

## **Submission to the Office for the Promotion of Migrant Integration on the Development of a Migrant Integration Policy**

### **I. Introduction**

Nasc, the Irish Immigrant Support 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 was founded in 2000 in response to the rapid rise in the number of asylum seekers and migrant workers moving to the city of Cork. It is the only NGO offering legal information and advocacy services to immigrants in Ireland's second city. Nasc's legal team assist some 1,200 immigrants annually in navigating Ireland's protection, immigration and naturalisation systems. We also assist migrants and ethnic-minority Irish people who encounter community-based and institutional racism and discrimination. Our campaigning strategy is informed by the issues emanating from our legal case work and our day-to-day work with migrants.

Nasc welcomes the opportunity for organisations and individuals to make submissions to the Office for the Promotion of Migrant Integration on the development of a new Migrant Integration Policy. Nasc does a significant amount of work promoting integration at a local and national level. We are the lead organisation in the Cork City Integration Strategy and are currently working with our partner organisations in the city to develop the new strategy for 2015 – 2017. A key aspect of integration is access to justice and services through information provision and advocacy – which form the cornerstone of Nasc's work. As part of our work promoting integration, we also have considerable experience in working with statutory bodies, NGOs and the community in tackling racism, xenophobia and discrimination at a local level in Cork City and nationally. Racism is a persistent problem for many people living in Ireland and unless it is adequately addressed it will remain a significant barrier to the integration of migrant and ethnic minority communities in Ireland and will serve to undermine societal cohesion.

### **II. Background**

#### ***a) Demographics***

Ireland has become an increasingly diverse society with a significant proportion of our workforce now migrants – 15% according to the 2011 Census.<sup>1</sup> In October 2012, the Central Statistics Office's (CSO) press release on

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<sup>1</sup> Central Statistics Office, Census 2011, available at:  
<http://www.cso.ie/en/media/csoie/census/documents/Prelim%20complete.pdf>.

Migration and Diversity from the 2011 census showed that the number of migrants living in Ireland now stands at 544,357, representing 199 separate nations.<sup>2</sup> This shows an increase of 124,624, or 30%, migrants living in Ireland since the previous census in 2006. Contrasting this even further with the 2002 Census, the figure for migrants living in Ireland then stood at 224,261, thus showing an increase of 143% in just nine years. Although migrants make up only a portion of Ireland's ethnic minorities, this rapid growth in immigration gives a marked indication of Ireland's ever growing multi-cultural and diverse society.

In a Cork context, the figures show that the city and county experienced some of the highest growths in migrants living within its borders. In the 2011 Census the number of migrants living in Cork County stood at 42,886, an increase of 10,518 since 2006 and placing Cork County third on the list of administrative counties with the highest number of migrants in terms of absolute numbers, behind Dublin City and Fingal. Remarkably, there are fifteen towns in County Cork where the migrant population exceeds 20%. In Cork City the census disclosed that there are a total of 14,611 people of different nationalities living here, bringing the total between City and County to 57,497.

### **b) The Environment**

Much has changed in Ireland since the publication of *Migration Nation* in 2008. *Migration Nation* was a document aimed at promoting integration during an economic boom, when more resources were dedicated to the promotion of social inclusion and cohesion generally. Since 2008, much has been lost, including a designated Minister for Integration, the National Consultative Committee on Racism and Interculturalism, and a National Action Plan on Racism. And much remains to be determined, such as the development of the new Irish Human Rights and Equality Commission and the Workplace Relations Commission, which will most likely be significantly less funded than their previous incarnations were. Many community, migrant-led groups and migrant NGOs have disbanded from lack of resources, or are functioning at a very limited capacity to support migrants and advocate for change.

Despite the changed climate for the promotion of integration, the figures outlined above emphasise that inward migration into Ireland is here to stay. And more importantly, those communities deemed 'new' in 2008 are now evolving into 1.5 and 2<sup>nd</sup> generation migrant communities, which means that the issues impacting them are far more wide-reaching and long-term than those that were identified in *Migration Nation*. Nasc welcomes the Department of Justice's commitment to developing an integration strategy to reflect the changed climate we now live in, and looks forward to a Government commitment to the promotion of integration across all departments and sectors of society.

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<sup>2</sup>Central Statistics Office, Census 2011 Profile 6 Migration and Diversity, available at:  
<http://www.cso.ie/en/census/census2011reports/census2011profile6migrationanddiversity-aprofileofdiversityinireland/>

### III. National Migrant Integration Strategy

Nasc welcomes the Department of Justice's commitment to developing a new national integration strategy. Integration is a complex and multifaceted process, which requires the coordination and participation of all sectors of society to effectively promote it. As noted above, the demographic composition of Ireland's population has changed over the last decade. This presents new conditions and challenges for social cohesion and a clear government response is required.

In the EU context member states have affirmed their commitment to developing the idea of integration as a driver for economic development and social cohesion, in order to better enhance migrants' contribution to the economic growth and cultural richness in member states. Migrants actively contribute to the economic, social and cultural development of Irish society. Their successful integration into society in Ireland is the key to maximising the opportunities of legal migration and making the most of the contributions that immigration can make to economic, social and cultural development. **In that context Nasc would contend that the Migrant Integration Policy must be underpinned by clear goals and objectives to create the conditions to develop integration as a key driver for economic development and social cohesion.**

#### *a) Integration through Participation*

Integration is a process that must start on the ground and the national integration strategy policies should be developed with a genuine 'bottom-up' approach, close to the local level. The key policies that need to be clearly articulated and developed must address the following key areas: support for language acquisition, measures to increase migrants access to employment, equality of access to education, a clear and effective immigration and protection system that ensures security of residence and access to justice for migrants, and effective measures to fight against discrimination, which should aim at increasing migrants' participation in society.

One key area to promote participation of migrants is the widespread availability of interpretation and translation services. **Nasc recommends that the Migrant Integration Policy include a clear action to promote access to translation services and interpretation by all government agencies, bodies and service providers as due course.**

**In order to promote greater migrant participation, Nasc also recommends that additional consultations with migrant communities and key community stakeholders are necessary in the ongoing development of the new Migrant Integration Policy.** A model for an effective form of direct engagement and participation with civil society could be taken from the Irish Council for Civil Liberties Rights Now campaign in the lead up to Ireland's Universal Periodic Review in 2011.

### **a) Immigration Reform**

Integration policy is intrinsically linked to immigration policy. Clear, effective immigration policy is the foundation on which effective integration is built. All other facets of integration, ranging from employment to education to health rely on already having security of residence, rights to family reunification and access to justice and effective remedies such as an Independent Appeals Tribunal – all aspects of a functioning, transparent and efficient immigration legislative and policy framework.

It was noted in *Migration Nation* (2008) that a clear commitment to immigration law, including pathways to permanent residency and citizenship and a streamlined asylum process were necessary actions in the promotion of integration. **The new Migrant Integration Policy must firmly re-state this commitment by calling upon the Government to immediately publish the new Immigration Residence and Protection Bill, to enshrine the rights of migrants and their families in Ireland.** This is an essential first step.

### **b) Employment**

Employment is critical driver for integration and presents an ideal opportunity for integration as an effective tool for economic development. In 2008, *Migration Nation* noted that 90% of adult migrant population was in employment compared to 65% of the indigenous population.<sup>3</sup> Since then Ireland has experienced a deep and prolonged recession but the current figures suggest that that the migrant population have suffered disproportionately as a result of the recession. In 2012 the employment rate for migrant adults stood 58.9% representing a drop of 31.3%. The comparable rate for the indigenous population stood at 58.2% in the same period representing a drop of 6.8%<sup>4</sup>. Additionally, in Nasc direct experience in working with migrants we would contend that many migrants are working below their skill and qualification levels.

**The following measures should be considered to effectively address migrant participation in the work place:**

- 1. Reform of our work permits system to permit sectoral work permits enabling work permit holders to change employment within the same sector, thereby increasing employment mobility and reducing the risk of workplace exploitation.**
- 2. Working with employers and social partners in the promotion of diversity in the workplace and combating discrimination.**
- 3. Introduce programmes to support and retrain migrants who have left the Direct Provision system upon attaining a residency permission to prepare them adequately for entry into the workplace.**

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<sup>3</sup> *Migration Nation*, pg. 8

<sup>4</sup> Annual Monitoring Report on Integration 2012 - The Integration Centre and ESRI - 2012

- 4. Reform of immigration policy to permit children of migrant workers who have completed second level education equality of access to the labour market and equality of access to third level education to include equality of access to third level education grants and a fee waiver.**

### ***c) Education***

Education is another critical area for the promotion of integration. *Migration Nation* showed a strong commitment to promoting education and training for migrant children and adults. **This commitment must be not only reiterated in the new Migrant Integration Policy but strengthened and fully resourced to ensure migrants have access to English language classes, tertiary education and skills training to make them active and productive members of Irish society.**

### ***d) Local Integration***

For many years Nasc has been a lead organisation in developing and implementing the Cork City Integration Strategy, which sets out to positively challenge discrimination and promote an inclusive, intercultural city in which all are valued, regardless of nationality, religion or ethnic background. It sets an agenda for cultural and ethnic diversity to be welcomed and celebrated in the city. In 2010, the Monitoring Group for the Strategy conducted a mid-term review. The review included a consultation with members of migrant communities living in Cork; a survey of the general public in Cork; and an update report from organisations with actions contained in the Strategy.

The results of the review that we found particularly striking were that:

- Racism and lack of social cohesion are very real issues in our city. The survey results reflect widespread concern but also tremendous goodwill.
- Discrimination is common experience for immigrant and ethnic minority residents, particularly in the field of employment.
- Awareness of equality infrastructure remains low, particularly among immigrant and ethnic minority residents.
- Real experiences of racism and discrimination are not reflected in official statistics, as they are rarely reported by victims.
- The need for more activities to promote integration in Cork City, such as parades, celebrations, local community activities and inter-faith events.
- That local media needs to be more culturally inclusive plus there needs to be a commitment in the City to challenge racist and negative media coverage.
- The need for a commitment to promoting inter-cultural awareness as a new reality in Cork City, for example good practice on anti-racism and promoting diversity, to become the norm in organizations.

- The continued demand for English language classes.
- The need for improved reporting of racist incidents.
- The need to safeguard equal access of employment for ethnic minority and immigrant groups.

These are results that could be easily applied to the national context.

Nasc has taken the leadership in the development of a new city wide integration strategy which is due to be completed this year. Cork is an increasingly multicultural and diverse city and as a non-governmental organisation working in this area, we are committed to working closely with statutory bodies, An Garda Síochána, community groups and individuals to collectively combat racism and promote integration.

Whilst we wish to acknowledge the ongoing work to promote integration undertaken by local government and by locally based groups across the country, we would contend that this work needs to be directed and coordinated at a national or governmental level to effectively promote the integration and social inclusion of all migrants. **We recommend that the Office for the Promotion of Migrant Integration take a leadership role in coordinating and supporting the development of locally-based integration strategies as well as monitoring role in ensuring that local strategies are successfully implemented.**

**We also recommend the establishment of a National Migrant Integration Forum that would be in regular consultation with OPMI and the Cross-departmental Working Group in the development, implementation and monitoring of the National Integration Strategy.** Civil society participation is key to integration measures being successful and effective. A suggested model for this forum could be the Migrant Consultative Forum, which was established on the foot of a joint report published by Nasc, Crosscare Migrant Project and Doras Luimní, *Person or Number? Issues Faced by Migrants Accessing Social Protection* (2012). It is a blend of civil society organisations, migrant representation and high level department officials from the Department of Social Protection. Since its inception, it has brought about significant reforms to improve migrant access to social protection and reduce discrimination.

### ***e) Racism and Discrimination***

Combating racism and discrimination in all its forms plays a critical role in promoting the integration of ethnic minority and migrant communities. Unfortunately, racism forms part of the lived experiences of migrants living in Ireland. It is a significant barrier to integration and limits opportunities for building an inclusive and integrated society based on mutual respect and equality. The impact of racism is not confined to the victim but has a detrimental impact upon communities and it undermines social cohesiveness. Through our work with victims of racism we have seen firsthand the harm that is caused to both the individual and the community at large.

According to the United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD):

*The term “racial discrimination” shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

The Macpherson Inquiry<sup>5</sup> was set up in the UK in the aftermath of the racially motivated murder of Stephen Lawrence, a black British teenager from Eltham, southeast London, in 1993. The Stephen Lawrence inquiry resulted in a major examination of institutional racism in the UK. The inquiry also led to the development of the definition of racism that is now employed by An Garda Síochána, Nasc and the ENAR Ireland, the Irish Network Against Racism, namely that a racist incident is any incident that is perceived by the victim to have been racist. The adoption of this victim-centred definition by An Garda Síochána and other statutory bodies and non-governmental organisations is a positive development; however it should be standard across all statutory bodies including oversight bodies such as the Broadcasting Authority of Ireland. Experiences in Ireland, the UK and elsewhere throughout Europe have demonstrated that “low-level” racism, such as name-calling or racist bullying, can escalate quickly into violent acts, need to be addressed and cannot be ignored.

Recent research has noted a link between economic recession in Ireland and racism and discrimination towards ethnic minorities.<sup>6</sup> This is supported by anecdotal evidence and surveys noting a widespread perception that racial incidents are on the rise in the midst of recession.<sup>7</sup> This association was highlighted by the Committee on the Elimination of Racial Discrimination (CERD). The CERD committee report on Ireland in 2011 concluded that:

*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. The Committee expresses grave concern over the disproportionate budget cuts to various human right institutions mandated to promote and monitor human rights such as the Irish Human Rights Commission, the Equality Authority and the National Consultative on Racism and Interculturalism.<sup>8</sup>*

Clearly, the demise of the National Consultative Committee on Racism and Interculturalism (NCCRI) and its reporting mechanism has had an impact on the awareness of and response to racist incidents. **The Migrant Integration Policy must make a strong commitment to renew funding for an independent body to collect,**

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<sup>5</sup>Sir William Macpherson, The Stephen Lawrence Inquiry: Report of an Inquiry (London: Home Department [UK]), available at: <http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>.

<sup>6</sup>Migrant Rights Centre Ireland, Racism and Migrant Workers in Ireland, Policy Paper (2010).

<sup>7</sup>Millward Brown Lansdowne, Public Attitudes Towards Immigration Survey Commissioned by the One Foundation (2012).

<sup>8</sup>Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination, Ireland (2011).

**analyse and disseminate reports of racist incidents. Nasc also recommends a commitment that all statutory bodies and services formally adopt the victim-centred definition of racism defined by the Macpherson Inquiry.**

**In addition, the Migrant Integration Strategy should include a commitment to developing a new National Action Plan on Racism, to show the Government’s commitment to tackling racism and promoting integration of migrant and ethnic minority communities in Ireland.**

#### **i. Racist Reporting**

Many types of racist incidents do not constitute a crime under Irish law, and they are not recorded as such in the Garda PULSE (Police Using Leading Systems Effectively) recording system. Awareness of the existing equality infrastructure is low among immigrant and ethnic minority residents, and real experiences of racism and discrimination are often not reflected in official statistics. Nasc operates a third party racist reporting mechanism that allows victims of racism to report an incident confidentially and receive support and redress.

This mechanism emerged as a result of low levels of official reporting of racist incidents locally. The mechanism was the brainchild of Cork-based Community Garda Sergeant Trevor Laffan, based on his concerns that ethnic minorities and migrants, particularly refugees and asylum seekers, were not comfortable reporting racist incidents to An Garda Síochána. Reasons for ethnic minorities not reporting include what Seamus Taylor has termed “minority ethnic community confidence”<sup>9</sup> in the police and other criminal justice agencies, the role of the Gardaí in immigration, as well as an inherent distrust of police and other authority figures amongst people coming from areas of the world that would be characterised by high levels of corruption and abuse of authority.

This third party reporting mechanism was designed to complement the Garda PULSE system. It is an innovative and ground-breaking mechanism which returns an element of control to the victim. All reported incidents are followed up and formal incidents, which are criminal in nature, are recorded on the Garda PULSE system and investigated under existing criminal legal provisions.

The mechanism has a number of clear objectives:

- 1) To monitor incidents of racism in the city

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<sup>9</sup>These include “low levels of confidence in the Garda response to racist crime’ negative policing experiences in home countries; negative policing experiences with the Garda Immigration policing function; experience of racism from the Garda themselves” (Taylor, Responding to Racist Incidents and Racist Crimes in Ireland: An Issues Paper for the Equality Authority (Maynooth: NUI Maynooth, 2010), p. 33.



- 2) To provide redress to the victims through our civil legal system, Garda Ombudsman, or other relevant avenues
- 3) To support victims of racism
- 4) To refer any formal complaint to the Gardaí for further investigation

Additionally, it provides evidence that racism is a very real issue in Ireland today and enables Nasc to work closely with local and Community Gardaí, other NGOs and statutory bodies to help address the issue. As an active member of the Irish Network Against Racism (ENAR Ireland), who themselves are affiliated with the European Network Against Racism (ENAR), Nasc also records incidents of racism on ENAR Ireland's central database and encourage victims and witnesses of racist incidents to report on ENAR Ireland's new iReport.ie reporting website. Third party racist reporting by NGOs such as Nasc has become an effective complement to official reporting procedures, particularly since the closure of the National Consultative Committee on Racism and Interculturalism (NCCRI).

In late 2012, Nasc published a report, *Stop the Silence: A Snapshot of Racism in Cork*<sup>10</sup>, that analysed the racist reports we had received to date and made recommendations on how to improve integration and combat institutional and individual racism in Ireland. The report documents the development of our racist reporting mechanism. It includes an overview of major studies on racism and discrimination conducted in Ireland and Europe over the last decade and a summary of the legislative and policy framework on racism. It provides a 'snapshot' overview of peoples' perceptions of and experiences with racism and discrimination Cork City and County based on a citywide survey on racism and analysis of our received reports. The findings of this report indicate that there remain many issues that need to be addressed in relation to victimisation and discrimination of ethnic minorities and migrants living in Cork.

Key themes that emerged in the report were:

- Racism is widespread but vastly under-reported
- Racism is perceived to be on the increase as a result of the economic downturn
- Third party racist reporting must be strengthened and expanded
- People know there are legislative mechanisms to protect them but the legislative and policy mechanisms are inadequate
- Greater awareness of racist reporting and anti-racism measures must be promoted amongst particularly vulnerable and invisible ethnic minority communities

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<sup>10</sup>Available at: <http://www.nascireland.org/wp-content/uploads/2012/02/NASC-Report.pdf>

Over the last two years Nasc has dealt with 101 reports (59 individual, 42 institutional) of racism consisting of:

Type of Incident	Number of reports
Individual Criminal	06
Individual Incitement of Hatred	10
Individual Non-verbal abuse	06
Individual Online Racism	12
Individual Physical Assault	08
Individual Verbal Abuse	17
<b>Total Individual</b>	<b>59</b>
Institutional Education	09
Institutional Employment	05
Institutional Garda/Judge	07
Institutional Goods & Services	12
Institutional Healthcare	02
Institutional Housing	03
Institutional Social Services	04
<b>Total Institutional</b>	<b>42</b>
<b>TOTAL</b>	<b>101</b>

Since the establishment of the racist reporting mechanism, we have seen a noted increase in reports of online racism. Online racism is an area that is fast becoming a concern as, from our experience, it is very difficult to monitor and even more difficult to prosecute.

**Nasc recommends the inclusion of specific actions in the new Migrant Integration Policy promoting reporting of racist incidents, both to the Gardaí and to third party reporting mechanisms, as well as targeted resources for expanding and strengthening third party racist reporting. The new Integration Policy should also include actions aimed at increasing awareness of the legislative and policy mechanisms in place for tackling racism and discrimination, especially amongst particularly vulnerable and/or invisible ethnic minority communities. The Policy should also include a recommendation for mandatory inclusion of hate-based incidents into the Garda PULSE system.**

## ii. Ethnic profiling

Nasc is also deeply concerned by the prevalence of ethnic profiling and the absence of any legislation to prohibit racial or ethnic profiling. Ethnic profiling is defined as:

*The use by police, security, immigration or customs officials of generalisations based on race, ethnicity, religion or national origin – rather than individual behaviour or objective evidence – as the basis for suspicion in directing discretionary law enforcement actions.<sup>11</sup>*

This issue of ethnic profiling was highlighted in the 2009 EU-MIDIS European Union Minorities and Discrimination Survey from the EU Fundamental Rights Agency (FRA) that showed that Ireland had the second highest rate of police stops in the EU. 59% of Sub-Saharan Africans reported being stopped by police in the previous 12 month period with 93% of these stops occurred when respondents were driving cars or were riding motorbikes. The survey also notes that 41% of Sub-Saharan Africans in Ireland reported being victims of crime in the last 12 months; this was fifth highest in the EU.<sup>12</sup>

Nasc's own research<sup>13</sup> carried out among the members of the Roma community indicated significant levels of ethnic profiling of that community by An Garda Síochána and other statutory services. 90% of Roma who participated in our research stated that they felt discriminated against victimised and harassed in their interactions with a range of state bodies. These bodies include: Local Authorities, FÁS, Health Service Executive, Employment Agencies, and the Gardaí. 37.5% of Roma males that were interviewed as part of the study were subjected to regular stop and search procedures and an additional 12.5% were stopped in the street and required to provide identity documentation. A disturbing 91.6% of Roma women who participated in Nasc's research had come to the attention of the Gardaí; the majority of this interaction was in relation to begging. Roma women are a very visible minority and as the existing begging legislation is subject to the unfettered discretion of the Gardaí, Nasc contend that the law on begging has the potential to promote ethnic profiling.

Roma, from a policing perspective, are viewed as a clear threat to public order and are policed accordingly. The labelling of the whole community as criminal, as was demonstrated by the stated high incidences of stop and search, the Garda raid of the houses, the attitude of the Gardaí toward the Roma, and the manner in which the begging legislation appears to be administered, does very little to cultivate a positive relationship between the

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<sup>11</sup> European Network against Racism, [http://cms.horus.be/files/99935/MediaArchive/publications/ENAR\\_OSJI%20factsheet%20ethnic%20profiling%20Oct09.pdf](http://cms.horus.be/files/99935/MediaArchive/publications/ENAR_OSJI%20factsheet%20ethnic%20profiling%20Oct09.pdf).

<sup>12</sup> European Union Agency for Fundamental Rights, European Union Minorities and Discrimination Survey, Introduction to the FRA's EU-wide discrimination survey (2009).

<sup>13</sup> Nasc, In From the Margins – Roma in Ireland (2013), available at: <http://www.nascireland.org/wp-content/uploads/2013/05/NASC-ROMA-REPORT.pdf>.

Gardaí and the community. The marginalisation and exclusion of a whole community coupled with what appears to be a prevalent and embedded link made between the Roma and criminality only serves to foster and develop a deep mistrust between the community and the Gardaí. It sends out a message to the wider society that they need to be protected from this community. Unless we begin to address the wider social issues of poverty, deprivation and lack of socio-economic rights, the Roma will never be brought in from the margins.

Concerns about ethnic profiling are not limited to the Roma community and could be extended to all migrant and visible ethnic minority communities. This issue was also highlighted by the European Commission on Racism and Intolerance's (ECRI) recent report on Ireland with regard to the wider migrant community and remains of grave concern to Nasc. The relationship between a community and its police force has a significant impact on the integration and social inclusion of that community. Garda policy in relation to our migrant community falls under the Garda Diversity Strategy and Implementation Plan, 2009-2012 through the medium of GRIDO, the Garda Racial, Intercultural and Diversity Office, as well as through local Community Policing and Ethnic Liaison Officers. The Diversity Strategy emphasises that An Garda Síochána must recognise and respect the needs, rights and dignity of all minorities resident in Ireland. **The implementation of this policy must be monitored to ensure it is effective and widely promoted. We would also recommend the inclusion in the Migrant Integration Policy a specific call upon the government to consider adopting legislation prohibiting any form of racial profiling, as recommended in the ECRI report, as our current equality legislation does not proscribe racial profiling by the police.**

### iii. Racism and Hate Crime Legislation

It is Nasc's contention that the existing legal and policy framework in Ireland fails to address racism and hate crime. With the exception of the Incitement to Hatred Act, 1989, racist behaviour, racially motivated offences or acts are not considered as offences under our current criminal law.

The only legislation in Ireland that deals specifically with racially motivated behaviour is the Prohibition of Incitement to Hatred Act, 1989. This was enacted to ensure compliance with Ireland's international legal obligations, in particular Article 2 of the United Nations International Covenant on Civil and Political Rights (ICCPR). The provisions in the Act are confined to what is termed 'expression offences', and were never intended to deal with criminal acts where incitement is not a factor. The Act criminalises behaviour and expression if they are intended to provoke hatred against a group or person on account of their race, colour, nationality, religion, ethnic or national origins, membership of the Travelling community or sexual orientation. The Act is silent on a definition of both incitement and hatred, and critically, to secure a conviction under the Act the prosecution is required to prove the actions were intended to stir up or incite hatred. It is insufficient that the material, expression or behaviour itself was likely to incite hatred. This high threshold goes some way to explaining the Act's underuse and paucity of convictions. In addition the Act fails to address online or cyber racism, which in

Nasc experience is a site for the dissemination of racist speech and racist ideologies against either an individual or a group. **Nasc recommend a call be included in the Migrant Integration Policy to amend the current Act to adequately address online or cyber racism.**

In the absence of a specific provision in our criminal law to deal with racially aggravated offences, prosecutions of this nature are usually brought under a number of other criminal legal provisions, including the Criminal Justice (Public Order) Act, 1994, the Non-Fatal Offences Against the Person Act, 1977 and the Criminal Damage Act, 1991. Under these Acts, criminal actions borne out of racial hatred are treated in the same manner as acts committed without a race or hate element. It is only at the sentencing stage that racist motivation can be considered as an aggravating factor. However, in the absence of sentencing guidelines or binding precedent, this consideration is entirely at the discretion of the judge. Nasc contends that this wholly inadequate. **We further recommend that the Migrant Integration Policy include a call for the immediate introduction of a specific criminal legal provision that makes committing an offence that is motivated by hate or racism an aggravating factor, allowing for a more severe punishment.** The introduction of a specific offence of this nature would provide adequate redress for victims of racism and hate crime and would send out a strong signal that racism is not tolerated in Irish society. In addition, the introduction of such a provision is required to ensure compliance with the EU Framework Decision on Combating Racism and Xenophobia (2008), which requires member states to ensure that there exists in law 'a proportionate and dissuasive penalty where racist or xenophobic motivation is an aggravating circumstance'.

There is a link between discrimination in employment and access to goods and services (issues covered by the equality legislation) and racist crime; both emerge from the same ideology of bias, prejudice and stereotyping. As stated previously, there is no specific offence in our criminal law to deal with racially aggravated offences. The robustness of a State's policy and legislation in this sphere can serve as a barometer of a State's concern with racist crime. Racial attacks are very serious in their nature; they impact not only on the individual but on communities as a whole, and serve to severely undermine societal cohesion. A strong legal framework sends a clear message that racism will not be tolerated.

#### ***f) Equality Structures***

Equality and respect for fundamental human rights form the cornerstone of a modern liberal democratic state. An expression of a state's commitment to uphold these core democratic values can be found in the laws a state enacts. Generally, it can be said that Ireland scores well here. When viewed together, Ireland has signed up to a large corpus of laws that protect fundamental human rights and equality. Recently, Ireland was elected as a member of the UN Human Rights Council and will sit on the council for a three year term. However, it is through domestic law and policy that we can truly gauge a state's commitment to the core democratic values of human rights and equality. This is especially true of equality as it has a clear internal dimension.

Under Ireland's equality legislation, discrimination based on any of the nine distinct grounds<sup>14</sup> is unlawful. While the equality provisions provide a good framework and clearly articulate the State's commitment to equality – as enshrined in Article 40.1 of the Constitution – it must be noted that a number of exemptions exist that serve to dilute the effectiveness of the legislation. In addition, the definition of 'service' in the equality legislation means that bodies such as An Garda Síochána do not fall under its remit. It is Nasc's contention that the anti-discrimination provision as provided for under the Equality Acts is not robust enough to adequately deal with structural or institutional discrimination.

It is worth noting here the issues that arise from the fact that the existing equality structures in Ireland – namely the Equality Tribunal, the Equality Authority and the Irish Human Rights Commission – are very much in flux at the moment and this uncertainty does not provide a solid framework for the promotion of integration.

The Equality Tribunal, with several other employment rights bodies including the National Employment Rights Authority, the Labour Relations Commission and the first instance functions of the Employment Appeals Tribunal, are due to be merged into one unified body called a Workplace Relations Commission. The legislation for this new body is still pending. It has not yet been confirmed whether complaints under the Equal Status Acts, which are not employment or workplace disputes, will be brought before this body but some commentators believe this to be the 'most likely course of action'. As a member of the Equality and Rights Alliance, Nasc would echo condemnations of this 'cost-saving strategy' as it reflects a lack of commitment by the Irish government to the protection of rights and equality in Ireland.

To date the Equality Authority has been a critical player in advancing the equality and anti-discrimination agenda in Ireland. In addition to its information provision role, the Authority has the competency through the use of strategic litigation to provide free legal assistance to complainants under the Acts. This is an extremely progressive provision. However we have found in our work that migrant communities are often reluctant to use equality bodies like the Tribunal and the Authority. Broadening the scope of the locus standi provision to include NGOs and other third parties is one means of addressing this; another would be the development of a targeted campaign by the Equality Authority to support the migrant community to engage, evoke and realise their rights.

The Government is in the process of merging the only other Irish human rights body, the Irish Human Rights Commission, with the Authority. Nasc, as a member of the Equality and Rights Alliance (ERA), would have significant concerns with the merger as proposed in Bill to establish the Irish Human Rights and Equality Commission (IHREC) 2014, ranging from the considerable control given to the Minister for Justice in the body's

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<sup>14</sup>These grounds are: gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community.

oversight, the criteria for appointments, the limited definition of equality, the powers and functions of the body, the duty on public bodies in relation to discrimination, and the provision of sufficient resources.

**Nasc recommends as a first step a clear action in the Migrant Integration Policy calling for the immediate enactment of legislation effecting the new human rights and equality bodies that have been proposed, i.e. the Workplace Relations Commission and the Irish Human Rights and Equality Commission, and a commitment to adequately funding and resourcing these bodies. In addition, the Policy should include a specific commitment to review the equality legislation to limit the discriminatory potential of the exemptions and the definition of service, as well as broadening the scope of the Acts to allow NGOs legal standing in whatever equality bodies are in place when legislation is finalised. Also, the Policy should include a commitment to raising awareness of the existing equality framework and ensuring access to equality bodies by vulnerable or isolated communities. In addition, these bodies cannot function in isolation – they must be supported to work in cooperation with government agencies and departments to ensure the mainstreaming of an equality agenda across all sectors of government.**

The merger of Ireland's primary human rights bodies coupled with the abolition of the National Consultative Committee on Racism (NCCRI), the lack of a new National Action Plan Against Racism, (which was not redrafted or monitored past 2008), the removal of the Office of the Minister for Integration and the deletion of a Ministerial post charged with promoting integration show that equality and anti-discrimination appear to be viewed as luxuries that the state can ill afford in times of austerity. There is now a significant vacuum in Government policy arising from the fact that there is no longer an expert body to advise on anti-discrimination and integration and no longer a dedicated plan to deal with these critical issues. These acts clearly question the state's commitment to deal with discrimination and promote equality at a time when arguably it is most needed.

#### **IV. Conclusion**

We are deeply concerned that integration is not deemed to be a priority by this Government, at local or national levels. A period of economic austerity has a profound – and arguably greater – impact on ethnic minorities and migrants living in Ireland; it is not a moment for the Government to roll back on its commitment to promoting integration. A multi-faceted and highly participatory approach is needed to promote integration. The commitment and input of statutory agencies, NGOs and communities are required to bring about the real and effective integration of ethnic minorities and migrants into Irish society. Budget cuts must not function to increase levels of racism or stifle anti-racism and integration strategies and initiatives at all levels of society. Promoting targeted and defined integration actions such as migrant employment and education, and anti-racism measures including awareness raising, promoting reporting of racist incidents and calling for institutional,



legislative and policy change are all integral components in making Ireland a truly diverse, multicultural and welcoming country.

## **V. Contact Information**

Nasc would welcome the opportunity to speak to our recommendations in more detail with the Office for the Promotion of Migrant Integration and the Cross-departmental Working Group as part of the Migrant Integration Policy consultation process.

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