



## Submission to the United Nations Universal Periodic Review

### Twelfth Session of the Working Group on the UPR Human Rights Council 6<sup>th</sup> October 2011

Nasc<sup>1</sup>, The Irish Immigrant Support Centre, 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 lawyers assist some 1,000 immigrants in navigating Ireland's protection, immigration and naturalisation systems annually. We also assist migrants and ethnic-minority Irish people who encounter community-based and institutional racism and discrimination.

## I. BACKGROUND AND FRAMEWORK

### A. Scope of international obligations

#### 1. Human rights proofing of proposed legislation:

We note that a broad programme of domestic legislative reform in the areas of protection, immigration, naturalisation, and anti-racism is urgently needed, and we urge the state to adopt procedures to ensure that the State remains in compliance with its obligations under UN conventions when drafting new legislation.

### B. Constitutional and legislative framework

#### 2. Introduce legislation providing for a single procedure for assessing asylum claims, as a matter of urgency

The lack of a single procedure for assessing asylum claims has led to a protection gap, whereby people seeking protection wait years for a final decision. Draft legislation dealing with "Immigration, Residence and Protection" was introduced by the outgoing government in 2008 and 2010. Neither Bill was passed. We agree very strongly with the UNHCR, which has urged the government to consider passing a discrete legislative measure as soon as possible to introduce a single procedure mechanism as a more comprehensive immigration Bill would be likely to face significant delay in the legislature.

#### 3. Introduce legislation providing a fair and efficient system for dealing with general immigration matters

There was a very broad consensus among rights advocacy organisations that particular aspects of the Immigration Residency and Protection Bill of 2010 were not in compliance with Ireland's international human rights obligations<sup>2</sup>. New draft immigration legislation should include an independent appeals mechanism to provide adequate redress for all immigration related decisions, and a framework for family

<sup>1</sup> Our name is based on the Irish word for "link."

<sup>2</sup> A Coalition of seven NGOs objected to the provision in the Immigration, Residence and Protection Bill 2010. Their primary concern with the proposed legislation was that it would lead to *refoulement*. The text of the coalition's campaign document is included in the Appendix.

reunification all legally resident migrants, including the non-EEA spouses of Irish nationals. It should provide a path to independent residency for victims of domestic abuse whose immigration status is tied to that of their spouse. It should avoid the introduction of deportation without notice or adequate safeguards against refoulement, and it should end the current practice of the detention of immigrants (including asylum seekers) on the basis that they are unable to produce identification (Section 12 Immigration Act 2004).<sup>3</sup>

#### **4. Commence consultation with civil society with a view to introducing legislation providing a fair and efficient system for the assessment of applications for citizenship by naturalisation.**

Non-nationals who have been legally resident in Ireland for four years can apply for citizenship. Valid applications are granted or refused on the basis of ministerial discretion, and there are no clear guidelines as to what factors influence the exercise of that discretion. Applications take on average 2 years to process. In 2009, only 18% of the 27,000 applications made were successful. We recommend that the government holds open consultations with civil society organisations, with a view to developing a human rights-based approach to citizenship and integration, and to fostering an inclusive society in which all of our long-term residents can access their right to participate in public and political life.

#### **5. Expand the remit of the Office of the Ombudsman to include asylum seekers, immigration and naturalisation<sup>4</sup>**

Ireland's Ombudsman has stated that "[t]here is little evidence that the improvements in public administration generally [...] have been a feature of the administration of [all issues relating to immigration, refugees, asylum seekers, and naturalisation], which have remained outside of the Ombudsman's remit."<sup>5</sup> Both the Ombudsman and the Committee on the Rights of the Child have called on the government to expand the remit of the Office of the Ombudsman. We urge the government to do so as a matter of urgency, as we believe that this would lead to an improvement in the quality of administrative procedures, many of which effect or deny the rights of immigrants and applicants for protection. We note that many applicants affected by improper decision in relation to general immigration and asylum applications currently have no alternative to High Court Judicial Review proceedings.<sup>6</sup>

#### **6. Introduce legislation to effectively combat incitement to hatred in the form of xenophobia and racism**

There has been some debate as to whether Ireland's Prohibition of Incitement to Hatred Act, 1989 is effective and sufficient to comply with Ireland's obligations under the Convention on the Elimination of all forms of Racial Discrimination. No conviction has ever been secured on the basis of the existing legislation. We urge the government to strengthen the legislative framework in order to effectively criminalise racist and xenophobic incitement to hatred.

#### **7. Introduce legislation so that racism can be considered an aggravating circumstance in criminal offences**

We urge the State to introduce a provision that makes committing an offence with a racist motivation or aim an aggravating circumstance allowing for more severe punishment.<sup>7</sup>

#### **8. Expand Ireland's Equality Legislation to include Government departments and functions**

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<sup>3</sup> "Immigration Issues in the District Court" by Ángel Bello Cortés, Kelleher O' Doherty Solicitors, is included in the Appendix.

<sup>4</sup> We note the recommendation of the Committee on the Rights of the Child (No 14. 2006): "Review and propose amendments to the specific provisions which limit the scope of the Ombudsman's Office's investigative powers with a view to eliminating possible gaps which may result in a violation of the rights of migrants, refugees and asylum-seekers"

<sup>5</sup> "Developing and Optimising the role of the Ombudsman", February 2011, The Office of the Ombudsman

<sup>6</sup> Courts Service Annual Report 2009 (the most recent available): 57% of all judicial review applications relate to asylum.

<sup>7</sup> We note the recommendation of the Committee on the Elimination of Racial Discrimination (No. 11 2005): "That the State Party introduce in its criminal law a provision that makes committing an offence with a racist motivation or aim an aggravating circumstance allowing for a more severe punishment."

The state's administrative and policing functions are not subject to the equality standards expected of private and commercial entities. This would help to counter and prevent institutional racism, examples of which we regularly encounter.

- In 2008, a condition was introduced that recipients of social welfare be “habitually resident” in Ireland. Appeals of social welfare decisions – 50% of which are successful – have doubled since then, as the condition is routinely misapplied to people of foreign origin.
- An EU Fundamental Rights Agency survey<sup>8</sup> found that Sub-Saharan Africans in Ireland experienced the highest rate of police stops of any ethnic minority in the 27 European Countries surveyed.

### **C. Institutional and human rights infrastructure**

#### **9. Ensure that a national body is charged with the collection and analysis of indicators of racial discrimination, and that a national reporting mechanism is available to persons who experience racism**

Our experience and research indicates that racial discrimination, and verbal and physical manifestations of racism, are a reality in Ireland. An EU Fundamental Rights Agency Survey of 2008 found that Sub-Saharan Africans in Ireland were among the most discriminated against groups in Europe.<sup>9</sup> A survey conducted in Cork in 2010 indicated that 70% of the residents of the city believe that racism is a problem there.<sup>10</sup>

We urge the government to be aware that “[t]he absence or small number of complaints, prosecutions and convictions regarding acts of racial discrimination in the county should not be thought of as positive, as it may indicate that victims have inadequate information about their rights, they fear social censure or reprisals, have limited resources, have a lack of trust in the police, or authorities are insufficiently alerted to or are aware of offences involving racism.”<sup>11</sup>

We note that a government agency formerly charged with monitoring racism and recording reports of racist incidents (the National Consultative Committee on Racism and Interculturalism) was closed in December 2008, and we urge the government to ensure that an appropriate government agency is charged with carrying out its functions.

#### **10. Allocate sufficient resources to the Irish Human Rights Commission, the Equality Authority, and the Equality Tribunal.**

In particular, we note that rights awareness among migrants is low. The EU-MIDIS survey found that 57% of Sub-Saharan Africans in Ireland were not aware that there is a law that forbids discrimination on the basis of ethnicity when applying for a job.<sup>12</sup> A 2010 survey conducted in Cork reflected very similar results. 70% of the migrants surveyed in Cork had not heard of the Equality Authority.<sup>13</sup>

### **D. Policy Measures**

#### **11. End the practice of the long-term accommodation of asylum-seekers and their children in residential institutions**

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<sup>8</sup> The EU Fundamental Rights Agency Minorities and Discrimination Survey, Main Report (EU-MIDIS) (European Union Agency for Fundamental Rights, 2009). 23,500 people from various ethnic minority and immigrant groups were surveyed across the EU's 27 member states.

<sup>9</sup> Ibid, p 9: “Looking at a breakdown of results according to specific groups in Member States, the “top ten” experiencing the highest levels of discrimination over a 12 month period...[included] Sub-Saharan Africans in Ireland (54%)”

<sup>10</sup> “Cork City Integration Strategy Integration Survey”, published in “Connecting Communities: The Cork City Integration Strategy 2008 – 2011, Mid-term Review” (Cork, February 2011)

<sup>11</sup> General Recommendation 31: CERD: General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system from A/60/18, pp. 98-108.

<sup>12</sup> EU-MIDIS Data in Focus Report “Rights Awareness and Equality Bodies” (European Union Agency for Fundamental Rights, 2010), p. 6.

<sup>13</sup> “Cork City Integration Strategy Integration Survey”, published in “Connecting Communities: The Cork City Integration Strategy 2008 – 2011, Mid-term Review” (Cork, February 2011)

It is the practice in Ireland that asylum-seekers and their families are housed in residential institutions until such time as their claims for asylum, subsidiary protection and humanitarian leave to remain are assessed. Many spend five years or more living in cramped conditions, without access to catering facilities. We urge the government to ensure that the practice is reviewed as a matter of urgency and that the institutional accommodation of families and in particular children is discontinued other than as a short-term measure.

## **12. Enable collection of disaggregated data by the Garda Complaints Commissioner**

Complaints made to the Garda Complaints Commissioner are not disaggregated, so that it is not possible to ascertain how many of the complaints made related to racism/ discrimination on ethnic grounds.<sup>14</sup>

## **13. Introduce a provision that makes the committing of an offence with a racist motivation or aim an aggravating circumstance allowing for a more severe punishment.**

We note that this has been recommended by CERD<sup>15</sup> and that it is required under the European Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

## **II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **A. Cooperation with human rights mechanisms**

No comment

### **B. Implementation of international human rights obligations**

#### **1. Equality and Non-Discrimination**

**14. Irish Nationals experience reverse discrimination affecting family unity.** Unlike the spouses of EU citizens working in Ireland, the non-EEA spouses of Irish citizens do not enjoy the right to reside in the state.

**15. Section 12 of the Immigration Act requires the Gardaí to engage in ethnic profiling and is discriminatory; it requires persons suspected of being “non-nationals” to carry identification**

#### **2. Right to life, liberty and security of the person**

**16. Immigrants including asylum-seekers are detained under Section 12 of the Immigration Act because they cannot produce identification.** Certain categories of persons, particularly asylum seekers from certain countries, may potentially commit this offence perpetually, even after serving a sentence for same.

#### **3. Administration of justice and the rule of law**

**17. The state does not provide disaggregated data regarding the nature of complaints made against the Garda Síochána.** This means that it is impossible to know whether reports that indicate that sub-Saharan Africans living in Ireland are the subject of disproportionate policing<sup>16</sup> are anomalous or indicative of an emerging and worrying trend.

**18. The quality of decision making in protection applications is very poor, and the process is slow and lacks transparency.** 57% of applications for Judicial Review in the Irish High Court are asylum-related. The process takes several years to complete. Previous decisions are not published.

<sup>14</sup> We note the Human Rights Committees’ recommendation (No. 14 , 2008) that “The state should take immediate measures to ensure the effective functioning of the Garda Síochána Ombudsman Commission. Provide more detailed information to the Committee regarding the types of complaints filed with the Ombudsman Commission.”

<sup>15</sup> CERD No. 11, 2005: “Recommends that the State party introduce in its criminal law a provision that makes committing an offence with a racist motivation or aim an aggravating circumstance allowing for a more severe punishment.”

<sup>16</sup> Ibid.

**19. Decisions made by department of justice officials in respect of general immigrations matters may not be appealed to any forum.**

**4. Right to privacy, marriage and family life**

**20. The spouses of Irish citizens and of Irish citizen children are sometimes deported from the state.**

**5. Freedom of religion or belief, association, and peaceful assembly and the right to participate in public and political life**

**21. Ireland's rate of naturalisation of long-term legal residents is low (less than one third of the EU average). There is no clear pathway to citizenship for long term legal residents.**

**6. Right to work and to just and favourable conditions of work**

**22. Asylum seekers are not allowed to work or study in the state, even when their application has not been resolved in a year or more.**

**7. Right to social security and to an adequate standard of living**

**23. Asylum seekers are obliged to live in residential institutions, sharing a room and eating in a canteen. They cannot avail of social security and live independently.**

**8. Right to education and to participate in the cultural life of the community**

**24. Asylum seekers are not permitted to avail of vocational training or to study.**

**9. Minorities and indigenous peoples**

**25. There is no state forum to which a (non criminal) incident of racism can be reported, and no state body monitors racism in Irish society.**

**10. Migrants, refugees and asylum seekers**

No comment.

**11. Human rights and counter terrorism**

No comment.

**III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS**

No comment.

**IV. KEY NATIONAL PRIORITIES/ RECOMMENDATIONS**

**26. Introduce legislation providing for a single procedure for assessing asylum claims, as a matter of urgency**

**27. Introduce legislation providing a fair and efficient system for dealing with general immigration matters**

**28. In the interim and as a matter of urgency, expand the Office of the Ombudsman to include immigration, asylum and naturalisation, thereby effecting an immediate improvement in administrative standards**

**V. CAPACITY BUILDING AND TECHNICAL ASSISTANCE**

No comment