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United Nations
in Geneva

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Note Verbale No. 007

The Permanent Representation of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response to communication OL GBR 11/2022, further to the letter dated 22 August 2022 from the Special Rapporteur on violence against women and girls, its causes and consequences; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on trafficking in persons, especially women and girls and the Working Group on discrimination against women and girls.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 11 January 2023.

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights

Thank you for your joint letter of 22 August regarding the UK's ratification of the Istanbul Convention and the reservations which we applied on Article 59 and Article 44(3). The UK is grateful to you for taking the time to set out your concerns in relation to these matters.

The UK is a proud champion of human rights and equality for all people around the world. Tackling gender inequality and standing up for the rights of women and girls around the world is a core part of the UK Government's mission. The UK is committed to supporting women and girls in all their diversity in taking charge of their own bodies, lives and futures. Their right to live free from violence and discrimination, and their choice in whether to get married, start a family and have a career are fundamental to creating equal and empowered societies and must be upheld.

On 21 July 2022, the UK ratified the Convention, sending a strong message to women and girls across the UK, and around the world, that the UK Government is committed to tackling violence against women and girls. Our ratification has been warmly welcomed within the Council of Europe, a sentiment reflected by Commissioner Dunja Mijatović, the Council's Commissioner for Human Rights, in her statement of 4 July following her visit to the UK.

We have applied two reservations, one on Article 59 of the Convention, which relates to residence permits for migrant victims of domestic abuse, and one on Article 44(3) of the Convention, to the extent that it relates to Articles 36 (sexual violence, including rape), when committed by UK residents who are not UK nationals, and 39 (forced abortion and sterilisation).

With regard to the reservation on Article 59, the Government was clear in our last two annual progress reports, which we laid before the UK Parliament. Our intention is to take into account the findings of the Support for Migrant Victims (SMV) Scheme pilot, alongside wider policy considerations, before making any further decisions on our compliance position on Article 59. Our decision to make this reservation, which nine other countries have also done, is to enable us to fully consider the links between financial support for migrant victims - taking into account the SMV Scheme pilot findings - and residence status in relation to Article 59. We also intend for this to inform our future policy response and ensure migrant victims are supported effectively. It is right that we consider these matters holistically, to determine future policy and ensure that we have a robust evidence base.

The SMV Scheme pilot, which we launched last year, has as you note provided wraparound support services for migrant victims of domestic abuse with no recourse to public funds – including accommodation, subsistence, legal advice and counselling. The pilot concluded on 31 March 2022 and a subsequent independent evaluation has sought to ensure that we have a robust evidence base in order to inform future policy decisions. The evaluation will be producing a final report later this year, and we will carefully consider its findings, which will inform any future policy decisions. In the interim, we are providing an additional £1.4 million in 2022-23 to continue to fund support for migrant victims of domestic abuse.

One of the outcomes of our policy consideration will be a decision on whether it is appropriate to withdraw the reservation on Article 59, under Article 78(4) of the Convention, or whether it is appropriate to maintain it. However, we will make this decision as soon as practicable.

In addition to the Support for Migrant Victims Scheme there are other forms of support the UK offers to migrant victims of domestic abuse. The Destitute Domestic Violence Concession (DDVC) allows for eligible migrant spouses or partners to apply to lift the no recourse to public funds condition associated with their leave to remain in the UK. This enables the victim to access welfare benefits while their application for indefinite leave to remain as a victim of domestic abuse (DVILR) is made and considered. We aim to consider all such applications within six months and applicants have access to public funds and leave to remain in the UK outside the Immigration Rules until a decision on their application is made. This removes the need for them to remain with their sponsor on whom they may have been financially dependent or reliant for their permission to stay in the UK.

To be eligible, an individual must have been a spouse, civil partner, unmarried partner or same sex partner whose last grant of leave was sponsored by a British citizen or settled person. Other groups of people, such as those with refugee leave or the partners of those with pre-settled status via the EU Settlement Scheme, are also eligible to apply for DVILR.

The second reservation was applied on Article 44(3), to the extent that it relates to Articles 36 (sexual violence, including rape), when committed by UK residents who are not UK nationals, and 39 (forced abortion and sterilisation). Article 44(3) states that our ability to prosecute British nationals and residents for certain crimes committed overseas must not be made subject to a condition that the behaviour is also illegal in the country where it was committed.

Having such a provision – that offending by UK residents overseas should be capable of being prosecuted in the UK only if what they did is an offence in the other country; or ‘dual criminality’ - is the norm in UK law. The UK considers that it is not generally right to prosecute someone for doing something in another country for which they could not be prosecuted in that country. However, the Convention requires states to be able to prosecute their residents and nationals if they commit one of a number of serious crimes overseas (forced marriage, FGM, sexual violence, and forced

abortion/forced sterilisation) even when they are not crimes in the country where they were committed. But it also allows states to place a reservation on that provision, and 12 other countries have done so to date.

The UK does depart from the dual criminality principle when there is a strong case to do so, and hence we do not apply it for rape/sexual violence (Article 36) committed by UK nationals, for forced marriage (Article 37) and for FGM (Article 38). We therefore have not made a reservation on those aspects of Article 44(3). However, we decided to retain dual criminality for forced abortion/sterilisation (as they are covered by 'general violence' offences which are likely always to be illegal overseas anyway) and for rape/sexual violence committed by UK residents who are not UK nationals. The Domestic Abuse Act 2021 introduced the provisions across the UK which gave effect to this policy. Our taking this course in relation to sexual violence also means that it is less likely that other countries will make reciprocal provisions which affect our nationals in ways which we would not welcome. For example, a country where same sex sexual activity is a crime could prosecute a UK national who lived in that country, returned to the UK for a holiday, and whilst here had sex with their same sex partner. If we were to criminalise our non-national residents for doing things overseas which are not illegal there, such reciprocal action could become more likely.

It is our view that making a reservation on Article 59 does not place the UK in breach of Article 4(3) of the Istanbul Convention (relating to non-discrimination). The assessment of whether we are compliant with that provision is subject to any reservations we make, and as such we do consider ourselves to be compliant with it. We do not believe that it is a breach of the spirit of the Convention to take an action - i.e. making this reservation - which is explicitly permitted by the terms of the Convention. Had the drafters of the Convention considered such a measure to be against its spirit, I do not consider that they would have included provision for it. The Convention must be seen as a whole, including the possibility of making reservations on five articles, which the drafters decided to include. We would further note that 24 states lodged one or more reservations with the Council of Europe upon signing or ratifying the Convention, a majority of those to have signed it.

We note the international instruments, recommendations and reports whose substance you consider to be breached by the reservation on Article 59. It is our view that the reservation does not breach any of our international obligations. For example the Convention on the Elimination of Discrimination Against Women, which is a legally binding international treaty. The Convention is aimed at the elimination of all forms of sex- and gender-based discrimination against women, and the articles which cited relate to the need to prevent discrimination against women on the basis of their sex. The provisions of Article 59 apply equally to women and to men, and hence making a reservation on it does not represent discrimination on the basis of sex.

We hope this response is helpful in setting out why the Government has chosen to ratify the Istanbul Convention with two reservations.