



Removing the Reservation to Article 59 of the Istanbul Convention

The Istanbul Convention represents the most advanced standard under international law to prevent and combat violence against women and domestic violence. The Convention entered into force in the UK on 1st November 2022.

Through ratification the UK will be legally bound by the Convention provisions on:

- Prevention
- Protection
- Prosecution
- Integrated policies
- Monitoring

The UK's ratification¹ of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), ten years after having signed it, is an overdue but very welcome step. However, reservation to article 59 is disappointing and should be withdrawn.

AMNESTY INTERNATIONAL IS CALLING ON THE UK GOVERNMENT TO:

- Withdraw the reservation to article 59
- Extend the DV Rule to all migrant victims in addition to those on spousal visas
- Extend the duration of the DDVC from three to six months and ensure it is of an amount adequate for women to be able to pay to access refuge spaces and update it according to rising inflation and cost of living
- Abolish NRPF for all migrant victims of domestic violence
- Accept the UPR recommendations for withdrawing the reservation and to extend protection to migrant women, including those with no access to public funds.

EQUAL PROTECTION FOR MIGRANT WOMEN

The Istanbul Convention has non-discrimination at its heart and adopts an intersectional approach recognising that women have different experience of violence and different vulnerabilities based on characteristics such as race, age, sexual orientation, migrant and refugee status amongst others.

Article 4.3 on Fundamental rights, equality and non-discrimination states²:

'The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin,

¹ <https://www.coe.int/en/web/istanbul-convention/-/the-united-kingdom-ratifies-the-istanbul-convention>

² <https://rm.coe.int/168008482e>

association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status’.

Recognising that migrant women, including undocumented women and asylum seekers are at particular risk of gender-based violence and face specific challenges to protection, the Convention prohibits discrimination on the grounds of migrant or refugee status when it comes to implementing its provisions. The convention’s Chapter VII is dedicated to migration and asylum establishing several obligations to ensure a gender-sensitive understanding of violence against migrant women and women asylum-seekers.

Article 59, which the government has reserved, introduces the possibility of granting migrant women, who are victims of domestic violence and whose residence status depends on that of their spouse or partner, with their own residence permit when the relationship ends.

- This allows a victim of domestic violence to leave the relationship without losing her residence status.
- It also creates, for instance, the obligation to allow migrant victims who left and then did not return to the country they migrated to because they were forced into marriage in another country to regain their residence status.

The Government has stated that the reservation is necessary to await evidence from the short-term pilot project Support for Migrants Victims Scheme while not delaying ratification further. However, given that the scheme is about support, rather than residence status, it is hard to understand why the reservation is necessary³.

THE DOMESTIC ABUSE ACT 2021 AND MIGRANT WOMEN

The introduction of the Domestic Abuse Bill was defined by former PM Theresa May as a once-in-a-generation opportunity to end domestic abuse and a landmark piece of legislation⁴. However, although the specific challenges that migrant women face have been recognised during the legislative process, the approved Act excludes them.

Migrant women face distinct obstacles to access protection, support and justice. Women with insecure immigration status find it virtually impossible to access refuge and other forms of safety and support in order to escape violence and abuse. Without access to public funds they are not eligible for welfare benefits, which are required to cover the cost of a stay within a refuge and therefore face the impossible decision of becoming destitute and/or homeless or returning to the perpetrator. Many often find they are unable to regularise or confirm their immigration status for a host of complex reasons, including because their status depends on the perpetrator’s status, or because the perpetrator has control of necessary documents and evidence.

According to the most recent data by Women’s Aid, immigration status and the associated challenges in accessing benefits continue to be significant barrier for women who are trying to

³ <https://www.gov.scot/publications/uk-government-position-on-article-59-joint-letter-to-minister-for-safeguarding/>

⁴ <https://www.bbc.co.uk/news/uk-politics-49910926>

access support: 30% of those who weren't British nationals did not have access to public funds and 9.5% did not know if they had recourse to public funds. In addition, only 6.3% of all vacancies posted on Routes to Support in 2020-2021 could consider women who had no recourse to public funds⁵.

A wealth of evidence was submitted to the Government during consultation on the Domestic Abuse Bill demonstrating that women who have insecure immigration status find it virtually impossible to seek protection when experiencing domestic abuse. The Government considered the Domestic Abuse Bill as the legislation needed to be able to ratify the Istanbul Convention. However, despite the crystal-clear language of the Convention on non-discrimination and the obligation to protect survivors regardless of immigration status, the Government offered insignificant concessions in a package of 'non-legislative' commitments such as the pilot scheme.

Specialised domestic violence services shared evidence from their decades long experience of supporting migrant victims to highlight how current protection measures are not sufficient.

The Domestic Violence (DV) Rule - an immigration application that survivors can make in order to obtain indefinite leave to remain **is only available to migrant women on spousal visas**. Women experiencing abuse who are on work visas, visitor visas, student visas, domestic workers, or those with status under right to family life rules, may in one way or another be dependent on their partner for their status, or their status may have become insecure as a direct result of abuse (not least, for example, if their partner is in possession of their documents). They must also be able to access protection without discrimination.

Similarly, the **Destitute Domestic Violence Concession (DDVC) enables survivors applying for leave under the DV Rule to access public funds for three months**. While this is vital and a literal lifeline, it is again **limited to those on spousal visas**. Access to state support is vital for any migrant survivor of domestic abuse who needs to establish independent residency and a life away from violence. Further, making a distinction for the provision of support on the basis of whether a survivor has a spousal visa goes against **Article 4(3) of the IC**, which prevents discrimination on the basis of '*marital status ... or any other status*'.

The Government should amend the Domestic Abuse Act to extend the DV Rule and DDVC so that any migrant survivor can apply for indefinite leave to remain and associated support from the state. Further, the length of time in which survivors are able to access public funds under the DDVC must be extended to at least six months and be updated in line with the cost of living – so they have sufficient time to find safety and obtain financial security-

⁵ <https://www.womensaid.org.uk/wp-content/uploads/2022/03/The-Domestic-Abuse-Report-2022-The-Annual-Audit.pdf>

THE UK PERIODIC REVIEW AT THE HUMAN RIGHTS COUNCIL (UPR)

On 10th November 2022 the UK underwent scrutiny of its human rights record as part of the Universal Periodic Review (UPR). **Several countries recommended⁶ for the UK to reconsider or lift the reservation to article 59 and provide equal protection to migrant women, including those with no recourse to public funds.** The government now has time until February to decide whether to accept or reject each recommendation, before the full outcome report on the UK UPR is adopted by the Human Rights Council in the February/March 2023 session.

*Lift the reservation to article 59 of the Istanbul Convention, so that migrant women can receive the same support and protection **(Spain)**;*

*Keep under review the reservations registered upon ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) **(Italy)**;*

*Dedicate sufficient resources to central, devolved and local authorities to ensure effective implementation of the Istanbul Convention **(Finland)**;*

*Review the legal framework pertaining to the violence against women to guarantee that women migrants get the necessary protection and support including women migrants who have not the right to get public aids **(Tunisia)**;*

*Review the Domestic Abuse Act to ensure protection and support for women and girls, regardless of their immigration status **(Mexico)**;*

*Revise the Domestic Abuse Act to ensure protection and support for migrant women **(Iceland)**;*

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<https://uprmeetings.ohchr.org/Sessions/41/UnitedKingdomofGreatBritainandNorthernIreland/Documents/United%20Kingdom%20-%20Draft%20report%20after%20adoption.docx>