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Exclusion, Minimization, Inaction: A Critical Review of Ireland's Policy Response to Gender-Based Violence as It Affects Migrant Women

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This critical review of Ireland's policy response to gender-based violence as it affects migrant women contributes to recent literature that focuses on how states' legal and policy regimes can be part of the problem, in this case adding to rather than reducing GBV related vulnerabilities experienced by migrant women. Through a review of key policy, law and NGO documents, the report foregrounds the significance of context-specific framing and interpretation of influential ideas in shaping the horizons of possible policy action. The review is contextualized in relation to developments in Ireland concerning migration, citizenship and racialisation and more broadly vis-a-vis the nexus of migration governance and gender based violence. The authors trace the development of dominant ideas that shape policy practice with a focus on their interpretation in the Irish context—namely, vulnerability, intersectionality, and interculturalism. Four particular areas of policy response are identified, which reveal a pattern of policy failure on the part of the Irish state characterized by exclusion, minimization, and/or inaction. These relate to assessment of vulnerability of applicants for international protection; addressing gender-based violence in the context of direct provision accommodation; identification and referral of trafficking victims; and response to domestic violence linked to dependent migration status. The authors find that the pattern of failure identified is linked to the current dominance of an ever narrowing and individualized framing of vulnerability found in EU migration regulations, a lack of application of an intersectional gender perspective, the diminished influence of indivisible human rights norms requiring attention to economic, social and cultural rights, as a well as a wider national context of declining resource allocation to addressing gender-based violence and integration, including anti-racism initiatives, for over a decade.

Keywords: gender-based violence, migration, Ireland, intersectionality, interculturalism, vulnerability, human rights

INTRODUCTION

It is now accepted that gender based violence violates human rights with wide ranging adverse consequences for survivors and societies. There is growing awareness and understanding of the myriad forms of sexual and gender based violence that women experience before and during migration, particularly where migration occurs in situations of armed conflict or other catastrophic

disruptions to every day life, or in the form of trafficking. It is also recognized that persistent forms of gender based violence under conditions of "peace"—from domestic violence and homophobia to sexual abuse and exploitation—are significant aspects of the migration stories of many women and that these experiences vary across identities and social groups and associated patterns of structural inequality and disadvantage. From this perspective, there is a particular onus on host countries, through their asylum, migration, reception and integration policies and processes, to be attentive and responsive to migrant women who may have experienced gender based violence. Yet, recent research suggests host states' legal and policy regimes are exacerbating or facilitating gender-based violence at interpersonal, group or institutional levels.

This critical review of the Republic of Ireland's policy response to gender-based violence as it affects different categories of migrant women is concerned with the latter dimension of the nexus of gender based violence and migration. Through a close reading of relevant policy and law documents, and related non-governmental reports and statements, it foregrounds the significance of context-specific framing and interpretation of influential ideas in shaping the horizons of possible policy action in Ireland's response to gender based violence in relation to migrant women. Part II provides a brief account of the concepts, methods and relevant migration literature that underpin and inform this review. Part III outlines the country specific context and literature related to migration, citizenship and racism and racialization in Ireland. Part IV explicates the development of dominant ideas in the field internationally and their interpretation in the Irish context—namely, vulnerability, intersectionality and interculturalism. Finally, Part V presents findings of four examples, which together reveal a particular pattern of policy failure on the part of the state to address adequately the human rights and needs of women who potentially have experienced forced migration and require specialized GBV related remedial interventions, as well as migrant women who are experiencing ongoing forms of intersectional gender based violence in Ireland.

CONCEPTS, METHODS, AND RELEVANT MIGRATION LITERATURE

This review reflects a broadly social constructionist perspective. This involves recognizing that knowledge is socially-constructed and contingent and that processes of meaning construction are consequential and entail potential empowerment or disempowerment. Applied to the study of policy response, a social constructionist approach is especially concerned with the use of language (i.e., word choice, ideas, framing, discourse) and how some ways of thinking and some subject positions are enabled through particular language and discursive practices while others are closed off. It also recognizes that policy implementation is a socially mediated process involving multiple stakeholders who stand in changeable and unequal relation to each other. Understanding what is happening in policy processes, therefore, entails consideration of relevant

legal and policy sources—vis-à-vis the use of language and dominant interpretations of the ideas they foster—as well as the perspectives of "street level" actors, non-governmental organizations and people who are "targets" of policy. This review is based primarily on analyses of relevant law and policy documents and associated outputs of non-governmental groups in the field. The underpinning research was carried out as part of an Irish country background study for the EU Gender Net Plus project: GBV-MIG Violence against Women Refugees and Migrants: Analyzing Causes and Effective Policy Response (Reilly and Sahraoui, 2020). (Discussion of findings based on related interviews with relevant stakeholders and migrant women in Ireland is beyond the scope of this review).

Regarding methods, content analysis of the main national policy documents that address migration, gender equality and gender-based violence in the Republic of Ireland was completed. This involved key word searches for references to intersectionality, vulnerability and/or interculturalism or cognate terms in all documents. To ascertain the extent to which an intersectional perspective shapes Government policy commitments, searches were undertaken for women, gender and gender based violence (or cognate terms) in policy documents that address migration, asylum and trafficking, with similar searches made for references to migrant or minority women or "race" and ethnicity in policy documents that address issues of gender equality and gender-based violence. (**Table 1** lists the relevant policy documents examined for these purposes). In addition, formative UN human rights standards, EU migration regulation texts, and national laws where reviewed to trace the development of the concept of vulnerability in policy contexts. A targeted review of associated reports and statements by non-governmental organizations (NGOs) engaged in advocacy around gender based violence and/or migration support was also undertaken to inform critical scrutiny of national policy documents. (All documents consulted are included in the references list at the end of this article.) Finally a supplemental review of secondary literature relating to migration in Ireland, the nexus of migration governance and gender based violence, and the theorisation of vulnerability, intersectionality, and interculturalism informs our discussion.

Substantively, this work contributes to a number of emerging currents in migration studies literature. Over the last decade, multiple studies have established that refugees, asylum seekers and undocumented migrants living in economically-advanced host countries, contend with heightened risks of sexual and gender based violence (SGBV) (Keygnaert et al., 2012; Kalt et al., 2013; Keygnaert and Guieu, 2015; Freedman, 2016; Oliveira et al., 2018). Increasingly, interdisciplinary research in the field is recognizing that host country policies and practices are contributing to rather than ameliorating such SGBV related vulnerabilities experienced by migrant women. For example, regarding the policy response in Victoria Australia to refugee and migrant women at risk of "family violence," Maher and Segrave (2018) identify the need for "Service and legislative responses that … support rather than inhibit women's efforts to secure their own safety…" (2018, p. 503). Keygnaert and Guieu (2015) critique the "tunnel vision" produced by EU

Gender Equality, Gender Based Violence	International Protection, Migration, Trafficking
National Policy Frameworks, Strategies, and Documents	
Victims of Domestic Violence Immigration Guidelines (INIS, 2012)	Planning for diversity—The National Action Plan Against Racism (DJELR, 2005).
Second National Strategy on Domestic, Sexual, and Gender-based Violence 2016–2021 (Cosc and DJE, 2016a)	RIA policy and practice document on safeguarding RIA residents against domestic, sexual and gender-based violence & harassment (RIA, 2014)
National Strategy for Women and Girls 2017–2020: Creating a better society for all (2017)	Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers: Final Report (McMahon Report) (DJE, 2015)
Action Plan: Second National Strategy on Domestic, Sexual, and Gender-based Violence 2016–2021 (Cosc and DJE, 2016b)	The migrant integration strategy: A blueprint for the future (DJE, 2017c).
HSE National domestic, sexual and gender-based violence training resource manual: Recognizing and responding to victims of domestic, sexual and gender-based violence (DSGBV) in vulnerable or at-risk communities (HSE, 2019)	National [Accommodation] Standards (DJE, 2019a) Second National Action Plan to Prevent and Combat Human Trafficking in Ireland (DJE, 2016)

legal and policy documents that ignores "migrants" legal status, gender orientation and living conditions' as specific SGBV risk factors within the EU' (p. 45). Significantly, Oliveira et al. (2018) problematize professionals' "SGBV conceptualization" as a factor in "the potential perpetuation of violence" (p. 10), especially their failure to recognize adverse socio-economic conditions and related forms of exploitation and harmful practices as forms of SGBV. Another emerging literature analyses policy implementation deficiencies at state and local level, especially relating to "vulnerable migrants" as symptomatic of problems of "multilevel governance" (Spehar et al., 2017; Pandek and Župarić-Iljić, 2018; Marti, 2019; Thouez, 2019; Campomori and Ambrosini, 2020). The latter literature foregrounds the importance of recognizing that effective policy response involves an array of actors—state and non-state actors—operating in context specific configurations, vertically and horizontally, at local, national and international levels.

Methodologically, the approach underpinning this review similarly affirms the value and necessity of critical scrutiny of the content of laws, policy frameworks, and associated ideas in diagnosing policy implementation problems. It also affirms the premise that how ideas are interpreted—in this case vulnerability, intersectionality and interculturalism—shapes the horizon of possibility of policy implementation. Moreover, it recognizes the importance of bottom-up and human rights based efforts in seeking transformative policy responses in this domain, in keeping with a critical multilevel governance perspective.

THE IRISH CONTEXT: MIGRATION, CITIZENSHIP, RACISM, AND RACIALISATION

Migration and Citizenship

Previously one of Europe's least economically developed countries with a pattern of high outward migration, in the late twentieth century, Ireland became a country of net inward migration. A period of sustained economic growth through the first half of the 2000s, resulted in labor shortages in many areas, which saw increasing numbers of migrants come to Ireland to take up available work, especially from Poland and Baltic states (Honohan, 2010). Following the global financial and economic crisis of 2007–2008, net migration to Ireland fell, becoming positive again 6 years later. The 2016 Irish census indicates that Polish and British nationals formed the largest communities of non-Irish nationalities resident in Ireland that year at 2.6 percent (122,515) and 2 percent (103,113), respectively, of a total population of 4.7 million. The census also reveals the recent emergence of a significant Brazilian community (0.3 percent of the population (13,640) in 2016). Central Statistics Office data further indicate that since 2000, immigration to Ireland outside the international protection (asylum) process appears to be gender-balanced (CSO, (n.d.)).

Applicants for international protection form a relatively small but important subset of non-Irish nationals who come to Ireland each year. The countries of origin of asylum seekers vary with unfolding international conditions and crises. In 1994 there were a few hundred applications for international protection, increasing to a high of almost 12,000 applicants in 2002. Partly due to the establishment of Ireland's stringent Direct Provision system in 2000 (discussed below), the numbers of applicants declined steadily from 2002 (Arnold et al., 2018, p. 12). During the 2000s until 2013, Nigeria was the top country of origin of applicants for international protection, with China, Democratic Republic of the Congo, Pakistan and Zimbabwe also often among the top five (McGinnity et al., 2020, p. 7). Since 2014, the number of applicants began to rise but remains low relative to 2002 and to other countries (McGinnity et al., 2020). In 2019, almost 740 000 applications for international protection were lodged in EU countries (plus Iceland, Liechtenstein, Norway and Switzerland), an increase of 11 percent compared to 2018 (EASO, 2020). Data for 2019 in Ireland indicate there were 4,781 applicants for international protection with the top five countries of origin being: Albania, Georgia, Zimbabwe, Nigeria and South Africa (IRC and ECRE, 2019b). The overall rejection rate in 2019 was 48 percent, down from 70 percent in 2018 (IRC and ECRE, 2019a). In addition to regular protection applicants, under the Irish Refugee Protection Programme established in 2015, Ireland committed to accepting 4,000 persons into the country under relocation and resettlement schemes (DJE, 2019b).

Regarding integration into Irish society, a recent study has found significant variation in integration journeys according to country and region of origin (McGinnity et al., 2020). Notably, while migrants are likely to be more highly educated than their Irish-born counterparts overall, the research found "most first-generation migrants have higher chances of being

unemployed when compared to respondents born in Ireland" (McGinnity et al., 2020). Most strikingly,

> Black migrants are 1.6 times as likely to be unemployed as White migrants, even after controlling for factors such as education, nationality, language skills, duration and likelihood of arriving through the protection system (McGinnity et al., 2020, p. 83).

A contentious Citizenship Referendum in 2004 has been extensively critiqued as a reactionary response to increased migration commencing in the late 1990s. Public discourse surrounding the referendum brought to the surface underlying ideas and attitudes among the White Irish majority about Irish identity, difference, "race" and "gender" and who should or should not have access to Irish citizenship. As such, the referendum was a defining moment in establishing the present context in which migration is regulated and in defining the parameters of migrants' life chances in Ireland, which are inextricably linked to access to citizenship or citizenship-like status. Until 2004, a more inclusive *ius soli* ("birthright") basis of Irish citizenship had prevailed (Honohan, 2010). The 2004 Citizenship Referendum and the subsequent amendment of Irish citizenship laws rendered *ius soli* conditional on the legal residence of either parent for three of the 4 years prior to the birth (Constitution of Ireland[1], Article 9, para. 2.1). As Honohan describes this retrogressive turning point: "Not just a technical adjustment, this change effectively tilted the conception of citizenship embodied in the constitution toward [exclusionary] *ius sanguinis*" or blood right (Constitution of Ireland[1], p. 821).

In their critical geographies of citizenship and belonging in Ireland, White and Gilmartin (2008) offer a gendered analysis of the convergence of ideas about the nation, the state, the family and the bodies of pregnant women in the run up to the 2004 referendum. They unpack discourses around "citizenship tourism" (see also Garner, 2007) which pilloried "foreign" women allegedly traveling to Ireland to give birth to Irish-born children. The authors argue: "As the number of asylum applications increased, the figure of the 'non-national' pregnant woman was used to signify threats to Ireland, its sovereignty and its integrity, and used as a justification for changing the definition of citizenship" (Garner, 2007, p. 397). As subsequent sections will address, the troubling logics of "othering," such as those that permeated public discourse around the 2004 referendum, continue to operate in Ireland in explicit and implicit forms, including in active state policies such as the Direct Provision system and more subtly in practices of inaction or omission.

Racism and Racialisation

Despite the adoption of a robust Equal Status Act (2000) and the elaboration of the *National Action Plan against Racism 2005–2008* (NPAR) (DJELR, 2005), Fanning and Michael (2018) conclude that "there has been little political push to take racism seriously" and that "black, ethnic minority and immigrant communities are politically marginalized in both jurisdictions

[North and South]" (Fanning and Michael, 2018, p. 2668–2669). Regarding wider public attitudes, studies of racism toward migrants in the Irish context connect it the racialisation and racism suffered by Irish Travelers (Mac An Ghaill, 2002). Gray (2002) has explored how some Irish women migrants living in England adopted "whitely scripts" allowing them to access the relative privileges conferred by identification with the category "white women". More generally, stereotyping and "othering" by the white middleclass establishment along racial lines has a long history in Ireland that predates the growth of immigration of recent decades, evidenced, for example, in the treatment of mixed race children in Ireland's "Mother and Baby" homes and "industrial schools" (AMRI, 2018). In a similar vein, Fanning implicates nation-building processes in Ireland, which have been entangled with "a politics of national identity within which claims of social membership of various minority groups were discounted" (Fanning, 2012, p. 3).

McGinnity et al. (2018) found that general perceptions of immigration in Ireland became more positive as immigration increased in the early 2000s while the economy was still booming, but deteriorated during the recession between 2006 and 2010 before improving somewhat again between 2010 and 2014 (p. 49). Garner (2007), however, questions the assumption that racist opinions thrive primarily in times of economic crisis, and argues that in Ireland "all the attitudinal surveys in the [prosperous] 1990s indicate ever-increasing levels of antipathy, and a targeting of Roma, Blacks and Muslims (as well as a strain of underlying antisemitism and anti-Traveler racism)" (p. 119). This is consistent with research by Ireland's Economic and Social Research Institute (McGinnity et al., 2018; Fahey et al., 2019), which found "there is an 'ethnic hierarchy' in relation to immigration [with Irish born respondents being] most supportive of allowing many or some immigrants of the same ethnic group [as themselves] (58 per cent), followed by Muslim immigrants (41 per cent)" (McGinnity et al., 2018, p. 50). In her study of labor market differentials in Ireland, Joseph (2018) identifies a "White-over-Black ascendancy" that disadvantages Nigerian migrants in particular. Further, Ní Chatháin's (2011) study with migrant women reported "numerous instances of racism in the context of service provision (educational, health, social welfare), employment, and in public contexts in their locality such as on the street, in the post office or on the bus" (2011, p. 30–31). Research into the experiences of non-EU migrant nurses equally reveals dramatically high instances of racist incidents with 55 percent of the 337 respondents in a study by Humphries et al. (2012) reporting experiences of bullying or discrimination in their professional environment.

The most visible and controversial aspect of Ireland's migration regime, which is frequently discussed as a form of institutionalized racism, is the Direct Provision (DP) system, used to accommodate applicants for international protection who do not have independent means. Established in 2000 following a period of growth in the numbers of asylum seekers arriving in Ireland, the system was supposed to be a "temporary" method by which the state would meet its obligations to provide for the material needs of people seeking international protection. The International Protection Accommodation Service (IPAS,

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[1]*Constitution of Ireland.* Available online at: http://www.irishstatutebook.ie/pdf/en.cons.pdf.

formerly Reception and Integration Agency), under the auspices of the Department of Justice, co-ordinates the DP system. Recent data indicates that 7,462 people are being provided with accommodation by the IPAS including 6,063 who are living in 38 DP accommodation centers across 18 counties and a further 1,399 residing in 34 emergency accommodation locations (Dáil Éireann, 2019, Question 15).

Although the duration of stays in DP centers is supposed to be short, in practice, most residents spend an average of 3 years in the system (Loyal and Quilley, 2016). International protection applicants are excluded from most social welfare entitlements and access to higher education and must wait 6 months to gain conditional access to the labor market (reduced from 9 months in 2021). Children have access to all levels of education "on the same basis as Irish citizens" and recipients of DP have access to free public healthcare. Nonetheless, residents live a life of forced dependency with limited opportunities for self-determination. Direct provision centers are dispersed throughout the country and are often located in remote areas or small towns with limited amenities. Residents receive basic "bed and board," typically involving common eating areas with no control over the food provided, shared bedrooms and bathroom facilities, and a small weekly allowance (€29.80 per child and €38.80 per adult) (Citizens Information, 2019).

Research into the DP system has documented the many negative impacts of the system for its occupants. In a study with 162 asylum seekers, Ryan et al. (2008) found almost half (46 percent) suffered from severe distress, with women being particularly at risk. Only those who had secured legal status showed a decline in distress levels over time. Another study (Moran et al., 2019) has demonstrated how DP negatively affects children's emotional and social development while parents shared feelings of abandonment, lack of agency in decision-making, uncertainty and disempowerment. Echoing these themes, O'Reilly theorizes life in DP as "ontologically liminal," whereby "a chronic sense of fear, insecurity, invisibility and a highly controlled existence are lived and internalized" (O'Reilly, 2018, p. 823). DP residents reported feelings of loss of "individuality" and "status as independent adults," which O'Reilly interprets as outcomes of an enforced "in between" existence (O'Reilly, 2018, p. 834). Finally, it is also important to note that when women exit the DP system, the vulnerabilities created in the DP context have long-lasting consequences. De Tona and Lentin, for example, underline that when women seeking international protection are granted leave to remain they still face major socio-economic challenges as a result of the barriers to employment and third-level education they faced while in the DP system (De Tona and Lentin, 2011).

POLICY FRAMES, CONCEPTS, AND INTERPRETATION

Vulnerability and Intersectionality

Vulnerability and intersectionality are two prominent and closely linked ideas in policy and practice related to gender-based violence and migration. As will be discussed, the concept of intersectionality originates in interdisciplinary feminist and critical race scholarship (see for example, Anthias and Yuval-Davis, 1983; Collins, 1986; Crenshaw, 1989, 1991). Regarding vulnerability, Martha Fineman is among the most influential theorists of the concept as it applies to law and policy. Her account of vulnerability originates in a rejection of the liberal assumption of the autonomous, individual legal subject, as an abstraction that does not recognize the basic fact that "the human condition is one of universal and continuous vulnerability" (2017, 134). This is so because "as embodied beings, individual humans find themselves dependent upon and embedded within social relationships and institutions throughout the life course" (Fineman, 2017, 134). Fineman criticizes the targeting of groups according to particular characteristics and classifying them as "more vulnerable" because she believes that this invariably stigmatizes those individuals (Anthias and Yuval-Davis, 1983; Collins, 1986; Crenshaw, 1989, 1991). Linked to this perspective, she also rejects "identity politics" which she sees as undermining her central premise of universal vulnerability. Within Fineman's theory, resilience, acquired via social institutions is the antidote to vulnerability. It follows that unequal access to societal structures, privilege and power diminish resilience. To address these inequalities, Fineman calls for systemic vulnerability analysis, which asks: is "institutional, and not individual, functioning inadequate"? (Fineman, 2017, 147). In a review of recent literature on vulnerability, Virokannas et al. (2018) find an overwhelming pattern of applying vulnerability only in terms of "vulnerable groups," most notably with respect to children and young people, the elderly, and women in relation to certain "life situations," including migration. Like Fineman, the authors are critical of the predominant focus on the "vulnerable group" in research and practice and call for a shift in focus to the "vulnerable life situations" of particular groups (Virokannas et al., 2018, p. 337). As the following subsection demonstrates, this distinction has roots in the human rights based conceptualization of vulnerability.

Vulnerability in UN Human Rights and EU Migration Regulation Frameworks

The idea that certain groups are vulnerable and require special protection is prevalent in human rights discourse. Yet, substantive references to vulnerability are surprisingly few and recent in international human rights texts. The formative General Comment 3 of the UN committee that oversees implementation of social, economic and cultural rights (UN, 1990), which sets out states' obligations regarding implementation of economic, social and cultural rights, stipulates that: "even in times of severe resources constraints...the *vulnerable members of society* can and indeed must be protected" (UN, 1990; emphasis added). The *Vienna Declaration and Programme for Action* (WCHR, 1993) (hereinafter: VDPA), widely recognized as the blueprint for a renewed, post-Cold War commitment to human rights, is a key milestone in the articulation of vulnerability as part of indivisible human rights, which assert the equal importance of economic, social and cultural rights on par with political and civil rights. Underlining a structural understanding of vulnerability, the VDPA calls for the promotion and protection of the human rights of "persons belonging to groups which have been *rendered vulnerable*, including *migrant workers*" and confirms that "States

have an obligation to create and maintain adequate measures … [in] education, health and social support, for the promotion and protection of the rights of *persons in vulnerable sectors* of their populations" (VDPA part 1, para. 24; emphasis added). At the same time, while also reaffirming the right "to seek and to enjoy in other countries asylum from persecution," the VDPA calls for "the provision of effective protection and assistance, bearing in mind the *special needs of women and children*" (VDPA part 1, para. 23; emphasis added). Moreover, in a significant departure in human rights framing, the VDPA contains four separate sections devoted to the rights of specific groups including: Persons belonging to national or ethnic, religious and linguistic minorities (including indigenous people and migrant workers); The equal status and human rights of women; The rights of the child; and the rights of the disabled person [VDPA, Part II (B), paras. 25–53, 63–65]. Importantly, these are not named as "vulnerable groups" *per se.*

Building on this expanding post-Vienna human rights agenda, General Recommendation 25 of the Committee on the Elimination of all Forms of Racial Discrimination (CERD) recognizes that "some forms of racial discrimination have a unique and specific impact on women" and pledges to take "a more systematic and consistent approach to evaluating and monitoring racial discrimination against women … [and] the disadvantages, obstacles and difficulties women face … on grounds of race, color, descent, or national or ethnic origin" (CERD, 2000). The *UN International Norms and Standards Relating to Disability* (INSD) (2003) further develops the situational meaning of vulnerability. Specifically, it characterizes "vulnerable groups" as consisting of people whose "situation" makes them "more vulnerable" to discrimination, including "indigenous peoples, ethnic minorities, refugees, migrant workers, women, children, people with HIV/AIDS, persons with disabilities and older persons." The INSD calls for new measures to safeguard the rights of "these people, focussing on specific *characteristics* and *situations*, such as age, gender, social situation etc." (INSD, 2003, Part V. 1/10; emphasis added). It also further elaborates the understanding of exceptional vulnerability due to intersectional, compounded or multiple discrimination on account of "both race and disability" (INSD, 2003, Introduction).

The framing of vulnerability specifically in relation to migration in Europe emerged most prominently in the process to recast the Common European Asylum System (CEAS). CEAS is the principal machinery for the "harmonized" regulation of migration in the EU. In contrast to the trend in human rights conceptualization, emphasizing structurally-mediated and situational vulnerability, in the context of CEAS we see a reversion to individualized, biological and psychological understandings of vulnerability and an emphasis on articulating criteria of exceptional vulnerability, which further narrows the scope of the concept. For example, The *Green Paper on the Future Common European Asylum System* (EC, 2007) noted that "serious inadequacies exist with regard to the definitions and procedures applied by Member States for the **identification of more vulnerable asylum seekers**" (EC, 2007, para. 2.4.1; bold in original). Regarding gender-based violence, the Green Paper

called for more precise regulation of what constitutes **"adequate medical and psychological assistance"**; the development of **"appropriate interview techniques"** that are sensitive to gender, age and cultural factors (EC, 2007; bold in original). *The Stockholm Programme* (EU, 2010a) and *Stockholm Action Plan* (SAP) (EU, 2010b) that followed the Green Paper continue the trend of framing vulnerability in terms of a hierarchy in which gender-specific vulnerability issues are invoked to pressure Member States to do more to protect "the most vulnerable." Specifically, the SAP declares a commitment to deploy "all policy instruments available" to respond to "violence against women and children, including domestic violence… and to fight all forms of discrimination, racism, xenophobia and homophobia" noting "the needs of those in *vulnerable situations* are of particular concern" (EU, 2010b, p. 3; emphasis added).

Notwithstanding the acknowledgment of situational vulnerability in the preceding quotation, the overall framing foregrounds interpersonal violence and individual acts of discrimination as the principal sources of vulnerability. Moreover, the SAP further establishes the link between the notion of "exceptional vulnerability" and gender-based violence, recognizing the "most vulnerable" to include "persons subjected to repeated violence in close relationships" and, consequently, to be "in need of special support and legal protection" (EU, 2010a, para. 2.3.4). By centring the individual in this way, the socio-economic and political conditions that produce GBV are eclipsed and the trope of women as inherently vulnerable is emphasized (Freedman, 2018). As will be discussed, this trend in EU framing, toward increasingly narrow and individualized understandings of GBV related vulnerability in contexts of migration, predominates in the Irish policy context, with frustrating consequences for efforts to address the rights and needs of migrant women affected by gender based violence.

Feminist Debates: Reconciling Intersectionality and Vulnerability

In contemporary feminist theory it is now well-established that women cannot be viewed as a monolithic group with a "natural" shared agenda. Rather, the common point of departure of feminist projects is that gender power relations, which typically disadvantage women and gender minorities, persist in most societies *and* operate with other dimensions of experience and identity—such as class, "race," ethnicity, sexuality, religion, ability and/or, indeed, legal status—to distribute power and resources in context-specific ways that confer greater disadvantage on some relative to others. Broadly speaking, this is what most people mean by a feminist intersectional perspective—recognition that different women experience gender-based disadvantage or oppression differently and remedial legal and policy responses must take account of this reality.

Crenshaw conceptualizes vulnerability from a socio-legal perspective as an outcome of intersectional disadvantage. She argues:

> Ensuring that *all* women will be served by the expanded scope
> of gender-based human rights protections requires attention to
> the various ways that gender intersects with a range of other

identities, and the way these intersections contribute to the *unique vulnerability* of different *groups of women*. Because the specific experiences of ethnically or racially defined women are often obscured within broader categories of race or gender, the full scope of their *intersectional vulnerability* cannot be known and must, in the final analysis, be built from the ground up (Crenshaw, 2000; emphasis added).

Crenshaw's conceptualization of intersectionality did not "start as an academic enterprise," rather it sprang from "trying to make sense out of why it was the case that certain issues in … [antiracist and women's] movements tended to always disappear" (Berger and Guidroz, 2010, p. 63). Black women's experience of domestic violence in the USA was one such issue. Crenshaw's efforts to obtain statistics on arrest rates for domestic violence by neighborhood in Los Angeles (and implicitly by "race") were opposed by women's organizations who feared that the numbers would undermine their struggle to present domestic violence as a universal problem for all women, and by men of color in civil rights movements who feared if released such statistics could undermine their struggle against police brutality (Berger and Guidroz, 2010).

In contrast to Crenshaw, Fineman (2017) cautions against approaches that foreground particular vulnerabilities of specific groups. Rather, she insists that "state policy and law should be responsive to *human vulnerability*" (Fineman, 2017, emphasis added). Moreover, she contends that such a responsive state cannot be achieved "through intersectionality and multiplicities of identities, but … [by] the creation of a vigorous universal conception" (Fineman cited in Kohn, 2014, p. 8). Fineman's focus on state accountability, the adequacy of institutional and policy responses to vulnerability, and eschewing stigmatization of "exceptionally vulnerable" groups, are compelling strengths of her theory. However, pitting "universal vulnerability" against "particular intersectionality" creates an unnecessary dichotomy. The major contribution of the concept of universal vulnerability is to make clear the need for a responsive state that is capable of providing the infrastructure and policies required to ameliorate vulnerability and to foster an equitable society. Intersectional analysis as Crenshaw describes it, does not detract from this, but deepens it by making visible forms of situational and structural vulnerability as they are experienced by groups that are marginalized in a given context. In the face of societal inequalities, Fineman's theory requires the state to "monitor a given institution in a way that is responsive to human vulnerability" (p. 145). It would not be possible to undertake such monitoring in the absence of Crenshaw's "ground-up" intersectional analysis in order to reveal the nature of the vulnerabilities, as they are experienced by differently situated women, to which the state is required to respond.

Other critics of vulnerability theory are concerned that it undermines norms of individual agency and autonomy. Goonesekere (2019) is highly critical of the how "vulnerability" figures in some contemporary human rights discourse to "encourage the exercise of state discretion in denying women's rights as part of a "protectionist" approach" (p. 49). Kohn (2014) also criticizes forms of protection that diminish the autonomy of

older people when they are targeted as a "vulnerable group" in ways that fail to comprehend the importance of independence in navigating the vulnerabilities associated with aging. These points raise wider questions about what is meant by agency and autonomy. As McNay observes,

> a revised understanding of agency has long been the explicit or implicit concern of feminist research devoted to the uncovering of the marginalized experiences of women … [which] attest to the capacity for autonomous action in the face of often overwhelming cultural sanctions and structural inequalities (McNay, 2000, p. 10).

This insight underscores the importance of avoiding dichotomous understandings that oppose vulnerability on one side to agency or autonomy on the other. Deploying a practical intersectional analysis to document and make visible manifestations of intersectional vulnerabilities as Crenshaw describes, is an essential step in identifying impediments to agency and autonomy. Diagnosing the situational and structural sources of such vulnerabilities, and what must be done to change these, is also key to maximizing the scope for agency and autonomy of those adversely affected by such conditions. The next section considers how the concepts of vulnerability and intersectionality have been articulated and acted upon in relevant Irish policy frameworks.

Vulnerability, Intersectionality, and the Irish Policy Response to Gender Inequalities

Ireland has strong equality legislation prohibiting discrimination on the basis of gender, sexual orientation and "race" among several other grounds. Maternity and parental leave entitlements have been strengthened in recent years to foster more gender equitable sharing of childcare in families. The recognition of marriage equality and liberalization of access to abortion are also recent developments much welcomed by gender equality advocates. Nonetheless, overall, women continue to be very under-represented in Irish political and decision-making structures at all levels. While women's participation rate in the labor market is relatively high at over 60 percent (Barry, 2015, p. 13), women are over-represented in part-time and casual employment while gender gaps in pay and pensions persist (Barry, 2015) At the same time, levels of domestic violence and sexual assault primarily against women continue to be high. One EU study found that 26 percent of women in Ireland had experienced physical and/or sexual violence by a current or previous partner or by "any other person" since the age of 15 (FRA, 2014). Viewed from a intersectional perspective, inequalities experienced by Irish-born women are inevitably exacerbated for women with limited legal status, while access to GBV supports and services, which typically suppose citizenship or permanent resident status, is also obstructed.

Ireland's *National Strategy for Women and Girls 2017–2020: Creating a Better Society for All* (hereinafter: The Strategy) has been the main policy framework guiding Government action to advance the rights of women and girls (DJE, 2017b, p. 7). The

opening section proclaims the Strategy's intersectional, human-rights, and "positive action" approach, stating that it:

> is underpinned by the societal values of equality, non-discrimination, inclusiveness, generosity, intersectionality, diversity and respect for human rights … [and recognizes that] a national strategy is needed to address instances of multiple discrimination and to put forward positive action measures for women and girls who experience particular disadvantages arising from the intersection of gender with other aspects of their identity (DJE, 2017b).

However, despite this strong rhetorical commitment to recognizing intersectionality and addressing forms of multiple discrimination, *none* of the Strategy's 139 actions directly addresses issues affecting "migrant women." Two actions potentially address migrants, including a commitment to create a section on the "care and support of women and girls from diverse ethnic backgrounds" in the Second *National Intercultural Health Strategy* (DJE, 2017b, Action 2.7. p. 45) and to deliver "improved healthcare services and health outcomes for women and girls who have undergone FGM" (DJE, 2017b, Action 2.8, p. 46). While potentially beneficial, these actions fall short of the stated commitment to an inclusive, intersectional and human rights based approach by limiting the Government's explicit responsibility to migrant women to the sphere of health policy and failing to provide the necessary specificity to be meaningful targets in a national strategy.

According to the national domestic violence organization, Women's Aid, approximately one fifth of the women it assisted in 2018 in its Dublin-based outreach support services were "migrant women" (Women's Aid, 2019, p. 9). Previously, a Women's Health Council study found minority ethnic women to be "over represented among service users of GBV organisations" (WHC, 2009, p. 86). Yet, there is very little recognition of this reality in state's Second *National Strategy on Domestic, Sexual and Gender-based Violence 2016–2021* (hereinafter: DSGBV Strategy). Remarkably, just two of 57 implementing actions refer to the situation of migrants including a commitment to "develop … targeted interventions in domestic, sexual and gender-based violence in communities of *particular vulnerability, including migrants* …" (Cosc and DJE, 2016b, Action 2.1100, p. 11; emphasis added) and to "improve confidence in how An Garda Síochána [the Irish police force] manages Domestic and Sexual Abuse within diverse and emerging communities" (Cosc and DJE, 2016b, Action 2.1000, p. 11). The emphasis on "particular vulnerability" in the National Strategy reflects a narrowing understanding of what vulnerability entails and the risk of stigmatization that Fineman warns against.

A training manual produced by the Irish Health Services Executive (HSE, 2019) on responding to domestic, sexual and gender-based in "vulnerable or at-risk communities" suggests a more expansive framing of vulnerability that is attuned to discrimination-related vulnerabilities and other structural sources of vulnerability. It goes further than most policies in this domain in presenting the situation of migrant women through an intersectional lens by recognizing the "2-fold discrimination" experienced by women in "vulnerable or at-risk communities"

on the basis of "gender and ethnic origin," which is compounded by "migrant status, increased isolation, and social norms that are defined by patriarchal values" (HSE, 2019, p. 54).

Overall, however, Ireland's major gender equality and DSGBV policies and strategies do not operationalise an intersectional approach and to date are not addressing the needs of migrant and minority women on a systematic interagency basis but through discrete projects such as the HSE DSGBV training manual. In particular, resonating with Crenshaw's example in the USA over three decades ago, a joint NGO report to the UN Committee on the Elimination of Discrimination against Women (CEDAW) underscored the persistent problem of the "lack of data available on violence experienced by vulnerable and marginalized women" (Pavee Point NTWF, 2017, p. 13). Moreover, the migrant support organization Nasc has expressly called for data collection in the area of domestic and sexual violence to "also include residency and immigration status of victim and perpetrator" (Nasc, 2016). The ethical gathering of data on migrant women's experiences of gender-based violence is a vital step in implementing an intersectional approach that is capable of comprehending the specific needs of different migrant women and the particular obstacles they face in accessing "universal" supports and services. Without a clearer understanding of what it means to implement an intersectional approach and a structural understanding of vulnerability, along with the establishment of a policy unit tasked with coordinating the necessary blend of targeted and mainstreaming policy responses, the invisibility and marginalization of migrant women in this policy domain will continue.

Integration, Interculturalism, and Anti-racism

Interculturalism has become the dominant doctrine among national and supranational policy actors over the past two decades. In the policy arena, interculturalist approaches are seen as explicitly promoting "dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favor of intercultural respect and a culture of peace" (UNESCO, 2005). In contrast with past policies of multiculturalism, seen as having created "parallel societies," policy makers have embraced interculturalism as an approach that valorises "interaction" across cultural frontiers and fuses together the principles of cultural independence and social cohesion (Delanty, 2009). Interculturalism however, carries a dense and contested rhetorical baggage that is in need of distillation and problematisation as a theoretical approach and as a policy paradigm in the contemporary era of "superdiversity" (Vertovec, 2007; McGarry, 2016, p. 2069).

Multiple versions of interculturalism exist, with Canada being the first nation to develop intercultural policies in the 1980s as a response to the perceived disadvantage of the francophone majority in the province of Quebec (Taylor, 2012). In Europe, the genesis of interculturalism is linked to a British Home Office report of 2001 into disturbances and riots in some northern towns with high levels of ethnic diversity (see Zapata-Barrero, 2017). Cantle (2001) highlighted that members of cultural minorities living in these areas were effectively living in bounded communities, segregated from majority British society and from

other minority groups. The report emphasized an "urgent need to promote community cohesion, based upon a greater knowledge of, and contact between" diverse ethnic minority groups and singled out multicultural policies, pursued since the 1970s, as having given rise to the growth of "plural monoculturalism" (Cantle, 2001, p. 86; Cantle, 2016a, p. 477).

Interculturalism experienced a meteoric rise on the supranational policy stage over the ensuing decade. The influential 2008 *White Paper on Intercultural Dialogue* from the Committee of Ministers of the Council of Europe presented interculturalism as the preferred model in a Europe in which previous multiculturalisms had failed (COE, 2008). This need to move beyond "failed multiculturalism" to embrace interculturalism was echoed in the 2008 *UNESCO World Report on Cultural Diversity* (UNESCO, 2008). These documents presented little evidence of the alleged failure of multiculturalist policies (Kymlicka, 2016; Meer et al., 2016). Nonetheless, the rhetorical scene had been set for the adoption of interculturalism as a new policy paradigm which would celebrate diversity by emphasizing engagement and interaction across cultural frontiers.

Given the manner in which intercultural rhetoric superseded multiculturalism, extensive debate has centered on the extent to which interculturalism differs from the multiculturalism it reacts against, and on whether it can indeed be considered a new policy paradigm (Antonsich, 2016). Interculturalism's core message of community engagement across the fault lines of diversity is largely welcomed, as is a renewed focus on the local. Modood (2016a,b) however posits that, while the emphasis on local level engagement is beneficial and complementary, it cannot be seen as a new departure from the tenets of multiculturalism. Indeed, for Modood (2016a) interculturalism does not fully engage with the political theory or policies of multiculturalism, but rather with a stereotype of multiculturalism. Kymlicka extends this critique, analyzing the espousal of intercultural rhetoric as an attempt to re-invigorate a flagging political commitment to diversity through the creation of a new political narrative. For Kymlicka (2016, p. 167), this strategy presents a threat to the project of diversity with the simplistic narrative of "interculturalism as remedy for failed multiculturalism" resonating with, and even bolstering, narratives of "populist parties as remedy for failed elites" espoused by the xenophobic far right.

A further issue associated with the espousal of intercultural policies over the past two decades is that, in focusing on micro-level cultural engagement, it turns a blind eye to larger issues of social justice. The assumptions of the "parallel lives" thesis obscure the macro-level structural issues and economic deprivations that contribute to processes of self-segregation among migrant communities (Sealy, 2018, p. 695). Interculturalism embraces a version of identity as dynamic, fluid, and at times contradictory and advocates for increased opportunities for encounter as a remedy to the rigid collective group (Cantle, 2016b). This conceptualization of identity, in treating difference as universal, overlooks the differing experiences of situational vulnerability and power that attend different identity groups (Modood, 2016b, p. 487). By focusing on intercultural contact and engagement as remedies for a lack of social cohesion, interculturalism ignores the questions of power

differentials which are key to a multiculturalist approach that traces its roots to the radical promise of the liberal egalitarian tradition (Modood, 2007, p. 8). The following section scrutinizes the evolution of the framing of interculturalism in Ireland's migration and integration policies with a focus on the space available within this paradigm to address the nexus of migration and gender-based violence.

Interculturalism in Irish Policy

For over a decade "interculturalism" has been Ireland's declared route to "integration" and its dominant policy frame relating to migration. In earlier iterations of interculturalism, "anti-racism" figured more prominently than it does currently, as evidenced by the influence of the National Consultative Committee on Racism and Interculturalism (NCCRI) (1998–2008) and the creation of a *National Action Plan Against Racism* (NPAR) (2005–2008) (DJELR, 2005) under the auspices of the then Department of Justice, Equality and Law Reform. The "intercultural framework" underpinning the NPAR appeared to herald a comprehensive vision organized around five pillars of: "protection and redress against racism"; "economic inclusion and equality of opportunity"; "full participation in Irish society"; "recognition and awareness of diversity"; and "accommodating diversity in service provision" (DJELR, 2005, p. 29). In keeping with a human rights framing of vulnerability and intersectionality, the NPAR recognizes the "intersection of racism with other forms of discrimination" (DJELR, 2005, p. 29). It names specific groups that have been rendered vulnerable due to situational and structural factors including "unaccompanied... young asylum seekers/refugees" (DJELR, 2005, p. 112) and "people with lack of legal status in Ireland" (DJELR, 2005, p. 130). The plan also makes frequent references to women and gender throughout and calls for an "intercultural approach to the services provided to women and children from cultural and ethnic minorities experiencing domestic violence" (DJELR, 2005, p. 120). However, this trajectory in Irish integration policy was cut short as "Much of the State's anti-racism infrastructure was dismantled during the financial crisis and has never been replaced" (Irish Times, 2020).

In 2008, responsibility for anti-racism initiatives was subsumed into the Office for the Promotion of Migration Integration (OPMI). Specifically, the OPMI was responsible for Ireland's *Migration Integration Strategy* (MIS) (DJE, 2017c). Much less ambitious than the NPAR, the remit of the MIS is limited to "integration of legal immigrants," "coordination of Ireland's international reporting requirements relating to racism and integration" and "overseeing the Irish Refugee Protection Programme" (OPMI, 2019). Elements of the underpinning "vision" of the strategy include enabling migrants "to celebrate their … identities," ensuring that migrants are "enabled and expected to participate in economic life" and in "politics and public life," and positive action "to address specific needs of migrant groups" (DJE, 2017c, p. 10). The MIS contains several action commitments under the heading of "Promoting Intercultural Awareness and Combating Racism and Xenophobia." such as "greater contact with marginalized communities" by the Garda Síochána to encourage reporting of racially-motivated crime and ensuring that users of public

services are informed of how to make a complaint of racist behavior by staff or others (DJE, 2017c, p. 133).

However, Ireland's performance in this area is widely regarded as very inadequate. A recent report by the European Commission on Racism and Intolerance calls on Ireland to produce a new strategy against racism "with a strong focus on reducing prejudice against the *most vulnerable* and targeted communities, including … migrants and Muslims" (ECRI, 2019, p. 10; emphasis added). Strikingly, the MIS refers to migrant women only once and then to note "actions being taken by Ireland to advance the rights of migrant women *internationally*" rather than *in* Ireland (DJE, 2017c, p. 7; emphasis added). Further, the MIS makes no reference to forms of violence that might affect migrants including gender-based violence nor does it refer to vulnerability in any form. In 2020, the OPMI was dismantled and "integration"—no longer located in the Department of Justice—reduced to one element in a new ministry in a regrouped Department of Children, Equality, Disability, Integration and Youth. NGOs and the Irish Human Rights and Equality Commission have repeatedly criticized the termination of NCCRI in 2008, and the inadequacy of institutional arrangements since, to deal effectively with the challenges of monitoring and countering racism in Ireland, including the failure to renew the national action plan against racism (IHREC, 2019a, p. 20; INAR, 2019, p. 9–10; Pavee Point, 2019, p. 4).

Overall, the trajectory of "integration policy" in Ireland, from 1998 to the present, has shifted from one rooted in a critical human-rights based understanding of interculturalism, tied to intersectional analyses of situational and structural forms of vulnerability—exemplified by the National Action Plan against Racism—to one in which unequal power relations are glossed over, exemplified by the Migration Integration Strategy. The absence of an explicit gender perspective in the MIS, along with the omission of any reference to intersectionality or gender-specific vulnerabilities, and the restriction of "migration integration policy" to migrants with lawful immigration status, signal a decisive weakening in the framing of Ireland's obligations to migrant women in particular.

The final part of this review homes in on a set of four failures in policy response to gender-based violence as it is experienced by migrant women in Ireland. Arguably, these illustrate the consequences of Ireland's move away from a human-rights based concepts of interculturalism and vulnerability and the lack of institutional machinery required to address such structural inequalities.

FOUR POLICY FAILURES IN IRELAND'S RESPONSES TO GENDER-BASED VIOLENCE AS IT AFFECTS MIGRANT WOMEN

In this section, we put a spotlight on a set of specific policies and mechanisms that are intended to respond to women who have potentially experienced forms of forced migration and related gender-based violence, as well as migrant women

who are experiencing domestic violence or abuse in Ireland as a host country. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) entered into force in Ireland July 1 2019. The Convention aims "to implement measures to protect the rights of victims [of gender-based violence] … without discrimination on any ground" such as "race, color, language, religion,… national or social origin,… migrant or refugee status, or other status" (COE, 2011). The Irish Human Rights and Equality Commission (IHREC), however, has noted significant obstacles to monitoring implementation of the Convention in Ireland, especially inadequate data and research and chronic under-reporting of GBV, particularly by victims from marginalized communities (IHREC, 2019b, p. 2). The failures discussed below are amplified by a wider context of a massively under-resourced policy response to all forms of gender-based violence in the Republic of Ireland. In 2018, for example, 9,971 individual women received a range supports, from information and counseling to court accompaniment while 1,138 women and 1,667 children were accommodated in a refuge (Safe Ireland., 2018). However, Forde et al. (2017) note that "with only 21 refuges in the entire country, Ireland provides a mere 31 percent of the minimum recommended by the Istanbul Convention" and that in 2015, "4,796 requests for refuge could not be met due to lack of space."

Assessment of Vulnerability of Applicants for International Protection

The Irish Government has been much criticized for not putting in place procedures to assess the vulnerability of international protection applicants and providing related supports as it is required to do (Nasc, 2019; IRC and ECRE, 2019a, p. 39, 41). This failure to operationalise vulnerability assessment has concrete consequences for international protection applicants who have experienced various forms of gender-based violence before or during migration and/or while living in Ireland. The *International Protection Act 2015*[2] (Hereinafter: IPA 2015) (Houses of the Oireachtas, 2015) is the main piece of domestic law setting out how Ireland meets its obligations for determining applications for international protection in compliance with the *UN Refugee Convention* (UN General Assembly, 1951). This is augmented by the *European Communities (Reception Conditions) Regulations 2018* (hereinafter: National Regulations), which supposedly transposes into Irish law the EU Reception Conditions Directive (RCD) (EU, 2013). The RCD is one of three principal directives of the EU Common European Asylum System (CEAS), along with Qualification and Procedures directives, which "set down the minimum and conservative standards to be followed" (Nasc, 2015) to ensure respect for human rights throughout the international protection application process. The Procedures Directive in particular places strong obligations on member states to take account of gender and to provide concomitant supports to protection applicants who have been subject to different forms of gender-based

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[2]*International Protection Act 2015*. Available online at: http://www.irishstatutebook.ie/eli/2015/act/66/enacted/en/pdf.

violence. Ireland, however, has not opted in to the Qualifications or Procedures directives. This signals a large deficit in the state's commitment to recognize and address the needs of migrants affected by gender-based violence. Nonetheless, the fact that Ireland has opted in to the RCD is significant insofar as it establishes clear obligations on the Government to identify and respond to the needs of "vulnerable persons" in the international protection application process. At the same time, the narrow, individualized definition of vulnerability articulated in the EU RCD offers less scope for deploying a more critical understanding of vulnerability than we find in the human rights paradigm. Specifically, the RCD asserts,

> Member States *shall* take into account the specific situation of vulnerable persons such as … persons who have been subjected to … rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation [FGM] …. (Reception Directive, Article 21; emphasis added).

Most importantly, the RCD stipulates the state's obligation to undertake timely assessment and to address the special reception needs of persons identified as vulnerable on an ongoing basis (Reception Directive, Article 22).

However, even in comparison to the RCD, the wording of Ireland's obligations regarding vulnerability assessment in the state's implementing legislation is weaker still. The 2018 National Regulations states that the Minister "shall" assess if a protection applicant has "special reception needs" and the nature of those needs within 30 days but is not required do so thereafter (Regulation 8, p. 13). Subsequent or ongoing assessment of needs depends on whether the Minister "considers it necessary to do so." Such a discretionary approach is not consistent with the EU RCD's requirement that "Member States *shall assess whether the applicant is an applicant with special reception needs*" on an ongoing basis (Reception Directive, Article 22). This exemplifies a Government strategy of minimization of responsibility and purposive inaction. Inevitably, if assessment of an applicant's "special reception needs" is framed as discretionary, action becomes an option with inaction the default position. Such an interpretation of the state's responsibility with regard to identification of vulnerability drastically reduces the chances of actually identifying protection applicants who are "vulnerable"—especially in relation to experiences of gender-violence, which are highly complex, hidden and stigmatized—and having their related reception needs assessed and met appropriately.

Addressing Gender-Based Violence in the Context of Direct Provision

The plight of international protection applicants affected by gender-based violence who are accommodated in Direct Provision (DP) constitutes a second area of policy failure on the part of the Irish state. Research carried out on the DP system by the migrant women's network Akidwa found "some women reported that stress, poor living conditions and poverty [within direct provision] were possible contributors to domestic violence" (Akidwa, 2010, p. 11). Others "reported feeling that the stigma and stereotyping of female asylum seekers who are also women of color had contributed to their being harassed in their communities" and "there was an overwhelming feeling amongst the majority of the women that if they complained about problems within the reception or asylum system, it would jeopardize their cases" (Akidwa, 2010). Subsequent research on safety and security issues confirmed that "women are experiencing sexual harassment in Direct Provision settings and that a hostile environment exists for women seeking asylum and protection in and around some Direct Provision accommodation centers" (Akidwa, 2012, p. 15). A report by the Rape Crisis Network Ireland found, "Domestic violence, sexual harassment and sexual assault in Direct Provision centers, recruitment for prostitution, and trafficking, particularly of young asylum seekers for the purposes of sexual exploitation, were all … experienced by refugee and asylum seekers in Ireland" (RCNI, 2014, p. 18). It concluded that "significant reforms are urgently necessary in the Direct Provision system to halt the risk of sexual violence to vulnerable residents and minimize the psychological harm to survivors" (RCNI, 2014, p. 4).

The *RIA Policy and Practice Document on Safeguarding RIA Residents against Domestic, Sexual and Gender-based Violence & Harassment* (RIA, 2014) was developed in response to the issues outlined above. The stated purpose of the policy is to "assist in the prevention of Domestic, Sexual and Gender-based Violence and Harassment" (RIA, 2014, p. 4) by facilitating the reporting of incidents to the police, the RIA and center managers as appropriate; providing affected residents with the information they need to access supports through the HSE and community service providers; and ensuring that records are kept of incidents and referrals (RIA, 2014). Although a significant step forward, the focus of this policy is on supporting reporting and referral. It does not deal with the chronic absence of appropriate supports and services and eligibility criteria that indirectly exclude protection applicants from availing of services that do exist. For example, residents of direct provision who are subject to domestic violence or abuse are extremely unlikely to secure a place in a women's refuge and are not entitled to the welfare payments that could afford them some economic independence to enable escape from immediate violence.

More recently, National Standards for safe and effective services and supports for residents of accommodation centers have been published (DJE, 2019a, p. 2). The standards reflect a partial return to human rights framing in the form of a declaration of "due cognisance of the responsibility to promote equality, prevent discrimination and protect the human rights of residents…" (p. 3). While this reflects an improvement from a low baseline in the Irish context, the standards are shaped by a highly individualized understanding of vulnerability, focussing on the obligations of service providers to residents who "have been assessed as vulnerable" or who are "exceptionally vulnerable" and have "special reception needs." Most importantly, however, any obligations on service providers to meet special reception needs will remain hollow in the absence of an effective mechanism for the assessment of vulnerability of applicants for international protection in the first instance. In this sense, the National Standards follow the established pattern of putting in place the most minimal response possible.

It remains to be seen if the standards signal a significant new departure in Ireland's policy response to the different forms of gender based violence experienced by women international protection applicants.

Identification and Referral of Trafficking Victims

A third major failure in Ireland's policy response to gender-based violence concerns its efforts to identify and support victims of trafficking. In particular, the state has been criticized severely for the deficiencies of its National Referral Mechanism (NRM)—"the framework through which State bodies fulfill their obligations to promote the human rights of trafficking victims, working in partnership with civil society" (DJE, 2016, footnote, p. 29). Very significantly, Ireland is the only Western European country that is included in the US State Department's *Trafficking in Persons Report 2020* Tier 2 watch list due to its poor efforts to combat trafficking (having been downgraded from Tier 1 in 2018). Among many failings, the report notes "systematic deficiencies in victim identification, referral, and assistance," a continued lack of "specialized accommodation and adequate services for victims" as well as "decreased victim protection efforts" compared to 2019 (Government of USA, 2020, p. 269).

Official figures generally underestimate the actual numbers of trafficked persons in Ireland. In the 5-year period 2013–2017, 283 victims of human trafficking were detected with women and girls accounting for two-thirds of these. Almost half of detected victims were subjected to sexual exploitation with 95 percent of these being female; and about 40 percent were trafficked for the purposes of economic exploitation, with two-thirds of this group being male and one-third female (DJE, 2017a, p. 8). Nearly one half were trafficked from within the European Economic Area (EEA), 30 percent from Africa, 12 percent from Asia and around seven percent from South America (p. 9). Moreover, Ireland has experienced a rise in suspected victims from Nigeria, Romania, Indonesia, Brazil, and Pakistan, while, "women from Eastern Europe who are forced into marriage in Ireland are at risk for sex trafficking and forced labor" (DJE, 2017a).

The Second *National Action Plan to Prevent and Combat Human Trafficking in Ireland* (DJE, 2016) is the Irish government's overarching policy response to human trafficking (hereinafter: NAP). The NAP has four dimensions: prevention, identification and support of victims, effective criminal justice responses, and ensuring responses are gender sensitive and comply with human rights (DJE, 2016, p. 34). Remarkably, despite recognition of the gendered dimensions of trafficking throughout the document, not a single one of the NAP's 65 action commitments explicitly deals with the stated goal of ensuring that all policy responses should be "gender-sensitive." The terms "gender," "gender-based violence" (or any of its cognates) or "sexual exploitation" do not feature in the formulation of any action. Further, Ireland's National Referral Mechanism primarily addresses the needs of "foreign nationals" (i.e., non-EEA nationals) who are not applicants for international protection and who are deemed by An Garda Síochána to be victims of trafficking on the basis of a "reasonable grounds" determination

(DJE, (n.d.a)). Because of the well-documented reluctance of victims of trafficking to self-identify for fear of retaliation by traffickers or being detained, prosecuted, punished and deported by the authorities (CEDAW, 2020), the fact that determination of trafficked status can only be made by the police is a major obstacle to identifying victims. Furthermore, among the most pressing concerns highlighted by the Irish Human Rights and Equality Commission (IHREC, 2014) is the state's current policy of accommodating identified victims of trafficking in Direct Provision centers. IHREC stresses the "lack of protection for vulnerable persons" in centers, especially the lack of "single gender facilities" and "access to a range of necessary support services" for victims of trafficking (IHREC, 2014, p. 19).

The failure to identify and protect victims of trafficking in Ireland is further evidence a pattern of inaction on the state's part vis-à-vis its international obligations to protect potential victims of trafficking, especially migrant women who comprise a large percentage of identified victims. Moreover, this situation is made worse by the absence of explicit, rights-based action commitments in the NAP to address the gender dimensions of trafficking, which is both a symptom and a source of the neglect of human rights protection in situations of potential and identified trafficking. A recurring obstacle to the protection of victims worldwide relates to the criminal law basis of the anti-trafficking regime, whereby "the victim's rights [can be] trampled in the name of securing a conviction [of traffickers]" (Smith-Cannoy, 2019, p. 325). However, this has not yet been the problem in Ireland where there has been no trafficking conviction since 2013 (Government of USA, 2020 p. 269). The problem in Ireland is a failure to take trafficking seriously and to fully recognize the state's responsibilities to its victims. This is compounded by a failure to mainstream a rights-based, intersectional gender perspective in the state's already weak efforts to combat trafficking.

Dependent Migration Status and Gender-Based Violence

Restrictions attached to dependent migration statuses, which exacerbate the powerlessness of migrant women experiencing domestic violence, constitute a fourth major policy failure in this domain. A leading migrant organization summed up the situation of migrants experiencing domestic violence compared to citizens in a similar situation: "[They] 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 and remedies" (Nasc, 2015, p. 2). When a migrant is legally and economically dependent on the spouse or partner who is abusing them, their situation is all the more difficult. Service providers in domestic violence organizations have reported that uncertain migration status and fear of deportation due to dependent status "make it difficult to establish trust" with migrant clients or to use the usual support options, including seeking legal protection, organizing a place in a refuge, or accessing rent allowance (Fagan, 2008, p. 51). Furthermore, Women's Aid notes, "due to limited funding,

[women's] refuges find it very hard to assist women without income, who may therefore be denied access to refuges at a particularly vulnerable time" (Women's Aid, 2019; see also Fagan, 2008, p. 53).

In particular, the Habitual Residence Condition (HRC), established in Irish social welfare policy since 2004, is frequently cited as a major obstacle to securing the safety of different categories of migrant and minority women who are experiencing domestic violence (Women's Aid, 2008; Pavee Point, 2015; Nasc, 2016). Typically, a person must have a "right to reside" in Ireland *and* must meet the HRC in order to be eligible for forms of social assistance such as the Supplementary Welfare Allowance and Rental Supplement, which women often rely on when escaping violent partners. Several factors are considered by the authorities in determining if a person with a right to reside also meets the HRC, such as continuity of residence and pattern of employment, among others (Citizens Information, (n.d.)). Service providers have reported considerable inconsistency in the HRC decision making process with outcomes varying according to geographic location and the personnel involved (Fagan, 2008, p. 53). In addition to excluding dependent migrants, this policy excludes by default undocumented migrants who are experiencing domestic violence as well as those who have insecure work and accommodation arrangements.

In response to dependent migrant status as a factor in gender-based violence, the Irish Naturalization and Immigration Service (INIS) produced its *Victims of Domestic Violence Immigration Guidelines* (2012). The Guidelines established a process under the auspices of the Minister for Justice, whereby a non-EEA person, whose status depends on their spouse or partner, and is a victim of domestic violence, can apply to obtain permission to stay in Ireland in their own right (INIS, 2012). The inadequacies of the Guidelines have been repeatedly highlighted by migrant support groups including the fact that they do not cover "undocumented women, who may be particularly vulnerable [to domestic violence]" (Nasc, 2016). In addition, lengthy delays in the processing applications are impeding women's access to emergency services and welfare supports and leaving "victims of domestic violence at high risk of homelessness and destitution" (Nasc, 2016). The Irish Human Rights and Equality Commission has also called for the full implementation of Article 59 of the Istanbul Convention, which "requires victims, whose residence status depends on their spouse or partner, to be granted autonomous residence permits irrespective of the duration of the relationship" IHREC, 2019a, p. 5).

These examples of exclusion from mainstream policy responses, or of slow or minimal "case-by-case" migrant specific responses, are indicative of a wider pattern of policy failure in Ireland with respect to migrant women experiencing different forms of gender based violence. In a policy domain that is already massively underfunded migrant women experiencing violence are multiply disadvantaged. In particular, the policy failures of underinvestment in domestic violence services in combination with migrant-exclusionary social welfare practices create intersectional disadvantage and conditions of heightened vulnerability to gender based violence for migrant women.

CONCLUSION

This review of Ireland's policy response to gender-based violence in situations of migration contributes to an emerging literature that focuses on how states' legal and policy regimes can be part of the problem, in this case adding to rather than reducing GBV related vulnerabilities experienced by migrant women. Specifically we have identified a pattern of exclusion, minimization and inaction in the state's policy response in the nexus of migration and gender-based violence. This affects women who come to Ireland seeking international protection and who are accommodated in Direct Provision, women who could be victims of trafficking, as well as those who are in Ireland as dependent spouses and partners or as undocumented migrants. In particular, we identify four policy response failures relating to assessment of vulnerability of applicants for international protection; addressing gender-based violence in the context of direct provision accommodation; identification and referral of trafficking victims; and response to domestic violence linked to dependent migration status.

All of the failures discussed share common patterns of exclusion or containment on one side and/or minimization and inaction on the other. The continuation of the Direct Provision model, social welfare eligibility barriers to accessing domestic violence services, and the highly constrained conditions under which dependent spouses and partners are permitted to be in Ireland, exemplify exclusion and containment. The persistent failure to put in place mechanisms for the proactive and ongoing assessment of vulnerability of applicants for international protection and to identify victims of trafficking to ensure appropriate gender-specific supports are provided, are examples of minimization and inaction. These patterns of state action and inaction are not only neglectful but have the potential to create, perpetuate and exacerbate vulnerabilities vis-à-vis gender-based violence.

Ireland's evasive policy practice in this regard must be read against a backdrop of documented racism in Irish society and emerging patterns of ethnic and racial hierarchies in accessing labor markets, along with government policies that promote dependency among migrant communities, including Direct Provision. The shadow cast by the contentious 2004 Citizenship Referendum, which surfaced racist and xenophobic tropes in public discourse around "undeserving" non-national pregnant women remains part of the context of Irish policy implementation. The policy failures identified also suggest a neoliberal rejection of the post-Vienna human rights vision of the indivisibility of human rights, which calls on states not only to refrain from doing harm directly, but to invest resources in the social and economic systems necessary to enable access to and enjoyment of "all human rights for all." The trajectory of integration policy in Ireland post 2008, following the global economic crisis, maps on to these changes. The concept of interculturalism that underpins Irish integration shifted from one rooted in an expansive vision of human rights that comprehends and seeks to ameliorate situational and structural forms of vulnerability, to one in which the realities of unequal power relations are glossed over, as exemplified by the Migration

Integration Strategy and its erasure of women. Reframing interculturalism in terms of indivisible human rights, substantive equality and intersectionality can strengthen its critical potential in the Irish context.

More broadly, the failures examined in this review also reflect a wider, chronic problem of Irish strategies and policy frameworks that deal with women and gender issues, which are strong on rhetoric but low on concrete action commitments and resources. More pressing is the process of "disappearance" of the concerns and issues affecting migrant and minority women, as Crenshaw observed it in relation to US Black women's experience of domestic violence, which is no less evident in the Irish policy context. The fact that none of the 139 actions of the National Strategy for Women and Girls and only two of 57 actions of the Second National Strategy on Domestic, Sexual and Gender-based Violence addressed the situation of migrant women at all, is striking evidence of such disappearance. This underlines the imperative of stronger and sustained engagement with intersectionality as a policy process lens to counter such erasures.

On the level of international norms and regulations in human rights and migration fields, the trajectory of the development of the concept of vulnerability and its application also present significant challenges. The original human rights framing of vulnerability, starting with the Vienna Declaration and Programme for Action, emphasizes structural and situational vulnerability, the amelioration of which calls for proactive social policy remedies. However, the conceptualization of vulnerability that has subsequently become dominant, as expressed in EU migration regulations, takes a narrower, individualized view. It encourages a focus on the physical and psychological dimensions of vulnerability and eschews acknowledgment of the necessary social, economic and cultural conditions that would enable individuals to take action to mitigate and transform their own vulnerabilities. This trend is accentuated by an increasing emphasis on hierarchies of vulnerability, whereby ever smaller subsets are rhetorically deemed to be the "most" or "more" vulnerable groups, and theoretically prioritised for remedial support, which still fails to materialise. This logic is echoed in the exclusionary, minimalist and no-action moments of the Irish policy response discussed in this review.

Nonetheless, the existence of supranational obligations on the Irish state to undertake vulnerability assessments of international protection applicants, for example, offers the possibility of creating policy mechanisms that can secure concrete positive improvements in the lives of migrant women. Doing so, within an overarching intersectional framework, in ways that address situational and structural sources, as well as personal forms of vulnerability, and which maximize the scope for the agency of the women affected is an essential goal to achieve better outcomes for women. Such an approach requires a more substantial policy implementation infrastructure than is currently in place, one that will not disappear with a change of government, in order to drive and coordinate inter-agency collaboration in supporting migrant and minority women affected by gender-based violence.

Finally, in addition to adequate resources, more sustained dialogue is required at every level—among policy makers and implementers and among migrant women advocates, as well as between these actors. This is necessary to bring attention to the consequences of prevailing patterns of exclusion, minimization and inaction across different policy domains in Ireland, which are implicated in creating conditions of powerlessness that exacerbate rather than ameliorate vulnerabilities. Such dialogue requires engaged discussion of key framing concepts—vulnerability, intersectionality and interculturalism—to realign them with more transformative human rights interpretations and to establish a clearer shared understanding of their meaning and application in Ireland's policy response in this field. These steps are vital to strengthen the policy response to gender-based violence as it affects migrant women.

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