



## **Domestic Violence and the Prohibition of Torture and Ill-Treatment**

### **Thematic Consultations of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

#### **Response to questionnaire – Surviving Economic Abuse, 14 May 2019**

#### Introduction

1. Surviving Economic Abuse (SEA) is the only charity in the UK dedicated to raising awareness of economic abuse and transforming responses to it. Our work is informed by a group of women who are 'Experts by Experience'. Our four strategic priorities focus on awareness-raising, professional responses, systems change and policy influencing. Our responses to the questionnaire will focus specifically on our area of expertise which is economic abuse.
2. Please find the responses below. They draw to a large extent from SEA's submissions in relation to the UK government's consultation *Transforming the Response to Domestic Abuse* and the draft Domestic Abuse Bill published in January 2019.

#### Prevalence and root-causes of domestic violence

3. Economic abuse involves behaviours (control, exploitation and sabotage) that interfere with an individual's ability to acquire, use and maintain economic resources<sup>1</sup>, such as money, a place to stay and transportation.<sup>2</sup> While SEA recognises that both women and men suffer domestic abuse, the focus of its work is the experience of women victim-survivors of domestic abuse, and dismantling the gendered power structures which help perpetuate domestic abuse by men against women.

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<sup>1</sup> Adams, A. E., Sullivan, C. M., Bybee, D. and Greeson, M. R. (2008) Development of the Scale of Economic Abuse. *Violence Against Women* 14(5): 563-587

<sup>2</sup> Sharp, N. & Learmonth, S. (2017) *Into Plain Sight: How economic abuse is reflected in successful prosecutions of controlling or coercive behaviour*

4. Economic abuse is often linked with other forms of abuse such as physical, sexual and emotional abuse, within the context of coercive control. The risk of experiencing physical abuse among those who experience economic abuse is nearly five times greater than among those who do not.<sup>3</sup> Domestic violence is also closely linked to women's economic independence and access to economic resources, with women being three and a half times more likely to be subject to domestic abuse if they are unable to find £100 at short notice.<sup>4</sup>
5. There is therefore significant evidence to suggest that women have increased vulnerability to domestic abuse when they are unable to access economic resources, through economic dependency and/or economic instability caused by the abuser. There is however insufficient data both globally and in the UK on the magnitude and prevalence of economic abuse and its links with other forms of domestic abuse. SEA recommends a number of measures to increase information on economic abuse, so we can better understand its patterns and root causes, and therefore develop more effective responses.
6. In order to gain a comprehensive picture of the prevalence and patterns associated with economic abuse, there should be a national inquiry into economic abuse as matter of priority. SEA has recommended that this be conducted by the proposed Domestic Abuse Commissioner to be established by the Bill.
7. There are also other steps the government should take within its current processes for gathering information on crimes nationally to obtain better disaggregated data on economic abuse.
8. The Crime Survey for England and Wales (CSEW) asks a question about financial abuse, but the Office for National Statistics (ONS) reports on it alongside emotional abuse as forms of "non-physical" abuse. SEA recommends that the data on financial abuse in the Crime Survey for England and Wales be disaggregated and reported on separately.
9. The current question in the CSEW about financial abuse is framed subjectively, asking participants whether an intimate partner or family member has prevented them from having a "fair share" of the household money. The evidence base on economic abuse within the context of intimate partner violence shows the concept as more nuanced and multi-faceted than a single question related to access to household income can reveal. SEA therefore further recommends that the existing question about financial abuse within the CSEW be reviewed and broadened to measure economic abuse.

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<sup>3</sup> Outlaw, M. (2009) No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners *Journal of Family Violence*. 24: 263-272

<sup>4</sup> Walby, S. and Allen, J (2004) *Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey*. London: Home Office Research Study 276

10. These measures would be in line with the government commitment to continue to develop means to better collect, report and track domestic abuse data<sup>5</sup>. It would also align with Article 11 of the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence) which requires states parties to collect disaggregated data on all forms of violence covered by the Convention; to conduct population-based surveys to assess the prevalence of and trends in all those forms of violence; and ensure that such information is available to the public.<sup>6</sup>

#### Relevance of the prohibition of torture and ill-treatment

11. Below are some of the areas identified in the questionnaire under which SEA believes the government should take action, in accordance with its positive duties under the prohibition of torture and other cruel, inhuman or degrading treatment or punishment with respect to domestic violence.

#### *Ratification, adoption or denunciation of relevant international instruments*

12. The Istanbul Convention provides a comprehensive framework within which to address domestic abuse. The UK government has not yet ratified this Convention, although it has stated its commitment to do so once it has enacted the Domestic Abuse Bill.
13. SEA strongly urges the ratification of this Convention. It would bring a renewed focus to some aspects of government policy touching on economic abuse, for instance collection of disaggregated data targeting information on economic abuse (Article 11, referred to above), and ensuring all victims of domestic abuse regardless of their status or background are provided equal protection of the law – see further the situation of migrant women, below.

#### *Reform of structural conditions conducive to domestic violence, including any form of legal, economic, cultural, social, religious and gender-based discrimination*

14. The Destitute Domestic Violence Concession (DDVC) provides eligible persons with a three month period of leave outside of the immigration rules, to allow them to apply for access to public funds. This may help fund alternative accommodation away from the abuser, and provides domestic abuse survivors a breathing space to consider their situation and attempt to regularize their status. However the DDVC is only available to partners of British citizens and settled persons where they are on spousal or partner visas, excluding many women on other types of visas such as students, domestic workers and women from other categories who may be equally

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<sup>5</sup> *Transforming the Response to Domestic Abuse*, UK Government Consultation Response and Draft Bill, January 2019

<sup>6</sup> The UK government has not ratified the Istanbul Convention.

vulnerable. 67% of the women with no recourse to public funds supported by the Women's Aid Federation of England and Wales No Woman Turned Away Project in 2016 were not eligible for the DDVC according to the present rules.<sup>7</sup>

15. SEA believes this is discriminatory and contrary to Article 4(3) of the Istanbul Convention which states that the implementation of the Convention and in particular measures to protect the rights of victims should be secured without discrimination on any grounds, which specifically include migrant or refugee status. Article 20(1) of the Convention is also engaged, which states that parties should take the necessary legislative or other measures to ensure that victims have access to services facilitating their ability to rebuild their lives including, when necessary, services such as legal and psychological counselling, financial assistance and housing.
16. It has further been pointed out that the current three month period for which the DDVC is provided is insufficient, as it can take as long as six weeks to process and application and to receive the benefits, and it does not take into account the obstacles migrant women face in opening a bank account.
17. We therefore support the recommendation made by others and led by Southall Black Sisters that the government
  - extend the Destitute Domestic Violence Concession to all survivors of gender-based violence regardless of their immigration status, and
  - extend to at least six months the time period for which the Destitute Domestic Violence Concession is provided.

#### *National legislative, executive or judicial measures*

18. The government has publicly committed to enacting a Domestic Abuse Bill, a draft of which was published along with the government's response to the consultation on domestic abuse in January 2019. The draft Bill is currently being scrutinized by a Joint Committee of Parliament, which is due to report in June 2019. This is a long-awaited and much needed piece of legislation on which the momentum must be maintained. Amongst the many positive measures proposed is the establishment of a Domestic Abuse Commissioner to look into all aspects of the issue. The Bill also provides a statutory definition of domestic abuse which recognises economic abuse, as well as a further definition of economic abuse itself. This is something that SEA called on Government to address and provides an important opportunity to transform responses, hold perpetrators accountable and increase understanding of economic abuse so that it

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<sup>7</sup> Joint written evidence submitted by Women's Aid et al. to the Joint Committee on the Draft Domestic Abuse Bill, April 2019:  
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/draft-domestic-abuse-bill-committee/draft-domestic-abuse-bill/written/100864.html>

does not get ignored or overlooked when addressing domestic abuse more broadly.

*Individual protective measures, including shelters and material support, for known or likely victims (incl. witnesses) of domestic violence*

19. It is important that in introducing policies relating to welfare benefits the government considers their impacts on victims of domestic abuse. The current proposals for the new benefits system, Universal Credit, provides for joint claimants to have their benefits paid into a single nominated bank account. In our evidence to the House of Commons Work and Pensions Select Committee inquiry into Universal Credit and domestic abuse, SEA argued that restricting access to an independent income compromises the ability of an individual to achieve economic stability and independence. Payment into a single account increases the opportunity for economic abuse, for instance, an abusive partner may prioritise their own spending above rent, resulting in the victim finding themselves jointly responsible for rent arrears.
20. Permitting victims of domestic abuse to request a 'split payment' in such circumstances, as proposed by the government, is not a viable solution. This may not be a practical possibility for many women experiencing control or coercion, who may be excluded from accessing the online application process or may be monitored while using it. It could also be dangerous since it challenges the control exerted by the perpetrator, with women experiencing economic abuse within the context of coercive control being at increased risk of domestic homicide.<sup>8</sup>
21. In order to ensure the appropriate protection of victims of economic abuse joint claimants of Universal Credit and any other welfare benefits should be offered separate payments as a default.
22. Access to housing and resettlement is a key individual protective measure for those seeking to escape domestic abuse and build a life that is secure and economically stable. The government consultation response acknowledges that victim-survivors of domestic abuse face "difficulties accessing appropriate housing and refuge".<sup>9</sup> SEA welcomes the provision in the draft Bill which ensures that, where a local authority, for reasons connected with domestic abuse, grants a new secure tenancy to a social tenant who has or had a secure lifetime or assured tenancy (other than an assured short hold tenancy) then this must be a secure lifetime tenancy.
23. SEA is also encouraged by the very recent government announcement that a legal duty will be placed on local authorities to deliver support to survivors of domestic abuse and their children, which includes secure

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<sup>8</sup> Websdale, N (1999) *Understanding Domestic Homicide*, California: Northeastern University Press

<sup>9</sup> *Transforming the Response to Domestic Abuse*, footnote 5 above

housing.<sup>10</sup> We intend to respond to the associated consultation and will be calling for the removal of the additional test of “vulnerability” which domestic abuse survivors have to satisfy when they become homeless in order to qualify as being in “priority need” of housing. This test is currently applied inconsistently across local authorities, leading to a postcode lottery as to women's access to accommodation<sup>11</sup>.

24. The current situation with regard to working women seeking places in refuges needs to be reviewed. Working women are required to pay a higher rent for refuge accommodation which they often cannot afford. However if they give up employment they can claim housing benefit which is higher and covers the rent. This is clearly a situation of perverse incentives, leaving a woman with the “choice” of keeping her job and staying with the abuser, or finding an escape and becoming unemployed.<sup>12</sup> Since economic stability is closely linked to physical safety, the government needs to review and reform the policy on funding of refuge places so that working women are can remain in jobs while maintaining their entitlement to accommodation in a refuge.

25. An important protective measure to ensure that victim-survivors of domestic abuse can manage their employment while having the necessary time to make arrangements for their and their families' safety, is the provision of paid leave for such individuals. SEA strongly recommends that the UK government introduce this policy, as has recently been done in New Zealand.

*Civil and criminal accountability, and other measures to be taken with regard to perpetrators of and other private participants in domestic violence*

26. The Serious Crime Act 2015 criminalises domestic abuse, as the offence of controlling or coercive behavior in an intimate or family relationship (section 76). Currently however the offence is committed only where at the time of the behaviour the perpetrator and victim are “personally connected”, i.e. in an intimate relationship or are living together having previously been in such a relationship. This suggests that domestic abuse ends when the relationship does but this is not the case. Unlike some other forms of control economic abuse does not depend on physical proximity, and can start, continue or escalate after separation and even if the perpetrator does not know where the victim is.<sup>13</sup> Indeed, the government

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<sup>10</sup> <https://www.gov.uk/government/news/government-unveils-new-support-for-survivors-of-domestic-abuse>

<sup>11</sup> Women's Aid Federation of England and Wales, No Women Turned Away Project

<sup>12</sup> Liberal Democrats Policy Paper, Real Women (2009) - [http://d3n8a8pro7vhmx.cloudfront.net/libdems/pages/1811/attachments/original/1390823352/91\\_-\\_Real\\_Women.pdf?1390823352](http://d3n8a8pro7vhmx.cloudfront.net/libdems/pages/1811/attachments/original/1390823352/91_-_Real_Women.pdf?1390823352)

<sup>13</sup> Surviving Economic Abuse (2018) '*Economic abuse is your past, your present and your future*' – a report on the practical barriers women face in rebuilding their lives after domestic abuse: [https://survivingeconomicabuse.org/wp-content/uploads/2018/10/SEA-Roundtable-Report\\_FINAL-1.pdf](https://survivingeconomicabuse.org/wp-content/uploads/2018/10/SEA-Roundtable-Report_FINAL-1.pdf)

recognises in its consultation response published along with the Bill that “victim-survivors may experience economic abuse after the relationship has ended.”<sup>14</sup> SEA strongly believes that economic abuse perpetrated post-separation needs to be recognised and criminalised within the controlling or coercive behaviour legislation.

27. Longer term, SEA believes that there is a strong case for making economic abuse a stand-alone criminal offence, as in some other jurisdictions<sup>15</sup>. This would ensure that the breadth of economic abuse in its varied forms and the economic harm it causes, would be captured by the law.
28. Another loophole in the legal accountability of perpetrators is that the controlling or coercive behaviour offence does not provide for remedial measures such as compensation in cases of economic abuse, unlike certain other offences such as criminal damage. This is because the legislation was introduced to address psychological abuse, and is not in step with the evolving understanding of economic abuse as a distinct construct which causes economic damage that need to be redressed. We have suggested that the Proceeds of Crime Act 2002 could potentially be used to recover assets and obtain compensation following economic abuse, and recommends that the government explores this further.

#### *Access to justice for victims (including witnesses) of domestic violence*

29. The current framework for legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 requires individuals to be means tested on their income and their capital to qualify for legal aid, and in some cases to pay contributions to their legal expenses. This has left many victims of domestic abuse ineligible for legal aid as they fail the statutory means tests, or liable to pay contributions which they cannot afford. This in turn has meant that they are unable to take their cases to court due to the lack of funds to pay for legal assistance, or go to court as litigants in persons where they face challenges navigating the legal system by themselves, often up against a perpetrator who has legal representation.
30. The means tests for income and capital can operate particularly unfairly on victims of economic abuse. They could be assessed as failing the means tests due to money or assets which they appear to own, but are unable to access or control due to economic abuse. Victims of economic abuse are also unable in practice to pay the contributions that may be required under the current legal aid scheme for the same reasons. The government has committed to reviewing the legal aid means test and has specifically said that the review “will include looking at the capital

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<sup>14</sup> *Transforming the Response to Domestic Abuse*, footnote 5 above

<sup>15</sup> Section 8 of the Family Violence Act 2004, Tasmania; Sharp-Jeffs, N (2015)

thresholds for victims of domestic violence".<sup>16</sup> SEA believes that the review should include an assessment of the impact of all aspects of the means test on victims, including the requirement and thresholds for contributions.<sup>17</sup> Given that economic abuse often goes hand in hand with other forms of domestic abuse and can produce a false picture of the economic resources accessible to a victim, we believe that domestic abuse victims should be eligible for legal aid without being means tested.

### Best practice and recommendations

31. SEA makes two broad recommendations to prevent and redress domestic violence from the perspective of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, with a specific focus on economic abuse. One is to conduct a national inquiry into economic abuse in order to understand its magnitude, prevalence and causes. This would provide a solid evidence base and could be used as a platform to identify best practice.
32. The second is using the evidence already available to introduce and strengthen awareness raising in all quarters to prevent and to respond effectively to economic abuse. This includes the criminal justice system, financial institutions and schools.
33. SEA further makes the following specific recommendations to the government which summarise the points made in response to the first two questions in this questionnaire:
  - Provide for disaggregated data on economic abuse; and ensures that the Crime Survey for England and Wales adequately targets economic abuse
  - Ratify the Istanbul Convention
  - Extend the Destitute Domestic Violence Concession to all victim-survivors of domestic abuse, regardless of their immigration status; and extend the time period for which it is provided
  - Enact the Domestic Abuse Bill
  - Ensure that joint claimants of Universal Credit (welfare benefits) are offered separate payments as a default
  - Recognise domestic abuse victims as in "priority need" for accommodation without the need to prove further vulnerability
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<sup>16</sup> Ministry of Justice, *Legal Support: The Way Ahead* (February 2019) - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777036/legal-support-the-way-ahead.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777036/legal-support-the-way-ahead.pdf)

<sup>17</sup> See Law Society (2018), *Research into the impact of legal aid capital and contribution thresholds for victims of domestic violence* - <https://www.lawsociety.org.uk/support-services/research-trends/impact-of-legal-aid-thresholds-for-victims-of-domestic-violence/>



- Reform policy on funding of refuge places so it does not incentivise working women to give up employment
- Introduce paid leave for victim-survivors of domestic abuse
- Recognise post-separation economic abuse as an offence
- Consider making economic abuse a stand-alone offence
- Provide for compensation for victims of economic abuse
- Exempt domestic abuse victims from the legal aid means test