



National Women's
Council of Ireland

Comhairle Náisiúnta
na mBan in Éirinn

Immigration and Residence in Ireland

Discussion Document

Submission of the National Women's Council of Ireland

29/7/'05

1. Introduction

National Women's Council of Ireland

The National Women's Council of Ireland (NWC) welcomes this opportunity to reflect on and contribute to the Irish Government's discussion document on immigration and residence in Ireland.

The NWC is a national representative organisation for women in Ireland and we represent our 165 affiliated organisations in a range of policy arenas at national and international levels. A significant number of our affiliate organisations include, represent and work directly with migrant women. Our submission has been informed by their input, their analysis, their knowledge and their vast experience in this field. It has also been informed by their concern and that of our broad membership base, to ensure that immigration legislation and policy in Ireland, reflects and addresses the needs of migrant women for security, inclusion and the right to be with their families.

This submission raises a number of general concerns in relation to the discussion document, outlines some of the features of the feminisation of migration, highlights key principles which we wish to see underpinning any future migration legislation or policy and sets out some key pertinent issues facing migrant women in Ireland to-day.

The economic context

'Our society and economy require people with specific skills and energies to ensure that we have a dynamic labour market and continued economic growth' ...foreign nationals are fulfilling a real need in our nation...'.¹ Immigration is clearly one of the factors that must be taken into consideration in the development of strategies to address the Ireland's demographic and economic challenges including skill and labour shortages and an ageing population. 'However, migrant workers are not just workers, but rather must be recognised as individuals and family members with social, cultural and economic needs'.² The recognition of the contribution and absolute necessity of migration to the Irish economy as the basis for developing future policy and legislation in this area we believe is extremely important if we are to continue to attract people to take up employment positions whether in skilled or 'unskilled' sectors while ensuring the protection of their human rights.

Incorporating inclusion and rights

'The contribution which immigrants make to Irish society is substantial. The diversity which immigration brings enriches us all'³. We welcome this recognition within the

¹ Immigration and Residence in Ireland – Discussion Document DJELR April 2005 - Foreword by the Minister

² Private Homes a Public Concern – Migrant Rights Centre Ireland 2005

³ Immigration and Residence in Ireland – Discussion Document DJELR April 2005 - Introduction

document and the principles and objectives, which broadly inform the framework for new legislation. We are concerned to ensure however, that each of these principles receive equal weighting and emphasis in the design and implementation of such legislation. In section 3 of this submission, we look at some of these principles and propose others in line with the National Action Plan Against Racism.

Incorporating a gender perspective

The incorporation of a gender perspective including gender proofing of any proposed legislation will be extremely important in ensuring that the specific issues facing migrant women are to be addressed. We are disappointed at the lack of recognition in the discussion document of the particularly vulnerable position of migrant women. The document does not take cognisance of the particular forms of powerlessness and oppression that they experience as women, as migrants and as migrant women, especially those who are separated from their families.

Of specific concern to us is the differentiated approach within the document towards different groups of migrants, in particular discrimination between low and highly skilled migrants. Despite a lack of sufficient data in this area, it is widely recognised at European level, that migrant women frequently occupy positions in low skilled, low waged, informal and unregulated employment sectors. Women, we can therefore safely assume, will be at the brunt of migration policies and practices, which relegate 'low-skilled' workers to the ranks of the segregated and the socially excluded.

Focus on Secondary Legislation

'Legislation should provide for schemes of economic migration to be set out in secondary legislation. There will be need for consultation between both Ministers in the making of such schemes'. The discussion document places much emphasis on the development of secondary legislation and secondary schemes to manage various aspects of the migration process. Discretionary powers in relation to a range of measures remain with the Minister for Justice with no parallel obligations on the Minister's behalf.

In the interests of transparency, clarity and fairness in the implementation of immigration law and policy, clear guidelines and codes of practice modelled on best international practice must be developed in all areas where secondary legislation and secondary schemes are to be applied.

Data Collection, sharing and Protection

The development of biometric data collection systems poses important questions regarding the protection of civil liberties and the necessity of such an approach. We urge Government to instigate a wide and participatory public discussion and debate on this matter. Regarding the e-borders programme and the filtering and sharing of information on known threats internationally, the NWCI advocates the development

of clear, transparent and detailed regulations governing the protection and use of individual data.

2. Feminisation of Migration

The international trend of the feminisation of migration is one which is also evidenced in Ireland. The UN estimates that of the 175 million migrants worldwide 50% are women and in some regions of the world this percentage is higher. In Asia, for example, women comprise the majority of those who work abroad. In 2000, women in the Philippines made up 70% of the migrant worker population.

The feminisation of migration can be explained by examining the factors in countries of origin as well as in host countries that make it necessary and economically viable for women to migrate. Labour shortages, poverty and low wage levels are obvious and significant pull factors for all migrant workers. Migrant women may also be pushed into migration as a mechanism to escape domestic violence, or encouraged to migrate in order to keep their families from falling into poverty.

The increasing participation rates by women in the labour market here and in western democratic societies generally, has created a demand for workers in the home, for domestic workers, childcare workers and care workers for elderly family members. The lack of adequate state supported childcare systems (particularly in Ireland which has the lowest level of childcare supports in the European Union) further stimulates this demand, which is almost exclusively met by migrant women. Economic prosperity and increased educational attainment here, has meant that Irish workers are less available or less anxious to undertake the jobs available in low paid, less secure and at times more physically dangerous employment arenas. The following quote from the Guardian newspaper refers to the situation in England with regard to the division of household labour. It rings true for Ireland also.

Women still do three quarters of whatever housework gets done. The inequity is sharpest for the most despised of household chores: cleaning. The growing servant economy, with all the quandaries it generates, is largely a result of men's continuing abdication of their domestic responsibilities.⁴

Many migrant women in this situation are not necessarily the poorest of the poor within their own communities. Many are educated and hold qualifications which are far beyond the employment positions they hold. Many applied for the only jobs available to them and are not now in a position to reapply for other work or to retrain, leaving them with little choice but to seek employment in insecure and lower paid sectors.

3. Proposed Principles to Underpin Migration Policy and Legislation

⁴ The Guardian (12 July 2004)

a. Human Rights

We welcome the Irish Government's commitment to establishing a legislative framework towards building a clear, efficient and transparent immigration system. Such a system is challenged to place at its heart a commitment to safeguarding the rights, integration and social inclusion of migrants and their families as opposed to simply that of managing migration, and promoting economic development and security. Migrant workers are not just workers, they are individuals and family members with social, cultural and economic needs and must be recognized as such in our debates and our conclusions on migration policy.

*'As the conclusions of Thessaloniki European Council, June 2003, have shown, Member States efforts in the field of immigration are focused on the development of a common policy on "illegal immigration, external borders, the return of illegal immigrants, cooperation with third countries and asylum". Such an approach, which is focused narrowly on the need for management of migration flows, often ignores the human rights dimension of immigration.'*⁵

Recommendations

We call on Government to;

- Ratify the UN Convention on the Rights of Migrant Workers and their families.
- Play a lead role at EU level in supporting and encouraging the ratification of the convention by all EU member states.
- Ensure that the forthcoming bill provides for the rights and entitlements of all migrants in Ireland.

b. Equality

*'There is a need for a flexible approach to attract skilled workers....this will involve granting favourable residence conditions to these people, such as the elimination of market testing and granting work access to family members...the area of unskilled migration is more controversial internationally and poses more potential problems ... such migration is not encouraged in most countries or it is limited such as the use of seasonal admission only, and limits on family reunification'.*⁶

The development of migration policy and legislation should refrain from the creation of a two tier immigration system which divides and segregates low and high skilled migrant workers and places a whole section of the migrant population into a situation of insecurity and a lack of rights.

⁵ 17/2/2004 Integrating a Gender Perspective into the EU Immigration Policy Position Paper (European Womens Lobby)

⁶ Immigration and Residence in Ireland – Discussion Document DJELR April 2005 – p63

Recommendations:

We call on Government to:

- Equality proof the forthcoming bill to assess its likely impact on migrants in different situations including migrant women, children of migrants, older migrants etc.
- Establish a core set of rights and entitlements for all migrant workers and their families.

c. Protection

A central facet of immigration legislation and policy should be that of ensuring effective protection and redress against discrimination and exploitation for all migrants in Ireland. *‘This approach seeks to build on policies that support individual orientated complaints procedures and remedies and to further develop mechanisms that proactively support and promote equality’⁷.*

Recommendations

We call on Government to:

- Establish a comprehensive information campaign targeted at all migrants and their families setting out their rights and entitlements and courses of redress in the event of discrimination or exploitation.
- Regulate the process by which migrant women are employed. Consideration should be given to the establishment of bilateral agreements with sending countries which could offer an important mechanism in pursuing exploitative recruiters.
- Ensure Speedy investigations into reported exploitative practices by recruitment agencies.

d. Integration, Inclusion and Interculturalism

The development of strategies to promote the full integration and inclusion of migrants in Irish society must be given priority in all deliberations concerning the migration process here. Such strategies must be based on the principle of Interculturalism, promote and reflect the importance and value of ethnic diversity and challenge racism in all of its forms.

Recommendations:

⁷ Planning for Diversity – The National Action Plan Against Racism

We call on Government to:

- Develop a comprehensive strategy for the integration of migrants and their families in line with the framework for the integration of migrants provided for in the National Action Plan Against Racism.
- Establish an advisory group with representatives of migrant organisations to oversee the development and implementation of the strategy.
- Ensure that the strategy is centrally informed by the 11 Common Basic Principles on Integration of the Hague Programme 2004.

e. Provision

The National Action Plan Against Racism has as a core theme that of supporting and accommodating cultural diversity in service provision, including a focus on common outcomes with a particular emphasis on health, education, social services, childcare, accommodation and the administration of justice. Equality of access to and outcomes from all of services is extremely important for those who come to work and live in Ireland and who contribute to our society and economy in a range of ways. Evidence has illustrated the clear link between poverty, social exclusion and membership of a minority ethnic community. Access to appropriate services therefore, clearly has an important role to play in combating poverty and social exclusion.

Recommendations:

We call on Government to:

- Guarantee the right of access to and equality of outcome from state services to all migrant workers.

f. Participation

The principle of inclusion and the participation of groups experiencing poverty and social exclusion in the design of policies and programmes that affect their lives is one which has been promoted and adopted by successive Governments in recent times. There is a general acceptance that the development of sound policies and programmes that are sustainable, effective and promote social cohesion requires the participation of organisations, which are directly representative of the communities concerned.

Recommendations:

We call on Government to:

- Establish a steering committee to oversee the operation of the proposed Irish Naturalisation and Immigration Service including representatives of migrant organisations.
- Recognise the value and contribution of the work currently being done by migrant organisations and organisations working on the issue of migration at local and national level and allocate specific resources to ensure that such organisations are guaranteed core funding.
- Ensure the participation of migrant organisations in any further consultation being undertaken in relation to migration policy or legislation in Ireland.

g. International co-operation and standards

The discussion document presents clearly the arguments for ensuring compliance with best international practice in the fields of security and cooperation concerning migration at international level. It is also important that such compliance extends to the arena of human rights and the protection and security of migrants and their families.

Recommendations:

We call on Government to:

- Ratify the UN Convention on the Rights of Migrant Workers and their families.
- Ensure that the forthcoming bill is in compliance with the European Directive on the Status of long-term Residents.
- Integrate the principles of the Hague Programme 2004 into the forthcoming bill.
- Take into account the provisions in the forthcoming European action plan on economic migration in Irish migration legislation.

4. Issues for Migrant Women

The NWCi strongly supports the submissions of the National Consultative Committee on Racism and Interculturalism, the Migrant Rights Centre Ireland and the Immigrant Council of Ireland. Rather than addressing all of the many important issues reflected in these submissions we wish to address a number of issues, which have a particular impact on migrant women in Ireland.

a. Family reunification

‘ International practice in the field of family reunification is at it’s most advanced in the traditional immigrant nations such as Australia, New Zealand, Canada, the US and the UK... the common thread through all their structures is that family reunification is only available to migrants who are established permanently or are

*likely to settle permanently. Permanent residents are almost always people on skilled employment permissions....*⁸

Family reunification is of immense importance to many migrants and in particular to migrant women who have been forced to leave their children and families behind when they emigrate to Ireland. This situation places a huge strain particularly on mothers of young children as well as on the children themselves. Family reunification is perhaps the single most important factor in promoting the integration of migrants and their families into Irish society. The NWCI advocates using a broad definition of the term family in relation to the constitution, such as that frequently cited as the definition of the UN.

“Any combination of two or more persons who are bound together by ties of mutual consent, birth and/or adoption or placement and who, together, assume responsibility for, inter alia, the care and maintenance of group members, the addition of new members through procreation or adoption, the socialisation of children and the social control of members.”

Recommendations:

We call on Government to:

- Introduce on a statutory basis the right to family reunification in the forthcoming bill.
- Permit access to the labour market for the spouses and families of migrant workers.
- Ensure access to education and training for spouses and dependants of migrant workers.

b. Violence against women

The reference in the discussion document to increasing protection for victims of Domestic Violence within the context of family reunification is welcome. Such women, who are dependant spouses of migrant workers, dependant on their spouses for financial support have little choice but to remain in dangerous and violent situations. Undocumented migrant women are frequently reluctant to report their situation through fear of deportation. Women in such circumstances are vulnerable physically financially and emotionally and require particular supports to address their situation. The difficulties and dangers which these women face require immediate attention.

⁸ Immigration and Residence in Ireland – Discussion Document DJELR April 2005 – p63

The NWCi supports the submission of the National Observatory on Violence Against Women. We are particularly concerned at the impact of the Habitual Residence Condition on migrant women especially those experiencing domestic violence.

Recommendations:

We call on Government to:

- Put in place measures to ensure that all migrant women (documented or undocumented) and children who experience domestic violence and whose immigration status is dependant on their husband's to be given temporary leave to remain the state.
- Consider all migrant women and children in this situation be automatically deemed 'HRC compliant'.
- Give women in this situation the right to work.
- Provide support for services to be made available for migrant women experiencing domestic violence.

c. Domestic work

The need for domestic and care workers in the private home has increased dramatically amongst the Irish middle classes with increased participation in the labour market and a growing demand for childcare. As mentioned previously, the role of childcare, eldercare and domestic workers in Ireland are quickly becoming the domain of migrant women.

Unfortunately however, the working conditions of many of these women leave much to be desired and in Ireland as in many other western democratic States, serious problems are associated with this sector. *'Evidence has emerged demonstrating problems in relation to pay and deductions from pay; the broad and varied range of tasks allocated; long hours of work; lack of access to holiday and leave entitlements; lack of privacy; and experiences of discrimination'*.⁹

Addressing the problems of this largely unregulated sector requires immediate and urgent attention on the part of the State. Adequate protection must be afforded to migrant domestic workers experiencing exploitation and discrimination in the workplace.

Recommendations:

We call on Government to:

⁹ Private Homes a Public Concern – Migrant Rights Centre of Ireland 2004.

- Resource to facilitate migrant women to organise and participate in developments that concern them, to pool their concerns, develop skills, and take action to address the issues concerning employees in this area of work.
- Proactively ensure migrant women have independent access to information about their employment rights and entitlements. Such information should be forwarded directly and independently to those being employed under the work permit system.
- Develop a special section in the Labour Inspectorate to investigate this area of work.
- Put in place immediate measures to regulate and address recruitment issues. Greater regulation of the process by which migrant women are employed is vital.
- Consider the establishment of bilateral agreements with sending countries, which could offer an important mechanism in pursuing exploitative recruiters.

d. Victims of Trafficking

Trafficking is defined 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 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”.¹⁰ There is a strong gender dimension to this issue. Trafficking in women has increased in Europe, especially trafficking in women for sexual exploitation. The issue has received little attention by the Irish authorities to date and at present there is little data or information on the position of women trafficked in this way.

Recommendations;

We call on Government to:

- Grant permanent residency to victims of trafficking. The right to residence must not depend on the victim’s willingness to give evidence against traffickers. The focus of attention in this regard must be on the health, safety and security of victims.
- Provide the necessary counselling and supports required for women who have been traumatised through the process of trafficking.

5. Conclusion

As the Irish Government prepares to launch a new system to deal with the on-going and much needed process of migration to Ireland, we are in a position not just to learn from and replicate the practices of our European counterparts but to play a leading role in the development of a migration system that reflects the true principles of

¹⁰ UN Optional Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Article 3, paragraph (a).

equality justice and rights. Issues of national security, economic development and the interests of the common good are clearly the responsibility of the State and must be given serious consideration in the development of all public policy. The promotion of human rights standards in the migration process is not and should not be seen as contrary to, but as complimentary to these concerns and to the development of an Irish society which is truly intercultural, anti-racist and socially inclusive.

We look forward to further reflection and discussion on the topics raised in the discussion document and to the development of migration legislation that meets the needs of all involved.