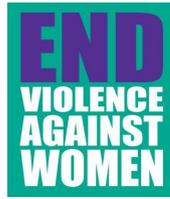


**LIBERTY**



## JOINT SUBMISSION TO THE DOMESTIC ABUSE BILL COMMITTEE THE NEED FOR PROTECTIONS FOR MIGRANT SURVIVORS

OCTOBER 2019

This submission represents the views of the above organisations, working together as members of the **Step-Up Migrant Women Coalition**, to ensure that the Domestic Abuse Bill provides protection for migrant women. This submission focuses only on provisions we believe the Bill should include which would provide equal protection to migrant survivors of domestic abuse; it does not deal with other aspects of the Bill which our organisations may also have individual or collective positions on.

## Summary of key recommendations

The Bill should be amended to include:

- (1) a principle of **non-discrimination** that mirrors the language of Article 4(3) of the Istanbul Convention;
- (2) a provision to establish **safe reporting pathways and a firewall to end data-sharing for immigration enforcement purposes between vital public services and the Home Office**, to ensure all survivors can safely report abuse to police and other services without fear of immigration enforcement;
- (3) **extension of 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 secure public funds (which must be provided for at least six months) which are essential for accessing refuge services, safety and support; linked to this, reinstating appeal rights to the Tribunal for DV Rule applications;
- (4) **provision to address 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.

## Introduction

1. The UK Government's 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 Convention<sup>1</sup> (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 legislation and are offered insignificant concessions in the Government's package of 'non-legislative' commitments in the consultation response.
3. Furthermore, the Government's response to the Joint Committee on the draft Domestic Abuse Bill (the Joint Committee), regarding its clear and robust recommendations to extend protection to migrant survivors and ensure they are able to report safely<sup>2</sup>, is wholly inadequate. The government has not incorporated any of the Joint Committee's recommendations regarding migrant women into the published Bill, instead announcing a review into "the overall response to migrant victims of domestic abuse". Notwithstanding the lack of transparency or published Terms of Reference for this review, it is anyway clear that the Government has now had ample time to consider a wealth of evidence demonstrating both

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<sup>1</sup> 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.

<sup>2</sup> [https://publications.parliament.uk/pa/jt201719/jtselect/jtddab/2075/207512.htm#\\_idTextAnchor064](https://publications.parliament.uk/pa/jt201719/jtselect/jtddab/2075/207512.htm#_idTextAnchor064)

the discrimination migrant women face in accessing protection, and the steps required to reverse that discrimination.

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 submission 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. The introduction of a non-discrimination clause was recommended by the Joint Committee. The aim of this clause is to strengthen the legislative framework that requires public authorities to effectively respond to *all* victims of domestic abuse.**
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 Refresh<sup>3</sup>.
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 violence<sup>4</sup> 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. Research<sup>5</sup> has pointed to particular vulnerabilities of migrant

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<sup>3</sup> <https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>

<sup>4</sup> 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.

<sup>5</sup> See Bristol University Justice Project <http://www.bristol.ac.uk/media-library/sites/sps/documents/justice/migrant-women-policy-evidence-summary.pdf> (2018)

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,
- 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 PATHWAYS

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 services<sup>6</sup> 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.<sup>7</sup> As part of the Step Up Migrant Women coalition<sup>8</sup>, 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 so<sup>9</sup>. Research<sup>10</sup> 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.<sup>11</sup>

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<sup>6</sup> Public services involved include the police, social services, health professionals, schools and others.

<sup>7</sup> 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.

<sup>8</sup> 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](#)

<sup>9</sup> Catrin Nye, Natalie Bloomer and Samir Jeraj, [‘Victims of serious crime face arrest over immigration status’](#), BBC News, 14 May 2018.

<sup>10</sup> King’s College London and the Latin American Women’s Rights Service [‘The Right to be Believed: Migrant women facing violence against women and girls \(VAWG\) in the ‘hostile immigration’ environment in London’](#) report, May 2019

<sup>11</sup> Ibid

11. Liberty and Southall Black Sisters have submitted the first police super-complaint<sup>12</sup>, 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).
12. The Government's own guidance on coercive control recognises that perpetrators of abuse often leverage immigration status as a tool of coercive control<sup>13</sup>, 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 case<sup>14</sup>, 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, left her in a state of uncertainty and at very high risk of further abuse.
13. The Government acknowledges in its response to the Joint Committee's report the very clear recommendation to separate reporting of crime from immigration control. However in response the Government merely refers to ongoing work to better implement the existing 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...*"<sup>15</sup> 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...*"<sup>16</sup>
15. The Government has not provided a single piece of evidence to demonstrate what purpose the police sharing the information of domestic abuse survivors with immigration enforcement would have, other than triggering immigration enforcement procedures against that individual. The role of the police is to protect victims and investigate crime, not to act as an extension of Immigration Enforcement. The NPCC guidance is – at best – ambiguous and sends conflicting messages to Police Officers about their role in supporting victims. Survivors who report to the Police should be offered protection, have the crimes they

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<sup>12</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/767396/Super-complaint\\_181218.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767396/Super-complaint_181218.pdf)

<sup>13</sup> [Controlling or coercive behaviour - statutory guidance](#)

<sup>14</sup> End Violence Against Women Coalition, '[Women Living in a Hostile \[Environment\], Personal Stories](#)'.

<sup>15</sup> [CEDAW General Recommendation No. 35, July 2017](#).

<sup>16</sup> 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.

are reporting investigated and signposted to a specialist domestic abuse service, where appropriate legal advice and support can be accessed in order to resolve insecure immigration status.

16. **In order to comply with the UK’s domestic and international human rights obligations, we recommend the Bill is amended to include a provision establishing safe reporting pathways and an end to data sharing for immigration enforcement purposes between public services and the Home Office. Survivors of domestic abuse and violence must be able to safely report abuse to the 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 engagement<sup>17</sup>.
17. 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.

## **DOMESTIC VIOLENCE RULE AND DESTITUTION DOMESTIC VIOLENCE CONCESSION**

18. Women with insecure immigration status find it virtually impossible to access refuge and other forms of safety and support in order to escape violence and abuse. Without access to public funds they are not eligible for welfare benefits, which are required to cover the cost of a stay within a refuge service. Women with no recourse to public funds therefore face insurmountable barriers to accessing refuge spaces and other forms of safe accommodation,<sup>18</sup> and therefore face 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.
19. **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, or their status may have become insecure as a direct result of abuse (not least, for example, 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.**

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

<sup>18</sup> 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.

20. 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**<sup>19</sup>.
21. We believe proposals may be made to make funding available to survivors to access emergency accommodation, without extending eligibility to apply to regularise or confirm their immigration status i.e. the DV Rule. We urge committee members to resist this suggestion. While it is of course critical to ensure that survivors are able to access emergency protection in the form of refuge, safe accommodation and welfare support, if survivors are not at the same time able to access a route to regularise their immigration status – through the DV Rule – they will quickly find themselves once more in an incredibly vulnerable and precarious situation when the emergency funding ends i.e. unable to access public funds, unable to work and unable to rebuild their lives. Refuges, who face a funding crisis, are likely to still be reluctant to accept women with no recourse if there is only an ‘emergency fund’ available and they are not eligible for welfare benefits in the long-term, which is essential for move-on and resettlement.
22. Egregiously, since 2015 those eligible to apply through the Domestic Violence Rule have also 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 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.<sup>20</sup> However, between 2015 and 2018, only 2% of administrative reviews resulted in an overturned decision.<sup>21</sup> **We are calling for the 2015 change to be reversed, to ensure survivors have the right to appeal decisions to the Tribunal.**
23. 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’.<sup>22</sup>

## **SPECIALIST SERVICES AND REFUGE PROVISION**

24. **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,

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<sup>19</sup> Southall Black Sisters has shown through their Tampon Tax funded No Recourse Project that at least six months access to public funds is necessary, [‘The Domestic Abuse Bill and Migrant Women’](#), 20 March 2019.

<sup>20</sup> Rights of Women, [‘Written evidence submitted to Public Bill Committee, Immigration Bill’](#), Session 2013-14.

<sup>21</sup> Niamh McIntyre and Alexandra Topping, [‘Abuse victims increasingly denied right to stay in UK’](#), The Guardian, 16 August 2018.

<sup>22</sup> Southall Black Sisters, [‘The Domestic Abuse Bill and Migrant Women’](#), 20 March 2019.

and that service providers are skilled and specialist.<sup>23</sup> 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.<sup>24</sup> As a result, 60% of all referrals to refuges were declined in 2017-18<sup>25</sup>, which rises to 80% for BME women.<sup>26</sup> It is evident that our refuge services are at crisis point. No survivor of abuse or child should ever be turned away from safety.

25. The Ministry of Housing, Communities and Local Government (MHCLG) will introduce a new statutory duty on local authorities to fund support for victims and their children in accommodation based domestic abuse services, including refuges and services that provide dedicated specialist support to victims with protected characteristics such as BME women, to the Bill at Committee Stage. The government has committed to underpin this with stable and secure funding, to be determined in 2020.
26. While the statutory duty signals welcome commitment from the government to end the post-code lottery that survivors currently face when seeking safety, we are concerned that many of the current barriers to specialist support will remain. Smaller, specialist services led ‘by and for’ BME and migrant women will continue to struggle within a localised funding system and under local needs assessments alone, as they will often be supporting survivors from across local authority boundaries and over the entire country. Robust national oversight arrangements, a national needs assessment and ring-fenced national funding for services led ‘by and for’ BME and migrant women will be essential. Reforms to the DV Rule and DDVC will still be required to ensure migrant women can access refuge services and safe accommodation, in reality.
27. Specialist services led ‘by and for’ BME and migrant women have suffered the most as a result of budget cuts<sup>27</sup> or competitive tendering practices, and subsequently these women are more likely to be denied safety. ‘By and for’<sup>28</sup> 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 support<sup>29</sup>. **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.**

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<sup>23</sup> 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.

<sup>24</sup> Jamie Grierson, [‘Council funding for women’s refuges cut by nearly £7m since 2010’](#), The Guardian, 23 March 2018.

<sup>25</sup> Home Affairs Select Committee, [‘Domestic Abuse’](#), Ninth Report of Session 2017-19, 17 October 2018.

<sup>26</sup> Imkaan, [‘Capital Losses: the state of the specialist BME ending violence against women and girls sector in London’](#), 2016.

<sup>27</sup> Imkaan (2018) From Survival to Sustainability (available online)

<sup>28</sup> “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>

<sup>29</sup> [https://www.sistersforchange.org.uk/wp-content/uploads/2019/03/83-SistersForChange\\_UnequalRegardUnequalProtection\\_Nov2017-1.pdf](https://www.sistersforchange.org.uk/wp-content/uploads/2019/03/83-SistersForChange_UnequalRegardUnequalProtection_Nov2017-1.pdf)

## CONCLUSION

28. 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 Committee members that the human cost of these failures will be severe – as 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.
29. To ensure this Bill is fit for purpose, we urge Committee members to 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.