

MRCI's submission to the Consultation on the National Women's Strategy

Tuesday, 31 January 2017



1. Introduction

The Migrant Rights Centre Ireland (MRCI) is a national organisation working to promote the rights of migrant workers and their families living in situations of vulnerability throughout Ireland. The MRCI works collectively with migrant workers to become involved in decision-making processes that affect their lives. We seek to influence policy, build public awareness on migration issues, undertake research and document the experiences of migrant families. The MRCI supports locally based initiatives and networks at a local, national, European and international level. In 2016 MRCI provided information and support to 1,922 people from 125 different countries.

2. Women with an Immigrant Background

Data obtained from the Central Statistics Office's Population and Migration Estimates for April 2016 indicates that 305,200 women residing in the state do not hold Irish citizenship; this represents 51.4% of the overall foreign population residing in Ireland. Among them, 109,100 or 35.75% hold citizenship from a country outside the European Union. These numbers echo the increasing academic literature addressing the feminisation of migration and the higher representation of women among non-European migrants in Ireland.

MRCI works with migrants in low-paid and precarious work at risk of poverty, discrimination and social exclusion for over 14 years. We work predominantly, but not exclusively, with Non-EU migrants and their families to ensure their access to rights and entitlements. The vulnerabilities and precariousness associated with immigration status merits special consideration when developing strategies to ensure equality outcomes for migrants. In 2015, the MRCI provided information to 910 migrant women accessing our services, or the equivalent of 48% of our service users. Migrant women experience the intersectionality of

gender and immigration status differently and some of Ireland's immigration policies and practices fall short of responding to their needs, this submission addresses some of these concerns as they relate to the list of issues put forward by the Committee.

3. Scope of the Submission

The MRCI welcomes the opportunity to contribute to this Consultation with views to develop a National Women's Strategy for the period of 2017-2020. Our submission is rooted in our experience of working migrant women since our inception, particularly those in low-paid occupations. For the purpose of this consultation we organized two consultations, one with key women leaders in different campaigns run by the MRCI and another general consultation organised on January 22nd, 2017. Together with a number of women leaders we participated in the public consultations organised by the Department of Justice.

The structure of the submission will follow the structure recommended by the Consultation Document. Initially we outline a list of issues of concern affecting migrant women in Ireland and then we move on to comment on the High Level Objectives identified by the Department before recommending outcomes and actions to achieve those.

4. Issues of Concern

➤ *Migrant women victims of domestic violence*

Migrant women continue to experience barriers in exiting situations of domestic violence, accessing support services and retaining their immigration status. Ireland lacks comprehensive immigration legislation, including the provision for independent status to foreign spouses of Irish nationals and migrant workers alike.

Because there is no entitlement to retain status following separation, many migrant women risk losing status when they leave a situation of domestic violence. Recently, the Department of Justice introduced measures for the retention of status in certain circumstances but these are only applicable to those spouses registered as dependents and under condition that they have a valid immigration status.

These barriers contradict the spirit of the EU Victims Directive which explicitly mentions the rights of undocumented migrants to report crimes and access services, including the possibility of obtaining a residence status as a victim of a crime. Those victims which can submit an application to the Department of Justice are granted a Stamp 3 (an immigration status which does not confer the right to work and limits access to social protection and support services). Only in exceptional circumstances are Stamp 4 (an immigration status which allows for the right to work and greater access to social protection and support services) granted. There is no timeframe given for the processing of application and because

the current process is not grounded in legislation, there is no procedure to appeal a negative decision.

Women trying to access financial support are required to meet the Habitual Residence Condition (a set of rules to access social, which among other things requires the applicant to justify of two years of legal and independent residence status); the difficulties posed by the system coupled with the lack of clarity result in many women facing financial hardship when exiting violence, or in the worst cases remaining in dangerous situations.

Recommendation: *Introduce clear guidelines for securing independent immigration status for migrant women victims of domestic violence regardless of their legal status. This status should confer the right to work and access to services and support regardless of meeting the Habitual Residence Condition. The process must be transparent, with a clear timeframe and an appeal mechanism.*

➤ **Human Trafficking**

The existence and growth of domestic servitude, forced labour and human trafficking in Ireland has become increasingly evident in recent years; the domestic work sector is particularly vulnerable with an overwhelming majority of victims being women.

Ireland continues to operate without a National Action Plan against Trafficking since 2012. An early identification with system outside of the remit of the law enforcement and with multi-stakeholder input is urgently needed to ensure that victims are being identified and offered protections while ensuring transparency in the process. We continue to lack safe accommodation for victims of human trafficking, women are housed in Direct Provision centres catering mainly for those seeking asylum; these arrangements are unsuitable and fall short of safeness as the addresses of the centres are publically known.

Recommendation: *Introduce a system of early-identification for victims of human trafficking with input from a range of stake holders from civil society and under the supervision of the Health Service Executive rather than the policing authority. Put in a legislative footing the right of victims to access services and support, including safe accommodation exclusive for victims of human trafficking. Put in place measures to prevent exploitation, including trafficking, in the domestic work sector.*

➤ **Sex Work**

Despite a lack of conclusive data on women doing sex work in Ireland, it is commonly believed that a large proportion of them are of migrant background. The MRCI has expressed concern that the State has decided to advance the Criminal Law (Sexual Offences) Bill without evidence-based research.

Of particular concern is the lack of inclusion of sex workers, including those of migrant background, in discussions related to these legislative developments. We are concerned about the possible negative impacts that criminalisation could have in the health status and wellbeing of sex workers, as pointed out by groups such as HIV Ireland and Sex Workers Alliance Ireland; with limited access to the health system, migrant sex workers could face even greater difficulties.

Recommendation: *Remove Part 4 of the Criminal Law (Sexual Offences) Bill 2015 criminalising the purchase of sex pending the commission of independent research on the impact of such legislation on the wellbeing, including health status, of sex workers. Initiate consultation with sex workers, including migrant sex workers, in relation to meaningful initiatives to improve the safety and well-being of sex workers.*

➤ ***Local and National Government Representation***

Ireland is one of the few countries in Europe where migrants, irrespective of legal status, can vote and be elected in local elections, yet information regarding the electoral system targeted at migrant communities remains limited. Registration to vote among migrant communities remains lower than average and the numbers of candidates for local councillors of migrant background went down in the 2014 local elections. It is important to include the participation and representation of migrant women in efforts to increase political representation of women at a local level; conversely efforts need to be made to have greater representation of Irish women of a migrant background at a national level.

Recommendation: *Put in place measures to increase the registration, voting and active participation, including through political representation, of women with a migrant background in local and national politics.*

➤ ***Work in the Private Home***

The Migrant Rights Centre Ireland has a long-standing track of working with migrant women in the private homes. To respond to emerging issues the MRCI set-up the Domestic Workers Action Group (DWAG), in 2003, made up of migrant women working as childminders, au pairs, cleaners, housekeepers and carers in Ireland. DWAG campaigns to improve rights and working conditions in this sector, making sure domestic work is recognised as work.

Starting in 2009, the Department of Jobs and Enterprise has gradually introduced restrictions to the employment permits system making it more difficult to secure a permit for work in the private home. Since the last reform of the system, in 2014, work in the private home has become ineligible in all circumstances which has contributed to the devaluation of the work, often unrecognised, and has resulted in the emergence of exploitative practices.

Of special concern is the growing use of the 'au-pair' system as a cover up for the exploitation of childminders in private homes. Underpayment of au pairs is widely advertised and tolerated, and has now become commonplace in Irish society. Au pair recruitment and placement agencies played a key role in responding to the demand for cheap flexible childcare. A recent survey by MRCI - *'Childcare in the Domestic Work Sector: Who's Minding the Children?'* - revealed that au pairs provide childcare to approximately 20,000 families in Ireland, often for as little as €100 per week for sixty hours of work, or more.

In spite of recent favourable rulings from the Workplace Relations Commission and official communications from relevant government departments, the enforcement of employment rights of those providing childcare in private home remains difficult and the 'au-pair' system continues to flourish.

Recommendation: *Remove occupations performed in the private home from the ineligible job categories for employment permits and introduce sector-based employment permits for this area of work, where labour mobility acts as a measure to prevent exploitation. Address the current levels of exploitation in the au-pair industry through awareness-raising, enforcement and tackling unscrupulous au-pair agencies who promote illegal work arrangements.*

➤ ***Access to termination of pregnancy***

Migrant women with non-EEA nationalities are disproportionately affected by our legislation outlawing the termination of pregnancies. Depending on their legal status (or lack of) migrant women might not be able to secure a visa to travel to another country where they can carry a termination, or a subsequent re-entry to Ireland.

Recommendation: *Ensure that the voice of migrant women is included in discussion around access to safe termination of pregnancy, including in the follow-up to the Citizen's Assembly on the 8th Amendment to the Constitution.*

➤ ***Immigration Reform***

Ireland continues to lack a consolidated framework relating to immigration and asylum issues. Currently, the Irish immigration system is based on piecemeal legislation and ad-hoc administrative policies and practices and underpinned by Ministerial discretion. The system should be transparent, robust and fair, with rights and entitlements clearly outlined and enshrined; comprehensive legislation is urgently needed to ensure this. Currently, there are no legislated rights to family reunification or permanent residency.

Legislation should introduce rights to dependent family members as well as an independent appeals mechanism; this legal vacuum often affects women seeking independent status

following separation. The above points echo the recommendations 106.60 and 107.21 from the UPR First Cycle and the most recent recommendation from the Committee on the Rights of the Child from late March 2016.

Recommendation: *Introduce comprehensive immigration legislation addressing all aspects of residence in the State and conferring independent status on spouses and children.*

➤ ***Irregular Migration***

Undocumented migrants' lack of legal status prevents them from accessing their fundamental rights to housing, health, education and employment. For the great majority, undocumented migrants have entered the State legally yet they are unable to keep their immigration status despite the demand for their labour. Estimates of the undocumented population are between 20,000 and 26,000, which is a growing area of concern.

In its recently published study - *Ireland is Home 2016: A survey of 1,008 undocumented migrants* the MRCI found that 52% of those are women. The majority of undocumented who MRCI has been working with are engaged in some form of employment, typically in more informal job sectors such as restaurants and cleaning, often living on meagre incomes.

Recommendation: *MRCI has been advocating for the introduction of a regularization scheme, where people come forward register with the state and work their way to permanent residency over a 5 year period. This scheme is a practical solution to address the situation of undocumented migrants in the state and ensure this vulnerable group have access to redress. A similar solution has been recommended by the UN Committee on the Rights of the Child issue in March in relation to undocumented children and their families.*

➤ ***Labour Migration policy***

The lack of foresight following the economic recession has seen a reduction of regular channels of migration that has put many migrants in situations of vulnerability. The growth and need for flexible labour has seen for example, the development of a burgeoning exploitative 'Au pair system' and arguably the use of the international student system to meet labour shortages. The lack of adequate policy responses forces irregularity both in terms of work arrangements and in terms of access to the state.

The economic recovery since 2013 has seen an increased inflow of migrants to Ireland, many from outside the EU, and in 2016 Ireland has returned to positive net migration for the first time since 2009. It is important to recognise the value of work provided by non-EU migrants, most of them women, in our economy and afford them the opportunity to work in a dignified manner covered by social protection and with the possibility to access residency and citizenship irrespective of the skills set they bring to our labour market.

Currently, as part of its labour migration structure; Ireland operates a work permit system. In this system, a worker's immigration status is dependent on them maintaining their employment which ties them to a specific employer. To change employer, a person has to go through complex administrative procedures which involves undertaking a Labour Market Needs Test, meeting a minimum salary threshold and comply to the eligibility for the sectors of employment. This puts them at risk of falling out of the immigration system if the process is not successful, added to the fear of becoming undocumented many migrant workers accept exploitative conditions of employment. As more and more migrants come to Ireland to contribute to economic growth and to fill labour and skill shortages across a range of sectors, the system needs urgent reform in order to ensure that both workers and the economy can benefit from migration.

Recommendation: *Reform our labour migration system to ensure that our employment permits system is responsive to the needs of the labour market and takes account of shortages of skill and labour across all levels. Reinstate dependant/partner/spouse employment permits for the spouses, partners and other dependants of all type of employment permit holders as it had been the case until 2009, and not just limited to holders of Critical Skills permits. Ensure that our labour migration system promotes the economic integration of migrant households.*

➤ **Access to Social Protection**

Access to social protection in Ireland is dependent on your immigration status. This prevents migrant women on dependent status, student visas and those who are undocumented from accessing any form of social protection assistance. This can prevent them from accessing housing supports, employment contributions and healthcare assistance; for those who have immigration status which allow them to apply for social protection, they still need to meet the Habitual Residence Condition rules. These rules, which are not stipulated in legislation, have been documented to disproportionately affect migrants and leave them without access to social protection entitlements.

Of particular concern is access to child benefit. Child Benefit is a universal payment which is payable to the parents or guardians of children under 16 years of age, or under 18 years of age if the child is in full-time education. It is intended to recognize that children are a vulnerable group in society and that poverty is detrimental to their upbringing. Child Benefit is not means-tested in order to provide a safety-net to all children. Nonetheless, access to child benefit is currently dependent on the immigration status of the parents leaving many non-Irish children at risk of poverty, particularly those children of lone parents.

Recommendation: *Review the rules and procedures for accessing social protection, in particular as they impact on dependents. Allow for the payment of child benefit to all*

children irrespective of the status of the parents. Reform the application of the Habitual Residence Conditions to ensure they do not continue to disadvantage migrant women.

➤ ***Marriages of Convenience***

In 2015, the Civil Registration (Amendment) Act 2014 was introduced giving powers to Civil Registrars to stop marriage ceremonies from taking place if they believe one party is entering into a marriage for the purpose of securing an immigration status. In the process of granting this additional powers to the Civil Registrars there were no consultations with stakeholders or interest groups, nor were there guidelines drafted to outline the process or the circumstances which will merit an investigation or prevention of a marriage from taking place.

The legislation relies completely on the subjective perception of Civil Registrars, lacks transparency and does not have an appeals mechanism; it represents an intrusion in the right to family life of thousands of migrants, and has been used to single out migrant women from certain nationalities as being complicit or forced into marriages of convenience. Not only the legislation is intrusive but its relevance has been questioned as marriage in Ireland does not confer immigration rights.

Recommendation: *Suspend the Civil Registration (Amendment) Act 2014 until there are clear and transparent guidelines on how Civil Registrars may proceed and until an appeals mechanism is in place. Put in place a consultation with interest groups on the impact of the legislation in the right to family life.*

5. High Level Objectives Proposed

The MRCI recommends that under each of the proposed High Level Outcomes, a section on women of immigrant background and other minority ethnic groups is included. Currently, as it is, the document bears no mention of specific barriers which affect women of migrant background, the difficulties they may experience to achieve equal outcome under the proposed recommendations, as well as a lack of targeted actions for this group.

➤ **Advance socio-economic equality for women and girls**

We believe that in order to progress socio-economic equality for women and girls with an immigrant background, the following areas must be considered.

- **Education**

Many complaints have been received in relation to the gendered nature of education in the State, and how it particularly affects girls with an immigrant background. There are reports of guidance counsellors treating girls from migrant households differently, not taking into account their skills or their wishes. What seems to be evident is that there is not a clear strategy across schools to maximise the skills and opportunities for children with an immigrant background and ensure equality of outcomes.

Furthermore, the current system under which fees structure for access to third level education is dependent on the citizenship of the applicant, discriminate against students from migrant households. It is important that this is amended to ensure that all children who complete their Leaving Certificate in Ireland can enjoy equal access to third-level education.

- **Childcare**

The lack of affordable childcare in Ireland has a disproportionate impact on migrant women who do not benefit to the same extent to the availability of family networks in place. Ongoing research conducted in MRCI has shown that childcare is the main barrier to the participation of women in the labour market, but that it also impacts on their active participation in public life. We believe that when developing tailored activation measures for women with an immigrant background, the state must consider the childcare needs of migrant households.

- **Tackling low-pay**

According to Eurostat, Ireland has the second-highest rate (21.6%) of low-wage earners among countries in Western Europe. The Low-Pay Commission has identified women and migrants as two groups particularly vulnerable to low pay and its adverse effects, it is important that when putting in place a strategy to tackle in-work poverty the views of migrant women in particular are considered.

Migrant women are over-represented in the provision of care to children, elderly people and people with disabilities in Ireland; these are essential roles for the well-functioning of our society and our economy. Yet, many of these women are obliged to perform such important roles under poverty wages and exploitative conditions of employment. Measures to raise the standards, including the pay, in the care industry are urgently needed.

- **A roadmap for economic integration**

Research has shown that independently of their qualification, migrants fare behind Irish workers in terms of occupational attainment and income. Key factors leading to this phenomenon are: the limited mobility in place in our labour migration system; difficulties in the recognition of foreign qualifications and skills; difficulties in the acquisition of new skills, particularly while in-work; and the failure of our activation policies to adequately target migrant communities.

Specific tailored measures to promote the economic integration of migrant women are needed in order to increase their labour market participation rate, including through self-employment.

➤ **Improve women's and girls' physical and mental health**

- **Mental Health of women with an immigrant background**

Other than issues already identified under this HLO relating to domestic violence and sexual reproductive rights it is important to acknowledge that migrant women present poorer mental health outcomes than the overall population, yet their entitlement and their access to mental health support services remains under the average.

In March 2017, Dublin will host the World Congress on Women's Mental Health, where the MRCI will present findings of the research related to mental health outcomes and socio-economic indicators for women with an immigrant background. It is important that the needs of migrant women are taken into consideration in the development of policies and actions linked to a national mental health strategy,

➤ **Promote women's and girls' equal and active citizenship.**

- **Using affirmative action to promote the active citizenship of migrant women.**

Affirmative action measures are required in order to tackle the structural under-representation of women with immigrant background in local and national politics. It is essential that when publishing updated roadmaps for increased female participation in politics and decision-making, including at state board, targets for the participation of women from an immigrant background are defined.

- **Allocate funding for projects which promote equal and active citizenship**

For MRCI, the concept of active citizenship is based on people's participation in society. MRCI works with migrants to create the conditions for participation and empowerment through taking action collectively on policies that affect their lives. In designing and implementing this strategy it is important for the Government to create opportunities and spaces for women with an immigrant background to participate in decision make fora and structures. These structures should facilitate women from a range of migrant communities and socio-economic backgrounds to bring their individual experiences and collective concerns to the fore. Funding should be made available for grassroots initiatives and voluntary and community organisations which focus on the active participation of vulnerable migrant women.

➤ **Embed gender equality in decision-making.**

It is worrying to note that the consultation document mentions the development of a new Integrated Framework for Social Inclusion, to tackle inequality and poverty, yet this framework does not incorporate the National Integration Plan and a National Action Plan against racism. It is paramount that the five different national strategies mentioned in the consultation document operate in synergy with the upcoming National Integration Strategy if the Government intends on delivering equality outcomes for women with an immigrant background. Furthermore, it is essential that work on a National Action Plan against Racism is started as racism and discrimination are key barriers for the full and equal participation of migrant women in the State.

- **National Integration Plan and a National Action Plan Against Racism.**

Ireland continues to operate without an Integration strategy since 2008 and a National Action Plan against Racism since 2007. In recent years, the Cross-Departmental Group has failed to deliver following a multi-stakeholder consultation in views of preparing for a new Integration Strategy. Leading agencies and organisations working with migrant communities in Ireland outwardly rejected an initial draft presented by the Department of Justice as it failed to incorporate recommendations from organisations working on the ground and included no monitoring system or key performance indicators. In the meantime, migrant communities and a second generation continues to grow without access to urgently-needed funding and support to tackle issues of integration, particularly of economic integration.

The Government must act swiftly to tackle racism and discrimination at all levels of society, including through legislation criminalising hate crime and ethnic profiling and through the promotion of reporting mechanisms for racist incidents such as iReport. Incidents of ethnic profiling by law enforcement agents and other State services are on the rise; this cannot be tolerated when Ireland has become an intercultural society where the participation, contribution and lives of first and second generation migrant communities are respected and valued. Legislation must be introduced to criminalise hate crime and hate speech as well as ethnic profiling.

Failing to act on the points mentioned above has left Ireland in breach of recommendations 107.20, 107.24, 107.25 and 107.26 of the First UPR Cycle.

6. Actions and Outcomes

In order for this strategy to be effective it requires the following key elements to be clearly stated:

1. Creating a high level vision for women's equality over the next four years.
2. Outlining a set of key headline goals for Ireland's women's strategy.
3. Developing a comprehensive set of objectives incorporating civil society concerns
4. Setting key targets across all identified objectives.
5. Ensuring concrete actions/activities, outputs and timelines are in place.
6. Developing short, medium and long term key performance indicators for measuring impact and success.
7. Putting in place a clear, robust and transparent monitoring system.
8. Ensuring funding is allocated for implementation, including funding for organisations working on the ground.