



## **RESPONSE TO THE EQUALITY AND HUMAN RIGHTS COMMISSION: CONSULTATION ON ITS PROPOSED MEASUREMENT FRAMEWORK**

Engender welcomes the opportunity to respond to the Equality and Human Rights Commission (EHRC) consultation on proposed amendments to its measurement framework. Beginning with an overview of the functions of the EHRC, this response proceeds with an overview of the EHRC's previous framework and the rationale for developing the model under consultation. The response then provides an analysis of the proposed measurement framework and a set of recommendations to the EHRC.

### **BACKGROUND**

Established in 2006, the EHRC has a statutory duty to encourage and support a society in which:

- People can achieve their full potential without prejudice or discrimination;
- There is respect and protection for human rights and the dignity and worth of every individual;
- Each person has an equal opportunity to participate in society; and
- There is mutual respect between groups for diversity, equality and human rights.

To carry out these functions, the EHRC monitors and reports on the state of equality and human rights in Great Britain every few years.

The EHRC is currently proposing to amend the tool it uses to measure equality and human rights in Great Britain. It identifies several reasons for this decision, including the development of a 'single, coherent tool covering equality and human rights' and the 'changing data landscape and internal resources'. The EHRC proposes to reduce the number of domains – or categories – it assesses each review period. At present, the measurement framework captures ten domains, which the EHRC is proposing to amalgamate into six. The six proposed domains would include:

- Education;
- Work (previously termed Productive and Valued Activities);
- Living Standards and Social Care (previously termed Standards of Living);
- Health;
- Security and Justice (amalgamation of Life; Physical Security; and Legal Security); and

- Participation and Private Life (amalgamation of Identity, Expression and Self-Respect; Individual, Family and Social Life; and Participation, Influence and Voice).

Within these domains, the EHRC would use 30 core indicators to measure the progress or regress of equality and human rights. For example, the domain ‘Living Standards and Social Care’ would be measured by three core indicators: housing, poverty and social care. The number of proposed core indicators would be reduced from the existing 45. The EHRC is also proposing to include supplementary indicators under each domain, though this set of indicators would not be regularly monitored or reported on by the EHRC.

## CONTEXT AND ANALYSIS

In an era of austerity, where focus has shifted to rolling back social assistance for society’s most vulnerable, the measurement of progress – or regress – in equality and human rights is of utmost importance. Mechanisms to measure compliance with legislation, both domestic and international, serve as a tool to gauge the state’s respect for equality and human rights. Measurement tools perform the function of identifying the effectiveness of the legislation in protecting rights, but can also be used to identify gaps in services. In doing so, tools such as the EHRC measurement framework point to areas where the state can better perform to ensure that every person under its care lives free of discrimination and inequality. In essence, the measurement of equality and human rights protects those living in Great Britain from serious and systemic equality and human rights abuses.

Engender’s response to the consultation is framed around the legal, economic and social realities Scotland faces today as well as those it will face in the near future. These include:

- UK-wide social security reforms, including £26bn worth of cuts to social assistance, tax credits, pay and pensions, and the reality that 86 percent of these cuts will have been taken from women’s incomes<sup>1</sup>;
- The devolution of certain social security powers to Scotland;
- Forecasts by organisations, like the Resolution Foundation, which point to a significant fall in living standards within the next decade and ‘the biggest rise in inequality since the late 1980s’<sup>2</sup>; and
- The uncertainty over the UK’s legal framework for the protection of equality and human rights once it leaves the European Union (EU).

The rationale for framing the consultation response around these realities is due to the view that social security cuts, coupled with warnings of rising inequalities, should be heeded as a time to build robust mechanisms to measure and analyse the status of equality and human rights.

Analysed herein is the proposed EHRC measurement framework. For ease, each of the six proposed domains is examined independently.

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<sup>1</sup> Women’s Budget Group. (2016). *The impact on women of the 2016 Budget: Women paying for the Chancellor’s tax cuts.*

<sup>2</sup> Resolution Foundation. (2017). *Living Standards 2017: the past, present and possible future of UK incomes.*

## Education

As part of this domain, the EHRC proposes to include three core indicators:

1. Education outcomes of children and young people;
2. Education outcomes and experiences of vulnerable children and young people; and
3. Higher education and participation in lifelong learning

Supplementary indicators include 'bullying in schools'.

An issue for Engender is whether the supplementary indicator is broad enough in its definition to capture harassment and discrimination in school settings. In schools, there is both visible gender discrimination and unseen 'normalised' prejudices, which constrain girls' ambitions and attainment and create the conducive context for inequality beyond education, including violence against women and girls within the school setting and in wider society. As found by the Status of Young Women in Scotland, gender inequalities have become so normalised that many young women between the ages of 16 and 30 did not realise that they had experienced it.<sup>3</sup> Under the Equality Act (2010) and the public sector equality duty which arises from it, schools in Scotland are required to show that they are eliminating discrimination and harassment and promoting equality between girls and boys, and women and men. Engender therefore recommends that the EHRC review this indicator with a view of: a) expanding it to include harassment and discrimination in schools; and b) include it as one of the core indicators under the domain 'Education'.

## Health

Engender welcomes the inclusion of mental health as one of the core indicators in measuring 'Health' within Great Britain. In the UK, more women than men experience depression, with one in four women requiring treatment for depression at some point in their lives, compared to one in 10 for men.<sup>4</sup> In Scotland, the need to monitor mental health care is pressing. In 2016, the Scottish Health Survey found that women between the ages of 16 and 24 have significantly lower levels of mental well-being compared to other age groups.<sup>5</sup> Further, the same age group of women reported higher levels of self-harming behaviour than men.<sup>6</sup> Given the number of women suffering from mental health problems, ranging from depression to anxiety to eating disorders, it is vital that the EHRC continue to monitor the provision of mental health care.

Included in the proposed measurement framework is the supplementary indicator 'reproductive and sexual health'. It is the position of Engender that this indicator should be included as one of the core indicators within the measurement framework, which would permit regular monitoring and reporting by the EHRC. Dating to 2008, the United Nations (UN) Committee on the Rights of the Child called on the UK to intensify efforts to provide adolescents with appropriate reproductive health services, including reproductive health education in schools. In its response to the UN, the Scottish Government committed to

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<sup>3</sup> Status of Young Women in Scotland. (2015). *Status of Young Women in Scotland*.

<sup>4</sup> Mental Health Foundation. (2016). *Mental Health and Women*.

<sup>5</sup> Scottish Government. (2016). *Health of Scotland's Population - Mental Health*.

<sup>6</sup> Scottish Government. (2016). *Health of Scotland's Population - Mental Health*.

continuing to provide access to sexual health advice.<sup>7</sup> At the time, Engender held, and continues to hold, that it is vital for young people in Scotland to be given clear and accurate information about sexual health, as well as full, unimpeded access to sexual health services. However, to know whether these rights are being met requires continuous monitoring.

In addition, the reproductive rights of women should not be overlooked, including rights around fertility and reproductive decision-making, and access to the information and healthcare services which enable this. Women who are disadvantaged by income inequality face additional barriers to reproductive health and are 'more vulnerable to the barrier of inadequate social support'.<sup>8</sup> Engender has also identified a number of ways in which disabled women, black and minority ethnic women, refugee and asylum-seeking women, and trans men may have additional barriers to adequate reproductive healthcare.<sup>9</sup> To measure state action in the dissemination of information and the provision of services related to sexual and reproductive health requires the inclusion of 'reproductive and sexual health' as a core indicator in the EHRC measurement framework.

Further, the inclusion of 'reproductive and sexual health' as a core indicator would facilitate the measurement of the UK's progress towards the UN Sustainable Development Goals, which provide that states 'ensure universal access to sexual and reproductive health and reproductive rights'. The absence of a core indicator to measure the protection of women and girls' sexual health and reproductive rights would leave these rights vulnerable to regression, and would put the UK in a position where its progress toward the UN Sustainable Development Goals is not regularly monitored domestically.

### Living Standards and Social Care

To measure living standards and social care, the EHRC proposes to examine three core indicators: housing, poverty and social care.

The inclusion of housing in assessing living standards is essential. A safe and affordable place to live, whether it be in an emergency, during a transition or for the longer-term, is a fundamental element to escaping a life of poverty. In its assessment of housing, the EHRC proposed to examine housing benefits. This is a welcomed inclusion, as cuts to social security, as well as the Household Benefit cap, will disproportionately impact women, in particular women who are lone parents. It is expected that by 2020 women who are lone parents will experience an estimated loss of £4,000 per year, a 20 percent fall in living standards and a 17 percent drop in disposable income.<sup>10</sup> To develop a measurement framework which captures housing benefits will allow a review of the consequences of social security cuts to some of the most vulnerable women in Scotland.

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<sup>7</sup> Engender. (2009). *Consultation on the Scottish Government's response to the 2008 Concluding Observations from the UN Committee on the Rights of the Child*.

<sup>8</sup> Ostrach & Cheney. (2014). *Navigating social and institutional obstacles: low-income women seeking abortion*.

<sup>9</sup> Engender. (2016). *'Our Bodies; Our Choice'*.

<sup>10</sup> Engender. 2012. *Multiple Jeopardy: The impacts of the UK Government's proposed welfare reform on women in Scotland*.

Of particular concern with the proposed measurement framework is the absence of core indicators related to unpaid care and childcare. In the existing framework, core indicators include:

1. The percentage of adults who do not have access to childcare to meet their and their children's need;
2. The percentage of parents who would prefer to change their childcare requirements, but are unable to do; and
3. Unpaid care and free time.

In the proposed framework, there is no reference to childcare. The closest reference made to childcare is the measurement outcome 'availability of support for children and young people, including young people in care'.

Lack of accessible, affordable and quality childcare emerges consistently as the most immediate barrier to women's participation in the formal labour market. Women in the UK provide around 70 percent of caring hours, and almost 60 percent of unpaid carers are women.<sup>11</sup> As Scotland has some of the highest childcare costs in the UK, the Scottish Government has committed to delivering quality, flexible childcare that is affordable, and is working towards providing an entitlement of 1,140 hours a year of childcare. However, to overcome the barriers that keep women who are mothers at the margins of the formal labour market requires the ability to measure those barriers. The knowledge provided by such measurements improve the ability to develop gender-based responses to encourage and foster women's participation in the labour market. Engender therefore strongly recommends that the EHRC include in its measurement framework core indicators on childcare and unpaid care.

### Participation and Private Life

Engender supports the inclusion of 'political participation and representation' as well as 'civic participation and representation' as core indicators within this domain of the proposed measurement framework. Women have unequal access to power, decision-making and participation throughout all areas of public life in Scotland. Though women make up 52 percent of the Scottish population, they hold only 37 percent of seats in the Scottish Parliament, 24 percent of seats in local council chambers, 36 percent of public board places, and 21 percent of current public board chairs.<sup>12</sup> It is therefore imperative that the EHRC framework measure women's participation in civic life.

Of concern, however, is the third core indicator 'respect for private life', which the EHRC proposes to measure by examining 'internet use and public awareness of privacy settings' and 'loss and misuse of personal data'. As these measurements fall under the purview of information and privacy, rather than equality and human rights, Engender strongly recommends that a different approach be undertaken to measure 'private life'. A suggested approach is to re-frame the indicator for 'private life' by amalgamating the previous domains 'individual, family and social life' and 'identity, expression and self-respect'. 'Private life' could

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<sup>11</sup> Skills for Care. (2012). *Carers Matter – Everybody's business*.

<sup>12</sup> Engender. (2016). *Equal Voice, Equal Power*.

then be measured by outcomes included in these now-retired domains, including ‘availability of support’, the freedom to form and pursue relationships of one’s choosing, and ‘healthy living’. This approach would not only capture outcomes which depict a broader understanding of private lives, but also allow for consistent measuring of equality and human rights going forward.

### Security and Justice

The EHRC is proposing to include three core indicators to measure the domain ‘Security and Justice’, including crime, the condition of people detained or residing in public or private institutions, and the effectiveness of the justice system.

Engender welcomes the EHRC proposal to continue to monitor the Scottish prison population. As Scotland is set to undergo the largest operational reform to its women’s estate, it will be critical for the EHRC to measure the Scottish Government’s progress, in particular whether its policies and programs deliver on the commitment to reduce the number of incarcerated women in Scotland.

The EHRC is also proposing to continue measuring the prevalence of crime by reviewing, among other crimes, the number of cases involving rape and domestic violence. In 2014, the UN Special Rapporteur reported that violence against women remains a pervasive challenge throughout the UK.<sup>13</sup> Last year in Scotland, nearly 1,700 cases of rape were reported to the police<sup>14</sup>, and over 58,000 incidents of domestic abuse were recorded by authorities.<sup>15</sup> In 2009, stakeholders in Scotland were consulted on the EHRC measurement framework. During the discussion on domestic violence, stakeholders raised the importance that the definition of domestic violence reflect gender inequality and, more specifically, intimate partner violence.<sup>16</sup> Providing a clear and unambiguous measure of gender inequality within this measurement continues to be supported and strongly recommended.<sup>17</sup>

### Work

The proposed framework would measure the domain for ‘Work’ by examining core indicators such as the employment rate, pay gaps in median hourly earnings, as well as occupational segregation.

Engender welcomes the continued assessment of part-time employment and self-employment within the employment indicator, as women in Scotland make up 75 percent of the part-time workforce.<sup>18</sup> Further, since 2008, the rate in self-employed women has risen dramatically, accounting for 63 percent of newly registered businesses. Over 2014, the figure rose steeply to 88 percent. Most recent labour market data shows that increasing part-time

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<sup>13</sup> [https://www.engender.org.uk/files/Final\\_press\\_statment\\_UK\\_15\\_Apr\\_VAW.pdf](https://www.engender.org.uk/files/Final_press_statment_UK_15_Apr_VAW.pdf)

<sup>14</sup> Rape Crisis Scotland. 2016. *Facts*. Available from: <http://www.rapecrisisscotland.org.uk/>

<sup>15</sup> Scottish Government. 2016. *Crime and Disorder*. Available from: <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/TrendDomesticAbuse>

<sup>16</sup> EHRC. (2009). *Research Report, Chapter 6: Physical Security*.

<sup>17</sup> EHRC. (2009). *Research Report, Chapter 6: Physical Security*.

<sup>18</sup> Close the Gap. (2016). *Gender pay gap statistics*.

self-employment was ‘solely driven by women’, whilst the rate of self-employed men fell.<sup>19</sup> Given these statistics, it is imperative that the measurement framework analyse employment through a gender-specific lens. The inclusion of data relating to women’s paid work in Scotland will support a better understanding of the realities of women who work part-time or are self-employed.

Absent from core indicators is ‘discrimination in employment’, which is proposed as a supplementary indicator. Employment protection is a function of equality and anti-discrimination legislation, which is captured in the Equality Act (2010) and other pieces of domestic legislation, underpinned by EU law. Among its many steps towards creating more gender-equal societies, the EU entrenched in law the rights of pregnant women. Engender strongly recommends that the EHRC reinstate ‘discrimination in employment’ as a core indicator within its measurement framework, given the uncertain future of domestic legislation on employment protections for women. The absence of the EU legal framework, coupled by the unclear direction of the UK on its review of domestic legislation post-Brexit, puts the employment rights of women in a precarious position. As the UK prepares to leave the EU, it is vital that the EHRC monitor and report on the progress or regress of state compliance with employment protections.

## CONCLUSION AND RECOMMENDATIONS

The proposed measurement framework reduces both the number of domains and indicators the EHRC will use to assess the state of equality and human rights in Great Britain. In no recent time, however, has the need for robust tools to measure equality and human rights been so pressing. As the UK prepares to leave the EU, as Scotland sets its own course for certain social security powers, and as organizations and think-tanks forecast a significant fall in living standards, there must be assurances that the EHRC can perform its statutory duty to encourage equality, eliminate discrimination, and protect and promote human rights in Great Britain.

To protect and promote equality and human rights in Great Britain, Engender calls on the EHRC to include the following indicators in its measurement framework:

1. Remove ‘bullying in schools’ as a supplementary indicator for ‘Education’ and replace it with an indicator which captures harassment and discrimination in schools.
2. Include harassment and discrimination in schools as a core indicator of the EHRC’s ‘Education’ domain;
3. Include as a core indicator, under the ‘Health’ domain, sexual and reproductive health;
4. Reintroduce core indicators on childcare and unpaid care under the domain ‘Living Standards and Social Care’;
5. Re-frame the proposed core indicator ‘Respect for Private Life’ under the domain ‘Participation and Private Life’ to capture outcomes included in the previous measurement framework, including ‘healthy living’, ‘availability of support’ and the freedom to form and pursue relationships of one’s choice;

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<sup>19</sup> Trade Union Congress. (2015). *What has been happening to self-employment lately?*.

6. Provide a clear and unambiguous measure of gender inequality in the measurement for 'domestic violence' in the domain 'Security and Justice'; and
7. Include 'discrimination in employment' as a core indicator within the 'Work' domain.

### **For Further Information**

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### **About Engender**

Engender has a vision for a Scotland in which women and men have equal opportunities in life, equal access to resources and power, and are equally safe and secure from harm. Engender is a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.