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Equality Commission for Northern Ireland

And

**National Consultative Committee on Racism
and Interculturalism (NCCRI)**

North/South Roundtable on Migration

Belfast, February 5th 2004



Introduction

The North/South Roundtable on Migration was organised in line with the commitment of the National Consultative Committee on Racism and Interculturalism (NCCRI) and the Equality Commission for Northern Ireland (ECNI) to develop a North/South agenda for anti-racism and intercultural strategies. The NCCRI and ECNI have been working in partnership since 1998 on a number of North South projects which include European Week Against Racism (incorporating UN International Day Against Racism) during March each year. The NCCRI and ECRI have been involved in organising North-South Roundtables since 1999. The first Roundtable took place in Dundalk in 1999, a key outcome of which was the publication of “Developing a North/South Agenda for Anti-Racism and Racial Equality Strategies (1999).¹ This North-South Roundtable on Migration is viewed as the beginning of dialogue on issues and concerns regarding migration.

The growing rise in racism and the need to develop intercultural strategies has been well documented both in the North and the South. The current policy context provides a unique opportunity to build on existing initiatives in the implementation of an effective North-South approach in the fight against racism and discrimination. The Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission and the Northern Ireland Council for Ethnic Minorities have specifically identified the need for both National Action Plans against Racism (NPAR) to contain a reference to North-South cooperation. The Irish governments summary of the outcomes of the consultation process on the NPAR specifically refers to the need for the NPAR to build on existing North-South cooperation, and the possibility of a common section in the Irish and British NPARs.

The Roundtable was hosted by the ECNI. Anastasia Crickley, Chairperson of the NCCRI, chaired the morning session. She stressed the importance of focusing on outcomes from this Roundtable and to keep in mind the North/South context, such as the Belfast Agreement, Common Travel Area, Schengen Agreement, and the institutional common framework. She then invited people who had undertaken research into migration issues, North and South, to present the findings of their research.

Presentations of research on migration – North/South

1. Dr. Pauline Conroy, Ralaheen Research Ltd

***Migrant Workers and their Experiences*²**

The contributions of 40,000 migrant workers to the Irish workforce can easily pass unnoticed. Preparing for Anti-Racist Workplace Week 2002 (the priority theme was migrant workers) was an occasion for organisations of employers, trade unions, the construction industry, the Equality Authority and anti-racism awareness bodies to reflect on the supports needed by migrant workers. This short study presents some of the different experiences of migrant workers during the recruitment process, in their workplaces and in settling down in Ireland. This is an illustrative study conducted in Autumn 2002. The interviews undertaken concentrated on certain sectors that had been recruiting migrant workers since 1995 such as agriculture, horticulture and manufacturing sectors. It does not claim to be a large-scale representative survey of all migrant workers. It is based on migrant workers’ own perceptions of their experience and provides a snapshot of that experience at a particular moment for those interviewed.

¹ See “Developing a North/South Agenda for Anti-Racism and Racial Equality Strategies: An overview of recent developments in Ireland and Europe On Racism and Interculturalism” March 2000. Available on www.nccri.com

² This publication from 2003 is available from the Equality Authority www.equality.ie

The study found that migrant workers at both ends of the occupational hierarchy were relatively satisfied with their circumstances. Computer professionals considered themselves treated equally to others at work. At the lower end of the hierarchy, the study found rural agricultural workers, located in isolated areas in single nationality teams. Their pay was below minimum standards of pay, their English poor to non-existent and their working day very long. They did not complain. The study found workers in employment with and without work permits, workers who had tried to switch employers, and migrant workers experiencing loneliness and who wanted their spouses and children to join them. Migrant workers in horticulture were satisfied although segregated from local community. Latvians working in horticulture felt that the conditions in Ireland were excellent compared to Latvia and not complaining out of ignorance of their rights regarding minimum wage and conditions that may be contrary to employment legislation such as an employer retaining their passport. Many sectors that migrant workers work in are not well unionised such as horticulture and this is a problem.

Experiences in the health sector were mixed. Migrant nurses in private hospitals and nursing homes reported calling in supports such as trade unions to address breaches of contract, minimum working conditions, non-payment of wages and harassment. In contrast to this, the study found investment in induction, diversity training and mentoring for migrant and Irish nurses in a teaching hospital. The research found that nurses working in the public and private sector were very dissatisfied; long hours, treated as trainee nurses, lower wages and forced to be on-call nurses so the Irish Nurses Organisation called upon to represent them. There is now a League of Filipino Nurses to guide nurses to trade unions to identify issues of discrimination.

Regarding sources of information for migrant workers, many were identified including Citizens Information Centres (CICs) and trade unions. However during the research and interviews it became apparent that these sources were not known to migrant workers – there was a perception that you had to pay for these services. One of the recommendations of the research was that service provision tends to be ‘one cap fits all’ and that it was inaccessible. There is a need to make provision for translation as a way to promote integration. Pauline also stressed that any research into migration needed to make provision for translation in the budget.

Migrant workers in the study reported using very few public services or Irish voluntary organisations. A surprising number of those favoured seeking help from their diplomatic missions in Dublin or London. A number had re-contacted their recruitment agencies for advice. A number of those without recruitment agency support or of uncertain legal status approached Irish Congress of Trade Union Centres for the Unemployed. The study suggests that migrant workers do not experience a strong support infrastructure. None of those interviewed had received materials in their own language. Knowledge of their rights and obligations in the Irish workforce was weak, uneven or erroneous.

It is clear that continuing economic development in Ireland will require a significant presence of migrant workers. This survey identifies the types of change required in policies and practices that relate to migrant workers. These include:

- Policies and practices to empower migrant workers including the need to review the current approaches to granting work permits.

- A programme of investment in migrant community associations to support their capacity to network migrant workers, to articulate their interests and to communicate employment and other rights information.
- The development of effective channels of communication with migrant workers at the point of recruitment and in the workplace, concerning their rights and situations.
- The further development of family reunification policies for migrant workers.
- Specific initiatives to support and address the situation of migrant workers in low skills employment in particular those in the agricultural, horticultural and forestry sectors.
- Workplace initiatives to apply the Equality Authority's code of Practice on Sexual Harassment and Harassment in the Workplace, to develop policies and procedures to combat discrimination and to promote equality and to develop a capacity to address equality issues in the workplace.

2. Kathryn Bell, Institute for Conflict Research (ICR)

***Migrant Workers in Northern Ireland - Summary of Preliminary Findings by Kathryn Bell, Thomas Lefebvre and Neil Jar man. Institute for Conflict Research*³**

Migrant workers have become an increasingly visible social group within Northern Irish society over the past few years. However little was known about the number of people moving to Northern Ireland to work, or indeed about the sectors of work that were attracting migrant workers. In addition little was known about the demands these changes placed upon statutory bodies or about the specific problems faced by migrant workers as they established themselves in Northern Ireland.

This report was commissioned by the Equality Directorate Research Unit of the Office of the First Minister and Deputy First Minister to address some of the gaps in our knowledge about migrant workers. It aims to provide base line data, to identify gaps in information and service provision and to identify social problems and personal needs experienced by people moving to Northern Ireland to take up employment.

The research employed a variety of methodologies to address these aims. ICR collated data and statistics from a range of government departments and statutory agencies; interviewed a number of people working for statutory, voluntary and community organisations; conducted a survey and interviews with migrant workers. ICR also spoke with a number of employers and employer's organisations and carried out a review of literature on migrant workers in Northern Ireland, the United Kingdom and the Republic of Ireland.

Having reviewed the literature a simple definition was adopted of a migrant worker: 'an individual who arrives in the host country either with a job to go to or with the intention of finding one'. Citizens of the United Kingdom and the Republic of Ireland working in Northern Ireland were excluded from our study.

³ This research will be finalised in near future and will also include incidents of harassment.

Categories

There are a number of different and distinct categories of migrant workers or non-nationals who have varying rights to work in Northern Ireland. The main categories are as follows:

- Nationals of the European Economic Area who have a right to travel, live and work in the UK.
- Nationals of all other countries: who require a work permit, which is obtained by an employer who cannot find a suitable national to fill a post.
- Nationals of Switzerland and British Overseas Territories and people employed in a limited number of activities, who require clearance to enter the UK but do not require a work permit.
- Commonwealth Working Holidaymakers: individuals between the ages of 17-30 who can work in the UK for up to 2 years.
- Students from outside the EEA can work part-time whilst enrolled in courses.
- Undocumented workers including people who have entered the UK legally but are working without a legal right to do so and individuals who have entered the country illegally.

Statistics

This variety of categories, some requiring documentation some not, means that it is difficult to identify the total number of migrant workers in Northern Ireland with any degree of accuracy. Furthermore different departments have different means of classifying individuals, while some departments cannot separate migrants from nationals. This means that it is not possible to give an accurate figure for migrant workers currently in Northern Ireland.

However the available data does shed some light on the issue:

- The 2001 Census indicates that there were 10,355 people in Northern Ireland who were born in EU countries (excluding UK & RoI) and 20,204 people born in non-EU countries. This gives a maximum figure of 30,559 people who could be classified as migrant workers or dependents of migrant workers.
- The Labour Force Survey (Spring 2003) estimated that there were 9,000 non-UK and RoI nationals working in Northern Ireland.
- Data on work permits issued between 1998 and 2003 suggests that the maximum number of people working on work permits is 7082.
- The UK Immigration Service estimates there are around 2000 undocumented workers in Northern Ireland.
- The UK National Statistics also indicate that there has been a net outflow of population from Northern Ireland every year since 1992. Over this time out-migration has exceeded immigration by 27,500 persons.

Due to the variety of overlapping sub-groups within the definition clarification on the numbers of migrant workers in Northern Ireland has proved difficult. However, it does indicate both the gaps in our knowledge and the scope for providing better data from the existing range of sources.

Demographics

Data from a variety of sources indicates that migrants are being employed in a wide range of sectors with the most frequently cited being food processing, agriculture, nursing and healthcare, education and hospitality and catering.

The diversity of employment sectors means that migrant workers are widely distributed across Northern Ireland. The significant Portuguese speaking community in Dungannon

and Portadown has been noted in the media, but more recently food processing factories in Ballymena, Coleraine and elsewhere have also been turning to migrant workers. Most health care workers are employed in the Belfast area, but many health care trusts employ nurses from other countries. Farms and agriculture businesses in Newtownards, Portadown and in the border areas have employed migrant workers and such labour has also proved attractive to a range of hotels across Northern Ireland.

Migrants with a wide range of nationalities outside of the EEA applied for work permits. The most numerous are from the Philippines, India, Poland, Ukraine, USA and China as well as from Bulgaria, Romania, South Africa, Canada and Malaysia. Among the EEA countries Portuguese nationals are the largest visible group. It is possible the enlargement of the EU in 2004 will increase the numbers of migrants coming from the new accession states in Eastern Europe.

Data for people registering for National Insurance numbers suggest that men and women are migrating to Northern Ireland in equal proportion. Data from the ICR survey indicated that 57% of migrants were married and in 67% of these cases the partner was also in Northern Ireland and 38% of the survey sample had children living with them in Northern Ireland. The ICR survey revealed that 48% of respondents had been in Northern Ireland for a year or less, 13% had lived here between one and two years, while 29% had lived in Northern Ireland for between 2 and 5 years and 10% had lived here for over 5 years.

Reasons for Migrating

The research identified a range of 'push' and 'pull' factors that either encouraged people to leave the country they were living in or attracted them to move to Northern Ireland. Limited opportunities for work were a prominent 'push' factor-encouraging migration, while a range of positive attractions to Northern Ireland were cited. These included: a higher salary, opportunity for career development, a better standard of living, and the active recruitment process for specific occupations.

It is generally accepted that host countries benefit from inward migration of labour, in terms of having both skilled people and an increased labour capacity for jobs for which there is a limited local labour interest. The evidence from this research suggests that migrant labour is filling significant gaps in the labour force in Northern Ireland, both in terms of providing skilled workers, for example in the health system, and unskilled factory labour, for example in the food processing industry and in certain sectors of agriculture.

Furthermore the influx of migrants can have positive impact more generally. This can include the potential impact of migrants on a local economy in terms of consumption, housing and entertainment, and the increasing cultural diversity such immigration can bring to the wider society.

Issues, Problems and Responses

The research revealed that migrant workers experience a range of problems associated with working in Northern Ireland. Some of these are due to a lack of information, for example in relation to obtaining National Insurance numbers, poor working conditions, and their relationships with recruitment agencies. Other issues included a lack of recognition of existing qualifications, which affected types of job people could take and salary levels, or poor training provided by employers in Northern Ireland.

Most migrant workers lived in rented accommodation and a number of interviewees had experienced problems over housing, particularly if their home was supplied by their

employer. In such cases leaving a job also meant finding a new home. Some people had also experienced harassment related to their housing situation, while others had experienced racism and harassment in the workplace and in the street.

Experiences of harassment were the main reasons for those migrants who were interviewed to have had contact with the police. Other statutory agencies that migrant workers had commonly engaged with were the Housing Executive, Social Security Agency, the health service and the education system. Each of the agencies had made some acknowledgement of the existence of migrant workers as an emergent and distinctive category of client/customer and had begun to adapt systems in response, for example multi-lingual translation facilities.

The two major issues of concern for migrant workers in engaging with the various statutory bodies were in terms of information, often in regard to basic knowledge about access and rights to services, and the provision of interpreter services. All bodies had acknowledged this latter issue and some steps had been made to respond, but the need to be able to communicate with clients and customers in a growing number of languages was proving a challenge.

Many migrant workers had sought help and support from a diversity of community and voluntary organisations when dealing with their problems. A growing number of non-governmental organisations had acknowledged the presence of migrant workers in their locality or as a client group and were developing programmes and projects in response. Trade Unions and the Citizens Advice Bureaux were the most frequently contacted bodies, but projects such as STEP in Dungannon, Sure Start in Cookstown and Wah Hep in Craigavon represent the growing number of locally based groups engaging with migrant workers.

Conclusions

The research revealed that migrant workers are a growing category of employees in Northern Ireland and they are a necessary factor for many employment sectors due to a shortage of available local labour. Anecdotal evidence also suggests that migrant workers can have a positive impact on local communities and are an important factor in sustaining local business diversity. However there is a lack of integrated and cross-departmental data on the number of people moving to Northern Ireland to live and work. This needs to be rectified so that service providers have a clearer indication of the needs they will be responding to.

There is also a need for better information for migrants arriving in Northern Ireland, which clearly identifies the full range of their rights and their responsibilities. There would be value in improving cross-sectoral partnerships within and between statutory agencies and NGOs to clarify issues of concern, identify emergent good practice and develop appropriate strategies for future action.

3. Nazia Latif, NI Human Rights Commission⁴

Undocumented Migrant Workers in Northern Ireland and International Human Rights Protections⁵

⁴ The website of the NI Human Rights Commission is www.nihrc.org

⁵ The research paper was originally an internal document for the NI Human Rights Commissioners.

The primary purpose of this research is to examine the potential for using existing international human rights standards to protect undocumented migrant workers⁶ in Northern Ireland from exploitation, harassment and discrimination.

Undocumented workers are an invisible population and there have recently been a number of documentaries exposing the issue on BBC. The police force of NI has said that there is no problem of human trafficking but the NGO community and the Lithuanian community would disagree. There have been instances where undocumented workers have been held in detention in high security prisons in NI before being deported. She cited one example of a woman in hospital about to give birth when she was transferred to prison and then deported to her home country.

First, the research provides an outline of the situation facing undocumented migrant workers in Northern Ireland. It looks at the exploitative conditions undocumented migrants are routinely subjected to: their physical work environment; their employment contracts; the problems in accessing primary health care; those encountered even when undocumented migrant workers are treated for very serious health problems; the inadequate housing offered to undocumented migrant workers; the UK's detention policy and the problems of trafficking and smuggling in humans.

Second, it looks at how existing human rights standards might be used to address the specific problems facing those workers. It examines the scope of those treaties which the UK has ratified including, The European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the UN Convention Against Torture. The paper then examines those treaties which do address the problems experienced by undocumented migrants but which have not been ratified by the UK. Developments at European level in this field are also looked at. This section also discusses the increasing recognition that human trafficking as well as smuggling constitutes a form of slavery and inhuman and degrading treatment and that therefore those who enter states by such means are to be considered victims rather than criminals themselves.

Third, the research paper provides some examples of good practice in other EU countries, focusing in particular on programmes of regularisation of undocumented migrants. It discusses the possibilities of the UK pursuing a similar programme.

Finally, the paper makes some recommendations regarding further action interested parties might wish to pursue in order to improve the situation of undocumented migrants. These are:

- Lobbying Government to ratify the Migrant Workers' Convention, and to begin lobbying Government to ratify the Protocols to the UN Convention against Transnational Organised Crime.
- Engaging with the Council of Europe's *ad hoc* Committee on action against trafficking in human beings (CAHTEH) in its plans to draft a convention to that effect.

⁶ This paper will avoid using pejorative terms such as 'illegal' workers/migrants. Instead the terms undocumented or 'irregular' will be used to denote those migrants who arrive and/or work in the UK without official documentation issued by the Home Office.

4. Piaras MacEinri, NUI, Cork

“Labour Migration into Ireland” for Immigrant Council of Ireland⁷

Piaras explained the recent phenomenon of Ireland turning from a country of emigration to immigration with a 42% increase of people in the South entering the economy which includes returning Irish, migrants from the EU and non-EU and increased participation of women. In the mid-1990s immigration dramatically increased yet there is unreliable data as to the exact numbers. Inter-censal data is not reliable so one needs to consult the work permits that have been issued. In 1993, 1,000 work permits were issued and in 2003 47,000 were issued.

This increase in immigration has posed a challenge for monocultural Ireland as the 2002 Census can attest to. The Census gives statistics relating to the different nationalities living in Ireland especially from non-EU States. The diversity in countries of origin in Ireland is unusual worldwide as we do not have historical ties with these countries. Migrant workers tend to know little about Ireland on arrival and the sectors they are employed in tend to be spread over many sectors and a wide geographical area.

The challenges include the development of a fair migration policy, a recognition that migration will lead to permanent residence and the development of a policy on family reunification and integration. Government departments need to work together and engage with civil society (see Parekh Report in the UK). The Immigration Bill 2004 is a step backwards in the achievement of a fair migration policy. At the moment there is little evidence of a plan at government level. Regarding the post accession situation, Ireland is now the only country in the EU allowing unlimited access to citizens of these states. The question is whether we can meet all our labour needs with the accession states only. It seems that all positive measures regarding migrant workers are on the backburner and there is no positive moves proposed during the Irish Presidency. He also emphasised that the introduction of identity cards in the UK would have implications for Ireland in the context of the Schengen Agreement and the Common Travel Area.

5. Peter Fitzmorris, NI Law Centre⁸

In light of the increasing number of migrant workers coming to Northern Ireland, in a two part study, Maura Hutchinson and Peter Fitzmaurice examine the immigration and employment issues respectively. The Law Centre (NI) has noticed a steady increase in the number of inquiries about issues related to migrant workers. Enquiries come from both individuals and employers, covering a broad range of immigration and employment questions. They examine the key issues involved and particularly the rights and obligations of both workers and employers.

Immigration - Maura Hutchinson, solicitor, Law Centre (NI)

To enable advisers to protect migrant workers, it is necessary to first explain who needs permission to enter and work in the UK. Whether or not a person needs permission to come to the UK to work, depends on nationality and/or immigration status. Obviously, all UK citizens have the right of abode in the UK and therefore have no restrictions on living and working here. This also extends to an ever-decreasing number of commonwealth nationals, who historically were granted a right of abode in the UK. Spouses and other dependants of UK citizens are also entitled to live and work in the UK, providing they first obtain the correct immigration permission for a year initially before being eligible for indefinite leave to remain.

⁷ Immigrant Council of Ireland; *Labour Migration into Ireland*. (2003). See www.immigrantcouncil.ie

⁸ Northern Ireland Law Centre. See www.lawcentreni.org

In addition to these categories, all of those nationals from European Economic Area countries ('EEA'), comprising the European Union and the European Free Trade Area countries (Norway, Iceland, Liechtenstein) have rights of free movement in the UK. Switzerland has also recently signed an Association Agreement with the EU, which now gives its nationals similar rights of free movement. Under the EC Treaty and various regulations and directives made under it, these nationals therefore have the right to enter the UK as workers, self-employed persons, providers or recipients of services, people who are self sufficient, retired persons or students. In addition, EEA nationals exercising one of the above rights of free movement are entitled to be accompanied by their family members who also benefit from these free movement rights. This obviously applies even if the family members are non-EEA nationals themselves.

Irish citizens are in a unique position. Not only are they covered by European law but in addition, Irish citizens have always been able to come and work in the UK freely and are treated as though they have indefinite leave to remain in the UK. If a person is seeking work in Northern Ireland and does not fit into any of the above categories, s/he will need permission to work in the UK. Visitors are not permitted to work in the UK although there are certain categories of business visitors who are allowed to visit the UK and carry out certain activities, including attending meetings, for example. However, anyone intending to undertake work will need to ensure that s/he has the correct permission.

The Work Permit Scheme

The main route by which migrant workers can enter the UK to work is the Work Permits Scheme, which is now operated by the Home Office. Up until recently, applications for work permits to enable individuals to work in Northern Ireland were considered here in Belfast by the Training and Employment Agency. However, this function has now transferred to the main Work Permits UK department, which is based in Sheffield. Work permits are issued to employers, not to employees. Work permits are not issued for non-skilled positions and employers will have to show that the individual required has the appropriate skills, qualifications and experience for the position.

The onus is also on employers to show that there are no suitably qualified or experienced 'resident workers' available. The 'resident workers' workforce includes EEA nationals as well as anyone in the UK who has settled status. Generally, unless the position sought is one which is recognised to be a shortage occupation (up-to-date lists are available from Work Permits UK) or the individual is coming to a senior board level post or is being transferred from a sister company overseas, then the Northern Ireland employer will have to advertise to show that there is no one else in the EEA who can undertake this job. Advertisements can be in appropriate professional journals or in national newspapers (the Belfast Telegraph is generally acceptable for Northern Ireland posts, but advisers should verify this in advance with Work Permits UK).

Work permit permission is issued for a period of up to five years. Once an individual has remained for four years as a work permit holder, s/he may apply for indefinite leave to remain in the UK (or 'settled' status). Up until that stage, her/his working permission is tied to the individual employer. S/he may not switch employment unless s/he first finds a new employer who obtains a fresh work permit for her/him and permission is sought to 'switch'. This obviously puts employees in a potentially difficult position, particularly if they are unhappy with their working conditions. The Law Centre is aware of a number of incidences where employers have threatened work permit holders with being removed from the country. Migrant workers can potentially

be put in a position where they feel they have no choice but to continue working for an employer, even if conditions are unlawful and/or discriminatory. In these situations, both immigration and employment advice should be sought.

Other Categories Permitting Work in the UK

In addition to the main Work Permit Scheme, there are a number of other immigration categories under which people may be able to work in the UK. For example, those non-EEA nationals admitted to the UK for the purposes of study are entitled to work part-time up to twenty hours per week. In addition, those individuals who have obtained indefinite leave to remain (or 'settled' status) have no restrictions on working. Those granted refugee status or exceptional leave to remain also have no restriction on working.

There are a number of other useful categories, including the Working Holidaymaker provisions: these apply to citizens of commonwealth countries up to the age of 27 who can come to the UK for up to two years on a working holiday. At present, individuals should work no more than a year full-time or two years part-time. There are provisions for commonwealth citizens who have UK born grandparents to obtain permission to remain here for an initial four-year period. There are no restrictions on working for them or their dependent family members. There are also a number of short-term working categories, including seasonal workers, language assistants and au pairs. A number of these categories are currently being revised by the government, pursuant to the Nationality, Immigration and Asylum Act 2002; revisions are likely to be made in the form of amendments to the Immigration Rules.

Consequences of Illegal Working

Where people work in the UK without permission, the consequences are potentially severe. Individuals who are in breach of their immigration permission may be removed from the UK and may then have difficulty in re-entering. They may also be committing a criminal offence under Section 24 of the Immigration Act 1971. Employers may also be guilty of an offence under Section 8 of the 1996 Asylum Immigration Act (as amended by the 2002 Nationality, Immigration and Asylum Act) if they employ someone who has not been granted leave to enter or remain in the UK; or does not have valid and subsisting leave or has leave containing a condition prohibiting that employment.

A number of documents, which employers can ask to see and retain or copy which provide a defence to the Employer sanctions provisions. These provisions have been amended by the 2002 Act to require compliance with any Order made by the Secretary of State for the Home Department, as a defence to the sanctions. It is as yet unclear what Orders will be made and what compliance they will require from employers, although it is likely the list of documents that an employer can ask to see will be expanded. However, to date, employers have had a defence if they have retained passports or other documents showing that an individual has indefinite leave to remain or is exempt from immigration control. Employers obviously need to ensure that any such request for these documents is not made in a discriminatory fashion e.g. employees must not be asked to produce evidence that they have permission to work in the UK purely on the basis that they have a foreign accent or appear to be from a minority ethnic group. The Home Office has also produced guidance in these circumstances (as referred to in the employment section of this article).

Protecting migrant workers – Peter Fitzmaurice, NI Law Centre

Employment representatives need to recognise that the issues which concern migrant workers may be different from those of settled workers and that the advice that they need is specific to their situation. Migrant workers have, inter alia, the following statutory employment rights:

- The right to be paid the minimum wage – currently £4.20 for adult workers aged 22 or over. The development rate, which applies to workers aged 18 to 21 inclusive, is £3.60 per hour. The development rate is also payable to workers aged 22 or over who are in the first six months of a new job with a new employer and receiving accredited training. However, au pairs and family workers may be excluded;
- The right not to be unlawfully discriminated against;
- The right to bring a companion to a disciplinary or grievance hearing;
- The right to working hours and holidays in line with the Working Time Regulations;

In addition, provided their status is that of an employee, they will also have the right to:

- Be given statutory notice if their contract is terminated;
- A written statement of terms and conditions of employment;
- Unfair dismissal and redundancy protection in line with statutory requirements; and
- Maternity and parental rights.

All these rights are subject to whatever qualifying conditions apply generally. A common issue that arises with regard to migrant workers is the issue of the contract of service being tainted with illegality. Illegality may not only taint the contract but also undermine the whole of the employment protection rights afforded to the employee by statute. Contracts which are a fraud on the Inland Revenue cannot be relied upon to pursue claims for wrongful or unfair dismissal (*Napier v National Business Agency Ltd* [1951] AER264; *Tomlinson v Dick Evans 'U' Drive Ltd* [1978] ICR 693). A foreign employee knowingly working illegally without a work permit will not be able to complain of unfair dismissal (*Sharma v Hindu Temple*, IDS brief 464, p 5). If the employee was not aware of the fact that the contract was being performed unlawfully by the employer (by, for example not deducting tax for remuneration), the employee may rely on the contract for the purposes of claiming employment protection rights (*Newland v Simons and Willer (Hairdressers Ltd)* [1981] ICR 521). However, ignorance of the law as opposed to the fact is no excuse (*Miller vs Karlinski* [1945] 62 TLR 85).

The fact that the contract is unenforceable by reason of illegality does not preclude a person employed under such a contract from bringing claims of sex (and therefore presumably race, disability or fair employment) discrimination. The reason for this is that such actions do not seek to enforce the unenforceable contract (*Leighton v (1) Michael (2) Charalambous* [1996] IRLR1967) unless the claim arises out of it or is inextricably bound up with a contract that causes the contract to be illegal (see *Hall v Woolston Hall Leisure Ltd* [2000] IRLR 578, CA in which Leighton was approved).

One particular area of great importance for migrant workers is the induction programme. An induction programme can give the worker information on basic

employment rights, health and safety issues, grievance and disciplinary procedures and other relevant issues. It is also an opportunity for employers to demonstrate best practice. An individual's employment rights are significantly affected by her/his status, that is whether s/he is employed under a contract of employment; employed under a contract for services; employed through an agency; or genuinely self-employed. Migrant workers can be particularly vulnerable to exclusion from employment rights because their employment is often through an agency.

Migrant workers have equal rights to be protected against unlawful discrimination, whether based on sex, disability, religion, political opinion, race or nationality. Given that migrant workers by their very definition are not from Northern Ireland, it is obvious that a representative will examine closely all the provisions of the Race Relations Order (Northern Ireland) 1997 when examining any potential legal claims arising from their employment. The Order applies in all employment situations although, as noted below, private households are currently excluded. Employers are vicariously liable for acts of race discrimination committed by their employees in the course of their employment, unless the employer can prove that reasonable steps were taken to prevent such discrimination. Where tribunals and courts find that unlawful race discrimination has occurred, they may order the employer to pay compensation to the victim. A term in a contract which purports to exclude or limit any provisions of the Order is unenforceable by any person in whose favour the term will operate.

In deciding whether a person had been discriminated against, like must be compared with like. Hence, in *Dhatt vs McDonald Hamburgers Ltd* [1991] ICR 238, it was not discriminatory to treat potential employees differently according to whether they were or not free to work in the United Kingdom without permission, and hence it was legitimate to require evidence of such permission only from those who are not British or EU citizens. In relation to the scheme outlined in regard to the Asylum and Immigration Act 1996, there is a danger that, in seeking to avoid liability under the Act, employers may treat job applicants from ethnic minorities differently. This in turn creates the risk of discrimination claims. The Home Office has produced a Code of Practice which includes guidance in avoiding discrimination.⁹

The EAT in England and Wales has suggested that a foreign national complaining of discriminatory treatment may only be able to compare her/himself with other foreign nationals rather than with British citizens (*Sheiky vs Argos Distributions Ltd* [1997] 597 IDS brief 16). Employment rights can be affected by where an individual works. Under the Race Relations Order, except for discrimination by way of victimisation, employment in private households is specifically excluded. In addition, an employer may lawfully discriminate in the arrangements that s/he makes for selecting employees for a job where being a member of a particular racial group is a genuine occupational qualification for the job.

A failure to observe the terms and conditions in an employee's contract or job offer, whether or not these have been put in writing, amounts to a breach of contract. Workers who sign contracts when they are in another country may be told that they cannot benefit from UK employment rights. However, in a recent case in England and

⁹ [HTTP://www.ind.homeoffice.gov.uk/default.asp?PageId=1366](http://www.ind.homeoffice.gov.uk/default.asp?PageId=1366).

Wales, *United Airlines v Brannigan* [2001], women flight attendants who had signed their contracts in the USA but were working in the UK at the time of their pregnancy were able to rely on UK law.

Under the provisions of the Treaty of Rome, in EU member states it is unlawful to discriminate between workers of the member states as regards employment, pay and other conditions of work and employment. In addition to this, there are the rights based on UK discrimination law. In addition, where migrant workers are offered terms and conditions inferior to those of resident workers, it should be possible to pursue a discrimination claim under the Race Relations Order if the effect of the policy is to differentiate between the workers on the grounds of their racial or national origins.

A number of inquiries at the Law Centre have concerned employers deducting sums from wages at source. These are generally in two forms: deductions for accommodation or other board or lodging or deductions from a worker's pay to cover a fee or charge by a recruitment agency for finding work. Deductions to cover accommodation and other board and lodging are not unlawful under UK law. However workers, not just employees, may not have deductions made unless required by law or where the worker has agreed in writing in advance that there should be a reduction. To be able to agree to something, the individual needs as a minimum to understand what the provision means. If a worker has been given something to sign in English and s/he is not fluent in the language, it should be possible to argue that agreement has not been given. See the case of *Simoes and others v Benjys Group* (2200806/01) in the Employment Tribunal of England and Wales. Deductions to cover fees or charges by recruitment agencies are usually unlawful under UK law.

Immigration Law Update

UK Work Permits has indicated that a new 'managed migration' scheme is due to be launched in the spring. Although details have not been finalised and no firm date has been given, this is a significant development, as it signals a significant departure from the majority of the current work permit scheme. The managed migration scheme will, for the first time, issue work permits for unskilled labour, most likely in the hospitality and food processing industries. Permits will be available on a quota basis, with a likely quota of 20,000 per scheme for the whole of the UK. It is anticipated, therefore, that these quotas will be filled within the first few days. Such permits will not be available to those already present in the UK, either legally or illegally. These permits are temporary in nature and it appears that applicants may not be accompanied by family.

Peter emphasised the difficulty to move jobs as migrant workers as one is always tied to the employer regarding work permits. Asylum seekers have no right to work and undocumented workers have few legal rights and do not want to expose themselves. Migrant workers have a right to a minimum wage but they suffer discrimination at all levels and suffer the constant threat of dismissal. They are charged for accommodation and charged fees from recruitment agencies who do not charge a fixed fee but an ongoing percentage of one's wage. These charges are contrary to UK and NI law and there are cases pending before Employment Tribunal. He referred to changes in relation to accession states, that the UK is not going to give unlimited access to citizens of accession countries as previously promised.

Common Issues

The next part of the Roundtable aimed to identify common issues relating to migration, North and South. These included:

- The lack of information and data in relation to undocumented workers and the issue of cross border trafficking with particular regard to the gender dimension.
- The reform of the work permit systems
- The need for widespread use of interpretation/translation
- To focus on integration processes for migrant workers
- Access to education and further training for migrant workers
- The potential of National Action Plans Against Racism to address the issue of migrant workers
- The definition and perceptions of migrant workers by the host community
- For migrant workers to have access to accurate up to date information. The potential of cross border collaboration of CICs and CIBs regarding dissemination of information was emphasised and for information to be made available pre and post arrival and in a variety of formats.
- The access of migrant workers to all support services and the need for culturally competent service provision
- To encourage community advocacy in order to bring cases of discrimination to the Employment Appeals Tribunal. The lack of resources made available to organisations to advocate on migrant workers behalf was highlighted

- The reality of personal and institutional racism and the need to reform existing anti-racism legislation
- The need for research including comparative research and to establish an inventory of research completed to date
- The need for public awareness of the situation of migrant workers and to clarify myths and misinformation about migrant workers
- The need for anti-racism awareness training in all sectors
- The investigation of the role of recruitment agencies, North and South
- The lack of funding and resources for minority ethnic groups
- The need to include all partners North and South to push for a fair and efficient migration policy.

Session Two

The afternoon session was chaired by Stephen Livingstone of the Equality Commission for NI. Antoinette McKeown, ECNI reported back on progress on actions arising from a Roundtable on Migration that took place in Belfast in March 2003. A note of that meeting was circulated.

Identification of Possible Future Actions on a North/South basis

1. To highlight the potential of a possible common chapter of UK and Ireland's National Action Plans Against Racism. The ECNI and NI Human Rights Commission intend to work together to develop a NI chapter of the UK National Action Plan. Some common issues for a common chapter include migration and immigration matters, Travellers, information exchange and capacity building for minority ethnic groups.
2. To conduct research into definitions and perceptions of migrant workers and research on undocumented workers.
3. To collate and disseminate information on issues with a North/South dimension and on the implications of crossing the border. A possible North/South publication on rights and entitlements for migrant workers was suggested.
4. To call on both Governments for a review of work permit system
5. To assess the impact of Accession on migration policy after May 1st 2004 which may be a possible topic for a future North/South Roundtable later in 2004 with a focus on the east/west dimension to migration.

Conclusion

Both the NCCRI and ECNI viewed this Roundtable as very valuable in stimulating dialogue on issues and concerns relating to migration on a North-South basis. It provided the space to learn from each other, to exchange ideas, to network and to identify future actions on a North/South basis. An all Ireland response to racism and

interculturalism is one that the NCCRI and the ECNI are keen to promote. We look forward to future and sustained dialogue with a view to achieving the development of a fair migration policy North and South.

Attendance List (in alphabetical order)

Alisa Keane, Irish Congress of Trade Unions
Anastasia Crickley, NCCRI
Anthony Finn, Emigrant Advice
Anthony Soares, Department of Spanish and Portuguese Studies, QUB
Antoinette McKeown, Equality Commission for NI
Anton McCabe, SIPTU Anti-Racism Sub-group
Brian Lambkin, Centre for Migration Studies, Omagh
Catherine Bell, Institute for Conflict Research
Catherine Clydesdale, Association of NI Colleges
Charo Lanao-Madden, Latin America Association
Damien McKevitt, Race Equality Unit, OFMDFM
Daniel Holder, NI Health & Social Services Regional Interpreter Project,
Denise Carlton, Immigrant Council of Ireland
Diane Grammar, International Organisation for Migration
Edith Mackey, Equality Commission for NI
Eileen Chan-Hu, Ballymena Community Forum Ethnic Minorities Project
Geraldine Shevlin, Equality Commission for NI
Helen Leith, Northern Ireland Housing Executive
Jacqueline Healy, NCCRI
James Anderson, Department of Geography, Queens University Belfast
Joe Leneghan, Equality Commission for NI
Karima Zahi, NICEM
Karl Morgan, University of Ulster
Liam Conlon, Know Racism, Department of Justice, Equality and Law Reform
Maria Anderson, Equality Unit, Department of Employment and Learning
Maria Ramos, Ballymena Inter-Ethnic Forum
Natalie Caleyron, Multicultural Resource Centre
Nazia Latif, NI Human Rights Commission
Nuala Kelly, Irish Human Rights Commission and Migrant Rights Centre Ireland
Pauline Conroy, Ralaheen Research Ltd.
Peter Fitzmaurice, Law Centre, NI
Piaras MacEinri, NUI, Cork
Robert O Shea, Chambers of Commerce Ireland
Sharon McLaughlin, City Bridges
Stephen Livingstone, Commissioner, Equality Commission for NI
Tayra McKee, STEP, Migrant Workers Support Centre
Teresa Moley, Equality Commission for NI
Tom Haverty, Commissioner, Equality Commission for Northern Ireland
Vincent Edwards, Equality Authority
Vincent Gibbin, Business Support Unit, OFMDFM