

## Forced Dependency and Legal Barriers: Implications of the UK's Immigration and Social Security Policies for Minoritized Women Living in Abusive Intimate Relationships in Northern Ireland

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### Abstract

This paper examines the complexities of the help-seeking process of minoritized women (primarily asylum-seekers and immigrants) experiencing domestic violence in Northern Ireland. The term 'minoritized' is used here to emphasize that "minority" status is not a static or innate trait of certain groups but instead is the outcome of a *process* of being *positioned* as a minority.<sup>1</sup> The paper addresses the intersections of ethnicity, nationality, class and gender and shows how state policies in relation to immigration and social security reinforce inequalities in gendered power relations. Despite attempts to improve the social security and immigration systems, the findings from a Northern Ireland study show how recent policy changes have not addressed the systemic institutional racism and institutionalised patriarchy in these agencies.<sup>2</sup> Where avenues for action are

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<sup>1</sup> Minoritization is used in our paper to encapsulate the diverse range of individuals belonging to/identifying with any group that is not White Irish or White British. It includes those who have immigrant, refugee, asylum or migrant worker status as well as those who have permanent residence in the UK as a result of their birth or visa authorization. See Batsleer *et al.* (2001).

<sup>2</sup> The paper is based on the findings from a Northern Ireland study undertaken by the authors for the Council of Ethnic Minorities. The report formed part of the Council's submission to the UK's periodic review by the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), July 2013.



undermined by such practices, the policies raise concerns about the safety and protection of minoritized women living in abusive relationships. We argue that the UK is failing to meet its human rights responsibilities to provide adequate support and assistance to minoritized women in abusive relationships and conclude that delivering state accountability alongside a human rights framework based on security, autonomy, liberty and equality is what is needed.<sup>3</sup>

### Key words

Domestic violence; immigration; social security; ethnic minorities; forced dependency.

### Resumen

Este artículo analiza las complejidades del proceso de búsqueda de ayuda en Irlanda del Norte para mujeres pertenecientes a minorías (principalmente solicitantes de asilo e inmigrantes) que sufren violencia doméstica. El término 'minoritarizadas' se utiliza aquí para hacer hincapié en que la situación de "minoría" no es un rasgo estático o innato de ciertos grupos, sino que es el resultado de un *proceso de ser posicionado como* una minoría. El artículo aborda las intersecciones de origen étnico, nacionalidad, clase y género y muestra cómo las políticas estatales en relación a la inmigración y la seguridad social refuerzan las desigualdades en las relaciones de poder desde una perspectiva de género. A pesar de los intentos de mejorar los sistemas de seguridad social e inmigración, los resultados de un estudio de Irlanda del Norte demuestran que los cambios políticos recientes no han abordado el racismo institucional sistémico y el patriarcado institucionalizado en estos organismos. Estas prácticas debilitan las vías de acción emprendidas, sin embargo, las políticas generan interés sobre la seguridad y protección de mujeres pertenecientes a minorías que sufren abusos en sus relaciones. Se sostiene que el Reino Unido no está cumpliendo su responsabilidad de defender los derechos humanos para proporcionar apoyo y asistencia adecuada a estas mujeres que sufren relaciones abusivas y se llega a la conclusión de que es necesario ofrecer una responsabilidad estatal dentro del marco de los derechos humanos, basado en la seguridad, autonomía, libertad e igualdad.

### Palabras clave

Violencia doméstica; inmigración; seguridad social; minorías étnicas; dependencia forzosa

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<sup>3</sup> Such a framework has been proposed by feminist legal scholar Jennifer Nedelsky (2011, p. 19-90).

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## 1. Introduction

Despite a more advanced understanding by states of intimate partner violence (herein domestic violence) and the particular experiences of ethnic minority and/or immigrant women that has helped shift the focus from the pathologizing of perpetrators and victims to the structural and systemic nature of the violence, the Northern Ireland government has only recently acknowledged the implications of its policies on domestic violence for minoritized women. Studies conducted in the UK and in North America have focused on particular immigrant groups and/or ethnic minorities regarding their experiences of help-seeking as victims/survivors of domestic violence.<sup>4</sup> However, the conflict dimension of Northern Ireland makes it a profoundly different site of study and as such, has a very different and broad-based comparative appeal. A review of the literature reveals that there have been no published articles on minoritized women and domestic violence in Northern Ireland, which contrasts to the numerous studies undertaken elsewhere in the UK.<sup>5</sup> Although Northern Ireland's immigration law, and to a large extent the social security system, is the same as the rest of the UK, Northern Ireland is a place apart. It is still emerging from conflict and prior to the Peace Agreement of 1998 had not experienced immigration anywhere near the level of Great Britain. As a country in transition from conflict to peace between two communities (the Protestant/Unionist community and the Catholic/Nationalist community) political identity and religion continue to be the focus of public policy whilst ethnic minorities are overlooked. This is despite ethnic minorities and foreign nationals making up a much larger percentage of Northern Ireland's population today than they did a decade previously (Russell 2013).<sup>6</sup>

To address this vacuum a six-week study was undertaken, at the request of the Northern Ireland Council for Ethnic Minorities (NICEM), aimed at developing an understanding of the experiences of minoritized women living in Northern Ireland seeking help and support in the context of domestic violence.<sup>7</sup> NICEM, a non-profit organization, focuses on the position of ethnic minorities in Northern Ireland as unique from the rest of the UK. Every four years, the UK government provides a report (having ratified the UN Convention) to the UN Committee on the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW Committee) on how it is fulfilling its obligations under the Convention. Among other

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<sup>4</sup> A number of studies have been undertaken elsewhere in the UK to develop an understanding of minoritized women's experiences with domestic violence, but not one of these studies has included Northern Ireland. For example: Batsleer *et al.* (2001) conducted a study to evaluate support for African, African-Caribbean, Irish, Jewish and South Asian women surviving domestic violence, with a specific focus on Manchester; Anitha (2008, 2010, 2011) reports on the experiences of South Asian marriage migrants to the North West and Yorkshire regions of England; and Gill (2004) reports on the experiences of 18 South Asian women in East London who had experienced domestic violence. See also: Hague *et al.* (2010), Patel (2011), Belur (2008) for articles on domestic violence against minoritized women in Great Britain.

In North America (US and Canada) numerous studies have been undertaken on a number of immigrant communities. For this article the authors have cited articles by Mahapatra (2012), Kanagaratnam *et al.* (2012), Ahmad *et al.* (2009), Lewis *et al.* (2005) and Shirwadkar (2004).

<sup>5</sup> Furthermore, there is an absence of data collection by public authorities in this field. For example, there is little official information on nationality, ethnicity, or immigration status in the government's Northern Ireland Crime Survey, which makes it difficult to assess trends over time in the violence and abuse experienced by minoritized women. This lack of data also makes it difficult to conduct accurate needs assessments required to facilitate effective responses for minoritized women.

<sup>6</sup> Northern Ireland Census data shows that the 'non-national' population of Northern Ireland has rapidly increased from 1.8% of the total population in 2001 to 4.5% in 2011. This figure does not include individuals from a minority background who hold British or Irish nationality. ('Non-national' refers to someone who does not hold either British or Irish citizenship).

<sup>7</sup> The research focused on immigrant women who had come to Northern Ireland to join a husband or partner and who were subsequently abused by him. The lack of information on non-immigrant minoritized women (e.g. Traveller women or women born in Northern Ireland but whose parents or grand-parents were immigrants) indicates that further research is needed to ensure their experiences are also recorded. Women from the Philippines usually immigrate alone as migrant workers, leaving their husbands/children at home, and whether these women experience control and abuse, via the mobile and internet, also requires further research.

issues on women's equality the government's report usually includes the legal, protective and preventive measures it has taken to respond to violence against women and the effectiveness of these measures. Non-governmental organizations (NGOs) are also invited by the Committee to make submissions on the assessment of the situation in the country in question.<sup>8</sup> Our study (the Northern Ireland study), commissioned and published by NICEM, formed the basis of its shadow report to CEDAW (McWilliams and Yarnell 2013). Making provision for NGO shadow reports to this UN Committee provides an important opportunity to exert international pressure on the state to address its systemic deficiencies and this paper is part of that process.

## 2. Methodology and theoretical framework

The study was aimed at analysing information provided by service providers rather than victims/ survivors; the authors did not seek out victims/survivors since funding was not available to put in place the support and advice victims/ survivors would need if they were interviewed. Further, many women were no longer in contact with the agencies that had assisted them. Respondents, with one exception (described later), were the service providers who had directly assisted minoritized women. The respondents were asked to share their knowledge of the experiences of minority, ethnic and immigrant women coping with intimate partner violence.<sup>9</sup> The purpose was to identify patterns in the help-seeking process and to share these experiences with service providers so as to assess the adequacy of support. NICEM facilitated the process of contacting respondents. Those who took part in the study understood that the findings would be reported to the CEDAW Committee as part of the UK's periodic examination and would also be disseminated through public events.

As part of the research process, nineteen in-depth semi-structured interviews were conducted with representatives from non-governmental organizations (NGOs) and statutory agencies; NGOs included women's centres, community centres, legal and advice centres working on immigration and minority rights issues. The interviewees were asked to discuss relevant cases, to share the narratives of minoritized women and to evaluate the assistance offered to those seeking help and support. Interviewees were also asked about the particular difficulties that minoritized women faced in Northern Ireland in relation to domestic violence. At the initiative of a group of immigrant women engaged informally with the non-governmental organizations, a focus group was held with women from different minority ethnic backgrounds to facilitate their input into the study.<sup>10</sup> Meetings with statutory agencies, including the Police Service of Northern Ireland and the Public Prosecution Service provided information on frontline practice on domestic violence and on the training to staff directly engaged in this issue. This paper is based upon the empirical findings from the interviews conducted as part of the NICEM submission to the UN CEDAW Committee and was written to add to the field of scholarship on domestic violence and ethnic minority women in a particular region of the UK. The paper is based on the specific experiences of ethnic minority women in Northern Ireland but also identifies commonalities with ethnic minority women in Great Britain, USA and Canada.

For the purpose of analysis, we adopted legal theorist Jennifer Nedelsky's (2011, p. 19-90) relational framework and applied it to the experiences of minoritized women

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<sup>8</sup> Article 18, Convention on the Elimination of Discrimination Against Women, 1979. Submissions by NGOs has been general practice from early on, 'Overview of the current working methods of the Committee' (Committee on the Elimination of Discrimination against Women 2003c).

<sup>9</sup> This included women who have refugee, asylum or migrant worker status or immigrants with irregular visa status as well as those who have longer term or permanent residence in the UK as a result of their birth or visa authorization.

<sup>10</sup> The material collected from the interviews and focus group was analysed using a thematic approach to identify similarities, patterns and trends across the data.

subjected to domestic violence in Northern Ireland. Nedelsky's (2011) relational approach recognizes that individuals exist within "nested relations" – ranging from intimate relationships to "wider relational patterns" such as gender relations, economic and political relations of power and the intersection of these wider relations with institutions – which interact and mutually influence one another. The approach also recognizes that the primary function of laws is to structure relationships – both between individuals, and between individuals and the state. In adopting this approach, we also asked what type of relationships the UK's immigration and social security laws and policies foster in the context of domestic violence (Nedelsky 2011, p. 65 and throughout). For example, do they foster relationships that promote core values such as security, liberty, autonomy, and equality, or do they foster relationships that undermine these values? (Nedelsky 2011).

Applying this analysis to the immigration and social security systems, the authors' intention was to assess the extent to which these systems respond to what are considered to be the most pressing needs of victims of domestic violence such as sheltered accommodation, financial resources and housing (Schneider 2000, p. 196-197).

### **3. Social and economic needs of minoritized women in abusive relationships**

The experience of emigration often brings increased isolation since pre-existing networks of support are absent and opportunities for building new social networks are greatly diminished (Raj and Silverman 2002, p. 371, Wright and Benson 2010, p. 483 Erez *et al.* 2009, p. 44). For women in Northern Ireland the situation is made worse by the smaller percentage of immigrant communities present. This may also be exaggerated by the dominance of the 'two communities', unionists and nationalists, leading to a greater sense of insularity than elsewhere in the UK. The implications for immigrant women who do not speak English are significant, and more so for those seeking support for domestic violence. NGO workers interviewed as part of the Northern Ireland study described how the situation of women who moved to Northern Ireland knowing no one except their respective husbands/partners increased their sense of vulnerability and isolation.<sup>11</sup> Given that Northern Ireland is transitioning from thirty years of armed conflict and division, community segregation is even more accentuated where community cohesion and inclusion prove difficult to achieve.

Due to this isolation, the emotional support that a minoritized woman needs to deal with an abusive partner may be absent; along with material support in the form of temporary accommodation, financial assistance and referrals to formal protection mechanisms. Research has shown that a woman's most frequent form of help-seeking in an abusive relationship is to disclose the abuse to family or friends (McWilliams and McKiernan 1995, p. 43-44). The next form of disclosure is to informal structures of support, generally within the community; and finally to the more formal statutory services (Anitha 2008, p. 192, Ahmad *et al.* 2009, p. 616). If an immigrant woman does not have support structures already in place within the family, the community or with service providers, voluntary support agencies noted that the steps towards disclosure might not take place.<sup>12</sup>

The situation for abused women contrasts with that of their male partners who are more likely to be employed outside the home and have new social networks through relationships with work colleagues and friends, which help improve their language skills. The gender inequity is further reinforced by the lack of affordable childcare that not only would enable opportunities to develop new skills but would

<sup>11</sup> Interviews A1, A2, A4, A7 and A8 on file with the authors.

<sup>12</sup> Comments made in numerous interviews with NGOs – interviews A1,A2, A3, A4, A5, A8, A9, A10, A11, A13 and A19.

also help to decrease vulnerability by enabling women to reach out to others. Women's Aid, the NGO predominantly working in this field, suggested that addressing the provision of such services is a much-needed prevention measure.<sup>13</sup> This is widely supported by research (Blum *et al.* 2006, p. 28, Walton-Roberts 2008, p. 502) showing how the absence of such provision reinforces an abused woman's dependency on her partner (Mahapatra 2012, p. 382).<sup>14</sup> The ways in which this forced dependency is exaggerated in the context of Northern Ireland where a more conservative approach to policy making is adopted, in contrast to other regions of the UK,<sup>15</sup> is what makes this an interesting study for comparative purposes.

In the Northern Ireland study, we found examples of different categories of minoritized women engaging with the immigration system and social security system, whose vulnerability to abuse was compounded by their forced economic dependency on their male partners. The first group are immigrant women with no recourse to public funds (immigrant women from outside the EEA) who have benefitted from piecemeal changes introduced by the UK government. The second category are asylum-seekers whose claims are linked to the primary applicant's claim and the third group are EEA (European Economic Area) wives or partners of EEA migrant workers. We outline below the difficulties faced by each group seeking support to leave an abusive relationship.

#### **4. Forced dependency and legal barriers for minoritized women in the immigration system**

When a woman migrates to Northern Ireland to join a husband/partner who is a UK or Irish national or a migrant worker her immigration status is dependent on him.<sup>16</sup> She has a spousal visa, which means her status is reliant on her marriage or civil partnership. This legal dynamic places him as the primary rights-holder; it is *his* right to a family life that allows her to enter the UK, and is not a right that she holds. In such a situation, the woman's legal right to reside in Northern Ireland is tied to that of her partner and is similar to the situation elsewhere in the UK. However, given that Northern Ireland has had, until recently, relatively small levels of migration, there are consequences for those being assessed by immigration officials. Those deciding these cases are likely to have less experience and familiarity with immigration issues and more specifically, with the dynamics of this dependent status. As one of the NGO's advice workers explained: "Where a woman is here on a spousal visa when the domestic violence starts, she asks herself, 'Do I stay in the relationship and protect my immigration status, or do I leave and become an immigration offender?' This is inconceivable that someone facing domestic violence could end up in an immigration detention centre."<sup>17</sup> The advice worker noted that the consequence of this is that women on spousal visas may have an even greater fear of the prospect of being deported if they decide to leave their abusive partner unless they are able to access good advocacy services on their behalf.

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<sup>13</sup> Comments made by interviewees of all NGOs and BME women, A1, A2, A3, A4, A5, A7, A8, A9, A10, A11, A12, A13, A18 and A19.

<sup>14</sup> Mahapatra (2012) notes that a woman's emotional dependence on her spouse or partner is more apparent when she lacks family and other support systems and finds herself isolated in an unfamiliar country. She argues that these situations give men increased power and control over women that may escalate to abuse and that the greater a woman's reported social support, the less likely she was to be abused.

<sup>15</sup> The Abortion Act (1967) in Great Britain does not extend to Northern Ireland nor does same sex marriage legislation provided for elsewhere in the UK. Furthermore, Northern Ireland has the lowest provision of childcare facilities in the UK

<sup>16</sup> In the interviews carried out by the authors the term 'dependent' status was used by numerous interviewees, denoting women whose legal status was reliant on their spouse. It is also used by Anitha (2011, p. 1264).

<sup>17</sup> Interview A11 on file with authors.

One of the study's respondents noted what she described as the 'disadvantaged'<sup>18</sup> status given to a woman who had made a claim for asylum together with her husband – he as the primary applicant with her application linked to his.<sup>19</sup> She noted that when the husband became violent, the woman was afraid of separating in case she jeopardized her claim for asylum. The woman knew she would have to make a new application in her own name, demonstrating that she could not return to her country of origin through fear of persecution. If a woman leaves an abusive relationship in such circumstances, she may lose her current status unless she is successful in making her own claim for asylum. If an immigrant no longer matches all the criteria under which his/her right to remain was authorized, he/she is liable for removal. Where the perpetrator is aware of the woman's reluctance to leave, due to the fear of deportation,<sup>20</sup> the partner's proprietary behaviour can become more intense, and more frightening, particularly where there is an absence of accountability for his behaviour (McWilliams and Yarnell 2013). In a previous study, undertaken during the conflict in Northern Ireland, the absence of accountability mechanisms had serious consequences for the victims where abuse had taken place.<sup>21</sup> The study showed how offenders knew that there would be fewer controls placed on their abusive behaviour as a result of police officers' unavailability for calls due to paramilitaries threatening the police and prohibiting them from entering certain areas. As a consequence, the extent and severity of domestic violence was much higher compared to areas where mechanisms of accountability were in place.

In relation to the issue of forced dependency of asylum-seeking women, an NGO interviewed in the Northern Ireland study highlighted the situation of a woman and her husband who were entitled as a couple to claim asylum support (UK Home Office 2014). Like all asylum claimants whose applications were being processed, they had no recourse to public funds (through social security benefits) during this time. Since the husband was the primary applicant, support payments were made in his name, which meant that his wife was dependent on him for her only source of income.<sup>22</sup> As the interviewee described it, the stresses of cultural adaptation, of the long wait for a decision on their asylum claim, and of not being permitted to work while the claim was in process, impacted on the husband's mental health. He was increasingly physically abusive to his wife during this time. He was hospitalised as a result of his mental state, during which time asylum support payments continued to be issued in his name.<sup>23</sup> It was difficult for the woman to exercise 'a choice' to leave the relationship as this would have left her destitute. The possibility of homelessness and jeopardizing an asylum claim means that the consequence of leaving an abusive relationship places these women between a rock and a hard place.<sup>24</sup>

Nedelsky's analysis of economic and political relations of institutional power and how these interact and influence gender power relations was exemplified by the experience of a Thai woman who came to Northern Ireland to live with her Northern

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<sup>18</sup> Interview A11 on file with authors.

<sup>19</sup> Detailed by interviewee A11.

<sup>20</sup> Interviews A1, A4 and A11 on file with the authors.

<sup>21</sup> McWilliams (1997, p. 81) documents the lack of police response, the ineffective enforcement of civil orders for domestic violence and the higher rates of intimate partner abuse in these areas as a consequence.

<sup>22</sup> Interview A11 on file with the authors.

<sup>23</sup> It is true that in a situation where the woman is the primary applicant and her partner is listed as a dependent joined with hers in this order, the roles would be reversed: he would be completely dependent on her for financial resources. The reality remains, however, that women are more likely to experience domestic violence than men and so the risks caused by the current structure of support payments are greater for women than they are for men.

<sup>24</sup> It is true that occupancy orders can work to remove this need, by ensuring an abused woman the right to remain in the property she had occupied with the abusive partner, making it illegal for him to return. This is a very important recourse for women to have. However, it must be recognized that not all women will be willing to involve the police and justice system in cases of domestic violence, and so would not be able to avail themselves of an occupancy order.



Irish husband but was forced out of the marital home by his violence. The NGO worker interviewed<sup>25</sup> noted how her husband had informed the immigration agency that she had voluntarily moved out and that he would not be supporting her. At the time of her engagement with the NGO, and shortly before the expiration of her visa, the woman had become fearful of the UK's immigration system. Despite having obtained employment, her right to remain in the UK was being put at risk because she could no longer live with her (abusive) partner. This minoritized woman was in the first instance victimised by his abusive behaviour and was then further intimidated by the threat of deportation. Policies that lead to this process of re-victimization for vulnerable women need to be urgently rectified by changes to the system, some of which are outlined below. As we also note below, these reforms are piecemeal and ad hoc and consequently fail to see how the forced dependency of immigrant women is being sustained.

#### *4.1. The immigration system: acknowledging legal barriers to help-seeking through the Domestic Violence Rule*

After continual lobbying by NGOs in the UK, in 2002, an important change was made in the immigration system to offer a limited category of women, non-EEA nationals, on spousal visas the possibility of being granted the right to remain in the UK by taking into account the circumstances of domestic violence (Southall Black Sisters 2012). This change helped to restructure the relationship of *some* women on spousal visas by providing a form of protection from abusive husbands. This reform, however, also led to criticism from women's rights and human rights advocates due to the way in which it was structured.

The Domestic Violence Rule (herein the DV Rule) means that a woman who has come to the UK to join a husband/durable partner who is a UK national or is 'settled'<sup>26</sup>, could apply for leave to remain in the UK, independent of her spouse if she was subjected to domestic violence following her immigration.<sup>27</sup> In theory, the DV Rule increased a minoritized woman's safety and security by providing her with an alternative to remaining in an abusive relationship, but she had to meet the eligibility criteria. This raises two concerns with the DV Rule: the first is the limited scope of the rule and the second is the 'proof' requirements for eligibility.

The DV Rule is applicable solely to women who have come to the UK to join a British or settled partner, and who would be entitled to indefinite leave to remain after a two-year probationary period (UK Home Office 2015b). The DV Rule excludes women who are spouses/partners of temporary workers, spouses/partners of students, asylum seekers, and irregular immigrants (UK Home Office 2015b). Given that the UK has not signed the Migrants Workers Convention, it is unlikely that this situation will be addressed for temporary workers through appeals to international human rights law. Research undertaken by Women's Aid between in 2012-2013,<sup>28</sup> with immigrant women in Northern Ireland, reported on the circumstances of those women who were victims of domestic violence and had no recourse to public funds. It found that less than one third of the women (29%) who had sought refuge for domestic violence in the three-month period in which the study was conducted would have been eligible to apply under the DV Rule.<sup>29</sup> The

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<sup>25</sup> Interview A12 on file with the authors.

<sup>26</sup> A 'settled' person is a non-UK citizen who can stay in the UK without any time restrictions, also known as 'Indefinite Leave to Remain.'

<sup>27</sup> The terms "husband," "spouse," and "partner" will herein be used interchangeably to refer inclusively to husbands and durable partners. The term 'settled' is used to describe a person with indefinite leave to remain and who is ordinarily resident (Clayton 2010)

<sup>28</sup> Most women who emigrate to the UK from outside the EEA are granted leave to enter on the condition that they have "no recourse to public funds". See 4.2. section in the article, *The Immigration System: Recognition of forced dependency as a barrier to help-seeking: Destitution Domestic Violence (DDV) Concession* for a discussion of this policy.

<sup>29</sup> This unpublished research was conducted by the Women's Aid Federation in Northern Ireland between November 1, 2012 and January 31, 2013, on file with the authors.

limited scope of the DV Rule means there are many women who continue to be excluded from this basic protection mechanism and are not afforded this right. The DV Rule is currently designed to enable the settlement of a small number of abused women rather than to protect immigrant women whose human rights continue to be violated by violent and abusive partners.<sup>30</sup>

Furthermore this technical, rather than rights-based, approach has meant that the victim has to fulfil a set of criteria before being able to access protection under the DV Rule. The onus is placed on the woman applicant to 'prove' she has been a victim of domestic violence (Rights of Women 2010). Anitha's (2008) study of South Asian women in the north of England describes how the proof requirements of the DV Rule do not reflect the actual help-seeking trajectories of this group of minoritized women. It assumes that abused women will make contact with formal support services at an earlier stage of the abuse and doubts those who do not fit these assumptions (Anitha 2008, p. 197). Her research shows that the high rejection rate of applicants under the DV Rule in its first five years was largely due to unrealistic proof requirements (Anitha 2008, p. 192).<sup>31</sup>

The Northern Ireland study results are consistent with Anitha's research and other studies conducted across the UK (Hague *et al.* 2010, p. 31). NGOs provided examples of the difficulties women encountered in the eligibility assessment and the lack of basic information in accessing protection. One interviewee<sup>32</sup> described in detail the extensive correspondence with the Home Office where continuous requests for documentation were demanded to prove the woman's relationship with her partner.<sup>33</sup> The combination of the daunting nature of the 26-page application form, the excessive cost and the lengthy assessment process, posed serious deterrents for women waiting anxiously to hear that they would be safe.<sup>34</sup>

While the DV Rule has helped some women on spousal visas to avoid further reliance on abusive partners for their right to remain in the UK and thus helps to afford those who are eligible a sense of autonomy, the difficulty in accessing it has meant the DV Rule has had limited impact to date. Not only does this raise the issue of socio-economic rights protection for minoritized women who are financially dependent on abusive partners but it also reflects the state's continuing failure to foster values of autonomy, security, liberty and equality for all.

Following Valerie Bryson's (2007, p. 65-67) advice that "it is particularly important to understand the wider economic context in which patriarchal power relations are sustained," the following sections provide an analysis of the legal barriers facing other minoritized women. As outlined below, there are barriers with the 'no recourse to public funds' rule and the complexity of the UK government's concession (Destitution Domestic Violence Concession) to remedy this. Asylum-seeking women in the immigration system also face additional barriers when they are not accounted for in the government's policy changes as well as minoritized women who are failed by the social security system.

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<sup>30</sup> UKBA staff guidance for judging whether a person is eligible to apply for settlement under the domestic violence rules states that foreign nationals who are not partners of UK citizens or settled person have no right to apply "... because these people were not admitted to the UK for the purpose of settlement. They have come to the UK as the dependant of someone who does not have settled status in the UK and who may never have settled status and should have no expectation of remaining in the UK outside that relationship." (UK Home Office 2015c, p. 50).

<sup>31</sup> Between 2002 and 2007, fewer than one-third of applicants under the Domestic Violence Rule were successful: 2101 of 3144 applicants were refused indefinite leave to remain.

<sup>32</sup> Interview A11 on file with the authors.

<sup>33</sup> The Home Office is the branch of government to which people apply for the right to remain in the UK.

<sup>34</sup> SET (dv) Application Form (Version 04/2013). An application form of 26 pages and a fee of £1051. It is possible to apply for the fee to be waived, as discussed below in the sub-section on women with no recourse to public funds in the section "Forced Economic Dependency."

#### 4.2. *The Immigration System: Recognition of forced dependency as a barrier to help-seeking through the Destitution Domestic Violence (DDV) Concession*

Most immigrant women from outside the EEA and Switzerland<sup>35</sup> who arrive in the UK have no recourse to public funds (social security).<sup>36</sup> As a result they have no access to a public social safety net in the form of social security or social housing provision. These rules create forced dependency particularly for a woman in an abusive relationship with nowhere to go on leaving. A woman in such a situation will not be guaranteed a place in a Women's Aid<sup>37</sup> refuge because she is ineligible for any housing benefit. Although Women's Aid operates an open door policy, it acknowledged that women with no recourse to public funds have on occasion been turned away because of financial constraints, and that some Women's Aid refuges have introduced a policy of limiting the number of women in this category whom they can accommodate.<sup>38</sup>

A minoritized woman who is not in paid employment, or whose partner takes control of any income or savings she may have, is placed in financial dependency on her partner where she has no recourse to public funds (Anitha 2011, p. 1264). Walby and Allen's (2004 cited in Humphreys 2007, p. 123) analysis of UK data shows that women who are unable to quickly access £100 are three times more likely to experience domestic violence than those who can access money in a timely manner. Anitha's (2010, p. 473) study also shows that each of the 30 South Asian women with no recourse to public funds who had left their partners after experiencing domestic violence had ended up living in "dire poverty." In the Northern Ireland study a respondent noted: "One question is whether all this means some women are not leaving at all. They may not be leaving because of a justified assessment of what their chances are if they do leave."<sup>39</sup>

This is a further example of how UK immigration law and policy, where it intersects with social security law and policy, curtails the options of minoritized women. With access to safe housing denied, women categorized as having 'no recourse to public funds' may stay in abusive relationships for longer periods, placing themselves and their children at increasing risk (UN Committee on ESCR, General Comment No.16, para. 27 quoted in Mullally 2011, p. 464). Applying Nedelsky's relational framework elucidates how the state policy of no recourse to public funds structures intimate relationships characterized by an immigrant woman's dependence on her husband, thereby undermining equality, autonomy, and human rights protections.

<sup>35</sup> While Switzerland is not part of the European Economic Area (EEA), its citizens enjoy the same rights as EEA nationals. The following is a list of the EEA countries: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Republic of Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the UK.

<sup>36</sup> "Public funds' are defined in the immigration rules and include: Attendance Allowance; Carer's Allowance; Child Benefit; Child Tax Credit; Disability Living Allowance; Housing Benefit; Income Support; income-based Jobseekers Allowance; income-related Employment and Support Allowance; Pension Credit; Severe Disablement Allowance; Social Fund Payments and Working Tax Credit." (Law Centre (NI) and Northern Ireland Human Rights Commission 2011, p. 33). Women who fall into the no recourse to public funds category include women from outside the EEA or Switzerland who come to the UK on work permits or student visas; those who join visa holders, including as spouses, durable partners, or fiancées; those who have entered illegally; as well as those who have over-stayed their visas. (Asylum seekers do not have recourse to public funds either, but can apply for assistance through the National Asylum Support Service (NASS) while their claim is being decided. The experience of asylum-seekers is discussed in a separate section below).

<sup>37</sup> Women's Aid, is a charitable organization and the main shelter organization in Northern Ireland, in 2012-2013 it provided refuge to 880 women (Women's Aid Federation Northern Ireland 2013). For women who do have access to public funds, their Housing Benefit is paid to Women's Aid for the duration of their stay.

<sup>38</sup> Women's Aid Federation Northern Ireland, correspondence with authors, Belfast, June 11 2013. The situation is further accentuated in Northern Ireland as a result of public expenditure cuts in the field of public housing provision.

<sup>39</sup> Interview A13 on file with the authors.

The Destitution Domestic Violence Concession (herein the Concession) was introduced to allow women applying for indefinite leave to remain under the Domestic Violence Rule to access public funds while their claim under the DV rule was being processed.<sup>40</sup> The Concession is an acknowledgement of the state's obligation to protect the human rights of abused women with no recourse to public funds.<sup>41</sup> Once again, the protection offered by the Concession is not afforded to all women in this category. Only wives or durable partners of UK nationals or 'settled' migrants are eligible. From a rights-based perspective, the distinctions made between groups of women with no recourse to public funds means favouring some vulnerable women over others. The CEDAW Committee made the recommendation, at its 55<sup>th</sup> session in 2013, that the UK extend the Concession to all women who are subjected to gender-based violence and exploitation regardless of their immigration category (Committee on the Elimination of Discrimination against Women 2013a, para. 57a). Given that the UK has signed the Council of Europe (Istanbul) Convention on preventing and combating violence against women and domestic violence, this may prove to be significant as the Convention establishes an international mechanism to monitor its implementation at the national level (Council of Europe 2011). The Convention is the first legally binding instrument in Europe to provide specific guidance for migration and asylum, integrating policies against multiple sectors. It is too early to assess whether it will rectify the issues of forced dependency created by the UK immigration and social security systems as outlined throughout this paper.

## **5. Forced dependency for EEA minoritized women in the social security system**

The state's ability to provide a system of efficient and timely social security to protect women in violent and dangerous relationships is crucial, perhaps even more so in Northern Ireland where minoritized families have become targets for hate crime and racist attacks and have been forced out of their homes as a result (Northern Ireland Human Rights Commission 2013). Delay in the system can act as a barrier to women seeking urgent advice from the public housing authority about an area where she can safely move. This is compounded by the way in which the social security system assumes the male to be the head of the household even when he is the one to move out (as exemplified by case study 1 below).<sup>42</sup> Despite those in the EEA category having some recourse to public funds (social security), we explain here two major concerns when dealing with the British social security system. The first relates to the Child Benefit Agency's administrative system in relation to EEA families, and the second relates to the discretionary nature of the support provided by the social security agency and public sector housing authority. First, in relation to social security, EEA immigrant men are able to prove entitlement more easily than EEA immigrant wives or partners. This is mostly due to the gendered nature of work: the majority of women continue to have the disproportionate responsibility for childrearing, caregiving, and domestic chores whilst men are more likely to take on paid employment outside of the home.<sup>43</sup> While British and Northern Irish women in the UK are more likely than their male partners to be in receipt of Child Benefit, study respondents suggested that for EEA immigrant families, Child Benefit is most likely to be claimed by fathers (Clarke

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<sup>40</sup> The DDV Concession was introduced by the UKBA in April 2012, following a pilot project funded by the Home Office and run by the charitable organization, Eaves, from the end of November 2009 to the end of March 2012.

<sup>41</sup> According to the UKBA, the scheme is aimed at protecting those eligible under the DDV Concession who are victims of domestic abuse. (UK Home Office 2015a).

<sup>42</sup> Interview A5 on file with the authors.

<sup>43</sup> See Bryson (2007) for a feminist analysis of time allocation.

2012).<sup>44</sup> A respondent explained that this is especially the case when the father moves to the country ahead of the mother and children, to start work and to find accommodation. In such a context, having the father claim and receive the Child benefit reduces processing times.<sup>45</sup> Given that Child Benefit acts as a “gateway” to other benefits, this means that these mothers may not have access to other much needed financial support. The case below highlights the consequences for those experiencing domestic violence and not being in receipt of benefits.

#### **NGO Client - Case Study 1**

Felicja and her husband moved to Northern Ireland from Poland with their daughter. Child Benefit was being claimed in the husband's name. Felicja explained that her husband was verbally abusive and one day he left Felicja and their daughter. Felicja and her daughter moved in with friends, and Felicja stated that she contacted the relevant agency to inform them that her child was no longer living with her father and that Child Benefit should be administered to herself as the mother, as is the case throughout the UK. The agency responded by writing a letter informing the father that someone else was making a claim on behalf of the child, and asking if he was suspending his claim for Child Benefit. Even though they had been informed that the husband no longer lived with the family, the staff insisted on sending the letter to the previous address since that was the address on the agency's file. This added to Felicja's problems since the standard time delay of 30 days for a response was adhered to by the agency. Felicja had to struggle for the following month to provide for herself and her child whilst her husband continued to receive weekly payments for a child no longer living with him.

Felicja's experience illustrates that where the father makes the claim for Child Benefit in EEA families and where there are delays in changing the entitlement following the family break up, a mother and her children can be left in destitution. This situation was summarized by one of the study's respondents: “When the family splits, mom takes the kids, but he holds the benefit that's assigned for the kids, and opens the door for other benefits for help – so she has the kids, no work and no money. And he's got the benefits and no kids to feed.”<sup>46</sup>

The study also found that EEA women, who do not engage in paid employment but are entitled to benefits were not immediately recognized as such by staff. The case study below, provided by a respondent at an advice centre for immigrants in Northern Ireland, highlights the ways in which EEA women experiencing domestic violence may be denied the support to which they are entitled. The case study also highlights an additional concern since these women would have been legally entitled to assistance given that the EEA partner of an EEA migrant worker has such entitlement once the couple separates.

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<sup>44</sup> Child Benefit is administered by HM Revenues and Customs and is a non-means-tested benefit paid weekly to a parent or carer of a child in the amount of £20.30 for a first child and £13.40 for each subsequent child.

<sup>45</sup> Interviews A4, A5 and A11 on file with the authors.

<sup>46</sup> Interview A5 on file with the authors.

**NGO Client - Case Study 2<sup>47</sup>**

Ania, a Polish woman who moved to Northern Ireland with her partner, stayed at home to look after their child. Her partner was employed and had control of the bank account. He exerted control over Ania and their eight year-old by controlling when and what they could eat and refusing them access to money, including the bus fare for the child to go to school. Ania decided she needed an independent source of income to be able to provide for herself and her child and approached the Jobs and Benefits office, explaining her situation. She was told that she was ineligible for Job Seeker's Allowance because she was living under the same roof as her employed husband. Ania then approached the Northern Ireland Housing Executive, hoping to be able to access Housing Benefit, which would enable her to rent a place of her own with her child and thereby become eligible for Job Seekers Allowance. The public housing provider told her that because she was not in paid employment, nor in receipt of the Job Seekers Allowance, she was ineligible for Housing Benefit. Ania was not offered any further advice or referrals by staff at the Jobs and Benefits office or at the Housing Executive. The agencies did not refer Ania to Women's Aid, a voluntary organization providing safe accommodation and material support. Instead, they left her to return to her abusive partner. Ania eventually found an organization that connected her with charitable services where she obtained food for herself and her daughter and told her about Women's Aid. Ania is now renting her own place and her current job enables her to support herself and her daughter. In between, she stayed for three weeks with Women's Aid who helped her to regain her sense of independence, dignity and self-esteem.

**6. Institutional racism**

Having addressed the legal barriers in the immigration system and the forced dependency created by the social security and immigration system, we turn to the institutional racism confronting women who do seek help. The Stephen Lawrence Inquiry provided extensive evidence on how laws and policy can nurture prejudices and foster a culture of institutional racism in the UK (Macpherson 1999).<sup>48</sup> This culture is particularly noticeable in Northern Ireland where racism is currently more prevalent on a societal level with many EEA migrants being forced to leave their homes due to physical attacks (Black 2014). The Police Service of Northern Ireland reports that racism comes second only to sectarianism as the most reported form of hate crime: in 2012/13, the official statistics recorded 750 racist incidents and 470 racist hate crimes in a population of 1.5 million people.<sup>49</sup> As wide-scale immigration is relatively new and social housing limited, immigrants living in social housing are more likely to be victims of hate crimes. This societal level of racism can then impact the statutory agencies, whose staff may themselves hold some of these attitudes. As one interviewee from a women's human rights organization in London noted, "Northern Ireland appears to be where we were 20 years ago."<sup>50</sup>

The institutional racism that EEA women faced when engaging with the social security system, discussed below, is reinforced by government campaigns throughout the UK about 'benefit tourists' (House of Commons 2014). This hostility was reflected in the government's July 2013 pilot poster campaign which asked 'In the UK illegally? Go home or face arrest.' The posters provided a contact number for those who 'wished' to go back to their country of origin with the promise of 'free advice and help with travel documents.' (Saul 2013).

Racist stereotyping was further noted by voluntary sector workers in the study in drawing attention to some service providers who perceived the cause of domestic violence to be related to ethnicity. One interviewee had heard remarks such as

<sup>47</sup> Interview A5 on file with the authors.

<sup>48</sup> Institutional racism is not unique to Northern Ireland but is reported widely throughout the literature on minoritized women. See for example Allen (2012, p. 873), Anitha (2010), Gangoli *et al.* (2006), Gill (2004), Burman *et al.* (2004).

<sup>49</sup> See note 40.

<sup>50</sup> Interview A18 on file with the authors.

“they’re not from here so they don’t really know any better” or “that’s just part of their culture”<sup>51</sup> by statutory agency workers. The response of one statutory body dealing with vulnerable minority women was to send them back ‘home’ to their country of origin.<sup>52</sup> One case involved an Eastern European woman who had been the victim of sexual violence by men known to her, and who was subsequently evicted from her publicly rented accommodation in response to a complaint about anti-social behaviour.<sup>53</sup> The woman sought and received support from an advice worker. The advice worker reported how shocked she was to learn that a staff member working in the local Housing Executive office was annoyed when the woman had not accepted an offer of an airline ticket purchased by the housing agency to facilitate her return ‘home’ to Eastern Europe. The housing officer had proposed that the woman should leave the country immediately despite the fact that she knew that the woman was pursuing legal proceedings against the men who had assaulted her.

The reaction of the public housing authority reveals something about staff members’ relative inexperience in dealing with ethnic minorities and migrant workers. This may be an outcome of the long running conflict in Northern Ireland where there was a relatively low rate of immigration before the Peace Agreement in 1998. As a consequence, there may be deep institutional pockets of racism that have been less influenced by the changes that have taken place in Great Britain. In this context, Northern Ireland does appear as a place apart where the legacy of the conflict has meant that policy makers have focused much more on relationships between the two main political/religious communities than with race relations.

## 7. Conclusion

Three major trends emerged from this study: barriers in women’s help-seeking, particularly in the immigration system; forced dependency created by the immigration and social security system; and institutional racism confronting women who do seek help. The Northern Ireland study shows how the immigration and social security systems structure the intimate relationships of minoritized women in such a way as to reinforce their dependency on a male partner and exacerbate gender inequities in their intimate relationships. Where minoritized women in Northern Ireland are dependent on their partners for ‘the right to remain’, these problems have serious implications for a woman’s safety and security when the relationship breaks down.<sup>54</sup> Enforced dependency and inequality within intimate relationships are known causes of coercive control and manipulation in intimate partner relationships (Stark 2013). In the specific case of minoritized women, forced dependency discourages help-seeking by creating legitimate fears of destitution, homelessness and deportation and in turn limits the options of immigrant women leaving an abusive partner. The findings from the Northern Ireland study largely mirror the experiences encountered by minoritized women elsewhere in the UK. However, this paper highlights the particular problems facing women in abusive relationships where there is evidence of institutional racism and a more conservative policy making environment. Inequalities that reinforce gender power relations, so common to the private sphere, are mirrored in the public sphere by policies and practices that enable their continuation.

The inequalities existing in government policy and the need to introduce reforms for minoritized women seeking to leave abusive relationships have been identified. Equality monitoring that includes data on ethnicity and nationality in relation to

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<sup>51</sup> Interviews A3 on file with the authors.

<sup>52</sup> Chantler (2006, p. 45) gives another example of such an incident.

<sup>53</sup> Interview A12 on file with the authors.

<sup>54</sup> The paper focuses on the immigration system in the UK but our findings are also relevant in countries that apply similar rules. Unreasonable behavior can form the grounds for separation and divorce in the UK but the eligibility rules for the ‘right to remain’ are much more complex and are outlined later in the paper.

both the offenders and the victims of domestic violence is necessary to show the prevalence of the violence as well as the effectiveness of the measures to prevent it. The application of international human rights standards and greater legal accountability mean that certain groups of immigrant women are now receiving additional support. However, groups of minoritized women remain outside the state's social security net. Where the state is not fulfilling its positive duty to protect women's human rights, CEDAW's recommendations that the UK government review its application of the Destitution Domestic Violence Concession<sup>55</sup> show the significance of international accountability mechanisms.

The state's duties and international obligations also show that individuals do not exist in isolation. They are shaped by their engagement with the local and global environment, with other individuals and with the state. In responding to domestic violence, policy makers must be aware that what goes on behind closed doors is also framed by the structures they impose. As we have shown above, by teasing out the connections between those seeking help and those providing help for domestic violence, it is fundamentally flawed to address the decisions that minoritized women make without addressing the regulatory frameworks of state laws and policies. In this context, CEDAW recently called on States parties, in its 2013 landmark General Recommendation (GR 30), to address the specific risks and particular needs of different groups of women subjected to multiple and intersecting forms of discrimination including women belonging to ethnic minorities (Committee on the Elimination of Discrimination against Women 2013b).

From policy makers to practitioners, minoritized women experienced a range of barriers that compounded their vulnerabilities in leaving an abusive relationship. Where minoritized women's dependency is reinforced by socio-economic policies that accentuate the proprietary behaviour of abusive partners, mediating or tempering intimate violence can be a struggle. By subscribing to traditional patriarchal views on the subordinate role of women in intimate relationships and by holding *laissez-faire* attitudes to intimate partner violence, the structures of social security and immigration policies and the institutional culture through which they are administered continue to undermine, rather than foster, values of autonomy, security, liberty and equality. What we need instead are laws and policies that prioritize these core values in the protection and support provided through political, social and relational networks alongside accountability mechanisms that enforce minoritized women's human rights.

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<sup>55</sup> The Committee recommended that the government, 'Extend the concession under the "no recourse to public funds" policy to all women who are subjected to gender-based violence and exploitation;' (Committee on the Elimination of Discrimination against Women 2013a, para.57(a)).



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