

## **Engender Parliamentary Briefing: Human Rights Day 2021**

**December 2021**

### **BACKGROUND**

As Scotland's feminist policy and advocacy organisation, Engender works to realise a world where women's economic, social and political rights are upheld and where women have equal access to resources, safety and power. We warmly welcome this opportunity to mark Human Rights Day 2021 in the Scottish Parliament. Human Rights Day also marks the end of the 16 Days of Activism Against Violence Against Women, signalling that violence against women is a human rights violation.

As part of our work on women's human rights, Engender has advocated for the incorporation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), often known as the Women's Bill of Rights. CEDAW, which has been ratified by 187 out of 193 UN member states, was ratified by the UK in 1986.

### **SPECIFIC CONSIDERATIONS**

#### **1. The Convention on the Elimination of All Forms of Discrimination Against Women**

The Convention<sup>1</sup> reflects the need for gender equality to underpin human rights so that they can be enjoyed, in full and without discrimination, by all women and girls. It provides an international common legal framework which 'legitimises women's claims for rights and equality' through its 30 articles spanning rights in public and political life, marriage and family life, education, employment, and health. Compliance with the convention is monitored in three ways by the UN CEDAW Committee, a body of 23 independent experts on women's rights issues: the reporting mechanism; the complaints procedure; and the inquiry procedure. Through reporting, the Committee examines the UK and devolved government representatives. It then makes recommendations for steps governments must take to address gender inequality at all levels, including family, community, business and state.

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<sup>1</sup> Anuradha Rao and the International Women's Rights Action Watch (2008) 'Domestic Application of the Convention on the Elimination of All Forms of Discrimination against Women: Potential and Actuality', p. 13.

Engender has engaged with the United Nations reporting processes for CEDAW and the International Covenant on Economic, Social and Cultural Rights (ICESCR) over a number of years, playing active roles in the reporting of human rights issues in Scotland through a programme of engagement with women and civil society organisations. We most recently developed a Scotland specific report<sup>2</sup> and four nations<sup>3</sup> report for the UK's interim report to the CEDAW Committee. These reports are a vital opportunity for third sector organisations to contextualise information provided to the committee from states and ensure women's voices and experiences in Scotland are heard in the international compliance processes.

However, as welcome as international supervisory processes are, accountability for women's rights in Scotland is undermined by the failure to incorporate the treaty domestically. The UK Government has to date shown no interest in incorporation of CEDAW and has additionally delayed its ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) since signing in 2012, a further barrier to protection of women's rights.

Engender therefore warmly welcomes the Scottish Government's intention to incorporate CEDAW, in addition to ICESCR, the Convention on the Elimination of All Forms of Racial Discrimination (UNCERD), the Convention on the Rights of Persons with Disabilities (UNCRPD) and other rights in a new Human Rights Bill in this parliament. This briefing sets out further information on the need for incorporation and the role of women's organisations in advocating for women's human rights and equality.

## **2. Women's Rights in Scotland**

Women in Scotland continue to face significant barriers to equality and the realisation of their fundamental human rights. The Gender Equality Index sets a baseline score for women's equality at 73 out of 100 (100 being 'full equality'), which masks deeper inequality experienced by different groups of women. Disabled women, women from black and minority ethnic (BME) communities, LGBT women, younger and older women, migrant, refugee, asylum-seeking and stateless women, low-income women, women with minority faiths, unpaid carers, care experienced girls and women, and women in rural areas all experience gender inequality in particular ways that are not fundamentally taken into consideration by policymakers in Scotland and the UK.

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<sup>2</sup> Engender (2021) CEDAW: Follow Up to Concluding Observations Scotland Shadow Report. Available at: <https://www.engender.org.uk/content/publications/CEDAW---FOLLOW-UP-TO-CONCLUDING-OBSERVATIONS-SCOTLAND.pdf>.

<sup>3</sup> Engender (2021) CEDAW: Follow Up to Concluding Observations Four Nations Shadow Report. Available at: <https://www.engender.org.uk/content/publications/CEDAW---FOLLOW-UP-TO-THE-CONCLUDING-OBSERVATIONS-FROM-THE-FOUR-NATIONS-OF-THE-UNITED-KINGDOM.pdf>.

Violence against women remains at epidemic levels, operating as a shadow pandemic whilst Covid-19 related measures have been implemented, restricting access to support and exacerbating the enabling conditions for perpetrators of abuse. Women's exposure and risk of falling into poverty or deeper poverty has increased due to restrictions on the sectors where women's labour is concentrated because of occupational segregation, because of mounting care, childcare and home-schooling and domestic work that has largely fallen to women, and because of pre-existing income precarity.

At the last reporting cycle for the UK, the CEDAW Committee made the following recommendations of note for Scotland:<sup>4</sup>

- Incorporation of CEDAW into Scots Law
- Reviewing and amending the Public Sector Equality Duty (PSED)
- Cumulative impact assessment of austerity
- Ensuring that women are not negatively impacted by Brexit
- Access to justice for victim-survivors of rape, sexual assault and domestic abuse
- Better intersectional gender-disaggregated data
- Ratification of the Istanbul Convention
- Decriminalising women in prostitution
- Undertaking temporary special measures (quotas) to improve women's representation
- Improving sex and relationship education
- Repealing the two-child limit (family cap) on Universal Credit and other reserved benefits

While action on a number of these recommendations has been seen, others have been slow or yet to be explored by policymakers. In addition, as we highlighted in our recent submission to the Committee as part of its focused follow-up, Covid-19 has exacerbated many of the trends that prevented women from accessing their human rights and has delayed action.

We are concerned that the lack of attention to equality and to gender mainstreaming in the pandemic response may lead to a significant rollback in equality for women and girls in Scotland. Additionally, with Brexit, there has been a loss of legal minimum protection for women's rights that Scotland cannot solve alone, but incorporation of CEDAW can mitigate some of the impacts and demonstrate a strong commitment to equality in devolved areas.

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<sup>4</sup> Engender (2019) CEDAW UK Examination: annotated concluding observations. Available at: <https://www.engender.org.uk/content/publications/Engender-annotated-concluding-observations-formatted.pdf>.

### 3. What could incorporation mean for women and girls in Scotland?

Scotland's new Human Rights Law must not only be ambitious; it must reach those who have the most to gain from greater justiciability and accountability. Failure to effectively address the specific needs of women would be to risk re-entrenching inequality between women and men in relation to social and economic rights. Engender supports a tripartite approach similar to the Human Rights Act – requiring public authorities not to act incompatibly, courts and public authorities to take account of the Convention's provisions, and the courts given powers to address incompatibility.

This would give CEDAW visibility and greater power as an advocacy and litigation tool – however effective incorporation would also need to be supported by other legal and soft law measures, such as the Scottish Specific Duties for the Public Sector Equality Duty, in order to prevent violations of rights and progress the realisation of gender equality.<sup>5</sup> Barriers to justice, including cost and narrow standing rules, need to be considered.<sup>6</sup>

In particular, Engender foresees four immediate cross-cutting benefits of incorporation of CEDAW:

- The significantly improved visibility of CEDAW and the rights it protects;
- Enhanced accountability for women's rights including the possibility that any woman can access a remedy for a breach of her rights in her local court;
- Rights could be better delivered without litigation because of requirements for public sector bodies to better embed substantive equality and the detailed jurisprudence spanning the full treaty articles into policy and practice;
- As the overarching aim of incorporation would be to avoid litigation, effective incorporation would require the legislature's enhanced vigilance regarding compliance.

The CEDAW Committee last month welcomed the Scottish Government's intention to incorporate the convention, while also calling on the UK Government as the state party to bring forward "a unified and overarching national strategy for the incorporation of

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<sup>5</sup> Nicole Busby and Muriel Robinson (2018) CEDAW: How can women's rights be better realised in Scotland? Engender. Available at: <https://www.engender.org.uk/content/publications/CEDAW-incorporation-paper.pdf>.

<sup>6</sup> Human Rights Consortium (2018) Discussion Paper: Overcoming Barriers to Public Interest Litigation in Scotland. Available at: <https://hrcotland.org/wp-content/uploads/2018/11/final-overcoming-barriers-to-pil-in-scotland-web-version.pdf>.

all the provisions of the Convention into its national legislation throughout its jurisdiction".<sup>7</sup>

#### **4. A new human rights framework can enhance the indivisibility of rights**

While CEDAW is a vital and focused tool to realise the rights of women, human rights are interdependent and indivisible. Women benefit from the articulation of rights protected by ICESCR, including the right to an adequate standard of living and to adequate housing. Disabled women can access the protection of the UNCRPD, and racialised women can depend on the UNCERD, in addition to CEDAW. Incorporation into a single legislative framework makes visible the interrelated nature of rights across treaties and signifies an equality of rights protection that will benefit all women.

However, as equal opportunities legislation is reserved to the UK Parliament, technical consideration will need to be given to maximising the effectiveness of CEDAW's approach to substantive equality of women.<sup>8</sup> There is a clear role for individual women, civil society, women's organisations and academics to inform the development of the new framework, including ensuring its capacity to respond to multiple and overlapping forms of discrimination and clear processes for monitoring interference with rights.

#### **FOR FURTHER INFORMATION**

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#### **ABOUT US**

Engender is Scotland's feminist policy and advocacy organisation, working to increase women's social, political and economic equality, enable women's rights, and make visible the impact of sexism on women and wider society. We work at Scottish, UK and international level to produce research, analysis, and recommendations for intersectional feminist legislation and programmes.

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<sup>7</sup> Letter From CEDAW Committee to Simon Manley CMG, Ambassador and Permanent Representative, UK Mission to the WTO, UN and Other International Organisations (Geneva), 25 November 2021. REFERENCE: BJ/follow-up/GBR/80. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fUD%2fGBR%2f47245&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fUD%2fGBR%2f47245&Lang=en).

<sup>8</sup> Nicole Busby and Muriel Robinson (2018) CEDAW: How can women's rights be better realised in Scotland? Engender. Available at: <https://www.engender.org.uk/content/publications/CEDAW-incorporation-paper.pdf>.