

May 31, 2013

Submission to Joint Oireachtas Committee on Justice, Defence and Equality on the Issue of Domestic Violence

I. Introduction

Nasc, the Irish Immigrant Support Centre, is a non-governmental organisation working for an integrated society based on the principles of human rights, social justice and equality. Nasc (which is the Irish word for link) works to link migrants to their rights through protecting human rights, promoting integration and campaigning for change. Nasc was founded in 2000 in response to the rapid rise in the number of asylum seekers and migrant workers moving to the city of Cork. It is the only NGO offering legal information and advocacy services to immigrants in Ireland's second city. Nasc's legal team assist some 1,000 immigrants annually in navigating Ireland's protection, immigration and naturalisation systems. We also assist migrants and ethnic-minority Irish people who encounter community-based and institutional racism and discrimination. Our campaigning strategy is informed by the issues emanating from our legal case work and our day-to-day work with migrants.

Nasc welcomes the invitation to submit a briefing document on the issue of domestic violence to the Joint Oireachtas Committee on Justice, Defence and Equality. The information we present in this submission is based on our experience working with migrants, in particular cases where migrant women have been affected by domestic violence and are looking for support in trying to leave an abusive relationship and access long-term safety and independence.

II. Information

As a migrant NGO we focus our information on the situation of migrants in relation to domestic violence. Any person experiencing domestic violence can encounter difficulties in reporting incidents, and in accessing support services and remedies. Immigrants can face additional barriers, including language difficulties, social isolation, racism and/or discrimination, limited access to income or independence, uncertain immigration status and lack of knowledge regarding available supports or remedies.

According to a study¹ conducted by the Women's Health Council in 2009, 'non-indigenous minority ethnic women' are over-represented in seeking access to domestic violence services such as refuges and support agencies in Ireland. The study notes that the vast majority of these women 'were on a spouse dependent visa or a migrant worker visa, asylum seekers or refugees'. There is a stark need for the Government to acknowledge the unique barriers experienced by migrant victims of domestic violence and we would strongly urge the members of this Committee to include specific provisions for migrant victims of domestic violence in any reforms they propose as a result of these hearings.

Nasc is a founder member of the Domestic Violence Coalition², which campaigns to raise awareness about the barriers migrant victims of domestic violence face and lobbies to bring about much needed reforms to support this very vulnerable group of women, and we support the Coalition's submission to the Joint Oireachtas Committee on Justice, Defence and Equality. Nasc, as a migrant NGO based in Cork, has provided advocacy and support to 92 migrant victims of domestic violence since 2011. In this submission we provide information and recommendations based on our unique experience providing legal support and advocacy for migrants in Cork.

Nasc has determined that the challenge to the Government involves two key matters that require reform:

¹ The Women's Health Council, *Translating Pain into Action: A Study of Gender-Based Violence and Minority Ethnic Women in Ireland* (2009), available at: http://www.dohc.ie/publications/pdf/MEW_Full_Report.pdf?direct=1

² The Domestic Violence Coalition includes the following organisations: ADAPT Services, Akidwa, the Domestic Violence Advocacy Service, Doras Luimní, the Immigrant Council of Ireland, Longford Women's Link, Sonas Housing and Women's Aid.

- Providing formal recognition of domestic violence in immigration law to enable dependent family members to apply to remain in Ireland as victims of domestic violence.
- Providing victims of domestic violence the opportunity to access safe emergency housing and essential benefits to ensure they are not destitute or homeless while an application to remain in Ireland is pending.

Absence of legislation

Unlike most other jurisdictions, current Irish immigration legislation does not provide a statutory right to family reunification for Irish citizens or legally resident migrants. The exceptions are for refugees and EU citizens and their family members.³

Additionally, there are no provisions to grant an independent or autonomous residence permit to legally resident migrants who entered and reside in the state as the spouse or partner of an Irish National or a legally resident migrant, following a specified period of legal residency. Critically, Irish law currently does not contain what we could term a 'domestic violence concession' to provide the right to apply for an independent residence permit for an individual who is resident in Ireland on the basis of a family relationship and seeks to remove him/herself from a violent and abusive home.

The INIS website states in relation to those who are resident in Ireland on the basis of a marriage to an Irish national, that "there are no rights of retention of residence in the event of separation/divorce".⁴ Similarly those in a de-facto relationship with Irish and non-EEA nationals are informed that "there are no rights of retention of residence in the event of separation".⁵

Migrants who come to Ireland as the dependant spouse/partner of a migrant worker may be resident in Ireland through the work permit scheme or through the green card scheme. Both schemes allow migrant workers to be joined in Ireland by family members under administrative policies. However, the

³ For an international comparative perspective, see the Migrant Integration Policy Index (2010), which ranked Ireland's family reunification policies as 'slightly unfavourable' compared to other EU states, the USA, Canada, Norway and Switzerland: <http://www.mipex.eu/>

⁴ <http://www.inis.gov.ie/en/INIS/Pages/WP07000024>

⁵ <http://www.inis.gov.ie/en/INIS/Pages/WP07000278>

entitlement of their spouses to reside in Ireland is dependent on the continued existence of the relationship. Therefore, migrant women who leave the family home as a result of domestic violence may be in danger of losing their immigration status. This difficulty can also be encountered by migrant women who are married to, or in a de facto relationship with, Irish nationals.

Nasc welcomed the introduction of guidelines by the INIS in August 2012 that contain information on dealing with cases where a person who is a victim of domestic violence wishes to obtain immigration status independent of their relationship with the perpetrator. Nasc also welcomed the Minister for Justice's concern, expressed in the Dáil⁶ in March 2012, that migrant victims of domestic violence should not remain in a violent situation and that there are remedies. However this is only a first step and there still remains a lack of clarity on the available remedies for dependent victims of domestic violence to apply for independent residency. In our experience, we have found that pursuing alternate routes to independent residency that are grounded in a substantive right, such as the rights that accrue from the parentage of an Irish Citizen Child following the decision of the ECJ in *Zambrano*⁷, can provide a more effective remedy. This option is limited however as not all victims of domestic violence fit this criteria.

It is clear that a legislative response is required. There are a number of opportunities to progress legislative reform, including a review of existing domestic violence legislation. However, the proposed Immigration, Residence and Protection Bill – due to be published imminently according to the Minister for Justice – and any secondary regulations made from that legislation are an obvious place for addressing this issue. Nasc believes that a 'domestic violence concession' is necessary in the proposed legislation and any secondary regulations that would allow for residence permission in the case of particularly difficult circumstances. Suggested wording for a legislative provision can be found below.

⁶ During 'Other Questions' asked by TDs Seán Crowe, David Stanton and Jonathan O'Brien 13 March 2012, <http://debates.oireachtas.ie/dail/2012/03/13/00011.asp>.

⁷ *Gerardo Ruiz Zambrano v Office National de l'Emploi* [2011] Case C-34/09

Suggested Provision:

“X. – (1) A person whose permission to reside in the State is dependent on the residence status of another person may apply to the Minister on an individual and personal basis for a residence permission in particularly difficult circumstances.

(2) Without prejudice to the generality of *subsection (X)* particularly difficult circumstances includes domestic violence.

(3) A person shall be prohibited from making an application under *subsection (1)* when their permission to reside in the State has expired due to particularly difficult circumstances.”

Impacts of lack of clarity

The lack of immigration legislation and co-ordinated multi-agency policy to deal with domestic violence leaves migrant victims of domestic violence at risk. Despite the existence of the new guidelines published by the INIS in 2012, many lawyers and other advocates remain unaware that there is a remedy for victims with dependent residency. Some women have been advised to seek asylum, or to do nothing, in order to avoid deportation. For those who are aware of the guidelines, uncertainties remain about what information can or should be sent with an application, and this can delay the processing of an application (this is discussed in more detail below under ‘Garda Reports’). Other agencies and service-providers are not aware of the guidelines either; as a result women who seek shelter from a refuge or apply for an emergency welfare payment are often refused.

A lack of information about how long the application may take negatively impacts already vulnerable women and may be prohibitive in them deciding to leave a violent situation and apply for independent residency. A lack of clarity about the timeframe for applications has the added consequence of negatively affecting a woman’s access to emergency services and essential social welfare benefits, leaving victims of domestic violence at high risk of homelessness and destitution. We have found that in some cases, women have returned to violent homes due to destitution, fear of deportation and of losing access to their Irish resident children. In addition to provision for domestic violence in the new Immigration and Residency Bill, the existing guidelines should be clarified in relation to the necessary information required and timeframes for applications. Expedited processing times for these applications should be implemented.

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Additionally, migrant women who leave their relationship due to violence can be in a very vulnerable position financially. Their immigration status might not allow them to work in Ireland and they might not be eligible for social welfare if they cannot satisfy the Habitual Residence Condition.⁸ Refuges generally depend on a woman being able to access some sort of social welfare payment for herself and her family so that can support her family while staying in the refuge. Irish women are often able to access some sort of temporary payment when they leave the family home as a result of violence but this often does not apply in the case of migrant women. It is our experience that refuges will still offer places to migrant women in these situations but they might find it hard to provide longer-term accommodation if the woman is not in a position to support herself and her family. This issue is causing particular difficulties at the moment, as many refuges and support services have suffered substantial cuts to their funding during the downturn.

Nasc has been aware of the issue of habitual residence and its impact on dependent migrant victims of domestic violence for several years, and it formed part of a report Nasc co-authored in 2012 titled *Person or Number? Issues Faced by Migrants Accessing Social Protection*.⁹ As a result of the recommendations in that report, the Department of Social Protection has committed to reforms in relation to migrant women's access to social welfare and emergency benefits in cases of domestic violence. Nasc is a lead organisation in the Migrant Consultative Forum that was established by Minister Joan Burton in the wake of the report and which regularly meets with the Department of Social Protection. Nasc would like to see a similar commitment from the Department of Justice to engage with migrant NGOs and other interested parties on policies impacting migrant communities. In addition, Nasc would welcome co-ordination between the Department of Justice and the Department of Social Protection in developing policies and regulations that ensure migrant victims of domestic violence can access accommodation, benefits to prevent destitution, homelessness or remaining in a violent relationship while an application for independent residency is pending.

⁸ The Habitual Residence Condition was introduced by the Department of Social and Family Affairs in 2004. Since then, all new applicants (including Irish nationals) must satisfy this condition in order to qualify for means tested payments and Child Benefit. In making a determination of an applicant's eligibility, factors such as length of residence in the country, employment history, intentions for the future and others will be considered.

⁹ Nasc, Doras Luimní, Crosscare, *Person or Number? Issues faced by Immigrants Accessing Social Protection, a 'snapshot' of 54 cases presenting to NGOs across Ireland* (2012), available at: <http://www.nascireland.org/wp-content/uploads/2012/05/Person%20or%20Number%20report%20Feb%202011.pdf>

At a bare minimum, Community Welfare Officers should be directed to positively exercise their discretion in cases of domestic violence, to issue an emergency payment to ensure that a person can access temporary safe housing and necessary supplies. A co-ordinated policy response must be developed by the Department of Justice and the Department of Social Protection that provides that a notification from the INIS of a pending application for residency permission based on domestic violence should suffice to bring a positive decision from Social Welfare Offices for Emergency Needs Payments and any other necessary Social Welfare payments.

Garda Reports

Migrant victims of domestic violence can be particularly vulnerable when making a report to the Gardaí. On top of the trauma of experiencing domestic violence, there may be language and cultural barriers as well as concerns about immigration status. As a result of our day-to-day interactions with migrant victims of domestic violence, we are concerned that Gardaí are not fully cognisant of the particular issues which impact migrant victims and the specific needs they may have in seeking out An Garda Síochána.

According to the recent guidelines published by the INIS, migrant victims of domestic violence whose residency is dependent on their violent partner can apply to gain independent residency. When a migrant victim of domestic violence is making an application to the Minister of Justice to seek independent residency permission, there are several types of formal documents that can aid in their case, including a Garda report; barring, safety or protection orders; or even proof that the Gardaí have been contacted in relation to a particular violent incident.

Not only do these documents aid in a migrant victim gaining independent residency and allowing the person freedom from control and the possibility of leaving a violence relationship, they can also aid in the victim's ability to access emergency support services such as community welfare, a medical card and refuge services. We have received reports from migrant victims that they were experiencing difficulties reporting domestic violence to the Gardaí and that when they presented at a Garda station to make a report, Gardaí were allegedly refusing to take reports of domestic violence. We have also received

reports that migrant victims seeking to apply for independent residency are having difficulty accessing the necessary Garda documentation to include in their application, and are being told the Gardaí cannot provide this information.

We would recommend compassionate, culturally sensitive and timely treatment of a particularly marginalised category of people going through an extremely difficult time. It is essential that An Garda Síochána devise a policy to correspond to the new guidelines so that victims of domestic violence can produce the necessary documentation to the INIS to secure independent residency.

III. Recommendations

Based on the information provided above, Nasc recommends the following reforms to improve the situation for migrant victims of domestic violence and their family members:

- The Department of Justice should introduce new legislation to deal with this issue. Minister for Justice Alan Shatter is expected to publish a new Immigration and Residency Bill imminently; this provides an ideal opportunity to protect migrant victims of domestic violence and their family members living in Ireland.
- The Department of Social Protection and the Irish Immigration and Naturalisation Service should introduce a co-ordinated policy to respond to respond to this issue, which would ensure that women and other family members with dependent residency in situations of domestic violence do not find themselves homeless, destitute or forced to remain in a violent home.
- Policy for An Garda Síochána in line with the new INIS guidelines to facilitate the provision of necessary information such as Garda reports documenting any incidents of police involvement for the purposes of an application for independent residency.

IV. Conclusion

This submission is based in the practical, day-to-day experience of Nasc's legal team in supporting and advocating for migrant victims of domestic violence. It is clear that migrant victims of domestic violence

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can experience significant barriers in accessing support services and leaving a violent relationship. Legislative provision for domestic violence in immigration law and a co-ordinated multi-agency policy to ensure clarity and preclude homelessness and destitution are fundamental to ensure the safety and well-being of migrant victims of domestic violence.