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Submission to the Immigration and Residence in Ireland Discussion Document

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

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Introduction

1. Role of the NCCRI

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. Further information can be found at www.nccri.ie

2. Work of the NCCRI on Migration

Migration policy is a multi faceted issue with many dimensions including employment rights, residency and citizenship issues, and issues related to integration. The NCCRI's work in this area has focused on the need the protection of the rights of migrant workers and their integration needs, in the context of a managed migration policy in Ireland. The NCCRI works closely with NGOs on the NCCRI partnership on this issue including the Immigrant Council of Ireland and the Migrant Rights Centre Ireland. There have been a number of high profile initiatives by the NCCRI, which have been informed by its migration sub group and through joint work with the Irish Human Rights Commission. Key outcomes have included:

- Contributing to emerging migration policy debate through, for example, the publication 'Migration Policy in Ireland: Reform and Harmonisation', 2003 and the hosting of a major conference on the issue
- Highlighting the issues faced by migrant workers, for example through 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* (April 2004)¹
- Participation in the Diversity At Work Network (DAWN) which involved the training of employers in both the public and private sector on the challenges of successfully accommodating diversity in the workplace and the publication of a report *Managing Diversity in the Workplace: Focusing on the Employment of Migrant Workers* (March 2005)
- Developing North/South migration initiative through a roundtable in Belfast in February 2004
- Ireland's national partner in the European Migration Dialogue - linking the national and European debates on integration and integration policies, a project co-ordinated by the Migration Policy Group in Brussels and sponsored by the European Commission.²

3. Consultation Process in Preparing this Submission

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 June Paul Burns from the Department of Justice, Equality and Law Reform gave a presentation to the migration sub-committee and the subsequent discussion amongst committee members identified a range of key concerns which have formed the core of

¹ All NCCRI publications on migration available at <http://www.nccri.ie/publications-other.html>

² See www.migpolgroup.com for more information on this project.

this submission. In addition the NCCRI has attended meetings organised by the Immigrant Council of Ireland and the Migrant Rights Centre Ireland on the discussion document which has also informed our position.

As part of our role as Ireland's partner in the European Migration Dialogue, the NCCRI organised two National Migration Dialogue meetings. Participants included key stakeholders at national and local levels, such as immigrant associations, governmental officials, Members of European Parliament, etc. The NCCRI held the First National Migration Dialogue on the 6 December 2004 on the *Role of Citizenship in Promoting a More Inclusive, Intercultural Ireland*.

The second National Migration Dialogue on *Migration, Residence and 'Integration': EU and Irish Perspectives* was held on the 1st of July 2005. The purpose of this Dialogue was to inform, influence and contextualise the debate around the forthcoming Immigration and Residence Bill, 2005, with particular reference to relevant developments at an EU level. The Dialogue also examined the potential and the limitations of the current EU thinking on 'integration' with reference to developments in Ireland, in particular the National Action Plan Against Racism 'Planning for Diversity'.

4. Overview and Structure of Submission

This submission is divided into two parts. The first part will place the immigration and residence debate within the framework of interculturalism in Ireland. Migration policy at national and EU level will also be discussed with particular emphasis on the growing concentration on integration debates at EU level.

The second part of the submission will focus in on the proposals contained in the discussion document. There will be a particular focus on proposals which have implications for the promotion of a more inclusive, intercultural Ireland.

There are also two annexes to the submission; the first annex gives an account of forms of racism in Ireland and the groups that experience racism. The second annex describes the NCCRI Racist Incidents Reporting Procedure and gives examples from our six monthly reports.

Part 1: Overview

1. *Immigration and Residence in an Intercultural Society*

The NCCRI submits that an immigration and residence policy needs to be developed in the context of an overall intercultural strategy. With regard to the discussion document's statement of overall objectives and basic principles that should underpin the legislation, it is imperative that interculturalism and integration of migrants and their families is at the heart of an immigration and residence framework for Ireland.

The National Action Plan Against Racism 2005-2008 defines interculturalism as the development of a more inclusive and intercultural society. It is about inclusion by design, not as an add-on or afterthought. It is essentially about creating the conditions for interaction, equality of opportunity, understanding and respect. In taking this approach we embrace the concept that 'one size does not fit all', and that by planning for and accommodating cultural and ethnic diversity, everyone will benefit from the process.³

2. *Policy Context*

European Developments on Migration and Integration

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.⁴ 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.

Our submission to the Green Paper addressed key areas which the NCCRI believes must remain central to any debate on migration:

1. **Interculturalism and Integration:** Migration policy must be developed in a broader context of an intercultural Europe. Integration is a central element in the promotion of an intercultural Europe. 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.⁵
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.

In December 2004, the adoption of the Hague Programme proved a significant step forward in articulating the integration agenda at a European level, the programme states that: "stability and cohesion within our societies benefit from the successful

³ See p38 of Planning for Diversity: The National Action Plan Against Racism 2005-2008. www.justice.ie

⁴ [COM (2004) 811 final]

⁵ The submission is available at www.nccri.ie

integration of legally resident third-country nationals and their descendants.” Following the adoption of the 11 principles on integration in December 2004, a Commission proposal is planned later in 2005 which will outline a common framework for integration. The Common Basic Principles (CBP) on Integration can be summarised as follows:

1. Integration is a dynamic two-way process of mutual accommodation by all immigrants and residents of Member States.
2. Integration implies respect for the basic values of the European Union by every resident.
3. Employment as a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society and to making such contributions visible.
4. Basic knowledge of the host society’s language, history, and institutions is indispensable to integration, enabling immigrants to acquire this basic knowledge is essential to successful integration.
5. The role of education in preparing immigrants and descendents to be more successful and active participants in society.
6. Equal access for immigrants to institutions, goods and services is an indispensable foundation for better integration.
7. Frequent interaction between immigrants and citizens is a fundamental prerequisite for integration..
8. Respect for the diversity of cultural and religion as long as they are compatible with Charter of Fundamental Rights.
9. The participation of immigrants in the democratic process, especially at the local and regional levels.
10. Mainstreaming integration policies and engaging civil society.
11. Developing clear goals, indicators and evaluation mechanisms and exchange experience.⁶

The European Commission Communication on Integration due to be published before the end of July and an action plan on integration is due to be released before the end of 2005.

It is the view of the NCCRI that EU developments in the migration and integration field can add significant value to national discussions and debates around an immigration and residence framework for Ireland. Therefore the NCCRI welcomes the government’s intention to examine its commitments under the EU migration framework in the context of the immigration and residence legislation. Ireland should take this opportunity to enhance its protection for migrant workers in line with its EU partners.

National Developments on Migration and Integration

The Employment Permits Bill was published at the end of June 2005. It governs the issue of all employment permits for nationals from outside the European Economic Area (EEA). The Bill will put the existing employment permit administrative arrangements on a legislative footing. The NCCRI welcomes the publication of the Bill in particular the emphasis on employer sanctions for breaches of employment law. However it remains concerned that the Bill provides for information about the

⁶ See European Policy Centre / King Baudouin Foundation: Beyond the Common Basic Principles on Integration: The Next Steps. 15 April 2005.

renewal of a permit and the original of the permit itself to be made available to the worker yet failed to place the ownership of the work permit with employees which leaves the migrant worker potentially vulnerable to exploitation in the workplace and in fear of taking a complaint against their employer.⁷

The NCCRI also welcomes the recent call by the Department of Enterprise, Trade and Employment for submissions to the White Paper on the Review of the 1971 Employment Agency Act (June 2005). There is a need for greater regulation and monitoring of recruitment agencies to protect job-seeking migrants from abuse and to bring to an end the illegal practices of passing the work permit fee onto the employee. Consideration should also be given to the establishment of bilateral agreements with sending countries which could offer an important mechanism in pursuing exploitative recruiters.

The term ‘integration’ has proved to be problematic in the Irish context. It can often mean different things to different people and in the worst cases it can be interpreted as another form of assimilation. Integration is commonly understood to be a two way process that places duties and obligations on both cultural and ethnic minorities and the State to create a more inclusive society.⁸ Yet this understanding does not account for the responsibilities of civil society.

We note that the government views integration as not a matter for the State alone but that a “*comprehensive integration policy encompasses a number of different strands from integration in the workplace or place of study, to integration in the community and access to public services for all legally resident non-nationals. It involves employers, social partners, non-governmental organisations and society as a whole playing their part also.*”⁹ The NCCRI believes that an integration policy must be government led and funded and be the primary responsibility of the State with majority and minority communities having a share in the responsibility. We must seek to develop an inclusive and intercultural definition of integration that does not gloss over issues such as racism or ignore long standing minority ethnic groups. The NCCRI submits that the recently published National Action Plan Against Racism, provides an intercultural framework for ‘integration’ in Ireland.

National Action Plan against Racism

On 27 January 2005 the Government launched ‘Planning for Diversity: The National Action Plan Against Racism’.¹⁰ The NPAR originates from commitments given by Governments at the United Nations World Conference Against Racism in South Africa in 2001. The decision to develop the NPAR was further reaffirmed in the

⁷ Note the recommendation of the CERD Committee in March 2005 where the Committee encourages Ireland to ensure full practical implementation of legislation prohibiting discrimination in employment and in the labour market. In this context the Irish government was asked to consider reviewing the legislation governing work permits and issue work permits directly to employees.

⁸ See p38 of National Action Plan Against Racism.

⁹ See Department of Enterprise, Trade and Employment and Department of Justice, Equality and Law Reform Joint Submission to the EU Green Paper on Managing Economic Migration www.europa.eu.int/comm/justice_home/news/consulting_public/economic_migration/news_contributions_economic_migration_en.htm

¹⁰ Copies of the Plan are available from the Equal Status Unit in the Department of Justice, Equality and Law Reform, or from the web at: www.justice.ie.

Social Partnership Agreement for 2003-2005. The emphasis throughout the Plan is on developing reasonable and common sense measures to accommodate cultural diversity in Ireland. The overall aim of the NPAR is to provide strategic direction to combat racism and to develop a more inclusive, intercultural society in Ireland based on a commitment to inclusion by design, not as an add-on or after thought and based on policies that promote interaction, equality of opportunity, understanding and respect. The Plan outlines an intercultural framework which will underpin the overall approach to its implementation. The Framework is summarised in Table 1.

Table 1: Summary of the Intercultural Framework underpinning the NPAR

Protection:	Effective protection and redress against racism
Inclusion:	Economic inclusion and equality of opportunity
Provision:	Accommodating diversity in service provision
Recognition:	Recognition and awareness of diversity
Participation:	Full participation in Irish society

In formulating an immigration and residence legislative and policy framework for Ireland, it is vital that there is direct reference, acknowledgement and accommodation of the key policy developments relating to the inclusion of minority ethnic groups in Ireland. In the discussion document there was no reference to the National Action Plan Against Racism or the National Action Plan Against Poverty and Social Exclusion (NAPS incl), despite the fact that both of these important policy documents form the cornerstone of an integration strategy for Ireland. Both plans must hold a prominent position in any forthcoming immigration and residence framework in order to ensure success.

Part 2: Issues for the Legislation

1. Admission (Sections 4-10 of discussion document)

Work Permit system

The NCCRI and other organisations have emphasised that the work permit in control of the employer greatly hinders access to rights and entitlements for migrant workers, and can lead to exploitation and discrimination. Key problems highlighted in this area include excessive or illegal deductions from worker's pay packets, lack of employment contracts, lack of knowledge of rights and illegal charging by employment agencies. Domestic workers are particularly vulnerable to exploitation in this context.¹¹

As stated before the Employment Permits Bill was published at the end of June 2005 and one of the aims of the Bill was to address workplace exploitation of migrant workers. While the NCCRI welcomes the publication of the Bill it remains concerned that the Bill provides for information about the renewal of a permit and the original of the permit itself to be made available to the worker yet failed to place the ownership of the work permit with employees which leaves the migrant worker potentially vulnerable to exploitation in the workplace and in fear of taking a complaint against their employer. The NCCRI notes the recommendation of the CERD Committee in

¹¹ See also the Labour Relations Commission Report 2004 which noted the upsurge in complaints received by migrant workers in relation to violations of employment legislation. www.Lrc.ie

March 2005 where the Committee asked the Irish government to consider reviewing the legislation governing work permits and envisage issuing work permits directly to employees.¹²

Job seeker permit

There has been suggestions from various interested parties at EU level that the granting of a temporary job seeker permit for non-EEA nationals of a limited duration. The NCCRI believes that this proposal may be useful to consider in the context of regularising the situation of migrant workers who become undocumented while in Ireland (although they entered the country legally) due to exploitation or other reasons.

Family Reunion

The NCCRI welcomes the objective of the discussion document to ensure that our future practices in relation to family reunification comply with constitutional practices and reflect best practice. Clarity, consistency, transparency and non-discrimination should underpin the area of family reunion. The NCCRI shares the concerns of other migrant organisations that family reunion may only be provided by secondary legislation or practice instructions and would encourage a statutory entitlement to family reunification similar to that provided for in the Refugee Act 1996 for recognised refugees. This right should be provided for in the forthcoming Immigration and Residence Bill 2005.

The NCCRI has always supported a broad definition of the family for the purposes of family reunion and is a partner in the Family Diversity Initiative.¹³ This would be consistent with developments in most EU member states, such as the recognition of unmarried partnerships, whether opposite or same-sex. In addition the cultural definition of a family needs to be respected such as family reunion for elders. There is a lack of clarity in the discussion document regarding the rights and entitlements of family members. The proposals suggest the ministerial introduction of schemes to address the broad range of situations that are required to be addressed. It is important for schemes to clearly set out rights such as right to work for spouses and dependents of all labour migrants and access to education and training for family members. Although Ireland is not a signatory, it could rely on the provisions contained in the UN Convention on the Rights of Migrant Workers and their Families to draw up a comprehensive set of rights.

The right to family reunification is a key component of the integration of migrant workers into their host society. The development of a family policy for Ireland under the auspices of the Department of Social and Family Affairs must reflect the needs of migrant families and make accommodation of family diversity in Ireland so as to avoid further experiences of marginalisation, discrimination and disadvantage.

¹² See the arguments for placing the ownership of the work permit into the employee control and the suggestion of a portable permit put forward in M. Ruhs: Managing the Immigration and Employment of Non-EU Nationals in Ireland. (May 2005)

¹³ For further information on the Family Diversity Initiative see www.familydiversity.ie

Access to information

The NCCRI would support the development of a formal system of induction for migrants on arrival in the country. Pre-departure information available at Irish embassies in sending countries and information in one's language on arrival is essential. It is further recommended that the Department of Enterprise, Trade and Employment make additional resources available to information and advocacy groups in urban and rural areas including enhancing the capacity of Citizens Information Centres around Ireland and provision of core funding to migrant support groups such as the Immigrant Council of Ireland and Migrants Rights Centre Ireland.¹⁴ The provision of proper interpreters in order to have full and equitable access to public services is also recommended.

Integration tests

The concept of integration tests has recently been a focus of attention in some EU Member States. The NCCRI believes that such tests should not be adopted as they would serve to undermine the rights of migrant workers, restrict their entitlements and send out a wrong message to current and future migrants. Formal induction and information at point of arrival should be the approach taken by the government.

Recognition of qualifications

The NCCRI notes that the non-recognition of qualifications of migrants coming to Ireland results in many having to work in jobs that do not match their qualifications. This causes great frustration among migrant communities as well as being a wasted opportunity for the Irish labour market who cannot utilise skills needed and already existing in the economy. There is also the potential for non-recognition of qualifications to be used by certain professional bodies in a discriminatory way against applicants from migrant communities. The government must develop flexible schemes for the recognition of qualifications already present in the workforce such as the development of schemes of equivalent standards, transfer exams and induction training.

The NCCRI recommends that the Irish government facilitate access to further education and training including English language training for migrant workers as this aids their speedy integration and enhancement of their skills. It is recommended therefore that a clear role be defined for FAS in relation to this.

Charging of fees to migrants to cover administrative costs

The discussion document states that visa fees should not be limited to the administrative costs of operating the system in light of the benefits which accrue to people allowed to enter and reside in Ireland. The NCCRI is concerned about the proposal to charge fees to migrants to cover the cost of biometrics and administrative costs of the Irish Naturalisation and Immigration Service (INIS). Migrant workers contribute enormously to the development of Irish economy and society through payment of taxes and other means and therefore they should not have to pay prohibitively high fees in order to enter the country. There is also a concern that the charging of prohibitively high fees may result in migrants not making the application

¹⁴ See also the commitment contained in Objective 2.2 of the National Action Plan Against Racism in relation to the access to information, that the Department of Enterprise, Trade and Employment is to develop an awareness campaign to provide accessible information on employment rights to migrants.

in the first place. In a competitive global market for recruiting workers, the imposition of high visa fees will not be an attraction for skilled workers.

2. Residence: Migrants in an intercultural society in Ireland (Section 11)

Codify core rights and entitlements of migrants

The NCCRI welcomes the creation of a Long Term Residence Status as it recognises that migrants and their families are potential permanent members of society instead of temporary economic entities. However the NCCRI is concerned that people with Long Terms Residence Status will have greater rights than migrants without that status, therefore maintaining a two tier system of rights. There should be a core set of rights for migrant workers and their families which can be drawn from the UN Convention on the Rights of Migrant Workers and their Families. The primary legislation should clarify entry and residency entitlements, workplace rights, welfare and social rights of migrants and their families. Persons with Long Term Residence status should be granted the same rights as Irish citizens. Additional needs of migrant workers should be identified and appropriate services put in place.

The NCCRI with the Irish Human Rights Commission has called on the Government to sign the UN Convention on the Rights of Migrant Workers and their Families and take a lead role in encouraging other EU states to do the same. The Bill should explicitly provide for the rights and entitlements of all migrants in Ireland and in doing this, the Government can draw from the comprehensive set of rights and protections provided for in the UN Convention. It should be recalled that the CERD Committee in its Concluding Observations wishes to encourage the Irish government to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and ILO Convention No. 97 on Migration for Employment (Revised), to ensure better protection for migrants and migrant workers.

Enforcement of employment legislation

The NCCRI has consistently urged the Government to increase the numbers and resources available to the Labour Inspectorate as a matter of priority. There is a commitment contained in the National Action Plan Against Racism to increase the number and provide additional resources. Accessible information on workplace rights should be provided to migrant workers in their own language.

There is a need for greater regulation and monitoring of recruitment agencies to protect job-seeking migrants from abuse and to bring to an end the illegal practices of passing the work permit fee onto the employee. The monitoring and regulation of recruitment agencies should be undertaken in the context of the Sustaining Progress commitment to reform the Employment Agency Act 1971 and the NCCRI welcomes the recent call by the Department of Enterprise, Trade and Employment for submissions to the review of the 1971 Act.

The NCCRI welcomes the provisions of the recently published Employment Permits Bill 2005 regarding the strengthening of sanctions against employers who are in breach of immigration or employment law. However although the Government maintains that full protection is offered to migrant workers on the basis of the legislative provisions that exist for the domestic labour force, it ignores the reality that

migrants are hindered in their ability to seek redress because of the ownership of work permits by employers and the lack of clarity regarding the immigration status if they become unemployed.

The NCCRI supports the establishment of an independent monitoring of the system, through for example the establishment of an Immigration Ombudsman. The Ombudsman would be an independent body with powers to investigate complaints against public bodies in relation to admission residence and other matters relating to the immigration process which cannot be dealt with adequately under mainstream complaint and protection procedures.

Undocumented workers

The discussion document does not address or make any provision for the position of migrants who find themselves in an irregular situation. Through its consultation with migrant support organisations the NCCRI is aware that migrant workers become undocumented because of the inadequacies in the system rather than the lack of border controls to prevent them entering illegally. Although most migrants enter States legally admission systems can create and facilitate undocumented workers and this is a reality that exists in other European states.¹⁵

In developing a labour migration policy it is important to acknowledge fully the reality of irregular migration. The Bill should provide for the introduction of a regularisation scheme as a mechanism for improving the individual situation of irregular migrants while responding to the demands of the labour market. Such schemes have proved to be pragmatic and useful in a number of our EU partner states e.g. Spain and Italy.

The NCCRI submits that access to services should not be restricted to emergency services only and that the proposed legislation should define a range of medical and social services and benefits that must be available to everyone, including undocumented migrants. An integration strategy for Ireland must also be explicit on the minimum rights of undocumented migrants, including their access to essential services. An integration strategy cannot ignore their existence.

Public awareness initiatives

The discussion document does not address the importance of public awareness initiatives. The NCCRI believes that it is the responsibility of the Government to promote a positive perception of migrants in Irish society and a recognition of the economic, social and cultural benefits of migration. Government must publicly highlight the positive contribution of migrants and fund an analysis of economic benefits of migration to challenge myths and stereotypes. The debate must be led by the government at national and local level, ensuring that accurate information is provided to the public and that the rationale for immigration and residence policies are explained to civil society. If the public is not given the facts to let them understand the real choices to be made, there will be a continuing tension between governments recognising that migration is needed and the public not seeing why.

¹⁵ For further information on undocumented workers in the European Union see www.picum.org

The CERD Committee recommended that the Irish government continue to combat prejudice and xenophobic stereotyping, especially in the media and fight prejudice and discriminatory attitudes. In addition one of the key objectives of the National Action Plan Against Racism is recognition which aims to enhance awareness of cultural diversity including a focus on awareness raising, the media and the arts, sports and tourism.

The use and promotion of certain language by government departments in relation to migrant workers and their families can promote a more positive image and experience for migrants. Use of derogatory terms like 'illegal immigrant' and 'illegal immigration' can have an effect on the public perception of migrants and act as a barrier to integration.¹⁶

Access to education and training

The Government should engage in the upskilling of workers and students already here to fill vacancies in different sectors. The Government could facilitate access to further education and training including English language training for migrant workers as this aids their speedy integration and enhancement of their skills. It is recommended therefore that a clear role be defined for FAS in relation to this.

In the NAPAR under the Objective Provision, it makes a commitment for enhancing the provision of English as a Second Language. Language and literacy proficiency has long been recognised as playing a key role in the integration process. The government should provide teaching and non-pay resources to schools to cater for the needs of pupils for whom English is not their mother tongue.

Objective 2.6 of the NAPAR provides for inclusion through vocational training and employment services strategies. The potential of training and employment services as an integration measure will be developed as part of the NAPAR. Measures include:

- Develop an overall strategy to training and employment services, with reference to broader equality policy
- Develop a programme to address employment of Black and minority ethnic groups with a particular focus on developing strategies for effective recognition of qualifications
- Integrate language supports into training and employment services through a new targeted programme.

Inclusive service provision

In many countries research has shown that cultural and ethnic minorities can experience higher levels of poverty and linked forms of social exclusion. Access to appropriate public services has an important role to play in combating poverty and social exclusion. The National Action Plan Against Poverty and Social Exclusion, launched in July 2003 makes specific acknowledgement of Travellers and migrants as vulnerable groups.

One of the key elements of an intercultural society is the full access of all migrant workers to all state services. Personnel involved in delivering state services must

¹⁶ See the National Action Plan Against Racism on the potential manifestations of racism in the form of labelling. P60

undergo anti-racism awareness training and public service agencies need to develop a more inclusive, intercultural approach to social service provision. The proper resourcing and widespread use of interpreter services by public services would also greatly support a more inclusive service provision. The National Action Plan Against Racism provides guidance on how to develop inclusive services for minority ethnic groups.

The NCCRI would advocate a whole organisation approach to ensure that access to and the delivery of public services make reasonable accommodation of cultural diversity and take positive action measures including use of equality reviews and equality action plans. The NAPAR recommends the:

1. Development of a template to provide guidance to service providers in implementing the NPAR, with reference to broader equality, anti-poverty and public service modernisation policy
2. Development of further resource materials / awareness initiatives to support greater understanding among service providers of the needs of customers from cultural and ethnic minorities and implement a programme of cultural awareness training among service provider staff.
3. Implementation of equal status reviews and action plans by service providers in the public sector, supported by guidance materials developed by the Equality Authority
4. Integration of anti-racism and intercultural training into in-service modules under the public service modernisation programme (SMI), with reference to broader equality/diversity policy
5. Development of an anti-racism/intercultural training for trainers programme for training units in government departments and statutory agencies
6. Where groups including Travellers, refugees and migrants experience additional barriers in accessing key public services, targeted strategies will be developed to overcome these barriers.
7. Outline as part of Government departments/statutory agency strategy statements/corporate plans/customer service plans, clear and reasonable mechanisms to engage with external customers/key stakeholders, including a specific reference to cultural and ethnic minorities.¹⁷

In its Concluding Observations, the CERD Committee expressed concern that the non-discrimination requirement stipulated in the 2000 Equal Status Act only covers government functions falling within the definition of a service as defined by the Act itself. In order to ensure comprehensive protection against discrimination by public authorities, the CERD committee urges that the Irish government to consider expanding the scope of the Equal Status Act so as to cover the whole range of government functions and activities, including controlling duties. The NCCRI would support the extension of the definition of service under the Equal Status Act 2000 to cover services created under the Immigration and Residence Bill.

National Action Plan against Racism: Inclusion

Objective Two of the National Action Plan against Racism seeks to ensure economic inclusion and equality of opportunity, including a focus on employment, the workplace and poverty.

¹⁷ See NAPAR Objective 3: 3.1-3.7. pp 100-103. www.justice.ie

Equality Proofing

Measures provided for under Objective 2.2 of the NAPAR include proofing key macro-economic and social planning processes/national agreements to ensure they combat racism, make reasonable accommodation of cultural diversity and include positive action for Black and minority ethnic communities. Proofing will include the undertaking of impact assessments to determine the likely outcomes for minority ethnic groups from key policy instruments. Proofing will take place during preparation, implementation and review of policy development. A template will be drawn up to support this process and will include a focus on National Employment Strategy, National Development Plan, National Social Partnership Agreements and National Action Plan on Social Inclusion. Proof forthcoming policies at a European level that impacts on employment and the workplace to ensure that cultural diversity is reasonably accommodated, for example the transposition of employment related EU Directives into Irish law.

Public Service Modernization

Objective 2.3 refers to inclusion through public service modernization so as to increase the participation of cultural and ethnic minorities in public services in Ireland, focusing on recruitment, diversity awareness training for all staff and career opportunities. Measures include:

- Undertake a new high-level initiative within the Public Service Modernisation Programme to promote full equality in practice in recruitment from cultural and ethnic minorities into the public service and in their career progression.
- Implement equality and diversity training across all public bodies that includes a focus on racism and interculturalism and that develops an awareness of these issues and that builds staff competencies to manage and operate within a culturally diverse workplace.

Integration of Migrant Workers

Objective 2.5 specifically provides for the inclusion of migrant workers, consistent with the requirements of policy on immigration, employment and equality. Measures associated with this objective are:

- Developing a comprehensive policy on the integration of migrants and their families, consistent with Government policy on immigration, equality and employment
- To establish a broadly based advisory group to contribute to the development of an integration policy focusing on migrant workers and their families.

Integration in practice

The NCCRI submits that there needs to be a legislative basis for integration.¹⁸ Without a legal foundation it can be hard to secure real commitment and implementation. A legislative framework would also contain a revised definition of integration. There is a need to review the existing integration policy document *Integration: A Two Way Process* (1999) due to developments that have taken place

¹⁸ Note that the new EU Constitutional Treaty in Article III 267.4 will give a legal basis to integration policies: "European laws or framework laws may establish measures to provide incentives and support for the action of member States with a view to promoting the integration of third country nationals residing legally in their territories."

since then. The NCCRI would encourage the drawing up of an integration strategy for refugees and migrants which would result from a detailed consultation with key stakeholders.¹⁹ The Reception and Integration Agency has been given responsibility for the co-ordination of the development of an integration plan informed by the framework and objectives set out in the NPAR and involving a range of key stakeholders.

In relation to the proposed Immigration Integration Unit, the NCCRI submits that such a Unit needs involvement from all the government departments and that key migrant organisations need to be represented. The Unit must also have strong links with other relevant initiatives such as the Steering Committee overseeing the National Action Plan Against Racism. If the government is serious about the integration and participation of migrants and their families into Irish society, they must commit sufficient resources to enable migrant led and support organisations to secure core funding for their organisation and be able to communicate needs and concerns to the new Unit.

Access to citizenship is not addressed in the discussion document. The NCCRI believes that easy acquisition of citizenship is important in terms of integration, the effects on the performance of economic migrants and may attract highly skilled migrants in a competitive market. While there must be clear and definite opportunities to access legal citizenship, equally important is the broader notion of civic citizenship, that migrants are real participants in Irish society, so that immigrants do not feel that they have no option but to naturalise.

The findings of the recent European Civic Citizenship and Inclusion Index 2005 are relevant in this regard which looked at citizenship and inclusion policies in the existing 15 Member States. Key findings include a glaring lack of data collected by Member States of the EU in the area of immigrant inclusion and citizenship; although statuses for immigrants are relatively difficult to acquire and weakly protected, they have significant rights associated with them and naturalization remains one of the most problematic areas for Member States, reflecting the ongoing debate over whether migration should be seen as a long-term or temporary phenomenon.²⁰

The NPAR provides an overall framework for the integration of migrants to Ireland but a further NPAR implementation strategy is needed to provide further detail on the form of specific integration strategies and supports. A range of strategies are required to support the integration of labour migrants and their families which seeks to build on existing initiatives by employers, trade unions and NGOs in Ireland including the work of bodies such as the Immigrant Council of Ireland and the Migrant Rights Centre Ireland. Under the Objective Participation in NPAR, there is a commitment to establishing an Intercultural Forum to promote further research, interaction and dialogue on cultural diversity in Ireland and to consider the policy implications arising from growing cultural diversity in Ireland.²¹

¹⁹ 2.4 of NPAR, p47 and p48

²⁰ See www.migpolgroup.com for a copy of the Index

²¹ p149 of NPAR Measure 9.4.1

3. Administrative arrangements – Operating and delivering an inclusive immigration and residence service (Section 12-14)

Transparency – Steering Committee to oversee operation of INIS

The NCCRI believes that the grounds for refusing or revoking residency permits should be provided for and that an applicant has access to an independent review procedure. Procedural safeguards must be put in place in any removals/deportation process such as rights of appeal and access to effective legal remedies. It is crucial that our immigration system is transparent and that officials are accountable for their decisions. People must be given reasons for refusals of decisions that affect them and access to an independent appeals mechanism against decisions of the Minister for Justice, Equality and Law Reform and other immigration officials including decisions regarding naturalisation. Free legal aid should be made available to migrants in certain cases, such as those involving detention, removal and deportation.

In order to develop and maintain a quality customer service, it is useful to make available an accessible and publicised complaints procedure for users of the immigration service. The development of a customer charter for the immigration process, available in different languages, may also be considered.

In its Concluding Observations, the CERD Committee remained concerned that in respect of the judicial review of administrative decisions on immigration issues a fairly short time limit has been introduced. The Committee hopes that all issues pertaining to the appeal procedure will be adequately resolved within the framework of the proposed Immigration and Residence Bill.

Migration Research Unit

It has been widely acknowledged that there is a dearth of data in the field of migration and it is very difficult to plan or manage a system if we have no idea of the extent of immigration to Ireland. Data collection will assist the government in targeting resources and responding to developing needs of migrant workers and their families. A question on ethnicity in the next Census in 2006 will go some way towards addressing this gap.

There is a commitment contained in NAPAR to develop a comprehensive framework of social and equality statistics to meet policy needs, based on the recommendations of the National Statistics Board. This translates to the development of a formal data/statistics strategy devised by each government department and statutory agency.²² In Objective 2.7 of NAPAR it refers to inclusion through the development of a comprehensive approach to social and equality statistics to assist in setting targets and measuring policy progress in related policy areas.

There is a need for a specialised migration research unit as is the practice in other states so as to develop an evidence-based approach to migration. Any permanent migration system needs to be reviewed and evaluated periodically. Such a research unit would inform future policy and legislative developments and support public awareness campaigns.

²² See 3.6 of NAPAR on p102.

Anti-racism and intercultural awareness training and whole system approach

In the discussion document it was noted the importance of staff training and technology in the recognition of false documents. It is equally important for all immigration staff at borders to undergo anti-racism and intercultural awareness training to ensure that they treat all migrants coming to Ireland in a non-discriminatory and respectful manner. Officials carrying out duties of monitoring and compliance must be adequately trained in the new immigration procedures and different categories of residence so to minimise mistakes that may have a negative impact on migrants living in Ireland.

In its Concluding Observations, the CERD Committee noted the reported occurrence of instances of discriminatory treatment against foreign nationals entering Ireland during security checks at airports. The Committee encouraged the Irish government to review its security procedures and practices at entry points with a view to ensuring that they are carried out in a non-discriminatory manner.

Discretion and the availability of an independent appeals mechanism

The discussion document anticipates the continuation of Ministerial discretion and discretion of officials in relation to immigration and residence matters. The NCCRI is of the view that such discretion should be exercised according to published criteria. It is important that the administrative guidelines informing the decision-making processes will be published. Ministerial discretion will be retained yet the legislation should set out the grounds upon which visa applications can be refused and the matters that the deciding officer is entitled to take into account when making a decision. Administrative procedures should embody the principles of transparency and accountability.

Applicants should have access to a transparent independent appeals system if visa application is refused. The applicant should be given reason for the refusal of an application and adequate resources should be provided to ensure that the appeals process operates in a timely, fair and efficient manner. An independent appeals system is one of the primary tenets of a constitutional justice system which must be reflected in the proposed legislation.

The power given to immigration officers needs to be very clearly defined and set out in legislation and their discretion to change or revoke a decision to be limited. The current provisions empower immigration officers to refuse leave to land on a number or broad and vague grounds related to public policy, health or security. This creates room for immigration officials to make a decision on subjective, arbitrary and discriminatory grounds. Therefore the criteria and guidelines for refusing entry should be provided for in the forthcoming legislation. The NCCRI is of the view that an appeal to a senior immigration official is not a sufficient safeguard.

A person refused leave to land should be provided with a reason for the refusal and afforded an opportunity to appeal that decision to an independent body (not a senior immigration official) as part of a fair, transparent and accountable procedure. The person should also have access to proper interpretation facilities to submit their case and access to legal services. An appeal should have suspensive effect.

Multiple forms of discrimination

The NCCRI supports a rights based approach to immigration, residence and integration policies. The approach must also be underpinned by anti-discrimination and equality principles. There is no recognition in the document of the need to accommodate diversity and to ensure that a new immigration and residence document does not cause or compound multiple forms of discrimination on grounds such as age, gender, sexual orientation, race or nationality.

The proposed primary and secondary legislation along with policies and schemes arising out of the legislation must be equality proofed. Measures in the NAPAR are relevant in this regard where the Irish government commits to draw up a comprehensive equality proofing/impact assessment method for public policy across all nine grounds in the equality legislation and to develop equality action plans within the public sector.²³

In its Concluding Observations, the CERD Committee is particularly concerned about the situation faced by women belonging to vulnerable groups and at the instances of multiple discrimination that they may be subjected to. The Committee, recalling its General Recommendation XXV, encourages the State party to take measures with regard to the special needs of women belonging to minority and other vulnerable groups, in particular female Travellers, migrants, refugees and asylum seekers.

Inter-departmental approach

Several government departments and agencies have a brief in this area and cross-departmental co-ordination and co-operation is crucial to the success of any immigration and residence policy. There is also a need for immigration policy and social inclusion policies to be integrated. Cross-departmental approach is essential to ensure consistency and understanding of immigration systems and procedures. The NCCRI agrees with the conclusion of the IOM study of 2001 that administrative arrangements require a 'whole of government' approach because of the range of issues to be addressed.

The NCCRI welcomes the recent establishment of an inter-Departmental Group on Refugee Resettlement and Integration. The Group represents a total of ten Government Departments and is chaired by the Reception and Integration Agency. The Minister for Justice has said that this Group will liaise with the proposed Immigration Integration Unit to be set up in the context of the establishment of the Irish Naturalisation and Immigration Service (INIS). The NCCRI proposes that the Immigration Integration Unit would also have a high level steering committee to oversee its operation with representation by 10 departments and with membership of key migrant rights organisations, expert bodies and social partners.

Resourcing of Migrant Led and Support Organisations

Migrant support and migrant led organisations need to be adequately resourced in order to assess and communicate the needs of migrant workers and inform policy. The Government needs to support migrant groups to participate in the immigration consultation process to ensure the successful implementation of immigration and residence policies.

²³ See p73 of NAPAR measure 1.1.2 and 1.1.3

The CERD Committee in March 2005 recommended that Ireland provide the newly established institutions in the field of human rights and non-discrimination with adequate funding and resources to enable them to exercise the full range of their statutory functions and also support the NGO community.

Data Protection

The NCCRI would have concerns around the introduction of biometrics as proposed in the document and the sharing of personal data both nationally and internationally. The National Action Plan Against Racism specifically mentioned the Data Protection Act 1988, as amended, which sets out conditions for the processing of personal data. Personal data as to racial or ethnic origin is 'sensitive personal data' for the purposes of the Data Protection Act and more stringent conditions, set out in section 2B of the Act, apply to the processing of sensitive personal data. The right to privacy and protection of personal data should underlie any proposed system for the introduction of biometrics.

Provisions on Border Controls, Monitoring and Compliance

The NCCRI welcomes the proposal to review the existing border and entry controls as contained under the Immigration Acts 2003 and 2004 and to review the effectiveness of carriers' liability provisions. The current provisions should be withdrawn, as they are conducive to racial profiling and impact detrimentally on the civil liberties of migrants coming to Ireland.²⁴

The NCCRI would also have concerns in relation to provisions on monitoring and compliance contained in the document. While recognising that immigration officers do, of course, have the right to ensure that national immigration laws are upheld they should rely on evidence and intelligence, rather than large scale 'net' approaches or random stopping of people on the street. The powers and discretion that the Immigration Act 2004 confers on immigration and registration officials have the potential to lead to cases of discrimination against minority ethnic groups. All immigration policy/legislation should include safeguards against such a possibility, and all immigration officers should be given adequate anti-racism training. Removals and deportation procedure must guarantee to take account of complementary and subsidiary forms of protection for migrants with regard to the Geneva Convention on Refugees and Article 3 of the European Convention on Human Rights.

²⁴ See NCCRI Submission on the Immigration Act 2004 at www.nccri.ie

Key Conclusions and Recommendations

1. Interculturalism as a Guiding Principle and Overall Objective

The NCCRI is of the opinion that an immigration and residence policy needs to be developed in the context of an overall intercultural strategy. There needs to be direct reference to key policy documents such as the National Action Plan Against Racism and National Action Plan Against Poverty and Social Exclusion.

2. Integration Strategy

The NCCRI submits that there needs to be a legislative basis for integration. Without a legal foundation it can be hard to secure real commitment and implementation. The principles and strategy set out in the National Action Plan Against Racism forms the basis of an overall approach to the integration needs of migrants and their families.

3. Resourcing of Migrant Led and Support Groups

In relation to the proposed Immigration Integration Unit, the NCCRI submits that such a Unit needs involvement from all the government departments and that key migrant organisations need to be represented. The government commit sufficient resources to enable migrant led and support organisations to secure core funding for their organisation and be able to communicate needs and concerns to the new Unit.

4. Family Reunification

The right to family reunification is a key component of the integration of migrant workers into their host society. Therefore the NCCRI would advocate a statutory entitlement to family reunification to be contained in the forthcoming Immigration and Residence Bill 2005.

5. Codification of Rights and Entitlements of Migrant Workers

There should be a core set of rights for migrant workers and their families set out in the Immigration and Residence Bill which can be drawn from the UN Convention on the Rights of Migrant Workers and their Families 1990. The NCCRI calls on the Government to sign the UN Convention and take a lead role in encouraging other EU states to do the same.

6. Immigration Ombudsman

The NCCRI also supports the call of migrant organisations for the establishment of an independent monitoring of the system, through for example the establishment of an Immigration Ombudsman. The Ombudsman would be an independent body with powers to investigate complaints against public bodies in relation to admission, residence and removal issues.

7. Undocumented Workers

The Bill should provide for the introduction of a regularisation scheme as a mechanism for improving the individual situation of irregular migrants while responding to the demands of the labour market. This would serve to protect the most vulnerable in our society from exploitation, discrimination and racism.

8. Public Awareness Campaigns

The NCCRI believes that it is the responsibility of the Government to promote a positive perception of migrants in Irish society and of the economic, social and cultural benefits of migration. Government must publicly highlight the positive contribution of migrants and fund an analysis of economic benefits of migration to challenge commonly held myths and stereotypes.

9. Equality Proofing

In line with the NCCRI submission to the Review of Immigration and Residence Policy (August 2001), immigration and residence legislation and policy should be equality 'proofed' to ensure that it is non-discriminatory across the nine grounds identified in the equality legislation.

10. Co-ordination, Co-operation and Ongoing Consultation

Several government departments and agencies have a brief in this area and cross-departmental co-ordination and co-operation is crucial to the success of any immigration and residence policy. The NCCRI proposes that the Immigration Integration Unit would also have a high level steering committee to oversee its operation with representation by all departments and with membership of key migrant rights organisations, expert bodies and social partners.

Annex 1

Racism in Ireland

A more complete profile of cultural diversity in Ireland is now available through analysis of data from the 2002 Census of Population than was previously possible. The 2002 Census provides information on national origin, Travellers, religious diversity and inward migration to Ireland. The inclusion of a comprehensive ethnicity question in future Census of Population should provide a more complete picture of ethnic diversity in Ireland. Though a high proportion of those migrating to Ireland in recent years are returning Irish nationals, the increase in inward migration in the 1990s has been a major contributor to the broadening of cultural diversity in Ireland. Migrant workers, and students from outside the European Economic Area have come to Ireland in increasing numbers. This has been a direct consequence of skill and labour force shortages in recent years and the proactive efforts by Irish companies and colleges to recruit people for work and study purposes. Many migrant workers want to work in Ireland for relatively short periods of time before returning home or finding work elsewhere. Others will make Ireland their home and will apply for long-term residency and citizenship.

Profile of the Different Forms of Racism in Ireland

Racism is a complex and multi faceted concept, ranging from small, everyday acts of discrimination, through the barriers and omissions that may be inadvertently established at an institutional level, to acts of threatening behaviour and violence. The different forms of racism include:

- Racism experienced by Travellers on the basis of their distinct identity, nomadic tradition and culture
- Racism experienced by recent migrants, which includes migrant workers, refugees, asylum seekers
- Racism experienced by ‘people of colour’ and visible minority ethnic groups, including black people on the basis of their skin colour and ethnic and/or national identity, irrespective of their legal status
- Racism experienced by Jewish and Muslim people in the form of anti-Semitism and Islamaphobia
- The intersection between racism and other forms of inequality, including the inequality that can be experienced by women, people with disabilities, gay and lesbians, older and younger people or on the basis of family status.

Racism is a multifaceted issue that can range from acts of snubbing and exclusion through to discrimination, the creation of barriers that can emerge at all levels in public and private institutions, to acts of threatening behaviour and violence. In an Irish context, there are four main manifestations of racism that can be summarised as follows:

- 11. Discrimination**
- 12. Assaults, threatening behaviour, and incitement**
- 13. Institutional/systemic forms of racism**
- 14. Labelling.**²⁵

²⁵ National Action Plan against Racism, p. 57.

There is increasing recognition of the need to address racism at an institutional /systemic level and to ensure that institutions recognise and make reasonable accommodation of cultural diversity and take appropriate action as necessary, including in the areas of human resources management and service provision. Institutional racism and the failure to accommodate diversity is often unintentional and can come about through lack of thought, lack of understanding, lack of adequate planning or the persistence of 'one cap fits all approach'. The outcome of these processes can contribute to failure in or weaker service provision to cultural and ethnic minorities.

Annex 2

NCCRI Racist Incident Reporting Procedure

In May 2001 the National Consultative Committee on Racism and Interculturalism (NCCRI) established a system for recording incidents related to racism in Ireland. Incidents can be forwarded by non-governmental organisations on behalf of the victims, including key organisations working with Travellers, refugees, asylum seekers and migrants. Other incidents have been reported directly to the NCCRI by victims. It is important to emphasise that this procedure is confidential and an individual does not need to give their personal details.²⁶

There is evidence which suggests that migrant workers, students and entrepreneurs face experience of racism and discrimination. In its six-monthly reports the NCCRI recorded the following incidents:²⁷

- A Pakistani national made a complaint about institutional racism that he was experiencing as his business was suffering due to the fact that none of his international students could obtain student visas and he was subjected to harassment by the GNIB.
- In May it was reported in the Irish Independent that a “Lotto winner” allegedly spat at an African taxi driver and called him ‘a black bastard’. Garda had witnessed the verbal abuse. The newspaper also reported in May an incident where a woman was fined for verbal racial abuse to a doorman at a pub in Dublin. (Media report)

Media reports at the end of 2004 noted a series of attacks on a minority ethnic business in Cork. The Star reported in October that a man was fined after he made racist and threatening remarks to a foreign fast food worker. It was reported in the Irish Examiner in the same month that four men from the west of Ireland passed racist comments before assaulting a pub bouncer on Christmas Eve 2003. The men were being charged under the Non-Fatal Offences Against the Person Act for assault in the Circuit Criminal Court. (Media report) In its Annual Report 2004 the Equality Tribunal noted that there was a 46% increase in Employment Equality cases on grounds of race in 2004.²⁸ However direct experiences of racism and discrimination are one of many barriers facing minority ethnic groups in the labour market.

²⁶ For further information see: <http://www.nccri.ie/incidents-about.html>

²⁷ NCCRI (2004) Reported Incidents Relating to Racism, May – October 2004, available at: <http://www.nccri.ie/pdf/incidents-may-oct04.pdf> (21.06.05)

²⁸ See: http://www.equalitytribunal.ie/hm/press_releases_publications/2005/200605.htm