

“Love is not a passport to Sweden”:
Domestic violence against migrant women and the
proliferation of rights’ statuses

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Abstract

This paper investigates how women's right to live free from violence operates in the context of insecure immigration status. The paper is based on qualitative research addressing domestic violence against women with insecure immigration status in England and Sweden, analysed within a human rights theoretical framework. Empirical data was collected through in-depth semi-structured interviews with 31 survivors from 14 different non-EU countries, and 57 professional stakeholders from local, national and international organizations.¹ The paper identifies a tension between human rights and immigration control, present in theory, policy frameworks and migrant women's lived experiences. The paper contends that this tension has led to a proliferation of rights' statuses for migrant women who are exposed to domestic violence. A solution is offered in the form of an expansionist model of human rights whereby presence in a territory is the basis for recognition as a rights-bearing subject.

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Introduction

Violence against women is an endemic global problem of epidemic proportions, requiring urgent action. According to the World Health Organization (WHO), 35% of all women worldwide have experienced physical and/or sexual violence by an intimate partner or sexual violence by someone other than a partner (WHO, 2013). The most pervasive form of violence against women globally is intimate partner violence, which may be physical, sexual, or psychological (Devries et al., 2013). Physical and/or sexual violence by an intimate partner affects almost a third of women worldwide (WHO, 2013). In the European Union (EU), the biggest survey ever conducted on violence against women showed that out of all women who have been in a relationship, 22% have experienced physical and/or sexual violence and 43% have experienced psychological violence by an intimate partner since the age of 15 (EU FRA, 2014). Domestic violence results in illness, disability, poverty and homelessness of women worldwide (Meyersfeld, 2010).

The global reach of violence against women does not mean that all women experience violence to the same extent, in the same way, or with the same consequences. The gender-based vulnerability of women to violence intersects with other axes of inequality. Violence against women has been identified as a particular risk for migrant women (Erez, 2001). Kiwanuka (2010) explains that a “multifaceted interaction of culture, poverty, host country immigration laws and policies, and other contextual factors appear to exacerbate migrant women’s vulnerability to gender-based violence in contexts of migration” (p. 164). Sabates-Wheeler and Feldman (2011) write about the “socio-political vulnerability” of migrant women: the institutional constraints facing migrants, which typically reflect a lack of political commitment from the host government or society. Anitha (2011) also highlights the “particular vulnerability of immigrant women” citing “social isolation, language barriers, lack of awareness about services, and racism on the part of services” (p. 1260) as key reasons. In a review of research on domestic violence against migrant women in major receiving countries Menjivar and Salcido (2002) link vulnerability to migrant women’s lack of options:

The experiences of immigrant women in domestic violence situations are often exacerbated by their specific position as immigrants, including limited host-language skills, lack of access to dignified jobs, uncertain legal statuses, and experiences in their home countries, and thus their alternatives to living with their abusers are very limited (pp. 901-902).

In the context of very limited data, it is an open question whether the heightened vulnerability of women with insecure immigration status leads to higher prevalence of domestic violence (Kelly, 2013). The results of the EU FRA’s 2014 survey on violence against women survey indicate that women who are not citizens of their current country of residence experience somewhat higher rates of physical and/or sexual violence since the age of 15 by partners and non-partners (EU FRA,

2014). The only population-based study to date addressing exposure to intimate partner violence among foreign-born women in Sweden found that this group of women is at increased risk of violence including intimate partner violence (particularly those with low disposable income) compared to Swedish-born women, and that foreign-born women have an increased risk of mortality due to interpersonal violence (Fernbrandt, 2013). Dedicated prevalence studies have not been conducted in the UK and the British Crime Survey data does not include enough detail to enable such analyses (Kelly, 2013). The scarcity of data on the prevalence of domestic violence against women with insecure immigration status residing in England and Sweden is a challenge for scholars, advocates and policy-makers.

While it is very important to document and highlight marginalised women's experiences of violence, this carries the risk of feeding into problematic cultural discourses on violence against women (Thiara, Condon & Schrötle, 2011). Burman (2012) describes the issue as follows:

There is also a common tendency to culturalize violence against immigrant or minority women and relate it to 'others', whether the 'other' is women, men or states. Such othering processes, whereby certain 'cultures' or marginalized groups are stigmatized as 'violent', serve to normalize this violence and hence make it less visible (p. 2).

Phillips (2010) highlights the delicate balance that needs to be met between the recognition of women as active agents rather than "puppets" of cultural forces, and complacency with regard to the potential need for protection. Culture is not an invariable phenomenon, "individuals interact with their culture so that the culture is constantly challenged and redefined" (Kasturirangan, Krishnan & Riger, 2004: p. 319). The approach of this paper is in line with Anitha's (2011) conviction that "Recognising difference among women does not preclude the possibility of a feminist analysis that reflects on the connections and commonalities in women's experiences of oppression" (p. 2), while accounting for the multiplying effect of structural inequalities including gender, race, class and immigration status.

The focus of this paper is on domestic violence against 'women with insecure immigration status' in England and Sweden. Insecure immigration status is defined as as not having the right to live and work in a specified country for an unlimited period, in other words not having citizenship, or permanent residency. In the UK context 'insecure immigration status' is the term used for people who do not have 'Indefinite Leave to Remain' (permanent residency). In Sweden 'insecure immigration status' is not an official term, but is used here to distinguish between having only temporary legal status or being undocumented, and having permanent residency or citizenship. The focus is on non-EU², or 'third-country', citizens with insecure immigration status residing in

² Due to EU free movement principles EU citizens residing in England or Sweden do not have 'insecure status' in the sense that they are not vulnerable to deportation in the same way as non-EU migrants. While not addressing their situation in this study, it should be noted that EU migrants who experience domestic violence while residing in another EU country may also face various migrant-specific difficulties and barriers to protection, for instance language barriers and restricted access to welfare benefits.

England or Sweden, including women on spousal, employment or student visas, asylum seekers, women who have been trafficked, visa ‘overstayers’, and undocumented women. All of these different categories can be identified in the migration journeys of women interviewed for this study. With the context of domestic violence in mind the empirical significance of having insecure immigration status is linked to its inherent uncertainty. Perpetrators can exploit women’s fears of deportation that are derived from her not knowing how long she can stay (Voolma, 2016).

This paper draws on the definition of domestic violence included in the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence:

‘domestic violence’ shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim (Article 3)

Both physical and non-physical forms of domestic violence are included, and perpetrators can be intimate (ex-)partners and/or family members. While survivors’ experiences of abuse by family members and in-laws is a feature of the data in this study, for all but one of the survivors interviewed intimate (ex-)partners were the main or sole perpetrators. Accordingly much of the discussion in this paper centres on domestic violence in the context of an intimate relationship. For most of the women interviewed, abusive intimate partners were permanent residents or citizens of the UK or Sweden. That is to say the perpetrators had a more secure immigration status than the survivors in this study, thus the abuse occurred in a context of power imbalance in relation to immigration status (among other power axes, especially gender).

The two-country design

The two-country design of this research reflects the study’s aim to develop a multi-scalar analysis of the focus problem, including identifying links between different levels of analysis: between international frameworks and trends, national policy and individual lived experiences. As the details of the nexus between domestic violence, immigration control and human rights are different in every national context, gathering data in two countries provides a fuller understanding of the key issues.

The UK and Sweden have both been countries of net migration since the 1950s (MIPEx, 2015a; 2015b). In the UK 3.8% of residents are non-EU citizens and 4% in Sweden (Eurostat, 2014). Foreign-born residents as a whole represent 12.5% of the population in the UK and 15.9% in Sweden (*Ibid.*). England hosts 92% of the UK’s foreign-born population (Migration Observatory, 2014). As the domestic violence service provision systems are different in the four nations of the UK it is coherent to focus on one nation in an international policy comparison and England hosts the biggest share of migrants.

Regarding violence against women statistics the EU Fundamental Rights Agency's 2014 survey showed that 29% of women in the UK and 28% of women in Sweden have experienced physical and/or sexual violence by a current or previous intimate partner since the age of 15 (EU FRA, 2014). In the same survey 46% of women in the UK reported psychological violence, and 51% of women in Sweden by a current or previous intimate partner since the age of 15 (*Ibid.*).

In both countries consecutive governments have proclaimed their commitment to ending violence against women (Government Offices of Sweden, 2015; UK Home Office, 2015a), and they can be considered as leaders in domestic violence service responses in Europe, among just seven other European countries with close to forty years of experience of delivering services to survivors (WAVE, 2014). In such a context where political commitment and service responses for guaranteeing women's right to freedom from domestic violence are well-established, it is pertinent to ask the question: do *all* women have the right to live free from violence?

This paper, based on qualitative interviews with survivors of domestic violence and professional stakeholders, addresses women's right to live free from violence in the context of insecure immigration status. In line with Voolma (2016), this paper links women's right to live free from violence with having access to safe accommodation (physical security) and the means to survive (subsistence). This conception draws on Shue's (1996) theory of 'basic rights' where he posits that physical security and subsistence are necessary background conditions for the enjoyment of any other right. These 'basic rights' are commonly threatened in domestic violence situations (Voolma, 2016), and access to safe accommodation and subsistence support are necessary to ensure survivors can leave violent homes. The point of departure of this paper is that these essential conditions must be guaranteed for all survivors of domestic violence by state welfare systems and legal frameworks, regardless of immigration status.

The core argument of this paper is that the empirical problem of domestic violence against women with insecure immigration status brings to the fore a tension between immigration control and human rights (Benhabib, 2004). This tension can be identified in human rights theory, in the intersection of immigration and welfare policies, and through exploring women's lived experiences of actualising the right to live free from violence in the context of insecure immigration status. I contend that this tension leads to or is connected to a proliferation of human rights' statuses, as described by Nash (2009). These arguments are developed in relation to empirical findings in two case study countries about migrant women's access to the basic rights of physical security and subsistence in domestic violence situations.

The paper will first elucidate the theoretical concepts used here to frame the empirical analysis, second explain the empirical method, and third discuss qualitative data from interviews with survivors and professional stakeholders in combination with an outline of national policy frameworks.

Theoretical framework

Tension between immigration control and human rights

In *The Rights of Others* (2004) Seyla Benhabib identifies a tension between “sovereign self-determination claims on the one hand and adherence to universal human rights principles on the other” (p.2). Benhabib (2004) argues that this is a “constitutive tension at the heart of modern liberal democracies” (p. 2) in so far as they recognise international human rights obligations while simultaneously upholding the legitimacy of territorially-bounded sovereign states. The Weberian definition of sovereignty involves the state having supreme authority in a given territorial area (Weber, 1965). From this perspective control of national borders is central to state sovereignty, and as such Hollifield (2008) observes that international migration can be seen as a direct challenge. Benhabib (2004) highlights that most theories of global justice have failed to acknowledge the global justice issues raised by international migration. Freeman (2011) explains how the tension between human rights and state sovereignty emerged:

International law was traditionally concerned with regulating the relations among states with the primary aim of maintaining international peace. The leading concept of this project was that of *state sovereignty*, which forbade states from interfering with each other’s internal affairs. The UN introduced the concept of human rights into international law without altering the concept of sovereignty (p. 10).

This paper addresses state sovereignty through the lens of immigration control. ‘Immigration control’ usually connotes control at the national border in relation to the type of migrants and how many migrants are allowed to enter the country. This paper is, however, concerned with the rights of migrants once they are already on the territory of another state, guided by the insight that “how ‘we’ treat ‘the other’ goes far beyond what happens at the border” (Dembour & Kelly, 2011: p. 5). Addressing the tension between immigration control and human rights by examining the experiences of women with an insecure immigration status who have suffered domestic violence shifts the focus from national to *internal* borders (Balibar, 2004): regulatory spheres inside national territories which shape the experiences of migrants once they have crossed the border (Bosniak, 2007). As Balibar (2004) compellingly argues in relation to European citizenship:

Sometimes noisily and sometimes sneakily, borders have *changed place*. Whereas traditionally... they should be *at the edge of the territory*, marking the point where it ends, it seems that borders and the institutional practices corresponding to them have been transported *into the middle of political space* (p. 109).

Proliferation of rights' statuses

Is the historically close connection between national citizenship and human rights affecting public policy today? Nash (2009) argues that it is, presenting the uneven application of human rights law in Europe as an illustration:

human rights law ... is still very unevenly applied in Europe... This is especially notable where issues of immigration and security tempt political authorities into sacrificing the rights of unpopular minorities – precisely those groups who are most in need of human rights (p. 1072).

Nash (2009) contends that this uneven application leads to a “proliferation of rights statuses”:

as a result of the uneven application of human rights law combined with existing social and economic inequalities between citizens and non-citizens, [there] is a proliferation of statuses regarding citizenship and human rights rather than an equalization of treatment for citizens and non-citizens (p. 1079).

From Nash's (2009) perspective 'actually existing' cosmopolitan citizenship comprises of a number of status groups, the members of which “enjoy a different package of formal and substantive rights according to their situation as citizens or non-citizens, the way in which states administer human rights, and their access to material and moral resources within that state” (p. 1072). She theorises that these different status groups would include at least the following five: “super-citizens, marginal citizens, quasi-citizens, sub-citizens and un-citizens” (p. 1073). The first two groups consist of ‘full citizens’ of states, quasi-citizens are denizens or long-term residents, sub-citizens are those without independent rights to residence and un-citizens are those with no status, for instance undocumented migrants. These groupings do not wholly map onto the statuses represented among the 31 survivors who participated in the study that this paper is based on, but the categories of sub-citizens and un-citizens are instructive for the focus on women with insecure immigration status.

Nash's (2009) model makes the assumption that individuals belong to one group yet as Oberoi (2010) observes, and as is shown by the survivor interview data of this study, the life-cycle of migration is complex, and individual migrants will often “move into and out of definitional categories throughout his or her migration journey” (p. 231). A clear example of this involves women on spousal visas becoming ‘overstayers’ (and thus being classed as ‘illegal migrants’) as a result of domestic violence (for instance if their abuser refuses to renew their visa). Nevertheless the idea of the proliferation of right statuses is a compelling one, and I employ it to analyse the women's right to live free from violence in the context of insecure immigration status in England and Sweden.

Presence as the right to have rights

If basing rights on citizenship or residency status means that many migrants are excluded, what should rights be based on? Bosniak (2007) observes that “the rights and recognition enjoyed by immigrants are usually understood to derive from either their formal status under law or their territorial presence” (p. 390). She characterises the status-based conception as the conviction that:

a person’s rights are determined by the specific legal category she occupies in the country’s immigration and nationality regime. The status of citizenship is understood to represent membership’s culmination — the moment the individual is entitled to enjoy full rights and entitlements and duties — whereas alienage status of various kinds entails lesser rights (*Ibid.*).

This conception is in line with Nash’s (2009) assessment of current practices in Europe involving different sets of rights for different groups of people depending on citizenship/ immigration status. Bosniak (2008) describes citizenship as the “normative benchmark” (p. 2) with “various locations short of citizenship are accorded incremental inclusion” (*Ibid.*). The idea is that “You are more entitled to rights and recognition as a lawful permanent resident alien than a visiting student or certainly than an irregular immigrant or a person detained at the border” (*Ibid.*).

By contrast Bosniak’s (2007) notion of ‘ethical territoriality’ reflects the “conviction that rights and recognition should extend to all persons who are territorially present within the geographical space of a national state by virtue of that presence” (pp. 389-390). Bosniak (2007) outlines this territorial model of rights and recognition as follows:

the territorial conception of rights for immigrants treats a person’s geographical presence itself as a sufficient basis for core aspects of membership. Instead of focusing on assigned legal categories, the territorial conception stresses the normative significance of the physical fact of presence in the national space. This presence is not necessarily tied to, or preceded by, political consent, although it may be. The territorial conception repudiates the notion of differential levels of inclusion, regarding the maintenance of partial membership statuses as illegitimate under liberal and democratic principles (p. 391).

The idea is that a person’s presence in the geographical territory of the state triggers the obligation to treat them as “fully in” (Bosniak, 2008: p. 3). Bosniak (2007) defends ethical territoriality on grounds of egalitarian and anti-caste commitments:

ethical territoriality appropriately insists on treating membership as a matter of social fact rather than as a legal formality. And by opposing the imposition of less-than-complete-membership on classes of residents, ethical territoriality honors the egalitarian and anti-caste commitments to which liberal constitutionalism purports to aspire (p. 392).

Addressing the rights of women to freedom from domestic violence as a social fact rather than a legal formality leads to the decoupling of access to domestic violence services from immigration

status. The approach of this paper employs Bosniak's (2007, 2008) territorial vision of rights and recognition as a yardstick. Human rights cannot be based on citizenship as this means all non-citizens are second-class humans. Rights cannot be based on immigration status or else differentiation is the guiding principle, contra the vision of human rights. If rights are based on residence, undocumented migrants are excluded. This is not an acceptable omission from a human rights perspective. Bosniak (2008) writes of undocumented (irregular) migrants: "irregular immigrants are [here] and hereness alone places them within the domain of rights-bearing subjects for many purposes. Being here is the right to have rights" (p. 2).

These three theoretical concepts of a tension between immigration control and human rights, a proliferation of rights' statuses, and presence as the appropriate basis for rights, are employed in this paper to assess the empirical realities for women with insecure immigration status in abusive relationships in England and Sweden.

Empirical method

High ethical standards are crucial for research on violence against women (Fontes, 2004; Jaquier, Johnson & Fisher, 2011) and the research protocol gained ethical approval from the University of Cambridge Department of Geography (UK) ethics board and the Lund (Sweden) regional ethics board.

Qualitative data collection involved semi-structured interviews with women who had experienced domestic violence while having insecure immigration status, and professional stakeholders working in this area. The sample consisted of 88 individuals, namely 31 survivors and 57 professional stakeholders: 18 survivors and 23 stakeholders in Sweden, 13 survivors and 22 stakeholders in England and 11 thematic experts from European and international organizations.

The sample of survivors encompassed women who had experienced domestic violence while having insecure immigration status in England or Sweden, were between the ages of 22 and 48, from 14 different non-EU countries: Afghanistan, Bolivia, Chile, Ecuador, Iran, Iraq, Morocco, Nigeria, Pakistan, Syria, Tunisia, Turkey, Yemen and Zimbabwe. Two thirds of the women interviewed had at least one child. Of the 18 women I interviewed in Sweden, 13 had migrated for marriage, two to seek asylum, two to find employment. Of the 13 survivors I interviewed in England eight had migrated for marriage, one to seek asylum, one to look for work, one to join her husband who had refugee status, one woman came to be closer to her daughter who lived in England, and one woman was trafficked to England as a child for purposes of sexual exploitation. I worked closely with specialist support services to arrange interviews with survivor participants - these organizations acted as gatekeepers to access and helped ensure that the questions posed to individual women were appropriate and sensitive.

The professional stakeholders interviewed for this study were identified as experts or stakeholders in relation to the issue of domestic violence against women with insecure immigration status. They worked in a number of different types of organizations: frontline and umbrella non-governmental organizations, local and national government or statutory agencies, political parties, the legal sector, and European and international organizations. I used a purposive sampling method (Tansey, 2007) to identify a core set of stakeholders by virtue of their roles in key organizations, and then initiated a snowball sampling method to reach other important stakeholders.

The samples of survivors and professional stakeholders were not representative samples, but were suitable for achieving the aim of this data collection, namely to explore the experiences of survivors and the perspectives of professional stakeholders, for identifying common themes for further analysis. Interviewing survivors, specialist support service providers who had worked with many survivors with insecure status, other country-based stakeholders and experts from international organizations enabled the triangulation of information from a number of perspectives about the nexus between immigration control and human rights, and more specifically survivors' right to live free from violence in the context of insecure immigration status.

The semi-structured interviews lasted approximately 40-50 minutes. I worked with interpreters for a third of the survivor interviews. The interpreters were professional support service providers themselves or approved by the gatekeeping organizations. I asked women about their background, migration journey and immigration status, the dynamics of abuse they experienced, pathways out of abusive homes, their current situation, and their future prospects.

Stakeholder interviews covered the same broad topics, but also reflected the individuals' particular roles and expertise. Specialist support service providers who work directly with survivors of domestic violence with insecure immigration status (n=19) were asked about trends in survivors pathways out of abusive relationships in the context of uncertain status, and their perspectives on immigration, domestic violence and welfare laws and policies. Interviews with national political/legal stakeholders (n=13) focused on national legal and policy frameworks and the key challenges in addressing the issue of violence against migrant women. Representatives of political parties (n=14) were asked about their parties' policies, and the background for these policies including the public and political discourse in this area. Stakeholders working for European or international organizations (n=11) were asked about the strengths and gaps of the existing European and international legal and institutional frameworks.

Data analysis involved a full transcription of audio recordings of interviews (if consent was given for recording). I used thematic analysis, as described by Braun and Clarke (2006), to analyze the interview transcripts. This involved first taking notes about content and initial interpretive ideas, then assigning codes to meaningful aspects of the data, next sifting through codes and creating themes at different levels (themes, sub-themes and main themes), and finally discarding some data.

Results and discussion

This section will offer a multi-scalar perspective on women's right to live free from violence in the context of insecure immigration status. The analysis will combine information about legal and policy frameworks with themes from qualitative interviews. The first part will focus on European and international professional stakeholders' perspectives on the tension between immigration control and human rights, which was a prominent theme in this set of interviews. This will give a sense of the context internationally in which to situate the data from England and Sweden. The second part will address national-level law and policy in combination with stakeholders' perspectives on these frameworks and how they affect women's right to live free from violence in the context of insecure status. The third part will outline a case study of a survivor's story and use this as a basis for individual-level analysis of actualising women's human rights.

Tension between immigration control and human rights

Experts from European and international organizations repeatedly alluded to a tension between immigration control and human rights in relation to public and political discourse and the links between rhetoric and policy. A migration specialist at UN Women described the crux of the issue as follows:

Migration is a very politically sensitive issue. And the markers of that discourse have nothing to do with human rights... It's national sovereignty, national security, law and order, morality... And when you have that perspective, then implementing things from a rights framework doesn't really happen

Migration specialist, UN Women, New York [P75]

This participant went on to argue that the tension exists in national immigration legislation and acts as a barrier to the implementation of human rights standards.

national [immigration] legislation is at variance with human rights standards because the perspective that you have is not essentially a human rights perspective. It is national sovereignty, national security, which oftentimes goes overboard, looking at these people as criminals... So there is a conflict or a tension between national sovereignty and the global movement of people and protection of people's rights across borders... that's one tension which leads to lack of implementation

Migration specialist, UN Women, New York [P75]

The idea expressed in this quote, that the discourse on migration which lacks a human rights perspective *leads to* the lack of implementation is noteworthy. It imparts that there is a strong connection between how migrants are perceived, how migrants are talked about, and policy outcomes which impact on migrants. In this way, anti-immigrant rhetoric can have concrete effects

on individual migrants' experiences. Yet stakeholders suggested that migrants' rights are not perceived to be a priority for international action:

It takes something really, really bad for anybody to mention anything on the abuse of migrants... it took Lampedusa in Italy before anybody said anything on migrants.

Member, European Economic and Social Committee, Brussels [P82]

This quote evokes a question relating to the response to the on-going refugee/migration crisis in the Mediterranean, where political will of European nations to work together and find a sustainable solution while saving the lives of as many people as possible, is still lacking. From a human rights perspective it is unjustified that nationality or immigration status would matter in a context where thousands are drowning. Yet the point made repeatedly by stakeholders is that migrants and migration are not generally addressed from a human rights perspective.

As a striking angle of the notion of a tension between immigration control and human rights, a staff member of the Platform for International Co-operation on Undocumented Migrants argued that governments harness the threat of violence against women as a tool of immigration control:

it's a policy-fostered type of destitution... for a woman, when we strip a woman of her right to go to the police, we strip her of her right to go to a women's shelter... we're in fact harnessing this threat, because then she'll go home, then others won't come. This is kind of the logic... it's harnessing the risk of the threat of violence against women as a tool of immigration control.

Staff member, Platform for International Co-operation on Undocumented Migrants, Brussels [P83]

This quote evokes Sabates-Wheeler and Feldman's (2011) argument that governments use welfare systems as immigration control instruments. It brings to mind the false choice between continuing violence and destitution and/or deportation that many women with insecure immigration status who have experienced domestic violence are faced with (e.g. Voolma, 2016). The next section on policy frameworks in England and Sweden explains how this false choice is created in the interplay between welfare and immigration policy.

Legality as a basis for rights

I suppose human rights legislation wasn't written with migrants in mind in particular

Policy officer, local government-led migration partnership, Yorkshire [P39]

Analysis of welfare and immigration policies in England and Sweden, and thematic analysis of national professional stakeholder interviews, reveal that in both countries a distinction is made between documented and undocumented immigrants with regard to guaranteeing protection from violence.

In Sweden, survivors of domestic violence who are legally resident in a municipality have access to support services to enable them to leave domestic violence situations, because access to welfare state provisions is based on residence as opposed to a specific immigration status. The Swedish Social Services Act 2001 stipulates that local government must provide support to women and children who have experienced violence. As I have argued elsewhere (see Voolma, 2016), while this means that most women who experience violence in Sweden do have access to basic services to enable them to leave violent relationships, undocumented migrants are not protected. Undocumented women are present in Sweden, but not legally resident, thus the benefits system does not cover them and most shelters are not able to house survivors from this group (Voolma, 2016).

In England, not only do undocumented migrants not have access to essential domestic violence services, a trend of criminalising undocumented migrants is ostensible, for instance in the 2014 UK Immigration Act. This Act is aimed at tackling ‘illegal immigration’, including restricting undocumented migrants’ access to the criminal justice system, to housing and to health care.

A number of stakeholders in England expressed a conviction that the Immigration Act 2014 will have broader effects, not only on undocumented migrants, but also on “all sorts of other migrants as well because they’re not going to understand the nuances of the Immigration Bill” [P39]. A Policy Officer at a local authority-led regional migration partnership in Yorkshire explained these effects:

If you’re a new refugee you might fear that this is going to impact you and it might stop you from registering with your GP or apply for social housing that you are entitled to because you just feel this wave of hostility towards you that you see in the press and restrictions on your access to things

Policy Officer, local authority-led regional migration partnership, Yorkshire [P39]

Basic rights on probation

Apart from the broad legal-‘illegal’ distinction, a specific policy issue that is common in England and Sweden with survivors of domestic violence with insecure status is mind is the spousal visa probationary period.³ Women who enter the UK or Sweden on spousal visas in order to join their spouses or fiancés (in Sweden unmarried partners are also eligible, but the relationship must be ‘serious’) are subject to a probationary period of residency. This period is five years in the UK and two years in Sweden, and if the relationship breaks down in this period they lose their right to remain and become subject to deportation.

An exemption to the deportation rule exists in both countries for survivors of domestic violence, stipulated by the 2002 UK Domestic Violence Rule and the 2005 Swedish Domestic Violence Rule. These exemption rules enable survivors of domestic violence to apply for an independent residence

³ See Voolma (2016) for a fuller discussion.

permit during the probationary period - a crucial correction to draconian immigration laws. However, the burden of proof for survivors is too high in Sweden with survivors needing to provide evidence of ‘serious enough and repeated violence’ and a ‘substantial relationship duration’ (Burman, 2012). Furthermore, even in the UK where the evidentiary requirements are not as high, qualitative research shows that many women do not know about the exception and remain with their abusive partners due to fear of deportation (Voolma, 2016). The quote in the title of this paper (“Love is not a passport to Sweden”) is from my interview with a representative of the Swedish National Organisation for Women’s Shelters and Young Women’s Shelters who was quoting a former Swedish Minister justifying the existence of the spousal visa probationary period. The concern that spousal visas should not be used purely for the purpose of obtaining a residence permit/citizenship ought not to obscure the real danger that women experiencing domestic violence may be in, a situation that is exacerbated if women feel trapped by the threat of deportation built into the spousal visa probationary period.

Proliferation of rights’ statuses

It is the No Recourse to Public Funding (“NRPF”) requirement applied to people with insecure immigration status in the UK that evokes Nash’s (2009) notion of a proliferation of rights’ statuses more extensively. Survivors of domestic violence subject to the NRPF rule have no entitlement to most welfare benefits, tax credits or housing assistance provisions that are state-funded. As domestic violence services in the UK are financed through public funds, survivors with insecure status do not have access to these. The NRPF rule applies to all individuals with insecure immigration status, including people on spousal visas, student visas, work visas, refused asylum seekers and visa ‘over-stayers’.

After a two decade campaign led by Southall Black Sisters, a specialist non-profit organization working to support Asian and African-Caribbean women survivors of gender-based violence, the UK government introduced the Destitution Domestic Violence Concession (“DDV Concession”) in 2012, to enable migrant spouses subject to the spousal visa probationary period with NRPF the right to access benefits and social housing for three months while they apply for permanent residency. The DDV Concession is regarded as a significant development and functioning well by specialist support service providers (Voolma, 2016), but as it only applies to survivors on spousal visas, other survivors with insecure immigration status are still excluded from protection and support. A survey conducted by the Campaign to Abolish No Recourse to Public Funds showed that during the three month period November 2012 - January 2013, 64% of survivors of domestic violence with an insecure immigration status (n=242) approaching specialist services for support did not qualify for the DDV Concession (Southall Black Sisters, 2013).⁴

⁴ In 2013, the United Nations Committee on the Elimination of Discrimination against Women recommended that the UK should “Extend the concession to the ‘no recourse to the public funds’ policy to all women who are subjected to gender based violence and exploitation” (CEDAW, 2013: p. 10).

The difficulties of supporting survivors with insecure immigration status subject to the NRPF requirement was a main theme in interviews with support service staff in England. Staff at a specialist (with expertise in supporting migrant and ethnic minority (“MEM”) women) domestic violence support service in Yorkshire talked about not being able to accept to the refuge survivors who do not have recourse to housing benefit and what the options might be for these women:

Participant A: to come here it’s accommodation-based and somebody has to pay their rent. So unless someone agrees to pay their rent, we can’t take them in terms of our service provision...

Participant B: Sometimes you’ve got other options when maybe they can come out of the (domestic violence) situation and maybe go to another family member’s house or they’ve got some sort of security. Because I’m working with someone now who’s left the domestic violence but she’s living at someone’s house.

Staff group interview, specialist MEM domestic violence support service, Yorkshire [P37]

Nash’s (2009) prognosis that “in practice there are quite different sets of rights for different persons of different status” (p. 1080) strikes as a compelling assessment of the situation regarding women’s access to domestic violence services to enable them to leave violent relationships in England. While in Sweden the main distinction in terms of access to safe accommodation and subsistence support is between documented and undocumented migrants, in England, the proliferation of rights’ statuses for women survivors of violence is more elaborate and includes: citizens and permanent residents who have access to services, survivors on spousal visas who have access if they can prove they are eligible under the Domestic Violence Rule, women with insecure status on other visas who are not eligible for services, and undocumented survivors who not only are not eligible for services, but are criminalized and under constant threat of deportation.

An Advocacy Officer at a housing and support service for vulnerable women in London discussed how restrictive policy goes hand-in-hand with problem-driven public and political rhetoric on migrants in the UK:

it just seems like these people have just violated some rules, rather than that they have a right, just as we do, to basic kind of safety and security. I think [human rights and immigration] are obviously intrinsically linked. I think the problem is that people... try and blur that connection to make it easier for certain political agendas... even though your husband has been abusively violent to you, you might even have children here, you still have to prove that you have a right to remain in this country

Advice and Advocacy Officer, housing and support service for vulnerable women, London [P43]

The following survivor case study reflects the proliferation of rights’ statuses from an individual perspective, and introduces another theme to be considered in relation to the tension between immigration control and human rights: the fluidity of immigration statuses.

A survivor's story

When Nisan⁵ (30, Sweden - *Turkey* [P25]) was 15 and still living in Turkey, she was kidnapped and raped by her then boyfriend and his friends. Her father's abuse towards her, which had started in early childhood, escalated. Her brother was living in Sweden at that time and her mother told her brother that either her father will kill her or she will kill herself. Her brother arranged a visit visa for Nisan and her mother took her to Sweden, telling her they would be in Sweden for three months until everything got back to normal and then they would return to Turkey. In reality her mother left her in Sweden with no way to return.

Nisan's visit visa was valid for three months and as her family did not renew her visa after that, she continued living in Sweden undocumented. After 18 months someone reported her so the police came to her sister's house to deport her, but she was not there.

When she had been in Sweden for a few years, Nisan's uncle who was a lawyer advised her to tell her story to the police and apply for residency, but lie about when she had entered Sweden. She applied as an asylum seeker, but the police wanted proof of when she came to Sweden. She did not get an answer about her status until she was 20 at which point she was refused. Her only option was to go back to Turkey or wait four years and apply again (at the time she had already been in Sweden for five years). She waited four years, without papers.

Within those four years a lot happened, she got in contact with a women's shelter, she got all her the papers from Turkey from the police there, and the hospital. She went to the migration board again, she told them the truth. But the migration board did not believe she had been in Sweden for ten years.

They said, "you are lying, you haven't been here for ten years, there's nothing proving that... according to law, you are not here"... If you're paperless you are not getting any help, not even from the migration board

Nisan's family then encouraged her to marry a man from Afghanistan she had been seeing. He was a Swedish citizen and Nisan eventually got permanent residency on the basis of this marriage. However, the relationship became abusive: "He was sick in the head he would threaten me and do all this sick stuff and we weren't even married anymore". Her husband raped her and she went to hospital where she was encouraged to go to a women's shelter.

At the time of the interview Nisan was going to school, living in a student flat during term-time, and staying with a friend during the holidays. She was hoping to become a Swedish citizen in a few months' time. Based on having moved through a number of migrant categories, from undocumented

⁵ Not her real name

to asylum seeker, back to undocumented, to spousal visa holder to permanent residency and now waiting for citizenship, Nisan talked about ‘degrees’ of rights for different categories of people:

It’s like degrees, if you are paperless you don’t have any right to get anything. If you are asylum seeker you would get a little help but not that much either because they are not sure which city you’ll stay in. If you have permanent residency, you can get more help, but it takes a lot of time.

The fluidity of migration categories

The last quote in Nisan’s case study, which discusses the ‘degrees’ of rights for different categories of migrant survivors of violence, evokes Nash’s (2009) concept of the proliferation of rights statuses. Nisan’s experiences also highlight the fluidity of migration categories. The labels of ‘temporary visitor’, ‘undocumented migrant’, ‘asylum seeker’, ‘failed asylum seeker’, ‘spousal visa holder’ and ‘permanent resident’ could all be used to describe Nisan’s status at different points in her life in Sweden. These categories do not adequately reflect the experiential side of Nisan’s precarious journey to permanent residence. Static labels conceal complexity of lived experience and the reasons for entering and moving out of different migration categories. In public and political discourse migrants are often described as belonging to one migrant group or label, or perhaps two (e.g. asylum-seeker and then refugee) - the empirical fluidity of migration categories, and the potential that the same person could move through several, even six, labels as Nisan did, is not part of policy discussions.

Basing rights on immigration status is thus problematic partly because this approach assumes that this status is ‘static’, and also that it is ‘deserved’. For instance, curtailing the rights of undocumented migrants may be based on an assumption that these individuals have deliberately defied the legal system and thus made a conscious choice to step outside of the status of a rights-bearing subject. In reality, a survivor of domestic violence may, as a part of the abuse, not be in control of her travel documents and may become an ‘overstayer’, and thus, ‘illegal’ if the perpetrator refuses to renew her visa. At least seven survivors interviewed for this study were undocumented or ‘overstayers’ at some point during their stay in England or Sweden. A Policy Officer at a local authority-led regional migration partnership in Yorkshire revealed that most ‘illegal’ immigrants are in fact people who have overstayed their visa for one reason or another:

One of the things that we do point out in our trainings actually that changes people’s perceptions of what an illegal, if you like, immigrant is. Because, it’s a perception that it’s just people coming in through Calais or undocumented in lorries, that kind of thing. And actually the majority of people who are classed as illegal have just simply over-stayed their visa and not got their papers in order.

Policy Officer, local authority-led regional migration partnership, Yorkshire [P39]

She confirmed that migrants change statuses often and that it is easy to become an ‘overstayer’.

Migrants... well they change statuses all the time as well. It's very easy to become an overstayer, for example. And slipping into that category suddenly changes your service access and people are worried about declaring what their status is.

Policy Officer, local authority-led regional migration partnership, Yorkshire [P39]

The following extract from my interview with a Migration Adviser at the UN Office of the High Commissioner for Human Rights elucidates the problems with basing legal protection on migrant categories:

when applying legal protection on the basis of categories we should be aware that no longer if they ever were are these categories enough or mutually exclusive... A woman could be smuggled, trafficked, an asylum seeker and an economic migrant at various points in the journey and sometimes at the same time. Categorisation does not allow for the fluidity of contemporary migration patterns... what you are doing is setting up a hierarchy of vulnerability and that's something that the human rights framework does not do

Migration Adviser, UN Office of the High Commissioner for Human Rights, Geneva [P73]

This quote provides a compelling critique of status-based conception of rights. Recognising that migrants commonly move between different immigrant categories, and that an individual migrant becoming 'illegal' could be the result of victimisation rather than a deliberate and conscious decision to disobey the law, problematises basing rights on immigration status and brings to mind the unsettling thought expressed by Bunch (1995) in relation to women, that "as long as any group can be denied its humanity, we are all vulnerable to human rights abuse" (p. 12).

Temporary assistance based on presence?

But can we reasonably expect states to protect and support all survivors of domestic violence on their territory, thus basing rights on presence as proposed by Bosniak's (2008) conception of 'ethical territoriality'? The Director of a UK national violence against women charity based in London shared a perspective which can be used to start to tackle this question:

Somebody who has chosen Britain as a place where they wish to come and invest their hard-earned income in order to improve their education, I'm not expecting them not to have a relationship when they're here, and I'm certainly not going to hold them responsible if they're in a relationship and their partner is abusive. And I see no reason whatsoever why it isn't possible to provide, even in those circumstances, some temporary assistance that allows them a breathing space to get safe. I'm not necessarily saying if you come here on a student visa you should end up getting leave to remain in this country on a permanent basis...we're constantly told that we're living in a globalised world, but only some bits of it appear to be global and we really need to start re-thinking how we frame social policy in a globalised economy

Director, national violence against women charity, London [P32]

The idea here is that it is not out of the question to expect migrant women of different statuses to be afforded access to assistance to enable them to leave abusive relationships. It is noteworthy that this stakeholder emphasises *temporary* assistance and makes a clear distinction between providing assistance to survivors of violence and granting permanent residence to anyone who is exposed to domestic violence in the UK. Additionally this interviewee's insistence that it is irrational to expect migrants to somehow avoid being exposed to domestic violence highlights the problematical justification the Home Office offers for the existence of the NRPF policy, that "migrants coming to the UK should be able to provide for themselves financially without relying on benefits from the state" (UK Home Office, 2015b). While it may be tenable to expect migrants with insecure status not to *plan* to rely on benefits, it is not reasonable, as the interview quote suggests, to expect migrants to somehow avoid being in need of temporary assistance as a result of domestic violence. In line with the emphasis by this interviewee on the need to re-think framing social policy in a globalised economy, it can be said that the issue of domestic violence against insecure immigration status provides a cogent illustration of the need for social policy to be re-framed in the context of international migration trends.

Conclusion

A tension between immigration control and human rights is clearly ostensible in national policy approaches which tie basic rights to immigration status. The legal-'illegal' distinction and the proliferation of rights' statuses identifiable in Sweden and England with regard to migrant women's access to basic services of safe accommodation and subsistence support are reflective of the aim of immigration control being prioritised over human rights. The findings in this paper about the fluidity of migration categories suggest that status-based systems of rights' provision cannot guarantee inclusive access to women's right to live free from violence. Basic rights need to be based on *presence* as opposed to residence (Sweden) or permanent residence/citizenship (England).

It is not unreasonable to expect EU states to provide time-limited safe accommodation and financial support to all survivors of domestic violence on their territory who need it. Especially considering that both the UK and Sweden have strong welfare states and well-established domestic violence support service systems, the gaps in the response to a particularly vulnerable group of survivors of domestic violence are not acceptable. Domestic violence services are not a matter of charity: they are essential to 'basic rights' (Shue, 1996), and thus must be decoupled from immigration status. The data points to the following policy recommendations for the the two case study countries:

England

- For England and the UK, the data points to the need for the abolition of the No Recourse to Public Funding (NRPF) requirement for people with insecure immigration status, which presents survivors with a false choice between continuing violence and destitution. As this will take time, in the interim, the Destitution Domestic Violence Concession should be extended beyond spousal

visa holders to all survivors of domestic violence subject to NRPF. The final step before the eradication of NRPF could be an exemption for all survivors of domestic violence, regardless of immigration status, from the NRPF requirement.⁶

- The findings also call for the abolition of the spousal visa probationary period, which prevents women from leaving abusive relationships for fear of deportation.

Sweden

- Findings in relation to Sweden also call for the removal of the spousal visa probationary period. In the interim, the criteria for the protective rule, which aims to enable women on spousal visas to leave violent relationships, must be reformed. Evidence from the claimant that she and/or her children have been subjected to domestic violence should be sufficient.
- The findings concerning undocumented women in Sweden highlight the need for reform to enable survivors regardless of immigration status to access support services without fear of apprehension. This could involve earmarked funding to shelters for supporting undocumented survivors, and a guarantee of non-disclosure to immigration authorities on behalf of services.

The findings discussed in this paper highlight the need to reconcile the aim of human rights with the reality of international migration dynamics. In the current political context of anti-immigrant sentiment sweeping Europe, and panic about how many (or rather, how few) migrants and refugees to ‘let in’, we must not lose sight of what happens to migrants who are already ‘here’. As Bosniak (2008) expressed concisely: “Being here is the right to have rights” (p. 2).

⁶ The U.S., Canada, Denmark and Austria have all introduced exemptions for survivors of domestic violence from NRPF requirements (Siddiqui, 2013).

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