



Safeguarding the Rights of Migrant Workers and their Families

**A Review of EU and International Standards:
Implications for Policy in Ireland**



HUMAN RIGHTS COMMISSION



NCCRI

Published by the Irish Human Rights Commission
and the National Consultative Committee on Racism and Interculturalism

Safeguarding the Rights of Migrant Workers and their Families

**A Review of EU and International Human Rights Standards:
Implications for Policy in Ireland**

**Irish Human Rights Commission
National Consultative Committee on Racism and Interculturalism**

April 2004

Acknowledgements

This is the first joint report by the Irish Human Rights Commission (HRC) and the National Consultative Committee on Racism and Interculturalism (NCCRI).

The report is consistent with the aims of the HRC as set out in its Strategic Plan, *'Promoting and Protecting Human Rights in Irish Society: A Plan for 2003-2006'*, which states that the HRC will monitor ongoing developments in immigration law and policy to ensure that the highest international human rights standards are observed.

The report represents the continuation of a number of initiatives by the NCCRI on migration policy in Ireland. These initiatives began with a major conference and the subsequent publication of the report, *'Migration Policy in Ireland: Reform and Harmonisation'*, and continued with the hosting of a North/South seminar in Belfast in February 2004.

A number of people were involved in the publication of this report. These include the staff of the HRC and the members of the HRC Racism Committee, and Jacqueline Healy, Philip Watt and members of the NCCRI Migration Sub-group of NCCRI, which is chaired by Anastasia Crickley.

We would particularly like to thank Anna Visser of the NCCRI and Roisín Hennessy of the HRC, who undertook the research on human rights instruments and EU policy that forms the core of this report.

**Irish Human Rights Commission
National Consultative Committee on Racism and Interculturalism**

April 2004

Foreword

The Irish Human Rights Commission (HRC) and the National Consultative Committee on Racism and Interculturalism (NCCRI) are to be congratulated on this timely publication. It provides a comprehensive review of the international human rights standards applicable to migrant workers and their families, as well as an account of the progress being made at EU level in developing safeguards. I believe the publication will prove to be a valuable guide for both policy-makers and organisations which are concerned with the protection of the rights of migrant workers and their families.

Immigration is one of the most important challenges currently facing Ireland and the other member States of the European Union. As a society, it is imperative that we deal with the issues posed by immigration in a positive, coherent and humane way. International human rights law and policy developments at EU level which seek to provide safeguards for migrant workers provide important benchmarks to which governments should have regard when formulating their immigration policies.

Immigration is a relatively new phenomenon in Ireland. We have changed radically from the mid 1990s onwards from a country of emigration to a receiving country. The experience of Irish immigrants in many different countries has often been one of discrimination and hardship. This experience in turn exhorts us as a nation to treat immigrants to this country humanely and with respect. We have an opportunity to manage the relatively new phenomenon of immigration in a positive, non-discriminatory, person-centred manner that will benefit both immigrants and Irish society.

The HRC and the NCCRI emphasise the need for Ireland to manage labour migration in a way that both fully respects the human rights of migrant workers and their families and takes into account current and future economic and employment imperatives. To implement this approach the review concludes with a number of both general and specific recommendations. In particular, the HRC and the NCCRI recommend that the development of immigration policy in Ireland and the EU must be underpinned by a human rights approach. I strongly support the development and adoption of such a policy, and I encourage the Irish Government to adopt the recommendations made in this report.

One of the specific recommendations is for the Irish Government to sign and ratify the International Convention on the Rights of All Migrant Workers and Members of their Families. This Convention has yet to be ratified by the vast majority of receiving States, including the member States of the EU, which seem to be unwilling to recognise fully at a legal level the rights of migrant workers and the important contribution which such workers make to the European economy. I agree with the HRC and NCCRI that Ireland should play a leadership role amongst the EU nations in safeguarding the rights of migrant workers and their families. A first important step for Ireland should be to open up the debate in the EU on the ratification of the International Convention on the Rights of All Migrant Workers and Members of their Families.

Mary Robinson
April 2004

Contents

Executive Summary	7
Introduction	12
Part One: International Human Rights Standards of Relevance to Migrant Workers and their Families	16
Section 1: Relevant Conventions Ratified by Ireland	16
Section 2: Relevant Conventions Not Ratified by Ireland	25
Section 3: Other International Human Rights Standards	30
Summation	35
Part Two: Progress at EU level in Developing Safeguards for Migrant Workers and their Families	36
Section 1: Development of EU Migration Policy	36
Section 2: Safeguarding the Rights of Migrant Workers and Their Families	39
Summation	45
Part Three: Implications for Policy in Ireland	46
Conclusion and Recommendations	50
Annex One: Abbreviations	53
Annex Two: Bibliography	55

Executive Summary

International human rights law focuses on the rights of migrant workers and their families when entering, working and living in a State, as well as their rights where that State attempts to expel them. The explicit recognition of these rights in Irish immigration policy is essential to ensure that migrant workers in Ireland are not exploited and to guarantee them clarity and security with regard to their rights and entitlements within the Irish State.

The aim of this report is to contribute to the process of ensuring there are adequate safeguards for the rights of migrant workers and their families in Ireland. The report seeks to fulfil this aim through:

- Reviewing the international human rights standards that are of relevance to migrant workers and their families, including those not yet ratified by Ireland
- Reviewing progress at an EU policy level in developing safeguards for the rights of migrant workers and their families
- Drawing out some of the key implications of these reviews for policy in Ireland.

The introduction to this report briefly outlines the changing context in which labour migration policy has been developed in Ireland, including the rapid economic growth that has taken place over the past decade resulting in significant labour and skill shortages in key sectors of the Irish economy. It also acknowledges that the migratory context in Ireland is set to change further as a result of EU enlargement.

Part One of this report, ‘International Human Rights Standards of Relevance to Migrant Workers and their Families,’ is divided into three sections. The first section focuses on the international human rights conventions related to the rights of migrant workers and their families that Ireland has ratified. The second section focuses on the conventions Ireland has not ratified (emphasising those it considers imperative for Ireland to ratify). Some of these are specifically aimed at protecting the rights of migrant workers and members of their families. The third section looks at non-binding principles arising from related international documents.

Part Two of the report reviews progress at EU policy level in developing safeguards for the rights of migrant workers and their families. Such progress is of increasing importance to policy in Ireland as the EU moves closer to developing a common immigration framework.

Part Three looks at the implications for policy in Ireland related to developing safeguards for the rights of migrant workers and their families. These policy implications arise from the review of the relevant international human rights standards and the development of a common immigration framework at EU level.

The conclusion of the report identifies a range of recommendations to inform policy development in Ireland related to safeguards for migrant workers and their families. The HRC and NCCRI express their strongly held view that in developing a common immigration policy, the EU member States should adopt a human rights approach and

respect the minimum standards set down in international human rights law in relation to migrant workers.

Part One: Section 1

Relevant Conventions Ratified by Ireland

As a State party to the European Social Charter (ESC), Ireland is required to protect the rights of migrant workers who are nationals of the member States of the Council of Europe. Under Article 19 of the Charter, States are required to provide accurate information to migrant workers regarding their rights and entitlements, and also to ensure that migrant workers receive treatment not less favourable than their own nationals in a range of areas including: working conditions, membership of trade unions, accommodation, employment taxes and legal proceedings.

Ireland has also ratified the International Labour Organisation Equality of Treatment (Social Security) Convention, which requires it to guarantee equality of treatment under social security legislation to the nationals of all other States that have ratified the Convention. As a State party to the European Convention on Human Rights (ECHR), Ireland is further required to guarantee the rights contained therein to “everyone” within its jurisdiction.

The rights contained in the broad range of UN human rights conventions that Ireland has ratified are guaranteed to “everyone” without discrimination - particularly on the basis of national origin. These conventions include: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention of the Elimination of all Forms of Racial discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) These conventions thus provide some protection for the rights of migrant workers and their families.

Part One: Section 2

Relevant Conventions Not Ratified by Ireland

Section 2 of this part of the report outlines the international human rights conventions relevant to migrant workers and their families that Ireland has not ratified. Chief among these is the UN International Convention on the Protection of All Migrant Workers and Members of their Families. This is the most comprehensive set of international human rights standards seeking to protect documented and undocumented migrant workers and their families. As well as guaranteeing all migrant workers their most basic human rights, this Convention requires States to grant documented migrant workers a wide range of rights *and* treatment not less favourable than their own nationals in a number of different areas. Other relevant conventions not (yet) ratified include the European Convention on the Legal Status of Migrant Workers (which is the Council of Europe equivalent to the UN Convention), and three Conventions of the International Labour Organisation which explicitly deal with the rights of migrant workers, particularly in relation to employment. This report argues that it is imperative that Ireland ratifies these conventions as part of the process of formulating and developing a fair and holistic immigration policy.

Part One: Section 3

Other International Human Rights Standards

The third section of this part of the report outlines a number of other international principles addressing the rights of migrant workers and their families that are not directly binding upon States. These principles provide essential guidance with regard to best international practice on migration policy and important detail around the broader principles on which the conventions are based. The standards examined include Council of Europe Recommendations of the Committee of Ministers, Recommendations of the International Labour Organisation, and the commitments made by States regarding migrant workers and their families at the World Conference on Racism 2001.

Part Two

Safeguarding the Rights of Migrant Workers and their Families at EU level

Part Two of the report focuses on the progress that has been made at EU policy level in developing safeguards for migrant workers and their families. This part of the report provides an overview of recent developments and trends concerning migrants' rights within the EU. In doing so, it documents the emerging recognition of the centrality of safeguarding migrants' rights as part of a broader immigration strategy and details the emergence of a legal framework for the protection of migrants. It notes that immigration has come to the fore of European policy-making in recent years and explains how the Amsterdam Treaty was pivotal in facilitating this development. It also details how this Treaty has been reflected in subsequent Council conclusions and Commission communications.

Part Two: Section 1

'Development of EU Migration Policy' details how, in the early years, the EU's focus was primarily on controlling and restricting immigration. Between 1994 and 1996, however, a series of communications and resolutions began increasingly to address issues such as the strengthening of immigrants' rights, concern for equal treatment, and combating of racism and xenophobia. It describes how, with the entry into force of the Treaty of Amsterdam in 1999, immigration policy became a full Community responsibility, and 'third country nationals ... finally found their place in Community law'.¹ Finally, this section of the report details the special meeting of the European Council at Tampere in 1999, which was dedicated to the establishment of an area of freedom, security and justice.

Part Two: Section 2

'Safeguarding the Rights of Migrant Workers and Their Families' forms the core of Part Two of this report. This section elaborates on the Commission proposals, directives and responsibilities built upon the foundation of the Amsterdam Treaty, which it documents according to six main categories:

¹ Apap, J (2001) Shaping Europe's Migration Policy, Centre for European Policy Studies, Working Document No. 179

1. Conditions of entry and residence
2. Family reunification
3. Freedom of movement
4. Freedom from discrimination and racism
5. Fundamental rights
6. General instruments on employment and social inclusion.

In order to provide a broad overview of the key developments in the European context, the instruments highlighted in this section of the report take account both of existing legal instruments *and* of those in the proposal stage.

The summation to this part of the report attempts to assess the extent to which the EU has managed to address the question of migrants' rights. It recognises that the EU has succeeded in developing a legal framework that seeks to create a common integration policy. It further acknowledges that the EU has gone some distance in addressing the rights of migrants by means of resolutions and directives in a number of key areas. It cautions, however, that though this trend could be set to increase, the realities and impact of the new constitutional arrangements remain to be seen. It also warns that significant gaps remain in the EU migration framework. The area of freedom, security and justice fleshed out at Tampere is a case in point; this would have included a number of initiatives in the field of migration, but has not been realised to date.

In its summation, this part of the report argues that when it comes to safeguarding the rights of migrants and their families, the existing potential has clearly not been reached. It concludes that the European community has not yet completed the structures necessary to protect and uphold the rights of migrant workers and members of their families.

Part Three

Implications for Policy in Ireland

Part Three of this report looks at the implications for policy arising from both the relevant international human rights conventions and the emerging EU migration policy framework. In these contexts, it identifies a number of 'benchmarks' from which to assess existing policy and to inform future policy development in Ireland. These benchmarks are:

- Employment rights of migrant workers being not less than State nationals
- Provision of accessible information on employment rights
- Ability to join and seek assistance from a trade union
- Ensuring effective complaint and redress mechanisms against exploitation and discrimination in the workplace
- Development of comprehensive and just family reunification policies
- Adequate protections against racism, including discrimination motivated by racism
- Adequate protections against the exploitation and discrimination of women migrant workers
- Equality of treatment in relation to access to important services, including education, healthcare and housing
- Freedom of movement within national and EU boundaries

- The right to access alternative employment in the event of loss of employment for those with employment permits.

Conclusion and Recommendations

The conclusion to this report assesses the current Irish context and calls on the Government to take a leadership role in the development of safeguards for migrant workers and their families at EU level. Finally, arising from the review of international human rights standards and policy progress at EU level, the report makes a number of overall and specific recommendations.

Overall, this report recommends that:

- Migrant workers should not be treated as economic entities, but as people with a broad range of social, cultural and economic needs and rights
- The development of immigration policy in Ireland and the EU must be underpinned by a human rights approach
- Safeguarding the rights of migrant workers and their families must be an essential component in the development of an overall immigration policy framework in Ireland and the EU.

The HRC and the NCCRI further specifically recommend that:

- The important rights and protections already afforded to migrant workers in Ireland need to be enhanced
- Policy-makers recognise that key areas of existing policy in respect of the rights of migrant workers and their families in Ireland are deficient and lacking in scope
- Enforcement bodies must be given adequate resources to enable protection, information and redress for migrant workers
- Labour migration policy should be linked to and reinforced by social inclusion, anti-racism and intercultural policy
- Targeted strategies are needed to ensure the adequate protection and rights for the most marginalised migrant workers
- Ireland should ratify the International Convention on the Rights of All Migrant Workers and their Families
- Ireland should play a leadership role in safeguarding the rights of migrants and their families at EU policy level.

Introduction

This report seeks to contribute to the process of ensuring there are adequate safeguards for the rights of migrant workers and their families in Ireland. The report sets out to achieve this aim in three ways:

- By reviewing international human rights conventions and other instruments that are of relevance to migrant workers and their families, including those not yet ratified by Ireland
- By reviewing progress at EU policy level in developing safeguards for the rights of migrant workers and their families
- By drawing out some of the key implications for policy in Ireland.

This report takes account of the rapidly changing demographic, policy and administrative context against which migration policy has been developed in recent years. Such changes include:

- The continued reliance of key sectors of the Irish economy on migrant workers, particularly migrant workers from outside the European Economic Area (EEA)²
- The enlargement of the EU by the joining of ten accession States in May 2004
- The comprehensive overhaul and modernisation of Ireland's immigration legislation that has been signalled by the Government
- The continued harmonisation of policy related to immigration at an EU level.

The report is structured in three parts followed by a conclusion and recommendations:

Part One provides an audit of the international human rights conventions of relevance to migrant workers and their families in Ireland. This part of the report is divided into three sections. The first looks at those conventions that Ireland has ratified; the second at those conventions that Ireland has yet to ratify, including the International Convention for the Protection of All Migrant Workers and Their Families; and the third section looks at other international standards of relevance to migrant workers and their families.

Part Two of the report reviews progress at EU policy level in developing safeguards for the rights of migrant workers and their families. Such progress is of increasing importance to policy in Ireland as the EU moves closer to developing a common immigration framework.

Part Three looks at the implications for policy in Ireland related to developing safeguards for the rights of migrant workers and their families. These policy implications arise from the review of the relevant international human rights conventions and the development of a common immigration framework at EU level.

Finally, the conclusion of the report identifies a range of recommendations to inform policy development in Ireland related to safeguards for migrant workers and their families.

² The EEA comprises the EU, Norway, Iceland, Liechtenstein and *de facto* Switzerland

Background

There can be little doubt that immigration is one of the most pressing issues facing Irish society at the beginning of this new century. For a country whose history has been dominated by mass emigration, the significant increase in inward migration witnessed since the mid 1990's has created a new context for migration policy and presented Irish lawmakers and policy-makers with challenges that could not have been foreseen a decade ago.

Much of recent Government policy in the area of labour migration has focused on ensuring a steady supply of migration into Ireland to meet the skills and labour shortages arising from the rapid economic growth rates of recent years. Despite this emphasis, a watchful eye has been kept on any potential displacement of Irish/EU workers arising from this process.

This report from the HRC and the National Consultative Committee on Racism and NCCRI calls on the Government to manage labour migration to Ireland in a way that fully respects the human rights of migrant workers and their families as well as taking into account current and future economic and employment imperatives.

In practice this means that the Irish government should ensure that there is adequate protection and redress for migrant workers who are exploited or face discrimination. It further means the development of a comprehensive framework of policies to meet the economic, social and cultural needs of migrant workers who are resident in Ireland, and it means greater choices and opportunities and rights to enjoy a family life through reunification rights for dependent family members.

The report seeks to take into account and emphasise that migrant workers are not a homogeneous group of people; they have different rights, income and entitlements, depending on such factors as the nature of their employment permit, their education and skill level and the type of employment in which they are engaged.

Some migrant workers from outside the EEA will be in highly paid jobs as doctors, engineers and information technology consultants and will enjoy the enhanced benefits of work visas/authorisations on issues such as family reunification and visa renewal. The majority of migrant workers on work permits, however, will be more likely to be employed in lower skilled/lower paid employment and will have significantly less entitlement to change jobs, to extend their residence in Ireland or to rights of family reunification.

This report's primary focus is on migrant workers and their families in the latter category. A growing body of research³ indicates that these people are most at risk from experiencing poor working and living conditions and the loneliness arising from extended separation from close family.

While many migrant workers with work permits and visas enjoy adequate conditions of employment, there are also increasing reports of migrant workers experiencing poor and exploitative conditions arising from the actions or inactions of a number of rogue employers and employment agencies. By its very nature, the extent of this is

³ Immigrant Council of Ireland (2003) Labour Migration into Ireland.

difficult to assess, as workers in such positions are slow to come forward out of fear of losing their employment or jeopardising the employment of their colleagues. In some cases, through language barriers or lack of access to impartial information, migrant workers may be lacking in knowledge of employment and equality rights in Ireland.

Of further concern is the increase in the number of complaints to the ODEI – The Equality Tribunal taken under the ‘race’ ground of the Employment Equality Act, 1998; these rose by 98% between 2002 and 2003.

The Changing Pattern of Labour Migration to Ireland

As a consequence of skills and labour shortages, Irish businesses and State agencies have been actively recruiting outside the EEA. This has been a key factor in influencing the changing pattern of migration to Ireland over the past decade (see Table 1).

In 1999 6,000 work permits were issued. By 2003 this figure had risen to over 47,500 (including permit renewals). Despite downturns in the economy, labour force surveys undertaken by the Economic and Social Research Institute (ESRI) predict that Ireland’s economy will continue to be dependent on migrant labour for the foreseeable future. Also of note is the Organisation for Economic Cooperation and Development’s (OECD) recent conclusion that migrant workers have played an important role in contributing to sustained economic growth in Ireland.⁴

In Ireland, migrant workers are principally concentrated in the manufacturing, service, health, food processing and agricultural sectors. Their main countries of origin are Latvia, the USA, the Philippines, the Czech Republic and Poland. In 2002, almost 40% of migrant workers coming to Ireland were from EU accession countries such as Poland, Latvia and the Czech Republic.

It should be noted that all migrant workers in Ireland are covered by the same key employment rights legislation as Irish nationals, including:

- Employment Agency Act, 1971
- European Communities (Safeguarding of Employees Rights on Transfer of Undertakings) Regulations, 1980
- Payment of Wages Act, 1991
- Terms of Employment (Information) Act, 1994
- Protection of Young Persons (Employment) Act, 1996
- Organisation of Working Time Act, 1997
- Employment Equality Act, 1998
- Minimum Notice and Terms of Employment Acts, 1973 and 2001
- Protection of Employees (Part-Time Work) Act 2001
- Unfair Dismissals Acts, 1977 to 2001.

⁴ OECD (2002) Trends in International Migration.

From 1 May 2004, accession State nationals will no longer require work permits to work in Ireland and will be entitled to all the rights of other EU citizens in Ireland.⁵ The Department of Enterprise, Trade and Employment anticipates that there will be a substantial drop in applications for work permits as a consequence.

**Table 1:
Pattern of Inward Migration into Ireland**

Origin	1996	2003
Returned Irish	45%	34.3%
UK	21%	13.6%
Rest of EU	13%	13.6%
USA	10%	3.2%
Rest of world	11%	35%

**Origin (% of total) Inward
Migration into Ireland in 1996 and 2003 (CSO)⁶**

While the pattern of inward migration to Ireland has changed rapidly in the past decade and will continue to change with EU enlargement, it is likely that for the foreseeable future a significant proportion of non-EEA workers will continue to work and live in Ireland.

In this context, it is imperative that Ireland constructs a viable policy and legislative framework for immigration that includes a strong focus on the rights of migrant workers and their families based on international human rights and with reference to emerging policy at EU level.

⁵ Accession States joining the EU in May 2004 are: Poland, Lithuania, Latvia, Estonia, Czech Republic, Hungary, Slovakia, Slovenia, Malta and Cyprus.

⁶ Adapted from Central Statistics Office (5 September 2002) Population and migration estimates, April 2002 and preliminary results for 2003.

Part One

International Human Rights Standards of Relevance to Migrant Workers and their Families

International human rights conventions and other international human rights standards provide us with important benchmarks from which to inform existing standards of policy and new policy related to safeguards for migrant workers and their families. Part One of this report is divided into three sections. Section 1 summarises the international human rights conventions of relevance to migrant workers and their families that Ireland has ratified to date; Section 2 summarises the conventions that Ireland has not yet ratified, and Section 3 outlines other international non-binding principles addressing the rights of migrant workers and their families.

Section 1:

Relevant International Conventions Ratified by Ireland

The international conventions of relevance to migrant workers and their families that have been ratified by Ireland are as follows:

- The European Social Charter
- The International Labour Organisation Equality of Treatment (Social Security) Convention C1180
- The European Convention for the Protection of Human Rights and Fundamental Freedoms
- The International Covenant on Economic, Social and Cultural Rights
- The International Covenant on Civil and Political Rights
- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Rights of the Child.

1.1 The European Social Charter

In 1961, the European Social Charter was adopted by the member States of the Council of Europe. It aimed to achieve greater unity between those member States for the purpose of ‘facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms’.⁷ The European Social Charter is concerned with economic and social rights, and is the natural complement to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which is concerned with civil and political rights.

The original European Social Charter of 1961 was ratified by Ireland in 1964. In November 2000, Ireland signed and ratified both the Revised European Social Charter of

⁷ Preamble to the European Social Charter, 1961.

1996 and the Additional Protocol providing for a system of collective complaints.⁸ Compliance with the Charter is monitored by the European Committee of Social Rights. Ireland is required to submit a report on a yearly basis to the European Committee of Social Rights and, on the basis of this report, the Committee issue conclusions on the conformity of Irish law with the Charter provisions.⁹ Under the Additional Protocol which provides for a complaints procedure, the organisations entitled to lodge a complaint are: The European Trade Union Confederation; the International Organisation of Employers; the Union of Industrial and Employers' Confederation of Europe; non-governmental organisations (NGOs) with consultative status with the Council of Europe¹⁰; employer's organisations and trade unions in the country concerned and - if the State has also agreed to this - national NGOs. Ireland has not agreed to allow national NGOs to take a complaint under the Additional Protocol to the European Committee of Social Rights.

Unlike the ECHR which requires States to secure to "everyone" within their jurisdiction the rights and freedoms' in the Convention, the European Social Charter only protects the rights of nationals of Council of Europe member States party to the Charter.¹¹ Article 38 of the Charter defines its scope in terms of the persons protected as follows:

'The persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, subject to the understanding that these Articles are to be interpreted in the light of the provisions of Articles 18 and 19'.

Articles 18 and 19 are specifically concerned with migrant workers, and their scope is also limited to migrant workers who are nationals of States parties to the Charter. Part I, paragraph 19 of the Charter provides:

'Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party'.

Both of these articles have been accepted in full by Ireland. Article 18 provides for the right to engage in gainful occupation in the territory of other States party to the Charter. States parties to the Charter are specifically required to simplify existing formalities and reduce or abolish chancery dues and other charges payable by foreign workers or their employers. States parties to the Charter are also required to liberalise

⁸ Ireland has not accepted obligations under Articles 8(3), 21, 27(1), and 31 of the Charter. However, Ireland has accepted obligations under all the 'core' provisions of the Charter, these include Articles 1,5,6,7,12,13,16,19 and 20.

⁹ Ireland's first report under the Revised European Social Charter to the Committee for the 2004 cycle was due for submission on the 30 June 2003. However, the Committee has not as yet received the report. Ireland's 21st report under the original 1961 European Social Charter was considered by the Committee in September 2003.

¹⁰ For a list of the NGOs with consultative status see: www.coe.int, at Human Rights, European Social Charter, Collective Complaints, Organisations entitled to lodge complaints with the Committee.

¹¹ The member States of the Council of Europe that have ratified the European Social Charter are as follows: Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Turkey and the United Kingdom.

regulation governing the employment of foreign workers, and to recognise the right of their nationals to leave the country and engage in gainful occupation in the territories of other States parties to the Charter.

Article 19(1) requires States to maintain - or to satisfy themselves that there are maintained - adequate and free services to assist migrant workers, particularly in obtaining accurate information in relation to their rights and to the conditions of their work permit. States are further required to take all appropriate steps within the limits of the national law to ensure that misleading propaganda relating to immigration and emigration is prohibited.

In accordance with Article 19(2), States parties to the Charter are required to adopt appropriate measures in their own jurisdictions to facilitate the departure, journey and reception of migrant workers and their families - and to provide appropriate services for health, medical attention and good hygienic conditions during the journey.

Article 19(3) requires States to promote co-operation, as appropriate, between public and private social services in emigration and immigration countries.

Articles 19(4), (5) and (7) require States to secure to migrant workers lawfully within their territories treatment not less favourable than that of their own nationals. States are required to do so in respect of:

- Remuneration and other employment and working conditions
- Membership of trade unions and enjoyment of the benefits of collective bargaining
- Accommodation
- Employment taxes, dues or contributions payable in respect of employed persons
- Legal proceedings relating to matters referred to in Article 19.

With regard to family reunification, Article 19(6) requires States to:

'Facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory'.

Sub-paragraph 8 of Article 19 requires States parties to the Charter to ensure that migrant workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality.

Under Article 19(9), States parties to the Charter are required to permit, within legal limits, the transfer of such parts of the earnings and savings of migrant workers as the migrant workers may desire. Sub-paragraph 10 requires States to extend the protection and assistance provided for in Article 19 to self-employed migrant workers.

Finally, in the field of education, sub-paragraph 11 of Article 19 requires States to promote and facilitate the teaching of the national language of the receiving State (or, if there are several, one of these languages) to migrant workers and their families. Under sub-paragraph 12, States are also required to promote and facilitate - as far as

practicable - the teaching of the migrant worker's mother tongue to the children of the migrant worker.

1.2 International Labour Organisation Equality of Treatment (Social Security) Convention C118

The International Labour Organisation (ILO) is a specialised UN agency which seeks to promote social justice and internationally recognised human and labour rights. It formulates international labour standards in the form of conventions and recommendations setting minimum standards of basic labour rights. The ILO is the first international organisation that Ireland became a member of as a newly independent State in 1923.

One of the main areas in which the standard-setting activities of the ILO regarding migrant workers have been concentrated, is the protection of their social security rights and those of their families. C118 is one of a number of conventions drafted by the ILO that is of relevance to the social security rights of migrant workers and their families.¹² Ireland ratified this Convention in 1964 and has accepted obligations under it in relation to some branches of social security including: medical care, sickness benefit, employment injury benefit, unemployment benefit and family benefit. However, Ireland has not accepted obligations under the Convention in relation to maternity benefit, invalidity benefit, old-age benefit or survivor's benefit.

In accordance with Article 3 of the Convention, each State for which the Convention is in force is required to guarantee to the nationals of any other State for which it is in force, equality of treatment under its legislation with its own nationals. It must guarantee this as regards both coverage and the right to benefits. Article 4 provides that residence should not be made a condition of the granting of social welfare benefits to migrant workers, unless legislation makes residence a condition of the granting of benefits to nationals of the member State. However, Article 4(2) provides that, in the case of unemployment benefit, the State may make residence of a six month period preceding the filing of the claim a condition of the granting of unemployment benefit.

Article 6 requires each State that has accepted the Convention's obligations in relation to family benefit to guarantee the grant of family allowance in respect of children who reside in the territory; they are obliged to do so under conditions and within limits to be agreed upon by the States concerned. Article 10 provides that the Convention applies to refugees and stateless persons without any condition of reciprocity.

1.3 European Convention for the Protection of Human Rights and Fundamental Freedoms

The ECHR was adopted by the member States of the Council of Europe in 1950. It entered into force in 1953 in the aftermath of the horrific abuse of human rights during the Nazi era. The ECHR is now regarded as the most effective regional human rights treaty dealing with civil and political rights. The European Court of Human Rights hears applications against States parties to this Convention for alleged

¹² The other ILO Conventions that contain standards of relevance to the social security rights of migrant workers are: C97 Migration for Employment Convention, 1949; C102 Social Security (Minimum Standards) Convention, 1952; C157 Maintenance of Social Security Rights Convention, 1982.

violations of it, and issues a legally binding judgement with which the respondent State is required to comply. Ireland was one of the 10 original parties to the ECHR and ratified it in 1953.

Ireland has recently incorporated the ECHR into its domestic law by means of the European Convention on Human Rights Act, 2003. In accordance with this Act, every organ of the State is required to perform its functions in a manner compatible with the State's obligations under the Convention provisions. In addition, under section 2(1) of the Act, the Courts (who do not come within the definition of an organ of the State under the Act) are required to interpret and apply a statutory provision in a manner compatible with the State's obligations under the Convention provisions.

The Scope and Applicability of the ECHR to the Rights of Migrant Workers and their Families

The ECHR is the only Council of Europe instrument generally applicable to all individuals residing in those countries which have ratified it - and not merely to nationals of other States parties. In accordance with Article 1 of the Convention, the ratifying States shall secure to '*everyone* within their jurisdiction the rights and freedoms' (emphasis added) defined in the Convention. However, as the ECHR is predominantly concerned with safeguarding civil and political rights, its relevance to the protection of the economic, social and cultural rights of migrant workers and their families is rather limited.

The ECHR affords equal treatment to non-nationals and nationals with respect to the non-derogable rights in the Convention - including the right to life and the right to freedom from torture and inhuman or degrading treatment. Article 16 represents the only explicit exception to the general application of the ECHR to non-nationals. It provides that:

'Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens'.

Articles 10 and 11 guarantee the rights to freedom of expression and peaceful assembly and association. Article 14 guarantees the right to non-discrimination in the enjoyment of the rights and freedoms protected under the Convention.

Article 14 and the Right to Non-Discrimination

The right to non-discrimination is recognised as a fundamental human right. It is provided for under Article 14 of the ECHR as follows:

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

This article complements the other substantive provisions of the Convention and its Protocols. It is not a stand alone provision and has effect solely in relation to the rights and freedoms contained in the Convention provisions.

In the case of *Gaygusuz v. Austria*,¹³ Article 14 was invoked in by a Turkish national who made an application against Austria for discrimination on the basis of nationality in granting social security benefits. The applicant had worked in Austria from 1973 to 1984, when he was certified unfit for work for medical reasons until 1986. He received an advance retirement pension in the form of unemployment benefit in 1986, and applied for an advance on his pension in the form of emergency assistance when his entitlement expired in 1987. The Austrian authorities refused the application on the grounds that the applicant did not have Austrian nationality (one of the conditions laid down for entitlement to an allowance of that type). In response, the applicant argued that Article 14 of the Convention was applicable in conjunction with Article 1 of Protocol 1 which provides as follows:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties’.

The Court accepted that entitlement to social benefit is linked to the payment of contribution to the unemployment insurance fund and can therefore be considered a pecuniary right for the purposes of Article 1 of Protocol No. 1. The Court held that the difference in treatment between Austrians and non-Austrians under the legislation in question was not based on any objective or reasonable justification. It further noted that the applicant was legally resident in Austria and had worked there, paying contributions to the unemployment insurance fund in the same capacity and on the same basis as Austrian nationals. The Court concluded that while the Austrian government was not bound by a reciprocal agreement with Turkey, it undertook, when ratifying the Convention, to secure ‘to *everyone* within its jurisdiction’ the rights and freedoms defined in the Convention.

Protocol 12 of the ECHR prohibits discrimination in the enjoyment of all of the rights contained in the law of the ratifying State. Article 1 provides:

‘The enjoyment of *any right set forth by law* shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.¹⁴

In order to enter into force, Protocol 12 requires ratification by 10 member States of the Council of Europe. As of 2003, five States have ratified the Protocol which was opened for signature and ratification in 2000.¹⁵ Ireland signed the Protocol in 2000 but has not ratified it. The ratification of Protocol 12, and its entry into force, is

¹³ *Gaygusuz v. Austria*, Application no. 17371/90, 16/09/1996.

¹⁴ Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1(1) emphasis added.

¹⁵ These countries are: Bosnia and Herzegovina, Croatia, Cyprus, Georgia and San Marino.

imperative to further the fundamental principle of equality and non-discrimination within Ireland and the Council of Europe. The Protocol has the important potential to guarantee any right set forth in Irish law to migrant workers without discrimination on the basis of nationality or other status.

Article 8 and the Right to Family Life

Article 8 of the ECHR guarantees the right to respect for private and family life, home and correspondence. In accordance with Article 8(2), an interference with this right is acceptable where it is in accordance with the law and necessary in a democratic society and where the interference pursues a number of specific purposes. In particular, the interference must be in the interests of national security; public safety or the economic well-being of the country; for the prevention of disorder or crime; for the protection of health or morals; or for the protection of the rights and freedoms of others.

In its case law on immigration, the Court has pointed out that the Convention does not guarantee the right of a non-national to enter or remain in a member State of the Council of Europe. However, the Court has stated that immigration controls have to be exercised consistently with Convention obligations, and the exclusion of a person from a State where members of his family are living might raise an issue under Article 8.¹⁶

The question under Article 8 of the ECHR is whether the expulsion of a person from a country - or the refusal to admit a person to a country - can be considered to amount to an interference with that person's family life and whether such interference can be justified under Article 8(2). The Court has examined in its case law whether there exists an effective family life between the persons concerned. The only cases which have been regarded as constituting a close relationship for this purpose are the relationships of a) husband and wife, and b) parent and child - where there is some situation of dependence.¹⁷

However, even if a sufficiently close relationship exists, it does not follow that expulsion, or refusal of admission, will constitute an interference with the right to respect for family life. The Court will consider whether the family unit could be preserved by establishing the family's residence in the country to which the member of the family is expelled, or from which he or she seeks admission. For example, in the case of *Abdulaziz, Cabales and Balkandali v. United Kingdom*¹⁸, the Court stated that:

‘The duty imposed by Article 8 cannot be considered as extending to a general obligation on the part of the contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouse for settlement in that country’.¹⁹

The Court concluded in this case that there was no obstacle to the applicants establishing a family life in the home country of their husbands' residence. The Court

¹⁶ *Abdulaziz, Cabales, and Balkandali v. United Kingdom*, Application numbers, 9214/80; 9473/81; 9474/81, para. 59.

¹⁷ Op. cit. para. 62.

¹⁸ Op. cit.

¹⁹ Op. cit. para.68.

generally affords a wide margin of appreciation to States parties to the ECHR with regard to immigration policy.²⁰

1.4 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was opened for signature and ratification in 1966 and entered into force in 1976. The Committee on Economic, Social and Cultural Rights monitors the compliance of the States parties with ICESCR. Ireland ratified ICESCR in 1989, submitted its second periodic report to the Committee in 2000, and is due to submit its third periodic report in June 2007.²¹ There is currently no mechanism for individual complaints under this Covenant.

Under Article 2(2), States are under an obligation to guarantee that the rights in the Covenant will be exercised without discrimination of any kind. These rights include the right of everyone to just and favourable conditions of work under Article 7; Article 8 guarantees the right of everyone to form trade unions and to join the trade union of his or her choice; Article 9 guarantees the right of everyone to social security; Article 12 guarantees the right of everyone to the highest attainable standard of physical and mental health; and Article 13 recognises everyone's right to an education.

1.5 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was also opened for signature and ratification in 1966 and entered into force in 1976. ICCPR is the complementary Covenant to ICESCR. It aims at securing to everybody worldwide the full enjoyment of their civil and political rights, and was ratified by Ireland in 1989. The Human Rights Committee monitors the compliance of the States parties with ICCPR. Ireland submitted its second periodic report to the Committee in 1998 and is due to submit its third periodic report in 2005.²² Ireland has also ratified the first Optional Protocol to ICCPR which provides for an individual complaints mechanism.

In accordance with Article 2(1), States are required to guarantee the rights recognised in the Covenant to all individuals within their territory and subject to their jurisdiction without distinction of any kind. ICCPR requires States parties to it to respect and ensure the fundamental human rights of persons including the right to life; the right to freedom from torture and inhuman treatment; the right to liberty; the right to privacy; family rights; the right to equality before the law; due process rights in criminal proceedings; the right to freedom of thought, conscience and religion; the right to freedom of expression, and the right to peaceful assembly and association.

²⁰ For example, at para. 67 of the *Abdulaziz* case the Court stated, 'In particular, in the area now under consideration, the extent of a State's obligation to admit to its territory relatives of settled immigrants will vary according to the particular circumstances of the person involved. Moreover, the Court cannot ignore that the present case is concerned not only with family life but also with immigration and that, as a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory'.

²¹ See the Concluding Observations of the Committee on Ireland's second periodic report at UN Doc. E/C.12/1/Add.35, 1999.

²² See *Concluding Observations of the Human Rights Committee* on Ireland's second periodic report at UN.Doc. A/55/40, para 422-451.

1.6 Convention on the Elimination of All Forms of Racial Discrimination

The Convention on the Elimination of All Forms of Racial Discrimination (CERD) is the oldest of the seven UN human rights treaties. It was opened for signature and ratification in 1965 and entered into force in 1969. CERD is a treaty aimed at eradicating racism and racial discrimination worldwide. It was ratified by Ireland in 2000. The Committee on the Elimination of All Forms of Racial Discrimination monitors the compliance of States parties with CERD. Ireland was due to submit its initial periodic report to the Committee in 2002. A draft copy of this initial report has been published by the Department of Justice, Equality and Law Reform and it is expected that the Government's final report will be published and communicated to the UN Committee by April 2004. Article 14 of CERD provides for an individual complaints mechanism, and Ireland has made a declaration recognising the Committee's competence to receive and consider complaints from individuals or groups claiming a violation of the rights protected under CERD.

Article 2 requires States to take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination.

State parties are also required to guarantee the right of everybody - without distinction as to race, colour, national or ethnic origin - to equality before the law and to the enjoyment of their political, economic, social and cultural rights. In particular, the rights to work, to the free choice of employment, to just and favourable working conditions, to protection against unemployment, and to equal pay for equal work, should be guaranteed to everybody without distinction. Also guaranteed to everybody without distinction are the rights to form and join trade unions and to housing, public health, medical care, social security, social services, education and training.

1.7 Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was opened for signature and ratification in 1979 and entered into force in 1981. CEDAW specifically addresses the rights of women and aims to eradicate discrimination against women in all its forms worldwide. It was ratified by Ireland in 1985. Ireland has also ratified the Optional Protocol to CEDAW that provides for an individual complaints mechanism. The Committee on the Elimination of All Forms of Discrimination against Women monitors the compliance of States parties with CEDAW. Ireland submitted its fourth and fifth periodic reports to the Committee in June 2003 and is due to be examined before it in 2005.²³ It should be noted that the report prepared by the Government does not refer to the particular situation of women migrant workers, who may experience multiple forms of discrimination.

Under CEDAW, Ireland is required to take all appropriate measures to eliminate discrimination against women in all its forms, including: political and public life, the field of education, employment, access to health care and all other areas. In relation to employment, CEDAW requires the State to eliminate discrimination against women and to ensure, on the basis of equality with men, the following rights: to work, to the same employment opportunities, to the free choice of profession, to promotion

²³ For a copy of Ireland's 4th and 5th periodic report see www.justice.ie, Publications.

and job security, to equal remuneration, the equal right to social security and to the protection of health and safety in working conditions.

1.8 Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) specifically addresses the rights of children worldwide and aims to secure to children the full range of their rights on the basis of equality and non-discrimination. The Convention regards the best interests of the child as the primary consideration. CRC was opened for signature and ratification in 1989 and entered into force in 1990. It is the most widely ratified human rights treaty, having been ratified by every State in the world except for the United States. It was ratified by Ireland in 1992. The Committee on the Rights of the Child monitors the compliance of States parties' with the Convention. Ireland submitted its initial periodic report to the Committee in 1996 and while Ireland's second periodic report was due to be submitted in 1999 the report has not yet been published or communicated to the Committee. There is no individual complaints mechanism under CRC.

Article 9 provides that a child is not to be separated from his or her parents against his or her will, except in accordance with the applicable law and procedure. Article 10 of CRC provides that applications by a child or his or her parents to enter or leave a State for the purpose of family reunification shall be dealt with in a positive, humane and expeditious manner. With regard to economic, social and cultural rights, CRC guarantees to every child the right to the highest attainable standard of health and to facilities for the treatment of illness. CRC also requires States to recognise the right of every child to the following: benefit from social security; a standard of living adequate for the child's physical, mental, spiritual and social development; and the right to education.

Section 2:

Relevant International Conventions Not Ratified by Ireland

This section focuses on the international conventions relevant to the rights of migrant workers and their families that Ireland has not ratified. Chief amongst these is the UN Convention on the Protection of All Migrant Workers and Members of Their Families (ICMW). Ireland has also not ratified either the Council of Europe Convention on the Rights of Migrant Workers or most of the International Labour Organisation Conventions specifically addressing the rights of these workers. While Ireland is not currently bound by the Conventions outlined below, these Conventions are regarded as the most comprehensive set of international human rights standards in relation to the rights of migrant workers and their families. Given the large number of migrant workers working and participating in Irish society, and the need to adopt an effective and humane immigration policy that focuses on their rights and those of their families, it is imperative that Ireland ratify these conventions and incorporate the standards contained therein into its immigration policy and law.

2.1 International Convention on the Protection of All Migrant Workers and Members of Their Families

The ICMW was opened for signature and ratification in 1990, but has only recently - on 1 July 2003 - entered into force. It contains a number of important principles in relation to the rights of migrant workers and their families. However, not all of the rights in the Convention apply to all the migrant workers defined by the Convention: Part III applies to all migrant workers and their families; Part IV only applies to those migrant workers who are documented and lawfully employed in the State.

Definition of a Migrant Worker

The ICMW provides for an international definition of the term migrant worker. Article 2 of the Convention defines 'migrant worker' as a person who is, or has been, engaged in a remunerated activity, in a State of which he or she is not a national. In addition, Article 2 defines particular categories of migrant workers including frontier workers, seasonal workers, seafarers, workers on offshore installations, itinerant workers, project-tied workers, and specified-employment workers.

Non-discrimination

Article 7 of the Convention provides that State parties are to respect and ensure to all migrant workers in their territory or subject to their jurisdiction the rights contained in the Convention. They must do this without distinction of any kind based on sex, race, colour, language, religious conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth and other status.

Part III of the ICMW: Protection of the Human Rights of All Migrant Workers

Civil and Political Rights

As indicated above, Part III of the Convention applies to all migrant workers and their families regardless of documentation or the legality of their employment. In essence, this part of the Convention applies the fundamental human rights provided for in other international human rights conventions specifically to migrant workers. These rights include: the right to life; the right to freedom from torture, inhuman or degrading treatment; the right to be free from slavery or compulsory labour; the right to freedom of thought, conscience and religion; the right to freedom of expression, the right to privacy, family, home and correspondence; the right to liberty and security of the person; the right to be treated humanely while in detention and, finally, the right to equality before the law.

Article 16(7)(a) is of particular relevance to the situation of migrant workers and their families. This article provides that where a migrant worker or member of his or her family is arrested or detained pending trial, the consular or diplomatic authorities of his or her State should be informed without delay if the person so requests. The person also has the right to communicate with the consular authority and to send communications to the consular authority without delay. In relation to persons deprived of their liberty, Article 17(3) provides that any person detained in a State for violation of provisions relating to migration shall be held separately from convicted persons or persons detained pending trial.

Article 21 provides that it is unlawful for anyone - other than a public official duly authorised by the law - to confiscate, destroy or attempt to destroy identity documents

of migrant workers or their families. Article 22 provides that migrant workers and their families shall not be subject to collective expulsion, and that each case should be decided individually. Furthermore, it provides that any decision regarding expulsion should be taken by a competent authority in accordance with the law.

Economic, Social and Cultural Rights

Article 25 provides that migrant workers shall enjoy treatment not less favourable than nationals of the State of employment in respect of remuneration, conditions of employment, and other terms of employment such as the minimum age. In addition, it is not permissible to derogate in a private contract from this principle of equality of treatment. Article 25 recognises the right of migrant workers to take part in trade union meetings and activities, to join any trade union, and to benefit from the aid and assistance of any trade union.

In relation to social security, the Convention provides that migrant workers and their families shall enjoy the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of the State. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the State concerned is required to examine the possibility of reimbursing the amount of contributions made by migrant workers with respect to that benefit on the basis of the treatment granted to nationals in similar circumstances.

The right to health care is provided for in Article 28. Specifically, on the basis of equality of treatment with nationals of the State concerned, the Convention provides for the right to receive medical care for the preservation of life, or for the avoidance of irreparable harm to a person's health. It is prohibited to refuse to provide emergency medical care on the basis of any irregularity with regard to stay or employment.

Part IV of the ICMW: Protection of the rights of those migrant workers who are documented

Residence Rights

Article 37 requires that before their departure, or upon their entry to a State of employment, migrant workers and their families should be fully informed by the State of all conditions applicable to their admission, particularly those concerning their stay and the remunerated activities in which they may engage, as well as the requirements they must satisfy in the State.

Article 38 requires States to make every effort to authorise migrant workers and members of their families to be temporarily absent without effect upon their authorisation to stay or to work. Under Article 39, they have the right to freedom of movement in the territory of the State of employment and the freedom to choose their residence there.

Equality of Treatment with the Nationals of the State of Employment

In the case of migrant workers who are legally documented to work within the State, the principle of equality of treatment with nationals of the State extends further than provided for in Part III of the Convention. Article 43 provides that migrant workers shall enjoy equality of treatment with nationals of the State in relation to access to educational institutions and services, and access to vocational guidance and training facilities. This article also provides for equality of treatment with regard to access to:

housing (including social housing schemes), social and health services, and equal access to participation in cultural life. State parties to the Convention are under an obligation to ensure *effective equality* of treatment to enable migrant workers to enjoy these rights.

Family Reunification

Article 44 of the Convention provides that the family is the natural and fundamental unit of society, and that the State shall take appropriate measures to ensure the protection of the unity of the families of migrant workers. States are required to take the measures:

‘That they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to the applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children’.

Therefore, while States are required to take steps to facilitate the reunification of migrant workers with their family, this provision is phrased in broad terms and grants a large amount of discretion to the States parties to the Convention.

Employment Rights

Article 51 provides that migrant workers who are not permitted to freely choose their employment will neither be regarded as irregular nor lose their right of residence because their employment terminates before their work permit has expired. In this situation, the Convention provides that the person involved has the right to seek alternative employment, to participate in public work schemes and to retrain during the remaining period of their authorisation to work.

Article 52 provides that migrant workers have the right to freely choose their employment, but this is subject to a number of conditions. Where it is in the interest of the State and provided for by law, the State may restrict access to limited categories of employment. It may also restrict free choice of employment in accordance with its legislation concerning the recognition of occupational qualifications acquired outside the State.

Article 52(3) pertains to migrant workers whose permission to work is limited in time; under it, the State can make their right to freely choose employment conditional upon two years of residence and employment on the territory of the State.

Article 54 provides that migrant workers shall enjoy equality of treatment with nationals in respect of protection against dismissal, unemployment benefits, access to public work schemes, and access to alternative employment in the event of loss of work.

Article 40 provides that, in addition to the right to join and participate in a trade union, migrant workers who are documented should have the right to form an association or trade union in the State of employment for the promotion and protection of their economic, social and cultural rights.

2.2 European Convention on the Legal Status of Migrant Workers

The European Convention on the Legal Status of Migrant Workers (EMW) is the culmination of the Council of Europe's efforts to produce a specific instrument for the protection of migrant workers and their families. The EMW was adopted in 1977 and entered into force in 1983. To date, however, it has only been ratified by eight member States of the Council of Europe.

Similarly to the European Social Charter, the EMW only applies to Council of Europe member States that are parties to the Convention. It pertains to migrant workers who have been authorised by another Contracting Party to reside in its territory in order to take up paid employment.

In relation to the nature of the work permit, Article 8(2) provides that 'a work permit issued for the first time may not as a rule bind the worker to the same employer or the same locality for a period of longer than one year'.

The EMW also provides that migrant workers should be accorded treatment not less favourable than that accorded to the nationals of the State of employment in relation to housing, conditions of work, social security, medical assistance, and legal proceedings.

2.3 International Labour Organisation Standards

The ILO has a further three conventions not ratified by Ireland that explicitly deal with the rights of migrant workers. The application of the provisions of these conventions is limited to the nationals of the States parties to them. However, refugees and stateless persons resident in a State party are entitled to the rights contained in the Conventions. The three conventions concerned are:

- Migration for Employment Convention, C 97
- Migrant Workers (Supplementary Provision) Convention, C 143
- Maintenance of Social Security Rights Convention, C 157.

Employment Rights

The principle that all migrant workers should receive the same treatment as nationals in respect of employment and work conditions is well recognised in the ILO Conventions. Under C97, this is required in relation to remuneration and conditions of work, membership of a trade union and taxation. Article 10 of C143 requires States to promote and guarantee equality of opportunity and treatment in respect of employment and occupation, and membership and participation in trade unions.

In relation to the free choice of employment for migrant workers, the ILO Conventions provide the highest standards of protection for them. Article 14(a) of C143 provides a member State may:

‘Make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully within its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract’.

Two years is the maximum period for which restrictions may be imposed on the free choice of employment. Free choice of employment is absolute, with the exception of access to public service. It is not dependent on the discretion of the State.

Family Reunification

Article 13(1) of C143 provides that States should take all necessary measures to facilitate the reunification of the families of all migrant workers residing in their territory. For the purpose of family reunification, the family is defined in C143 as ‘the spouse and dependent children, father and mother’.

Section 3:

Other International Standards Addressing the Rights of Migrant Workers and their Families

As noted above, this final section of the report examines the significant number of principles of international human rights law that specifically address migrant workers and their families. While not directly legally binding upon States, these principles provide important guidance with regard to best international practice in the area of migration policy. These non-binding standards also provide important detail around the broader principles contained in the Conventions. They come from three key sources: as Recommendations of the Council of Europe’s Committee of Ministers; Recommendations of the International Labour Organisation; and from the Conference Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance 2001.

3.1 Council of Europe: Recommendations of the Committee of Ministers

The Committee of Ministers is the decision-making body of the Council of Europe and comprises the foreign ministers of all member States - or their permanent diplomatic representatives in Strasbourg. Under Article 15.b of the Statute of the Council of Europe, the Committee of Ministers can make recommendations to the member States on matters that it has agreed are a ‘common policy’ between member States. Although these recommendations are not legally binding upon States, they represent a political consensus on a particular matter and reflect the broader aim of the Council of Europe to achieve greater unity between its members. The Committee of Ministers has made a number of recommendations specifically addressing the rights of migrants in particular areas. These include:

Migrants’ Housing

According to **Recommendation (1988) 14** on Migrants’ Housing, member States should take steps to accord migrants treatment not less favourable than that accorded to their own nationals regarding housing and rents. To this end, States are recommended to enact legislation to counter all forms of housing discrimination against migrants. They are also recommended to provide fuller information for migrants on their opportunities, rights and duties regarding rented accommodation and home ownership.

Security of Residence of Long-Term Migrants

Recommendation (2000) 15 contains a set of recommendations concerning long-term immigrants security of residence. A long-term immigrant is defined as a person

who has resided lawfully and habitually for a period of at least five years and a maximum of ten years, on the territory of the State otherwise than exclusively as a student. A long-term immigrant is also defined as a person who has been authorised to reside on the territory of the State permanently for a period of at least five years, or as a family member whose residence on the territory of the State has been authorised for a maximum period of five years for the purpose of family reunification.

This Recommendation states that a long-term immigrant should enjoy no less favourable treatment than that enjoyed by nationals of the member State with regard to the following areas: access to employment and other economic activities; working conditions; the right of association; membership of and active participation in trade unions; access to all forms of housing; social security and assistance; healthcare; schooling and vocational training; active and passive participation in public life at local level and free movement on the territory of the State of residence.

According to Paragraph 3 of this Recommendation, the residence permit of a long-term immigrant may only be withdrawn under certain circumstances. These circumstances include: where the permit has been acquired by means of proven fraudulent conduct; where the person resided effectively outside the State for a period of more than six months; where the person has been convicted of serious crimes or where the person constitutes a serious threat to national security.

Paragraph 4 of the Recommendation deals with the circumstances under which a long-term immigrant can be expelled from the State. According to the Recommendation, a decision to expel a long-term immigrant must have due regard to the principle of proportionality in light of the case law of the European Court of Human Rights. In deciding to expel somebody, the State must take into consideration the personal behaviour of the immigrant, the duration of his or her residence, the consequences for both the immigrant and his or her family, and the existing links of the immigrant to his or her country of origin.

In addition, the Recommendation provides that States should not expel a person who has been a resident for five years except where the person has been convicted of a criminal offence where the sentence exceeds two years' imprisonment. Where a person has been a resident for ten years, expulsion can only be authorised in the case of a conviction for a criminal offence where the sentence exceeds five years' imprisonment. Finally, the Recommendation states that a person who has resided in the State for twenty years should no longer be expellable.

Legal Status of Persons Admitted for Family Reunification

Recommendation (2002) 4 deals with the rights of persons who have been admitted to the State for family reunification. Section II provides that, after admission for family reunification, the family member should be granted an establishment permit, a renewable residence permit, or a renewable residence permit of the same duration as that held by the principal. In the case of residence permits granted to children who are family members, the Recommendation states that the primary consideration should be the best interests of the child.

Section III recommends that after a period of four years of legal residence, adult family members should be granted an autonomous residence permit independent of that of the principal. Where there is a divorce, separation or death of the principal, a

family member having been resident for at least one year, should be given the opportunity to apply for an autonomous residence permit.

Section IV recommends that when considering expulsion of a family member, consideration should be given to the person's place of birth, age of entry to the State, length of residence, family relationship, the existence of family ties in the country of origin and to the solidity of social and cultural ties with the country of origin. In addition, where children are involved, their best interests and well-being should be given special consideration.

Section V addresses equality of access to the labour market, to education and to social rights for family members. In particular, it states that family members should enjoy equal treatment to the principal with regard to access to employment, as well as the enjoyment of social rights, including the rights to health care and social security. If the family members have access to the labour market, they should enjoy equal treatment with nationals as regards working conditions and membership of, and participation in, trade unions. In addition, family members should enjoy equal treatment with nationals with respect to education. This applies to both university education and vocational training, and includes initial and further training and retraining.

3.2 Recommendations of the International Labour Organisation

In addition to drafting conventions, the ILO has also drafted a number of non-binding recommendations specifically addressing the rights of migrant workers and their families. These recommendations provide detailed definition of the standards contained in the conventions. They often set higher standards than the conventions, thus providing important guidance as regards best international practice in migration policy.

Migration for Employment Recommendation R86

According to Paragraph 4 of the Recommendation, it should be a general policy of member States to develop and utilise all possibilities of employment. For this purpose, they should facilitate the international distribution of manpower and, in particular, the movement of manpower from countries which have a surplus of manpower to those that have a deficiency.

Paragraph 5 of the Recommendation states that a free service should be provided in each country to assist migrants and their families and, in particular, to provide them with accurate information. This service should advise migrants and their families, in their languages or in a language they can understand, on matters relating to emigration, immigration, employment and living conditions, including health conditions in the place of destination. Paragraph 5 further states that preparatory courses should be provided to inform migrants of the general conditions and methods of work prevailing in the country of immigration, and to instruct them in the language of that country. Both the countries of emigration and immigration should mutually agree to organise such courses.

According to Paragraph 8 of the Recommendation, there should be a reasonable interval between the publication and the coming into force of any measure altering the conditions on which immigration or the employment of migrants is permitted.

Paragraph 10 provides that migration should be facilitated by such measures as may be deemed appropriate to ensure that migrants for employment are provided in case of necessity with adequate accommodation, food and clothing on arrival in the country of immigration. Migration should also be facilitated by ensuring, where necessary, vocational training in order to enable the migrants for employment and to acquire the qualifications required in the country of immigration.

In relation to family reunification, paragraph 15 states that provision should be made by agreement for authorisation to be granted for a migrant for employment introduced on a permanent basis to be accompanied or joined by the members of his family.

Paragraph 16 provides that migrants for employment authorised to reside in a territory and the members of their families authorised to accompany or join them should, as far as possible, be admitted to employment on the same conditions as nationals. Where such restrictions exist, they should cease within five years of a migrant residing regularly in the country.

Migrant Workers Recommendation R151

Paragraph 2 of this Recommendation states that migrant workers and members of their families should enjoy effective equality of opportunity and treatment with nationals of the State concerned in respect of:

- Access to vocational guidance
- Access to vocational training and employment of their own choice on the basis of individual suitability for such training and employment
- Advancement in accordance with their individual character, experience, ability and diligence
- Security of employment, the provision of alternative employment, relief work and retraining
- Remuneration for work of equal value
- Conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment
- Membership of trade unions, exercise of trade union rights and eligibility for office in trade unions and in labour-management relations bodies, including bodies representing workers in undertakings
- Rights of full membership in any form of co-operative
- Conditions of life, including housing and the benefits of social services and educational and health facilities.

Paragraph 6 of this Recommendation provides that, while assuring migrant workers the right to geographical mobility, the State may make the free exercise of the choice of employment subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years.

Paragraph 7 sets out the measures that the State should take in consultation with representative organisations of employers and workers to ensure migrant workers and

their families can take full advantage of their rights and opportunities in employment and occupation. These measures include:

- The provision of information to migrant workers, as far as possible in their mother tongue or in a language they can understand, on their rights under national law
- Measures to advance their knowledge of the language or languages of the country of employment, as far as possible during paid time
- General measures to promote their adaptation to the society of the country of employment and to assist and encourage their efforts and those of their families to preserve their national and ethnic identity and their cultural ties with their country of origin.

Maintenance of Social Security Rights Recommendation R167

Paragraph 3 provides that member States should conclude (among themselves and with the States concerned) appropriate administrative or financial arrangements to remove possible obstacles to the provision of social welfare benefits to nationals of a member State or to refugees or stateless persons. Paragraph 4 provides that where one member State bound by a bilateral or multilateral social security instrument has no legislation in force in respect of unemployment or family benefit, the member States so bound should endeavour to conclude appropriate arrangements between themselves to compensate equitably the loss of the absence of rights resulting therefrom.²⁴

3.3 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance 2001

The World Conference against Racism was held in Durban, South Africa in 2001. Migration and discrimination was one of the specific issues it addressed. Indeed, the Conference Declaration contains a specific section addressing the rights of migrants generally. In particular, all States are requested to combat manifestations of a generalised rejection of migrants and to actively discourage all racist demonstrations and acts that generate xenophobic behaviour and negative sentiments towards migrants or rejection of migrants.

In light of the positive effect family reunification has on the integration of migrants, Paragraph 28 of the Declaration calls upon States to facilitate family reunification in an expeditious and effective manner.

Paragraph 29 urges States to take concrete measures to eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace against all workers, including migrants. In addition, States are urged to ensure the full equality of all persons before the law, including labour law. They are further urged to eliminate the barriers that exist for migrant workers in relation to their access to and participation in vocational training, collective bargaining, employment contracts and trade union activity, as well as judicial and administrative tribunals. In addition, States are urged to eliminate barriers to migrant workers seeking employment in

²⁴ Recommendation R167 also contains Annex I entitled, 'Model Provisions for the Conclusion of Bilateral or Multilateral Social Security Instruments', and Annex II entitled, 'Model Agreement for the co-ordination of bilateral or multilateral social security instruments'.

different parts of their country of residence and to working in safe and healthy conditions.

Under paragraph 30(b), States are urged to review and revise their immigration laws, policies and practices so that they are free of racial discrimination and compatible with their obligations under international human rights law. States are also urged to take all possible measures to promote the full enjoyment by all migrants of all their human rights, including the right to fair wages and equal remuneration for work of equal value without distinction of any kind. There should also be no distinction in the rights of migrant workers to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control, including social security, social insurance, access to education, health care, social services and respect for cultural identity.

As has been noted above, though not legally binding, the principles of these recommendations provide essential guidance on best international practice in the area of migration policy.

Summation

International human rights standards consistently emphasise that migrant workers should receive effective equality of treatment with nationals of the state of employment in relation to employment, economic and social rights, including the rights to housing, health care, and education. The right to family life is recognised throughout international human rights law and, under the UN Convention on the Rights of the Child, States parties are required to deal with applications for family reunification in a positive, humane and expeditious manner. The right of access to adequate information for migrant workers in relation to the conditions of their work permits and their rights and entitlements while residing in the host State are also set out under international human rights law. In addition, effective protection and redress against racial discrimination and the exploitation of women are well established in international law.

Part Two

Progress at EU Level in Developing Safeguards for Migrant Workers and their Families

Part Two of this report focuses on the emergence of immigration policy at EU level. In particular it examines the progress made in providing safeguards for migrants in the EU. It notes that, as a consequence of recent EU treaties and Council of Ministers decisions, there will be increased harmonisation of immigration policy at EU level.²⁵

The promotion of obligations in the European context relies on the legal basis established through the Treaty on European Union (TEU), most recently amended by the Treaty of Nice. It is this basis that allows EU institutions to make legislation and policy. Decisions made by the EU can range from totally binding regulations to aspirational documents such as declarations.

This part of the report traces the development of EU policy from the 1990s through to 2003, detailing its evolution from the Treaty of Amsterdam and the Tampere Council, through to the Laeken meeting and the Thessaloniki conclusions. It examines the progress that has been made in developing safeguards for migrants at EU level in recent years. It concludes that while important progress has been made in developing a legal framework for a common immigration policy, to date the main focus has been on the security and control aspects of this framework, with less progress being made on safeguarding rights.

Section 1: Development of EU Migration Policy

EU migration policy emerged slowly during the 1990s. However, by the ratification of the Treaty of Amsterdam, the regulation and rights of third country nationals was firmly on the Community's agenda.

Justice and Home Affairs moved to centre stage in the European debate during the 1990s. With the signing of the Maastricht Treaty in 1992, migration came under the remit of Third Pillar cooperation.²⁶ However, the focus at this stage was primarily on controlling and restricting immigration.

²⁵ Ireland and the UK have opt out rights in the harmonisation of immigration process but it remains to be seen if these will be invoked.

²⁶ The three pillars of the EU Treaty are:

- **First pillar:** the Community dimension, comprising the arrangements set out in the EC, ECSC and Euratom Treaties, i.e. Union citizenship, Community policies, Economic and Monetary Union, etc
- **Second pillar:** the common foreign and security policy, which comes under Title V of the EU Treaty
- **Third pillar:** police and judicial cooperation in criminal matters, which comes under Title VI of the EU Treaty (Third pillar).

The Treaty of Amsterdam transferred some of the fields covered by the old Third pillar to the First pillar (e.g. free movement of persons). Communitisation means transferring a matter which, in the institutional framework of the Union, is dealt with using the intergovernmental method (Second and Third pillars) to the Community method (First pillar).

In 1994, a Commission communication to the Council and the European Parliament on the integration of legal immigrants called for the strengthening of their rights. In 1995 there was a resolution on the fight against racism and xenophobia in employment and social affairs. The European Parliament also called for equal treatment in its resolutions on racism.

In 1996, the Council adopted a Joint Action Plan (96/443/JHA) concerning action to combat racism and xenophobia. Under this plan, the member States undertook to ensure effective judicial cooperation in respect of offences based on racist or xenophobic behaviour, however the Plan does not contain any specific references to migrants. Thus, it was not until the Treaty of Amsterdam, 1999 that Justice and Home Affairs - and specifically migration - came to the fore in EU policy-making.

Amsterdam Treaty

Immigration policy became a full Community responsibility with the entry into force of the Treaty of Amsterdam on 1 May 1999. Article 63 makes immigration a competence of the EU. As one writer put it, 'in the provisions of the Treaty of Amsterdam, third country nationals have finally found their place in Community law'.²⁷

The new title IV 'Visas, asylum, immigration and other policies related to the free movement of persons' was incorporated into the TEU.²⁸

The Treaty also included the transfer of competence from the Third pillar towards the First pillar; a transfer which implies a recognition of the jurisdiction of the ECJ in the new areas of Community competence.

The Treaty of Amsterdam states that in order to progressively establish an area of freedom, security and justice, the Council shall adopt:

- Within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 62(2) and (3) and Article 63(1)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article 31(e) of the Treaty on European Union
- Other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63.

The Commission is preparing a document on progress, which (in light of the 2004 deadline) is due to be presented to the Council in June 2004.

An Action Plan of the Council and the Commission on how best to implement the Treaty's provisions in the area of freedom, security and justice was adopted on 3 December 1998. Included in this Plan was the preparation of rules on the conditions of entry and residence, and the determination of rights for residents of one member

²⁷ Apap, J (2001) op. cit., p. 3

²⁸ Apap argues that the new title is important: it does not mention a common immigration policy, but provides a partial inventory of the elements of such a policy, Apap, J. (2001) op. cit.

State to reside in another member State. It should be noted however, that the overall focus was not on the promotion of the rights and integration of third country nationals, but on the development of mechanisms to combat illegal migration.

Post-Amsterdam

A special meeting of the European Council held at Tampere, Finland in October 1999 was dedicated to the establishment of an area of freedom, security and justice. This meeting elaborated political guidelines for the following years, including in the field of immigration. Tampere thus gave an additional push for the adoption of the Treaty measures considered necessary for the realisation of an area of freedom, security and justice. Paragraph 18 of the Presidency conclusions particularly emphasised this, stating that:

‘The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia’.

In its communication on a Community Integration Policy (COM 2000/757), the Commission set out its ideas for the new approach to the management of migration flows and, in particular, for a common policy on admission for economic reasons. The Commission communication on an open method of coordination for the Community Immigration Policy (COM 2001/387) is aimed at further facilitating these developments.

The Presidency’s conclusions on Justice and Home Affairs at Laeken in December 2001 reaffirmed commitment to the objectives defined at Tampere. The European Council undertook as soon as possible to adopt a common policy on asylum and immigration which would balance the migrants’ legitimate aspiration to a better life with the ‘reception capacities’ of the EU and its member States. It further recognised that one element of such a policy must be the establishment of specific programmes to combat discrimination and racism. However, the conclusions did not make any further reference to the rights of third-country nationals legally resident in the member States.

Paragraph 26 of the Seville conclusions stated that:

‘The European Council is determined to speed up the implementation of all aspects of the programme adopted in Tampere for the creation of an area of freedom, security and justice in the European Union. The European Council points here to the need to develop a European Union common policy on the separate, but closely related, issues of asylum and immigration’.

The conclusions further recognised that ‘the integration of immigrants lawfully present in the Union entails both rights and obligations’.

In its draft guidelines of April 2003, the Commission encourages member States to make use of immigration, in order to facilitate economic objectives. It does, though,

stop short of proposing concrete objectives or targets regarding new labour immigration, and concentrates instead on the inclusion of already resident migrants.²⁹

The Thessaloniki conclusions of June 2003 recognised the need for a common policy given the political priority ascribed to migration. In terms of this report, their most important section concerns the development of a policy at European level on the integration of third country nationals legally residing in the territory of the EU. The conclusions welcome the agreement on the directive on family reunification (see below). The Council invited the Commission to present an Annual Report on Migration and Integration in Europe in order to map EU-wide migration data, immigration and integration policies and practices. The conclusions also acknowledge that the success of integration depends on the effective inclusion of all possible actors.

In June 2003, the Commission published a Communication to the Council, the European Parliament, the Economic and Social Committee (ESC) and the Committee of the Regions (COR) on immigration, integration and employment (COM 2003/336). Its purpose was to address the gaps in policy development with regard to integration. The Communication places the importance of integration in the context of the Lisbon objectives³⁰ and sets out detailed proposals for supporting the development of integration policies for third country nationals in the EU. It puts forward key policy proposals in terms of:

- Consolidating the legal framework
- Re-enforcing policy coordination, including programmes for newly arrived immigrants
- Civic citizenship and nationality
- The European Employment Strategy
- The Social Inclusion Process
- Economic and social cohesion
- Combating discrimination
- Cooperation in education
- Closer dialogue with third countries
- Reinforcing EU financial support for integration
- Improving information on the migration phenomenon.

Section 2: Safeguarding the Rights of Migrant Workers and Their Families

As stated above, the TEU provides the legal base for the development of policies on migration. Since the Amsterdam Treaty, the institutions of Europe have been more active in promoting the rights of migrants in the EU. The emerging framework can be broadly discussed in terms of six main categories:

²⁹ Niessen, J and Schibel, Y (2003) Charting the New Paths for Europe at Home and Abroad, European Policy Centre, available: www.theepc.net

³⁰ At Lisbon the EU set itself the goal to 'become the most competitive and dynamic knowledge-based economy in the world; capable of sustainable economic growth with more and better jobs and greater social cohesion'.

- (1) Conditions of entry and residence
- (2) Family reunification
- (3) Freedom of movement
- (4) Freedom from discrimination and racism
- (5) Fundamental rights
- (6) General instruments on employment and social inclusion.

(1) Conditions of Entry and Residence of Third Country Nationals

Commission proposal COM 2001/386 aims to provide a single national application procedure leading to one combined title for residence and work permits. This proposal defines a number of key terms, such as ‘third-country nationals’, ‘activity as an employed or self-employed person’, ‘residence permit’, and ‘seasonal worker’. According to it, the holder of a ‘residence permit – worker’ will enjoy various rights, notably the rights: to enter and reside in the member State that issued the permit, to pass through other member States, to exercise the activities of the permit, and to enjoy the same conditions as EU Citizens. The proposal further provides that decisions on residence permits will be adopted within 180 days of application.

A proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service (COM 2002/0548), was proposed in 2002. According to the Commission, this proposal completes the set of initiatives already presented on immigration for the purposes of employment and family reunification.

Extension of Regulation No. 1408/71 to Nationals of Third Countries

Progress has also been made towards granting third country nationals the same protection as EU workers in the field of social security when moving in the EU. A proposal by the Commission (COM 2002/59 final) suggests that the implementation of new Regulation 1408/71 should result in giving legally residing non-EU nationals the same rights as EU nationals when moving within the EU. According to the Commission, the adoption of this Regulation is an essential cornerstone, in view of the future adoption of the directives on the status of long-term residents and admission for employment. At present, the Regulation only applies to citizens of the EU. The proposal to extend its application to nationals of third countries was agreed in principle by the Council in February 2002. Parliament issued its opinion in November 2003.

Status of Long-Term Residents

The objective of a Council Resolution adopted on 4 March 1996 (31996Y0318/02) was to encourage at national level the adoption of measures promoting the integration of third country nationals residing on a long-term basis in the territory of a member State.³¹ As a resolution, however, this document is not legally binding.

In 2001 the Commission published a proposal for a directive concerning the status of third-country nationals who are long-term residents (COM 2001/127 final). This proposal is based on the long tradition in the member States that the length of a

³¹ A long-term resident should be granted a residence authorisation for at least ten years - or an unlimited residence authorisation. The resident and their family should enjoy the same treatment as nationals of the member State with regard to: working conditions, membership of trade unions, housing public policy, social security, emergency health care, and compulsory schooling.

person's residence has an influence on the level of their rights. It was adopted as Council Directive 2003/109/EC on 25 November 2003. This Directive determines both the terms for conferring and withdrawing long-term resident status by a member State, and the terms of residence in member States other than the one which granted the long-term residence status. Member States have until 23 January 2006 to transpose the directive. Neither Ireland nor the United Kingdom participated in its adoption.

Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking who Cooperate with the Competent Authorities

Commission proposal COM 2002/71 provides for short-term residence permits being issued to victims of trafficking who cooperate with the authorities. It includes a 30-day reflection period for victims in which they will not be expelled, and during which they will be given access to housing and free legal and language assistance. The actual residence permit will be valid for six months, and renewable for a further six months, and will give its holder access to the labour market, vocational training and education. Political agreement was reached under the Italian presidency. However, as of December 2003 this proposal was subject to parliamentary reservation by the Netherlands and France.

Asylum Policy

A number of legislative instruments in the field of asylum policy contain provisions in relation to integration. The Council Directive laying down minimum standards for the reception of asylum seekers is a case in point. The proposal for a directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or persons who otherwise need international protection (COM 2001/510 final) is another. It contains a specific chapter regulating the content of international protection and specifying the rights to be enjoyed by a refugee or person granted subsidiary protection. These rights require member States to provide programmes tailored to the needs of refugees to facilitate their integration into society. The European Parliament issued its opinion in October 2002 and according to the latest edition of the Commission's Scoreboard work is in progress in the Council.³²

(2) Family Reunification

Political agreement was reached on the Directive on family reunification in the Council on 27 February 2003 (2003/86/CE). This Directive recognises the right to family reunification for third country nationals holding a residence permit of one year or more who have reasonable prospects of obtaining permanent residence. Member States will be entitled to require, for the exercise of this right, that third-country nationals comply with integration measures in accordance with national law. An essential provision for the integration of family members is that they be entitled, in the same way as the applicant, to access to employment, education and vocational training.³³ Ireland and the United Kingdom have opt-out rights and have not participated in this Directive.

³² In a press release issued on 24 November 2003, the UNHCR issued strong concerns about the direction of the EU asylum policy harmonisation process. The High Commissioner for Refugees, Ruud Lubbers outlined eight separate elements of the draft asylum procedures directive which are a cause for concern, available at: www.unhcr.ch/press-releases (06.01.04)

³³ A number of concerns have been expressed regarding the content of this Directive, most notably an NGO called the European Coordination for Foreigners' Right to Life. In a letter to the President of the

(3) Freedom of Movement for Periods not Exceeding Three Months and Specific Authorisation

Commission proposal COM 2001/388 final, provides for the general harmonisation of the conditions for movement of third-country nationals with a view to replacing the existing provisions of the Schengen *acquis*.³⁴ This proposal also defines certain key terms such as ‘third-country national’, ‘uniform visa’ and ‘residence permit’. It does not affect Community or national law relating to longer term stays or access to economic activity. Parliament issued its opinion in February 2002, and work is ongoing in the Council.

Freedom of Movement with a Long-Stay Visa

The Council Regulation on Freedom of Movement with a Long-Stay Visa (No. 1091/2001) allows holders of long-stay visas to move freely around the countries participating in the Schengen *acquis* for a period of three months from the initial date of validity of the long-term visa. The United Kingdom and Ireland did not participate in the adoption of this regulation.

Travel Facilities for School Pupils from Third Countries

Council Decision 94/795/JHA, of 30 November 1994, lays down the conditions under which school pupils from third countries resident in a member State may enter and temporarily reside on the territory of other member States.

Posting of Employees from Third Countries by Undertaking for the Provision of Cross-Border Services

A Commission proposal (COM 2000/271 final) for a directive seeks to enable service providers established in the EU to post employees from third countries via a simple advance declaration to be sent to the authorities of the host member State. This proposal also takes into account the extension of free movement of cross-border services to self-employed nationals of a third country. The Commission has also put forward proposals for a directive on the admission of students and volunteers and is preparing a new proposal on the admission of researchers.³⁵

European Parliament, dated 6 October 2003, it called on the Parliament to lodge an appeal in the ECJ to obtain an annulment of the Directive: Garatto, A. (2003), on behalf of the European Coordination, available at: www.coordeurop.org (09.12.04). On 16 December 2003 the President of the European Parliament decided to challenge the Directive on the Right to Family reunification; this was done following a recommendation by the Parliament’s Committee on Citizen’s Freedoms and Rights, and supported by the Committee on Legal Affairs.

³⁴ Ireland is not a member of Schengen. However Ireland asked to take part in some aspects of Schengen by letters to the President of the Council of the EU dated 16 June 2000 and 1 November 2001. The Commission and Council issued their opinion, emphasising that Ireland’s partial participation should not undermine the overall consistency of the Schengen provisions. Ireland asked *inter alia* to take part in all the provisions concerning the implementation and operation of the Schengen Information System (SIS). On 28 February 2002 the Council adopted a decision on Ireland’s request which took effect as of 1 April 2002 [Decision 2002/192/EC, published in Official Journal L 64 of 07.03.2002], available at: <http://europa.eu.int/scadplus/leg/en/lvb/l33020.htm> (09.12.03). The decision outlines Ireland’s participation in a number of provisions of the Schengen *acquis*.

³⁵ Commission (2003) Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment (COM 2003/336).

(4) Freedom from Discrimination and Racism

Council Decision 2000/750/EC established a Community action programme to combat discrimination from 2001-2006.³⁶ This programme deals with all forms of discrimination, except sex, which is dealt with by a specific Community action. Within the limits of Community power, the programme seeks to supplement and support efforts in the member States.

Council Directive 2000/78/EC established a general framework for equal treatment in employment and occupation. This directive prohibits discrimination based on religion or belief, disability, age or sexual orientation in the areas covered by the directive. It states that:

‘This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation’.

Council Directive 2000/43/EC provides for implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Its purpose is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting the principle of equal treatment into effect in the member States.³⁷

As the Commission has pointed out:

‘Although the directives do not cover discrimination on grounds of nationality, and are without prejudice to the conditions relating to the entry and residence of third country nationals and to any treatment which arises from their legal status, they do apply to all persons resident in the Member States, including third country nationals’.³⁸

The Commission proposal for a Council Framework Decision on combating racism and xenophobia (COM 2001/664 final), is aimed at approximating the laws and regulations of the member States regarding racist and xenophobic offences. It expands the list of offences in the Joint Action of 1996 to other forms of conduct which should be made criminal offences in all member States. Article 8 refers to the racist intention of the offender as an aggravating circumstance. This Council Framework Decision would apply to all offences involving racism and xenophobia committed within the territory of the member States, by nationals of the member

³⁶ The Commission presented a communication on racism, xenophobia and anti-Semitism in December 1995.

³⁷ In Ireland it has been proposed that the implementation of the Race Directive will be achieved through the introduction of the Equality Bill, 2004 to amend the Employment Equality Act and the Equal Status Act. This Bill will also serve to implement the Framework Employment Directive and the Gender Equal Treatment Directive. The European Commission publishes short reports on the current state of play in each member State on the implementation of the race equality Directive into national law; these are available at:

http://europa.eu.int/comm/employment_social/fundamental_rights/legis/msleglnraceequal_en.htm (06.01.04).

³⁸ Commission (2003), op. cit. As highlighted above, the Article 13 directives do not have direct effect.

States, or for the benefit of a legal person established in a member State. According to the Commission Scoreboard, work on this proposal is in progress at the Council.³⁹

(5) Fundamental Rights

The Charter of Fundamental Rights of the European Union was signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2002. Article 15 states that ‘Nationals of third countries who are authorised to work in the territories of the member States are entitled to working conditions equivalent to those of citizens of the Union’. Article 21 prohibits discrimination on the grounds of race, colour, ethnic or social origin, birth and membership of a national minority. Chapter IV of the Charter deals with workers’ rights, and refers to all workers. Article 7 of the draft Constitution states that the EU shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights; and that this Charter will constitute Part II of the Constitution.

(6) Policy Instruments Underpinning Integration, Employment and Social Cohesion

In addition to combating discrimination, since the launch of the European Employment Strategy (EES) in 1997, the integration of disadvantaged groups, including migrant workers and ethnic minorities, has been a key feature of the employment guidelines.⁴⁰ In its Communication of 17 July 2002, the Commission reviewed the experience of five years of the EES and identified major issues for the debate on its future. These include reducing the employment gap between EU nationals and non-EU nationals, promoting full participation and employment for second generation migrants, addressing the specific needs of immigrant women, fighting illegal immigration and transforming undeclared work into regular employment.

In the field of social inclusion, the Nice European Council (December 2000) agreed a set of common objectives to combat social exclusion and poverty. The first national action plans against poverty and social exclusion (NAPs/incl) were submitted in June 2001. Although they lacked data on vulnerable groups, these plans clearly identified ethnic minorities and immigrants as being at high risk of social exclusion and discrimination.

In 2000 the Commission announced a five year Programme of Action with the objective of ‘shaping a new Europe’. Part of the Programme was an economic and employment agenda. In its 2000 communication on the Social Policy Agenda, the Commission stated that ‘equality of treatment should apply to third country nationals who reside within the EU, in particular long-term residents, in view of strengthening their integration into the host country’.

³⁹ According to the European Network against Racism (ENAR) ‘the initial text has been substantially altered due to heavy bargaining on its content by the different member States. However, even in this altered and weakened version, the Council has not been able to reach an agreement, De Jonckhere, S. (2003) Irish Presidency: Priorities for EU member States in Combating Racism, in: NCCRI, Spectrum Issue 4 (December 2003) p. 5.

⁴⁰ For further information on the EES see the Commission’s website : http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm (06.05.01).

Summation

‘It is undeniable that the EU is advancing towards a common migration procedure. However, the question is to know when and, one could add, how, such a system will be set up this process knows some delays and encountered a number of difficulties. One can only hope that the new attitude towards the immigration of third country nationals combined with the new competencies of the Community in the field of immigration will reflect the ‘good intentions’ expressed in several documents and action plans in policies that would be at the same time concrete, effective and human’.⁴¹

Immigration has come to the fore of European policy-making resulting in an increased focus, throughout the 1990s to date, on Justice and Home Affairs. The Amsterdam Treaty was pivotal in facilitating this development, which has been reflected in Council conclusions and Commission communications over the last four years. However, significant gaps remain in the EU migration framework.

At Tampere in 1999 the EU attempted to flesh out the agenda of creating an area of freedom, security and justice as promised in 1997. This included a number of initiatives in the field of migration. Townsend points out, however, that ‘four years on they have not met these targets. The EU has developed only the vaguest outline of an immigration policy, while making slightly more progress on building a European asylum system’.⁴²

In light of the 2004 deadline, it is clear that the EU has begun the process of addressing the rights of migrants. Resolutions and directives have been proposed and adopted in a number of key areas. This trend could be set to increase with the revision of decision-making procedures as envisaged by the draft Constitution, though the realities and impact of the new constitutional arrangements remain to be seen.

In short, the main success of the EU in the safeguarding of the rights of EU migrant workers has been the development a legal framework which seeks to develop a common immigration policy. The frame may exist, but the European community has not yet completed the structures to protect and uphold the rights of migrant workers and members of their families.

⁴¹ Apap, J (2001) op. cit., p. 24

⁴² Townsend, A (2003) op. cit., p. 2

Part Three

Implications for Policy in Ireland

Arising from the review of international standards and policy progress at EU level outlined above, Part Three of this report seeks to draw out some of the implications for policy in Ireland for the protection of migrant workers and their families.

The report does not seek to apply an overly legalistic or prescriptive approach to this process: some important human rights standards are contained in conventions that Ireland has not yet ratified, or relate to the emerging legislative process at EU level which - as this report points out - is still evolving. Consequently, this part of the report seeks to identify a broad range of benchmarks and issues that should be considered by policy-makers in Ireland when developing policy related to labour migration and the protection of migrant workers and their families.

Benchmarks for Policy Development in Ireland

The review of international standards and EU policy provides a range of benchmarks to assist in shaping future policy in Ireland.

This report clearly shows that the EU advocates the protection of migrant rights and their families as an integral part of the overall immigration framework being developed at EU level. This implies the need for a similar approach in Ireland. In short, future immigration policy in Ireland must take into account the rights of migrant workers and their families as part of an overall policy; the failure to do so would be inconsistent with the EU policy framework approach that Ireland has already endorsed.

This report's review of the development of EU policy also demonstrates that rights of migrant workers and their families is a multifaceted issue that includes consideration of a wide range of factors, including: conditions of entry and residence; family reunification; freedom of movement; freedom from discrimination and racism; fundamental rights, and general instruments on employment and social inclusion.

The review of international standards in this report provides us with a list of important benchmarks from which to assess existing policy and to inform future policy development. These are summarised as follows:

- Effective equality of treatment with nationals of the State in relation to employment rights
- Provision of accessible information on employment rights
- Ability to join and seek assistance from a trade union
- Ensuring effective complaint and redress mechanisms against exploitation and discrimination in the workplace
- Development of a comprehensive approach to family reunification rights by dealing with applications in a positive, humane and expeditious manner
- Adequate protections against racism, including discrimination motivated by racism
- Adequate protections against the exploitation and discrimination of women migrant workers

- Equality of treatment in relation to access to important services, including education, healthcare and housing
- Freedom of movement within national and EU boundaries
- The right to access alternative employment in the event of loss of employment for those with employment permits.

There are clear implications for policy arising from the application of these benchmarks to policy. These are summarised as follows:

1. Important rights and protections are already afforded to migrant workers in Ireland, but these need to be enhanced

There are important rights and protections already afforded to migrant workers, but these need to be enhanced. Among those already established is the enjoyment of equal employment rights through the broad range of employment rights legislation in Ireland, which applies to both non-EEA and EEA workers. Protection against discrimination on the grounds of race and the other eight grounds of the equality legislation is also provided for through that legislation and applies equally to migrant workers.

However, other important rights, such the right to join and seek aid from a trade union, are in some cases only notional for those migrant workers in Ireland who are in exploitative employment situations or who have not been adequately informed of their rights by the employer or the relevant State agencies.

Of further concern is the right to freedom of movement. The ability of migrant workers (including long-term residents) in Ireland to travel to other EU countries is impaired by the need to obtain visas to travel every time such a visit is made.⁴³

Another area of concern relates to the ability to access alternative employment in the event of loss of employment for those migrant workers with work permits. At present, this ability is only available at the discretion of the Department of Enterprise, Trade and Employment; this inevitably leads to lack of transparency, no matter how helpful the Department might be in individual cases.

2. Key areas of existing policy in respect of the rights of migrant workers and their families in Ireland are deficient and lacking in scope

There are some key areas of policy in Ireland in respect of the rights of migrant workers and their families that are deficient and lacking in scope.⁴⁴ For example, under present regulations the right to family reunification for those on work permits seeking to exercise their choice of enjoying a family life with their immediate family is discretionary and overly restricted.

Policy can also be considered deficient in light of the increasingly well-documented actions of rogue employers and employment agencies exploiting the work permit system; they are able to do so because of the procedure of investing work permits with employers rather than employees.

⁴³ Except in the limited circumstances that there is a bilateral agreement with the EU country concerned.

⁴⁴ Immigrant Council of Ireland (2003) Labour Migration into Ireland.

Of further concern is the ability to access key services such as education. For example, third level colleges, in line with government policy, charge full fees to most long-term residents (including migrant workers) no matter how long they have been in Ireland and how much tax they have paid. This policy needs to be reviewed in light of the principle of effective equality of treatment with nationals.

3. Enforcement bodies must be given adequate resources to enable protection, information and redress for migrant workers

The realisation of rights is in large part dependent on adequate protection, information and redress mechanisms. At a statutory level, greater resources must be given to bodies such as the Labour Inspectorate and the Employment Rights Unit in the Department of Enterprise, Trade and Employment to ensure that they can fulfill their statutory role, including the provision of targeted and accessible information to migrant workers on their employment rights. The enforcement of employment equality legislation is in part dependent on the resources available to the equality bodies.

Concomitant with the need for greater resources in the statutory sector, NGOs working in the areas of migrant workers rights, including the Immigrant Council of Ireland and the Migrant Rights Centre Ireland, need adequate resources to fulfill their mandate, which includes providing information and advice for migrant workers.

4. Labour migration policy should be linked to and reinforced by social inclusion, anti-racism and intercultural policy

The review of EU policy in this report clearly indicates that the EU continues to advocate a joined-up approach to policies related to migrant workers and their families. Intrinsic to this approach is a focus on broader policies that impact on social inclusion and anti-racism and intercultural policy.

The forthcoming Government National Action Plan Against Racism (NAPAR) provides an opportunity to build a more inclusive and intercultural Ireland where racism is effectively challenged. The Plan will help to provide a conceptual framework for targeted integration strategies, including those focusing on migrant workers and their families.

Government policy in Ireland should take into account a recent European Commission Communication (COM 2003/336 final) which provides guidance on developing a holistic approach to the integration of ‘third country nationals’ including migrants. The socio-economic needs of migrants should be specifically included in:

- The European Employment Strategy and Employment Guidelines
- The National Action Plans Against Poverty and Social Inclusion
- The structural funds and community initiatives.

5. Targeted strategies are needed to ensure the adequate protection of and rights for the most marginalised migrant workers

Migrant workers are not a homogeneous group. Targeted strategies need to be developed to ensure the protection and rights of the most marginalised migrant workers. These include women migrant workers in low paid or exploitative employment. In addition, further strategies need to be developed with migrant workers with limited English language skills and/or those with limited previous knowledge of working in an EU country. In order to inform future targeted strategies,

research needs to be undertaken to identify the sectors of the economy where exploitation is most likely to occur.

6. Ireland should ratify the International Convention on the Protection of All Migrant Workers and Members of their Families

The ratification by Ireland of key human rights conventions related to migrant workers and their families - including the ICMW - would help ensure that policy in Ireland is underpinned by comprehensive human rights standards.

Conventions not yet ratified by Ireland and non-binding international standards should be taken into account when Government policy is being developed in relation to the rights of migrant workers and their families.

7. Ireland should play a leadership role in safeguarding the rights of migrants and their families at EU policy level

With policy on migration being increasingly decided at EU level, Ireland has the potential to play a key role in ensuring that, in addition to the related security and economic issues, there is a focus on the rights of migrant workers and their families.

Conclusion and Recommendations

Conclusion

The Government has signaled its commitment to bring in comprehensive immigration legislation, a second work permit bill and a bill in relation to the greater regulation of employment agencies. These initiatives are to be welcomed and provide an important opportunity to introduce a comprehensive set of measures to provide protection and redress for migrant workers and their families.

It is the view of the HRC and the NCCRI that the legislative framework for a new immigration policy should be based on the established international human rights standards addressing the rights of migrant workers and their families and take into account the framework approach adopted by the EU.

Under international human rights law there are a number of treaties and non-binding standards that address the rights of migrant workers and their families. The International Convention on the Protection of All Migrant Workers and Members of Their Families is the most relevant human rights treaty in this area. However, Ireland, along with the other member States of the EU, has not yet ratified this Convention. In addition, Ireland has not yet ratified the European Convention on the Legal Status of Migrant Workers, nor has Ireland ratified a number of the International Labour Organisation conventions dealing with the rights of migrant workers.

International human rights standards consistently emphasise that migrant workers should receive effective equality of treatment with nationals of the State of employment in relation to employment rights and also in relation to economic and social rights including the rights to housing, health care, and education. The right to family life is recognised throughout international human rights law and, under the UN Convention on the Rights of the Child, States parties are required to deal with applications for family reunification in a positive, humane and expeditious manner. The right of access to adequate information for migrant workers in relation to the conditions of their work permits and their rights and entitlements while residing in the host State is also set out under international human rights law.

The HRC and the NCCRI think it important that the Government should enhance the enforcement of existing employment rights and labour law through bodies such as the Labour Inspectorate and the Employment Rights Unit of the Department of Enterprise, Trade and Employment. In this regard, for example, it is a matter of continuing concern that less than 20 labour inspectors are employed to enforce labour legislation throughout the country; in comparison, Ireland employs 350 environmental health officers.

The HRC and the NCCRI believe that the Government should put in place an overall strategy to take account of increasing cultural diversity in Ireland and to combat incidents of racism experienced by migrants and other minority ethnic groups in Ireland. The HRC and the NCCRI identify the forthcoming Government National Action Plan Against Racism as providing an important opportunity to develop a more inclusive and intercultural society in Ireland, where racism is effectively challenged.

It is the strongly held view of the HRC and the NCCRI that in developing a common immigration policy the EU member States should adopt a human rights approach and respect the minimum standards set down in international human rights law in relation to migrant workers. As previously noted none of the member States of the EU have ratified the International Convention on the Rights of All Migrant Workers and Members of their Families, even though it is estimated that 56 million migrant workers live and work within Europe.

The HRC and the NCCRI would wish the Government to take a leadership role in the development of safeguards for migrant workers and their families at an EU level. As a consequence of the Amsterdam Treaty and the Tampere Council in 1999, legislation is being developed at EU level to harmonise immigration policy between the member States. This impacts across a broad range of areas of domestic policy. The emerging legislative framework deals primarily with the conditions of entry and residence of third country nationals, the right to family reunification, fundamental rights, and freedom of movement of third country nationals within the EU, and racism and freedom from discrimination.

In addition, the integration of migrant workers, particularly long-term migrant workers, has been identified as a policy objective for the EU under the European Social Agenda and the European Agenda against Social Exclusion and Discrimination. This is to be welcomed.

While acknowledging that some progress has been made in developing a framework on immigration policy at EU level, progress in implementing the 'safeguards' dimension of this framework has been piecemeal and slow. The Irish Presidency of the EU provides an opportunity to give this process a renewed impetus. The HRC and the NCCRI are also conscious that Ireland's immigration legislation must be developed in the context of an evolving EU immigration policy.

The migratory context in Ireland is changing rapidly. The relevant human rights instruments and the framework approach being developed by the EU indicate clear benchmarks for policy in this area. Viewed in light of these, this report finds the existing policies safeguarding the rights of migrant workers and their families in Ireland to be deficient and lacking in scope.

In this context, it is imperative that Ireland now constructs a comprehensive policy and legislative framework for immigration that includes a strong focus on the rights of migrant workers and their families based on international human rights and the emerging framework approach adopted at EU level.

Recommendations

Overall Recommendations

Arising from the review of international human rights standards and policy progress at an EU level, the overall recommendations of this report are that:

- Migrant workers should not be treated as economic entities, but people with a broad range of social, cultural and economic needs and rights
- The development of immigration policy in Ireland and the EU must be underpinned by a human rights approach
- Safeguarding the rights of migrant workers and their families must be an essential component of the development of an overall immigration policy framework in Ireland and the EU.

Specific Recommendations

In addition, the HRC and the NCCRI specifically recommend that:

- The important rights and protections already afforded to migrant workers in Ireland need to be enhanced
- Gaps in existing policy should be filled in accordance with international human rights standards
- Enforcement bodies must be given adequate resources to enable protection, information and redress for migrant workers
- Labour migration policy should be linked to and reinforced by social inclusion, anti-racism and intercultural policy
- Targeted strategies are needed to ensure the adequate protection and rights for the most marginalised migrant workers
- Ireland should ratify the International Convention on the Rights of All Migrant Workers and Members of their Families
- Ireland should play a leadership role in safeguarding the rights of migrant workers and their families at EU policy level.

Annex One: Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
COR	Committee of the Regions
COREPER	Committee of Permanent Representatives
CRC	Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECRI	European Commission on Racism and Intolerance
ECSC	European Coal and Steel Community
EEA	European Economic Area
EES	European Employment Strategy
EMW	European Convention on the Legal Status of Migrant Workers
ENAR	European Network Against Racism
EP	European Parliament
ESC	European Social Charter
ESC	Economic and Social Committee
ESRI	Economic and Social Research Institute
EU	European Union
EUMC	EU Monitoring Centre on Racism and Xenophobia
GAERC	General Affairs and External Relations Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	UN Convention on the Protection of All Migrant Workers and Members of their Family

ILO	International Labour Organisation
HRC	Irish Human Rights Commission
JHA	Justice and Home Affairs
NAPAR	National Action Plan Against Racism
NCCRI	National Consultative Committee on Racism and Interculturalism
NGOs	Non-Governmental Organisations
OECD	Organization for Economic Cooperation and Development
QMV	Qualified Majority Voting
SIS	Schengen Information System
TEU	Treaty on European Union

Annex Two: Bibliography

An Introduction of European Labour Law, available at: www.fedee.com (09.12.03)

Apap (2001) *Extending Citizenship Rights to Third Country Nationals*, Centre for European Studies, Policy Brief No. 175

Apap, J (2001) *Shaping Europe's Migration Policy*, Centre for European Policy Studies, Working Document No. 179

Apap, J (2002) *The Development of European Citizenship and its Relevance to the Integration of Refugees*, CEPS Working Documents No. 180

Apap, J and Incerti, M (2002) *Trust and Cooperation in Judicial Extradition, Immigration and Asylum Matters*, Proceedings of a CEPS-Sitra Network Meeting, Brussels: CEPS

Borchardt, K (1999) *The ABC of Community Law*, Brussels: European Commission

De Jonckhere, S. (2003) Irish Presidency: Priorities for EU Member States in Combating Racism, in: NCCRI, *Spectrum* Issue 4 (December 2003) pp 4-6

Decision-making in the European Union, available at: www.europa.eu.int

Halibronner, K (2002) *Immigration and Asylum Law and Policy of the European Union*, The Hague: Kluwer Law International, available at: www.immigration.ucc.ie

Immigrant Council of Ireland (2003) *Labour Migration into Ireland*

Justice and Home Affairs Council Meetings, minutes available at: <http://ue.eu.int/newsroom/loadbook.asp?BID=86&LANG=1> (09.12.04)

List of Text adopted by the Council in the area of JHA by year, available at: <http://ue.eu.int/jai/releves/indexEN.htm> (09.12.04)

Niessen, J and Schibel, Y (2003) *Charting the New Paths for Europe at Home Abroad*, European Policy Centre, available: www.theepc.net

OECD (2002) *Trends in International Migration*

Peers, S. *Readmission Agreements and the EC External Migration Law*, Statewatch Analysis No. 17

Scottish Parliament Information Centre (2001) *An Introduction to EU Policy-Making Structures and Procedures*, Research Note, available at: www.scottish.parliament.uk (09.12.04)

Townsend, A (2003) *Can the EU Achieve an Area of Freedom, Security and Justice?*, Centre for European Reform – Opinion, available at www.cer.org.uk/pdf/opinion_at_jhaoct.pdf

UNHCR Press Release (24.11.03) Lubbers warns EU asylum law may erode international standards, available at: www.unhcr.ch/press-releases (06.01.04)



NCCRI

National Consultative Committee on Racism and Interculturalism
20 Harcourt Street
Dublin 2
Tel: 01-478 5777
Fax: 01-478 5778
Email: nccri@eircom.net
Website: www.nccri.com



HUMAN RIGHTS COMMISSION

Irish Human Rights Commission
4th Floor, Jervis House
Jervis Street, Dublin 1
Tel: 01-858 9601
Fax: 01-858 9609
Email: info@ihrc.ie
Website: www.ihrc.ie