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**Nasc Submission to the Public Consultation on the Establishment of an Electoral  
Commission**

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**MARCH 2019**

**NASC, THE MIGRANT AND REFUGEE RIGHTS CENTRE. 34 PAUL STREET, CORK.**

## **Nasc Submission to the**

### **Public Consultation on the Establishment of an Electoral Commission**

**March 2019**

#### **Terms of Public Consultation**

As set out in the consultation process documentation, the Government is considering four options with regard to the establishment of an Electoral Commission. The Department makes clear in the consultation document that its ultimate aim is to have an electoral commission on a statutory basis and the four options relate to the sequence and legal basis under which the Commission should be established (or the status quo retained). In this submission, Nasc sets out its position on the key question of the establishment of an Electoral Commission, and also sets out its views on those related areas of Electoral Law Reform which it considers urgent and which should be addressed as part of the present reform process. We would like to thank the Irish Council for Civil Liberties for their support in drafting this submission.

#### **Background to our Submission**

Nasc, the Migrant and Refugee Rights Centre, is a non-governmental organisation working for an integrated society based on the principles of human rights, social justice and equality. Nasc (which is the Irish word for link) works to link migrants to their rights through protecting human rights, promoting integration and campaigning for change. Nasc's legal team assist some 1,300 immigrants annually in navigating Ireland's protection, immigration and naturalisation systems. Our policy and campaigning work is directly informed by our day-to-day experiences working with migrants, refugees, asylum seekers and ethnic minorities living in Ireland and we welcome the opportunity to make a submission to the Department of Housing, Planning and Local Government. We fully support the submission made on this issue by the Irish Council for Civil Liberties (ICCL) and echo their recommendations. We fully support ICCL's contention that the establishment of an Electoral Commission affords a unique and much needed opportunity to address existing deficiencies in the Electoral Act, and in particular the issues surrounding the regulation of civil society advocacy, where, we believe, smaller NGOs are particularly vulnerable.

Nasc, as an NGO working to advance human rights, believes that the subject of regulation of elections and political activity must ensure that any regulations in this area (statutory or otherwise) should advance and respect human rights standards. In particular, we are concerned that restrictions on political activities

should be based in law, necessary and proportionate, with specific reference to the need to respect the rights to freedom of expression and freedom of association.

## **We support the Establishment of an Electoral Commission on a Statutory Basis**

- Nasc supports the establishment of an Electoral Commission. We are supportive of strengthening the cohesiveness and transparency of electoral regulation that an Electoral Commission can bring. We support the general recommendations for the establishment of an Electoral Commission, including the commitment in the Programme for Government and the recommendation of the Joint Oireachtas Committee on Environment, Culture and the Gaeltacht (2016). We note that the Department does not anticipate that there should be any additional costs associated with transferring across these functions to a Statutory Electoral Commission.
- The issues that will fall to be regulated by the Electoral Commission engage important questions of human rights and democratic participation. Furthermore, it is essential that any regulatory body operating in this area should be fully independent of Government in all respects. Such independence should be guaranteed by ensuring that the body is established by primary legislation; and by ensuring that funding for any Electoral Commission comes directly from the central fund of the exchequer.
- We also believe that the introduction of establishing legislation will afford an opportunity to address existing deficiencies in the Electoral Act, including the issues surrounding the regulation of civil society advocacy. Specifically, we are concerned with certain aspects of the current Electoral Law and Regulation as they apply to civil society: in particular that electoral regulation should not apply to advocacy by civil society on matters of policy outside of elections and referendums; and that regulation of the activities of civil society in referendums should respect (or be consistent with) freedom of expression and freedom of association.

## **Role and Functions of the Electoral Commission in Regulating and Overseeing Election and Referendum Funding**

- We note that the Joint Oireachtas Committee identified the following specific functions to be given to an Electoral Commission in the first phase: the regulation of political funding as currently carried out by the Standards in Public Office Commission (SIPO); and the functions of the Referendum Commission. In transferring these core functions to the Electoral Commission, it is essential that clear provision be put in place for fair procedures for all affected parties that are subject to such regulations.
- We recognise the issues of electoral security identified in the IDG report, including the need to address transparency of online political advertising, and reform of political funding rules. We see these threats as linked to threats experienced by civil society from hostile actors who wish to suppress democratic processes more generally.

- If an Electoral Commission is to effectively address the threat of excessive spending corrupting our politics, the rules on campaign funding need to be expanded to regulate the spending of previously existing resources as well as regulating the receipt and use of donations.
- We also agree with the Transparent Referendum Initiative that requirements for real-time disclosure of information during election periods are essential.
  
- We also support recommendations to transfer other core electoral regulation issues to the Electoral Commission including:
  - Oversight of the Register of Electors engages several human rights issues, including issues of discrimination that may arise from proof of identity requirements (as arose in UK), and which could be addressed by automatic registration procedures.
  - Providing for and resourcing a research function for the Electoral Commission would be a positive step which would allow the Commission to develop capacity to respond to developments in technology.
  - Providing for and resourcing a voter education function for the Electoral Commission would provide an independent source of information which could encourage higher levels of democratic participation, and higher levels of political awareness. This is particularly relevant in the context of securing increased levels of political awareness and democratic participation amongst our migrant communities.

For further information, please contact Fiona Finn, CEO, Nasc, the Migrant and Refugee Rights Centre – email: [fiona@nascireland.org](mailto:fiona@nascireland.org) or ring (021) 427 3594.