

## **Evidence for CEDAW shadow report, by Southall Black Sisters**

1. We are grateful for the opportunity to contribute to this report.
2. We have focussed on five issues for the purpose of this evidence where we think the Government has fallen short of both its specific obligations under CEDAW, and its general obligations under other human rights norms in relation to violence against women and girls (VAWG) and related issues. The first three issues address specific articles of CEDAW whereas the latter two address wider VAWG issues:
  - (1) Lack of adequate protection and support for migrant women facing domestic abuse and their children;
  - (2) Access to justice and legal aid;
  - (3) Growing state accommodation of ultra-conservative religious laws and their impact on minority women;
  - (4) Transnational marriage abandonment;
  - (5) Extra-territorial jurisdiction.

### **Issue 1**

**Lack of adequate protection and support for migrant women facing domestic abuse and their children** (*this covers rights guaranteed by article 9 (nationality), article 12 (healthcare), and article 13 (social and economic benefits) of CEDAW as well as broader VAWG issues*)

3. We urge the CEDAW committee to particularly focus on rights violations when gender-based violence overlaps with immigration, especially in the context where the Government is implementing its goal of creating a 'hostile environment' for migrants. This impacts on all minorities, especially abused vulnerable women. The rights of migrant and minority women should therefore be at the front and centre of any examination into the UK's record on upholding CEDAW principles. We address this issue under the following headings:
  - (1) Introduction
  - (2) Housing
  - (3) Healthcare
  - (4) Prioritisation of immigration enforcement over protection of victims
  - (5) Inadequate responses from children's services to families with no recourse to public funds
  - (6) Specific issues for women asylum seekers

## **(1) Introduction**

4. At least 60% of the women we work with at Southall Black Sisters (SBS) who have been subject to gender based violence also have insecure immigration status. Some of these women have been dependant on their partners/spouses for their immigration status whilst others arrive in the UK through other immigration routes.
5. On a daily basis, we are witness to countless migrant women who are subject to violence but who have nowhere to go because they have insecure immigration status and fear deportation and destitution. They are subject to many state-imposed restrictions that only serve to heighten their vulnerability to abuse and violence.
6. Many such women are abused physically, sexually, financially and emotionally. They are deliberately kept uninformed by their partners and in-laws about their status, as this is used as a way of controlling their behaviour and keeping them vulnerable and dependant. Immigration status therefore becomes a weapon of control and coercion in the hands of perpetrators, who know that their wives and partners have nowhere to go and no means of survival.
7. Almost 40 years of working with such women has demonstrated that the intersection of immigration status with domestic abuse creates or exacerbates marginalisation and inequality. This group of migrant women do not have the same right of access to safety and support when compared to other women who are victims of violence and abuse. This lack of an adequate safety net raises serious concerns that these women will remain vulnerable to high rates of domestic and sexual violence as well as harmful practices, sexual and economic exploitation, domestic violence related homicide (including so called 'honour' killings) and suicide. Our experience and available research shows a close connection between domestic homicide and suicide amongst women facing immigration problems, and a lack of access to key services because of the existence of the no recourse to public funds rule in immigration law. Indeed, there is some evidence to suggest that BME women including migrant women suffer from disproportionately higher rates of suicide and homicide, linked to a history of abuse.
8. Of these women with insecure immigration status, a large proportion has no recourse to public funds. The 'no recourse to public funds' requirement, introduced in the 1980s, dictates that persons coming to the UK who are subject to 'immigration control' must be financially supported by their spouses or must support themselves by working. They are not entitled to financial assistance from the state including most forms of welfare benefits, or social housing. This had a devastating impact on migrant women who found themselves in a violent relationship and were financially and otherwise dependant on their spouse or partner.

9. We have been at the forefront of campaigns over the last 20 years to ensure that migrant women suffering domestic abuse do not face the appalling ‘choice’ of staying in a violent relationship and risking their lives, or leaving to face destitution, deportation and further exploitation. As a result of years of campaigning, we succeeded in introducing the Domestic Violence (DV) Rule in 2002 to allow women on spousal visas a route to apply for indefinite leave to remain if their relationship broke down due to domestic violence.<sup>1</sup> As a result of further lobbying, the Destitution and Domestic Violence (DDV) Concession was introduced in 2012 to allow DV Rule applicants the chance to access limited state benefits and housing whilst their application was being considered.
  
10. Because of the restrictions placed on who can apply under the DV Rule (and therefore be eligible for the DDV concession), most migrant women subject to ‘no recourse to public funds’ (including housing benefit and access to social housing, child benefit and tax credits) are plunged into destitution that results in trauma and mental and physical health problems. Vulnerable women and children have no proper access to food and other basic items. Many rely on charity handouts from organisations like us and food banks. We have definitely noted an increase in dependency on these alternatives, especially as punitive immigration and social security measures kick in. We have continued to campaign for the abolition of the no recourse to public funds restriction for migrant women who have suffered domestic abuse as there is no doubt from our experience that the no recourse to public funds provision leaves women destitute. Not only is this an additional trauma; it also makes women who are suffering other disadvantages harder to reach.
  
11. In broader terms, the climate of hostility around immigration which has been compounded by the Immigration Act 2016 and latterly, Brexit, has also had a damaging impact on our users. The draconian measures relating to illegal working and renting have had a devastating impact on the ability of many migrant women (including those lawfully present in the UK) to seek housing and work. This leads to them becoming stuck in a cycle of deprivation and marginalisation.

## **(2) Housing**

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<sup>1</sup> The current position is that eligibility to apply for Indefinite Leave to Remain under the Domestic Violence Rule, is limited to those who entered the UK as the partner (i.e. spouse, civil partner, unmarried or same sex partner) of a British citizen or a person settled in the UK. This currently excludes many other groups of women including those who originally entered on visitor or student visas, and the partners of asylum seekers (despite the case of *A v Secretary of State for the Home Department* [2016] CSIH 38 holding that the partners of asylum seekers should be entitled to rely on the DV Rule; a decision which the government has thus far failed to implement)

12. Our experience is that a key cause of homelessness is the interaction between domestic violence and immigration law and policy. The no recourse to public funds restriction is a major cause of poverty, destitution and homelessness amongst migrant women facing domestic violence.
13. We therefore focus below mainly on women with no recourse, but we would note that the housing situation for women who do have access to public funds is also deeply problematic. When women present as homeless to the local authority, they sometimes face delays and disbelief. We have had many cases where, despite SBS providing evidence of a woman's vulnerability due to domestic violence (and, frequently, related mental health problems) the housing officer has concluded that the woman is not vulnerable and therefore not a priority need for rehousing. There is also a shortage of social housing stock particularly in London, especially in relation to emergency and long term needs. In terms of refuges, many have closed due to funding cuts or they place increasingly onerous conditions on who they will take, which often does not include women with no recourse to public funds. Many also refuse because the advocacy and support work required to support such women is deemed too demanding in terms of staff time and other resources, and their immigration condition too precarious. Refuge spaces are at an absolute premium. BME specialist refuges are becoming increasingly rare and almost non-existent outside London, often due to spending cuts, but also because of local commissioning cultures that favour large generic services over small specialist services because they represent 'value for money'. This has led to the closure of specialist BME services, which has in turn impacted on the availability of safe housing alternatives for migrant women.

#### No recourse to public funds and homelessness

14. Whilst we have welcomed the DV Rule and the DDV Concession as key reforms, (they have enabled thousands of migrant women to exit form abuse) we continue to lobby the Government to lift immigration restrictions and to allow access to public funds for all other categories of migrant women who are victims of abuse in other contexts. The DV Rule and the DDV Concession only apply to migrant women on spousal/partner visas.<sup>2</sup> Women on other visas or those who have been trafficked into the UK, or are here as migrant domestic workers but subject to violence from their employers, do not benefit from the reforms. The 'no recourse to public funds' requirement for these sub-groups of women means that they continue to be denied access to safe accommodation and to public funds (including housing benefit, child

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benefit and tax credits). They are plunged into destitution that results in or compounds their trauma and mental and physical health problems.

15. Many abused and destitute migrant women continue to have no safety net, and as a result, face differential treatment when attempting to escape violence and abuse compared to other women in the UK. So we continue to push for the DV Rule and DDV Concession is extended to apply for all women. This is why in 2017, SBS applied for, and was awarded, a grant from the Government's Tampon Tax Fund to establish a pilot project to provide temporary housing and subsistence funding to women with no recourse to public funding. The funds will enable us to support migrant women who are not on spousal/partner visas, and to assess the success of the support given. It will hopefully provide evidence to the Government, if it is needed, that the DDV Concession must be extended to all abused migrant women and asylum seekers with 'no recourse'.

#### Social housing

16. Single migrant women who are not on spousal/partner visas but subject to the no recourse to public funds rule struggle to access social housing, as social housing and housing benefit are deemed to be public funds. There is some limited provision available for some of these women under Part I of the Care Act 2014, if they are assessed as needing 'care and support'. The reality is that it is incredibly difficult to access this provision; we address this further below.
17. We currently operate an emergency fund to provide short term assistance for such women living in London only. Although the fund will be supplemented by the Tampon Tax grant, it is still nowhere near enough to meet the rising level of need that we see from across the UK, nor is it a long term solution. Women who fall within this category are forced to turn to charities and even strangers for help, but needless to say this can present other risks, especially for vulnerable migrant women. Most women therefore will stay in abusive relationship and others who do exit often experience further abuse including sexual exploitation and domestic servitude from friends, family members and members of the community who have offered to accommodate them. Many are too scared to report their experiences to statutory agencies due to their insecure immigration status and fear of deportation.
18. Women with no recourse who have children should, in theory, be able to approach the local children's services department for assistance under s17 Children Act 1989. However as we explain below, such support is incredibly difficult to access without consistent and tenacious advocacy on behalf of these women. This is becoming a serious problem as cuts in public spending are imposing severe constraints on social

services, which means that they become even more harsh and punitive in their approach to migrant women in a manner which often borders on illegality.

### Refuges

19. We are finding it incredibly difficult to secure refuge accommodation for women with no recourse to public funds as refuges inevitably need to know how their housing and subsistence costs will be met. Indeed, even women eligible for the DDV concession face a struggle obtaining refuge space. Refuges are reluctant to accommodate migrant women because there is no guarantee that their immigration status will be regularised or because often there is a delay in the processing of benefits by the Department of Work and Pensions. Often refuges refuse because supporting migrant women is resource intensive and most refuges simply do not have skilled or experienced staff to support women who have complex immigration matters. A further difficulty for BME migrant women is the dearth of specialist BME refuge provision available, as referred to above.
  
20. Our experiences are largely echoed by research undertaken by Women's Aid. See their '*Nowhere to Turn*' report (2017) which considered the findings from their 'No Woman Turned Away' project (commissioned to provide extra support to women trying to access refuges). They found that 9.64% of women refused refuge spaces were refused because they had no recourse to public funds. Almost half of the women supported by the project were BME (44%); for whom there is very limited specialist refuge provision available (29 refuges in the whole country, mainly concentrated in London, with only 51% of all refuges having access to an interpreter).
  
21. In addition, we have seen that whereas previously refuges would make provision for migrant women and offer at least one space to a woman with insecure status, this is no longer the case. As many refuges have been taken over by either housing associations or other types of charities such as homeless shelters and or mental health organisations such as EACH, their staff lack the knowledge or experience of supporting women facing domestic violence and related matters. They are simply seen as homeless and treated as such, rather than as victims of domestic violence whose problems are compounded by other related matters. The demise and de-skilling of the refuge sector is therefore a serious problem.

### Private sector housing

22. The Government's determination to create a 'hostile environment' for illegal immigrants has also had a damaging impact on our users with no recourse to public

funds who, in the absence of social housing and support, often have to secure private rented accommodation.

23. The Immigration Acts 2014 and 2016 prevent landlords and letting agents from renting residential property to people who are unlawfully present in the United Kingdom. The 2016 Act changed the penalty from civil penalties on landlords and agents, to a criminal penalty of up to five years' imprisonment. Clearly this has had inevitable implications for the willingness of landlords to rent their properties to migrants given the time consuming and costly checks needed, as well as the penalty for 'getting it wrong'. Our experience is that this has led to migrants (even those who are lawfully present) facing huge problems obtaining private housing.
24. In many other cases, most migrant women are denied access to even private housing or placed at further risk. Migrant women who have fled violence often do so without any of their belongings or paperwork and may lack evidence to show their status. Others may lack lawful status through no fault of their own; e.g. they have been dependant on the perpetrator of abuse to renew their visa. In these circumstances, we have seen such women being exploited by sham landlords. They exploit women's desperation by providing them with inadequate and sometimes dangerous housing, or by financially or sexually exploiting them. For example, many women have complied with the request to provide identity and other documents only to never have these returned. When they question this, they are subjected to demands for further rent or sexual favours. Our experience and anecdotal evidence also shows how destitute and desperate migrant women are forced to turn to prostitution to survive.
25. Our experience of discrimination appears to be borne out by research carried out in 2015 and 2017 by the Joint Council for the Welfare of Immigrants<sup>3</sup>. Responding to questions, 27% of landlords said that they would be less likely to rent to someone with a "foreign-sounding name or accent". The research also found that 42% of landlords were less likely to consider someone who does not have a British passport (even where they may be lawfully present in the UK) as a result of the Right to Rent requirements.

### **(3) Healthcare**

26. We are extremely concerned about migrant women's ability to access healthcare in a safe manner. Various measures are making it more and more difficult for migrant women to access healthcare without fear of immigration enforcement/deportation. For example, the climate created by posters in hospital waiting rooms about

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<sup>3</sup> [https://www.jcwi.org.uk/sites/jcwi/files/2017-02/2017\\_02\\_13\\_JCWI%20Report\\_Passport%20Please.pdf](https://www.jcwi.org.uk/sites/jcwi/files/2017-02/2017_02_13_JCWI%20Report_Passport%20Please.pdf)

charging for treatment and being asked to produce proof of immigration status, can be very intimidating for vulnerable women. Further, this creates the potential for migrant women to be profiled and targeted, with their immigration status being used to prevent access to health services, even where this is not mandated by legislation. For example, some migrant women are not even registered with a GP surgery because they are being asked for documents to demonstrate their status and eligibility, and many do not have access to the same. This is despite the fact that GP services are not currently required to ask for proof of immigration status. Other women are being asked to provide evidence at A&E, before being able to access health care, despite A&E services currently being free of charge regardless of whether the patient's normal residence is in the UK.

27. In addition, NHS Digital and the Home Office have a memorandum of understanding which allows for information sharing regarding persons who are suspected of immigration offences. Much of this information sharing is happening without NHS staff even being aware; indeed we have found that many GPs do not know the Home Office has access to this information. This makes it more difficult for migrants to approach health services to report domestic violence and other crimes and receive treatment. This in turn may put their health and safety at serious risk. We note that the Health Select Committee has recently raised grave concerns about the nature of such information sharing for precisely this reason.
28. Under the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017, we understand that all secondary care services will now be chargeable and there will a requirement for services to obtain the costs for non-urgent treatment upfront. We are aware that there are categories of persons exempt from the charge. However we note there is no exemption from charges for those who are supported by social services because they are destitute and have no recourse to public funds.
29. The impact of this is twofold. Firstly, it has serious implications for the ability of migrant women to safely disclose abuse in health settings, and again suggests a policy of prioritising immigration control over protection. Secondly, we have noticed an emerging local problem of migrants resorting to 'self-medicating' with medicines they have bought from unregulated suppliers (who are importing these medicines from India and elsewhere), because they are too frightened to access primary or secondary healthcare. Clearly this is dangerous not just for individuals but from a public health perspective.

30. For women who are homeless and are unable to access healthcare, this could lead not only to a rapid deterioration in their physical and mental health, but also to self-harm and suicide.

*Case study – Ms O*

*Ms O had seen one of the posters in hospital stating “not all NHS services are free.” She thought it was to do with people who are not British. She stated that when she saw this she felt distressed: “I feel sad- if I can’t pay it I will die because I can’t afford it.” Regarding her immigration status, she said “I feel fine now, but if I hadn’t been here so long I would be scared.” She said that she generally would not want to go to hospital because she felt it was going to be difficult to obtain treatment. Ms D stated that “constantly you are afraid because you don’t know what will happen in the next minute. Our right as human beings is completely destroyed.”*

*Case study – Ms L*

*Ms L stated that during the first ten years she lived in the UK, she was always scared. She said that especially when she was pregnant, she was too scared to go to hospital because she was afraid of being asked about her immigration status. She had premature births three times, and she believes it was due to the high level of stress she was under because she did not feel able to seek medical assistance. She said, “I was always scared that they would ask for my passport.” She remarked that this was when immigration policy in the UK was less harsh, and said that “if I had come here during this time, I would have died.”*

**(4) Prioritisation of immigration enforcement over protection**

31. We have long been concerned about migrant women who report domestic abuse being questioned by police about their immigration status and indeed being reported to the Home Office rather than being afforded protection and safety. We have recently seen this elevated to a quasi-official policy or practice at local level. In a case last year, the police and Chair of a local Multi-Agency Risk Assessment Conference (MARAC) made clear to SBS that vulnerable and abused women with insecure immigration status should not call the police even in emergencies where they fear for their lives or that of their children. The MARAC in this case argued that the police are duty bound to arrest and report women to the immigration authorities if they are flagged up on their data base as ‘illegal immigrants’, irrespective of whether or not they are taking steps to secure their status, based on their right to apply to remain in the UK as victims of domestic violence. SBS arranged a meeting with the local borough commander, where the police confirmed the view that their paramount duty is to arrest migrant women with insecure status and not to protect

even in cases of domestic violence. Clearly, this stance will have far reaching implications for an entire group of migrant women who need to access the criminal justice system for protection and redress.

32. However on a more positive note we have on recent occasions been able to influence MARAC practice for the better. In one case the perpetrator had insecure status and the social services representative said “the best course of action” for the woman, would be if the perpetrator was deported. The SBS representative on MARAC challenged this; the purpose of MARAC was protection and not immigration enforcement; it was wrong and discriminatory to try and use the forum to deprive someone (perpetrator or victims) of their immigration status by the back door; and further taking such action may actually place the woman at further risk of repercussions from the perpetrator or his family if she was seen to be ‘colluding’ with the immigration authorities. SBS consistently challenges MARAC partners in similar scenarios, with the outcome that we have been able to influence best practice and ‘change the dialogue’ around immigration matters at MARAC. We know from partner organisations that where MARAC is not challenged, there is a culture developing of conflating immigration enforcement with the MARAC aims of ensuring safety and protection.

**(5) Inadequate responses from social services to families with no recourse to public funds and to single migrants**

Support for families

33. Notwithstanding the multiple restrictions on assisting those with no recourse to public funds, s17 of the Children Act 1989 (CA 1989) allows for local authorities to provide support to a family where there is a child in need and the local authority determines that it must use its power to provide accommodation and/or financial support. S17 requires local authorities to assist the family as a whole.<sup>4</sup> The duty under s17(1) is triggered by the physical presence of a child in need in the local authority’s area.

34. However, we find that local authority children’s services departments are, more often than not, trying to avoid their duty to protect vulnerable children and their

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<sup>4</sup> There are certain exceptions: schedule 3 of the Nationality Immigration and Asylum Act 2002 (NIAA) provides that 5 categories of persons (including refused asylum seekers, visa overstayers and illegal entrants) are not eligible for s17 CA 1989 support. Children are not excluded under schedule 3 NIAA, but where a parent falls into one of the excluded categories that will generally mean the family is excluded from receiving s17 support. However, the local authority may still provide assistance directly to the child. In addition, schedule 3 NIAA requires that the local authority provide support and assistance where this is necessary for the purpose of avoiding a breach of the family’s human rights or rights under the European Treaties.

families with no recourse to public funds. Almost daily we have to deal with women and children being turned away by children's services (sometimes deliberately and disingenuously sending the family to another agency or another borough), without the requisite assessment being carried out. We frequently have to challenge both their failure to carry out assessments, and the poor quality of such assessments even when they are carried out, as they often fail to take account of the domestic violence suffered (or simply dismiss it). We have had multiple cases where children's services have abrogated their responsibility in the following ways:

- a. the social worker has recommended that domestic violence can be resolved by the mother returning to her home country (even where that is unsafe or she has a pending immigration application);
- b. the social worker recommending mediation with the abuser for the purpose of reconciliation,
- c. the social worker has recommended that the children live with the perpetrator of domestic violence or his family;
- d. the social worker has tried to claim that because the family are not 'habitually' or 'ordinarily' resident in that borough they must return to where they lived before to seek assistance – usually the area they fled from;
- e. The social worker has threatened to accommodate the children but not the mother or some younger children but not older children;
- f. The social worker has tried to divert the mother to make an asylum claim (and therefore shift their responsibility to provide accommodation and financial support to NASS), even where the social worker has no immigration qualifications or remit to recommend this course of action. It is to be noted that often when women are coerced/duped into making an asylum application when in fact they should be making a DDV concession application, the Home Office will view this as the woman being inconsistent and not credible, therefore rendering the social worker's advice as unsafe and seriously dangerous.

35. In some of the above instances, our users – vulnerable from their experiences, unfamiliar with the practices in this country and often not confident in speaking English - often feel pressurised by social workers into seeking asylum or entering into a private arrangement to having their children looked after by the perpetrator/his

relatives, or sometimes enter into agreements under s20 of the Children Act 1989 to have their children accommodated by children's services. We have seen time and time again that women are not properly advised that s20 is voluntary in nature, or of the need to seek legal advice before they enter into such agreements. We are horrified at the cavalier approach that is taken by some social workers, as this action amounts to de facto removal of children from their primary carer and is therefore discriminatory and a breach of their human rights.

36. Our experiences are supported by the research carried out Women's Aid (referred to above) which found that social services failed to meet their duty of care to 32% of survivors which the Women's Aid project was supporting; 26% of whom were fleeing with children. Of the 37 women failed by children's services, 11 were failed on more than one occasion.
37. More broadly, we have found that severe cuts to children's services budgets have led to a huge reduction in resources (including experienced social work staff) available to safeguard children and to provide meaningful support for migrant women in order to avoid child protection measures/care proceedings, as well as homelessness, poverty and destitution.
38. We provide a selection of case studies below for illustration, but can provide further cases on request.

*(1) Case study – Ms A*

*Ms A was referred to Southall Black Sisters by Hounslow Children's Social Services so that we could assist with issues around domestic violence and her immigration status. Despite knowing that SBS and an immigration solicitor were assisting Ms A, and without informing either, the social worker arranged for Ms A and her daughter to claim asylum at Lunar House in Croydon. When we questioned the social worker on why this action was taken and what immigration qualifications he possessed, we were told that such a route had "worked in the past." SBS deemed this to be a clear attempt by children's services to avoid their duty to assess and support Ms A and her child under s17 of the Children Act 1989. We had to stress that the appointment made at Lunar House be cancelled since it was not relevant or appropriate. After much advocacy on our part and distress to Ms A, the social worker agreed to cancel this appointment.*

*(2) Case study – Ms D*

*Ms D is a Lebanese national. She arrived in the UK in April 2010 as the dependant of her husband, an EEA national who had been living in the UK since 2001. They had*

*two daughters, now aged 5 and 8. Ms D's husband worked as a taxi driver until 2014, when he was diagnosed with schizophrenia and ceased working. His behaviour towards Ms D deteriorated and he became increasingly controlling. In November 2016 he threatened to burn Ms D, take their children and leave the country. Ms D's husband was sectioned, but due to family and cultural pressure, Ms D felt compelled to reconcile with him when he was released from hospital. However her husband's behaviour continued to be erratic; he would not allow her to visit the toilet alone; he slept near the front door to check that she wasn't trying to 'escape'; he confiscated her bank cards and kept hiding her car. He was also physically abusive. Ms D reported this to her husband's mental health team and the children's school. In December 2017, following Ms D reporting her concerns over her husband not taking medication, he grabbed her by the throat and pushed her. Ms D finally reported her husband to the police, who referred her to SBS.*

*Ms D's husband was again sectioned. However, Ms D no longer felt safe in the marital home. She and her daughters were temporarily housed by a friend, but this was deemed unsafe as Ms D's husband knew the address. SBS therefore assisted Ms D to present as homeless to the local authority, Ealing, who placed her and her children in temporary accommodation shortly before Christmas 2017. SBS assisted Ms D to liaise with the police and have special safety measures placed on the temporary home as she was still fearful.*

*However over the Christmas period in 2017, Ms D contacted SBS to say that she had received written notification from the local authority to say she would be evicted on 2 January 2018 as she was not entitled to housing assistance; because her husband was not working, neither he nor she could be considered as exercising their EEA treaty rights. The housing officer had been aware of all these facts at the time Ms D and the children were offered housing.*

*SBS obtained advice from a community care solicitor and advised Ms D to present at Ealing children's services on the date of eviction as they had a duty to assist the family under s17 of the Children Act 1989. Ms D did so but was refused assistance. The social worker refused to provide written confirmation of the reasons. The social worker informed Ms D that she and the children were the responsibility of the neighbouring local authority, Hounslow. Ms D duly presented at Hounslow children's services, who agreed to accommodate her and the children for the night, pending a s17 assessment to commence the next day. On 3 January, Hounslow children's services agreed to extend the accommodation for a further two days (until 5 January). However, shortly after Ms D left the office, Hounslow children's services telephoned Ms D to say that she would need to leave the accommodation on 4 January and to present at Ealing council instead. Ms D did so and Ealing refused to*

*assist her. SBS were told that Ms D and her children were not Ealing Council's responsibility as the children's "needs" under s17 had arisen when they were in Hounslow! Despite SBS' repeated attempts to advocate for the family, Ealing Council would not change their position. Ms D returned to her accommodation in Hounslow as she had no other choice.*

*On 5 January Ms D presented at Hounslow children's services, who refused to accommodate her and asked her to return to Ealing Council, and informed her that they would immediately cease paying rent for the room. Ealing Children's Services then called Ms D after she had already left Hounslow, and advised her to stay in Hounslow and insist on being accommodated. In the meantime, the landlord of Ms D's temporary accommodation called her and threatened her with eviction. Ms D was extremely distressed and did not know what to do.*

*The SBS caseworker then travelled to the property in Hounslow to meet with Ms D and her children. She attempted to reason with the landlord and managers of the property, who were unhelpful and aggressive and ultimately threatened to call the police if Ms D did not leave. The situation escalated and ultimately the SBS caseworker, Ms D and her children had to barricade themselves in a room. After the intervention of a senior SBS manager, Ealing Council agreed to provide accommodation until 8 January 2018.*

*Between 8 and 17 January 2018, Ms D was granted day-by-day extensions to her accommodation in Ealing, whilst Ealing and Hounslow Councils both continued to prevaricate about who would take responsibility for her and her children. SBS continued to advocate for Ms D and regularly sought updates from both local authorities.*

*On 19 January, following advice from the Ealing social worker, Ms D presented at Hounslow children's services. They refused to assist, or conduct an assessment. Ms D's solicitor wrote to the legal department of both boroughs. On 22 January SBS was informed by Ms D's landlord that she would be evicted at midday the same day. Following several phone calls to both boroughs by SBS, Ms D's accommodation was extended to 26 January. Ealing confirmed on 25 January that they would continue to provide accommodation whilst they carried out a s17 assessment.*

*However, Ms D was left feeling traumatised and utterly hopeless as a result of her experiences. At the end of January 2018, Ms D told SBS that she felt she had no choice but to return to Lebanon with her children. Her family were now offering some support. Although Ms D and her children had an established and settled life in the UK, and despite the unstable conditions and insecurity in Lebanon, Ms D felt that she*

*and the children had no future in the UK. Despite SBS' offers of further support, Ms D and her children returned to Lebanon in February 2018. SBS are currently pursuing complaints against Ealing and Hounslow. Although we have received confirmation of Ms D and her children's safe arrival in Lebanon, we remain concerned about their safety and deeply troubled that they were driven to take such an extreme course of action due to the failures of children's services. No doubt the Government would claim this is a success story arising from their policy to create a 'hostile environment'.*

*Ms D told SBS:*

*"I leave because of what happened with social services. Nobody wanted to take responsibility, it's not fair to leave me like that. Going to one social services, going to another. It made me stressed. I'm not happy at all with them. It was very hard for me and my daughters. It's not human, I think they don't believe in human rights. Nobody helps me, but you. Nobody. I was angry. I am so angry. I got sick. I cried too much, I have problem in my eyes now, I have migraine from stress. It's very hard for me to go to Lebanon. I like to stay here with my daughters. But social service put me in hard situation, and they put me in this stress and I take this decision because of that. I am leaving here with nothing. No paper, no visa, nothing. 8 years gone like that. Maybe I won't be allowed to come back. But I don't know what else to do. It's too much for me to live like this here. My daughters were crying every night, for no reason. Crying so much, until 10, 11 at night. They were just so sad, it affects them mentally too much. They know I am not happy and it is bad for them.*

*My daughters want to go to Lebanon to be with my family. I have a big family there – brothers, sisters. My family was too sad to see me like this here, they want me to come there, they bought tickets for us. I leave all my things here, I can't take everything with me, I left them with friends. I am sad but happy I don't have to live like this anymore. My daughters are happy even if they have to leave the school here, they can't live like this."*

### (3) Case study – Ms R

*Ms R had an arranged marriage to her first cousin, Mr R, in November 2012 in Pakistan. Mr R (a British national) and his family returned to the UK soon after this and Ms R was able to travel to the UK on a spouse visa to join her husband a year later. Whilst in the UK she lived with her husband and in-laws. Ms R was subject to domestic violence including controlling and emotional and financial abuse by her husband and in-laws. In 2014, she became pregnant but was always accompanied her to GP/midwife appointments to ensure that she was unable to report the abuse.*

*Following the birth of her daughter in October 2015, the violence towards Ms R escalated. On one occasion Ms R's husband threw their infant daughter at Ms R,*

*causing injury to her daughter and to her. He then held Ms R against a wall by her throat whilst she was still holding her child. Ms R was threatened with divorce and was told that her family in Pakistan would be harmed if she disclosed the abuse to anyone. In 2015, after yet another assault by her husband Ms R telephoned the police. But she was subject to intense pressure by her in-laws to minimise the incident. Mr R received an informal warning from police.*

*A month later, reassured by her husband's promises that things would improve, Ms R reluctantly agreed to her husband's request that they travel to Pakistan with their daughter for what she understood was a holiday. Shortly after arriving at the airport in Islamabad, her husband parted company with her, claiming that he had to meet a business associate. He returned to the UK shortly after that, without Ms R's knowledge, taking both her and their daughter's passports. He has never returned them. Ms R and her family were deceived by her in-laws into believing that they would arrange for her to return to the UK. As time went on however, it became clear that Ms R's husband and in-laws had deliberately abandoned her and her daughter in Pakistan. Ms R contacted the British High Commission, the Forced Marriage Unit, and two MPs in the UK to seek assistance with returning to the UK to assert her matrimonial rights. She was eventually put in touch with her current family law solicitor who commenced proceedings in the High Court in 2016 for her to return with her daughter. The High Court ordered the return of both Ms R and her daughter to the UK so that she could engage in legal proceedings in this country.*

*As a result of the efforts of SBS, Ms R's family solicitors and immigration solicitors (the latter acting pro bono as there was no legal aid available for her case), Ms R was granted leave outside the Immigration Rules to enter the UK, with no recourse to public funds. Her daughter, a British citizen, was granted an emergency travel document. They arrived back in the UK in November 2016. It was accepted that the child should remain in Ms R's care and Mr R did not seek contact, so the High Court proceedings concluded without any fact-finding or judgment being given.*

*Because Ms R had returned to the UK on a different visa to that which she had left the UK (her spousal visa no longer being valid due to her marriage breaking down), she had no recourse to public funds and therefore was not entitled to apply for indefinite leave to remain under the DV rule. This in turn meant she was not eligible for the DDV concession.*

*Ms R had arranged for herself and her daughter to stay with some family friends, Mr and Ms J. However the friends had young children of their own and the tensions within the house quickly escalated to the point where Ms R and her daughter were at*

*emotional risk and indeed Ms J said her husband had threatened her with removing her (Ms J) from the house if she did not evict Ms R and her child.*

*As Ms R and her child were about to become homeless, SBS made a referral to their local children's services, preparing a detailed letter setting out Ms R's circumstances, together with supporting evidence including from Ms R's solicitors. Despite constant advocacy and pressure from SBS, the children's services prevaricated and attempted to abrogate their duty in the following ways:*

- a. The children's services department incorrectly tried to claim that Ms R and her daughter were not their responsibility and told her that she should return to the local authority area she had lived in before she was abandoned in Pakistan;*
- b. They insisted that Ms J had agreed to accommodate Ms R, despite Ms J confirming to SBS on several occasions that she was not willing to help and that her own marriage was at risk (Ms R also confirmed this). Children's services ignored warnings from SBS that the situation in the J's house was placing Ms R's daughter's welfare at risk;*
- c. They tried to delay matters by sending Ms R to the charity Shelter for housing advice (who referred her straight back to children's services due to her 'no recourse' status; SBS had warned the social worker that this was likely to be the outcome);*
- d. A social work manager offered to pay for a return ticket to Pakistan without consulting SBS or Ms R's immigration solicitors (despite a letter from SBS setting out why Ms R and her child would be at risk in Pakistan and that Ms R was trying to regularise her status. Moreover, the letter stated that an existing High Court order directed that the child could only be removed with leave of the court or permission of the other parent);*
- e. They refused to carry out a s17 assessment despite several requests;*
- f. They essentially abandoned Ms R and her child in the reception area of the building whilst all social work staff left for the day, with the result that SBS had to refer Ms R and her child to the out of hours Emergency Duty Team to ensure they had safe accommodation;*
- g. They made an application to the Home Office for some benefits to be granted to Ms R, without discussing this with SBS or Ms R's immigration solicitors and despite the social worker lacking the requisite qualifications to do this.*

*SBS was left with no choice but to lodge a formal complaint letter with the social workers and the Director of Children's Services. However, it was only after SBS instructed community care solicitors on behalf of Ms R, who wrote a letter before action, that children's services agreed to provide temporary accommodation and subsistence under s17. Even then the subsistence level had to be challenged as it was completely inadequate. The children's services department did not prepare their s17 assessment for a further 4 months. The assessment focussed on criticising the actions of Ms R rather than assessing the needs of her child, and dismissed Ms R's allegations of domestic violence (without reason or any reference to SBS' supporting evidence) and suggested Ms R's daughter could either live with Mr R (the perpetrator) or his sister.*

*This assessment was subject to a legal challenge but in the meantime, Ms R's immigration solicitors (with the assistance of SBS) were successful in their application for Ms R to have indefinite leave to remain in the UK. Ms R is now trying to rebuild her life with her young daughter.*

#### Single migrants

39. Single migrants may be entitled to assistance from the local authority under the Care Act 2014. If it appears a person has "needs for care and support", the local authority must carry out an assessment. People subject to immigration control, whose needs arise solely from being destitute, are excluded from support. Certain groups (such as those unlawfully present and failed asylum seekers) will only be able to access certain support if this is necessary to avoid a breach of the person's human rights or rights under EU treaties.
  
40. Although the threshold for carrying out an assessment is in theory very low, our experience is that local authorities will often conclude that our users are not "vulnerable enough" to justify support being given under the Care Act, even when we have provided detailed evidence of a woman's vulnerability and needs. Our experience is that adult social services very rarely support single migrant women partly because they simply do not understand gender-based violence and the risks and vulnerabilities that this creates and partly because they remain chronically under-funded.

#### **(6) Specific issues for women asylum seekers**

41. We are concerned that asylum seekers are often excluded from, or forgotten in, the discussion around migrant women suffering gender-based violence.

42. Asylum seekers are entitled to financial support and housing from the National Asylum Support Service (NASS) under s96 of the Immigration and Asylum Act 1999 if they are otherwise destitute. “Destitution” is however considered by the Home Office in a very literal sense and we have had users refused NASS support because they have an interest in assets or income, even if they have no actual access to the same (please see our case study below).
43. The level of NASS support is extremely low. The financial support amounts to £36.95 per household member per week, with £3 extra available for pregnant women and children aged 1-3 and £5 extra for babies under 1. The absolute inadequacy of the financial provision is perhaps self-evident, but is starkly demonstrated when looked at against the Government’s survey of income poverty in the UK, *Households Below Average Income*. This sets the poverty line in the UK at 60 per cent of the median UK household income. The poverty line for the UK for 2015 to 2016, according to this measure, is £1738 a month for a couple with two children and £1287 for lone parent with two children, excluding housing costs (the weekly figure would therefore be £401/£297).
44. Perhaps our greatest concern is that NASS housing can be provided anywhere in the country and a refusal of accommodation (however justified) will mean no further accommodation offer will be made. This means that asylum seeking women face the ‘choice’ of homelessness if they refuse NASS accommodation, or dispersal to an unfamiliar part of the country at short notice, destroying what support networks they have been able to form, often rendering them unable to continue work with support services such as SBS, and leaving them isolated and even more vulnerable to violence, exploitation and mental health problems. In most of our cases, dispersals can be extremely damaging and catastrophic for migrant BME women who often either have no family support in the UK or have been rejected and ostracised by their community for defying community norms on marriage and divorce. For these women, organisations like SBS represent a critical lifeline because we operate a holistic model of support that addresses complex and overlapping needs for legal, practical, emotional support. Removal from such networks creates acute trauma and heightens their vulnerability and isolation.

#### Case study – Ms N

*Ms N is a Pakistani national. She was brought up in a strict religious family in Pakistan. She wanted to pursue higher education in the UK, before returning to Pakistan. Ms N’s parents eventually agreed to this, but on the condition she agreed to an arranged marriage after she completed her education.*

*Ms N applied for a student visa and arrived in the UK in April 2017. Before leaving Pakistan, Ms N signed an authority to allow her parents to have full access to, and control over, her bank accounts in Pakistan. She commenced a degree at the University of Bedfordshire and found accommodation in Hounslow. Unfortunately due to problems with the course, she was told by the university to commence her course the following year.*

*Soon after this, Ms N commenced a relationship with a man she had met locally. Ms N's partner became verbally abusive and insisted she financially support him with the money she had intended to use to fund her degree and subsistence. He was extremely controlling. He also became physically abusive. Ms N's partner would frequently leave her and then return and beg for forgiveness. Ms N was alone in the UK and isolated and felt she had no choice but to reconcile.*

*Ms N found out that she was pregnant. In August 2017, when she was about 3 months pregnant, her partner slapped her hard across the face during an argument. They separated after this. Ms N contacted her family after this incident. However they disowned her and threatened to kill her if she returned to Pakistan. She received various death threats after this from several family members. Ms N took these threats very seriously and knew that her situation in Pakistan as a single mother would be dire and that she would be at risk of violence from the community as well as family members. Ms N's parents also prevented her from accessing her bank accounts in Pakistan. Ms N felt depressed and suicidal. She attempted to take an overdose of sleeping pills.*

*Soon after this, Ms N ran out of money and fell behind on her rent. She also found out that there were problems with her unborn baby's development. Her landlord evicted her, despite her pregnancy, and threw all her possessions out onto the street. She was found crying in a park by a woman who offered her a room to rent in a shared house.*

*In October 2017, Ms N came to SBS for assistance. SBS assisted her to obtain immigration advice and make an asylum claim. We provided Ms N with emotional and practical support. We were concerned that Ms N's housing situation was very unstable; she was again at risk of eviction as her landlord's partner wished to move in. SBS was very concerned about Ms N's vulnerability to exploitation given her immigration status, pregnancy and fragile emotional health. We assisted her to obtain emergency accommodation in a bed and breakfast, assisted her with food vouchers, and provided some living expenses through our 'no recourse fund'. Ms N*

*was then referred to children's services by her midwife, and SBS maintained regular contact with the social worker.*

*When Ms N made her application for asylum in November 2017, we assisted her in applying for NASS accommodation. Unfortunately, this was refused on the basis that she had funds in her bank accounts in Pakistan and was therefore not destitute. This was despite the fact her parents had denied her access to this money and she was entirely dependent on SBS to meet her day to day needs through our no recourse funds. We communicated with Ms N's bank to request that they give Ms N access to her bank account, but they were extremely unhelpful.*

*SBS encountered repeated difficulties with children's services as they claimed, even after the baby was born, they did not have a duty to accommodate Ms N and her child as they were entitled to NASS support. We explained that NASS support had been refused and that Ms N and her child were homeless and vulnerable. We argued that children's services had a duty to house them under s17 of the Children Act. Initially children's services tried to persuade SBS to continue using our short term fund to accommodate Ms N and her child in a bed and breakfast whilst they arranged accommodation. We had to insist that it was completely inappropriate for us to continue using scarce resources in this way, when children's services had a statutory duty to this family.*

*Eventually, the NASS decision was successfully appealed and Ms N and her child were accommodated outside London. However the stress caused to Ms N by the initial refusal and not knowing who would take responsibility for her case impacted negatively on her wellbeing. In addition, SBS could not continue to provide emotional and other support as Ms N had left London, which left her devastated.*

45. We are also concerned about the quality of interviews carried out in respect of asylum seeking women. The Guardian has recently highlighted the lack of expertise and understanding amongst many interviewers, with potentially devastating consequences:

<https://www.theguardian.com/world/2018/feb/11/asylum-interview-10-examples-of-absurdity-home-office>

<https://www.theguardian.com/uk-news/2018/feb/11/i-thought-she-was-an-intern-asylum-interview-goes-wrong>

### Link to evidence

46. Much of the evidence in the above section is taken from our own casework experience; however we include links below to relevant research, studies and articles. All website links were extracted on 20 March 2018:

- a. *NHS chiefs urged to stop giving patient data to immigration officials*, The Guardian, 31 January 2018 - <https://www.theguardian.com/society/2018/jan/31/nhs-chiefs-stop-patient-data-immigration-officials>
- b. Households Below Average Income statistics – taken from <https://www.gov.uk/government/collections/households-below-average-income-hbai--2>
- c. Women’s Aid, *Nowhere to Turn* (2017) taken from <https://www.womensaid.org.uk/research-and-publications/nowomanturnedaway/>
- d. Joint Council for the Welfare of Immigrants, *Passport Please: The impact of the Right to Rent checks on migrants and ethnic minorities in England*, February 2017, taken from [https://www.jcwi.org.uk/sites/jcwi/files/2017-02/2017\\_02\\_13\\_JCWI%20Report\\_Passport%20Please.pdf](https://www.jcwi.org.uk/sites/jcwi/files/2017-02/2017_02_13_JCWI%20Report_Passport%20Please.pdf) on 20/03/2018
- e. ‘*Asylum interview: 10 examples of absurdity from the Home*’, The Guardian, 11 February 2018, taken from <https://www.theguardian.com/world/2018/feb/11/asylum-interview-10-examples-of-absurdity-home-office> on 20/03/2018
- f. ‘*I thought she was an intern’: when asylum interviews go wrong*’, The Guardian. 11 February 2018, taken from <https://www.theguardian.com/uk-news/2018/feb/11/i-thought-she-was-an-intern-asylum-interview-goes-wrong> on 20/03/2018

### Government response

47. The Government’s response to these issues has been piecemeal and inadequate.

48. On the issue of housing, the Government has indicated in their recent consultation on the proposed Domestic Abuse bill that they will give consideration to extending the DDV concession. As referred to above, they have also provided £250,000 funding

through the Tampon Tax to SBS to pilot support for women and their children affected by violence and abuse on non-spousal visas with no recourse to public funds (as a last resort fund to contribute towards rent and subsistence for a limited time; women without dependent children can be paid for a maximum of 12 weeks and those with children or other vulnerabilities up to 2 weeks while they apply for help from social services).

49. We understand that there is also work ongoing in relation to immigration enforcement and safe reporting for migrant women between the Mayor's Office for Policing and Crime, and a coalition of organisations chaired by the Latin American Women's Rights Service.

50. However, the problem with the Government's approach to resolving these issues is that it is by way of ad hoc concessions to a discriminatory and punitive immigration policy; immigration control is treated as the priority with small exceptions being made for the most vulnerable – rather than having a humane policy to start with. This does not sit well with the Government's avowed prioritisation of domestic abuse; the right to protection and to access to support, have become dependant on immigration status. In addition the Government have consistently refused to ring fence funding for BME specialist women's organisations, which are predominantly the agencies working with migrant women.

### **Recommendations**

51. We would make the following recommendations:

- a. We need a coherent policy for all migrant women suffering gender-based violence (including women with insecure status and asylum seeking women);
- b. Abolish the 'no recourse to public funds' restriction for all migrant women and children subject to gender based violence;
- c. Reform housing and social security laws and policies vital to prevent abused women and children plunging into poverty and destitution. This would include refuge places for all migrant women suffering domestic abuse with these women having access to a specialist, properly resourced link worker;
- d. Create clear statutory guidance to children's services to assist all abused and destitute migrant women and children;
- e. Extend the DV Rule and DDV concession to include all migrant women and children irrespective of their visa status and extend the DDV Concession to longer than three months' leave outside the Immigration Rules;
- f. Developing safe and confidential reporting systems for victims with insecure immigration status that provide confidence that their immigration status will not be investigated.

- g. Ending the policy of dispersal for abused female asylum seekers since this disrupts the essential support and assistance they may be receiving and heightens their isolation and vulnerability to harm.
- h. Provide clear statutory guidance (including a clarification of statutory duties) to the police and health services in respect of protecting victims of domestic abuse and their children, regardless of immigration status;
- i. Institute ring-fenced funding for specialist BME services and refuges based on history and track record of working to further equality and human rights of women.

**Issue 2 – Legal aid and access to justice** *(this covers rights guaranteed article 15 (equality before the law), article 16 (marriage and family matters) as well as broader issues of violence against women and girls)*

52. The potential impact and consequences of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) were extensively explored in the previous CEDAW shadow report (April 2013). The CEDAW committee’s concluding observations on the UK’s seventh periodic report also expressed serious concern that LASPO *“unduly restricts women’s access to legal aid”* (paragraphs 22-23). We warned against the likely impact of LASPO in our response to the previous government’s ‘Transforming Legal Aid’ consultation in 2012: *“The current legal aid proposals, if instituted, will represent a highly regressive move for many vulnerable groups since they will be faced with a legal system that is the exact opposite of a ‘fair, open justice system’. The proposals will result in a less transparent, discriminatory and elitist justice system. Only the rich will be able to access justice and there will be no or limited public accountability of institutions that engage in arbitrary decision making or abuse their powers...(the reforms) will undermine fundamental rights enshrined in domestic and international law, such as the right to life, the right not to be subject to torture and inhuman and degrading treatment, the right to private and family life, the right not to be discriminated and the right to a fair trial. Above all, the proposals will undermine the very principles of equality before the law and the rule of law - the cornerstones of a democracy that the UK is ironically seeking to promote in other parts of the world.”*

53. We summarise some of the multiple current problems with legal aid and access to justice, below. A full account of our concerns about the state of legal aid can be found within our submission to the Bach Commission on access to justice, a link to which is provided below.

54. As a result of LASPO, many areas of civil law were removed entirely from the scope of legal aid (including most immigration, housing and social security cases). Women who are unfamiliar with the culture, systems, and often the language of this country find it almost impossible to represent themselves in these, often complex, areas without considerable support.
55. Our users also face stringent financial criteria to access legal aid, as well as rising court fees. There are fewer specialist, good quality legal aid solicitors and many law centres have been forced to close for lack of funding.
56. Legal aid for private family law cases can only be accessed if our clients can evidence domestic violence on the basis of restrictive and often unrealistic criteria set by the Legal Aid Agency. Even where legal aid is granted, many women find themselves in a position where their former partners, the perpetrators of abuse, are allowed to cross examine them personally as they are not eligible for legal aid.
57. We have lobbied the Government extensively to reverse these drastic and ill-thought out cuts to legal aid. In our experience these cuts have resulted in access to justice being denied to many women and children who are fleeing abusive situations. All of this means that women often find themselves having to represent themselves, or worse still, remain 'trapped' in violent or abusive relationships. Those with complex needs are particularly hard hit, and vulnerable women are left to negotiate a legal system which they find difficult to understand thus compounding their trauma.
58. Our casework has shown that BME women are twice disadvantaged on the grounds of both gender and race. Their inability to access legal aid, a pillar of the welfare state, must be seen in the wider context of the difficulties BME women (especially migrant women) face in accessing state support in terms of benefits, healthcare, social care and police protection. We have provided detail above in relation under the heading 'issue 1'.
59. We are often left with no choice but to assist women to represent themselves. However, due to the lack of capacity and resources, we increasingly find ourselves informing women that they have to represent themselves in legal proceedings. We are finding this an extremely difficult and disturbing step to take.
60. To try to remedy the justice gap for these women and the ongoing breach of women and children's human rights we have taken the initiative to set up our own pro bono scheme in which a number of family law barristers have agreed to run a monthly family law advice clinic for our users at our centre. A number of barristers and solicitors have also agreed to be called upon for ad hoc pro bono advice and

representation. These steps have had to be taken because the Government has failed to provide adequate legal aid services.

61. In summary, LASPO has been a disaster in terms of access to justice, human rights, equality, and indeed as a cost-cutting exercise, with the financial burden shifting to other areas, such as the court service and the voluntary sector.
62. Our ongoing concern, based on our significant years of experience, is that the 'justice gap' created by then state's measures on austerity and legal aid cuts is leaving more and more BME women to the mercy of growing 'community' and religious forms of arbitration. This is explored under 'issue 3', below.

### **Link to evidence**

63. The following links may be helpful (website links all extracted on 20 March 2018):
  - a. *Standing alone - Going to the family court without a lawyer*, Citizens Advice, November 2015 - <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Crime%20and%20Justice%20Publications/Crime%20and%20Justice%20consultation%20responses/StandingAloneGoingtothefamilycourtwithoutalawyerfinalversion.pdf>
  - b. Evidence submitted by Southall Black Sisters to the Bach Commission on Access to Justice, 4 May 2016 (available on request)
  - c. *Access Denied? LASPO four years on: A Law Society Review*, Law Society of England and Wales, June 2017 - <file:///C:/Users/radhika/Downloads/lapso%204%20years%20on%20review.pdf>
  - d. *The Right to Justice*, the final report of the Bach Commission, September 2017 - [https://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission\\_Right-to-Justice-Report-WEB.pdf](https://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf)

### **Government response**

64. Despite the searing criticism of LASPO from across the legal and political spectrum as well as civil society, and a number of successful legal challenges to legal aid policy in relation to the domestic violence evidence requirements and exceptional funding, the Government's response has been limited to ad hoc and piecemeal changes. It is not an acceptable response.
65. For example, on 8 January 2018 the Government has announced long awaited changes which widen the evidence that will be accepted by the Legal Aid Agency when demonstrating domestic violence in family cases. We cautiously welcome the decision to allow domestic violence support services to provide evidence, and to allow a grant of indefinite leave to remain (ILR) under the DV rule to stand as

evidence (both of which were amongst suggestions we made to the Ministry of Justice). However, we remain opposed in principle to the continued need to evidence domestic violence as the eligibility criteria remain problematic and difficult particularly for BME women to meet.

66. In addition, the Government has now launched a post-implementation review of LASPO. This review is long overdue. It must be comprehensive, transparent and robust to avoid simply being a whitewash. There must be proper and meaningful consultation with specialist organisations particularly those which work on VAWG and domestic abuse, and which deal with vulnerable minority groups.

67. The Government has failed to make good on other assurances, such as enacting legislative change to ensure victims of domestic abuse are not cross examined by their unrepresented perpetrators in the family courts. In addition, we continue to see cutting of fees for legal aid lawyers, which is likely to further reduce the numbers of lawyers willing and able to take on legal aid work.

68. We also must question the state's commitment to access to justice when the Government has for some time been threatening to repeal the Human Rights Act and to water down the equality duties. In addition there have been insufficient assurances or guarantees that the current EU Withdrawal Bill will protect the safety net of rights protection despite Brexit. It is vital that we protect both the equality laws and the Human Rights Act since they are important tools with which to hold the state to account when it discriminates against, or fails to protect, BME women. For example, we have used Equality Act 2010 and the Human Rights Act in the following ways:

- a. To challenge on a daily basis, the failure of local authority children's services to assist children in need and their families;
- b. To save SBS as a specialist service for BME women in the face of commissioning structures that favour generic services. We successfully used the Equality Act to argue that the commissioning model was discriminatory towards BME women;
- c. To challenge gender segregation in faith-based schools, that seeks to disempower BME girls. We used the Equality Act to successfully intervene in the case of *HM Chief Inspector of Education, Children's Services and Skills v Interim Executive Board of Al Hijrah School and others* [2016] EWHC 2813 (Admin), which involved a faith based, co-educational school that followed strict gender segregation to the detriment of the girls in that school (please see link below under 'issue 3');

- d. To intervene in inquests where women have been driven to suicide aggravated by domestic violence. We have been able to use the Human Rights Act to require the coroner's court to extend the scope of the coroner's duty so that there is a focus not just on how but why a woman is driven to suicide;
  - e. To challenge the Government's prohibition on non-EU spouses entering the UK where they or their sponsor were under 21. At the Supreme Court, we argued that it would result in an unjustified and disproportionate interference with the article 8 ECHR right to family life of genuine couples to live together, whilst simply driving the problem of forced marriage 'underground' – *R (Quila) v Secretary of State for Home Department; R (Bibi) v Secretary of State for Home Department* [2011] UKSC 45;
  - f. To successfully hold the police to account for failures to investigate crime with the result that women suffered inhuman and degrading treatment perpetrated by a non-state actor - *Commissioner of Police of the Metropolis v DSD and another* [2018] UKSC 11]
69. Any attempt to water down or repeal equality and human rights legislation will be seriously disadvantageous to all women's struggles for their rights but especially the most vulnerable and marginalised women such as BME women.

### **Recommendations**

70. Our recommendations are:
- a. The Government should reverse punitive austerity measures; this includes restoring legal aid to pre-LASPO levels;
  - b. There should be specialist training on VAWG issues – including in relation to harmful cultural practices and transnational violence - for anyone concerned with facilitating access to justice (including those working at the Legal Aid Agency);
  - c. The Government must make a clear commitment to safeguarding equalities and human rights law and policies, especially following Brexit.

**Issue 3 - Growing state accommodation of ultra-conservative religious laws and their impact on minority women** *(this covers rights guaranteed article 15 (equality before the law), article 16 (marriage and family matters) as well as broader issues of violence against women and girls)*

71. Our concern, based on our significant years of experience, is that the 'justice gap' created by the state's measures on austerity is leaving more and more BME women to the mercy of growing 'community' forms of arbitration, that are increasingly religious in character. In recent years, they have been facilitated and indeed encouraged by the state to flourish as a cheap alternative to utilising the formal legal system. The slashing of legal aid and the denial of access to the formal legal system, allows increasingly vocal religious right-wing and conservative groups in minority communities to make demands that are antithetical to human rights including the right to resolve family disputes in accordance with religious values. These values inherently discriminate against women and other sexual and religious minorities and ultimately prevent rather than encourage access to justice.
72. Many of the most vocal religious groups that have a seat at the public table are ultra-conservative if not fundamentalist in nature. Yet they are increasingly given funding to provide faith based services or shape public policy on a range of issues. At the heart of all fundamentalist movements is support for the patriarchal family and the control of women. Women are viewed as embodying the morals and traditional values of the family and the whole community. Religious fundamentalists often promote violence against women as a means of maintaining control over women, and/or create a climate, through the promotion of ultra-conservative attitudes about women, that is conducive to violence against women.
73. We have carried out extensive research which reveals a plethora of problems that women encounter when utilising religious arbitration forums and tribunals to resolve family disputes; ranging from incompetence and maladministration to flagrant human rights abuses. For example:
- a. Women are subject to discriminatory and arbitrary responses;
  - b. The religious arbitration forums/tribunals applied religious principles based on patriarchal notions of differences between the sexes which are inherently incompatible with equalities and human rights law and principles;
  - c. Women are charged to use these forums/tribunals when their husbands are not. They also face inordinate delays due to their husbands failing to co-operate or due to the inefficiencies/incompetence of the tribunals;
  - d. Women and children do not have legal representation during the process; decisions are not public material and there is no right of appeal;

- e. Many abused women are forced into mediation for the purposes of ‘reconciliation’. Frequent advice is to be tolerant of abuse and to allow the abusive partner access to children even if this contravenes court orders;
- f. Women are frequently only granted religious divorces where they agree to waive their legal rights to maintenance, property and even their children;
- g. Such forums/tribunals often seek to persuade women to discontinue criminal charges against their husbands for violent or abusive behaviour.

74. Moreover our overwhelming experience of working with minority women from all backgrounds is that the most vulnerable and marginalised women do not want their family disputes to be governed by religious arbitration forums and tribunals; they want the same access to justice and protection that is available to women in the wider community. See link below to our article in Open Democracy in December 2016 and the accompanying letter signed by over 300 abused women, both religious and atheist, opposing religious arbitration in family matters because this is the site most governed by patriarchal norms and where arguably the greatest violation of the rights of women and girls occur.

75. Leaving BME women to the mercy of religious or faith based laws and institutions and services (including schools, refuges, advice and advocacy centres) is both dangerous and racist; it denies them the right to access justice and instead leave them to negotiate a system which discriminates against them as women. These faith based models of intervention seek to reinforce gender injustice and inequality; at best they lack the expertise, interest or incentive to identify women’s vulnerabilities and assist them or divert them to services which can help them. Faith based measures serve to further disadvantage women; contributing to their descent into marginalisation, poverty and homelessness because they are denied their rights to property, freedom of movement and expression. Our experience and research is supported by the recent findings of *‘The Casey Review: a review into opportunity and integration’*:

*“...Women in some communities are facing a double onslaught of gender inequality, combined with religious, cultural and social barriers preventing them from accessing even their basic rights as British residents. And violence against women remains all too prevalent – in domestic abuse but also in other criminal practices such as female genital mutilation, forced marriage and so-called ‘honour’ based crime.” (Para 1.57)*

*“Throughout our review we have encountered countless examples of abuse and unequal treatment of women enacted in the name of cultural or religious values, or as a reaction to those values.” 3(Para 7.17)*

76. We would also point to the creeping influence of religious fundamentalism in other areas of public life, such as education. For example, relationships education (RSE) in the UK has – particularly since the 1989 Rushdie affair - been hijacked by ultra-conservative, fundamentalist forces that use the ‘right to religious freedom’ and ‘parental choice’ to control women and girls’ autonomy, sexuality, and knowledge and keep them subjugated and vulnerable to gender based abuse. The UN Special Rapporteur on Cultural Rights has observed that fundamentalists everywhere often target education, including seeking to remove sex education from the curriculum. This is devastating for BME women who already suffer great religious, cultural and economic inequalities (see the Casey review, December 2016). We have seen growing assertions over the years of a particularly orthodox, patriarchal, Islamic identity and concordant demands for “Islamic” uniforms (including hijabs for 5 year old girls); the right to withdraw girls from dance, music, swimming and PSHE lessons; for gender segregated lessons and sports activities, aimed at fulfilling the Islamic requirement for “female modesty”. (For more detail please see *HM Chief Inspector of Education, Children’s Services and Skills v Interim Executive Board of Al Hijrah School and others* [2016] EWHC 2813 (Admin), in which SBS intervened - <https://www.judiciary.gov.uk/judgments/hm-chief-inspector-of-education-childrens-services-and-skills-v-the-interim-executive-board-of-al-hijrah-school/>). These developments violate domestic equality laws and CEDAW principles as well as other human rights standards on the right to education.

77. Despite repeated warnings by experienced groups such as ourselves, One Law for All and our coalition partners, the Government’s response has been startlingly ambivalent (please see below).

**Link to evidence**

78. We would refer to the following, all of which were extracted from the given URL links on 20/3/2018:

- a. SBS Briefing Paper on religious arbitration in family matters (9 March 2016) (available on request)
- b. Open letter to Home Secretary regarding Government’s ‘independent review’ on Sharia councils and arbitration forums in the UK, with accompanying article (4 July 2016) -

<https://www.opendemocracy.net/pragna-patel-gita-sahgal/whitewashing-sharia-councils-in-uk>

- c. *'The Casey Review: a review into opportunity and integration'*, Dame Louise Casey, December 2016 – taken from <https://www.gov.uk/government/publications/the-casey-review-a-review-into-opportunity-and-integration>
- d. Submissions to Home Affairs Select Committee – Sharia Councils Inquiry:
  - o Written evidence 3 August 2016 - <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/sharia-councils/written/35465.html>
  - o Supplementary evidence 10 January 2017 (statement of over 300 women opposed to religious laws): <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/sharia-councils/written/44485.html> (also published at <https://www.opendemocracy.net/5050/pragna-patel/sharia-debate-who-will-listen-to-us>. Pragna's article accompanying this letter can be found at: <https://www.theguardian.com/commentisfree/2016/dec/14/sharia-courts-family-law-women>
  - o Further supplementary evidence 10 January 2017 (testimonies of survivors): <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/sharia-councils/written/44604.html>
- e. SBS submission to the Women and Equalities Committee on the implementation of Sustainable Development Goal 5 in the UK, (January 2017), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/implementation-of-sustainable-development-goal-5-in-the-uk/written/45458.html>
- f. *HM Chief Inspector of Education, Children's Services and Skills v Interim Executive Board of Al Hijrah School and others* [2016] EWHC 2813 (Admin), in which SBS intervened - <https://www.judiciary.gov.uk/judgments/hm-chief-inspector-of-education-childrens-services-and-skills-v-the-interim-executive-board-of->

al-hijrah-school/. Our evidence can be found at <https://wewillinspire.com/wp-content/uploads/2017/10/SBS-Inspire-Witness-Statement.pdf>

- g. SBS and others, Open letter on Sharia 'Courts': Why Regulation is Not the Answer, 21 November 2017 - <https://www.southallblacksisters.org.uk/popluar/sharia-courts-why-regulation-is-not-the-answer>.
- h. *The independent review into the application of sharia law in England and Wales*, February 2018, taken from <https://www.gov.uk/government/publications/applying-sharia-law-in-england-and-wales-independent-review>
- i. SBS and One Law for All coalition response, Open letter to the Home Secretary – Amber Rudd: 'Sharia Laws Are Part of the Extremist Threat and Not a Solution', 6 February 2018, <https://www.southallblacksisters.org.uk/popluar/sharia-laws-are-threat-not-solution>

### **Government response**

- 79. Despite the concern expressed by the CEDAW committee at paragraph 22 of their concluding observations on the UK's seventh periodic report, about the need to protect women from informal community/faith based arbitration systems, the actual Government response has been lukewarm.
- 80. The previous Home Secretary (now Prime Minister) set up an independent review into Sharia laws in July 2016. SBS together with a huge number of organisations and individuals felt compelled to boycott this inquiry due to the limited terms of reference of the review; the lack of human rights-based approach; the fact that theologians (including Imams) were chairing and advising the review and the implications for the impartiality of the review (see link at paragraph 78b above). The published review itself confirmed our concerns (see paragraph 78i above).
- 81. At around the same time, the Home Affairs Select Committee also set up a review into sharia councils. We provided extensive evidence to this review (see links above). However, this was far from problematic and we felt compelled to raise concerns about the way that oral evidence sessions were conducted by one MP in a manner which suggested bias towards the 'pro-sharia council' lobby, and the number of witnesses from a 'pro-religious' background as compared to those who opposed

sharia councils (see <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/sharia-councils/written/43507.html> which sets out these concerns). In any case the work of the Select Committee abruptly ended when an early election was called in June 2017.

82. The Government has not responded substantively to either review save to rule out the possibility of regulating sharia councils. However, the state's approach to multiculturalism and integration has historically been to engage and pander to faith leaders without questioning their motivations and agenda, particularly when it comes to equality and gender based violence. For example, the recently concluded independent review into Sharia laws in the UK was a highly flawed exercise. Although the Government rejected formal recognition (through regulation), the way has been left open for the Sharia courts to continue to exist in a no-man's land where they continue to produce discriminatory parallel laws while posing as an acceptable alternative dispute mechanism. Now they will be strengthened by a review that has endorsed their existence. For more information see the link to the open letter to the Home Secretary above.

83. There seems to be no move to end this ill-thought out approach. There has also been a lack of joined up thinking between the Government's integration strategy and policies around violence against women and girls, despite the links drawn in Dame Louise Casey's report between inequality (including gender inequality) and religious and ultra-conservative forces. The latter erect considerable religious, cultural and social barriers that prevent BME women from asserting their fundamental rights and freedoms.

### **Recommendations**

84. We seek an end to state accommodation of the faith based approach to BME women that is being increasingly defined by fundamentalists and conservatives. Instead, the state needs to adopt a clear commitment to pursuing a human rights-based approach to BME women and to provide adequate resources to BME women's organisations to pursue this objective. We also demand a clear separation between religion and the state especially in the areas of law, public policy, education and welfare services. A secular state is the only means by which the state can guarantee equal rights to the religious and non-religious.

85. We would also like to see the UK state committing itself to ending religious arbitration councils, tribunals and 'courts' that purport to be arbiters of justice in family matters. There must be legislation banning any form of religious arbitration,

including negotiations and mediation on family matters, since women and children are most susceptible to abuse and violations of their rights in the context of the family. Any accommodation of religious arbitration in family matters will de facto lead to the growth of parallel legal systems and in effect privatise justice and legitimate cultural relativism in the law. We also would like to see the state create a new law that criminalises anyone attempting to arbitrate on family matters using religious laws.

#### **Issue 4 – Transnational marriage abandonment**

86. Over the past few years, we have witnessed the emerging and increasing phenomenon of transnational marriage abandonment where foreign national wives, following marriage, are abused and then deliberately abandoned by their British national husbands in their countries of origin. Our casework and existing research shows that this involves large numbers of women from India, but increasingly we are seeing cases from Pakistan and Bangladesh.

87. Abandonment takes three main forms:

- a. Abandonment in the UK – This occurs when a woman migrates upon marriage to join her husband and is subjected to a period of neglect, abuse and exploitation, following which she is either thrown out of the marital home or less commonly, leaves to escape the violence;
- b. Abandonment in the country of origin following a brief period on the UK. This occurs when following a marriage, a woman is sponsored to the UK and then subject to abuse and taken back to her country of origin either through coercion or deception (e.g. for a holiday) and abandoned there while the husband returns back and revokes her visa;
- c. Abandonment in the country of origin having never been sponsored in the UK. This occurs when the husband arrives in the Indian subcontinent, marries and then leaves shortly afterwards with assurances that he will apply for a visa for his wife but fails to do so – in these cases, the woman is either abandoned with her in-laws or at her natal home, and never migrates.

88. Women in the second and third categories are the hardest to help as the resources and legal remedies available in the UK are limited.

89. Whilst some very good practice has developed (e.g. within family law) there is an absence of a holistic, state wide response. We have been working with the Home Office (around immigration law and policy) as well as the President of the Family Division (around the response of the family justice system) in order to improve

outcomes for women abandoned abroad, in terms of the rights to engage in legal proceedings in the UK or re-enter the UK to assert their rights in terms of property (including reclaiming dowries), maintenance and their children and their right to settlement under immigration rules governing domestic violence.

### Link to evidence

90. We would refer to the following; all website links were extracted on 20 March 2018:

a. Academic articles/reports

- Jahangir, S. (2015) *Stranded Spouses and Immigration Control*, Family Law Week, March 2015
- Anitha, S., Roy, A. and Yalamarty, H. (2016) *Disposable women: Abuse, violence and abandonment in transnational marriages*. Lincoln: University of Lincoln.
- Anitha, S., Patel, P., Handa, R. and Jahangir, S. (2016) *Emerging issues for international family law Part 1: Transnational marriage abandonment as a form of domestic violence*. Family Law Journal, 46 (10). p. 1247
- Jahangir, S., Anitha, S., Patel, P., and Handa, R. (2016) *Emerging issues for international family law Part 2: Possibilities and challenges to providing effective legal remedies in cases of transnational marriage abandonment*. Family Law Journal, 46 (11), p. 1352
- Patel, P., Handa, R., Anitha, S., Jahangir S. (2016) *Emerging issues for international family law: Part 3: Transnational marriage abandonment and the dowry question*. Family Law Journal, 46 (12), p. 1443

b. Videos

- 'My second name is dowry' video (full version), by Southall Black Sisters support group -<https://www.youtube.com/watch?v=7Z2FRGGUZeQ> or available via <http://www.southallblacksisters.org.uk/>
- 'The wives abandoned by British Asian men' – BBC News - [https://www.youtube.com/watch?v=k6OmhfOgj\\_4](https://www.youtube.com/watch?v=k6OmhfOgj_4)
- 'Outcast Brides' – BBC Inside Out - <http://www.bbc.co.uk/programmes/p04vzq85>

c. Blogs and articles

- <http://www.southallblacksisters.org.uk/news/transnational-marriage-abandonment-is-abuse>
- <https://www.opendemocracy.net/5050/pragna-patel/transnational-marriage-abandonment-new-form-of-violence-against-women>
- <http://www.bbc.co.uk/news/uk-37472233>

## Government response

91. Until recently, this problem was little understood in law, policy and practice in the UK. There has been very little attention at central government level paid to this issue. We have been working with immigration policymakers and the family judiciary to influence policy and legislation. A summary of our work is outlined below.
92. The University of Lincoln published vital research in 2016 which highlighted the scale of the problem and the devastating consequences for women. On 4 February 2016, SBS and the University of Lincoln launched the report *Disposable Women: Abuse, Violence And Abandonment in Transnational Marriages: Issues For Policy And Practice in the UK and India* at the Houses of Parliament.
93. Since then, alongside an expert working group of academics and family and immigration law practitioners, SBS has been lobbying extensively for change in both family and immigration policy.

### SBS' work on abandonment in the family justice system

94. Since April 2016, SBS and a sub-working group have been working closely with the President of the Family Division, Sir James Munby, on improving outcomes for abandoned women in the family justice system. In October, November and December 2016 we published a series of articles on transnational marriage abandonment in *Family Law* journal. We were then invited by the President to make a presentation to a conference of senior family judges in May 2017 with a view to raising judicial awareness of the issue as a form of domestic abuse and to improve judicial decision making in family cases that raises issues of abandonment.
95. As a result of our work with the President of the Family Division transnational marriage abandonment was included for the first time in the definition of domestic abuse in the revised *Practice Direction 12J: Child Arrangements and Contact Orders: Domestic Abuse and Harm*.

### SBS' work regarding immigration policy

96. In addition to the above, SBS has also been working to change policy and practice in respect of immigration matters. We have seen first-hand how many abused and abandoned women have had their visas curtailed by their perpetrators; they contact the immigration authorities following the abandonment to inform them that the marriage has ended and that their wives are no longer living with them. This is a deliberate tactic used by perpetrators to prevent their wives from returning to the

UK to assert their rights. The perpetrators are often aware that these women would have rights under the DV Rule but for the abandonment. For example, currently a woman who is abandoned in her country of origin cannot apply for indefinite leave to remain (ILR) under the DV Rule – when she would be able to if the marriage had broken down due to domestic abuse within the UK. These women should be enabled to apply for ILR, and should also not be subjected to ‘no recourse to public funds’ restrictions if they have re-entered the UK. The tactic of abandonment therefore forms a key part of the financial, physical, psychological abuse and coercive control to which the women are subjected. They are left destitute and isolated and in a state of great anxiety and distress.

97. In May 2016, a working group co-ordinated by SBS met with the Head of Immigration and Family Policy at the Home Office to increase understanding and reduce the opportunities for perpetrators to abuse and abandon women with impunity. We urged the Home Office to recognise that the overlap of domestic abuse and immigration in this area has a devastating impact on the human rights of migrant women and on the welfare and rights of their children. The officers were very receptive to working on the issue and a follow up meeting was arranged but unfortunately postponed repeatedly by Home Office staff due to a number of factors including Brexit and a change of personnel. However a further meeting with the Home Office is imminent.

## **Recommendations**

### **Family law**

98. We are continuing to lobby for further changes within the family justice system, including:
- a. The need for more awareness of transnational abandonment and training for the judiciary, legal profession, and Cafcass officers;
  - b. The need for such cases to be heard by judges with an appropriate level of seniority, and with effective liaison taking place between the family court and immigration authorities;
  - c. In terms of divorce and financial remedies, there is a need for greater scrutiny of divorce cases where the abandoned wife cannot respond as she is out of country, to ensure that if she has been abandoned she can seek a remedy;
  - d. The need for a more streamlined process to enforce the Maintenance Orders (Reciprocal Enforcement) Act 1972 so that an abandoned wife can enforce maintenance orders that are issued in her country of origin.

### **Immigration law and policy**

99. It is vital that transnational marriage abandonment is recognised in the cross-government definition of domestic violence and abuse (and any definition include in the forthcoming Domestic Abuse bill), and specifically in immigration policy and guidance. More must be done to ensure that spouses who have been subject to transnational abandonment are able to access their rights as victims of domestic abuse without being caught by immigration controls. They must be entitled to return to the UK to or to participate in criminal, family or other legal proceedings that protect their rights.

100. There is also a clear need for the UK's immigration system to act in a way that acknowledges and combats transnational abandonment, from clearer guidance for entry clearance officers when considering visa applications from abandoned spouses; to acting on Family Court requests for the return of abandoned mothers to the UK; to more attention being paid to ensure that husbands cannot revoke their spouses' visas with ease.

101. We would also like to see the following changes to immigration law and policy:

- a. Improving involvement of foreign spouses in the visa application process, ensuring that they understand their rights and where to go to access help and support.
- b. Ensuring foreign spouses can access information about their partner's previous marriages, or where their partner has supported any previous spousal visa applications, through the visa application process.
- c. Improving the assessment and response to curtailing spousal visas for foreign spouses when a partner claims that a marriage has ended due to domestic abuse;
- d. Provision of temporary visas for women who have entered the UK on spousal visas and are then taken to another country and abandoned there;
- e. Extending the DV rule so that women who have been abandoned outside the UK and who spousal visas have subsequently expired, can still avail themselves of the DV rule.

## **Issue 5 – Extra territorial jurisdiction**

102. As the issues of abandonment (above), as well as forced marriage and female genital mutilation (FGM) demonstrate, in a globalised world with greater migration, violence against women and girls increasingly takes place across and beyond national borders.
103. Two tragic recent examples in the UK are the honour killings of Samia Shahid and Seeta Kaur, both British women who were tricked into going to Pakistan and India, respectively, and murdered. In Seeta's case, her grieving family have been left to seek justice without any state support either from the Indian or the British authorities. The Indian authorities have failed Seeta's family through patriarchal indifference and complacency that has so far not resulted in any proper investigation. The British Government's response also betrays its commitment to addressing honour based violence and to protecting BME women and even smacks of racial bias in its treatment of the bereaved families of non-white British nationals killed or harmed abroad.
104. A major problem in Seeta's case is that her husband is an Indian national, although he had indefinite leave to remain in the UK and has continued to exercise his right to enter the UK. The police and other state authorities have relied on section 9 of the Offences Against the Person Act 1861 (OAPA), which they state creates a legal bar to prosecuting a non-British national for crimes abroad.
105. Section 9 OAPA, '*Murder or manslaughter abroad*' states:
- Where any murder or manslaughter shall be committed on land out of the United Kingdom, whether within the Queen's dominions or without, and whether the person killed were a subject of Her Majesty or not, every offence committed by any subject of Her Majesty in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter . . . may be dealt with, inquired of, tried, determined, and punished . . . in England or Ireland . . . : Provided, that nothing herein contained shall prevent any person from being tried in any place out of England or Ireland for any murder or manslaughter committed out of England or Ireland, in the same manner as such person might have been tried before the passing of this Act.***
- [Emphasis added]*
106. UK case law has clarified that a 'subject of Her Majesty' should be construed as a 'British citizen', a British subject within the meaning of the British Nationality Act 1981 or a 'protected person' under that Act.

107. So despite the extensive years of residency and links to the UK, Seeta's husband can escape justice because he is not a British citizen.
108. The criminal law is outdated insofar as it does not take account of globalisation, the movement of people and links to countries abroad through marriage. Existing criminal laws on gender-based violence contain serious loop holes in respect of protection; they not only fail to protect BME women in particular, but also have discriminatory outcomes for them. These women are more likely to be taken back to their countries of origin by abusive perpetrators whether they are British nationals or not, and perpetrators enjoy near impunity for their crimes because the criminal justice system in those countries is often inadequate.
109. The current criminal laws in relation on prosecutions for gender-based violence are inconsistent and lack clarity. Whilst section 9 of OAPA bars the prosecution of non-British national perpetrators who commit crimes abroad, we would observe that there have been a number of piecemeal legislative exceptions created to allow for extra-territorial jurisdiction to be exercised for certain offences committed on British national women abroad even where the perpetrators are not British nationals, namely forced marriage and female genital mutilation. Numerous other examples including: hostage taking (Taking of Hostages Act 1982); torture (Criminal Justice Act 1988) and terrorism (Terrorism Act 2000).<sup>5</sup>

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<sup>5</sup> 1) Forced marriage: Section 121 of the Anti-Social Behaviour, Crime and Policing Act 2014 creates an offence of forced marriage. S121(7) provides that an offence is committed if

- (a) the person or the victim or both of them are in England or Wales,*
- (b) neither the person nor the victim is in England or Wales but at least one of them is habitually resident in England and Wales, or*
- (c) neither the person nor the victim is in the United Kingdom but at least one of them is a UK national.*

This expressly foresees the possibility of prosecuting a foreign citizen for a crime of forced marriage committed abroad.

- 2) Female Genital Mutilation (FGM): s1(1) – (3) of the Female Genital Mutilation Act 2003 creates the offences of FGM and aiding/abetting FGM. Section 4 expressly provides that an offence is committed when the relevant prohibited act is committed outside the UK by either a UK national or a UK resident. Moreover, the offence is treated as if committed in England or Wales. Once again, a person who has foreign citizenship but UK residency, may be prosecuted for crimes committed abroad.
- 3) Murder or manslaughter committed in the UK or country party to the European Convention on the Suppression of Terrorism 1977: section 4 (read with Schedule 1, paragraphs 1 and 2) provides that a person who commits an act in any Convention country, which would amount to an offence of murder or manslaughter if committed in the UK, shall be guilty of murder/manslaughter in the UK. The section expressly provides that this is the case whether the person is a citizen of the UK or any of the Convention countries or not. It also applies to nationals of Convention countries committing murder or manslaughter anywhere in the world (even non-Convention countries). Further, we understand that the Secretary of State can order that section 4 apply to non-Convention countries if certain conditions apply (and has so ordered in the case of the USA). We understand that a prosecution under section 4 requires the consent of the Attorney General, but that there is no need for the

110. It seems to us to be an illogical anomaly, contrary to the principles of justice and equal protection before the law, that a British national woman has no recourse if she is taken abroad in order for a crime of serious domestic abuse or honour based violence (other than forced marriage or FGM) to be perpetrated against her– unless her perpetrator happens to be a British citizen! There seems to be no logical reason why victims of domestic and honour-based violence and deaths (as opposed to victims of forced marriage and FGM) should be excluded from the protection of the British state. All this does is create transnational arenas for violence and abuse against women, particularly BME women.

111. We welcome the grant of the Royal Assent to the Preventing and Combating Violence Against Women and Domestic Violence Bill 2016-17 – which provides for the ratification of the “gold standard” Istanbul Convention as a step forward in protecting women’s rights. Article 44 of the Convention requires state parties to establish jurisdiction where an offence of gender based violence is committed by a person who is a national of, or habitually resident in, that state – even if the offence takes place outside that state.

112. We note that the consultation on the forthcoming Domestic Abuse and Violence bill includes a section on extra-territorial jurisdiction, but it does not go far enough to comply with the spirit as well as the letter of the Istanbul Convention (please see below, under ‘Government response’). It does not appear to contemplate extending extra-territorial protection and the right to seek legal redress for victims of domestic and honour-based violence and deaths committed abroad.

### **Link to evidence**

113. Please see our Justice for Seeta campaign  
<http://www.southallblacksisters.org.uk/campaigns/justice-for-seeta-campaign>

### **Government response**

114. The Government are proposing to introduce extra territorial jurisdiction for certain offences as part of the Domestic Abuse bill:

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offence to be in any way terrorism related. We understand one such recent case was *R v Rimas Venclovas* [2013] EWCA Crim 2182 - which involved a Lithuanian man prosecuted in England for his (Lithuanian) wife’s murder.

- a. Putting people in fear of violence: section 4 of the Protection from Harassment Act 1997
  - b. Controlling or coercive behaviour in an intimate of family relationship: section 76 of the Serious Crime Act 2015
  - c. Stalking involving fear of violence or serious alarm or distress: section 4A of the Protection from Harassment Act 1997
  - d. Actual bodily harm: section 47 of the Offences Against the Person Act 1861
  - e. Grievous bodily harm: section 20 of the Offences Against the Person Act 1861
  - f. Grievous bodily harm with intent: section 18 of the Offences Against the Person Act 1861
  - g. Procuring abortion: section 58 of the Offences Against the Person Act 1861
  - h. Rape: section 1 of the Sexual Offences Act 2003
  - i. Assault by penetration: section 2 of the Sexual Offences Act 2003
  - j. Sexual assault: section 3 of the Sexual Offences Act 2003
  - k. Causing a person to engage in sexual activity without consent: section 4 of the Sexual Offences Act 2003
115. A huge omission from this list is domestic homicide. The Government has said in its consultation that various crimes, “including the common law offence of murder”, are already subject to extra territorial jurisdiction – however, as explained above the current criminal law only extends extra-territorial jurisdiction to crimes committed by a British national or subject and not British residents.
116. Other omissions are some of the crimes which would fall under the umbrella of domestic abuse or ‘honour based violence’ such as kidnapping, false imprisonment and blackmail.

### **Recommendations**

117. It is vital for the Government to comply with the Istanbul Convention in full.
118. Article 1a of the Istanbul Convention states that a purpose of the Convention is to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence. Article 12(2) requires parties to take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person. Whilst the Convention sets out certain specific offences which must be criminalised by State parties (including attempts or aiding/abetting these offences) at articles 33-39; (including psychological violence, stalking, physical violence, sexual violence and rape, forced marriage, FGM, forced abortion and sterilisation), it is evident that they

are only examples. The Convention does not simply require that state parties only legislate in respect of those offences.

119. The Convention sets out a comprehensive scheme for tackling offences of violence against women and domestic abuse, and setting up extra territorial jurisdiction in respect of the same. It would appear the Government has simply complied with the minimum requirements in respect of extra territorial jurisdiction, by limiting it only to the specified offences at articles 33-39.

120. The Government should follow the spirit, not just the letter, of the Istanbul Convention. Extra territorial jurisdiction should be extended to all cases of violence against women committed abroad by British nationals or residents of the UK.