

Special Rapporteur on violence against women and girls
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Dear Ms. Alsalem,

Input for the Special Rapporteur on Violence Against Women and Girls (SR VAWG) Country Visit to the United Kingdom of Great Britain and Northern Ireland

As the National Human Rights Commission for Scotland, the Scottish Human Rights Commission welcomes your upcoming country visit to the UK.

In January, the Commission published a comprehensive assessment of violence against women and girls in Scotland in support of the Council of Europe's Istanbul Convention. We found that a wide breadth of issues with the prevention, protection and access to justice for victim-survivors of gender-based violence against women and girls in Scotland demonstrates ongoing challenges with aligning the commitment to a human rights and public health approach with delivery and attitudes.

To inform our monitoring, the Commission developed a series of focus groups with survivors to understand their experiences, priorities, and views as part of the preparation of our report. We have shared these women's experiences through a standalone report, with their own words

reflected throughout. Both reports are enclosed as an Annex to this letter.

The full breadth of the reports will be relevant to your assessment, however we draw your attention to the following key findings as relevant to your [thematic priorities](#):

Relevant legal, institutional and policy frameworks related to violence

Our report found that Scotland has developed comprehensive and ambitious approach which is drawn from international and regional human rights standards. Equally Safe has been successful in establishing a national approach to gender-based violence against women and girls built on human rights principles and standards. There is good awareness of the strategy at all levels of government and across the public sector.

However, we determined that there is a large gap between policy and practice and women's experiences of accessing support fall far short of expectations set by Equally Safe. In general, progress measurement could be improved with more specific and measurable actions and reporting could be more transparent across many frameworks. The forthcoming revised delivery plan is an opportunity to embed these.

The adequacy of the legal and normative framework for specific forms of violence

Our report covers the scope and applications of criminal and civil laws covering a range of manifestations of violence against women and girls in Scotland.

Recent and proposed law reforms in the area of violence against women have been innovative and grounded in a gender-sensitive approach. However more time is needed to understand how these are

being applied in practice.

Examples include the Domestic Abuse (Scotland) Act 2018, which was when passed referred to as the 'gold standard' framework by researchers and practitioners in the field. An initial review of the legislation published found that although the law better reflected how adults experience domestic abuse, its impact has been limited by poor understanding of what constitutes criminal behaviour amongst the public (including victims/witnesses) and professionals. There is also evidence that justice actors have struggled with the prosecution of psychological abuse, particularly regarding verbal, telephone, and online abusive behaviour.

The implementation of constitutional guarantees, legal provisions and programmes

The Scottish Government is currently exploring incorporation of international human rights treaties within the limits of the devolution settlement. This would see new legislation to create a Scottish Human Rights Bill, which includes at least elements of CEDAW.

The Scottish Government's proposed model of incorporation would amount to a procedural duty to consider the rights elaborated in CEDAW within devolved competence. The approach taken in the Bill is still being finalised by the Scottish Government. Although the Commission has noted that other models could be explored to ensure maximum incorporation within devolved competence and that the procedural duty requires further explanation, the Scottish Government's model could enhance public body awareness of recourse to CEDAW provisions. The absence of a duty to comply with CEDAW raises questions about how justice could be accessed or improved in cases of violations. The Commission continues to interrogate this ahead of the Bill being laid before the Scottish Parliament.

The GB Equality Act 2010 establishes nine protected characteristics including sex. Intersectional discrimination is not a specific feature of the Act's operation and s.14 which would establish protection in cases of dual discrimination has not been brought into force.

Transparency, accountability, and effective participation the design of laws and policies, allocation and monitoring of spending provision of effective assistance and protection for victims of gender-based violence

The Scottish Government publishes an Equality and Fairer Scotland Budget Statement alongside the annual budget each year which offers a post-hoc description of spending by equality considerations. A range of figures relevant to violence against women are provided across budget documents. Despite Scottish Government's stated commitments to equality and human rights budgeting, and specifically to gender budgeting, the lack of transparency and breakdown is stark.

While the Scottish Government ensures available funding for a wide spectrum of work aligned to Equally Safe, the breadth of projects in scope and competitive nature of funding contributes to a lack of security and sustainability for vital services.

Our engagement in research for our reports demonstrated a clear sense that women's voices were missing from policy and prevention frameworks surrounding violence against women. Participants in focus groups felt that women were not sufficiently represented in decisions about their lives and that victim-survivor voices were not adequately reflected in policies. Stakeholders highlighted gaps for women with learning disabilities and women of colour.

While the Scottish Government regularly emphasises its support for participatory work, they and other policymakers do not often carry out their own. Targeted engagement and participation work is routinely

outsourced to the third sector, who reflected to us that there was not always an appreciation of the pressures of delivering this.

The design and implementation of policies to ensure coordinated, gender-sensitive and comprehensive essential services for the survivors of gender-based violence against women;

While Equally Safe has driven a culture change across the public sector measuring progress is challenging due to the partiality of data and evidence around outcomes, especially for further marginalised groups of women.

The Scottish Government should take action to improve policy coherence around gender equality and primary prevention in its policymaking in line with existing commitments to address women's social, economic, and cultural positioning which makes them more likely to experience or more vulnerable to gender-based violence.

Access to effective justice mechanisms and guarantees of non-repetition

Our research found that survivors have deeply negative experiences and perceptions of criminal cases. The Scottish Government has determined that significant reforms are needed to ensure the broader justice system is more gender-sensitive and trauma informed. Proposals for reform of the criminal justice system reflect the seriousness of this but there is a lack of consensus about the cumulative impact of changes that must still be navigated in the legislative process.

An acknowledged crisis exists across legal aid in Scotland, which is undermining women's rights to access justice and potentially their safety. A full review is needed to ensure the legal aid system; however, an interim increase in available funding may be necessary to encourage solicitors to take on legal aid cases before a full review can be

completed. More support for specialist legal support is needed, including in law centres.

Management of shelters, protection orders and other integrated services

The support service framework in Scotland is complex and inconsistent. While some effort has been demonstrated to improve the funding landscape, the lack of sustainability increases precarity for services and staff and undermines the availability of support for victim-survivors.

Support is rarely co-located, and access is mediated through the availability of information. It is not always provided in accessible formats and requires victim-survivors to navigate multiple agencies.

Specialist service provision has been historically piecemeal and complicated. Funding limitations have meant that some services have had to close their waiting lists for support to new referrals. Refuge support is provided almost exclusively by the third sector on the basis of commissioning. Local authority funding for service provision was historically greater and has reduced as local authority funding in general has become more precarious. In addition, specialist women's services have found it more difficult to access local funding as local authorities try to make funding go further by awarding contracts to more generalist services. A range of other grant-making and philanthropic bodies also fund services.

This complex and often unstable funding environment is often accompanied by competitive tendering processes and short term (1-3 year) awards. Staffing is a significant concern for services and many report having to readvertise posts on multiple occasions.

The protection order landscape is complicated and expensive, and legal aid is not readily accessible. New purpose-built protection orders have

not yet been implemented and Scottish Government has not provided a timescale for this.

Equal treatment and access to services

No Recourse to Public Funds (NRPF) is a condition that may be applied to an individual's leave to enter or remain in the UK. Migrants with NRPF conditions cannot access services provided and/or funded by the government listed in the Immigration and Asylum Act 1999 and the Immigration Rules.

Many women with an NRPF condition are unable to undertake paid work, either because their visa condition does not grant right to work or because of caring responsibilities. The risk of destitution for this group is especially high. Migrant women are in a considerably worse position than non-migrants, including at greater risk of exploitation and homelessness. Victim-survivors who are reliant on a perpetrator for their legal status or living are in an impossible position.

The Commission has recommended that the Scottish Government should continue to explore how it can ensure the maximum available support available to women with NRPF conditions while working with the UK Government to end its use.

As you are aware, over the past five years there has been considerable debate about reforms proposed by the Scottish Government to the statutory Gender Recognition process. As a result, the environment surrounding the inclusion and exclusion of transgender people – in particular transgender women – from violence against women services has become increasingly fraught, highly politicised, and polarised.

There are anecdotal reports that some women are self-excluding from services due to fears that they will face re-traumatisation or encounter men abusing provision for transgender women. Similarly, there are

anecdotal reports that trans people are not accessing violence against women services due to concern that they will be ejected or encounter prejudice.

The discourse around the best way to deliver services for people in vulnerable situations has been extremely difficult for service providers, who are required to balance the needs of different populations according to their own operational set ups. The Equality Act 2010 allows for trans people to be excluded from single sex services where this is a proportionate means of achieving a legitimate aim. The complexity - and at times misinformation – around how the exceptions are, can and should be applied requires leadership and thoughtful explanation based on the precise nature of the individual operational setting.

Services in Scotland have a long history of appropriate risk management and managing the dignity and privacy of all users. The majority of service providers and their umbrella networks who engaged with the Commission on this issue expressed support for reforms and confirmed that they would have no direct bearing on how they manage services.

Any woman who requires gender-based violence support services must have access to that service without discrimination under the Istanbul Convention and in such a way as to protect their safety. There is evidence that further marginalised women face gaps in accessing services. We found particular gaps in services or information about services for women and girls with learning disabilities, who also risk being subject to restrictive practices as a result of reporting. Gaps in culturally and race competent services have also been described by women of colour.

The capacity of stakeholders to collect and analyse and use disaggregated-data

Measuring progress on the prevention and response to gender-based violence against women and girls is made more challenging due to the partiality of data and evidence around outcomes, especially for further marginalised groups of women. This is not an issue unique to violence against women and girls, and the Commission has consistently highlighted gaps and inconsistencies in data gathering processes across numerous human rights monitoring frameworks.

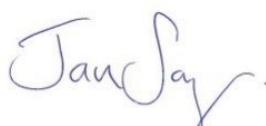
While all women and children are under-represented in research and data about violence against women, gaps are pronounced for those who are further marginalised. Greater alignment with international human rights standards could be helpful in driving improvement in data quality and disaggregation.

Further comments on the upcoming visit

We hope that you will be able to meet with a wide range of stakeholders involved in all aspects of violence against women policy and service delivery, including representatives of further marginalised communities of women and girls.

The Commission would be extremely pleased to meet with you to discuss our findings as part of the visit scheduled to take place from 12 to 21 February 2024. Please contact our Policy and International Officer at eilidh.dickson@scottishhumanrights.com who will be very pleased to facilitate a meeting.

Yours sincerely



Jan Savage
Executive Director