



General Policy Paper No. 6

Migration and Diversity: A Rights-Based Approach to Migration

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The European Network against Racism (ENAR) is a network of some 600 NGOs working to combat racism in all EU Member States. ENAR is determined to fight racism, racial discrimination, xenophobia and related intolerance, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national and European initiatives.

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This sixth General Policy Paper by the European Network against Racism (ENAR) is the product of ongoing concern and reflection regarding the development of progressive migration and integration policies, at a time when the EU institutions are considering a new programme for the design of EU policies in the area of justice and home affairs after 2010 and the European Council has underlined “the need for a renewed political commitment”¹ on a common immigration policy. In defining the networks’ priorities for the future, ENAR Members placed ‘migration’ as second in importance to anti-discrimination and the network therefore has as a strategic goal to promote the rights of third-country nationals and to ensure that migration, and related policies and practices, do not undermine ENAR’s vision of a Europe without racism.

According to Eurostat estimates, there are currently 18.5 million third-country nationals² residing in the EU and immigration accounts for 80% of the population change today³. Migrants⁴ make rich contributions not only economically, but also socially and culturally to their host society as well as to their country of origin. Increasingly however, the debate on migration has crossed the line into xenophobia and racism. Many ethnic and religious minority groups have been adversely affected by public perception and the debate surrounding migration which has often been couched in negative terms. The negative portrayal of migrants by politicians, policy-makers and by and through the mass media, through stereotypical language and negative images has led to a worrying increase in racism and xenophobia.

Since the entry into force of the Treaty of Amsterdam and the transfer of immigration and asylum policies to the first ‘Community’ pillar of the European Union⁵, the EU has gained enormous competence in this area⁶, the national veto power on immigration and asylum policies within the European institutions has been gradually reduced and the European Parliament’s competences gradually extended⁷. EU Heads of State and Government have increasingly identified immigration as a key area for work however, European developments have been primarily focusing on the control of migration and combating irregular immigration of third-country nationals building on the conclusions of the Tampere European Council in 1999, the Hague Programme of 2004 and the Global Approach to Migration adopted by the European Councils in 2005 and 2006. While some European developments have had positive implications for the protection of third-country nationals, many more have sought to restrict, and serve to undermine the integration of all migrants, in particular the most vulnerable groups such as undocumented migrants and asylum seekers, through a very security focused agenda. Anti-terrorist legislation has been used to evict undesirable migrants and tighten border controls as well as identity checks, and has led to an increase in racism, and particularly Islamophobia.

Additionally, the current EU approach to migration focuses on the economic necessity of highly skilled migration, but lacks recognition of the broader contribution to European society. Those not defined as ‘highly skilled’ are excluded from recognition of the economic value of migration, and to

¹ Brussels European Council, 14 December 2007, Presidency Conclusions

² The ENAR Shadow Report on Racism in Europe (2007) defines the term ‘third-country national’ as a person who is not a national of an EU Member State.

³ Eurostat, ‘Statistics in focus: first demographic estimates for 2006-2007

⁴ As defined in the ENAR Shadow Report on Racism in Europe (2007), the term ‘migrant’ may include long-term and short-term migrant workers, students, asylum seekers and refugees, stateless persons, spousal and family dependants, women migrants and children, and undocumented migrants.

⁵ Article 63 TEC

⁶ The common EU immigration policy does not apply to Denmark which has decided to opt out of Title IV of the Treaty establishing the European Community. The UK and Ireland decide on their involvement on a case-by-case basis (possibility of an ‘opt-in’).

⁷ Provisions within the Lisbon Treaty will further reduce national veto power on immigration and asylum policies, and extend qualified majority voting to these areas

their economic, social and cultural importance to European society. This approach which treats migrants as economic units and not as human beings is not consistent with European values of respect of human dignity, equality and fundamental rights⁸ and risks adversely affecting the success of integration and social inclusion policies aimed at migrants, including ‘legally resident’ third country nationals and ethnic and religious minorities who are EU citizens. The approach to integration and migration policies needs to be firmly grounded in a human rights-based approach ensuring anti-racism and anti-discrimination through a common set of rights for all. It is a fundamental principle of human rights that they apply to all persons.

What do we mean by a human rights-based approach?

Although there is no single universally agreed rights-based approach there is an emerging consensus on the basic constituent elements based on international human rights standards. A rights-based approach integrates the norms, standards and principles of the international human rights framework into policies and initiatives. It helps promote accountability, empowerment, participation and focuses on the inclusion and involvement of particularly vulnerable groups⁹. However, a rights-based approach does not only limit itself to international standards and the legal perspective. A more practical approach needs to be in place to bring about long-lasting change on the ground. This requires active involvement of the groups directly affected and social dialogue as a key instrument in pursuing human rights objectives, placing importance on both consultation with civil society and the participation of all stakeholders. A prominent issue in human rights is also the question of collective rights and individual rights. It is especially important to take into account both collective and individual rights when condemning certain human rights violations.

Mainstreaming equality and non-discrimination across all EU policy areas, including immigration is essential. Applying a rights-based approach to EU migration and integration policy implies explicitly linking all relevant policy areas and setting the achievement of human rights as an objective across the board. EU migration policy must move beyond considerations of demographics and economics alone, towards developing a dynamic perspective on migration that allows for mutual benefits of migrant and host communities and views migrants as individuals with rights that are to be valued and protected. The EU has to comply with international standards, including respect for the fundamental rights of third-country nationals (regardless of legal status), including equal access to employment, housing, education and health. Europe has a responsibility both to the people living within its borders, as well as internationally to take a leading role in promoting fundamental rights and respecting international human rights standards.

Advocating for a human rights-based approach to migration is a duty in the context of the protection of fundamental human rights, and a strategic priority in the eradication of all forms of racism. Consequently this paper elaborates five key principles:

1. A positive political discourse must be promoted
2. Anti-discrimination legislation must protect everyone living and working in the EU
3. Effective policymaking must be ensured at all levels
4. The EU must be an inclusive participatory democracy
5. The international dimension of migration and asylum policies must be recognised

⁸ ENARgy, EU migration policy: Is it fair? August 2008, Issue 25

⁹ See PPR, Participation and the Practice of Rights Project, What is a human rights based approach?: http://www.pprproject.org/index.php?option=com_content&task=view&id=18&Itemid=29

1. A positive political discourse must be promoted

The EU needs a vision of hope in which diversity is an asset for our common future by challenging the underlying perceptions and assumptions surrounding migration which are increasingly enhanced by the negative discourse by politicians, policy-makers and through the mass media. Migrants should be perceived as bridges between societies and should be recognised as rich contributors to host societies, both socially and culturally.

An approach framed by the respect for human rights and recognition of the positive nature of diversity in Europe needs to be upheld.

ENAR calls for:

- The promotion of positive values, conceptions, and principles
 - An approach that is consistent with European values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities must be promoted;
 - Policies and practices related to migration and asylum must not undermine the vision of a Europe without racism;
 - Migrants must be considered and treated as human beings and not as mere economic units;
 - The economic, social and cultural importance of migrants to European society – whether “highly skilled” or not - and their participation in civic, political, social, cultural and economic life must be recognised;
 - The EU programme 2010-2014 for the area of Freedom, Security and Justice must revisit its approach to immigration and asylum, framing it within a positive approach that combats racism and xenophobia and promotes the rights of all.

- The use of positive terminology in the political discourse
 - Terminology must not perpetuate a negative image of migrants (e.g. human beings cannot be ‘illegal’ and language must recognise this);
 - Politicians, policymakers and the media must bring attention to and overtly condemn racist incidents and promote positive images of migrants;
 - Terminology likely to incite xenophobia, racism, anti-Semitism, islamophobia or other forms of discrimination towards migrants should have no place on the media or in the political discourse;
 - Ethnic minorities and people with a migrant background must be hired within the media to help present an ethnically diverse picture of society and avoid negative portray of migrants and ethnic minorities.

2. Anti-discrimination legislation must protect everyone living and working in the EU

The EU must provide protection to all persons living and working in its territory, and fully implement and respect the Charter of Fundamental Rights, namely Article 21, which states that:

“Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.”

Derogations and exemptions allowed under existing anti-discrimination legislation have been misused by member states to evade their obligation to ensure that asylum and immigration laws are neither discriminatory nor have discriminatory effects. There should be no alibi for discrimination under nationality /immigration laws, and no disguise for racism under the mask of security measures.

ENAR calls on the European Union and its Member States to:

- Ensure anti-discrimination for all
 - The exceptions on nationality and legal status should be removed from the EU anti-discrimination directives;
 - A non-discrimination clause should be included in the proposed EU directive on basic socio-economic rights for third country nationals. The grounds should include ethnicity and religion as well as nationality in order to guarantee equal treatment of third country workers;
 - A non-regression clause should be included in any future legislation;
 - The European institutions to fully implement and where needed revise relevant Community legislation to comply with the 1951 United Nations Convention Relating to the Status of Refugees, the 1954 United Nations Convention relating to the Status of Stateless Persons and CERD General Recommendation 30 on discrimination against non-citizens, as well as the relevant recommendations of the Council of Europe, the Conventions of the International Labour Organisation, and the Palermo Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants by Land, Air and Sea;
 - The European Community should sign the International Convention on the elimination of all forms of racial discrimination, as all member states have already ratified it, just as it has done for the UN Convention on the rights of people with disabilities;
 - The transposition and implementation of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents as well as the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, must fully comply with the principle of non-discrimination;
 - The positive impact of comprehensive and strong anti-discrimination policies has to be made known to all interested parties including businesses and workers' Unions;
 - The EU programme 2010-2014 for the area of Freedom, Security and Justice Rights must protect the rights of all, including third-country nationals, and must not restrict the enjoyment of fundamental rights to citizens only.

- Respect the links between anti-discrimination, integration, and social inclusion
 - Integration must not be used as a means of restricting the exercise of human rights of migrants and must not exclude or discriminate on any ground, whether on the basis of race or nationality or social or any other status;
 - Special attention should be paid to legislation regarding family reunification, which currently jeopardises both non-discrimination principles and children's rights, while disproportionately impacting on migrant women and older migrants;
 - Greater awareness raising on and consideration of the Common Basic Principles on Integration is needed;
 - Protection against discrimination on the ground of nationality provided by the Treaties needs to be extended to every person living in the territory of the EU;
 - The entitlement to European citizenship needs to be extended to everyone who has been legally residing in the territory of the EU for a reasonable number of years;
 - Undocumented migrants need to be provided with basic legal and social protection as well as the possibility to becoming regularised through a regularization scheme on the basis of reasonable requirements;

- Support to migrant children needs to be ensured by providing intercultural educational activities aimed at facilitating intercultural understanding and dialogue to help children integrate in a new environment;
 - Specific educational needs and issues of migrants should be mainstreamed into current and future EU Open Method of Coordination in the fields of education and culture through the development of targets and indicators disaggregated by ethnic origin and migrant status.
- Enforce existing labour law
- European institutions and Member States must fully implement and enforce existing labour laws under national and Community law and under the International Labour Organisation Conventions (The Migration for Employment Convention and the Migrant Workers Convention);
 - European Institutions and its Member States must sign, ratify and implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The European institutions must ensure that Community legislation complies with the provisions of the Convention;
 - European Member States must respect the European Convention on Human Rights (ECHR) and the United Nations Human Rights Treaties, which also apply to migrant workers, regardless of their legal status;
 - All EU legislation relating to third-country workers such as the directive providing for sanctions against employers of irregular third country workers or the 'Blue Card' directive should reaffirm the principles of the uniqueness of labour law to uphold rights and forms of protection in the workplace;
 - The EU should insert labour standards and rights into the EU's Common Agricultural Policy agreements: violations of labour standards could be used to halt payments to producers who violate labour law or exploit workers.
- Protect workers' rights
- The proposed directive on basic socio-economic rights for third country workers should not exclude certain categories of third-country nationals such as seasonal workers as this severely limits the effectiveness of the provision on equal treatment;
 - Positive action should be promoted.

3. Effective policymaking must be ensured at all levels

Political particularism and bureaucratic myopia need to be challenged. Narrow national interests should not prevent the EU from establishing effective policy making mechanisms, and the fear of losing privileges and power should not force the EU to adopt a totally defensive position. Policy and decision makers must adopt a holistic and coherent approach to other relevant policy areas for successful integration and migration strategies.

Therefore ENAR calls on the European Union and its Member States to:

- Ensure policy coherence
- Policy coherence with regard to EU migration policy needs to be ensured vis-à-vis other relevant EU policies such as employment and social policy, the Lisbon strategy and fundamental rights as an essential pre-requisite for effective policy making;
 - Policy and decision makers must adopt a holistic and coherent approach to integration and migration and recognise that anti-discrimination and social inclusion are prerequisites for successful integration and migration strategies;

- An EU Open Method of Coordination on anti-discrimination, integration (and migration) issues needs to be encouraged in order to enable benchmarking and ensure a holistic approach;
 - Initiatives such as the European Commission's integrated impact assessment procedure to Member States need to be encouraged as a useful tool to ensure that social, environmental and economic impacts are taken into consideration in all policy proposals;
 - The EU programme 2010-2014 for the area of Freedom, Security and Justice should develop a comprehensive approach to combating Racism and Xenophobia that sees the fight against racism and the protection of fundamental rights mainstreamed into all relevant areas of work, including through police cooperation and work towards a coherent judicial area in civil and criminal matters, data protection (for example, protection against ethnic profiling) and the fight against terrorism¹⁰.
- Promote gender sensitive and age sensitive policymaking
 - EU migration policies should ensure that migration policy is gender sensitive and that the specific needs of migrant women are addressed;
 - EU migration policies should ensure that migration policy is age sensitive and that the specific needs of young and old migrants are addressed;
 - EU migration policies should ensure access to the right to work, to social assistance and services of general interest to migrant women workers who work in sectors which are traditionally not recognised as "work" such as domestic and care work;
 - A human rights assessment of all existing and new measures with regard to their direct and inadvertent effect on ethnic and religious minorities, including migrant women and children, should be conducted.
 - Be proactive, not reactive
 - The EU can proactively include equal treatment of third country nationals in the common European policies on immigration and integration, modifying existing and proposed legislation;
 - The EU and Member States can acknowledge the role of third country nationals' representatives, and anti-racist organisations and provide for structured and permanent participation of NGOs in the EU institutional debate and decision making process on immigration and asylum.
 - Make use of demographic data, challenging assumptions
 - Demographic and other statistics should be linked with all aspects of migration that need to be publicised.

4. The EU must be an inclusive participatory democracy

The EU should be an inclusive democracy taking into account all people who are living in its territory, and should develop ways for everyone to fully participate and create a true European public space which is vital for the European integration process. Political rights are important basic human rights that make participatory democracy possible; however, not only do migrants need political rights - political parties and institutions need to be representative of all society and reflect the diversity of populations of different regions at local, national and EU level.

¹⁰ ENAR General Policy Paper on Racism as a Crime, April 2006; European Strategies to combat racism and Xenophobia as a Crime, April 2003.

ENAR urges the European Institutions and the Member States to ensure that the views and needs of ethnic minority communities and migrants are represented and sought in the formal structures of a true democratic system:

- Ensure participation and the migrants' voice
 - Structured and permanent participation of NGOs in the EU institutional debate and decision making process on immigration and asylum must be provided;
 - The role of third-country national' representatives and anti-racist organizations should be acknowledged in guaranteeing that legislation and policy do not lead to unlawful discrimination against non-nationals;
 - The European Integration Forum should be used as a tool for representatives of civil society to input on integration issues and allow the European institutions to promote a comprehensive approach to integration, involving stakeholders at all levels;
 - Political parties must ensure that they encourage political participation of migrants and ethnic minorities as much as possible in European, national and local elections;
 - Migrants and ethnic minorities must be adequately represented among election candidates;
 - The European Institutions should reflect the diversity of the EU population.

5. The international dimension of migration and asylum policies must be recognised

An effective approach must recognise the international dimension of migration and asylum policies. The EU as a major international player needs to better target and coordinate EU policies in partnership with third countries.

Consequently ENAR calls on the European Union and its Member States to:

- Recognise the global context
 - Migration policy must be designed to deal with increased mobility in a globalising world through the protection of fundamental rights;
 - An effective approach must tackle poverty and social exclusion. It must be closely linked to the Union's overseas development programme;
 - Precise and targeted policies should be developed to address the specific needs of migrants within social inclusion policies;
 - Member States should identify and address specific barriers to labour market inclusion faced by migrants, such as lack of language skills or legal/residence status;
 - European institutions should not adopt any bi or multilateral agreements which undermine, or fail to protect, the fundamental rights of immigrants, with particular reference to: readmission agreements; Regional Protection Programmes; and agreements in the framework of the European Neighbourhood Policy and the World Trade Organisation;
 - The European NGO community should build relations and establish cooperation agreements with civil society organizations in the concerned third countries;
 - EU institutions and member states should recognise and promote the diasporas' contributions to their countries of origin;
 - The public service and the media should reflect the diversity of the national population.