

SERIES

# Ensuring an inclusive & effective domestic abuse bill for all women

TOPIC

## UK compliance with the Istanbul Convention



### KEY POINTS

- + The Istanbul Convention applies to all forms of violence against women and girls (VAWG), including domestic violence. The UK Government intends to ratify the Convention. Currently, there are serious questions regarding the UK's compliance with the Convention (para 1-2)
- + The Convention provides that prevention, protection and support for victims must be based on a gendered understanding of VAWG. The Government's proposed statutory definition of domestic abuse does not recognise the gendered nature of domestic abuse (para 3-4)
- + The Convention requires States to develop co-ordinated multi-agency arrangements to tackle domestic violence. There are serious concerns regarding the adequacy of the UK's current multi-agency arrangements for high-risk victims of domestic abuse (para 5-6)
- + States are required to implement the Convention without discrimination on any ground, including migrant or refugee status. Currently in the UK, immigration enforcement is coming before protection of migrant women victims of domestic abuse (para 7-10)
- + The Government has not included protections for domestic abuse victims and 'vulnerable' witnesses in the Family Courts. Its proposals relating to domestic abuse protection orders and an aggravated offence when children are involved raise significant issues (para 11-13)
- + The Government's current proposals on extraterritorial jurisdiction do not comply with Article 44 of the Convention (para 14-15)

### INTRODUCTION

- 1 The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) applies to all forms of violence against women and girls (VAWG), including domestic violence. It is important given the UK Government's intention to ratify<sup>1</sup> the Istanbul Convention and its need to be compliant with it.<sup>2</sup> In its November 2017 progress report on ratification of the Convention, the Government stated, "The UK complies with the vast majority of the Convention's articles... But we know there is more to do".
- 2 At workshops held by Sisters For Change in Leeds, Birmingham and London at the end of 2017, specialist VAWG support services raised concerns regarding the UK's compliance with the standards set down in the Istanbul Convention. Further issues regarding compliance were raised at Sisters For Change recent Regional Roundtable on *Securing an inclusive and effective Domestic Abuse Act* in May 2018.<sup>3</sup> This note discusses core obligations of the Istanbul Convention and highlights a number of areas where there are serious questions regarding the UK's compliance with those obligations.

### GENDERED NATURE OF DOMESTIC VIOLENCE

- 3 The Istanbul Convention explicitly recognises that domestic abuse affects women disproportionately and States parties are required to pay particular attention to women victims of gender-based violence in implementing the Convention.<sup>4</sup> The Convention provides that prevention, protection and support measures must be based on a gendered understanding of violence against women and domestic violence and focus on the human rights and safety

1 Ratification defines the international act whereby a State indicates its consent to be bound to a treaty.

2 The UK Government signed the Istanbul Convention in 2012 and is thereby required to refrain from acts that would defeat the object and the purpose of the Convention.

3 SFC Regional Roundtable 8 May 2018 at Westminster. Participants included public protection and victim specialists, police oversight bodies; MPs and Peers; JCHR, Home Affairs Committee and Women & Equalities Committee officials; local government representatives; and experts from the women's sector across England, Wales, Scotland and Northern Ireland.

4 Istanbul Convention, Article 2.

of the victim.<sup>5</sup> Further, the Convention recognises that States parties may wish to take special measures to prevent and protect women from gender-based violence and provides that such measures will not be considered discrimination: “the fact that women experience gender-based violence, including domestic violence, to a significantly larger extent than men can be considered an objective and reasonable justification to employ resources and take special measures for the benefit of women victims only”<sup>6</sup>

- 4** The Government does not intend to recognise the gendered nature of domestic abuse or its disproportionate impact on women in its use proposed statutory definition of domestic abuse. (For further information see Sisters For Change Briefing Note 5).

## PROTECTION AND SUPPORT OF ALL VICTIMS OF VIOLENCE

- 5** The Convention requires States parties to develop comprehensive and co-ordinated policies to prevent and combat VAWG, including domestic violence, which place the rights of the victim at the centre and are implemented through effective multi-agency co-operation. The Convention specifically addresses risk assessment and requires State authorities (not limited to the police) to take the necessary measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out in order to provide co-ordinated safety and support for the victim.<sup>7</sup>

- 6** Despite definite improvements in the police response to domestic abuse driven by Her Majesty’s Inspectorate of Policing over the last 3 years, at Sisters For Change Regional Roundtable in May 2018, police oversight bodies reported that “risk rating” conducted by the police remains a challenge and there is an urgent need to improve police identification of and responses to high-risk victims. In addition, the function and authority of Multi-Agency Risk Assessment Conferences (MARACs) needs to be reviewed to address the current situation where “the volume of cases cannot be looked at properly;” many public agencies fail to attend and risk is not being adequately managed.<sup>8</sup> Experts across public authorities and the women’s sector agree that MARAC operates in multiple different ways across the country and that it should be subjected to a comprehensive evaluation. A central weakness of the current multi-agency arrangements for responding to high-risk victims of domestic abuse is that it is not on a statutory footing, which produces the result that delivery responsibilities are not clear and there is little accountability in the event of failures by public authorities to implement protection plans for high-risk victims of domestic abuse. (For further information, please refer to Sisters For Change Briefing Note 2).

## PROTECTION OF MIGRANT WOMEN

- 7** States parties are required to implement the Convention, in particular measures to protect the rights of victims, without discrimination on any ground including race, language, religion, national or social origin, or migrant or refugee status. The Convention recognises that migrant women, including undocumented migrant women, and women asylum-seekers are at increased risk of gender-based violence and that fear of deportation or loss of residence status is exploited by perpetrators to prevent victims of domestic abuse seeking help. The Convention explicitly states that measures taken to prevent VAWG and domestic violence must address the specific needs of persons made vulnerable by particular circumstances.<sup>9</sup> The exclusion of migrant and refugee women from support services because of their residence status is identified as discrimination and prohibited.<sup>10</sup>

- 8** The Istanbul Convention requires State parties to take steps to ensure that migrant women victims of domestic abuse whose residence status depends on that of the spouse or partner are granted an autonomous residence permit of a limited validity in the event of the dissolution of the marriage or the relationship.<sup>11</sup> States must also ensure that migrant women domestic abuse victims can obtain

<sup>5</sup> Istanbul Convention, Article 12(3) and 18(3).

<sup>6</sup> Explanatory Report to the Istanbul Convention, Council of Europe Treaty Series No. 210, 11 May 2011 (Explanatory Report), para.55, applying the approach of the European Court of Human Rights in its case law relating to ECHR Article 14, see, e.g. *Abdulaziz, Cabales and Balkandali v UK*, Application No.s 9214/80, 9473/81, 9474/81, 28 May 1985.

<sup>7</sup> Istanbul Convention, Article 51 and Explanatory Report, para.261.

<sup>8</sup> SFC Regional Roundtable on *Securing an inclusive and effective Domestic Abuse Act*, 8 May 2018.

<sup>9</sup> Istanbul Convention, Article 12(3).

<sup>10</sup> Explanatory Report, para.53.

<sup>11</sup> Istanbul Convention, Article 59.

the suspension of expulsion proceedings initiated against them in relation to a residence status dependent on their spouse/partner to enable them to apply for an autonomous residence permit.

- 9** At Sisters For Change Regional Roundtable in May 2018, Southall Black Sisters reported that restrictive immigration policies and laws – part of the “hostile environment” policy – are hurting BME and migrant women, especially those suffering violence and domestic abuse. State imposed restrictions on access to services for women with insecure immigration status, often with No Recourse to Public Funds (NRPF), increases their vulnerability, leads to destitution and is responsible for rising rates of homicide and suicide. A number of measures have been proposed to protect migrant women, including (i) ensuring that immigration status does not impact a victim’s right to access services and support; (ii) removing NRPF restrictions for all women suffering gender-based violence, regardless of immigration status; and (iii) extending the Destitute Domestic Violence Concession beyond its current 3 month limit.
- 10** It is widely agreed by public protection and victim specialists, and experts across the women’s sector that the Domestic Abuse Bill must include effective protections for migrant women and those seeking asylum and make it easier for them to understand and access services so that they do not “fall out of the system.”<sup>12</sup>

#### **CHILD CUSTODY ARRANGEMENTS AND SAFETY OF VICTIMS AND WITNESSES**

- 11** The Istanbul Convention requires States to ensure that in the determination of custody and visitation rights of children, incidences of violence – against the non-abusive carer as well as the child itself – are taken into account and that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.<sup>13</sup> The Government does not currently intend to include in the Domestic Abuse Bill special measures to protect domestic abuse victims and ‘vulnerable’ witnesses in the Family Courts or to ban perpetrators of domestic abuse from cross-examining their victims in the Family Court. The Ministry of Justice committed to the ban and it was included in the Prisons and Courts Bill 2017 (s.47). However, the legislation fell due to the general election and has not subsequently been re-introduced.
- 12** The Government proposes to replace the Domestic Violence Protection Order (DVPO) – a short-term order that gives victims “breathing space” – with a Domestic Abuse Protection Order (DAPO), which (i) can be applied for by a much broader range of individuals and agencies (possibly reducing the victim’s own authority and placing it in the hands of third parties), (ii) can be granted for a much greater length of time, and (iii) has the possibility of attaching additional positive requirements, such as electronic tagging and attending perpetrator programmes. This change will not consolidate or rationalise the current complicated system of orders, but merely add another order to the list. By including positive requirements, it is likely the order will take longer to issue and create significant additional issues in terms of monitoring and enforcement.
- 13** The Government’s proposals for an aggravated offence when children are involved in domestic abuse cases raises concerns: first, it will result in children being called to court to give evidence, which victims will wish to avoid (and so may cause a ‘chilling effect’ in terms of cases brought); secondly, the threat of more stringent sentencing mean perpetrators will be less likely to plead guilty to allegations of abuse. In contrast, new sentencing guidelines, which have been well drafted and come into effect at the end of May 2018, consider child involvement in domestic abuse cases in a much more nuanced way. It would perhaps be more sensible to evaluate the efficacy of these new guidelines before introducing the new aggravated offence proposed.

#### **EXTRA-TERRITORIAL JURISDICTION**

- 14** The Convention requires State parties to prosecute offences established in accordance with the Convention<sup>14</sup> when they are committed on their territory or committed by their nationals, or persons with habitual residence in their territory, overseas (extraterritorial jurisdiction).

<sup>12</sup> SFC Regional Roundtable, Westminster, 8 May 2018.

<sup>13</sup> Istanbul Convention, Article 31.

<sup>14</sup> Stalking, physical violence, sexual violence including rape, forced marriage, FGM, forced abortion and forced sterilisation.

The Convention takes a major step forward in the protection of victims of the most serious VAWG crimes – sexual violence including rape, forced marriage, FGM, forced abortion and forced sterilisation – by requiring State parties to ensure their jurisdiction to prosecute is not dependent on the condition that the act of violence is not a crime in the country where it happened (the requirement of dual criminality). The objective is to recognise that certain forms of VAWG, such as forced marriage, FGM, forced abortion and forced sterilisation, most frequently occur *outside* the territory of the State party.

- 15** The Government proposes to extend extraterritorial jurisdiction<sup>15</sup> to a number of additional VAWG offences.<sup>16</sup> We challenge the inclusion of “procuring abortion” in the list of offences given the current unacceptable legislation on abortion in Northern Ireland, where the offence of “procuring an abortion” has been used to criminalise women seeking abortion. In addition, the Government does not propose removing the requirement of dual criminality, except in relation to stalking and coercive and controlling behaviour. This means that the UK will fail to comply with Article 44(3) of the Convention and will not provide this important additional protection for victims of some of the most serious forms of VAWG.



## RECOMMENDATIONS FOR THE DOMESTIC ABUSE BILL

Government Domestic Abuse Consultation questions relevant to this recommendation: Q1, Q3, Q8, Q12, Q15, Q16-26, Q37, Q43, Q44, Q49, Q50,

- + The Domestic Abuse Bill should recognise the gendered nature of domestic abuse and its disproportionate impact on women
- + The Bill should explicitly set out the multi-agency arrangements for the protection of high-risk victims of domestic abuse, with local authorities, police and health services designated to manage and co-ordinate the protection of high risk victims of domestic violence and oversee effective implementation of protection plans within their local areas
- + The Bill should protect all women living in the UK without discrimination, including migrant women, women seeking asylum and stateless women.
- + The Bill should ensure that immigration status does not impact a victim’s right to access services and support and prioritise protection of migrant women victims of domestic abuse ahead of immigration enforcement.
- + The Bill should include special measures to protect domestic abuse victims and ‘vulnerable’ witnesses and ban perpetrators of domestic abuse from cross-examining their victims in the Family Courts.
- + The Bill should extend the extra-territorial jurisdiction of the UK to prosecute crimes of sexual violence including rape, forced marriage, FGM, forced abortion and forced sterilisation without the dual criminality requirement.

## CONTACT

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15 The courts already have extra-territorial jurisdiction over the common-law offence of murder; certain sexual offences where the victim is under 18 years; forced marriage and FGM.  
16 Including (i) putting people in fear of violence; (ii) coercive and controlling behaviour in an intimate or family relationship; (iii) stalking; (iv) actual bodily harm (v) grievous bodily harm; (vi) rape; (vii) procuring abortion; (viii) assault by penetration and (ix) sexual assault.