



Submission Cover Sheet: Joint Oireachtas Committee on Justice, Defence and Equality on Integration, Multiculturalism and Combating Racism

11 October 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 promoting integration and combating racism.

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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.

Submission to Joint Oireachtas Committee on Justice, Equality and Defence on Integration, Multiculturalism and Combating Racism

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 a submission to the Justice Committee on integration, multiculturalism and combating racism. Nasc does a significant amount of work promoting integration at a local and national level. 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 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

Ireland has become an increasingly diverse society with a significant proportion of our workforce now migrants – 15% according to the 2011 Census.¹ In October 2012, the Central Statistics Office's (CSO) press release on Migration and Diversity from the 2011 census showed that the number of migrants living in Ireland now stands

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

² Central Statistics Office, Census 2011 Profile 6 Migration and Diversity, available at:

at 544,357, representing 199 separate nations.² 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.

III. Integration

Integration is an intercultural process which places rights and obligations on the state, majority and minority communities, to ensure all individuals have the opportunity to participate in economic, social, cultural and political life on an equal basis and without having to relinquish one's cultural identity. (Connecting Communities, the Cork Integration Strategy, 2008-2011)

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.

² Central Statistics Office, Census 2011 Profile 6 Migration and Diversity, available at:

<http://www.cso.ie/en/census/census2011reports/census2011profile6migrationanddiversity-aprofileofdiversityinireland/>

- 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.

Nasc has taken the leadership in the development of a new city wide integration strategy which is due to be completed in late 2013. 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 and work to promote integration undertaken at a local level 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. As a first step we would call upon the Government to publish the net Immigration Residence and Protection Bill, to enshrine the rights of migrants and their families in Ireland. This is an essential first step.

IV. Racism

Combating racism 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 Inquiry³ 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 Macpherson inquiry also led to the development of the definition of racism that is now employed by An Garda Síochána, Nasc and the Irish Network Against Racism (ENAR Ireland), 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. 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.⁴ This is supported by anecdotal evidence and surveys noting a widespread perception that racial incidents are on the rise in the midst of recession.⁵ 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.⁶

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. Nasc strongly recommends that the government renew funding for an independent body to collect, analyse and disseminate reports of racist incidents.

³ 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>.

⁴ Migrant Rights Centre Ireland, Racism and Migrant Workers in Ireland, Policy Paper (2010).

⁵ Millward Brown Lansdowne, Public Attitudes Towards Immigration Survey Commissioned by the One Foundation (2012).

⁶ Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination, Ireland (2011).

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 included what Seamus Taylor has termed “minority ethnic community confidence”⁷ 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 is designed to complement the Garda PULSE system. This is an innovative and ground-breaking mechanism which returned an element of control to the victim. All reported incidents are followed up and formal incidents, which are criminal in nature, were 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
- 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

⁷ 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.

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.

In late 2012, Nasc published a report, *Stop the Silence: A Snapshot of Racism in Cork*⁸, 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 city wide 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

Over the last nine months Nasc dealt with 90 reports of racism consisting of:

Breakdown of Racist Reports (2012 – 2013)	90 cases
Institutional Racism	29 cases
Verbal abuse	16 cases
Harassment	13 cases
Online of cyber racism	10 cases
Hate speech	10 cases
Criminal damage	7 cases
Physical assault	5 cases

⁸ Available at: <http://www.nascireland.org/wp-content/uploads/2012/02/NASC-Report.pdf>

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.

Ethnic profiling

Nasc is also deeply concerned by the prevalence of ethnic profiling among the Gardai 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.⁹

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.¹⁰ Nasc's own research carried out among the members of the Roma community indicated that 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.¹¹

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. We would 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.

⁹ European Network against Racism, http://cms.horus.be/files/99935/MediaArchive/publications/ENAR_OSJI%20factsheet%20ethnic%20profiling%20Oct09.pdf.

¹⁰ European Union Agency for Fundamental Rights, European Union Minorities and Discrimination Survey, Introduction to the FRA's EU-wide discrimination survey (2009).

¹¹ Nasc, In From the Margins – Roma in Ireland (2013), available at: <http://www.nascireland.org/wp-content/uploads/2013/05/NASC-ROMA-REPORT.pdf>.

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 on line 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 would call upon the Government amend the current Act to adequately address on line 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 and we 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'.

Under Ireland’s equality legislation, discrimination based on any of the nine distinct grounds¹² 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, especially the exemption on nationality, 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.

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 other jurisdictions, 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.

V. Conclusion and Recommendations

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 approach is needed to tackle racism and 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. Raising awareness of racism, promoting reporting of racist incidents and campaigning for institutional, legislative and policy change are all integral components in making Ireland a truly diverse, multicultural and welcoming country.

Recommendations include:

- A coordinated approach to be taken to National Integration planning and monitoring.
- A national strategy and action plan for integration with solid anti-racism measures.
- The immediate introduction of a specific criminal legal provision that makes committing an offence that is motivated by hate or racism an aggravating factor.

¹² These grounds are: gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community.

- Flanking measures to tackle racism, including anti-racism and diversity training for communities, public servants and An Garda Síochána; funding for the expansion of third party racist reporting; and adequate resources for equality and anti-racism monitoring bodies.
- Review of the equality legislation to limit the discriminatory potential of the exemptions and the definition of service.
- Reform of the Incitement to Hatred Act to provide for online racism.
- Racism and other forms of discrimination to be included as an obligatory category in the Garda PULSE system.