



european network against racism

# ENAR Shadow Report 2009-2010

## **ENAR SHADOW REPORT 2009/ 2010**

### **Racism and Discrimination in Ireland**

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

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

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The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries.

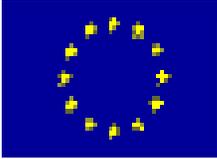
PROGRESS mission is to strengthen the EU contribution in support of Member States' commitment. PROGRESS will be instrumental in:

1. providing analysis and policy advice on PROGRESS policy areas;
2. monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;
3. promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
4. relaying the views of the stakeholders and society at large

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## I. Executive summary

Racism is on the increase in Europe and Ireland is not immune to this phenomenon. Ireland's capacity to respond and to prevent racism during such periods has been diminished through disproportionate cuts to the equality infrastructure at the end of 2008, cuts which took effect in 2009. Subsequent cuts to community infrastructure have also cut the capacity to respond to racism on the ground and engage in proactive initiatives at the local level. Racism seemed to have fallen off the political agenda in 2009 and there is little acknowledgement of the possibility that racism might increase. However, a window of opportunity presented itself at the end of the reporting period through the appointment of a Minister of State for equality, human rights and integration.

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. This is as a result of a number of factors including the recession but also due to government policies that arguably exacerbate the effects of recession on particular groups through restrictions to social protection including on the basis of habitual residency.

The report presents an overview of racism for the period January 2009 to March 2010. It highlights the manifestations of racism in eight key areas including employment, housing, education, health, racist violence, policing, access to goods and services and the media including the internet. Some of the key manifestations highlighted in this section include the existence of the Housing (Miscellaneous Provisions) Act 2002 which criminalises trespass on public or private land. This Act disproportionately affects Travellers and leaves people homeless. Combined with a failure to provide adequate, appropriate accommodation for Travellers, the Act is one of the factors that render a nomadic lifestyle near impossible. The application of the Habitual Residence Condition which limit access to certain welfare payments unless a person is considered to be habitually resident in the country for two years, is also creating great hardship for people who are vulnerable at this time. The denial of access to child benefit to asylum seekers, copper-fastened in the last budget, clearly lets us know that not all children are equal.

Yet racism is relatively invisible on the political agenda. The killing of a 15 year old boy, Toyosi Shittabey, in Dublin early in 2010 was a wake-up call to all in Ireland that racism certainly has not gone away. This tragic and horrendous event mobilised people and leaders; people spoke out saying that ethnic minorities must be protected and that racism cannot be tolerated. But we need the actions to follow the words. We need to ensure that the criminal justice system and legislation is better able to address racist crime.

Legal and political developments are central to addressing racism and at times can contribute to racism. The report focuses on four legal and policy areas including anti-discrimination, migration and integration, criminal justice and social inclusion.

An area where inaction is particularly problematic is in the area of racist violence and incitement to hatred. Significant problems with our current legislative framework including the Incitement to Hatred Act 1989, have been noted at the national and the international level. Legislation and policies are a key factor in shaping public opinion. Institutions are central to creating the conditions that determine whether minority ethnic communities experience equal or unequal opportunities. The Irish Government is required to transpose the EU Framework Decision on combating racism and xenophobia by November 2010 and this offers some potential to improve our capacity around addressing racist violence and speech. Maximising this opportunity must be a priority.

The report concludes that Ireland is at a critical juncture. However, the Government has diminished the capacity to respond and to prevent racism, through disproportionate cuts to the equality infrastructure that took effect at the beginning of 2009 and subsequent cuts to community infrastructure.

The report makes a number of recommendations including:

- Provide sufficient resources to equality bodies to ensure effective implementation of equality legislation, as a matter of urgency.
- Implement recommendations made by the Human Rights Committee under CCPR, in relation to counter-terrorism, detention of asylum seekers, denominational education and representation and recognition of Travellers.
- Continue to improve existing data collection, to enable meaningful categorisation and data disaggregation.
- 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.
- 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.

Ireland needs strong political leadership that sends a clear message that racism is not acceptable, both in words and in actions. This large and important task cannot be left to one Minister alone and all politicians – at all levels and across parties – must show leadership on the issue.

NGOs play a vital role in addressing racism and we continue in our struggle to ensure that our voices are heard and that we are supported to play our part in addressing racism and building an inclusive, intercultural society.

## II. Table of contents

I. Executive summary.....	4
II. Table of contents .....	6
III. Introduction .....	7
IV. Communities vulnerable to racism and discrimination.....	8
V. Manifestations of racism and religious discrimination.....	11
V.i Employment .....	11
V.ii Housing .....	13
V.iii Education.....	15
V.iv Health .....	17
V.v Policing and ethnic profiling.....	19
V.vi Racist violence and crime.....	21
V.vii Access to goods and services in the public and private sector.....	23
V.viii Media, including the internet.....	25
VI. Political and legal context .....	27
VI.i Anti discrimination.....	27
VI.ii Migration and integration .....	30
VI.iii Criminal justice .....	34
VI.iii.i Racism as a crime .....	35
VI.iii.ii Counter terrorism.....	36
VI.iii.iii Ethnic profiling .....	36
VI.iv Social inclusion .....	36
VII. National recommendations.....	40
VII.i General.....	40
VII.ii Anti discrimination .....	40
VII.iii Migration and integration .....	40
VII.iv Criminal justice .....	41
VII.iv.i Racism as a crime .....	41
VII.iv.ii Counter terrorism.....	41
VII.iv.iii Racial profiling .....	41
VII.v Social inclusion.....	41
VIII. Conclusion.....	42
IX. Bibliography.....	44
X. Annex 1: List of abbreviations and terminology .....	49

### III. Introduction

Racism is on the increase in Europe and Ireland is not immune to this phenomenon. At a time when racism is on the increase, Ireland's capacity to respond and to prevent racism has been diminished through disproportionate cuts to the equality infrastructure at the end of 2008, cuts which took effect in 2009. Subsequent cuts to community infrastructure have also cut the capacity to respond to racism on the ground and engage in proactive initiatives at the local level.

Racism seemed to have fallen off the political agenda in 2009 which was replaced by a denial that an increase in racism might be possible. This situation changed somewhat at the end of the reporting period when the killing of a 15 year old boy which is believed to have been racially motivated shook the country into recognising the reality of racism in Irish society and prompted statements by politicians that racism would not be tolerated. As 2010 progresses, civil society organisations await actions to match the words and are concerned by continued inaction in the area of legislative reform to more effectively deal with racist violence and crime.

The time period covered by this report is from January 2009 to March 2010. The report focuses on manifestations of racism as well as policy and legislative developments evident during this period and complements previous Shadow Reports including the 2008 Shadow Report. While the report does not focus specifically on developments in late 2010, some key developments have been highlighted such as the launch of the Intercultural Education Strategy and Traveller Health Study.

Section III of the report provides information and data on communities that are vulnerable to racism in Ireland. Manifestations of racism and religious discrimination are outlined in Section IV, focusing on key problems in the areas of employment, housing, education, health, policing and racial profiling, racist violence and crime, access to goods and services and the media.

Section V provides an overview of political and legislative developments in Ireland in 2009 and early 2010 in four key policy areas, namely anti-discrimination; migration, family reunification and integration; racist violence and crime; and social inclusion. On the basis of assessments by NGOs and building on recommendations from key bodies including relevant international bodies, the report offers a series of recommendations. The report concludes by highlighting particularly critical developments between January 2009 and March 2010 and reflecting on the significance of civil society responses and contributions.

## IV. Communities vulnerable to racism and discrimination

Ireland is a multi-ethnic society with ethnic and religious diversity with ethnic minorities comprising approximately 10% of the population. Ethnic and religious minority groups in Ireland 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. The EU Fundamental Rights Agency research (EU MIDIS) identified Ireland as among the poorest countries in relation to the level of discrimination, with 73% of those surveyed from Sub-Saharan Africa stating that they had experienced racism in Ireland. 25% of those from Central and Eastern Europe also reported experiencing racism. A small scale study in Cork had similar findings with approximately 70% of those surveyed reporting that they had experienced racism.

A key development took place in 2006 with the inclusion for the first time in the census a question on ethnic background. The 2006 census is the most comprehensive, available source of information on diversity in Ireland, collecting data on religious belief, nationality, country of birth and membership of the Traveller community<sup>1</sup>. The Census reveals that in 2006, 88.8% of the population were Irish nationals, 2.7% were from the UK, 3.9% were from other EU countries and 3.5% were from outside the EU. In 2006, there were 188 nationalities represented in Ireland. 96.5% of the population had a White ethnic background. People with a non-Irish white ethnic background<sup>2</sup> were predominantly in the 25-44 age group (50.5%). People with Black ethnic backgrounds were concentrated in the 0-14 (40.9%) and 25-44 (44.5%) age groups. The 2006 Census also revealed that the number of mixed nationality families had increased from 70,721 in 2002 to 95,635 in 2006. The census demonstrates that the majority of immigrants are young, single people. Of the 122,000 persons who immigrated into Ireland in the twelve months before the census, 68.2% were single and of these 62.2% were in their twenties.

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>3</sup>.

The question of the recognition of the distinct ethnic identity of the Traveller community has once again come to the fore. The State acknowledges a distinct Traveller culture, that Travellers experience racism and provides protection to Travellers from discrimination through the equality legislation. However, it does not recognise Travellers as a distinct ethnic group. The Shadow Report 2008

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<sup>1</sup> While the introduction of a question on ethnic background is significant, some have argued that the question formulation is limited and might be improved in the future.

<sup>2</sup> Terminology used here reflects Census categories.

<sup>3</sup> CSO Press Release, available at [http://www.cso.ie/newsevents/pr\\_equalityinireland2007.htm](http://www.cso.ie/newsevents/pr_equalityinireland2007.htm)

reported that the UN Committee of the Elimination of Racial Discrimination (CERD) encourages the State to work more concretely towards recognising the Traveller community as an ethnic group<sup>4</sup> and that this view was echoed in the Opinion of the Advisory Committee for the Protection of National Minorities (ACFC)<sup>5</sup>. In 2008, the Human Rights Committee, in its concluding observations after consideration of the report submitted by the Irish Government of the International Covenant on Civil and Political Rights (ICCPR), expressed concern that the State party does not intend to recognise the Traveller community as an ethnic minority (para 23)<sup>6</sup>. The Equality Authority also supports the recognition of the Traveller community as a distinct ethnic group. In 2008, the Irish Traveller Movement launched an online petition in an effort to lobby the government to recognise the distinct ethnic identity of the Traveller community. Despite continued petitioning and lobbying, there has been no significant movement by the Government on this position.

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.

Central Statistics Office (CSO) population and migration estimates for the year ending April 2010<sup>7</sup> show the highest level of net emigration since the 1980s. The CSO reports that the number of persons emigrating from Ireland in the twelve months preceding April 2010 was 65,300 while the number of immigrants arriving into Ireland fell sharply, from 57,300 to 30,800 over the same period. These combined changes have resulted in an increase in net outward migration from 7,800 in April 2009 to 34,500 in April 2010. While the level of overall emigration remained constant, emigration among Irish nationals increased significantly in the period from 18,400 in April 2009 to 27,700 in April 2010 over the same period emigration of non-Irish nationals fell from 46,800 in April 2009 to 37,600 in April 2010. Nationals of the EU12 States accounted for the bulk of this decline.

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<sup>4</sup> UN Committee on the Elimination of all forms of Racial Discrimination, *Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination* (CERD, 10 March 2005) CERD/C/IRL/CO/2 at para. 20

<sup>5</sup> Advisory Committee for the Protection of National Minorities, *Second opinion on Ireland* (Strasbourg: Council of Europe, October 2006). The opinion states, '31. The Irish authorities should refrain from conclusive statements affirming that the Travellers do not constitute an ethnic minority in so far as such a position is not based on clear criteria and does not result from a dialogue with the minority concerned, taking into account the principle of self-identification stemming from Article 3 of the Framework Convention...'

<sup>6</sup> UN Committee on the Elimination of all forms of Racial Discrimination, *Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination* (CERD, 10 March 2005) CERD/C/IRL/CO/2 at para. 20

<sup>7</sup> The CSO published population and migration estimates for the year ending April 2010 on 21 September 2010. These are available at

<http://www.cso.ie/releasespublications/documents/population/current/popmig.pdf>

In 2009, 2,689 applications were made for asylum, a decline of 30.4%<sup>8</sup>. Of these, approximately 30% were made by female applicants. 764 were children under the age of 18; the adult to child ratio is calculated at 2.5. In 2008, the Office of the Refugee Commissioner (ORAC) received 3807 claims for asylum. In 2007, ORAC received 3933 applications and in 2006, 4241 claims for asylum were lodged<sup>9</sup>. These figures represent a significant decrease on earlier figures, e.g. in 2003 when the number of claims stood at 7483. The top five nationalities of those seeking asylum in 2008 were Nigerian, Pakistani, Iraqi, Georgia and Chinese; these were also the top five nationalities in 2007.

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>10</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 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 1581 persons in 1991 to 1790 in 2002 and to 1930 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.

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<sup>8</sup>Office of the Refugee Commissioner Annual Report 2009, available at, <http://www.orac.ie/pdf/PDFCustService/AnnualReports/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%20Annual%20Report%20-%202009.pdf> accessed 2 September 2010.

<sup>99</sup> ORAC, <http://www.orac.ie/pages/Stats/statistics.htm>, accessed 17 April 2008.

<sup>10</sup> Census 2006, available at <http://www.cso.ie/statistics/Population.htm>

## V. Manifestations of racism and religious discrimination

### V.i Employment

Ethnic and religious minority groups continue to experience discrimination in the area of employment, although some protection is offered through the Employment Equality Acts.

Discrimination in employment is outlawed in Ireland on the basis of nine grounds, including 'race', membership of the Traveller community and religion. Relevant legislation includes Employment Equality Act 1998 and Equality Act 2004. Relevant data on cases brought under the legislation is collected by two bodies established by the legislation, namely the Equality Authority and the Equality Tribunal.

While there was an overall increase of 12% in claims brought to the Equality Tribunal under the Employment Equality legislation, there was a 29% decrease on the 'race' ground. That noted, there were more claims brought under the 'race' ground than any other ground. 287 claims were brought under the 'race' ground which was followed by 116 claims under the disability ground and 40 on the basis of age.

The 'Race' ground accounted for 167 queries to the Equality Authority under the Employment Equality Acts; Membership of the Traveller Community accounted for eight and there was one query on the religion ground. Combining these three grounds, queries from ethnic and religious minority groups might be considered to account for 180 queries. Queries on the age ground stood at 211 and there were 190 queries in relation to discrimination on the basis of disability. There were 188 queries in relation to gender.

While the number of referrals brought by members of the Traveller community is relatively low, this does not reflect Travellers' experience in the area of employment as Travellers experience high levels of unemployment. Census 2006 reveals that of the 7220 Travellers considered to be in the labour force, 1815 are at work while 5405, that is 75%, are unemployed<sup>11</sup>.

Racism and discrimination in 2009 and in 2010 became quite visible at the point of recruitment and also in redundancy. As the recession continued, recent migrants including migrants who are here on the basis of a work permit became particularly vulnerable. The 2008 report highlighted the impact of the recession on specific sectors including construction where many migrants and EU nationals

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<sup>11</sup> Census 2006, Volume 5 – Ethnic or Cultural Background, table 19, p. 41, available at [http://www.cso.ie/census/census2006results/volume\\_5/vol\\_5\\_2006\\_complete.pdf](http://www.cso.ie/census/census2006results/volume_5/vol_5_2006_complete.pdf), accessed 11 April 2009.

were employed. Indeed, exploitation and non renewal of work permits has left a number of people undocumented. A group that continues to experience persistent discrimination in this area before and through the recession, are Travellers whose level of employment remains relatively low.

The ESRI on behalf of the Equality Authority produced a study that examined labour market experiences of migrants in Ireland, comparing responses by employers to job applications from candidates who were identical in terms of qualification and experience, but had Irish and non-Irish-sounding names. The study showed that job applications with Irish names were over twice as likely to be invited to interview as candidates with identifiably non-Irish names, even though both submit equivalent CVs<sup>12</sup>.

The *Discrimination in Recruitment* study echoed the findings of a previous report by the Equality Authority, *Immigrants at Work: Ethnicity and Nationality in the Irish Labour Market*, which found that migrants in Ireland fare less well than Irish nationals in the Irish labour market across a range of dimensions. The report found that migrant workers are often hindered from accessing employment because of racism. Non-Irish nationals are three times more likely to experience discrimination while looking for work, while Black people are seven times more likely. Moreover, in the workplace non-Irish nationals are twice as likely to experience discrimination as Irish nationals. The report also identifies English language skills as an important factor in determining the quality of the migrants' experience. The findings of both of these reports confirm the need for a much stronger enforcement of equality legislation<sup>13</sup>.

There is considerable evidence to show that migrant workers experience difficulties asserting their employment rights, and are vulnerable to racism in the workplace. Migrant workers are vulnerable to workplace exploitation because of the work permit system, which binds a migrant worker to a particular employer. It is often difficult for migrant workers to leave a situation of exploitation, since to do so would render them undocumented. For migrant women there is the additional concern of gender discrimination, such as experiences of unequal pay, sexual harassment, and pregnancy-related discrimination. Accessing redress for migrant workers is especially difficult, with a waiting period in the Equality Tribunal of two years, compounded by the absence of interpreting supports in the Labour Relations Commission and Employment Appeals Tribunal<sup>14</sup>.

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<sup>12</sup> Equality Authority, *Discrimination in Recruitment*, <http://www.equality.ie/index.asp?locID=105&docID=794>, accessed 10 September 2010.

<sup>13</sup> Equality Authority, *Discrimination in Recruitment* study echoes findings a previous report by the Equality Authority, *Immigrants at Work: Ethnicity and Nationality in the Irish Labour Market*, <http://www.equality.ie/index.asp?locID=105&docID=737>, accessed 10 September 2010.

<sup>14</sup> MRCI, *Racism and Migrant Workers in Ireland report*, <http://www.mrci.ie/publications/documents/MRCIPPRacismandMigrantWorkersinIreland.pdf>, accessed 10 September 2010.

Growing hostility towards migrants is a worrying development in the current recession. The role of the tabloid media and some right wing anti-Lisbon Treaty groupings circulating anti-migrant and racist propaganda was evident in the lead up to the referendum on the EU Lisbon Treaty. The decision of the government to make restrictive changes to the work permit system in June 2009 also had the potential to exacerbate racism towards migrants. These changes have made it extremely difficult for migrant workers who had been made redundant to remain and work in Ireland. This created a high degree of tension and fear within the migrant community and in addition created the impression that migrant workers were no longer welcome.<sup>15</sup>

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

#### **IBEC Help desk for employers on diversity**

As part of the Action Strategy for Integrated Workplaces launched by the Minister of State for Integration, the Irish Business and Employers Confederation (IBEC) set up a help-desk to answer queries by employers on managing diversity. IBEC also disseminated information (through articles, a diversity newsletter and through a diversity and integrated workplaces webpage on the IBEC Employer Services webpage) on the advantages of promoting diversity and integration from the business perspective<sup>16</sup>.

#### **Migrant Rights Centre Ireland (MRCI) Bridging Visa Campaign**

The MRCI advocated for several years for the introduction of a Bridging Visa for migrant workers who could demonstrate that they had been exploited or had become undocumented through no fault of their own. It was envisaged that the visa would allow a migrant worker to change or seek employment within a defined period of time, becoming documented. The Irish Naturalisation and Immigration Service (INIS) introduced the Undocumented Workers Scheme and in October 2009, INIS published guidelines and applications for some undocumented workers.

See [http://www.mrci.ie/policy\\_work/lrreqMigrant\\_UndocuMigrant.htm](http://www.mrci.ie/policy_work/lrreqMigrant_UndocuMigrant.htm)

### **V.ii Housing**

In terms of housing for Travellers, there have been positive policy, legislative and design improvements in recent years, but there remains a gap between policy agreed on at the national level and the implementation of this policy by the local authorities that are responsible for the delivery of Traveller accommodation in Ireland at the county and city levels.

Under the provisions of the Housing Traveller Accommodation Act 1998, local authorities/councils are required to prepare and implement a Traveller

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<sup>15</sup> Ibid

<sup>16</sup> Equality Authority, *Annual Report 2009*, <http://www.equality.ie/index.asp?locID=136&docID=885>, accessed 10 September 2010.

Accommodation Programme for 2009-2013. In the South Dublin County Council, for example, the implementation of the previous Traveller Accommodation Programme for 2005-2008 was met with some difficulty, including resistance from some members of the community to such developments. However, it has been acknowledged that where sites were adequately developed and managed, this went some way towards improving the perception of Traveller accommodation. The Programme has contributed to reducing the number and frequency of unauthorised encampments, and improved housing conditions for Travellers.<sup>17</sup>

The existence of the Housing (Miscellaneous Provisions) Act 2002 which criminalises trespass on public or private land is another example. This Act disproportionately affects Travellers and leaves people homeless. Combined with a failure to provide adequate, appropriate accommodation for Travellers, the Act is one of the factors that render a nomadic lifestyle near impossible.

The Habitual Residency Condition<sup>18</sup> continues to render people homeless, as they may not be able to access emergency accommodation, social housing or rent allowance<sup>19</sup>. This condition has affected recent migrants, refugees and asylum seekers and Travellers in particular. There are also serious concerns expressed by women's groups that the habitual residency condition is effectively leaving migrant women no choice but to remain in situations of domestic violence. Not only might her legal status be dependent on her spouse, but due to the fact they are often the primary carer, her access to social protection is limited and dependent on her spouse. Furthermore, she may not be in the country for the required two years.

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>20</sup>. These limitations are discriminatory and undermine the fundamental principles of equality and human dignity. A number of NGOs working in the area of asylum and refugee rights, including the Free Legal Aid Centre (FLAC), called for the introduction of an independent complaints mechanism for people living in Direct Provision. Currently the Reception and Integration Agency (RIA), which is the Departmental

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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.

<sup>18</sup> The Habitual Residency Condition was introduced in May 2004, with the accession into the EU of 12 more Member States. The Habitual Residency Condition requires that a person is legally and habitually resident in the State for two years before s/he can access certain State funded supports.

<sup>19</sup> Rent allowance is a social welfare payment, which is a contribution towards the rent costs of certain categories of social welfare recipients.

<sup>20</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/>

unit assigned to provide accommodation and services to applicants, deals with any complaints by residents. Given that the RIA essentially operates the system of Direct Provision, its transparency and independence in dealing with complaints can be questioned, as well as its accessibility by asylum seekers who may not feel comfortable making a complaint to the institution that is responsible for providing the service in the first place processing their application for asylum<sup>21</sup>.

In the private rental sector, there is also evidence of poor housing conditions and discrimination. Focus Ireland<sup>22</sup> and the Immigrant Council of Ireland commissioned research on the experiences of migrant workers living in 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>23</sup>.

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

#### **Cross sectoral partnerships: Immigrant Council of Ireland and Focus Ireland research initiative**

Focus Ireland is a lead agency working in the area of homelessness. They partnered with Immigrant Council of Ireland to conduct research in Blanchardstown, a suburb of Dublin where a relatively high proportion of the population has a migrant background. The report, *Making a Home in Ireland* was published in 2009. See [www.focusireland.ie](http://www.focusireland.ie) and [www.immigrantcouncil.ie](http://www.immigrantcouncil.ie)

### **V.iii Education**

One of the more significant surveys which demonstrated the experience of children in education was published in March 2010, with its findings causing some alarm. The Teachers' Union of Ireland (TUI) commissioned a survey that found that as many as 46% of respondents had reported a racist incident taking place in their school in the previous month. This compares to 25% reporting the same the previous year. Marketing company Behaviour and Attitudes (B&A) last year conducted independent research among teachers and lecturers on the issue

<sup>21</sup> FLAC, *Complaints mechanism for Direct Provision*, <http://www.flac.ie/news/2010/06/23/joint-release-support-groups-seek-independent-complaints-mechanism-for-direct-provision/>, accessed 14 September 2010.

<sup>22</sup> A national organisation working in the area of homelessness.

<sup>23</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.

of interculturalism, racism and resources for minority ethnic students.<sup>24</sup> Other findings of the survey included:

- 46% of respondents were aware of racist incidents which had occurred in their school in the past month.
- 32% of respondents stated that they do not have a specific formal procedure that is followed if a racist incident occurs in their school or college.
- 60% of teachers in Vocational Education Committee (VEC)<sup>25</sup> schools stated that the presence of minority students in classes increases teacher workload.
- 70% of teachers said that interpretation services were inadequate.
- 64% said that in-service support for intercultural education is inadequate
- 62% said that support available for teaching English as a second language was inadequate.
- 60% of respondents believe that additional promotional posts with special responsibility for minority ethnic students are necessary in schools
- 77% believe all teachers should receive in-service on intercultural education.
- 49% of VEC schools do not have policy on anti-racism and the promotion of interculturalism.

The FRA Annual Report 2010 found that in Ireland certain aspects of school admission policies impact indirectly on newcomer students. For example, newcomer students are much less likely to fulfil certain criteria which can facilitate access to schools, such as having an older sibling in the school, having applied for a school place at an early age, or having a parent who attended the school<sup>26</sup>.

Access to third level is difficult for ethnic minorities for a number of reasons. For one, educational inequalities earlier in the education system impact on access to third level, as has been the experience of Travellers for generations. It is positive to note that there has been some small improvements in the area of access to third level education for Travellers with a small number of Travellers now engaging in third level education. Emerging issues however, affect migrants. One issue is the fact that children who are here with their parents who are migrant workers are often categorised as non-EEA students are expected to pay

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<sup>24</sup> Teachers' Union of Ireland, *Racism, Interculturalism, and Resources for Minority Ethnic Students*, [http://www.tui.ie/%E2%80%9846\\_of\\_respondents\\_aware\\_of\\_racist\\_incidents\\_in\\_schools\\_in\\_previous\\_month%E2%80%99/Default.1184.html](http://www.tui.ie/%E2%80%9846_of_respondents_aware_of_racist_incidents_in_schools_in_previous_month%E2%80%99/Default.1184.html), accessed 14 September 2010.

<sup>25</sup> VECs are statutory education authorities which have responsibility for vocational educational training, youth work and a range of other statutory functions. VECs also manage and operate second level schools, further education colleges, pilot community primary schools and a range of adult and further education centres delivering education and training programmes to all sectors of the communities served by the VECs.

<sup>26</sup> FRA, *Annual Report 2010*, [http://fra.europa.eu/fraWebsite/attachments/AR\\_2010-conf-edition\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/AR_2010-conf-edition_en.pdf), accessed 13 September 2010.

foreign fees. These can be as much as 400% more than those for Irish and EU students, rendering access to third level impossible for most.

The 2008 Report highlighted the consultation that took place to inform the Intercultural Education Strategy (2010-2016). Work on the strategy continued in 2009 and into 2010 (and was launched in September 2010).<sup>27</sup> The importance of intercultural education should be noted. There is increasing evidence of the separation of initiatives with some initiatives targeted at migrants but excluding Travellers, sometimes with little focus on the majority population. Racism in education requires a holistic approach that is inclusive of all groups and tackled through whole organisational approaches. There is some concern that responses focus only on one group and that will reduce their effectiveness. The Intercultural Education Strategy was developed mindful of an earlier document, Recommendations for a Traveller Education Strategy. It is important that the link between the two is evident in the roll out of the Strategy and considered in monitoring and review processes.

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

#### **Irish Traveller Movement Yellow Flag pilot project.**

The programme provides a practical series of steps that brings issues of interculturalism, equality and diversity into the whole-school programme and allows schools to apply them to the day to day running of the school. It works with students, staff, management, parents and wider community groups so that issues of diversity and equality are not merely seen as "school subjects" but can be understood and taken outside the school setting into everyone's personal lives.

See <http://www.itmtrav.ie/keyissues/education/>

### **V.iv Health**

Health inequalities and difficulties accessing healthcare service remain issues for ethnic and religious minorities. In 2008, the HSE launched the Intercultural Health Strategy which is a very positive development. However, 2009 was a year that saw cutbacks rather than investment in the area of health and a number of issues identified in the 2008 report – despite acknowledgement by the HSE – remain.

Traveller health has for many years been poorer on average than the general population, with a much shorter life expectancy among the Traveller community.<sup>28</sup>

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<sup>27</sup> Intercultural Education Strategy, [http://www.education.ie/servlet/blobServlet/mig\\_intercultural\\_education\\_strategy.pdf](http://www.education.ie/servlet/blobServlet/mig_intercultural_education_strategy.pdf), accessed 27 September

<sup>28</sup> Department of Health and Children, [http://www.dohc.ie/issues/traveller\\_health/](http://www.dohc.ie/issues/traveller_health/), accessed 16 September 2010.

Pavee Point appeared before the Oireachtas Committee on Health and Children on 10 March 2009 and highlighted some of the issues around poor healthcare for Travellers, as well as the insufficient allocation of government funds in this area. The delegation highlighted issues such as institutional reforms of the HSE which were impacting negatively on Traveller health structures and budgets, as well as the distancing of Travellers from the decision-making process.<sup>29</sup>

The HSE also recognises the health inequalities experienced by ethnic minorities, noting that it is widely acknowledged that people from minority groups including Travellers, asylum seekers, refugees and migrant workers are especially vulnerable to poverty and social exclusion and may be exposed to racism. Coupled with language and cultural barriers this may further compromise health and well-being. Progress continued to be made on the national Traveller health study<sup>30</sup> through 2009 and into 2010<sup>31</sup>, the study was launched in September 2010.

Female Genital Mutilation (FGM) is a critical issue for ethnic minority women in Ireland. Ireland might be described as being in the early stage of addressing this issue, politically, socially and through the health services. A steering group comprising of a range of organisations including NGOs was established to advise in the development of a three year plan, Ireland's National Action Plan on FGM which was launched at the end of 2008. The goals of the National Action Plan on FGM are to prevent the practice of FGM in Ireland; to provide high quality, appropriate health care and support for women and girls who have undergone FGM; and to contribute to the worldwide campaign to end FGM. Another positive development is awaited and the government has been working on legislation on FGM through 2009 and 2010. It is expected that a Bill which will explicitly outlaw the practice of FGM will be launched before the end of 2010.

However, other policies are having a negative effect on the health of ethnic minorities. Refugee organisations and other NGOs<sup>32</sup> including Amnesty International highlighted the negative impact of the Dispersal and Direct Provision (DDP) policies on the mental health of asylum seekers. The HSE has also acknowledged the mental health issues for asylum seekers in the Intercultural Health Strategy. The 2008 report, which referred to a range of studies, support the concerns of NGOs. For example, a study of the use of General Practitioner (GP) services and morbidity patterns found that asylum seekers were five times more likely to attend with a psychiatric condition as a similar Irish General Medical Service (GMS) patient and asylum seekers were

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<sup>29</sup> Oireachtas website, Parliamentary debates, <http://debates.oireachtas.ie/DDebate.aspx?F=HEJ20090310.xml&Node=H3#H3>, accessed 16 September.

<sup>30</sup> National Intercultural Health Strategy, 21 February 2008, <http://www.healthfacts.ie/latest-news.html> accessed 17 April 2009, accessed 24 September

<sup>31</sup> The study has since been published and was launched in September 2010. The findings concur with statements in previous shadow reports that Traveller health continues to be significantly poorer than that of the settled population.

<sup>32</sup> Including for example Amnesty International, Integrating Ireland and NASC.

three times more likely to have a diagnosis of anxiety<sup>33</sup>. A qualitative study in Galway identified the length of time living under the direct provision accommodation system as one of the factors that had a negative impact on mental health.<sup>34</sup> Unfortunately however, the situation for asylum seekers has not improved since the 2008 report.

Hospitals are often a place of work for ethnic minorities as well as a place they visit or stay when in need of health care assistance or advice. While they may be safe places for some, others report discrimination. There is emerging evidence of discrimination within maternity hospitals that is of concern. This is one of the issues that has been highlighted to Cairde, an NGO working in the area of ethnic minority health. They currently run a health forum which has included work on pregnancy and parenting. Cairde are concerned by this issue and are currently engaging in work to clarify and improve the situation.

As highlighted in the 2008 report, language, interpretation and translation services continue to operate at a relatively low capacity, an issue also highlighted by the International Medical Organisation (IMO) which criticised in particular the language services provided to GPs<sup>35</sup>. Again, there is no evidence of widespread improvement in this regard.

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

#### **Cairde Ethnic Minorities Health Forum**

Cairde is a community development organisation working to tackle health inequalities among ethnic minority communities by improving ethnic minority access to health services and ethnic minority participation in health planning and delivery. Cairde facilitates the Ethnic Minorities Health Forum which was established in 2002. It is a forum of ethnic minority community groups who meet to identify and address issues that impact on the health of their communities. The forum meets regularly to discuss issues that affect their health and links with the HSE and relevant bodies to improve ethnic minority health. See <http://www.cairde.ie/ethnic-minority-health-forum-emhf/>

### **V.v Policing and ethnic profiling**

The police play a central role in protecting human rights, including the rights of ethnic and religious minorities. In recent years, a number of initiatives have been developed by An Garda Síochána, often through community policing, to develop

<sup>33</sup> McMahon J, MacFarlane A, Avalos G, Cantillon P, Murphy AW. A survey of asylum seekers' general practice (GP) service utilisation and morbidity patterns. *Irish Medical Journal* 2007; 100(5):461-464.

<sup>34</sup> Stewart, R. (2007) *The Mental Health Promotion Needs of Asylum Seekers and Refugees*, A qualitative study in Direct Provision Centres and Private Accommodation in Galway City, Galway City Development Board and Health Promotion Services, HSE West.

<sup>35</sup> See article by Ian Mc Guinness in the Irish Medical Times entitled, "GP Services 'Poor'", Irish Medical Times, available at [http://www.imt.ie/news/2008/03/gp\\_language\\_service\\_poor.html](http://www.imt.ie/news/2008/03/gp_language_service_poor.html) accessed 17 April 2009.

links with the ethnic and religious minority communities. In light of this critical role, it is important that police act in a fair and non discriminatory manner. As in other Member States, there are concerns in the area of policing and also in the specific practice of ethnic profiling that cannot go unchecked.

Ethnic profiling and overpolicing are issues 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 and racial 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. The survey found that in Ireland over a 12 month period, 59% of Africans surveyed had been stopped at least once by gardaí. One in three eastern Europeans were stopped at least once in the same period. More than 1,000 Sub-Saharan Africans and eastern Europeans were surveyed. The stop rate for Sub-Saharan Africans in Ireland was the highest for any ethnic minority surveyed in any of the 27 EU Member States. Only members of the Roma in Greece experienced similarly high levels of police stops, with 56% stopped at least once in the previous 12 months.<sup>36</sup>

Since it became operational in May 2007, The Garda Síochána Ombudsman Commission (GSOC) has received 8, 091 complaints between 9th May 2007 and 30th June 2010. Of these complaints, 126 amounting to 1.5 % of the caseload, appear to relate to allegations of discriminatory behaviour by gardaí. Of these 126 complaints, 100 complaints relate to discrimination on the grounds of 'race' or religion.

The Garda National Immigration Bureau already collects biometric information which is included in the certificates of registration, and the forthcoming Immigration, Residence and Protection Bill proposes that non-Irish nationals be required to carry identification at all times. Given that Irish citizens are not required to carry identification at all times, this would encourage a situation in which those who are perceived to be non-Irish nationals by Gardai (based on ethnic and racial profiling) could be stopped and asked to produce identification. This would create an unnecessary cleavage between citizens and non-citizens since the requirement to carry identification would not apply universally. It also means Irish citizens, including those who are Black or have acquired citizenship can be requested to produce identification on these grounds.

NGOs have reported that individuals experience difficulties in reporting incidents of racism to the Gardaí. In practice, many racist incidents fall into the category of verbal harassment, which can be more difficult to verify and prove. Migrants are

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<sup>36</sup> 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 6 September 2010.

reluctant to report racist incidents to Gardaí who also act as immigration officers. This is particularly true of migrants entering and leaving the state, who can be at the mercy of the discretionary powers of immigration Officials. There is anecdotal evidence of racial profiling as well as discrimination on the grounds of 'race' and ethnicity in these instances, which are compounded by the lack of procedural safeguards or appeal mechanisms and the fact that immigration officials do not fall under the jurisdiction of the Ombudsman or the remit of equality legislation.<sup>37</sup>

## V.vi Racist violence and crime

Data relating to racist violence and crime could previously be gathered from two sources: the Central Statistics Office which collates information gathered by the Gardaí Pulse computer system, and the NCCRI 'racist incidents' system. While the Pulse system is still in place, the closure of the NCCRI marked the loss of the 'racist incidents' mechanism for reporting and collecting data. However, in May 2010 the Immigrant Council of Ireland launched its own racist incident reporting and support service, aimed at people who have experienced or witnessed racist incidents. The ICI's Racist Incidents Support and Referral Service will provide information and support, including referrals to counselling services where appropriate, for people who have experienced a racist incident, as well as record data, report on trends and advocate for legislative and policy change where necessary.<sup>38</sup> This is a welcomed development but means it will be some time before any data is released.

In December 2010 the FRA released an EU-wide survey on discrimination against minorities. The report found that discrimination against Sub-Saharan Africans in Ireland was among some of the highest levels of discrimination against minorities in Member States. Some 26% of respondents considered they were victims of 'racially motivated' assault, threat or serious harassment in the last 12 months.<sup>39</sup>

There is a range of legislation relative to racism, including the Prohibition of Incitement to Hatred Act 1989, which "prohibits the publishing, broadcasting or distribution on any material which would incite hatred on the grounds of race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation". There are fundamental limitations to this piece of legislation and its application which have long been highlighted by NGOs and stakeholders, not least because the Act does not define the term

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<sup>37</sup> MRCI, *Racism and Migrant Workers in Ireland*, <http://www.mrci.ie/publications/documents/MRCIPPRacismandMigrantWorkersinIreland.pdf>, accessed 10 September 2010.

<sup>38</sup> Immigrant Council, *Press Release 14 May 2010*, [http://www.immigrantcouncil.ie/press\\_detail.php?id=133](http://www.immigrantcouncil.ie/press_detail.php?id=133), accessed 24 August 2010.

<sup>39</sup> FRA, *Annual Report 2010*, [http://194.30.12.221/fraWebsite/attachments/AR\\_2010-conf-edition\\_en.pdf](http://194.30.12.221/fraWebsite/attachments/AR_2010-conf-edition_en.pdf), accessed 30 August 2010.

'incitement' or what constitutes incitement to racial hatred. The means of enforcement and regulation also need to be reviewed.

2010 was marked by the tragic death of a 15 year old boy who was stabbed to death by two men in an alleged racially motivated crime. Toyosi Shittabey had moved from Nigeria to Ireland with his family 11 years previously. Two men were arrested and one man was charged with manslaughter. Subsequently, both men were charged with murder. There was considerable public outcry and solidarity with the family, and the tragic incident sparked public debate on perceived increased levels of racism in Irish society.

**No. of complaints alleging discrimination on the grounds of race and/or religion (as of 30th June 2010)<sup>40</sup>**

Year	2007	2008	2009	2010
<b>Complaints</b>	39	22	25	14

**Yearly Reported Racially Motivated Incidents 2003 - 2009 (19/02/2010)<sup>41</sup>**

Year	2003	2004	2005	2006	2007	2008	2009
<b>Count</b>	64	68	100	173	214	172	126

The incidence of recorded racist crime fell by 21% to 180 incidents in 2008. While this would appear to indicate decreasing levels of racism, in reality NGOs have experienced significant difficulties in reporting incidents of racism to the Gardaí. In practice, the majority of racist incidents fall into the category of verbal harassment, which is difficult to verify. In addition, many migrants are reluctant to report racist incidents to Gardaí who also act as immigration officers.

**Examples of NGO Good Practice**

ENAR Ireland Standard Framework for the Reporting of Racist Incidents. ENAR Ireland applied for funding through Dublin City Council's Integration Fund in January 2009 to pilot a Racist Incident Monitoring System and was successful. The Racist Incident Monitoring system aims to ensure the availability and coordination of comparable statistics on racist incidents (including in the areas of racist violence and crime; goods and services; employment) as a key tool to

<sup>40</sup> Office of the Minister of State for Integration, *Statistics on Racist Crime and Racial Discrimination*, <http://www.integration.ie/website/omi/omiwebv6.nsf/page/Statistics%20on%20Incidents%20of%20Racism%20and%20Discrimination-en>, Accessed 2 September 2010.

<sup>41</sup> Ibid.

addressing racism. The data shall provide evidence to inform policy and legal development. ENAR Ireland also aims to ensure organisations can make appropriate referrals and that supports are available to individuals and groups who experience racist incidents. See [www.enarireland.org](http://www.enarireland.org)

## **V.vii Access to goods and services in the public and private sector**

Discrimination in the provision of goods and services is illegal, under the equality legislation (see VI.i below).

The Annual Report of the Equality Authority<sup>42</sup> presents an overview of the queries received under each of the grounds. In the area of equal status, of the 731 queries received (and where the ground is specified<sup>43</sup>), 118 referred to the 'race' ground, 67 were on the basis of membership of the Traveller community and 16 were on the religion ground. Overall, discrimination on the basis of 'race' was the third most cited ground in the area of goods and services at 118 queries, with disability (210) being cited the most frequently, just above age (161). However, when we take the figures for 'race' combined with the figures for membership of the Traveller Community (67) and religion (16), it is clear that queries regarding discrimination against members of ethnic and religious minority communities were second to those made in relation to the disability ground. 'Race' was and fourth in the area of employment, after age, disability and gender<sup>44</sup>.

While there was an overall decrease in claims brought to the Equality Tribunal under the Equal Status legislation, there was an 11% increase in claims on the 'race' ground and only a 13% decrease in claims on the basis of membership of the Travelling community.

Cases taken under the legislation are heard by the Equality Tribunal. Of the 176 cases referred to the Equality Tribunal under equal status, 20 were on the 'race' ground, 20 were on the Traveller ground and four were on the basis of religion. While disability was the most cited ground with 32 cases, the total cases taken by ethnic and religious minorities account for 44 cases, that is 25% of cases referred<sup>45</sup>.

While most frontline service providers are respectful and aim to deliver services without prejudice, direct experiences of racism are a reality for many people.

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<sup>42</sup> Equality Authority Annual Report 2009, available at <http://www.equality.ie/index.asp?locID=136&docID=885> accessed 12 July 2009.

<sup>43</sup> 1721 queries were received but for 899 of these, the ground was unspecified (Ibid, p. 17).

<sup>44</sup> 'Race' accounted for 167 queries under the Employment Equality Acts; Membership of the Traveller Community, 8 and there was one query on the religion ground. Combining these three grounds, queries from ethnic and religious minority groups might be considered to account for 180 queries. Queries on the age ground stood at 211 and there were 190 queries in relation to discrimination on the basis of disability. There were 188 queries in relation to gender.

<sup>45</sup> Note, cases taken on multiple grounds are not included in these statistics.

Racism in the delivery of public services is also evident in the policies shaping access to these services. The Habitual Residency Condition (HRC) is of particular concern for migrant workers. Migrant worker eligibility for essential supports and services is predicated on meeting a number of restrictive criteria and not on economic need. The HRC may appear to be blind to 'race' and nationality because it applies to all applicants, but in reality the discretionary nature of HRC criteria leads to migrant worker applicants being disproportionately affected and contributes to them being pushed further into poverty.

Direct provision residents receive a weekly allowance of €19.10 per adult and €9.60 per child, the only social welfare payment not to have increased since its introduction 10 years ago. Asylum seekers or others awaiting a decision on subsidiary protection or humanitarian leave to remain cannot satisfy the Habitual Residence Condition and therefore cannot qualify for any mainstream payment.<sup>46</sup> The Habitual Residency Condition has been mentioned throughout the report and this area is no exception, particularly with regard to access to publicly funded services.

Discrimination by service providers is unlawful. It is important that service providers do not discriminate against service users or indeed, in their workplace. Racism in the workplace should not be tolerated. ENAR Ireland received a complaint from a prominent broadcaster regarding a racist e-mail he had received targeting asylum seekers amongst others. It appears to have been circulated through the offices of a number of key service providers. The last recipient who sent the message to the broadcaster was working with An Post. On receipt of the complaint, An Post instigated a grievance procedure against the employee. ENAR Ireland was pleased to see that the incident was taken seriously by the employer. One of the reasons ENAR Ireland highlighted this incident in the media was because we are concerned at the level of acceptance of racism and also at the impact this may have on service delivery.

This comes at a time when anecdotal evidence suggests inconsistent application of the Habitual Residency Condition and reports from NGOs the migrants are being treated in an unfair manner when trying to access social welfare payments. There may be an emerging issue of ethnic profiling. NGOs are beginning to think about ethnic profiling in the context of social welfare as evidence suggests that social welfare officials are effectively policing migrants, suspecting welfare fraud. While data is yet inconclusive, this area is of such concern that the MRCI for example, has included social welfare in the context of its current research on ethnic profiling.

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<sup>46</sup> MRCI, *Racism and Migrant Workers in Ireland*, <http://www.mrci.ie/publications/documents/MRCIIPPRacismandMigrantWorkersinIreland.pdf>, accessed 10 September 2010.

## V.viii Media, including the internet

While acknowledging the positive informative, critical and awareness raising role the media can and has played, it must be acknowledged that there are worrying weaknesses in the legislative and policy context to combat racism in the media. An issue referred to in previous Shadow Reports for example, is the ineffectiveness of the Incitement to Hatred Act. This Act has been under review for many years without conclusion. One outcome of the review process came about in 2008 with the publication of research conducted under the National Action Plan<sup>47</sup>. However, action on the basis of the research is still awaited (see also section VI.iii). The Government considers that the legislation is robust and sufficient. There is a clear gap between the perspective of civil society organisations and the Government in this regard.<sup>48</sup>

One case which highlights the lack of capacity of the Irish legal system to deal with racism in the media is that an attempt by NGOs including the Immigrant Council of Ireland to address an article published by the *Irish Independent*<sup>49</sup> 2008. The article was written by Kevin Myers and was titled 'Africa is giving nothing to anyone – apart from AIDS'. The article generated huge criticism and was deemed highly offensive by a number of NGOs and minority media who spoke out against the article but was ultimately unsuccessful (see also 2008 report).

The issue of racism on the internet became more visible in 2010, with a number of cases reported on social networking sites. For example, 8,000 people signed up to one anti-Traveller Facebook page. The lack of explicit reference to the internet in incitement to hatred legislation can be problematic and NGOs have called for the position regarding the internet to be made explicit in legislation.<sup>50</sup>

While not specific to racism or hate crime, other legislative and policy developments may impact positively. For example, the Broadcasting Bill 2008<sup>51</sup> was published in May 2008. The Department of Communications explains that the Bill provides for the establishment of a new broadcasting regulator for all broadcasters licensed in the state, to be called the Broadcasting Authority of Ireland (BAI). Under the Bill, the BAI will perform the existing functions of both the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission. It will also undertake as well as undertaking a range of new

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<sup>48</sup> See for example, presentation and paper by Solicitor Siobhan Cummiskey working with the Irish Traveller Movement written for ENAR Ireland seminar on Racist Crime held in June 2009 (summary available in seminar report).

<sup>49</sup> The *Irish Independent* is one of the leading national newspapers with one of the highest distributions in the country.

<sup>50</sup> See ENAR Ireland seminar report from June 2010, 'Racist Crime: Issues, Opportunities and the Framework Decision on Racism and Xenophobia'.

<sup>51</sup> Available at <http://www.oireachtas.ie/documents/bills28/bills/2008/2908/b2908s.pdf> accessed 10 April 2009.

regulatory functions, particularly with regard to the oversight of public service broadcasters.<sup>52</sup>

A clear omission and weakness in the establishment of the Press Council was the fact that its remit and Code of Practice did not include all nine grounds reflected in the Equality legislation and Travellers were not included. This situation was rectified in 2008. The Code was amended to include Travellers. The Press Council itself now also includes Traveller representation.

Radio Teilifis Éireann (RTÉ), the national broadcasting channel recognises the need to develop a holistic and comprehensive approach and has adopted a commitment to interculturalism as corporate policy by the RTÉ Authority and Executive Board.

The 2008 Shadow Report referred to NCCRI reports on racist incidents as evidence of racism in the media. However, the racist incidents system ceased with the closure of NCCRI and there is no comparable data available for 2008. As a response to this gap and guided by good practice by NGOs across Europe, ENAR Ireland has developed a racist incident system which will help generate relevant data for future reports.

### **Examples of Good Practice**

#### **Pavee Point Media Monitor**

The Pavee Point Media Monitor is designed to keep you up to date with the most relevant stories to the Traveller and Human Rights interest in Ireland's printed media. It'll be used to update on complaints and issues around television and radio broadcasts in Ireland, and to give subscribers information on upcoming programmes or articles of interest. See <http://pavee.ie/mediamonitor/>

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<sup>52</sup> Further details also available at [www.eumap.org](http://www.eumap.org)

## **VI. Political and legal context**

Securing progress for equality and anti-racism in the current political environment is quite challenging as these are not considered priority areas. The country is going through a difficult recession, one in which it is argued that equality is seen as a luxury. At a time of recession where there are risks for increases in racism and inequality, our capacity to respond has been diminished through significant cutbacks to equality and related infrastructure in 2008 and to government funding programmes to community organisations.

Local Elections were held in June 2009. ENAR Ireland re-launched the Anti-Racism Political Protocol in the run up to the local elections, an initiative that was developed by the NCCRI which closed in December 2008. A number of NGOs promoted voter registration and participation within ethnic minority communities including among migrants. All people resident in Ireland can vote in the Irish local elections.

While Ireland has not experienced the same rise in right wing extremism as is evident in other Member States, the denial of racism by leading politicians was worrying in 2009.<sup>53</sup> Political leadership is required.

The Cabinet saw a number of changes between in the period of reporting. The Office of the Minister was a welcome development in 2007; however, it has undergone much change in leadership. The Office was initially led by the new Minister for Integration in 2007; the first significant cutbacks to deal with the recession at the end of 2008 also impacted on the cabinet and area of integration became part of a junior ministerial portfolio on 22 April 2009. The area was included in the portfolio of the Minister of State at the Departments of Community, Rural and Gaeltacht Affairs; Education and Science and Justice, Equality and Law Reform with special responsibility for Integration and Community was added to an existing profile and held by the junior minister for drugs, social inclusion and integration. A further cabinet restructuring took place on 23 March 2010 with the establishment of a new Ministry for equality, human rights and integration. While it is a welcome development to see integration alongside equality and human rights, such significant changes over such a short period of time bring their own difficulties.

### **VI.i 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

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<sup>53</sup> A Cabinet restructuring in April 2010 provided some opportunities to refocus on the issue.

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).

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>54</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.

Of the 822 queries received by the Equality Authority in the area of employment (and where the ground was specified<sup>55</sup>), 167 related to the 'race' ground, eight to the Traveller ground and five to the religion ground. In the area of equal status, of the 731 queries received (and where ground is specified), 118 referred to the 'race' ground, 67 were on the basis of membership of the Traveller community and 16 were on the religion ground. Overall, discrimination on the basis of 'race' was the third most cited ground in the area of goods and services and fourth in the area of employment.

In the area of employment equality and pensions, the 'Race' ground accounted for 289 of 780 cases brought to the Equality Tribunal in 2009 and represented the highest case load under any single ground, followed by disability at 117 cases. Though 'race' continued to be the highest cited ground (as in 2008), the figure dropped by 29% compared with an overall drop of 7% in cases referred. There were also two cases taken on the grounds of membership of the Traveller community and no cases were taken in 2009 on the ground of religion in 2009.<sup>56</sup> Of the 176 cases referred to the Equality Tribunal under equal status, 20 were on the 'race' ground, 20 were on the Traveller ground and four were on the basis of religion. While disability was the most cited ground with 32 cases, the total cases taken by ethnic and religious minorities account for 44 cases, that is 25% of cases referred. Note, cases taken on multiple grounds are not included in these statistics.

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<sup>54</sup> Equality Authority Annual Report 2009, available at <http://www.equality.ie/index.asp?locID=136&docID=885> accessed 12 July 2009.

<sup>55</sup> 1721 queries were received but for 899 of these, the ground was unspecified (Ibid, p. 17).

<sup>56</sup> See Equality Tribunal's Annual Report for 2009, available at <http://www.equalitytribunal.ie/uploadedfiles/AboutUs/Annual%20ReportFinal2009.pdf>, accessed 20 September 2010.

The equality bodies are central to ensuring the effectiveness of equality legislation. 2009 saw the Equality Authority operate on a budget that had been reduced by 43% at the end of 2008. There was no increase for the Equality Authority budget in the 2009 budget and the resources remain disproportionately reduced into 2010. While there is equality legislation in place and an equality body, the cuts seriously question the commitment to equality and threaten to undermine the effectiveness of the legislation. Such cuts arguably lend support to the view that equality is a luxury in a time of recession rather than equality and social inclusion being central to building a social and sustainable country and Europe.

The 2008 Shadow Report outlined the dismantling of the equality infrastructure including cuts to the Equality Authority and Irish Human Rights Committee budgets; the merging of the heretofore independent Combat Poverty Agency into the Social Inclusion Division of the government department on social and family affairs (now Department of Social Protection) and the closure of the NCCRI as well as the cessation of the National Action Plan Against Racism (NPAR). While a number of functions of the NCCRI were to be absorbed into the Office of the Minister for Integration, there was little evidence in 2009 that the functions of the NCCRI were absorbed. Furthermore, the NCCRI as an independent body had a specific role and therefore, a simple absorption into the Office of the Minister is inappropriate.

As detailed above, the NPAR ceased at the end of 2008 with no clear follow up mechanism identified. The timeframe of the NPAR was too short. While a number of initiatives continue to be developed through specific government departments and are identified in relevant sections above (e.g. Intercultural Health Strategy and Intercultural Education Strategy) there is no mechanism to ensure a holistic approach and joint up thinking regarding a response to racism; one that involves all government departments, a range of stakeholders and includes all groups experiencing racism including Travellers and migrants amongst others.

Research commissioned by ERA on the impact of the cuts imposed on equality infrastructure, concluded that in the case of the Equality Authority, questions are raised about how it can continue to carry out its functions with such a significant budget cut. The report noted that since the budget cuts to the Equality Authority there had been a decline in its media profile; a decline in significant case outcomes; a falling off of engagement with the business and enterprise community; and reduced engagement with NGOs.<sup>57</sup>

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<sup>57</sup> Harvey and Walsh op cit page 80

In September 2009, Equality & Rights Alliance (ERA)<sup>58</sup> submitted a complaint to the European Commission to examine whether the Irish Government was failing to comply with its duties under EU equality Directives, due to the nature of the cuts imposed on the Equality Authority. The complaint was supported by the General Secretary of the Irish Congress of Trade Unions (ICTU). A corresponding petition was also submitted by ERA to the European Parliament's Petitions Committee. Our petition was signed by all opposition Irish Members of the European Parliament.<sup>59</sup> The Commission expressed much regret at the Irish Government's decision to cut the budget of the Equality Authority. However, the Commission stated that due to the minimal-standard nature of EU Directives, they were unable to instigate infringement proceedings against the Irish Government. Following the hearing of the ERA petition to the Petitions Committee of the EU Parliament in May 2010, the Committee decided to write to the Irish Government requesting information on the nature of the cuts to the Equality Authority and how it is continuing to discharge on its functions under EU Equality Directives.

## **VI.ii Migration and integration**

The legal and policy developments in the area of migration are quite grim. While there have been some positive developments such as a scheme to provide a bridging visa for migrants who have become undocumented through no fault of their own, overall it has become much harder to secure a work permit. The Immigration, Residence and Protection Bill which had the potential to address the gaps and anomalies within the immigration system, has serious weaknesses and problematic provisions. The recession makes it harder for migrants to remain consistently in employment; yet new restrictions have been introduced to limit access to social welfare. Asylum seekers currently in the asylum process on the other hand, never had the right to work (except for one year in 1998) and have minimal social welfare payments; their situation remains dire; while they are in the system living conditions are difficult and the chances of securing refugee status are very slim, at present Ireland has the second lowest recognition rate in the EU at first instance.

The 2008 Shadow Report evoked the problems highlighted by NGOs on the Immigration, Residence and Protection Bill 2008, which was subsequently withdrawn, It has since been replaced with the Immigration Residence and Protection Bill 2010 which is currently going through the Oireachtas. The Immigration, Residence and Protection Bill 2010 was published in July and aimed to consolidate and update all immigration and asylum legislation which has to date been ad hoc and piecemeal. While the creation of a single procedure

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<sup>58</sup> Equality and Rights Alliance (ERA) is a coalition of civil society organisations that came together to campaign for the protection of the equality bodies and related infrastructure in 2008.

<sup>59</sup> To read a full copy of the complaint: [http://www.eracampaign.org/uploads/ERA\\_Compaint\\_to\\_the\\_EU\\_Commission.pdf](http://www.eracampaign.org/uploads/ERA_Compaint_to_the_EU_Commission.pdf) and petition: [http://www.eracampaign.org/uploads/ERA\\_Petition\\_to\\_the\\_European\\_Parliament.pdf](http://www.eracampaign.org/uploads/ERA_Petition_to_the_European_Parliament.pdf)

for reviewing applications for refugee status and subsidiary protection is welcomed by NGOs, they, as well as the UN High Commissioner for Refugees and the Irish Human Rights Commission (HRC), many organisations have expressed concern about aspects of the Bill, which still contains problematic provisions and potentially illegal provisions that were contained in the 2008 version. Areas of particular concern include summary deportations, restrictions of the right to marry, limitation of access to justice for migrants, failure to protect victims of trafficking, detention, refoulement, carrier liability and family reunification. ENAR Ireland has particular concern of the impact of summary deportation procedures on the practice of ethnic profiling.

The HRC called for the Bill to be amended to provide for an independent appeals procedure to review all immigration-related decisions, and noted concerns about the “alleged lack of independence” of the new Protection Review Tribunal which would be created by the Bill, to replace the Refugee Appeals Tribunal.<sup>60</sup> The Bill would allow a government minister to appoint part time Tribunal members<sup>61</sup>. The MRCI amongst others argues that the IRP Bill which allows for summary removal<sup>62</sup>, creates a system in which undocumented migrants who have been exploited, or are in a situation of forced labour, would not be able take their employer to court, to claim unpaid wages for example, but instead would be put on a plane without any access to redress.

Asylum seekers remain in a very vulnerable position in Irish society. Very few asylum seekers receive refugee status in Ireland. The policy of dispersal and direct provision continues (see also section on social inclusion) and is having detrimental impact on the well being of asylum seekers and of their families. In April 2009, the Council of Europe Commissioner for Human Rights expressed concern about conditions in accommodation centres for asylum-seekers, including overcrowding and problems of safety. This policy actively limits asylum seekers’ opportunities to integrate. While the number of asylum seekers is relatively low in Ireland, they remain one of the most vulnerable groups.

The government recently announced that it will begin reforming the immigration rules which affect international students from outside the European Economic Area. The move has been welcomed by NGOs, including the Immigrant Council of Ireland, but the details of the immigration reform proposals have yet to be published.<sup>63</sup>

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<sup>60</sup> Amnesty Report on Ireland 2009, <http://www.amnesty.org/en/region/ireland/report-2009>, accessed 23 September 2010.

<sup>61</sup> Full time are appointed through the public appointments service, however in reality all current members are part time – see section 101.

<sup>62</sup> One of the main objections to the Immigration, Residence and Protection Bill is a provision which allows for the summary removal of migrants and those in need of protection, without access to a fair hearing. Current procedures regarding removal provide an individual fifteen days to make representations to the Minister as to why they should be allowed to remain in the State. The new Bill would take away this basic right.

<sup>63</sup> Immigrant Council of Ireland, [http://www.immigrantcouncil.ie/press\\_detail.php?id=147](http://www.immigrantcouncil.ie/press_detail.php?id=147), accessed 23 September 2010.



redundant after five years working on a permit and to those still in employment. In addition, migrant workers who have been made redundant have period of six months 'breathing space' (increased from three months since August 2009) in which to secure new employment.

NGOs have uncovered several problems identified by migrant workers regarding the new Scheme for non-EEA nationals who have held permits for five years or more. For example, the MRCI has come across individuals who lost their jobs through dismissal which may have been unfair, due to exploitation or poor treatment. These individuals will not be able to produce a redundancy notice to qualify for the new provision.

Social Welfare legislation was amended in December 2009 and now states that persons who do not have a legal right to reside in the State shall not be regarded as being habitually resident in the State.<sup>69</sup>

The Department of Enterprise, Trade and Employment implemented changes in work permit arrangements in April 2009. These changes were designed to make qualifying conditions more difficult for the granting of new work permits to non-EEA nationals for occupations requiring lower skills/qualifications and vacancies, in order to give preference to Irish or EU citizens to fill these positions.<sup>70</sup> There was also a revision of arrangements for the Green Card scheme, with amendments made to the list of occupations eligible for Green Cards.<sup>71</sup> Initially the Government proposed that a labour market test be introduced for all redundancy permits. The MRCI campaigned against this and the change was reversed. The decision was communicated in the Proposed Renewed Programme for Government published on 10 October 2009.<sup>72</sup>

The National Report for Ireland on Strategies for Social Protection and Social Inclusion 2008-2010 (NSSPI) recognise integration as "one of the most important challenges being faced by Irish society".<sup>73</sup> Racism is a core barrier to integration. ENAR Ireland argues that integration shall not be achieved as long as racism persists. However, the need to address racism as a key part of any integration strategy is not always recognised including by key government offices. Furthermore, racism cannot be addressed by focusing on one group alone; anti racism strategies need to be inclusive of the experience of all ethnic and religious

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<sup>69</sup> Social Welfare and Pensions (No.2) Act of 2009, Section 15, <http://www.oireachtas.ie/documents/bills28/acts/2009/a4309.pdf>, accessed 27 September 2010.

<sup>70</sup> Department of Enterprise, Trade and Innovation, <http://www.deti.ie/labour/workpermits/reviseidworkpermitarrangements%20-%20june%202009.htm>, accessed 27 September

<sup>71</sup> Department of Enterprise, Trade and Innovation, <http://www.deti.ie/labour/workpermits/reviseidgreencard.htm>, accessed 27 September

<sup>72</sup> Renewed Programme for Government 10 October, [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2009/Renewed\\_Programme\\_for\\_Government\\_October\\_2009.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2009/Renewed_Programme_for_Government_October_2009.pdf), accessed 27 September

<sup>73</sup> Minister of State for Integration, <http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-strategies-national-en>, accessed 23 September 2010.

minorities. As the majority of integration initiatives developed by the Office of the Minister for Integration relate only to legally resident migrants, they are limited endeavours in terms of addressing racism.

For many migrants, their level of integration into the local community is impeded by racism, a lack of information, poor access to services, language difficulties, different and long working hours, low pay, lack of acceptance by local people, lack of community facilities and cultural differences. A number of studies<sup>74</sup> concur that important factors that would facilitate integration into the local community were being able to speak the English language well, having better access to local services and information, improved community facilities, and improved acceptance by the local community. One study carried out in a Dublin suburb by ICI and Focus Ireland for example, found that access to local services and information was highest in the Nigerian community and lowest in the Chinese community.<sup>75</sup>

On integration, civil society organisations are playing a key role in ensuring the development of integration and anti racism plans. Local anti-racism groups are working in partnership with local authorities across the country in supporting the development and monitoring of local integration plans and anti-racism and diversity plans, e.g. in Limerick, Galway, Cork and Dublin.

Awareness of the EU 11 Common Basic Principles (CBPs)<sup>76</sup> seems to be increasing and they are sometimes used as a tool in the development of policy and procedures. Applicants for funding under the European Integration Fund (EIF) are informed that projects should be underpinned by the CBP and these frame the criteria for selection. Local authorities are also demonstrating cognisance of the CBPs. For example, the Dublin City Council explains that the Integration Strategy is based on the CBPs.<sup>77</sup>

### **VI.iii Criminal justice**

In June, the Criminal Law (Human Trafficking) Act 2008 came into force, creating an offence for trafficking. The Act criminalised the use of services of victims of trafficking, and abolished any defence based on the victim's consent for such offences. The Immigration, Residence and Protection Bill 2010 would, if enacted, provide for a 45 day recovery and reflection period for victims of trafficking. It would also provide for a six-month temporary residence permit for

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<sup>74</sup> Including for example, Lynch, C (2008) *Needs Analysis of New Communities in Dublin 10* Ballyfermot Partnership; Focus Ireland/ICI (2009).

<sup>75</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>76</sup> Council document on the 11 CBP: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005\\_0389en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0389en01.pdf)

<sup>77</sup> For a copy of the Dublin City Integration Strategy, see [www.dublin.ie](http://www.dublin.ie)

victims, but this would be conditional on the victim's co-operation with a criminal investigation.<sup>78</sup>

In July 2009, the Human Rights Committee examining Ireland under the International Covenant on Civil and Political Rights (ICCPR) expressed concern that Ireland did not "intend to recognise the Traveller community as an ethnic minority", and that "the criminalisation of trespassing on land in the 2002 Housing Act... disproportionately affects Travellers".<sup>79</sup>

### **VI.iii.i Racism as a crime**

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 limited provision in the area of aggravated sentencing.

An Garda Síochána (Irish Police) has a Garda Racial and Intercultural Office (GRIO) 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 with only three police officers and a recently extended mandate to cover all the equality grounds. GRIO carries out training with police. However, this is a small office serving a large police force and the amount of training they can deliver is limited. While the Office is supportive, it is over-stretched. 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 crime 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 are also limited in their response as a result of issues with the legal system and the scope of legislation that is in place.

Irish NGOs has long held hopes that the EU Framework Decision on Racism and Xenophobia would help ensure that progress would be made in the area of racist crime. However, until 2010 there has been little public debate. ENAR Ireland has instigated debate on the EU Framework Decision including 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. While officials have continued to engage with ENAR Ireland on this issue, the position remains the same although NGOs has identified clear areas where Ireland's legislation does not appear to comply even with minimum standards and should certainly be strengthened.

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<sup>78</sup> Amnesty Report on Ireland 2009, <http://www.amnesty.org/en/region/ireland/report-2009>, accessed 23 September 2010.

<sup>79</sup> Ibid.

### **VI.iii.ii 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. There have been a few developments in this area but arguably, they have a limited impact of on ethnic and religious minorities. 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, the increased focus on security rather than rights of migrants within immigration legislation has affected ethnic and religious minorities.

In the period January 2009 to March 2010, a small number of developments in this area are evident. 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 potentially engaged in renditions.<sup>80</sup>

### **VI.iii.iii Ethnic profiling**

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>81</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. Anecdotal evidence across the country suggests that the practice of ethnic profiling is carried out. In response to the difficulty of proving this, NGOs including the Migrant Rights Centre are carrying out research in this area and ENAR Ireland’s new racist incident monitoring scheme (as well as work of other NGOs in this area) includes the category of policing/criminal justice so that people can report incidents of ethnic profiling independently.

### **VI.iv Social inclusion**

Overall, there is evidence to suggest that there is greater mainstreaming and inclusion of ethnic minorities in social inclusion policies in recent times, although

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<sup>80</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>81</sup> Open Society Institute, Ethnic Profiling in the European Union: Pervasive, Ineffective and Discriminatory, Page 19.

there continues to be scope for improvement. Furthermore, effective mainstreaming needs to be accompanied by targeted initiatives. Action also needs to be taken to ensure consistency across policy areas so that developments in other areas do not negatively impact on social inclusion objectives.

The National Action Plans on Social Inclusion (NAPS)<sup>82</sup> are designed to identify actions to be taken to combat poverty and social exclusion, and to reform social protection systems. Ireland's NAP Inclusion 2008-2010<sup>83</sup> identifies a number of actions and includes some specific mention of ethnic minorities. However, gaps remain and there needs to be greater consistency across policy areas so that policies in other areas such as accommodation or migration do not negatively impact on social inclusion. Furthermore, greater credence and recognition need to be given to the social aspects of migration, including social, cultural and political rights of migrants.

The NAP Inclusion 2008-2010 makes a number of specific references to social inclusion of ethnic minorities and to other relevant policies and initiatives taken by Government that impact on this. One of the concerns however is what impact the cuts to such initiatives shall have on the effectiveness of the NAP Inclusion. The NAP Inclusion identifies the NPAR among its priorities in relation to integration. However, the NPAR concluded at the end of 2008. The budget of the Office of the Minister for Integration, which is also referred to in the NAP Inclusion, was cut by 25% on the October 2008 budget. While there was a 6% increase in the budget of the Office for 2010, this remains a still significantly reduced budget compared with 2008.

There is little core funding for NGOs and across the board, the allocation of funding by government has been short term, often for once off projects and as such as we have seen, is particularly vulnerable to cutbacks. Local community groups that have supported work with ethnic minorities have been severely affected by restructuring and budget cuts including the cessation of the Community Development Programme which saw the closure of local community groups across the country and the merging of local structures. The large proportion of local Traveller community groups were funded under the Community Development Programme. The cuts to the programme were also likely to have a disproportionate effect on Travellers. Traveller organisations lobbied the Government and have secured some exemptions from the blanket cuts to projects; this process continues to be a work in progress with the final outcome of the process pending.

There continue to be particular difficulties accessing funding for work with specific groups, such as Roma. An analysis of the situation suggests that there

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<sup>82</sup> The NAPS under the EU's OMC on Social Protection and Social Inclusion - For further information see Europa website: [http://ec.europa.eu/employment\\_social/spsi/strategy\\_reports\\_en.htm](http://ec.europa.eu/employment_social/spsi/strategy_reports_en.htm)

<sup>83</sup> The National Report for Ireland is available at [http://ec.europa.eu/employment\\_social/spsi/docs/social\\_inclusion/2008/nap/ireland\\_en.pdf](http://ec.europa.eu/employment_social/spsi/docs/social_inclusion/2008/nap/ireland_en.pdf), accessed 10 April 2009.

needs to be greater recognition of the need for particular strategies for work with specific target groups. The way data is collected in the area of migration and the allocation of funding, suggests that diversity within the migrant population requires greater recognition. Migration related data should be collected and disaggregated on the basis of ethnicity as well as nationality.

The European Integration Fund (EIF) and the European Refugee Fund are two sources of funding for NGOs and local authorities to deliver targeted initiatives. However, there are problems with the criteria that determine what groups can access funding. For example, the EIF funding criteria differentiate between migrants and the Fund can only be accessed for projects to support those considered to be legally resident migrants. Match funding requirements also present a practical issue.

Dispersal and Direct Provision (DDP), the policies underpinning accommodation arrangements for asylum seekers in the State, have consistently been criticised by NGOs and have received international attention, as identified in the 2007 Shadow Report. 2009 saw no positive change in this area. In 2009 and into 2010, the payment to asylum seekers remained the only social welfare payment that has not increased since 2000, despite clear increases in the cost of living and inflation. When the policies of Dispersal and Direct Provision (DDP) were introduced in 2000, it was envisaged that cases would be processed within six months and that therefore, no one would be accommodated under DDP for longer than this. In practice, however, many asylum seekers including families are living under DDP in excess of two years. This policy has led to the effective segregation of communities. Key stakeholders argue that asylum seekers have become institutionalised and that this impacts negatively on their longer term integration including economic participation. When the DPP was first introduced, it was envisaged that people might spend up to six months in the hostels. However, in practice asylum seekers are more likely to spend between two and five years in direct provision accommodation.

Refugee organisations are seriously concerned with the asylum system and dispersal and direct provision has now been in place for a decade. For example, the Irish Refugee Council (IRC) identified key issues of concern with the current asylum procedure including the lack of transparency, including non-publication of decisions or guidelines; quality of decision-making; understanding of protection concerns; discretionary nature of assessment of humanitarian leave to remain and other protection concerns; quality of interpreting and translation services; revocation of refugee status as well as problems associated with the Dublin regulation<sup>84</sup>.

Many migrants do not receive child benefit, a payment that was a universal payment until 2008. Asylum seekers do not receive child benefit. A number of

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<sup>84</sup> See IRC document published in 2009, 'Single Protection Procedure A Chance for Change' available at [http://www.irishrefugeecouncil.ie/media/Report\\_single\\_protection.pdf](http://www.irishrefugeecouncil.ie/media/Report_single_protection.pdf)

cases have been taken successfully by FLAC where individuals were wrongfully denied payment but have been appealed by the relevant department<sup>85</sup>. NGOs have also found that other exceptional needs or discretionary payments are no longer being paid to asylum seekers including the Back to School allowance. With regard to child poverty, the policy on non payment of Child Benefit to asylum seekers further marginalises and results in higher levels of poverty among asylum seekers with families. In addition, with increased risks of families becoming undocumented at a time of recession, child poverty is an area of real concern. As Travellers are also affected by the Habitual Residency Condition, the pervasiveness of Traveller child poverty is likely to be exacerbated.

The Habitual Residency Condition was highlighted in the last three shadow reports. Since the recession and particularly in 2009 and into 2010, the HRC has led to untold hardship as many migrants have lost their jobs. The impact of the HRC in particular on women experiencing domestic violence is an issue that has been raised by women's groups<sup>86</sup>. The Habitual Residency Condition (HRC) continues despite lobbying by NGOs and the research findings of agencies such as the Homeless Agency reported in 2007 Shadow Report, which demonstrate that the HRC was impacting on homelessness and limiting the provision of emergency accommodation to migrants.<sup>87</sup> It should be noted that access to welfare payments is also an issue for EU citizens.

On a positive note, NGOs such as Integrating Ireland (now Integration Centre) and partner organisations, had actively been encouraging ethnic minorities to engage with the political process in the lead up to the local and European elections which were in June 2009. Also, cultural diversity policies for arts were announced in February 2009, as an outcome of the EU Year of Intercultural Dialogue. It is worth noting that 2010 is European Year on Poverty and Social Exclusion. The challenge for the Year, however, is to ensure that initiatives are not once off but contribute to a legacy for the Year.

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<sup>85</sup> Further information is available from Free Legal Advice Centres (FLAC), see [www.flac.ie](http://www.flac.ie)

<sup>86</sup> For example, a woman may experience domestic violence and need to leave a violent situation. However, if she has not been habitually resident in the country for two years, she will not be able to access social protection. Her residency may be tied to that of her partner. She may not have the right to work in the country and therefore be economically dependent on her partner.

<sup>87</sup> See Homeless Agency's 2006 report, *Away From Home*.

## **VII. National recommendations**

### **VII.i General**

- Provide sufficient resources to equality bodies to ensure effective implementation of equality legislation, as a matter of urgency.
- Implement recommendations made by the Human Rights Committee under CCPR, in relation to counter-terrorism, detention of asylum seekers, denominational education and representation and recognition of Travellers.
- Continue to improve existing data collection, to enable meaningful categorisation and data disaggregation.
- 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.
- 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.

### **VII.ii Anti discrimination**

- 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.

### **VII.iii 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.

## **VII.iv Criminal justice**

### **VII.iv.i Racism as a crime**

- Greater consideration needs to be given to options for the inclusion of racism as an aggravated factor in legislation and to ensuring increased sentencing where a criminal act has had a racist aspect.
- Strengthen our capacity to prevent and address hate speech including through strengthening incitement to hatred legislation.
- There needs to be a shift in focus from intent to impact – and this needs to be reflected in legislation and at sentencing.
- 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.
- Greater recognition of the role of a range of stakeholders including civil society organisations and those experiencing racism, can help address the gap between the need on the ground and the legal options currently available. Effective communication between relevant government departments and statutory bodies with civil society organisations is vital to developing responses to racism including through criminal law.

### **VII.iv.ii Counter terrorism**

- As recognised in the HRC's concluding comments (CCPR), the government needs to provide a definition of terrorism and collect and provide data which can monitor the impact if any of counter terrorism legislation on human rights and the proportionality of the effect of ethnic minorities.
- Due consideration should also be given to the HRC concern regarding the State's reliance on official assurances regarding the risk of torture or ill-treatment of those on so called rendition flights (para 11).

### **VII.iv.iii Racial profiling**

- Ensure monitoring at points of entry and the provision of data. NGOs should also be allowed to be present at points of entry for independent monitoring.
- Amend sections of the IRP Bill that facilitate ethnic profiling, directly or indirectly.

## **VII.v Social inclusion**

- Social inclusion policy needs to include all migrants, including asylum seekers and undocumented workers.
- Policies that affect ethnic minorities, including those that affect migrants, need to go through a poverty impact assessment.
- Policies that contribute to poverty and the social exclusion of ethnic minorities such as dispersal and direct provision, need to be reviewed and effective solutions found.

## VIII. Conclusion

Racism is on the increase across Europe and Ireland is no exception. This fact is highlighted by the Shadow Report for the period January 2009 to March 2010. Key issues and developments include:

- Negative impact of closure of NCCRI and cessation of NPAR, particularly in time of recession.

Due to cuts outlined in the October 2008 budget, the NCCRI closed on 19<sup>th</sup> December 2009. The impact of this cut was seen throughout 2009 through for example, invisibility of racism on the political agenda, cessation of independent racist incident monitoring system and decrease in spaces for officials and civil society organisations to come together. Government has diminished the capacity to respond and to prevent racism, through disproportionate cuts to the equality infrastructure that took effect at the beginning of 2009 and subsequent cuts to community infrastructure. This is of potentially grave concern, given the likelihood of racism increasing in times of recession and evidence of current trend of rise in racism in other Member States.

- Impact of recession on ethnic and religious minority groups.

Ethnic minorities have been affected by the recession through loss of employment, limited access to employment. The impact of the recession is exacerbated for a number of migrants who cannot access social protection as e.g. their residency is dependent on employment or they are not considered to be habitually resident. The discretionary criteria and arguably application of the Habitual Residence Condition which limit access to certain welfare payments to migrants, are also creating great hardship for people who are vulnerable at this time. It is also affecting Travellers and impacting on their ability to practice a nomadic way of life. The denial of access to child benefit to asylum seekers, copper-fastened in the last budget, clearly lets us know that not all children are equal.

- Racism is a crime and requires effective legislation and monitoring.

An area where inaction is particularly problematic is in the area of racist violence and incitement to hatred. Significant problems with our current legislative framework including the Incitement to Hatred Act 1989, have been noted at the national and the international level. For many years now the Act has been under review. However, we are yet to see any legislative change or clear outcome as a result of the process. At a time when we see evidence of an increase both in the level and severity of racist incidents across Europe, action in this area must be a priority. Legislation and policies are a key factor in shaping public opinion. Institutions are central to creating the conditions that determine whether minority ethnic communities experience equal or unequal opportunities.

Racism must be back on the agenda and can no longer be denied. We need a holistic and inclusive approach that is inclusive of all groups that experience racism. Any reduction in commitments to equality or in institutional capacity to address racism pose a threat at any time; however, in a time of recession such moves are most inopportune and potentially devastating. At this time, the risk of a rise in discrimination and racial hatred is likely to be accentuated through the diminished capacity to address and prevent inequality. 2009 saw civil society organisations including ENAR Ireland work to minimise the impact of cuts to supports for anti racism work including by mainstream organisations. The work of civil society organisations needs to be recognised and supported. In times of significant struggle and cutbacks, civil society organisations continue to play a vital role; their concerns and the concerns of people experiencing racism must be heard and considered in wider debate on equality and social inclusion.

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## X. 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
GSOC	Garda Síochána 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
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
VEC	Vocational Education Committee

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.



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