

UNITED KINGDOM

SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

UPDATE, 72ND SESSION, 18 FEBRUARY – 8 MARCH 2019

Amnesty International submits this briefing to the United Nations (UN) Committee on the Elimination of Discrimination against women in advance of 72nd Session and the review of the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland (UK). In this submission, Amnesty International presents some of its concerns against the UK government's response to the List of Issues published by the CEDAW Committee and additional updates. [It should be read together with Amnesty International's submission in advance of the adoption of the List of Issues.](#)

ARTICLE 2 (A & F) AND 3: UK'S COMPLIANCE WITH HUMAN RIGHTS OBLIGATIONS

Amnesty International is concerned by the UK government response to this issue as raised by the Committee regarding the domestication of CEDAW.

- While parts of CEDAW are incorporated in UK law through the Human Rights Act 1998 and the Equality Act 2010, gaps remain. These gaps should be assessed against CEDAW obligations and a plan of action to further domestication should be developed. The argument brought by the UK government that incorporating CEDAW would 'create a hierarchy of rights in terms of sex as compared to other protected characteristics, such as disability or race' are unsatisfactory. Obligations pertaining to all those with protected characteristics under the Equality Act should be domesticated so that national laws provide the most effective framework for respecting, protecting and fulfilling rights.
- The Equality Act is also at its weakest in its provisions for public bodies to actively promote equality: for example, the Public Sector Equality Duty (PSED, S 149) is a potentially powerful tool to redress inequalities and ensure public policy does not exacerbate existing ones. However, its use is not widespread and, as a result, economic policies have exacerbated gender-related and other inequalities¹. The Equality and Human Rights Commission (EHRC) is a National Human Rights Institution which includes in its remit the enforcement of the PSED. However, EHRC's budget has been reduced by 70% since 2010².
- Section 1 of the Equality Act 2010, the Socio-Economic Duty, has yet to be enforced. Section 1 would require public authorities 'to reduce the inequalities of outcome which result from socio-economic disadvantage³' as they exercise their functions.
- The Equality Act is also currently unable to respond to those experiencing intersectional discrimination because of multiple aspects of identities. Section 14 deals with discrimination pertaining to any two of the protected characteristics but is not enforced. Discrimination on more than two grounds is not covered by the Equality Act.

¹ Notably, in 2010 the Fawcett Society launched a legal challenge against the government arguing that the proposed emergency budget would disproportionately affect women. The case was deemed 'unarguable' but pushed further the debate on the need for proper distributional analysis of macroeconomic policy, analysis that the government admitted not carrying out in 2010. In 2016 the Women and Equality Select Committee called the government's own equality analysis of the 2015 budget as lacking in transparency and detail. The 2017 budget contained no equality impact assessment. Amnesty International report on cuts to legal aid in England and Wales has also found a failure of carrying out meaningful distributional analysis and seeking alternatives to cuts.

² <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/enforcing-the-equality-act-the-law-and-the-role-of-the-equality-and-human-rights-commission/written/91482.html> para 16

³ <https://www.legislation.gov.uk/ukpga/2010/15/section/1>

Amnesty International recommends that the UK authorities:

- Safeguard existing human rights protection and take action to incorporate CEDAW into domestic law across all jurisdictions.

ARTICLE 2 (C & D) AND GR 35: VIOLENCE AGAINST WOMEN

Over many years, the UK Parliament has enacted legislation and the government has implemented policies to extend immigration controls over a wide range of ordinary social interactions with private and public bodies. The relevant controls have particular and disproportionate impact on migrant women by increasing their vulnerability to gender-based violence and reducing their capacity to seek help or escape from that violence.

The controls that have been extended restrict or prohibit, on the basis of citizenship or immigration status, access to various opportunities, safeguards and necessities including employment, housing, social welfare and assistance, healthcare, police services, banking facilities, further and higher education, marriage registration and driving licenses. Connected to these controls is the extensive and very permissive use of data sharing – both to facilitate the exercise of the controls and to report people and information about them to Home Office immigration authorities to facilitate their immigration functions. Since 2010, legislation has significantly extended powers, prohibitions and restrictions that relate to this.⁴

It is migrant women who are poor, socially excluded, undocumented or with an immigration status dependent on their partner, who are most likely to be affected. This is because these women are both most likely to need to access the relevant private and public bodies and are most likely to be or become of insecure immigration status (so most at risk from reporting to the Home Office and the exercise of immigration powers to detain, remove or deport). The impact upon many women is to deter them from approaching relevant private and public bodies, still less make any disclosure that may lead to their immigration status being revealed or threatened, including bodies that are specifically charged with protecting them against violence and related exploitation. In 2018, the UK Parliament received evidence concerning the death of a migrant domestic worker too afraid to approach a hospital or GP.⁵

While the UK government has made some progress by recognising coercive control as a criminal offense in 2015,⁶ it has failed to recognise or address that fear of immigration checks and powers is exploited by perpetrators to control victims.⁷ As documented by Amnesty International and specialist BAME organisation Southall Black Sisters in 2008⁸, migrant women with ‘no recourse to public funds’, find it virtually impossible to access protection. This issue persists, deterring women, including undocumented women and women subject to a ‘no recourse to public funds’ condition on their immigration status from accessing protection and safety. A 2017 study by Women’s Aid found that while 60% of all referrals to refuge services were declined,⁹ women with ‘no recourse to public fund’ status had access to just one refuge space per region in England.¹⁰

The UK government’s draft Domestic Abuse Bill (DA Bill),¹¹ published on 21 January 2019, fails to adequately address the foregoing matters that put the lives and wellbeing of migrant women at risk. Additionally, general inadequacies of the DA Bill include that the proposed statutory definition of abuse includes no express framing of abuse as a violation of women’s rights and the absence of satisfactory commitments to ensure legislation will be accompanied by adequate, long-term, predictable financial resources. The proposals to provide project funding of £500,000 “to improve... understanding of the number of migrant victims who need crisis support” and “consider the argument for widening the cohort of individuals eligible under the destitute domestic violence concession”¹² address neither the urgency nor the fullness of how immigration laws, policies and practices continue to put women’s lives and wellbeing at risk.

⁴ See, in particular, Parts 3 & 4 of the Immigration Act 2014; Parts 1, 2 & 5 of the Immigration Act 2016; and paragraph 4 of Schedule 2 to the Data Protection Act 2018

⁵ Oral evidence given to the Health Committee inquiry on Memorandum of understanding on data sharing between NHS Digital and Home Office, HC 677, 16 January 2018

⁶ UK Crown Prosecution Service, *Legal Guidance on Controlling or Coercive Behaviour in an Intimate or Family Relationship*, reviewed 30h June 2017.

⁷ End Violence Against Women Coalition, *Women living in a hostile environment*, 2018, page 2.

⁸ Amnesty International and Southall Black Sisters, *No recourse, no safety*, 2008.

⁹ https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2018/02/Womens_Aid_Data_DVA_Provision.pdf

¹⁰ <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2017/07/NWTA-Full-report.pdf>

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772202/CCS1218158068-Web_Accessible.pdf

¹² *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill*, p24.

On a positive note, Scotland passed the Domestic Abuse (Scotland) Act 2018 which criminalizes coercive control in Scottish Law¹³.

Amnesty International is pleased to see 'gendered online abuse' being mentioned in the UK government's report to CEDAW. Amnesty International's research¹⁴ into the issue shows how it affects women's rights to freedom of expression and participation online and the harmful psychological impact of online violence and abuse on women. Violence and abuse online can target women in different ways according to different aspects of their identity including race, gender identity, sexual orientation amongst others. We are pleased that UK Committee of Standards in Public Life's report on Intimidation in Public Life¹⁵ recommends that social media companies must take a more proactive approach to preventing online violence and abuse and to enable users to protect themselves, including improved transparency on how they deal with reports of abusive content. However, we are concerned with the UK's government intention to potentially legislate fines for social media companies to take down content given the risk of censoring legitimate expression in the process¹⁶. We welcome that the UK government has asked the Law Commission to review the adequacy of 'trolling laws'¹⁷.

Amnesty International recommends that the UK authorities:

- Ensure the draft Domestic Abuse bill clearly defines domestic abuse within the framework of violence against women and girls according to human rights obligations.
- Extend the scope of the Destitute Domestic Violence Concession to all survivors of gender-based violence, including asylum seekers.
- Repeals the 'no recourse to public funds' policy
- Establish a "firewall" around reporting and access to services, for all survivors regardless of immigration and citizenship status. Survivors must be able to report to police, social services and health services with no fear of immigration enforcement.
- Establish new routes for survivors of domestic abuse to regularize their immigration status or obtain status independent from their perpetrators.
- Ensure that the concerns of migrant women reporting violence are addressed and that human rights obligations take precedence over immigration control.
- Adopt an intersectional approach to the review of 'trolling laws' to ensure existing legislation is fit for purpose for all women.
- Ensure online violence and abuse against women and girls are part of the curriculum for Sex and Relationship Education.

ARTICLES 10(H); 12 (1) & 14 (B) WOMEN'S RIGHT TO HEALTH AND ACCESS TO FREE, SAFE AND LEGAL ABORTION IN NORTHERN IRELAND

Women and girls continue to be subjected to grave and systematic rights violations by being compelled to either travel outside Northern Ireland (NI) to procure a legal abortion, buy medical abortion pills online which is illegal and puts them at risk of prosecution, or to carry their pregnancy to term. The Offences Against Persons Act (1861) continues to carry the harshest criminal penalties in Europe.

Since Amnesty International submitted its shadow report the following developments are worth noting:

- In September 2018, the Women and Equalities Select Committee announced an enquiry into abortion law in Northern Ireland¹⁸ to seek evidence on the following questions: 1. What are the views of the general public, women and medical and legal professionals in Northern Ireland about the law on abortion and whether it should be reformed? 2. How have those views changed over time? 3. What are the experiences of women in Northern

¹³ <http://www.legislation.gov.uk/asp/2018/5/contents/enacted>

¹⁴ Amnesty International, *Unsocial media: tracking Twitter abuse against women MP*, 2017 and Amnesty International, *Toxic Twitter*, 2017, chapter 1.

¹⁵ UK Government, *Government response to the Committee on Standards in Public Life Review of Intimidation in Public Life*, 2018.

¹⁶ UK Government press release, *New rules to make social media safer*, 20th May 2018, available at <https://www.gov.uk/government/news/new-laws-to-make-social-media-safer>

¹⁷ UK Law Commission announcement, *Government asks Law Commission to look at trolling laws*, 6th February 2018, available at <https://www.lawcom.gov.uk/government-asks-law-commission-to-look-at-trolling-laws/>

¹⁸ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2017/abortion-law-northern-ireland-launch-17-19/>

Ireland who have been affected by the law on abortion? 4. What are the responsibilities of the UK Government under its international obligations for taking action to reform abortion law in Northern Ireland? 5. How should these be reconciled to the UK's devolution settlement? The Committee is expected to publish its report in May 2019.

- Following the Supreme Court judgement in June¹⁹, Amnesty International has been supporting a victim, Sarah Ewart, in obtaining the Declaration of Incompatibility at Belfast High Court. The case is listed for hearing on 31st January 2019. The case only deals with one of the categories that were brought by the Supreme Court, fatal foetal abnormality.
- In November 2018 Amnesty International released the results of an opinion poll²⁰ which found that: 75% of adults in the UK want the government to change the law on abortion in Northern Ireland; 66% of Northern Irish adults think that, without their own government, Westminster should act to change the law; 65% of adults in Northern Ireland agree that abortion should not be a crime, this figure rises to 81% in the rest of the UK.
- In terms of parliamentary events, a private members bill for decriminalisation passed the first reading in the House of Commons and it is scheduled for a second reading on 25th January. In addition, two amendments to the Northern Ireland Executive and Functions Bill passed, on abortion and same sex marriage. While the move does not result in a change to the law to allow wider access to abortion (and to same-sex marriage), it shows the strength of feeling in parliament in support of reforming abortion law in Northern Ireland and will increase pressure on the government to allow a change in legislation.

Amnesty International recommends that the UK authorities:

- Comply with its human rights obligations and legislate to guarantee women in Northern Ireland access to free, safe and legal abortion services.

¹⁹ On 7 June, the majority of the UK Supreme Court considered that the current law in Northern Ireland is “disproportionate and incompatible with Art 8” of the European Convention on Human Rights, “insofar as that law prohibits abortion in cases of (a) fatal foetal abnormality, (b) pregnancy as a result of rape and (c) pregnancy as a result of incest.” The Court however concluded that a declaration of incompatibility could not be issued, as the Northern Irish Human Rights Commission lacked standing to bring these proceedings before the Court, as it was not itself ‘victim’ of an unlawful act.

²⁰ <https://www.amnesty.org.uk/northern-ireland-abortion-law-poll>