

THE UPR PROJECT AT BCU



BIRMINGHAM CITY
University
Centre for Human Rights

PACE
UNIVERSITY

ELISABETH HAUB
SCHOOL OF LAW

Submitted to:

The United Kingdom of Great Britain and Northern Ireland's Universal Periodic Review
Fourth Cycle
41st Session of the UPR Working Group
Oct - Nov 2022

About the UPR Project at BCU:

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and NHRIs, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. You can read more about

the UPR Project here:
www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu

Our Partner:

For this submission the UPR Project at BCU partners with Pace University's Elisabeth Haub School of Law. The Elisabeth Haub School of Law is ranked #1 in Environmental Law by US News and World Report, and offers a J.D. program with concentrations in a variety of areas, including criminal law and procedure. It also offers LL.M. degrees in both Environmental and International Law, a series of joint degree programs, and a Doctor of Juridical Science (S.J.D.) in Environmental Law. The Law School is home to the Pace Criminal Justice Institute, which generates educational opportunities for students and promotes interdisciplinary collaboration among scholars, policymakers and practitioners locally, nationally and internationally. The Pace Criminal Justice Institute supports and encourages creative research, teaching, and discussion concerning the theory and practice of criminal law by those interested in advancing criminal law reforms and promoting the fair and ethical prosecution of crime.

Compiled by:

Lead Authors: Dr. Alice Storey, Prof. Lissa Griffin & Dr. Rebecca Smyth **Contributing Authors:** Dr. Amna Nazir & Prof. Jon Yorke **Thank you to:** Birmingham City University student Melisa Oleschuk and Arizona State University JD Candidate Nourin Abourahma for their research assistance.

Contact:

Dr. Alice Storey (Lead Academic of the UPR Project at BCU) Email: Alice.Storey@bcu.ac.uk
Address: Birmingham City University, School of Law, Curzon Building, 4 Cardigan Street, Birmingham, B4 7BD, UK.

INTRODUCTION

1. There are nine core international human rights treaties,¹ of which the United Kingdom of Great Britain and Northern Ireland (UK) is a party to seven, albeit with the attachment of reservations, understandings, and declarations (RUDs).²
2. There are aspects of the UK's legal and political structure that have the potential to complicate its ability to implement international human rights norms. It is important to note that the UK is a "union state" made up of three nations, England, Wales, and Scotland, and the province of Northern Ireland.³ Owing to devolution, each nation provides its own laws, policies, and strategies that are not reserved to Westminster, where the UK Parliament sits. The Northern Ireland Assembly, known as "Stormont," is the devolved legislature of Northern Ireland that was created as a power-sharing body by the Good Friday Agreement. It legislates in all areas not explicitly reserved to the UK Parliament. Due to political disputes, Stormont collapsed and remained suspended between January 2017 and January 2020, during which time power was held by the UK Parliament.
3. In this submission we encourage the UK to commit to improving its human rights protection and promotion by engaging meaningfully with the fourth cycle of the UPR in 2022. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations the UK accepts, and actively engaging with civil society throughout the process.
4. This Stakeholder submission focuses upon the overarching theme of women's rights, using an inclusive definition of "women."⁴ Specifically, we focus upon:
 - a. Access to Abortion in Northern Ireland.
 - b. Domestic Abuse across the UK.

ACCESS TO ABORTION IN NORTHERN IRELAND

1. Abortion was illegal in Northern Ireland (NI) until 2020, with the only exceptions being to preserve the pregnant person's life or to prevent 'real and serious adverse effects' to their health.⁵ While the Abortion (NI) 2020 Regulations have partly decriminalised abortion, medical professionals who perform unauthorised abortions remain subject to criminal penalties, and ongoing implementation issues mean that most NI residents still must travel to England or Wales to access abortion.

A. Normative and Institutional Framework

UN Human Rights Standards

2. Sexual and reproductive health rights ('SRHRs') entail:

'The right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information.'⁶

3. UN human rights bodies hold that states must provide abortion access at least in cases of a risk to the pregnant person's life or health, rape or incest, and fatal foetal abnormality ('FFA').⁷ Failing to ensure access to abortion violates the right to be free from torture and other forms of cruel, inhuman, or degrading treatment or punishment ('CIDT'); the right to privacy; the principles of equality and non-discrimination; and states' obligations to eliminate discrimination against women.⁸
4. In 2018, the Committee on the Elimination of All Forms of Discrimination Against Women ('CEDAW Committee') called on the UK to legalise abortion in NI at a minimum in the case of threats to woman's physical or mental health; rape and incest; and "severe foetal impairment."⁹

Domestic Law

5. Section 9 of Northern Ireland Executive Formation Act 2019 repealed the provisions criminalising abortion, and required the NI Secretary of State to implement the CEDAW Committee's 2018 recommendations.¹⁰
6. The Abortion (Northern Ireland) (No. 2) Regulations 2020 are broadly in line with human rights standards because they permit abortion in the case of a risk to the pregnant person's life or health and in the case of FFA. There is no exception for rape or incest, but the Regulations reflect the wording of the 1967 Abortion Act which is interpreted to permit abortion in the case of rape or incest or for socioeconomic reasons.¹¹
7. Abortion is permitted:
 - i. Up to 12 weeks without restrictions, when approved and carried out by a registered medical professional.¹²
 - ii. Up to 24 weeks, when two medical professionals agree that continuing the pregnancy would involve greater risk to the person's health than an abortion.¹³

- iii. Without gestational limits when two medical professionals agree abortion is “immediately necessary” to save the person’s life or prevent grave permanent injury;¹⁴ to prevent grave permanent injury;¹⁵ or in the case of “severe fetal impairment or fatal fetal abnormality.”¹⁶
8. Requiring two medical professionals to sign off on abortions is “abortion exceptionalism,” the “singling out” of abortion “for more restrictive...regulation as compared to other, similar procedures.”¹⁷ There is no medical justification for this impediment to abortion access.
9. Under the Regulations, abortions may only be carried out in specified locations, i.e., health and social care (HSC) hospitals, HSC-provided abortion clinics, and premises that provide primary medical services. For medical abortions in the first ten weeks, the second drug may be taken at home when the first drug was taken at an approved location.¹⁸ These restrictions are unnecessary and are also abortion exceptionalism: there is extensive evidence that self-managed abortion, with “support and referrals to formal health care services as needed,”¹⁹ is an appropriate model of care that improves availability and accessibility, particularly for those in remote areas, experiencing financial difficulty, or in abusive relationships.²⁰
10. The continuing criminalisation of abortion is another human rights issue. Intentional termination or procurement of termination in violation of the Regulations is an offence with a fine of up to £5000.²¹
11. The Regulations allow for conscientious objection unless the abortion “is necessary to save the life, or to prevent grave permanent injury to the physical or mental health” of the patient.²² This provision strikes a fair balance between the right to conscientious objection and the right to health.

B. Implementation of Recommendations from Cycle Three in 2017

12. In 2017, the UK received 227 recommendations, two of which addressed abortion in NI. Both recommendations were ‘noted’ by the Government, indicating that no action would be taken to implement them.
13. **Iceland (para. 134.170)**²³ and **Sweden (para. 134.172)**²⁴ asked the UK to ensure that “access to abortion in NI fully complies with international human rights law, by decriminalising abortion and ensuring access to abortion in cases of severe and fatal foetal anomalies and where the pregnancy is a result of rape or incest.” Following the collapse of power sharing in NI in 2017, no progress was made on abortion access until the 2019 Executive Formation Act, which led to the introduction of The Abortion (NI) Regulations 2020 in March 2020.

14. In addition to the concerns raised in Cycle Three, further issues have been raised (as addressed in Section C) that:

- i. NI abortion services are unevenly available and underfunded.
- ii. People in NI still must travel to England for abortion services after 10 weeks.
- iii. Ongoing efforts to restrict abortion access in NI are impacting service delivery.
- iv. Unauthorised abortion continues to carry criminal penalties, deterring providers and perpetuating stigma that also deters access to abortion.

C. Further Points for the UK to Consider

The right to health: availability, accessibility, acceptability, and quality

15. The Committee on Economic, Social and Cultural Rights (‘CESCR’) has identified **availability, accessibility, acceptability, and quality** as the four “interrelated and essential elements” underpinning state obligations to realise the right to health.²⁵ This section will focus on issues relating to the **availability** and **accessibility** of abortion in NI.²⁶

Insufficient funding and inadequate service provision

16. There is currently a recognised “postcode lottery” for abortion services in NI.²⁷ Two of the five relevant HSC Trusts are currently not providing abortion services.²⁸

17. In October 2020, the Northern HSC Trust closed its early medical abortion (‘EMA’) service due to a lack of staff and funding, resulting in a lack of EMA access in 10 out of 26 of NI’s local areas.²⁹ This Trust is the largest geographically in NI, and provides care to 479,000 people.³⁰ For the same reasons, in April 2021, the Western HSC Trust suspended its EMA services.³¹ This Trust provides care to 300,000 people.³²

18. In May 2021, the NI Human Rights Commission sued the NI Government for failing to commission and fund abortion services. Westminster then enacted the Abortion (NI) Regulations 2021, giving the Secretary of State power to direct NI Ministers, departments, or relevant agencies to implement the 2018 CEDAW recommendations and the 2020 Regulations.³³ In July 2021, the Secretary of State formally directed Stormont’s Department of Health to “commission and make abortion services available in Northern Ireland as soon as possible, and no later than 31 March 2022.”³⁴ As of February 2022, there has been little progress on implementing the 2021 Regulations or the Secretary of State’s formal directive.

Lack of abortion services past 10 weeks' gestation

19. Due to a lack of staff and funding, NI clinics are only able to provide EMA up to 10 weeks.³⁵ As a result, people whose pregnancies are over 10 weeks' gestation must still travel to England or Wales for abortion. While the UK Government covers the cost of such travel, not everyone can access this funding, which requires proof of an NI address or registration with an NI-based doctor. Many individuals cannot provide this proof, such as those who are homeless or in a situation of irregular migration.³⁶
20. Even for those who can access this funding, travelling to access abortion results in additional stress, planning, and costs, a situation exacerbated by the ongoing pandemic. Furthermore, requiring people to travel to access abortion can result in human rights violations: in *Mellet* and *Whelan*, the UN Human Rights Committee held the Republic of Ireland responsible for violations of the right to be free from CIDT, to privacy, and to equality before the law, due to Mellet and Whelan having to travel to the UK to access abortion for FFA.³⁷ The Committee recognized that the distress and financial burdens they experienced “could have been avoided” by accessing abortion “in the familiar environment of [their] own country and under the care of the health professionals whom [they] knew and trusted.”³⁸

Delays in and undermining of the Regulations' implementation

21. Stormont's reluctance to take full ownership of implementing the Regulations, and ongoing attempts by conservative actors to restrict abortion access, are impeding access to abortion in NI. In February 2021, a Democratic Unionist Party Member of Stormont proposed criminalising abortions in the case of non-fatal disabilities, and in October 2021 the Society for the Protection of Unborn Children ('SPUC') brought a lawsuit opposing the March 2022 deadline to establish abortion services.³⁹ The High Court rejected SPUC's challenge in February 2022, ruling that the NI Secretary has the legal authority to direct the establishment of abortion services,⁴⁰ but the NI Secretary and other branches of NI Government have failed to do so.
22. While the freedom to express different views on abortion must be respected, attempts to restrict abortion access through legal challenges are a common “lawfare” tactic that result in violations of SRHRs.⁴¹ CESCR has stated that the “unavailability of goods and services due to ideology-based policies or practices... must not be a barrier to accessing services.”⁴² The Special Rapporteur on freedom of religion or belief has stated that the manifestation of individuals' religion or belief must “not have the effect of denying women, girls or LGBT+ persons” their rights to non-discrimination, physical and mental integrity, and health, including reproductive health.⁴³
23. Attempts to restrict abortion access on the basis of NI's supposedly unique cultural, political, or religious context should not undermine the availability and accessibility of abortion. The balance of power between Westminster and Stormont, like religious or

other reasons, is not a justification for failing to meet international human rights obligations.

Criminalisation and Stigma

24. Human rights experts including the CEDAW Committee, the Human Rights Committee, the Special Rapporteur on Torture, and academic Rebecca J. Cook have explained that criminalisation of abortion creates a climate of stigma around abortion, perpetuates gender stereotypes about women's assigned social role as mothers, and chills the decision to access abortion.⁴⁴
25. Nevertheless, NI's Regulations continue to criminalise abortion for healthcare professionals who act outside the Regulations. This has deterred healthcare professionals from providing abortion services, causing staffing shortages and delays in service rollout.⁴⁵ Framing abortion as a matter for criminal law contributes to stigma and shame, deterring and delaying people from accessing abortion.⁴⁶

Summary

26. The UK and NI Governments are failing to comply with international human rights standards on abortion in violation of the principles of equality and non-discrimination, the right to privacy, the right to health, freedom from torture and CIDT, and states' positive obligations to eradicate all forms of discrimination against women.

D. Recommendations for Action by the UK

We recommend that the UK Government should:

- i. Fully decriminalise abortion and ensure that abortion legislation is informed by international human rights standards and scientific evidence, rather than political or religious considerations and abortion exceptionalism.
- ii. Ensure abortion is equally available and accessible across NI on all permitted grounds through sufficient staffing and funding of all HSC Trusts.
- iii. Safeguard against attempts by conservative actors to restrict abortion access by immediately implementing the Regulations, as directed, by March 2022; responding promptly and effectively to attempts at abortion "lawfare"; and broadening and improving public education on the issues surrounding abortion.
- iv. Work with individuals, organisations, and healthcare professionals to develop a framework for safe, straightforward, legal, and local abortion access. Ensure this framework centres the gender-sensitive, intersectional understanding of the right to health developed by UN human rights bodies.

DOMESTIC ABUSE

27. Domestic abuse, as defined in the Domestic Abuse Act (2021) ('DAA'), includes behaviour consisting of physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse, psychological, emotional, or other abuse.⁴⁷ Importantly, the DAA specifies that "it does not matter whether the behaviour consists of a single incident or a course of conduct."⁴⁸ The two people involved must be personally connected and must be aged 16 or over.⁴⁹ The DAA is only in force for England and Wales, and some provisions for England only, owing to the devolved nature of the UK. However, Scotland and Northern Ireland also provide very similar definitions of domestic abuse.⁵⁰
28. In England and Wales, "[t]he number of police recorded domestic abuse-related crimes...rose 6% in the year ending March 2021 to 845,734."⁵¹ Despite this, "[f]or the third successive year, the [Crown Prosecution Service's] charging rate for domestic abuse-related crimes in England and Wales decreased to 70% in the year ending March 2021, down from 76% in the year ending March 2018."⁵² In Scotland, "police recorded 65,251 incidents of domestic abuse in 2020-21" which was a 4% increase compared to 2019-20.⁵³ 80% of these cases involved a female victim and male perpetrator.⁵⁴ In Northern Ireland in year ending 31st December 2021, "there were 32,219 domestic abuse incidents" which was a rise of 1.2% on the previous year,⁵⁵ and "domestic abuse crimes" rose by 9%.⁵⁶
29. This Stakeholder Report refers to 'domestic abuse' throughout, in line with the DAA and in recognition of the fact that domestic abuse includes much more than just violence. However, domestic abuse is sometimes referred to as 'domestic violence' or 'intimate partner violence' and is also included under the broad umbrella term 'violence against women and girls.'

A. Normative and Institutional Framework of the UK

30. The Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW')⁵⁷ is key when considering the protection of women from domestic abuse. In particular, General Recommendation 19 passed in 1992 provides that:

'The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.'⁵⁸

31. General Recommendation 35 from 2017 updated General Recommendation 19, to provide “further guidance aimed at accelerating the elimination of gender-based violence against women.”⁵⁹ The UK is a party to CEDAW and has now withdrawn many of the reservations it attached upon ratification.⁶⁰
32. There are a number of other international human rights agreements and policies related to domestic abuse, in particular the Declaration on the Elimination of Violence Against Women 1993.⁶¹ Also pertinent are the Beijing Declaration and Platform for Action 1995,⁶² the UN Commission on Human Rights Resolution 1994/945,⁶³ and the Commission on the Status of Women.⁶⁴
33. The Council of Europe’s Convention on preventing and combating violence against women and domestic violence (‘Istanbul Convention’) is also directly relevant to the UK. It opened for signatories on 11th May 2011 and entered into force on 22nd April 2014.⁶⁵ The UK signed the Istanbul Convention in 2012 but is yet to ratify it.⁶⁶

B. Implementation of Recommendations from Cycle Three in 2017

34. In 2017, the UK received 227 recommendations. Of these, 15 were made regarding domestic abuse or a related issue, such as violence against women and girls. All of these recommendations were accepted and below is a consideration of the action taken on each recommendation.

Ratify the Istanbul Convention

35. Six recommendations asked the UK to ratify the Istanbul Convention. Five Member States simply recommended ratification (**Italy** (para. 134.43),⁶⁷ **Montenegro** (para. 134.44),⁶⁸ **Spain** (para. 134.45),⁶⁹ **Turkey** (para. 134.46),⁷⁰ and **Bosnia and Herzegovina** (para 134.47)).⁷¹ Whereas **Finland** (para. 134.48) asked the UK to “[m]ake the necessary legal, policy and practice-related changes to enable the ratification of the...Istanbul Convention and dedicate sufficient resources to central, devolved and local authorities to ensure its effective implementation.”⁷² This more detailed and specific recommendation is encouraged, as it points not only towards ratification but also implementation.
36. These recommendations have not been implemented. The UK government has advised that it will only ratify the Istanbul Convention when it can implement it in full.⁷³ To do this, further legislation was needed regarding extra-territorial jurisdiction. In November 2021, the government confirmed that by late February 2022, all four nations should have passed the necessary laws rendering the UK able to implement the Istanbul Convention.⁷⁴ Despite this, the government has stated it will only set out a timetable for ratification “when all the legislative provisions necessary for compliance have been enacted.”⁷⁵ This approach is causing unnecessary delays to the ratification of the

Istanbul Convention, which is crucial to providing women with protection from domestic abuse.

Combat Violence Against Women and Girls (VAWG)

37. Five recommendations were made in relation to the broad category of VAWG, with a particular focus on asking the UK to combat or prevent VAWG (**Paraguay**, para. 134.83; **Slovenia**, para. 134.182; **Bosnia and Herzegovina**, para.134.184; **China**, para. 134.186; **and, Libya**, para. 134.180). All of these recommendations were supported, yet the UK government did not distinguish between them, instead providing one lengthy response to all five recommendations, detailing the actions taken across the four nations.⁷⁶
38. It is difficult to ascertain the level of implementation of these recommendations, as these recommendations did not specify the type of VAWG being discussed. There are particular issues that require urgent action, including domestic abuse, and so Member States should avoid using the broad term ‘VAWG’ without specifying the violence they are referring to, as this allows for broad responses and a lack of action.⁷⁷

Prevent Domestic Abuse

39. Four recommendations were made that made specific reference to domestic abuse, albeit using the terminology ‘domestic violence.’ **Maldives** (para. 134.181) recommended that the UK should “[a]dopt national legislation, especially in Northern Ireland, on domestic violence protection, that ensures all cases of domestic violence are thoroughly investigated and that perpetrators are prosecuted.”⁷⁸ **Sudan** (para. 134.183) specified the type of VAWG it was referring to, recommending the UK to “[c]ombat violence against women and girls, in particular domestic violence.”⁷⁹ **Indonesia** (para. 134.185) said that the UK should “[c]ontinue its positive efforts to reduce domestic violence throughout the country.”⁸⁰ Finally, **Czechia** (para. 134.187) recommended the UK to “[s]tep up its efforts in fighting domestic violence and take measures to prevent secondary victimization and the negative impact of domestic violence on children.”⁸¹
40. These recommendations were much more specific, which is commendable. However, as the UK government merely pointed to the same lengthy response provided to the recommendations on violence against women and girls, this provides a challenge to understanding whether they have been implemented in any meaningful way. Whilst making specific recommendations on domestic abuse is a positive step, it would be more beneficial for Member States to take an ‘intersectional approach,’⁸² for example, considering the interlinked effects of socioeconomic factors and domestic abuse, or race and domestic abuse.⁸³

C. Further Points for the UK to Consider

COVID-19 and Domestic Abuse

41. The COVID-19 pandemic has been disastrous for those suffering from domestic abuse. The government-imposed lockdowns across the UK left many in forced quarantine with their abusers and no source of support.⁸⁴ In fact, “[t]he UK’s largest domestic abuse charity, Refuge, has reported a 700% increase in calls to its helpline in a single day, while a separate helpline for perpetrators of domestic abuse seeking help to change their behaviour received 25% more calls after the start of the COVID-19 lockdown.”⁸⁵ The UN Special Rapporteur on Violence Against Women (SRVAW) found that it was women from already marginalised backgrounds who suffered the most in terms of domestic abuse during the lockdowns of the pandemic, including “minorities, indigenous, Afrodescendant, migrant and rural communities, older women, women and girls with disabilities, homeless women, and women deprived of liberty and victims of trafficking.”⁸⁶
42. The World Health Organization (WHO) has found that “[v]iolence against women tends to increase during every type of emergency.”⁸⁷ The WHO has stated that governments “must include essential services to address violence against women in preparedness and response plans for COVID-19, fund them, and *identify ways to make them accessible in the context of physical distancing measures.*”⁸⁸ Therefore, thought must be given to how the UK government can best deal with the effects of a national emergency, such as the COVID-19 outbreak and lockdowns, on domestic abuse victims. This should be raised during the 2022 UK UPR and other Member States could share best practice on how they dealt with this issue.
43. A significant point that should not be overlooked is that, whilst COVID-19 exacerbated domestic abuse, as Margolis has found, “[t]he pandemic has exposed longstanding flaws in the UK government’s approach to domestic violence.”⁸⁹ One example of this is funding. UN Secretary-General, Antonio Gutierrez, specifically mentioned the “horrifying global surge” of domestic abuse during the pandemic, noting that “[h]ealthcare providers and police are overwhelmed and understaffed” and “local support groups are paralyzed or short of funds. Some domestic violence shelters are closed; others are full.”⁹⁰ Whilst this has intensified during the pandemic, a lack of funding has been a significant issue in the UK for many years, including cuts to domestic abuse services such as refuges, and cuts to police and healthcare budgets.⁹¹ A failure to properly fund such services leaves women facing domestic abuse with no support or recourse.

LGBTQ+ Community and Domestic Abuse

44. The LGBTQ+ community has also suffered greatly in terms of domestic abuse during COVID-19.⁹² Yet, owing to an alarming lack of data related to LGBTQ+ victims of domestic abuse in the UK, it is difficult to ascertain whether this has increased on figures before the pandemic.⁹³ This lack of specific data and analysis is something that the UK Government should seek to rectify urgently.
45. In the UK, there are no specific domestic abuse refuges for the LGBTQ+ community, with only two refuges offering specialised support for LGBTQ+ survivors and both are in London.⁹⁴ In particular, trans women find accessing domestic abuse support particularly challenging due to the “perception that they are not welcome, and media narratives framing them as a risk to cisgender women.”⁹⁵ In fact, a high profile domestic abuse organisation told one worker, “[i]f they don’t sound like a woman, it doesn’t matter if they say they are, hang up. We’re not supporting them.”⁹⁶ Whilst the UK Government does not collect data, Stonewall and its partners found that one in six trans women between 2017-18 had experienced domestic abuse.⁹⁷ By not providing adequate support for trans women experiencing domestic abuse, the UK Government is in breach of its duty to protect its citizens from harm.
46. Moreover, Faye cautions against the solution simply being to create refuges for the community: “[w]hile specialist provision for trans survivors is to be encouraged, there is a difference between advocating for tailored services designed to help people with specific experiences and championing enforced segregation.”⁹⁸ A sensible and evidence-based approach should be taken, and most importantly the UK Government should implement any actions related to this issue in conjunction with representatives from the LGBTQ+ community.

Access to Legal Aid for Victims of Domestic Abuse

47. The introduction of the Legal Aid, Sentencing and Punishment of Offenders Act (‘LASPO’) in 2012 has had devastating consequences for victims of domestic abuse across the UK. It made deep and damaging cuts to accessing legal aid for civil matters, including for victims of domestic abuse. This has led to people acting as litigants in person, without legal representation, which has widespread repercussions.⁹⁹ Although victims of domestic abuse are technically able to access civil legal aid, the evidentiary requirements are extremely strict.
48. The UK government addressed this in the 2017 UPR, noting that civil legal aid is available for those who can provide “objective evidence” of domestic abuse.¹⁰⁰ The UK Government’s website states the following:

‘You’ll usually need to show that you or your children were at risk of harm from an ex-partner.

You can ask for evidence from:

- the courts
- the police
- a multi-agency risk assessment conference (MARAC)
- social services
- a health professional, for example a doctor, nurse, midwife, psychologist or health visitor
- a refuge manager
- a domestic violence support service
- your bank, for example credit card accounts, loan documents and statements
- your employer, or education or training provider
- the provider of any benefits you've received'¹⁰¹

49. This fails to take into account the complex nature of domestic abuse. In fact, Choudhry and Herring have argued that “these restrictions on who can prove they are or have been the victim of domestic abuse is an improper interference in the human rights of victims of domestic abuse.”¹⁰² As those who cannot meet the strict evidentiary requirement are having to attend court without a lawyer, instead as ‘litigants in person,’ this breaches their right to a fair trial under Article 6 European Convention on Human Rights¹⁰³ and Article 14 International Covenant on Civil and Political Rights.

D. Recommendations for Action by the UK

We recommend that the UK Government should:

- i. Fully engage with the recommendations made during the UPR regarding domestic abuse, providing clear responses to recommendations and setting out specific plans for implementation.
- ii. Set out a clear and realistic timetable for ratification of the Istanbul Convention and take all necessary steps to implement it in practice.
- iii. Properly fund healthcare and support services, to allow victims of domestic abuse to access refuges and any relevant treatment. The UK Government should provide a publicly available action plan on how it will action this.
- iv. As a priority, instruct the Office for National Statistics (and its equivalents in Scotland and Northern Ireland) to collect and analyse specific data relating to LGBTQ+ victims of domestic abuse.
- v. Work with the LGBTQ+ community to ascertain what kind of support is required to help those who are experiencing domestic abuse, and then implement the findings. Take an intersectional approach to this, working with LGBTQ+ people from different races and socioeconomic backgrounds, sex workers, people with disabilities etc.

- vi. Work with domestic abuse experts and practitioners to formulate realistic and practical evidentiary requirements for victims of domestic abuse seeking legal aid. This should take into account the complex nature of domestic abuse and should not be onerous upon the person seeking the funding.

¹ UN OHCHR, 'The Core International Human Rights Instruments and their Monitoring Bodies' <www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

² See, Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force on 27 January 1980) 1155 UNTS 331; 8 ILM 679 (1969) Article 2(1)(d).

³ Adrian Kay, 'Territorial Justice and Devolution', *British Journal of Politics and International Relations* 7 (2005): 544–60.

⁴ This inclusive definition is explicitly recognized in the Northern Ireland Abortion Regulations, which define 'woman' to include 'a person of any age who is pregnant', which is welcome in terms of recognising trans* and gender-diverse identities.

⁵ Offences Against the Person Act 1861 secs 58, 59; Criminal Justice Act (Northern Ireland) 1945, sec 25; *R (on the application of A and B) v Secretary of State for Health* [2017] UKSC 41.

⁶ CESCR, 'General Comment No. 22' para 5.

⁷ E.g., CAT, 'General Comment No. 2' para 22; CEDAW, *LC v Peru*; CRC, 'General Comment No 20'; CRPD, 'Joint statement by the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination against Women' (29 August 2018); CCPR, *Siobhán Whelan v Ireland*; Special Rapporteur on the right to health, 'Criminal laws and other legal restrictions relating to sexual and reproductive health'; Special Rapporteur on the rights of persons with disabilities, 'Challenges experienced by girls and young women with disabilities in relation to their sexual and reproductive health and rights' (A/72/133, 14 July 2017) para 11; Special Rapporteur on torture, 'Gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment'.

⁸ CCPR, *KL v Peru*, para 7; CCPR, *LMR v Argentina*, para 10; CCPR, *Amanda Mellet v Ireland*, para 8; CCPR, *Siobhán Whelan v Ireland*, para 8; CEDAW, *LC v Peru*, paras 8-9.

⁹ CEDAW, 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland', para 58.

¹⁰ CEDAW (n 7), para 58; Northern Ireland (Executive Formation etc.) Act 2019, sec 9.

¹¹ The Abortion (Northern Ireland) (No. 2) Regulations 2020, 4(b), 5, 6(a); 1967 Abortion Act, 1(1)(a) and 1(1)(b).

¹² *ibid* 3.

¹³ *ibid*, 4.

¹⁴ *ibid*, 5.

¹⁵ *ibid*, 6.

¹⁶ *ibid*, 7.

¹⁷ I Vandewalker, 'Abortion and Informed Consent' (2012) 19 *Michigan Journal of Gender & Law* 1, 3.

¹⁸ The Abortion Regulations 2020, 8.

¹⁹ See, e.g. H Moseson et al, 'Effectiveness of self-managed medication abortion between 13 and 24 weeks gestation' (2020) 102 *Contraception* 91.

²⁰ A Mohdin, 'Relaxation of UK abortion rules welcomed by experts' (*The Guardian*, 30 March 2020) <<https://www.theguardian.com/world/2020/mar/30/relaxation-of-uk-abortion-rules-welcomed-by-experts-coronavirus>> accessed 15 February 2022.

²¹ Regulations (n 12) 11(1).

²² *ibid*, 12.

²³ UNHRC, 'Report of the Working Group on the Universal Periodic Review – United Kingdom of Great Britain and Northern Ireland', para 134.170.

²⁴ *ibid*, para 134.172.

²⁵ CESCR, 'General Comment No. 14' para 12.

²⁶ Availability is 'an adequate number of functioning health-care facilities, services, goods and programmes... to provide the population with the fullest possible range of sexual and reproductive healthcare.' Accessibility means that 'all individuals and groups' can access 'health facilities, goods, information, and services related to sexual and reproductive health care... without discrimination and free from barriers' CESCR (n 3) paras 12, 15

²⁷ Amnesty International, 'Northern Ireland: Women blocked from abortion care, one year since law change' 21 October 2020, <<https://www.amnesty.ie/northern-ireland-women-blocked-from-abortion-care-one-year-since-law-change>> accessed 13 December 2021.

-
- ²⁸ HSC Structure <<http://online.hscni.net/home/hsc-structure/>> accessed 14 February 2022.
- ²⁹ Amnesty (n 35).
- ³⁰ Northern HSC Trust, <<https://www.northerntrust.hscni.net/>> accessed 14 February 2022.
- ³¹ Western HSC Trust, 'Early Medical Abortion Service' <<https://westerntrust.hscni.net/service/early-medical-abortion-service/>> accessed 13 December 2021.
- ³² Western HSC Trust, 'About the Trust' <<https://westerntrust.hscni.net/about-the-trust/>> accessed 14 February 2022.
- ³³ J McCormack, 'Abortion in NI: Timeline of key events' *BBC News*, 4 October 2021.
- ³⁴ *Ibid.*
- ³⁵ Alliance For Choice, '12-24 weeks' <<https://www.alliance4choice.com/1224-weeks-pregnant>> accessed 13 December 2021.
- ³⁶ *Ibid.*
- ³⁷ *Mellet, Whelan* (n 8).
- ³⁸ *Mellet*, para 7.5.
- ³⁹ McCormack (n 33).
- ⁴⁰ *Ibid.*
- ⁴¹ S Gloppin, 'Conceptualizing Abortion Lawfare' (2021) 17 *Revista Direito GV* 1-19.
- ⁴² CESCR (n 6) para 14.
- ⁴³ Special Rapporteur on freedom of religion or belief, 'Gender-based violence and discrimination in the name of religion or belief', para 76(a).
- ⁴⁴ CEDAW Committee, 'Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland', paras 46-7; RJ Cook 'Stigmatized Meanings of Criminal Abortion Law' in RJ Cook et al (eds), *Abortion Law in Transnational Perspective: Cases and Controversies* (Philadelphia PA, University of Pennsylvania Press 2014); CCPR, *Whelan*, paras 2.5, 3.1, 7.5; SR torture, 'Applying the torture and ill-treatment protection framework in health-care settings', paras 46-50, para 90; SR torture (n 4) paras 14, 42, 43-4, 51, 72.
- ⁴⁵ Alliance for Choice, 'The Abortion (Northern Ireland) Regulations 2020' <<https://www.alliance4choice.com/faq2020>> accessed 14 February 2022.
- ⁴⁶ Cook (n 44).
- ⁴⁷ Domestic Abuse Act 2021, section 3.
- ⁴⁸ *ibid.*
- ⁴⁹ *ibid* section 2.
- ⁵⁰ See, Domestic Abuse (Scotland) Act (2018); Domestic Abuse and Civil Proceedings Act (Northern Ireland) (2021).
- ⁵¹ Office for National Statistic, 'Domestic Abuse in England and Wales Overview: November 2021' (24 November 2021) <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandanddwalesoverview/november2021>>.
- ⁵² *ibid.*
- ⁵³ Scottish Government, 'Domestic Abuse: Statistics Recorded by the Police in Scotland – 2020/21' (30 November 2021) <<https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2020-21/pages/2/>>.
- ⁵⁴ *ibid.*
- ⁵⁵ Police Service of Northern Ireland, 'Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland' (24 February 2022) <https://www.psn.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2021-22/q3/domestic-abuse_-bulletin-dec-21.pdf>.
- ⁵⁶ *ibid.*
- ⁵⁷ UN General Assembly, 'Convention on the Elimination of All Forms of Discrimination Against Women' (18 December 1979) UNTS vol 1249.
- ⁵⁸ Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 19: Violence against women', Eleventh session (1992), contained in A/47/38, para 2.
- ⁵⁹ Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 35 on gender-based violence against women, updating General Recommendation 19' (14 July 2017), CEDAW/C/GC/35.
- ⁶⁰ UN OHCHR, 'Status of Ratification' <<https://indicators.ohchr.org>> accessed 24 February 2022.
- ⁶¹ Declaration on the Elimination of Violence Against Women 1993.
- ⁶² Beijing Declaration and Platform for Action 1995, Art 124-b.
- ⁶³ UN Commission on Human Rights Resolution 1994/945.
- ⁶⁴ Commission on the Status of Women.
- ⁶⁵ Council of Europe CAHVIO, 'Negotiations' www.coe.int/en/web/istanbul-convention/cahvio.

- ⁶⁶ UK Home Office, ‘Istanbul Convention Ratification: 2019 Progress on Report’ (2019) www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-10-31/HCWS58/.
- ⁶⁷ UNHRC, ‘Report of the Working Group’ (n 23) para 134.43.
- ⁶⁸ *ibid* para 134.44.
- ⁶⁹ *ibid* para 134.45.
- ⁷⁰ *ibid* para 134.46.
- ⁷¹ *ibid* para 134.47.
- ⁷² *ibid* para 134.48.
- ⁷³ UK Government, ‘Istanbul Convention: 5th Progress Report 2021’ <<https://www.gov.uk/government/publications/istanbul-convention-implementation-progress-report-2021/istanbul-convention-5th-progress-report-2021-accessible-web-version>> accessed 24 February 2021.
- ⁷⁴ *ibid*.
- ⁷⁵ *ibid*.
- ⁷⁶ UNHRC, ‘Report of the Working Group on the Universal Periodic Review – United Kingdom of Great Britain and Northern Ireland – Addendum.’ (7 September 2017) A/HRC/36/9/Add.1 p 33.
- ⁷⁷ Alice Storey, ‘Taking an Intersectional Approach to Recommendations in the UN’s Universal Periodic Review: A Case Study on Domestic Abuse in the UK’, article in preparation on file with author.
- ⁷⁸ UNHRC, ‘Report of the Working Group’ (n 23) para. 134.181.
- ⁷⁹ *ibid* para. 134.183.
- ⁸⁰ *ibid* para. 134.185.
- ⁸¹ *ibid* para. 134.187.
- ⁸² *See, generally*, Kimberlé Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color’ (1991) 43 *Stan L Rev* 1241. While Crenshaw coined the term itself, the notion of intersectionality has been considered by women across the world for centuries.
- ⁸³ Storey (n 77).
- ⁸⁴ Caio Augusto de Lima et al, ‘COVID-19: Isolations, Quarantines and Domestic Violence in Rural Areas’ (2020) *SciMedicine Journal* Vol 2 No 1.
- ⁸⁵ Mark Townsend, ‘Revealed: Surge in Domestic Violence During Covid-19 Crisis’ *The Guardian* (12 April 2020) <<https://www.theguardian.com/society/2020/apr/12/domestic-violence-surges-seven-hundred-per-cent-uk-coronavirus>>.
- ⁸⁶ UNGA, ‘Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences’ (24 July 2020) A/75/144, para 8. The LGBTQ+ community has also suffered greatly during the pandemic, as discussed in this report.
- ⁸⁷ WHO, ‘COVID-19 and Violence Against Women’ (7 April 2020) <<https://apps.who.int/iris/bitstream/handle/10665/331699/WHO-SRH-20.04-eng.pdf>>.
- ⁸⁸ *ibid*. Emphasis added.
- ⁸⁹ Human Rights Watch, ‘UK Failing Domestic Abuse Victims in Pandemic’ (8 June 2020) <<https://www.hrw.org/news/2020/06/08/uk-failing-domestic-abuse-victims-pandemic>>.
- ⁹⁰ United Nations, ‘UN Chief calls for Domestic Violence ‘Ceasefire” amid “Horrorifying Global Surge”’ *UN News* (6 April 2020).
- ⁹¹ Trust for London, ‘Measuring the Impact of Cuts in Public Expenditure on the Provision of Services to Prevent Violence Against Women and Girls’ (30 January 2012) <<https://www.trustforlondon.org.uk/publications/measuring-impact-cuts-public-expenditure-provision-services-prevent-violence-against-women-and-girls/>>; Jamie Grierson, ‘Council Funding for Women’s Refuges Cut by Nearly £7m since 2010’ *The Guardian* (23 March 2018) <<https://www.theguardian.com/society/2018/mar/23/council-funding-womens-refuges-cut-since-2010-england-wales-scotland>>; Lizzie Deardon, ‘Police Cuts Contributed to Rise in Murders in Britain, Home Office report says’ *The Independent* (5 March 2020) <<https://www.independent.co.uk/news/uk/crime/police-cuts-rise-murders-britain-home-office-latest-figures-a9377551.html>>; The Health Foundation, ‘Budget 2018: £1bn Real Terms Cut to Wider Health Budget’ (31 October 2018) <<https://www.health.org.uk/news-and-comment/news/budget-2018-1bn-real-terms-cut-to-wider-health-budget>>.
- ⁹² Joseph Patrick McAulay, ‘Covid-19 and L.G.B.T.+ Victims of Domestic Abuse: Suffering in Silence’ *Oxford Centre for Criminology Blog* (6 July 2020) <<https://www.law.ox.ac.uk/centres-institutes/centre-criminology/blog/2020/07/covid-19-and-lgbt-victims-domestic-abuse>>.
- ⁹³ Interventions Alliance, ‘Domestic Abuse in LGBT Communities’ (25 March 2021) <<https://interventionsalliance.com/domestic-abuse-in-lgbt-communities/>>; Paula Rhone-Adrien, ‘The Rise of Domestic Abuse During COVID-19 in LGBTQ Relationships and How you Can Get Help’ *Gay Times*

<<https://www.gaytimes.co.uk/life/the-rise-of-domestic-abuse-during-covid-19-in-lgbtq-relationships-and-how-you-can-get-help/>> accessed 24 February 2022.

⁹⁴ Say It, 'LGBT Domestic Abuse Victims Staying with Perpetrators in Lockdown because they Can't Secure Refuge Space, Charity Warns' (13 May 2020) <<https://sayit.org.uk/lgbt-domestic-abuse-victims-staying-with-perpetrators-in-lockdown-because-they-cant-secure-refuge-space-charity-warns/>>.

⁹⁵ Shon Faye, 'The Transgender Issue' (Penguin 2021) p 56.

⁹⁶ Moya Lothian McLean, "'If they Sound Like a Man, Hang Up'" – How Transphobia became Rife in the Gender-based Violence Sector' *Gal-dem* (1 February 2021) <<https://gal-dem.com/transphobia-in-sexual-violence-services/>>.

⁹⁷ Stonewall, 'Supporting Trans Women in Domestic and Sexual Violence Services' (2018) <https://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf> p 2.

⁹⁸ Faye (n 95) p 59.

⁹⁹ See, Jess Mant, 'Litigants' Experience of the Post-LASPO Family Court: Key Findings from Recent Research' (2019) *Fam. Law* 2019, 49 (Mar), 300-303.

¹⁰⁰ UNHRC, 'National Report – United Kingdom of Great Britain and Northern Ireland' (24 February 2017) A/HRC/WG.6/27/GBR/1, para 15, 45.

¹⁰¹ UK Government, 'Legal Aid' <www.gov.uk/legal-aid/domestic-abuse-or-violence> accessed 24 February 2022.

¹⁰² Shazia Choudhry & Jonathan Herring (2017) A human right to legal aid? – The implications of changes to the legal aid scheme for victims of domestic abuse, *Journal of Social Welfare and Family Law*, 39:2, 152-167

¹⁰³ *ibid.*