

Mandates of 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 children and the Working Group on discrimination against women and girls

Ref.: OL GBR 11/2022
(Please use this reference in your reply)

22 August 2022

Your Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women and girls, its causes and consequences; Special Rapporteur on the human rights of migrants; Special Rapporteur on trafficking in persons, especially women and children and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 50/L.7, 43/6, 44/4 and 50/7.

In this connection, we wish to submit the following comments on the recent reservations made by the Government of the United Kingdom of Great Britain and Northern Ireland to articles 44(3) and 59 of the Council of Europe Convention on preventing and combatting violence against women and domestic violence, also known as the Istanbul Convention.

The ratification constitutes an important decision that will further strengthen the efforts to protect women and girls against violence in the United Kingdom. Although we commend the decision to ratify the Istanbul Convention, we are dismayed by the explicit exclusion of migrant women victims from the key protections in relation to residence status guaranteed by the Istanbul Convention, by reserving the right not to apply the provisions laid down in article 59 of the Convention. We are concerned that this reservation could contribute to creating a two-tier system of protection for women in the United Kingdom and further entrench the vulnerable situations in which migrant women who face gender-based violence find themselves.

We are also concerned by the political climate in which the ratification and its reservations takes place. Restrictive immigration policies could threaten the right to seek protection and asylum for those fleeing persecution and violence, which are incompatible with the United Kingdom's fundamental human rights obligations. Such policies could exacerbate the risk for migrants, in particular women migrants, to stay in the United Kingdom, by creating a context in which they are more vulnerable to violence, while making them less able to access specialist support, public services or justice.

Reservations

The reservation entered on Article 44, paragraph 3, means that the United Kingdom could apply a dual criminality requirement, the norm in national law when dealing with extraterritorial jurisdiction, for offences encompassed by Articles 36 (sexual violence, including rape), 37 (forced marriage), 38 (female genital mutilation) and 39 (forced abortion and forced sterilisation). Article 44(3) provides as follows:

“For the prosecution of the offences established in accordance with articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other

measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalised in the territory where they were committed”.

Therefore, the United Kingdom would only prosecute offending behaviours regarded as criminal offences in both the United Kingdom and the country where it happened. We take note of your Excellency’s Government’s justification to depart from the dual criminality rule in the case of forced marriage (article 37) and female genital mutilation (article 38), to which the dual criminality rule does not apply in national law. We also acknowledge that compliance with article 36 (sexual violence, including rape) is ensured by the Sexual Offences Act 2003 (England and Wales), the Sexual Offences (Northern Ireland) Order 2008 and the Sexual Offences (Scotland) Act 2009; and that compliance with article 39 (forced abortion and forced sterilisation) is ensured by general offences of physical violence under the common law (in Scotland), the Offences Against the Person Act 1861 (in England and Wales and Northern Ireland), the Infant Life (Preservation Act) 1929 (in England and Wales) and the Criminal Justice Act (Northern Ireland) 1945.

By entering a reservation on article 59, the United Kingdom would exclude its legal obligation to enact measures to protect migrant victims of violence whose residency status is dependent on that of a spouse or partner who is or becomes abusive. In particular, article 59 provides as follows:

- “1. Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
2. Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.
3. Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:
 - a) Where the competent authority considers that their stay is necessary owing to their personal situation.
 - b) Where the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings”.

The reservation made to article 59, which requires States to grant residence to survivors whose immigration status depends on an abusive partner, would perpetuate and reinforce longstanding barriers for migrant women, who may fear expulsion from the country if they seek help for domestic violence. Indeed, article 59 introduces the possibility of granting migrant women an autonomous residence permit if they are trapped in an abusive relationship because their residence status depends on that of

their abusive spouse or partner. This allows victims of domestic violence to leave the relationship without losing their residence status. For victims of forced marriage, the convention creates the obligation to allow migrant women to regain their residence status if they left their country of residence for a longer period than legally permitted because they were forced into marriage abroad and are unable to return.

International standards

Before providing comments on the risk drivers and consequences of the reservations, we would like to refer to the relevant existing international standards, in particular the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and its obligation not to discriminate, which the United Kingdom committed to uphold when it ratified the Convention in 1986.

CEDAW defines ‘discrimination against women’ by any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (article 1). It creates the obligation for States to take appropriate measures to eliminate discrimination (article 2) and to accelerate and ensure *de facto* equality (article 4).

We regret that by introducing a reservation to article 59 of the Istanbul Convention, migrant women would be further discouraged from reporting situations of violence they may be experiencing and may result in them having access to lesser protection and prevention modalities. Such reservation would constitute *de jure* and *de facto* discrimination.

We wish to recall the CEDAW Committee’s recommendation addressed to the United Kingdom in 2019 (CEDAW/C/GBR/CO/8) to “strengthen the implementation of programmes and policies aimed at providing effective access to healthcare for women belonging to marginalised groups, in particular asylum seeking and refugee women, migrant women, Roma and Traveller women, and victims of trafficking”.

We would like to bring to your attention the General Recommendations no. 26 and no. 38 from the CEDAW Committee, respectively issued in 2008 and 2020, which are of the utmost importance to protect and empower women, especially migrant women:

- GR no. 26 (2008) on women migrant workers offers valuable insights on the conditions of work undertaken by migrant women that takes place in the informal sector and exposes them to increased risk of exploitation, abuse and potentially trafficking. On this ground, States should promote safe migration procedures and have the obligation to respect, protect and fulfil the human rights of women throughout the migration cycle.
- GR no. 38 (2020) on trafficking in women and girls in the context of global migration underlines the conditions created by restrictive migration and asylum regimes pushing migrants towards irregular pathways, highlighting the particular vulnerability of smuggled women and girls to being trafficked. It contextualises the implementation of States parties’ obligations to combat all

forms of trafficking as stipulated in article 6 of CEDAW in the context of global migration.

The UK's reservations to the Istanbul Convention would interfere with existing international human rights standards, including those set forth in CEDAW. We wish to recall that the Istanbul Convention prohibits discrimination on the grounds of migrant or refugee status when it comes to implementing its provisions (article 4, paragraph 3). It also requires that measures be taken to prevent such violence and support victims while considering the needs of persons in vulnerable situations. Article 59 on 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 is an integral part to the convention. In this regard, we deem the reservation entered by the United Kingdom would be in contradiction with the spirit of the convention it yet ratified.

We would like to draw the attention of your Excellency's Government to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), which your Excellency's Government ratified in 2006, whereby your Excellency's Government is obliged to refrain from acts that would frustrate or undermine the objectives and purposes of the Protocol.

We would like to refer to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by your Excellency's Government in 1976. In addition, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Excellency's Government ratified in 1988.

We would like to underscore the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children in her report to the Human Rights Council (A/75/169). In this report, she notes that the non-punishment provision is a key element in any system of protection of victims of trafficking. It is critical for an effective implementation that the non-punishment principle is practically applied from the starting point of the detection of a victim of trafficking.

We would also like to bring to your attention the recommendations made by the Working Group on discrimination against women and girls in their report on discrimination against women in economic and social life, with a focus on economic crisis (A/HRC/26/39). The experts noted that women migrant workers face exploitation and abuse, often finding themselves in precarious employment without effective legal protections, particularly if they have irregular or undocumented legal status. About half of the world's migrant workers are women, most of them finding work in traditionally female-dominated occupations such as domestic work or in the garment and textile industries. They require protection against discrimination and abuse.

We would also like to highlight the report of the Special Rapporteur on the human rights of migrants on the impact of migration on migrant women and girls: a gender perspective (A/HRC/41/38), in which the Special Rapporteur stressed that it is the States' responsibility and, in their interest, to respect, protect and fulfil the human rights of all migrant women and girls.

Furthermore, the United Kingdom has pledged to fulfil the central, transformative promise of the 2030 Agenda and its Sustainable Development Goals (SDGs) to "leave no one behind". It therefore committed to prioritising the interests of the world's most vulnerable and disadvantaged people; the poorest of the poor and those people who are most excluded and at risk of violence and discrimination, including migrant women.

General observations

We seize this opportunity to reiterate the necessity to study women in migration from the perspective of gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration. The vulnerability of women migrants is attributable to sharper divisions of power between class, race and gender within their occupation and in their host society. Migrant women are, therefore, amongst the category of women that should benefit from the applicability of the Istanbul Convention.

Women's immigration status has an impact on their experiences of violence, their perceptions of those experiences, and their ability to seek and receive support. Migrant women are, for example, disproportionately at risk from gendered violence including domestic violence, sexual violence, 'honour-based' violence, forced marriage, female genital mutilation and trafficking. In her statement following a visit to the United Kingdom in 2014, the Special Rapporteur on violence against women also noted that migrant women experienced a disproportionate rate of femicide. She shared concern about migrant domestic workers suffering high levels of abuse, including "psychological, physical, and sexual abuse; low wages, or non-payment of wages; extremely long working hours; denial of time off and rest days; retention of passports; or being prevented from leaving their place of employment unaccompanied" (A/HRC/29/27/Add.2).

Women with an insecure immigration status in the United Kingdom are often subject to the 'No Recourse to Public Funds' requirement on their visa. These women are often unable to access any form of emergency accommodation, including refuges, because they are unable to claim State benefits. Many of them already face higher barriers in seeking the necessary support due to language challenges, lack of adequate sufficient information, precarious legal status in the country at times, and economic dependence on their spouses. Migrant women also face a perceived and real risk of being detained and deported rather than assisted if they report abuse. Therefore, the 'No Recourse to Public Funds' rule would not only prevent women from leaving their abusive husbands or intimate partners if their residence depends on them, but it would also reinforce the sense of impunity among perpetrators, who use the threat of deportation to discourage their partner from leaving or filing a report against them.

The United Kingdom's implementation of the 'Support for Migrant Victims' pilot scheme, alongside the Domestic Violence Act of 2021, aims to provide

accommodation and wrap-around support for migrant victims of domestic abuse with no recourse to public funds, as well as providing the data required to inform subsequent policy decisions. While we welcome this initiative, we are concerned that no long-term protection appears to be enshrined in the law beyond this pilot project, which supports only a limited number of women.

We urge the Government of the United Kingdom to use the opportunity presented by Article 59 to put protection for all migrant women on the same statutory footing. The Home Office said it had reserved article 59 because the matter is under review pending the conclusion and evaluation of the ‘Support for Migrant Victims’ pilot scheme. Although we note the Government’s reasoning, we would like to see a stronger commitment to examining the grave consequences of this reservation until it decides to withdraw it.

Conclusion

In light of the above concerns, we call upon your Excellency’s Government to further comply with its renewed commitment to combat violence against women and girls by reconsidering its decision to enter reservations to articles 44(3) and 59 of the Istanbul Convention. We would like to emphasise that addressing the unprecedented large movements of refugees and migrants, as well as their disproportionate consequences on the rights of women and girls, requires an immediate and coordinated human rights-based approach that all countries can endorse and implement. We believe that the Istanbul Convention provides a comprehensive framework to bridge national and international legislation together. We stand ready to provide your Excellency’s Government with any technical support in the effort to promote, protect, and fulfil the rights of all migrant women in the United Kingdom.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please explain how the evaluation of the ‘Support for Migrant Victims’ pilot scheme will impact your decision to ratify the Istanbul Convention without the reservation made to article 59.
2. Please detail how immigration policies will be designed to further comply with the Istanbul Convention’s requirement that victims of violence against women and girls are protected regardless of their immigration status.
3. Please clarify the reasoning for the reservations to articles 44(3) and 59 and its compatibility with the spirit of the Istanbul Convention and above-mentioned international human rights treaties to which the United Kingdom is a State party.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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