



european network against racism

# ENAR Shadow Report 2010-2011

## ENAR SHADOW REPORT

### **Racism and related discriminatory practices in Ireland**

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## I. Executive summary

Racism is on the increase in Europe and Ireland is not immune to this phenomenon. Racist violence and crime accounted for 75% of the racist incidents reported to the Irish Network Against Racism in 2011. EU Fundamental Rights Agency's EU MIDIS study showed that 73% of sub-Saharan Africans interviewed said they had experienced discrimination. A report published by the Teachers' Union of Ireland in 2010 revealed that 46% of teachers were aware of a racist incident in their schools in the previous month. Yet Ireland's capacity to respond and to prevent racism during such periods has been diminished through disproportionate cuts to the equality infrastructure and to civil society organisations.

The report presents an overview of racism for the period January 2010 to March 2011.

### **Communities vulnerable to racism**

Ireland is an ethnically diverse society with ethnic minorities accounting for approximately 10% of the population. This diversity is reflected across the country. Ethnic minorities are vulnerable at this time, especially economically.

An ongoing problem is the persistent refusal by the State to recognise the ethnic identity of Travellers. Other vulnerable groups include women who, for example, are over-represented as employees in under-regulated sectors and for whom services are at times inappropriate.

The report strongly **recommends** that the State recognise the distinct ethnic identity of Travellers. It also recommends that real action to be take that reflects the gendered nature of racism and other intersecting forms of discrimination. The government should ensure a gender dimension is reflected in all measures to address racism and social exclusion.

### **Manifestations of Racism**

The report makes reference to a number of areas where racism is manifest and also notes relevant legal and political developments in the respective areas. These include the area of employment, education, housing, health, criminal justice, access to goods and services and the media.

Access to quality **employment** and under-employment are issues for ethnic minorities. There are specific issues for migrant workers who often work in precarious conditions and asylum seekers who do not have the right to work. The

report **recommends** that the National Employment Rights Agency be resourced to enable it carry out checks in workplaces to fight exploitation.

There are many issues in the area of **housing or accommodation**, particularly for Travellers and asylum seekers. The report recommends an end to Dispersal and Direct Provision policy for asylum seekers<sup>1</sup>. In the interim, the report **recommends** that the State ensure a proper regulation of accommodation centres for asylum seekers including the introduction of an independent appeals mechanism.

The right to **education** is limited for many groups including asylum seekers and undocumented workers. Others do not enjoy their right to access and full participation in education as a result of continuing direct and indirect discrimination e.g. Travellers and religious minorities. The denominational nature of much of the Irish formal education provision persists. The report **recommends** that the denominational nature of education provision finally be resolved. Issues surrounding access to third level education for the children of migrants, including the requirement that they pay substantially higher fees than Irish students, need to be addressed.

**Health** is a significant concern. The all island Traveller Health Study reveals prevailing poor health status for Traveller including shorter life expectancy and higher infant mortality rates. While the Traveller Health Study is welcomed, the findings of the study reveal shocking information on the status of Traveller health. Suicide accounts for 11% of deaths in the Traveller community. Asylum seekers are another group experiencing particular health issues. Mental health issues are prominent in the asylum seeking population, some of which are arguably as a direct result of the implementation of the dispersal and direct provision policy. The report **recommends** that the State commit resources to addressing the issues identified in the Traveller Health Study.

Racist violence and crime account for 75% of the racist incidents reported to the Irish Network Against Racism in 2011. Racist violence is a problem and Ireland does not have the legal means to deal with it adequately. With regard to **criminal justice** it was found that there are continuing limitations in the capacity of the legal system to recognise and penalise racist motivation in crime. Only one in six people report racist incidents to the police. In the area of policing, evidence of

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<sup>1</sup> Dispersal and direct provision is a system introduced by the Irish Government in 2000 through which asylum seekers are accommodated by the state in residential institutions throughout the country. For more, see [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie)

**ethnic profiling** is emerging and little evidence of serious measures to protect people against ethnic or racial profiling. Furthermore, certain controlling duties and other functions carried out by the police, are not covered by the equality legislation. A key challenge overall is the availability of data.

The report **recommends** that the Government give serious consideration to introducing legal provisions that employ a combination of racially aggravated offences and aggravated sentencing. The review of the Incitement to Hatred Act should be concluded and relevant amendments put into effect. It highlights the need for Government support for ENAR Ireland and our partners, in providing an independent mechanism for the monitoring of racist incidents.

The report notes that many key goods and services are provided by statutory bodies. **Access to goods and services** is often restricted as a result of government policy, e.g. habitual residence condition. The report **recommends** that exemption in the equality legislation be removed and that services provided by all government authorities or statutory bodies, be covered by the Equal Status Act.

An emerging area for concern with regard to **media**, is racism on the internet. There are also persistent issues with print and broadcast media. There are concerns regarding the effectiveness of the Incitement to Hatred Act to deal with racism in the media including online. The report **recommends** that racism on the internet be explicitly covered by the Incitement to Hatred Act and that racially aggravated offences be introduced in legislation.

**In conclusion**, the report challenges the pervasive myth that racism is not a significant issue in Ireland. It also refers to International instruments, concluding that the Irish government must implement recommendations by the UN Committee on the Elimination of all forms of Racial Discrimination (UN CERD) (March 2011).

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### III. Introduction

Racism persists in Irish society. Racism is on the increase across Europe and Ireland is no exception. This fact is highlighted by recent research by both European Network Against Racism (ENAR) and the EU Fundamental Rights Agency (FRA) as well as in research conducted by national bodies such as the Teachers Union of Ireland. The Eurobarometer also highlights a gap between realities and perceptions of people in relation to racism and related discrimination.

Ireland which had a booming economy and growing diversity for much of the previous decade, is now in the midst of recession. At this time, we are at a critical juncture and the anti-racism agenda requires strong political leadership and support by State institutions. Racism is on the increase in Ireland, reflected both in terms of number and severity of racist incidents. There is also apparent increased tolerance of racism. At a time when the risk factors for racism are clear including recession and the rise of extremism across Europe, Ireland finds that its capacity to address racism has seriously diminished since December 2008 with the closure of the National Consultative Committee on Racism and Interculturalism (NCCRI)<sup>2</sup> and the subsequent budget cuts which have affected the equality sector and institutions disproportionately, including a 43% cut to the budget of the equality body, the Equality Authority (see last year's Shadow Report for further information).<sup>3</sup> It should be noted that Ireland saw the election of a new coalition government on 25th February, which took power at the end of this shadow reporting period.

On the ground, there is a real sense of a perception by Government and other stakeholders that equality and anti-racism are seen as a luxury in a time of economic recession. We have seen disproportionate cuts to equality sector institutions and organisations at a time when the challenges of inequality and racism are coming more to the fore. We argue that not only is anti-racism and equality key to economic recovery but ignoring racism at this time has the potential to create social conflict and harm from which it will take decades to recover.

Key issues include the need for monitoring and legislation to effectively respond to racially motivated crime; and the ever diminishing capacity of infrastructure to address racism including through cuts to the community and voluntary sector. It

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<sup>2</sup> The NCCRI was a partnership body bringing together representatives from statutory organisations and civil society organisations. It acted as an advisory body to government. Other changes including the merging of the once independent Combat Poverty Agency into the Department of Community, Rural and Gaeltacht Affairs; a 24% cut to the budget of the Irish Human Rights Commission and a 43% cut in the budget of the Equality Authority which acts as the equality body, as required by the EU 'Race' Directive.

<sup>3</sup> ENAR Shadow Report: Racism in Ireland (2009/2010) available at <http://www.enar-eu.org/>

is with regret that we must again report what has been termed the 'persistent refusal' by the State to recognise the ethnic identity of Travellers.

The report is divided into fifteen sections. Section IV provides a description of communities vulnerable to racism. Sections V to XI focus identifying manifestations of racism and presenting an update on relevant policy and legal developments in specific areas, namely employment, housing, education, health, criminal justice, media, access to goods and services. Sections XII and XIII focus on legal and policy developments in anti-discrimination and in migration. Section XIV sets out a series of recommendations, at the national level and the conclusion (section XV) highlights the most significant developments. The time period covered by this report is from March 2010 to March 2011; however, some references are made to the calendar year January to December 2010, depending on the availability of data and related reasons. While the report does not focus on developments in the second part of 2011, where pertinent to the discussion, specific developments may be highlighted.

## IV. Communities vulnerable to racism and discrimination

Ireland is a multi-ethnic society; ethnic minorities represent approximately 10% of the population and there is considerable ethnic and religious diversity within the country. Many of these groups are vulnerable to racism. The Eurobarometer poll shows that more than half of Irish people believe that discrimination on the basis of ethnic origin is widespread. The figure was 57% in 2007; 52% in 2008 and 46% in 2009.

There were 22,400 members of the Irish Traveller community, or just over 0.5% of the population. There was a very high proportion of Irish Travellers in the 0-14 age group (41.4%), this was twice the overall population rate of 20.4%.<sup>4</sup>

The question of the recognition of the distinct ethnic identity of the Traveller community remains unresolved and was once again raised in the Concluding Observations of the UN Committee on the Elimination of Racial Discrimination (CERD), which highlighted the persistent refusal on the part of the State regarding this recognition.<sup>5</sup>

The Roma community has long been represented in Ireland. The community has grown considerably with the recent wave of immigration since the 1990s. It is not possible, however, to indicate the size of the Roma community in Ireland as the main data collection mechanism, the Census, does not collect data specifically on the Roma community.

In the context of the UN Year on People of African Descent, it is interesting to highlight where relevant, specific experiences. However, due to the way data is collected in Ireland and, of course, our specific migration history, it is not always possible to provide a focused analysis. Some studies referred to in the Report however, have looked specifically at people from Africa, e.g research by Equality Authority on discrimination in employment, by NUI Galway on taxi drivers, by TCD on Somali Refugees and the 2009 EU MIDIS study provides important, though worrying, data on the experiences of people from sub-Saharan Africa (see relevant sections throughout Report).

The 2011 Census maintained the question on ethnic background introduced in 2006, however at the time of writing detailed information from the 2011 census has not yet been released. The 2006 census remains the most detailed available source of information on diversity in Ireland. In 2006 there were 188 nationalities represented in Ireland, with 96.5% of the population stating that they had a 'white ethnic' background. People with a non-Irish white ethnic background were

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<sup>4</sup> CSO Press Release, available at [http://www.cso.ie/newsevents/pr\\_equalityinireland2007.htm](http://www.cso.ie/newsevents/pr_equalityinireland2007.htm)

<sup>5</sup> CERD Concluding Observations CERD/C/IRL/CO/3-4 para 12



predominantly in the 25-44 age group (50.5%), whilst people with a black ethnic background were predominantly between 25-44 (44.5%) or under 15 (40.9%).

In 2010 there were 1,939 asylum applications, down 27.9% from 2009.<sup>6</sup> This decrease in applications follows the trend of previous years, with asylum numbers dropping consistently since 2006.

Though Ireland continues to be a predominantly Christian, largely Catholic country, there is evidence of increasing religious diversity within the population. The 2006 Census reveals that Muslims are the third largest religious group in Ireland.<sup>7</sup> There was a 69.9% change in the Muslim population between 2002 and 2006, with 0.77% of the population identifying as Muslim in the 2006 Census compared with 0.49% in 2002. 0.05% of the population identify with the Jewish faith. There has been a very small but steady increase in the Jewish population since 1991, from 1,581 persons in 1991 to 1,790 in 2002 and to 1,930 persons in 2006. 90.64% of the population identify as Christian, with 86.83% identifying as Roman Catholic.

Within ethnic minority communities, there are sections of the community that experience multiple and/or additional forms of discrimination, e.g. women, lesbian and gay people, people with a disability. There are some provisions for the disaggregation of data by gender across categories such as ethnic background, religious belief and membership of the Traveller community within the census data collection and reporting mechanisms. However, data collection mechanisms are not consistent across the board. Concerned by instances of multiple discrimination, CERD is amongst those who encourage the State to take measures regarding the special needs of women belonging to a minority and other vulnerable groups. Particularly vulnerable groups in Ireland in 2009 and into 2010 included victims of trafficking, undocumented workers, domestic workers, migrants in low paid employment and unaccompanied minors. Recognising the UN Year of people of African descent, it is however not possible to say from existing data how many people in Ireland are of African descent. A small scale study of the Somali refugee community<sup>8</sup> however, highlights a high level of discrimination against the community and as reported in 2010, 73% of people from sub-Saharan African stated they had experienced discrimination, in the EU FRA study, EU MIDIS.<sup>9</sup>

2010 was a very significant year for equality and LGBT rights, with the passing of the Civil Partnership Act which came into force in January 2011. This Act allows for the recognition of Partnership and is already having a positive impact on the lives and opportunities for same sex couples, where one partner is a foreign national. LGBT organisations and migrant organisations have long fought for the

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<sup>6</sup> ORAC Annual Report 2010

<sup>7</sup> Census 2006, available at <http://www.cso.ie/statistics/Population.htm>

<sup>8</sup> Lentin, 2010.

<sup>9</sup> EU FRA, 2009.

rights of same sex couples to be recognised as partners and to have access to the same residency rights as heterosexual, married couples. It is interesting to note that both a strong human rights and business case were put forward for the Act, with LGBT organisations for example highlighting lack of marriage or partnership rights as a barrier to investment by multi national corporations and the impact of this discrimination on securing and retaining a skilled workforce.

## V. Racism and related discrimination in employment

### VII.i Manifestations of racism and related discrimination in employment

Racism and related discrimination were seen in 2010-2011 in the growth of unemployment amongst non-Irish nationals. The Annual Monitoring Report on Integration 2010 found that employment levels for non-Irish nationals were down 30% compared to 9% for Irish nationals.<sup>10</sup> The Migrant Rights Centre Ireland noted that it appears that unemployment is being managed by encouraging migrant workers to leave Ireland.<sup>11</sup> They argued that as the migrant workers have a significant presence in the Irish economy, and they are experiencing high levels of unemployment, the Government is encouraging them to leave so the unemployment will be reduced.

The Central Statistics Office record the two industries most affected by redundancies as manufacturing and construction,<sup>12</sup> two industries where migrant workers are highly represented.

Migrant workers continue to be vulnerable to workplace exploitation due to the restrictive work permits system, as leaving employment renders them vulnerable to becoming undocumented (see also section on migration and integration). Growing hostility towards migrants is continuing to develop in the current recession.

There are issues for people who are self-employed. Issues for taxi drivers came to light and received attention from NGOs, media, academics and CERD in 2010 and 2011. However, responses to, or the capacity to change the situation, are lacking (see below). Research conducted by the Irish Centre for Human Rights amongst taxi drivers in Galway revealed that 46% of the population had been informed through hearsay or indirect experience not to use a taxi driven by 'Africans'.<sup>13</sup> 62% of African taxi drivers stated that they had experienced discrimination whilst seeking employment in the Galway taxi industry, whilst 100% had experienced harassment that was racially motivated.

While there are specific issues for migrants in the area of employment, it must not be assumed that discrimination is a relatively new phenomenon or a supposed consequence merely of the recession. Travellers are a group that continues to experience persistent discrimination in this area before and through the recession, and whose level of employment remains relatively low. The experience of Travellers continues to have a negative impact on quality life for

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<sup>10</sup> Annual Monitoring Report on Integration 2010, ESRI/The Integration Centre. F. McGinnity et al. April 2011. P15

<sup>11</sup> MRCI, Hidden Messages, Overt Agenda. P 9

<sup>12</sup> CSO Statistical Yearbook 2010

<sup>13</sup> ICHR/NUIG Taxi Research 2010 p 6

individuals but also arguably on the whole community. Travellers' experience demonstrates the pervasiveness of discrimination in employment.

In the context of the EU Year of People of African Descent, it is interesting to note that the research conducted by the Equality Authority in 2009, *Discrimination in Recruitment*<sup>14</sup>, documented results for three specific groups including Africans, Asians and Europeans. The research indicates that people from these groups were only half as likely to receive an interview as an Irish national. EU MIDIS study<sup>15</sup> provided a specific focus on people from Sub Saharan Africa and found that 26% of respondents from this group reported discrimination at work.

Growing hostility towards migrants is a worrying development in the current recession. A Teachers Union of Ireland (TUI) survey<sup>16</sup> which shows an increase of racist incidents in schools, also referred to increased hostility and references to perceptions that migrants were taking jobs.

#### **Examples of NGO Good Practice**

##### **MRCI Campaign for the Right to Change Employer**

The Migrant Rights Centre Ireland (MRCI) continue to lobby the government for changes in the work permit system to enable worker mobility to promote employment equality and assist those in circumstances of extreme exploitation.

#### **VII.ii The political and legal context**

People are protected from discrimination in employment under the equality legislation on nine grounds including 'race', 'membership of the Traveller community' and 'religion'. However, it can take up to three years before a case reaches a successful conclusion and penalties are limited. Cuts in the budget of the equality body risk jeopardising the positive steps taken in the past towards employment equality. The current waiting time for individuals seeking redress over discrimination in employment weakens the practical impact that equality legislation has on the lives of those facing discrimination in employment.

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<sup>14</sup> Equality Authority, *Discrimination in Recruitment*, <http://www.equality.ie/index.asp?locID=105&docID=794>, accessed 10 August 2010

<sup>15</sup> EU – MIDIS, European Union Agency for Fundamental Rights European Union Minorities and Discrimination Survey (2009), Fundamental Rights Agency, *EU MIDIS Report*, [http://fra.europa.eu/fraWebsite/attachments/eumidis\\_mainreport\\_conference-edition\\_en\\_.pdf](http://fra.europa.eu/fraWebsite/attachments/eumidis_mainreport_conference-edition_en_.pdf), accessed 16 July 2011

<sup>16</sup> Teachers Union of Ireland, *Results of Behaviour and Attitude Survey* (2010)

Changes to the work permit system in 2009 continue to restrict the movement of migrant workers: new employment permits are only granted to 'highly skilled, highly paid' jobs, with a minimum salary of €30,000. In the current economic climate this is very difficult to achieve.

In an environment of recession with dramatic increases in unemployment (and as noted often disproportionate effect on ethnic minorities or migrants), there have been calls on Government for a robust Jobs strategy and activation measures. Significant plans have yet to emerge and ENAR Ireland argues that any measure must take into account the specific needs and barriers experienced by ethnic minority groups. Ireland is quite susceptible to influences from the United Kingdom. In light of statements there such as 'British jobs for British people', this is an area that requires both close monitoring and a proactive approach by the Government. The limited response – or apparently the lack of a responsible body – for the issues experienced in the taxi industry, points to a potentially limited capacity to respond to such occurrences and therefore, a proactive approach may be necessary.

## **VI. Racism and related discrimination in housing**

### **VI.i Manifestations of racism and related discrimination in housing**

Accommodation is a key area where there are clear cases of discrimination, at the individual and structural level; and across sectors. Discrimination in accommodation and poor living conditions must be addressed if equality is to be achieved, as it also impacts on other areas such as education and health.

Both limited implementation of Government policy on Traveller accommodation and the impact of current legislation, are directly linked to continued unstable and unsuitable living conditions for Travellers (see also section below). There are still Traveller families living on the side of the road, with no sanitary facilities or access to drinking water. This is an intolerable situation for which there are solutions, and it must be addressed. Where halting sites have been adequately developed and managed, it has been acknowledged that this went some way towards improving the perception of Traveller accommodation. For example, a South County Dublin Traveller Accommodation Programme has contributed to reducing the number and frequency of unauthorised encampments, and improved housing conditions for Travellers.<sup>17</sup>

The 'Habitual Residency Condition' continues to render people homeless when they are deemed ineligible for emergency accommodation, social housing or rent allowance. There is a growing problem of destitution and homelessness amongst migrant workers, particularly those that are undocumented. There are ongoing concerns that the Habitual Residency Condition is forcing migrant women to stay in circumstances of domestic violence, as their immigration status and consequently access to social protection are often tied to their spouse. This renders female migrants doubly vulnerable to discrimination in the field of housing.

The system of direct provision of accommodation for those in the asylum process and those awaiting deportation continues to be of concern to human rights groups in Ireland. There are many instances of individuals and families living in direct provision for over five years whilst their asylum, subsidiary protection, and humanitarian leave to remain claims are processed. Individuals who have been refused permission to remain in the process are also housed indefinitely in direct provision. Such a situation leaves people in substandard accommodation, violating their right to adequate housing.

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<sup>17</sup> South Dublin City Council, [http://housing.southdublin.ie/index.php?option=com\\_content&task=view&id=134&Itemid=155](http://housing.southdublin.ie/index.php?option=com_content&task=view&id=134&Itemid=155), accessed 15 September 2010.

Research into the best practice for local authority housing confirmed that those most at risk were older migrants, those not well integrated into the labour market, those with distinctive cultures and those whose accommodation was tied to work. Best practice should include policies to deal with racist incidents and a breakdown of data should be available for homelessness and housing provision.

In the private rental sector, there is also evidence of poor housing conditions and discrimination. Focus Ireland<sup>18</sup> and the Immigrant Council of Ireland commissioned research on the experiences of migrant workers living the area of Blanchardstown, a suburb of Dublin. The research found that several of the interviewees had reported serious problems, including overcrowding, damp housing, insecurity of tenure, limited furnishings, and landlords not carrying out repairs. Several felt discriminated against by landlords and said they had to move regularly. Interestingly, the evidence from the housing pathways of the interviewees found that the quality of their accommodation tended to improve the longer a person had been resident in Ireland.<sup>19</sup> The Vincentian Refugee Centre in Dublin have also highlighted issues with private landlords and are exploring initiatives with relevant stakeholders to positively address this.

#### **Examples of NGO Good Practice**

##### **NGO Forum on Direct Provision**

The NGO Forum on Direct Provision is made up of 15 NGOs working in the areas of asylum and integration. It works with the Reception and Integration Agency (RIA) and the Department of Justice to lobby for policy change in relation to accommodation of asylum seekers.

#### **VI.ii The political and legal context**

The provision of accommodation for Travellers remains part of national policy and legislation. However, the implementation of such policies at a local level is not as successful. All local authorities are required to have a Traveller accommodation programme under the Housing (Traveller Accommodation) Act 1998, the third set of these programmes covers the period 2009-2012<sup>20</sup>. The government has reiterated its commitment to these programmes in order to deal with Traveller accommodation in the National Action Plan on Social Inclusion 2007-2016. The Housing Policy Statement of June 2011 commits the Government to the provision of Traveller specific accommodation.

<sup>18</sup> A national organisation working in the area of homelessness.

<sup>19</sup> Focus Ireland, *Making a Home in Ireland: Housing Experiences of Chinese, Indian, Lithuanian and Nigerian migrants in Blanchardstown*, <http://www.focusireland.ie/index.php/research/publications-list-and-summaries/195-2009-making-a-home-in-ireland-housing-experiences-of-chinese-indian-lithuanian-and-nigerian-migrants-in-blanchardstown>, accessed 15 September 2010.

<sup>20</sup> Housing (Traveller Accommodation) Act, 1998, available at <http://www.irishstatutebook.ie/1998/en/act/pub/0033/index.html>

Human rights groups continue to call for reform of the system of Direct Provision of accommodation for asylum seekers, which was originally intended to be a short-term measure. Ireland's policy of Direct Provision violates asylum seekers' rights to an adequate standard of living, in particular the right to adequate housing and autonomy over food and health.<sup>21</sup> These limitations are discriminatory and undermine the fundamental principles of equality and human dignity. Following submissions and lobbying by NGOs, the Reception and Integration Agency (RIA) was called before the Oireachtas Committee for Health and Children. This was noted as an important action by NGOs as it clarified the situation and called for accountability of the Agency to the Oireachtas.

NGOs have called for the abolition of the policy of dispersal and direct provision but as of yet, to no avail. They are also calling for an independent appeals mechanism whereby residents of accommodation centres could make an independent appeal where there are issues or a complaint is taken against management. This would seem a normal procedure and indeed, simply a matter of course. However, no such mechanism has yet been introduced.

The Habitual Residency Condition (HRC) restricts a person's entitlement to access social housing and also emergency accommodation services, including refuges. In 2010 and 2011, this is an issue that has been highlighted in particular by women's organisations and those providing support to people experiencing domestic violence. They argue that the HRC is effectively forcing women to remain in domestic violence situations. This issue is discussed at greater length in the section on access to goods and services.

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<sup>21</sup> See for example Akidwa's 2010 publication, *I am Only Saying It Now* and Free Legal Advice Centre (FLAC) campaigns and representation, details of which are available online at <http://www.flac.ie/getinvolved/campaigns/current/direct-provision-campaign/>



## VII. Racism and related discrimination in education

### VII.i Manifestations of racism and related discrimination in education

Migration into Ireland increased significantly over the last two decades, and the education system is now seeing the results of such migration in terms of second generation access to education. There has been some change also in terms of retention of Traveller children within education, with a small number progressing to third level. Caution must also be paid in light of findings of the ESRI/Integration Centre study which showed that 20% of “non-Irish students” leave education early.<sup>22</sup>

The 2010 Budget saw further reductions in funding to educational programmes for marginalised groups, including language assistants and adult Traveller education programmes.

The CERD Committee noted with concern in 2011 that the education system in Ireland is still largely dominated by the Catholic Church<sup>23</sup> and is still largely denominational. 98% of primary schools are run under religious patronage, with 92% of these being Catholic.<sup>24</sup> The provisions of the Equal Status Act give schools the power to refuse to admit students on the grounds of religion providing a legal basis for discrimination and furthering hindering any integration agenda. The possibility of a new State model of primary schools under the patronage of VEC is a welcome step towards a more integrated approach to education in the State.

The Annual Monitoring Report on Integration found that 20% of non-Irish students leave education early.<sup>25</sup>

The results of the Teachers’ Union of Ireland’s 2010 ‘Behaviour and Attitude Survey’ research<sup>26</sup> revealed that almost two fifths of participants believed that the number of teachers available to teach English as a second language was not adequate. 48% of teachers were aware of a racist incident in the last month, and 32% had no specific formal procedure to follow after a racist incident. There was a clear trend noted by the researchers that racist incidences were being reported in communities where job losses were starting to increase. There was a clear lack of an intercultural policy at any of the schools researched, and African children were perceived to be targeted in more incidents.<sup>27</sup>

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<sup>22</sup> Monitoring report p 24

<sup>23</sup> CERD para 26

<sup>24</sup> IHRC Cerd Submission, p16

<sup>25</sup> Monitoring report p 24

<sup>26</sup> Above n15

<sup>27</sup> Teachers Union p 22

Eurobarometer public opinion polling suggests that many Irish nationals would like to see an education campaign involving migrants in order to improve local understanding of interculturalism.<sup>28</sup>

Access to third level education for ethnic minorities continues to be a problem. Educational inequalities earlier in the education system impact on the ability to access third level. This has been seen in the Traveller community, and is likely to increase in effect with the ongoing budget cuts to education.

Children of non-EEA nationals do not receive an immigration status in their own right until they turn 16. Most of the time, the immigration status given at the time of registration does not appropriately reflect the situation of these children who have settled in Ireland with their parents as they are registered as international students. This has an impact on their application for third level education. Third-level tuition fees vary greatly depending on institution, course of study and most critically on the status of the student. Fee decisions are made on an ad-hoc basis by different institutions and there is no standard code of practice or national policy outlining the conditions to qualify for EU or non/EU third level tuition fee. Many children are considered non-EEA students and are expected to pay the according fees. This is despite often having completed the majority of their studies in Ireland and there is no clear guidance on what fees should be applicable to children of non-EEA migrants.

#### **Examples of NGO Good Practice**

**Irish Traveller Movement Yellow Flag Project** Piloted in 2008-2009, the Yellow Flag Project brings issues of interculturalism, equality, and diversity into both primary and secondary schools. The project is ongoing and spreading across more schools in the State. Visit the Irish Traveller Movement website for further information, [www.itmtrav.ie](http://www.itmtrav.ie)

#### **VII.ii The political and legal context**

The National Action Plan for Social Inclusion (NAP Inclusion) 2007-2016 stated that segregated provision of primary and post-primary education would be phased out by 2009<sup>29</sup> to ensure that Travellers were integrated into mainstream schools. This goal has clearly not been realised. The Review of NAP Inclusion in 2008 stated that work has commenced towards this goal.<sup>30</sup>

In December 2010 the 'father rule' of Clonmel Christian Brothers School was ruled discriminatory by the Equality Tribunal, finding that the practical effect of

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<sup>28</sup> EB p 86

<sup>29</sup> NAP Inclusion 2007-2016 p35

<sup>30</sup> NAP 2008 Review

such a rule discriminated against Traveller children, and all children who were not of a Catholic background, who were less likely to have had parents or grandparents in the school. In July 2011 Clonmel Circuit Court overruled the decision, despite recognising that the rule was discriminatory against Travellers and potentially against other groups including for example Polish and Nigerian nationals.

On 28 March 2011 the Minister for Education and Skills announced the establishment of a Forum on Patronage and Pluralism in the primary sector to discuss the divesting of patronage from the Catholic Church. So far the forum has held public working sessions and welcomed written submissions from the main stakeholder groups. A conference will be convened in November to hear the advisory group's preliminary findings.<sup>31</sup>

Budget cuts have resulted in the cessation or restriction of education initiatives of particular benefit to ethnic minorities. Funding issues have seen the cessation of Pavee Point's Éist project which developed an anti-bias approach to early years education and has been highlighted in previous reports as an example of NGO good practice. Cuts to resource teacher hours have resulted in fewer resources for language support in mainstream education provision. The budget has also seen cuts to Traveller training centres. While this has been seen as part of a move away from segregated education and towards higher quality education provision, some NGOs argue that no alternative arrangements have been made.

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<sup>31</sup> <http://www.education.ie/home/home.jsp?pcategory=10856&ecategory=56743&language=EN>

## VIII. Racism and related discrimination in health

### VIII.i Manifestations of racism and related discrimination in health

Health inequalities and difficulties accessing healthcare services remain issues for ethnic and religious minorities.

The All Ireland Traveller Health Study showed a dramatic difference between the health of the Traveller community and that of the overall population. Infant mortality in the Traveller community is 14.1% compared to 3.9% in the overall population.

Findings from the recent Traveller Health study, *Our Geels*,<sup>32</sup> reveal startling statistics and the persistently poor health status of Travellers. Suicide accounts for 11% of deaths in the Traveller community. Life expectancy for both men and women is lower in the Traveller community than in the overall population (Traveller men 61.7, general population 76.8, Traveller women 70.1, general population 81.6). Since 1987 the male life expectancy in the general population has risen 5.2 years whilst there has been no rise in Traveller men. There has been a rise in Traveller female life expectancy 4.8 years since 1987, exceeding the rise in the general population by 0.4 years. On the other hand, there is clear evidence of the value of Primary Health Care for Traveller projects, with proportionally more Traveller women than settled women accessing breast screening and smear tests.

There are serious concerns<sup>33</sup> over the impact of dispersal and direct provision on the mental health of asylum seekers.

The HSE Crisis Pregnancy Service is commissioning research into Sexual Health, Fertility and Motherhood issues for migrant and minority ethnic women in Ireland. The results of this research have not been published at the time of writing.

#### Examples of NGO Good Practice

**Cairde Ethnic Minorities Health Forum** Cairde works to tackle health inequalities among ethnic minorities in Ireland by improving access and

<sup>32</sup> *All Ireland Traveller Health Study: Our Geels* was published in September 2010 and is available at [http://pavee.ie/ourgeels/wp-content/uploads/2010/09/AITHS2010\\_SUMMARY\\_LR\\_All.pdf](http://pavee.ie/ourgeels/wp-content/uploads/2010/09/AITHS2010_SUMMARY_LR_All.pdf).

<sup>33</sup> NGO Forum on Direct Provision, Direct Provision and Dispersal: Is there an alternative (2011), [http://www.irishrefugeecouncil.ie/detail.php?category\\_id=2&sub\\_category\\_1\\_id=2&sub\\_category\\_2\\_id=22&sub\\_category\\_3\\_id=204](http://www.irishrefugeecouncil.ie/detail.php?category_id=2&sub_category_1_id=2&sub_category_2_id=22&sub_category_3_id=204)

participation. The Ethnic Minority Health Forum meets regularly to identify and address issues that impact on ethnic minority health.

**The All Island Traveller Health Study.** The All Island Traveller Health Study was conducted employing a methodology that involved the participation of Travellers as field researchers and was supported by Traveller organisations including Pavee Point Traveller Centre.

## VIII.ii The political and legal context

The HSE National Intercultural Health Strategy 2007-2012 aims to reduce health inequalities for people from diverse ethnic and cultural backgrounds. This includes refugees, asylum seekers, migrant workers, undocumented migrants and Travellers. The midterm review of the Strategy is currently in progress.

The HSE National Service Plan for 2011<sup>34</sup> states that Emergency Multilingual Aid toolkits for staff will be made available, the Intercultural Health Guide will be implemented and a translation toolkit will be given to staff.

The Female Genital Mutilation Bill<sup>35</sup> is a relatively progressive Bill that seeks to outlaw FGM in Ireland. It has received and indeed been progressed as a result of lobbying by NGOs, including Akidwa (an African and migrant women's organisation and members of ENAR Ireland). Unfortunately, the Bill was not passed as hoped before the change of Government in Spring 2011. However, it is envisaged that legislation shall be passed by the current Government and this is much anticipated.

The 'All Island Traveller Health Study'<sup>36</sup> is referred to throughout the Report. However, published amidst budget cuts and austerity measures, it appears that there shall not be a specific budget or adequate funding available to follow up with actions to address the glaring disparity between Traveller health status and that of the general population.

It must be noted that government policy itself is having a negative effect on health and refugee organisations as well as that medical professionals highlight the negative impact of dispersal and direct provision, including on the mental health of asylum seekers.<sup>37</sup>

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<sup>34</sup> National Service Plan (2011), Health Service Executive, <http://www.hse.ie/eng/services/Publications/corporate/nsp2011.pdf>, accessed October 2011

<sup>35</sup> Criminal Justice (Female Genital Mutilation) Bill 2011, <http://www.oireachtas.ie/documents/bills28/bills/2011/0711/b0711s.pdf>, accessed October 2011

<sup>36</sup> Above n23

<sup>37</sup> See for example, the Report from the National Conference HSE West on Mental Health Issues affecting Ethnic Minorities and Asylum Seekers, published in 2009, available at <http://www.hse.ie/eng/services/Publications/services/SocialInclusion/MentalHealthNeedsOfMinorityEthnicGroups.pdf>

## IX. Racism and related discrimination in criminal justice

### IX.i Manifestations of racism and related discrimination in criminal justice

#### IX.i.i Policing and ethnic profiling<sup>38</sup>

Policing plays an important role in the protection of minority rights. The Irish police force, An Garda Síochána, have recognised this important role and have developed strategies aimed at linking with ethnic and religious minority communities. The ‘Garda Diversity Strategy’ and ‘Implementation Plan 2010-2012’ was launched in 2010 and is ongoing.<sup>39</sup> However, there are still concerns regarding policing and ethnic profiling due to deficiencies in legislation, problems with data collection and police practice. For example, police are not required to record the ethnicity of people they stop. Therefore it is difficult to prove that ethnic profiling is practised or otherwise.

The UN CERD<sup>40</sup> noted with concern the lack of legislation proscribing racial profiling by police. It recognised that many non-Irish people are subjected to police stops and recommended that legislation should be adopted to prohibit any form of racial profiling.<sup>41</sup>

Ethnic profiling is a practice that can affect all ethnic and religious minorities including Travellers. There is mounting concern by NGOs, including those working in the area of migration and integration, that Gardaí may be practicing ethnic profiling. There is little national data on the issue of profiling; however, the European Union Minorities and Discrimination Survey (EU MIDIS) found high levels of police stops among many minority groups that were interviewed across Member States, Ireland included.

Observational research conducted by the Migrant Rights Centre Ireland on ethnic profiling indicated that identity documents were regularly checked for visible minorities. During interviews it was revealed that visible minorities experienced more scrutiny at airports, with one incident involving a man with long term residency being detained for three hours whilst his white colleague was not stopped.<sup>42</sup> The MRCI study provides useful recommendations for government policy in this area.

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<sup>38</sup> The Open Society Institute defines “ethnic profiling” as the “use of generalisations grounded in ethnicity, race, national origin, or religion - rather than objective evidence or individual behaviour - as the basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity” .

<sup>39</sup> An Garda Síochána Annual Report 2010 p 40

<sup>40</sup> UN Committee on the Elimination of all forms of Racial Discrimination – issued concluding recommendations on Ireland in March 2011.

<sup>41</sup> CERD para 18

<sup>42</sup> Ibid. p22

ENAR Ireland's racist incident monitoring system includes the category of policing/criminal justice so that people can report incidents such as ethnic profiling independently.

Generally in regard to policing, the Garda Síochána Ombudsman Commission Report for 2010 states that the public attitude of non-Irish nationals towards policing does not differ from the overall population, with almost eight out of 10 individuals who had recent contact with the Gardai being satisfied.<sup>43</sup> The report contained information on the number and type of complaint made against members of the Gardaí, however the breakdown of this data did not include ethnic profiling as a factor of the complaint.

Statistics from the Office for the Promotion of Migrant Integration<sup>44</sup>:

No. of complaints alleging discrimination on the grounds of race and/or religion:

<b>Year</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Count	39	23	24	25

Breakdown of complaint outcomes:

<b>Outcome</b>	<b>Count</b>
Sanction	4
No breach	54
Withdrawn	6
Inadmissible	29
Still open	18
Total	111

It is difficult to ascertain the outcome of complaints made to the Ombudsman on grounds of 'race' due to issues with disaggregation of data. Furthermore, few complaints were upheld in the final instance.

### **Examples of NGO Good Practice**

#### **Migrant Rights Centre Ireland – Singled Out**

There has been a dearth of information regarding ethnic profiling and evidence has been largely anecdotal. MRCI participated in an EU wide study on ethnic profiling. As part of this, research was carried out. ENAR Ireland is also working with police on a range of issues, including the reporting of racist incidents. Data collection has been noted as an area where improvements can and should be made, including introducing the practice of recording the

<sup>43</sup> GSOC Annual Report 2010 p49

<sup>44</sup> Office for the Promotion of Migrant Integration, [www.integration.ie](http://www.integration.ie)

ethnicity of people who are stopped by police as is common practice for example in the UK.

### IX.i.ii Racist violence and crime

Racist violence and crime account for 75% of the racist incidents reported to the ENAR Ireland and its members in 2011; that is 113 of the 149 incidents recorded. An Garda Síochána can note racist motivation, when a crime is reported to them. Figures released by the Central Statistics Office show the number of such cases noted by An Garda Síochána.<sup>45</sup>

#### Overall Yearly Totals

Year	2003	2004	2005	2006	2007	2008	2009	2010
	64	68	100	173	214	172	128	122

#### Breakdown of Yearly Totals

Below, racist incidents are broken down into 10 different classes of crime. This breakdown is only available for incidents from 2006 onwards. Please note that figures are only given where there were 5 or more offences recorded - the result is that the totals in the table above vary slightly from the totals in the table below.

	2006	2007	2008	2009	2010
<b>Assault Minor</b>	39	50	45	30	36
<b>Assault causing harm</b>		17	12	13	7
<b>Harassment</b>		11	9		7
<b>Criminal Damage (Not Arson)</b>	39	42	29	22	22
<b>Robbery from the person</b>	5				
<b>Public Order Offences</b>	51	57	42	34	26
<b>Drunkenness Offences</b>		6			
<b>Prohibition/Incitement to Hatred- Other Offences</b>		6	6		

<sup>45</sup> Data available also on the website of the Office for the Promotion of Migrant Integration, [www.integration.ie](http://www.integration.ie)



<b>Menacing Phone Calls</b>			5		
<b>Prohibition/Incitement to Hatred-Section 2 of 1989 Act</b>	5	7	9	10	
<b>Totals</b>	<b>139</b>	<b>196</b>	<b>157</b>	<b>109</b>	<b>98</b>

*All incidents are provisional and may be subject to further revision.*

*Source: The Central Statistics Office*

The Committee on the Elimination of Racial Discrimination noted that racist motivation is not consistently taken into account by judges in sentencing.<sup>46</sup> It also noted with concern the reported prevalence of knife crime against members of the sub-Saharan African community.<sup>47</sup>

In September 2010 two men were charged with the murder of Toyosi Shittabey, a fifteen year old boy who was stabbed to death in April 2010. Toyosi Shittabey's death shocked his community and indeed, the country.

In terms of reporting a racist incident, An Garda Síochána research indicates that only 18% of people were likely to report a racist incident, clearly suggesting that under-reporting, an international issue, is also an issue in the national context.

#### **Examples of NGO Good Practice**

**ENAR Ireland – Standards and Standard Framework for the Monitoring of Racist Incidents:** ENAR Ireland provides an independent mechanism for the recording of racist incidents and related supports including awareness raising, training, referral, reporting. Incidents can be reported face to face, by phone or online. For more information or to report an incident online, visit the website, [www.enarireland.org](http://www.enarireland.org)

An Garda Síochána (Irish Police) has a Garda Racial, Intercultural and Diversity Office (GRIDO) which acts as a resource to the public and to the police service. While committed and working closely with civil society organisations, the Office has limited resources despite a recently extended mandate to cover all the equality grounds. GRIDO carries out training with police. However, this is a small office serving a large police force. There is anecdotal evidence to suggest that responses at a local level are inconsistent. In some areas and depending on the officer, the response to racist incidents can be good; in other areas is not as strong and there are also problematic issues such as the fact that in some instances the ethnic liaison officer is also the immigration officer. Indeed, police

<sup>46</sup> CERD para 19

<sup>47</sup> Ibid. para 23

are also constrained as a result of issues with the legal system and the scope of legislation that is in place.

## **Counter terrorism**

The current counter terrorism debate that is evident in a number of Member States does not have the same relevance or resonance in Ireland. However, Irish society is not immune from international debate and fear and this can impact on ethnic and religious minorities in less structured ways. As indicated in earlier shadow reports,<sup>48</sup> the increased focus on security rather than on the rights of migrants within immigration legislation has affected ethnic and religious minorities. The Immigration, Residence and Protection (IRP) Bil 2010<sup>49</sup> demonstrates this focus on security.

In this period, few developments in this area are evident. However, it is worth noting that in November 2009, the government established a Cabinet Committee on Aspects of International Human Rights. Its remit included reviewing, and making recommendations to strengthen, the statutory powers of the police and civil authorities regarding the search and inspection of aircraft.<sup>50</sup>

## **IX.ii The political and legal context**

Racist violence is a problem and Ireland does not have the legal means to deal with it adequately. There are a range of legal instruments with some relevant to the area of racism as a crime. However, there is a clear gap between the legislation that is in place and the need on the ground. There are weaknesses in the incitement to hatred legislation and little capacity to address racist motivation.

The Department of Justice holds that current legislation satisfies the requirements of the EU Framework Decision on Racism and Xenophobia.<sup>51</sup> At the time of the deadline for transposition (November 2010), the then Irish Government held that its legislation protecting minority groups having hatred incited against them was sufficiently robust to continue to provide that protection.<sup>52</sup> This position is a disappointing development and is against the advice of many NGOs working in the area. It is also contrary to the conclusion of

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<sup>48</sup> See ENAR Shadow Report: Racism and Discrimination in Ireland (2009/2010) and ENAR Shadow Report: Racism in Ireland (2008) available on <http://www.enar-eu.org/>

<sup>49</sup> Immigration, Residence and Protection Bill 2010

<http://www.oireachtas.ie/documents/bills28/bills/2010/3810/b3810d.pdf>, accessed October 2011

<sup>50</sup> Amnesty International State of the World's Human Rights Report 2009, <http://report2009.amnesty.org/en/regions/europe-central-asia/ireland>, accessed 24 August 2010.

<sup>51</sup> Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, November 2008, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:EN:PDF>, accessed October 2011

<sup>52</sup> See ENAR Ireland Report of Seminar on Racist Crime, published 2010, for further information,

research commissioned under the National Action Plan Against Racism, the overall recommendation of which states that the law needs to be reformed.<sup>53</sup>

Irish NGOs had long held hopes that the EU Framework Decision on Racism and Xenophobia would help ensure progress in Ireland's capacity to deal with racist crime. However, until 2010 there had been little public debate. ENAR Ireland instigated debate on the EU Framework Decision through highlighting it in the media, raising the question with officials and holding a seminar. The initial response by Government was that Ireland complies with the Framework Decision. Furthermore, it must be acknowledged that the EU Framework Decision provided for only minimum standards.

A decade since the review of the Incitement to Hatred Act 1989 was announced, the failure of successive governments to give adequate consideration to the legal framework to address racist crime, at this point can only be regarded as an example of institutional racism.

*Dokie v DPP*<sup>54</sup> ruled that section 12 of the Immigration Act 2004, making it an offence for non-nationals to not carry identification, was unconstitutional. However, provisions to deal with this ruling in the Civil Law (Misc.) Bill 2010 do not amend the provision in a substantial way and do not contribute to an effort to combat the problem of ethnic profiling.

Despite the entry into force in June 2008 of the Criminal Law (Human Trafficking) Act 2008<sup>55</sup> and the introduction of the National Action Plan to prevent and combat trafficking of human beings in Ireland 2009-2012, there have been no prosecutions and only 5 temporary residence permits have been granted. A police officer of An Garda Síochána is charged with making a reasonable grounds decision in relation to whether an individual is possibly a victim of trafficking. No time limit or guidelines are set out for this decision making process. There is currently a judicial review of the refusal to recognise a potential victim of human trafficking. The IRP Bill would introduce more safeguards for potential victims of human trafficking, although this has not been passed.

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<sup>53</sup> Schweppe and Walshe, December 2008, p. 189,

<sup>54</sup> [2010] IEHC 110 25/3/11

<sup>55</sup> Criminal Law (Human Trafficking) Act 2008, <http://www.irishstatutebook.ie/pdf/2008/en.act.2008.0008.pdf>, accessed October 2011

## **X. Racism and related discrimination in access to goods and services**

### **X.i Manifestations of racism and related discrimination with access to goods and services in the public and private sector**

Under equality legislation, discrimination in the provision of goods and services is illegal. The Equality Authority Annual Report for 2010 shows once again, that the 'race' ground continues to be amongst the grounds most often cited in cases brought to them.<sup>56</sup> There continue to be problems with the fact that the definition of services under the Irish equality legislation does not include certain functions of the State, including immigration, residence process and social welfare services.

The 'Habitual Residency Condition' continues to act as a barrier to accessing public sector goods and services for many migrants. Women's groups argue that the HRC is effectively leaving women no choice but to remain in violent domestic situations. A coalition of women's and migrant organisations have highlighted this issue, arguing that women experiencing domestic violence should be exempt from the HRC and be able to access services and supports to enable them to live independently.

Romanian and Bulgarian nationals continue facing problems when accessing public services. Although they are EU citizens, the requirement that they hold a work permit for one year in reality means that they do not have the right to work and cannot access many public services.

According to FRA Research Ireland is one of only three EU countries whose governmental institutions show a certain level of awareness of racism in sport.<sup>57</sup> It is also one of only three Member States where equality bodies have intervened and taken legal action in cases of denial of access to services in sport. Sanctions were imposed in relation to access to services, with €5000 being granted to a referee who was denied membership of the Referee Society, as the decision not to grant him access to the society was found to be discriminatory under the "race" ground.

The GAA have implemented an intercultural programme and have amended their regulations to state that the association is anti-sectarian and anti-racist. Any racist behaviour is punishable by suspension and possible expulsion.<sup>58</sup> The FAI

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<sup>56</sup> See Equality Authority Annual Report 2010, launched on 9 August 2011 and available online.

<sup>57</sup> Racism, ethnic discrimination and exclusion of migrants and minorities in sport. A comparative overview of the situation in the EU. FRA October 2010

<sup>58</sup> GAA Official Guide Part 1 3 June 2011

Rule book, effective from 2 March 2011, states that the organisation is committed to confront and eliminate discrimination and to develop a programme of ongoing training and awareness.<sup>59</sup>

There were five incidents of racism recorded by the Football Association of Ireland between 2007-2008. One of these incidents included a referee ordering a 12 year old Sikh boy to take off his patka.<sup>60</sup>

### **Examples of NGO Good Practice**

The coalition of refugee organisations working to end Dispersal and Directive Provision and the coalition of women's and migrant organisations working to ensure independent status and access to services and supports for migrant women experiencing domestic violence are examples of good practice in this area.

## **X.ii The political and legal context**

It is with regret that it must be reported that legislation, government policy and government actions (including cuts) are acting as barriers to people accessing services or securing redress where they have experienced discrimination.

Such measures include:

- The Habitual Residence Condition
- The Intoxicating Liquor Act
- Dispersal and Direct Provision
- Exemptions in the Equal Status Act
- Cuts in budget to the equality body
- Cuts to community projects that engage in awareness raising activities and support people to access their rights.

The successful appeal by a school which had refused entry to a Traveller child because his father had not attended the school, is of grave concern and the Traveller community and other community organisations have made media statements to that effect (see section on education). In the judgement, the judge agreed that there had been indirect discrimination but considered this acceptable for reason of maintaining the ethos of the school. This raises questions with regard to the understanding of and regard for the impact of indirect discrimination on individuals and communities, a concept that has been promoted by the European Union. In light of consideration being given to a merger between the Equality Body and Human Rights Commission, the capacity to address cases of discrimination in a timely fashion is of paramount importance.

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<sup>59</sup> FAI Rule Book Rule 70

<sup>60</sup> FRA 2010, p 38.

## **XI. Racism and related discrimination in the media**

### **XI.i Manifestations of racism and related discrimination in the media, including the internet**

The Press Council of Ireland and Office of Press Ombudsman Annual Report 2010 noted that there were 36 complaints made on the grounds of prejudice. This includes material intended to, or likely to, cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the Travelling community, gender, sexual orientation, marital status, disability, illness or age. There is no further breakdown of these 36 complaints, and no data is available on how the cases were resolved.

Eurobarometer research indicated that a perception exists in the public that the media are hesitant to express an opinion on migrants.<sup>61</sup> The national broadcaster, Radio Telefís Éireann (RTE), has committed to reflecting the diversity of Ireland and promoting inclusiveness and diversity.<sup>62</sup> Their Annual Report 2010 states that they met/exceeded their target of promoting inclusiveness and diversity, including outreach and educational initiatives.<sup>63</sup>

The annual report <sup>64</sup> of 'www.hotline.ie', an anonymous facility which enables individuals to report suspected illegal activity on the internet, states that it had three reports on issues such as racism, threats of violence against individuals, or financial scams. There is no specific breakdown on reports of instances of racism.

As noted in earlier Shadow Reports, racism on the internet is increasingly evident. This is of particular concern, given the limited legal capacity to deal with this phenomenon. The first person has been charged under section 2 Incitement to Hatred Act for material published on Facebook.<sup>65</sup> This case was referred to the Office of the Director of Public Prosecutions. The DPP recommended that the case be heard before a court. The case was subsequently heard in a district court (Killarney). The defendant was found not guilty.

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<sup>61</sup> EB p25

<sup>62</sup> RTE Statement of Strategy 2010-2014

<sup>63</sup> RTE Annual Report 2010

<sup>64</sup> ISPAI Hotline.ie Service Annual Report 2011

<sup>65</sup> The Facebook page called on people to use Traveller babies as shark bait, using derogatory language.

### **Examples of NGO Good Practice**

**Media and Multicultural Awards** Established in 2002, the MAMA Awards are run by Metro Eireann, Ireland's first multicultural newspaper. They recognise individuals, groups, organisations, and journalists who work to promote crosscultural understanding.

### **XI.ii The political and legal context**

An Garda Síochána issued a press statement in July 2010, stating that racism on the internet would not be tolerated and will be treated seriously. However, the capacity to deal with racism on the internet is limited and while it is important that An Garda Síochána take a proactive role, this is unlikely to come to full fruition if the legislation cannot deal with these issues. ENAR Ireland and our members have called for explicit reference to the internet in Incitement to Hatred legislation.

The Office for Internet Safety continues to promote the self regulation of the internet, through the Internet Service Providers Industry Association of Ireland's (ISPAI) Code of Practice and Ethics, includes a provision to ensure services do not contain material likely to incite violence, racial hatred, or discrimination.

The review of the Incitement to Hatred Act has yet to produce any substantial results, and the legislation remains ineffective. (See also the section on Criminal Justice.)

## **XII. Political and legal developments in anti racism and anti discrimination**

Among the key instruments in the area of anti-discrimination in the Irish context is the Equality legislation. The Equality Act 2004 was signed into law in July 2004. The Act amends a number of the provisions of the Employment Equality Act 1998 and the Equal Status Act 2000, giving effect to EU Directive 2000/43/EC which implements the principle of equal treatment between persons irrespective of 'racial' or ethnic origin; EU Directive 2000/78/EC, which established a general framework for equal treatment in employment and occupation; and EU Directive 2000/73/EC of the European Parliament and of the Council, amending Council Directive 76/20/EEC on the implementation of the principle of equal treatment for men and women. The Act, however, is not without limitation and in 2007 the European Commission noted a number of issues including with regard to the definition of indirect discrimination (see also 2007 Shadow Report for further details).<sup>66</sup>

The Equality Authority and Equality Tribunal provide important data for assessing the extent to which ethnic and religious minorities are aware of their rights. The data, of course, also provides an indication of the extent of discrimination and where the discrimination occurs. The Annual Report of the Equality Authority<sup>67</sup> provides an overview of the work for the year including an overview of the queries received on each of the grounds and with regard to employment or equal status.

In 2008, the then Government proposed a merger between the Equality and Human Rights bodies. There was much opposition to this move, resulting in the establishment of an equality and rights alliance to campaign against this move. The outcome of the campaign initially was positive with regard to the merger; however, the October 2008 budget introduced disproportionate cuts. It should be noted that again in 2011 and from a new Government, a merger of the two bodies has again been mooted but the precise nature of the intention is not yet clear. Furthermore, it is not clear how this move can guarantee all protections and satisfy the specific requirements of both the Equality legislation and the Belfast Agreement (which led to the establishment of a human rights commission in Northern Ireland as well as a human rights commission in the Republic).

Ongoing budget cuts continue to limit the capacity of human rights organisations and NGOs to monitor racism and promote integration in the State. They signal that equality, integration and human rights are luxuries that cannot be afforded in this time of recession. The European Parliament's Petitions Committee is to ask

<sup>66</sup> ENAR Shadow Report: Racism in Ireland (2007) available at <http://www.enar-eu.org/>

<sup>67</sup> Equality Authority Annual Report 2010 was launched on 9 August 2011 and is available online at <http://www.equality.ie/index.asp?locID=136&docID=885>.



the European Commission to examine how staff and budget cuts at the Equality Authority are impacting on its ability to carry out its functions since 2008.<sup>68</sup> This is in response to the Equality and Rights Alliance submission regarding the budget cuts. The Irish Human Rights Commission have commented that their ability to continue operating as an effective body has been seriously jeopardised due to budget cuts. The cessation of funding to the NCCRI in 2008 and the lack of emergence of any other body specifically tasked with addressing racism means that Ireland currently has no government body or policy dealing specifically with that issue.

Earlier shadow reports highlighted the establishment of a new Ministry, with the position of a Minister for Integration. The position itself saw three changes in the period 2006 to 2011, with the position originally being the sole brief of a Junior Minister; it then became one of a number of responsibilities of a Junior Minister, 9 months later, the title changed again to Junior Minister for Integration, Equality and Human Rights. The new Government, as part of a rationalisation programme, has removed this Ministry. Similarly, the once Office of the Minister for Integration has become the Office for the Promotion of Migrant Integration, within the Department of Justice and Equality.

The role of the community and voluntary sector in addressing racism and promoting equality and integration cannot be over-estimated. Similarly we should not under-estimate the impact of the cuts to the community infrastructure over the past three years. Again, the 2011 Budget saw €9 million worth of cuts in allocations across community development programmes and projects. This severely limits the ability for grass roots organisations to combat racism and related discrimination across the country.

On a positive note, during the 2011 General Election all major parties signed up to the ENAR Ireland Anti-Racism Election Protocol,<sup>69</sup> originally formulated by the NCCRI in 2001. Members of the public reported specific incidents/statements of concern to ENAR Ireland during the election campaign. The election campaign was conducted largely without resorting to racial stereotypes or inciting hatred, though there were notable exceptions, for example by an independent candidate running in Cork City whose literature arguably blamed migrants for the economic recession. The Political Protocol was referenced by the Irish Government in their report to the CERD Committee in Geneva in February 2011.

While there is a clear focus on equality in the new Programme for Government, it is of concern that racism is not mentioned and that integration is invisible. However, the equality provisions provide some opportunities for progressing the anti racism agenda. The 2011 Programme for Government contained a commitment to require all public bodies to take due note of equality and human rights in carrying out their functions. What this shall mean in practice has yet to

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<sup>68</sup> <http://www.eracampaign.org/press-coverage-1/m:6,138>

<sup>69</sup> Available on [www.enarireland.org](http://www.enarireland.org)

be tested and in response to a Parliamentary Question in July 2011, the Minister for Justice clarified that this would not require or imply new legislation. For almost a decade, NGOs have been encouraging the introduction of a statutory duty on public bodies, as provided for in legislation in the Northern Ireland.

2010 was a very significant year for equality and LGBT rights, with the passing of the Civil Partnership Act which came into force in January 2011. This Act allows for the recognition of Partnership and is already having a positive impact on the lives and opportunities for same sex couples, where one partner is a foreign national. LGBT and migrant organisations have long fought for the rights of same sex couples to be recognised as partners and to have access to the same residency rights as heterosexual, married couples.

(See also sections on education, employment and access to goods and services for reference to particularly noteworthy cases taken under the equality legislation.)

#### **Examples of NGO Good Practice**

**Towards a National Framework for the Monitoring of Racist Incidents – ENAR Ireland (supported by Equality Authority)** The Equality Authority has provided funding to ENAR Ireland to carry out a number of actions to build the case for monitoring and reporting racist incidents, including four regional seminars and website development – including in the area of access to goods and services and in employment – under the Equality Innovation Fund.

### XIII. Migration and integration

A single piece of legislation in the area of immigration has been envisaged for years and the Immigration, Residence and Protection Bill which was expected to be passed in 2010, came to another abrupt halt with the change of Government early in 2011. There were, however, significant issues with the Bill, as noted in previous reports including the Shadow report for 2009-2010 and for 2009. As legislation is still to be passed, it is important to note that, amongst others, still missing in this legislation are: provisions relating to domestic violence, unaccompanied minors and family reunification.

At the time of writing the IRP Bill 2010 has still not passed into law, the Minister for Justice and Equality is to introduce an amended version of the Bill in summer 2011, to be debated in committee at the reconvening of the Dail. The Committee on the Elimination of Racial Discrimination recommended that the IRP Bill be improved to include access to judicial review of administrative decisions for migrants and to set out a right for migrant women in abusive relationships to receive legal protection and residence permits.<sup>70</sup>

New applications for asylum continue to fall in numbers, from 2660 in 2009, 1918 in 2010 and 270 up to June 2011. 6.9% of these applications were processed under the Ministerial Prioritisation Directive, which was revoked in relation to Nigerian nationals in March 2010 due to a challenge over the lawfulness of such a practice.<sup>71</sup> The UNHCR continues to train ORAC officials to improve the asylum process, however Ireland continues to have the lowest refugee recognition rate in the EU, recognising just 1.5% of first instance applications. Only 25 applicants were granted refugee status in 2010. In 2010 there were 191 outstanding legal challenges to decisions made in the asylum process.

Conditions in Direct Provision continue to be a concern to many NGOs working in the area, enforcing segregation rather than enabling integration. In June 2010 many single residents of the accommodation centre in Mosney were sent a letter requesting their removal to a Dublin based facility, and research undertaken by the Irish Refugee Council suggests that in many cases this was against medical advice and caused a great deal of distress to residents. Unannounced inspections continue to be carried out, often at antisocial hours and at great distress to families and young children.<sup>72</sup> The Direct Provision weekly allowance of €19.10 per adult and €9.60 per child continues to be the only social welfare payment that has not increased in over 10 years.

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<sup>70</sup> CERD para 15

<sup>71</sup> ORAC Annual Report 2010 p 14

<sup>72</sup> Irish Refugee Council Report on Early Morning Inspections by the Department of Justice at Mosney Accommodation Centre, August 26 2010

In December 2010 a Frontex flight attempted to deport 34 Nigerian nationals and one Irish citizen from Dublin airport. Of the 35 people, 13 were children. The flight was aborted after long delays and inadequate conditions and the individuals were returned from Greece to Ireland. The Irish Refugee Council stated that it had information to suggest that the treatment and standards aboard the flight were contrary to the Article 3 ECHR prohibition on torture and inhumane and degrading treatment. Human rights groups protested and lobbied to government to stop such practices.

New student provisions have meant that people who have been in Ireland as long term students (seven year student visa) find they are unable to renew their permission. NGOs find that strict work permit requirements mean they are becoming undocumented.

Ireland has yet to put in place legislation and other provisions for longer term immigration. Difficulties and lack of transparency in accessing citizenship in Ireland were highlighted by the Immigration Council of Ireland in 2011.<sup>73</sup> This is another area where there is no right to appeal and research suggests that contact with police or accessing social welfare have formed the basis for refusing applications. Academic and other research points to gender based discrimination but there is no data available to assess whether there is any differential impact of citizenship law or criteria on men or women.

According to MIPEX Ireland ranks joint 16th out of 31 countries with an index score of 49, not halfway favourable for integration. Labour market access is poor, and non-EU family reunification is the worst out of the 39 countries studied. Ireland has still not signed or ratified the Convention on the Rights of All Migrant Workers and their Families.

Eurostat data for 2010 reveals that 8.6% of the population are 'foreigners', with 6.9% being EU nationals and 1.7% non-EU nationals.<sup>74</sup> The median age of foreigners is 29.8 compared to 35.2 for Irish nationals.

The 2011 Eurobarometer on Migrant Integration revealed that the general population views the main obstacle to integration to be a mistrust in migrants' motivations.<sup>75</sup> There were some positive perceptions of migration, including enhancement of cultural diversity and new ways of thinking, however negative perceptions around an arrogant migrant attitude, that they are a drain on social welfare and the health service and contributing to job losses were also voiced.<sup>76</sup> Concerns over the dilution of local culture, the resistance of migrants to accept a new culture and a lack of desire to integrate were also noted.<sup>77</sup>

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<sup>73</sup> See for example, research carried out by Catherine Cosgrave, Immigrant Council of Ireland, published in 2011.

<sup>74</sup> Eurostat 34/2011 Population and Social Conditions

<sup>75</sup> Qualitative Eurobarometer Migrant Integration May 2011 p21

<sup>76</sup> EB p 24

<sup>77</sup> EB p 44

## **XIV. National recommendations**

### **Employment**

- Address issues in migration policy and legislation that lead to workers remaining in exploitative situations or becoming undocumented.
- Ensure greater speed in resolving cases brought under the equality legislation.
- Ensure ethnic minorities are included.

### **Housing**

- Ensure implementation of Government policy on accommodation for Travellers.
- Abolish Dispersal and Direct Provision.
- Abolish the Habitual Residency Condition.

### **Education**

- Ring fence resources for the implementation of the Intercultural Education Strategy.
- Address the legal status anomaly for children of migrant parents who have been living in Ireland, which leaves them subject to foreign fees and effectively precludes them from access to third level education.

### **Health**

- Ensure follow up to the issues identified in the All Island Traveller Health Study are a policy, practice, and resource priority.
- Abolish Dispersal and Direct Provision policy which is adversely affecting the mental health of asylum seekers.

### **Criminal justice**

- Reform the law to effectively recognise racist crime. This requires concluding the review of the Incitement to Hatred Act and giving due consideration to adopting a combination of aggravated offences and penalty enhancement provisions.
- Strengthen the capacity to prevent and address hate speech including through strengthening incitement to hatred legislation.
- A holistic approach to the implementation of the law, with all stakeholders – including the police and the judiciary – playing their role to the full is essential.
- Ensure monitoring at points of entry and in the provision of data. NGOs should also be allowed to be present at points of entry for independent monitoring.
- Ensure that new immigration legislation does not facilitate ethnic profiling, directly or indirectly.

### **Access to goods and services**

- Continue to improve existing data collection, to enable meaningful categorisation and data disaggregation.
- Ensure the inclusion of Travellers in all initiatives designed to address racism and promote social inclusion.
- Extend the definition of services in the equality legislation to include immigration and other aspects of law enforcement.
- Ensure that all policies that impact on the lives of ethnic and religious minority groups are equality and poverty proofed and take account of multiple forms of discrimination, such as those experienced by women.
- Abolish the Habitual Residency Condition. In the interim, provide exemptions so that women experiencing domestic violence can access necessary services and supports to live independently.

### **Media**

- Strengthen the Incitement to Hatred legislation, including capacity to address racism on the internet.

### **General**

#### ***Anti-racism and anti-discrimination***

- Implement recommendations by the CERD Committee (March 2011).
- The Government must recognise the distinct ethnic identity of Travellers.
- Ensure the inclusion of Travellers in all initiatives designed to address racism and promote social inclusion.
- Restore the capacity of the Equality Authority through adequate funding.
- Racism must be named by government and specific measures to address racism must be introduced, for example, through a comprehensive follow-up mechanism to the NPAR.
- Develop increased capacity to enable effective strategies to be developed to respond to multiple discrimination.

#### ***Migration and integration***

- Ratify the UN Convention on the rights of migrants and their families.
- Stop the current practices of detention of asylum seekers, in light of the HRC concluding observations and NGO concerns.
- Provide core funding to groups working with migrants on integration.
- Address the policy of Dispersal and Direct Provision, mindful of the short and longer term impact it has on people's integration.
- Restore child benefit to asylum seekers.
- Proof all legislation and measures to ensure that minors can never be detained in adult facilities on the basis of an irregular migration status.

## XV. Conclusion

The findings of this report suggest a complacency around racism and at best, an ill-founded optimism that Ireland's approach to racism is different and that we are protected from the political and other affiliations that have led to extremism or dramatic increases in racism in other EU Member States. This complacency, denial and active diminishing of our capacity to address racism and is a sign for serious concern in the face of risk factors likely to lead to racism including the recession and the daily incidents that confirm that racism is part of everyday life for ethnic and religious minorities.

The serious economic considerations that face the Government have unfortunately been met by a de-prioritisation of equality and anti-racism, at a time when these measures are arguably most necessary.

The deadline for transposition of the EU Framework Decision on Racism and Xenophobia in November 2010 created an optimism that quickly deflated. The event came and went and while debate was facilitated by ENAR Ireland, the event saw no change to legislation or other measures to address racially aggravated crime.

Similarly, the hope generated by a monumental all Island study on Traveller Health dissipated with news that there simply are not the resources to address the disparity between the health status of Travellers and the general population.

February 2011 marked the Hearing of the Irish Government before the UN CERD Committee. The Committee's concluding observations echoed NGO concerns that racism had fallen off the political agenda. Its recommendations are helpful but clearly the Committee has had to reiterate a number of earlier recommendations in light of the fact the progress in some areas has disappeared and other issues – such as the 'persistent refusal' on the part of the State to recognise Traveller ethnicity remain unchanged.

Racism and ant-racism must be back on the political agenda. There are some opportunities within the Programme for Government, given a focus on equality. However, the Government needs to make explicit reference to racism and related forms of discrimination experienced by ethnic and religious minorities in its implementation.

Serious challenges face the country. At the same time the community infrastructure developed since the 1980s and the broader equality infrastructure first introduced in the late 1990s, have face considerable cuts or obliteration. Without the support of communities and their organisations, the challenges become even greater. Equality has been presented as a luxury that we can no

longer afford; the reality is that racism is the price we cannot afford and equality a key building block for a recovering economy and societal cohesion.



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## **Annex 1: List of abbreviations and terminology**

ACFC	Advisory Committee on Framework Convention on the Protection of National Minorities
BAI	Broadcasting Authority of Ireland
CBP	EU 11 Common Basic Principles on Integration
CCPR	International Covenant on Civil and Political Rights
CEDAW	Committee for the Elimination of Discrimination Against Women
CERD	Committee for the Elimination of All Forms of Racial Discrimination
CPA	Combat Poverty Agency
CSO	Central Statistics Office
DEIS	Delivering Equality of Opportunity in Education
ECHR	European Convention on Human Rights
ECRI	European Council on Racism and Intolerance
EEA	European Economic Area
ELO	Ethnic Liaison Officers
ERA	Equality and Rights Alliance
FAI	Football Association of Ireland
FLAC	Free Legal Advice Centres
FRA	European Union Fundamental Rights Agency
GMS	General Medical Service
GNIB	Garda National Immigration Bureau
GP	General Practitioner (medical doctor)
GRIDO	Garda Racial, Intercultural and Diversity Office
GSOC	Garda Siochána Ombudsman Commission
HRC	Habitual Residency Condition
HRC	Human Rights Committee
HSE	Health Service Executive
IBEC	Irish Business and Employers Confederation
ICCL	Irish Council for Civil Liberties
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICI	Immigrant Council of Ireland
ICTU	Irish Congress of Trade Unions
IGO	International Governmental Organisation
IHRC	Irish Human Rights Commission
INIS	Irish Naturalisation and Immigration Service
INTO	Irish National Teachers' Organisation
IRC	Irish Refugee Council
IRP	Immigration, Residence and Protection Bill
MIPEX	Migrant Integration Policy Index
MRCI	Migrants' Rights Centre Ireland
NERA	National Employment Rights Agency
NESC	National Economic and Social Council
NCCA	National Council for Curriculum Assessment
NCCRI	National Consultative Committee on Racism and Interculturalism

NPAR	National Action Plan Against Racism
NTACC	National Traveller Accommodation Consultative Committee
NTWF	National Traveller Women’s Forum
NUJ	National Union of Journalists
OMI	Office of the Minister for Integration / Office for the Promotion of Migrant Integration
ORAC	Office of the Refugee Applications Commissioner
PPF	Programme for Prosperity and Fairness
RAT	Refugee Appeals Tribunal
RIA	Reception and Integration Agency
SARI	Sport Against Racism Ireland
SRRC	Show Racism the Red Card
TUI	Teachers Union of Ireland
VEC	Vocational Education Committee
VRC	Vincentian Refugee Centre

**Note on terminology:** the terms ‘ethnic and religious minority groups’, ‘ethnic minority groups’ and ‘religious minority groups’ are used throughout the report in the interest of facilitating consistency at a European level. However, other terms are used when necessary where referring to specific pieces of legislation, e.g. ‘race’ is one of the grounds on which discrimination is prohibited in the equality legislation; the Immigration, Residence and Protection Bill refers to the term ‘foreign nationals’. Where the term ethnic and religious minority groups is used, Travellers are included. However, as the Government does not recognise Travellers as a distinct ethnic group it is sometimes deemed necessary to use the term ‘ethnic minority groups including Travellers’ to ensure that it is understood that the point is also relevant to Travellers.

The Police Force in Ireland is referred to as “An Garda Síochána”, meaning “keepers of the peace” in the Irish language. The relevant terms, An Garda Síochána, Gardaí (police plural) and Garda (police, singular) are used throughout the report.

The equivalent of the Parliament in Ireland is “Dáil Éireann”, from the Irish language. The terms “Dáil Éireann” or simply, “the Dáil” are used occasionally in the report.

Oireachtas Committees are cross-party Committees which bring together elected representatives regardless of political party, on specific areas such as Justice and women’s rights or health and children. For more information, see [www.oireachtas.ie](http://www.oireachtas.ie)

The main political parties in Ireland include Fianna Fáil, Fine Gael, Green Party, Labour Party, Sinn Féin, Socialist Party. The government for the majority of this shadow reporting period was a coalition between Fianna Fáil and the Green

Party. A new Government – a coalition between Fine Gael and Labour – was elected in February 2011.

