



# UNITED KINGDOM

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

70<sup>TH</sup> SESSION, 2-20 JULY 2018

AMNESTY  
INTERNATIONAL



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# 1. INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee on the Elimination of Discrimination against Women in advance of the adoption of the list of issues and the subsequent review of the eighth periodic report of the review of the United Kingdom of Great Britain and Northern Ireland (UK). In this submission, Amnesty International presents some of its concerns under the Convention on the Elimination of All Forms of Discrimination against Women (the “*Convention*”) with a focus on human rights violations experienced by migrant women, LBT women and women in Northern Ireland.

The concerns raised in this submission are also relevant for the implementation of Goal 3 (target 3.7), Goal 5 (targets 5.1, 5.2 and 5.6), Goal 10 (target 10.2) and Goal 16 (target 16.3) of the Sustainable Development Goals.

## 2. ABSENCE OF DATA ON SPECIFIC GROUPS OF WOMEN IN UK REPORTING [ARTICLE 18]

Amnesty International is concerned about the lack of intersectional analysis and data on Black, Asian and Minority Ethnic (BAME) women and women living with disabilities related to the different obligations under CEDAW in the UK’s state report to the Committee. This makes it challenging to track any progress made and identify any gaps remaining across all areas of the Convention including for specific groups of women.

Equality impact assessments undertaken ahead of agreeing budgetary measures in 2015 have been criticised by the Commons Select Committee: ‘[...] no analysis was given of how spending decisions or policies might negatively affect protected groups, and the statement has been criticised as being insubstantial and lacking in detail’. The Committee recommended that the government’s review be evaluated by an independent party<sup>1</sup>.

### **AMNESTY INTERNATIONAL RECOMMENDS THAT THE UK AUTHORITIES:**

- provide further information to the Committee on the implementation of the Convention specifically as it relates to BAME women and women living with disabilities.
- comply with recommendation 17 of the Committee to improve equality impact analysis and the collection of disaggregated data: ‘The Committee urges the State party to take advantage of the review of the Equality Duty to ensure that the gender equality component of the Duty is properly prescribed for public authorities, including the application of the principle of substantive equality. In this regard, the State party should consider issuing statutory guidelines on the Duty covering England, Scotland and Wales, which would provide uniform guidance. It further urges the State party to bring into force the provisions of the Equality Act relating to the introduction of a new public sector duty on socioeconomic inequalities; the recognition of multiple forms of discrimination; and the need to publicize information on pay disaggregated by gender’.

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<sup>1</sup> UK Parliament, Commons Select Committee, *Equalities analysis and the 2015 Spending Review and Autumn*, paras 14 and 15.

# 3. UK'S COMPLIANCE WITH HUMAN RIGHTS OBLIGATIONS [ARTICLES 2 (A & F) AND 3]

Amnesty International is concerned about the lack of government analysis on the potential impact of the UK's withdrawal from the European Union on women's rights and compliance with CEDAW. The EU (Withdrawal) Bill, as filed, reduces human rights protections by excluding the Charter of Fundamental Rights of the European Union from retained EU law and will remove the ability for legal claims to be brought based on the general principles of EU law<sup>2</sup>. In addition, it threatens to weaken existing protections by granting extraordinarily wide powers to Ministers to amend 'retained' EU law – including domestic human rights and equalities legislation passed by Parliament – placing fundamental rights at risk<sup>3</sup>.

The UK's approach to implementing its international human rights obligations has fragmented under devolution as repeatedly raised by the Committee, including in 2008: *"the Committee reiterates its concern, as expressed in its concluding observations of 1999, at the lack of a unified national strategy and policy for the implementation of all provisions of the Convention"*<sup>4</sup>. Discrepancies in implementation between administrations were again noted by the Committee in 2013<sup>5</sup> with the recommendation to *"develop and adopt a unified, comprehensive and overarching national strategy for the implementation of the Convention throughout its territory"*.

## AMNESTY INTERNATIONAL RECOMMENDS THAT THE UK AUTHORITIES:

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

## 3.1 ACCESS TO JUSTICE AND CUTS TO LEGAL AID [ARTICLES 1 & 2, GR 19 & 35]

Amnesty International's report on the impact of legal aid cuts in England highlighted the fact that the government's own Equality Impact Assessments concluded that there would be a disproportionately negative impact on women, BAME individuals as well as people with disabilities, as these groups are most likely to require and receive publicly funded legal aid. Despite these risks the government decided to go ahead with the cuts in April 2013 thereby disregarding the disproportionate effect on these and other groups such as migrants and refugees many of whom are already in a vulnerable situation<sup>6</sup>. The removal of legal aid in areas such as private family law and welfare benefits is likely to disproportionately affect women many of whom also experience intersectional discrimination due to their ethnicity, immigration, socio-economic status<sup>7</sup>.

A recent independent review funded by the Scottish Government called for *"publicly funded legal assistance solicitors to be embedded within third sector organisations who have a significant civil case load"*<sup>8</sup>.

The UK government has announced a review of the 2012 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)<sup>9</sup>.

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<sup>2</sup> Liberty and Amnesty International UK, *Joint Briefing on the EU (Withdrawal) Bill Report Stage in the House of Lords*, April 2018

<sup>3</sup> *Ibidem*.

<sup>4</sup> CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women United Kingdom of Great Britain and Northern Ireland*, Extract from A/63/38, page 142, para 249.

<sup>5</sup> CEDAW, *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, para 29.

<sup>6</sup> Amnesty International, *Cuts that hurt: the impact of legal aid cuts in England on access to justice*, 2016, page 15.

<sup>7</sup> *Ibidem*, chapter 3.

<sup>8</sup> Martyn Evans, *Rethinking Legal Aid: An Independent Strategic Review*.

## AMNESTY INTERNATIONAL RECOMMENDS THAT UK AUTHORITIES:

- include in the review the recommendations of the CEDAW committee: In its concluding observations on the UK's seventh periodic report the Committee recommended the UK government to: ensure that women can access courts and tribunals effectively, especially those who are survivors of violence; assess how reforms to legal aid have affected the protection of women's rights, and ensure women are protected from informal justice systems such as community arbitration which may not be in line with CEDAW and may violate their rights.<sup>10</sup>
- review the impact of changes to legal aid on access to welfare benefits and for immigration cases on specific groups of women, in particular BAME women and women living with disabilities.
- restore legal aid for family reunification as put forward in the Refugees (Family Reunion) Bill currently at Committee Stage in the House of Commons<sup>11</sup>.

## 3.2 VIOLENCE AGAINST WOMEN [ARTICLE 2 (C & D) AND GR 35]

Since 2010 the UK government has enacted a series of policies to promote a so called 'hostile environment' which extend certain immigration control powers to many areas of public and private life requiring individuals to evidence their citizenship or immigration status to access healthcare and social assistance, to work, rent accommodation and have a bank account<sup>12</sup>. Such policies have a disproportionate impact on migrant women who are at risk of gender-based violence. While the UK government has made progress by recognising coercive control as a criminal offense in 2015<sup>13</sup>, it has failed to recognise that fear of immigration checks and deportation is exploited by perpetrators to control victims<sup>14</sup>.

As documented by Amnesty International and specialist BAME organisation Southall Black Sisters in 2008<sup>15</sup>, migrant women with 'no recourse to public funds', find it virtually impossible to access protection. This issue persists ten years later, keeping women with a 'no recourse' status away from being able to access safety. A 2017 study by Women's Aid found that vacancy monitoring for refuge spaces accepting a woman with no recourse to public funds showed an average of one space per region in England<sup>16</sup>.

Amnesty International is concerned that the current UK government's proposal for a Domestic Violence and Abuse Bill is narrow, ignores the issues facing migrant women, including undocumented women<sup>17</sup> and the proposed statutory definition of abuse is not framed as a violation of women's rights. In addition, we are concerned that any new legislation will not be able to eradicate violence against women unless accompanied by adequate, long-term, predictable financial resources.

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

We are pleased to see 'gendered online abuse' being mentioned in the UK government's report to CEDAW. Amnesty International's research<sup>18</sup> into the issue shows how it affects women's right to right 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

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<sup>9</sup> UK Government, *Post-implementation review of LASPO*, announcement available at <https://www.gov.uk/government/publications/post-implementation-review-of-laspo>

<sup>10</sup> See note 5, para 23.

<sup>11</sup> UK Parliament, Refugees (Family Reunion) (No. 2) Bill 2017-19

<sup>12</sup> UK Government Immigration Act 2014 and Immigration Act 2016

<sup>13</sup> UK Crown Prosecution Service, *Legal Guidance on Controlling or Coercive Behaviour in an Intimate or Family Relationship*, reviewed 30h June 2017.

<sup>14</sup> End Violence Against Women Coalition, *Women living in a hostile environment*, 2018, page 2.

<sup>15</sup> Amnesty International and Southall Black Sisters, *No recourse, no safety*, 2008.

<sup>16</sup> Women's Aid Federation of England, *Nowhere to turn*, 2017, page 6

<sup>17</sup> UK Government, *Transforming the response to domestic abuse*, 2018, available at <https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/>

<sup>18</sup> Amnesty International, *Unsocial media: tracking Twitter abuse against women MP*, 2017 and Amnesty International, *Toxic Twitter*, 2017, chapter 1.

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 Life<sup>19</sup> 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 process<sup>20</sup>. We welcome that the UK government has asked the Law Commission to review the adequacy of 'trolling laws'<sup>21</sup>.

#### **AMNESTY INTERNATIONAL RECOMMENDS THAT THE UK AUTHORITIES:**

- ensure the proposed Domestic Violence and 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.
- ensure that the concerns of migrant women reporting violence are addressed and that human rights obligations take precedence on immigration control.
- adopt an intersectional approach to the review of 'trolling laws' review to ensure whether 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.

## **3.3 DISCRIMINATION AGAINST LBT WOMEN [ARTICLE 2 AND GR 28]**

Northern Ireland is the only remaining part of the UK to deny same-sex couples, including lesbian and bisexual women, the right to marry.

Trans women face particular challenges in the UK. Transphobia is so prevalent in the UK that in 2017 a British trans woman was granted asylum in New Zealand<sup>22</sup>. Although there has been a process of legal gender recognition since 2004, it is lengthy, costly and invasive<sup>23</sup>. Amnesty International UK therefore welcomes the UK government's announcement that it will finally publish a consultation on reforming the Gender Recognition Act before summer recess in July 2018.<sup>24</sup>

#### **AMNESTY INTERNATIONAL RECOMMENDS THAT THE UK AUTHORITIES:**

- introduce a Bill to extend equal marriage rights to same-sex couples in Northern Ireland.
- Develop quick, accessible and transparent legal gender recognition procedures on the basis of the individual's self-declaration, including an option for non-binary people.

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<sup>19</sup> UK Government, *Government response to the Committee on Standards in Public Life Review of Intimidation in Public Life*, 2018.

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

<sup>21</sup> UK Law Commission announcement, *Government asks Law Commission to look at trolling laws*, 6<sup>th</sup> February 2018, available at <https://www.lawcom.gov.uk/government-asks-law-commission-to-look-at-trolling-laws/>

<sup>22</sup> Stonewall, *Truth about trans*, 2018

<sup>23</sup> The current process requires applicants to be formally diagnosed with gender dysphoria, to live in their 'acquired gender' for two years, and hand over evidence supporting all of this to a gender recognition panel (composed of clinicians who have never met the applicant) who have the power to approve, or deny, an application. In addition, it does not provide an option for legal recognition to those identifying as non-binary or those under 18.

<sup>24</sup> Pink News, *Gender Recognition Act review will launch before summer, government says*, 18<sup>th</sup> May 2018,

## 3.4 WOMEN IN IMMIGRATION DETENTION [ARTICLES 2(D), 2(F) & 12]

The UK remains the only country in the EU without a time limit for immigration detention. An Amnesty International's 2017 report<sup>25</sup> found that immigration detention has become a matter of routine rather than used in cases of absolute necessity. The deportation rates of those in detention are falling, yet the use of detention itself is growing, with most detainees being released back into society. We are deeply concerned that the Adults at Risk Policy (which aims to protect “vulnerable” adults from being detained if there is reason to believe detention would cause them harm) appears not to be adequately implemented. As a consequence, the “*application of this policy [is] largely retrospective: it relies on evidence being presented to the Home Office after detention has occurred.*” The result is that survivors of torture and sexual and gender-based violence are being held in detention in the UK where they may face further harassment, including sexual harassment, and inadequate care, including mental health care, in detention centres<sup>26</sup>.

While women are detained considerably less frequently than men<sup>27</sup>, immigration detention has a disproportionate impact on the female partners and family members of detained persons<sup>28</sup> by increasing their unpaid care responsibilities when they are left as sole parent and breadwinner in the household. If single mothers are detained then children's care is put upon other female relatives, regardless of their ability to be adequate carers and bail is refused claiming other relatives can take care of children.

In some cases, the mother's status as a detainee become justification for a child's entry into the social care system and a case against the mother as a competent guardian. Such carelessly made claims, and the decisions based on them, directly contradict the rigorous check systems in place within Family Law in the UK to determine a parent's suitability to raise their children.

Moving of detainees from Scotland to England prior to removal disrupts their right to legal representation as immigration lawyers are generally only qualified in one UK jurisdiction and people detained in Scotland have greater access to legal aid than those detained elsewhere in the UK.

### AMNESTY INTERNATIONAL RECOMMENDS THAT THE UK AUTHORITIES:

- introduce a universally applicable statutory time limit for detention, short enough to constitute an effective constraint on its use.

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

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.

The UK Government response to CEDAW inquiry on NI published in February 2018 is wholly inadequate, citing that responsibility for reforming NI abortion law is a devolved matter. This is incorrect, the UK as state party to the relevant human rights treaties is ultimately responsible for ensuring that necessary legislative

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<sup>25</sup> Amnesty International UK, *A matter of routine: the use of immigration detention in the UK*, 2017

<sup>26</sup> *Ibidem*, page 38.

<sup>27</sup> In the year ending June 2017, the number of people placed in immigration detention in the UK was 27,819. Of these, 23,651 were men, 4,120 were women and 48 were children.

<sup>28</sup> See note 26, pages 23-27.



reform happens to ensure compliance with its international human rights obligations<sup>29</sup>. In addition, NI has been without functioning devolution for the last sixteen months and with no return of devolution in sight.

Section 5 Criminal Law Act (NI) 1967 creates the offence of withholding information if a person knows or believes an offence has been committed. Section 5 may therefore make it a criminal offence for a healthcare professional to fail to disclose information to the police where they become aware that a woman has taken abortifacient medication.

Although disclosure in circumstances of confidentiality may well constitute a reasonable excuse for not reporting, the law and the Guidance for Health and Social Care professionals are unclear on this point:

*“If a health and social care professional knows or believes that a person has committed certain offences, including an unlawful termination of pregnancy, he/she has a duty under the Criminal Law Act (NI) 1967 to give to the police information likely to be of material assistance in securing the apprehension, prosecution, or conviction of that person. However the health and social care professional need not give that information if they have a reasonable excuse for not doing so; the discharge of their professional duties in relation to patient confidentiality may amount to such a reasonable excuse. Professionals should be clear, however, that patient confidentiality is not a bar to reporting offences to the police.”<sup>30</sup>*

The ongoing criminal prosecutions of women who purchase abortion pills are having a much wider effect, in that those who do acquire online pills, are less likely to feel they can seek medical or support services, which in turn aggravates the risk to their health and wellbeing.

This is highlighted in an ongoing court case involving a woman facing criminal prosecution for purchasing pills for her 15-year old daughter who became pregnant whilst in an abusive relationship. A judicial review due to take place on challenging the decision of the Public Prosecution Service to prosecute the mother for offences under s.59 of the Offences Against the Person Act 1861. Amnesty International is a third-party intervenor in the case and has made submissions on the case focussing on the reasons why it was not in the public interest to prosecute and highlighting the key human rights concerns at stake.

On 25 April 2018, the report of an inter-Departmental working group on termination of pregnancies in fatal foetal abnormality cases was published. The report was commissioned in 2016 by the then NI Health and Justice Ministers and recommends *“that a change is made to abortion law to provide for termination of pregnancy where the abnormality is of such a nature as to be likely to cause death either before birth, during birth or in the early period after birth”*. Whilst the acknowledgment of need for legislative reform is welcome, this would not be sufficient to make the law in NI human rights compliant and is therefore not the limit of the reform that is needed which must include access to safe and legal abortion in broader circumstances, as well as the decriminalisation of abortion<sup>31</sup>.

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.<sup>32</sup>

#### **AMNESTY INTERNATIONAL RECOMMENDS THAT THE UK AUTHORITIES:**

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

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<sup>29</sup> CEDAW, *Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, (Index: CEDAW/C/OP.8/GBR/1), 2017

<sup>30</sup> Guidance for health and social care professionals on termination of pregnancy in Northern Ireland, March, 2016.

<sup>31</sup> Northern Ireland Department for Justice and Department for Health joint report, *Report of the working group on Fatal Fetal Abnormality*, 2018.

<sup>32</sup> See further, <https://www.supremecourt.uk/cases/docs/uksc-2017-0131-press-summary.pdf>



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