

An Coiste Comhairleach Náisiúnta
ar Chiníochas agus Idirchultúrachas

National Consultative Committee
on Racism and Interculturalism

Third Floor, Jervis House, Jervis Street, Dublin 1.

Tel: 00-353-1-858-8000

Fax: 00-353-1-872-7621

Email: info@nccri.ie

Website: www.nccri.ie



NCCRI Submission on the Scheme for an Immigration, Residence and Protection Bill

November 2006

Table of Contents

Role of the NCCRI	3
Consultation Process	3
Positive Developments.....	4
Long-term Residency	4
Issues and Concerns	4
1. Potential criminalisation of minority ethnic groups	4
2. Potential for increased racial profiling	5
3. Data collection and privacy	5
4. Marriage and the family.....	6
5. Vulnerable groups.....	7

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 organisations, and is core funded by the Department of Justice, Equality and Law Reform. Further information can be found at www.nccri.ie.

The NCCRI's work in the area of migration has been ongoing for several years. Most recently in July 2005 the NCCRI sent a submission to the Department of Justice, Equality and Law Reform in response to its discussion document. The NCCRI has a subgroup of its Partnership Board, which focuses on migration, the Migration Forum comprising NGOs, migrant-led groups and research bodies. The Migration Forum has discussed the current Scheme on a number of occasions, including at a meeting with the Department of Justice, Equality and Law Reform on 18th October 2006 with around 11 representatives from the Department and approximately 12 representatives from NGOs and the NCCRI. These discussions have informed the current submission.

As the current document heads of bill (hereafter referred to as 'Scheme') rather than a Bill, this submission does not attempt to address all aspects and wording of the Scheme; rather it seeks to highlight some key concerns. It is also anticipated that detailed policy statements will accompany any emerging legislation which will provide clarification on many areas which are currently unclear.

The NCCRI is aware that many other organisations, including NGOs represented on the NCCRI's Migration Forum will present submissions on their own areas of interest and expertise.

Consultation Process

The NCCRI welcomes the meeting of 18th October between organisations on the NCCRI's Migration Forum and the Department of Justice, Equality and Law Reform. This was a useful and constructive exchange of information, and an opportunity to highlight areas of concern and to seek clarification in relation to the Scheme. The NCCRI encourages the Department of Justice, Equality and Law Reform to be open to further meetings if necessary, and where appropriate with individual NGOs on their area of expertise.

The NCCRI restates the point made at this meeting that the submissions received by the Department in relation to the discussion document in 2005 should have been analysed and summarised. This, together with the original submissions should be published on the Department's website.

Positive Developments

Long-term Residency

The NCCRI welcomes the concept of long-term residency being enshrined in legislation. However if this is to become meaningful there needs to be explicit reference to the contribution that long term residency can play in relation to integration. Further, the rights associated with long-term residency that would give non-EU citizens equivalent rights to Irish citizens are not adequately set out in the Scheme. For example:

- Access to Social and affordable housing
- Access to third level colleges through reduced fees
- Access to social welfare
- Access to travel within the EU on the same basis as EU citizens
- Voting rights

Unless rights and entitlements are made explicit in the Scheme, the perceived value of long-term residency will be undermined.

Issues and Concerns

The NCCRI welcomes the fact that the heads of bill has been sent to the Irish Human Rights Commission for their review. There are a number of areas of concerns in the Scheme in relation to racism and human rights; these are as follows:

1. Potential criminalisation of minority ethnic groups
2. Potential for increased racial profiling
3. Data collection and privacy
4. Marriage and the family
5. Vulnerable groups

1. Potential criminalisation of minority ethnic groups

The NCCRI is very concerned about the provisions for revoking or refusing to renew resident permits for people who have been convicted of a crime. The NCCRI views this provision as a double punishment for migrants and notes that the Irish Government has been reported as requesting that other countries do not deport Irish people back to Ireland on completion of their sentencing.

If this concept is introduced, there need to be strict restrictions in place including a commitment to non-refoulement. There also needs to be clear guidance on which visa categories this applies to and exactly what crimes and offences can incur this penalty. It is recommended that if such a provision is introduced, that it should apply to only the most serious of crimes and not to (for example) traffic offences.¹

Furthermore, the proposed legislation, media coverage and public discourse on this issue should not unfairly attribute road traffic offences or other crimes to migrant

¹ See for example the Canadian Immigration and Refugee Protection Act 2002.

communities in Ireland. This issue should be addressed in related government statements.

2. Potential for increased racial profiling

Although there are already requirements to carry identification / documents, the NCCRI is concerned that there may be an increased focus on identity checks due to the requirement to produce documents (Head 82). Ireland is now a country with an ethnically and culturally diverse population, many of who live here on a long-term basis and increasingly, many of whom have been born here. It will be not possible for an immigration officer or member of An Garda Síochána can determine whether someone is a 'foreign national' simply based on appearance.

The NCCRI has a racist incidents recording and reporting system and has received reports of people from visible minorities being stopped and questioned in airports by the Garda National Immigration Bureau, despite the fact that they have an Irish or other EU passport. The NCCRI notes that the UN Committee on the Elimination of Racial Discrimination (CERD) in their concluding observations following a review of Ireland's First and Second Report under the ICERD convention has already raised concerns in this regard:

"The Committee encourages the State party 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."²

Research in the UK indicates that black people are six times more likely to be stopped and searched by police³, and research at a European level indicates that black and minority ethnic groups are disproportionately targeted for identity checks.

Racial profiling is currently being challenged before the United Nations Human Rights Committee.⁴ The case challenges a ruling by the Spanish Constitutional Court which held that police could target blacks for identity checks because racial appearance is a proxy for immigration status. The applicant is an African-American woman with Spanish citizenship who was stopped and asked for identity documents by a National Police officer in a train station. When she asked why other (white) family members had not been stopped, the officer pointed at her and explained that he had been told to identify persons who "looked like her," adding, "many of them are illegal immigrants."⁵

3. Data collection and privacy

The Scheme contains numerous references to biometric data including immigration officers' powers to request a 'foreign national' to provide biometric data, the requirement that 'foreign nationals' carry an ID card which will contain biometric information and a register which contains biometric information; and there are offences associated with failure to comply with these provisions.

2 United Nations Committee on the Elimination of Racial Discrimination (2005) "Concluding observations of the Committee on the Elimination of Racial Discrimination, Ireland". UN DOC CERD/C/IRL/CO/2, at 16.

3 Hayes, B. (2005) "A Failure to Regulate: Data Protection and Ethnic Profiling in the Police Sector in Europe", in Justice Initiatives, "Ethnic Profiling by Police in Europe."

4 *Rosalind Williams Lecraft v. Spain*.

5 www.justiceinitiative.org/db/resource2?res_id=103402

Firstly, there are privacy concerns associated with biometric data.⁶ Further information is required on the rationale behind the introduction of biometric ID cards, who will have access to the data and for what purposes, and how the privacy of the data will be protected.

Secondly, it is important that ID cards are not a pre-requisite for accessing essential Government services such as healthcare, as this could lead to a situation where people who urgently require services could be turned away if a) they are an Irish citizen and do not have to carry ID but are perceived to be a 'foreign national', b) the 'foreign national' has not brought their ID card for a genuine reasons, or c) where a migrant has become undocumented, which may not be the fault of the migrant themselves (for example, employer exploitation).

Thirdly, an area of concern is that consistent with commitments in the NPAR and as part of the NCCRI's recent work on improving government service provision to minority ethnic groups,⁷ the NCCRI is encouraging the collection of ethnic data for the purposes of planning and tailoring services. Some government service users are naturally reluctant to fill in "ethnic monitoring" forms but service providers and the NCCRI stress that the data collected is strictly confidential and is used to improve services. This work will be significantly undermined by the collection of data by government bodies which is not confidential and for the purposes of "ethnic monitoring". This would be particularly true where collection of such data extends to areas such as education.

Finally, there are also concerns about the costs of the proposed ID card and register system which will be borne by tax payers and by those applying for ID cards; this could be particularly onerous where families require a number of cards. The costs/benefits of administering an ID scheme in the United Kingdom has been a matter of much discussion. The cost to individuals has been estimated at £200 -£300 per person.

The NCCRI advises against the introduction of identity cards for non-EU migrants because of the potential breaches of human rights, the increased potential of racial profiling and the potential cost of such cards for both the State and individuals.

4. Marriage and the family

The NCCRI is concerned by restrictions on the right to marry (Head 67) which require a 'foreign national' to notify the Minister of intention to marry (2(a)(i)) and prohibit marriage on a number of grounds including being the holder of a protection temporary residence permit (3(a)(i)). This appears to effectively mean that asylum seekers cannot marry and refugees can only marry if they have applied for and been granted a long-term residence permit, which would take a minimum of five years. The right to marry is a recognised right in international, European and domestic legislation⁸ and restrictions on the right to marry have been challenged in the UK. Particularly considering that marriage to an Irish

6 Privacy is protected in Article 8 of the European Convention on Human Rights, implemented in Ireland through the European Convention on Human Rights Act 2003.

7 See for example, Watt P. & F. McGaughey (eds) "Improving Government Service Delivery to Minority Ethnic Groups: Northern Ireland, Scotland and Ireland." Available at: www.nccri.ie.

8 Article 10 (1), see also the International Covenant on Civil and Political Rights, Article 23, European Convention on Human Rights and European Convention on Human Rights Act 2003, Articles 12.

citizen does not give a 'foreign national' a right to enter or be in the State (Head 67 (1)); the NCCRI is opposed to restrictions on the right to marry.

Protection for the family is also well enshrined in international, European and domestic law; for example the International Covenant on Economic, Social and Cultural Rights reads:

"the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children."⁹

Similarly, the Irish Constitution recognises the family as the "natural primary and fundamental unit group of Society", and "the necessary basis of social order and as indispensable to the welfare of the Nation and State".¹⁰ The current heads of bill fails to deal comprehensively with family reunion entitlements. Family reunion is provided for with reference to holders of protection permits (Head 37), however the definition is narrow¹¹ and does not take into account the wider family circle in some cultures.

Furthermore, it could be inconsistent with the UN Convention on the Rights of the Child to which Ireland is signatory, which provides that a child seeking refugee status should receive appropriate protection and be assisted to trace parents *or other members of the family* for reunification.¹² Family reunion entitlements for all migrants need to be outlined, a more culturally appropriate definition of family should be adopted and any family reunion provisions should be consistent with Article 22 of the Convention on the Rights of the Child.¹³

5. Vulnerable groups

Although human rights are the inalienable rights of all people, there is no doubt that vulnerable groups require the protection that human rights offer more than others. The NCCRI is concerned by the lack of effective appeal opportunities proposed, the high level of Ministerial discretion and the powers given to immigration officers.

Vulnerable groups in the asylum and immigration process include children, people who have been trafficked, women, people who have survived torture or trauma, people who have become undocumented at the hands of unscrupulous employers and people with disabilities, including psychiatric illnesses.¹⁴ This is particularly important given the burden of proof in Head 4 (5), which states that "the onus of proving (as the case may

9 International Covenant on Civil and Political Rights, Article 23, European Convention on Human Rights and European Convention on Human Rights Act 2003, Articles 8.

10 Irish Constitution, Article 41

11 The definition includes spouses, parents of under 18 year old children and children under 18 years old who are not married.

12 Convention on the Rights of the Child, Article 22.

13 For further discussion on family reunion, refer to Immigrant Council of Ireland (2006) "Family Matters: Experiences of Family Reunification in Ireland."

14 For example, a number of high profile cases emerged in Australia where people had been wrongly detained in immigration detention or deported; including the case of Cornelia Rau, an Australian citizen who left a psychiatric hospital and was detained for ten months in immigration detention without her illness being diagnosed. See the Palmer Report: Department of Immigrations, Multicultural and Indigenous Affairs (2005) "Inquiry into the circumstances of the immigration detention of Cornelia Rau". Available at: http://www.minister.immi.gov.au/media_releases/media05/palmer-report.pdf

require) that such person is not a foreign national, or is not a foreign national of a particular nationality or of a particular class, or is not such a particular foreign national, shall lie on such person”; and given the range of offences proposed in the Scheme.

A temporary bridging visa should be provided to protect people who have been trafficked and people who have become undocumented as a result of employer exploitation until their particular case is resolved.

In relation to credibility, provisions as described in Head 48 (for example identity documents; full and true explanation; and making inconsistent, contradictory, unlikely or insufficient representations) are of concern in that these criteria are likely to lead to an inference *against* the protection applicant’s credibility. In fact, many of the criteria are indicative of genuine asylum cases. Also, most overseas research studies indicate that between 20% to 40% of asylum seekers have experienced exposure to torture.¹⁵ Particular consideration should be given to the effects of torture and trauma which can lead to memories of events being disorganised and fragmented, can alter the perception of time, interfere with spatial perception, produce memory blocks (including, in extreme circumstances, amnesia for complete or partial details of an event) and generate ongoing impairments in concentration.¹⁶

There is evidence from Canada and Australia that post-traumatic symptoms, including confusion and omissions, were frequently misinterpreted as evidence that claimants’ stories were not credible.¹⁷ Provisions relating to credibility need to be balanced with an obligation to consider the effects of torture and trauma in the protection determination process; supported by training and provision for expert medical and psychological evidence to be presented.

The NCCRI is concerned about potential infringements on the civil liberties of children. The exact proposals in relation to children need to be clearly articulated (for example can biometric data be taken from children aged 14 – 18 years, will children be detained etc.?). Also, there need to be particular safeguards in place in relation to protection for children in the immigration and asylum process.¹⁸ The role of the HSE should be clarified and a role should be established for the Ombudsman for Children in overseeing the rights of children in the immigration and asylum process.

In conclusion, there also needs to be an overarching protection for such vulnerable groups and the NCCRI strongly recommends more effective rights of appeal and the establishment of an office of Immigration Ombudsman in the Bill.

15 Z. Steel *et al* (2004) “The mental health impacts of migration: the law and its effects. Failing to understand: refugee determination and the traumatized applicant.” *International Journal of Law and Psychiatry* 27, 511–528, p.515.

16 *Ibid*, pp.517 – 518.

17 *Ibid*. & C. Rousseau *et al* (2002) “The complexity of determining refugeehood: A multidisciplinary analysis of the decision-making process of the Canadian Immigration and Refugee Board.” *Journal of Refugee Studies*, 15(1), 43–70.

18 For example in relation to Head 17 (5)(a)(iii), it is unclear how the HSE would be in a position to determine when it would not be in the child’s best interests; it is also important that the child be allowed to express him/herself in this regard – Article 12 UN Convention on the Rights of the Child.

Ends.

For additional information, please contact Fiona McGaughey, Research and Policy Officer, NCCRI. Email: Fiona@nccri.ie / telephone: 01 8588000.