



Migrant Rights Centre Ireland

*Submission to the Immigration and
Residence in Ireland Discussion
Document*

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Introduction

Migrant Rights Centre Ireland

The Migrant Rights Centre Ireland (MRCI) is a national organisation concerned with policy and change in addition to responding to the direct needs of migrant workers and their families.¹ The vision of the MRCI is an Ireland where migrant workers and their families participate fully and equally in an intercultural society.² The mission of the MRCI is to promote the conditions for social and economic inclusion of those migrant workers and their families who are in vulnerable situations. The vision and mission reflects closely the aims for which the organisation was established, namely:

- a) To empower migrants in Ireland to enjoy their rights and participate fully in all aspects of social, economic, cultural and political life in Ireland.
- b) To remove boundaries and build solidarity, challenging racism, exploitation, prejudice and inequalities experienced by migrants in Ireland.

The MRCI welcomes the commitment by the Irish government to put the immigration and residence rules on a statutory footing and the opportunity to contribute to the debate. We also welcome the Government's commitment to put in place a modern comprehensive legislative framework that will enable policies to be formulated and modified as needs require and to provide for a fair and transparent set of procedures for the day-to-day implementation of those policies.

Our Consultation Process

MRCI works exclusively with migrant workers and their families. The organisation's combination of community work, direct service provision and advocacy makes it distinctive within the wider field of organisations working on immigration-related issues in Ireland today. This approach has enabled the MRCI to identify the key issues affecting migrant workers and their families for the purposes of responding to the discussion document. In addition the MRCI held a focused group discussion with migrant workers and other interested parties in July to present the key tenets of the discussion document in order to ascertain their views and key concerns.

Structure of Submission

This submission has three parts: the first contains an overview of MRCI's main priorities and key recommendations that we would like to see reflected in immigration and residence policy and legislation; the second part responds to the discussion document section by section outlining concerns and omissions; the third part contains concluding remarks and contact information for further consultation with the MRCI.

¹ Further information on the MRCI is available online at www.mrci.ie

² An intercultural society is one where all people live free of racism and where the rich diversity of our multicultural make up is respected, reflected in structures and policies, and resourced at all levels. Interculturalism also implies equality across diverse cultures while multiculturalism is rooted in concepts of tolerance and acceptance as opposed to respect and rights associated with cultural expression. Finally, interculturalism is concerned with integration and the creation of a society where all its members benefit mutually from its diverse make up.

Part 1: Overview – Key Recommendations

It is the MRCI's fundamental belief that there are certain principles that should underpin any migration policy. A migration policy for Ireland needs to be planned, progressive and non-reactive to national and international security concerns. Security and economic concerns alone should not dictate the type of immigration legislation that is developed. What is needed is a framework for the formulation of a holistic migration policy based on a respect for humanity and the needs of the economy and security.

Ireland's migration policy must be reflective and responsive to global and European developments and realities. It needs to be people-centred, community centred and family centred. It should be proactive in meeting the current and future needs of both society and migrant workers and their families. It must be consistent with Ireland's economic and social goals while recognising migrant workers and their families as participants of Irish society, human beings with civil, political, economic, social and cultural rights.

Integration – An Overall Objective

An immigration and residence policy cannot only take account of economic and security needs but it must account for the integration needs of migrants. One of the overall objectives of the legislation and policy in this area should be integration and a guiding principle be one of promoting an intercultural society. The recently launched National Action Plan Against Racism (NAPAR) will be a guiding document in this regard. In addition the 11 common principles of integration that were adopted at EU level as part of the Hague Programme in December 2004 should also underpin the legislation.

The MRCI believes that an integration policy, driven, facilitated and funded by the State is a vital component of a successful immigration and residence policy. An integration model and strategy needs to be designed and implemented that will respond to the needs of all immigrants, with an anti-racism and social inclusion focus. Integration begins before a person arrives in Ireland. Therefore all aspects of the immigration and residence procedure have direct bearing on the integration of a migrant worker into the host society.

The MRCI submits that there needs to be a legislative basis for integration provided for in the forthcoming Immigration and Residence Bill. Without a legal foundation it will be difficult to secure real implementation. A legislative framework would also contain a revised progressive definition of integration.³

Family Reunion

The MRCI advocates a statutory entitlement to family reunification for migrants similar to that provided for in the Refugee Act 1996 for recognised refugees. Such a right should be provided for in the forthcoming Immigration and Residence Bill 2005. The primary legislation should clearly state the rights and entitlements of family members. The MRCI supports a broad definition of the family for the purposes of family reunion, consistent with developments in most EU member states, such as the

³ See p39 of the National Action Plan Against Racism.

recognition of unmarried partnerships, whether opposite or same-sex. It is well documented that the right to family reunification greatly facilitates the integration of migrant workers into their host society. The ongoing 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. T

Essential Skills

The discussion document maintains that the permanent migration system or any fast-track scheme should apply to skilled workers only. The MRCI asserts that a forward-looking immigration and residence system should recognise the current and future need for both high skilled and low skilled workers. The differentiation between skilled and low skilled/unskilled is a misnomer. The MRCI would advocate the use of the term essential skills as a full range of skills are required to sustain the economic and social development of Irish economy and society. Such a term also has more positive connotations for migrant workers in low-skilled sectors.

Many of the essential skills are in the economy already yet the recognition of qualifications is a major barrier for many migrants and their families. 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.

Undocumented Workers

The MRCI submits that access to services for undocumented workers 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. It should be emphasised that many migrants become undocumented while in Ireland through no fault of their own but because of the current inadequacies of the system. 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.

Introduction of a Bridging Visa

The MRCI also advocates the introduction of a “bridging visa” for migrant workers who can demonstrate that they have been exploited. The visa would allow a migrant worker to change or seek employment within a defined period. This is the practice of immigration officials at present so it would be actually codifying it in primary legislation. The worker remains documented, in a position to make an official complaint and seek new employment. This is one way in which the Government could provide for a pathway back to legal status, at least for migrants who entered Ireland legally but whose status has since become irregular. It also provides an escape route out of the current work permit system for the migrant worker when employers are exploitative.

Protecting the Most Vulnerable

The MRCI would recommend the appointment of an Immigration Ombudsman to monitor admission, residency, family reunion and access to citizenship issues. The exploitation of migrant workers in the workplace would be dealt with under mainstream procedures such as the Labour Inspectorate. The Immigration

Ombudsman would be given adequate powers of investigation. The appointment would ensure that the most vulnerable are protected, those in employment and those that, through no fault of their own fall out of the system and become undocumented. It is the experience of the MRCI that migrant workers and their families in the most vulnerable situations are least likely to access supports available, despite needing the highest level of protection from exploitation.⁴

Institutional Issues

Several government departments and agencies have a brief in this area and high-level cross-departmental co-ordination and co-operation is crucial to the success of any immigration and residence policy. Cross-departmental approach is essential to ensure consistency and understanding of immigration systems and procedures. The system itself must embrace the principles of transparency, accountability, accessibility and efficiency with proper checks and balances on the exercise of discretion.

The MRCI advocates 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 race age, gender and sexual orientation. The proposed primary and secondary legislation along with policies and schemes arising out of the legislation must be equality proofed so as to assess potential impact on migrants.⁵

A Focus on Primary Legislation

The MRCI shares the concerns of other migrant organisations that many important aspects of immigration and residence will be provided for in secondary legislation or practice instructions. It is the MRCI belief that this would be a missed opportunity to create a clear framework for a functioning and fair immigration and residence policy for Ireland. The Immigration and Residence Bill should provide for the all the criteria for the making or refusing of an application to enter and reside in the State and contain rights and entitlements of migrants and their families. The MRCI believes that there should be a core set of rights for migrant workers and their families drawn from the UN Convention on the Rights of Migrant Workers and their Families 1990.

⁴ In its Concluding Observations, the CERD Committee noted its particular concern 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 Ireland 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. [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.IRL.CO.2.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.IRL.CO.2.En?OpenDocument)

⁵ See Objective 2.1 of the National Action Plan Against Racism which includes a commitment by the government to equality proof key policy instruments to determine their likely outcome for minority ethnic groups. Proofing will take place during preparation, implementation and review stage of policy development. Although it doesn't include a focus on immigration and residence legislation and policy, the MRCI advocates that it should do so.

Part 2: Issues (Section by Section)

1. Overall Objectives and Basic Principles

The MRCI believes that in communicating the overall objectives and basic principles of the proposed Bill to the general public that there is an emphasis on and recognition of the economic, social and cultural benefits of migration and diversity. Migrant workers and their families bring positive benefits to the Irish economy and society and this fact needs to be communicated rather than concerns surrounding security and protecting the economy of the State.

Integration as an Overall Objective

The MRCI believes that an integration policy, facilitated and funded by the State, is a vital component of a successful immigration and residence policy. An integration model and strategy must be designed and implemented that will respond to the needs of all migrants, with an anti-racism and social inclusion focus. The MRCI believes that integration begins before a person has come to Ireland – all aspects of the immigration and residence procedure have direct bearing on the integration of a migrant worker into the host society. Undocumented workers should also be included in any integration strategy. Although these migrants may have no right of residence, they cannot be ignored when different approaches to integration are being considered.

Legislative basis for integration

The MRCI submits that there needs to be a legislative basis for integration. Without a legal foundation it can be hard to secure real implementation. A legislative framework would also contain a revised definition of integration. The term ‘integration’ has proved to be problematic in the Irish context, with some groups interpreting it as assimilation. We must seek to incorporate an inclusive definition of integration that addresses the reality of racism and discrimination and reflects the intercultural dimension and approach that the recently published National Action Plan Against Racism seeks to promote.

Immigration Integration Unit

The MRCI welcomes the proposal for the establishment of an Immigration Integration Unit. Such a Unit needs to be overseen by a high level steering committee with clear terms of reference. This committee requires high level officials from all the government departments and key migrant organisations such as the MRCI need to have representation on it. This would facilitate joined up thinking and a co-ordinated government response on the issue of integration.

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

It is key that the proposed Immigration Integration Unit has strong links with other relevant initiatives such as the Steering Committee overseeing the NAPAR and the Office for Social Inclusion overseeing the National Action Plan Against Poverty and Social Exclusion (NAPS Incl). Continuous reference to the NAPAR is essential in the formulation of an Immigration and Residence Bill. It is relevant to all parts of the immigration and residence structures, ensuring that anti-racism and anti-discrimination is at the heart of the system.

Factors Related to a Successful Integration Strategy

Access to Information

A common thread running through case studies of the MRCI is the low level or absence of knowledge about employment rights. Although the Department of Enterprise, Trade and Employment has information available in a range of languages, efforts are needed to improve dissemination as not all migrant workers are receiving this information. The MRCI would recommend a formal system of induction for migrant workers and their families on arrival in the country which provides them with relevant and accessible information on their entitlements and obligations. Pre-departure information should be made available at Irish embassies in the sending countries⁶ and information in one's language on arrival. It is further recommended that the government make additional resources available to information and advocacy groups in urban and rural areas including community and local development organisations and Citizens Information Centres. The availability of proper interpreter services in accessing public services is also vital.

Access to Education and Training

MRCI has identified the problem of de-skilling among migrant workers living in Ireland. Many migrant workers working in Ireland are qualified in other areas. Indeed some of the skills identified are in professions for which Ireland is trying to recruit migrants. 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. As resources permit, the State should provide teaching and non-pay resources to schools to cater for the needs of pupils for whom English is not their mother tongue.

Under Objective 2.6 of the NAPAR it 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:

⁶ For example the Irish embassy in Poland provides pre-departure information in their language to Polish workers seeking to come to Ireland to work.

- Developing 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 targeted programmes.

Recognition of qualifications

The MRCI 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 employers in the Irish labour market who cannot tap into a pool of skills needed and already existing in the economy.

As referred to above Objective 2.6 of NAPAR makes a commitment to develop a programme to address employment of Black and minority ethnic groups with a particular focus on developing strategies for effective recognition of qualifications. The MRCI would recommend the development of a flexible approach to the recognition of qualifications as a matter of priority.

Core Funding for Migrant Led and Support Organisations

If the government is serious about the integration of migrants and their families into Irish society, they must commit sufficient resources to enable migrant led and migrant support organisations to secure core funding. Organisations need to be adequately resourced and supported in order to assess and communicate the needs and concerns of migrant workers and inform policy. This will enable migrant workers to participate in the consultation process in designing and implementing proper policies and legislation in relation to immigration and residence.

Public Awareness Campaigns

The MRCI 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.⁷

There is a commitment contained in the NAPAR to develop a high-level awareness and compliance initiative by the Department of Enterprise, Trade and Employment for migrant workers and employers.⁸ While the MRCI welcomes this commitment we would also like to see resources committed to an innovative public awareness campaign on the positive contribution that migrant workers and their families bring to

⁷ The CERD Committee in its Concluding Observations (March 2005) recommended that the Irish government continue to combat prejudice and xenophobic stereotyping, especially in the media and fight prejudice and discriminatory attitudes. In addition the European Commission recent communication on Immigration, Integration and Employment recommends that EU countries should gather data and information to raise awareness of the contribution migrants bring to economic, social and cultural life in the EU. (Comm 2003/336:35)

⁸ See Objective 2: Inclusion in the National Action Plan Against Racism www.justice.ie

Ireland. December 18 is International Migrants Day and it is suggested that the Government could fund an annual public awareness initiative on this date.

Access to Citizenship

Access to citizenship is not addressed in the discussion document. The MRCI considers that easy acquisition of citizenship is important in terms of integration. Studies have also revealed that acquisition of citizenship has a positive effect on performance of economic migrants and may attract highly skilled migrants in a competitive market. The legislation must clarify routes to citizenship for migrants setting out entitlements to apply and clear procedures on how to do so with speedy processing of applications.⁹

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, through the incremental improvement of rights so that immigrants do not feel an imperative to naturalise. Synergy of the proposed immigration and residence legislation and policy with strategies identified under the National Action Plan Against Poverty and Social Inclusion should be supported in this context.

Avoidance of Exclusionary Language

The MRCI considers that 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 loaded terms like ‘illegal immigrant’ and ‘illegal immigration’ can have an effect on the public perception of migrants and act as a barrier to integration.

EU Developments on Integration and Migration

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 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.¹⁰ The European Commission is also expected to issue a Communication on Integration before the end of July 2005.

⁹ 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: there is 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. See www.migpolgroup.com for a copy of the Index

¹⁰ 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.

At EU level the importance of the Common Travel Area (CTA) is reflected in Ireland's opting out of key EU developments in the area of migration such as the Directive on Long Term Residence and on Family Reunion. The discussion document has stated that the Bill will reflect developments at European level in tackling the problem of illegal immigration, trafficking in human beings and the control measures which have been introduced to combat threats in this area. The MRCI would argue that it is equally important that the Bill reflect EU developments in admission and residence requirements for migrants and progress at EU level on integration, even if Ireland chooses not to participate in the measure.

2. Visa and Pre-entry Clearance

The MRCI welcomes the proposed codification of the visa system in order to improve clarity and efficiency and the proposal to review / eliminate the re-entry visa scheme.

Biometric Data systems

The MRCI is concerned by the proposal that the Government intends to develop biometric data systems for the issuing of visas and residence permits, fuelled by security concerns and the need to tackle irregular migration. The use of biometrics is controversial which has data protection, discrimination and other implications for the civil liberties of individuals. The MRCI would have great concerns in relation to the protection of personal data and issues relating to right to bodily integrity and right to privacy. Biometric applications should include measures that safeguard the integrity of data. Privacy and human rights issues should continue to be important parts of an overall strategic vision for the use of biometrics, alongside the element of security and general management.

Charging of Visa Fees

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 MRCI would have serious concerns about the potentially prohibitively high fees that may be charged to migrants that may result in them not making the application in the first place. In addition it sends out the wrong message to migrants that they must pay for the privilege of coming to Ireland

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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 descendants 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.

to work whereas in reality the Irish labour market and economy needs and benefits greatly from their participation. In a competitive global market for recruiting workers, the imposition of high visa fees will not be an attraction for skilled workers, especially when the discussion document makes it clear that a pre-entry visa does not guarantee entry to the State.

The MRCI is of the opinion that the charging of fees can lead to a double taxation on migrant workers and their families. A migrant worker will pay fees to come and work in Ireland and then go on to contribute to the welfare of the State through the tax system. The impact of charging such fees to migrant workers must be assessed, especially the potential of the imposition of charges to cause exploitation, vulnerability and the risk of becoming undocumented as a result.

Visa Lists

The discussion document states that the inclusion of nationalities on lists of persons who require visas is usually the result of experience regarding the nationalities concerned within the immigration system such as the history of compliance with immigration law. The MRCI asks that this list be reviewed periodically.

Administration and Procedural Issues

It is important that the administrative guidelines informing the decision-making processes will be published. It appears that 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, accountability and accessibility. Decisions should be made in a timely manner with an independent complaints or review process, all of which will require the allocation of adequate resources.

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.

3. Border Controls

The MRCI 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.

Discretion

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 of broad and vague reasons related to public policy, health or security. This creates space 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 in order to provide for adequate checks and balances to the system.

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.

Procedural Safeguards

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 proposed) 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.

Detention

The MRCI is concerned about the proposals to detain persons refused permission to enter. It is the view of MRCI that detention should not be used for those in breach of immigration legislation. If the proposal for detention is pursued the nature and purpose of such detention should be explained and procedural safeguards be provided to ensure that such deprivation of liberty is lawful and consistent with international human rights standards. For example the length of detention should be proportionate to the purpose of the detention and a detainee should be allowed access to legal advice and interpreters.

Staff Training

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 with respect and in a non-discriminatory manner.

4. Admission for the purpose of Work

MRCI welcomes the emphasis in the discussion document on permanent migration systems. Within limited exceptions, all migrants should be treated as potentially permanent members of Irish society. However the discussion document has not identified the actual policies it intends to implement but lays out a series of options that will most likely be set out in secondary schemes by the Minister. The European Commission plans to publish before the end of 2005 an action plan on economic migration, as an outcome of the consultations surrounding the Green paper on Managing Economic Migration. This document will be very relevance to the proposed legislation and the MRCI calls on the Government to take into account the provisions of this action plan in formulating legislation and policy.

Work Permit System

The MRCI has consistently pointed out that the work permit in control of the employer greatly hinders access to rights and entitlements, and can lead to

exploitation and discrimination.¹¹ Domestic workers are particularly vulnerable to exploitation in this context. Work permits should be detached from the employer in order to avoid the potential for exploitation. The recently published Employment Permits Bill 2005 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.¹²

Rights and Entitlements

The MRCI welcomes the creation of a Long Term Residence Status but is concerned that it may reinforce the already existing two-tier system of rights. The MRCI believes that 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 1990. The MRCI 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.¹³

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 without the right to a passport and right to vote. Additional needs of migrant workers should be identified and appropriate services put in place.

Undocumented Workers

The discussion document does not address or make any provision for the position of migrants who find themselves in an irregular situation. It is the experience of the MRCI through its work that migrant workers become undocumented because of the inadequacies in the system rather than the lack of border controls to prevent them entering illegally. Certain admission systems can facilitate undocumented workers and this is a reality that is commonplace in other European states.¹⁴

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. 2005 Regularisation Programme in Spain that was market and employer driven.

¹¹ See in particular Migrant Rights Centre Ireland: Work Permits in Ireland: A Recommendation for Change. March 2004.

¹² 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.

¹³ It should be recalled that the CERD Committee in its Concluding Observations (March 2005) 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.

¹⁴ For further information on the plight of undocumented workers in the European Union see www.picum.org

Regularization can serve to combat exploitation and discrimination while strategic economic sectors and the economy overall benefit in the process.

Bridging Visa

The MRCI advocates the introduction of a “bridging visa” for migrant workers who can demonstrate that they have been exploited. The visa would allow a migrant worker to change or seek employment within a defined period. This is the practice of immigration officials at present so it would be actually codifying it in primary legislation. The worker remains documented, in a position to make an official complaint and seek new employment.

Flexibility Between Schemes

The government should introduce in primary legislation the possibility of transferring between schemes and between different immigration statuses. For example a person in a low-skilled sector may have the possibility of transferring to a high skilled category once he or she has undergone the necessary recognition of qualifications or the passing of equivalence standards tests that are required to work in that sector. There has also been strong support from various interested parties at EU level for the granting of a temporary job seeker permit for non-EEA nationals of a limited duration in order to facilitate such a transfer.¹⁵

Focus on Skilled Workers? The Essential Skills Approach

The MRCI is concerned about the Government’s over-reliance on the enlarged EU to fulfil labour needs in particular low skilled positions. Our immigration policy should provide for long-term solutions. When other EU states lift their restrictions on workers from the 10 Accession States, competition will intensify to attract these workers. As the 10 new states become more integrated within EU economy outward migration may reduce from these states. Therefore Ireland needs to plan ahead in relation to our immigration and residence policy.¹⁶

The discussion document notes that the admission of unskilled or low-skilled migrants can pose potential problems such as the scope for long-term unemployment or social problems in the event of an economic slowdown and therefore is not encouraged internationally. The discussion document maintains that the permanent migration system or any fast-track scheme should apply to skilled workers only. The MRCI asserts that a forward-looking immigration and residence system should recognise the need for both high skilled and low skilled workers. The MRCI would advocate the use of the term essential skills as a full range of skills are required to sustain the economic and social development of Irish economy and society. The term has more positive connotations for migrants who work in low skilled sectors.

Monitoring and Enforcement

The MRCI calls on 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 provide and, as resources allow, enhance

¹⁵ European Commission Public Hearing on the Green paper on Managing Economic Migration 14 June 2005.

¹⁶ See the arguments against the reliance on the 10 accession states to fulfill our temporary labour needs in Martin Ruhs: Managing the Immigration and Employment of Non-EU Nationals in Ireland (2005).

the capacity of bodies and agencies responsible for the enforcement of employment rights policy.¹⁷ The MRCI recommends at minimum doubling the number of Labour Inspectorate personnel and support this with interpretative services.

Accessible information on workplace rights should be provided to migrant workers in their own language. In this regard there is a commitment contained in the NAPAR to develop a high-level awareness and compliance initiative by the Department of Enterprise, Trade and Employment for migrant workers and employers, to provide accessible information on employment rights to migrants and minority ethnic groups and to ensure, through the Labour Inspectorate, full observance of occupational health and labour legislation, minimum pay and registered employment agreements, including in respect of migrants and minority ethnic groups.¹⁸

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 MRCI welcomes the recent call by the Department of Enterprise, Trade and Employment for submissions to the White Paper on the Review of the 1971 Act (June 2005). 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 MRCI 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.¹⁹

The MRCI would recommend the appointment of an Immigration Ombudsman to monitor admission, residency, family reunion and access to citizenship issues. The exploitation of migrant workers in the workplace would be dealt with under mainstream procedures such as the Labour Inspectorate. The Immigration Ombudsman should be given adequate powers of investigation. The appointment would ensure that the most vulnerable are protected, those in employment and those that, through no fault of their own fall out of the system. It is the experience of the MRCI that migrant workers and their families in the most vulnerable situations are least likely to access supports available, despite needing the highest level of protection from exploitation.²⁰

¹⁷ Objective 2.2 of the National Action Plan Against Racism www.justice.ie

¹⁸ *ibid*

¹⁹ 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

²⁰ See Migrant Rights Centre Ireland: Private Homes – A Public Concern: The Experience of Twenty Migrant Women Employed in the Private Home in Ireland. December 2004.

5. Admission for Purposes of Self-Employment

MRCI welcomes the proposal to place business permission / self-employment requirements on a statutory footing and that consideration will be given to dispense with capital requirements in certain cases, so as to promote viable businesses.

MRCI considers that there should be no absolute requirement to apply for admission for the purpose of self-employed activities from outside the State. In particular students should not be required to embark on a costly trip back to their country of origin to apply for permission to return in order to take up self-employed activities. This is unduly restrictive of entrepreneurial activity and a waste of administrative resources and time. The government should introduce flexibility between schemes as stated earlier so that migrants can transfer easily between study and work schemes. The MRCI would also ask the government to consider the relaxation of stringent rules regarding the setting up of a business as a migrant worker such as the resources needed for establishment and the securing of a business permission.

With regard to sanctions for businesses operating in Ireland without the necessary permission, it is important to emphasise that this irregularity arises due to the almost total lack of awareness on the part of individuals setting up businesses and other key agencies of the existing business permission requirements. Therefore viable businesses that are currently in operation should be afforded the opportunity to regularise the situation and any sanctions provided for in the Bill should apply in respect of businesses set up after the legislation comes into force.

The MRCI considers that migrant workers and their families should be supported and enabled to develop entrepreneurial skills with access to supports such as the County Enterprise Boards. This would also support the development of business relationships with sending and receiving countries and would contribute towards the government's commitment to supporting the development of sending countries.

6. Admission for the Purpose of Research

The MRCI welcomes the proposal to introduce legislation governing the admission of researchers. Any scheme introduced should clearly identify the rights and entitlements of all workers admitted. It is implied in the proposals that this category of workers should be given preferential treatment. The MRCI believes that all migrants deserve just and flexible rules regarding their admission and permission to reside. The Government should avoid reinforcing the existing two-tier system between 'first-class' and 'second-class' migrants. Under the current system, non-EEA academics and researchers have experienced difficulties in securing entry visas for spouses, even for visit purposes. All researchers should be entitled to the same rights and entitlements as other skilled migrant workers.

The MRCI is concerned that the recruitment of researchers and other skilled workers results in brain drain and a deterioration of the economic and social development of many sending countries. The Irish government needs to consider the development of bilateral agreements with other states, offering scholarships and financial benefits to

sending countries. The IOM has developed policy responses for receiving countries to this phenomenon which the Irish government could draw on.²¹

7. Admission for the Purpose of Study

As the government proposals on admission for study purposes are too vague at present, the MRCI is willing to be involved in further consultation when proposals are more concrete. Below are some preliminary comments and concerns.

Regulation

The MRCI welcomes the Government's intention to regulate educational institutions. Legislation should provide for enforcement mechanisms and sanctions against educational institutions who are operating in breach of regulations. Regular inspections of language schools are necessary to ensure that the service is of the highest standard.

Flexibility Between Schemes

International students should not be treated simply as a means of generating revenue to support educational institutions. International students make an enormous contribution to the educational sector and the Government should recognise this by facilitating their option to stay on in Ireland if they so choose. People who come here for the purposes of study should be allowed to transfer to a work authorisation scheme. Countries like Canada and the US are taking the approach of retaining international students by recruiting them to fill gaps in skilled sectors of the labour market.

The EU Proposals on Study and Research such as the Directive adopted in March 2004 on the conditions of entry and residence of third country nationals for the purpose of studies, vocational training and voluntary service is of particular relevance here. The Directive outlines the rights which those individuals may enjoy such as limited access to the labour market. Ireland has not opted to participate in this Directive but is free to borrow from its provisions in the formulation of provisions for the forthcoming legislation.

Working Arrangements for Students

Recently the government has implemented changes to the working arrangements for international students with a view to phasing out international students' right to work part-time while pursuing a recognised course in Ireland. The MRCI is of the view that the government should review the decision to phase out the right to work part-time. International students need to be facilitated to source an adequate level of income and be self-sufficient so they should be allowed to continue to work 20 hours a week and have access to full-time employment during the holidays. It is the experience of the MRCI that curbing the right to work will not address the rationale for the government's change in policy but will in fact lead to an increase in undocumented workers.

²¹ See International Organisation for Migration: World Migration 2005: Costs and Benefits of International Migration 2005. <http://www.iom.int>

Rights and Entitlements

The rights and entitlements of international students must be set down in legislation such as the right to work part-time and the right of spouses and partners to join students during their course of study and work.

8. Admission for the Purpose of Family Reunification

The MRCI welcomes the objective of the discussion document to ensure that our future practices in relation to family reunion conform with constitutional practices and reflect best practice. Clarity, consistency, transparency and non-discrimination should underpin this area. The EU Directive on Family Reunification (2003) establishes common rules of Community law relating to the right to family reunification. Ireland, like the UK, has not opted into this Directive but has the option of participating in the future.

Statutory Right to Family Reunion

The MRCI is concerned that family reunion may only be provided by secondary legislation or practice instructions. The MRCI advocates a statutory entitlement to family reunification similar to that provided for in the Refugee Act 1996 for recognised refugees. Therefore the right should be provided for in the forthcoming Immigration and Residence Bill 2005.

Broad Definition of the Family

The MRCI supports a broad definition of the family for the purposes of family reunion. This would be consistent with developments in most EU member states, such as the recognition of unmarried partnerships, whether opposite or same-sex. Where possible the cultural definition of a family needs to be respected such as family reunion for elders.

Rights and Entitlements of Family Members

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 a broad range of situations in relation to family reunion. It is important for schemes to clearly set out the rights of family members such as right to work for spouses and dependents of all labour migrants and welfare entitlements such as child benefit. Access to education and training for family members including third level education should be facilitated. Although Ireland is not a signatory, it could draw 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.

Family Reunion and Integration

It is well documented that the right to family reunification greatly facilitates the integration of migrant workers into their host society. The ongoing 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. The failure of family policy to accommodate diversity may cause additional levels of marginalisation, discrimination and disadvantage and reinforce the barriers to integration.

9. Admission of non-economically active persons

The MRCI welcomes the commitment by the Government to fill the lacuna in this area and it is hoped that the proposed secondary legislation will make available clear, comprehensive and transparent rules for the admission and residence of non-economically active persons. The MRCI submits that the forthcoming legislation provide for the rights of non-economically active people and access to emergency services. The discussion document states that, in general a person seeking permanent residence, as a non-economic migrant should be required to show connections with Ireland. The MRCI would have concern over this requirement, as it would lead to the preference of certain migrants over others without any objective justification.

10. Residence status and residence permits

Long Term Resident Status

The MRCI welcomes the Government's proposal to put the issuing of residence permits on a legislative footing. The MRCI strongly supports the introduction of a long-term resident status similar to the EU Directive on Long Term Residence. The status should be automatically issued after five years continuous residency if there are no issues of threat to public security. Time used to calculate this status should cover periods of residence as a student, worker, non-economically active etc. It should also be stated clearly in legislation the link between the attainment of this status and the possibility of applying for naturalisation. The status of long-term residency has the aura of permanence that should ensure that migrant workers and their families are on the road to citizenship if they so wish.

Administration and Procedural Fairness

The MRCI 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. The administrative process needs to be streamlined and simplified so as to make it easier for the user of the service.

The MRCI is in favour of a combined residency and work permit but only where the work permit is in the control of the employee. If a combined permit was in control of the employer, it would potentially leave the migrant worker in a more vulnerable position than is the case at the moment. As stated above the proposed introduction of biometric data systems for the issuing of residence permits is controversial with data protection and other implications for the civil liberties of individuals.

Bridging Residence Permit

The MRCI would also support the introduction of a bridging residence permit for persons who are forced to leave their job due to sickness or injury or pregnancy. Migrant workers in such situations find they are unable to leave Ireland and subsequently become undocumented and they cannot work or pursue a case in a situation of exploitation. The availability of a bridging resident permit would allow a migrant worker to seek and secure work and be in a position to challenge the exploitation that lead to their undocumented status. This would be a humanitarian and pragmatic approach to unforeseen circumstances that migrant workers and their families might encounter.

Feminisation of Migration

As is the case internationally, there is a gradual, but distinct trend towards the feminisation of the migrant population. The understanding of migrant women's specific experiences of work in Ireland is often overlooked. In particular, migrant women's voices are rarely heard. There is a need for the Department of Justice to address the difficulties facing migrant women who experience domestic violence and whose immigration status is dependant on that of their husbands. Many migrant women who come to Ireland do so as a dependant spouse of a migrant worker.

All spouses who join migrant workers have a right to reside here for as long as the relationship is subsisting. If the relationship ends then so does the right to reside here. They are therefore in a very vulnerable position financially which is of particular significance when it comes to women who are experiencing abuse as financial abuse is a very common control tactic used by abusers.

Evidence from MRCI service-users suggests that the DJELR has been sympathetic to women in this situation and that residency has been granted. However the fact that this is a discretionary entitlement is unsatisfactory, There should be clear guidelines set down for the granting of residency in these situations and on the rights of entitlements of those granted residency with regards to the right to work, social welfare, housing and healthcare.

Dependant spouses do not have the right to claim social welfare or health board payments, and a condition of their entry to the country is that they should not have recourse to public funds. In addition all applications for state benefits are now subject to the Habitual Residence Condition (HRC) which generally requires that persons be resident in the state for 2 years before being granted any means-tested payments and child benefit. It should be noted that the HRC impacts on all women who may need to access state resources. Women from the 25 member states of the EU will also be refused benefits under this rule which will impact on their ability to access support if they are experiencing domestic violence.

Migrant women who have dependant spouse status are obviously additionally vulnerable if they are experiencing abuse in the home due to their insecure immigration status. However another group of vulnerable women is undocumented women or women who have no immigration status in the state. Women in this situation will be very reluctant to look for support from either state institutions or NGOs because of fear of deportation.

The MRCI would recommend that there be provision for women and children, whether documented or undocumented, who experience domestic violence and whose immigration status is dependant on their husband's to be given temporary leave to remain the state. Women and children in this situation should automatically be deemed 'HRC compliant' (as are refugees, those granted leave to remain on humanitarian grounds, and those granted leave to remain on parentage of an Irish child') and therefore able to access Health Board payments such as supplementary welfare, rent allowance, medical cards and social welfare payments. The MRCI would further recommend that ongoing consultation should take place with migrant led women's groups to identify the support needs of women in violent relationships.

11. Monitoring and Compliance

The MRCI is of the view that the proposals on monitoring and compliance contained in the discussion document are too vague for considered comment at present and we look forward to further consultation on an aspect of the system that has a significant impact on migrants living in Ireland. Below we have included some preliminary comments.

Procedural Safeguards

There is a lack of reference to procedural safeguards that would normally apply in the case of law enforcement that may have serious consequences for the civil liberties of persons. The MRCI also believes that officials carrying out duties of monitoring and compliance must be adequately trained in the new immigration procedures and statuses so as to minimise or prevent mistakes that may have a negative impact on migrants living in Ireland. Training would also include anti-racism and intercultural awareness training for staff.

Undocumented Migrants

The MRCI submits that access to services for undocumented migrants 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. In particular it should be emphasised that undocumented women must have access to social benefits and protection or they will be vulnerable to exploitation in the sex industry. This phenomenon has been pointed out by organisations working with migrant women such as Ruhama.²²

It should be emphasised that many migrants become undocumented through no fault of their own but through the current inadequacies of the system. No person should be denied access to a benefit or service due to deficiencies in the administrative procedure. The MRCI would suggest that the Government identify pathways back to legal status, at least for migrants who entered Ireland legally but whose status has since become irregular.

Victims of Trafficking

The MRCI welcomes the Government proposal to provide assistance to the victims of trafficking. However it is important to emphasise that trafficking at international level encompasses a wider definition than that referred to in the discussion document to incorporate exploitation and modern day slavery. The Vienna Protocol contains a definition of trafficking that should be used for the purposes of our immigration legislation and policy.²³ It is the experience of the MRCI that you can be trafficked and hold a work permit, a situation which is identified as modern day slavery under the international definition of trafficking.

²² See Ruhama's bi-annual report available at www.ruhama.ie

²³ The UN Vienna Protocol defines Trafficking in persons as "the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability (1) or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation (2), forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

The MRCI advocates that trafficked persons be given an independent residence status so they can access services to assist them in pursuing complaints, to participate in criminal investigations, apply for another job with the availability of a bridging visa or the option of returning home if they so wish. The focus of the assistance should be on protecting the health, safety and dignity of victims rather than securing their assistance and co-operation in a criminal investigation.

12. Removals

In the operation of a deportation or removals procedure, a clear distinction must be maintained between asylum and immigration. The MRCI is concerned that proposals relating to removals and deportation may adversely affect the rights of individuals in need of protection. Therefore the principle of non-refoulement should apply to all migrants who have residuary protection needs. Procedural safeguards must be put in place in any removals/deportation process such as rights of appeal and access to effective legal remedies. Alternatives to forced removal or deportation should be considered and prioritised. Regularisation of undocumented migrants should be considered as part of a humanitarian and pragmatic alternative to removal/deportation.

13. Administration and Delivery of Services

Irish Naturalisation and Immigration Service (INIS)

The MRCI welcomes the proposal to establish the Irish Naturalisation and Immigration Service (INIS) on a non-statutory basis as an executive office within the Department of Justice, Equality and Law Reform. As a non-statutory body a steering committee made up of key governmental and non-governmental organisations and social partners could be established to be involved in overseeing the new agency.

Necessity of Interdepartmental Co-ordination

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 also essential to ensure consistency and understanding of immigration systems and procedures. The MRCI 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.

Availability of Resources

It is essential that the necessary financial and human resources be allocated to ensure that INIS operates in an efficient, professional and transparent manner. All staff must undergo basic training and anti-racism and intercultural awareness training. It is also vital that external recruitment and recruitment of civil servants to INIS recruit people who have an experience and understanding of issues relating to migration.²⁴

²⁴ One could take the example of the School Inspectorate of the Department of Education where teachers are recruited to carry out the work because of their experience and understanding of the educational sector.

Transparency and Procedural Safeguards

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. Clear and detailed rules relating to the protection of individual data need to be developed.

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.

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. The availability of translation and interpreter services should be an integral part of all aspects of the immigration and residence service.

Data Collection

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. Without data we cannot measure whether the system is working or not. The data should cover key aspects of migration, such as labour migrants, refugees, undocumented short-term and return migrants and aim to raise awareness of the contribution migrants bring to economic, social and cultural life in Ireland. A strategy must also be developed to gather standardised and disaggregated information on patterns, trends, labour market needs, key issues in relation to anti-poverty and social inclusion measures, socio-economic status of foreign-born residents, workers and irregular migrants.

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.²⁵ 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.

Charging of User Fees

The MRCI is concerned about the proposal in the discussion document that INIS will charge fees to users of the service so that the costs of biometrics and administrative

²⁵ See 3.6 of NAPAR on p102.

costs will be met by migrant workers. The MRCI believes that this sends out a wrong message about inward migration to Ireland, that migrant workers should pay for the opportunity to come here and work instead of emphasising that Ireland needs labour migrants and international students. The INIS user costs must be borne by the State. As stated previously under the section on the charging of visa fees, this will in effect lead to migrants being subjected to a double taxation regime.

Inclusive Service Provision

Migrant workers and their families must have full access to all state services. Personnel involved in delivering state services must undergo anti-racism awareness training. Public service agencies need to develop a more inclusive, intercultural approach to social service provision. The provisions of the National Action Plan Against Racism (NAPAR) are instructive on how to develop inclusive services for minority ethnic groups including migrant workers and their families.

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.

The key challenge is to ensure that access to and delivery of public services make reasonable accommodation of cultural diversity and take positive action measures. The MRCI would support 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 National Action Plan Against Racism, 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.²⁶

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.

Habitual Residence Condition (HRC)

The International Labour Organisation (ILO) has stated that there is no evidence to suggest that migrants engage in ‘welfare shopping’, by and large people migrate to ensure a better standard of living which can only be achieved through active participation in the labour force. In the first year since EU Accession this conclusion appears to underpin the experience in Ireland, in other words the motivation for migration is employment and not access to social welfare. The MRCI calls on the Government to speedily review the HRC as it has promised to do and suggest how the HRC can be amended in order to ensure that the social welfare system achieves its objective of protecting the most vulnerable groups in society. The work of the MRCI has highlighted that the HRC is serving to exacerbate the problems facing already vulnerable communities in Irish society, those groups who the social welfare system should be focused on protecting.

Part 3: Concluding Remarks

Monitoring, Evaluation and Research

The discussion document acknowledges that there is no single best solution to economic migration. Therefore there is a need to review and evaluate the proposed system on a periodic basis to assess its impact. The establishment of a specialised migration research unit as is the practice in other states would be useful in order to develop an evidence-based approach to migration. Such a migration research unit could also research the link between the Irish emigrant experience and migrant workers coming here.

Further and Ongoing Consultation

The MRCI is concerned about the over emphasis on secondary legislation in the discussion document to provide for an immigration and residence system. The Government needs to identify actual policies it intends to implement in primary legislation. The system needs to be clear and comprehensive from the Bill, not in secondary schemes. Therefore MRCI urges the Government to continue its consultation with key stakeholders when specific proposals are outlined in the near future.

The MRCI would welcome an opportunity to meet with the Department of Justice, Equality and Law Reform with a view to deepening the discussion of issues contained in this submission. For further information and consultation, contact Siobhan O Donaghue, Director, MRCI. Tel. 01-8881355 Siobhan@mrci.ie

²⁶ See NAPAR Objective 3: 3.1-3.7. pp 100-103. www.justice.ie