

# EQUALITY AND JUSTICE FOR MIGRANT WORKERS AND THEIR FAMILIES



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## 1. Introduction

Ireland is multi-ethnic with a population made up from a broad range of different ethnic groups. The past decade has witnessed concern, debate and initiative to define what type of multi-ethnic society we want to build and to advance the development of this multi-ethnic society. This work was largely focused on an agenda of integration or of creating an integrated society. Economic crisis has however driven this work and debate off the political agenda and out of media attention.

Economic crisis has created a different context within which to establish what type of multi-ethnic society is desired and to advance the development of this society. International experience suggests that economic crisis hits migrants with particular severity. Economic crisis can be a moment when the role of the state in society is reduced and public services to minority ethnic groups in society are cut back. Economic crisis can breed an inward looking culture within the majority ethnic group that is hostile to diversity. Economic crisis therefore poses particular challenges to the development of the kind of multi-ethnic society we wish to foster.

The Migrant Rights Centre Ireland is concerned to establish an agenda for a multi-ethnic Ireland in a time of economic crisis. This concern is driven by the absence of political debate and initiative on this agenda. It is informed by the difficulties economic crisis is already posing to the place and participation of migrants in society many who have made Ireland their permanent home.

The Migrant Rights Centre Ireland seeks to put forward an agenda that defines the type of society that should emerge out of this economic crisis. This must also be an agenda that provides the value base to shape policies and programmes to manage and respond to the economic crisis. This is an agenda with the twin objectives of justice and equality.

This discussion document sets out the need for an agenda of justice and equality for the kind of multi-ethnic society (section 2) we want to create. It examines global trends that support such an agenda and those that run counter to it (section 3). It explores the current situation for migrants

from a justice perspective (section 4) and from an equality perspective (section 5). It points to the need for action on injustice and inequality experienced by migrants (section 6) and identifies some policy levers with the potential to advance an agenda of justice and equality for a multi-ethnic society (section 7).

## 2. Framing the Agenda

The starting point for an agenda regarding what type of multi-ethnic society we want to foster is the presence of a diversity of ethnic groups. This diversity is well established in Ireland but is currently experiencing the impact of economic crisis. The key elements of an agenda for a multi-ethnic society need to be established as equality and justice. Policies, programmes and debate needs to be directed towards achieving these inter-linked objectives.

### *A multi-ethnic Ireland*

Ireland has a multi-ethnic population. The ethnic diversity of the population is captured in the 2006 Census. In the Census 454,511 people (10.9%) identified as members of minority ethnic groups out of a population of 4,172,013. This ethnic diversity is presented in the rather awkward categories used in the Census as:

- 87.4% White Irish
- 0.5% White Irish Traveller
- 6.9% Other White
- 1.3% Asian/Asian Irish
- 1.1% Black/Black Irish
- 1.1% Other including mixed
- 1.7% Unspecified

The Census identified a higher proportion of men to women in these minority ethnic groups with men making up 53.1% of these groups. It found that the majority of minority ethnic people are first generation migrants, born outside Ireland. Just 5% of the minority ethnic people enumerated were born in Ireland.

The economic crisis has implications for this ethnic diversity in the population. There are fewer non-Irish nationals coming to Ireland. The Central Statistics Office estimated immigration of 17,400 non-Irish nationals in the year ending April 2010<sup>1</sup>. This is down from a peak of 89,600 non-

<sup>1</sup> Population and Migration Estimates, Central Statistics Office, April 2010.

Irish national immigrants estimated in April 2007. The proportion of women to men coming to Ireland is increasing from 47% in 2007 to 53% in 2010. Further evidence of falling numbers can be seen in the reduction of Personal Public Service numbers issued to non-Irish nationals. In 2009 there were 79,543 PPS numbers issued to non-Irish nationals, down from a peak of 226,821 in 2006<sup>2</sup>.

Some migrants are leaving Ireland. The Central Statistics Office estimated emigration of 37,600 non-Irish nationals<sup>3</sup> in the year ending April 2010. This is up from 29,100 non-Irish nationals estimated as emigrating in 2007. The proportion of women to men leaving Ireland is decreasing from 40.5% in 2007 to 34.3% in 2009. The Quarterly National Household Survey<sup>4</sup> figures for Quarter One in 2011 show a decrease of 11.3% (45,400 people) in the number of non-Irish nationals aged fifteen and over in Ireland compared with the same quarter in 2010.

However it is important to note that most migrants are staying in Ireland. The Quarterly National Household Survey<sup>5</sup> figures for Quarter One of 2011 estimates 357,300 non-Irish nationals aged fifteen and over present in Ireland in the first quarter of 2011. This is consistent with trends documented during other periods of economic recession in other parts of the world where times of economic crisis were found to be times for the consolidation of ethnic diversity in the society. While the extent of migration from Ireland has certainly increased in recent years, people continue to move to the country. Regardless of the economic crisis, Ireland will remain a multi-ethnic country, still challenged to develop a multi-ethnic society.

### ***An agenda for a multi-ethnic Society***

The agenda for this multi-ethnic society needs to be framed by the objectives of justice and equality. These objectives can find support in the global context although there are also global trends that run counter to these objectives. There is a significant challenge to advance these objectives for migrant workers and their families in an Ireland that is faced by economic crisis. This economic crisis is accompanied by an equality crisis that includes widespread denial and abuse of the rights of migrants and entrenched inequalities in their situation. An agenda for equality and justice in Ireland is challenged by a context that is characterised by institutional and individual racism.

<sup>2</sup> Foreign Nationals: PPSN Allocation, Employment and Social Welfare Activity 2009, Central Statistics Office, May 2011.

<sup>3</sup> Population and Migration Estimates, Central Statistics Office, April 2010.

<sup>4</sup> Quarterly National Household Survey, Quarter 1 2011, Central Statistics Office, 16<sup>th</sup> June 2011.

<sup>5</sup> Quarterly National Household Survey, Quarter 1 2011, Central Statistics Office, 16<sup>th</sup> June 2011.

Migrants experience injustices. Simultaneously they live in situations of inequality. Experiences of injustice contribute to these situations of inequality. They deny migrants access to resources, power, status and caring relationships – the key ingredients for equality. Situations of inequality in turn create the conditions for injustice. They limit the resources of migrants to challenge injustice and expose them to a status that enables injustices against them. Equality and justice are therefore inter-linked objectives.

Justice is focused on the policies and practices of key institutions in society and the manner in which these institutions treat migrants. Policies and practices can unjustly prevent migrants from participating in and making their contribution to society. Justice is concerned with fairness, with respect for human dignity and with rights to equal treatment in relation to these policies and practices. It is based on the obligations all members of society hold towards one another as human beings<sup>6</sup>.

Equality is focused on the type of society that is developed on the basis of just institutional policies and practices. It reflects the type of society that might be aspired to by the members of that society. Equality would be concerned with the situation of migrants as compared with that of the dominant groups in society. This comparison is measured in how resources, power, status and caring relationships are distributed between different groups in society. Equality needs to be concerned with the outcomes of this distribution that are achieved by and for migrants<sup>7</sup>.

The current Programme for Government commits to the goal of equality for the diversity of ethnic groups that make up Irish society. The Programme states that the Government:

*'will promote policies which integrate minority ethnic groups in Ireland and which promote social inclusion, equality, diversity and participation of immigrants in the economic, social, political and cultural life of their communities<sup>8</sup>'.*

This commitment in the Programme for Government provides a useful starting point to frame an agenda for migrants. However, in a context where rights are all too often denied to migrants, it needs to be underpinned with an explicit commitment to justice. The level of ambition for equality in this commitment also needs to be clearly defined in terms of outcomes for migrants in a context

<sup>6</sup> The Idea of Justice, Sen A., Allen Lane, London, 2009. Sen also develops the distinction between an arrangement based perspective and a realisation based perspective in the theory of justice.

<sup>7</sup> An Ambition for Equality, Crowley N., Irish Academic Press, Dublin, 2006.

<sup>8</sup> Programme for Government, Department of Taoiseach, 2011.

where the inequalities they experience are both significant and persistent.

Justice requires that institutions respect the rights of migrant workers and their families in any policies they develop. It requires that the practices of the institution in its engagement with migrants are based on respect for human worth and dignity. Access to justice requires the effective protection of individual rights. Migrants need to have the confidence, knowledge and capacity to challenge unjust policies and practices. Advocacy supports, rights awareness programmes, legal advice and representation and a broader culture of rights are all required to secure this access to justice. Justice is the required foundation stone for a society based on equality.

Non-governmental organisations have developed a wide range of initiatives to promote justice for migrants. The Migrant Rights Centre Ireland, for example, conducts case work at an individual level and in 2010 provided rights information and advocacy to 2561 migrant workers<sup>9</sup>. Initiatives by Migrant Rights Centre Ireland during 2010 to promote justice also included a focus on enhancing the rights infrastructure available to migrant workers and their families. Action was successfully taken to encourage the National Employment Rights Agency to inspect working conditions in private homes and take on the situation of domestic workers who are frequently exploited. Campaigns were developed to seek a regularisation process for a wider category of migrant workers than is currently allowed on foot of the introduction in 2009 of a Bridging Visa, and to seek to have trafficking for forced labour recognised as a criminal offence. MRCI also actively campaigned for the right of work permit holders to freely change employer.

The pursuit of justice without a wider ambition for equality is valuable but nonetheless limited. Change in the situation of migrants requires initiative beyond securing individual rights. It requires initiative that goes beyond the reach of justiciable rights. Initiative is required to build popular support and political will for equality and a more equal society. Initiatives are required to define and achieve a new more balanced distribution of resources, power, status and access to caring relationships for all groups in society including migrant workers and their families.

The pursuit of justice needs therefore to be part of a wider ambition for equality. This requires action to promote equality alongside justice. It also requires an approach to the protection of rights that includes but goes beyond the individual. An approach to rights protection based on mobilising, empowering and building the capacity of

<sup>9</sup> Annual Report 2010, Migrant Rights Centre Ireland, Dublin, 2011

communities of migrants is needed to challenge injustice, demand rights and advance equality.

Equality is about realising a new situation for migrants living in Ireland. It needs to be pursued with an ambition that includes but goes beyond providing opportunities to migrants. A focus on equal opportunities is based on the idea that, while everyone should have access to some minimum entitlements, the competition for advantage after this point should be governed by fairness. This focus is limited in that in can, and does, co-exist with significant levels of inequality. Equality needs to be pursued with an ambition that allows real choices to migrants and secures new outcomes for them. The challenge is to achieve equality not to manage inequality.

Equality has to be advanced around an interlinked set of objectives if it is to be achieved. It involves securing:

- A more balanced distribution of resources in society. Resources encompass wealth and income as well as the full spectrum of public goods such as education, accommodation and health. This is the economic/social domain for equality.
- A more balanced distribution of power and influence in society. Power encompasses participating in decision making and influence is about having a say in decision making that impacts on you. This is the political domain for equality.
- A more balanced distribution of status and standing for the diversity of groups in society. Status and standing encompass societal attitudes towards particular groups. They are also reflected in institutional practices that identify and take into account the practical implications of difference as they are relevant to the mandate of the institution. This is the cultural domain for equality.
- Access to sustaining relationships of love, care, solidarity and respect. These relationships exist within minority ethnic communities, between different ethnic groups in society and between minority ethnic groups and the majority ethnic group in society. This is the affective domains for equality.

Non-governmental organisations have developed a wide range of initiatives to promote equality for migrants. Migrant Rights Centre Ireland, for example, implemented actions in 2010 to further develop a leadership capacity among migrants, to mobilise over 3000 migrant workers to participate in advocacy and campaign initiatives, to support the emergence of migrant worker associations that give voice to the interests of domestic workers, restaurant workers and agricultural workers, to secure an inclusion of migrants in the work of community organisations, local development organisations and trade unions, and to raise policy issues to enhance equality for migrants particularly in

relation to the minimum wage and the Joint Labour Committee system<sup>10</sup>.

The pursuit of equality is built on the foundation stone of the pursuit of justice. The pursuit of equality without a focus on justice inevitably reflects a limited ambition for equality. Achieving equality and securing new outcomes for migrants can only be realised with a focus on justice. These outcomes require a rights based approach to equality where those that experience inequality are empowered to assert their rights, enabled to identify their shared interests, and mobilised to advance an equality agenda. The failure to include a focus on justice results in a lack of impact for equality strategies.

### 3. A Global Context

There are a number of developments at an international level that serve as a stimulus for an agenda based on equality and justice for migrants. Equally however there are some global trends that run counter to this agenda.

#### Justice

The international rights framework provides a key stimulus for a better protection and promotion of the human rights of migrants.

This human rights framework encompasses civil and political rights and economic, social and cultural rights. These elements of the human rights framework focus on the rights of all people. There are important differences across this spectrum of rights. Civil and political rights are immediately effective and can be pursued through the courts. Economic, social and cultural rights tend to be subject to available resources and are often only realisable progressively over time as resources become available rather than through the courts.

There are also some elements in this human rights framework that have a specific focus on ethnic diversity and on migration. These include:

- United Nations 'International Convention on the Elimination of all Forms of Racial Discrimination' (1965). Ireland has ratified this convention and has submitted four reports on its implementation.
- United Nations 'International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families' (1990). Ireland has yet to ratify this convention.
- International Labour Organisation 'Migration for Employment Convention (Revised)' (No. 97 - 1949),

<sup>10</sup> Annual Report 2010, Migrant Rights Centre Ireland, Dublin, 2010.

'Migrant Workers (Supplementary Provisions) Convention' (No. 143 – 1975) and 'Convention on Decent Work for Domestic Workers (No. 189 - 2011). Ireland has yet to ratify these conventions.

#### Equality

Equality has been defined in the European Treaties as one of the values of the European Union. The European Treaties require that the European Union in all its policies and activities should aim to combat discrimination based on a number of grounds including that of racial or ethnic origin.

The Europe 2020<sup>11</sup> policy strategy should serve to stimulate greater equality for migrants in the labour market and in society. This sets a target employment rate of 75% for the population aged 20-64. It states that the achievement of this target will require strategies '*including through greater involvement of women, older workers, and the better integration of migrants*'. The Irish Government is required to prepare a National Reform Programme in April of each year to set out how it is implementing this strategy in Ireland.

The Europe 2020 strategy includes a number of flagship initiatives. One of these is 'An agenda for new skills and jobs'. This includes a commitment to work to '*promote a forward looking and comprehensive labour migration policy which would respond in a flexible way to the priorities and needs of labour markets*'. The European Commission has published its contribution to this initiative<sup>12</sup>. In a section on 'Equipping people with the right skills for employment' the initiative makes reference to the need to reap the potential contribution of migration to full employment and the European Commission commits to:

- Considering the possibility of presenting proposals to help reform the systems for the recognition of professional qualifications,
- Launching a 'New Agenda for Integration' of third country nationals that would provide improved structures and tools to facilitate the exchange of knowledge and the mainstreaming of integration priorities of the Member States in all relevant policy areas,
- Considering the possibility of presenting proposals to help improve the enforcement of rights of EU migrant workers in relation to the principle of free movement.

Preparatory measures promised by the European Commission include conducting an analysis of the

<sup>11</sup> Europe 2020: A strategy for smart, sustainable, and inclusive growth, COM (2010) 2020 final, European Commission, 2010.

<sup>12</sup> An Agenda for New Skills and Jobs: A European contribution towards full employment, COM (2010) 682 final, European Commission, 2010.

contribution of migration policies to the labour market and skills matching in line with the Stockholm Programme and establishing a policy network to improve the education of migrants and address the educational achievement gap between migrant students and the indigenous population at school. Member states are invited to focus ESF and other EU fund interventions to contribute to the actions outlined in this Communication from the Commission.

Another flagship initiative is 'European Platform against Poverty'. This includes a commitment to *'develop a new agenda for migrants' integration to enable them to take full advantage of their potential'*. The European Commission has now published its approach to this initiative<sup>13</sup>. This identifies that succeeding *'in the integration challenge is crucial for European social cohesion'*. It also commits the European Commission to presenting a 'New European Agenda on Integration' to better support the efforts of Member States in promoting third-country nationals of diverse cultural, religious, linguistic and ethnic backgrounds to participate actively in European economies and societies. The Commission will also discuss with Member States and others how to best adapt the working methods of the existing Social Open Method of Coordination to the new governance arrangements for Europe 2020.

### Counter Trends

There are a number of global trends that militate against an equality and justice agenda. These include the further emergence of protectionist and security based agendas and the continued growth of racism.

Protectionism has been further advanced across the European Union over the course of the current economic and financial downturn and has taken on new forms. This was noted by the OECD in a 2009 report<sup>14</sup> which highlighted a tightening of migration policies through actions such as:

- Cutting numbers of migrants allowed entry under official programmes.
- Reducing the list of occupations for which there are shortages of workers.
- Making it more complex and difficult for employers to employ migrant workers.
- Introducing policies that encourage migrant workers to return home.

The OECD have warned against these new forms of protectionism on the basis that such policies can end up

<sup>13</sup> The European Platform Against Poverty and Social Exclusion: A European framework for social and territorial cohesion, COM (2010) 758 final, European Commission, 2010.

<sup>14</sup> International Migration Outlook 2009, Organisation for Economic Cooperation and Development, 2009.

merely pushing people to stay on in irregular circumstances, that there continues to be labour shortages which will not be filled by domestic labour and these shortages will become more acute, and that it is more difficult to loosen these controls when the economy starts growing again. The OECD warns against 'mortgaging the possibility of further migration when growth resumes'.

A securitisation agenda has further emerged with some dominance across the globe in the last decade. This agenda is in response to real and imagined threats to security. The fears that inform this securitisation agenda often outweigh the reality of any threat actually posed. This is an agenda that is concerned with economic underdevelopment and political instability for the security threats they pose. It is concerned with energy supplies and sustaining the access of the so-called developed nations to these supplies. It has a particular focus on Islam, the advance of so-called political Islam and a supposed 'war of civilisations'.

This securitisation agenda influences a wide range of policy areas including that of migration policy. It is shaping new approaches to the management of the borders of the European Union and the further development of a fortress Europe. It is transforming the relationship between Government and citizen into one that is increasingly intrusive. It is contributing to new tensions between different groups in societies, between different religions and between citizens and non citizens.

Racism continues to grow. The European Network Against Racism highlighted in a 2011 review that 'the lives of ethnic and religious minorities across the European Union over the period under review continued to be marred by racism and discrimination'<sup>15</sup>. This review noted that a number of communities are particularly vulnerable to racism and discrimination including Roma, migrants and the Muslim and Jewish communities. Amnesty International has pointed to the economic downturn as leading to a rise in racism and xenophobia, noting that 'marginalisation was heightened in 2009 by fears of economic downturn and accompanied in many countries by a sharp rise in racism and hate speech in public discourse'<sup>16</sup>.

This racism is evident, according to European Network Against Racism, in a wide range of fields including employment, housing, education, healthcare, the media and policing. It can involve individual attitudes and behaviours as well as institutional policies, procedures and practices. It can find roots not only in the economic

<sup>15</sup> Racism in Europe, ENAR Shadow Report 2009-2010, Gauci J.P., ENAR, Brussels, 2011.

<sup>16</sup> State of the World's Human Rights, Annual Report 2010, Amnesty International, 2010.

downturn but also in the cultural sphere where fears are stimulated that ethnic diversity is a threat to the culture and identity of the dominant group.

#### 4. An Irish Context – Rights Denied

Migrants experience a range of abuses of their rights in Ireland. Injustice is a common experience in a range of different fields. The objective of justice and the goal of a just society are thus compromised.

These rights abuses occur at work, in the wider society and in seeking access to Irish society. The denial of rights blocks access for migrant workers to resources, to representation and influence, to recognition and status, and to relationships of care and respect. These rights abuses therefore serve to diminish and limit any ambition for equality for migrant workers and their families.

##### **Resources**

Resources encompass income, jobs and wealth as well as public goods such as education, health and accommodation. Rights abuses in relation to resources reflect the economic/social domain for equality. These rights abuses encompass the policy and practice of institutions in the public and private sectors. In particular migrants experience rights abuses in access to employment and appropriate employment conditions and in access to public goods such as education, housing and health.

The National Employment Rights Authority (NERA) is responsible for a range of workplace related legislation including the National Minimum Wage Act, the Payment of Wages Act, the Organisation of Working Time Act, the Protection of Young Persons Act and the Employment Permits Act. In 2009 NERA reported low compliance rates in a number of sectors where migrant workers are concentrated. They carried out 442 inspections in the catering sector and found a 21% compliance rate, 131 inspections in the hotel sector and found a 27% compliance rate, and 284 inspections in the retail grocery and allied trade sector and found a 28% compliance rate<sup>17</sup>.

Between 2006 and 2009, MRCI assisted over 250 exploited migrant workers in lodging formal complaints and in achieving settlements and awards of €1.3 million for unpaid wages and other gross violations of their employment rights. Breaches included payment below the minimum wage, non-payment of holidays and excessive working hours, among others. Most of these workers were employed in low-wage, primarily non-unionised sectors, such as agriculture, domestic work, and restaurants. There is also evidence of a problematic link between poor

<sup>17</sup> Review of 2009, National Employment Rights Authority, 2010.

employment conditions and the experience of non-EU migrant workers who require work permits in Ireland. Approximately 80% of MRCI's exploitation cases involved migrant workers holding employment permits.

There are high levels of discrimination in Ireland. The Central Statistics Office published a special review on equality in 2005<sup>18</sup>. Overall 12.5% of the Irish population aged 18 years and over (381,600 people) said that they had been discriminated against in the preceding two years. Some 24% of non-Irish nationals felt they had been discriminated against over the preceding two years which is around twice the rate for Irish nationals<sup>19</sup>.

The Employment Equality Act prohibits work related discrimination. The Acts cover nine grounds including the ground of race and a Traveller community ground. 7.2% of the population aged 18 and over stated in the CSO survey that they had experienced work related discrimination on the nine grounds and on other grounds. In 2009 the Equality Tribunal reported that referrals of allegations of discrimination under the Employment Equality Acts were highest on the race ground. They dealt with 731 referrals under the Acts of which 289 were on the race ground and 2 on the Traveller community ground (40% of all their casefiles).

Research by the ESRI and the Equality Authority found that job applicants with a name deemed to be Irish were more than twice as likely to be invited for an interview as candidates with an identifiably non-Irish name. This finding was made on the basis of two people with different names submitting equivalent CVs<sup>20</sup>. This rate of discrimination was considered high by international standards by the authors. In a separate report the same organisations found no gender difference in the experience of discrimination against non-Irish nationals in looking for work<sup>21</sup>.

Discrimination in access to public goods is also an issue. The Equal Status Acts prohibit discrimination in the provision of goods and services, education and accommodation on the same nine grounds as the Employment Equality Acts. 9% of the population aged 18 and over stated in the CSO survey that they had been discriminated in the provision of services on the nine grounds and on other grounds.

<sup>18</sup> Quarterly National Household Survey: Equality module, Central Statistics Office, Dublin, 2005.

<sup>19</sup> The Experience of Discrimination in Ireland: Analysis of the QNHS equality module, Russell H., Quinn E., King O'Riain R. & McGinnity F., Equality Authority and ESRI, Dublin, 2008.

<sup>20</sup> Discrimination in Recruitment: Evidence from a Field Experiment, McGinnity F., Nelson J., Lunn P. & Quinn E., ESRI & Equality Authority, Dublin, 2009.

<sup>21</sup> Immigrants at work: Ethnicity and Nationality in the Irish Labour Market, O'Connell P. & McGinnity F., ESRI and Equality Authority, Dublin, 2008.

The race and Traveller community grounds accounted for the highest number of referrals under the Equal Status Acts in 2009 to the Equality Tribunal. They dealt with 126 referrals under the Acts of which 20 were on the race ground and 20 on the Traveller ground (31.7% of all casefiles)<sup>22</sup>. The Equality Tribunal do not provide a breakdown of these cases by sector. The Equality Authority no longer provides such a breakdown by sector of their casework. However in 2007 the Equality Authority reported that 62.5% of its cases on the race ground under the Equal Status Acts involved allegations of discrimination against Government Departments and State Agencies which are the main providers of public goods.

The structure of third level education tuition fees presents a barrier to participation by people with an established immigration history. If a migrant child has not been naturalised by the time they reach third-level education age they are generally required to pay either EU citizen or international student fees at third level. This can force the children of migrant workers out of education altogether<sup>23</sup> and amounts to a significant denial of rights in this field.

The Teachers Union of Ireland published a survey of teachers in post-primary, higher and further education based on 2009 data<sup>24</sup>. 43% of respondents were aware of racist incidents in their schools over a one month period. 32% of the teachers said their educational establishments had no formal procedure to respond to racist incidents.

In the CSO survey 4% of the population aged 18 and over alleged discrimination in obtaining housing or accommodation and respondents of 'Black and other ethnicity' were more much likely to perceive this discrimination than 'White' respondents. A client survey carried out by Threshold in Dublin in 2008 found that a significant number of respondents pointed out that when attempting to source accommodation they had been informed by landlords that properties had already been rented when they were in fact vacant<sup>25</sup>. Some respondents identified this as a masked discriminatory practice whilst also acknowledging it would be difficult to prove.

Asylum seekers face a significant denial of rights in relation to resources due to the system of direct provision they are required to enter. It has been argued that this system of

<sup>22</sup> Annual Report 2009, Equality Tribunal, Dublin, 2009.

<sup>23</sup> Immigration and children and young people, Briefing paper, Immigrant Council of Ireland, Dublin, 2010.

<sup>24</sup> Results of Behaviour & Attitudes Survey on Racism, Interculturalism & Resources incorporating the recommendations of the TUI Equality Committee, Behaviour and Attitudes & TUI, Dublin, 2010.

<sup>25</sup> Migrants and Poverty in the Private Rented Sector in Dublin City: An analysis of the experience of migrants seeking assistance from Threshold, Working Paper 10/09, Combat Poverty Agency, Dublin, 2009.

direct provision violates asylum seekers' rights to an adequate standard of living with particular focus on the right to adequate housing and the inter-related rights to food and health<sup>26</sup>. It is further argued that this system is discriminatory and that it undermines the fundamental principles of equality and human dignity.

### **Representation**

Representation is about access to power and influence and, in particular, access to decision making positions. Rights abuses in relation to representation reflect the political domain for equality. Issues of representation and denial of rights for migrants arise, in particular, in relation to access to high level positions in the civil service and public sector.

The Public Appointments Service highlights that some jobs in the civil service have a nationality requirement and that the applicant for many posts is required to have knowledge of the Irish language<sup>27</sup>. These requirements amount to a denial of rights and serve to deny access for migrants to decision making positions within the civil service and the wider public sector. The ethnic homogeneity of those who currently fill these positions cannot adequately serve a multi-ethnic society.

### **Recognition**

Recognition is about access to status and standing for members of different groups in society. Rights abuses in relation to recognition reflect the cultural domain for equality. Issues of recognition and denial of rights for migrant workers and their families arise, in particular, in relation to their legal status including access to long term resident or citizen status and the lack of means to address irregular status. These issues also arise in relation to ethnic profiling by a range of state agencies.

There is a very specific legal dimension to the issue of recognition in relation to migrants. Legal status impacts on the status and standing of migrants in society. The institutional policies and practices for access to citizenship and to long term residence involve significant denial of rights to migrants.

Ireland provides the least favourable rights to security of residence status of all EU Member States. This is due to the discretionary nature of the process for granting long-term residence permits and the lack of a permanent residence status<sup>28</sup>.

<sup>26</sup> The Policy of Direct Provision in Ireland: A violation of asylum seekers' right to an adequate standard of living, Breen C., International Journal of Refugee Law, Oxford University Press, 2008.

<sup>27</sup> www.publicjobs.ie

<sup>28</sup> Cosgrave C., Living in Limbo: Migrants experience in applying for naturalization in Ireland, ICI in collaboration with NASC, 2011.

In this context citizenship is the only secure legal status in Ireland that provides clarity as to rights and obligations. In 2009 the Irish Naturalisation and Immigration Service processed 25,582 applications for citizenship. Only 5,868 were approved with 1,461 refused, 6,011 deemed ineligible and 12,242 rejected as invalid. Ireland has the second lowest rate of citizenship acquisition in the European Union<sup>29</sup>. Ireland has the lowest rate of acquisition of citizenship by naturalisation<sup>30</sup>. The Minister for Justice and Equality has promised important improvements in the naturalisation process. These improvements however do not address this issue of low rates of acquisition of citizenship.

While there is no official data, there are an estimated 30,000 migrants with an irregular status in Ireland<sup>31</sup>. The lack of legal status makes these people more vulnerable to exploitation and abuse of their human rights, excludes them from basic services and cuts them off from their extended families. It leads to high levels of stress and an ongoing fear of deportation – pressures that can undermine their physical and mental well-being. The large majority of these people arrived with valid documents that entitled them to enter and reside for a time in Ireland. Very few intended to be or become migrants with an irregular status. There are no pathways to regularise their status and to remain in the country legally.

Ethnic profiling is a practice carried out by people in positions of authority, such as the Gardai, who might target people for reasons of safety, security or public protection but could rely on stereotypes about ethnicity rather than on reasonable suspicion. Ethnic profiling is a form of misrecognition based on stereotypes and false assumptions. An exploratory study of the Migrant Rights Centre Ireland catalogued incidences of ethnic profiling on buses, trains and in cars; at airports and ports; on the street and in other public places; and in relation to Social Welfare<sup>32</sup>. It identified patterns of systemic profiling in relation immigration, policing and social welfare services. It concluded that, despite evidence of ethnic profiling, there are few steps being taken to tackle it and that individual complaints mechanisms are inadequate.

### **Relationships**

Relationships are about access to sustaining relationships of love, care, solidarity and respect. Rights abuses in relation to relationships reflect the affective domain for equality.

<sup>29</sup> Cosgrave C., *Living in Limbo: Migrants experience in applying for naturalization in Ireland*, ICI in collaboration with NASC, 2011.

<sup>30</sup> Eurostat - <http://ec.europa.eu/eurostat>.

<sup>31</sup> *Life in the Shadows: An exploration of irregular migration in Ireland*, Migrant Rights Centre Ireland, Dublin, 2010.

<sup>32</sup> *Singled Out*, Migrant Rights Centre Ireland, Dublin, 2011.

Issues of relationships and denial of rights for migrants arise, in particular, in relation to family reunification, trafficking in forced labour and trafficking for sexual exploitation.

Family reunification has been identified as a major concern to migrants other than recognised refugees and EEA citizens. There is a lack of clarity as to which family members can be admitted, the conditions under which family reunification can be granted and the length of time to process applications. There is no right to family reunification enshrined in primary legislation unlike all other European Union Member States. Inconsistency and lack of transparency has resulted from the wide ministerial discretion in this area<sup>33</sup>.

Forced labour is a growing problem in Ireland<sup>34</sup>. The Migrant Rights Centre Ireland has identified over 160 cases of forced labour over the last 6 years. This is accepted to be the tip of the iceberg and research into the extent and scope of forced labour in Ireland is required. There are problems in most jurisdictions in prosecuting forced labour and if cases do not fall within a trafficking framework they rarely get prosecuted. There is no law in place to address the severity of this crime in Ireland and those who commit this crime are not subject to criminal penalties.

There has been no prosecution for trafficking in forced labour in Ireland since the introduction of the Criminal Justice (Human Trafficking) Act, 2008. The 2011 Trafficking in Persons report<sup>35</sup>, produced by the US State Department, highlights this poor level of prosecution of those involved in trafficking and the poor level of identification of victims of trafficking in forced labour. It also warns against the prosecution of victims of trafficking in forced labour for crimes they were forced to commit. The Government are conducting a mid-term review of their National Action Plan against trafficking in Human Beings and this should provide an opportunity to improve this situation.

The Immigrant Council of Ireland published research in 2009 that identified more than one hundred women and girls who were victims of human trafficking for sexual exploitation and had presented to ten different service providers over a two year period<sup>36</sup>. The research highlighted that this was only a fraction of the real number of women trafficked for sexual exploitation.

<sup>33</sup> Family Reunification Submission, Immigrant Council Ireland, October 2010.

<sup>34</sup> A Framework for Tackling Forced Labour in Ireland, ICTU and MRCI, Dublin, 2011.

<sup>35</sup> <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

<sup>36</sup> *Globalisation, Sex Trafficking and Prostitution – the Experience of Migrant Women in Ireland*, O'Connor M. & Kelleher P., Immigrant Council of Ireland, Dublin, 2009.

Data from the Anti Human Trafficking Unit of the Department of Justice and Equality highlights human trafficking for sexual exploitation and for labour exploitation<sup>37</sup>. In its report for 2010 it states that 69 cases of alleged trafficking involving 78 people were reported to the Gardai in that year. This included 56 victims of sexual exploitation and 19 victims of labour exploitation. 78.2% of these people were women. In the same year NGOs identified 36 alleged victims of human trafficking of whom 28 were referred to the Gardai.

## 5. An Irish Context – Entrenched Inequality

Ireland is a deeply unequal society for a wide range of groups. Inequality for migrants is evident in their lack of access to and enjoyment of resources, representation and power, recognition and status, and relationships of love, care, solidarity and respect. In each of these areas there is evidence of significant mal-distribution - of resources, power, status and caring relationships.

In some of these areas, such as resources, quantitative data on these inequalities is widely available. However in other areas, such as recognition and status, there is a lack of data. In all areas there are instances where data is gathered but not disaggregated by ethnicity. The evidence of inequality is therefore inevitably more qualitative or anecdotal in some areas. It is necessary to further develop data gathering and analysis on ethnic diversity in Ireland so that inequalities are visible and progress towards equality can be monitored.

### Resources

Inequality in the distribution of resources in Ireland reflects the situation in the economic/ social domain. Equality in this domain is about who has access to and enjoyment of income, wealth and jobs. It is also about who has access to and enjoyment of public goods. Public goods include education, health and accommodation. This is a domain where data gathering and analysis is considerably developed. Quantitative evidence of significant inequalities for migrant workers and their families is available. However in many instances this data is not disaggregated by gender.

Ireland is characterised by a mal-distribution of wealth and income. Data for 2006 shows that 1% of the population holds 20% of the wealth in Ireland and the top 5% holds 40% of the wealth<sup>38</sup>. When the value of home ownership is excluded the concentration of wealth is even greater with 1% of the population accounting for around 34% of this

<sup>37</sup> Annual Report of Trafficking in Human Beings in Ireland for 2010, Anti Human Trafficking Unit, Department of Justice and Equality, Dublin, 2011.

<sup>38</sup> O'Sullivan P., *The Wealth of the Nation: How Ireland's wealthy will invest in the next decade*, Bank of Ireland Private Banking, Dublin, 2006.

wealth. In 2009 the richest ten percent of households received nearly a quarter (24.5%) of total disposable income. This was eleven times the amount of income earned by the poorest ten percent of households (2.3%)<sup>39</sup>.

Migrants experience significant inequality in this context of highly concentrated wealth and income. Home ownership gives some indication of wealth. Using EU-SILC data from 2008 it is estimated that just over 80% of Irish household respondents owned their own homes. This compares with 33% of non-Irish national household respondents<sup>40</sup>. A high proportion of those in need of social housing are non-Irish nationals. 23.4% of households in need of social housing were non-Irish nationals in 2008<sup>41</sup>.

The median disposable household income for non-Irish nationals is estimated, using EU-SILC data for 2008, at around 80% of the income of Irish households<sup>42</sup>. The median disposable income for Irish households was €52,000 and that for non-Irish national households was €41,000. After adjusting incomes for the needs of the household depending on the number of adults and children living in them, income for non-Irish nationals is estimated at 87% of that for Irish nationals. There is a gender wage gap between male and female migrant workers. Non-Irish national women earn about 15% less per month than their male counterparts<sup>43</sup>.

Non-Irish nationals are at a higher risk of poverty than Irish nationals. The Central Statistics Office estimated that 14.4% of the population were at risk of poverty in 2008<sup>44</sup>. The percentage at risk of poverty for non-Irish nationals has been calculated as significantly higher, at 18.4%, than for Irish nationals<sup>45</sup>. In relation to consistent poverty there were no significant differences found between non-Irish nationals and Irish nationals.

Many migrants face particular risks of poverty where they are not eligible for statutory benefits or income supports, or where they can be reluctant to avail of these benefits or supports lest they negatively affect their immigration status<sup>46</sup>. Sending home money regularly coupled with

<sup>39</sup> Policy Briefing, January 2011, Social Justice Ireland.

<sup>40</sup> Annual Monitoring Report on Integration 2010, McGinnity F., Quinn E., O'Connell P. & Donnelly N., The Integration Centre & ESRI, 2011.

<sup>41</sup> Assessment of Social Housing Needs, Department of Environment, Community and Local Government, Dublin, 2008.

<sup>42</sup> Annual Monitoring Report on Integration 2010, McGinnity F., Quinn E., O'Connell P. & Donnelly N., The Integration Centre & ESRI, 2011.

<sup>43</sup> Immigrants at work: Ethnicity and Nationality in the Irish Labour Market, O'Connell P. & McGinnity F., ESRI and Equality Authority, Dublin, 2008.

<sup>44</sup> Survey on Income and Living Conditions (SILC), Central Statistics Office, Dublin 2009.

<sup>45</sup> Annual Monitoring Report on Integration 2010, McGinnity F., Quinn E., O'Connell P. & Donnelly N., The Integration Centre & ESRI, 2011.

<sup>46</sup> Submission to Special Rapporteur on the Human Rights of Migrants to the Human Rights Council, Migrant Rights Centre Ireland, Dublin, June 2010.

working long hours, receiving the minimum wage and in some cases below the minimum wage has been identified as putting migrant women at risk of poverty<sup>47</sup>.

Migrants tend to be particularly badly hit by economic recession. This is, in part, due to the vulnerability of the sectors that they work in. Ireland has not been an exception to this international trend. Employment levels have fallen by 30% for non-Irish nationals as opposed to 9% for Irish nationals<sup>48</sup>. The Central Statistics Office figures for the first quarter in 2011 estimate a seasonally adjusted unemployment rate of 14.0% with 295,700 unemployed people<sup>49</sup>. 44,800 of these unemployed people were non-Irish nationals representing an unemployment rate of 18.1% for non-Irish nationals.

Non-Irish nationals have been found to experience an occupational penalty in relation to access to 'privileged occupations', defined as managerial, professional and associate professional, and technical occupations<sup>50</sup>. When age, education and gender are held constant, non-Irish nationals are less likely than Irish nationals to secure the more privileged jobs in the occupational privileged occupations. This points to issues of a lack of progression for migrant workers within the workplace.

There is evidence of inequalities for migrants in relation to access to public goods. Examples include inequalities in access to social protection, educational attainment, homelessness and mental health services.

In relation to social protection, the Habitual Residency Condition limits access for non-Irish nationals to a number of social welfare payments including job seekers allowance. The United Nations Independent Expert in the question of Human Rights and Extreme Poverty reported her concern to the Human Rights Council that the 'habitual residency status requirement represents a considerable obstacle for members of vulnerable groups, particularly people experiencing homelessness, Travellers, asylum seekers and refugees, migrant workers and returning Irish migrants, to access services to which they are entitled'<sup>51</sup>.

In the field of education, immigrant student performance varies according to the language spoken in their home. It is

<sup>47</sup> Enabling Equality: Migrant Women in Rural Ireland, Migrant Rights Centre Ireland, Dublin, 2008.

<sup>48</sup> Annual Monitoring Report on Integration 2010, McGinnity F., Quinn E., O'Connell P. & Donnelly N., The Integration Centre & ESRI, 2011.

<sup>49</sup> Quarterly National Household Survey, Quarter 1 2011, Central Statistics Office, Dublin, 16<sup>th</sup> June 2011.

<sup>50</sup> Immigrants at work: Ethnicity and Nationality in the Irish Labour Market, O'Connell P. & McGinnity F., ESRI and Equality Authority, Dublin, 2008.

<sup>51</sup> Report of the Independent Expert in the question of Human Rights and Extreme Poverty Magdalena Sepulveda Carmona, Mission to Ireland, Human Rights Council, United Nations General Assembly, May 2011.

estimated, using 2006/7 data, that about 70% of second level migrant students and 75% of primary level migrant students do not speak English<sup>52</sup>. English speaking immigrant students have similar reading and mathematics scores as their Irish peers, as measured for fifteen year olds<sup>53</sup>. However non-English speaking immigrant students perform much worse than their Irish peers in both reading and mathematics. This situation could be further aggravated with the current proposal by Government to cut 250 language support teacher posts in 2011.

Non-Irish national students are much more likely than Irish students to leave school early prior to completing the Leaving Certificate. A 2010 study found that 20% of non-Irish national students leave school early compared to 11% of Irish national students<sup>54</sup>. The denominational nature of the education system can also present barriers of access for migrant children from minority faiths or no faith.

In relation to housing, there is no overall data on the number of homeless non-Irish nationals. Crosscare have highlighted that their Charlemont Street service in Dublin provided accommodation to 1150 unique individuals in 2009 of whom 152 (13.2%) gave their nationality as other than Irish. In the first three months of 2010 this service had 125 new service users and 20% of these were non-Irish nationals. Crosscare identify that the reasons why non-Irish nationals find themselves homeless can be the same as for Irish nationals – mental health and addiction issues – but that there are also additional reasons for non-Irish nationals related to the right of the individual to reside in the state and to access social welfare<sup>55</sup>. In November the count of the number of people sleeping rough in the four local authority areas in Dublin identified 60 people and over 50% of these were non-Irish nationals.

In relation to health, non-Irish nationals record better health than Irish nationals. The EU SILC data shows that over 90% of non-Irish nationals report good health compared to 84% of Irish nationals<sup>56</sup>. However a 2009 study on the perspectives of non-Irish nationals on their mental health concluded that there was a profound need for access to specialist trauma counselling for some people as well as the need for low level/non specialist support and

<sup>52</sup> Adapting to Diversity: Irish schools and newcomer students, Smyth E., Darmody M., McGinnity F. & Byrne D., ESRI Research Series 8, ESRI, Dublin, 2009.

<sup>53</sup> Annual Monitoring Report on Integration 2010, McGinnity F., Quinn E., O'Connell P. & Donnelly N., The Integration Centre & ESRI, 2011.

<sup>54</sup> Byrne D. & Smith E., No Way Back? The dynamics of early school leaving, ESRI, Dublin, 2010.

<sup>55</sup> Providing Advice and Homeless Support Services for Eastern European Citizens in Dublin, Stanley W., in Homeless in Europe – Homelessness and migration in Europe: finding responses, FEANTSA, 2010.

<sup>56</sup> Annual Monitoring Report on Integration 2010, McGinnity F., Quinn E., O'Connell P. & Donnelly N., The Integration Centre & ESRI, 2011.

care, primarily of a preventative nature<sup>57</sup>. The study was based on focus group discussions which found a low level of awareness of and access to formal mental health services and a suspicion of services generally. Uncertainty, insecurity and the effects of perceived racism were identified as particular threats to mental health and well being of non-Irish nationals.

### **Representation**

Inequality in the distribution of power in Ireland reflects the situation in the political domain. Equality in the political domain is about who has access to decision making power and influence. Equality in this domain can be advanced through members of particular groups holding decision making positions – including in the economy, in society, and in politics. It can also be advanced by organisations representing particular groups exerting influence over decision making processes by articulating and advocating for the interests of their particular group. There is a lack of data available on the distribution of power between ethnic groups in Ireland. This limits a quantitative assessment of this issue. However data available in relation to representative and participative democracy provides some indication of the inequalities in Ireland in this domain for migrant workers and their families.

The membership of the institutions of representative democracy in Ireland is very homogeneous<sup>58</sup>. There are few minority ethnic people who have taken seats in the Dail just as there are few working class people, people with disabilities, gay and lesbian people or people from religious minorities. In the 2009 local elections four immigrants were elected – from Nigeria, the Netherlands, Russia and Lithuania – out of 1,627 local authority members – a mere 0.2%<sup>59</sup>. The United Nations Committee on the Elimination of Discrimination highlighted concern in relation to this issue when it reiterated its recommendation that Ireland should adopt affirmative action programmes that seek to improve the representation of Travellers in political institutions such as the Dail and Seanad<sup>60</sup>.

Equality in the political process is advanced by increasing the presence of people from minority ethnic groups in the institutions of representative democracy. It is also advanced by securing a voice for organisations of people

<sup>57</sup> Lakeman R. & Mathews A., *The Views and Experiences of Members of New Communities in Ireland: Perspectives on Mental Health and Well being*, Translocations: Migration and Social Change, Number 2009-0420, 2009.

<sup>58</sup> Gallagher M. & Marsh M., *How Ireland Voted 2007*, Palgrave MacMillan, 2007.

<sup>59</sup> Annual Monitoring Report on Integration 2010, McGinnity F., Quinn E., O'Connell P. & Donnelly N., *The Integration Centre & ESRI*, 2011.

<sup>60</sup> Committee on the Elimination of Racial Discrimination, Seventy Eight Session, February/March 2011.

from minority ethnic groups in democratic debate and by ensuring the capacity of these organisations to thus influence political decision making.

There is a vibrant civil society in Ireland. Minority ethnic people have engaged with a wide range of organisations to identify, articulate and advocate for their shared interests. This civil society infrastructure is now challenged by a new context of unprecedented change, increased demand on its resources and reduced access to funding. This new context will inevitably reduce the strength of voice and influence open to migrant workers and their families.

An analysis of the impact of the 2010 budget on the voluntary and community sector calculated a reduction in funding of the order of 9 to 10% for the sector and suggested that the sector had been identified for disproportionate attention in the budget<sup>61</sup>. This research calculated the cumulative effect of the 2009 and 2010 budgets on the sector as involving a 15% funding reduction which would translate into the loss of 4,778 jobs, with an additional 1,100 Community Employment posts at risk. It stated that community and voluntary organisations were meeting a significantly increased demand on their services and that a reduced representational capacity was a likely consequence of the cuts combined with this increase in demand for services.

### **Recognition**

Inequality in the distribution of status and standing between different groups in Ireland is the situation in the cultural domain. In a context of diversity, equality in this cultural domain can be advanced through practical steps being taken by organisations to respect difference and recognise a range of norms. This requires organisations to make adjustments in their policies and practices to take account of the practical implications of cultural difference. The failure to make such adjustments provides evidence of inequality in this cultural domain as do practices of stereotyping, segregation, assimilation or invisibility of minority ethnic groups. There is a lack of data on the status and standing of minority ethnic group which limits a quantitative analysis of inequality in this cultural domain.

Education policy and practice, however, does offer some insight into the status and standing enjoyed by the cultures and identities of minority ethnic people in Ireland. In 2004 it was found that a lack of curricular recognition for ethnic difference can operate as a barrier to full participation for minority ethnic learners<sup>62</sup>. More recently it has been

<sup>61</sup> Harvey B., *Analysis of Implications of 2010 Budget for the Voluntary and Community Sector, Impact*, Dublin, 2010.

<sup>62</sup> Lodge A. & Lynch K. (eds), *Diversity at School*, IPA and Equality Authority, Dublin, 2004.

reported that there is a default model of a white citizen underpinning mainstream education policies which ignores the experience of minority ethnic groups<sup>63</sup>.

The Intercultural Education Strategy 2010-2015 does include rights and responsibilities as one of ten key components for intercultural education<sup>64</sup>. This component states that 'it is important to respect and preserve cultural and identity values as long as they do not infringe on the overall good and well being of Irish society'. This reflects a limited recognition of the importance of making adjustments to take account of the practical implications of cultural diversity in education policy and practice if equality is to be advanced for minority ethnic learners. The strategy does establish an expected outcome that 'institutions are accommodating cultural diversity, inclusion and integration with particular reference to equality and diversity policy'. Again the reference to equality and diversity policy seems limiting in a context where such considerations need to be central to all policies and practices of an educational establishment.

### **Relationships**

Inequality in access to and the enjoyment of sustaining relationships of love, care, solidarity and respect reflect the situation in the affective domain. Relationships involving physical abuse, verbal abuse or disrespect experienced by migrant workers and their families provide evidence of inequality in this affective domain. However again there is a lack of data on access to sustaining relationships for migrant workers and their families which limits a quantitative analysis of inequality in this domain.

There is some data on racially motivated offences collected by the Gardai. This does provide some insight into the inequality in this domain. The Garda PULSE system records offences with a racist motive and these are reported by the Central Statistics Office. In 2009 128 racially motivated incidents were recorded which represented a decrease from a high of 224 recorded incidents in 2007<sup>65</sup>. A large number of such incidents are, however, under-reported, under-recorded and under-prosecuted<sup>66</sup>. Racist violence is also considered by non-governmental organisations to be getting worse in severity<sup>67</sup>.

<sup>63</sup> Country Report: Ireland, Moreau et al., Educational Policies that Address Social Inequality, Institute for Policy Studies in Education, London, 2008.

<sup>64</sup> Intercultural Education Strategy, Department of Education and Science & Office of the Minister for Integration, Dublin, 2010.

<sup>65</sup> Central Statistics Office, Yearly National Reported Racially Motivated Incidents 2006 – 31 March 2010.

<sup>66</sup> Annual Report 2008, Fundamental Rights Agency, Vienna, 2009.

<sup>67</sup> Lynch C., Racist Violence in Ireland, ENAR and Open Society Foundations, Brussels, 2010.

Migrants play significant roles in the provision of care which is an important contribution to equality in the affective domain. CSO figures for the health and social care sector in 2006 identify 61,170 health and social care workers of whom 16.5% were non-Irish nationals<sup>68</sup>. This compares with a proportion of 2% non-Irish nationals working in this sector in 1998. It is estimated that there will be an increased demand for health and social care workers in the future due to the ageing of the population and changes in the caring roles played by family members. It is expected that the demand for migrants will remain strong with predictions suggesting the number of migrant workers in this sector will rise by between 23,000 and 28,000 by 2028 and by between 31,000 and 37,500 by 2035.

Research on the role of migrant workers in caring for older people found that migrant care workers made up almost a third of all care workers in the care settings involved in the survey with the largest numbers working in private home care and private long-stay care settings<sup>69</sup>. This research states that the strongest determinant of the demand for non-Irish national care workers is the difficulty in recruiting Irish care workers due to negative perceptions of caring for older people, lack of career pathways and general under-funding of the care sector. Migrant carers highlighted issues in relation to poor rates of pay, discrimination and bureaucracy in the processing of job applications.

### **6. Consequences of Injustice and Inequality**

Injustice and the denial of rights diminish the human worth and deny the human dignity of migrants. The immediate consequences of these injustices are exclusion, disadvantage and hardship for migrants. Their full participation in the life of Irish society is limited. At the same time these injustices have a wider impact as the contribution migrants have to make to the economic, social, cultural and political life of Irish society is also diminished.

Inequality damages the well being and quality of life of migrants. The inequalities in their situation start from the injustices they experience. These inequalities are further deepened by an institutional failure to develop policies, programmes and practices that take account of the practical implications of ethnic diversity. These inequalities reflect, and form an integral part of, the wider inequalities experienced by a broad spectrum of groups in Irish society.

<sup>68</sup> Barrett A. & Rust A., Projecting the Future Numbers of Migrant Workers in the Health and Social Care Sectors in Ireland, ESRI, 2009.

<sup>69</sup> Walsh K. & O'Shea E., The Role of Migrant Care Workers in Ageing Societies: Context and Experiences in Ireland, Irish Centre for Social Gerontology NUI Galway,

The consequences of these inequalities go further than migrants. In more equal societies almost everyone does better<sup>70</sup>. More equal societies are characterised by longer life expectancy, greater educational attainment and better social mobility. Less equal societies are characterised by higher levels of violence, greater rates of imprisonment and higher levels of drug abuse.

The consequences of inequality are also evident in the economic sphere. Businesses that achieve diversity in their top management team and that have positive action policies perform better<sup>71</sup>. Businesses that invest in equality and diversity systems demonstrate higher levels of labour productivity, greater levels of workforce innovation and better employee retention levels<sup>72</sup>.

The failure to advance justice and equality for migrants, and for other groups in Irish society, is bad for migrants, is bad for business success and economic development, and is bad for society. Injustice and inequality experienced today by migrants also stores up disadvantage and exclusion for future generations and compromises any aspirations for a future multi-ethnic society. It is in everyone's interests to advance equality and justice for migrants.

## 7. Levers to Advance an Equality and Justice Agenda

There are a number of levers available in the current policy context in Ireland that could provide a basis for advancing an equality and justice agenda for migrants. There are a range of policy initiatives promised and being taken by Government and a range of developments within civil society that should carry the equality and justice agenda for migrant workers and their families. These various levers could drive the development of a multi-ethnic society if they take on the challenge to include migrants.

### *Rights Infrastructure*

There is a significant institutional infrastructure to protect the rights of migrants among other groups. This infrastructure includes the Equality Authority, the Irish Human Rights Commission and the National Employment Rights Authority as well as the Equality Tribunal, the Employment Appeals Tribunal and Rights Commissioner

<sup>70</sup> Wilkinson R. & Pickett K., *The Spirit Level – Why more equal societies almost always do better*, Allen Lane, 2009.

<sup>71</sup> Monks K., *The Business Impact of Equality and Diversity, The international evidence*, Equality Authority & National Centre for Partnership and Performance, 2007.

<sup>72</sup> Flood P. et al., *New Models of High Performance Work Systems, The business case for strategic human resource management, partnership and diversity and equality systems*, Equality Authority & National Centre for Partnership and Performance, 2008.

Service. However there are issues of effectiveness and access in relation to this infrastructure.

The effectiveness of the Equality Authority and the Irish Human Rights Commission was compromised by a decision of the previous Government as part of the 2008 budget to disproportionately reduce the funding to these bodies by 43% in the case of the Equality Authority and by 24% (effectively 32%) in the case of the Irish Human Rights Commission. The lack of resources contributes to issues of effectiveness for the Equality Tribunal where there is a backlog of three years for employment equality cases.

Evidence of access issues arises from the high levels of under-reporting of discrimination that have been identified. The Central Statistics Office special report on equality found that most people do nothing about the discrimination they experience. 60% of those who felt they had been discriminated did nothing about it and less than 6% took any formal action including legal action in response to discrimination<sup>73</sup>. The groups that report experiencing the highest levels of discrimination, including minority ethnic people, are found to be the least likely to take action on foot of this discrimination<sup>74</sup>.

The Equality and Rights Alliance has developed a campaign to protect and strengthen the equality and human rights infrastructure since 2008. The Alliance has published a roadmap for a strengthened equality and human rights infrastructure in Ireland<sup>75</sup>. The roadmap makes recommendations in relation to developments in laws, institutions, policy mechanisms and policy strategies. The purpose of this equality and human rights infrastructure is defined as being to enable participation in establishing equality and human rights standards, to advance the full realisation of equality and human rights, to build public commitment to a society based on equality and human rights and to support organisational practice and public policy making that advances equality and human rights. This roadmap and the campaign for its implementation offer one lever for change in challenging the denial of rights experienced by migrant workers and their families.

### *Membership of the UN Human Rights Council*

Ireland is currently seeking membership of the UN Human Rights Council. This should serve as an incentive to the Government to adopt and live up to the highest standards of human rights as established by the UN. This should serve

<sup>73</sup> Quarterly National Household Survey: Equality module, Central Statistics Office, Dublin, 2005.

<sup>74</sup> *The Experience of Discrimination in Ireland: Analysis of the QNHS equality module*, Russell H., Quinn E., King O'Riain R. & McGinnity F., Equality Authority and ESRI, Dublin, 2008.

<sup>75</sup> *A Roadmap to A Strengthened Equality and Human Rights Infrastructure in Ireland*, Equality and Rights Alliance, Dublin, 2011.

as a stimulus for the ratification of the United Nations 'International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families'. It should serve to encourage the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which creates an individual complaints mechanism for violations of economic, social and cultural rights.

It should also serve to ensure a more complete response to the recommendations made by the UN to Ireland on foot of reports made under the UN Conventions. For example, in its 2011 response to the Irish Government's third and fourth reports, the United Nations CERD Committee noted '*with regret that the economic recession that has confronted the State party threatens to reverse the achievements that have been made in the State party's efforts to combat racial discrimination at all levels*' and recommended '*that the State party should ensure that, notwithstanding the current economic recession, enhanced efforts are made to protect individuals from racial discrimination*'<sup>76</sup>. This would be a valuable starting point for the implementation of the full body of these recommendations.

### **Programme for Government**

The Programme for Government holds a number of levers for change. The Government is committed to developing a number of reform programmes in the Programme for Government. Some of these commitments hold potential to advance an equality and justice agenda for migrants. These include commitments to political reform, constitutional reform and public sector reform.

In relation to political reform, the Programme for Government states that '*We will radically overhaul the way Irish politics and Government work*'. As part of this commitment there is a recognition that '*there needs to be a substantial increase in the number of women in politics*' and a commitment that '*public funding for political parties will be tied to the level of participation by women as candidates those parties achieve*'. This response to the glaring gender inequality in our representative democracy could offer a gateway to raise the absence of minority ethnic people in these democratic institutions and to stimulate action to address this inequality.

There is a commitment to '*establish a Constitutional Convention to consider comprehensive constitutional reform, with a brief to consider*' a number of specific options as well as '*Other relevant constitutional amendments that may be recommended by the*

<sup>76</sup> Committee on the Elimination of Racial Discrimination, Seventy Eight Session, February/March 2011.

*Convention*'. This broad brief could be used to develop a focus on a multi-ethnic Ireland and on equality and justice for migrant workers and their families in the Constitution. An equality and justice agenda for Constitutional reform would have to be developed and promoted in this regard that includes migrants.

Public sector reform is another relevant commitment. The Programme for Government states that '*Real reform of the public sector will require a commitment from the whole of government to become more transparent, accountable and efficient*'. The need for '*Concrete mechanisms to improve performance, using a range of external standards and benchmarks, and to deal with persistent under-performance*' is noted. External standards and benchmarks should include a focus on performance that advances equality and that ensures respect for justice in organizational policies and practices.

There is a specific commitment in the Programme for Government in this areas that holds particular potential. The Government states that it '*will require all public bodies to take due note of equality and human rights in carrying out their functions*'. The effective implementation of this commitment will require amendment to the equality legislation to include an obligation on public sector bodies to proactively promote equality and human rights. It will be necessary to develop a model for this obligation and to create supports for its implementation. Equality and justice for migrant workers and their families will be an important dimension to this model and these supports.

The Programme for Government includes a number of more specific policy commitments that hold potential to advance equality and justice for migrants. These commitments include developments in labour market policy, education policy and mental health policy.

Labour market policy commitments should offer new opportunities for migrants, in particular in the context of high levels of unemployment they are experiencing. For example there is the commitment to '*provide 30,000 additional training places across the education and training system, distributed in line with the recommendations of the Expert Group on Future Skills Needs*'. The implementation of such commitments should include provision for migrant workers and their families and should enable workplace progression for migrants.

Institutional change will also be a feature in this policy field with the commitment to '*replace FAS with a new National Employment and Entitlements Service so that all employment and benefit support services will be integrated in a single delivery unit managed by the Department of Social Protection*'. The perspective and needs of migrants

should contribute to shaping the mandate, development and operation of this new body.

The Programme for Government also poses some challenges to the situation of migrants. In particular commitments in relation to incomes policy are of concern.

It will be important to develop initiatives to protect the wages of migrant workers on low pay. The Programme for Government commits to *'reform the Joint Labour Committee structure, beginning with the appointment of independent chairpersons to JLCs, who will retain a casting vote. Reform options will examine the rate of pay for atypical hours'*. Proposals developed to reform this area will need to reflect a commitment to equality and justice for migrant workers and their families.

Education policy is an area of significant commitment which holds potential to advance equality and justice for migrants in a context where they can experience issues of early school leaving and low educational attainment. A focus on educational disadvantage is evident in the commitment to *'consider recommendations of the review of the DEIS programme and use it as a platform for new initiatives to deliver better outcomes for students in disadvantaged areas'*. It would be useful and important to include a focus on the implications of the cultural diversity of students in disadvantaged areas in these new initiatives.

There should also be particular opportunities for the development of capacity within schools to more effectively respond to the needs of minority ethnic pupils in the commitment by Government to *'require schools, with the support of the Inspectorate, to draw up five year development plans for their schools and individual teachers'*. Development plans should have a focus on equality and on responding effectively to the ethnic diversity of the school community.

Mental health policy is given some significant emphasis with a commitment to incorporating the recommendations of 'A Vision for Change' and *'to reducing the stigma of mental illness, ensuring early and appropriate intervention and vastly improving access to modern mental health services in the community'*. New institutional structures are promised such as *'a cross-departmental group to ensure that good mental health is a policy goal across a range of people's life experiences including education, employment and housing'* and new funding is promised including *'ring-fenced funding will be provided to recruit additional psychologists and counselors to community mental health teams'*. These developments offer opportunities to bring forward the particular needs of migrant workers and their families.

## **2016 Centenary**

The Ireland of today is very different to the Ireland of the authors of the Proclamation of the Irish Republic in 1916. The centenary of the proclamation will be celebrated in 2016. This will present an important moment of reflection on the Ireland that has emerged from the struggle for independence. The value of equality espoused in the Proclamation remains valid and urgent for today's multi-ethnic Ireland. The Proclamation stated:

*'The Republic guarantees civil and religious liberty, equal rights and equal opportunities to all its citizens, and declares its resolve to pursue the happiness and prosperity of the whole nation and of all its parts, cherishing all the children of the nation equally, and oblivious of the differences carefully fostered by an alien government, which have divided a minority from the majority in the past'*.

The preparation for and celebration of the centenary of the Proclamation of the Irish Republic in 2016 offers particular opportunities to debate and redefine what we mean by 'Irishness' and what type of society we want to develop out of this foundation stone. The relevance of this centenary is referenced in the Programme for Government in the commitment to *'develop a cultural plan for future commemorative events such as the Centenary of the Easter Rising in 2016'*. Migrants and their organisations should be central to this celebration. An equality and justice agenda for ethnic diversity needs to be brought forward as part of the debates attendant on this centenary. 2016 should be a launching pad for a new equal, just and ethnically diverse Ireland.

## **Civil Society**

The Programme for Government commits that *'During a time of recession and deep unemployment the Government acknowledges the vital role of the community and voluntary sector working in partnership with local communities, State agencies and local authorities'*.

However it is clear that the coming years are going to be challenging for civil society organisations. There are immediate challenges for these organisations in terms of reduced funding and increased demands. However the challenges also include those of finding new forms of organisation and new agendas for change that are capable of responding to the unprecedented crises faced by Irish society.

New forms of organisation and new agendas for change are emerging within civil society. These include initiatives such as Claiming our Future, the Coalition for the Low Paid and the Equality and Rights Alliance. Claiming our Future is a broad based non-party political movement for an equal, sustainable and thriving Ireland that spans the community

sector, the trade union movement and the environmental sector. The Coalition for the Low Paid is an alliance of trade unions and community sector organisations established in response to the changes proposed to the Joint Labour Committee system. The Equality and Rights Alliance is a coalition of organisations representing groups experiencing inequality that spans trade unions and community organisations which was set up to defend and strengthen the equality and human rights infrastructure.

A feature of these new initiatives is their capacity to reach across and engage different sectors within civil society. They have organized around new agendas and developed new ways of working on issues of equality and justice. Migrants need to be involved in this growth and development of civil society. The voice of minority ethnic people needs to take its place in leading these initiatives.

### **Europe 2020**

The Government are required to prepare an annual National Reform Programmes to implement the Europe 2020 strategy. This programme should include a response to the demand for a focus on the better integration of migrants in pursuit of the EU target employment rate of 75% of people aged 20-64.

In the same policy area the Government will be challenged to respond to the European Commission's 'Agenda for new skills and jobs' with its focus on the recognition of qualifications, mainstreaming integration priorities into all policy areas and improving the enforcement of rights for migrant workers. The European Commission is committed to preparing a New European Agenda on Integration under the European Platform against Poverty. This will also require Government action as it aims to stimulate Member State action on promoting third country nationals participation in the economy and in society.

Decisions have still to be made on the future of the Open Method of Coordination on social inclusion and social protection under the European Platform against Poverty. The development of a strengthened process of policy coordination in this area will be required if the poverty reduction targets of Europe 2020 are to be met. The Government is challenged to support such a strengthened process and in participating in such a process is further challenged to ensure that Irish policy and programmes are adequate to addressing the poverty experienced by migrants.

Migrants must be a significant focus in the response of the Irish Government to the Europe 2020 strategy. It will be important to advocate that the Government responds with real ambition to the targets of Europe 2020 and that minority ethnic groups are explicitly named in the policy responses developed. It will be important to ensure that

the focus on integration developed at a European Union level embraces an equality and justice agenda and that the response to this commitment by the Irish Government advances equality and justice for migrants.

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