



## **Submission to the Home Affairs Committee**

### **Domestic Abuse Inquiry**

**July 2018**

Amnesty International UK is a national section of a global movement of over three million supporters, members and activists. We represent more than 600,000 members, supporters, activists, and active groups across the United Kingdom. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

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## **Summary of recommendations:**

- A new statutory definition must be rooted in Violence against Women and Girls (VAWG) as a violation of human rights.
- The government should take action to ensure equal protection for migrant women.
- The government should ratify the Istanbul Convention (IC) as a matter of urgency and act to bridge implementation gaps, in particular in relation to Articles 4, 8 and 9.
- The government should ensure the Bill is adequately financed, reverse existing cuts to legal aid and consistently apply meaningful equality impact assessment to future budgets so that the response to domestic abuse can be truly effective.
- The government should amend sections 58 and 59 of the OAPA to ensure it protects rather than criminalizes women.
- The role of the proposed Commissioner should be framed under VAWG and should be independent, accountable, adequately funded and permanent.

## **Introduction:**

1. Amnesty International UK (AIUK) welcomes the opportunity to respond to this inquiry. By this submission, AIUK seeks to raise our concerns regarding the proposals for the Domestic Abuse Bill (the Bill), focussing in particular on compliance with human rights standards.

## **Definition of domestic abuse and human rights standards**

2. AIUK welcomes the proposal for a statutory definition of domestic abuse encompassing diverse forms of abuse experienced by women, men and non-binary people.
3. However, given that women are disproportionately affected by violence perpetrated by men, we are concerned that the proposed statutory definition does not recognise that domestic abuse is rooted in VAWG which is a violation of women's rights and a form of discrimination against women<sup>1</sup>. VAWG is both a cause and a consequence of structural gender inequality in society.
4. According to data collected in 2016 and 2017 by the Office of National Statistics women are around twice as likely as men to experience domestic violence, and men are far more likely to be perpetrators. Most domestic homicide victims are women, killed by men. On average, two women are killed each week by their current or former partner in England and Wales, a figure that has changed relatively little in recent years. Between March 2014 and 2016, 242 women were killed by a male partner/ex-partner; 32 men were killed by their male partner/ex-partner, and 40 by their female partner/ex-partner<sup>2</sup>.
5. For the Bill to enable the UK to make progress towards eradicating domestic abuse it needs to be informed by analysis rooted in human rights obligations: a new statutory definition should place domestic abuse as a cause and consequence of discrimination

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<sup>1</sup> UN CEDAW Committee General Recommendation 35

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf)

<sup>2</sup>

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2017>

against women and follows the Convention on the Elimination of Discrimination Against Women (CEDAW).

6. This means recognising that “discrimination against women – as defined in article 1 of CEDAW – includes gender-based violence, that is, ‘violence which is directed against a woman because she is a woman or that affects women disproportionately’, and, as such, is a violation of their human rights”<sup>3</sup>. Given the intention for this Bill to put the UK in the position to ratify the IC a statutory definition based on VAWG as a human rights violation is needed.

### **Ensuring all women are protected**

7. Women have different experiences of VAWG and domestic abuse based on their age, race, class, sexual orientation and gender identity, migration status, amongst others.
8. It is critical for the law to recognise these diverse experiences and ensure all women are protected.
9. AIUK agrees with the inclusion of family members, in addition to intimate partners, within the proposed statutory definition as this will improve the recognition and legal protection for all people experiencing abuse at the hand of associated persons beyond intimate partners.
10. This will be particularly relevant for BAME women: evidence shows that half of BAME women experience violence and abuse at the hand of multiple perpetrators such as extended family members. Evidence from Sisters for Change<sup>4</sup> shows how BAME women’s experiences are systematically misunderstood by the police.
11. AIUK is concerned by the lack of reference to forms of violence and abuse disproportionately experienced by BAME and migrant women such as FGM, forced marriage, so called ‘honour-based’ violence, dowry-related abuse and transnational marriage abandonment.
12. It is critical for the statutory definition and guidance to be informed by the analysis and experience of BAME women led organisations and avoid stereotyping specific communities in relation to domestic abuse. The complexity of women’s experiences needs to be understood so that all women can access protection and justice. These issues should be addressed in any guidance related to the definition.

### **Ratification and compliance of the IC**

13. The UK government has committed to ratify the IC. According to the government, the missing step is the extension of extraterritorial jurisdiction to VAWG offences, including rape of an over 18 and sexual assault, where it does not yet apply<sup>5</sup>. However, AIUK’s analysis is that introducing extraterritorial jurisdiction will not be sufficient to ensure the UK is compliant with the requirements of the IC. We have identified compliance with articles 4 (equal protection for migrant women), 8 (financial resources) and 9 (role of civil society) as priority areas where the UK is falling short and that will not be addressed by the current proposals for the Bill. AIUK urges the

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<sup>3</sup> See footnote 1.

<sup>4</sup> <http://sistersforchange.org.uk/unequal-regard-unequal-protection/>

<sup>5</sup>

government to ratify the IC as a matter of urgency and act to bridge implementation gaps.

14. In order to prosecute the crime of forced abortion in the UK when the offence has been committed abroad, as required by the IC, the government proposes that extraterritorial jurisdiction is acquired over section 58 of the OAPA, which governs abortion in England, Wales and Northern Ireland.
15. This 1861 legislation, which does not distinguish between consensual and forced abortion, is indeed used to prosecute those who physically assault pregnant women with the intention of causing them to lose the pregnancy or administer medication to induce an abortion without her knowledge. However, it also criminalises women who choose to end their own pregnancies.
16. The criminalisation of women is not an abstract issue in the UK. Women in Northern Ireland are subject to some of the most restrictive abortion laws in Europe and are forced to travel long and often traumatising journeys to access the same services that women across the rest of the country are able to access close to home.
17. Additionally, the use of online abortion medication across the UK is rising. For women in abusive relationships the ability to access in-clinic services may be further restricted. In fact, the journal *Contraception* reported in September 2017 that nearly one in five women (18%) who contacted an online provider requesting abortion medication were in controlling circumstances that made in-clinic attendance impossible, for reasons of confidentiality or ability to leave the home.
18. In February 2018 the CEDAW Committee recommended that the UK government repeal section 58 and 59 of the OAPA in order to prevent criminalisation of women in Northern Ireland. In June 2018 the UK Supreme Court concluded that the restrictions on abortion in Northern Ireland constituted a violation of human rights.
19. It is therefore simply unthinkable that section 58, in its current form, be extended as part of the government's ratification of a convention to protect and further women's rights.
20. The government should use this unique opportunity to amend both sections 58 and 59 of the OAPA to make clear that no offence is committed under these sections where a) the pregnancy is terminated by the woman herself, or she assists in or consents to such a termination and b) the pregnancy is terminated in good faith by a registered medical practitioner, a registered nurse or a registered midwife, with the consent or assistance of a pregnant woman.

### **How to secure the equal protection of BAME and migrant women who are victims of domestic abuse**

21. Equal protection for all women regardless of race, ethnicity and migration status is an obligation under Article 4 of the IC. The explanatory report accompanying the IC at paragraph 53 explains why drafters added a non-exhaustive list to non-discrimination grounds: 'Research into helpseeking behaviour of victims of violence against women and domestic violence, but also into the provision of services in Europe shows that discrimination against certain groups of victims is still wide-spread. Women may still experience discrimination at the hands of law enforcement agencies or the judiciary when reporting an act of gender-based violence'<sup>6</sup>.

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<sup>6</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

22. AIUK urges the government to accept and act on the evidence that immigration policy is being used by perpetrators of domestic abuse as a tool to control victims and continue the abuse<sup>7</sup>. In practice this means recognising that immigration law and policy has exacerbated the risk for migrant women to experience violence and abuse and a climate of impunity for perpetrators. Unless these discriminations are remedied the UK will not be able to meet the requirements of the IC.

23. To start remedying the violation of migrant women's rights and ensuring their full legal protection the government should:

- Establish a “firewall” around reporting and access to services, for all survivors regardless of immigration and citizenship status. Survivors must be able to report to police, social services and health services with no fear of immigration enforcement
- Extend the Destitution Domestic Violence Concession (DDVC) to all survivors, rather than only those migrants who are in the UK with leave as the partner of a British citizen or settled person (i.e. a person with permanent status in the UK).
- Extend the duration of DDVC from three to six months to ensure adequate support for survivors.
- Urgently review the impact of ‘no recourse to public funds’ on survivors seeking protection ensuring the review is informed by the experiences of migrant survivors and the organisations supporting them.
- Ensure EEA national survivors and their family members can access their rights and entitlement which they are increasingly being denied due to having to prove their residence status<sup>8</sup>. This trend puts this particular group of survivors at further risk of violence, abuse and destitution. Such denial of rights is difficult to challenge because the provision of legal aid for welfare benefits law has been terminated.
- Establish new routes for victims of domestic abuse to regularise their immigration status or obtain status independent from their perpetrators.
- End the revocation of leave (by way of cancellation or curtailment) following unilateral declaration by sponsors without giving visa holders the right of reply.
- Provide legal aid for victims of domestic violence to obtain immigration and welfare benefits advice and assistance.
- Reinstate rights of appeal against refusal of Home Office decisions.
- Facilitate access to support and accommodation for victims.
- Invest in specialist services supporting migrant and BAME women by providing adequate, predictable and long-term funding as well as learning from the experience of specialist service providers on how to improve protection and access to justice.
- Review rules on visas for domestic workers<sup>9</sup>.

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<sup>7</sup> <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/FINAL-living-in-a-hostile-environment-for-Web-and-sharing-.pdf>

<sup>8</sup> <https://www.womensaid.org.uk/pregnant-women-child-survivors-left-sleeping-rough-current-system-fails/>

<sup>9</sup> In 2012 the government changed the rules on visas for domestic workers tying the visa to an employer for a maximum of six months with no right to renewal or extension beyond this time. No change of employer was

## **What else is required to ensure that there is sufficient support, protection and refuge for victims of abuse**

24. Sufficient support, protection and refuge for victims of abuse can only be achieved through adequate, long-term and predictable financial investment. Under CEDAW states are obliged to not only have a non-discriminatory legal framework, but also to ensure policies do not have discriminatory impacts. Given the disproportionate impact of budgetary cuts on women<sup>10</sup> the UK is currently in breach of CEDAW as well as protection from non-discrimination under Article 26 of the International Covenant on Civil and Political Rights.
25. The allocation of appropriate financial and human resources for all activities to prevent and combat domestic violence and VAWG is an obligation under Article 8 of the IC. At present the UK is falling short on this front. The following is a non-exhaustive list of the current situation:
- The Bureau for Investigative Journalism revealed local authorities across England have cut their spending on domestic violence refuges by nearly a quarter (24%) since 2010. A snapshot survey of 40 refuge managers across England revealed they had turned away more than a thousand women in six months alone<sup>11</sup>.
  - As documented by Women's Aid on just one day in 2017, 94 women and 90 children were turned away from refuge. 60% of all referrals to refuges were declined in 2016-17, normally due to a lack of available space<sup>12</sup>.
  - Government proposals to reform assisted housing poses a threat to refuges: by devolving this funding to local authorities for a wider range of supported housing and no ringfenced pot for refuges, the government will remove a woman's individual entitlement to support with her housing costs when she flees domestic abuse to a refuge and refuges' last secure form of funding.
  - The NRPF policy is leaving women behind and offloading the costs of protection and support on refuges as women with NRPF status do not have access to housing benefits necessary to secure a refuge place. The Women's Aid Nowhere to Turn Project (2017) identified an average of only one refuge space per region in England available for a woman with NRPF.
  - The move towards decentralisation of service provision of VAWG services has led to council funding larger and generic service providers which lack the

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permitted, thus leaving domestic workers with the stark choice of enduring violence perpetrated by the employer/ other members of the household or finding themselves breaching their visa and at risk of being deported. This policy has been updated with section 53 of the Modern Slavery Act 2015 and as a result of the Ewin's review, thus affording increased protection to domestic workers victims of modern slavery and/or trafficking. However, these changes are very far from a return to the pre-2012 position and leave many domestic workers at increased vulnerability to abuse and unable to seek help.

<sup>10</sup> For an analysis of human rights obligations and austerity measures see [Report on austerity measures and economic and social rights](#) of the UN High Commissioner for Human Rights, for a gender analysis of tax and welfare reforms in the UK see [Women's Budget Group](#).

<sup>11</sup> <http://www.politics.co.uk/comment-analysis/2017/12/12/the-truth-about-may-s-20m-fund-for-women-s-refuges>

<sup>12</sup> <https://www.womensaid.org.uk/research-and-publications/nowomanturnedaway/>

expertise and experience to support survivors. This has been particularly detrimental to specialist organisations for BAME and migrant women.

- Cuts to legal aid for immigration and welfare benefits have had a disproportionate impact on access to justice for BAME and migrant survivors.

26. The resourcing of specialist services, in particular those serving BAME women, is in crisis. Research by Imkaan has found that 67% of BAME VAWG organisations reported facing huge obstacles in accessing local funding because of funding guidelines favouring large and generic service providers. Imkaan's data suggests a worrying increase in specialist BAME VAWG organisations being taken over and managed by generic providers across the UK<sup>13</sup>.
27. Article 9 of the IC requires Parties to the Convention to recognise the work of civil society organisations and to support them 'enabling them to carry out their work in the best possible way'.
28. Given the issues noted under compliance with Article 8, AIUK urges the government to ensure that the Bill is informed by the analysis and experience of service providers, in particular those working with BAME and migrant women and that funding models are improved towards being adequate, predictable and sustainable to support specialist services.
29. This will also mean seeking to meaningfully involve service providers when developing other areas of law and policy that is relevant for survivors such as welfare benefit, housing, labour market reform, fiscal and immigration among others. However, the concept of partnerships and multi-agency cooperation must exclude co-option into immigration enforcement as a type of cooperation.
30. AIUK urges the government to ensure the Bill is adequately financed, to reverse existing cuts to legal aid and to consistently apply meaningful equality impact assessment to future budgets so that the response to domestic abuse can be truly effective.

### **The proposed role and powers of the Domestic Abuse Commissioner**

31. AIUK welcomes the creation of a Commissioner in this area, which should be independent and permanent and act as a scrutiny and accountability mechanism for policy and practice. To achieve the goal of improving the UK's response to VAWG we think the Commissioner will need adequate budget and power.
32. However, AIUK urges the government to frame Bill and the role of the Commissioner under a VAWG definition. This is necessary to ensure that the Commissioner's mandate and scope is in line with the existing policy framework which is on VAWG thus ensuring they have an overview of all forms of violence against women and girls, including, but not limited to domestic abuse.
33. AIUK endorses the response of the Ending Violence Against Women Coalition on what could be the scope of a VAWG Commissioner<sup>14</sup>.

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<sup>13</sup> <https://zine.imkaan.org.uk/new-report-life-saving-black-women-s-groups-in-critical-state-facing-closure-government-must-e3eb904bf8e0>

<sup>14</sup> EVAW Coalition [response](#) to Domestic Violence and Abuse Bill consultation, see response to question 59.