatives.'

²⁶⁹ The report states that 'human rights are the foundation and purpose of policing'. See Commission on the Future of Policing, [The Future of Policing in Ireland](#) (2018) p. ix.

²⁷⁰ The Commission has called for equality and human rights standards to be embedded in the ethos and operations of An Garda Síochána at all levels, including the delivery of services, the operation of the oversight and accountability mechanisms, and the training programmes provided to recruits and Garda members. The Commission has also recommended, in light of An Garda Síochána's obligations under the Public Sector Equality and Human Rights Duty that the policies, procedures and practices of An Garda Síochána should be equality and human rights proofed and should be made accessible to the public. See IHREC, [Submission to the Commission on the Future of Policing](#) (February 2018).

²⁷¹ These include the [General Scheme of Garda Síochána \(Powers\) Bill](#), [General Scheme of Garda Síochána \(Digital Recording\) Bill](#), and the [General Scheme of the Policing, Security and Community Safety Bill](#).

²⁷² The Diversity & Integration Strategy 2019–2021 commits to developing "a Garda training programme for Gardai and Garda Staff to build their competency and capacity to interact more effectively and positively with migrants, refugees, victims of hate crime and people from diverse and minority background". See An Garda Síochána, [Diversity & Integration Strategy 2019-2021](#) (2019) p. 9. An Garda Síochána's Mission & Strategy Statement 2019 – 2021 and Human Rights Strategy 2020–2022 also commit to incorporating human rights into training. See An Garda Síochána, [Strategy Statement 2019-2021](#) (2019) p. 8 and An Garda Síochána, [Human Rights Strategy 2020–2022](#) (2020) p. 10.

noted.²⁷³ Human rights and equality standards, intercultural awareness, and cultural competency should be central to the initial and continuous training of all members of An Garda Síochána.²⁷⁴

Targeted strategies are needed for the recruitment, retention and advancement of a diverse police service which fully reflects the diversity of Irish society.²⁷⁵ An Garda Síochána should set specific targets for diversity in its recruitment procedures,²⁷⁶ and promotion policies should be regularly evaluated to address underrepresentation of minority groups, and groups that experience intersectional discrimination.²⁷⁷

The Commission recommends that the National Action Plan Against Racism:

- 15.1. includes measures to ensure human rights and equality standards, including the Public Sector Equality and Human Rights Duty, are embedded in every aspect of policing, including the legislative framework.**
- 15.2. tasks An Garda Síochána to urgently incorporate human rights and equality standards, intercultural awareness, and cultural competency in the initial and continuous training programmes of all Garda members and civilian staff. Targets for the reach of training should be ambitious and measurable over the lifetime of the plan.**
- 15.3. includes specific targets for the recruitment, retention and progression of minority ethnic groups within An Garda Síochána.**

²⁷³ IHREC CERD Report (2019) p. 139.

²⁷⁴ IHREC CERD Report (2019). 9, 140; IHREC, [Submission to the Commission on the Future of Policing](#) (February 2018) p. 13.

²⁷⁵ A diverse workforce benefits An Garda Síochána as it will equip the Garda with new competencies and skills, including language skills, and will enhance communication with minority groups. European Commission against Racism and Intolerance. See Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Ireland - adopted on 10 October 2018](#) (2019) ACFC/OP/IV(2018)005, para 60; European Commission against Racism and Intolerance, [ECRI Report on Ireland \(fifth monitoring cycle\): Adopted on 2 April 2019](#) (2019) CRI(2019)18, para 52; Committee on the Elimination of Racial Discrimination, [General recommendation No. 36 \(2020\) on preventing and combating racial profiling by law enforcement officials](#) (17 December 2020) CERD/C/GC/36, para 46.

²⁷⁶ IHREC, [Submission to the Commission on the Future of Policing](#) (February 2018) p. 8.

²⁷⁷ Committee on the Elimination of Racial Discrimination, [General recommendation No. 36 \(2020\) on preventing and combating racial profiling by law enforcement officials](#) (17 December 2020) CERD/C/GC/36, para 47.

Racial profiling

There are negative attitudes amongst Garda members towards minority ethnic groups,²⁷⁸ as well as reports of racial profiling in the use of stop and search powers,²⁷⁹ including reports from young minority ethnic people.²⁸⁰ Discrimination does not explicitly constitute a breach of discipline within the *Garda Síochána (Discipline) Regulations 2007*.²⁸¹ Concerns have been raised about the ability of the Garda Síochána Ombudsman Commission to effectively address and investigate complaints of racial profiling by Garda members.²⁸²

Equality and human rights monitoring bodies advise that racial profiling should be clearly defined and prohibited by law and should be subject to an independent complaints mechanism, as well as oversight mechanisms both within and external to law enforcement bodies. Policy, practices and training of the police should be reviewed, in collaboration with the communities most affected by racial profiling, and there should be effective protection and remedies for acts of racial discrimination by the police. Disaggregated data on racial profiling should be collected and disseminated.²⁸³

²⁷⁸ See European Commission against Racism and Intolerance, [ECRI Report on Ireland \(fifth monitoring cycle\): Adopted on 2 April 2019](#) (2019) CRI (2019)18, para 52. See also Conor Gallagher, [Gardaí have negative view of Travellers, survey finds](#) (*The Irish Times*, 20 August 2020).

²⁷⁹ The Commission has noted reports which indicate that minority ethnic communities can be under-protected and over-policed, including due to racial profiling. See IHREC CERD Report (2019) pp. 136-140. The Commission has also raised concern about the extension of surveillance technology proposed in the *Garda Síochána (Digital Recording) Bill* and its potential equality implications due to minority groups' experience of racial profiling. See IHREC, [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#) (August 2020) p. 47.

²⁸⁰ Some participants at the Commission's Be Heard on CERD consultation in 2019 raised concerns about the about the targeting of people from minority ethnic groups including with regard to stop and search powers.

²⁸¹ The Advisory Committee on the Framework Convention for the Protection of National Minorities have called on the Irish authorities to amend Garda Síochána (Discipline) Regulations 2007 to explicitly specify that discrimination constitutes a breach of discipline. Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Ireland - adopted on 10 October 2018](#) (2019) ACFC/OP/IV(2018)005, para 61.

²⁸² Irish Network against Racism, [Alternative Report on Racial Discrimination in Ireland](#) (2019) pp. 23-24.

²⁸³ Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#) (23 January 2020) CERD/C/IRL/CO/5-9, para 16. See also Committee on the Elimination of Racial Discrimination, [General recommendation No. 36 \(2020\) on preventing and combating racial profiling by law enforcement officials](#) (17 December 2020) CERD/C/GC/36, paras 38-41, 50; European Commission against Racism and Intolerance, [ECRI General Policy Recommendation N° 11 on combating racism and racial discrimination in policing: adopted on 29 June 2007](#) (2007) CRI(2007)39.

The Commission recommends that the National Action Plan Against Racism:

- 15.4. tasks the Government with prioritising legislation to define and prohibit racial profiling through amendments to legislation in development (noting current policing reform bills).²⁸⁴**
- 15.5. sets out measures to address racial profiling. These should be designed, implemented and monitored with the active participation of communities affected by racial profiling and discrimination, and include the establishment of an independent racial profiling complaints mechanism, review of all relevant policies of An Garda Síochána, and training for police and across the criminal justice sector more broadly.**

²⁸⁴ Policing, Security and Community Safety Bill, Garda Síochána (Powers) Bill and Garda Síochána (Digital Recording) Bill

16. Hate crime and hate speech

The Commission welcomes the Anti-Racism Committee's focus on monitoring the effectiveness of planned hate crime and hate speech legislation, as well as on the need for education and awareness raising measures to improve public awareness on this issue.²⁸⁵ The Commission has emphasised the need for both legislative and non-legislative measures to combat hate crime and hate speech.²⁸⁶

While criminal sanctions are necessary for condemning severe forms of hate speech, the human sentiment of hatred cannot be eliminated by legal prohibition alone.²⁸⁷ What is ultimately required is to address and counter the conditions conducive to the use of hate speech.²⁸⁸ As the guidance of human rights and equality bodies has emphasised, criminal sanctions are therefore only one component of the required response to hate speech.²⁸⁹

Strengthening the legislative framework

Inadequate legislation on hate crime has been a longstanding concern of the Commission.²⁹⁰ Noting the escalation in incidents of far-right rhetoric and racist hate crime,²⁹¹ the Commission urges that Criminal Justice (Hate Crime) Bill 2021 be given absolute priority from Government in terms of enactment and full commencement.

The Commission recommends that the National Action Plan Against Racism:

16.1. provides for monitoring and review of ongoing developments in respect of the legislative framework on hate crime and hate speech (including the *Criminal*

²⁸⁵ Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), at p. 17.

²⁸⁶ In its submission on the Review of the Prohibition of Incitement to Hatred Act 1989 the Commission listed the following measures: media regulation and self-regulation; press codes and journalistic ethics; social media standards and take down procedures; broadcasting standards; codes of conduct by public officials, election candidates, and elected representatives; counter speech; education and awareness raising; and support for victims. <https://www.ihrec.ie/app/uploads/2019/12/Review-of-the-Prohibition-of-Incitement-to-Hatred-Act-1989.pdf>

²⁸⁷ United Nations (2012) Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, para.32.

²⁸⁸ ECRI (2016) General Policy Recommendation No. 15, para.2.

²⁸⁹ See European Commission Against Racism and Intolerance (ECRI) (2016) General Policy Recommendation No. 15 on Combatting Hate Speech; Committee on the Elimination of All Forms of Racial Discrimination (2013) General recommendation No. 35: Combating racist hate speech; United Nations (2012) Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, U.N. doc. A/67/357.

²⁹⁰ While sentencing practice allows for prejudice motivations to be taken into account by the sentencing court, the court is under no obligation to do so. See IHREC CERD Report (2019) p. 41.

²⁹¹ As noted by the Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth periodic reports of Ireland](#), December 2019, at para. 21.

Justice (Hate Crime) Bill and Online Safety and Media Regulation Bill). This should include provisions to take immediate action if there is delayed, incomplete or inadequate implementation of the legislation or unintended negative consequences arising from its operation.

Non-Legislative Measures

Media regulation and self-regulation

Objective media play an essential role in the dissemination of information in a democratic society. It is crucial therefore that media avoid disseminating information which could have the effect of promoting intolerance.²⁹² The European Commission against Racism and Intolerance (ECRI) recommends that States:

“use regulatory powers with respect to the media (including internet providers, online intermediaries and social media), to promote action to combat the use of hate speech”.

In this regard, it encourages the use of self-regulation as a means of ensuring that any control over freedom of expression is as limited as possible.²⁹³ Self-regulation includes adherence to codes of journalistic ethics, the adoption of codes of professional practice and the effective implementation of terms of use.²⁹⁴

Press codes and journalistic ethics

A free media plays a fundamental role in promoting an open, democratic, and equal society. The right of the press to freedom of expression is afforded special protection under the Irish Constitution. Article 40.6.1° (i) of the Constitution provides that the State must seek to ensure the media (the “organs of public opinion”) can exercise their “rightful liberty of expression”, provided they “shall not be used to undermine public order or morality or the authority of the State”.²⁹⁵ Irish courts have recognised “the need for vigorous and informed debate on issues of importance” and for “substantial justification” on an “excessive or unreasonable interference with the conditions necessary for such debate”.²⁹⁶

²⁹² UN Committee on the Elimination of Racial Discrimination, *General Recommendation no. 35*, para.40.

²⁹³ ECRI (2016) [General Policy Recommendation No. 15 on Combatting Hate Speech](#), p.7-8.

²⁹⁴ CERD (2013) [General Recommendation No. 35](#).

²⁹⁵ Article 40.6.1°(i), [Constitution of Ireland](#).

²⁹⁶ *Cogley v RTE* [2005] I.R. 79 at para 94.

The Press Council of Ireland and Office of the Press Ombudsman are statutory self-regulatory bodies providing oversight of the press in Ireland.²⁹⁷ These bodies consider complaints relating to newspapers (print and online), magazines and online-only news publications. Principle eight of the Press Council of Ireland's Code of Practice provides:

"Newspapers and magazines shall not publish material intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the travelling community, gender, sexual orientation, marital status, disability, illness or age".²⁹⁸

According to the handbook accompanying the code of practice, the Council may decide not to uphold a complaint for a wide range of reasons, including where the publication concerned has taken or offered to take sufficient remedial action to resolve a complaint.²⁹⁹ Sufficient remedial action by a publication can include the publication of a correction, a clarification or apology, a right of reply, or the amendment or deletion of online material. A growing circulation of racist and hate speech and discriminatory discourse can be seen in public commentary and in the public sphere both online and offline. In this challenging context, the role of the press in ensuring an informed, objective and respectful public debate is fundamental in supporting an open, democratic, and equal society for all. Given this, it is important that standards and codes of practice are actively implemented and are kept under review to ensure that the sanctions available are effective and responsive to the current trends.

The Commission recommends that the National Action Plan Against Racism:

- 16.2. includes a priority action on press codes and journalistic ethics that addresses appropriate support and training for editors and journalists as to the nature and dynamics of hate speech; swift imposition of remedial action where hateful material is published by the press; and active support, implementation and review of codes of practice.**

²⁹⁷ The bodies are recognised in statute under the *Defamation Act 2009*.

²⁹⁸ 'Principle 8 – prejudice', Press Council of Ireland, [Code of Practice](#). In 2017, 14.7% of complaints received by the Council concerned an alleged breach of this principle of the code. See Press Council of Ireland, [Annual Report 2017](#), p.9.

²⁹⁹ Press Council of Ireland & Office of the Press Ombudsman (2014), [Code of Practice for Newspapers and Magazines: Handbook, January 2014](#), p.4.

Broadcasting standards

In contrast to the self-regulatory model of press regulation, broadcasting is subject to structural and content regulation under the *Broadcasting Act 2009*, which states that television and radio broadcasters must not broadcast:

“anything which may reasonably be regarded as causing harm or offence, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State”.³⁰⁰

The Broadcasting Authority of Ireland (BAI) monitors compliance by broadcasters with broadcasting rules. The BAI Code of Programme Standards was prepared under the *Broadcasting Act 2009* and broadcasters are required to comply with its principles, including the following:

“The manner in which persons and groups in society are represented shall be appropriate and justifiable and shall not prejudice respect for human dignity. Robust debate is permissible as is the challenging of assumptions but programme material shall not stigmatise, support or condone discrimination or incite hatred against persons or groups in society in particular on the basis of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race, nationality, ethnicity or religion.”³⁰¹

As part of its monitoring role, the BAI considers complaints relating to broadcasts, where viewers and listeners consider that the broadcaster has not complied with the BAI’s codes and rules.³⁰² When the BAI upholds a complaint of a breach of its codes and rules, it will in most cases publish and distribute information about the complaint,³⁰³ but:

“does not have any power to award to any party, costs or expenses”.³⁰⁴

³⁰⁰ Section 39(1) (d), *Broadcasting Act 2009*.

³⁰¹ Principle 5, BAI Code of Programme Standards (available at <http://www.bai.ie/en/codes-standards/#al-block-4>).

³⁰² The viewer or listener must first raise the complaint directly with the broadcaster.

³⁰³ “the broadcaster concerned will broadcast a summary of the BAI’s decision, unless it considers it inappropriate to do so. This could include the name of the person who made the complaint. This will be done at a time and manner suitably similar or close to the timing of the original broadcast which prompted the complaint. In most instances, a copy of the decision of the BAI will be published and distributed to media. This document will include a summary of the initial complaint, the initial response from the broadcaster and the broadcaster’s response to the BAI (where relevant). The programme, broadcast date and the name of the complainant will also be published”. See Broadcasting Authority of Ireland (2017) [A Guide for Listeners & Viewers to the Complaints Process & the Broadcasting Authority of Ireland](#), p.24.

³⁰⁴ Broadcasting Authority of Ireland (2017) [A Guide for Listeners & Viewers to the Complaints Process](#)

The Commission recommends that the National Action Plan Against Racism:

- 16.3. tasks media regulators with developing a framework of dissuasive sanctions integrated with regulatory mechanisms aimed to prevent hate speech.**

Codes of conduct for public officials, election candidates and elected representatives

Public officials, election candidates and elected representatives play a crucial role in shaping political discourse.³⁰⁵ Political discourse that fosters a climate of hostility and intolerance can exclude targeted groups from the public sphere,³⁰⁶ directly contradicting targeted groups rights to freedom of opinion and expression.³⁰⁷ Moreover, there is evidence to suggest that the use of exclusionary, nationalist rhetoric by elected officials is positively correlated with the occurrence of hate crime incidents.³⁰⁸

The Commission believes it is imperative that public officials, election candidates and elected representatives avoid making statements, which promote or endorse hatred. Formal rejection of hate speech by high-level public officials can play an important role in promoting a culture of tolerance and respect throughout society.³⁰⁹ International human rights and equality monitoring bodies recommend self-regulation in this regard, encouraging States to support codes of conduct, which clearly prohibit the use or endorsement of hate speech by public figures, and provide for suspension and other sanctions upon breach of their provisions.³¹⁰

The Commission recommends that the National Action Plan Against Racism:

- 16.4. includes a priority action to develop codes of conduct for public officials and election candidates that clearly prohibit the use or endorsement of hate speech. These codes should provide for appropriate sanctions for breach of their conditions.**

[& the Broadcasting Authority of Ireland](#), p.24.

³⁰⁵ CERD (2013) [General Recommendation No. 35](#), para.15

³⁰⁶ Alexander Tsesis, '[Dignity and Speech: The Regulation of Hate Speech in a Democracy](#)', Wake Forest Law Review, Vol. 44, 2009, p.497-532.

³⁰⁷ United Nations (2012) [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), para 62

³⁰⁸ Olga Chyzh, Mark Niemany and Clayton Webb (2019) 'The Effects of Dog-Whistle Politics on Political Violence', working paper, available on Professor Chyzh's website: <http://www.olgachyzh.com/research/>.

³⁰⁹ CERD (2013) [General Recommendation No. 35](#), para.37.

³¹⁰ ECRI (2016) [General Policy Recommendation No. 15](#), p.7.

Training for key actors

Counter-speech

A culture of public discourse in which people can freely articulate and debate experiences and deconstruct stereotypes is essential to combatting hate speech.³¹¹ Acts of counter speech directly confronting and condemning hateful rhetoric can help to foster such a culture.³¹²

Public officials and elected representatives have a crucial role to play in this regard; prompt interventions from these figures can deter further hateful incidents from occurring and prevent tensions escalating between groups, while also opening space for further counter-speech by the targets of hate speech and their allies.³¹³ Condemnation by high-level public officials has taken on added importance in light of concerns about extremist groups attempting to vindicate their use of hate speech by invoking the freedom of expression debate, attempting to cast themselves as defenders of free speech.³¹⁴

For public officials to respond with counter-speech, they must be able to recognise hate speech and the prejudice of which it is symptomatic, express sympathy and support for its targets, and articulate its harms to society as a whole.³¹⁵

The Commission recommends that the National Action Plan Against Racism:

- 16.5. includes a priority action on appropriate and adequate training in equality and non-discrimination for public officials and elected representatives to ensure they are equipped to recognise and respond effectively to hate speech.**

Operation of hate crime legislation

Appropriate training for the judiciary, prosecutors, and police investigators is essential to the effective operation of hate crime law.³¹⁶ The State has yet to develop education measures on hate crime for key actors in the criminal justice system. The Commission

³¹¹ United Nations (2012) [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), para.62.

³¹² ARTICLE 19 (2015) '[Hate Speech' Explained: A Toolkit](#), p.49.

³¹³ ECRI (2019) [ECRI Report On Ireland \(fifth monitoring cycle\)](#), Adopted on 2 April 2019, Published on 4 June 2019, paras.41.

³¹⁴ United Nations (2012) [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), para.65

³¹⁵ Ibid. p.49.

³¹⁶ OSCE, [Hate Crime Law – A Practical Guide](#) at p. 22; Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth periodic reports of Ireland](#), December 2019, at para. 22; IHREC [Review of the Prohibition of Incitement to Hatred Act 1989](#), December 2019, at p. 35.

urges that a twin track approach be taken so that while development of the legislative framework progresses, support measures can be established and refined as needed once the legislation is finalised.

The Commission recommends that the National Action Plan Against Racism:

- 16.6. includes a priority action on appropriate and adequate hate crime and hate speech training for the judiciary, prosecutors, and police investigators.**

Monitoring and reporting Mechanisms

The Commission welcomes the launch of An Garda Síochána's alternative hate crime reporting mechanism,³¹⁷ which should be placed on a statutory footing and supplemented by a sustainably-funded third-party reporting mechanism.³¹⁸ The Commission notes the State's poor record on collating and publishing hate crime data,³¹⁹ recalling its commitment as an Organization for Security and Co-operation in Europe ('OSCE') participating State to:

"collect, maintain and make public reliable data on hate crimes, across the criminal justice system from the police to the courts".³²⁰

Victimisation survey data can enable police and policymakers to understand the hate crime reporting gap and develop measures to address it.³²¹

The Commission recommends that the National Action Plan Against Racism:

- 16.7. includes non-legislative measures to combat hate crime and hate speech with regards to: media regulation and self-regulation; press codes and journalistic ethics; social media standards and take down procedures; broadcasting standards; codes of conduct by public officials, election candidates, and elected representatives; counter speech; education and awareness raising; and support for victims.**

³¹⁷ The reporting mechanism is available here: <https://www.garda.ie/en/crime/hate-crime/>. It was launched on 21 July 2021 - see Conor Hunt, [New service launched for people to report hate crimes](#), RTE news, 21 July 2021.

³¹⁸ For example, INAR's [iReport.ie](#).

³¹⁹ For example, no official data on hate crime was reported to the ODIHR in 2015, 2016 or 2017. See ODIHR, [Hate crime report: Ireland](#).

³²⁰ ODIHR, [Hate crime reporting: what do we know](#).

³²¹ ODIHR, [Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide](#), 2014.

- 16.8. tasks the Department of Justice to place An Garda Síochána's alternative hate crime reporting mechanism on a statutory basis through amendment to current legislation under development,³²² and to support the continued operation of alternative third party hate crime reporting through the provision of sustainable core funding.**
- 16.9. tasks An Garda Síochána and the Courts Service to record and publish accurate and reliable disaggregated data on hate crime on an annual basis in fulfilment of its commitment as an OSCE participating State.**
- 16.10. includes an action to supplement victimisation surveys, which include hate crime specific questions, with booster samples of groups traditionally underrepresented or excluded from standard national surveys.**

³²² For example the Policing, Security and Community Safety Bill

17. Legal framework on citizenship

The practical and legal impact of restrictions on citizenship affect the protection of fundamental human rights, including the guarantee of equality.³²³ Differential treatment based on citizenship must be proportionate and pursue a legitimate aim.³²⁴

Reform is required to ensure that particular groups are not discriminated against regarding access to citizenship,³²⁵ and to address barriers to naturalisation for long-term or permanent residents, including undocumented people.³²⁶ The Commission is concerned about the extent to which the legislative framework on citizenship is serving a legitimate or proportionate purpose, considering its impact on children's access to third-level education,³²⁷ as well as the small number of cases in which children born in Ireland have faced deportation.³²⁸

³²³ For example, as some of the rights protected under the Constitution of Ireland refer explicitly to citizens while others do not, there is uncertainty as to the scope of protection provided under constitutional law to persons without Irish citizenship. Article 40, which provides for rights to equal treatment, freedom of association, freedom of expression, and other rights, including unenumerated rights, refers specifically to citizens. For further analysis, see Irish Human Rights Commission (May 2004), [Observations on the Proposed Referendum on Citizenship and on the 27th Amendment to the Constitution Bill 2004](#), pp.7–9, 14

³²⁴ Office of the High Commissioner for Human Rights (1 October 2002), [CERD General Recommendation XXX on Discrimination against Non-Citizens](#), section IV.

³²⁵ On 23 March 2021, the Minister for Justice announced proposals for the residency requirement for children to become Irish Citizens to be reduced from five years to three years. The proposed changes are contained in the Courts and Civil Law (Miscellaneous Provisions) Bill 2021. See Department of Justice, [Minister McEntee to make it easier for children to secure Irish citizenship](#), press release, 23 March 2021; [General Scheme of the Courts and Civil Law \(Miscellaneous Provisions\) Bill 2021](#).

³²⁶ The Commission notes that there has been an absence of any pathway to residency for undocumented people in Ireland. In this regard, the Commission welcomes the recent announcement of a draft scheme to regularise undocumented migrants in the State. See Department of Justice, [Minister McEntee outlines draft scheme to regularise undocumented migrants to Cabinet](#), 23 April 2021. The Minister has estimated that up to 17,000 people may benefit from such a scheme, including 3,000 children. See Marie O'Halloran, [Scheme being considered to give 17,000 undocumented migrants residency rights](#), Irish Times, 6 December 2020. A recent survey of 1,000 undocumented persons in the State found that 75% had been in Ireland for 5 years or more, 93% were working, 59% were women, 46% work more than 40 hours per week, and 26% receive less than the minimum wage. See Migrant Rights Centre Ireland, [Live here, work here, belong here: A survey of 1,000 undocumented people in Ireland](#), October 2020.

³²⁷ See IHREC CERD Report (2019) p. 60 – 69.

³²⁸ Seanad Éireann debate (21 November 2018), [‘Irish nationality and citizenship \(naturalisation of minors born in Ireland\) bill 2018: second stage’](#).

Citizenship by naturalisation

Applications for citizenship are granted at the absolute discretion of the Minister for Justice,³²⁹ who must be satisfied an applicant is of 'good character'.³³⁰ 'Good character' is not defined and no guidelines on its interpretation have been published.³³¹ Applicants can be deemed as failing to meet the 'good character' requirement on the basis of their moral character or if they have come to the adverse attention of An Garda Síochána – regardless of how minor an offence may have been committed or whether an offence was ever charged.³³² The Department of Justice has reported that failure to satisfy the 'good character' requirement is among the top reasons for refusal of a naturalisation application.³³³ The Commission is concerned that applications for citizenship by naturalisation are being determined on the basis of an unfairly high standard that would never apply to other Irish citizens. Furthermore, aside from applying to the High Court for a judicial review, there is no independent appeals mechanism available for naturalisation decisions,³³⁴ depriving applicants of any meaningful opportunity to challenge a decision on substantive grounds or to make a new application for naturalisation.³³⁵ The Commission notes that draft legislation proposes to provide a statutory basis for the continuous residence requirement in respect of citizenship applications.³³⁶

³²⁹ The High Court has said that the Minister's discretion in naturalisation cases is 'as absolute as it is possible to get in a system based on the rule of law.' See [AMA v Minister for Justice and Equality \[2016\] IEHC 466](#). Issues regarding the application of naturalisation rules in individual cases have consistently come before the High Court in the form of judicial review proceedings, including due to the restrictive interpretation by the Minister of the conditions that must be met. See M. Carolan (14 October 2019), '[Teenage girl wins appeal over refusal of Irish citizenship](#)', The Irish Times

³³⁰ Irish Nationality and Citizenship Act 1956 (as amended), s 15(1) (b).

³³¹ Sarah Groarke and Róisín Dunbar, [Pathways to Citizenship through Naturalisation in Ireland](#), 2020 at p. iv.

³³² Applicants must supply information on convictions or civil judgments made against them in the State or any other country and must indicate if they have been the subject of a Garda investigation in Ireland, including where they were not charged with any offence. See Sarah Groarke and Róisín Dunbar, [Pathways to Citizenship through Naturalisation in Ireland](#), 2020 at p. iv; B. Otukoya (2018), 'Super-Citizens: Defining the "good character" requirement for citizenship acquisition by naturalisation', *Hibernian Law Journal*, 17(1), pp.80–88. See [I v The Minister for Justice and Equality \[2019\] IEHC 515](#) and [Iurescu \(a minor\) v The Minister for Justice and Equality & Ors \[2019\] IEHC 535](#).

³³³ Sarah Groarke and Róisín Dunbar, [Pathways to Citizenship through Naturalisation in Ireland](#), 2020 at p. ix.

³³⁴ Stanley, *Immigration and Citizenship Law*, p. 902. Note, the judicial review action is limited and does not review the merits of a case or questions of fact. Also, the High Court does not have the power to alter or replace the administrative decision. See Immigrant Council of Ireland, [Child Migration Matters \(2016\)](#) p. 125

³³⁵ Stanley, *Immigration and Citizenship Law*, p. 896–898. The INIS website notes that in reapplying for citizenship by naturalisation, an application should 'pay careful attention' to the reasons the previous application was refused. See www.inis.gov.ie/en/INIS/Pages/WP16000022

³³⁶ See Head 45 of the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021, available at: <https://www.gov.ie/en/publication/653aa-general-scheme-of-the-courts-and-civil-law-miscellaneous-provisions-bill-2021/>.

The Commission recommends that the National Action Plan Against Racism:

- 17.1. tasks the Department of Justice to provide statutory underpinning for the good character requirement in citizenship-by-naturalisation applications.**
- 17.2. tasks the Department of Justice to introduce a statutory right to an independent appeals process for citizenship-by-naturalisation decisions.**

Revocation of Certificates of Naturalisation

Legal aid is not available and there is no right of appeal in respect of the process for revocation of citizenship for naturalised Irish citizens.³³⁷ Irish law does not contain provisions preventing revocation of citizenship where the individual does not have the right to citizenship of any other country, and revocation would therefore render them stateless.³³⁸ This is despite a recommendation of the United Nations High Commissioner for Refugees,³³⁹ and the requirement of the 1961 *Convention on the Reduction of Statelessness* that State parties must not deprive a person of their nationality if it would render them stateless.³⁴⁰ Ireland has ratified the Convention but with a reservation in respect of revocations of citizenship.³⁴¹ In the case of persons who are not a citizen of any other EU Member State, revocation of naturalised Irish citizenship amounts to revocation of European Union (EU) citizenship.³⁴² It is essential that persons whose citizenship the

³³⁷ Naturalised Irish citizens may have their citizenship revoked by the State. Following an initial notification of an intention to revoke, the affected individual may apply to the Minister for a quasi-judicial inquiry as to the reasons for the revocation. The case is then referred to a Committee of Inquiry that subsequently reports to the Minister, though its recommendations are not binding. The affected individual can call evidence and examine witnesses, but legal aid is not available. While the affected individual can challenge the Minister's decision by way of judicial review, there is no right of appeal to a decision of the Committee of Inquiry or the final decision of the Minister for Justice and Equality. See IHREC CERD Report (2019) at p. 30.

³³⁸ Sarah Groarke and Róisín Dunbar, [Pathways to Citizenship through Naturalisation in Ireland](#), 2020 at p. 80. An example of such a situation would be where a person comes from a country where dual citizenship is not allowed and they have renounced their citizenship in order to become an Irish citizen. If their Irish citizenship was to be subsequently revoked, this could render them stateless. See Sinnott Solicitors, [Revocation of Irish citizenship notification](#), 10 June 2020.

³³⁹ UNHCR, [Scoping Paper: Statelessness in Ireland](#), at p. 9.

³⁴⁰ Article 8, [1961 Convention on the Reduction of Statelessness](#).

³⁴¹ The reservation provides that Ireland reserves the right to deprive a naturalised Irish citizen of their citizenship pursuant to section 19 (1) (b) of the Irish Nationality and Citizenship Act, 1956, namely where the person has 'by any overt act, shown himself to have failed in his duty of fidelity to the nation and loyalty to the State'. See United Nations Treaty Collection, 'Chapter V Refugees and Stateless Persons: 4. Convention on the Reduction of Statelessness', https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5.

³⁴² See IHREC CERD Report (2019) at p. 31. Further, Irish constitutional law experts have questioned the constitutionality of this framework, because of the potential drastic consequences of revocation and the question of whether anyone other than a judge in a court could order it. See G. Hogan, G. Whyte, D. Kenny, and R. Walsh (2018), *Kelly: The Irish Constitution*, (5th ed., Bloomsbury Professional), p. 166.

Minister proposes to revoke are afforded fair procedures in that process as a matter of human rights law.³⁴³

The Commission recommends that the National Action Plan Against Racism:

- 17.3. tasks the State to make legal aid available to all people in respect of whom the Minister for Justice proposes to revoke citizenship.**
- 17.4. provides for an urgent review of the Irish Nationality and Citizenship Act 1956 concerning guarantees of due process and fair procedure in the revocation of citizenship.**

Stateless people

There is currently no formal process for determining statelessness,³⁴⁴ and there is an ad hoc system for the recognition of stateless people in Ireland.³⁴⁵ The State does not collect data specifically on stateless people³⁴⁶ and there is an absence of safeguards in place for migrant children.³⁴⁷

The Commission recommends that the National Action Plan Against Racism:

- 17.5. tasks the State to develop a statelessness determination procedure in line with its obligations under international law.**

³⁴³ In October 2020, the Supreme Court found that the scheme for the revocation of naturalised citizenship under section 19 of the Irish Nationality and Citizenship Act 1956 was unconstitutional. On 10 February 2021, the Supreme the Court declared that Sections 19(2) and 19(3) of the Act be struck down in their entirety. The Commission is concerned that not striking down Section 19(1) could lead to the possibility of revocations taking place in the absence of any safeguards. See IHREC, [Amicus Curiae Submission Damache v Minister for Justice](#), January 2021.

³⁴⁴ The Minister for Justice and Equality may, at his absolute discretion, dispense with the conditions for naturalisation in cases involving stateless persons, under section 16 of the Irish Nationality and Citizenship Act 1956 as amended by section 5 of the Irish Nationality and Citizenship Act 1986.

³⁴⁵ IHREC CERD Report 2019, p. 32.

³⁴⁶ See Dáil Éireann (10 July 2018), '[Statelessness determination process](#)'.

³⁴⁷ IHREC CERD Report 2019, p. 32.

18. International protection

The Commission welcomes the Anti-Racism Committee's recognition that refugees and asylum seekers must be considered in a National Action Plan Against Racism,³⁴⁸ and urges that this consideration is informed by the equality and human rights issues identified by the Commission in respect of the international protection system.³⁴⁹ The Commission has called for the complete phasing out and replacement of the Direct Provision system, noting its adverse impact on the rights on international protection applications,³⁵⁰ which has been exacerbated during the Covid-19 pandemic.³⁵¹ Given the myriad equality and human rights issues arising in respect of Direct Provision, the Commission calls for more urgent action than that proposed under the timeframe set out in the Government's White Paper on Direct Provision.³⁵²

The Commission recommends that the National Action Plan Against Racism:

18.1. tasks the State to afford utmost priority to the phasing out and replacement of the Direct Provision system.

³⁴⁸ See Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), p.6.

³⁴⁹ The Commission has repeatedly highlighted the extensive human rights and equality issues relating to Ireland's international protection system and the State's wider approach to international protection, including on issues such as excessive waiting times, lack of access to legal aid, immigration detention, failure to conduct vulnerability assessments, the wider policy of dispersal, and ongoing issues with family reunification and unaccompanied minors. For example, see IHREC CERD Report (2019) p. 110-125.

³⁵⁰ See IHREC: [White Paper Submission Direct Provision](#), 2020 at p. 5. There is a well-documented, negative long-term impact of Direct Provision on the rights of individuals seeking international protection in Ireland, particularly on the right to family life, private life, and health. See IHREC CERD Report (2019; [Submission to the Committee against Torture on the List of Issues for the Third Examination of Ireland](#), 2020 at p. 34.

³⁵¹ The Commission has raised concerns about the capacity for Direct Provision residents to adhere to public health advice due to the congregated nature of Direct Provision accommodation. IHREC, [Statement from the Irish Human Rights and Equality Commission In Respect of Direct Provision](#), 19/08/2020. The Commission recalls that as of 24 October 2020, there were 313 cases of Covid-19 reported in direct provision accommodation, representing 4% of all direct provision residents compared to a virus prevalence rate of 1.3% for the rest of the general population. See N. Baker, [Direct provision system 'magnified' issues faced by children during Covid-19 lockdown](#) (Irish Examiner, 10 December 2020). See also Irish Refugee Council, ["Powerless" Experiences of Direct Provision During the Covid-19 Pandemic](#), August 2020.

³⁵² The White Papers sets out that all Direct Provision accommodation will be phased out by the end of 2024. See Department of Children, Equality, Disability, Integration and Youth, [A White Paper to End Direct Provision and to Establish a New International Protection Support Service](#), February 2021. This is longer than the Day report's recommendation for a new international protection system to be in place by mid-2023. See Department of Justice, [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (October 2020).

19. Human Trafficking and Racism

Trafficking in human beings remains a hidden but pervasive crime, with Ireland acting as both a destination and transition country for the movement of trafficked persons. Human trafficking is a highly gendered and racialized phenomenon: more women than men are trafficked in Ireland, and all are predominantly people of migrant background.³⁵³

Certain sectors, such as hospitality, fishing, agriculture and construction can rely on the workforce of people (primarily migrant men) who are in a vulnerable situation.³⁵⁴ Victims of trafficking for sexual exploitation are almost exclusively migrant women, who can be hidden within:

“mixed populations of independent, exploited and coerced prostitutes and in mixed migration flows”.³⁵⁵

Trafficking for the purpose of sexual exploitation has strong racial and ethnic undertones, disproportionately affecting minority women and girls.³⁵⁶ Due to the substantial presence of migrants in these high-risk environments for exploitation and trafficking,³⁵⁷ and the role played by discriminatory attitudes and beliefs based on both race and gender,³⁵⁸ it is important that the State framework for combatting racism and promoting equality take into account the crime of trafficking in human beings, and the need to combat it.³⁵⁹

The most frequently reported forms of trafficking in Ireland are trafficking for the purposes of sexual exploitation, trafficking for the purposes of labour exploitation and trafficking for criminal activities. Prevalence is difficult to establish due to limitations on the current

³⁵³ Irish citizen victims are rarely encountered, and primarily number among those recorded as child victims of trafficking. Note the reclassified statistical data in the annual State report in 2017, available at:

<https://www.blueblindfold.ie/wp-content/uploads/2020/11/2017-Annual-Report.pdf>

³⁵⁴ EU (2021), EU Strategy on Combatting Trafficking in Human Beings 2021-2025

³⁵⁵ EC (2016), Study of the Gender Dimension of Trafficking in Human Beings. EU: Luxembourg.

³⁵⁶ OSCE (2021), Discouraging the Demand that fosters trafficking for the purposes of sexual exploitation. Office of the Special Representative and Co-ordinator for CTHB: Vienna.

³⁵⁷ The EU Strategy on Trafficking in human Beings (2021-2025) states that in the case of sexual exploitation, prostitution, escort services, massage parlours, bars and nightclubs are high risk environments, while in the case of labour trafficking, such environments can include: agricultural sector, construction, hospitality, cleaning sector, domestic work, forestry, textile and garments, food manufacturing.

³⁵⁸ UNOHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (Geneva: UNOHCHR, 2010), p. 101.

³⁵⁹ The importance of a response to human trafficking grounded in anti-discrimination, anti-racism and intersectionality has also been underscored by the UN Special Rapporteur on trafficking in persons, especially women and children. See Human Rights Council (May 2021), [Implementation of the non-punishment principle: Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally](#), A/HRC/47/34, at para 26.

national referral mechanism for identification of victims of trafficking.³⁶⁰ However, official data,³⁶¹ as well as recent estimations on the island of Ireland,³⁶² indicate that trafficking of women for sexual exploitation has been resilient to the pandemic.³⁶³

The EEA, Africa and to a lesser extent Asia are the primary regions of origin for victims of trafficking of women for the purposes of sexual exploitation in Ireland. The trend of increased trafficking of third country national women from the African continent is readily apparent from the available data.³⁶⁴ Trafficking for the purposes of forced labour in the fishing industry, which has been prominent over 2016, 2017 and 2018 appears to be affecting men from Asia and North Africa. Construction and waste recycling are other sectors that feature in the national statistics on trafficking for labour exploitation. According to latest knowledge, the agricultural sector is particularly affected by labour exploitation, due to:

“the large number of workers employed on a non-regular basis, through third parties or as illegal workers”.³⁶⁵

The State response to human trafficking has been deemed lacking in a number of respects. Ireland has been negatively evaluated by virtually all international monitoring mechanisms (Council of Europe, US Office to Monitor and Combat Trafficking in Persons and OSCE) as well as by national experts with respect to the action it is taking to combat human

³⁶⁰ The current victim identification process, which does not enjoy a statutory basis, gives the sole role of formal identification of victims to An Garda Síochána. The Council of Europe GRETA Committee, the Commission, and others, have regularly called for the expansion of the national referral mechanism to include multiple agencies and NGOs that are likely to come into contact with victims of trafficking. Plans for a reformed national Referral Mechanism have recently been announced by the Department of Justice. These plans propose to allow victims of trafficking to be identified across a range of departments and agencies. See Department of Justice (Press release, 11 May 2021), ‘[Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports](#)’.

³⁶¹ Data for the 2015-2019 period are published in Department of Justice and Equality (2019), [Trafficking in Human Beings in Ireland: Annual Report 2019](#). See [www.blueblindfold](#)

³⁶² Breen, M.J., Healy, Amy Erbe, Healy, Michael G. (2021), [Report on Human Trafficking and Exploitation on the Island of Ireland](#), Limerick: Mary Immaculate Collage.

³⁶³ See also Breslin, R (2020), Exploitation as usual: Emerging evidence on the impact of Covid-19 on Ireland’s sex trade, Dublin: UCD, SERP.

³⁶⁴ Department of Justice and Equality (2019), [Trafficking in Human Beings in Ireland: Annual Report 2019](#), p. 9. See [www.blueblindfold.ie](#).

³⁶⁵ EU (2021) EU Strategy to tackle Organised Crime & EU Strategy on combatting Trafficking in Human Beings: Questions and Answers.

trafficking.³⁶⁶ Minimum standards across several areas are not being met, which led to the State being designated to a Tier Two Watch List by the US Department of State.³⁶⁷

There appears to be agreement on the main areas of deficiency: the rarity of prosecutions for trafficking;³⁶⁸ the lack of an efficient national referral mechanism for identification of victims of trafficking ('NRM'); chronic deficiencies in the provision of assistance to victims, in particular the use of Direct Provision for accommodation of victims of trafficking; and the lack of gender-specific shelters.

The Commission recommends that the National Action Plan Against Racism:

- 19.1. includes a section on Human Trafficking, which will task the State with identifying the existing obstacles to prosecution of perpetrators in adult trafficking cases and adopt and implement the practical recommendations provided in the OSCE, GRETA and US TIP reports.**
- 19.2. tasks the State with the immediate implementation of the proposed New National Referral Mechanism, ensuring that the process is coherent, transparent and easy to access for structurally vulnerable people and civil society organisations.**
- 19.3. includes an action to legislate for: assistance and protection to victims of human trafficking ensuring access to specialised services and assistance, irrespective of victims' cooperation with law enforcement agencies; the non-punishment principle on a statutory footing to ensure that victims are not prosecuted for crimes that they were compelled to carry out as a result of being trafficked; and the establishment of a dedicated compensation fund for victims of trafficking.**
- 19.4. includes an action to task the State with accommodating victims of trafficking in appropriate gender-specific facilities that ensure access to the necessary support services.**

³⁶⁶ IHREC appeared as amicus curiae in the case of *P. v The Chief Superintendent of the Garda National Immigration Bureau & Ors* in 2015, wherein the High Court found that the State's administrative scheme for the protection of victims is inadequate under EU law aimed at combatting human trafficking.

³⁶⁷ US Department of State (2020), [Trafficking in Persons Report, 20th Edition](#), p. 55 and US Department of State (2021), [Trafficking in Persons Report, 21st Edition](#), p. 302.

³⁶⁸ The first trafficking conviction under current legislation only took place in June 2021. See Seán McCárthaigh, ['Two women guilty of human trafficking in first conviction of its type'](#), *Irish Times*, 11 June 2021.

- 19.5. **includes measures targeted at the sectors linked to trafficking for forced labour, adopting a victim-centred (rather than an immigration-law-enforcement-oriented) approach.**

20. Public and professional attitudes and awareness

Commission-supported research has identified racist attitudes across Irish society, finding that just under half of adults born in Ireland believe some cultures to be superior to others; that 45% of adults born in Ireland believe that some races/ethnic groups were born harder working; and that 17% of adults born in Ireland believe that “some races were born less intelligent”.³⁶⁹ Commission-supported research has also found that people conceal negative attitudes to diversity, with highly educated people more likely than others to do this; this is an important finding because people with decision-making power over public policy and the allocation of resources such as jobs and housing tend to have higher educational attainment.³⁷⁰ The evidence base on negative public and professional attitudes to diversity underscores the need for anti-racism education and training beyond education in schools alone, for example in Continuous Professional Development programmes. Such training is required across a wide range of workplaces and professional groups, in particular those groups whose professional interactions with minority ethnic persons can potentially perpetuate discriminatory institutional outcomes.

Negative attitudes to diversity can also be tackled by initiatives that celebrate and make ethnic minority cultures and heritage visible. A range of initiatives have been recommended to promote respect for and recognition of Traveller identity,³⁷¹ including establishment of a permanent cultural centre.³⁷² Commemorative initiatives need to be accompanied by concrete measures to address contemporary barriers to the realisation of Traveller culture and identity in practice, including laws in respect of trespass and evictions as they relate to Traveller nomadism,³⁷³ and the legislative framework on horse ownership.³⁷⁴

³⁶⁹ Frances McGinnity, Raffaele Grotti, Helen Russell and Éamonn Fahey, [Attitudes to Diversity in Ireland](#), March 2018.

³⁷⁰ Frances McGinnity, Mathew Creighton and Éamonn Fahey, [Hidden Versus Revealed Attitudes: A List Experiment on Support for Minorities in Ireland](#), 2020, at p. ix.

³⁷¹ IHREC CERD Report 2019, at p. 81.

³⁷² The Seanad Public Consultation Committee has recommended the establishment of a National Traveller Cultural Centre and Archive, development of regional Traveller language hubs, and the resourcing of a specific fund to support cultural endeavours promoting Traveller heritage and culture. See [Seanad Public Consultation Committee Report on Travellers Towards a More Equitable Ireland Post-Recognition](#), January 2020, at p. 11.

³⁷³ The Commission has noted a range of bodies have called for the laws governing trespass and evictions to be reformed with a view to enabling Traveller nomadism, including the Traveller Accommodation Expert Group, the Advisory Committee on the Framework Convention for the Protection of National Minorities, and the UN Committee on the Elimination of Racial Discrimination. See IHREC, [Comments on Ireland's 17th National Report on the Implementation of the European Social Charter June 2020](#), at p. 13-15.

³⁷⁴ The Commission has noted that the legislative framework on evictions

The UN General Assembly proclaimed 2015-2024 as the International Decade for People of African Descent,³⁷⁵ a core aim of which is to promote a greater knowledge of and respect for the diverse heritage, culture and societal contributions of people of African descent.³⁷⁶ In December 2019, concerns were raised about the State's failure to finalise a programme of action to mark the International Decade for People of African Descent, in the halfway point of the decade.³⁷⁷ The Commission notes that a programme of activities had not been finalised as of February 2021.³⁷⁸

The Commission recommends that the National Action Plan Against Racism:

- 20.1. sets out a framework for the delivery of anti-racism education and training across a wide range of workplaces and professional groups.**
- 20.2. tasks the Department of Children, Equality, Disability, Integration and Youth to develop and roll-out co-designed anti-racism public awareness initiatives.**
- 20.3. tasks the Department of Children, Equality, Disability, Integration and Youth to urgently finalise and implement a programme of activities to mark the remainder of the International Decade for People of African Descent.**
- 20.4. tasks the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media to implement the recommendations of the Seanad Public Consultation Committee in relation to promoting respect for and recognition of Traveller identity.³⁷⁹**

that the Control of Horses Act 1996 led to a notable increase in the seizure and impoundment of Traveller horses, with reports indicating that Traveller horse ownership continues to be increasingly restrained due to the implementation of local authority by-laws. See IHREC CERD Report 2019, at p. 80-81.

³⁷⁵ United Nations, [Resolution adopted by the General Assembly on 23 December 2013](#), A/RES/68/237.

³⁷⁶ See <https://www.un.org/en/observances/decade-people-african-descent/programme-activities>.

³⁷⁷ UN CERD Committee, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, at para. 23-24.

³⁷⁸ On 4 February 2021, the Minister for Children, Equality, Disability, Integration and Youth stated: "My Department is also working with the International Decade for People of African Descent Steering Committee in Ireland to develop a programme of activities to celebrate the United Nation's International Decade for People of African Descent (IDPAD). This programme will promote the diverse heritage, culture and contribution of people of African descent to Irish communities." See [Migrant Integration Dáil Éireann Debate, Thursday - 4 February 2021](#)

³⁷⁹ The Seanad Public Consultation Committee recommended the establishment of a National Traveller Cultural Centre and Archive, development of regional Traveller language hubs, and the resourcing of a specific fund to support cultural endeavours promoting Traveller heritage and culture. See [Seanad Public Consultation Committee Report on Travellers Towards a More Equitable Ireland Post-Recognition](#), January 2020, at p. 11.

- 20.5. **tasks the Central Statistics Office to undertake regular research on attitudes to diversity in the State, with a view to monitoring trends over time and gauging the impact of measures to improve anti-racism awareness and understanding.**



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