

## **Scottish NGO briefing for UN Special Rapporteur on Violence Against Women March 2014**

### **Introduction**

We welcome the opportunity to provide this briefing for the UN Special Rapporteur on Violence Against Women to inform her visit to the UK in March/April 2014.

The briefing has been produced by a group of NGOs working to address violence against women and gender inequality in Scotland. It has been informed by discussions with local refuge providers affiliated to Scottish Women's Aid, input from other NGO stakeholders and research and policy analysis undertaken in Scotland over the last few years.

We identified a number of common concerns and we have focussed our briefing on these areas of concern, whilst endeavouring to stay within the context of the mandate of the UN Special Rapporteur on Violence Against Women.

Given the constitutional framework of the UK, we have not commented extensively on matters which are reserved to the UK Government at Westminster which are likely to be covered in some depth by briefings from sister organisations in England, Wales and Northern Ireland. We have focussed only on the aspects of reserved issues which we think have a different or additional impact for women living in Scotland.

Where we have pre-existing briefings which cover an issue in some depth, we have provided links to these in the interests of keeping the top-level document brief. We can provide hard copy of these if required.

**Scottish Women's Aid** [www.scottishwomensaid.org.uk](http://www.scottishwomensaid.org.uk)

**Rape Crisis Scotland** [www.rapecrisisscotland.org.uk](http://www.rapecrisisscotland.org.uk)

**Engender** [www.engender.org.uk](http://www.engender.org.uk)

**Human Rights Consortium Scotland** <http://hrconsortiumscotland.wordpress.com/>

**Scottish Refugee Council** [www.scottishrefugeecouncil.org.uk/](http://www.scottishrefugeecouncil.org.uk/)

Queries about the briefing or material it links to should be addressed in the first instance to Lily Greenan, 0131 240 0310 [lily.greenan@scottishwomensaid.org.uk](mailto:lily.greenan@scottishwomensaid.org.uk)

## **The context – Scotland, equality and human rights**

### **UK Government and Human Rights in Scotland**

The Human Rights Act 1998 (HRA) operates as a form of bill of rights for the UK. Section 6 of the Human Rights Act 1998 requires all public authorities to comply with the European Convention on Human Rights (ECHR). This duty covers thousands of UK public authorities in Scotland such as the UK Border Agency and the Department of Work and Pensions as well as distinctly Scottish bodies such as local authorities, health boards and housing associations. The HRA incorporates the ECHR, but not all of its provisions such as Article 13 ‘the right to redress’.

The UK Government passes national legislation on equality and human rights in Scotland; for example, the Equality Act 2008 included a power to establish the GB Equality and Human Rights Commission (EHRC) which delivers specific functions in Scotland, England and Wales (but not Northern Ireland).<sup>1</sup> The EHRC may take action if a case involves equality and human rights in Scotland and may act with the permission of the Scottish Human Rights Commission if the matter relates solely to human rights.<sup>2</sup>

The UK Parliament has established a ‘Joint Committee on Human Rights’ with cross-party membership, which has a remit to consider, for example, matters relating to human rights in the United Kingdom (but excluding consideration of individual cases).<sup>3</sup>

### **Scotland Act 1998 - Human Rights**

It is argued that Scotland does have a written constitution in The Scotland Act 1998<sup>4</sup>. Its 132 Articles set out the limitations and powers of devolved government in Scotland. Human Rights are specifically covered in Articles 29, 57, 100 and 126 as well as in Schedule 5. Human Rights are both reserved to the UK Government and devolved functions of the Scottish Administration.<sup>5</sup>

Section 29 of the Scotland Act 1998 requires MSPs to comply with the ECHR as well as EU Law when passing legislation at the Scottish Parliament. Section 57 of the Scotland Act 1998 requires Scottish Government Ministers, positively, to comply with the ECHR.

The Scotland Act ensures that Scottish Ministers understand their responsibility for observing and implementing international obligations, defined not simply by reference to the specific Convention rights defined in the Human Rights Act, but in terms of all international obligations Schedule 5 7 (2) (a) and S126(10). If Scottish Ministers fail to meet these obligations they may be subject to enforcement action against them on the part of the Secretary of State by virtue of section 58 of the Scotland Act 1998.

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<sup>1</sup> The Northern Ireland Human Rights Commission already existed <http://www.nihrc.org/>

<sup>2</sup> Section 7(4) Equality Act 2006

<sup>3</sup> <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/>

<sup>4</sup> <http://www.legislation.gov.uk/ukpga/1998/46/contents>

<sup>5</sup> See Himsworth piece on SSRN.

When the Scottish Parliament has exercised its devolved authority to define human rights it has consistently gone beyond the ECHR:

- The Scottish Human Rights Commission (SHRC) has a duty to promote and encourage best practice in relation to human rights, defined as ECHR as well as other human rights contained in a ratified, international treaty<sup>6</sup> e.g. UN Convention on Civil and Political Rights (ICCPR).
- Scotland's Commissioner for Children and Young People (SCCYP) has specific responsibilities for the UN Convention on the Rights of the Child.<sup>7</sup>

The Scottish Parliament has passed distinctive legislation which has protected and promoted specific social, economic, civil, political, cultural and economic rights, e.g. on homelessness and for particular groups, e.g. incapacity and adult protection. However it declined to incorporate the UN Convention on the Rights of the Child in the Children and Young People (Scotland) Bill which progressed through the Scottish Parliament in 2013-2014.

### **Practical Application of Human Rights**

Arguably there is an unequal enjoyment of human rights in the UK. Although the ECHR can take up individual human rights cases in England and Wales the Scottish Human Rights Commission is specifically prohibited from taking individual cases.<sup>8</sup> Unlike the UK Parliament, the Scottish Parliament has declined to set up a dedicated Human Rights Committee. Human Rights, it is argued, are an integral part of the business of each Committee but a study published by Glasgow University concluded that there was room for improvement after studying the work of all parliamentary Committees in November 2011:

“Although we are limited by the terms of reference to a single calendar month, the evidence for the period reveals a widespread disregard of the normative and institutional framework for conceptualizing and analysing human rights issues. Although there is no evidence to suggest that this is deliberate, most Committees did not seize the opportunity to imbue human rights in their respective field of activities.”<sup>9</sup>

There have been two surveys of the public sector's delivery of their human rights duties under the HRA in Scotland. Freedom of information requests were made requesting information about the explicit steps taken to implement or put into practice compliance with Section 6 of the Human Rights Act 1998 over the last three years.

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<sup>6</sup> Scottish Human Rights Commission Act 2006 Section 2(2) (b)

<sup>7</sup> The Commissioner for Children and Young People (Scotland) Act 2003 S 5

<sup>8</sup> Section 6 Scottish Commission for Human Rights Act 2006

<sup>9</sup> 'Scottish Parliament Committees' Perspective on Human Rights - A Glasgow Human Rights Network Report for the Cross-Party Group on Human Rights' pub April 2012 Page 20

- In 2010, ten out of the 42 public bodies admitted they could not provide explicit steps taken to implement or put into practice compliance with Section 6 of the Human Rights Act 1998 over the last three years.<sup>10</sup>
- In 2006, 65.5% - well over half of all the 49 public authorities surveyed - either did not understand the meaning of the Act or could not provide evidence of steps taken to ensure compliance with the Act.<sup>11</sup> In February 2014, the Human Rights Consortium Scotland published a report on a consultation it had undertaken on whether there should be an oath for public servants including a duty to uphold human rights. It highlighted in the response from the trade union UNISON Scotland, which represents 160,000 public service workers, “members advise that they don't generally operate in a human rights culture”<sup>12</sup>.

### **Practical Enjoyment of Human Rights?**

Polling in Scotland is rare but results confirm the view that there is a gap in public understanding about human rights. A MORI Scotland poll commissioned by the Justice 1 Committee of the Scottish Parliament on the public's views on human rights in 2005 revealed:

- 29% said the term human rights in Scotland meant nothing to them, or formed no associations with the term - most common in working class respondents
- 23% feel that there is inadequate protection of human rights in Scotland, twice those that feel there is excessive protection (11%).
- Women and working class people more likely to feel protection is inadequate<sup>13</sup>

The Equality and Diversity Forum (EDF), which is an NGO based in London, has undertaken polling across the UK and has concluded that: those who are pro human rights make up 22% of the population; those who are conflicted are 41%, uninterested 11% and anti 26%.

### **The Future**

There will be a referendum on Scotland's constitutional future on 18<sup>th</sup> September 2014. There is an opportunity to consider the benefits of a new written constitution in better respecting, protecting and fulfilling equality and human rights in an independent Scotland. In the event of a 'no' vote, Scotland may still face change eg a former Prime Minister who is opposed to independence, Gordon Brown, has called for “a written constitution which recognises the Scottish Parliament is "irreversible".<sup>14</sup>

The UK's constitutional arrangements have a complicated and nuanced impact on gender equality in Scotland. The degree of interdependence between economic, political and social

<sup>10</sup> 'Delivering Human Rights in Scotland: an Update on Scottish Public Authorities' Feb 2011 p10

<sup>11</sup> 'Delivering Human Rights in Scotland: A Report on Scottish Public Authorities'. Sept 2006 p12

<sup>12</sup> Report of Responses to Our Consultation Human Rights in a Public Servant's Oath?, HRCS

<sup>13</sup> 'Scottish Commission for Human Rights Bill' Stage 1 Report, Justice 1 Committee Scottish Parliament Volume 2 Annex D

<sup>14</sup> 2nd September 2013 <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-23928469>

gender inequalities, and their structural nature, means that no related policy set in Scotland is wholly unaffected by those set by the UK Government. Even though Scotland's criminal justice system is entirely within its own control, issues around immigration and asylum are within the control of the UK Government, and have bearing upon the experience of refugee and asylum-seeking women.

An independent Scotland would be no more likely to engage with women's equality because Scotland is a more progressive nation. There is no reason to believe that an independent Scotland would not have governments that have a negative impact on women's rights, as well as a positive impact.

There is, however, potential in the possibility for structural change that accompanies wider reallocation of power and responsibility. This would also be the case in the event of other significant change, such as that introduced by further devolution.

Engender has produced a report reviewing the on Scotland's constitutional futures which elaborates on this issue.

<http://www.engender.org.uk/content/publications/Gender-equality-and--Scotlands-constitutional-futures.pdf>

## Primary prevention of violence against women – addressing gender inequality

### Women's inequality in Scotland

**Care Gap:** 62% of unpaid carers are women. Twice as many female carers as male carers receive benefits, at a rate of £1.70 per hour

**Freedom gap:** every 13 minutes a woman in Scotland experiences violence

**Income gap:** Twice as many women as men rely on benefits and tax credits. Women are 95% of lone parents who receive income support

**Pay gap:** Women earn 13% less than men as full-time workers and 34% less than men part-time. Female-dominated occupational and industrial sectors are low-paid and undervalued

**Power gap:** Only 15% of senior police and 25% of Senators of the College of Justice in Scotland, 10% of UK national newspaper editors and 8% of Directors of FTSE firms are women

**Representation gap:** Only 36% of MSPs, 17% of MEPs, 24% of councillors, 3% of council leaders and 26% of trade union leaders are women

*from Gender equality and Scotland's Constitutional Futures, Engender, 2014*

Violence against women and girls can best be understood as a cause, and a consequence, of structural gender inequality. The framing of violence against women (VAW) in terms of male privilege and power, and in terms of women's economic inequality and lack of political representation is essential.

Research shows that policies most valued by survivors of VAW, such as subsidised childcare and housing, income support, and educational support, map closely with indicators of inequality. Tackling occupational segregation, ensuring good quality and low-cost childcare provision, taking a gendered approach to poverty, and delivering equitable social security and employability are all vital to the prevention of VAW. A strong case is made for a strengthened focus on systemic gender inequality across prevention activities.

Within Scotland, there is a clear need for policy coherence across departments. It is encouraging to see from the Scottish Government's draft violence against women strategy that they have attempted to tackle some of the systemic gender inequalities that enable violence. A composite, cross-cutting action plan with outputs and indicators would have clear value, however, to date, work has progressed in departmental silos.

### Gender budget analysis

The Scottish Government has been responsive to calls to ensure that draft budgets are reviewed for their impact on equalities groups. The Equality Budget Advisory Group (EBAG) is a non-statutory advisory group that reviews the Scottish Government budget and

makes recommendations to improve outcomes for equalities groups. The Scottish Women's Budget Group, an informal grouping of individual women interested in alternative economic perspectives, has driven much of this work. [www.swbg.org.uk](http://www.swbg.org.uk).

Violence against women NGOs have worked effectively with the SWBG to highlight the impact of public policy decisions on funding to local services  
<http://www.rapecrisisScotland.org.uk/news/spend-now-save-later/>.

### **Equal Pay and Occupational segregation**

Women's economic inequality contributes to an enabling environment for men's violence. The gender pay gap in Scotland has fluctuated over recent years, and widened for the first time in ten years between 2011 and 2012. The most recent pay gap figures, published by Close the Gap, indicate a full-time pay gap of 13.3% and a part-time pay gap of 33.7%.

The Scottish economy is characterised by gendered occupational segregation, which combines with systemic undervaluation of women's cleaning, caring, catering, clerical, and retail work to contribute to women's low pay. This is not an issue that will resolve itself over time. There are significant and stark patterns of gendered segregation across subject choices at all levels of education in Scotland. Girls are massively underrepresented in science, technology, engineering and maths (STEM) subjects, and subsequently in STEM occupations. The modern apprenticeship (MA) programme, which is a key entry point to the labour market for young people who do not take part in further or higher education, is heavily segregated. Despite a range of initiatives to challenge gender segregation and pay inequality, the indicators of women's labour market participation remain stubbornly unmoved.

All of the levers to tackle occupational segregation are within the Scottish Government's competence. Devolved policy areas related to occupational segregation include education, skills, economic development, and national training programmes.

For further information about the gender pay gap and occupational segregation in Scotland:

<http://www.closesthegap.org.uk/content/gap-statistics/>

<http://www.closesthegap.org.uk/content/resources/CTG-Working-Paper-9---Statistics.pdf>

<http://www.closesthegap.org.uk/content/resources/Women-and-work-consultation-February-2013.pdf>

### **Public Sector Equality Duty**

The public sector equality duty (PSED) is a pillar of the Equality Act 2010 that obliges proactive due regard for equalities issues across all public authority activities. It was designed to bring together three predecessor duties on gender, race, and disability, and to add a requirement to act to reduce discrimination and promote equality with regard to age, sexual

orientation, religion and belief, gender reassignment, pregnancy and maternity, and marriage and civil partnerships.

The PSED is interpreted and implemented differentially across the devolved administrations of the UK. The equalities sector in Scotland successfully lobbied for the Scottish-specific regulations to require public bodies to publish equality impact assessments, as well as information on occupational segregation, the gender pay gap and other measures that relate to gender equality. English public bodies are not obliged to fulfil any of these requirements.

The ambition of all the public duties on equality, current and historical, has been to shift the onus for action to tackle discrimination from the individual to public bodies. In practice, the diluted focus on gender under the PSED amounts to regression, and has resulted in a selective approach to equalities across Scottish public bodies. Superficial adoption of the language of intersectionality and cross-cutting equalities strands by public authorities has masked weak implementation and compliance failures across the board.

Scottish Women's Aid has carried out a specific analysis of local authorities adherence to the PSED in relation to activity to address violence against women.

<http://www.scottishwomensaid.org.uk/publications-resources/resource/scottish-womens-aids-analysis-local-authority-equality-outcomes>

### **Defining violence against women as gender based violence**

Since devolution, successive Scottish administrations have used the definition proposed in the 1993 UN Declaration on the Elimination of Violence Against Women, defining violence against women as gender based abuse and linking it to structural inequality. The Scottish Government has continued to use this definition in its draft strategy to address violence against women and girls, "Equally Safe" which it recently circulated for consultation. This is a very positive development which has helped frame the work to address violence against women in Scotland since 2000.

The availability of Scottish Government funding to support work which is consistent with this definition has undoubtedly helped to spread the use of it across the public sector and it has been adopted by most local multi-agency partnerships. However, there is wide variation in the level of understanding of what a gendered analysis really means and it too often reduces to a simplistic debate about "who does what to whom", focussed on the perceived lack of services for men who have been abused. More work is needed to embed the understanding across all public sector bodies to ensure that work to address violence against women and girls is linked to wider work to address gender inequality. This includes work to embed the understanding across all Scottish Government departments; the Health Department has an initiative supporting strategic work to address the needs of adult survivors of child sexual which is based on a gender neutral understanding of child sexual abuse. They have recently hosted a conference promoting the Alaskan Family Wellness Warriors Initiative,



which is based on a family violence model at odds with the rest of the Scottish Government's strategic work in this area.

This debate is a rolling one in Scotland. Some of the issues were recently explored in a briefing by the Centre for Research on Families and Relationships focussed on domestic abuse and gender inequality. <http://www.crfr.ac.uk/assets/briefing-69.pdf> and there have been significant levels of training input by NGOs on this theme at every level of the public sector.

There is now a specific organisation working to support men who have experienced domestic abuse, <http://www.abusedmeninscotland.org>. While there is no doubt a need for services for male survivors, their political position has been unhelpful, being largely based on opposing the use of the gendered definition and drawing on gender neutral statistical surveys to challenge the validity of the Scottish Government's adherence to a gendered analysis of domestic abuse and other forms of gender based violence.

### **Primary prevention of violence against women - tackling cultural norms**

Work in this area has been piecemeal and is largely driven by NGOs. Two pieces of research in particular have highlighted the need for more consistent work with young people. Nancy Lombard conducted research with 11 and 12 year olds on their attitudes towards violence <https://www.era.lib.ed.ac.uk/bitstream/1842/5613/1/briefing%2054.pdf> and more recently, Zero Tolerance, a primary prevention NGO, carried out research on young people's attitudes to pornography, sex and relationships - <http://www.zerotolerance.org.uk/Projects/AttitudesResearch>.

The findings are unsurprising to anyone working in the field. The challenge is to move beyond proving that prejudicial attitudes exist from an early age, towards taking action to change those attitudes and the behaviours that flow from them.

### **Commercial sexual exploitation**

The Scottish Government funds a national post to raise awareness of commercial sexual exploitation, working from a position of Challenging Demand. <http://www.womenssupportproject.co.uk/content/challengingdemand/180/>. The recognition that prostitution and pornography are harmful to women is welcome but the position is weakened somewhat by the current legislative framework which continues to address prostitution as a 'public nuisance' issue requiring management, rather than part of the spectrum of violence against women and girls. Legislation is largely focussed on licensing and regulation of saunas, lap dancing clubs rather than criminalising demand or addressing decriminalising women who work in prostitution.

Police responses to prostitution have been variable over Scotland although the unified force may begin to address that.

## **Violence in the family**

### **Domestic abuse**

Several key issues of concern emerged from consultation with local Women's Aid groups. These included the impact of funding cuts on service delivery; the impact of the Westminster welfare reforms, including specific concerns about the impact of the bedroom tax in Scotland; the lack of specialist services for Black and minority ethnic women and the failings of the justice system for women and children who experience domestic abuse.

Women in contact with Women's Aid services contributed stories about their experiences. These have been shared separately with the Special Rapporteur.

Scottish Women's Aid also has concerns about the accountability of public bodies, and the absence over the last few years of a national prevention strategy to address violence against women and girls.

### **Impact of funding cuts on service delivery**

Scottish Women's Aid has conducted an annual survey of the funding of local Women's Aid groups since 2007, when ring fenced was removed from the Supporting People funding which had previously provided most of the local authority funding received by Women's Aid across Scotland. The decision to remove ring fencing was part of a political agreement between the new minority Scottish Government and the Convention of Scottish Local Authorities which allowed the Scottish Government to meet a manifesto commitment to freeze Council Tax, the main income generation stream for local authorities.

The latest report from Scottish Women's Aid focused on the impact of funding cuts on domestic abuse services for women and children in Scotland and found that:

- 92% of services are working with a reduced or stand still budget with no inflationary uplift to cover increased energy, transport, VAT and other operational costs. Up from 61% of services in 2009/10.
- Almost a third of Women's Aid groups (29%) had to make cuts to their services as a result of reduced funding. This included closing a refuge, cut backs to outreach services to women living in the community, reducing support hours to women and children, increasing waiting lists for both refuge and outreach services, and cutting therapeutic activities for children.
- 1 in 4 Women's Aid groups cut back on staffing costs, through redundancies, or freezing posts. Other measures include pay freezes and reducing staff terms and conditions.
- 68% of Women's Aid groups reported a greater demand for their services during 2012-13. With the introduction of the welfare reform programme adding further pressure on services.
- A third of Women's Aid groups reported a deficit in the last financial year, with insufficient funding to cover their costs

- 63% of Women's Aid groups are working with funding contracts of only 1 year, while 32% are working with no contractual arrangement or service level agreement.

The full report can be found here:

[http://www.scottishwomensaid.org.uk/sites/default/files/SWA%20funding%20survey%202012-13\\_0.pdf](http://www.scottishwomensaid.org.uk/sites/default/files/SWA%20funding%20survey%202012-13_0.pdf)

### **Impact of welfare reform<sup>15</sup>**

Women experiencing domestic abuse face considerable barriers when trying to leave an abusive partner. Access to financial support and housing are crucial. The current reforms to the benefits system are impacting adversely on women's ability to maintain financial independence and to be safely rehoused.

The household payment under Universal Credit will increase the opportunity to create financial dependency, prevent women from leaving and place women and their children experiencing domestic abuse at increased risk. Research by Refuge found that 89% of the women they surveyed experienced financial abuse as part of their experience of domestic abuse.<sup>16</sup>

The changes to the way that housing is supported also have a serious impact on women escaping an abusive partner. Domestic abuse is a major cause of homelessness for women and is the fourth most common reason given for a homeless application in Scotland. The bedroom tax reduces women's ability to establish a new tenancy due to the lack of availability of suitably sized accommodation. It is causing bottlenecks in refuges as women are unable to leave, preventing women and children getting safe accommodation and support.<sup>17</sup>

Refuges, provided by Women's Aid in Scotland, are themselves under threat as not all refuge accommodation in Scotland qualifies as exempt from the bedroom tax. The inability of services to cover all their accommodation costs puts these services at risk.

J came into our refuge in late 2012 suffering from chronic depression, anxiety and PTSD as a result of the abuse she experienced. In a supportive environment she has begun to regain her health. Before the bedroom tax she would have moved onto her own tenancy by now. The severe shortage of one bedroom properties means she can't and the situation is hindering her recovery. We currently have a waiting list for our refuge flats that is growing but we are not in a position to free up J's flat as she has nowhere to go to.

*Case study provided by Glasgow East Women's Aid.*

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<sup>15</sup> A report, *Gender and Welfare Reform in Scotland* will be launched on 2<sup>nd</sup> April 2014, by Engender, Close the Gap, Scottish Women's Aid, Scottish Women's Convention, Zero Tolerance and the Scottish Refugee Council.

<sup>16</sup> Refuge (2008) *'What's yours is mine': The different forms of economic abuse and its impact on women and children experiencing domestic violence*

<sup>17</sup> Scottish Women's Aid (2012) *Measuring the impact of funding cuts on domestic abuse services for women and children in Scotland*

## **Justice system responses**

### **Safe contact for children**

Scotland has specific legislation requiring Sheriffs to consider the safety of children under 16 when hearing applications in civil court for ‘contact or residence’ from estranged parents. There is specific reference in the legislation, passed in 2006, to domestic abuse as a safety concern which should be considered; the ‘safe contact’ amendment, which amends the Children (Scotland) Act 1995.

The legislation has proved problematic in implementation, since family lawyers and sheriffs may have limited understanding of the dynamics of domestic abuse. This results in repeated failure by judges to follow the requirements of section 11(7) of the Act in relation to taking domestic abuse into account when making decisions on child contact. Children and mothers are being obliged to enter into unsafe and inappropriate contact arrangements. Supervised contact arrangements are rare.

Shared parenting is increasingly seen as an appropriate, default position without consideration of the best interests of the child’s welfare and often either without taking their views, ignoring them or in direct opposition to them, all of which breach the statutory requirements of the Children (Scotland) Act 1995.

A useful overview of the issues, from a small scale research study with children and young people, can be found here <https://www.era.lib.ed.ac.uk/bitstream/1842/2795/1/rb42.pdf>.

### **System generated risks**

There are many ways in which the justice system itself creates risk for women. This is not an exhaustive list:

1. Courts are not imposing special bail conditions despite police providing information to the procurator fiscal service. So we have a situation where women are encouraged to report the abuse to the police but the system fails to protect them when they do.
2. When bail conditions are imposed, breaches of bail are not being consistently policed or dealt with by the courts.
3. SWA has anecdotal evidence of women being charged for “breaching” the abuser’s bail – for example if the woman goes to her abuser’s residence when he is not allowed in the woman’s house, they look upon this as her being in breach of the bail conditions, despite the fact that she may still be under duress from her abuser/his family.
4. There are proposals in the Criminal Justice (Scotland) Bill which has just reached Stage 2 to extend police powers to release offenders on “undertakings”, with or without special conditions restricting their behaviour prior to trial. This would circumvent detention for appearance before court on a bail hearing and will put women at risk.

5. MARAC processes being introduced without due attention to core principles – see below.
6. The failure to adequately resource specialist domestic abuse courts – see below.

### **MARAC processes**

Scottish Women's Aid and Rape Crisis Scotland have supported proposals by the Scottish Government to establish a National Framework for MARACs to ensure a consistent approach across Scotland. We have some concerns about the varying levels of understanding in local multi-agency frameworks about appropriate information sharing, particularly where information is being shared without the women's consent.

### **Specialist domestic abuse courts**

There have been significant improvements in the justice system response to domestic abuse over the last few years. The police response continues to improve, and the conversion rate from incident to crime is increasing significantly across Scotland since the inception of Police Scotland. More cases are referred to the Procurator Fiscal and more cases go forward for court proceedings. The Crown Office has already implemented programmes of training for staff and revised guidance and the new national procurator fiscal for domestic abuse will continue to review the prosecution approach to domestic abuse.

The introduction of the domestic abuse court in Glasgow (piloted in 2004) demonstrated that fast tracking of cases and good advocacy support not only improved women's experiences of the justice process but also reduced the likelihood of them seeking to withdraw from the prosecution before trial and ultimately led to more perpetrators being held to account. Fast tracking meant getting cases from report to trial within 6-8 weeks.

With the current wait times of 7-8 months between marking and trial in Glasgow, that benefit is disappearing. More court resource is required – and not only in Glasgow - if the improvements at the front end of the criminal justice response are to be effective in holding perpetrators to account.

### **Hitting children as a punishment**

It is eleven years since the Scottish Parliament passed the Criminal Justice (Scotland) Act 2003 which introduced, in Section 51, a defence for adults of 'justifiable' assault<sup>18</sup> when they hit a child as a punishment, and sought to prohibit the use of implements, blows to the head and shaking.<sup>19</sup> At the time the Scottish Executive decided not to evaluate the impact of S51 although research had been published of the operation of Section 74 of the same Act<sup>20</sup>

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<sup>18</sup> S51 (1) of the Criminal Justice (Scotland) Act 2003  
<http://www.legislation.gov.uk/asp/2003/7/section/51>

<sup>19</sup> *Ibid* S 51 (2)

<sup>20</sup> Published by the Scottish Executive in November 2006  
<http://www.scotland.gov.uk/Publications/2006/11/24133659/0>

There have been two attempts to amend this S51, in 2005 and 2014, but support has been so weak that the amendments have not even been pushed to a vote by MSPs (Members of the Scottish Parliament). Currently there is an opportunity to amend the law and give children equal protection from violence in the Criminal Justice (Scotland) Bill which is beginning Stage 2 of the process<sup>21</sup>.

Successive administrations have failed to change the law on physical punishment. Marilyn Glenn MSP tabled an amendment to the Family Law Bill at Stage 2 in November 2005 which focused on family life but got so little support from the Justice Committee that she did not subject it to a vote. Alison Johnstone MSP tabled an amendment at Stage 3 of the Children and Young People (Scotland) Bill in February 2014 on Article 19 of the UNCRC, which did not receive support and was withdrawn.<sup>22</sup>

The impact of physical punishment on children's lives and the failure of the State to protect children is a source of shame and concern. It also, unintentionally, sends a message to some of our most vulnerable and disempowered children that their rights are weak and that the State cannot protect them. The extent and use of physical punishment in Scotland is not well understood:

A study of the ChildLine database by the Centre for Research on Families and Relationships at Edinburgh University, found alarming levels of violence reported in calls from children suffering physical abuse. Children tell of physical assaults that are frequent, brutal and sadistic. Whilst they use many terms to describe the nature of their abuse including smacking, slapping and hitting, they more commonly discuss it in terms of 'being battered', 'beaten', 'hammered', 'punched', 'kicked' and so on. Children often talk about having marks, bruises and abrasions after assaults and some children talk about being kept off school until their bruises are healed.<sup>23</sup>

The use of physical punishment in the home does damage children. NHS Health Scotland produced health and wellbeing profiles for children and young people by Community Health Partnership area (CHPs) in 2010. The overview for Scotland counted hospital admissions per 100,000 population of 0 - 24 year olds as a result of assault, as an indicator of violence in children and young people's lives. The latest statistics are for 2008 - they do not publish these profiles anymore - and show that the average in Scotland was just over 100. 16 of the 38 CHP areas had above average rates of admission, with the rates of over 150 per 100,000 population in East Ayrshire, Kirkcaldy and Levenmouth, Glasgow South, North Ayrshire and Glasgow North East with the last two having rates of well over 200 per 100,000 population.

In 2011/12, the Reporter to the Children's Hearing system in Scotland received 52,527 referrals of which 39,737 were for care and protection grounds<sup>24</sup>. The police made 79.9% of care and protection referrals. 2,485 children under age 1 were referred on care and protection grounds.

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<sup>21</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/65155.aspx>

<sup>22</sup> See Official Report of the Scottish Parliament at Stage 3 of the Children and Young People (Scotland) Bill on 19<sup>th</sup> February 2014 eg columns 27745 – 27747

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8949&mode=pdf>

<sup>23</sup> But what about me? is a research study of children's calls to ChildLine Scotland with concerns about the health and wellbeing of their parents and significant others. The study was carried out by the CRFR at Edinburgh University and funded by the ESRC.

<sup>24</sup> Reasons are set out in S52(2) of the Children (Scotland) Act 1995

An analysis of counselling sessions provided by ChildLine UK, the free 24-hour helpline for children and young people provides a unique indication of the nature and levels of concerns among children. ChildLine held 315,111 counselling sessions in 2011/12 and physical abuse accounted for 6% (17,452 contacts), sexual abuse 5 % (15,993), emotional abuse 1% (2,729) and neglect 1 % (1,646).<sup>25</sup>

Research undertaken by the NSPCC “How Safe are our Children?”<sup>26</sup> monitored the extent of child abuse and neglect in the UK to enable judgement on whether efforts to prevent maltreatment and to protect children are working. The report shows that one in five children today have experienced serious physical abuse, sexual abuse or severe physical or emotional neglect at some point in their lifetime.

The UN has repeatedly recommended that the UK and Scotland change its laws eg CEDAW, UNCRC<sup>27</sup>, ICESCR<sup>28</sup>, UPR<sup>29</sup> in 2012<sup>30</sup> and in May 2013 the UN Committee Against Torture examined the UK’s compliance with CAT and urged prohibition of physical punishment of children by adults, “repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment”.<sup>31</sup> It is a matter of concern that there is no formal process that the Concluding Observations from UN Committees are not reported to and debated on by MSPs:

CAU Scotland, an alliance of organizations, is concerned that the Scottish Government fails to acknowledge that corporal punishment is a form of violence against children that must be prohibited. By failing to ensure a consistent approach to the eradication of all forms of violence in Scottish society, the Scottish Government is:

- Undermining its broader efforts to address domestic and other forms of violence. The failure to act exposes a contradictory approach to tackling violence: although it supports ‘tough action to punish those who break the law and invests in work to tackle the causes of violence’<sup>32</sup>, it refuses to change the law on hitting children.
- Undermining the Scottish Government’s ambition for ‘Scotland to be the best place in the world for children to grow up’.
- Failing to send out a clear message, in law, that hitting a person is wrong.

Measures that could be taken to improve this situation include:

- The Scottish Government could use the Criminal Justice (Scotland) Bill<sup>33</sup> and table/accept an amendment to the 2003 legislation to give children equal protection from assault.

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<sup>25</sup> [http://www.nspcc.org.uk/Inform/research/findings/how-safe/indicator07\\_wdf95545.pdf](http://www.nspcc.org.uk/Inform/research/findings/how-safe/indicator07_wdf95545.pdf)

<sup>26</sup> [http://www.nspcc.org.uk/Inform/research/findings/how-safe/how-safe-2013\\_wda95178.html](http://www.nspcc.org.uk/Inform/research/findings/how-safe/how-safe-2013_wda95178.html)

<sup>27</sup> Children are unbeatable! Website <http://www.childrenareunbeatable.org.uk/pages/info.html#UN>

<sup>28</sup> UN Committee on Economic, Social and Cultural Rights ‘Concluding Observations’ 12 June 2009 Para 24

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/429/21/PDF/G0942921.pdf?OpenElement>

<sup>29</sup> ‘Report of the Working Group on the Universal Periodic Review United Kingdom of Great

Britain and Northern Ireland’ pub 6<sup>th</sup> July 2012 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/150/31/PDF/G1215031.pdf?OpenElement>

<sup>30</sup> <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx>

<sup>31</sup> Para 29, <http://www2.ohchr.org/english/bodies/cat/cats50.htm>

<sup>32</sup> <http://www.scotland.gov.uk/Topics/Justice/public-safety/17141/violence>

<sup>33</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62233.aspx>

- The Scottish Government could evaluate the impact of S51 to evidence that the law is currently working satisfactorily to prevent violence against children as was asserted in 2012?
- The Scottish Government could commit to deliver and evaluate a high profile public information campaign on the benefits of non-violent discipline in the home and practical strategies for parents/carers to use. Such a campaign, first promised in 2003, would complement legislative reform. The Scottish Government's National Parenting Strategy should include an explicit campaign on non-violence.
- The Scottish Government could initiate a formal process so that the Concluding Observations from UN Committees are reported to and debated on by MSPs and periodic updates on compliance are delivered by responsible Scottish Government Ministers

## **Violence in the community**

### **Rape and sexual assault**

The prevalence of sexual violence continues to be a cause for concern and a focus for prevention work and campaigning to challenge the prejudicial and perpetuating myths and attitudes.

Scottish Government research into attitudes highlights concerning victim blaming beliefs around the clothing worn by the woman, the number of previous partners, the number of previous sexual partners, whether there had been prior consensual sexual contact etc

<http://www.notever.co.uk/the-campaign/links-and-resources/>

Positive examples of state campaigns to address this include the current Police Scotland campaign <http://www.wecanstopit.co.uk/> raising awareness of the law and targeting perpetrators rather than victims' behaviour

Police Scotland have made positive changes in the way they deal with rape and sexual crimes e.g. the establishment of rape investigation units, a national rape review team for all rapes which do not proceed, increased partnership work with the direct referral protocol to the national helpline and the new advocacy pilot in Glasgow as well as 3<sup>rd</sup> party information sharing protocol. However underreporting remains a concern with fears about the justice system a major theme. See Rape Crisis Scotland (RCS) annual report for statistics.

<http://www.rapecrisisscotland.org.uk/publications/annual-reports/>

There remain some challenges in ensuring consistent practice and attitudinal barriers still remain, especially regarding the misinformation regarding levels of false allegations. Rape Crisis Scotland has a current campaign on this issue.

<http://www.rapecrisisscotland.org.uk/campaigns/false-allegations/>



Whilst the Scottish Government have been supportive of the Rape Crisis movement in Scotland, funding remains a serious concern and a threat to service delivery across local Centres. See <http://www.rapecrisisscotland.org.uk/news/its-the-difference-between-having-quality-of-life-and-not/> for more information on the services offered and the difference they make.

There are a number of concerns regarding the prosecution of sexual violence.

Establishing corroborative evidence particularly in these crimes is a significant hurdle in cases proceeding to court. The Scottish Government has stated its commitment to removing this, however it is facing significant legal and political opposition. For further information see <http://www.rapecrisisscotland.org.uk/news/corroboration-briefing/>

Another serious concern especially in sexual crimes is the use of sensitive information including medical records and the inclusion of sexual history and character evidence to discredit the victim, who has no independent legal representation (ILR) and very few rights. The Scottish Government attempted to address this with the introduction of so called Rape Shield legislation, however the outcome was not as anticipated with an increase of applications to introduce this form of evidence. The Scottish Government funded research in 2007 which highlighted this [www.rapecrisisscotland.org.uk/.../Evidencing-Sexual-Assault-Burman.pdf](http://www.rapecrisisscotland.org.uk/.../Evidencing-Sexual-Assault-Burman.pdf).

Following this research, the Crown Office and Procurator Fiscal Service states that this situation has changed, however no data is collected on this matter to evidence any changes and RCS current online survey with survivors indicates otherwise.

In 2013 there was a proposed amendment to the Victims and Witnesses Bill which had cross party support. This would have introduced a limited form of independent legal representation, informed by research RCS commissioned to review the use of ILR internationally [www.rapecrisisscotland.org.uk/.../IndLegalRepReport-2010.pdf](http://www.rapecrisisscotland.org.uk/.../IndLegalRepReport-2010.pdf). The amendment was rejected by the Scottish Government. <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/59133.aspx>

There is reference to ILR in the draft VAWG Strategy currently being developed by the Scottish Government, however little detail has been provided.

## **Violence perpetrated or condoned by the state**

"64% of women in Cornton Vale are currently on suicide watch, according to The Herald today. Prison continues to be an unsuitable setting for the vast majority of women offenders, whose crimes tend to be petty in nature, rather than violent. Further, we know that women experience prison differently to men, many women prisoners have themselves been victims of repeated forms of sexual and physical violence and suffer from high rates of mental illness. Prison regimes, however, are designed based around the needs and patterns of behaviour shown by male prisoners. The Howard League Scotland continues to call for change to how we treat convicted women, we need to move from a punishment model to a restorative one, which can tackle the complex needs exhibited by women prisoners and, crucially, reduce re-offending."

*Howard League Scotland, 7th February 2014*

There have been several inquiries over the last 20 years into the high rates of suicide and self-harm among women prisoners at Cornton Vale Prison. Little has changed as a result. Although work with women offenders is not a primary focus for any of the NGOs involved in compiling this briefing, it is a matter of concern that so many women with histories of abuse in childhood and adulthood end up in the women's prison at Cornton Vale.

We hope that the most recent enquiry, carried out by the former Lord Advocate, Dame Elish Angiolini, may result in more significant action for change at Cornton Vale.

Commission on Women Offenders final report April 2012  
<http://www.scotland.gov.uk/Resource/0039/00391828.pdf>

## New vulnerabilities

### Experiences of refugee and asylum seeking women

Around 20,000 refugees live in Scotland, of whom approximately 30-50% are women and girls.<sup>34</sup> Some women seek asylum for the same reasons as men, but many are fleeing gender based persecution. The top five countries of women seeking asylum in the UK in 2012 were Pakistan, Iran, Nigeria, Eritrea and China, all countries where there are concerns about lack of state protection from violence.<sup>35</sup> A study we published in 2009 found that 70% of women seeking asylum in Scotland had experienced physical and/or sexual violence in their lifetime; 38% had experienced intimate partner violence; and 65% reported that their children had witnessed some form of violence.<sup>36</sup>

Refugee women and girls are exposed to several factors that can increase their risk of experiencing violence here in Scotland. Of particular concern is the risk of destitution, which one in four people in the UK asylum process will experience. The UK Government operates a deliberate policy of withdrawing all financial support and accommodation from people who have been refused asylum. We know that decision making in women's claims is particularly poor, resulting in more women than men being disbelieved and refused. Research by Glasgow Caledonian University's Scottish Poverty Information Unit (SPIU) found a higher proportion of women presenting destitute (38%) in Glasgow than among asylum seekers generally (30%).<sup>37</sup>

Although asylum is a reserved matter, many areas of social policy relating to the integration and protection from violence of refugee women and girls, including those seeking asylum, are wholly devolved to the Scottish Parliament, including policing, housing, health, legal aid and child protection. The Scottish Refugee Council has responded to the Scottish Government draft strategy on Violence Against Women and Girls.

[http://www.scottishrefugeecouncil.org.uk/assets/0000/7827/SRC\\_response\\_Equally\\_Safe\\_-\\_FINAL.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/7827/SRC_response_Equally_Safe_-_FINAL.pdf)

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<sup>34</sup> Shisheva, M. et al (2013) *Refugees in Scotland after the Referendum: an appraisal of the options*, Scottish Refugee Council,

[http://www.scottishrefugeecouncil.org.uk/assets/0000/5495/4087\\_SRC\\_Referendum\\_Report\\_V3.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/5495/4087_SRC_Referendum_Report_V3.pdf)

<sup>35</sup> Home Office Immigration Statistics, <https://www.gov.uk/government/collections/immigration-statistics-quarterly-release>

<sup>36</sup> Zimmerman, C. et al (2009) *Asylum seeking women: violence and health*, London School of Hygiene & Tropical Medicine and Scottish Refugee Council, [http://www.scottishrefugeecouncil.org.uk/assets/0000/0097/Asylum\\_seeking\\_women\\_violence\\_and\\_health.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/0097/Asylum_seeking_women_violence_and_health.pdf); Dorling, K. et al (2012) *Refused: the experiences of women denied asylum in the UK*, Women for Refugee Women, <http://www.refugeewomen.com/images/refused.pdf>

<sup>37</sup> Gillespie, M. et al (2012) *Trapped: destitution and asylum in Scotland*, Glasgow Caledonian University Scottish Poverty Information Unit, [http://www.scottishrefugeecouncil.org.uk/assets/0000/5050/Trapped\\_destitution\\_and\\_asylum\\_final.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/5050/Trapped_destitution_and_asylum_final.pdf)

## **Multiple and intersecting forms of discrimination**

In the case of most groups of marginalised women, where there has been any specific work done, it has mostly focussed on understanding the impact of gender based violence. We are not yet at the stage of automatically integrating consideration of the needs of women who experience multiple and intersecting forms of discrimination into policy, planning and service delivery. This applies across the public, private and NGO sectors.

Leadership from the Scottish Government is essential to change this, so it was disheartening to read a consultative draft of the new VAWG strategy that made little reference to the issues faced by marginalised women and girls - including black and minority ethnic women, lesbian, bisexual and trans women, disabled women, asylum seeking and refugee women and gypsy traveler women. A very specific reference to FGM and forced marriage seemed to be the main policy response identified in relation to the experiences of women from minority groups, and these two issues were somewhat inappropriately combined.

Some work has been done to gather data to support the development of more effective responses.

A survey by Wise Women looking at disabled women's experiences of violence, identified that 73% of respondents had experienced domestic abuse and 52% of them identified that discrimination and stereotyping had stopped them being able to access services.

<http://www.wisewomen.org.uk/docs/Daisie%20Report%20PDF.pdf>

Recent work on the experiences of lesbian, bisexual and trans women has begun to inform thinking about appropriate service responses.

<https://www.era.lib.ed.ac.uk/bitstream/1842/6553/1/briefing%2064.pdf>

## **BME women's experiences**

When the EHRC and EVAW published the Map of Gaps in 2007, Scotland was held up as an example to the rest of the UK, with significantly higher proportions of service provision across the country. The exception was in relation to services for Black and minority ethnic women, with only two specialist service providers for BME women experiencing domestic abuse and no specific provision in relation to sexual assault or any other form of gender based violence. In the context of a situation where there are few general services specifically tailored to meet the needs of BME people outwith the central belt of Scotland, this was a significant failing.

It hasn't improved much, although Shakti Women's Aid is now funded to work beyond the city of Edinburgh and has engaged in some effective partnership work in other parts of Scotland to support services to engage more meaningfully with BME women who experience domestic abuse.

However, the general picture is still very sparse and this is compounded by the other issues which BME women may have to contend with, including inappropriate responses to their health concerns and discriminatory assumptions about their citizenship.

Some useful work on older women's experiences was done a few years ago and this led to additional specific training for health and social care workers in some areas.

<https://www.era.lib.ed.ac.uk/bitstream/1842/2771/1/rb%252039.pdf>

## **Conclusion**

Both the Scottish National Action Plan for Human Rights and the forthcoming Scottish Government Violence Against Women and Girls Strategy offer some opportunities to address shortcomings in the current responses. It is to be hoped that both of these areas of work will be fully informed by the expertise of the NGOs working to address violence against women and girls, and by women and girls themselves.