



Recommendations for the Domestic Violence and Abuse Bill

Amnesty International UK (AIUK) is concerned that the proposal for a new Domestic Violence and Abuse Bill is falling short of the government's ambition to be a once in a generation opportunity to tackle the issue and would not, as the UK intends, ensure Istanbul Convention compliance.

THE UK GOVERNMENT SHOULD:

- Ensure that the new statutory definition places domestic abuse as a cause and consequence of discrimination against women and a violation of human rights following the Convention on Elimination of Discrimination Against Women (CEDAW).
- Ensure that the statutory definition and guidance reflect the diverse experiences of all women in particular BAME women.
- Ensure the proposed Commissioner is a VAWG Commissioner, which should be adequately resourced, independent and permanent.
- Ensure compliance with Article 4 of the Istanbul Convention (IC) by ensuring equal protection for migrant women.
- Ensure compliance with Articles 8 and 9 of the IC by ensuring long-term, flexible and sustainable funding for support services, in particular those for BAME and migrant women.
- Amend articles 58 and 59 of the Offences Against the Person Act (OAPA) to prevent the criminalisation of women seeking abortions in Northern Ireland.

Statutory Definition of Domestic Abuse

AIUK welcomes the proposal for a statutory definition of domestic abuse encompassing diverse forms of abuse experienced by women, men and non-binary people. The current proposal however does not recognise that domestic abuse is rooted in a Violence against Women and Girls (VAWG) which is a violation of women's rights and a form of discrimination against women.

The IC too is explicit in this respect: for the purpose of the Convention, violence against women shall be understood to constitute a violation of human rights and a form of discrimination ... [this] needs to be borne in mind when implementing the Convention' (para 40). Ultimately 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.

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Protection for all women

We agree with the proposed inclusion of family members in addition to intimate partners within the definition, this will be particularly relevant for BAME women, half of whom experience violence and abuse at the hand of multiple perpetrators such as extended family members. It is critical that the particular experiences of BAME women are included in the proposed definition and statutory guidance. Amnesty International 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.

Home Affairs Select Committee report – October 2018

The Home Affairs Select Committee's report on domestic abuse has noted that current proposals for the Bill fall short in a number of areas and have recommended the government take action to ensure the Bill is fit for purpose.

- The bill and statutory guidance should explicitly recognise the gender inequality underlying domestic abuse, and that the disproportionate impact of domestic abuse on women and girls.
- The government should ensure adequate refuge spaces by placing a statutory responsibility on local authorities for provision, backed by ring-fenced funding from central government.
- The Committee heard of inadequate service provision for victims, in particular BAME victims. It recommends that the government's review takes into account gaps in service provision for BAME victims.
- The government should ensure all victims of abuse receive adequate protection, irrespective of immigration status and recognised perpetrators are using immigration control as a coercive control tool. The police should comply with this obligation.

However, it is also 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.

Establish a VAWG Commissioner

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 with adequate budget and power.

However, we urge the government to frame the Bill and the role of the Commissioner under a VAWG definition to ensure that the Commissioner's mandate and scope is in line with the existing policy framework, ensuring they have an overview of all forms of violence against women and girls, including, but not limited to domestic abuse.

Comply with Article 4 of the IC – end the discrimination of migrant women

Article 4.3 of the IC prohibits the discrimination of women on several grounds, including migrant or refugee status acknowledging that: 'Research into help seeking 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'¹.

¹ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

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AIUK urges the government to urgently act on the evidence² that immigration policy is being used by perpetrators of domestic abuse as a tool to control victims and continue the abuse. In practice this means recognising that immigration law and policy has exacerbated the risk for migrant women to experience violence and abuse and created a climate of impunity for perpetrators.

Unless these violations of migrant women's rights are recognised and addressed the proposed Bill will fall short of the requirements of the IC.

In order to comply with the IC and remedy the violation of migrant women's rights, 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, and its duration from three to six months.
- 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.
- Establish new routes for survivors of domestic abuse to regularise their immigration status or obtain status independent from their perpetrators.
- Reinstate pre-2012 visa rules for migrant domestic workers.
- 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 survivors 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.

Comply with Articles 8 and 9 of the IC – ensure adequate resources and specialist services to tackle VAWG

Article 8 of the IC ‘aims at ensuring the allocation of appropriate financial and human resources for both activities carried out by public authorities and those of relevant non-governmental and civil society organisations’³.

However, the UK government approach to funding to eradicate VAWG, including domestic violence, and support survivors has been falling short of what is required. The Bureau for Investigative Journalism has revealed that local authorities across England have cut their spending

² <https://www.endviolenceagainstwomen.org.uk/hostile-environment-immigration-policy-sees-abused-women-without-support-and-deported/>

³ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

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on domestic violence refuges by nearly a quarter (24%) since 2010. As documented by Women's Aid⁴, 60% of all referrals to refuges were declined in 2016-17, normally due to a lack of available space. Women with 'no recourse to public fund' status only had one refuge space available per region in England.

The move towards decentralisation of service provision of VAWG services has led to councils funding larger and generic service providers which lack the expertise and experience to support survivors. This has been particularly detrimental to specialist organisations for BAME and migrant women. Unless these issues are addressed through budgetary measures the UK government not only will fall short of what the IC requires, it will further compound the crisis of VAWG response services and the rights violations that survivors, particularly BAME and migrant survivors, face.

Article 9 of the IC recognises that specialist non-governmental and civil society organisations 'have a long tradition of providing shelter, legal advice, medical and psychological counselling as well as of running hotlines and other essential services'. The Article also commits governments to actively encourage and support NGOs and civil society 'enabling them to carry out their work in the best possible way'⁵.

Amend articles 58 and 59 of the Offences Against the Person Act (OAPA)

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.

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.

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.

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.

⁴ <http://www.politics.co.uk/comment-analysis/2017/12/12/the-truth-about-may-s-20m-fund-for-women-s-refuges> and <https://www.womensaid.org.uk/research-and-publications/nowomanturnedaway/>

⁵ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

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