

The Scottish Women's Rights Centre recognises the importance of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in defining discrimination and providing a framework for addressing it. We regularly use Human Rights Legislation in our efforts to address gender based violence and the ability to do so post-Brexit remains unclear.

**Question 1: What is the current status of the concerns identified by the UN CEDAW Committee in its last report on the UK? In other words, what are your outstanding concerns with women's rights in these areas (or any other areas) in Scotland?**

The Scottish Women's Rights Centre is a unique collaborative project that provides free legal information, advice and representation to women affected by violence and abuse. The Centre strives to fill the gaps that exist between women's experiences of gender based violence and their ability to access justice by working with a specialist solicitor and an experienced advocacy worker.

We operate on the understanding that the violence and abuse experienced by women is inextricably linked to the broader inequalities that women experience within a patriarchal society. These gendered inequalities are rife and have multiple manifestations. We are clear that solutions to ending gender based violence do not therefore exist in a vacuum and must be considered alongside inequality of pay, representation, employment and opportunity. The way in which gendered inequalities intersect with other forms of inequalities specifically in relation to protected characteristics is of central importance and should be considered throughout.

In 2016/17 statistics from Rape Crisis Scotland detail the gendered nature of sexual crimes in that 3.89% of survivors using Rape Crisis Centres across Scotland were male, 92.92% were female and 0.15% were trans<sup>1</sup>. Rape Crisis Scotland also reported that 96.21% of perpetrators were male, 3.38% were female and 0.41% involved abuse by both male and female perpetrators. This is evidence that sexual crimes are overwhelmingly perpetrated by men against women, however gender disaggregation is not applied to other factors such as the nature of abuse, timescale, whether it was reported etc. so it is not possible to compare these factors and the experiences of men and women within these services on the basis of gender.

The Scottish Women's Rights Centre provide a women only service specifically to address the inequalities of justice experienced by women. In the years 2016/17 with just one solicitor we responded to 298 helpline calls and took on 58 women for representation. Amongst those who shared demographic information, 27% of contacts were survivors from Black and Minority Ethnic communities and 11% were disabled.

Using gender based violence as a measure of inequality and looking specifically at how this interacts with the Scottish justice system, it is clear that women in Scotland's rights are being breached and that inequality is increasing with the passage of time. In brief:

**Rape:** It is important to remember in consideration of these statistics that the vast majority of sexual crimes are not reported and never make it to court, however in 2016/17 sexual crimes increased by 5% from 10,273 to 10,822. The recording of these crimes is at the highest level seen since 1971, the first year for which comparable crime groups are available and yet the conviction rate for rape and attempted rape in Scotland has fallen to its lowest level in eight years with only 98 convictions recorded in 2016/17. Significant contributory factors in this include two anomalies of the Scottish legal system; corroboration and the not-proven verdict. There is significant evidence that both these factors disproportionately impact cases of sexual crimes which overwhelmingly perpetrated against women; this highlights the systemic nature of the inequality experienced by women and the challenges in overcoming these when they are inbuilt in our legal system. Removal of the requirement for

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<sup>1</sup> The remaining 2.96% were family, friends and partners.

corroboration and the not-proven verdict would improve the outcomes for complainers of sexual crimes and support their right to access justice.

**Domestic Abuse:** is also underreported for a multitude of reasons, and yet even though many cases are never heard in the legal system it is known to permeate society, with 58,810 incidents reported in 2016/17 and an increase of 50% of incidents recorded by police in the past 10 years. With changes to legislation through the Domestic Abuse Act that shift our understanding away from domestic abuse as incidents towards a recognition that it is an ongoing pattern of controlling behaviour that can - but does not necessarily - include physical violence it is likely that reporting of domestic abuse will increase. Notably the definition of domestic abuse in Scotland is restricted to partner and ex-partner, whereas the definition adopted in England and Wales is wider and includes other family members which is likely to be more effective for women in BME communities whose experiences of violence are often compounded by familial and community pressures and expectations.

**Commercial exploitation:** Crimes associated with prostitution increased by 23% in from 2016/17 to 303 in 2016/17. 9 out of 10 women involved in prostitution want to exit from it. The law in Scotland Prostitution (Public Places) (Scotland) Act 2007 criminalises kerb crawling and the soliciting in public places and in so doing the message is not about protecting women from harm it is about keeping it out of the public eye. Failure to deal with demand could not be clearer than with regards to human trafficking; the Human Trafficking and Exploitation Act makes absolutely no reference to demand. Links need to be more clearly made in policy and legislation between the commercial exploitation of women and violence against women.

**Female Genital Mutilation (FGM):** There has yet to be a single prosecution for FGM in Scotland. The Scottish Government has published an action plan with a focus on prevention and extended legal protection by widening the definition to habitual residents, but this does not yet include measures adopted in England and Wales that could increase protections including ensuring anonymity of victims, FGM protection orders and creating a new offence of failure to protect.

**Question 2: Thinking about the policy development process (i.e. from generating an idea to the coming into force of a Bill, strategy or programme) where has this not been aligned with the ambitions of CEDAW (e.g. not taken account of CEDAW)?**

Several recent high profile policy changes would indicate that CEDAW is not a consideration throughout the development and implementation of policy. For example, the now notorious rape clause that requires women to receive third party verification that their child was born of rape in order to access child tax credits for their third or subsequent child is overt discrimination; there is no conceivable way that CEDAW was considered in the development of this policy.

In addition, recent changes to the Crown Office and Procurator Fiscal Service (COPFS) policy that enables prosecutors to compel sexual crime survivors to give evidence would appear to take no cognisance of Article 3 & 8 of the Human Rights Act and it is unlikely - although yet to be confirmed - that any Equality Impact Assessment was undertaken prior to implementation. Too often policy is formed with considerations of discrimination against women an afterthought, if that.

Where women's equality is considered it is important that this is balanced with a recognition that violence against women is an epidemic and that considerable resources must still be invested in the prevention and tackling of this in addition to women's overall inequality. Within Equally Safe, women's equality is considered throughout but in doing so vital resources are diverted to tackle inequality rather than specifically focussing on violence against women. The causal story itself cannot be fully addressed by limited actions on education, awareness and employment, and to do so risks neglecting the many other contributory factors.

Policy involving consideration of discrimination is often a contradiction, and a case of giving with one hand whilst taking away with the other. The Istanbul Convention - finally ratified in 2017 after having been signed in 2012 - focuses on prevention, protection and prosecution is situated in a broader picture of austerity and systemic cuts to those very services that are essential to supporting women experiencing gender based violence.

There is clearly a balance to be struck; with such high levels of gendered violence and abuse and strategy must create and develop achievable and measurable objectives that address violence against women and improve women and girls safety in Scotland today.

**Question 3: In the last five years, are you aware of any legislative initiatives and/or policy programmes or reforms put in place to promote women's rights and gender equality in Scotland?**

The Equally Safe Delivery Plan is one that has been developed through extensive consultation with stakeholders and one that we have contributed to. Whilst there are elements within this that are progressive, we are of the view that the plan is too heavily focussed on domestic abuse and we are concerned that this is at the expense of other forms of gender based violence.

Recent legislative measures including the non-consensual sharing of intimate images and Scotland's new Domestic Abuse Act are both laws that have the potential to support women's right to access to justice and the advancement of equality in Scotland.

**Question 4: Is there anything else you would like to share with the UN CEDAW Committee in respect of women's rights in Scotland?**

There is still a gulf between women's experience of violence and abuse and their access to justice; similarly there is a gulf between aspiration and implementation when it comes to the development of policy and legislation in Scotland. Specifically with reference to the Domestic Abuse Act and the rights of rape complainers there is a real need to think about the right to privacy and the role of sensitive records in corroborating cases. The use of private records to discredit complainers in rape trials can have a devastating impact, similarly there is concern anticipating the use of private psychological and medical records to corroborate the emotional impact of coercive control. What will this mean for women giving evidence in domestic abuse cases and what power will this hand to perpetrators? A similar paradox exists for survivors of stalking where they have to prove two or more incidents causing fear and alarm - this too hands power to stalkers in the form of evidencing the traumatic effect of their actions.

We are of the view that there is an urgent need to look at the interplay between the civil and criminal legal systems and the anomalies and disparities these create with respect to protections for victims and women's ability to exercise their rights. It is unreasonable to think that women can split their lives and experiences to suit the parameters of civil and criminal processes, and we know that the protections that should be available to women under the civil process are often unobtainable because of issues with funding cases, accessing representation, system and process problems. This leaves women going through civil matters without the protections that the criminal process offers; we must ensure these rights are extended, protected and promoted to support women to access justice no matter which process.



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