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ar Chiníochas agus Idirchultúrachas

National Consultative Committee
on Racism and Interculturalism

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**Submission on the Green Paper on an EU Approach to
Managing Economic Migration, to the Director General,
Directorate General Justice, Freedom and Security, European
Commission**

**National Consultative Committee on Racism and
Interculturalism (NCCRI)**

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Introduction

The National Consultative Committee on Racism and Interculturalism (NCCRI) was established in 1998 as an independent expert body focusing on racism and interculturalism. The NCCRI is a partnership body which brings together government and non-government organizations, and is core funded by the Department of Justice, Equality and Law Reform.¹

The NCCRI has been actively engaged in discussions on migration in Ireland in recent years. The NCCRI has a migration sub-group which involves many of the key stakeholders concerned with migration in the Irish context, and provides a forum for discussion on the intersection between anti-racism and promoting interculturalism, and migration. In 2004 the NCCRI launched a joint publication with the Irish Human Rights Commission (IHRC) entitled: *Safeguarding the Rights of Migrant Workers and their Families: A Review of EU and International Standards: Implications for Policy in Ireland*.

The NCCRI welcomes the initiative by the European Commission to re-launch the debate on migration, through its Green Paper on an EU Approach to Managing Economic Migration [COM (2004) 811 final].² Given the increasing linkages between the debates on racism and migration, this initiative is especially timely. As the First Annual Report on Migration and Integration [COM (2004) 508 final] identified:

The fight against discrimination and racism has been rendered even more complex in the recent political climate, with the sometimes negative stereotyping of immigrants in the media and the rise in support for far-right political parties in some Member States.

This submission will address three key areas which the NCCRI believes must remain central to any debate on migration:

1. **Interculturalism:** Migration policy must be developed in a broader context of an intercultural Europe.³
2. **Mainstreaming:** any approach to migration, no matter what level of harmonisation is adopted, must be underpinned by a commitment to anti-racism and interculturalism.
3. **Integration:** Integration is a central element in the promotion of an intercultural Europe; the NCCRI has stressed the importance of the definition of integration as a *two-way* process. European societies must facilitate migration in a manner which acknowledges the impact of family reunification, admission systems and the position of undocumented workers, on integration.

¹ For further information and a list of recent submissions see: www.nccri.ie

² Hereafter referred to as the Green Paper

³ As part of Ireland's Presidency of the European Union a major conference was held in Dublin on 9 June 2004 entitled: 'Combating Racism through Building a More Inclusive, Intercultural Europe'. Over 100 people participated, representing most of the 25 EU countries, with a broad mix of people from statutory and non-statutory backgrounds. The organisers of the conference were the NCCRI, in association with the Department of Justice, Equality and Law Reform, the Department of Foreign Affairs and the European Monitoring Centre on Racism and Xenophobia, the proceedings from the conference are available at: <http://www.nccri.ie/pdf/spectrum6.pdf>

1. Migration and Interculturalism

As a particularly vulnerable group in European societies migrant workers are targets of exploitation and racism, in the NCCRI's view these challenges must be overcome in a context of promoting an intercultural Europe.

The NCCRI is particularly concerned with the intersection between racism and migration in contemporary societies; immigration is often raised in the context of discussions on contemporary racism. This is a common theme amongst both traditional immigration countries such as the United Kingdom as well as in those jurisdictions where net immigration is a more recent phenomenon. However racism is not caused by immigration, as Lentin and McVeigh put it "racism has nothing to do with some putative quality of the racialised individual or his or her culture... racism is a quality of, and caused by, a racist society rather than racialised minorities".⁴ That said it is clear that the movement of people and policy developed to manage this movement, is a significant factor when talking about interculturalism and the fight against racism.

The concept of interculturalism has evolved over time and is now replacing earlier concepts such as policies based on assimilation, and increasingly interculturalism is replacing the concept of multiculturalism.⁵ An intercultural approach believes that the culture of the minority group is important and requires recognition and acceptance. An intercultural approach also requires that we focus attention and become aware of the accepted norms within the dominant culture. In this way interculturalism implies positive approaches which extend beyond the reach of anti-discrimination policies and which include effective and positive integration of migrant workers.

Promoting a Europe which is attractive to migrants

By undermining the lived experiences of migrant workers racism has the potential to undermine European ambitions for the 'efficient management of migration flows'; Europe should be wary of fostering an image of itself as a hostile environment for migrants. As the Commission points out in its Green Paper:

The EU must also take account of the fact that the main world regions are already competing to attract migrants to meet the needs of their economies. This highlights the importance of ensuring that an EU economic migration policy delivers a secure legal status and a guaranteed set of rights to assist the integration of those who are admitted.

An intercultural Europe which respects diversity, and is attractive to migrants cannot be realised without sustained efforts to ensure the integration of migrants.

2. Degree of Harmonisation: Mainstreaming

Mainstreaming seeks to ensure that the needs of minority ethnic groups are included in the planning, implementation and review of the major activities undertaken at a policy and organisational level and the proofing of policy and implementation strategies for their impact on minority ethnic groups. Over recent years mainstreaming has become a priority across the equality agenda, both nationally as well as in the European context. Given the intersection between migration policy and concerns regarding discrimination and racism,

⁴ Lentin and McVeigh (2002) Racism and anti-Racism in Ireland, Belfast: Beyond the Pale, p. 6

⁵ Farrell, F and Watt, P (2001) Responding to Racism in Ireland, Dublin: Veritas, pp.26-27

it is particularly important that anti-racism is mainstreamed throughout all aspects of migration policy.

Anti-discrimination and interculturalism are ‘horizontal’ issues in the development of migration policy at both the domestic and European levels. Anti-racism must be ‘mainstreamed’ in all policy developments to ensure that discrimination does not undermine the European project described in the Green Paper and the rights of migrants. Consequently the NCCRI would argue that no matter what degree of harmonization is adopted by the EU, the overall approach must be underpinned by a commitment to anti-racism and interculturalism.

3. Integration

As identified in the Hague Programme in November 2004 “the common basic principles underlying a coherent European framework on integration should be established”. These principles, connecting all policy areas related to integration, should include at least the following aspects. Integration:

- is a continuous, *two-way process* involving both legally resident third-country nationals and the host society;
- includes, but goes beyond, anti-discrimination policy;
- implies respect for the basic values of the European Union and fundamental human rights;
- requires basic skills for participation in society;
- relies on frequent interaction and intercultural dialogue between all members of society within common forums and activities in order to improve mutual understanding;
- extends to a variety of policy areas, including employment and education.

It has been mooted that minorities suffer racism because they are not integrated enough. However this assumption fails to taken into account the inherent nature of racism and racial discrimination; discrimination and racism are a direct result of prejudice amongst the majority population and not the presence of minority ethnic communities in society. The *two-way process* which has been identified in a number of national and European policy documents, implies on the one hand that it is the responsibility of the host society to ensure that the formal rights of immigrants are in place in such a way that the individual has the possibility of participating in economic, social, cultural and civic life. On the other, immigrants should respect the fundamental norms and values of the host society and participate actively in the integration process, without having to relinquish their own identity.

The Green Paper states that ‘measures taken must be accompanied by strong policies to integrate migrants’, however integration as a *two-way process* is about much more than initiatives to educate and inform migrants, but rather it is about fostering intercultural societies which respect and celebrate all forms of diversity. In other words integration is more than induction programmes or the pre-departure ‘integration tests’ which have recently been introduced by the Dutch government.

The NCCRI is concerned that there has been a recent trend to focus the integration imperative on migrants, the concept of a *two-way process* must not be lost in the current

debate. As Kymlicka describes it: “the key factor in determining the integration of immigrant groups in Western countries is not the differences in culture between the country of origin and the receiving country, but rather the policy of the receiving country”.

Integration starts as soon as migration happens, or even before it. Therefore any distinctions which are made for policy and legislative purposes between short term and long-term migrants should be wary of potentially undermining integration. Integration is not a straightforward or simple process, and often it will require targeted action to ensure that minority ethnic groups are reasonably accommodated in service provision.

3.1 Family reunification

The question of family reunification is often the most pressing one facing migrants. Organisations working with migrants have raised serious concerns about the implications of the current family reunification system in Europe, concern which is highlighted by the recent problems with the Family Reunification Directive which has been widely identified as problematic.

Family reunification rights are a vital element in the promotion of the integration of migrant workers, without the enjoyment of family life migrants will experience ongoing difficulties in terms of integration and consequent problems of social exclusion.

3.2 Admission systems: Work permit system

In the Irish context the NCCRI has expressed its concern regarding the current work permit system. This system fits into the category described by the Green Paper as ‘conditional on a concrete job vacancy’. Organisations working with migrant workers have long expressed their concern that such systems of linking a work permit to an employer can contribute to exploitation and discrimination against migrant workers. Consequently the NCCRI would argue that where such systems are put in place comprehensive safeguards must protect the rights of migrants. Thus for example where a migrant worker is without a permit, but has lodged a discrimination complaint, that worker should be facilitated in remaining in the State until the complaint is resolved (perhaps through the ‘job seeker permit’ option posited in the Green Paper). There is a danger that where the ‘economic needs test’ is applied too inflexibly that the rights of migrants will be undermined.

While there have been significant developments in terms of the anti-discrimination legal framework at EU level, it remains the case that in many jurisdictions immigration officials are not subject to this framework.

3.3 Undocumented workers

The Green Paper has identified that without common criteria for the admission of economic migrants, the number of migrants entering the EU illegally will grow. However the paper fails to recognise the particular vulnerability of illegal migrants, who in many cases may be the victims of trafficking, or may well have become illegal after entering the EU legally, through no fault of their own.

Particular integration initiatives must identify the needs of illegal migrants and ensure that they are not the victims of discrimination and exploitation in European societies. The EU must consider necessary protections in more detail during this current phase of discussions.

Conclusion

While acknowledging that progress has been made in developing a framework on immigration policy at EU level, progress in implementing the rights of third country nationals has been piecemeal and slow. Where developments have been made such as the Family Reunification Directive, the results are disappointing.

It must be recalled that as a matter of principle basic human rights are universal and apply to everyone regardless of nationality or legal status, however exclusions based on nationality, such as that in CERD, are invoked by states to legitimise the inequalities in the treatment of non-nationals. According to Theo van Boven 'in Europe such treatment and attitudes affect in particular people of non-European origin who are visibly distinguishable by the colour of their skin'.⁶

The development of instruments to protect the rights of third country nationals must be underpinned by two core principles:

- Migrant workers should not be treated as economic entities, but as people with a broad range of social, cultural, civil and political rights. The development of immigration policy must secure these rights.
- Equality mainstreaming must inform the development of all immigration policy. This means the integration of equal opportunities and anti-discrimination principles, strategies and practices into all spheres of immigration activity. Immigration policy should not undermine equality, or the rights and protection afforded to migrants in other spheres of EU activity.

The NCCRI is concerned that anti-racism and promoting an intercultural Europe are placed at the heart of the development of European migration policy. By failing to promote a society which respects diversity the EU Members States will not attract the migrants that they so desperately needs.

As has been identified in a number of policy documents produced by the European Commission in recent years integration must be at the heart of migration initiatives. This submission has highlighted three key issues which have the potential to undermine the *two-way* integration process: family reunification, admission systems, and the problems facing undocumented workers. The impact of migration policies in these areas should not be allowed to undermine the goals of integration and the promotion of an intercultural Europe.

⁶ Theo van Boven (2001) *Discrimination and Human Rights Law: Combating Racism*, in Fredman, S. (ed.) *Discrimination and Human Rights: The case of racism*, Oxford: Oxford University Press, p. 122