



Amnesty International UK submission to the Group of Experts on action against violence against women and domestic violence (GREVIO) ahead of their visit to evaluate the UK's implementation of the Istanbul Convention

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We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

Introduction

Amnesty International UK (AI UK) is pleased to be able to provide information to the GREVIO in advance of the visit to the UK. AI UK does not provide services directly to women and girls experiencing domestic and gender-based violence; therefore, it is responding to selected questions based on our legal and policy expertise aiming to complement and strengthen the submissions of service providers.

The UK government finally ratified the Convention on 21st July 2022, ten years after it became a signatory. According to the government, such delay was due to the desire to make sure UK laws were compliant with the requirements of the Convention ahead of ratification. The Convention entered into force on 1st November 2022.

However, implementation of the Convention is lacking in several areas, while the government has reserved Articles 44 and 59.

Human rights context

AIUK wishes to highlight the broader context of human rights in the UK, which is fundamental for the implementation of the Convention. The Istanbul Convention, the most comprehensive international legal framework to tackle gender-based violence against women and girls, is based

on the understanding that gender-based violence is a violation of human rights. Therefore, the government's commitment to tackle gender-based violence cannot be seen as separate from the broader policy, legislation and political environment for human rights. In fact, very often the government's actions go against its commitment to tackle gender-based violence against women and girls.

The past few years have seen an erosion of human rights legislation and protections¹. The government repeatedly threatened to replace the Human Rights Act with a less protective Bill of Rights which would de facto reduce human rights protections to pre-2000 levels as well as fundamentally affect the Good Friday Agreement.

The right to protest has been substantially restricted through the Public Order Act. This matters for the Istanbul Convention because protest and collective action have been, and continue to be, fundamental to advance women's rights, including protection against gender-based violence.

While the Bill of Rights has been shelved, the rhetoric of human rights posing restrictions to the government's plans continues, specifically regarding immigration and asylum.

In early October 2022 the then Prime Minister Liz Truss stated that a new immigration bill² would "make sure no European judge can overrule us", a reference to the European Court's power to indicate 'interim measures' to state parties. The issue of 'interim measures' became very contentious earlier in the year when an interim measure was indicated about the implementation of the government's policy of removing asylum seekers to Rwanda. The section on Articles 59, 60 and 61 explains how such developments affect the compliance with and implementation of the Convention. At the time of writing, on 12th December 2023, the government introduced the Safety of Rwanda (Asylum and Immigration) Bill³ to overcome the Supreme Court judgement that found the Rwanda scheme to be unlawful.

On the face of the Bill the Home Secretary states the inability to declare the bill compatible with the European Convention, but that the government wishes to introduce it regardless.

Gendered impact of economic policies

The Westminster government has implemented austerity policies since the global financial crisis in 2008. Broadly speaking these consist of cuts to public services, including jobs, and to welfare provisions.

According to research by the Equality and Human Rights Commission, tax and spending measures implemented between 2010 and 2017⁴ have affected women more than men, with poor women (in the 1st and 2nd income deciles) and large families (more than 3 children) the most affected. Given that women receive more benefits than men this is not surprising. In

¹ For more information please see AIUK's submission to the 41st Session of the UPR Working Group, November 2022 <https://www.amnesty.org/en/documents/eur45/5421/2022/en/>

² What then become the Illegal Migration Act in 2023.

³ <https://publications.parliament.uk/pa/bills/cbill/58-04/0038/230038.pdf>

⁴ https://www.equalityhumanrights.com/sites/default/files/impact-of-tax-and-welfare-reforms-2010-2017-interim-report_0.pdf#page=27

addition to poverty, the impact of structural racism means that ethnic minority women, and single mothers amongst them, have paid the most for austerity cuts⁵.

A particularly egregious policy established as part of the Welfare Reform and Work Act 2016, introduced a two-child limit for claiming child tax credits or universal credit with very narrow exceptions, one being that the third child has been conceived because of rape or of being in a coercive or controlling relationship at the time of conception. Rape must be disclosed to be able to benefit from the exception.

In addition to being cruel and discriminatory, the two-child limit has increased poverty for large families, which were already amongst the poorest.

Regression in LGBTI equality

From 2011 to 2015 the UK held first place in the ILGA 'Rainbow Europe'⁶ ranking of European countries' performance on LGBTI rights. However, the UK dropped from 10th to 14th place in the 2022 table and to 17th place in the 2023 table. The failure to reform legal gender recognition, to ban conversion therapy, as well as the treatment of LGBTI asylum seekers have caused this deterioration. The government's commitment to reform legal gender recognition and a ban on conversion practices were announced in 2018 but remain unfulfilled⁷.

Hostile portrayal of trans people has dramatically increased in UK media since 2015 in a way that perpetuates stereotypes and fosters discrimination⁸. Hate crimes against LGBTI people have surged: in England and Wales, hate crimes against people with the protected characteristic of sexual orientation increased by 41% between 2017 and 2021, although they slightly fell by 6% in 2022/2023⁹. In the same period, hate crimes against trans people increased by 11% to 4732, the highest number since records began in 2012 (it had already increased by 56% between 2017/18 and 2021/22)¹⁰. According to the Home Office discussion about 'transgender issues' in politics, media and social media may have led to this increase.

The most recent Social Attitudes Survey in 2023 found that 64% of those interviewed describe themselves as not prejudiced at all against people who are transgender, a decline of 18% since 2019. Just 30% think someone should be able to have the sex on their birth certificate altered if they want, down from 53% in 2019¹¹.

⁵ <https://www.intersecting-inequalities.com/projects>

⁶ The ILGA ranking <https://www.ilga-europe.org/report/rainbow-europe-2023/> is based on a series of indicators in 7 areas: equality and non-discrimination, family, hate crime and hate speech, legal gender recognition, intersex bodily integrity, civil society space and asylum.

⁷ The reform of the Legal Gender Recognition Act announced in 2020 consisted in a lower application fee and the application process put online, despite the fact that the majority of responses to the consultation agreed to remove the requirements for diagnosis and medical treatment.

⁸ <https://www.thepinknews.com/2023/09/09/transphobia-uk-press-media-negative-coverage/>

⁹ <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2022-to-2023/hate-crime-england-and-wales-2022-to-2023>

¹⁰ <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2021-to-2022>

¹¹ <https://natcen.ac.uk/publications/bsa-40-liberalisation-attitudes>

The impact of a toxic political and public discourse on the rights of trans people has been noted with concern by the Council of Europe's commissioner for human rights and the UN independent expert on sexual orientation and gender identity¹² in their recent visits to the UK, respectively in June 2022 and May 2023. In particular, the CoE Commissioner stated concerns about the narrative that wrongly pits women's rights against trans rights, promoting the idea of human rights as a zero-sum game¹³.

AI UK is very concerned about the government's rhetoric on 'gender ideology' and the attempts to 'clarify the notion of sex' in the Equality Act, which would ultimately nullify the achievement of legal gender recognition¹⁴.

Domestication of human rights obligations

The UK has a devolution arrangement whereby some matters which are part of the Convention are devolved to the administrations of Scotland, Northern Ireland and Wales. However, as highlighted by the CEDAW Committee in its 2019 concluding observations, devolution does not negate the direct responsibility of the State party to fulfil its obligations to all women and girls within its jurisdiction¹⁵. This is relevant for the assessment of the implementation of the IC as well.

AI UK wishes to highlight the welcome plan of the Scottish Government to incorporate CEDAW as part of a new human rights bill for Scotland, alongside ICERD, CRPD and ICESCR.

The CEDAW Committee has identified issues of particular concern in Scotland and incorporation could prompt more robust action to tackle these, including the rate of imprisonment of women. Substantial areas of CEDAW are within reserved competence, there are some important areas of rights protection which could be protected at least partially within devolved competence including articles on trafficking, education, employment, health and access to courts and tribunals.

Relationship, sex and health education

Relationships, sex, and health education (RSHE) became statutory in England in September 2020. It covers topics including healthy relationships, domestic abuse, FGM, forced marriage and abuse. There is also statutory teaching within the curriculums of Wales, Scotland and Northern Ireland which covers key topics including healthy and safe relationships and sex education.

¹² <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/statements/eom-statement-UK-IE-SOGI-2023-05-10.pdf>

¹³ <https://rm.coe.int/report-on-the-visit-to-united-kingdom-from-27-june-to-1-july-2022-by-d/1680a952a5>

¹⁴ <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/statements/eom-statement-UK-IE-SOGI-2023-05-10.pdf> The IE SOGI looked at this issue during his visit to the UK in May 2023, see pages 4 and 5.

¹⁵ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/072/08/PDF/N1907208.pdf?OpenElement>

The government has announced a review of the statutory guidance in England which aims to consider what is appropriate to be taught in RSHE and at what age, in response to reports of 'inappropriate content' being used in schools. AIUK is very concerned about the politicization of sex and relationship education, fueled by anti-LGBT rhetoric. There is no acknowledgement that RSHE is vital for all children and a critical tool to combat misogyny and gender stereotypes that underpin violence against women and girls. According to the government, a consultation should open by the end of 2023.

The release of new non-statutory political impartiality guidance in 2022 has also made it more difficult for teachers to teach RSHE with confidence as they are afraid of making mistakes and violating this guidance. As a result, some topics, including those discussing 'equality issues' are not taught consistently by all teachers which has led to a difference in teaching and learning for students.

Question for the governments

- What does the government hope to achieve with its review of the RSHE guidance?
- How is the government planning to ensure children and young people actively participate in any review of the RSHE guidance?
- Why is the government relying on spurious arguments to combat so-called 'gender ideology' in its policy development and decision-making in this area?

Northern Ireland

On 7th December 2023 AIUK published 'Legal but not local'¹⁶ a report on the barriers to accessing abortion services that still exist in Northern Ireland four years after abortion was decriminalised in 2019. Women, girls and pregnant people in controlling and coercive relationships, victims of sexual violence and asylum seeking and refugee women face compounded barriers to access.

AIUK would be very pleased to meet with GREVIO as part of their visit to Northern Ireland.

Migration and Asylum

The political rhetoric about asylum seekers and migrant people is nothing short of demonisation. The public discourse conflates asylum seekers and refugees with so-called 'illegal migrants' while the government has de facto stopped processing asylum claims.

¹⁶ Amnesty International UK, 2023, [Legal but not Local](#)

Asylum seekers stuck in temporary accommodation for long periods face deplorable conditions, with great negative impacts on their health, including mental health, nutrition and access to education¹⁷.

A poignant example of harmful rhetoric is the former Home Secretary's remarks¹⁸ that the Refugee Convention offers protection to women and girls and LGBTQI+ people merely based on their experiencing 'discrimination', which should not be sufficient to qualify for protection. She said that consequently the threshold for qualifying for protection has been lowered thus increasing the number of people who may qualify for asylum.

Such a message sends a signal that women's and girls' claims should be considered differently. Despite the vast majority having experienced gender-based violence in their country of origin, or during transit, women and girls already face enormous difficulty in securing protection in the UK system. They are met with disbelief and a lack of understanding of gender-based violence and how it might be traumatic to disclose their experiences.

Article 59

The Domestic Abuse Act 2021¹⁹ presented as a 'once in a generation' opportunity to combat domestic abuse, does not afford equal protection to migrant women. Three critical changes to the Bill proposed by civil society led by 'by and for' domestic violence services were defeated by the government²⁰. The amendments would have offered equal protection to migrant women, as per article 4(3) of the Istanbul Convention by:

1. Establishing a safe reporting mechanism (a 'firewall') so that migrant women can feel confident to report violence to statutory bodies without fear of immigration enforcement. Well-founded fear of detention, deportation and separation from children is a key factor preventing women from reporting violence. The government itself recognises that perpetrators use immigration enforcement as a threat to control victims.
2. Abolishing the No Recourse to Public Fund (NRPF) condition for women facing domestic violence, so that they can access services, including refuges.
3. Extending the Domestic Violence rule and associated support, which is available only to women who are in the UK on a spousal visa, to all migrant women, regardless of status.

AI UK regrets that the government has reserved Article 59 and urges it once again to withdraw the reservation. The rationale the Government presented for the reservation is not credible²¹. The Government's motivation for the reservation was to wait for evidence arising from its Support for Migrant Women pilot which has been renewed for 2022-2024. The pilot scheme was set up following the Domestic Abuse Act to provide support and gather evidence on the needs of women

¹⁷ <https://www.hrw.org/news/2023/09/14/uk-children-and-families-seeking-asylum-face-dire-conditions>

¹⁸ <https://www.bbc.com/news/uk-politics-66919416>

¹⁹ <https://www.legislation.gov.uk/ukpga/2021/17/contents/enacted>

²⁰ <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Second-reading-Short-Briefing-on-DA-Bill-and-migrant-women-APRIL-Liberty-Amnesty-UK-EVAW-LAWRS-Imkaan-Womens-Aid.pdf>

²¹ <https://lordslibrary.parliament.uk/istanbul-convention-preventing-and-combating-violence-against-women-and-domestic-violence/#heading-3>

with no NRPF, even though specialist domestic violence services have highlighted the discrimination faced by victims with NRPF for decades.

However, Article 59 is about the duty to ensure that women whose status depends on a spouse/partner can obtain an autonomous resident status if the relationship breaks down. The issue of financial support, although relevant, is separate and different. The government said that the withdrawal would be reviewed based on the evaluation²² of the Support scheme which was published in August 2023²³ but there is no known timeframe for potential review.

Question for the government

Even though this article is reserved AI UK urges the GREVIO to raise the issue of inequality of treatment of migrant women victims/survivors as it is pertinent to Articles 1, 3 and 4.

Article 60

As a premise, the government report was submitted in June 2023, only one month before the approval of the Illegal Migration Act, which has further changed the government's approach to asylum.

Section 33(2) to (5) of the Nationality and Borders Act 2022²⁴ introduced a restrictive definition of 'membership of a particular social group' for the purposes of the Refugee Convention Article 1(A)(2) definition. In addition, section 32 raised the standard of proof; and section 37 is also of special concern for restricting the non-penalisation provision (Article 31 of the Refugee Convention).

As admitted by the government's response²⁵, the Nationality and Borders Act 2022 introduced into UK domestic law a re-definition of key concepts of the Refugee Convention, including 'particular social group'. However, this was not evidence of a continued commitment to upholding the rights of refugees, including people "at risk of sex-based harm". The UK's re-definition – including that of 'particular social group' – was intentionally to narrow the Convention's proper application. This was done expressly in contradiction to long-settled international and judicial authority as to the meaning of the Convention, including on the part of the UK's higher courts.

However, the impact of the Nationality and Borders Act 2022 has been significantly reduced by the Illegal Migration Act 2023, by which the UK will simply refuse to recognise the status and rights of refugees seeking asylum in the UK. This Act is yet to be fully commenced. When fully commenced, any person who arrived in the UK on or after 20th July 2023 requiring permission

²² <https://questions-statements.parliament.uk/written-questions/detail/2022-06-09/HL814/>

²³ <https://www.gov.uk/government/publications/evaluating-the-support-for-migrant-victims-smv-pilot/evaluating-the-support-for-migrant-victims-smv-pilot-findings-from-a-process-evaluation#pilot-outcomes>

²⁴ <https://www.legislation.gov.uk/ukpga/2022/36/contents/enacted>

²⁵ <https://rm.coe.int/state-report-uk-baseline-evaluation/1680abd6d3> page 59

to enter but not having it will be excluded from asylum in the UK unless having travelled to the UK by a route that passed through no other country which the UK Government treats as 'safe'.

That exclusion will be given effect by three statutory obligations upon the Home Secretary – to make arrangements to expel the person, to never consider their asylum claim and to never grant permission to the person to enter or stay in the UK. These statutory obligations make no exception for women and girls, nor for gender-based persecution.

Article 61

The Illegal Migration Act 2023 has a limited suspensive procedure which is critical to the the extremely minimalist claim by the Government that despite their being unable to make a statement of human rights compatibility, in practice the Act will prove to be compatible.

The plan to send asylum seekers to Rwanda to have their claims considered by the Rwandan authorities was declared unlawful by the Supreme Court on 15th November 2023²⁶ which found that Rwanda is not a safe country because of inadequacies in its asylum system, evidence of refoulment of asylum seekers and the failure to abide by guarantees of non-refoulment in a previous similar agreement with Israel.

Questions for the government:

- Has the government made any assessment of how the Illegal Migration Act and the proposed Rwanda scheme affect the implementation of the Istanbul Convention? If so, what were the findings and what action did the government take as a result?
- Has the government thought about the consequences of enacting legislation that does not comply with human rights obligations on its duties under the Istanbul Convention to prevent gender-based violence, protect victims of violence and punish perpetrators?

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²⁶ <https://www.supremecourt.uk/cases/docs/uksc-2023-0093-etc-judgment.pdf>