



**NCCRI**

National Consultative  
Committee on Racism  
and Interculturalism

**Submission to the Joint Committee on Justice, Equality,  
Defence and Women's Rights**

**Immigration Residence and Protection Bill 2008**

**National Consultative Committee on Racism and Interculturalism**

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# Introduction

The National Consultative Committee on Racism and Interculturalism (NCCRI) was established in 1998 as an independent expert body. It is a partnership body, which brings together government and non-government organisations to develop initiatives and to provide expertise in tackling racism and promoting interculturalism.

The overall role of the NCCRI is:

- To act as an expert body to develop an integrated and strategic approach to racism, to focus on its prevention and to foster Interculturalism within Ireland
- To inform policy development and seek to build consensus through dialogue in relation to the issues of racism and Interculturalism
- To promote the understanding and celebration of cultural diversity within Ireland
- To establish links with other organisations or individuals involved in issues of racism and Interculturalism arising from developments at European Union and international levels.

The NCCRI welcomes the invitation and opportunity to make a submission on the Immigration Residence and Protection Bill 2008 to the select Committee on Justice Equality, Defence and Women's Rights.

In the context of this Bill, the NCCRI has previously put in a submission in relation to the Heads of Bill and organised a day-long meeting between NGOs and the Department of Justice Equality and Law Reform to examine and discuss this Bill in detail. NCCRI also directly raised issues of concern to the NCCRI at this meeting, in particular in relation to identity cards and integration.

This submission seeks to focus on issues that we continue to have concerns about, or issues that have emerged since this meeting most closely linked to our remit as an organisation. The views expressed do not necessarily reflect the views of individual bodies associated with NCCRI.

## 1. Protection

The NCCRI welcomes in principle the thrust of the stated intention of the Bill to introduce a more efficient procedure for all applicants seeking protection, from those seeking asylum to those looking for subsidiary protection. This Bill also transposes the latest EU Directives (2004/83/EC – Qualification Directive and 2005/85/EC – Procedures Directive) on those seeking protection, and is therefore a welcome development.

However, the NCCRI is greatly concerned about the detailed submission provided by the UNHCR Office in Dublin, subsequent to our meeting, highlighting significant gaps and perceived non adherence to the 1951 Geneva Convention on Refugees. The issues raised by the UNHCR relate to concerns about 'non refoulement', protection for those genuinely seeking asylum, concerns about the Protection Review Tribunal, and

overarching issues of transparency, fairness and impartiality. We believe that the Bill should not be progressed until such a time that the UNHCR is satisfied that the Bill is consistent with the 1951 Convention.

## 2. Marriage – section 124.

On the one hand, marriage is a fundamental and universal human right and on the other hand, there is a fear by government that marriages of convenience/sham marriages can be used to circumvent immigration laws. A further point of principle is that marriage plays an important role in the integration process.

While recognising that Governments in general have a legitimate concern to prevent the undermining of immigration law, there is no research on how widespread the problem of marriages of convenience is in Ireland. The proposed measure to deal with such marriages is far too severe in its approach and the government should look at emerging good practice in other countries.

Furthermore, current proposals could be unconstitutional, and contrary to Article 12 (right to marry) and Article 14 (non discrimination) of the European Convention on Human Rights Act 2003. The Appeal Court in the United Kingdom, in 2007, ruled that laws designed to clamp down on marriages of convenience were unlawful.<sup>1</sup> Lord Justice Buxton said that the right to marry and found a family under Article 12 of the European Convention on Human Rights was recognised as an important and fundamental right, not to be lightly interfered with.<sup>2</sup>

The Irish Constitution, through the provision of Article 41, recognises the family as the natural, primary and fundamental unit of society only in so far as it is based upon marriage. To restrict marriage for some people therefore erodes one of the basic principles in our constitution. As such we propose that section 124 (2)(b) and (3) of the legislation must be amended.

### **Alternative approaches**

The following alternative approaches are drawn from practice in other countries:

- All marriages, from their inception, should be recognised as genuine. However, where necessary, couples should be required to provide evidence that they are in a

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<sup>1</sup> Regina (Baiai and Others) v Secretary of State for the Home Department [2007] and Regina (Baiai and Another) v Same (No 2) [2007]

See also <http://business.timesonline.co.uk/tol/business/law/reports/article1985502.ece>

<sup>2</sup> To be proportionate, it was found that a scheme to achieve such an end must either properly investigate individual cases, or at least show that it had come close to isolating cases that very likely fell into the target category. The scheme must also show that the marriages targeted did indeed make substantial inroads into the enforcement of immigration control.

- genuine and continuing relationship. Proof of joint bank accounts, joint utility bills etc should be accepted as evidence of the relationship being bona fide.
- A spousal visa could be granted for an initial period of 2 years. At the end of that period, upon production of evidence of a continuing and genuine relationship the visa holder could be granted a permanent residence visa.
  - Fiancé(e) visas to allow travel to Ireland. The couple would be required to produce a valid notice of intention to marry and then marry within a period of 9 months. (See New Zealand, for example).
  - There should be no ‘prescribed fee’ for couples wishing to be granted permission to marry, as this is contrary to the value that Ireland has traditionally placed on the importance of family life.
  - Spousal sponsorship, as seen in Canada, is a serious sign of genuine commitment. The legally resident sponsoring partner must pledge to take care of their partner or spouse for a minimum of 3 years. If separation occurs before that time, then the sponsoring partner is liable for any draws on the social welfare system made during that period. The sponsored spouse or common-law partner must be able to demonstrate that they are in a genuine relationship with a Canadian citizen or permanent resident sponsor, and have not entered into the relationship primarily for the purposes of immigration. Besides a marriage certificate, or evidence of cohabitation for at least 1 year, individuals may be required to provide other evidence such as pictures, letters, telephone bills, emails, etc, to prove the relationship is bona fide.

### 3. Family Reunification

Family reunification is vital in terms of enabling people living in Ireland to feel settled, integrated, and happy. If the current Bill is not amended, Ireland will be the only EU Member State that does not have primary legislation covering this important and significant form of migration. We would encourage a broad interpretation of ‘family’ to be adopted, and for this definition to include life partners not just spouses, as well as immediate family. The Bill does not specifically mention the family reunification process and the NCCRI would like to see immediate members of the same family awarded the same status as the principal applicant. Furthermore, the NCCRI would like to see a standard provision included in the Bill specifically mentioning the protection of separated children through the principle of ‘best interest’, as outlined in the United Nations Convention on the Rights of the Child. Separated children seeking protection may have lost their natural parents, but may have significant attachments and be emotionally dependent on other family members such as siblings. Section 50(4)(1)(b) should therefore be expanded and reference should be made to other adults or siblings who by law or custom are primary caregivers to the child.

### 4. Identity Cards/Racial Profiling

The NCCRI reiterates its concern that the introduction of a partial system of identification cards and their increased use in ensuring access to key public services has

the potential to lead to increased racial profiling. In short, public service providers may begin demanding an identification card from people who appear to be foreign in order to access a particular non emergency public service. This has the potential to alienate many Irish/EU citizens who may be forced to carry a passport at all times to prevent delays or denial of services. In cases of black Irish citizens, for example, the new system has the potential to cause repeated petty infractions with bureaucracy as identification cards are requested on a regular basis.

The NCCRI recommends that other options be considered including for example:

- If the government is set on ID cards for non EEA citizens, the consideration of ID cards for everyone in Ireland, with adequate safeguards
- If ID cards are introduced for non-EEA nationals, that adequate training and guidelines be issued to key service providers to prevent racial profiling, and that formal monitoring/regular reviews are carried out.

## 5. Integration

### Long-term residency

The most important part of the Bill in respect of integration, other than family reunification, is long-term residency (section 36). This section was welcomed when the heads of Bill were published. It is disappointing that a range of caveats and qualifications now appear to be added which dilutes the concept and which fails to meet the current EU standards as set out in the Directive on EU Long-Term Resident Status.

In particular:

- Long term residency is renewable every five years, whereas third country EU nationals will receive a 5 year residency permit, *automatically renewable*.
- The qualifications for long term residency are in part unfair, and in part unclear, leaving considerable discretion with the Department of Justice. For example, s36(4) (iv) specifies that applicants must not have had recourse to publically funded services as are prescribed. There is strong concern that anyone who falls ill or who is temporarily unemployed will either a) lose their entitlement of long term residency or b) jeopardise their own or their families well being by not resorting to public services from fear of jeopardising their future status.

In relation to services that long-term residents are entitled to in the Irish Bill, the only services specified are medical and social welfare. It is of concern the following are not included: education, including the issue of reduced university fees; housing, including access to social housing. The EU Directive specifies equal treatment in a number of areas of socio-economic life:

- Access to employment and self-employed activity;
- Education and vocational training;

- Social protection and assistance;
- Access to goods and services, etc.

The Irish legislation should also consider access to voting in general elections by long-term residents, as democratic processes and rights are a key aspect of the integration process.