

Reforming the Criminal and Civil Provisions on Racism in Ireland

Racism is a reality for migrant and ethnic minorities living in Ireland. Racism is a significant barrier to integration and limits opportunities for building a cohesive and connected society based on mutual respect and equality. Many types of racist incidents do not constitute a crime under Irish law, and they are not recorded in the Garda PULSE 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. As a lead organisation in the Cork City Integration Strategy, Nasc has worked for several years with its partner organisations in Cork to promote integration and combat racism. Nasc's third party racist reporting mechanism emerged as a result of concerns about underreporting of racist incidents and was designed to complement official reporting channels.

Since June 2012, Nasc has received 81 racist reports through our third party reporting mechanism. This included 59 cases of individual racism and 22 cases of institutional racism. A breakdown of the types of reports received shows the wide range of racist incidents occurring:

Breakdown of Racist Reports	June 2012 – May 2013
Discriminatory Treatment	20 cases
Verbal Abuse	16 cases
Harassment	13 cases
Online Racism	10 cases
Incitement to Hatred	10 cases
Criminal / Property Damage	7 cases
Physical Assault	5 cases

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.**

In November 2012, Nasc published a report, *Stop the Silence: A Snapshot of Racism in Cork*, which analysed the racist reports received by Nasc since the establishment of the mechanism in 2011 and included a snapshot survey on people's attitudes to racism in Cork. The report also included an critical analysis of the existing legal and policy framework in Ireland, and its failures in addressing the persistent problem of racism and underreporting of racist incidents. The findings in the report showed significant failures in the existing criminal provisions for prosecuting racist and hate crimes. Under Ireland's equality legislation, discrimination based on any of the nine distinct grounds is unlawful. These grounds are: gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. **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. **Unlike 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.

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 was 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 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. **The introduction of a specific provision to deal with racially aggravated offences coupled with clear sentencing guidelines covering racially motivated crimes would send out a strong signal that racism is not tolerated in this jurisdiction.** In addition, the introduction of a provision to ensure 'a proportionate and dissuasive penalty where racist or xenophobic motivation is an aggravating circumstance' is required to ensure Ireland's compliance with the EU Framework Decision on Combating Racism and Xenophobia (2008). Such a penalty is absent from our current legislative framework.

Recommendations

- **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 account for online racism.**
- **Legislative reform to account for racially aggravated offences.**
- **Clear sentencing guidelines to cover racially motivated crimes.**
- **Racism to be included as a category in the Garda PULSE system.**

As part of Nasc's ongoing work to combat racism and promote integration, we are asking people to support our call for legislative and policy reform. We will be hosting a high level conference, '**Race and Hate Crime in Ireland**', in September 2013 to begin a national dialogue on the effectiveness of our criminal and civil provisions in tackling racism and hate crimes. More details about the conference will be announced shortly. For more information about our campaign to fight racism or to find out what you can do, check out our website at www.nascireland.org, ring us at (021) 4317411 or email reportracism@nascireland.org.

About Nasc

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 is the only NGO offering legal information and advocacy services to immigrants in Ireland's second city, Cork.