LIBERTY'S SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON TORTURE ON DOMESTIC ABUSE IN THE UK

MAY 2019
ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at libertyhumanrights.org.uk/policy

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INTRODUCTION

1. Liberty welcomes this opportunity to contribute to the UN Special Rapporteur on Torture’s (SRT) report on domestic abuse. This is a particularly pertinent issue for Liberty, as in January 2019 the UK Government published its draft Domestic Abuse Bill – a new piece of legislation that aims to ‘transform’ the response to domestic abuse across the country. However, Liberty has a number of significant concerns about the human-rights compliance of this proposed legislation. Due to its narrow scope, the Bill represents a missed opportunity and will continue to fail thousands of survivors of domestic abuse across the country.

2. The SRT questionnaire focuses on: (1) the prevalence and root-causes of domestic violence, (2) the relevance of the prohibition of torture and ill-treatment, and (3) best practice and recommendations. In this submission, we hope to highlight how laws, policy and practices in the UK both leave survivors at risk of cruel, inhuman or degrading treatment or punishment, and even perpetuate cycles of abuse. We will include associated recommendations throughout this submission – recommendations that we believe will ensure compliance with domestic and international human rights standards. Liberty would welcome any endorsements in the SRT’s report that speak to these concerns, as we continue to advocate for better protections in the UK’s draft Domestic Abuse Bill.

3. Therefore, in this submission, Liberty will focus on two key areas to outline the UK Government’s long-standing failure to comply with our obligations under human rights law and recommendations that would remedy these shortfalls. First, inadequate protections afforded to migrant survivors of abuse perpetuate a discriminatory system of safety in the UK, and second, reforms to the justice system are insufficient and fail to provide survivors with the access to safety, security and support they need.

THE HUMAN RIGHTS FRAMEWORK

4. Domestic abuse is one of the UK’s most pressing and devastating human rights issues. It affects thousands of people across the country every day. For the year ending March 2017, the Office for National Statistics estimated that 1.9 million adults had experienced domestic abuse – approximately 1.2 million were female.¹

These acts of violence and abuse have a devastating impact on the lives of survivors and their children.

5. Domestic abuse violates survivors’ rights to be free from torture, inhuman and degrading treatment or punishment. In the UK, these rights are protected by – the European Convention on Human Rights (ECHR), as conferred into domestic law by the Human Rights Act 1998, the Convention for the Elimination of Discrimination Against Women (CEDAW), the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). It is worth noting that while the UK is currently only signatory to the Istanbul Convention, the Government has made repeated commitments since 2017 that the proposed Domestic Abuse Bill will finally ratify this ‘gold standard’ legal instrument. However, as it stands the UK fails to comply with these core legal instruments with respect to protecting survivors of domestic abuse in a number of ways, which are outlined in full below.

HIERARCHIES OF SAFETY FOR MIGRANT SURVIVORS IN THE UK

SURVIVORS LIVING IN A ‘HOSTILE ENVIRONMENT’

6. The UK Government’s ‘hostile environment’ has prioritised immigration enforcement over the need to provide safety and security to survivors of domestic abuse. Invasive data-sharing agreements between trusted public services and Immigration Enforcement prevent survivors with insecure immigration status from accessing the services they need, as they often fear reporting crimes due to the real risk of detention or deportation. We are particularly concerned by the police’s routine referral of victims of crime to the Home Office – considering 60 per cent of police forces admitted that they do so. What is especially harrowing is the fact that victims of domestic abuse and other serious crimes may even be considered ‘low-hanging fruit’ –

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4 For further information about the ‘hostile environment’, please see Liberty’s ‘Guide to the Hostile Environment - the border controls dividing our communities and how we can bring them down’, May 2019.
5 For further information, please see Liberty’s ‘Care Don’t Share’ report, December 2018.
6 Liberty has also submitted the first police super-complaint with Southall Black Sisters, regarding data-sharing between the police and immigration enforcement. The super-complaint contains a wealth of evidence, documenting cases where survivors have been subject to arrest and detention, instead of having crimes committed against them properly investigated. It also outlines the substantive human rights concerns around these data sharing practices. The full super-complaint can be accessed publicly here.
as vulnerable people are seen as easy marks to meet the Government’s removal targets.\(^8\)

a. In one case, a survivor of rape – who was five months pregnant at the time – reported her ordeal to the police. Although they initially took her to a sexual assault centre, she was subsequently arrested while in these premises and taken into custody.\(^9\) As a result of the hostile environment, this type of dehumanising treatment has unfortunately become all too common for migrant survivors of domestic abuse. In another case, a survivor who came to the UK with her British citizen partner was regularly physically abused by him and treated like a slave. When a member of the public who witnessed the abuse reported it to the police, the survivor was taken to a hospital due to the severity of her injuries then transferred to a hostel, where she was later arrested and sent to Yarl’s Wood detention centre to be deported.\(^10\)

7. Perpetrators of abuse also often use these hostile environment measures as a tool of coercive control, by threatening to report victims to the Home Office if they go to the police with a complaint, or by suggesting the victim is entirely dependent on him for her residency in the UK. In some cases, a woman’s vital documentation and paperwork is also kept by the perpetrator. This leaves survivors fleeing violence in an impossible position – where they are forced to choose between detention/deportation, destitution or staying with their abuser. As the End Violence Against Women Coalition (EVAW) argues; “it is essential immigration policies are designed so they can’t be used as a weapon by abusers or as an excuse by authorities not to help women or take action.”\(^11\)

a. In one case, a survivor who left her abusive husband found out that he had been lying about managing her immigration paperwork, and as a result she had overstayed her visa. She had a real fear of detention or deportation – particularly as a victim of Female Genital Mutilation who was terrified her daughters would be at risk of being cut if they were sent back to Nigeria.\(^12\) The hostile environment has left her in a state of limbo, uncertainty and at very high risk of further abuse.

8. Under s.6 of the Human Rights Act 1998, public bodies have a statutory duty to respect individual human rights. Therefore, statutory agencies’ practices must uphold their obligations to keep all survivors safe from violence, and place survivors’ safety as paramount to immigration control. Failure to do so risks breaching victims’ rights under

\(^11\) End Violence Against Women Coalition, Women Living in a Hostile Environment, Personal Stories.'
Articles 2, 3, 4 and 8 ECHR. Further, the UK must comply with positive obligations under ECHR – namely to take action in response to harm, including systemic duties, operational duties and investigative duties. This is cemented by legal precedent in the European Court of Human Rights (EChTR), which reinforces states’ and state actors’ obligations to protect victims prevent harm and provide appropriate remedies for those who escape violence. Similarly, this duty to investigate is protected by Article 3 of the Human Rights Act 1998, as confirmed in the UK Supreme Court case of Commissioner of Police of the Metropolis v DSD and another [2018] UKSC 11. Therefore, by failing to properly investigate crimes committed by perpetrators of domestic abuse – and instead prioritising immigration control – the Government is in breach of its human rights obligations to protect survivors and prevent serious violence, including domestic abuse.

9. The Government’s ‘hostile environment’ policies also contravene our obligations under international human rights instruments – primarily CEDAW and associated recommendations made by the Committee. The CEDAW Committee updated its General Recommendation 35 on gender-based violence in 2017, and calls on states to repeal “...restrictive immigration laws that discourage women, including migrant domestic workers, from reporting this violence...” and in its most recent report examining the UK, the Committee also recommended that, “asylum-seeking women, migrants and women with insecure immigration status are able to seek effective protection and support services without fear of having their immigration status reported to authorities...”. Further, Article 5(1) of the Istanbul Convention states that “Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation”, and Article 7 of the Istanbul Convention calls for all Parties to “place the rights of the victim at the centre of all measures”. Yet evidence shows that the ‘hostile environment’ flagrantly breaches these human rights standards, as immigration enforcement actions against survivors of domestic abuse often result in arrests, detention and/or deportation – in violation of survivors’ rights to be protected from violence, to report crimes without fear, and ultimately be free from inhuman or degrading treatment or punishment.

13 In Osman v United Kingdom [1998] ECtHR 101, the case established a positive obligation upon the State to prevent loss of life where the authorities ‘knew or ought to have known’ of a real and immediate risk to the life of a person from criminal acts of another, and failed to take measures that could reasonably have avoided that risk. MC v Bulgaria, Application No. 39272/08 [2003] ECHR 646 found that there were breaches of Article 3 and 8 arising from investigative and prosecutorial failures as a result of the state’s actions in response to the rape of a 14 year old girl by two men. Similarly, in Opuz v Turkey, Application No. 33401/02 ECHR [2009] at para 176, EChTR found Turkey was in violation of its obligations to protect victims of domestic violence, and for the first time held that gender-based violence is a form of discrimination under ECHR. The violation of Article 3 was a result of the State authorities’ failure to take protective measures in the form of effective deterrence against serious breaches of the applicant’s personal integrity by her husband.


10. In order to comply with our domestic and international human rights obligations, Liberty is calling on the UK Government to legislate for safe-reporting mechanisms through the Domestic Abuse Bill, including an impenetrable ‘firewall’\textsuperscript{16} between vital public services and the Home Office, so that \textit{all} survivors can safely report abuse to the police, social services, health professionals and others without fear of immigration enforcement. Models of best practice on ‘firewalling’ and ‘safe reporting’ to the police and statutory agencies can be found in Amsterdam (Netherlands), Antwerp (Belgium) and Helsinki (Finland).\textsuperscript{17} These practices encourage the reporting of crimes, in the interest of more effective policing and community engagement.

\textbf{NO RECOUSE, NO SAFETY}

11. Thousands of migrants in the UK are subject to the ‘No Recourse to Public Funds’ (NRPF) condition – which bars them from accessing public funding and state support. Survivors of domestic abuse subject to the NRPF condition are subsequently some of the most marginalised and isolated survivors of abuse in our society, as without access to housing support, they are routinely denied refuge spaces and safe accommodation.\textsuperscript{18} One survivor, who suffered emotional and psychological abuse at the hands of her partner for two years in the UK, was denied a refuge space because of her immigration status and had to continue living with her perpetrator in the same house.\textsuperscript{19} This experience is familiar to many other migrant women – who face a harrowing choice between destitution and staying with their abuser.

12. By continuing to perpetuate this discriminatory, two-tier system of safety, the Government will fail to comply with Article 4(3) of the Istanbul Convention which specifies that any measures to, “\textit{protect the rights of victims shall be secured without discrimination on any ground such as ... national or social origin ... migrant or refugee status, or other status}”.\textsuperscript{20} Many women fleeing abuse with NRPF also become destitute and even street homeless, which violates their rights under Articles 3 and 8 ECHR. In addition, the discriminatory nature of the NRPF condition for survivors of domestic abuse – which includes the fact that women with this status are far more likely to be turned away from a refuge space\textsuperscript{21} – violates their rights under Article 14 ECHR, when

\begin{footnotesize}
\begin{enumerate}
\item A means to prohibit the sharing of information between services for immigration enforcement purposes — Fizza Qureshi, ‘Firewalls and Tunnels: Migrants Need Protecting from the State’, Migrants Rights Network, November 2017.
\item See further detail on best practice of firewalling in the Latin American Women’s Rights Service’s ‘\textit{Step Up Migrant Women Coalition roundtable report on safe reporting}’, May 2018.
\item Women’s Aid’s ‘\textit{No Woman Turned Away}’ project found that during 2016/17, only 5.4 per cent of vacancies for refuges on Routes to Support would consider applications from women with NRPF, 2018, p.23.
\item End Violence Against Women Coalition, ‘\textit{Women Living in a Hostile [Environment], Personal Stories}’.
\item Article 4(3), Istanbul Convention.
\item Women’s Aid’s ‘\textit{Nowhere to Turn}’ report found that only one quarter of women seeking refuge were accommodated in suitable refuge spaces, while only 7 per cent of women with no recourse to public funds were accommodated.
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applied alongside Articles 2, 3 and/or 8. Therefore, it is clear that between destitution, homelessness and trapped in cycles of violence, the NRPF condition places many survivors at risk of further inhuman or degrading treatment or punishment.

13. We note that under Article 21 of CEDAW, the UK Government has a duty to protect the human rights of all women entering the country regardless of immigration status. Yet the Government instead suggests in relation to survivors with no recourse to public funds that, “In some cases, the victim of domestic abuse may be best served by returning to their country of origin and, where it is available, to the support of their family and friends.” This approach disregards the principle of non-refoulement, which is a core tenet of international law and also protected by Article 61 of the Istanbul Convention.

14. To ensure compliance with fundamental domestic and international human rights law, and protect migrant women from inhuman or degrading treatment, we are urging the UK Government to insert an exemption to the NRPF condition for survivors of domestic abuse.

RIGHT TO REMAIN AND BE FREE FROM INDEFINITE DETENTION

15. Women with insecure immigration status find it virtually impossible to access refuge and other welfare support in order to escape violence and abuse. Without access to public funds and housing support, they are routinely denied refuge spaces, safe accommodation and welfare, and therefore are faced with the impossible decision of becoming destitute and homeless or returning to the perpetrator. Many often find they are unable to regularise or confirm their immigration status for a host of complex reasons, including because their status depends on the perpetrator, or because the perpetrator has control of necessary documents and evidence.

16. Article 59 of the Istanbul Convention states that victims whose residence status depends on their spouse or partner should be “granted...an autonomous residence permit”. The Domestic Violence (DV) Rule – an immigration application that survivors can make in order to obtain indefinite leave to remain – is crucial, but is only available to migrant survivors on spousal visas. Women experiencing abuse who are on work visas, visitor visas, student visas, domestic workers, or those with status under right to family life rules, may in one way or another be dependent on their partner for their status (not least if their partner is in possession of their documents). We believe they must also be able to access protection without discrimination.

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23 Women’s Aid’s ‘No Woman Turned Away’ project found that during 2016/17, only 5.4 per cent of vacancies for refuges on Routes to Support would consider applications from women with NRPF, 2018, p.23.
17. Similarly, the Destitution Domestic Violence Concession (DDVC) enables survivors applying for leave under the DV Rule to access public funds for three months. While this is vital and a literal lifeline, it is again limited to those on spousal visas. Access to state support is crucial for any migrant survivor of domestic abuse who needs to establish independent residency and a life away from violence. Further, making a distinction for the provision of support on the basis of whether a survivor has a spousal visa goes against Article 4(3) of the Istanbul Convention, which prevents discrimination on the basis of “marital status ... or any other status”.

18. It is also important to note that the three month time limit on access to public funds under the DDVC often bars the limited number of women who can currently apply for the DDVC from accessing accommodation, as refuges and landlords may refuse accommodation because they do not want to risk the uncertainty of what happens after three months if leave is not obtained. Therefore, the three-month limit means even migrant survivors who can presently access the DDVC continue to face the risk of homelessness. Further, if the purpose of the DDVC is to provide survivors with some security while they establish an independent life away from violence, frontline service providers have found that three months is not long enough for survivors to access necessary support and gather the required evidence to support their DV Rule applications.

19. It is therefore crucial that the DV Rule and DDVC are extended, so that any migrant survivor is eligible to apply for indefinite leave to remain and associated support from the state, regardless of their immigration status. Further, the length of time in which survivors are able to access public funds under the DDVC must be extended to at least six months – so they have sufficient time to find safety and obtain financial security.

20. Since 2015 those eligible to apply for leave to remain under the DV Rule have no longer had the right to appeal decisions to the Tribunal, only leaving them with recourse to an administrative review – which is limited to procedural errors rather than reconsidering the substance of a decision. This new system is impeding access to justice for migrant survivors of domestic abuse. Before 2015, DV Rule appeals had a high success rate – with 82 per cent being overturned in 2011. However, between 2015 and 2018, only 2 per cent of administrative reviews resulted in an overturned decision. In response, Liberty is calling for the 2015 change to be reversed, to ensure survivors have the right to appeal decisions to the Tribunal.

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21. We are also greatly concerned by the routine use of immigration detention in the UK – particularly considering we are the only country in Europe that continues to detain people indefinitely, without any judicial oversight on the initial decision to detain. Migrant women who have experienced domestic abuse and other forms of gender-based violence are immensely affected by this inhuman and degrading system. Being detained indefinitely in poor, unsanitary conditions, where further ill-treatment and abuse occurs, and access to mental health and medical care is inadequate, vulnerable people are inevitably re-traumatised. The UK Government should end the harmful practice of indefinite detention altogether by imposing a 28-day time limit, and improve the widely-criticised Adults at Risk policy to ensure that vulnerable people – including migrant survivors of domestic abuse – are not placed in detention in the first place.

SPECIALIST SERVICES AND REFUGE PROVISION

22. Liberty believes that the UK Government must provide the adequate resources necessary to meet basic human rights standards for protecting survivors of abuse. Council of Europe guidelines on ‘minimum standards for support services’ recommends that: victims have access to appropriate services, that a range of support options are available for women facing multiple discrimination, and that service providers are skilled and specialist.27 Further, Article 23 of the Istanbul Convention provides that “Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children”. However, the UK does not meet these minimum standards set out by the Council of Europe. Policy decisions of successive governments have resulted in a dramatic reduction of crucial services since 2010. More than 65 per cent of England’s local authorities have cut their spending on refuges.28 As a result, 60 per cent of all referrals to refuges are now routinely refused29, which rises to 80 per cent for black, Asian and minority ethnic (BAME) women.30

23. Without providing shelter and safety to thousands of women every year, the Government risks breaching survivors rights’ under Article 2 (right to life), Article 3 (freedom from torture, inhuman and degrading treatment and punishment), Article 8 (right to protection of the home, private and family life – including autonomy in decision making, the right to live with dignity and the right to physical and psychological integrity), and Article 14 (the equal enjoyment of all these rights).

24. Despite the human rights implications of cutting refuge services over the past decade, the Government has not yet guaranteed that it will reverse these harmful policies to ensure all survivors of domestic abuse are safe. We welcome the Government’s recent statement that it plans to impose a legal duty on local authorities to deliver support to survivors of domestic abuse in accommodation-based services.\(^{31}\) However, it is not yet clear how this will interact with existing legal duties on local authorities (under s.17 of the Children Act 1989 and Article 3 of the Human Rights Act 1998), whether this commitment will be backed by adequate funding, whether the duty will be properly implemented and whether it will equally apply to BAME and migrant women. The latter is crucial, as specialist services for BAME and migrant women have suffered the most as a result of budget cuts, and subsequently these women are more likely to be denied safety. The funding pledged is insufficient to provide meaningful support and protection to the thousands of BAME survivors of abuse across the UK – which risks further discrimination and embeds a two-tier system of safety. Liberty believes the UK Government must meet the basic needs of all survivors, grounded in minimum standards of human rights – including for BAME women, LGBT+, disabled and older victims of abuse.

**REFORMS TO THE JUSTICE SYSTEM**

**ACCESS TO JUSTICE**

25. Article 57 states that “Parties shall provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law”. However, currently survivors of domestic abuse face multiple barriers when accessing our justice system. As a result of drastic cuts by the Ministry of Justice since 2012, legal aid provisions for survivors of domestic abuse are now extremely limited. We acknowledge that legal aid is currently available for immigration applications under the Domestic Violence Rule and for private family law proceedings using the Domestic Violence Gateway, but these are extremely difficult to obtain through the normal means-testing eligibility rules - which also fail to take into account the impact of economic abuse when assessing women's financial circumstances. For instance, the National Centre for Domestic Violence found that over 6,000 survivors of domestic abuse were denied free legal representation in 2017 because they appeared to have money or assets that precluded them from receiving legal aid – however these economic resources were actually being controlled by their abusers.\(^{32}\) There are also other types of cases for which victims may need legal aid but will be out of scope – such as most housing claims and social security disputes. Although exceptional case funding may be available if human rights law so requires, this type of funding is very difficult to secure and very

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\(^{31}\) Government unveils new support for survivors of domestic abuse, 13 May 2019.

\(^{32}\) Sachin Croker and Ben Robinson, “Legal costs halt thousands of domestic violence cases”, BBC 5 live Investigates, 8 April 2018.
limited in availability.\textsuperscript{33} This means many survivors who may be involved in proceedings relevant to domestic abuse issues are unable to access legal aid, denying people equal access to justice.

26. This breaches Article 57 of the Istanbul Convention and contravenes Council of Europe guidelines that state victims should receive “\textit{free, immediate and comprehensive assistance including ... legal assistance}”\textsuperscript{34}. In order to ensure compliance with the Istanbul Convention and our domestic and international human rights obligations, \textbf{we recommend that the UK Government considers the recommendations made in the LASPO review (June 2017)}\textsuperscript{35} - which specifically outlines the detrimental impact of legal aid cuts to domestic abuse cases. Further, although the evidential barriers to access legal aid in private family law proceedings were lowered in January 2018\textsuperscript{36}, the evidential burdens must continue to be reduced and the extremely low means test for all legal aid cases must be increased, so that survivors of abuse are no longer barred from accessing justice.

\textbf{PURSUING CRIMINAL PROCEEDINGS}

16. The UK Government has recognised that survivors often fail to pursue justice through criminal proceedings and routinely retract cases. Yet the Government has incorrectly identified the reasons behind this. Survivors of abuse choose not to engage with the justice system due to mistrust, a lack of confidence in the system which they feel is stacked against them, the fear of being reported to immigration enforcement in some cases, and fear of retribution by their perpetrators. In order to improve this, we suggest two main changes: (1) resources and funding should be given to Independent Domestic Violence Advocates and specialist domestic abuse services, so that advocates can support survivors throughout the criminal justice process, and (2) survivors need a guarantee that they will not be reported to the Home Office as a result of pursuing a criminal case, and that they will not be further victimised during the process. Eradicating the culture of disbelief is crucial to achieving this, so that survivors do not feel isolated or further traumatised by proceedings themselves.

17. Failure to pursue criminal proceedings can also often be a result of failings by the police to properly seek prosecutions – sometimes with fatal consequences. Evidence clearly demonstrates that the overall police response to domestic abuse is inadequate and ineffective. A lack of training, failure to recognise the level of risk present, and a culture of disbelief result in devastating consequences for survivors. These failings are encapsulated in the case of Katrina O’Hara, who was murdered in 2016 by her abuser.

\textsuperscript{33} Monidipa Fouzder, \textit{“Exceptional case funding scheme ‘inaccessible’}, High Court told\textit{”, The Law Society Gazette, 10 June 2015.}

\textsuperscript{34} Council of Europe, \textit{“Assistance for and protection of victims”, Recommendation (2002)5.}

\textsuperscript{35} The Law Society, \textit{“Access Denied? LASPO four years on: a Law Society review”, June 2017, p.16.}

\textsuperscript{36} The Law Society, \textit{“Boost for justice for victims of domestic violence after legal aid rule change”, 8 January 2018.}
after the police wrongly classed her as the ‘attacker’ and seized her phone. Katrina’s tragic and avoidable death is symptomatic of a much larger issue. In 2014, a review of all 43 police forces in England and Wales by Her Majesty’s Inspectorate of Constabulary (HMIC) found that there were serious deficiencies in police operations concerning domestic abuse, including: “alarming and unacceptable” weaknesses in some core policing activity, poor management and supervision to enforce the right attitudes of officers, failure to prioritise action to tackle abuse on a day-to-day level, and officers lacking the skills and knowledge to engage confidently and competently with victims of domestic abuse. In recent years, there have been widespread reports of other police shortcomings. The Independent revealed in 2017 that the number of domestic abuse incidents going unattended by police is ‘soaring’, with officers failing to show up at least 39,686 incidents in 2016. Police have also been accused of ‘pushing responsibility’ for prosecution onto victims, rather than tracking down evidence and building a case themselves. The police should be using their powers to protect survivors of domestic abuse, yet there is a clear disparity between the approach to victims of other crimes and victims of domestic violence. As Zoe Bellingham (HMIC Inspector) stated, “They wouldn’t tell a victim of burglary: ‘Do you want us to do something about this?’ Would that ever happen? So why should that question be put – and we know it still is – to victims of domestic abuse?”

18. Therefore, survivors of domestic abuse continue to be barred from accessing justice in the criminal courts as a result of ineffective policing and hostile judicial environments – both of which are permeated by a culture of disbelief. And while perpetrators benefit from impunity, survivors remain at risk of further inhuman and degrading treatment. Liberty believes this can only be resolved by holding the police to account – particularly in line with their duties under human rights law – and ensuring survivors have proper access to support, legal representation and advice both inside and outside of the courtroom.

SURVIVORS IN THE CRIMINAL JUSTICE SYSTEM

19. The UK Government continues to fail women who end up incarcerated as a result of domestic abuse. We believe an effective approach to reform should be twofold: (1) preventative, and (2) rehabilitative.

20. Based on the suggestions outlined in this briefing, the Government needs to improve its overall response to domestic abuse in order to provide victims with better support, to

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37 Lizzie Dearden, ‘Police treated domestic abuse victim as ‘attacker” and took her phone days before murder, reports find’, The Independent, 8 January 2018.
39 Harriet Agerholm, ‘Police failing to attend one in nine domestic violence incidents, figures show’, The Independent, 10 December 2017.
41 Ibid.
prevent them from turning to offending behaviour in the first place. A report by the Prison Reform Trust in 2017 describes domestic abuse as a driver to women’s offending. It revealed that 57 per cent of women in prison report having been victims of domestic violence. The report also acknowledges that there are strong links between women’s experience of domestic and sexual abuse and coercive relationships and offending behaviour – which often traps them in a vicious cycle of victimisation and criminal activity. In these cases, imprisonment leads to further trauma and can exacerbate mental health issues – potentially violating women’s right to life (Article 2 ECHR), and freedom from inhuman or degrading treatment (Article 3 ECHR) through self-harm and suicide. The risk to life is particularly pertinent, as 46 per cent of women in prison report having attempted suicide at some point in their lifetime – this is twice the rate of men (21 per cent) and more than seven times higher than the general population. If women were provided with better support networks, had their reports taken seriously by the police, and were able to access safe accommodation away from their abusers, this could help prevent a great deal of women’s offending behaviour. There is something fundamentally wrong with a system that incarcerates women who are victims of crimes often far worse than the ones they have committed.

21. Liberty’s recommendations to tackle this issue are as follows:

a. Sentencing Guidelines should provide for judges to take domestic abuse into account as a specific mitigating factor.

b. Probation management should consider the risk of a victim returning to abuse when making decisions about releasing women back into the same community, without any protections or legal safeguards against the abuser.

c. We need a ‘whole system approach’ that is properly invested in. The recommendations made by Baroness Corston in her 2007 report on ‘women with particular vulnerabilities in the criminal justice system’ could serve as a useful starting point. She sets out a blueprint for a “distinct, radically different, visibly-led, strategic, proportionate, holistic, woman-centred, integrated approach” to women in the criminal justice system. These recommendations appear to have fallen by the wayside, yet could provide the foundations for a more humane and effective approach to addressing female offending behaviour.

44 Ibid, p.4.
CONCLUSION

27. Liberty believes that the UK Government is continuing to fall short of its domestic and international human rights obligations to prevent, protect and provide remedies to survivors of domestic abuse. The human cost of these failures is severe – as thousands of survivors and their children remain at risk of destitution, further violence and even loss of life. The system of support for survivors in the UK falls below human rights standards and the Government’s proposed Domestic Abuse Bill does little to remedy this situation.

28. To ensure the UK meets its obligations under the Istanbul Convention, CEDAW, the ECHR and UNCAT, Liberty believes the recommendations outlined in this submission are vital in order to create a system that is fair, just and equal for all – and crucially places the human rights of survivors at the heart of all measures. We believe the draft Domestic Abuse Bill is a golden opportunity to legislate for these changes and place essential safeguards on a statutory footing. Only with radical reform can the UK Government truly transform the response to domestic abuse and ensure the human rights of all survivors are meaningfully respected and protected.

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