



Children's human rights in the contexts of domestic abuse and COVID-19

Fiona Morrison & Claire Houghton

To cite this article: Fiona Morrison & Claire Houghton (2022): Children's human rights in the contexts of domestic abuse and COVID-19, The International Journal of Human Rights, DOI: [10.1080/13642987.2022.2057963](https://doi.org/10.1080/13642987.2022.2057963)

To link to this article: <https://doi.org/10.1080/13642987.2022.2057963>



© 2021 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 04 Apr 2022.



Submit your article to this journal [↗](#)




View related articles [↗](#)



View Crossmark data [↗](#)

Children's human rights in the contexts of domestic abuse and COVID-19

Fiona Morrison ^a and Claire Houghton^b

^aFaculty of Social Sciences, University of Stirling, Stirling, UK; ^bSchool of Social and Political Sciences, University of Edinburgh, Edinburgh, UK

ABSTRACT

Domestic abuse is a simultaneous attack on children's and women's human rights. Research underlines the relationality of domestic abuse, unveiling the entwined experiences of children and women. While these experiences may be connected, their rights are distinct and there are risks in viewing mothers as proxies for their children. Policy measures introduced to address COVID-19 had profound impacts on the lives of children and women experiencing domestic abuse. Drawing on an independent Children's Rights Impact Assessment (CRIA) in Scotland, the article explores the impacts such policy measures had on children's human rights in the context of domestic abuse. It offers insight on the opportunities and limitations of CRIs when considering the issue of domestic abuse. CRIs make visible and prioritise children's human rights; however, they risk masking the relationality of rights and therefore the implementation of children's human rights. By integrating human rights instruments – the UNCRC and the Istanbul Convention – the article offers ways to recognise children as victims of domestic abuse, while supporting connections between their rights and the women's rights. It concludes that a Joint Protocol between the UNCRC and the Istanbul Convention is needed to integrate children's human rights with the relationality of domestic abuse.

ARTICLE HISTORY

Received 23 February 2022

Accepted 21 March 2022

KEYWORDS

Child rights; domestic abuse; COVID-19; UNCRC; Istanbul Convention

Introduction

Domestic abuse remains a stubborn social phenomenon that has adverse and disproportionate impacts¹ on the human rights of children² and women.³ Definitions and the terms used to refer to domestic abuse vary and are contested. In Scots law and policy the term domestic abuse is generally used.⁴ Article 3(b) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (known as the Istanbul Convention) defines domestic violence as:

all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

CONTACT Fiona Morrison  f.morrison@stir.ac.uk

© 2021 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License (<http://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way.

This definition encompasses a range of behaviours that constitute domestic abuse in adult intimate relationships. Whilst the Convention's preamble states that 'children are victims of domestic violence', explicit reference to children as victims of domestic abuse is missing from this definition, as are the relational connections between adult and child victims of domestic abuse.

The onset of the COVID-19 pandemic saw global concern about increases in the levels and intensity of domestic abuse.⁵ This followed learning from previous epidemics where the scale and nature of violence against women had changed and increased.⁶ COVID-19 policy measures that sought to prioritise rights to health and survival had unintended and serious consequences for the human rights of child and adult victims of domestic abuse. So called 'lockdowns' or 'stay at home orders' not only confined families to their homes, but also confined child and adult victims to their homes with perpetrators of domestic abuse. Disruptions to social and protective services and networks exacerbated the impact of domestic abuse on child and adult victims and adversely impacted their rights. They diminished opportunities for, and pathways to, support or protection from domestic abuse.⁷

This article draws on policy analysis undertaken by the Observatory of Children's Human Rights Scotland for the Commissioner for Children and Young People Scotland on the COVID-19 policies affecting children experiencing domestic abuse in Scotland.⁸ Undertaken from 11 May until 19 June 2020, the analysis uncovered concerns and provided evidence on breaches to children's human rights in the urgent policy response to the pandemic. The article begins by orientating the reader to the relationality of child and adult victims' experiences of domestic abuse. It then presents substantive findings from the Children's Rights Impact Assessment (CRIA), focussing on the impact policy measures had on children's human rights. As the analysis was undertaken following the introduction of policies, it is technically a Children's Rights Impact Evaluation.⁹ By integrating provisions made under the United Nations Convention on the Rights of the Child (UNCRC) and the Istanbul Convention, the article offers critique on the how attuned these instruments are to the relationality and distinctiveness of children's human rights in the context of domestic abuse. It concludes by offering ways in which human rights instruments and assessment tools could be co-ordinated to monitor and support the implementation of children's human rights in the context of domestic abuse.

The relationality of domestic abuse

Research with children, on their own experiences of domestic abuse, has contributed to the reconceptualisation of domestic abuse. Understandings have expanded – from domestic abuse being primarily the concern of adults and adult relationships,¹⁰ to where children are understood to be intimately involved and affected.¹¹ Child focussed research helped uncover the interwoven yet distinct experiences of children and their mothers' experiences of domestic abuse.

Domestic abuse occurs in relational contexts. However, the nature of these relationships and the latitude to seek help or access safety varies amongst child and adult victims. For women, domestic abuse involves being abused by an intimate or a formerly intimate partner. For a child, it involves a parent, usually a father or stepfather, abusing the child's mother. As well as living with abuse and its consequences, a child may also be

a target of domestic abuse.¹² By virtue of being a child, children have less opportunity to seek help or to access safety in contexts of domestic abuse. For example, children's access to domestic abuse refuges (or shelters) or to children's access to independent legal representation is mediated by adults.¹³ This is not to argue women's access to help or safety is easy or straight-forward¹⁴ but rather to underline that children's access may be even more complex and is often reliant on their mothers' access.

The connections between women and children in the context of domestic abuse are well rehearsed in feminist literature. Kelly¹⁵ described domestic abuse as a 'double intentioned' form of abuse – a combined attack on women and children. This 'attack' extends to the mother–child relationship, where as part of the abuse direct and indirect attempts are made by the perpetrator to undermine the mother–child relationship.¹⁶ The entanglement between women and children may begin even before a child's conception, through rape¹⁷ or when women's rights to reproductive decision-making are restricted or violated as part of the abuse.¹⁸ A significant amount of domestic abuse begins or intensifies during pregnancy¹⁹ and, following birth, the terms or nature of the mother–child relationship may be set and controlled by the perpetrator of abuse.²⁰ Domestic abuse negatively affects a woman's capacity to parent, which in turn can impact the mother–child relationship.²¹ Abuse may take place in front of children and children may witness and deal with its aftermath.²² Children may be coerced into being involved in the abuse of their mother.²³ Following parental separation, abuse may continue and child contact and associated legal proceedings become a focus for it.²⁴ The cumulative impact of living with fear,²⁵ on-going abuse and resulting mental and physical health issues resulting can weigh heavily on and undermine the mother–child relationship.²⁶

However, as well as a place of vulnerability, the mother–child relationship is also theorised as source of strength and power for children and mothers living with and recovering from domestic abuse.²⁷ Empirical research with children and women has challenged constructions of children as passive, women's parenting as deficit, and as helped to underline the relationality of domestic abuse. Accordingly, bolstering the mother–child relationship is increasingly accepted to be key in protecting children in the context of domestic abuse.²⁸ Child protection policies have slowly started to swing from framing the mother–child relationship as a place of deficit towards one of strength, increasingly recognising and emphasising women's attempts to protect children in the context of domestic abuse.²⁹ Children may also be a source of strength and power to mothers in circumstances of domestic abuse. Children act to protect themselves, their mothers, and siblings when they intervene and seek help during attacks and episodes of abuse.³⁰ Women describe children as catalysts for seeking help or attempts to access safety.³¹ This focus on and optimism for the 'mother–child relationship' is core to feminist research and advocacy services in addressing domestic abuse. It offers an important counter to 'mother blaming' which has largely dominated safeguarding responses to children and domestic abuse.³² It also recognises findings that children often want to be supported by their mothers in recovery from domestic abuse.³³

However, an uncritical or unfettered commitment to the 'mother–child relationship' may risk obscuring the differences amongst children's and women's experiences and views on domestic abuse. It may act to elide what might be the ensuing consequences for their and other familial relationships. Children's experiences of abuse do not necessarily mirror those of women. While children's and women's access to safety may be

interrelated, their routes may be different. Children and women do not always have accurate or complete knowledge of each other's experiences of domestic abuse.³⁴ While women may try and protect children from abuse taking place this is not always possible, and they may underestimate children's awareness of abuse or the impact it has on children.³⁵ Not all children want to be supported by their mothers, and not all mothers are able to support their children.

Thus, this review of literature highlights the relationality of children and women in the context of domestic abuse. However, as well as connections there are points of difference – while children's and women's rights to protection and provision may be linked, they are not synonymous or proxies for one another.

Methods for the CRIA

The CRIA was undertaken in the summer of 2020 by the Observatory of Children's Human Rights Scotland on behalf of the Commissioner for Children and Young People Scotland. The CRIA included an analysis of the COVID-19 policies affecting children experiencing domestic abuse in Scotland, it drew on considerable evidence available from before and during the pandemic. Qualitative interviews (n = 9) were carried out with practitioners working in Scottish domestic abuse policy and practice contexts. While not a substitute for existing gaps in the systematic data collection and monitoring of the implementation of children's human rights in Scotland,³⁶ interviews helped surface qualitative evidence on the impact new and rapidly changing policies had on the rights of children experiencing domestic abuse. Additional experts also reviewed and provided feedback on the drafts of the CRIA.³⁷ Together, the methods aimed to critically analyse, in the context of domestic abuse, how policy measures resulting from the pandemic met children's human rights, how these measures were or were likely to violate them, and how any rights violations could be mitigated.

Integrating human rights instruments

The CRIA's analysis was underpinned by an integration of relevant human rights instruments, including the European Convention on Human Rights (ECHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). However, the substantive 'rights lenses' used were UNCRC and the Istanbul Convention.

The United Kingdom (UK) is bound by the UNCRC by virtue of being a party to the treaty. The Scottish Government has further committed to and is amidst attempts to directly incorporate the UNCRC into domestic Scots' law.³⁸ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) provides a comprehensive set of standards to prevent and combat violence against women and domestic violence. The UK became a signatory to the Istanbul Convention in 2012; however it has yet to ratify the Convention. The UK Government has indicated ratification will take place when the UK law is compliant with all parts of the Convention, identifying several Articles that it is wholly or partially uncompliant with.³⁹

Findings from the CRIA

Our findings are organised around the themes: protection; prosecution; provision; and participation. This represents an amalgamation of the Istanbul Convention's 4 'Ps' (protection, prosecution, provision, and prevention) and the UNCRC's 3 'Ps' (protection, provision, and participation). 'Prevention' is not substantively addressed in this article owing to the nature of the policy measures that had formed the CRIA analysis.

Through our findings, we explore the extent to which the UNCRC and the Istanbul Convention are attuned to the relationality of domestic abuse. We also draw out the impact that policy measures had on children's human rights in the context of domestic abuse.

Children's rights to protection

Article 19 of the UNCRC requires State Parties to take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse, while in the care of parent(s). It requires that measures should include effective procedures for establishing social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment. While 'domestic abuse' does not appear in Article 19, the definition of abuse used is broad, encompassing the direct and indirect abuse of children that may take place in context of domestic abuse. Article 19's focus on support for the child *and* the parent offers potential to address some relational aspects of domestic abuse. However, its focus is the victimisation of the child rather than addressing links between child and adult victimisation.

Article 18 of the Istanbul Convention requires parties to take necessary legislative and other measures to protect all victims from any further acts of violence. It requires an integrated approach, to account for the relationship between victims, perpetrators, children, and the wider social environment. This offers a more explicit and nuanced approach to relational aspects of domestic abuse than the UNCRC. However, its distinction between 'children' and 'victims' risks marginalising children. It positions children in relation to adult victimisation or adult perpetration of domestic abuse rather than recognising children's distinct rights and experiences of domestic abuse. It also appears inconsistent with the Convention's preamble which asserts that 'children are victims of domestic violence, including as witnesses of violence in the family'.

Article 31 of the Istanbul Convention is concerned with decisions about children's rights to residence (custody) and child contact (visitation), in relation to one or more of their parents. It requires that decisions must take account of domestic abuse, and that residence and contact must 'not jeopardise the rights and safety of the victim or children'. Thus, it makes explicit relational connections between child and adult victims in post-separation contact arrangements. However, it risks presuming that adult and child victims' rights are congruent, potentially obscuring differences between children's and women's rights or interests in this context. In contrast, Article 9 (3) of the UNCRC squarely focuses on the rights and interests of the child. It establishes the child's right

to maintain personal relations and direct contact with both parents on a regular basis, when separated from one or both parents except if it is contrary to the child's best interests. By foregrounding children's rights in this way, the UNCRC does not make explicit the relationality of child and adult victims in post-separation parenting arrangements, unless they are also found to be detrimental to children's best interests.

Breaches to children's rights to protection

'Lockdown' policies, or 'stay at home orders', in response to the pandemic threatened children's rights to protection from domestic abuse. They acted to confine children to their homes often along with the perpetrator of domestic abuse. Scottish Government guidance quickly established seeking help because of domestic abuse as constituting a reasonable excuse to leave home.⁴⁰ However, it is unclear how effective this guidance was in supporting adult and child victims' access to safety. The Coronavirus (Scotland) Act 2020 placed a duty on Ministers to take account of the nature and incidents of domestic abuse during the pandemic; however it was not clear whether this extended to children and minimal data on children was gathered. There was and is, a lack of robust data and evidence on the incidence or nature of domestic abuse affecting children – and a lack of evidence on how their rights to protection are breached or upheld in this context.

Most children who experience domestic abuse are not known to services like social work or specialist domestic abuse services.⁴¹ Children often do not meet 'thresholds of risk' for statutory services and the capacity of specialist domestic abuse services is limited.⁴² The closure of schools and early-years settings not only breached children's rights to education (Article 28 of the UNCRC), but also breached children's broader rights to protection. Practitioners reported an immediate halt to outreach support in schools – a key safe space for domestic abuse support, alongside an abrupt decline in school referrals to domestic abuse support services. During the initial stages of the pandemic, 'vulnerable children' and children of key workers were permitted to continue to attend education and childcare settings. However, in guidance⁴³ on children's eligibility for this provision, children who experience domestic abuse were not identified as 'vulnerable children' and therefore not explicitly eligible for it. Efforts were made to create ways for adult victims to seek help and access safety during lockdowns, by expanding victims' access to helplines through supermarkets and pharmacies.⁴⁴ However, parallel efforts were not made for children, rendering children's access to help and safety contingent upon their mothers' access.

Practitioners reported that children identified by or who were receiving services from statutory agencies like social work experienced further challenges to their rights to protection. Physical restrictions made it difficult for professionals to make direct and independent contact with a child and for ensuing referrals and, or investigations. For example, practitioners reported that attending police officers at a domestic abuse 'incident' were restricted in efforts to speak directly with the child and record the child's views through physical distancing. Social workers undertaking home visits found it challenging to communicate directly with children due to physical constraints of space and the presence of others.⁴⁵ This complicated children's participation in risk and safety assessments, with subsequent negative impacts on the quality of such assessments and on the evidence used for onwards referrals to child protection, specialist services and criminal proceedings.

Schedule 3 of the Coronavirus (Scotland) Act 2020 constrained the operation of the Children's Hearings System, the system for making child welfare decisions in Scotland. Section 67 of the Children's Hearings (Scotland) Act 2011 had introduced 'having a close connection with someone who carries out domestic abuse' as a specific ground for a child's referral to the Children's Hearings System and in 2018–19 this was the second most common grounds for referral.⁴⁶ However, hearings were reduced under COVID-19 policies to those that required the urgent and immediate protection of a child, limiting the implementation of children's protection rights. Hearings took place virtually, often curtailing children's participation rights (Article 12 of the UNCRC) with potentially negative implications for children's protection rights. Concerns were raised by practitioners that it may not be safe for a child to discuss domestic abuse if living with the perpetrator of abuse or a child may not have adequate access to resources to digitally participate in hearings.

Restrictions meant most civil proceedings that deal with disputes about residence and child contact were suspended. On-going cases were sisted or adjourned and only 'urgent and necessary' cases were heard. The minority of cases that were heard took place remotely without parties present and only in cases where evidence did not require to be led. Practitioners reported that lengthy delays to new or on-going disputes about child contact risked caused significant anxiety and uncertainty to children and their mothers.

The Lord President issued guidance to parents on complying with child contact orders during the suspension of civil proceedings.⁴⁷ The guidance made no reference to domestic abuse, children's best interests (Article 3 of the UNCRC) nor on implementing children's participation rights (Article 12 of the UNCRC) in these circumstances. It directed that, if Government advice on COVID-19 meant it was not possible to comply with a court order, parents could temporarily vary contact orders. In such circumstances, it encouraged indirect contact, and the use of video technology to facilitate contact. This prioritised maintaining child contact rather than considering whether or what was in a child's best interests. In contexts of domestic abuse, changing the boundaries of court ordered contact could be dangerous. Practitioners reported that indirect and virtual contact opened up opportunities for surveillance, psychological abuse and harassment. This mode of contact was unsuitable for particular groups of children – for example, younger children, children with additional needs and children without independent or reliable access to the technology needed for virtual contact.

Policy measures confined children to their homes, but home was often not a place of safety for children with experience of domestic abuse. This group of children often do not meet thresholds of risk for statutory services, meaning mitigations that intended to safeguard 'vulnerable' children did not extend to many of the children who experience domestic abuse. Children's participation in legal and safeguarding decisions, as well as safeguarding practices were restricted, and decisions about their welfare were deferred at critical junctures in their lives. Together, acting to undermine children's protection rights.

Children's rights in relation to prosecution

The Istanbul Convention establishes a series of measures to support adult and child victims during prosecution of domestic abuse. Article 56 of the Istanbul Convention

makes explicit the connections between child and adult victims, establishing a range of protective and special measures for both adult and child victims during criminal proceedings. Article 12 of the UNCRC, the UN Committee on the Rights of the Child General Comment on Article 12⁴⁸ and the Council of Europe's Guidelines on Child Friendly Justice⁴⁹ also provide for children's participation in legal proceedings. However, a key point of divergence between the Istanbul Convention and the UNCRC is the priority given to children's best interests – Article 56 (2) of Istanbul establishes children's best interests should be 'taken into account' when considering special measures for child victims', whereas Article 3 of the UNCRC, establishes children's best interests as 'a primary consideration' in all actions concerning children. The Istanbul Convention provides greater detail on the protective measures for children's involvement in the prosecution of domestic abuse than the UNCRC. However, when combined with the Council of Europe's guidelines on child friendly justice and the General Comment on Article 12, the UNCRC offers greater *substantive* and more expansive protection to children and their interests during the prosecution of domestic abuse. For example, the priority given to the timeliness of justice for children is particularly relevant considering the impact that COVID-19 policy measures had on the operation of the justice system.

Breaches to children's rights in relation to prosecution

Policy measures led to the severe restriction of criminal trials, resulting in major delays to the conclusion of criminal cases. Delays and uncertainty in proceedings were reported by practitioners as a significant source of fear and trauma for children. Practitioners expressed concern about lapses in communication and notifications from the criminal justice system, as well as breaches in bail conditions with little reparation during this part of the pandemic. This all negatively impacted on children's rights relating to prosecution and protection.

The Scottish Government acknowledged significant, increased risk and safety issues for adult victims and their children during the pandemic and issued several protective measures to address this. These included: considering custody following an incident of domestic abuse and further bail conditions if the accused were released⁵⁰; excluding domestic abuse perpetrators from early release from prison⁵¹; and allowing domestic abuse to be one of the few non-custody summary court hearings to take place.⁵² Such measures offered protection to some women experiencing domestic abuse and through this advanced children's rights to protection.

As well as problems resulting from the paralysis of parts of the criminal justice system, practitioners' expressed concern that pre-pandemic progress made on implementing children's rights within the criminal process was at risk of being reversed. This centred on largely on the implementation of the Domestic Abuse (Scotland) Act 2018. Sections 1 and 2 of the Act extended the prosecution of domestic abuse to include psychological violence (see also Article 33 of the Istanbul Convention). Section 5 of the Act introduced provisions on a child aggravator offence (see also Article 46 of the Istanbul Convention), raising the status of child victims of domestic abuse.

The halting of parts of the criminal justice system, resulting delays and uncertainties for children, served to undermine children's rights to protection and in relation to the prosecution of domestic abuse. Also at risk, is the progress made towards raising the status of child victims in the prosecution of domestic abuse.

Children's rights to provision

In addition to the provisions made in Article 19, Article 39 of the UNCRC further establishes children's rights to support in the context of domestic abuse. It requires States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child who is a victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration are to take place in an environment which fosters the health, self-respect, and dignity of the child. Article 27 further requires State Parties to recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development. Article 22 of the Istanbul Convention requires parties to take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of the Convention. Parties are further required to provide or arrange for specialist women's support services to all women victims of violence and their children. Article 23 of the Istanbul Convention makes further requirements around the provision of shelters or refuges. It requires Parties to take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children. Article 24 also requires parties to take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of the Convention.

Comparison between these human rights instruments demonstrates not just difference in the specificity of rights for the context of domestic abuse, but also difference in the priority or status afforded to child victims and to adult victims. The UNCRC focuses squarely on children, giving children a set of independent rights prioritising their status. Whereas the Istanbul Convention focuses primarily on adults, with children brought under its auspices through their mothers. This recognises the relationality of domestic abuse, but risks marginalising children, viewing them as an extension of their mothers. But in combining the UNCRC and the Istanbul Convention, there is opportunity for children 'to be seen', and their rights to be prioritised and attend to the relationality of domestic abuse.

Breaches to children's rights to provision

Practitioners reported that physical restrictions led to radical reconfiguration of the provision of domestic abuse support and advocacy services. Services transformed from largely face-to-face modes of delivery to entirely digital and telephone modes.⁵³ Reconfigurations meant services were able to continue providing some support to children during this early stage of the pandemic; however, it also meant that core elements of work with children were lost, compromising children's rights to provision (Articles 19 and 39 of the UNCRC). Access to confidential and private spaces, the use of creative and play-based methods in support contexts and other physical aspects of support, like touch and 'being with' children, were all diminished. This challenged the

implementation of provision rights for all children with experience of domestic abuse, with challenges felt especially acutely amongst some groups of children. For example, practitioners reported younger children; children 'living with' domestic abuse, without access to safe or confidential spaces at home; and children newly referred to services who may struggle to develop relationships with those working in support services to be especially affected.

For children made homeless because of domestic abuse, their rights to access housing and adequate standards of living (Article 27 of the UNCRC) were made more vulnerable during the pandemic. Practitioners reported a lack of spaces in refuges (Article 23 of Istanbul) and a resulting COVID-19 'backlog' for families. Existing shortages in housing stock were exacerbated by an increased demand for housing, leaving children and women without safe or affordable housing options.⁵⁴

Reconfiguration of services aimed to ensure children were able to access domestic abuse support services during the pandemic. However, this mode of service delivery did not meet the needs of all children, and some children's rights were unmet. Homelessness, resulting from domestic abuse, further undermined children's provision rights. Existing pressures to meet demand were exacerbated for a range of services during the pandemic, resulting in a significant toll on provision rights.

Children's rights to participation

The UNCRC establishes a range of participation rights for children. Article 12 ensures children the right to be participate in decisions that affect their lives. It requires:

- (1) States Parties to assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- (2) For this purpose, the child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Articles 13, 14, 15 and 17 provide children with a broader set of participation rights – in relation to: freedom of expression; freedom of thought, conscience, and religion; freedom of association; and access to information. The UN Committee on the Rights of the Child's General Comment on Article 12 elaborates on children's participation rights.⁵⁵ It establishes the need for 'information-sharing and dialogue' between adults and children in a context of 'mutual respect'. It implies children's views should have influence on decision-making, this encompasses both decisions made about an individual child and 'collective' decisions about children.⁵⁶ Therefore, interpreting Article 12 demands an expansive understanding of children's participation, from children participating in individual decisions through to children participating in policy development and decision-making.

The Istanbul Convention is silent on children's (and adult victims') participation rights. Article 11 of the Convention requires parties to collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention. It further requires parties to support research in the field of all forms of

violence covered by the scope of the Convention to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement the Convention. However, the focus here is on the effectiveness of measures and does not necessarily extend to involving and supporting child or adult victims' participation in decision making on domestic abuse policy.

Breaches to children's participation rights

As discussed earlier in the article under children's rights to protection, practitioners expressed concern that the widespread suspension and restriction of the children's hearings system, as well as criminal proceedings, posed serious risks to children's participation rights, in turn breaching children's rights to protection. In the civil justice system, children's participation rights were extremely constrained if not entirely extinguished by the 'urgent only', remote hearings, approach. Methods for children's virtual participation in the children's hearings system were developed at pace in the context of crisis. Practitioners hoped that the pivot to pre-recorded evidence in criminal proceedings would be accelerated and expanded through COVID-19 measures, but this did not prove to be the case in summary courts, where most domestic abuse criminal cases are heard. Such virtual and timely methods have potential to improve children's experience across the justice system. However, there is a need to evaluate this with children, to help understand what impact they have on children's inter-related rights to protection and participation.

The CRIA found children's broader participation in domestic abuse policymaking to be wholly absent during COVID-19. Practitioners reported concern that previous innovation in young survivors' involvement in national policymaking had stalled. They gave examples⁵⁷ of young survivors' recent involvement in domestic abuse policy making and were concerned that progress and momentum in this area was lost. While there was a lack of government facilitated participation in policymaking, there were examples of young survivors' own activism. For example, young activists created films and used social media to raise awareness of domestic abuse amongst children.⁵⁸ While recognising that policy was made at speed, the danger was observed that, by excluding children from decision-making processes, a raft of human rights breaches follows, not only to participation rights but also to children's protection, provision, and prosecution rights.

Conclusion

Through integrating the UNCRC and the Istanbul Convention, the CRIA offers a systematic way to be both child-focussed and domestic abuse sensitive in policy analysis. In other words, it enabled the policy analysis to be attuned to the relationality of child and adult victims' experiences, while still maintaining priority and creating space for the distinctness of children's human rights. The CRIA revealed that children who experience domestic abuse were largely absent from policy responses to the COVID-19 pandemic. Policy measures risked significant breaches to children's rights in relation to protection, prosecution, provision, and participation. This is concerning given the prominence of the UNCRC and Istanbul Convention enjoy in both Scottish and UK policy discourses. It raises questions on the extent to which policy makers were alive to these instruments, and how embedded they are in policy making processes. It also raises

broader questions about the status of children in policymaking and on the (in)visibility of children who experience domestic abuse.

The CRIA revealed limitations in both the UNCRC and the Istanbul Convention in implementing children's rights in the context of domestic abuse when each is considered in isolation. The UNCRC foregrounds children – ensuring children have status, prioritising a set of independent and distinct rights for children. Yet, at points the UNCRC risks masking that children live in relationships. Not only are children's rights relational – but in the context of domestic abuse, the implementation of these rights may be entwined, interrelated and dependent on their mothers. The Istanbul Convention offers specificity in relation to the impact of domestic abuse on adult and child victims, and the measures that may help ameliorate it. However, if used on its own, the Istanbul Convention risks marginalising children – children's status as victims and as right holders' fades. Children risk being conceptualised as extensions of their mothers, rather than individuals with their own set of independent rights.

This brings us back to the relationality of domestic abuse and the subsequent complexities in addressing it – how to ensure that children and their rights have status in domestic abuse policy whilst attending to the connections (and at times tensions) between children's rights and women's rights.

Going forward, theoretical, policy and practice shifts are needed to fully recognise children's human rights and the relationality of these with women's human rights when experiencing domestic abuse. A Joint Protocol between the UNCRC and the Istanbul Convention is one way to do this. This would offer a systematic and tangible way to maximise children's human rights – underpinned by a recognition that children are victims of domestic abuse, children are individuals with their own rights and needs and that children's and women's rights are interrelated. Ultimately, it would provide a means to make visible the protection, prosecution, provision, and participation rights of both child and adult victim-survivors of domestic abuse, enable scrutiny of the implementation of these rights and a platform from which to address breaches to these rights.

Notes

1. World Health Organization, on behalf of the United Nations Inter-Agency Working Group on Violence against Women Estimation and Data. 2021. Violence against women prevalence estimates, 2018. Global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women.
2. L. Kelly and A. Mullender, 'Complexities and Contradictions: Living with Domestic Violence and the UN Convention on Children's Rights', *The International Journal of Children's Rights* 8 (2000): 229.
3. J. Herring, *Domestic Abuse and Human Rights* (Intersentia, 2020).
4. For a policy example see the Scottish Government strategy to prevent and eradicate violence against women and girls Scottish Government. 2018. *Equally Safe National Strategy* <https://www.gov.scot/publications/equally-safe/>. See the s11.7(c) of the Children (Scotland) Act 1995 for an example of the term 'domestic abuse' used in legislation.
5. UN Women. The Shadow Pandemic: Violence against women during COVID-19. [UN Women.website] 2020. <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>; See also Joint statement by the Special Rapporteur and the EDVAW Platform of women's rights mechanisms

- on Covid-19 and the increase in violence and discrimination against women. 2020. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26083&LangID=E>.
6. E. Fraser, *Impact of COVID-19 Pandemic on Violence against Women and Girls*. Helpdesk Research Report No. 284. (London, UK: VAWG Helpdesk, 2020); T. Palermo and A. Peterman, 'Undercounting, Overcounting, and the Longevity of Flawed Estimates: Statistics on Sexual Violence in Conflict', *Bulletin of the World Health Organization* 89, no. 853 (2011): 924–6.
 7. C. Bradbury-Jones and L. Isham, 'The Pandemic Paradox: The Consequences of COVID-19 on Domestic Violence', *Journal of Clinical Nursing* (2020).
 8. C. Houghton, F. Morrison, and L. McCabe, *Domestic Abuse: Children's Rights Impact Assessment (CRIA)*. Commissioner for Children and Young People Scotland, 2020.
 9. European Network of Ombudspersons for Children (ENOC). 2020. A Guide on How to Carry out CRIA, p. 11. <http://enoc.eu/wp-content/uploads/2020/12/ENOC-Common-Framework-of-Reference-FV.pdf>.
 10. J.E. Callaghan, et al., 'Beyond "Witnessing": Children's Experiences of Coercive Control in Domestic Violence and Abuse', *Journal of Interpersonal Violence* 33, no. 10 (2018): 1551–81.
 11. C. Abrahams, *The Hidden Victims: Children and Domestic Violence* (London: NCH Action for Children, 1994); A. Mullender, et al., *Children's Perspectives on Domestic Violence* (Sage, 2002).
 12. N. Stanley, 'Domestic Violence and Child Abuse: Developing Social Work Practice', *Child & Family Social Work* 2, no. 3 (1997): 135–45.
 13. F. Morrison, E.K.M. Tisdall, and J.E. Callaghan, 'Manipulation and Domestic Abuse in Contested Contact—Threats to Children's Participation Rights', *Family Court Review* 58, no. 2 (2020): 403–16.
 14. A.M. Moe, 'Silenced Voices and Structured Survival: Battered Women's Help Seeking', *Violence against Women*. 13, no. 7 (2007): 676–99.
 15. L. Kelly, 'The Interconnectedness of Domestic Violence and Child Abuse: Challenges for Research, Policy and Practice', in *Children Living With Domestic Violence*, ed. A. Mullender and R. Morley (London: Whiting and Birch, 1994).
 16. L. Radford, and M. Hester, *Mothering through Domestic Violence* (London: Jessica Kingsley Publishers, 2006).
 17. L. Kelly, 'The Continuum of Sexual Violence', in *Women, Violence and Social Control. Explorations in Sociology* (British Sociological Association Conference Volume series), ed. J. Hanmer and M. Maynard (London: Palgrave Macmillan, 1987).
 18. C. Burton and K. Carlyle, 'Screening and Intervening: Evaluating a Training Program on Intimate Partner Violence and Reproductive Coercion for Family Planning and Home Visiting Providers', *Family Community Health* 38 (2015): 227–39.
 19. R. O'Reilly, B., Beale, and G. Gillies, 'Screening and Intervention for Domestic Violence during Pregnancy Care: A Systematic Review', *Trauma, Violence, & Abuse* 11 (2010): 190–201.
 20. L. Bancroft, J. G. Silverman, and D. Ritchie, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (Thousand Oaks, CA: Sage, 2012).
 21. C. Humphreys, et al., 'Supporting the Relationship between Mothers and Children in the Aftermath of Domestic Violence', in *Domestic Violence and Protecting Children: New Thinking and Approaches*, 130–47, 2015; L. Radford and M. Hester, *Mothering through Domestic Violence* (Jessica Kingsley Publishers, 2006).
 22. Mullender et al. *Children's Perspectives on Domestic Violence*.
 23. N. Stanley, *Children Experiencing Domestic Violence: A Research Review* (Dartington: Research in Practice, 2011).
 24. J. Birchall and S. Choudhry, 'I Was Punished for Telling the Truth': How Allegations of Parental Alienation Are Used to Silence, Sideline and Disempower Survivors of Domestic Abuse in Family Law Proceedings', *Journal of Gender-Based Violence* (2021); F. Morrison, "'All over Now?' The Ongoing Relational Consequences of Domestic Abuse through Children's Contact Arrangements', *Child Abuse Review* 24, no. 4 (2015): 274–84.
 25. F. Buchanan, C. Power, and F. Verity, 'Domestic Violence and the Place of Fear in Mother/Baby Relationships: "What Was I Afraid of? Of Making It Worse"', *Journal of Interpersonal*

- Violence* 28, no. 9 (2013): 1817–38; R. Pain, ‘Everyday terrorism: Connecting Domestic Violence and Global Terrorism’, *Progress in Human Geography* 38, no. 4 (2014): 531–50.
26. Humphreys, et al. ‘Supporting the Relationship between Mothers and Children in the Aftermath of Domestic Violence’.
 27. E. Katz, ‘Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed by and Resist Regimes of Coercive Control’, *Child Abuse Review* 25, no. 1 (2016): 46–59.
 28. Humphreys et al. ‘Supporting the Relationship between Mothers and Children in the Aftermath of Domestic Violence’.
 29. F. Buchanan and N.T. Moulding, ‘Mothering during Domestic Abuse: Protective Agency as a Force for Change’, *Qualitative Social Work* 20, no. 3 (2021): 665–80.
 30. Katz, ‘Beyond the Physical Incident Model’.
 31. A.R. Baly, ‘Leaving Abusive Relationships: Constructions of Self and Situation by Abused Women’, *Journal of Interpersonal Violence* 25, no. 12 (2010): 2297–315.
 32. S. Lapierre, ‘Mothering in the Context of Domestic Violence: The Pervasiveness of a Deficit Model of Mothering’, *Child & Family Social Work* 13, no. 4 (2008): 454–63.
 33. C. Humphreys, et al., ‘“Talking to My Mum”: Developing Communication between Mothers and Children in the Aftermath of Domestic Violence’, *Journal of Social Work* 6 (2006): 53–63.
 34. Stanley, *Children Experiencing Domestic Violence*.
 35. S.M. Nolas, E. Sanders-McDonagh, and L. Neville, ‘“Gimme Shelter”? Complicating Responses to Family Violence’, 2018.
 36. E.K.M. Tisdall and F. Morrison, ‘Children’s Human Rights under COVID-19: Learning from Children’s Rights Impact Assessments’, *International Journal of Human Rights* (in press).
 37. For an overview of the CRIA and its methodology see Independent Children’s Rights Impact Assessment on the Response to Covid-19 in Scotland, <https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2020/07/independent-cria.pdf>.
 38. K. McCall-Smith, ‘What Remains Following the UNCRC (Incorporation)(Scotland) Bill Reference Judgment?’, 2021, <https://ohrh.law.ox.ac.uk/what-remains-following-the-uncrc-incorporation-scotland-bill-reference-judgment/>.
 39. Home Office, Implementation of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – 2021 Report on Progress, 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030014/E02686085_Istanbul_Conv_Progress_Report_Elay.pdf; Article 44 requires legislative measure to apply to British citizens who commit crimes against women whilst abroad, regardless of the whether the country is party to the Convention. Currently, this does not extend to all forms of violence against women or across all of the UK. Article 33 requires psychological violence be criminalised. There are gaps in legislation in Northern Ireland. Articles 4(3) and 59 require measures to protect the rights of victims are secured without discrimination owing to immigration status. Migrant women with ‘no recourse’ to public funds are ineligible for government benefits that enable victims to access these measures.
 40. Scottish Government, *Coronavirus (COVID-19) Supplementary National Violence against Women Guidance*, 2020, https://www.cosla.gov.uk/__data/assets/pdf_file/0030/19668/COVID-19-Supplementary-VAW-Guidance-Sept-2020.pdf.
 41. N. Stanley, et al., ‘A Stop–Start Response: Social Services’ Interventions with Children and Families Notified Following Domestic Violence Incidents’, *The British Journal of Social Work* 41, no. 2 (2010): 296–313.
 42. Ibid.
 43. Scottish Government, *Coronavirus (COVID-19): Physical Distancing in Education and Child-care Settings*, 2020. <https://webarchive.nrsotland.gov.uk/10682/20200515175817/http://www.gov.scot/20200516043911/https://www.gov.scot/publications/coronavirus-covid-19-physical-distancing-in-education-and-childcare-settings/pages/education-provision/>.
 44. <https://www.hestia.org/uksaysnomore>.

45. S. Pink, H. Ferguson, and L. Kelly, 'Child Protection Social Work in COVID-19', *Anthropology in Action* 27, no. 3 (2020): 27–30.
46. SCRA. 2020. Official Statistics 2019/2020. <https://www.scra.gov.uk/2020/07/scras-official-statistics-2019-20/>.
47. Lord President. 2020. Coronavirus Crisis: Guidance on Compliance with Court Orders Relating to Parental Responsibilities and Rights. https://www.scotcourts.gov.uk/docs/default-source/default-document-library/updated-covid-19-guidance-on-compliance-with-court-orders-relating-to-parental-responsibilities-and-rights_january-2021.pdf?sfvrsn=0.
48. UN Committee on the Rights of the Child. 2009. General Comment No. 12. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en.
49. Council of Europe. Committee of Ministers, 2010. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. Council of Europe. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3.
50. Lord Advocate. 2020. Lord Advocate's Guidelines: Liberation by the Police Covid-19 or Coronavirus. https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/Lord_Advocates_Guidelines_on_Liberation_Coronavirus_Publication_Version_02_30_March.pdf.
51. Release of Prisoners (Coronavirus) (Scotland) Regulations 2020.
52. Crown Office and Procurator Fiscal Service. 2020. Joint statement from Lord Advocate and Chief Constable. <https://www.copfs.gov.uk/media-site-news-from-copfs/1876-joint-statement-from-lord-advocate-and-chief-constable>.
53. This 'pivoting' of specialist services to remote provision is reported by GREVIO, but the focus is largely on adult victims. See GREVIO. 2020. Second General Report on GREVIO's Activities. <https://rm.coe.int/grevio-s-second-activity-report-2021/1680a2165c>.
54. Scottish Women's Aid. 2020. Submission to the Equalities and Human Rights Committee. <https://womensaid.scot/wp-content/uploads/2020/05/Equalities-and-Human-Rights-Committee-submission-final.pdf>; Scottish Government. 2020. COVID-19 Allocations Advice and Information for the Housing Sector. <https://www.webarchive.org.uk/wayback/archive/20200428101908/https://www.gov.scot/publications/coronavirus-covid-19-allocations-advice-and-information-for-the-housing-sector/>.
55. UN Committee on the Rights of the Child. 'General Comment No. 12'.
56. E.K.M. Tisdall and P. Cuevas-Parra, 'Beyond the Familiar Challenges for Children and Young People's Participation Rights: The Potential of Activism', *The International Journal of Human Rights* (2021): 1–19.
57. C. Houghton, 'Voice, Agency, Power: A Framework for Young Survivors' Participation in National Domestic Abuse Policy-Making', in *Responding to Domestic Violence: Emerging Challenges for Policy, Practice and Research in Europe*, ed. S. Holt, C. Øverlien, and J. Devaney (Jessica Kingsley Publishers, 2018), 77–96. See also the Everyday Heroes reports (<https://everydayheroes.sps.ed.ac.uk/reports/>) from the project involving children and young people with experience of gender based violence in the development of the current Equally Safe policy in Scotland, <https://everydayheroes.sps.ed.ac.uk>. See also, Voice against Violence <https://www.voiceagainstviolence.org.uk/> significantly impacted the Domestic Abuse (Scotland) Act 2018 and set standards for participation of young survivors in policy-making.
58. See Yello! Animations, IJCC project <https://blogs.ed.ac.uk/ijcc/2020/10/we-knew-we-had-to-help/>.

Acknowledgements

The authors want to acknowledge the underlying work for this article, in the independent CRIA. It was commissioned by the Children and Young People's Commissioner Scotland, supported by the Observatory of Children's Human Rights Scotland, and written by a committed team. We wish to thank Leah McCabe for her research assistance and the practitioners who we interviewed as part of

the CRIA. The analysis presented in the article benefited from collaborative learning with children, young people and adults across a range of projects, including the University of Stirling SPARK Grant and Carnegie RIG 008635. We appreciate the constructive comments from the anonymous reviewers.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Notes on contributors

Fiona Morrison is a Senior Lecturer at the Centre for Child Wellbeing and Protection, University of Stirling. Her research interests are in the areas of children's rights, child welfare, domestic abuse and research with children. Before entering academia, she held policy and practice roles in the areas of domestic abuse and child wellbeing.

Claire Houghton is a Lecturer in Social Policy and Qualitative Research, at the School of Social and Political Sciences, University of Edinburgh. Her research interests are in gender and violence, children's rights, participation, policy-making, feminist theory, ethics and research practices.

ORCID

Fiona Morrison  <http://orcid.org/0000-0001-6426-0408>