



# Women's Aid



## Submission to the Select Committee on Justice, Equality, Defence and Women's Rights on the

## Immigration, Residence and Protection Bill 2008

**March 2008**



## Introduction

Women's Aid is a voluntary organisation offering information, support and access to services for women who are experiencing violence by a male intimate. We are committed to the elimination and prevention of violence against women, through effecting political, cultural and social change.

### **Women's Aid has been responding to women experiencing domestic violence for over 30 years.**

- **We operate the National Freephone Domestic Violence Helpline, which is open 12 hours per day, 7 days a week**
- We support women on a one-to-one basis, providing information and support on financial, legal, housing and social welfare matters. We support women through the courts system and provide court accompaniment to them
- We train statutory and voluntary agencies such as the Gardai, health professionals, Accident and Emergency staff, legal professionals, frontline staff and community groups on identifying and responding to domestic violence
- We deliver creative personal development programmes in the Dublin refuges for women and children who have been abused
- We lobby for improved legislation and policy to respond to domestic violence and we provide research and information on domestic violence to the media, public and key decision makers.

Women's Aid welcomes the opportunity to comment on the Immigration, Residence and Protection Bill, 2008. This submission is based on a 2005 submission to the Department of Justice Equality and Law Reform on the 'Immigration and Residence in Ireland' discussion document. Unfortunately many of our concerns expressed in the 2005 submission are still current.

Given our remit, this submission deals primarily with the need for support and protection of victims of domestic violence.

### **Migrant women dependants experiencing domestic violence**

Increasingly Women's Aid frontline services and other domestic violence services nationwide are supporting migrant women from a variety of countries, who are experiencing violence by their spouse/partner. A number of migrant women contacting us for support are dependent on their spouse for leave to remain in Ireland and are exempt from accessing social welfare or paid employment. This causes many women to remain trapped in a relationship where they have to endure significant levels of physical, emotional, sexual and financial violence.

In a Forum facilitated in 2006 by Women's Aid, AkiDWA (African Women's Network) and the Immigrant Council of Ireland, on *Addressing the Needs of Black and Minority Ethnic Women Experiencing Male Violence*, immigration status and the Habitual Residence Condition were identified as two of the main issues for women experiencing domestic violence and as main barriers to their being able to leave violent partners [1].

It is therefore with great concern that we note that no provision to grant independent immigration status to victims of domestic violence is included in the present Bill.

### **Immigration/residency status**

Many migrant women come to Ireland as the dependant spouses of migrant workers. The immigration status of these women is therefore insecure and wholly dependent on their continued relationship with their spouse. When the relationship ends, so too does the dependant spouse's leave to remain in the country.

However, for many women, returning to their country of origin is not a viable option, for economic, social and cultural reasons. If they have children with the abuser, they may not be allowed to take the children outside the jurisdiction even when they do want to leave.

Irish research on domestic violence by the National Crime Council, has also noted that migrant women are forced to stay with abusive partners because of their precarious immigration status and that



women in this situation are extremely reluctant to report the abuse to the Gardai for this reason [2].

Threats of deportation are used by abusers to maintain control on the victim and prevent her from seeking help and support.

### **Habitual Residency Condition**

The Habitual Residence Condition was introduced in 2004 with the aim to restrict access to the Irish social welfare system. Habitual Residence is a condition which needs to be met in order to qualify for certain social welfare assistance payments and Child Benefit.

Women who are in Ireland as a dependant spouse of a permit or visa holder, have no entitlement to social welfare payments. Depending on the specific type of visa, they may also be forbidden to access paid employment and are therefore financially wholly reliant on their spouse.

It is well established in the literature that financial abuse is often present in violent relationships as one of the tactics used by the perpetrator to maintain control over his partner[3], and that economic dependency and poverty - or fear of poverty- can keep women trapped in violent relationships [4].

Moreover, nowhere to go, and having limited or no access to the economic resources of the household are two of the most frequent reasons reported by women as barriers to leaving violent partners [5].

The HRC severely impacts on a woman's ability to leave a violent relationship and to access support services. Firstly, she may not be regarded as HRC compliant and may therefore have no access to any financial assistance, including emergency assistance through the Supplementary Welfare Allowance scheme.

Secondly, due to limited funding, refuges find it very hard to assist women without income, who may therefore be denied access to refuges at a particularly vulnerable time. Their immediate safety and that of their children may be put at risk.

If a woman is also in fear of deportation and/or prevented from seeking employment due to her visa status it would become extremely difficult for her to leave a violent relationship and to protect herself and her children.

### **The situation in similar jurisdictions**

In the UK the Domestic Violence Rule was introduced to allow immigration rules to accommodate the needs of victims of domestic violence. This rule means that migrant women, who are victims of domestic violence, are granted leave to remain where they can produce evidence of the abuse they are experiencing.

The evidence required is as follows:

#### Category 1:

One of the following:

- A court injunction, non-molestation order or other protection order (other than an ex-parte or interim order);
- A criminal conviction against the abusive sponsor or;
- A police caution issued to the abusive sponsor.

Category 2 - If the above cannot be provided, the applicant must provide at least two of the following:

- A medical report from a hospital doctor confirming that the applicant has injuries consistent with being a victim of domestic violence;
- A letter from a GP who has examined the applicant and is satisfied that the applicant has injuries consistent with being a victim of domestic violence;
- An undertaking given to a court that the perpetrator of the violence will not approach the applicant who is a victim of domestic violence;
- A police report confirming contact or attendance at the home of the applicant as a result of domestic violence;



- A letter from social services confirming involvement in connection with reports of domestic violence;
- A letter of support or report from a Home Office recognised women's refuge or domestic violence support organisation

Although this change in immigration guidelines was a welcome development, there have been a number of concerns voiced by Women's Aid in the UK and immigrant advocate services, that the changes have not gone far enough to protect migrant women experiencing domestic violence, and that the evidence required may be extremely hard for migrant women to access.

It is the case, for example, that women in need of protection will be extremely reluctant to approach the authorities and statutory services for fear of deportation. It is unlikely therefore that women will readily access the courts, the Police, GPs, Social Services or hospitals for support. It is also likely that many women in this situation will be prevented by their abusive spouse from accessing local services. Language and cultural barriers are also compounding factors.

Research by the National Crime Council found that migrant women had very little knowledge and awareness of refuges [6]. Moreover in Ireland at the present time, refuge and other frontline service provision to victims of violence is woefully inadequate. Refuges are often full and, due to lack of resources, are often unable to accommodate women and children with no income. It is extremely likely therefore, that migrant women dependants will not manage to access refuges in Ireland, even if they do manage to access information on where their nearest refuge is.

It is our contention also that the above criteria should be broadened to include psychological abuse. It is often the case that when women have an opportunity to disclose to a GP or other health care provider, they may not have physical injuries at that time. The impact of psychological abuse on women is very significant and often GPs and other health care providers, will have noted the psychological impacts on women such as; suicidal feelings, depression and anxiety.

## Recommendations

- ❖ That migrant women experiencing domestic abuse, whose immigration status is dependent on their spouse dependants, should be given leave to remain.
- ❖ That the evidence required to prove that a woman and her children are victims of domestic abuse should take into consideration the issues noted earlier in this submission.

Such criteria should allow for the following; that migrant women will be extremely unlikely to access the authorities and statutory services; that migrant women will have very limited access to information on their rights and entitlements, the type of support services available and the location of those services; that language and cultural barriers as well as the enforced isolation women will experience due to the control being exerted on them, will further compound their ability to access support; and that leaving a violent partner is the most dangerous time for all women experiencing male violence, women are most at risk of serious or lethal violence at this time.

- ❖ That the Bill needs to make clear that discretion can be exercised to allow for exceptional circumstances when women become unlawfully present in the state due to circumstances beyond their control. For example, due to the violence, women may not be able to comply with strict timelines when seeking to renew or change their resident permit. Women in this situation should not have access to benefit and services limited under Section 6(1) of the Bill.
- ❖ That women in this situation be exempt from the Habitual Residence Condition and allowed to access emergency Health Board payments including; rent allowance, supplementary welfare, medical cards, child benefit and the one parent family payment. Moreover, access to such payments and benefits should not prevent a woman escaping domestic violence from being granted long-term residence [7].
- ❖ That all migrant women and children experiencing domestic abuse be entitled to access State



resources, including EU nationals and women who have their own independent immigration status.

- ❖ That women escaping domestic violence be allowed to work.
- ❖ That all relevant government departments, statutory and voluntary agencies be fully briefed of any legislative and policy changes on these issues.

## **Victims of trafficking**

Women's Aid welcomes the introduction of some protection for victims of trafficking in the Bill. However, the Bill does not go far enough in protecting the victims of this crime.

In particular we are concerned about:

- the exclusion of EU/EEA nationals
- the short duration of the recovery period in which victims have to decide whether to assist the Garda Síochána in an investigation or prosecution.
- the fact that a temporary residence permit may only be issued if the victim of trafficking is assisting the Garda Síochána in an investigation or prosecution and only lasts as long as that assistance is needed.

This does not provide an avenue for victims of trafficking to remain in Ireland long-term, if returning to their home country would compound their trauma or put them at further risk, particularly if they have assisted the Garda and fear retribution.

- the lack of measures in the Bill ensuring adequate victims' assistance such as access to accommodation, material and financial assistance, medical treatment, counselling, interpreting, legal assistance and information and education for their children.

It is the experience of those working internationally on trafficking for the purposes of sexual exploitation, that unless victims are fully supported and protected by the State, they will not be safe to assist police in securing prosecutions against the traffickers. It is important, therefore, that women in this situation be fully protected by the State, allowed access to State supports and given renewable residence permits in circumstances where it is unreasonable to compel a victim of trafficking to leave Ireland.

Women's Aid therefore supports the recommendations on trafficking made by the Immigrant Council of Ireland Independent Law Centre in its Submission to the Select Committee on Justice, Equality, Defence and Women's Rights on the Immigration, Residence and Protection Bill 2008, March 2008 and summarised in the attached Annex.



## NOTES

- 1 Immigrant Council Of Ireland, Women's Aid, AkiDWA Addressing the needs of Black and Minority Ethnic Women Experiencing Male Violence, Report of a seminar hosted by AkiDWA, The Immigrant Council of Ireland and Women's Aid, July 2006
- 2 National Crime Council and Economic and Social Research Institute, *Domestic Abuse of Women and Men: Report on the National Study of Domestic Abuse*, The Stationery Office, Dublin, 2005, p.163
- 3 For a discussion of the range of financial abuse see Bradigan, E., *His money or our money? Financial abuse of women in intimate partner relationships A Report By The Coburg Brunswick Community Legal And Financial Counselling Centre Inc*, available from [www.communitylaw.org.au](http://www.communitylaw.org.au)
- 4 Jane Gurr, Louise Mailloux, Dianne Kinnon and Suzanne Doerge, *Breaking the Links Between Poverty and Violence Against Women* (Ottawa: Ministry of Supply and Services Canada, 1996): 1.
- 5 Office of the Tánaiste, (1997) Report of the Task Force on Violence Against Women, The Stationery Office, Dublin
- 6 National Crime Council and Economic and Social Research Institute, *Domestic Abuse of Women and Men: Report on the National Study of Domestic Abuse*, The Stationery Office, Dublin, 2005, p.164
- 7 Section 36(4)(iv) currently restricts access to long-term residence to persons who have relied on 'publicly funded services as are prescribed'.