



TEJP

**TRAVELLER
EQUALITY AND
JUSTICE PROJECT**



Traveller Equality & Justice Project
Submission to the National Action Plan
Against Racism for Ireland Public
Consultation 2021



Funded by
the European Union

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1. Introduction:

The Traveller Equality and Justice Project is a collaboration between the Centre for Criminal Justice & Human Rights, School of Law UCC and the Free Legal Advice Centre. The work of the TEJP is supported through the European Union's Rights, Equality & Citizenship Award for 2021-2023.¹

The TEJP's mandate is to challenge the inequality and discrimination faced by the Irish Traveller Community, specifically in Cork & Kerry. The TEJP's core outputs include meeting unmet legal need through the establishment of the TEJP Traveller-specific legal clinic and capacity-building of both Travellers and legal professionals. This capacity building is executed through the development of our Traveller Law Database, textbook and other publications which seek to create a knowledge-base for those wishing to extend their practice into equality and minority rights work. Other project activities including data-set-creation on experiences of discrimination and barriers to access to justice, specifically within the Irish domestic equality framework and includes reporting to the European Union throughout the current funding period.

The TEJP supports the establishment of the National Anti-Racism Committee in 2020 and recognises this as one of many steps needed to create a fairer and more just society for ethnic minorities and victims of both discrimination and racism. The TEJP acknowledges the importance of the Committee's work and commitment to engagement with stakeholder organisations and minorities, creating a space to discuss how we can both respond to, challenge and eradicate racism in all its forms within the jurisdiction.

The TEJP welcomes the opportunity to submit to the National Action Plan Against Racism for Ireland Public Consultation 2021 and notes the scope of the Plan to strengthen the Government's approach to combating racism, building on the actions currently in the National Traveller and Roma Inclusion Strategy.

Our submission focuses on the following core themes:

- **Barriers to Justice for victims of Racism and Discrimination and need for legislative reform (Theme 1)**
- **Reform of Hate Speech legislation (Theme 2)**

¹ The Traveller Equality and Justice Project is funded by the European Union's Rights, Equality and Citizenship Programme (2014-2020) under Grant Agreement number: 963353 — TEJP — REC-AG-2020 / REC-RDIS-DISC-AG-2020.

- **New initiatives for equal access to employment, education and accommodation (Theme 3)**
- **Actionable policies for greater social inclusion and participation (Theme 4)**

It will also include suggestions for reform of both legislation and policy, in order to give broad and tangible effect to both domestic and international human rights norms, designed to combat racial discrimination.

2. Traveller Experiences of Racial Discrimination in Ireland:

The TEJP welcomes the long overdue recognition by the Irish State of Traveller Ethnicity in March 2017. However, despite this recognition, Travellers continue to experience widespread and systemic discrimination, racism and hate speech on a daily basis as one of Ireland's most marginalised and disadvantaged groups.² High levels of racism and discrimination by public and private actors continues with little specific State action intended to address such racism.³

Surveys of public attitudes to Travellers consistently reveal negative attitudes. A 2000 survey found that “36% of Irish people would avoid Travellers; 97% would not accept Travellers as members of their family; 80% would not accept a Traveller as a friend; and 44% would not want Travellers to be members of their community.”⁴ While a more recent survey found that “60.04% would not welcome a member of the Travelling [sic] Community into the family through kinship, and 79.4% would be reluctant to buy a house next door to a Traveller.”⁵

The Economic and Social Research Institute has also previously recognised this, noting that “the circumstances of the Irish Travelling people are intolerable. No humane and decent society, once made aware of such circumstances, could permit them to persist”.⁶ The ESRI further recognised that Irish Travellers are “... a uniquely disadvantaged group: impoverished, undereducated. often despised and ostracised. they live on the margins of Irish society”.⁷ Although this report was

² Irish Human Rights and Equality Commission, Ireland and the Convention on the Elimination of Racial Discrimination (Dublin: 2019, IHREC)

³ <https://www.ihrec.ie/app/uploads/2017/11/Who-experiences-discrimination-in-Ireland-Report.pdf> at p. 1.; All Ireland Traveller Health Study, Summary of Findings, September 2010, available at https://www.ucd.ie/t4cms/AITHS_SUMMARY.pdf

⁴ Citizen Traveller Campaign in 2000.

⁵ M., Mac Gréil, *Emancipation of the Travelling People (a Report on the Attitudes and Prejudices of the Irish People Towards the Travellers: Based on a National Social Survey 2007-08)*. Survey and Research Unit, Department of Sociology, National University of Ireland Maynooth, 2010

⁶ Economic and Social Research Institute, *The Population Structure and Living Circumstances of Irish Travellers: Results from the 1981 Census of Traveller Families*, Paper no. 131 (Dublin: ESRI,1986).

⁷ Economic and Social Research Institute, *The Population Structure and Living Circumstances of Irish Travellers: Results from the 1981 Census of Traveller Families*, Paper no. 131 (Dublin: ESRI,1986).

written in 1986, little has improved in relation to the community, despite the recognition of ethnicity. Indeed, denial of Traveller ethnicity remains common, at all levels.⁸

Travellers often refer to such experiences of racism as commonplace and “just the way it is”,⁹ finding that such racist comments are ingrained and societally accepted. Speaking to this, Dr Sindy Joyce recognised the extent and impact on this for her community who are seen as ‘deserving’ or that such racism is warranted and therefore acceptable:

A lot of people believe that the racism that we experience and the hate that we experience is actually not racism or hate at all, that it actually somehow comes down to ourselves, that it’s our own fault. So it becomes victim-blaming, and I suppose it’s constant, into a cycle, a never-ending cycle.¹⁰

The TEJP recognises the damage which this ‘victim blaming cycle’ has created – many Travellers chose not to identify as Travellers, instead hiding their identity for fear of persecution. Unfortunately, this need for Travellers to hide their identity is a result of long-standing policies and historical State attempts to assimilate Travellers into the settled community or to ‘fix’ Travellers. The 1963 Commission on Itinerancy¹¹ resulted in policies of assimilation for Travellers and created policies aimed at acclimatising Travellers away from their own unique culture and heritage into a more settled way of life as “there can be no final solution to the problem created by itinerants until they are absorbed into the general community”.¹²

This approach to eradicating Traveller culture, regarding it as ‘less than’ and treating their unique historical and cultural background as something to be eradicated permeated all aspects of State policy. For example, educational policy was adapted in light of the Commission’s report in 1963 with children being taught in segregated classrooms and showered and ‘deloused’ before entering the school. Some recall that this was often done in front of settled children, and that they felt humiliated, ashamed and like they were dogs.¹³ More worrying is that many of those implementing such policies did not see how this was problematic:

⁸ K. Doyle, “Presidential Candidate Peter Casey sparks outrage with his ‘racist’ remarks on Travellers”, 17 October 2018, Independent.ie, see also TEJP statement against Prejudicial Comments made by Cllr. Kenneth O’Flynn of Cork City Council at: <https://twitter.com/tejpucc/status/1406993054456745990>

⁹ <https://travellermovement.org.uk/archived-resources?download=9:jun-2015-gypsies-travellers-community-inequality-and-discrimination>

¹⁰ C. Gallagher, ‘Public asked for views on proposed ‘hate crime’ laws’ 24th October 2019 <https://www.irishtimes.com/news/crime-and-law/public-asked-for-views-on-proposed-hate-crime-laws-1.4061810>

¹¹ Commission on Itinerancy, Report of the Commission on Itinerancy, (Dublin: 1963, The Stationery Office). For background see Irish Traveller Movement, Review of the Commission on Itinerancy Report, <https://itmtrav.ie/wp-content/uploads/2017/02/ITM-Review-of-the-1963-Commission-on-Itinerancy.pdf>

¹² *Ibid* at 111.

¹³ J. Jones, ‘Second Opinion: Ethnic status for Travellers – what’s stopping us?’ <https://www.irishtimes.com/life-and-style/health-family/second-opinion-ethnic-status-for-travellers-what-s-stopping-us-1.1776460> 29th April 2014.

The principal proudly described the “hygiene” element of the programme, which involved showering and delousing the children before allowing them into segregated classrooms. When I suggested that providing washing facilities to Traveller families and educating the children together would be less discriminatory, I was told I did not understand the itinerant problem.¹⁴

While State policy has shifted away from the harsh policies of assimilation, unfortunately much of the segregation that occurred during this period has made its mark. Despite focused policies such as the National Traveller & Roma Exclusion Strategy, Racism and discrimination are unfortunately lifelong everyday experiences for Travellers in Ireland, so deeply rooted and tolerated that the current legal framework appears to have little to no impact.¹⁵ Any review intended to counteract experiences of racism must include full reform of the *Prohibition of the Incitement to Hatred Act* 1989 and the broader Equality Legislative Frameworks, including the *Equal Status Acts 2000-2018*, as part of Ireland's commitment to protect its citizens against racism and discrimination.

2.1. Experience of Racial Discrimination and the Impact of this upon Mental Health:

The impact of sustained and proliferating racism has clearly taken a huge toll on the Traveller Community. Recent workshops conducted by the TEJP and Cork's Traveller Women's Network reflect the lived-experience and impact which racial discrimination has in practice. Those surveyed recognise the hugely detrimental impact of this upon their mental health:

It's affecting their mental health. they know that even before they go to book a thing they have to pretend not to be who they are, dress differently, talk differently, not even give their own name, so this is a huge thing, for example booking a wedding, having to change everything, so the stress of it alone before we even book something is very bad for their mental health, it definitely is even a Child's party, its causing people very bad stress.¹⁶

The impact of this upon daily life, was recognised as being a source of shame and humiliation, where Travellers feel constantly on edge:

¹⁴ J. Jones, 'Second Opinion: Ethnic status for Travellers – what's stopping us?' <https://www.irishtimes.com/life-and-style/health-family/second-opinion-ethnic-status-for-travellers-what-s-stopping-us-1.1776460> 29th April 2014.

¹⁵ Cork Traveller Women's Network 'Discrimination in Accessing Goods and Services: Focus Groups,' 2019. Full report available August 2021 at <https://www.ucc.ie/en/tejp/guidesandresources/>

¹⁶ *Ibid*

Even if it's the most Traveller friendly venue in the world when you are walking in those doors it your heart is in your mouth, just in case, because you have been turned away so many times before. We are half expecting to be turned away all the time. And when we do get in or do get served, or you do get an appointment, there is a sense of relief that you didn't have to go through the humiliation of being turned away again. Settled people don't have to go through this, the constant stress, they are not even aware of it of how it feels to be carrying this with you all the time. It's like being treated like an outsider all the time.¹⁷

In particular, the respondents noted that they bear huge stigma, embarrassment and erosion of sense of self and identity as a result of being a member of the Traveller Community:

Even in the work space, I have daughters working, but they have to hide their identity. They said, if the boss knew they were Travellers, they would be left go and thrown out. That is what they would have to look forward to.... they are not left be who they want to be, speak in their accent, dress the way they want to dress, use a different address. They can't give an address of a site or a group housing scheme. Those addresses are classed as black spots by employers.¹⁸

All of those surveyed, noted that they feel that there is no option for recourse, as the occurrences are so regular that it has become 'part of life'.

You are tired from it, there is so much discrimination, its constant, if we were to go around and bring every single person who didn't let us in somewhere, you would be there forever, your whole life would be taken over from it. It's too much, its overwhelming. Too many people out there to challenge.

There is so much discrimination. You carry that with you, you don't realise it, you don't understand it, but now we are starting to understand it ourselves, hearing about trauma, internalised oppression and the effects it has on you. Lifelong discrimination affects our mental health, affects our well-being, and affected homelessness, drug abuse, alcohol abuse. Homelessness is new, years ago we were nomadic, but we always had a home. Young Travellers stayed alongside their parents; our culture is being broken down.¹⁹

Participants highlighted that the racism faced daily in Ireland is not replicated elsewhere, this underlines the 'Irish' issue of racism against Travellers:

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid*

The difference in England or other places away foreign is huge because I can go with my family into a café or a restaurant or bar and I will get served and am treated with dignity and it is so different. And I almost can't believe it – I am saying they are so nice...and the thing is that if you are turned away from a place in England, almost guaranteed you will find the owner is Irish.

It's like if you were on holidays in Spain. The staff just class us as Irish tourists and they smile at us and come over and ask if we are ok and would we like anything else and that would just never ever happen in Ireland and that is the truth, you get the odd person here who treat us like we are human, but most don't.²⁰

The feelings of helplessness in the face of persistent racial discrimination are not limited to the day-to-day lived experiences of the Traveller Community. Unfortunately, ongoing issues with workability of both the equality legislation and the *Incitement to Hatred Act 1989* have resulted in a system which hinders rather than helps victims of racial discrimination.

Travellers feel existing barriers within the equality framework have blocked their ability to take cases and challenge refusal of service. This is further compounded by the lack of enforcement of Equal Status Act cases. This results in a situation where despite applicants being successful in bringing such legal cases, there is no system of ensuring that remedies are implemented with an all too common consequence being that repeat acts of discrimination are committed by the defendant:

Travellers are a small community. When we hear of other Travellers going through the stress of bringing a place to court for discrimination and it changes nothing, that means we feel it's not worth taking cases. Even if you win your case and get compensation money, it's no good because when you go back to that venue, they will still discriminate against you again. And just because you won for that one pub doesn't mean the pub next to them is going to let Travellers in.

The core impact of this is not only arguably creating ongoing breaches of Traveller's access to justice rights and right to an effective remedy, but also results in 'rediscrimination' by virtue of the Acts' failure to adequately prevent racial discrimination. Furthermore, this creates an erosion of trust and faith in the legal system within Traveller Community:

We never brought a case because you don't hear of Travellers getting any justice and its draining to have to fight every day of your life when the system that is supposed to be

²⁰ *Ibid*

there to help you doesn't work. You could be years fighting and never get anywhere. You could put in your complaint and be waiting years for it to get to court. Your torn left right and centre fighting to get your evidence, make your statements, write your letters, and still at the end of it you don't even get an apology.²¹

Those surveyed agreed that they did not trust the current legislative framework and had no faith in the system to afford equality or freedom from racial discrimination. They further noted that these issues extended both to the attitudes of the judiciary and legal representation. The majority of those surveyed reported that they had experienced prejudiced or racist remarks from the bench during their interactions with the Court's system (both civil and criminal). They also noted that they felt that there was a lack of engagement from legal practitioners and where they did manage to secure representation this was often sub-par and below the standard which should be provided:

So even though a solicitor might take the cases from us, they don't stay in touch with us about the case, we are chasing them for information and there is no progress, it's like they are trying to put us down gently

The reason why Travellers don't take cases anymore, is because they are wondering where they go. They feel like cases are sitting in a shelf somewhere. Solicitors don't get back to you. You must chase them. And it's so slow with no feedback.

I have brought at least 3 cases to one solicitor and they have all just faded away, never made it away and I was always the person doing the chasing the solicitor for news. I will never go to that law firm again; I have not faith in it. But I have no doubt in my mind that I will be discriminated against. But I don't know any other solicitor to go to who would push things and take us seriously. And what I do know is that the system that is in place right now to challenge discrimination is not working.²²

Such testimony reflects both the daily lived experience of Travellers and the widespread, pervasive racial discrimination to which they are subjected. More worryingly however, it reflects a broader issue within Irish society, that the current legislative framework is failing both Travellers and other victims of racial discrimination at every juncture.

As a result, there is a clear need for reform of the equality framework and this requirement must underpin and inform every action under the National Action Plan Against Racism for Ireland, in order to avoid the toothlessness of previous consultation processes.

²¹ *Ibid*

²² *Ibid*

3. TEJP Recommendations:

In recognising the manner in which inadequate equality, racism and hate speech legislation has shaped the experiences of ethnic minorities in Ireland, the TEJP respectfully submits a number of core recommendations, grouped on the basis of the four themes presented by the National Anti-Racism Committee in their consultation document.

The scope of the Committee's work and its possible reach is important. However, the TEJP recognises that significant shifts both in policy and societal attitudes is needed alongside an overhaul of the current systems, to create a more equitable Irish society which does not tolerate racism.

Our recommendations are grouped according to the 'themes' presented in the consultation document and are thus as follows:

3.1. Barriers to Justice for Victims of Racism and Discrimination and Need for Legislative Reform (Theme 1)

In theory, there is a robust equality framework in Ireland under the *Equal Status Act* which provides for Travellers as a protected ground. The Act prohibits discrimination in accessing goods and services across a broad range of service providers including retail, hospitality, healthcare, education and accommodation. However, access to justice has become problematic since the shift from the Equality Tribunal to the Workplace Relations Commission (WRC) and District Court, which hears cases concerning licensed premises under s.19 of *the Intoxicating Liquor Act 1989*.

The more adversarial nature of the District Court has created a fear of self-representation which was not present before the Tribunal or arguably currently before the WRC. This issue has been compounded by the lack of practitioners willing to take equality cases:

‘... [after the system changed from Equality Tribunal to District Court] the solicitors saw that there were more cases being thrown out and dismissed and they lost interest.’²³

The transfer of Equal Status claims into the jurisdiction of Workplace Relations Commission has caused some further confusion and has unfortunately had the effect of reducing access to the equality infrastructure.²⁴ The TEJP notes that this must be reversed as a matter of priority as victims of racial discrimination report difficulties understanding the WRC process and find the forms to be an additional barrier:

Yes, the [Equality Tribunal] was a better system, quicker and more straightforward. better environment, in a hotel. easier

²³ *Ibid.*

²⁴ INAR, ALTERNATIVE REPORT ON RACIAL DISCRIMINATION IN IRELAND 2019 https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_39711_E.pdf

to do the forms. and you could get support from a Traveller project, you didn't have to go to a solicitor. there was loads of cases at that time...²⁵

INAR has also found that victims of discrimination have a low awareness of the full range of [the WRC] roles and work,²⁶ while the ECRI has noted that they may be misled by the name of the Commission, which directly refers to a Workplace, often leading those to believe it only concerns employment cases.²⁷ This is reflected within the Traveller Community lived experience:

Without a doubt there was more cases being won by Travellers in the Equality Tribunal and Travellers saw it. There was fire in our bellies, and we were standing up for ourselves going to the Equality Tribunals. But then suddenly that was all taken away. ²⁸

These issues with the structure of the current equality framework are proliferated by existing barriers to access to justice which prevent Travellers from challenging racism. Of particular note, is the current unmet legal need, whereby solicitors do not take equality cases or will not accept Traveller clients.²⁹ This is a worrying issue as access to justice is essential to addressing unmet legal and is integral and essential for social inclusion.

The inability of Travellers to both access the equality infrastructure and bring cases to challenge racial discrimination not only perpetuates their experiences of discrimination, but also creates a gap in understanding. If Travellers are unable to take cases, this has a direct effect on data concerning equality cases, whereby cases concerning Travellers are not present, thus undermining our understanding of how the equality frameworks operate in practice for minority groups. Furthermore, where Travellers do find legal representation and are able to take cases, they report turning up to hearings to see numerous practitioners representing the hotel or service provider. This creates a general issue of equality of arms for those seeking to defend their right to equal access to goods and services under the Acts.

It is clear therefore, that Travellers as a minority group, are largely unable to challenge racial discrimination under the relevant equality infrastructure. The equality systems warrant immediate reform to create a more accessible and inclusive forum for victims of discrimination to respond adequately.

²⁵ *Ibid*

²⁶ *Supra* n.23 p.10.

²⁷ *Supra* n.15

²⁸ *Ibid*

²⁹ *Ibid*

Further issues within the legal system as reported by Travellers involve racist comments and statements made by both practitioners, court staff and unfortunately, also by members of the judiciary. The TEJP has received complaints about such occurrences within both civil and criminal cases at both the High Court and District Court levels. This speaks to the ongoing debate around centralised judicial training and monitoring to ensure that racial discrimination has no place within the Court room.

While we recognise that comprehensive reviews and funding injections are ongoing for both the *Incitement to Hatred Act* and Legal Aid system, we emphasise that there is a need for reform of the domestic equality infrastructure to ensure that this is victim-centred and does not seek to undermine or create barriers to effective access to justice. In addition, reviews cannot take place in isolation effectively ignoring the interconnectedness of barriers to justice within this space.

Considering this, the TEJP recommends the following actions to be taken as part of an anti-discrimination proofing of the equality frameworks:

Recommendations:

- Need for increased visibility and reporting of equality cases, creation of data set: EU Report on the Application of RED notes that ‘Equality data are crucial for raising awareness, sensitising people, quantifying discrimination, showing trends over time, proving the existence of discrimination, evaluating the implementation of equality legislation, demonstrating the need for positive action, and contributing to evidence-based policymaking’.³⁰
- The current Equality infrastructure and legal aid provision must be updated. While the TEJP welcomes recent announcements re a review of the legal aid system, we recommend reform under section 27 of the *Civil Legal Aid Act 1995* as amended to ensure legal aid is available in discrimination claims before the WRC to ensure legal aid available for people to bring claims of discrimination.
- More broadly, with regard to reform to the Legal Aid system we recommend consideration of introduction of a means tested system such as that operating within Italy. Under this approach an advance payment is awarded for legal fees in equality cases considering the adversarial nature of proceedings. This includes setting up funds that provide victims of discrimination with advance coverage of legal cost and is known as the 'solidarity fund' of the National Bar Association (Consiglio Nazionale Forense)

³⁰INAR, Alternative Report on Racial Discrimination in Ireland 2019 https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_39711_E.pdfhttps://ec.europa.eu/info/sites/default/files/report_on_the_application_of_the_racial_equality_directive_and_the_employment_equality_directive_en.pdf

and Ministry of Equal Opportunities (DPO) which provides for €600 in each instance.³¹

- Section 14 of the *Equal Status Acts 2000 – 2015* to be amended to ensure that an effective remedy is available for discrimination that has a legislative basis.
- Increased awareness of the WRC: a promotional campaign to highlight its non-workplace related functions; improvement and improve its complaint procedures, including its complaint form; and consideration of a name change to promote and reflect its equality enforcement function.
- Remove s.19 of *the Intoxicating Liquor Act* and return *Equal Status Act* complaints from the highly adversarial District Court to the WRC.
- The TEJP recommends that judicial training is needed to enable greater and more respectful engagement amongst the judiciary when dealing with minority and vulnerable parties. Traveller Cultural Awareness Training³² and ethnic minority awareness training for all Court staff, alongside a campaign calling such conduct out would serve the current District Court environment well. We further note that enhanced monitoring and recording of District Court cases could act as a deterrent for such conduct.

3.2. All Forms of Media and Communications, including New Technologies: Reform of Hate Speech Legislation (Theme 2)

A core barrier to greater social inclusion for minorities in Ireland is the inability of the current hate speech legislation to adequately respond to racism and hate speech platformed or dissemination on new media, including social media and new technologies more broadly. Despite numerous cycles of reform consultation over a period of 18 years, the *Prohibition of the Incitement to Hatred Act 1989*, remains the core framework for responding to racism across media platforms. While State policy has shifted away from the objectionable policies of assimilation, unfortunately much of the segregation that occurred during this period has made its mark and despite focused policies such as the National Traveller & Roma Exclusion Strategy, Travellers continue to be treated like second-rate citizens and persistent discrimination and racism continue in Ireland. Racism and discrimination are unfortunately lifelong everyday experiences for Travellers in Ireland. Any review

³¹ National Bar Association (Consiglio Nazionale Forense) and Ministry of Equal Opportunities (DPO) <https://www.consiglionazionaleforense.it/documents/20182/48446/REGOLAMENTO+PER+IL+FUNZIONAMENTO+DEL+FONDO+DI+SOLIDARIETA%27+PER+LA+TUTELA+GIURISDIZIONALE+DELLE+VITTIME+DI+DISCRIMINAZIONE/47cb27b0-9c2e-4a63-8499-3e6f4c4adc80>

³² TCAT Training is offered by the Traveller Visibility Group in Cork, <http://www.tvgcork.ie/node/84>

of the *Act* must be framed as part of Ireland's commitment to protect its citizens against racism and discrimination.

In recognising the deep-rooted and widespread prejudice faced by Travellers, the TEJP strongly believes that *the Prohibition of Incitement to Hatred Act 1989* is unfit for purpose. When the Act was last reviewed five years ago, it was noted that during the first 27 years of operation only 10 cases had resulted in a conviction.³³ The Law Reform Commission, in its report on “Harmful Communications and Digital Safety” noted this directly the 1989 Act has been subject to significant criticism for its perceived inefficacy, illustrated by the limited number of prosecutions that have been taken under it.³⁴

We therefore welcome the current review process and submit that the Act must be reformed in order to adequately respond to and combat ‘the last acceptable form of racism’ that is hate speech and prejudice directed at members of the Irish Traveller Community across all forms of media and communications including new technologies.

In relation to the subsequent recommendations made, the TEJP is conscious of the importance of free expression both under the Irish Constitution and the European Convention on Human Rights but notes the right to free speech is not absolute and must be balanced against other rights and interests.

The TEJP would therefore suggest the following recommendations to ensure that the hate speech and racism legislation is fit for purpose and applicable to all forms of media:

- The TEJP submits that the wording of the 1989 Act is not broad enough to cover incitement via modern technologies and online behaviour: ‘the definitions of “broadcast”, “publish”, “recording” and “distribute” in the Act are not wide enough to cover online broadcasting, publication and social media discourse.’ We would propose the inclusion of more explicit terms pertaining to online and social media content which would result in more successful prosecutions under the Act. This is important as the majority of incidents of racist expression occur online.
- The TEJP, in recognising the damage and hurt that is caused by online ‘trolling’ and racist abuse of Travellers through social media such as Twitter, Facebook and other online social media applications, recommends that significant reform to the policy and regulatory environment including clearer codes of practice is urgently carried out to address the current deficiencies in the policing of such platforms.

³³ C. O’Keeffe, “Law to be reviewed regarding hate crime”, 17 December 2016, Irish Examiner. <https://www.irishexaminer.com/ireland/law-to-be-reviewed-regarding-hate-crime-435659.html>

³⁴ Law Reform Commission, Report on harmful communications and digital safety LRC 116-2016 (Dublin: 2016, LRC) at p.9.

- The TEJP notes the long delay in reform to this area is compounded by the strong position which Ireland occupies as a country which is currently the base for major social media and technological giants such as Facebook, Google, Apple and Yahoo. Ireland is therefore well placed to significantly push for change and reform amid the oversight and supervision and removal of racist material from social media and other online platforms.
- The TEJP also recommends that the Broadcasting Authority of Ireland (BAI), The Press Council of Ireland and Office of the Press Ombudsman are trained in adequately responding to racist content. These bodies are well placed to take a lead as statutory appointed supervision bodies for the press (print and online) in Ireland. The TEJP notes that a recent communication to the BAI about offensive comments on the Journal.ie by Cork Traveller Women’s Network was unsuccessful as the BAI noted that it could not control online comments. The TEJP disagrees however and would highlight that the comments are often disabled on the Journal.ie when the article contains sensitive information or ongoing trials. Reform to the BAI’s remit is therefore needed for it to adequately respond to reflect the reality of new media and communications.
- The TEJP would recommend that policy both within the BAI and its members be reformed to ensure that comments are disabled on news stories which may encourage negative engagement from commenters regarding the Traveller Community. While the Journal.ie and other engagement-based sites thrive upon active reader input/comments – they must recognise the platform that allowing a comment space provides. While the Journal.ie comments section includes the following statement ‘This is YOUR comments community. Stay civil, stay constructive, stay on topic. Please familiarise yourself with our comments policy [here](#) before taking part.’ TEJP notes that this is clearly insufficient to prevent prejudice comments and racist comments.
- The TEJP recommends that the law in this area should be revised as part of a wider reform of hate crime which produces an effective hate crime/speech regime. The use of hate speech creates a climate in which racism, including racist violence and discrimination, are perpetuated against ethnic groups. Both online speech and media speech, protected as a right under both the constitution and the ECHR (Article 10), must be carried out in a way that respects other rights. It is not absolute; restrictions are therefore permissible and should be clearly legislated for to ensure an appropriate legal environment for prosecution of hate speech.
- In addition, it is vital that the proposed reforms to the legislation ensure that use of prejudice and racism within political campaigns must be adequately responded to and

challenged to prevent candidates running on campaigns of hatred. The increased visibility of campaigning which channels racist and xenophobic ideas and materials, particularly prevalent since the 2018 Presidential campaign, highlights the growing importance of this. Where racist speech becomes normalised and mainstreamed it can lead to increasing hate crimes including actions that go beyond discriminatory practice.

- The TEJP proposes, in line with recommendations made from IHREC to the UN CERD hearing in 2019, that reform of the Act is needed to ensure that legislation for hate speech not just be of a criminal nature but should also include ‘other policy and regulatory measures to encourage non-discriminatory discourse, to educate the public on the harm of hate speech and to ensure that its extent and impact are adequately tracked.’³⁵

The TEJP therefore submits that specific legislation for hate crimes is necessary in Ireland as part of a full reform of the current legislation and in order to create robust and actionable responses to racism.

3.3. New initiatives for equal access to employment, education and accommodation (Theme 3)

Although the TEJP welcomes the introduction of the *Traveller Culture and History in Education Bill 2018*, we recognise that discrimination and experiences of racism continue to undermine and invade the educational experiences of many Traveller children. We submit that education and discrimination therein, must be a core focus of the new Committee’s work.

There are serious and entrenched issues within the educational standards to which Travellers are subjected to. These include but are not limited to:

- Reduced timetables which are often used for children with a specific illness, learning disability or medical need, to ensure they can continue in education are being widely used for Traveller children, despite these not presenting with any specific need for such restrictions.³⁶
- Adjusted curricula and withheld educational supports for Traveller children,
- Lack of access for supports needed for transition to Leaving Certificate and Senior Cycle.
- Lack of dedicated supports and advice for progression to third level.

³⁵ IHREC Submission to UN CERD, October 2019 – full report available at: https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf

³⁶ Irish Examiner, ‘Up to 60 Traveller students in one school on reduced timetables’ 29th June 2021 <https://www.irishexaminer.com/news/arid-40325537.html>

Traveller children are effectively segregated within formal education. The practices are archaic and based upon damaging perceptions of Travellers as disinterested in education. The TEJP recognises the delay caused to proposals to ensure an eradication of reduced timetabling practice by Covid-19, however a new approach is urgently needed. Such an approach must uphold the rights of the child to educational attainment and must focus on driving retention and progression through education for Travellers. Other supports must be adopted including:

- Nationwide and centralised roll out of Traveller-specific enhanced support for access programmes such as the excellent programme rolled out in Munster Technological University, the PATH programme³⁷ and the Junior Star Pupil Programme in Kerry which promotes access to third level and provides information, guidance and support to students from the Traveller community who are in the Junior Cycle of a mainstream second-level school.³⁸
- Specific grants must be adopted to support Travellers to third level in light of ongoing issues with the inadequacy of SUSI grant system.
- Employment – programmes to provide incentives for employers to hire Travellers, reskill/upskilling grants, focus on supporting and promoting specific Traveller crafts and heritage e.g. smithing, tinwork, music via specific cultural heritage grants and state supported actions.

Traveller Accommodation:

While the TEJP welcomed the thorough and excellent work of the Report of the Expert Review Group on Traveller Accommodation,³⁹ there has to date been little progress on the implementation of their recommendations. These recommendations were comprehensive, guided by culturally-sensitive and appropriate practice and findings and would create tangible and crucial reform to the current broken Traveller Accommodation system provided for under the *Housing (Traveller Accommodation) Act 1998*. The TEJP would call for the swift implementation of these findings in full, for Ireland to adequately meet its international human rights duty to protect and uphold the rights of Irish Travellers to culturally appropriate accommodation.

The TEJP further recognises the prejudice and systemic racism that has and continues to stymie local authority provision of adequate Traveller appropriate accommodation. The failure of many

³⁷ CIT Access Programme Overview, http://www.mycit.ie/access_disability.traveller-education

³⁸ IT Tralee, Junior Star Programme, [://www.ittralee.ie/en/InformationFor/CurrentStudents/StudentLife/StudentSupportServices/AccessOffice/TravellerLiaisonOfficer/#juniorstar](http://www.ittralee.ie/en/InformationFor/CurrentStudents/StudentLife/StudentSupportServices/AccessOffice/TravellerLiaisonOfficer/#juniorstar)

³⁹ Report of the Expert Review Group on Traveller Accommodation (2019) <https://rebuildingireland.ie/wp-content/uploads/2019/07/2019-July-Expert-Review-Group-Traveller-Accommodation.pdf>

local authorities to provide this, despite clear allocation of unspent funds, is indicative of wider issues with discrimination and prejudice within Traveller Accommodation Units. These issues reached critical point considering the hugely detrimental impact of Covid-19 upon the living situation of many Travellers reliant upon local authority Traveller accommodation. We therefore call for the extension of Circular 06/2020 and Circular 46/2016 which granted Local Authorities emergency powers to respond to Traveller accommodation issues which may contribute to the spread of Covid-19 in overcrowded accommodation. These included extra mobile homes and welfare units/portaloos on halting sites to enable residents to adhere to public health guidelines. The TEJP is aware, that despite the ongoing threat of Covid-19, that many local authorities have ceased providing or at worst, never provided, emergency measures are mandated in the circulars. The TEJP would question what motivated this failure of the local authorities to do so, where specific funds were ringfenced for this exact purpose.

Recommendations:

In considering the manner in which the current Traveller accommodation programme structure perpetuates racial discrimination, local authority refusal to supply Traveller-specific accommodation is in direct contraindication to the international human rights of the Traveller Community. Moreover, evidence has repeatedly been presented, that the issue is not fund-dependent. In fact, the majority of Local Authorities return the majority of their accommodation budget unspent. The issue therefore appears to be with the responsibility for Traveller accommodation being with local authorities who appear to be unable to carry out their duties under *the Housing (Traveller Accommodation) Act 1998*. The Expert Review Group recently identified that a core barrier to full implementation of the Act is the lack of political will at local authority level,⁴⁰ stressing that the duty under the Act needs to be transferred from local to national Government to ensure such prejudice does not continue to prevent creation of Traveller-specific and culturally adequate accommodation.

It must be stressed that barriers to provision of Traveller-specific accommodation are solvable given the size of the Community and the general improvements to policy, legislation and funding supports. The core issues lie within implementation of legislation and policy and is compounded by the how local authorities completely fail to recognise the need to provide culturally appropriate accommodation, do not see it as a right, and therefore reimpose discriminatory "housing" solutions.⁴¹ These issues are intrinsically tied to a lack of political will rooted in prejudice and racial

⁴⁰ *Ibid*

⁴¹ We note that this was a core finding from the IHREC Equality Review 'Provision of Traveller Accommodation by Local Authorities,' July 2021 <https://www.ihrec.ie/our-work/equality-review>

discrimination at a local level, in addressing the issues a shift towards strengthened Executive Function is vital.

Some possible recommendations could be around:

- **Improved Executive Functions:** TAPs should be an Executive function for local authority management not a reserved function of Councillors; the result of the current system is an unnecessary politicisation of provision of Traveller-specific housing. All decisions on Traveller accommodation should be moved from the Local Authority to An Bórd Pleanála on a temporary basis (such as the current approach to Strategic Housing Zones). Part 8 of *Planning and Development Regulations 2001 – 2015* allows public consultation on Halting Site planning applications and is a key problem that must be resolved – TEJP submits that Part 8 is contrary to the State’s international obligations and results in a restriction of Traveller rights as a result of public pressure. This is directly contrary to *L.R. et Al v. Slovakia* No 31/2002, U.N Doc CERD/C/66/D/31/2003 and the Anti-discrimination Directive 2000/43/EC.
- An **amendment to the *Planning and Development (Housing) and Residential Tenancy Act 2016*** would circumvent Part 8, moving such decisions to An Bórd Pleanála, The State therefore needs to amend planning regulations and to take effective steps to progressively realise the right to culturally appropriate housing for Travellers. Focus should lie on securing culturally appropriate accommodation as a priority in recognition of Travellers as an ethnic minority. Recognition of this, requires respect for nomadic practices and creation of transient sites and halting sites to prevent further erosion of Traveller ethnic identity in line with international human rights obligations *Winterstein v. France* no 27013/07, Art 17 CFREU which are binding upon the Irish State through the *European Convention on Human Rights Act, 2003* s. 2.
- **Accountability:** Imposing sanctions on local authorities who fail to realise obligations, create a centralised body to oversee implementation.
- **Respond to Traveller Families in Emergency Accommodation:** Traveller-specific emergency accommodation hubs need to be provided in each local authority in recognition of the high-levels of Travellers currently homeless. There needs to be an increased usage of Local Authority Managers using the emergency powers available to them to provide emergency accommodation for families living on unsafe roadsides while they await permanent accommodation provisions. Halting sites which have been closed must be refurbished and reopened to provide for the high demand for accommodation.

3.4. Actionable policies for greater social inclusion and participation (Theme 4)

The TEJP recognises the need for actionable policies designed to create lasting change and greater social inclusion and participation amongst marginalised groups such as the Traveller Community. Such policies must address the stigma, prejudice, discrimination, racism, social exclusion and identity erosion experienced by Travellers and include benchmarks and targets for monitoring effective implementation. Far too often, policy designed to enhance social inclusion remains purely aspirational and optical. Inclusion has recently become a ‘buzz word’ for commercial enterprises, such campaigns and initiatives do little more than create social media attention for performative allyship. Effective and measurable targets which have real impact for those excluded from society must be prioritised.

In particular, the following actions are needed to effect broader societal change, creating greater social inclusion:

- Unfortunately, without **adequate hate speech legislation** and in the absence of proper avenues through which to complain about public figures, those engaged in racist activities face little to no repercussions.
- The current barriers to social inclusion and participation of disadvantaged groups such as Travellers is largely attributable to the prejudice and stigma such groups face within society. Tackling this is a first step, however this must follow **a root and branch approach** through adequate punishments for those who exclude groups – increased funding, increased State supports for those actively engaging in inclusion and participatory projects.
- Awareness of the systemic racism experienced by minority groups and in particular Travellers, is not the issue, Unfortunately, Traveller racism and discrimination are engaged in across all aspects of society. TV programmes and films regularly engage in racist language and portray damaging stereotypes⁴². Such acts are seen as the **‘last acceptable form of racism’** and there is no retribution for those who engage – evidenced by fact that individual politicians have sustained political careers on anti-Traveller rhetoric and that usage of anti-Traveller slurs pervade throughout society.
- Specific initiatives such as campaigns which raise public awareness of racial discrimination can only do so much. There is a place for such campaigns, yet a priority in must be in **actions which do more than raise awareness alone**, instead coupling this with real and visible calls for action. **Data collection** and greater understanding of who experiences

⁴² For examples of this see Derry Girls, season 2 episode 3 ‘The Concert,’ and Young Offenders which repeatedly used pejorative language often used to describe Travellers.

racism and why is paramount. Yet ultimately stronger legislation, legal aid and supports for groups which assist and represent Traveller are a crucial first step. Campaigns and initiatives only go so far when legal system is too weak to act as an effective deterrent from those refusing service to marginalised groups. No adequate disincentive to not engage in racist acts in Ireland.

- Campaigns must be accompanied by awareness-raising of the proper **avenues to respond to and penalise those who engage in racism and hate speech**. Tools such as iReport and the work of INAR and IHREC more broadly must be made more visible. Specific reporting options for those in public office who engage with and actively campaign against minorities and specifically Travellers must be prioritised. The Presidential campaign and continued racism and prejudice rhetoric which pervades local authority politics evidence how weak the system for reprimanding political figures and candidates who engage in such acts is, codes of conduct must be robust and appropriate to ensure racism has no place in Irish politics.
- Specific **mechanisms are needed to ensure political procedures, processes and participation are antiracist**. These must include improved mechanisms for removal of Cllrs and others who engage in prejudice and racist language including clear avenues for complaint to Local Authorities, updating codes of conduct to more clearly penalise hate speech, racism and prejudiced language which at present are not clear. Overall, we need to make clear to those engaging in racist rhetoric that it will not be tolerated.

4. Concluding Remarks & Recommendations:

A number of recommendations can be drawn from this submission, which the TEJP believes will both improve and strengthen responses to racism in Ireland:

- The TEJP notes that the ongoing reform of the Incitement to Hatred Act is crucial to combatting racism in Ireland. In particular, ‘hatred’ as defined by the Act is clearly too loose a term and should be amended to ‘prejudice’ which allows for clearer scope and application and would bring Ireland in line with both European and International consensus on what constitutes incitement to hatred. The TEJP recognises to complete failure of the current act to respond to hate speech online both on social media and media platforms. Reform of the Act must address the serious issue of hate speech online and is fit for purpose, including reference not only to traditional media forms, but to social media platforms

- The TEJP notes that Travellers do not have faith in the current hate speech and racism legislation - based on the Act's failure to respond to and prevent hate speech in the Irish public, media and digital media realms. Traveller groups must be included at all levels of the reform process to ensure that active Community engagement and to encourage faith in the proposed reforms.
- The TEJP notes the use of 'hot topics' as click bait on online news media publications. The TEJP considers that ultimately the responsibility for policing content which may encourage or allow a platform for racial abuse, hate speech and prejudiced comments, be subject to greater Editorial scrutiny. Anti-racism training must be delivered to all BAI members in Ireland to encourage greater engagement with editorial responsibility in the publication of such content.
- The TEJP notes that specific training must delivered to the Gardaí and judiciary in order to encourage those involved in the prosecution of hate speech to be mindful of their important role in creating a society where racism is not tolerated. Steps must be taken in particular to address racial profiling both within the judiciary and An Garda Síochána.
- The TEJP encourages the State to take appropriate steps to combat hate speech on the basis of the principles laid down in the ECRI's *Report on Ireland (Fifth Monitoring Cycle)* recommendation to create new offences and to ensure that such steps form part of a comprehensive approach to hate speech and hate crime, establishing the necessary responses to target the social, economic, political, cultural and other root causes of hate speech and racism in Ireland.
- Urgent need for reform of Equality Framework, the WRC/DC division resulting from s19 of the *Intoxicating Liquor Act* and the lived experiences of Travellers reflect that the current framework serves to exclude those attempting to challenge unequal access to goods and services. This further marginalises individuals and directly undermines their right to access to justice.
- Reform is needed to the domestic equality infrastructure to ensure access to justice for victims of racial discrimination and inequality.
- Barriers to employment and education must be addressed at a national level.
- Commitment and clear strategic plan for reform of the current Traveller accommodation legislative framework to implement the findings of the Traveller Accommodation Expert Review Group.
- Entrenching social inclusion – broader reform of the legislative frameworks creates a robust mechanism for challenging and responding to racism. Increased prosecutions under

both the equality and hate speech legislation would act as an effective deterrent and sends clear message to those engaging in racist and hateful speech across all forms of media and new technology.

- Inclusion of prejudiced and discriminatory language in all codes of conduct for public officials to be supported by transparent and effective complaint mechanisms. At present, Councillors and local authority staff face little disincentive when engaging in such language and rhetoric yet it is not uncommon. Stronger codes of conduct which clearly outlaw discriminatory or prejudiced communications with clear methods of complaint may act as a deterrent for those who have previously run on racist and anti-minority platforms.
- The TEJP stresses that in Cork particularly, many Travellers have had adverse experiences with members of the Gardaí and judiciary where derogatory language is used without a means of challenging this. We are therefore highly cautious of how such training would be developed and stress that Traveller Representatives must be involved in the drafting and creation of such training to ensure that it is not a 'box-ticking' exercise. Such training could be modelled on the highly successful Traveller Cultural Awareness Training offered to those working with Travellers within the HSE. Furthermore, the TEJP stress that any proposed training for the Judiciary and Gardaí should be mandatory and continuously monitored to ensure that it is effective.
- Increased data creation and monitoring to benchmark the actions of the National Action Plan and to adapt outputs and policies accordingly.
- Human rights training is needed across the public sector, and it should be introduced with an effective approach to embedding the Public Sector Equality and Human Rights Duty. The Public Sector duty should be a core consideration in the work undertaken by all Government bodies and agencies in respect of the matters raised in this report. Enforcement of the Duty may be carried out by several bodies but must be in place to give it adequate standing in policy and practice and increase the trust of the public in its function.
- There needs to be a coordinated and national commitment amongst all public bodies working for and with Travellers to commit to anti-racism strategies which include relevant training, facilitation of access to education, employment and services, transparency of terms within this work and clear visibility. Engagement with these issues on a purely optical level is no longer sufficient, clear and actionable State and public sector duty must be committed to. A State enforced move away from rhetoric to actionable practice is required to further progress Ireland's commitment to anti-racism.

5. Conclusion:

These recommendations are made by the TEJP within the context of severe and widespread racism directed at the Traveller Community. Such hate speech, prejudice and racism has become normalised as part of the day-to-day experience of Travellers. Racism directed at Travellers is ‘the last acceptable form of racism’ and recent events, where political candidates have seen surges in popularity after making racist and anti-Traveller remarks compound this. The TEJP welcomes the establishment of the National Anti-Racism Committee in 2020 and recognises this as one of many steps need to create a fairer and more just society for ethnic minorities and victims of both discrimination and racism. In acknowledging the importance of the Committee’s work and supporting its commitment to engagement with stakeholder organisations the TEJP welcomed the opportunity to submit to the National Action Plan Against Racism for Ireland Public Consultation 2021. We hope that such campaigns and consultations and engagement with will contribute to real change and deliverables to inform how we as Irish society can both respond to, challenge and eradicate racism in all its forms within the jurisdiction.