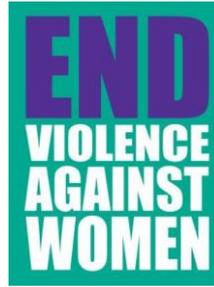


LIBERTY



imkaan



JOINT PARLIAMENTARY BRIEFING ON THE DOMESTIC ABUSE BILL MIGRANT WOMEN LEFT BEHIND

1. The UK Government's draft Domestic Abuse Bill (the Bill), while including some important provisions, is overall a disappointing and inadequate solution to a devastating and widespread problem that impacts roughly two million people a year in the UK, the majority of whom are women. The Bill leaves behind society's most marginalised and isolated survivors of domestic abuse, particularly migrant women. It also fails to fully meet the requirements of the Istanbul Convention¹ (IC), despite the Government's stated intention to ratify the IC through the introduction of this Bill.
2. Given the wealth of evidence submitted to the Government consultation on the Domestic Abuse Bill demonstrating that women who have insecure immigration status find it virtually impossible to seek protection when experiencing domestic abuse, and the crystal clear language of the IC that protection must be afforded to survivors regardless of immigration status, it is extremely disappointing that migrant women are not mentioned anywhere on the face of this proposed legislation and are offered insignificant concessions in the Government's package of 'non-legislative' commitments in the consultation response.
3. In this briefing, we summarise the key changes we urge Parliamentarians to make to the Bill in order to secure more equal protections for migrant survivors of domestic abuse. This includes:
 - (1) a principle of non-discrimination that mirrors the language of Article 4(3) of the IC;
 - (2) a 'firewall' between vital public services and the Home Office, so that all survivors can safely report abuse to police and other services without fear of immigration enforcement;
 - (3) extending eligibility for the Domestic Violence (DV) Rule and Destitute Domestic Violence Concession (DDVC), so every migrant survivor can access routes to regularise/confirm their immigration status and can access public funds (which must be provided for at least six months); linked to this, reinstating appeal rights to the Tribunal for DV Rule applications;
 - (4) exempting survivors of domestic abuse from being subject to 'No Recourse to Public Funds', or at the very least delinking eligibility for a refuge space from eligibility for public funds;
 - (5) addressing the crisis in funding for refuges and domestic abuse services, particularly specialist services run 'by and for' Black, 'minority ethnic' (BME) and migrant women, to comply with the government's human rights obligations.

¹ The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, also known as the Istanbul Convention, creates a legal framework at pan-European level to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence.

4. If this Bill does not promote equality, security, liberty and dignity for *all* survivors of abuse, it will fail to fully incorporate the IC and would also risk violating the UK's domestic and international human rights obligations under the European Convention on Human Rights (ECHR) and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). The reform measures proposed in this briefing would go some way to remedying the defects of the Bill and crucially protect thousands of survivors of domestic abuse in this country.

NON-DISCRIMINATION PRINCIPLE

5. **Article 4(3) of the IC** sets out that the provisions in the treaty *“shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or any other status.”* The right to be free from discrimination is also protected by Article 14 ECHR when read together with other ECHR rights, particularly Articles 3 and 8 in the context of domestic abuse. **We recommend a non-discriminatory approach is put on a statutory footing in this Bill to mark the importance of this as a guiding legal principle.**
6. The Government's consultation on 'Transforming the Response to Domestic Abuse' puts a significant emphasis on the need to improve protection for victims but does not meaningfully acknowledge or address the significant additional barriers faced by migrant women in accessing that protection. Actually, the proposals set out in the Bill do not reflect the commitment in any comprehensive or effective manner for any survivor. Its focus is predominantly on criminal justice measures and fails to centre the crucial role of prevention work and the provision of services, as foregrounded in the Home Office's Ending Violence Against Women and Girls 2016-2020 Strategy Refresh².
7. The exclusion of protections for migrant women is notable given that the Government in part recognises some of the issues migrant women face – in particular accessing refuge and welfare support; and safely reporting abuse to public services, including the police. Encouraging women to come forward and support the charging and prosecution of perpetrators without ensuring that adequate protection is available for them increases the risk of further harm and their vulnerability. When victims of domestic abuse are adequately supported by specialist services, they are less likely to return to a situation of violence³ and / or drop out of the criminal justice process altogether. Migrant women face additional barriers because abusers commonly use women's fears of immigration enforcement and separation from their children to control them. Research⁴ has pointed to particular vulnerabilities of migrant women, including:
 - a higher proportion of homelessness,
 - a greater financial impact of abuse because of their own inability to work on account of their immigration status,

² <https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>

³ Imkaan (2012) Vital Statistics 2: Key findings report on Black, Minority Ethnic and Refugee Women's and Children's experiences of gender-based violence. London: Imkaan.

⁴ See Bristol University Justice Project <http://www.bristol.ac.uk/media-library/sites/sps/documents/justice/migrant-women-policy-evidence-summary.pdf> (2018)

- being disproportionately affected by lack of resources for support when facing forms of abuse such as FGM, forced marriage and so called ‘honour-based’ violence
 - being more likely to report multiple perpetrators
 - being more likely to face a justice gap, with police not pursuing criminal charges.
8. A non-discrimination clause in the Bill, reflecting the language in **Article 4(3) of the IC**, seeks to confront the existing two-tier system of safety that exists for migrant and BME women, and demands that public authorities effectively respond to *all* victims of domestic abuse as a matter of law, thereby incorporating a central principle of the IC into the very legislation intended to enable its ratification.

SAFE REPORTING MECHANISMS AND ‘FIREWALLING’

9. **Article 50 of the IC** sets out that *“Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims”* - read with **Article 4(3)** this must apply regardless of immigration status.
10. The Government’s ‘hostile environment’ agenda has prioritised immigration enforcement over the need to provide safety and security to survivors of domestic abuse. Invasive data-sharing agreements between public services⁵ and Immigration Enforcement prevent survivors with insecure immigration status from accessing the services they need, as they often fear reporting violence due to the real risk of detention or deportation.⁶ As part of the Step Up Migrant Women coalition⁷, we are particularly concerned by the police’s routine referral of victims of crime to the Home Office – considering 60% of police forces have admitted to doing so⁸. Research⁹ revealed that 2 in 3 migrant women who experienced domestic abuse feared that at the moment of reporting, police would not support them because of their insecure immigration status. In one account, a survivor undergoing physical and psychological abuse who reported to police on 3 occasions, was told that she was an ‘illegal’ and that she should refrain from calling again; in another case, the police arrested a survivor as she reported in her local police station and was detained and questioned by immigration officials.¹⁰
11. Liberty and Southall Black Sisters have submitted the first police super-complaint¹¹, regarding data sharing between the police and immigration forces, which details a number of cases in which survivors have been subject to arrest and detention, instead of having crimes committed against them properly investigated (including a pregnant rape victim being arrested on immigration charges after going to the police).

⁵ Public services involved include the police, social services, health professionals, schools and others.

⁶ For further information, please see [Latin American Women’s Rights Service and Step Up Migrant Women’s briefing on safe reporting](#), August 2018 and Liberty’s [‘Care Don’t Share’ report](#), December 2018.

⁷ Step Up Migrant Women coalition is led by the Latin American Women’s Rights Service and is formed by 38 organisations in the women, migrant and social justice sectors. [More info here](#)

⁸ Catrin Nye, Natalie Bloomer and Samir Jeraj, [‘Victims of serious crime face arrest over immigration status’](#), BBC News, 14 May 2018.

⁹ Research by King’s College London and the Latin American Women’s Rights Service with Migrant Women facing VAWG under the hostile environment (to be published in May 2019)

¹⁰ Ibid

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767396/Super-complaint_181218.pdf

12. The Government’s own guidance on coercive control recognises that perpetrators of abuse often leverage immigration status as a tool of coercive control¹², by using the threat of deportation to prevent victims from reporting violence and confiscating victims’ vital documentation and paperwork. This leaves survivors fleeing violence in an impossible position – where they are forced to choose between the risk of detention/deportation or staying in a situation of violence. In one case¹³, 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 removed to Nigeria. The precarious nature of her immigration status, as leveraged by the perpetrator, has left her in a state of uncertainty and at very high risk of further abuse.
13. While the Government in its consultation response acknowledges the Home Affairs Select Committee recommendation that victims must be able to report abuse to the police without fear of immigration enforcement¹⁴, it offers nothing more than a commitment that police will follow National Police Chiefs’ Guidance, which contradictorily states that survivors should be treated “first and foremost...as a victim” but also that it would be “wholly appropriate” for an officer to notify immigration enforcement if they become aware that an individual is an “illegal immigrant”.
14. This is an entirely inadequate response to the reality that such data-sharing schemes not only conflict with existing domestic policy to prioritise the needs of victims, but in fact potentially violate the government’s international human rights obligations. The CEDAW Committee’s General Recommendation 35 on gender-based violence (2017) calls on states to repeal “...restrictive immigration laws that discourage women, including migrant domestic workers, from reporting this violence...”¹⁵ 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...”¹⁶
15. Further, **Article 61 of the IC** provides that States must not under any circumstances return survivors of gender-based violence who are in need of protection, regardless of their status or residence, to any country where their life would be at risk or where they might be subjected to torture or inhuman treatment. To comply with these human rights standards, public authorities should not be routinely referring victims to Immigration Enforcement, and the Home Office should not be deporting survivors of domestic abuse who may be at risk of stigmatisation, ill-treatment and further abuse in another country – particularly when that survivor has come to their attention due to reporting they are a victim of abuse.
16. **In order to comply with the UK’s domestic and international human rights obligations, we recommend the Bill to be amended to include a provision establishing a ‘firewall’ between vital public services and the Home Office, so that all survivors of domestic abuse and violence can safely report abuse to the**

¹² [Controlling or coercive behaviour - statutory guidance](#)

¹³ End Violence Against Women Coalition, ‘[Women Living in a Hostile \[Environment\], Personal Stories](#)’.

¹⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1015/1015.pdf>

¹⁵ [CEDAW General Recommendation No. 35, July 2017](#).

¹⁶ CEDAW, ‘Concluding observations on the eight periodic report of United Kingdom of Great Britain and Northern Ireland’, Advance Unedited Version, CEDAW/C/GBR/CO/8, 14 March 2019, p. 7.

police, social services, health professionals and others without fear of immigration enforcement. Examples of good practice on ‘firewalling’ and ‘safe reporting’ to the police and statutory agencies can be found in Amsterdam (Netherlands), Antwerp (Belgium) and Helsinki (Finland). These practices encourage the reporting of crimes, in the interest of more effective policing and community engagement¹⁷

DOMESTIC VIOLENCE RULE AND DESTITUTE DOMESTIC VIOLENCE CONCESSION

17. 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 accommodation¹⁸ and welfare and therefore are faced with the impossible decision of becoming destitute/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’s status, or because the perpetrator has control of necessary documents and evidence.
18. **Article 59 of the IC** states that victims whose residence status depends on their 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 it is only available to migrant women 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). They must also be able to access protection without discrimination. **The Bill should therefore ensure all migrant survivors are eligible to apply for indefinite leave to remain under the DV Rule.**
19. Similarly, the Destitute 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 vital 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 IC**, which prevents discrimination on the basis of *“marital status ... or any other status”*. **It is therefore crucial that the DV Rule and DDVC are widened so that any migrant survivor can apply for indefinite leave to remain and associated support from the state. 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. Egregiously, since 2015 those eligible have also no longer had the right to appeal applications made under the DV Rule 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 clearly impeding access to justice for migrant survivors of domestic abuse as before 2015, DV Rule appeals had a high success rate – with 82% being overturned in 2011.¹⁹ However, between 2015 and 2018, only 2% of

¹⁷ See examples on best practice of firewalling in the [LAWRS’ Step Up Migrant Women coalition Roundtable report on safe reporting, May 2018](#)

¹⁸ 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.

¹⁹ Rights of Women, [‘Written evidence submitted to Public Bill Committee, Immigration Bill’](#), Session 2013-14.

administrative reviews resulted in an overturned decision.²⁰ **We are calling for the 2015 change to be reversed, to ensure survivors have the right to appeal decisions to the Tribunal.**

21. For a more detailed analysis of issues relating to the Domestic Violence Rule and the DDVC, please see Southall Black Sisters' briefing paper on 'the Domestic Abuse Bill and migrant women'.²¹

NO RECOURSE, NO SAFETY

22. While the extension of the DDVC (and DV Rule) is critical and would make potentially life-saving difference to migrant women, the reality is that while the Government's no recourse to public funds (NRPF) condition remains applicable to survivors, the UK will fail to comply with the IC. When applied to survivors NRPF itself is arguably discriminatory under Article 4(3) and perpetuates a two-tier system of safety, leaving even those currently eligible under the DDVC vulnerable and unable to access funds until their application has been accepted.

23. Because many women fleeing abuse with NRPF become destitute and even street homeless, this 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 space²² - also potentially violates their rights under Article 14 ECHR, when applied alongside Articles 2, 3 and/or 8.

24. BME women's organisations, in particular Southall Black Sisters and Imkaan, have been campaigning for the abolishment of NRPF for survivors for many years. In 2009, 107 cross-party MPs supported a motion that acknowledged NRPF as having a devastating effect on women who are trapped in a cycle of abuse, and stated that *"the Government has a duty to protect the human rights of all women entering the UK regardless of immigration status, as stated in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)"* and recognised *"the need for a permanent solution for all women; and therefore calls on the Government to exempt women fleeing domestic violence from the no recourse to public funds rule"*.²³ Ten years later we have seen no progress, despite the government's own admission – in the Bill's consultation response – that women with no recourse are in need of crisis support. **Survivors of abuse should be exempt from having NRPF, or at the very least NRPF status should be delinked from a woman's eligibility for refuge accommodation.**

25. The Government's pledge of £500,000 for a new 'crisis support system' for survivors with no recourse is a sticking plaster, and will not stop thousands of migrant women from having their fundamental human rights infringed and their safety disregarded. We are also alarmed by the Government's entirely inappropriate suggestion in their consultation response 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*

²⁰ Niamh McIntyre and Alexandra Topping, ['Abuse victims increasingly denied right to stay in UK'](#), The Guardian, 16 August 2018.

²¹ Southall Black Sisters, ['The Domestic Abuse Bill and Migrant Women'](#), 20 March 2019.

²² Women's Aid's ['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.

²³ House of Commons, ['Violence Against Women and the No Recourse to Public Funds Rule'](#), Early Day Motions, Tabled 24 November 2009, 2009-10 Session, EDM No.214.

family and friends."²⁴ These proposals show that the Government remains completely detached from the realities of survivors' experiences, which at the minimum could include stigma, rejection and further violence from family and community members both here in the UK and in their country of origin.

SPECIALIST SERVICES AND REFUGE PROVISION

26. **Articles 8 and 20 of the IC** require (respectively) states to provide adequate funding for policies and programmes; and ensure victims have access to services, including housing. Council of Europe Guidance is also clear that a range of support options must be available for women facing multiple discrimination, and that service providers are skilled and specialist.²⁵ However, specific policy decisions of the Government have resulted in the decimation of these crucial services since 2010 – with more than 65% of England's local authorities slashing their spending on refugees.²⁶ As a result, 60% of all referrals to refuges are now routinely refused²⁷, which rises to 80% for BME women.²⁸ It is evident that our refuge services are at crisis point. No survivor of abuse or child should ever be turned away from safety.
27. The Government's failure to ensure there is adequate provision across the country may breach its positive obligations under the ECHR – namely to take action in response to harm, including systemic, operational and investigative duties. This is cemented by legal precedent in the European Court of Human Rights (ECtHR) that reinforces states' obligations to effectively protect, prevent and provide appropriate remedies for victims of domestic abuse.²⁹ Without providing shelter and safety to thousands of women every year, the Government risks breaching survivors' rights under Articles 2, 3, 8 and 14 ECHR.
28. Despite the human rights implications of cutting refuge services over the past decade, the Government has not committed to reversing these harmful policies to ensure all survivors of domestic abuse are safe. This issue is compounded for BME and migrant women – as specialist services for these groups have suffered the most as a result of budget cuts³⁰, and subsequently these women are more likely to be denied

²⁴ HM Government, ['Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill'](#), January 2019, p.25.

²⁵ Council of Europe – Professor Liz Kelly, Roddick Chair on Violence Against Women, ['Combating violence against women: minimum standards for support services'](#), September 2008, Directorate Gender of Human Rights and Legal Affairs, p.16.

²⁶ Jamie Grierson, ['Council funding for women's refuges cut by nearly £7m since 2010'](#), The Guardian, 23 March 2018.

²⁷ Home Affairs Select Committee, ['Domestic Abuse'](#), Ninth Report of Session 2017-19, 17 October 2018.

²⁸ Imkaan, ['Capital Losses: the state of the specialist BME ending violence against women and girls sector in London'](#), 2016.

²⁹ In *Osman v United Kingdom* [1998] ECHR 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. 39272/98 [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 ECtHR [2009] at para 176, ECtHR 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.

³⁰ Imkaan (2018) *From Survival to Sustainability* (available online)

safety. 'By and for'³¹ specialist services are critical as providers hold unparalleled levels of skill and knowledge, and deliver wraparound support rooted in a nuanced understanding of social and cultural contexts, and provide holistic care to survivors from minoritized and marginalised groups who face barriers to accessing welfare, housing and immigration advice support³² The Government's £300,000 pledge to build resources and expertise within specialist BME services barely scratches the surface, considering the chronic underfunding of 'by and for' services. For example, the combined income of 15 BME ending VAWG organisations based in London is now less than the income of one generic non-specialist provider³³. Not only is this funding insufficient to compensate for such catastrophic cuts over recent years, but it will not stretch far enough to provide meaningful support and protection to BME survivors of abuse across the UK. We are also concerned that the scope of this limited funding only enables the development of provisions within existing providers, rather than also recognising the need to open more specialist refuges and services. **We believe the Government must meet the basic needs of all survivors, grounded in minimum standards of human rights – including for BME, LGBTI and disabled survivors, as well as older victims of abuse.**

CONCLUSION

29. We believe the Bill is a missed opportunity and is so limited in scope that it will fail to meet the government's international and domestic human rights obligations, including the requirements of the IC. We emphasise to parliamentarians that the human cost of these failures will be severe – as thousands of migrant and BME survivors of domestic abuse and their children will remain at risk of detention/deportation, destitution and further violence. The system of support for the women in this country is already at crisis point and the Bill does little to address this situation.
30. To ensure this Bill is fit for purpose, parliamentarians must ensure the legislation includes protections for migrant survivors of domestic abuse, in line with the UK's duties under the ECHR, CEDAW and the IC. We believe that the recommendations in this briefing will create a system that is fair, just and equal for all - and crucially places survivors at the heart of all measures.

CONTACT

ZEHRAH HASAN, LIBERTY, zehrahh@libertyhumanrights.org.uk

KARLA MCLAREN, AMNESTY UK, karla.mclaren@amnesty.org.uk

ANDREA SIMON, EVAW Andrea.Simon@evaw.org.uk

ILLARY VALENZUELA OBLITAS, LAWRS illary@lawrs.org.uk

JANE GORDON, SISTERS FOR CHANGE jgordon@sistersforchange.org.uk

LEAH COWAN, IMKAAN leah@imkaan.org.uk

³¹ "Specialist services are designed and delivered **by and for** the users and communities they aim to serve." Voice4Change England and NAVCA Specialist Services: A Guide for Commissioners 2012, accessed online at <http://www.navca.org.uk/news/view-article/equalities-new-report>

³² https://www.sistersforchange.org.uk/wp-content/uploads/2019/03/83-SistersForChange_UnequalRegardUnequalProtection_Nov2017-1.pdf

³³ Imkaan (2018) From Survival to Sustainability (available online)