

## New Communities Partnership and networks

### Joint stakeholder submission by the New Communities Partnership and member organisations to the IHRC

#### Universal Periodic Review

##### Executive Summary

1. The priority issues in this submission are the rights of **migrants, refugees and asylum seekers**. The need to strengthen **the administration of justice and uphold the rule of law** in the area of immigration is of key importance. The existing legislative basis for the immigration system in Ireland lacks clarity and transparency. The Immigration and Residence Bill 2010 holds little promise of reform as it fails to address many of the concerns raised by organisations working in the field of migrants' rights<sup>1</sup>. The provision for the exercise of discretionary powers without clear guidelines and the lack of an independent appeals mechanism in most immigration matters has a direct and proximate co relation to the interference with migrants' rights.

**NCP recommends comprehensive legislative reform to support the development of an effective and transparent immigration system in the interest of fairness, equity and consistency in decision making.**

2. Other key points of focus are; the right to family life, the rights of the child, the right to work and **the right to equality and non discrimination**. Administrative policies that fail to consider constitutional or convention rights have a significant impact on the interference with these rights. The **right to work** is out rightly denied asylum seekers and greatly impeded for migrant workers and their spouses through ineffective administrative schemes. The IBC/05 scheme introduced by the government in 2005, expressly seeks to exclude entitlement to family rights. While there are no clear provisions made for the **family rights** of most categories of migrants, the two year processing period for refugees who are entitled to family reunification under Section 18 of the Refugee Act 1996 is onerous.

**NCP recommends that in establishing administrative schemes, government departments should take into account the constitutional and convention rights of all those to be affected by the schemes.**

3. The following ethnic minority led organisations are some of the joint submitting stakeholders for this report;

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<sup>1</sup> Immigration, Residence and Protection Bill 2010: a critical review September 2010

Afro-Irish Kidios Club  
Association of Malawians in Ireland  
Angola Association (Cork)  
Algerian Community Ireland  
Brazilian Women's Association (Limerick)  
CAMI-Cameroonian association in Ireland  
Congoese Community in Ireland  
Cork Nepalese Community Ireland  
Diaspora Women Initiative  
Hindu Cultural Centre Ireland-HCCI  
Lithuanian Community Ireland  
NANI-Nigerian Association Network Ireland  
Romanian Community in Ireland  
Southside Chinese Resident Association-SCRA

### **Background and Framework**

4. New Communities Partnership (NCP) is the sole national representative network of ethnic minority led organisations in Ireland. The aim of NCP is to represent and build the capacity of ethnic minorities & their organisations to identify their community and personal needs and develop strategies to meet these needs. Founded in 2003, with offices in Dublin, Limerick and Cork, the nationwide network in 2011 is composed of 117 member groups representing many ethnicities across 75 countries from Asia, the Middle East, North Africa, Europe, the Caribbean, South America and Africa.
5. New Communities Partnership (NCP) works to create awareness about migrants' rights by writing reports and making representations on behalf of migrants before government and treaty monitoring committees. NCP and its member groups contributed to the submissions of NGO Alliance Against Racism (NAAR) on the examination of Ireland's third and fourth periodic reports under Article 9 of the Convention on the Elimination of all forms of Racial Discrimination (CERD) .As

part of the steering group of the Irish Committee of the European Cultural Foundation, NCP made a presentation before the Oireachtas joint Committee on European Affairs on the 18<sup>th</sup> of January last entitled '*How to live in an intercultural society*'.

6. New Communities Partnership has also recently launched a project entitled '*Promoting Civic Participation of third Country Nationals Through Local Authority Platforms*'. This project which is led by NCP and Dublin Employment Pact, is a partnership with four local authorities and aims at developing mechanisms that promote the active engagement of new communities thereby reducing the social exclusion experienced among these communities. The project has many strands and typically, seeks through proactive action to address issues of social justice. One strand of the project seeks to address the issue of high levels of unemployment amongst people from ethnic minority communities through the delivery of workplace opportunities in partnership with the local councils.
7. NCP has been monitoring migrants' rights since 2003 and holds regular forums with member organisations in the cities of Dublin, Limerick and Cork. These forums provide an opportunity for member organisations to dialogue and engage with each other and to identify issues of concern to them. More recently, NCP has facilitated focus groups with people drawn from its member organisations with the specific objective of finding out member's perception and opinions on Ireland's human right standard in order to draw up a report for the Universal Periodic Review. Through the lived experiences of people from the ethnic minority communities and qualitative and quantitative research which involved the use of questionnaires, NCP has put together this report.

### **Promotion and Protection of Human Rights on the Ground**

#### **Cooperation with human rights mechanisms**

8. The extent of the States cooperation with human rights mechanisms in the area of **administration of justice and rule of law** leaves significant room for improvement. The lack of clarity and transparency in the immigration system has created a situation where public officials have unfettered discretionary powers over vast areas of the lives of migrants. This discretion is often exercised without any discernable applicable guidelines. There is no independent appeals mechanism for immigration related decisions and the only option open to appellants, is to seek redress by way of judicial review before the High Court. An appellant seeking redress by way of judicial review has to apply for leave of court within a 14 day time limit. There is also the looming threat of costs if the appellant is subsequently unsuccessful in having the impugned decision reviewed. The potential appellant in most immigration matters is effectively denied **access to justice** because of the prohibitive costs. **The immigration and Residence Bill (IRB) 2010** does not make any provision for an independent appeals tribunal for

immigration related appeals despite the commitment to do so in the programme for government. A legal system committed to the rule of law should have clarity in legislation, consistency in decision making as well as an independent appeals mechanism. A common thread that runs through the experiences of interference with the rights of migrants across the board, is lack of clarity in legislation, arbitrary exercise of discretion and lack of an effective remedy. This falls short of the right to **fair procedures** as provided for under **Article 8 of the Universal Declaration of Human Rights** and the **right to an effective remedy as provided for under Article 13 of the European Convention on Human Rights**.

9. Ireland has not incorporated the **Convention on the Elimination of all forms of Racial Discrimination (CERD)** into her national law. There has been no improvement since the State was last reviewed by the UN Committee on the elimination of all forms of racial discrimination in 2005. The **National Action Plan Against Racism (2005-2008)** lapsed in 2008 and no other plan has been put in place to support anti racism strategy. There have been significant cut backs to the funding provided to bodies that support anti racism work such as the Equality Authority and the **Irish Human Rights Commission**. The **National Consultative Committee on Racism and Interculturalism (NCCRI)** which played a leading role in the State anti racism strategy has also been closed down. Many racist incidents go unreported and concern has been voiced about the handling of some of the more publicised incidents. A recent incident in which an African man was arrested by the gardai at the Ulster Bank in Grafton Street on suspicion of possessing false documents was reported in NCP's submission to NAAR. Although the man was not resisting arrest, he was handcuffed and publicly marched down Grafton Street by three gardai to a garda station where he was detained. He was subsequently released without as much as an apology when investigations revealed that his documents were authentic. Another incident is the arrest and detention of a Nigerian Catholic priest Father Achebe, on the suspicion of trying to enter the country illegally. Despite being in possession of a valid visa, the reverend gentleman was stripped naked and placed in a cell over night with four other inmates at Cloverhill prison. He was only released on the intervention of the Nigerian ambassador to Ireland. Reverend Achebe's solicitor Gerry Cullen noted that flaws in the 2004 immigration Act allows the State to detain visitors from certain countries at will. Although no wrong doing was found on the part of the Nigerian priest, no apology or regret was ever expressed by the authorities over the incident. Any distinction on the basis of race, nationality descent or ethnic origin which has the effect of nullifying the enjoyment of human rights and fundamental freedoms on an equal footing with others, derogates from the right to **equality and non discrimination**. It is in contravention of **Article 1 of the Convention on the Elimination of all forms of Racial Discrimination**.

The State has shown commitment in engaging with the NGO sector in consultations leading up to the drafting of the **IRB 2010** though most recommendations of NGO's have not been taken on board. The consultation process for the **Universal Periodic Review** got off to an early start and this has given NGO's the opportunity to engage with the State on issues of concern. There is ongoing cooperation between the citizenship section of the Immigration service and **NCP** in putting in place a **citizenship project** to address undue delays in processing citizenship applications. This project is very important to people from the new communities as acquiring citizenship strengthens their rights and enhances participation in the community.

## **Implementation of International Human Rights Obligations**

### **The right to family life**

10. The right to respect for private and family life under **Article 8 of the ECHR Act 2003** is often interfered with disproportionately for the purpose of immigration control. Time spent by families seeking asylum in direct provision accommodation derogates from the enjoyment of this right. The system of *direct provision* is a system set up by government, providing accommodation on a full board basis for asylum seekers. The administration of this system is not consistent with the State's obligations under **Article 7 of the International Covenant on Civil and Political Rights (ICCPR)**. Asylum seekers and their families including minor children often remain in direct provision accommodation for years, provided with a meagre allowance and no entitlement to work. There is evidence that the direct provision scheme has had an adverse impact on the mental health of many asylum seekers.
11. According to the Free Legal Advice Centres Report on direct provision, '*One size doesn't fit all*' published in 2009, '*The direct provision system does not provide an environment conducive to the enjoyment or fulfilment of the most basic human rights, including the rights to health, food, housing and family life.*' The time spent in the direct provision accommodation can be directly linked to the nature of the asylum system in the State. Eurostat, the EU statistics agency revealed that the Office of the Refugee Applications Commissioner rejected 99% of asylum claims decided between July and September 2010<sup>2</sup>, the lowest rate of acceptance in the EU. The decision making process is heavily weighed against asylum seekers. The quality of decisions issued by the Refugee Appeals Tribunal was severely criticised by Mr Justice Cooke in a conference co-hosted by the Irish Refugee Council at the Law Society on the 12<sup>th</sup> of November last. The High Court judge suggested that many of the decisions were '*cut and paste*' and failed to properly consider the merits of each case. It is to be expected that many of these

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<sup>2</sup> Irish acceptance of asylum claims lowest in EU; Irish Times 21.01.2011

decisions will be appealed thereby increasing the length of time spent awaiting a final decision. The authorities have failed to implement the ‘**Procedures Directive**’, which contains minimum standards for a claim to be fairly and transparently considered. This failure has led to the European Commission referring Ireland to the court of justice of the EU. The official length of time of two years it takes to process family reunification applications for persons with refugee status is excessive. Many asylum seekers spend years in the asylum process under very difficult circumstances, it is a travesty that when they are eventually granted refugee status, the state expects them to wait a further two years or more to have their application for family reunification determined. Applications for family reunification for refugees are frequently denied on grounds that are legally flawed. In the test case of **Hamza and Elkhalfa V Minister for Justice (Nov 2010)** the court held that the power to consider an application under s.18 (3) (a) is non discretionary. NCP is aware of an instance where a refugee who had to wait three years to be granted family reunification, was unable to enjoy that right because her marriage had broken down as a result of the many years of separation. Justice delayed is often justice denied. The **IBC/05 scheme**<sup>3</sup> introduced by the government includes a proviso that effectively denies persons granted residency under this scheme the enjoyment of family rights under Article 8 of the ECHR Act 2003. As a result of the denial of family rights, many migrant families are trapped in poverty as they are either unable to work without the support of their spouses or to adequately provide for their children. There is still no clear provision for family reunification for most categories of migrants with the exception of refugees, EU nationals and certain categories of workers.

**NCP recommends that the principle of proportionality should be applied where a measure by a public authority will affect the basic human rights of those to whom that measure will apply.**

### **Rights of the child**

12. **Article 2 of the Convention on the rights of the child (CRC)** requires State parties to *ensure that children enjoy equal rights without discrimination irrespective of the race, nationality, ethnicity or social origin of their parents*. A number of State policies and practices have had a disproportionately adverse impact on children of ethnic minority origins. The courts in Ireland ruled in favour of the State in the administration of the IBC/05 scheme. The Supreme Court overturning an earlier decision of a High Court held inter alia, *that the legal rights of individuals under the scheme do not fall to be considered*. The Minister For Justice successfully argued that *he is not required to have regard to the*

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<sup>3</sup> Ex gratia administrative scheme under which non national parents of Irish citizen children were granted leave to remain in the state in 2005.

*constitutional rights of the child* in the establishment and adoption of the scheme<sup>4</sup>. In sharp contrast to this pronouncement of the Supreme Court of Ireland, the UK Supreme Court in a recent ruling in the case of **ZH (Tanzania (FC) v Secretary of State (2011) UKSC 4** attached much weight to the best interest of the child in reaching a decision not to deport the non-national parent. In another similar case in the same jurisdiction, the house of lords *held that both the secretary of state and the Immigration appellate authorities had to consider the rights to respect for the family life of all the family members who might be affected by the decision and not just those of the claimant or appellant in question.*<sup>5</sup> The weight attached to the best interest of the child in the UK jurisdiction is further illustrated in a court pronouncement where it was held that; *'It will be rarely proportionate to uphold an order for removal if there is a close and genuine bond with the other spouse and that spouse cannot reasonably be expected to follow the removed spouse to the country of removal, or if the effect of the order is to sever a genuine and subsisting relationship between parent and child'*<sup>6</sup>

13. The length of time spent by children of asylum seekers in direct provision accommodation does not meet the States obligation under the **CRC**. The meagre allowance of €9.60c per Week for a child in direct provision and the denial of child benefit on the basis of the narrow interpretation given to the habitual residency conditions have created a situation of high prevalence of poverty amongst children of non-national parentage. There is at present no appropriate care service in place for unaccompanied minor asylum seekers. Ireland's asylum system and the way it treats unaccompanied children was criticised by the EU commission which has suggested it threatens the rights of the most vulnerable in the EU<sup>7</sup>. Unaccompanied minor asylum seekers are often housed in direct provision accommodation without adequate supervision. According to Denis Naughten TD Fine Gael's immigration spokesman, 500 children have disappeared from state care over the last decade and 441 are still unaccounted for<sup>8</sup>.

14. Children of non-nationals who accompanied their parents to Ireland have limited access to third level education as compared to their Irish counterparts. Under the present immigration system, these children remain undocumented and have no

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<sup>4</sup> Bode (A minor) v Minister for Justice, Equality and Law Reform and Others (2007) IESC 62, Ireland: Supreme Court, 20 December 2007.

<sup>5</sup> Beoku-Betts v Secretary of state for the Home Department 2008 UKHL 39,2009 AC 115

<sup>6</sup> EB(Kosovo) v Secretary of State for the Home Department(2008)AC1159

<sup>7</sup> Asylum move on minors may affect Ireland; Irish Examiner Feb.02.2011

<sup>8</sup> Only 1 in 7 missing migrant kids traced, warns FG; Metro Eireann 3-9 June 2010

clear immigration status. Although many of these children have lived and schooled in Ireland for most of their lives, they are unable to access third level education because of the excessive fees they are required to pay.

### **The right to work**

15. The denial of the right to work to asylum seekers who spend years in the asylum process infringes on the right to **human dignity** and the right to an **adequate standard of living**. The delay in processing family reunification to persons with refugee status who have young children is a barrier to employment. The IBC/05 policy which denies the right to family reunification to persons granted residency under this scheme has also made it difficult for those separated from their spouses to work. The effective denial of this right traps many ethnic minority families in poverty. Migrant workers in the State who have been granted work permits must remain with the same employer for the first twelve months under the terms of the permit. This policy leaves work permit holders open to exploitation by employers. A spousal work permit scheme published by the Department of Enterprise in May 2010 is very limiting in its attempt to grant leave to work to the spouses of certain categories of work permit holders. The scheme requires that the spouses of certain categories of work permit holders first secure an offer of employment before making an application for a spousal work permit or having such an application made on their behalf by a potential employer. The chance of securing an offer of employment without holding a valid work permit is highly improbable in today's economy. Many spouses of migrant workers, though highly skilled, are unable to secure work due to this ineffective scheme. Research by the Economic and Social Research Institute in the past has shown a proportionately higher level of unemployment amongst migrants. Many highly skilled immigrants are not employed at occupational levels that reflect their level of education. The launch by the Irish government of a new public policy 'Migration Nation' in 2008 has yet to make significant impact on migrant workers.

### **Achievements, Best Practices, Challenges and Constraints**

16. The establishment of the Office of the Minister for Integration (**OMI**) in June of 2007 and the appointment of a Minister for State with the responsibility for integration policy is one of the achievements of the last four years. The effectiveness of the work of the **OMI** would be significantly improved if it is complemented by a cohesive integration strategy that is reflected in broad government policies. The severe challenges and constraints have been the significant cut backs to the funding of anti racism and integration work. Other challenges have been the delay in implementing recommendations made from periodic reports and from discussions and dialogues between stakeholders and the government.

### **Key National Priorities**

17. The key national priorities that New Communities Partnership recommends to the government to improve human rights on the ground are comprehensive reform of the immigration system by enacting an Immigration and Residency Act that is clear and transparent and by establishing an independent appeals tribunal for immigration related decisions. The use of Ministerial discretion should be reduced and clear guidelines for the exercise of discretion should be established. Funding for anti racism and integration work should be re instated and a new anti racism strategy should be published. The state should take into consideration the constitutional and convention rights of migrant families, particularly children in the establishment of schemes that will affect them. The state should commit to future cooperation with human rights mechanisms and agencies.