

**Submission Cover Sheet:
Joint Oireachtas Committee on
Transport and
Communications hearings on
the abuse of social media and
cyberbullying**



15th March 2013

Overview

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. The information we present in this submission is based on our experiences and work in anti-racism, integration and our third party racist reporting mechanism. We are especially interested in the area of online racial abuse and hate speech in social media.

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A representative of Nasc is willing to appear before the Committee in a public session to discuss the arguments made in this submission.

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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 1,000 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.

Nasc welcomes the opportunity for organisations and individuals to make submissions and have an impact on the development of any future policy and legislation on the abuse of social media. As part of our work promoting integration, we have considerable experience in working with statutory bodies and the community in tackling racism, xenophobia and discrimination. Racism is a persistent problem for many people living in Ireland and online racism is an area we feel does not have adequate coverage or treatment from a legislative, policy or policing perspective.

Nasc operates a third party reporting mechanism that allows victims of racism to report an incident confidentially and receive support and redress. In late 2012, we published a report, *Stop the Silence: A Snapshot of Racism in Cork*, that analyses the racist reports we have received to date and makes recommendations on how to improve integration and combat institutional and individual racism in Ireland.¹ As an active member of the Irish Network Against Racism

¹ The report is available for download from our website at: <http://www.nascireland.org/wp-content/uploads/2012/02/NASC-Report.pdf>

(ENAR Ireland), who themselves are affiliated with the European Network Against Racism (ENAR), Nasc records incidents of racism on INAR's central database. We are especially interested in the area of social media, online racism and harassment, as this is an area in which a growing number of complaints have been made to Nasc in recent times.

Reporting Online Racism

As mentioned, Nasc is involved in and has developed a racist reporting mechanism, where ethnic minorities and migrants who have built up strong and trusting relationships with our organisation can report racist incidents. Nasc thus functions as an intermediary between victims and witnesses of racism and official reporting channels. Third party racist reporting by NGOs such as Nasc has become an effective complement to official reporting procedures, as many racist incidents that occur in Ireland do not officially constitute a crime and are not recorded in the Garda PULSE system.

This mechanism has a number of clear objectives:

- To monitor incidents of racism and provide ENAR Ireland with a clear evidence base to raise awareness and lobby for reform of the current legal framework to adequately address racially motivated crimes.
- To provide redress to victims of racism through our civil legal system, the Equality Authority, the Garda Ombudsman, or other relevant avenues.
- To refer any formal complaint to the Gardaí for further investigation.
- To support victims of racism.

Over the past 18 months since the beginning of this initiative, Nasc has received 10 cases where reports on online racism have been made, making online racism and harassment the second highest category of reports being made to Nasc. The area of online racism is fast becoming an area of concern as, from our experience, it is very difficult to monitor and even more difficult to prosecute.

In cases of online racism, Nasc have encountered a number of areas of concerns. For example, if there was a racist post on an online forum or a social media outlet such as Facebook, if the comment has been deleted and it is under 60 days from the date of deletion, Gardaí would require an FBI warrant to retrieve the information as it is an American-hosted website. Once it is over 60 days very little can be done, as Facebook then delete the content themselves, leaving no evidence. Nasc discovered this after reporting a complaint to the Gardaí about racist comments on a Facebook page. The Gardaí investigated the incident and identified the perpetrator, however, they were unable to prosecute due to the reason stated above.

Thus, in situations where Nasc now receive a report regarding online issues, we print out the post immediately in case the perpetrator deletes the content, which we have found tends to be the case due to the nature of the information. We then take screen captures to monitor the times and dates, and then inform the Gardaí of the situation immediately.

This brings us to another issue which arises when dealing with online racism and hate in social media outlets and online forums. From our experience, An Gardaí Síochána and The Garda Racial Intercultural and Diversity Office (GRIDO) themselves are not entirely clear on the best way in which to respond to such reports. This is through no fault of their own, as no clear guidelines or training are in place for tackling such issues or understanding how the current legislation applies to online racism. In the number of cases we have brought to the Gardaí and GRIDO it has been extremely difficult to get information on how the investigations are progressing. Indeed, it seems that the Gardaí do not feel they can prosecute these offences, especially if the potentially criminal content is later deleted by the user or by the social media site.

Criminal Legislation

Unlike other jurisdictions, there is no specific offence in our criminal law to deal with racially aggravated offenses or racial hate crimes. In the absence of a specific provision, 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. However none of these provisions would apply to online racial crimes.

The only legislation in Ireland that deals specifically with racially motivated behaviour in Ireland is *The Prohibition of Incitement to Hatred Act 1989*. This Act was enacted to ensure compliance with our international legal obligations, in particular Article 20.2 of the United National International Covenant on Civil and Political Rights (ICCPR) which provides that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. The provisions in the Act are confined to what is termed “expression offences” and was never intended to deal with criminal acts where incitement is not a factor. The Act criminalises behavior and expression if they are intended to provoke hatred against a group of person on account of their race, colour, nationality, religion, ethnic or national origins, and 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 behavior itself was likely to incite hatred. This high threshold goes some way to explaining the Act's underuse and paucity of convictions.

Nasc believes that the Prohibition to Incitement to Hatred Act is inadequate to the task of tackling racism in all its forms, especially when it comes to online racism. Clarification that the Act applies to online incitement and harassment is necessary. However new legislation is also required that specifically makes racism a crime, which would include online forms of racism.

Civil Legislation

In addition to a Constitutional commitment to equality in Article 40.1 of the Irish Constitution, the Employment Equality Acts 1998-2011 and the Equal Status Acts 2000-2011 set down distinct rights and specifically prohibits discrimination in employment, vocational training, advertising, collective agreements, and the provision of goods and services. Under the equality legislation discrimination based on any of the nine grounds – one of which is race – is unlawful. Although the existing civil legislation is a comprehensive and progressive model, there is little force behind it and few cases involving racism come to a satisfactory conclusion.

International Conventions

Our international obligations, including our ratification of the UN Convention on Human Rights, the European Convention on Human Rights, the UN Convention on the Elimination of Racial Discrimination, the European Convention on Racism and Intolerance (amongst other treaties), compels the Irish State to combat racism in all its forms, including online racism.

Ratification of the Council of Europe's Convention on Cybercrime and particularly the Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems would send a strong message that Ireland was committed to treating online racism as a crime.

Recommendations

- Clarification that online racism falls under the existing criminal and civil legislation, including section 2 of The Prohibition to Incitement to Hatred Act, 1989 and assurances that such crimes will be investigated accordingly.
- New legislation defining hate crimes which includes racial hate crimes and deals specifically with online hate crimes.

- Training for the Gardaí and the DPP on how to investigate and prosecute online racial crimes.
- Ratification of the Council of Europe Convention on Cybercrime and the Additional Protocol and corresponding legislation to make online racism a crime.
- Funding and support for NGOs in their continued efforts in addressing and monitoring racism online.

Further Information

For further information or clarification of any of the above, please do not hesitate to contact Simon Prim, Racist Reporting Officer, Nasc, the Irish Immigrant Support Centre at: (021) 4317411 or simon@nascireland.org.