

Submission to FLAC for ICESCR Shadow Report

30 May 2014

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 FLAC for inclusion in the Shadow Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's progress to protect the rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESR). Much of Nasc's advocacy and campaigning work to protect and promote access to justice and effective remedies for migrants in Ireland is relevant to protecting migrants' economic, social and cultural rights, and we can provide extensive experience and information for inclusion in the Shadow Report.

The following presents our input into several of the rights included in the ICESCR, as they pertain to our work with migrants and asylum seekers living in Ireland. The submission is organised in line with the rights outlined in the convention, as they relate to our own experience working with migrants. These include: rights to equality and non-discrimination, work, social security, protection of the family, education, housing, and cultural life. However, it is important to note that the experience of migrants crosscuts several of the relevant rights so there is a significant amount of overlap, especially in the area of the rights of asylum seekers living in direct provision, whom we argue experience significant barriers in accessing economic, social and cultural rights across the board.

It is our experience that the austerity measures put in place in Ireland over the last several years have been adopted to justify an erosion of the enjoyment and realisation of the rights contained in the Covenant. This is particularly the case for migrants residing in the State in the areas of non-discrimination and equality, protection of the family, securing adequate standards of employment and education, and accessing social security and

housing. For asylum seekers residing in direct provision, a system without any legislative oversight, the broad spectrum of economic, social and cultural rights are not being realised.

The lack of legislative reform in relation to Ireland's immigration and protections systems is significant in this respect. Reform of the Irish immigration and protection systems was first proposed in 2001. The first Bill was 2008. This was withdrawn when the government at the time fell. A new Bill was published in 2010; this was withdrawn when the last Government fell, and we are currently awaiting the publication of an amended version of the 2010 Bill. Although the 2010 Bill contains some positive reforms, notably the introduction of a single procedure for the consideration of asylum and subsidiary protection claims, it also represents a missed opportunity to make real changes to the efficiency and procedural fairness of the Irish protection system. The previous Minister for Justice, Alan Shatter, committed to re-introducing the IRP Bill 2010 with substantial amendments at an early date in the lifetime of the current government. This did not happen. We are hopeful that the newly appointed Minister for Justice will introduce the Bill in all due haste.

II. Equality and Non-Discrimination

Article 3 of the Covenant requires the State to ensure the right to non-discrimination and the equal rights of all to economic, social and cultural rights. 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.

Nasc's research has shown that NGOs play a lead role in raising awareness of accessing ones rights. Organisations must be adequately funded to provide anti-discrimination and equality strategies. It is our experience that vulnerable ethnic minorities and migrant communities may not be aware of the legal protections afforded to them and NGOs play an integral third party role in helping to change this.

Nasc believes that more has to be done to target minority groups that are particularly vulnerable. Nasc's report, *Stop the Silence: A Snapshot of Racism in Cork* (2012),¹ found that of the 52 reports of racism over a 12 month period, just one report was by a member of the Roma community. This victim made 7 separate reports over the 12 month period, with incidents varying from verbal abuse to criminal damage. The Roma community continues

¹ Available at: <http://www.nascireland.org/wp-content/uploads/2012/02/NASC-Report.pdf>

to be victim to social exclusion and Nasc's 2013 publication *In from the Margins: Roma in Ireland*² highlighted the levels of discrimination this community continue to be subject to. 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.

Furthermore, Nasc's research in *Stop the Silence* found that 72% of Black African respondents claimed to have been discriminated against. Nasc gave respondents a number of options including whether or not they had experienced discrimination from An Garda Síochána, the Department of Social Protection, Community Welfare Officers, HSE or while in education. These figures would indicate that institutional discrimination is a cause for concern.

Ethnic Profiling

Nasc is also deeply concerned by the prevalence of ethnic profiling among the Gardaí and the absence of any legislation to prohibit racial or ethnic profiling. 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.³

Nasc's own research⁴ 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. 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.

² Available at: <http://www.nascireland.org/wp-content/uploads/2013/05/NASC-ROMA-REPORT.pdf>

³European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey, Introduction to the FRA's EU-wide discrimination survey* (2009).

⁴Nasc, *In From the Margins – Roma in Ireland* (2013), available at: <http://www.nascireland.org/wp-content/uploads/2013/05/NASC-ROMA-REPORT.pdf>.

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.

Government Action and Budgetary Decision Making

Tackling discrimination at a statutory level requires strong government responses and targeted funding. The Government has not taken any significant steps to implement this. The merging of the Irish Human Rights Commission and the Equality Tribunal, the reduced role of the Office for the Promotion of Migrant Integration and the 2008 closure of the National Consultative Committee on Racism and Interculturalism (NCCRI) exemplifies the effect of budget cuts in the area of non-discrimination and equality. Nasc believes that these changes have not been reasonable and that budget cuts should not result in the exacerbation of discrimination. It is Nasc's opinion that a multi faceted approach is needed to tackle discrimination. The effects of budget cuts has emphasised the important role third party reporting mechanisms play by acting as an avenue for remedy.

In Law & Policy

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. Encouragingly, 69.1% of survey respondents from an ethnic minority background said they were aware that laws are in place to protect victims of discrimination but, 82.8% of those surveyed by Nasc who had experienced racism or discrimination did not report the incident. Almost half of this amount believed that nothing would happen by reporting the incident.

Nasc 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 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'. Clearer sentencing guidelines to cover racially motivated crime and the inclusion of hate related crime as a category in the Garda PULSE system would send a strong signal that discrimination and racism is not to be tolerated.

Under Ireland's equality legislation, discrimination based on any of the nine distinct grounds⁵ 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.

The merger of Ireland's primary human rights bodies coupled with the abolition of the National Consultative Committee on Racism and Interculturalism (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.

Additional Information

Below is a breakdown of findings from *Stop the Silence: A Snapshot of Racism in Cork* (2012);

- 55% believe racism is a problem in Cork;
- 30.2% have been victims of a racist attack;
- 52.1% have witnessed a racist attack;
- 93.1% of the above percentage witnessed verbal racism;
- 19.5% of the above percentage witnessed a physical attack;
- 21.8% of all respondents experienced discrimination by the Gardai;
- 24.4% of all respondents experienced discrimination while at school/college;
- 14.1% of all respondents experienced discrimination while dealing with banking services;
- 38.5% of all respondents experienced discrimination when entering a service provider/shop;
- 8.2% of all respondents experienced discrimination when seeking employment;
- 25.6% of all respondents experienced discrimination at work;
- 29.5% of all respondents experienced discrimination when looking to rent/buy a place to live;
- 10.3% of all respondents experienced discrimination by healthcare services;

⁵These grounds are: gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community.

- 24.4% of all respondents experienced discrimination by a social welfare/community welfare officer;
- 29.5% of all respondents experienced discrimination at a cafe/restaurant/bar;
- 77.8% of all respondents were aware that laws exist to protect them from discrimination;
- 69.1% of ethnic minority respondents were aware that laws exist to protect them from discrimination;
- 76% of African respondents were aware that laws exist to protect them from discrimination;

Breakdown of Racist Reports (28/05/2014):

- Overall Number: 97
- Individual: Criminal Damage - 06
- Individual: Incitement to Hatred - 10
- Individual: Non-verbal abuse - 05
- Individual: Online Racism - 12
- Individual Physical Assault - 08
- Individual Verbal Abuse - 17
- Institutional: Education - 06
- Institutional: Employment - 04
- Institutional: Garda/Court Services - 09
- Institutional: Goods & Services - 10
- Institutional: Healthcare - 02
- Institutional: Housing - 03
- Institutional: Social Services - 05

III. Work

Article 6 of the Covenant requires the State to recognise the right to work including the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. The State is required to take appropriate steps to safeguard this right.

In 2008, *Migration Nation* noted that 90% of adult migrant population was in employment compared to 65% of the indigenous population.⁶ 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%.⁷ Additionally, in

⁶ Office of the Minister for Integration, *Migration Nation* (2008), pg. 8

⁷ The Integration Centre and ESRI, *Annual Monitoring Report on Integration 2012*

Nasc direct experience in working with migrants we would contend that many migrants are working below their skill and qualification levels.

Migrant Workers

Migrant workers are required to have a work permit in order to work in the State. Work permits are tied to a particular employer and position pursuant to the Employment Permits Act 2006. It is our experience that migrant workers find it very difficult to change employers and are often subjected to workplace exploitation as a result of the inequitable power balance created by the work permit system. Migrant workers are required to remain with their initial employer for a period of 1 year, save in exceptional circumstances, before they can change employment. A change of employment requires the issue of a new work permit and given the difficulty in engaging an employer who is willing to employment a migrant who is subject to work permit conditions, many migrants chose to remain in exploitative work places.

Dependant Family Members of Migrant Workers

Dependent family members, i.e. spouses or children, of work permit holders do not have the right to work in the State without a work permit. Dependents/children can only avail spousal / dependent work permits if the primary work permit holder was granted a work permit before June 2009. The requirement to secure a work permit places a significant barrier on dependent family members accessing employment in the State as the majority of potential employers are unwilling to undergo the administrative procedures required before a dependent of a work permit holder may be employed. There is currently no procedure in place for dependent family members to gain free access to the work place unless they become naturalised citizens, granted at the discretion of the Minister for Justice & Equality, or accrue a Stamp 5 immigration permission after 8 years of residency in the State.

In cases where the family relationship with the work permit holder breaks down, there is no formal procedure in place for dependent spouses or children to gain access to the work place without a work permit, as their immigration permission as a dependent precludes them accessing the work place and social security.

Undocumented workers

Undocumented migrant workers are currently unable to seek redress against employers under current employment legislation. This places them in an extremely vulnerable position as they have no redress against

exploitative employers and abusive workplace practices. The *Employment Permits (Amendment) Bill 2014* proposes an amendment that will allow undocumented migrant workers to take legal action against an employer. Since 2011 Nasc has successfully assisted 20 migrant workers who became undocumented through no fault of their own to obtain a bridging visa in order to regularise their immigration permission and apply for a work permit. Bridging visas are currently granted at the discretion of INIS and it is our experience that undocumented migrant workers are often extremely reluctant to come forward to seek to regularise their status due to the current ad hoc process available for regularisation. The *Employment Permits (Amendment) Bill 2014* proposes to introduce a 'reactivation employment permit' for undocumented migrant workers who previously held an employment permit but became undocumented through no fault of their own. Nasc welcomes the proposal to introduce legalisation that will assist undocumented migrant workers to regularise their immigration permission and re-enter the workplace.

Asylum Seekers

The State report states that:

“Asylum applicants are not entitled to take up paid employment pending a final decision being made on their applications. While their applications for refugee status are being considered, their accommodation, food, clothing and other needs are provided for by the State.”

We submit that, once an initial period of six to twelve months has passed, it is unreasonable that the state continues to deny those persons seeking international protection in the state the right to enter paid employment while they wait for their application to be processed. This measure would put Ireland in line with EU standards on asylum reception.

IV. Social Security

There are numerous barriers facing immigrants who attempt to access social protection in Ireland. The entitlement to access social protection is dependent on the type of immigration permission held by the immigrant. This affects, in particular, immigrants resident in the state on 'dependent' immigration permission, usually spouses or partners of work permit holders. In circumstances of domestic violence, the spouse or partner who does not have access to the labour market also cannot access social protection and is forced through financial necessity to remain in an abusive situation or to face a situation of homelessness and

destitution. The inability to access social protection effectively precludes an entire category of immigrants from accessing sustainable State services and supports for homeless people.

Immigrants who are not *prima facie* barred from accessing social protection due to their immigration status are faced with other barriers. It is our experience that the Habitual Residence Condition, introduced in 2004, has disproportionately affected immigrants. The implementation of the Habitual Resident Condition has been both inconsistent and inaccurate and has resulted in large numbers of migrants being denied their entitlement to access social protection.

Nasc believes that the Irish State is failing to meet its obligations under Article 9 of the Covenant. In 2011, Nasc co-published a report, *Person or Number? Issues faced by Immigrants in Accessing Social Protection*,⁸ which detailed the failures and inadequacies in the Irish social welfare system including failure to provide correct information to applicants, failure to allow applicants to apply for benefits, failure to apply the law correctly and inappropriate, racist and aggressive language used by staff. These issues resulted in some migrants becoming homeless or destitute.

In the latter half of 2013 over 70 people came to Nasc for assistance vindicating their social protection entitlements. Of the 20 appeals to the Social Welfare Appeals Office (SWAO) Nasc dealt with during this period, 18 involved individuals or families who had been left without any means of social assistance and seven had to access homeless services at least once while awaiting a decision on their case. One client waited twenty months for a decision on his appeal during which time he and his wife had no form of income and lost their home due to rent arrears.

Roma

Nasc believes the rights of Roma to social security are particularly being negatively impacted by failures in the Irish social welfare system. In 2013, Nasc produced a report, *In from the Margins – Roma in Ireland: Addressing the Structural Discrimination of the Roma Community in Ireland*, which documented the barriers Roma living in Ireland experience in accessing necessary services such as social protection, leaving that community at particularly high risk of destitution and homelessness.

Of the 33 Nasc case files reviewed for the report, 18 of them dealt with issues in accessing social protection. In the context of the Roma, this is the single greatest issue presenting in Nasc legal clinics. All 18 cases were deemed by Nasc legal staff to have an underlying entitlement to the benefit claimed. The two main barriers identified were the habitual residence requirements and the availability to work requirement. A number of

⁸ Available at: <http://www.nascireland.org/wp-content/uploads/2012/05/Person%20or%20Number%20report%20Feb%202011.pdf>.

issues were identified in the research, including lack of knowledge about the complexities of EU nationals' rights and entitlements amongst deciding officers, significant delays in processing of applications, as well as obstruction in processing applications and a marked resistance to grant payments to Roma and misapplication of the HRC.⁹

V. Protection of the Family

Family Reunification

Irish citizens and migrant workers do not have a legislative right to family reunification with immediate family members. These applications are decided on a discretionary basis by the Irish Naturalisation and Immigration Service (INIS). This means that Irish citizens are treated much less favourably than their EU counterparts who are living in Ireland. We believe that Irish citizens should have access to family reunification on the same basis as their EU citizen counterparts. We believe that Irish legislation in relation to family reunification for this category of migrants should be brought into line with the provisions of the EU Directive on the Right to Family Reunification. Ireland has opted out of this Directive, causing us to fall behind best practice in the EU and internationally.

At present, no appeals process for those dissatisfied with an adverse decision related to family reunification exists – the only option at present is to initiate judicial review proceedings. This is not an appropriate remedy as it is extremely expensive for citizens to take a case to the High Court to judicially review a negative decision and it overburdens the High Court with immigration related judicial review applications. We call for the introduction of an independent Immigration Appeals Tribunal to relieve the pressure on the Irish courts while offering an inexpensive, expedited appeals process to applicants.

Nasc believes that the State is not meeting its obligations under Article 10 of the Covenant. Nasc welcomes the clarity that the recently published '*Policy Document on Non-EEA Family Reunification*', Department of Justice and Equality 2013 has provided in the area of family unity however we believe that this policy does not provide the widest possible protection and assistance to the family, particularly those with dependent children. We are particularly concerned by the consistent reference within the policy document to decisions made by family members to voluntarily separate and that the State does not bear an obligation to reunite the family in these cases.

⁹ Nasc, *In from the margins – Roma in Ireland*, available at: <http://www.nascireland.org/wp-content/uploads/2013/05/NASC-ROMA-REPORT.pdf>

A major concern is the restrictive economic policies in places for people, including Irish citizens who wish to reunite with spouses. Comparatively, the income thresholds set out in the policy document are quite high and effectively bar many people from applying for reunification with their family. For those who are ill or unable to work due to disability or old age there is no possibility that they will be in a position to meet the income requirement. It is also our experience that single parent families in particular are unable to reunite with family members in Ireland as they are unable to meet current income thresholds.

Separated Children

Article 10 of the Covenant provides for the protection of children and young people. Although the State notes in its report that the best interests of children are being taken into consideration for asylum seeker children and particularly separated children seeking asylum, Nasc has grave concerns that the rights of this group are not being adequately protected by the State. Nasc is particularly concerned that the residential capacity in Dublin to house separated children is too little. Especially in the case of 16-18 year olds who will usually stay in residential care until they are 'aged-out' and are dispersed into adult accommodation, as opposed to younger children who are most likely fostered to families throughout the country. For that older age group who are often left in residential care, there are only 6 beds in a single residential unit provided for this category of separated child.

In addition, Nasc has found that the best interests of the child are not being upheld when a situation of age-dispute arises and advises that the state must provide alternative, more appropriate accommodation for these vulnerable minors. Nasc has worked with 4 separated children (3 of which are no longer minors) who were placed in adult hostel accommodation rather than being cared for by the HSE in either a foster or residential setting as required. This is an extremely vulnerable group of young people, and putting them into adult accommodation could put them at serious risk. We are concerned in case there is some correlation between a lack of capacity for housing separated children and the high number of age-disputes for unaccompanied minors. We would suggest in age dispute situations to treat the young person as a minor until proven otherwise, and not the other way around.

In addition, the provision of aftercare to separated children who are transferred to adult services once they reach the age of 18 must be re-examined. 'Aged-out minors' are a vulnerable group of care leavers who often become traumatised by the transition to Direct Provision and struggle to adjust to the new living environment which can lead to the development of mental health issues, such as depression and anxiety. In our experience of working with 2 aged-out minors that were formerly in foster care and now live in direct provision, young people are provided no support during the transition period or afterwards by the state. Nasc believes that government policy must be changed to afford aged-out minors the same system of aftercare as Separated Children granted status and other residents and citizens.

VI. Education

Community education provides a vital link to education for ethnic minorities experiencing disadvantage and has been especially successful in targeting those most hard to reach learners. It is effective as a means to combat social exclusion and re-connect those to education and the labour market.¹⁰ Community education is supported by the Department of Education through Education and Training Boards (ETB's) and SOLAS. The sector is currently facing challenges posed by current labour market activation policy and the employability agenda. The recent reform of the Further Education & Training Sector (following the introduction of the Education and Training Boards Act 2013) in Ireland poses new challenges to the progress of community education.

While Community Education has been recognised in the new Further Education and Training Strategy (FET)¹¹ as an important component of further education, the sector has often been the least well funded stream of education and lacks multi-annual, dedicated funds which impacts the long term planning and sustainability of the sector. Additionally outcomes that are focused on accreditation and employment cannot compete with more well resourced, intensive FET programmes in private and statutory sectors. As hard to reach learners that have experienced disadvantage and exclusion from education require more support, resources and time, swift outcomes are not possible to achieve.

The Quality and Qualifications Ireland (QQI) fees schedule will also impact on the delivery of community education. High fees proposed are unsustainable for community education providers who often manage limited and uncertain funding resources. Unlike private providers, these organisations cannot recoup the cost from learners who experience poverty and barriers to work. Fees will impact the ability of the provider to maintain the quality assurance requirements of QQI and may result in the loss of a vital resource for learners.¹²

There is concern that these measures will further impact the right to education under the CESCR for the most vulnerable groups.

Nasc has been delivering courses to disadvantaged learners through community education for over thirteen years. We have traditionally experienced a high learner retention rate, with over 600 people accessing our courses in that time. Approximately 80% of students either progressed to further education i.e. PLC, FAS/SOLAS

¹⁰ 'More than just a Course' (AONTAS Research on the outcomes and benefits of Community Education, commissioned by DES 2011) available at http://www.aontas.com/download/pdf/community_education_more_than_just_a_course.pdf

¹¹ SOLAS (2014) 'Further Education and Training Strategy 2014 – 2019' available at <http://www.education.ie/en/Publications/Policy-Reports/Further-Education-and-Training-Strategy-2014-2019.pdf>

¹² AONTAS 'Presentation to the members of the joint Committee on education and social protection on the role and potential of community education', 2014; The Qualifications and Quality Assurance (Education and Training) Act 2012.

courses, Third level degree/diploma courses or entered employment. In 2008, Nasc produced a report, *Evaluating the Barriers to Employment and Education for Migrants in Cork*, which documents some of the issues migrants experience in accessing education in Ireland.¹³

Asylum Seekers

Asylum seekers living in direct provision are entitled to avail of pre-school, primary and post-primary education. Although there are no clear policies preventing asylum seekers from accessing third level education, in Nasc's experience the non-EU fees are prohibitive and function to exclude asylum seekers from accessing training that would allow them to upskill and enter the labour force upon getting refugee status.

Separated Children

Separated children who enter the State as asylum seekers are not entitled to State support should they wish to avail of vocational education and training upon turning 18 years of age. The lack of State funding effectively prohibits this vulnerable group from continuing in education. Separated children in the asylum process receive a weekly allowance of €19.10 and do not have the financial means to enter into vocational education and training. Nasc has provided support to 28 separated children to access vocational education and training through a dedicated Separated Children Education Fund since July 2012. This fund has enabled separated children, who would otherwise have been unable to access education due to their lack of financial resources, to continue with their education. More must be done by the State to ensure access to education for this particularly vulnerable category of young people.

VII. Housing

Although the guidelines governing eligibility requirements for social housing were changed in 2012 to clarify which categories of non Irish nationals residing in Ireland were eligible for social housing (Circular 41/2012¹⁴), and we welcome this change as we believe it begins to fulfil Ireland's obligations to protect the rights of EEA and non-EEA long term residents in accessing adequate housing without discrimination, we continue to have

¹³ Nasc Irish Immigrant Support Centre (2008) *Evaluating the Barriers to Employment and Education for Migrants in Cork*, Available at <http://www.nascireland.org/wp-content/uploads/2012/02/Barriers-to-Employment-and-Education.pdf>

¹⁴ Available at: <http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,29412,en.pdf>

concerns about the application of these guidelines by local authorities and widespread discrimination by local authorities in their discretionary control of housing lists.

It has come to our attention that the provisions of Circular 41/2012 are being applied incorrectly and inconsistently by some Local Authority social housing assessment offices in relation to the residency requirement for legal residents from outside the EEA to demonstrate that they have been granted permission to reside in the State. The Nasc legal service is currently advocating on behalf of a number of individuals with local authorities in order to clarify entitlements to access social housing. We found it very telling for instance during our research on structural discrimination experienced by the Roma community, that none of Nasc's Roma clients – at the time the report was compiled – were residing in social housing, despite the fact that EEA residents who are resident in Ireland longer than 3 months and comply with the provisions of the EU Free Movement Directive are eligible to apply.

In addition, we are concerned that long-term immigrants who fulfil the eligibility requirements for social housing may still be experiencing discrimination because of their nationality in the determination of priority, by being overlooked in the order of priority or left waiting on housing lists for longer periods of time than Irish nationals.

For migrants who are not eligible for social housing or who have been (perhaps wrongfully) refused social housing due to discrimination, private rented accommodation is the only option. In our experience, migrants – particularly identified vulnerable migrants such as Roma – experience significant discrimination in accessing private rented accommodation as well, including experiencing racism and verbal abuse from landlords and other tenants. They also experience difficulties accessing rent allowance (see social security above). Additionally, due to a rise in numbers of people accessing rented accommodation, there is a growing number of landlords refusing rent allowance. We contend this disproportionately impacts migrants and other disadvantaged groups, and we are seeing an increasing number of clients at risk of homelessness.

VIII. Cultural Life

Article 15 of the Covenant requires the State to recognise the right of everyone to participate in cultural life. General Comment No. 21 imposes a 'specific and continuing obligation' on the State to take 'deliberate and concrete measures' to fully implement that right. Nasc does not believe the State is doing enough to fulfil its obligations in this respect, in promoting the cultural and social integration of migrants into Irish society.

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.

A key aspect of integration is access to justice and services through information provision and advocacy – which form the cornerstone of Nasc’s work. For many years Nasc has been a lead organisation in developing and implementing the Cork City Integration Strategy¹⁵, 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.

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 suggest 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.¹⁶

IX. Direct Provision

In our experience, we believe asylum seekers living in direct provision experience failures in the realisation and protection of their economic, social and cultural rights across the board. Access to work, education, protection of the family (especially children), equality and non-discrimination, health, adequate standard of living, social security, and cultural life are all impacted by being housed in institutionalised settings and isolated from Irish society.

¹⁵ *Connecting Communities: The Cork City Integration Strategy 2008-2011*, available at: <http://www.nascireland.org/wp-content/uploads/2012/02/Connecting-Communities.pdf>

¹⁶ For more information on integration, see Nasc’s recent submission to the Office for the Promotion of Migrant Integration on the development of a new migrant integration policy, available at: <http://www.nascireland.org/wp-content/uploads/2012/02/OPMI-Integration-Submission.pdf>

Some of these have been highlighted in the above sections, such as the lack of access to work and issues for aged out and age disputed minors. In addition, the direct provision system severely hampers residents' rights to an adequate standard of living. This issue, in the context of food, has been documented by Nasc's recent report *What's Food Got to Do With It? Food Experiences of Asylum Seekers in Direct Provision*,¹⁷ which found that the food in direct provision is inedible, monotonous, too strictly regulated and culturally inappropriate; it does not represent the cultural and religious needs of residents; and it has a negative impact on the health and well-being of families and children particularly. More importantly, this report highlights that negative experiences of food reflect wider issues with the direct provision system more generally and the broken asylum and protection system that allows men, women and children to live in limbo for several years, not allowed to work, with very little money or supports, and isolated from Irish society in hostels that regulate and dictate their actions and movements.

In addition to issues with food, Nasc receives numerous complaints from residents that range from the accommodation (dampness, overcrowding), to lack of privacy, to lack of play and study areas for children, to verbal abuse and racism from staff. Inspections are carried out by a company contracted by the Reception and Integration Agency; they should be carried out by an official, independent body such as HIQA. Further, asylum seekers rarely make official complaints for fear of retaliation from staff and concern that a complaint might result in a transfer or worse, a negative recommendation on their asylum application. A lack of an independent complaints mechanism – a basic necessity in any institutionalised residency setting – is significant here.

Although asylum seekers have a roof over their head and food on the table, it does not constitute an adequate standard of living, nor does it protect residents' rights to health or family. Payments made to asylum seekers are not standard social welfare payments and have never been changed for inflation, which means residents receive the same payment in 2014 as they did when the system was established in 2000. Direct provision has created a second tier of residency in Ireland, that apparently is not subject to the same human rights standards as any other body or institution in the State.

¹⁷ Available at: <http://www.nascireland.org/wp-content/uploads/2014/05/WhatsFoodFINAL.pdf>. See also Nasc's 2008 report, *Hidden Cork: The perspectives of asylum seekers on direct provision and the asylum system in Ireland*, available at: http://www.nascireland.org/wp-content/uploads/2012/02/dp_report.pdf.