

Submission by Nasc, Migrant and Refugee Rights Centre to the European Commission consultation on 'Preventing and combatting gender-based violence against women and domestic violence'

10th May 2021

About Us:

1. Nasc, Migrant and Refugee Rights Centre is a non-governmental organisation based in Cork City, Ireland. Nasc, the Irish word for 'link', empowers migrants to realise and fulfil their rights. Nasc works with migrants and refugees to advocate and lead for change within Ireland's immigration and protection systems, to ensure fairness, access to justice and the protection of human rights.
2. Nasc has over two decades of experience supporting refugees, asylum seekers and ethnic minority communities in Ireland. Through our various projects including our free legal service, our migrant youth project and our education and employment project for migrant, asylum-seeking and refugee women, Nasc provides information, advice and support to over 1,200 people annually. Our information, advice and support work include supporting migrant victims of domestic violence. Nasc also provides support in the form of referrals and training to mainstream services, including domestic violence services, working with migrant and ethnic minority communities.
3. This submission is directly informed by our day-to-day experiences working with migrants, refugees, asylum seekers and ethnic minorities living in Ireland. This submission aims to identify issues disproportionately impacting Ireland's migrant, asylum seeking and ethnic minority communities.

Introduction

4. Migrants and people from ethnic minority backgrounds often face additional barriers in accessing domestic violence supports. These barriers include lack of access to, or availability of refuge spaces, lack of family support, isolation, the reluctance of migrant communities to report crimes, lack of immigration firewall when An Garda Síochána (Ireland's police force) are investigating crimes and the potential risk of becoming undocumented when separating from an abusive partner and the lack of availability of interpretation services. The Irish immigration system itself is complex and migrants who hold their immigration permission on the basis of their relationship with an abusive partner or family member can struggle to navigate how to retain their permission and not become undocumented when leaving an abusive family situation. Preparing an application to retain an immigration status can be a time-consuming and difficult process akin to another court proceeding.

Immigration System and Residence Permits

5. Ireland does not have a statutory right to retain immigration status for migrant victims of domestic, sexual or gender-based violence. This is problematic as under Ireland's immigration system, migrants who are resident on the basis of their family relationship to a sponsor find their immigration residence permit indefinitely tied to that of the sponsor who

may be an Irish citizen or a migrant themselves. The dependent migrant may be the spouse, intimate partner, child or parent of the sponsor. In practical terms, this means that the migrant and sponsor may often need to reside together at the same address (especially where the relationship is a marital or intimate partner relationship) and the dependent migrant may be required to physically present with the sponsor in order to register or to renew their immigration residence permit. Nasc's experience has been that this creates an imbalanced power dynamic where the abusive sponsor can wield 'control' over the dependent migrant family member as the withdrawal of their cooperation with an immigration renewal application can directly lead to the dependent migrant family member becoming undocumented.

6. This power imbalance is made worse when the migrant family member is entirely financially dependent on their abusive sponsor. Migrant spouses and partners (particularly of employment permit holders) in Ireland are routinely given an immigration permission, colloquially referred to as a 'Stamp 3' which excludes them entirely from the labour market or from accessing social welfare payments or housing supports. There is no clear progression pathway to move from a 'Stamp 3' immigration residence permit to an immigration permission that permits access to the labour market.

7. The threat of becoming undocumented can have a chilling effect on victims coming forward and seeking assistance. Nasc's direct experience of working with victims of domestic violence is that in every instance of domestic violence reported to our services where the victim's immigration status has been tied to that of their abuser, the abuser has used that to threaten, control or coerce the victim. Our experience has shown that victims will remain in abusive relationships for longer because they feel trapped by their immigration status.

8. Undocumented migrants face particular barriers and can struggle to access refuge spaces or financial supports and may risk having their lack of immigration status investigated by An Garda Síochána when they report an incident of domestic violence. Nasc's experience has been that abusive sponsors may withdraw their cooperation with their family members' immigration residence permit to deliberately isolate the victim and prevent them from seeking support.

9. Although, as mentioned above, Ireland's does not have statutory provisions in place for the regularisation of immigration permissions following the breakdown of a relationship for domestic violence¹, the Department of Justice does have a policy document² which outlines the discretionary application process for victims of domestic violence to apply under. Nasc has a number of concerns about the Immigration Guidelines for Victims of Domestic Violence (the Immigration Guidelines). Our primary concern is that the Guidelines exclude undocumented migrants who experience domestic violence from their remit however we are also concerned by inconsistent and untransparent decision-making with no time limit

¹ The sole exception to this is the European Community (Free Movement of Persons) Regulations 2015 which transposes Directive 2004/38EC into Irish law.

² Department of Justice, Victims of Domestic Violence Immigration Guidelines, (<http://www.inis.gov.ie/en/INIS/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf/Files/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf>)

set for a decision to be made on an application. Further, the Guidelines themselves have become outdated³. Nasc's experience of assisting migrants in making applications under the Guidelines is that the type of documentation requested as evidence of domestic violence to support an application is often very difficult to obtain and does not reflect the lived experience of migrant victims of domestic violence.

Recommendations:

Introduce a statutory right to retain a residence permission in the event of the breakdown of a family relationship where it is warranted by particularly difficult circumstances including domestic or sexual violence.

Introduce an automatic right to an independent residence permit after a 2 year period of residence in the State. This residence permit should allow full access to the labour market.

Access to information in languages other than English or Irish

10. Nasc's experience is that there is a lack of awareness amongst migrant communities about the resources available for people in abusive relationships or what can be considered domestic violence in an Irish context. This is particularly common amongst our services users whose first language is not English. Ireland's 2016 census found that approximately 13% of people living in Ireland speak a language other than Irish or English at home. 14.2% of this cohort indicated, when asked about their proficiency in English, that they spoke English 'not well or not at all'. Despite the relatively significant number of people self-declaring that they cannot speak English well or at all, Ireland's domestic violence services are not adequately resourced to respond to the needs of non-English speakers. Nasc believes that there has been an under-investment in delivering messaging of domestic, sexual and gender-based violence to migrant communities. By way of example, the Immigration Guidelines referred to at para 9 have not been translated into any other languages which would make them accessible to migrants. It is very rare that any of Nasc's service users is aware of or has read the Immigration Guidelines prior to attending our service. There has never been national information domestic violence campaign directed at non-English speakers or addressing the issue of immigration-based coercive control.

11. Nasc welcomes initiatives such as an interpretation phone line service offered by Women's Aid⁴ which aim to ensure that migrants have access to domestic violence supports however this relies on women firstly being aware of this service and secondly overcoming their fear of contacting any service. It is also important to note that an equivalent service for men who become victims of domestic violence does not exist.

12. There are no widely available resources in languages other than English or Irish which provide information for a migrant victim of domestic violence who wishes to apply for a protection order, safety order or barring order through the courts. If the migrant has sought support from a domestic violence service, this information may be communicated to them

³ The Domestic Violence Act, 2018 recognised a new offence of coercive control however the Guidelines do not reflect this.

⁴ Women's Aid offer a 24 phone line service which includes access to interpreters in 170 languages. For more information see <https://www.womensaid.ie/services/helpline/telephoneinterp.html>

via interpreter before they attend court or make an application. Unfortunately migrants who do not access these services, are often left without any information or expectation of what the process can entail.

Recommendations

Introduce a multi-lingual, national domestic violence campaign which includes information specifically directed at those with precarious or dependent immigration residence permits.

Access to justice

Legal Aid

13. Ireland provides means-tested legal aid for applications to the courts for barring, protection and safety orders via the Legal Aid Board. A Legal Aid Board-appointed solicitor is able to assist the victim of domestic violence in navigating complex court procedures, provide information and advice as well as representation in court. This free service is essential and needs to be adequately resourced so that it can provide legal assistance to people urgently. Unfortunately, assisting with an application for an independent residence permit falls outside the remit of the Legal Aid Board and migrant victims of domestic violence often struggle to find free or affordable expert assistance to make an application to the Department of Justice to retain their immigration status following their separation from their abusive family member. Given the importance of this application, which may determine whether the migrant will be permitted to remain in Ireland or not, there is a clear need for expert legal advice to be provided at this stage. Some migrants will find free services such as Nasc's however we are conscious that large swathes of the country are underserved and do not have organisations such as Nasc within easy reach. Others make an application themselves without assistance and often find themselves facing inordinate delays as a result.

Recommendation:

Make legal aid available for applications for independent residence permits following the breakdown of an abusive family relationship.

Interpretation

14. Nasc's experience is that the quality of interpretation and translation varies very significantly in Ireland. This can be attributed to the fact that Ireland does not have a system to regulate interpretation or translation services or even a strict ethical code of conduct for interpreters and translators. When you hire an interpreter in Ireland, there is no way to gauge that person's level of competency in English or in the language they are interpreting into.

15. It is perhaps unsurprising then there are widespread reports of poor practice⁵. Nasc have repeatedly heard from our clients and service users they may have struggled to communicate with an interpreter who spoke a different dialect or who wasn't fluent in the language they were interpreting in. More worrying still are instances where the interpreter deliberately fails to interpret or misinterprets what is being said. Interpreter behaves in the course of the interview. In the 2017-2020 National Migrant Integration Strategy⁶ the HSE made commitments around the development of an "appropriate model ... for the provision of interpreting services to users within the health area who are not proficient in English." Unfortunately, however, this commitment has been recorded as being "behind target".

16. There is also a lack of consistency between courts and judges as to when the courts will provide an interpreter. Our experience has been that some migrants seeking an initial *ex parte* order from a local court will not be provided with an interpreter and may not progress their application as a result. This practice has been reviewed by Offaly Domestic Violence Support Service, who conducted research on domestic violence services for ethnic minorities in their geographic area, and found that of the four local courts, interpreters were not provided for *ex parte* hearings:

*"Four of the Midlands Courts (Roscommon, Offaly, Longford and Athlone) all state that any ex. parte hearing i.e. protection order/interim barring order/emergency barring order, does (sic) not grant an interpreter. It is then at the Judge's discretion to decide if there is a requirement for an interpreter for subsequent court appearances i.e. Safety/Barring order. When the applicant meets the respondent at a hearing for safety/barring order, and if the Judge has granted an interpreter, both parties (if they need an interpreter and speak the same language) often have to share the same interpreter."*⁷

Recommendations:

Introduce a national accreditation system for interpreters and translators

Provide for access to interpreters for *ex parte* domestic violence court hearings.

Immigration firewall

17. Migrant victims of domestic violence who report a crime to An Garda Síochána may find themselves questioned about their immigration status and a referral of their case made to the Department of Justice. This is a huge concern for undocumented migrants who believe that they cannot safely report incidents of domestic violence without endangering their presence in the country and placing themselves at risk of deportation.

⁵ See for example Chapter 3 of the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (2015) available at <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>

⁶ Department of Justice and Equality, Migrant Integration Strategy: Blueprint for the Future, 2017-2020 (February 2021)

http://www.justice.ie/en/JELR/Migrant_Integration_Strategy_English.pdf/Files/Migrant_Integration_Strategy_English.pdf

⁷Offaly Domestic Violence Support Service, Ethnic Minority Community Development Pilot Project 2018-2020,

Recommendation:

Introduce an immigration firewall for anyone reporting a crime including victims of domestic violence.

Access to Accommodation

18. Ireland is failing to meet its obligations under the Istanbul Convention to provide an adequate number of refuge places for victims of domestic violence. Based on our population size, Ireland should have 472 places available but is falling significantly short with only 141⁸. In a recently published discussion paper, Safe Ireland - a national domestic violence service, noted that between March 2020 and December 2020 on average 216 requests for emergency refuge were not met because of lack of capacity⁹.

19. Ireland's migrant community face even further barriers when accessing spaces at domestic violence refuges. For anything other than emergency accommodation, there is generally a requirement that the victim of domestic violence must be eligible for housing supports. The eligibility criteria for housing supports includes a requirement to be habitually resident in the State¹⁰ and the habitual residence condition contains a requirement to have a right to reside in the State. This serves to exclude those who are undocumented and also presents a significant obstacle even to those who are legally resident but have had their immigration documents stolen or destroyed by an abusive family member. Excluded from longer-term housing supports from domestic violence refuges, and lacking a support network or family in the State, often the only choice is to return to an abusive home.

Recommendation:

Access to domestic violence refuge spaces should be available to all, regardless of immigration status.

⁸ Social Justice Ireland, *Budget 2021 must address lack of domestic abuse refuge spaces*, 19 August 2020 Press Release available at <https://www.socialjustice.ie/content/policy-issues/budget-2021-must-address-lack-domestic-abuse-refuge-spaces>

⁹ Safe Ireland, *No Going Back: A sustainable strategy and infrastructure to transform our response to DSGBV in Ireland*. Discussion Paper (March 2021) available at <https://www.safeireland.ie/policy-publications/>

¹⁰ The exclusion of protection applicants from some social welfare entitlements is provided for in the Social Welfare and Pensions (No. 2) Act 2009, which prevents protection applicants from fulfilling the habitual residence condition requirement.