

CEDAW PEOPLE’S TRIBUNAL
REPORT OF THE PRESIDENT OF THE TRIBUNAL

ACKNOWLEDGEMENTS

Judge, President and Author of the President’s Report:

Hon Dr Jocelynn Scutt, AO

Founder and Campaign Director:

Joanne Welch

CPT Steering Committee:

Dr Davina Lloyd (Chair)

Ann Fenner

Kris Gibson

Michaela Hawkins

Louise Matthews

Legal Consultant:

Dr Nazir Afzal OBE QC

Counsel: Garden Court Chambers

Sonali Naik QC

Amanda Weston QC

Grace Brown

Nicola Braganza

Louise Hooper

Maria Moodie

Solicitor:

Smita Bajaria

Assistant To Counsel:

Emma Nash

Founding Counsel:

Professor John Cooper QC

Advocacy Group

Prof Andrew Byrnes

Dr Meghan Campbell

Jane Connors
Lord Sikka

Judges for the livestream hearing

Prof Fareda Banda
Prof Christine Chinkin
Prof Aisha K. Gill
Jane Gordon

Witnesses:

Zlakha Ahmed MBE
Nazmin Akthar
Baljit Banga
Joeli Brearley
Jenny Beck QC Honaris Causa
Cherie Blair CBE QC
Catherine Casserley
Dr Jennifer Cassidy
Dr Sofia Collignon
Professor Rebecca Cook
Professor Christine Cooper
Professor Diane Elson
Alice Fookes
Catherine Fookes
Saskia Garner
Esuantsiwa Jane Goldsmith
Lisa Gormley
Barry Harwood
Kevin Hyland OBE
Dr Kelly Johnson
Dr Olga Jurasz
Dr Annette Lawson OBE
Rosie Lewis
Darragh Mackin
Dr Kasey McCall-Smith
Cris McCurley
Malini Mehra
Dr Rachel Minto
Jonna Monaghan
Rebecca Munro
Nick Newland
Dr Catherine O'Rourke
Margaret Owen OBE
Pragna Patel
Alexandra Pavliuc
Rachel Powell
Dr Charlotte Proudman QC
Yasmin Rehman
Elizabeth Sclater OBE
Sam Smethers

Dr Mary-Ann Stephenson
Janet Veitch OBE
Hilary Watson

Friends:

Professor Philip G Alston
Byline Times
Dr Koldo Casla
Lianne Dallimore
David Hencke
Patricia Schulz
Ian Rothwell

Legal Assistants:

David Adekeye
Pietra Asprou
Manuella Attoh
Jessica Brown
Ginny Butcher
Katie Capstick
Floriane Cartron
Chanda Chitoshi
Chloe Darcy
Charlotte Dickson
Ranime Djouider
Joy Edogbanya
Isabelle Ehiorobo
Savannah Foster
Clara Guirau
Bailey Hall
Bethany Howell
Jacqueline Van Humbeeck
Zarafsha Hussain
Nicola Reimann-Jones
Rachel Kelly
Shauna Lyttle
Laura Petriti
Prabhjot Manak
Niamh McLoughlin
Shrinidhi Muthappan
Alexandra Nadasan
Natalie Payne
Katrina Pitt
Beth Riley
Lauren Monda Robins
Rosie Sanders
Suhaila Sammy Sandhu
Brittany Smart
Danae Spentzou
Hannah Spooner

Jenny Stopher
Annabel Twose
Olivia Usani
Jacqueline Van Humbeeck
Joanna Veimou
Sara Vincenzotti
Ilias Vlachogiorgos
Adele Wells
Kate Wheeler
Hannah Wilson
Karina Wisniewski

Social Media “The Best Team”:

Janet Bailes
Janet Booth
Maureen Bower
Patricia Cartwright
Janice Chapman
Linda Davies
Lesley Ellis
Cheryl English
Elaine Hague
Terry Hague
Janet Jones
Sheila Jones
Gillian Lidgitt
Olwyn Maddox
Gerry McDonagh
Christine Orley
Kit Prow
David Rainer
Maz Rhodes-Purcell
Pam Satchwell
Sheila Stewart
Helena Jansen van Vuuren
Sue Whalley
Sharon Wheeler

CONWAY Hall:

Dr Jim Walsh Chief Executive and his team
PFEvents IT Team

CEDAW PEOPLE'S TRIBUNAL

REPORT OF THE PRESIDENT OF THE TRIBUNAL

PART 1: INTRODUCTION AND BACKGROUND TO THE TRIBUNAL

A. ORIGINS AND PURPOSE OF THE CEDAW PEOPLE'S TRIBUNAL

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) arose out of the Declaration on the Elimination of All Forms of Discrimination Against Women which was drafted by the Commission on the Status of Women (CSW) and adopted by the United Nations General Assembly on 7 November 1967. CSW has an ongoing role within the UN, holding meetings annually in New York to advance the rights and interests of women globally through the adoption of an Agreed Status. The Declaration was a landmark in the work of CSW. It led, in turn, to the formulation and ultimate adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by the General Assembly on 18 December 1979. CEDAW came into effect on 3 December 1981, having gained the requisite number of signatories.¹

The United Kingdom signed the Convention on 22 July 1981, ratifying it on 17 April 1986 and signing the Optional Protocol in 2004.² Since that time, the United Kingdom has taken some steps toward implementing CEDAW. As the Statute of the CEDAW People's Tribunal states, at the core of the Tribunal's work and its very reason for existence is the question whether those steps are sufficient in the United Kingdom's pursuit of its obligations under CEDAW and, if not, what steps are required to ensure its full implementation:

The CEDAW People's Tribunal is a civil society initiative that will examine the extent to which women's and girls' human rights and in particular the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention) are implemented in the United Kingdom and will make recommendations about ways to improve that situation so that women and girls can fully enjoy their human rights and fundamental freedoms on the basis of equality. The Tribunal will examine the failure to integrate CEDAW into domestic legislation, decide whether those delays are justified, and make recommendations as to how the Convention can

¹ As background see for example [Byrnes, Andrew --- "The Convention on the Elimination of All Forms of Discrimination against Women and the Committee on the Elimination of Discrimination against Women: Reflections on their role in the Development of International Human Rights Law and as a Catalyst for National Legislative and Policy Reform" \[2010\] UNSWLRS 17 \(austlii.edu.au\)](#) (accessed 16 August 2021); Marilou McPhedran, Susan Bazilli, Moana Erickson and Andrew Byrnes, *The First CEDAW Impact Study – Final Report* ('Introduction' by Andrew Byrnes and Jane Connors) Released during the Twenty-Third Session of the CEDAW Committee, New York, NY, USA, June 2000, [aaIntro Pages \(iwrp.org\)](#) (accessed 16 August 2021); Simone Cusack and Lisa Pusey, 'CEDAW and the Rights to Non-Discrimination and Equality', [Microsoft Word - 03Cusack \(unimelb.edu.au\)](#) (accessed 16 August 2021); Christine Chinkin, Jane Gordon and Joanna Hemingway, 'The UK CEDAW Story', [The UK CEDAW story - CORE](#) (accessed 20 August 2021); [The UK CEDAW story | Semantic Scholar](#) (accessed 20 August 2021).

² On the Optional Protocol, its scope and purpose see Felipe Gomez Isa, 'The Optional Protocol for the Convention on the Elimination of All Forms of Discrimination Against Women: Strengthening the Protection Mechanisms of Women's Human Rights', *Arizona Journal of International and Comparative Law*, 2003, vol. 20 (2) pp 291-321 <http://www.ajicl.org/AJICL2003/vol202/Gomez.pdf> (accessed 10 July 2021).

be given full effect in the United Kingdom, advancing women in all aspects of society and recognising historic inequalities: Statute of the CEDAW People’s Tribunal, para 1

B. ORGANISATION OF THE TRIBUNAL

Embarking on this task, a Steering Committee was established to oversee teams assisting the work of the Tribunal, each team or sub-group having a defined task or role:

- i. Communications Team dealing with Social Media and external relations;
- ii. Advocacy Group dealing with legal matters relating to the workings of the Tribunal;
- iii. Expert Group providing expert advice and guidance on the work undertaken;
- iv. Legal Secretariat organizing the collection of the evidence for the Tribunal;
- v. Fundraising Group raising the funds for the Tribunal;
- vi. CEDAW mapping group investigating gaps in current legislation that can be covered by CEDAW;
- vii. Bill of Rights group writing a proposed Bill of Rights for Women;
- viii. Other groups as deemed necessary.

The Advocacy Group, Expert Group and Legal Secretariat in particular provided support to the Judges in the organisation of material and particularly in keeping a close record of the hearing and witness evidence. Garden Court Chambers³ acted as Counsel Assisting and Smita Bajaria of Bajaria Solicitors⁴ provided expertise as Instructing Solicitor.

The Tribunal heard evidence over three days, from 21-23 June inclusive, receiving evidence from an impressive list of witnesses who were taken through their evidence by the team from Garden Court. Additionally, witness statements were received from those unable to attend, together with documentary evidence comprising journal articles, texts and reported cases. All have been considered and taken into account by the Tribunal, and a list of witnesses and counsel, together with this material, appears in the Appendices to this report.

The United Kingdom government and governments of the devolved administrations were invited to attend the Tribunal hearing and to provide witnesses or witness statements or submissions. In the event, none did attend. However, all responded variously, ranging from a nil response from the First Minister of Northern Ireland, to an acknowledgement from the Office of the Welsh government and no further engagement, from the United Kingdom that the Prime Minister was engaged with the Covid 19 pandemic and the information would be passed on to relevant others, to extensive and helpful documentation arriving from the office of the First Minister of Scotland, indicating that the incorporation of CEDAW is well-underway in Scotland.

C. THE UNITED KINGDOM & CEDAW

Dating from 1979 as it does, that CEDAW is accepted as a dynamic ‘living’ human rights instrument is key to its foundation and continuing relevance to advancing the status of women. The passage of some forty years has been accompanied by the work of the Committee on CEDAW, recognised as the authoritative interpretative body for CEDAW. The Committee has, through its ongoing work, ensured that the Convention keeps pace with human rights developments, conforming to the necessity of keeping CEDAW up to date with women’s rights, principles and practices. Through its General Recommendations (GR) and associated work the Committee addresses and incorporates into CEDAW

³ [Garden Court Chambers | Leading Barristers located in London, UK](#) (accessed 8 August 2021).

⁴ [Bajaria Solicitors | Immigration, Human Rights, Asylum Nationality Law](#) (accessed 8 August 2021).

jurisprudential advances in recognition of changes over time. The Committee regularly reviews the status of women in each country being a signatory to CEDAW, with governments obliged to present regular reports on the application of CEDAW. The Committee addresses each with feedback incorporating a critique of gaps or failures, and recommendations for improvement. This process confirms both the importance of CEDAW for the United Kingdom and the importance of enshrining CEDAW in domestic law, giving full recognition by the United Kingdom to the rights of women and girls, according to its CEDAW commitments.

Consistent with the core obligations of State parties under the Convention Article 2 and General Recommendation 28 (GR 28), the United Kingdom's commitment to the implementation of CEDAW by providing an effective avenue for women and girls in the United Kingdom to be afforded these rights in principle and in practice is key. Indeed, the Committee's February 2019 review of the UK specifically recommended incorporation of the Convention's provisions into UK domestic law.⁵

This is consistent with the UK's having entered into the Convention for, as UN Women affirms, by accepting the Convention, 'States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.'⁶

In addition to the Introduction covering the 'Content and Significance of the Convention' along with the Preamble, CEDAW comprises six Parts, addressing respectively:

[PART I](#)

Discrimination ([Article 1](#))

Policy Measures ([Article 2](#))

Guarantee of Basic Human Rights and Fundamental Freedoms ([Article 3](#))

Special Measures ([Article 4](#))

Sex Role Stereotyping and Prejudice ([Article 5](#))

Prostitution ([Article 6](#))

[PART II](#)

Political and Public Life ([Article 7](#))

Representation ([Article 8](#))

Nationality ([Article 9](#))

[PART III](#)

Education ([Article 10](#))

Employment ([Article 11](#))

⁵ Preamble, [Text of the Convention on the Elimination of All Forms of Discrimination against Women \(un.org\)](#) (accessed 2 July 2021).

⁶ [Convention on the Elimination of All Forms of Discrimination against Women \(un.org\)](#) (accessed 2 July 2021). The support of the CEDAW Committee is now within the purview of the Office of the High Commissioner for Human Rights in Geneva.

Health ([Article 12](#))
Economic and Social Benefits ([Article 13](#))
Rural Women ([Article 14](#))

[PART IV](#)

Law ([Article 15](#))
Marriage and Family Life ([Article 16](#))

[PART V](#)

Committee on the Elimination of Discrimination against Women ([Article 17](#))
National Reports ([Article 18](#))
Rules of Procedure ([Article 19](#))
Committee Meetings ([Article 20](#))
Committee Reports ([Article 21](#))
Role of Specialized Agencies ([Article 22](#))

[PART VI](#)

Effect on Other Treaties ([Article 23](#))
Commitment of States Parties ([Article 24](#))
Administration of the Convention ([Articles 25-30](#))

The United Kingdom has extended the scope of CEDAW to its overseas territories and Crown dependencies, and the devolved administrations (Scotland, Wales, Northern Ireland) have been acceded scope to apply and implement provisions of CEDAW.⁷ However, the UK's record of signing (1981), ratifying (1986), and Optional Protocol ratification (2004) is, in the final analysis and as revealed by the evidence before the Tribunal, disappointing.

Initially, the UK registered a number of reservations to particular Articles. The principle relating to reservations is that they are intended to be temporary, with States parties taking steps in a timely manner to remove any obstacles standing in the way of implementing those Articles in relation to which reservations are lodged. Reservations were registered in relation to Article 9 (re citizenship and nationality), Article 11 (State Pensions – withdrawn 6 April 2020), Article 15 (maintaining as UK interpretation said to be in concert with UK contract law) and Article 16 (in 2011 said to be under review; in 2019 declared as being retained).⁸ The CEDAW Committee nonetheless considers that all reservations should be withdrawn and urges the UK to do so.⁹ As Rebecca J. Cook, a Tribunal Witness, points out:

The object and purpose of [CEDAW] are that states parties shall move progressively towards the elimination of all forms of discrimination against women and ensure equality between men and women. Further, states parties have an obligation to provide the means to move progressively toward this result. Reservations to the Convention's substantive provisions pose a threat to the achievement of this goal. [The obligation means] that reservations contemplating the provision of means towards the pursuit of this goal will be regarded as compatible with 'the

⁷ This can be problematic in some respects, although Scotland and Wales as devolved nations appear to be in advance of the United Kingdom government in addressing responsibilities under CEDAW. See later.

⁸ See: 8th UK Report to CEDAW Committee, [United Nations convention on the elimination of all forms of discrimination against women \(publishing.service.gov.uk\)](#) (accessed 7 July 2021); see 7th UK Report to CEDAW Committee, [UK approach to tackling discrimination and advancing gender equality \(publishing.service.gov.uk\)](#) (accessed 7 July 2021).

⁹ Para 11, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021).

For the Committee, certain developments and aspects of government raise concerns requiring the attention of the UK Parliament in realising the UK's obligation to implement CEDAW. An overarching concern as to the consequences of the European Union (Withdrawal) Act 2018 (Brexit) and its impact on women is highlighted, particularly with regard to the economic consequences for women (including loss of funding), trade and investment policies negatively affecting women, and the potential for legislative affirmation of women's rights through UK adoption of European Union laws to be undermined or overridden, without the domestic implementation of CEDAW.¹⁴ So, too, the impact of the austerity policy begun with the 2010 Conservative-Liberal Democrat Coalition government and its continuing implementation, noting the disparate impact on women, particularly but not only as single parents, through cuts to funding (including legal aid),¹⁵ loss of jobs and services vital to women's health, well-being and access to institutions central to participation in the polity.¹⁶ These concerns run parallel with a reiteration of concerns expressed in previous Committee reports - 1999, 2008 and 2013 – and the 'lack of measures taken to fully incorporate the provisions of the Convention' into national legislation, 'leading to a fragmented and uneven legislative framework on the rights of women and girls'. Devolution is not, says the Committee, to be used to undercut the responsibility of the UK government and Parliament to ensure that CEDAW principles and practices are incorporated into domestic law. Reference is made to the situation in Northern Ireland where the effective protection of women is unable to be realised due to the governmental situation, and action in relation to the overseas territories is insufficient. 'Proactive measures' are required.¹⁷

Measures that have been taken, such as the Equality Act 2010, though acknowledged, are found wanting, not only in its failure to extend to Northern Ireland, but in its 'limitations of the public sector equality duty, and failure in relation to 'intersecting forms of discrimination', as well as lack of implementation of provisions the public sector duty relating to socioeconomic inequalities and 'combined discrimination'.¹⁸ Specific reference is made to the failures of the legislation in its need to address 'situations of intersecting forms of discrimination' such as that 'faced by "Black, Asian and Minority Ethnic" women, older women, women with disabilities, asylum-seeking and refugee women, lesbian, bisexual and transgender women and intersex persons'.¹⁹ The importance is noted of ensuring that women, 'in particular women in vulnerable situations, such as women with disabilities, "Black, Asian and Minority Ethnic" women, asylum-seeking and refugee women and victims of gender-based violence and of trafficking, have effective access to justice and remedies with adequate legal support and representation, including by ensuring that legal aid and representation is accessible and available and the provision of procedural and age-appropriate accommodations'.²⁰

The need for all public bodies across UK jurisdictions to 'systematically undertake gender equality impact assessments' is emphasised, together with the need for 'national machinery for the advancement of women' to work effectively, the Government Equalities Office and House of Commons Women and Equalities Select Committee to monitor its performance being acknowledged but with reservations as to the lack of specific focus on advancing women's rights.²¹ The lack of a 'unified and comprehensive national strategy or an effective coordinating and monitoring mechanism' for the

¹⁴ Para 21, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021).

¹⁵ Specific reference is made to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 continuing to have a negative impact on women's access to justice and effective remedies in areas such as family, housing, immigration and welfare benefits law: para 23, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021); see also [MPs sound alarm over legal aid in hard-hitting report | News | Law Gazette](#) (accessed 27 July 2021).

¹⁶ Para 17, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021); see also *R (On the application of the Fawcett Society) v Chancellor of the Exchequer* [2010] EWJC 3522 (Admin).

¹⁷ See paras 13-16, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021).

¹⁸ Ss. 1-3, 14 Equality Act 2010; inequalities (sections 1 to 3 of the Act) and the recognition of "combined discrimination" (section 14 of the Act); para 15 [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021).

¹⁹ Para 16, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021).

²⁰ Para 25, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021).

²¹ Paras 24-25, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021).

Convention's implementation to ensure gender equality in England, Northern Ireland, Scotland and Wales is addressed effectively. Here, the 'lack of systematic collection of data, disaggregated by sex, gender, ethnicity, disability and age' and a focus on 'intersecting forms of discrimination' is flagged, in its need 'to identify areas in which women lack substantive equality with men, inform policymaking and assess the impact of measures taken'.²²

Government measures taken to address the negative impact of gender stereotyping are noted, and action in relation to 'gender stereotypes that are likely to cause harm or serious or widespread offence in advertisements', but 'the persistence of gender stereotypes' and their affect and effect on women and girls' requires concerted and continuing action. Similarly, gender-based violence measures are welcomed, but 'lack of uniform protection of women and girls from all forms of gender-based violence across' the UK is notable in its inadequacy generally and particularly with regard to Northern Ireland, 'asylum-seeking women, migrants and women with insecure immigration status', and women with a disability whose risk is heightened by potential violence from caregivers and added difficulties in gaining protection and accessing justice. Generic rather than women-focused services and the failure to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) are concerns, as are female genital mutilation (FGM) despite the Female Genital Mutilation Act 2003, and trafficking of women, despite the Modern Slavery Act 2015, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) and the Human Trafficking and Exploitation (Scotland) Act.²³

Ultimately, and most importantly from the perspective of the Tribunal and the task before it, whilst the Committee 'welcomes the role played by [the UK] in support of gender development goal 5' – namely to 'achieve gender equality and empower all women and girls',²⁴ firmly stated in bold is the admonition:²⁵

7. The Committee calls for the realization of de jure (legal) and de facto (substantive) gender equality, in accordance with the provisions of the Convention, throughout the process of implementing the 2030 Agenda for Sustainable Development. The Committee recalls the importance of Goal 5 and of the mainstreaming of the principles of equality and non-discrimination throughout all 17 Goals. It urges the State party to recognize women as the driving force of the sustainable development of the State party and to adopt relevant policies and strategies to that effect.

Furthermore, the Committee (again in bold) goes on to place a firm and time-defined obligation upon the Parliament of the United Kingdom that cannot be ignored:²⁶

8. The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention ... It invites the Parliament of the United Kingdom, as well as the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly where relevant, in line with their mandates, to take the necessary steps regarding the implementation of the present concluding observations between now and the submission of the next periodic report under the Convention.

²² Para 25, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021).

²³ Paras 25-31, [CEDAW C GBR CO 8-EN \(1\).pdf](#) (accessed 7 July 2021).

²⁴ [Goal 5 | Department of Economic and Social Affairs \(un.org\)](#) (accessed 7 July 2021).

²⁵ Para C (7), [Concluding observations on the 8th periodic report of United Kingdom of Great Britain and Northern Ireland](#) : (accessed 7 July 2021); [file:///C:/Users/Jocelynne/Downloads/CEDAW_C_GBR_CO_8-EN%20\(1\).pdf](file:///C:/Users/Jocelynne/Downloads/CEDAW_C_GBR_CO_8-EN%20(1).pdf) (accessed 7 July 2021).

²⁶ Para D (8), *ibid.*

It is against this backdrop that the Tribunal has undertaken its task.

D. DEFINITIONS AND KEY CONCEPTS

CEDAW sets out:

- a definition of discrimination;
- directives as to the scope of application of action to eliminate discrimination, including the public ('public authorities and institutions': Art 2 (d)) and private sector ('by any person, organisation or enterprise': Art 2(e));
- a requirement that machinery (including 'competent national tribunals and other public institutions': Art 2(c)) be established to effect 'protection' against 'any act of discrimination': Art 2(c));
- directives as to legislating for the 'practical realisation of' the principle of 'equality of men and women': Art 2(a); and
- acknowledgement that measures supporting maternity and temporary measures designed to accelerate the goal of equality will not be deemed a breach, so long as rendered obsolete once equality is achieved (Art 4).

It is well to set out the whole of Part 1 of CEDAW containing these key discrimination provisions and principles, for – as evidence before the Tribunal affirmed²⁷ – an ignorance of CEDAW, much less its provisions, pervades the community and law-making with the exclusion only of those who have made it their business and even life's work to pursue the goal of formal, substantive and transformative equality between women and men in the interests of a better society.

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

²⁷ See later.

- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.²⁸

The UK Government precises these and the remaining Articles of CEDAW for ease of access, in a policy paper published on 22 June 2011.²⁹

²⁸ [OHCHR | Convention on the Elimination of All Forms of Discrimination against Women](#) (accessed 7 July 2021).

²⁹ **Article 1 This article sets out the definition of discrimination**

Discrimination against women includes any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying women's enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. This is irrespective of their marital status, on a basis of equality of men and women.

Article 2 - Duty of States

States agree to pursue by all appropriate means a policy of eliminating discrimination against women, undertaking to take concrete steps to eliminate discriminatory laws, policies and practices in the national legal framework.

Article 3 - Equality

States shall take all appropriate measures to ensure the full development and advancement of women so as to guarantee them the enjoyment of human rights and fundamental freedoms on a basis of equality with men. This is in all fields but in particular the political, social, economic and cultural fields.

Article 4 - Special measures

States are allowed to adopt temporary special measures to accelerate de facto equality for women until the objectives of equality of opportunity and treatment have been achieved. States are allowed to adopt special measures aimed at protecting maternity.

Article 5 - Stereotyping and cultural prejudices

States shall take appropriate measures to eliminate stereotyping, prejudices and discriminatory cultural practices. States shall also ensure that family education includes a proper understanding of maternity as a social function and the recognition of the roles of men and women in the upbringing of their children.

Article 6 - Trafficking and prostitution

States shall take all measures to stop all forms of trafficking and the exploitation of prostitution of women.

Article 7 - Political and public life

States shall ensure that women have equal rights with men to vote, hold public office and participate in civil society.

Article 8 - Participation at the international level

States shall ensure that women are allowed to represent their governments at the international level and to participate in the work of international organisations.

Article 9 - Nationality

States shall grant women equal rights with men to acquire, change or retain their nationality and also equal rights in respect of their children's nationality.

Article 10 - Education

States shall ensure that women have equal rights with men in education, including equal access to schools, vocational training, curricula and educational resources. States shall eliminate stereotypes of the roles of women and men through revising school materials and teaching methods.

Article 11 - Employment

States shall ensure that women have the same opportunities as men in employment, promotion, training, equal remuneration, social security and safe working conditions. Women must also be protected in respect of pregnancy, maternity and marital status.

Article 12 - Health

States shall ensure that women have equal rights with men to access to health care services, including reproductive health services.

Article 13 - Economic and social benefits

States shall ensure that women have equal rights with men to family benefits, bank loans and other forms of financial credit. Women must also be allowed to participate equally in recreational activities, sports and all aspects of cultural life.

Article 14 - Rural women

States shall take all appropriate measures to eliminate discrimination against women in rural areas so that they can participate in and benefit from health care, education, social security, development planning etc equally with men.

Article 15 - Equality before the law

States shall ensure that women and men are treated equally before the law. Women have the same legal right to enter contracts, own property and choose their place of residence.

Article 16 - Marriage and family life

States shall ensure that women have equal rights with men in relation to marriage and as parents, as well as in respect of other aspects of family life.

Articles 17 - 24

‘Women’ has been recognised by the CEDAW Committee as an inclusive term, and girls come within CEDAW: Art 10 on education explicitly refers to girls, and GR28 and GR36 recognise the application of CEDAW to girls. Intersectionality or the intersections of attributes, identities or characteristics such as race/ethnicity, disability and sexuality as intrinsic to women under CEDAW, and debates about language and terms such as BAME, BME, Black and minority communities were addressed by witnesses before the Tribunal. In particular concerns as to the essentialism of ‘BAME’ or ‘BME’ as terms relating to Black and minoritised women, and issues in the context of the Report of the Commission on Race and Ethnic Disparities,³⁰ arose in the course of the hearing. The Tribunal heard from witnesses expressing concerns about language and terminology used in discrimination and equal opportunity law itself. The definition of discrimination, including ‘direct’ and ‘indirect’ discrimination, in addition to ‘intersectionality’ and other matters where language impacts on community and judicial understanding, and substantive and practical application of the provisions, require consideration. These are addressed later.³¹

PART 2: TRIBUNAL FINDINGS

1. Constitutional, legislative and policy framework

CEDAW Committee raised the following matters:

- Lack of full incorporation of CEDAW into national legislation
- Fragmented and uneven legislative framework for protection of women’s rights across the Devolved Nations
- Money-laundering, tax evasion and offshore tax regimes in UK overseas territories and Crown dependencies and their impact on women through a stated lack of financial resource to provide proper and effective, or even satisfactory, services and supports for programmes essential to the health, well-being and rights of women and girls to achieve their potential
- Sustainable Development Goals (SDGs) and national implementation of Goal 5: ‘Achieve gender equality and empower all women and girls’
- Equality Act – issues relating to the public sector equality duty and intersectional discrimination
- Austerity – impact on women’s rights, women’s jobs and women’s services
- Brexit – impact generally as risking the SDGs and particularly SDG 5; concerns as to non-retrogression in protection of women’s rights (including the need for the UK to maintain parity with EU equality and gender laws); trade agreements – concerns as to incorporation of provisions with consequences negative to the interests of women and equality

Additional matter to consider:

- Covid-19 – impact on women of the pandemic

These articles describe the composition and procedures of the CEDAW Committee, the relationship between CEDAW and national and international legislation and the obligation of States to take all steps necessary to implement CEDAW in full.

Articles 25 - 30 - Administration of CEDAW

These articles describe the general administrative procedures concerning enforcement of CEDAW, ratification and entering reservations.

Date: Wed Jun 22 14:59:44 BST 2011: UK Government, *Policy Paper*, [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\) Articles - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/convention-on-the-elimination-of-all-forms-of-discrimination-against-women) (accessed 9 July 2021); see also [UK’s 7th Periodic Convention on the Elimination of all forms of Discrimination Against Women Report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/UK-7th-Periodic-Convention-on-the-Elimination-of-all-forms-of-Discrimination-Against-Women-Report-2011.pdf).

³⁰ [Commission on Race and Ethnic Disparities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/UK-7th-Periodic-Convention-on-the-Elimination-of-all-forms-of-Discrimination-Against-Women-Report-2011.pdf) (accessed 9 July 2021).

³¹ See **17. Overarching Matters**, later.

The issues pinpointed by the CEDAW Committee arose in the course of the Tribunal hearing, together with concerns as to the impact of Covid 19, including the increased powers of government and reduction in parliamentary scrutiny or accountability; the impact of the severance of the European Union and United Kingdom under the European Union (Withdrawal) Act 2018,³² including concerns as to the Ireland/Northern Ireland Protocol;³³ the government review of the Human Rights Act 1998 and its potential for downgrading equality and women's rights; and, by the Judicial Review and Courts Bill 2021, the review of judicial review and potential limitation of it as a mechanism for holding executive government to account.³⁴

FRAGMENTATION OF APPROACH TO WOMEN'S RIGHTS

Speaking in a personal capacity, Dr Kasey McCall-Smith, senior lecturer in public international law and director of the LLM in the human rights programme at the University of Edinburgh Law School, referred to the incorporation of CEDAW into national law, direct, indirect or sectoral (piecemeal). She explained:

- under direct incorporation, new legislation 'transposes or transforms an international treaty into national law [with] public authorities having a duty to give effect to treaty provisions, these being directly applied and enforced in national courts'; this ensures enforceability of specific human rights through institutions and procedures providing remedies for human rights breaches through judicial and administrative paths: para 4, Witness Statement, Case ref: 032
- a treaty 'given some effect in national law through another legal mechanism, most commonly through constitutional reference to a ratified human rights treaty, for example South Africa incorporates various human rights treaties by making reference in their constitution of those ratified'. This does not automatically mean treaties 'are directly enforceable in national courts, so additional legislation may need to be put in place guaranteeing this and ensuring that human rights obligations are recognised by public authorities, ... with the degree of direct application of treaty obligations within national courts dependent on the working of incorporation legislation and the constitutional arrangement of the legal system': para 5, *ibid*
- sectoral or piecemeal incorporation 'is the loosest form of incorporation', arguably 'not actually even incorporation ... Generally ... incorporation looks like integrating various aspects of a human rights treaty into national law at some level less than direct or indirect incorporation'. Parts only of the treaty are incorporated, 'often without a clear link to the treaty within a piece of legislation. For example, in the UK, the right to education is effectively incorporated into many different laws but without direct reference to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UNCRC [Convention on the Rights of the Child] or CEDAW'. This is the approach 'most widely used in the United Kingdom, but is potentially the

³² [European Union \(Withdrawal\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/16/section/1) (accessed 7 July 2021).

³³ [Revised Protocol to the Withdrawal Agreement.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/98442/Revised_Protocol_to_the_Withdrawal_Agreement.pdf) (accessed 21 July 2021); and see [The Protocol on Ireland/Northern Ireland - KPMG Ireland \(home.kpmg\)](https://www.kpmg.com/au/issuesandinsights/articlespublications/2018/12/the-protocol-on-ireland-northern-ireland-kpmg-ireland) (accessed 21 July 2021).

³⁴ See for example *R (on the application of Kaur and Shah) v London Borough of Ealing* [2008] EWH 2062 (Admin), [Kaur & Shah, R \(on the application of\) v London Borough of Ealing & Anor \[2008\] EWHC 2062 \(Admin\) \(29 July 2008\) \(bailii.org\)](https://www.bailii.org/uk/ew/caseref/2008/2062.html) (accessed 7 July 2021); *R (On the application of the Fawcett Society) v Chancellor of the Exchequer* [2010] EWJC 3522 (Admin; see also [Bar-Council-response-to-HM-Government-consultation-on-Judicial-Review-Reform.pdf \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/press-releases/2010/07/bar-council-response-to-hm-government-consultation-on-judicial-review-reform) (accessed 9 July 2021); [Bar Council responds to introduction of Judicial Review and Courts Bill](https://www.barcouncil.org.uk/press-releases/2010/07/bar-council-responds-to-introduction-of-judicial-review-and-courts-bill) (accessed 29 July 2021); [News focus: Judicial Review and Courts Bill - bigger reforms on the horizon? | News | Law Gazette](https://www.lawgazette.com/news/2010/07/29/news-focus-judicial-review-and-courts-bill-bigger-reforms-on-the-horizon/) (accessed 29 July 2021).

least effective method as failing to provide recognition to the overall framework of rights, particularly for the international human rights treaties’: para 6, *ibid*

Dr McCall-Smith added that presently the UK has a ‘very fragmented approach to women’s rights’ with ‘a number of pieces of legislation existing alongside common law protections to support non-discrimination for women, but it is predominantly a sectoral approach with no real joined up thinking’. She referred to advances being made in Scotland in the campaign to have CEDAW incorporated into domestic law.³⁵ She, like other witnesses speaking on this issue, was critical of the failure of the Equality Act 2010 to achieve its aims ‘in terms of ending gender discrimination’, citing as an example the proactive public sector equality duty on public bodies under the Equality Act, reflected in the Fairer Scotland Duty Act³⁶ that imposes on public authorities that same ‘duty of due regard to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics, such as women’:

Repeatedly, we see evidence that this has not translated into a change in lived experience, and a lot of that relates to the lack of disaggregated data and absence of willingness to collect data by the government. Accordingly, [governments] tend to overlook vulnerabilities, particularly intersectional vulnerabilities, which almost always have the most telling impact on women in some way, shape, form, or fashion: para 10, *ibid*

The variations and inequities caused by the sectoral approach were illustrated by reference to Wales, Northern Ireland, and Scotland, where situations vary. Thus, devolution has in some respects enabled the women of Wales to gain advances not realised throughout the United Kingdom, whilst women in Northern Ireland have suffered detriment. As to the former, lecturer in Politics at the University of Cardiff and speaking in her personal capacity, Dr Rachel Minto considered that ‘from a devolved perspective’ Wales has seen ‘notably policy development, driven by a more socially minded attitude leading to a distinctive approach to gender equality’. She cited examples such as:

... the previous and current First Minister’s commitment to feminist government, the equality-focused approach in the caption of the Welsh Parliament (through the equality mainstreaming duty in the 1998 Government of Wales Act),³⁷ the recent Gender Equality review, the Wellbeing of Future Generations Act 2015³⁸ and gender mainstreaming in EU Funding in Wales, Wales has developed a distinctive equality agenda: para 6, Witness Statement, Case ref: 022

She went on to acknowledge the ‘significant work [is necessary] to make these policy aspirations a reality’, but added that some of ‘the positive lessons learned in Wales could serve as inspiration for how gender mainstreaming could be implemented around the UK as we leave the EU’: para 6, *ibid*

³⁵ See Mbali Badiya, Siti Zaleha Mohd Ali, Alexandra Oancea, Carmen Ramirez Molina, Monserrat Saavedra, Sophia Simelitido and Isabel Watkins, *Strengthening Women’s Rights in Scotland – The Call for Incorporation of CEDAW into Scottish Law*, Human Rights Clinic, University of Edinburgh Law School, April 2021; see also [LLM Human Rights Clinic students present research findings to Scottish Government | Edinburgh Law School](#) (accessed 2 August 2021); [Students from LLM Human Rights Clinic deliver presentation on EQIAs to Scottish Government | Edinburgh Law School](#) (accessed 2 August 2021); [Incorporating Human Rights in Scotland | Edinburgh Law School](#) (accessed 2 August 2021); [5-organisations-CEDAW-incorporation-paper.pdf \(engender.org.uk\)](#) (accessed 2 August 2021).

³⁶ Part 1 of the Equality Act, [Fairer Scotland Duty: interim guidance for public bodies - gov.scot \(www.gov.scot\)](#) (accessed 7 July 2021).

³⁷ [Government of Wales Act 1998 \(legislation.gov.uk\)](#) (accessed 9 July 2021); see also [Government of Wales Act 2006 \(legislation.gov.uk\)](#) (accessed 9 July 2021).

³⁸ [Well-being of Future Generations \(Wales\) Act 2015 \(legislation.gov.uk\)](#) (accessed 9 July 2021); see also [Well-being of Future Generations \(Wales\) Act 2015 – The Future Generations Commissioner for Wales](#) (accessed 9 July 2021).

Hilary Watson for the Women's Equality Network (WEN) Wales noted the value of the Feminist Scorecard 2020 'which highlighted the areas of equal representation and leadership, stopping violence against women, tackling gender health inequalities, global responsibility and women, fair finance, caring responsibilities are valued and shared [and] was made in reaction to Carwyn Jones' call for a feminist government when he left his position as First Minister'. She said that the Feminist Scorecard 'is a helpful resource for us to estimate where Wales was prior to the coronavirus pandemic, and ensure that these areas are addressed'. Wales has moved forward in this regard, by at least ensuring a mechanism to measure women's equality, and the Welsh Government has also taken a step forward by incorporating the Convention of on the Rights of the Child into Welsh Law, so that it must be considered when the government engages in law making: paras 9, 14, Witness Statement, Case ref: 004

The situation in Northern Ireland is patchy, a combination of devolution and lack of an overall approach, disseminated throughout the United Kingdom, honouring women's rights. Darragh Mackin, appearing in both his personal and professional capacity as a Partner at Phoenix Law in Belfast raised the issue of fragmentation in the context of abortion rights in Northern Ireland, observing that the present 'discriminatory' approach 'is unacceptable and unjustifiable, both domestically and in international law'. This arises under section 20 of the Northern Ireland Act 1998, which provides that if any matter is deemed 'significant or controversial' it should be referred to the executive.³⁹ On this, he said:

It seems that abortion services will not be commissioned until this matter is referred to the executive. This is an entirely improper approach to adopt. There is nothing contentious about the provision of health services or their formal commissioning. Any past issues have been resolved; the legislation is there; the findings of the High Court in Belfast are clear. This is not a contentious issue; it is a human rights issue: para 4, Witness Statement, Case ref: 025

Dr Catherine O'Rourke, senior lecturer in human rights and international law at the Ulster University School of Law, where she directs the Transnational Justice Institute within the School of Law raised the abortion issue in similar terms. Speaking as an academic in a personal capacity, Dr O'Rourke recounted the history of the change in the law leading to 'effective deletion of sections 58-59 of the Offences Against the Person Act 1861 (OAPA),⁴⁰ the provisions criminalising abortion': para 9, Witness Statement, Case ref: 012 She, too, referred to 'the problem where the health trusts have declined to commission services':

Although the Executive is now operating, the minister for health remains opposed and unwilling to have health trusts commission services. Currently, the Northern Ireland Human Rights Commission has been successful in their application for judicial review of the Minister of Health's failure to commission services. They are attempting to have the High Court tell the Minister for Health he must commission services. The Secretary of State says he needs to comply with the Northern Ireland Executive Formation Act 2019⁴¹ but it remains complicated. Despite this, the CEDAW inquiry report [referred to in s. 9 of the Act]⁴² was a major and

³⁹ [Northern Ireland Act 1998 \(legislation.gov.uk\)](#) (accessed 9 July 2021).

⁴⁰ [Offences against the Person Act 1861 \(legislation.gov.uk\)](#) (accessed 9 July 2021) – s. 58 'Administering drugs or using an instrument to procure abortion'; s. 59 'Procuring drugs & etc ... to procure abortion'.

⁴¹ [Northern Ireland \(Executive Formation etc\) Act 2019 \(legislation.gov.uk\)](#) (accessed 9 July 2021).

⁴² S. 9 Abortion etc: implementation of CEDAW recommendations

(1)The Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland.

(2)Sections 58 and 59 of the Offences Against the Person Act 1861 (attempts to procure abortion) are repealed under the law of Northern Ireland.

(3)No investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections under the law of Northern Ireland (whenever committed).

important catalyst. I would submit that it is one of the most successful stories of CEDAW advocacy, an extraordinary and effective intervention: paras 9, 11, *ibid*

Jonna Monaghan, project coordinator for Northern Ireland Women’s European Platform (NIWEP), speaking on behalf of the organisation, noted that the impact of Northern Ireland ‘being subject to policy set by the UK Parliament can be looked at in a number of ways’. Here, she said:

In a positive sense, you could say that the abortion legislation is an example of where the UK parliament acted where the Northern Ireland assembly chose [not to] or was unable to [do so]. Abortion legislation had been raised in Northern Ireland assembly by campaigners for many years, but it was the UK government that passed the amendment ...: para 9, Witness Statement, Case ref: 003

Then, however, the issue raised by Mr Mackin and Dr O’Rourke comes into play, reiterated by Ms Monaghan and expanded in some detail, including limitations on surgical abortions which ‘remain subject to the approval of the Board of the Health Trust in the area in which the abortion would take place’; limitations on medical abortions ‘to 9 weeks even though the law states 12 weeks’; a ‘major issue in that funding for abortions has to come from the existing reproductive and sexual health budgets with no promise of uplift in future years ... so, for a long time, several trusts have not provided abortions at all because they are concerned about the viability’. One trust area has, nonetheless, announced ‘they will start providing early medical abortions’: paras 15-17, *ibid*

As to adverse consequences arising out of UK parliamentary action, Ms Monaghan commented:

In a slightly different way, [matters] such as welfare reform, a policy of the UK Parliament, have a negative impact for women in Northern Ireland. Policy on benefits and welfare is devolved but in Northern Ireland there has been a tendency to keep parity with the rest of the UK and there is very little scope for local decision-making. Another example is in relation to Brexit and more recently COVID, decisions largely taken at central level and [providing] limited opportunities for the devolved government to do very much ... But largely we would argue that the implementation or not of CEDAW in Northern Ireland is not linked to decisions made at UK level, it’s decisions at local level: para 10, *ibid*

She outlined a range of areas illustrating the vital need for a comprehensive rather than sectoral or piecemeal approach, including in particular a range of issues relating to ‘violence against women, domestic abuse, and gender-based violence’: para 23, *ibid* An example she provided was that of ‘a high-profile rape trial some years ago’ which generated a review of how serious sexual offence cases are

(4)The Secretary of State must by regulations make whatever other changes to the law of Northern Ireland appear to the Secretary of State to be necessary or appropriate for the purpose of complying with subsection (1).

(5)Regulations under subsection (4) must, in particular, make provision for the purposes of regulating abortions in Northern Ireland, including provision as to the circumstances in which an abortion may take place.

(6)Regulations under subsection (4) must be made so as to come into force by 31 March 2020 (but this does not in any way limit the re-exercise of the power).

(7) The Secretary of State must carry out the duties imposed by this section expeditiously, recognising the importance of doing so for protecting the human rights of women in Northern Ireland.

(8) The Secretary of State may by regulations make any provision that appears to the Secretary of State to be appropriate in view of subsection (2) or (3).

(9) Regulations under this section may make any provision that could be made by an Act of the Northern Ireland Assembly.

(10) In this section “the CEDAW report” means the 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 (CEDAW/C/OP.8/GBR/1) published on 6 March 2018.

handled. The review having been submitted in early 2019, ‘absolutely nothing has happened on the significant number of recommendations made’: para 4, *ibid* This raised the question whether overarching legislation providing rights for all women throughout the United Kingdom would bring about changes more rapidly and more consistently.

SUMMATION

FRAGMENTATION OF WOMEN’S RIGHTS

Within any nation state, rights – human, civil, political – should accrue by right, not by reference to discriminatory factors. By reference to examples, the evidence highlights an issue recognised in other jurisdictions where a federal system operates. Within such systems, some commentators and human rights proponents assert that a system is preferable where within the one nation state individual parts thereof are able to advance with a human rights agenda, whilst others lag – these others eventually (it is hoped) advancing to the levels achieved by the former. The argument here is that campaigns can succeed through direct pressure and commitment applied by human rights activists and practitioners to the state or province or devolved entity. On the other hand, this means that within one country or nation state human rights are variably distributed, according to geography or residence or postcode.

This then informs the opposing argument, in that the question arises whether it is acceptable that human rights are or may be variable within one nation state, rather than universally acknowledged and applied throughout that nation state. Hence, in turn, the argument ‘for’ advancing human rights is that this variability should be acknowledged as detrimental to the human rights project. Further, that any campaign is better organised, with greater capacity, resource and involvement, where the target is the federal body or nation state’s political and legislative apparatus: a campaign claiming human rights as women’s rights and women’s rights as human rights, for example, is founded in a better principle, stronger and far more compelling, if it lays claim to these rights for all within the nation state than proceeding on a sectoral basis. This is a question to be addressed by final recommendations in the Report.

EQUALITY ACT 2010

The Equality Act 2010⁴³ was generally recognised by witnesses as an important advance. However, its limitations were also writ large. Hilary Watson, speaking on behalf of the Women’s Equality Network (WEN) Wales, related her response to the position in Wales. Saying that she was, in her role, ‘more likely to be lobbying the Welsh government about devolved equalities measures’, nonetheless WEN Wales ‘recognises the importance of the Equality Act 2010 within Wales. However, we believe there are a number of issues’ requiring attention:

The Act does not reflect issues in 2021, as a number of topics in the conversation about equality were not present in 2010. One example is understanding of non-binary gender identities. [Also], the Equality Act allows the use of gender quotas, but not quotas for other protected characteristics such as ethnicity or disability. This is an area that needs to be addressed and strengthened by any subsequent case law. Similarly, the Equality Act should have provisions ensuring that ethnicity and disability pay gap figures are recorded: Para 12, Witness Statement, Case ref: 004

Rebecca Munro, PhD researcher at the European University Institute and speaking in her personal capacity, considered the Equality Act against the backdrop of the human rights framework as currently

⁴³ [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk) (accessed 7 July 2021); [Equality Act 2010: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 7 July 2021).

existing, referring first to the Human Rights Act 1998.⁴⁴ She observed that the ‘UK human rights framework is not very strong, particularly in regard to accountability mechanisms for socio-economic rights violations’:

This is because our current model is based on the Human Rights Act, which incorporates the European Convention on Human Rights (EDHR). The ECHR favours civil and political rights over socio-economic rights, meaning it has been more difficult for women to hold the government to account for regressions in socio-economic rights since the financial crisis. On top of that, we have the Equality Act, which only has a provision stating a government must show ‘due regard’ to issues of equality, specifically to gender equality. This is not a particularly rigid provision and has not been very successful in finding accountability for government violations, so it is not a very strong framework: para 4, Witness Statement, Case ref: 014

Janet Veitch, chair of the UK Women’s Budget Group⁴⁵ and of the Happy Baby Community,⁴⁶ working freelance, said that the Equality Act indicated some attempt to ‘mainstream gender into our policies in the UK’, incorporating ‘the general requirement not to discriminate but also to promote policies that positively reduce inequality’. Nevertheless, ‘in terms of day to day practice the UK falls behind:

For example, the equality impact assessments that are sometimes produced when policy is being developed [as required under the Act] these have not achieved the desired outcome of preventing sex discrimination in the workforce. [Under David Cameron’s government] it was decided that the Equality Act did not require a written equality impact assessment. [It] only had to be [thought] about in developing policy. The officials carrying out these assessments often simply indicate that there is no differential impact between men and women, on the basis that the law applies equally to men and women. These assessments often focus only on these direct effects, rather than looking for evidence of indirect impact – impact that has more effect on one sex than the other because for example women are more likely to have lower incomes over their lifetime, or more likely to have caring responsibilities, than men ...: paras 2-3, Witness Statement, Case ref: 002

This aspect was a focus for other witnesses, too. Dr Annette Lawson said that the Act was essential for affirmation of women’s sex-based rights, and although she ‘did not think it is as good as it could be [women] absolutely need it and for that reason, if no other’ it is essential. Nonetheless ‘it isn’t nearly as well practiced as it should be’ and ‘proper implementation’ is essential. Here, she referenced the failures of government departments to comply with the equality impact assessment requirement, particularly in the context of the 2010 austerity budget and the introduction of ‘new welfare rules and systems into the benefit system’ where ‘it was important to measure the impact of such changes on women as compared with men but a cursory ‘impact assessment’ ‘found no difficulty’: paras 34-35, Witness Statement, Case ref: 026

⁴⁴ [Human Rights Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1998/42) (accessed 7 July 2021).

⁴⁵ The Women’s Budget Group is an independent and not-for-profit membership network consisting of women’s voluntary organisations, academics and policy experts whose aims are to promote a gender equal economy. We do this through conducting in-depth analysis of the impact of policy on women. Our analysis has been used to influence policy debates on a national and local level. We run several projects that work to build the capacity of women’s organisations as well as national and international campaigning organisations and other equality groups. We are also working on a project to build support for an intersectional Feminist Green New Deal in the UK. In 2020 we published the final report of the [Commission on a Gender-Equal Economy: Womens Budget Group \(wbg.org.uk\)](https://www.womensbudgetgroup.org.uk) (accessed 21 July 2021).

⁴⁶ A community of support for women who have fled from violence or traffickers, and are pregnant or with a young child and are seeking international protection in the United Kingdom. HBC is committed to being a charity led and managed by women who have lived experience of migration into the United Kingdom: [Happy Baby Community](https://www.happybabycommunity.org.uk) (accessed 21 July 2021).

For Baljit Banga, executive director of Imkaan,⁴⁷ ‘issues and concerns with the Equality Act’ similarly related to a ‘very perfunctory compliance, by local authorities, to the equality impact assessment and public sector equality duty’. This, she said, ‘means that these mechanisms available in the Equality Act are not being completed appropriately – meaning that services are not protected in the local area’. This in turn denies services the protections needed, through failure to fully comply with ‘existing protections like the Equality Act’: para 28, Witness Statement, Case ref: 018 The ‘perfunctory’ approach was attested to by Pragna Patel of Southall Black Sisters (SBS)⁴⁸ too, this in reference to the way Ealing Borough Council addressed it in the context of funding of services. In this instance, the matter went on judicial review:

We felt compelled to bring a legal action against the Council on the basis that it had failed to carry out an equality impact assessment to assess what the withdrawal of funding for a specialist service would mean for vulnerable groups, particularly BME women in the area. The Council had not carried out an equality impact assessment as it is required to do under the public sector equality duty. Eventually it did carry out an equality impact assessment which was more of a tick-box exercise because after having carried it out it concluded that a specialist service was not needed, even though we had made significant representations and submissions setting out the need in great detail: para 9, Witness Statement, Case ref: 023

Ultimately, Ealing Borough Council withdrew its decision, following a two-day hearing in which Southall Black Sisters ‘argued that the Council had breached the equalities duty, particularly the race equality duty and had acted unlawfully in the way the decision was made. A comprehensive judgment was produced by the High Court,⁴⁹ however, this raises questions about the effectiveness of the provision in that a ‘tick-box’ approach is clearly inappropriate, yet launching High Court action, much less run for a two-day hearing to address this, is a matter of financial challenge in itself.⁵⁰ Ms Patel concludes:

What is clear from this case is just how drastically the socio-economic climate has impacted on organisations like ours and how we operate. It also highlights how governance at both the local and central level has failed to adhere to the Equalities legislation. It is only through struggle and the efforts of grassroots organisations that use the law and other avenues to challenge unlawful funding decisions that we have been able to survive: para 12, *ibid*

Alice Fookes, providing a personal statement as a member and trustee of the National Alliance of Women’s Organisations (NAWO)⁵¹ in the United Kingdom, and from her experience as teacher,

⁴⁷ We are the only UK-based, umbrella women’s organisation dedicated to addressing violence against Black and Minoritised women and girls – that is, women who are defined in policy terms as Black and ‘Minority Ethnic’ (BME): [Imkaan](#) (accessed 21 July 2021).

⁴⁸ **Southall Black Sisters**, a not-for-profit, secular and inclusive organisation, was established in 1979 to meet the needs of Black (Asian and African-Caribbean) women. Our aims are to highlight and challenge all forms gender-related violence against women, empower them to gain more control over their lives; live without fear of violence and assert their human rights to justice, equality and freedom: [Southall Black Sisters - Southall Black Sisters](#) (accessed 21 July 2021).

⁴⁹ *R (on the application of Kaur and Shah) v London Borough of Ealing* [2008] EWH 2062 (Admin), [Kaur & Shah, R \(on the application of\) v London Borough of Ealing & Anor \[2008\] EWHC 2062 \(Admin\) \(29 July 2008\) \(bailii.org\)](#) (accessed 21 July 2021). Note – this predated the 2010 ‘austerity’ budget – it happened at the time of the 2008 bank failures consequent economic crisis: [The financial crisis – 10 years on | Bank of England](#) (accessed 8 August 2021).

⁵⁰ Not to overlook the stress of engaging in legal action, the time such matters can take in preparation, and the necessary diversion from directing full engagement of an applicant on the work they are established to do.

⁵¹ **Our Mission:** NAWO is an alliance of organisations and institutions working to make gender equality a reality. **Aims & Objectives:** NAWO outlines its aims and objectives in the Strategic Plan 2015-2020. **Partnerships:** Ensuring

feminist and gender equality advocate, concluded that the Equality Act, along with the Human Rights Act 1998, required 'strengthening and reinforcing'. Enlarging upon this by reference to disability, and upon Janet Veitch and Baljit Banga's concerns as to public sector duty, barrister Catherine Casserley of Cloisters Chambers,⁵² speaking in her personal capacity, acknowledged that the Equality Act, overall, expanded some forms of discrimination available for disabled women and disabled people generally, enabling them to make claims. However, she said, 'there are difficulties with the Equality Act in the protection of disabled women from relevant forms of discrimination'. One of the most significant is that the 'dual protected characteristics', section 14 of the Equality Act not having been brought into force means:

... a disabled woman can bring a claim of discrimination based on the fact that she is a woman and that she has a disability, but not that she is a disabled woman. Disabled women can bring claims and ask the tribunal to make a finding on both characteristics, and there are ways of arguing that a claim is in relation to those dual characteristics and how they interact. However, strictly speaking, section 14 cannot be used, which is very problematic if those addressing disability claims in representing women do not know how to argue this dual reality'.⁵³ para 6, Witness Statement, Case ref: 028

A further disadvantage arising through the failure to bring into force section 14 of the Act is, she said, that those who are subject to the public sector equality duty 'should be looking at the impact on different equality groups of what they do':

However, without section 14 ... it means that when public authorities are looking at the elimination of discrimination, strictly speaking they have only to look at matters in silos and at those protected characteristics in and of themselves. Therefore, in events related to, for example, the pandemic or any significant public authority or governmental event, they do not necessarily have to look at those dual characteristics, and it does mean that people are left behind: para 24, *ibid*

that women's voices are heard nationally and internationally, and that gender is mainstreamed through all government policies: [NAWO – National Alliance of Women's Organisations](#) (accessed 21 July 2021).

⁵² [Cloisters - Barristers Chambers](#) (accessed 21 July 2021).

⁵³ Section 14 provides: 14 Combined discrimination: dual characteristics

(1) A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.

(2) The relevant protected characteristics are— (a) age; (b) disability; (c) gender reassignment; (d) race; (e) religion or belief; (f) sex; (g) sexual orientation.

(3) For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).

(4) But B cannot establish a contravention of this Act by virtue of subsection (1) if, in reliance on another provision of this Act or any other enactment, A shows that A's treatment of B is not direct discrimination because of either or both of the characteristics in the combination.

(5) Subsection (1) does not apply to a combination of characteristics that includes disability in circumstances where, if a claim of direct discrimination because of disability were to be brought, it would come within section 116 (special educational needs).

(6) A Minister of the Crown may by order amend this section so as to—

(a) make further provision about circumstances in which B can, or in which B cannot, establish a contravention of this Act by virtue of subsection (1);

(b) specify other circumstances in which subsection (1) does not apply.

(7) The references to direct discrimination are to a contravention of this Act by virtue of section 13.

Ms Casserley went on to address the ‘dual characteristics’ or ‘intersectionality’ principle in the context of those discriminated against making claims, yet confronting a regime where the provision designed to ensure proper recognition of this – section 14 – being unable to be applied. Noting that disability ‘intersects with characteristics such as race, religion, sexuality, gender, class, and geography, to compound the effects of discrimination and inequality enormously’ she outlined particular ways in which recognition is lacking. One was violence inflicted on the home ground on women with a disability: here, she cited a National Health Service (NHS) report.⁵⁴ Another related to those with an invisible disability, who confront particular difficulties:

... people with ‘invisible’ disabilities, such as learning disabilities and mental health conditions, are empowered by the law to very little extent to access essential services, protection mechanisms, and reasonable adjustments they may require, compared to those with ‘visible’ disabilities. Whilst the law applies to people with invisible disabilities as much as people with non-visible disabilities, the Equality Act itself, a complex piece of legislation, is not accessible. Without that accessibility (regardless of problems with funding) it is extremely difficult for people to enforce and to think that the law is for them: para 11, Witness Statement, Case ref: 028

SUMMATION EQUALITY ACT 2010

As witnesses observed, the Equality Act 2010 was an advance. At the same time, witnesses recognised the Act’s limitations and need for incorporation of new provisions or actioning of provisions already contained within it – such as section 14, the provision covering intersectionality or multiple characteristics of the one individual, the proper implementation of the provision requiring gender impact investigation and statement prior to and with the formulation of policy, and the provision designed to ensure transparency of wage differentials between women and men, so as to expose (and, hopefully, to redress) the gender pay gap.

Prior to the Equality Act 2010, equal opportunity and discrimination legislation comprised the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disability Discrimination Act 1995, each incorporated into the 2010 Act. Other nation states had introduced equal rights, discrimination or anti-discrimination legislation addressing and expanding on the ‘protected characteristics’ included in the 2010 Act also, some 30-40 years before, with statutory bodies (as in the United Kingdom) having the designated task of administering the laws – for example, the United States Equal Employment Opportunity Commission (EEOC) was established in 1965 to implement the 1964 Civil Rights Act in relation to workplace discrimination.⁵⁵ The United Kingdom followed with the Equal Pay Act 1970, specifically to address that question. Other jurisdictions included, for example, age, sex, race, disability, marital status, family responsibilities, pregnancy, breast-feeding, sexual orientation, religion, political belief or affiliation, political activity, industrial belief or affiliation, political activity, irrelevant criminal record, irrelevant medical record, association with a person who has any of the foregoing features.⁵⁶

A most basic concern about the scope of the Equality Act was expressed by witnesses in three specific respects:

⁵⁴ See National Health Service (NHS), <https://www.mhcc.nhs.uk/wp-content/uploads/2017/05/Disability-and-Domestic-Abuse-Risks-Impact-Response-PHE-2015.pdf> (accessed 12 July 2021); also [Microsoft Word - Domestic Abuse Policy 2015 \(shsc.nhs.uk\)](https://www.shsc.nhs.uk/~/media/1/2/3/4/5/6/7/8/9/0/Microsoft-Word-Domestic-Abuse-Policy-2015-shsc.nhs.uk) (accessed 12 July 2021).

⁵⁵ [Overview | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/) (accessed 2 July 2021).

⁵⁶ Anti-Discrimination Act 1998 (Tasmania), [View - Tasmanian Legislation Online](https://www.tas.gov.au/legislation/view+details?act=1998-0001) (accessed 2 July 2021). Note further attributes or identities have been included, however, these were in the original Act and remain.

- The limited scope of the definition of ‘disability’;
- The approach to addressing pregnancy and maternity, and the absence of reference to family responsibilities, as ‘protected characteristics’;
- The failure to action section 14 (‘intersectionality’) insofar as all ‘protected characteristics’ in combination is in issue, with particular reference to ‘age’ ‘protected characteristic’.⁵⁷

In respect to the third aspect, age discrimination, Elizabeth Sclater spoke eloquently on the importance of recognising the impact of age and ageing on women and women’s rights: Witness Statement, Case ref: 001 Age discrimination against women is real and recognised in *Miriam O’Reilly v BBC*⁵⁸ by the Employment Tribunal.⁵⁹ Yet albeit it may (and does) play a significant role in paid employment, it impacts on women in other fields – fields incorporated into the Equality Act, but its intersection with sex needs to be properly recognised – something not accepted in the *O’Reilly case*. Nazmin Akhtar emphasised age, too, together with a panoply of intersecting characteristics, in observing that the implementation of section 14 would be ‘so useful for Muslim women because often ... the discrimination experience is [as a matter of course] a combination of factors including age, ethnicity, gender and faith, and it is difficult to prove that discrimination was based on one factor when it may have been due to a combination ...: para 11, *ibid*

On the second, Joeli Brearley’s evidence was compelling: para 24, Witness Statement, Case ref: 035 – the requirement that pregnancy, for example, or caring for children, appear by the construction of the Act to be obliged to come within the scope of sex as a ‘protected characteristic’ for the purpose of establishing discrimination is, bluntly, short-sighted, although as ‘pregnancy and maternity equality’ is explicitly included in Chapter 3 – ‘Equality of terms’,⁶⁰ this is an advance on the original position vis-à-vis ‘sex’ and the jurisprudence that developed around it last century, when the pregnancy issue eventually was clarified after muddle-headed thinking displayed in a raft of cases coming out of the United States.⁶¹ It was addressed explicitly in Equal Opportunity, Discrimination and Anti-Discrimination Acts to overcome this problem.⁶²

On the first, Catherine Casserley raised this issue with great clarity: paras 6, 11, 24, Witness Statement, Case ref: 028 The requirement that the ‘physical or mental disability’ must be one that ‘has a substantial and long-term adverse effect’ on the person’s ‘ability to carry out normal day-to-day activities’⁶³ has the potential to exclude persons with a disability that may be extraordinarily inhibiting albeit having no ‘long-term adverse effect ...’ Her concern was, too, as to the importance of recognising generally invisible disabilities which, although they would come within the scope of the definition, may not be so readily understood not only by society in general, but by those charged with administration of the legislation and those charged with implementing it through judicial decision-making. The definition, at least, could be addressed by incorporating a provision along the following lines:

⁵⁷ Note that section 14 refers to ‘dual characteristics’ seemingly to limit intersectionality to two protected characteristics at any one time. See further **17. Overarching Matters**, later.

⁵⁸ [Employment Cases Update: O’Reilly v BBC & Anor 2200423/2010 \(ET\)](#) (accessed 2 July 2021).

⁵⁹ [Make a claim to an employment tribunal: Make a claim - GOV.UK \(www.gov.uk\)](#) (accessed 2 August 2021).

⁶⁰ [Equality Act 2010 \(legislation.gov.uk\)](#) (accessed 2 July 2021).

⁶¹ See generally Gillian Thomas, *Because of Sex – One Law, Ten Cases, and Fifty Years that Changed American Women’s Lives at Work*, St Martins Press, New York, NY, USA, 2016, particularly (but not only) *California Federal Savings & Loan Association v Guerra* 479 US 272 (1987), [CALIFORNIA FEDERAL S. & L. ASSN. v. GUERRA | FindLaw](#) (accessed 2 July 2021)

⁶² See for example Anti-Discrimination Act 1977 (NSW) – amended early on to cover this.

⁶³ S. 6(1) Equality Act 2010, [Equality Act 2010 \(legislation.gov.uk\)](#) (accessed 2 July 2021).

disability means any of the following that presently exists, previously existed but no longer exists, may exist in the future, whether or not arising from an illness, disease or injury or from a condition subsisting at birth:

- (a) a total or partial loss of the person's bodily or mental functions;
- (b) total or partial loss of a part of the body;
- (c) the presence in the body of organisms causing or capable of causing disease or illness;
- (d) the malfunction, malformation or disfigurement of a part of a person's body;
- (e) disorder, malformation, malfunction or disfigurement that results in the person learning differently from a person without the disorder, malformation, malfunction or disfigurement;
- (f) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment or that results in disturbed behaviour;
- (g) reliance on a guide-dog, wheelchair or other remedial or therapeutic device; ...⁶⁴

The sexual harassment provision requires revisiting too. The problem with the framing of the provision was raised in relation to similar framing of legislation addressing online abuse. The Equality Act 2010 provision states:

26 Harassment

(1) A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

- (a) A engages in unwanted conduct of a sexual nature, and
- (b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
- (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
- (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- race;
- religion or belief;

⁶⁴ S 3 Anti-Discrimination Act 1998 (Tasmania).

- sex;
- sexual orientation.

An alternative would see removal of the ‘purpose or effect’ framing, which was the subject of critique by witnesses in relation to online conduct:⁶⁵

17. Prohibition of certain conduct and sexual harassment

(1) A person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute [here listing sex, race, disability, pregnancy, etc] in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

(2) A person must not sexually harass another person.

(3) Sexual harassment takes place if a person –

- (a) subjects another person to an unsolicited act of physical contact of a sexual nature; or
- (b) makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person; or
- (c) makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence; or
- (d) makes any unwelcome gesture, action or comment of a sexual nature; or
- (e) engages in conduct of a sexual nature in relation to another person that is offensive to that person –

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

Woman hatred or vilification requires explicit attention as ‘prohibited conduct’ under the Equal Opportunity Act, so that it can be addressed as a civil wrong. Although an action in tort may be framed to include this harm, the provisions of equal opportunity legislation creating a civil wrong provide greater scope than a tortious claim. Consideration could be given to framing a provision along such lines:

19. Inciting hatred

A person, by a public act, must not incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the ground of –

- (a) the race of the person or any member of the group; or
 - (b) any disability of the person or any member of the group; or
 - (c) the sexual orientation or lawful sexual activity of the person or any member of the group;
- or

⁶⁵ [Criminal Justice and Courts Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2015/22/section/33) (accessed 2 July 2021): s 33 (1) is even more restrictive, requiring intention to cause distress: s 33 Disclosing private sexual photographs and films with intent to cause distress (1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made— (a) without the consent of an individual who appears in the photograph or film, and (b) with the intention of causing that individual distress.

- (d) the religious belief or affiliation or religious activity of the person or any member of the group; or
- (e) the gender identity or intersex variations of sex characteristics of the person or any member of the group.⁶⁶

AUSTERITY MEASURES IMPACTING ON WOMEN'S RIGHTS

Austerity measures brought in by the 2010 Conservative-Liberal Democrat Coalition government budget⁶⁷ were said by many witnesses to have had a significant impact upon women and women's services including upon access to justice and differential impact on minoritised women.⁶⁸ Pragna Patel, director of Southall Black Sisters (SBS), reiterated this outcome. Noting 'significant evidence showing how austerity policies have impacted, specifically on women', she went on to add that austerity 'has had a disproportionate impact on BME women's access to services':

Women are more likely to lose employment, and as a result are more likely to be plunged into poverty. They are less able to access jobs due to lack of childcare. However, the area where austerity has had the greatest impact is in relation to access to justice due to cuts in legal aid. Women who are subject to domestic abuse, who need access to the courts in relation to private family matters, have been particularly impacted: para 19, Witness Statement, Case ref: 023

The 'No Recourse to Public Funds' provision impacts here, too.⁶⁹

Rebecca Munro, PhD researcher at the European University Institute, speaking in her personal capacity, confirmed her specialist field of research as focusing on civil society organisations using international human rights mechanisms in an effort to hold governments to account 'for violation of socio-economic rights'. Specifically as to patterns discernible from austerity measures imposed in the United Kingdom from the 2010 Coalition government, she said this:

... suggests that austerity measures in the UK have had a negative impact on women in particular, specifically in the rollout of universal credit creating a one payment system which goes to one family member, reinforcing the male breadwinner model ... In a sense it has also made women more likely to be victims of domestic violence and economic abuse. Benefit sanctions and welfare reforms that have been so far implemented, such as the introduction of the housing benefit cap, have also mainly affected women. Further, my research shows that single mothers have predominantly been pushed into poverty, so it seems austerity measures have had a bigger negative impact on women than on men: paras 2, 3, Witness Statement, Case ref: 014

Nick Newland, giving evidence in his capacity as Policy and Communications Officer for the Associated Country Women of the World, observed that for rural women austerity measures along with Covid 19

⁶⁶ 'Sex' should be explicitly included, albeit the definition of 'sexual orientation' in the Anti-Discrimination Act 1998 (Tasmanian) enabled the provision to be applied to 'sex'.

⁶⁷ [Spending Review 2010 - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 2 July 2021); *R (On the application of the Fawcett Society) v Chancellor of the Exchequer* [2010] EWJC 3522 (Admin); and see for example [Was austerity necessary in 2010? - Economics Help](#) (accessed 9 July 2021); [Austerity Generation FINAL.pdf \(cpag.org.uk\)](#) (accessed 9 July 2021); Isabel Ortiz and Matthew Cummins, 'The Austerity Decade 2010-20', 17 December 2020, [The Austerity Decade 2010-20 | Social Policy and Society | Cambridge Core](#) (accessed 2 July 2021); [Budget 2010: Pain now, more pain later in austerity plan | Budget | The Guardian](#) (accessed 2 July 2021); [BBC News - Spending Review 2010: Key points at-a-glance](#) (accessed 2 July 2021).

⁶⁸ See **3. Women's access to justice**, later.

⁶⁹ Further on cuts to legal aid and 'No Recourse to Public Funds', see later.

‘have made access to vital services more difficult’. He noted problems of access to health services including mental and reproductive health and family planning’, as well as ‘lower rates of access to higher education for rural students, and a vast digital skill divide between women and men, which can be assumed to disproportionately impact rural women’s life outcomes’: paras 3, 4, Witness Statement, Case ref: 011

Esuantsiwa Jane Goldsmith, writer, strategist facilitator and activist working in the not-for-profit sector and speaking in her personal capacity, confirmed the negative impact of budget cuts (otherwise ‘austerity measures’) in promoting ever more serious ‘underfunding, particularly of specialist services led by and for women’. This, she said, inflated the existing inadequacy of services and domestic legislation for Black and minoritised women, too, with services ‘not currently designed to empower women and meet their needs’. Further, ‘sometimes services are not only lacking, but the approach of those that do exist can be detrimental to the health and wellbeing of the women they are there to serve’:

There is serious underfunding, particularly of specialist services led by and for women. I have worked with Latin American groups, Bangladeshi women, and African women’s groups, many of them getting partnership funding through the EU. That has gone, after Brexit, leaving many organisations collapsing through lack of funding. This underfunding particularly affects women’s services around violence, with level of violence against women having risen and levels of rape convictions gone down, particularly during the COVID-19 pandemic’: paras 22, 25, Witness Statement, Case ref: 036

Austerity measures have served to exacerbate already existing disadvantages. Mr Newland pointed out that distance and geography have resonance, with differential impact on ageing, thus:

In many cases, investment in safe and reliable public transport for rural communities and non-patronising training in digital skills would improve quality of life. Older rural women face these issues and more, with key concerns including with the lack of access to high quality and affordable care provision, geographical isolation in older age increasing the risk of loneliness, and adjustment of the pension age for women leaving them vulnerable to financial difficulty: para 5, *ibid*

Ageing was an issue raised generally and in the context of austerity measures by Elizabeth Sclater, OBE, General Secretary for Older Women’s Network Europe (OWNE).⁷⁰ She attested that austerity ‘has impacted older people generally, but particularly around the cuts to local government services’. She said that although the impact was on ‘older people’, and that impact ‘huge’, the consequence of more older women living at home, ‘on their own, isolated’, has meant that they have been particularly badly hurt, with ‘their request for being able to get help at home (for home care) having had to be turned down’, with support from neighbours if at all, ‘with minimal communication from Governmental departments or medical services’: paras 10, 20, Witness Statement, Case Ref: 001

Cuts to services have hit all women’s resource provision, witnesses said, yet Black and minoritised women’s services ‘have faced challenges on multiple levels’, explained Pragna Patel for SBS. These services ‘are so critical for women because they are best placed to understand where the gaps in protections are and what the emerging forms of violence and abuse are’. Furthermore, they ‘understand the particular needs of a community and the intra-community barriers that need to be addressed [and] are well placed to identify further risks in a way that outside services, both within the wider third sector and the statutory sector, cannot do ...:

⁷⁰ See Older Women’s Network Europe and National Association of Women’s Organisations, *Older Women’s Rights in the United Kingdom*, Submitted to the 55th Session of the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women, June 2011, [EQShadowReport2012rF2.indd \(ohchr.org\)](#) (accessed 1 August 2021).

There is a wider economic context of austerity which has had a significant impact on these services. Many have been decimated, they have closed, or they have been threatened with closure and that's largely because funding regimes have moved towards commissioning structures that favour large, corporatised bodies. These structures favour the provision of generic services over smaller ones that provide a tailored response to specific cohorts of women.

The austerity measures in combination with changes in funding regimes and the move towards commissioning structures have had a devastating impact on the existence of, not just specialist BME VAWG services, but generally specialist BME services. For a long time, we have argued for ring-fenced funding for these services, which have shrunk considerably and are still in a precarious state, but we find that austerity measures, combined with commissioning structures, are continuing unchecked. This is despite concerns being routinely raised in various official inquiries and submissions on a range of issues:⁷¹ paras 6-7, Witness Statement, Case ref: 023

SUMMATION

AUSTERITY MEASURES IMPACTING ON WOMEN'S RIGHTS

The failure to conduct any or any effective equality impact assessment in constructing the 2010 budget was taken on judicial review by the Fawcett Society, to no avail, despite the force of the argument.⁷² The budget, the budget process, and the application for judicial review confirm the complaint, voiced by so many witnesses, as to the failure of government to honour the public sector duty set out in the Equality Act 2010. The basis upon which the application for judicial review was framed, an outcome of the understandings of women's organisations throughout the United Kingdom, has been borne out in the years since 2010. The evidence before the Tribunal confirms this categorically.

The admonition to government is – first, apply the Equality Act provision in this regard; secondly, cease using the euphemism 'austerity' and apply the more accurate description of 'cuts'; and thirdly, begin to undo the damage done by at least reinstating the funds and resources stripped from women's services and the local government grant.⁷³ As local government is bound to apply statutory requirements set by Parliament and government policy, it is both rational and reasonable for central government to provide the funding.

Additionally, gender budgeting should be incorporated into government budget setting for all government departments and authorities, so as to ensure that some modicum of relevance is incorporated into budgets in relation to the need for women's services, and so that budgets are not set

⁷¹ Ms Patel referenced here the action (noted also elsewhere in this Report) taken by Southall Black Sisters in challenging through judicial review the move towards a commissioning structure 'that favoured the provision of one generic service for domestic abuse in the borough of Ealing Council'. The Council refused to accept the approach suggested by Southall Black Sisters, namely to consider funding two services – one generic services and one specialist. When the Council refused and withdrew SBS' funding, putting it 'into a pot to fund a generic service' SBS instituted judicial review. Ealing Council withdraw its decision, however, a judgment was written addressing the issues: *R (on the application of Kaur and Shah) v London Borough of Ealing* [2008] EWH 2062 (Admin), [Kaur & Shah, R \(on the application of\) v London Borough of Ealing & Anor \[2008\] EWHC 2062 \(Admin\) \(29 July 2008\) \(bailii.org\)](#) (accessed 21 July 2021).

⁷² [Spending Review 2010 - GOV.UK \(www.gov.uk\)](#) (accessed 2 July 2021); *R (On the application of the Fawcett Society) v Chancellor of the Exchequer* [2010] EWJC 3522 (Admin).

⁷³ For the history of the local government grant funding, see [Research Paper \(parliament.uk\)](#) (accessed 2 August 2021); [2010 to 2015 government policy: Council Tax reform - GOV.UK \(www.gov.uk\)](#) (accessed 2 August 2021); [Local government funding in England | The Institute for Government](#) (accessed 2 August 2021).

in ignorance of inequality and disadvantage which, if they are ignored, are compounded.⁷⁴ To achieve this outcome, consultation with the Women's Budget Group should be instituted as an ongoing practice, with Women's Budget group experts and expertise built into the budget process.⁷⁵ As Janet G. Stotsky says:⁷⁶

Gender budgeting is a strategy to achieve equality between women and men by focusing on how public resources are collected and spent. Gender budgeting is an approach to budgeting that can improve it, when fiscal policies and administrative procedures are structured to address gender inequality ... When properly done, one can say that gender budgeting is good budgeting.

BREXIT – WITHDRAWAL FROM THE EUROPEAN UNION (EU)

The United Kingdom withdrew from the European Union (EU) by the European Union (Withdrawal) Act 2018.⁷⁷ The lack of women's voices at all levels of government and policy making, not the least in the context of Brexit, was voiced by witnesses in their written statements and throughout the hearing.⁷⁸ That at the time of Brexit negotiations, a woman held the office of Prime Minister did not, sadly, mean that the fundamental requirement for attention paid to women and women's rights in the context, make any difference.

Speaking on behalf of her organisation, Widows for Peace through Democracy,⁷⁹ Margaret Owen, OBE (also a patron of Peace in Kurdistan and member of the UK Women's Civil Society Alliance),⁸⁰ drew attention to the paucity of the process in its failure to address women's rights, vital to the question of withdrawal, its management and its outcome:

Representation of women in decision-making and leadership is vital for the advancement of women's rights. During Brexit, both the committee on the Withdrawal Agreement and the Political Declaration failed to have any meaningful representation of women or address the impact of women's rights in the UK, and the impact on women will be significant. The EU provided us with equal pay, job sharing and funding for women's NGOs: para 25, Witness Statement, Case ref: 025

The deficit in decision-making through lack of women's involvement in the process or women's voices being heard was referred to by other witnesses. Rachel Powell, speaking in her capacity as the Women's Sector Lobbyist with the Women's Resource and Development Agency (WRDA), and referring to

⁷⁴ [Gender budgeting | European Institute for Gender Equality \(europa.eu\)](#) (accessed 2 August 2021);

⁷⁵ [Womens Budget Group \(wbg.org.uk\)](#) (accessed 2 August 2021).

⁷⁶ [Gender Budgeting; Janet G. Stotsky; IMF Working Paper 06/232; October 1, 2006](#) (accessed 2 August 2021).

⁷⁷ [European Union \(Withdrawal\) Act 2018 \(legislation.gov.uk\)](#) (accessed 12 July 2021).

⁷⁸ With regard to Brexit and Northern Ireland in particular, in light of the United Kingdom's commitment not only to CEDAW but to, for example, Security Council Resolution 1325, it is clear that 'honouring in the breach' appears to be, sadly, the order of the day. On the obligation to involve women in pre, current and post-conflict situations see [Security Council Resolution 1325 - UNSCR](#) (accessed 21 July 2021); [Security Council Resolution 1325 | PeaceWomen](#) (accessed 21 July 2021); also **8. Women and peace and security**, later.

⁷⁹ Widows for Peace through Democracy (WPD), founded by Margaret Owen OBE, works to make sure widows of all ages, irrespective of religion, ethnicity, caste, age or nationality, are protected from violence, marginalisation and can enjoy their full human rights: [Widows for Peace through Democracy](#) (accessed 21 July 2021).

⁸⁰ Civil Society Alliance: [Welcome to Civil Society Alliance - Civil Society Alliance, UK](#) (accessed 21 July 2021); [UK Civil Society Women's Alliance: The impact of the Covid-19 pandemic on older women | Global Platform \(corona-older.com\)](#) (accessed 21 July 2021); [CSW Alliance – NAWO](#) (accessed 21 July 2021); [Peace in Kurdistan – Campaign for a political solution to the Kurdish question \(peaceinkurdistancampaign.com\)](#) (accessed 21 July 2021).

research and reports of the Women's Policy Group of which the WRDA is secretariat and which she chairs, commented upon Brexit, Northern Ireland, and women:

Owing to events in Northern Ireland, including the collapse of the executive from 2017-2020, Northern Irish women's voices have not been heard sufficiently in the Brexit negotiations taking place from 2016-2020. Brexit raises a number of concerns for Northern Irishwomen's rights, including the potential to lose EU safeguards on socioeconomic rights such as protection from workplace discrimination and maternity leave guarantees, as well as NI-specific matters such as cross-border child maintenance payments, victims or perpetrators of domestic violence fleeing cross-border, and rights protections for frontier workers. While much attention has been given to the implications of Brexit on the Good Friday Agreement and peace in Northern Ireland (which can be reflected as a factor in the recent riots across Northern Ireland, women must not be forgotten as a group, who stand to be disproportionately affected: para 6, Witness Statement, Case ref: 008

In his personal capacity and professional capacity as a Partner in Phoenix Law in Belfast, Darragh Mackin spoke of Brexit and Northern Ireland, too. Concluding it would be a 'very risky learning curve' he expressed this view in the context of 'what the impact will be in terms of protections for women in the UK' and thence for the women of Northern Ireland:

The EU has undoubtedly ensured strong safeguards for women's rights in Northern Ireland and across the UK over the years. EU law was fundamental on issues such as maternity leave. There remains a question as to what aspects of those protections will be ensured in UK domestic law ... The proof lies in what we have seen in the Northern Ireland abortion context, whereby we had to point to CEDAW (international law) to give women the requisite protections: para 8, Witness Statement, Case ref: 025

He reflected further on the position vis-à-vis the European Convention on Human Rights (ECHR),⁸¹ for 'going hand in glove' with Brexit is 'the current UK government's drive to repeal' the Convention.⁸² This added to 'the warning signs insistently pointing towards dilution of protection of women's rights', and for women of Northern Ireland, facing this together with the pandemic, additional complications arise 'in terms of how the Northern Ireland protocol marries up':

... these are times in which we should be trying to enhance or increase protections for women, not deplete them ... It would be naïve not to see the potential for further discrimination against women in the impacts that the pandemic may have, especially coupled with Brexit: para 9, ibid

Summing up, Jonna Monaghan, project coordinator for Northern Ireland Women's European Platform (NIWEP),⁸³ speaking on behalf of the organisation, said it was 'too soon say for certain how rights of

⁸¹ ECHR, https://www.echr.coe.int/Documents/Convention_ENG.pdf (accessed 21 July 2021).

⁸² That is, exit the United Kingdom from any adherence to the ECHR.

⁸³ The core objective of Northern Ireland Women's European Platform (NIWEP) is to give women and girls in Northern Ireland a voice at the national and international level. The work of NIWEP aims in particular to make sure the views and priorities of women in Northern Ireland are heard within the review mechanisms of international human rights treaties and international networks. NIWEP represents women's organisations in Northern Ireland in the European Women's Lobby, as part of the UK Joint Committee on Women. NIWEP also represents Northern Ireland at the United Nations, as an NGO with Special Consultative Status with the Economic and Social Council of the United Nations since 1999. Within Northern Ireland, NIWEP's core objective is to build capacity and share international learning on women's rights and human rights with a view to strengthening women's effective participation in public life and policy making. **Aims and Objectives:** NIWEP exists to promote any charitable purpose to benefit women in Northern Ireland, through a number of mechanisms including: provision of a forum

women in Northern Ireland will be affected by the UK leaving the European Union', referring to concerns outlined in the Shadow CEDAW Report and the concluding observations of the CEDAW Committee, Brexit being one of the issues of which the CEDAW Committee 'became aware because the four nations highlighted it'. She continued:

The concerns remain the same, the rights of people particularly in the border regions. Currently, it is about cross border workers, it is not entirely clear what the rights of people are, and rights may differ. There would be people who are EU citizens living on one side of the border, working on the other – it is unclear how that would work. There are practical issues relating to access to jobs and pensions particularly in the border regions. It is quite common that people live on one side of the border and working on the other. Their pay and their pension accrue in the jurisdiction in which they are working, how will that play out in the future? There are examples of people not being able to get mortgages if, for example, they live in Northern Ireland but work in the Republic of Ireland. They may not be able to get a mortgage for a property even in Northern Ireland because of concerns from banks. A specific issue is that services are not included in the trade deal, so what sort of economic impact will that have? That is in addition to concerns of how COVID will impact the economy, a concern for Northern Ireland: para 11, Witness Statement, Case ref: 003

She confirmed that every issue is pertinent to the position of women, and the differential impact and uncertainty cannot be ignored.

Evidence of the rise of racist epithets and actions consequent upon Brexit and the debates leading up to and following it was all encompassing, and alluded to by witnesses. Rosie Lewis of the Angelou Centre in Newcastle said Brexit had 'disproportionately affected women in terms of escalating hate crime against women of colour and accepted forms of socio-economic exclusions of Black and minoritised women: para 12, Witness Statement, Case ref: 024 Baljit Banga, executive director at Imkaan, speaking on behalf of the organisation, raised the issue of responsibility in respect of hate crime, particularly as initiated or exacerbated by Brexit. In this respect, she said, much more 'needs to be done to protect immigrant women' for '... we see, especially after the Brexit referendum, a really hostile environment, a xenophobic environment, that really affects the rights of women'. Here, Ms Banga referred to the report published by the Oxford Human Rights Hub, *The Impact of Brexit on Equality Rights*.⁸⁴ As she observed, without a constitutional bill of rights, the right to equality in the United Kingdom is 'governed entirely by parliamentary legislation':

Currently this is remedied by the EU law, but we are out of the EU now. So, this will affect the principle of equal treatment as a fundamental norm. Without the binding EU law, there is no obstacle to prevent parliament repealing or undermining the right to equality. This is why the situation in the UK, regarding rights and protections especially of migrant women, is more at risk now than it had been previously: para 37, Witness Statement, Case ref: 018

Chair of the UK Women's Budget Group and of the Happy Baby Community, freelance worker Janet Veitch, OBE, alluded to the impact of Brexit on minorities, referencing 'a taste of how Brexit will affect ethnic minorities and immigrant women living in the UK' through the 'spike in hate crimes towards

for women's organisations; promotion of mechanisms to ensure that the views and interests of women in Northern Ireland are heard and represented particularly in regard to national, European and international policy; affiliation and cooperation with collaborative organisations in England, Scotland and Wales as well as Ireland; dissemination and collection of information, particularly that relevant to Europe; carrying out or assisting with research and surveys, and planning of collective action on specified issues: [Northern Ireland Women's European Platform | \(niwep.org\)](https://niwep.org) (accessed 21 July 2021).

⁸⁴ [The-Impact-of-Brexit-on-Equality-Rights.pdf \(equallyours.org.uk\)](https://equallyours.org.uk) (accessed 2 August 2021); [Oxford Human Rights Hub: the Impact of Brexit on Equality Law | Equally Ours](https://oxfordhumanrights.org.uk) (accessed 2 August 2021).

immigrants, [with] some of the rhetoric before the [Brexit] referendum being in opposition to the free movement of people, ... one of the key pillars of the EU':

... part of the drive for Brexit was some people's desire to reduce the number of migrants. [Simultaneously] we have had a government talking about creating a 'hostile environment' for illegal immigrants ... their excuse being that anyone here illegally does not deserve a supportive climate. But once you start labelling any group of people, particularly migrants and people already not seen as 'belonging' ... and making it clear that treating people badly is acceptable, then you [begin] condoning ill treatment generally: para 7, Witness Statement, Case ref: 002

Relating her experience in travelling around the United Kingdom almost immediately after the 7/7 bombings,⁸⁵ speaking with women in the Muslim community about their priorities, 'women said repeatedly that every time there was a bombing or terror related crime, the media highlighted it as Muslim extremism'. This in turn translated across the country with fears for elderly relatives and children suffering physical or oral attacks in the street or at school. Thus, she said, 'the Brexit discourse reinforces that sense of xenophobia [or] certainly resistance to people who do not look like the mainstream population, people seen to be visibly different [with] minoritised groups always falling into that category, gypsies and travellers (the most disadvantaged group in the UK) and so on': paras 8-9, *ibid*

Calling upon her background in the civil service, Ms Veitch went on to recall 'how much the UK resisted accepting and bringing into UK law many of the rights EU members were required to [extend] to workers, for example. This returns us to the question whether departure from the EU will cause a halt in progression'. Here, she mentioned compulsory holiday pay, equal pay for part-time work as coming in under the Blair government in 1997/1998, explaining that the Conservative government pre-dating the Blair Labour government, led by John Major and before him Margaret Thatcher, 'had strongly resisted giving these workers employment rights'. This, she added, continued to be the approach of the current government, 'so that all the time [the UK] has been a member we might argue that we have been a dead weight holding back the EU from creating stronger workers' rights, and rights in gender equality'. She fears the UK is 'unlikely to depart from that', despite its being 'historically true that some of the rights' we have had were there before EU membership'. As an example, she cited the Equal Pay Act 1970,⁸⁶ 'possibly stronger than what applied to the EU at the time, but since then [the United Kingdom has] developed a very long track record in trying to argue that any strengthening of the rights of workers (such as the minimum wage) is a drag on the market and the operation of the free market and therefore a drag on economic growth ... I think that will continue, and the whole point of Brexit is to support a free and liberal market, with minimal taxation'.⁸⁷ The likelihood that 'the UK will be a less

⁸⁵ Bombings in London of a tube-train on the underground and a double-decker bus in a London street on 7 July 2005: [7/7 London bombings: What happened on 7 July 2005? - CBBC Newsround](#) (accessed 12 July 2021); [7 July London bombings: What happened that day? - BBC News](#) (accessed 12 July 2021).

⁸⁶ [Equal Pay Act 1970 \(legislation.gov.uk\)](#) (accessed 12 July 2021).

⁸⁷ The contention that an EU tax directive was an impetus for Brexit has been asserted and contested, see: [Brexit: Claims about EU tax rules fact-checked - BBC News](#) (accessed 21 July 2021). The directive relates to publication by multinationals and their subsidiaries with annual revenues of above EUR 750m, being active in more than one country, to publish and make accessible the amount of taxes they pay in each member state, with the information required to be made available on the internet, using a common template, and in machine-readable format. The headline to the EU release of information outlining the directive reads: '**Legislators sealed a deal obliging multinationals to publicly declare what taxes they pay in each EU country, overcoming five years of foot-dragging by some governments.**' The directive provides further that to, amongst other matters, increase transparency, data will be required to be broken down into specific items, including the nature of the company's activities, number of full-time employees, amount of profit or loss before income tax, amount of accumulated and paid income tax and accumulated earnings. Further, methods or schemes to avoid reporting and transparency are addressed, so that subsidiaries or branches falling below the revenue threshold will be required to report if

regulated economy sitting outside the EU and able to undercut them and compete against them' was a principal issue, for this would be detrimental to workers' rights and particularly to women: paras 17-18, *ibid*

Dr Jennifer Cassidy of Oxford University, speaking in her personal capacity, focused on the potential for 'poor economic growth at best or at worst deep recession' and the consequences for women, linked with the austerity measures already operative:

... we know from the last recession, that women were hit harder than men. If austerity has told us anything it is that when money is tight, it is women, particularly ethnic minority women, who suffer the most. Linked to this is the removal of financial support for women's rights in Northern Ireland. A sizeable portion for funding of women's services comes from the EU, and will cease after the Brexit deal ... The impact on women's rights due to Brexit, and its impending implications for British society, continue to remain side-lined on every level of the debate ... Analysis by the Women's Budget Group is showing 1,000,000 women's jobs at risk, even with Theresa May's Brexit deal, let alone a no Brexit deal: para 19, Witness Statement, Case ref: 021

As to job rights, she noted the need to have 'legislation protecting women and worker's rights ... reinscribed into domestic law', referring particularly to guaranteed rights in the European Union to '... equal pay, paternity pay paternity leave and workplaces being safe from harassment': para 19, *ibid*

Similarly focusing on issues arising in terms of industrial rights, Cherie Blair, CBE, QC, chair of Omnia Strategy⁸⁸ and the Cherie Blair Foundation for Women,⁸⁹ in her personal capacity observed that in looking toward the future, 'the UK having decided to leave the EU in order to set its own standards, it is now considering whether certain EU regulations will be reviewed, such as the Working Time Directive'.⁹⁰ This, she said, '... is something that has been very important for women' in guaranteeing workers a working week of no longer than 48 hours, the right to accrue annual leave on hours worked overtime, and the right to adequate rest breaks'. She added a hope that this desire to set independent standards for the United Kingdom 'is to make the rights stronger,' but said that of this she was 'not entirely confident': para 19, Witness Statement, Case ref: 027 This was consistent with concerns expressed in January 2021 by the Institute of Employment Rights.⁹¹

Another perspective on the effect of Brexit on women was brought to the Tribunal by Alice Fookes, part-time English teacher in adult education, providing her personal statement in evidence as a member and Trustee of the National Alliance of Women's Organisations (NAWO) in the United Kingdom, and speaking also from her expertise and experience as a teacher, feminist and advocate for gender equality. She noted a negative impact 'because the market for jobs will shrink at least in the short to medium term', an added factor being that the 'process of applying for jobs across Europe is now far more difficult', and loss of women's funding from EU sources would add to cuts to benefits and services

deemed to exist solely to help the company avoid reporting requirements. The report states that some provisions allow room for manoeuvre for temporary exemption of multinationals from some reporting requirements, but the temporary measures are nevertheless circumscribed strongly. It is reported that some MEPs wanted stronger provisions to tackle profit shifting to non-EU tax havens, yet the new rules will still shed some light on taxes being lost to tax havens. This and further information appears at: [EU lawmakers strike milestone deal for corporate tax transparency | News | European Parliament \(europa.eu\)](#) (accessed 12 July 2021). All this does not detract from the witness' concern as to the 'free market' approach and the detrimental impact on industrial rights generally and particularly for women workers, and for women's rights generally.

⁸⁸ [Omnia Strategy LLP](#) (accessed 2 August 2021).

⁸⁹ See for example [Cherie Blair Foundation for Women ExxonMobil Foundation Road to Growth Programme 2021 for Women Entrepreneurs in Nigeria.-Apply Now - Australia Information Portal \(australiaminds.com\)](#) (accessed 2 August 2021).

⁹⁰ [Maximum weekly working hours - GOV.UK \(www.gov.uk\)](#) (accessed 12 July 2021).

⁹¹ [Leak reveals plans to abolish Working Time Directive - IER](#) (accessed 22 January 2021).

already suffered. Here, austerity and the pandemic were factors, too, ‘having changed the playing field for women and girls’ with long-term consequences. Atop this, however, the consequence of the United Kingdom now being a lone voice in the international arena, rather than having the strong platform of the EU from which to speak, has significant implications. Brexit, she said, ‘... has resulted in a loss of safe platforms for women’s voices to speak out and be heard, particularly the wider, bigger, safe spaces where women can speak out as a group or block, for example, at the UN Commission on the Status of Women (CSW),⁹² where British women pre-Brexit shared the European block platform’: paras 4-5, Witness Statement, Case ref: 037

Brexit has, too, ‘meant the loss [or potential loss] of protection of legal instruments such as the ECHR⁹³ containing various protections for women, and directives such as the Pregnant Women’s Directive⁹⁴ and the Work Life Balance Directive,⁹⁵ as well as European citizenship and free movement rights’ (although the Work Life Balance Directive is said to come into effect after the United Kingdom leaves the EU):⁹⁶ para 60, *ibid*

Kevin Hyland, OBE, speaking in his capacity as a representative of the Santa Marta Group,⁹⁷ referred to the consequences confronting the United Kingdom in light of leaving the EU, in regard to the government’s civil and criminal justice and human trafficking responsibilities:

... the UK faces greater difficulties in cooperating internationally to tackle human trafficking, namely in losing membership of Eurojust and Europol. Establishing bilateral agreements with our former key partners, such as Poland, Romania and Lithuania, is key to continuing to fight trafficking in Europe and to mitigate the impact of losing access to EU mechanisms such as the aforementioned databases, and the limitations of having request-only access, as well as other tools such as the European Arrest Warrant: para 6, Witness Statement, Case ref: 038

This has multiple implications for women’s safety. Women and girls are recognised as the most affected group where trafficking is in issue, whether sex trafficking or domestic labour trafficking, and there is no indication that women and girls are not subjected to trafficking for labour generally.⁹⁸ Furthermore,

⁹² The United Nations Commission on the Status of Women has been held annually since 1946, taking place ordinarily at UN headquarters in New York. Country delegations conduct the official business, whilst women from around the world participate in parallel events as delegates from ECOSOC status NGOs – for example, International Alliance of Women (IAW), WILPF (Women’s International League for Peace and Freedom), National Council of Women (NSW) – see: [Commission on the Status of Women | UN Women – Headquarters](#) (accessed 21 July 2021); [NGO participation | Commission on the Status of Women | UN Women – Headquarters](#) (accessed 21 July 2021).

⁹³ [European Convention on Human Rights \(coe.int\)](#) (accessed 21 July 2021).

⁹⁴ [Directive 92/85/EEC - pregnant workers - Safety and health at work - EU-OSHA \(europa.eu\)](#) (accessed 21 July 2021); [Women’s Rights - The risks of Brexit | TUC](#) (accessed 21 July 2021); [Microsoft Word - FINAL women workers and EU rs 2.docx \(tuc.org.uk\)](#) (accessed 21 July 2021); Roberta Guerrina and Annick Masselot, ‘Walking into the Footprint of EU Law ...’, online CUP, 9 January 2018, [Walking into the Footprint of EU Law: Unpacking the Gendered Consequences of Brexit | Social Policy and Society | Cambridge Core](#) (accessed 21 July 2021).

⁹⁵ [Brexit and workers’ rights | Insights | Bishop Fleming](#) (accessed 21 July 2021); [What is the EU’s Work-life Balance Directive? - Alexander JLO - A Highly Respected Firm of London Solicitors \(london-law.co.uk\)](#) (accessed 21 July 2021).

⁹⁶ [Workers' rights to be protected in UK law - GOV.UK \(www.gov.uk\)](#) (accessed 21 July 2021).

⁹⁷ [Santa Marta Group - Preventing Human Trafficking and Modern Slavery](#) (accessed 21 July 2021); [Catholic Bishops Conference of England and Wales \(cbcew.org.uk\)](#) (accessed 21 July 2021); [Santa Marta Group - Combating Human Trafficking](#) (accessed 21 July 2021).

⁹⁸ [Trafficking in women and girls: Report of the Secretary-General \(2020\) | Digital library: Publications | UN Women – Headquarters](#) (accessed 21 July 2021); [Trafficking of Women and Girls: an issue of international and state security | LSE Women, Peace and Security blog](#) (accessed 21 July 2021); Deborah L. Hume & Nancy M. Sidun (2017) Human Trafficking of Women and Girls: Characteristics, Commonalities, and Complexities, *Women & Therapy*, 40:1-2, 7-11, DOI: 10.1080/02703149.2016.120590, [Human Trafficking of Women and Girls: Characteristics, Commonalities, and Complexities \(tandfonline.com\)](#) (accessed 21 July 2021).

crimes of violence against women, already poorly addressed by the criminal justice system,⁹⁹ will be less easily pursued where involving EU defendants.

Associated with this is the issue raised by project co-ordinator Jonna Monaghan, speaking on behalf of her organisation – the Northern Ireland Women’s European Platform (NIWEP) in relation to European Protection Orders (EPOs).¹⁰⁰ These Orders are designed to ensure inter-state coverage for women moving between the nation states of the European Union, where a woman has a protection measure issued by one state, and moves to another, to ensure continued protection despite being out of the jurisdiction wherein the Order was issued. Ms Monaghan observed that women in Northern Ireland who are subjected to ‘domestic abuse and gender-based violence’ suffer particularly disadvantage by loss of this mechanism:

... whilst significant across the UK, [the EPO has] specific implications in Northern Ireland [which] are potentially greater because in some cases you only need to move half a mile and you are in a different jurisdiction. The domestic violence charities have quite significant concerns around that ...’: para 12, Witness Statement, Case ref: 003

Her misgivings were echoed in the evidence of Janet Veitch, OBE, chair of the UK Women’s Budget Group and of the Happy Baby Community, who alluded to the importance of the European Protection Order along the Victims’ Rights Directive¹⁰¹ which is designed to establish minimum standards on rights, support and protection of victim/survivors of crime: para 13, Witness Statement, Case ref: 002

Summing up, Dr Rachel Minto, lecturer in Politics at the University of Cardiff and speaking in a personal capacity, reflected on the benefits accruing to the United Kingdom as a member of the European Union, ‘not only from legislative frameworks supporting gender equality (the stands often exceeded in the UK but nonetheless providing an important safety net), but from EU funding’. This, she said, ‘benefited a

⁹⁹ See for example [Rape-inspection-2019-1.pdf \(justiceinspectorates.gov.uk\)](#) (accessed 21 July 2021); [Too few rape allegations end in prosecution \(justiceinspectorates.gov.uk\)](#) (accessed 21 July 2021); [Police and CPS in rape case blame game - report - BBC News](#) (accessed 8 August 2021); [A joint thematic inspection of the police and Crown Prosecution Service’s response to rape – Phase one: From report to police or CPS decision to take no further action - HMICFRS \(justiceinspectorates.gov.uk\)](#) (accessed 16 July 2021); [A joint thematic inspection of the police and Crown Prosecution Service’s response to rape – Phase one: From report to police or CPS decision to take no further action - HMICFRS \(justiceinspectorates.gov.uk\)](#) (accessed 16 July 2021). Note - numerous references could be provided here, and see further **4. Gender-based violence against women**, later.

¹⁰⁰ Under Directive 2011/99/EU the European Protection Order (EPO), a mechanism for the mutual recognition of protection measures of victims of crime, was required to be transposed into the national legislation of member states by 11 January 2015. An EU report documenting and analysing use of EPOs notes the estimate that ‘in 2010 over 100,000 women residing in the EU were covered by protection measures related to gender-based violence, ... many of whom probably travel/move/commute across the EU on a regular and/or occasional basis: [EPRS_STU\(2017\)603272_EN.pdf \(europa.eu\)](#) (accessed 16 August 2021). See also [Violence against women: an EU-wide survey. Main results report | European Union Agency for Fundamental Rights \(europa.eu\)](#) (accessed 16 August 2021).

¹⁰¹ The Directive seeks to ensure appropriate information, support and protection are provided to all victim/survivors and they are able to participate in criminal proceedings. The Directive provides for recognition and treatment of victim/survivors ‘in a respectful, sensitive, tailored, professional and non-discriminatory manner by all actors coming into contact with them’. Further, ‘special attention should be paid to victims with specific needs in view of protecting them from secondary victimisation, retaliation and intimidation’ as well as providing them with ‘access to specialised support services’. Where the victim/survivor is a child, ‘the child’s best interest shall be the primary consideration’. Also, the Directive applies to all victim/survivors ‘without discrimination, independently of their residence status [and] is applicable to all criminal proceedings taking place in an EU Member State, independently of when and where the crime took place’. It provides victim/survivors with ‘a right to information, a right to understand and to be understood, a right to access support and protection in accordance with their individual needs, as well as with a set of procedural rights’: [EUR-Lex - 52020DC0188 - EN - EUR-Lex \(europa.eu\)](#) (accessed 16 August 2021).

range of “radical”/more progressive equality projects such as the Women’s Workshop in South Wales in the 1980s, as well as norms frameworks and membership of European civil society networks, which bolstered the advocacy potential and insights of UK-based organisations across the nations of the UK’: para 4, Witness Statement, Case ref: 022

Exiting the European Union means that the United Kingdom government must recognise the consequent regional funding issues and their impact on gender equality initiatives. This ‘should be taken into account’, she said, ‘as well as ensuring that in the event of reduced public spending, budgeting is planned with a gendered lens’ particularly in light of ‘the heavily gendered implications of spending cuts in the UK through the impact of austerity’. This being true, and the United Kingdom having ‘made the decision not to pursue dynamic alignment with the EU on issues such as employment standards’:

... there are five key issues that Wales and the UK should take into account not only to mitigate the potentially harmful impacts of Brexit on gender equality, but to ensure the UK will continue to progress and work towards gender equality outside of the EU. These key objectives, identified and highlighted by the Women in Europe (Wales) Network, comprise legislation, funding for social projects, social inclusion for all, access for civil society organisations to European networks, and representation of women decision-making, that together promote gender equality: para 5, *ibid*

SUMMATION

BREXIT – WITHDRAWAL FROM THE EUROPEAN UNION (EU)

Notwithstanding that the Prime Minister at the time of Brexit was a woman, with some women members of cabinet, of the outer ministry, and of the Conservative (governing party) members of Parliament as whole,¹⁰² many witnesses expressed concerns as to the failure of women and girls’ interests to be taken into account in the formulation of policy and implementation of Brexit and impact of Brexit on women’s rights in particular and human rights generally. Most particularly at this stage, witnesses voiced concerns, doubts and apprehensions, clearly articulating whether this could lead to a downgrading of measures introduced to promote them. That a woman was at the time Prime Minister did not and could not overcome this: one female voice, whatever level of office, or even a very few in cabinet,¹⁰³ cannot encapsulate the necessary input from or for 50 percent of the population.¹⁰⁴ This

¹⁰² That for the 2019 election it was reported that a ‘record number of women’ were elected (taking into account all women elected to all political parties, with 12 more than in the 2017 General Election), yet this remained as ‘only one third’ of the total MPs, is indicative of the Brexit participatory and decision-making deficit where women and women’s voices are in issue: [General election 2019 results: full list of female MPs after a record number of women are elected \(inews.co.uk\)](#) (accessed 21 July 2021); [General Election 2019: How many women were elected? \(parliament.uk\)](#) (accessed 21 July 2021). Further, since at least 2010, Labour women elected as MPs have far outnumbered Conservative women elected, confirming concerns as to the failure to include women in the Brexit decision-making process: for example, 57 (41%) of the 140 MPs elected for the first time in 2019 were women. Of these, 32% of new Conservative MPs were women; 77% of new Labour MPs were women and 13% of new SNP MPs were women. All newly elected Liberal Democrat MPs were women. Seven of 15 (47%) of re-elected former MPs were also female: [General Election 2019: How many women were elected? \(parliament.uk\)](#) (accessed 21 July 2021).

¹⁰³ For example, First May Ministry (2015-2017), as Home Secretary (Amber Rudd), Education (Justine Greening), International Development (Priti Patel), Justice (Liz Truss), Environment (Andrea Leadsom), Culture, Media, Sport (Karen Bradley), (Leader of the Lords) Baroness Evans; Second May Ministry (2017-2019) – various changes for various reasons meant that the tapestry was ever shifting, without significance in terms of any greater representation of women: see [① Second May ministry. The second May ministry was formed on 1 \(google-info.org\)](#) (accessed 12 July 2021).

¹⁰⁴ The Rt Hon Theresa May (Prime Minister May 2016-July 2019), [The Rt Hon Theresa May MP - GOV.UK \(www.gov.uk\)](#) (accessed 12 July 2021); on the issue of women’s authority, see Mary Ann Sieghart, *The Authority*

confirms, if it ever really needed to be, that representation of women requires more than isolated or any less than 50 percent participation.

The United Nations Security Council Resolution 1325¹⁰⁵ is framed to ensure the equal participation of women in conflict prevention and resolution, and maintenance and promotion of peace and security. That its emphasis is on 'armed conflict' does not deny its utility and application in domestic conflict, in particular that of a political nature as embodied in withdrawal of the United Kingdom from the European Union. This endeavour is one that clearly generated conflict, with at least one death, the murder of Jo Cox, MP, on 16 June 2016, directly attributable,¹⁰⁶ and numerous incidents, whether by acts or words or acts and words, of violently abusive dimensions. These are attested to by many witnesses before the Tribunal and are clearly documented elsewhere, including in arrests, prosecutions and convictions.¹⁰⁷

Security Resolution 1325 provides variously:¹⁰⁸

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Reaffirming also the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts ...'

...

1. Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict; ...

CEDAW and SC 1325 work together.¹⁰⁹ As UN Women observes:¹¹⁰

Gap – Why Women are Still Taken Less Seriously Than Men, and What We Can Do About it, Doubleday/Transworld, London, UK, 2021. Any proposition that one woman can speak for all is patently ridiculous on its face and, bearing in mind the vast variety of women in any population and in particular in that of the United Kingdom is without merit.

¹⁰⁵ [S/RES/1325\(2000\) - E - S/RES/1325\(2000\) -Desktop \(undocs.org\)](#) (accessed 2 July 2021).

¹⁰⁶ Justice Wilkie, in imposing a 'gaol for life' sentence, recognised the killing as generated by, amongst other matters, extreme 'nationalism': 'It is clear from your internet and other researches that your inspiration is not love of country or your fellow citizens, it is an admiration for Nazism, and similar anti-democratic white supremacist creeds where democracy and political persuasion are supplanted by violence ... There is no doubt that this murder was done for the purpose of advancing a political, racial and ideological cause, namely that of white supremacism and exclusive nationalism, mostly associated with Nazism and its modern forms. That is one of the indices of an offence of exceptionally high seriousness for which the appropriate starting point is a whole life term ...', per Schedule 21 Criminal Justice Act 2003: [Sentencing Remarks of Mr Justice Wilkie: R -v- Thomas Mair \(judiciary.uk\)](#) (accessed 2 July 2021); [Jo Cox: Man jailed for 'terrorist' murder of MP - BBC News](#) (accessed 2 July 2021); [Jo Cox: Murdered MP's family pays anniversary tribute - BBC News](#) (accessed 2 July 2021).

¹⁰⁷ Numerous references are widely available. See for example John Burnett, Institute of Race Relations, [Racial-violence-and-the-Brexit-state-final.pdf \(irr.org.uk\)](#) (accessed 2 July 2021); Homa Khaleeli, *Guardian*, 29 June 2016, ['A frenzy of hatred': how to understand Brexit racism | Brexit | The Guardian](#) (accessed 2 July 2021); Robert Booth, *Guardian*, 20 May 2019, [Racism rising since Brexit vote, nationwide study reveals | Race | The Guardian](#) (accessed 2 August 2021); Helen Pidd, *Guardian*, 29 June 2016, [Manchester tram 'racism': two bailed, one remains in custody | UK news | The Guardian](#) (accessed 2 August 2021); Miqdaad Versi, *Guardian*, 27 June 2016, [Brexit has given voice to racism – and too many are complicit | Miqdaad Versi | The Guardian](#) (accessed 2 August 2021).

¹⁰⁸ [S/RES/1325\(2000\) - E - S/RES/1325\(2000\) -Desktop \(undocs.org\)](#) (accessed 2 July 2021).

¹⁰⁹ [CEDAW and Security Council Resolution 1325 A Quick Guide | UN Women – Headquarters](#) (accessed 2 July 2021).

¹¹⁰ [CEDAW and Security Council Resolution 1325: A Quick Guide \(unwomen.org\)](#) (accessed 2 July 2021).

CEDAW and 1325 are powerful frameworks for asserting women's human rights and demanding that governments and international institutions ensure these rights are realized, by setting up adequate responses to women's needs and protection against violations of their rights. Each has an important relationship to major decision-making bodies: CEDAW is a global human rights treaty that should be incorporated into national law as an apex standard for women's rights, and it requires governments to set in place the mechanisms and measures needed to fully realize women's rights. Resolution 1325 is a Security Council tool that mandates member states to engage women in all aspects of peace-building. CEDAW enriches resolution 1325 by providing substantive normative guidance on 1325-related interventions. 1325 can broaden the scope of CEDAW's application, by clarifying the relevance of women's human rights standards even in states in conflict that are not parties to CEDAW, or in relation to non-state actors and international organizations.

That the United Kingdom is not only committed (at least in formal terms) to both CEDAW and SC 1325 gives room for pause in light of the paucity of women involved in the negotiations and finalisation of the agreement between the UK and the EU on Brexit, but particularly that the United Kingdom must be taken to be, as one of the Security Council members, an author of it, is even more cause for concern. There is no good reason for the United Kingdom not to have had regard to its obligations not only under CEDAW but under SC 1325 in the context of Brexit.

On the final day of the hearing, in introducing their final submissions, Garden Court Chambers summed up Day 1:¹¹¹

The overwhelming theme that emerged across the witnesses of Day 1 was that of –

WOMEN'S VOICES
WOMEN NOT LISTENED TO
WOMEN NOT SEEN – in DOMESTIC and INTERNATIONAL POLITICAL INSTITUTIONS
WOMEN NOT PRIORITISED
GENDER NEUTRALITY = ENTRENCHES and REINFORCES MALE PRIVILEGE

KEY MESSAGE – EQUALITY IS NOT UNDERSTOOD WHETHER EXPRESSED CULTURALLY OR POLITICALLY

This précis is applicable overall. However, when it comes to Brexit, a monumentally important change in the United Kingdom's position not only vis-à-vis the European Union, but the world, this theme resonates. The position of women in Northern Ireland is particularly critical, with an imperative need for immediate inclusion, for it is apparent that the matters raised in relation to women and from women's perspective, as with the matters raised by other witnesses, are simply not even on the drawing board, much less on the decision-making table. No wonder, for the absence of women is palpable, and bound to have a profound effect. Nonetheless, it is not too late – not only should the words of these witnesses be taken into account by government as of now, but their expertise and experience, both on the ground and various other measures, be incorporated into future work on the emergence of the United Kingdom into its new position economically, politically, socially and globally.

COVID 19 – IMPACT OF PANDEMIC ON WOMEN

Esuantsiwa Jane Goldsmith, writer, strategist, facilitator and activist working in the not-for-profit sector and speaking in her personal capacity observed that many 'key obstacles' remain 'for women to

¹¹¹ Garden Court Chambers, *Closing Submissions – CEDAW People's Tribunal: Day 1*, 21 June 2021.

overcome', referring to the economic crash followed by austerity, environmental crisis, the rise of fundamentalism and misogyny, mental health crisis, crisis of democracy, and the aftermath of the Coronavirus pandemic. The first issue, she said, 'is that services have been cut because of austerity and/or the COVID-19 pandemic':

Services have been moved online and are not easy to access, particularly for the poorest women and particular communities. Therefore, there can be privacy issues and issues relating to women not having access to online services because they do not have access to the internet or a private space. During the first wave of the COVID 19 pandemic some chemists such as Boots opened up spaces for women to report domestic violence, in recognition that women are suddenly having to access very meagre services from home, which can be dangerous if they are living with perpetrators: para 23, Witness Statement, Case ref: 036

Another development, she said, is even more rapid privatisation of services, taking them out of the hands of women-run organisations, promoting changes detrimental to women, through a 'lack of understanding of the value of having women-only services run by women for women'. Providing as an example the Poppy Project at King's Cross, a drop-in refuge centre for women, she said that the move to 'large organisations being awarded contracts for services previously run by women for years' detracts from the principle of 'women's empowerment through delivering the services as well as partaking of them': para 24, *ibid*

The combination of factors militating against proper resourcing of services for women was raised by Baljit Banga of Imkaan, too. Services should, she said, reflect the demographic of the women they serve. Organisations and services should 'look like Black and minoritised women who access support, so as to address the institutional barriers and the racialised assumptions about women and girls'. This requires that 'governance, recruitment, retention, succession, as well as infrastructure, back office, front office support, must represent and reflect the women and girls using the services':

Aspects like representation, voice, visibility are important, especially where there is race erasure [which] occurs when government officials claim that racism or structural inequalities do not exist. Addressing structural inequality is critical, otherwise the barriers will continue to exist: para 9, Witness Statement, Case ref: 018

However, these goals were unable to be achieved to the degree required, because cuts to funding and resourcing in the name of austerity predating Brexit and Covid 19 already placed 'Black and minoritised women and girls' services under threat, [with] very few organisations able to provide support to them'. Lack of available services generates a high need for services, the pre-existing funding shortfall for Black and minoritised women and girls' organisations being '... 39%, due to decommissioning and austerity measures, disproportionately targeting the Black and minoritised women's sector'. Thus at the onset of the Coronavirus pandemic, '... 25% of organisations ... said they would not survive another six months if there was no funding available for them to survive'. During the Covid period, 'just above 43,000 women were supported in the sector. 40% of these women fell into the category of destitute', located in socioeconomic circumstances, insecure migration status, and in comprising the precarious employment sector. Some 293 bed spaces are managed by the Black and minoritised women's refuge sector, said Ms Baljit, leaving 'a shortfall of just over 1,000 bed spaces': para 10, *ibid*

Pragna Patel, speaking on behalf of Southall Black Sisters (SBS) of which she is director, focused on the impact on services, too, this in the context of 'the hostile immigration environment' and the need for women to seek support where subjected to criminal violence and abuse. Ms Patel said that the hostile environment has:

... made it even more difficult for women to make disclosures of abuse because every point of contact they might have in accessing state services, whether it is healthcare, education or social services, [they find] embedded within a wider hostile environment strategy. Many of these services will data share with the Home Office, which then increases women's risks for being removed or deported even before they have had a chance to obtain protection or access to legal advice or representation to resolve their immigration matters: para 15, Witness Statement, Case ref: 023

This situation, she said, 'has been exacerbated in the current COVID pandemic where the routes to safety have shrunk for all women subject to abuse, but even more so for women who have uncertain immigration status and who are subject to the NRPF'¹¹²: para 16, *ibid*

For the Angelou Centre,¹¹³ Rosie Lewis expressed concern consistent with that related by other witnesses, saying that a particular issue was 'racism and racialised inequalities faced by migrant women, with hate crime against these women exacerbated by Covid'. She said, too, that Covid:

... has led to a rapid increase in severe domestic violence against women, whereby they are unable to leave the abusive situation, with issues emerging around housing, financial autonomy and access to benefits. There is a lack of support for women facing additional barriers and the public sector equality duty was completely dropped [by the government]: paras 4-5, Witness Statement, Case ref: 024

She added that access to technology had become a more pronounced issue for women whom the Angelou Centre was focused on serving. With the coming of the Covid pandemic, 'even if they are living in a household with technology, many would not have access to it or have any understanding of it'. With the move to home education online, this meant 'complete exclusion' for a large proportion of Black and minoritised women (particularly those migrating in their lifetime), 'if they lack a good understanding of systems and structures'. She referred also to the No Recourse to Public Funds question, observing that Covid 'has also affected women' in this position, 'who lack equal access to healthcare and food'. This led the Angelou Centre to set up its own cultural foodbank: paras 5-6, *ibid*

¹¹² 'No Recourse to Public Funds', [Who has no recourse to public funds \(NRPF\) | NRPF Network](#) (accessed 21 July 2021).

¹¹³ The Angelou Centre is a black-led women's centre based in the Newcastle upon Tyne. We offer a range of holistic women only services for Black and Minority Ethnic (BME) women across the North East region. As well as frontline support we also work at strategic and national levels ensuring the voices of BME women are represented and heard. We fully support women with disabilities and LBTQI women. The Angelou Centre is wheelchair accessible. **SERVICES: Training and employment support:** We offer a wide range of courses, activities and support to help women to update and improve their skills and support them in their journey to work. Our accredited courses range from basic skills, like English, Maths, IT, ESOL, personal development to accredited volunteering and digital learning opportunities. The Angelou Centre advocates participatory learning practices and ensure that multi-lingual BME are able to access our courses. **Support for survivors of domestic abuse:** We provide a comprehensive, holistic model of support for BME women, children and young survivors of domestic and sexual violence. We offer culturally and linguistically diverse advice, information and advocacy through case work; group support for women (Saheli) and children (Simba) as well as therapeutic care and counselling for women and children. **Social and creative activities:** Social activities and events are crucial in providing opportunities to meet other women from diverse backgrounds, make friends and build social networks - Mahila Mandal the 'aunties' group, for elders; Angelou Youth and Angelou Carers. BAM! SISTAHOOD! Project provides opportunities to explore creative and digital skills: [Angelou Centre – International Newcastle](#) (accessed 9 July 2021).

Hilary Watson, policy officer for Women’s Equality Network (WEN) Wales¹¹⁴ said that during the pandemic, she and WEN Wales:

... raised a number of concerns relating to the needs of women in Wales at this time. In particular, ... concerns about high-quality childcare provision and caring for all, protection of women from poverty, ensuring women are safe both in their homes and at work, and tackling gender health inequalities: para 3, Witness Statement, Case ref: 004

She provided some good news on the No Recourse to Public Funds question from the perspective of Wales, although preceded by the concern about the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.¹¹⁵ In relation to the latter, there were elements, ‘including a sustainable funding model for the specialist violence against women sector, [which] have not been implemented’. Adverting to the rise in criminal assault at home and other forms of domestic violence during the Covid 19 crisis, she advised that in ‘making sure women are safe in their homes’, WEN focused predominantly on ‘protecting women from domestic violence and other forms of violence against women’. She observed that during the coronavirus pandemic there was a ‘widely reported increase in the use of violence against women helplines, as well as the strain put on specialist domestic abuse services. At the same time, WEN ‘supported the change the Welsh government brought in, which suspended the “no recourse to public funds” requirement for migrants, allowing wider access to the services for vulnerable women’. Nonetheless, she added, ‘we are concerned that despite its small financial impact, this will not continue after the pandemic has ended’: para 6, *ibid*

Sam Smethers, former Chief Executive of the Fawcett Society,¹¹⁶ providing her statement as freelance consultant in concert with her professional expertise, said the Fawcett Society, when she was in her original role, had begun ‘looking into the impact of the COVID-19 pandemic on women’, concerned that it ‘would have a significant impact’, and being proven correct. Working with ‘allies such as the Women’s Budget Group and academics from the London School of Economics, as well as from Scotland, Wales, and Northern Ireland’, the aim was ‘to evidence this impact’. The ‘pandemic was found to be impacting women’s earning capacity, as many women were relieved of paid employment or furloughed and female-dominated sectors were more likely to be furloughed’. Thus:

The pandemic was impacting mothers, through pregnancy discrimination, redundancy and forced home-schooling of children. Mothers were carrying the emotion and mental weight of the pandemic and were more likely to be experiencing anxiety. The pandemic was impacting single parents, low-paid women, and Black, Asian and minoritised women and disabled women: paras 4-5, Witness Statement, Case ref: 030

¹¹⁴ Women’s Equality Network (WEN) Wales welcomes the breadth and diversity of tradition, belief and culture of the community. It seeks to create, maintain and promote a community in which each person is treated fairly and equally irrespective of race. Women’s Equality Network (WEN) Wales confirms its commitment to a policy of equal opportunities in employment and service delivery. Individuals will be selected and treated on the basis of their relevant merits and abilities and will be given fair and equal opportunities within the Women’s Equality Network (WEN) Wales. Equally, we confirm our commitment to treating all staff, clients, customers and service users in accordance with this policy. Women’s Equality Network (WEN) Wales commits to adhere to the Equality Act 2010 and provide fair and equitable services to people from all race and other protected characteristic backgrounds. The aim of the policy is to ensure that no job applicant or user/ visitor/ guest receives less favourable treatment on any grounds which are not relevant to good employment practice. We are committed to a programme of action to make this policy fully effective: [Women’s Equality Network \(WEN\) Wales | Zero Racism Wales](#) (accessed 21 July 2021).

¹¹⁵ [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015 \(legislation.gov.uk\)](#) (accessed 8 August 2021).

¹¹⁶ (August 2015-December 2020), [The Fawcett Society](#) (accessed 9 July 2021).

The Fawcett Society ‘built up an evidence base showing how these groups of women were hardest hit by the pandemic, which remains true now’:

Now we are facing the long-term impacts of the pandemic on women. It is not just the short-term, first year, impacts we need to address, it is the long-term picture. We are seeking decades of progress on women’s rights and gender equality reversed in one year. That should worry all of us, making CEDAW more relevant now, during the pandemic, than ever before: paras 7-8, *ibid*

Joeli Brearley, founder and chief executive officer of Motherhood Planned¹¹⁷ spoke of the combination of paid and unpaid work falling upon women during the pandemic,¹¹⁸ if women did manage to retain their paid jobs:

During lockdown, women have had to manage their paid work alongside a high increase in unpaid work due to childcare facilities and schools being closed. The pandemic has resulted in an additional 31 hours a week of unpaid work according to PriceWaterhouse Cooper. Women are taking on the majority of that work. For every hour of uninterrupted paid work done by women, men were doing three hours of uninterrupted paid work. The only time the work in the home was being equally shared was when a father had been furloughed and the mother was continuing to do her paid job. This has a higher impact on a woman’s availability and performance: para 10, Witness Statement, Case ref: 035

Ms Brearley went on to address the loss of jobs suffered as a consequence of Covid 19, observing that ‘more women than men have been furloughed, decreasing their income and putting them first in line for redundancies’¹¹⁹. Further, women between ages 25-34 are losing their jobs at an extraordinary rate and compared to men aged 35-49, that group is 31% more likely to lose their job ...’.¹²⁰ The issues for pregnant women were even more pronounced:

On 16 March 2020, pregnant women were placed in the vulnerable category but the government provided no information in terms of their employment rights until almost nine months later. This guidance wasn’t clear and did not protect pregnant women to the full extent. Many were therefore forced to choose between their livelihood and their unborn child. Where pregnant women were suspended on safety grounds they were often not suspended on full pay as required and some were told to take early maternity, sick pay or even no pay: paras 11-12, *ibid*

Kevin Hyland, providing his evidence as representative of the Santa Marta Group, commented upon the effect of Covid 19 on workers already occupying jobs at the most unequal and abused levels. During Covid, he said, these workers ‘have been pushed further underground, facing greater marginalisation and vulnerability’. People in situations properly described as desperate, he added, are ‘more likely to accept increasingly low pay, worse working conditions, and more dangerous routes to the UK, with potentially tragic consequences’. This means that authorities and organisations working in the field are faced with even greater challenges to ‘identifying and proactively offering support to victims of

¹¹⁷ In the Founder and CEO’s words ‘better known as Pregnant then Screwed’: Witness Statement, Case ref: 035, para 1

¹¹⁸ For women workers and the level of unpaid work prior to the pandemic, see for example [Understanding the unpaid economy \(pwc.com.au\)](https://www.pwc.com/au) (accessed 8 August 2021).

¹¹⁹ See [Coronavirus \(COVID-19\) and the different effects on men and women in the UK, March 2020 to February 2021 - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk) (accessed 8 August 2021).

¹²⁰ [Unequal impact? Coronavirus and the gendered economic impact - Women and Equalities Committee - House of Commons \(parliament.uk\)](https://www.parliament.uk) (accessed 21 July 2021).

trafficking and exploitative labour in the UK, further highlighting the need for proactive and localised services during and after the pandemic': para 7, Witness Statement, Case ref: 038

The issue of instability of paid employment and insecurity of jobs was followed through by the evidence from Imkaan, when Baljit Banga explained the consequences of Covid 19 and secondary victimisation on women seeking help from services, including police, only to be met with discrimination arising out of racist tropes,¹²¹ including being disbelieved, subject to the contention that 'it's your culture' or being turned away:

... if she is turned away from services, she is made vulnerable to unintended consequences. The problems here are structural. For example, during the first days of the lockdown, many women who had moved from refuges to independent housing were supporting themselves in the precarious employment sector, working zero-hour contracts.¹²² They lost their employment and the employers did not apply for the government furlough schemes. This put women at risk of homelessness. This is after they had received support in refuge accommodation and had moved on to independent housing to rebuild their lives. These are structural problems – the so-called unintended consequences of the current COVID crisis. But for Black and minoritised women who make up the precarious employment sector, the issue is the lack of rights and protections – it is a racialised sector. Prevalence rates [of violence against Black and minoritised women] are impacted by structural barriers that deny her the support she needs: para 21, Witness Statement, Case ref: 018

Reckoning that despite men's 'having died in greater numbers during the pandemic', it is 'women who have shouldered the lockdown burden',¹²³ Ms Goldsmith noted 'the increases in childcare responsibilities and home schooling have been shouldered largely by women, and women are more likely to lose their jobs, be furloughed, and have arrested career development'. This is a consequence at least in part because:

Many [women] are working in the hardest hit sectors such as catering, travel, beauty industries, caring and service industries, which are all badly hit. Black, Asian, and Minority Ethnic women (BAME) are often on the front line of the care services in care homes and hospitals as nurses and cleaners, both losing their lives and saving the lives of others. Whilst deemed essential workers, women are part of some of the poorest communities in the UK, with some nurses having to visit food banks, in one of the richest countries in the world: para 6, Witness Statement, case ref: 036

¹²¹ See for example [Racial Tropes – The Literature Blog \(interpretingliterature.com\)](https://www.interpretingliterature.com) (accessed 8 August 2021) – notably, googling 'racist tropes' elicits references to such tropes as they apply to men – for example (as per the cited example) 'the metaphor of the Black African as an ape-like figure "satisfies the need to provide a biological justification of antiblack racism, and supplies a convenient rationale for ongoing subordination of Black people ...'. Adding 'woman' to the search engine for 'racist tropes' brings up first a reference to these tropes as relating to men (in the context of 'white' women): [4 Racist Stereotypes White Patriarchy Invented to 'Protect' White Womanhood - Everyday Feminism](#). 'Misogynoir' is the better way to elicit reference to racist tropes applying to women: <https://rantt.com/sexism-racism-2020-election> (accessed 8 August 2021) – referencing Kamala Harris and her bid for the White House as vice president; see also [Asian women: Shooting points to racist tropes - YouTube](#) (accessed 8 August 2021). This provides a stark example of intersectionality – being Black and minoritised as women takes second place according to the search engine, insofar as the application of racist tropes is in issue.

¹²² [Zero hours contracts: guidance for employers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/zero-hours-contracts) (accessed 8 August 2021).

¹²³ Although see the position in Northern Ireland, where it appears that women's Covid 19 related deaths outnumber those of men, per Rachel Powell, Witness Statement, Case ref 008, later; [Coronavirus \(COVID-19\) statistics | Northern Ireland Statistics and Research Agency \(nisra.gov.uk\)](#) (accessed 21 July 2021); [COVID-19 - Statistics | Department of Health \(health-ni.gov.uk\)](#) (accessed 21 July 2021); [Women being disproportionately affected by Covid pandemic according to survey - BelfastTelegraph.co.uk](#) (accessed 29 July 2021).

Joeli Brearley referred to the ‘frontline’ phenomenon for Black and minoritised women, too, noting that they were ‘far more likely to be placed in a dangerous situation in having to work with patients who could have Covid 19, and they are also more likely to be suspended on incorrect terms. Then they face the childcare issues identified previously’: para 13, *ibid*

Extending concerns into other areas, the effect on Black and minoritised women arose in Pragna Patel’s evidence in her role as director of Southall Black Sisters (SBS). She said that the Covid 19 pandemic ‘has impacted upon every area of our work, exacerbating the existing inequalities we address, and the inequality gap is only widening’. In this, Ms Patel gave the example of the ‘lockdown’, pointing out that this made it more difficult for women to engage with the legal justice system. Organisations such as SBS ‘have had to fill the gaps created by the pandemic and lack of support and welfare infrastructure existing to deal with issues like violence against women and girls (VAWG)’. She went on to relate that when the lockdown occurred:

... women found themselves even more trapped in situations of abuse and violence, and that particularly impacted on those who already find it difficult to make disclosure, such as BME and migrant women. That situation could have been planned for by the government because there were clear warning signs from other countries that the pandemic was giving rise to spikes in domestic abuse and domestic homicide and was creating vulnerabilities. The government needed to put in place protections and the infrastructure to support vulnerable groups but failed to do so: para 22, Witness Statement, Case ref: 023

Referencing also the lack of coordinated strategies, with no forward thinking or planning, Ms Patel reiterated that ‘in relation to supporting abused women or women subject to violence and abuse in their homes, nothing was put in place by government at the beginning of lockdown in March. It was solely ‘as a result of an outcry within the VAWG sector, and through campaigns and the threat of a legal challenge by us’, that this situation was a situation remedied by the government’s making funding available for support for abused women and introducing various plans to support women to leave abusive situations. Yet, as predicted, not only was there a ‘rise in domestic abuse, but in domestic homicide during the lockdown that began in March 2020, with initial data suggesting that even BME women are over-represented in the homicide figures’: paras 23-24, *ibid*

Confirming the need for emphasis, Ms Patel reiterated further that the burden fell on organisations such as SBS ‘already strapped for cash, already with limited resources’ to fill the gap with resources and means to enable women to leave an abusive situation, seeking safety. This, she noted, ‘is a huge indictment of the failure of the state to meet its obligations to the most vulnerable and to protect those at risk during the pandemic’. She noted, too, with some irony that ‘at the beginning of the lockdown, the government made plans for street homeless people - which was absolutely right and the correct thing to do – but had not thought about other vulnerable groups, such as women subject to violence and abuse who needed alternative safe accommodation and support to escape abuse’: paras 23, 25, *ibid*

Dr Kelly Johnson of Durham University, speaking in a personal capacity, revealed that her work alongside Dr Katrin Hohl¹²⁴ related to reporting ‘domestic abuse to police and how it has been impacted by the pandemic’. ‘Domestic abuse charities,’ she said, ‘have seen a huge spike in reports and calls for help and support since the very onset of the pandemic’. However, as to ‘engaging with the criminal justice system it has been more varied’:

There are signs that when lockdown measures lift, [this may give] victims more space to come forward to report to the police. Yet [right now] we are concerned that there is an escalating

¹²⁴ Senior lecturer in criminology at the City University of London: [Dr Katrin Hohl • City, University of London](#) (accessed 21 July 2021).

issue of domestic abuse taking place because victims and survivors are locked down with their abusers, however, they do not have that space to report. It is likely there will be a potential spike in cases coming forward as the lockdown issues ease and the vaccine rolls out. So, we are stressing to service providers and police [the need] to have additional resources in place, to be ready for those cases ...: paras 8-9, Witness Statement, Case ref: 029

At the same time, Dr Johnson added that the pandemic 'has only exposed the domestic abuse crisis, not created it'. Year on year 'significant increases in domestic abuse reports and experience [exist] as far back as our data goes'. She emphasised the importance of 'sustained funding and well-resourced domestic abuse services to support victim survivors and help keep them safe': para 9, *ibid*

Her evidence squared with other witnesses referring to the Covid 19 pandemic, who observed that women and women's services, already inadequately funded and resourced, faced even greater challenges. A failure in government responsibility meant that women were left adrift unless the sector was able to step in. This meant taking on the load despite continuing to carry resource deficits arising out of the austerity cuts, with lack of government support factored upon the Coronavirus effect. As Women's Sector Lobbyist with the Women's Resource and Development Agency (WDRA) and Women's Policy Group chair Rachel Powell observed, the Covid 19 pandemic has 'exposed and exacerbated inequalities with respect of women's socioeconomic rights'.¹²⁵ For women in Northern Ireland, she said, the pandemic had a significant impact on abortion access and violence against women, as well as affecting differentially women on the frontline:

In Northern Ireland, women make up the majority (79%) of adult health and social care workers, yet PPE¹²⁶ is often not designed with women's bodies in mind. Furthermore, in Northern Ireland, women make up 80% of all part-time workers, 91% of single parents, and almost 70% of all unpaid carers. Almost a third of women were not a part of the formal labour market and considered 'voluntarily unemployed' or 'economically inactive' in Northern Ireland prior to the pandemic, and many of those who work are condensed into part-time, low-paid, and so-called 'low-skilled' labour. The impact of this cannot be ignored – Northern Ireland is one of the few places globally where more women have died of Covid-19 than men, owing in part to the front-line roles many Northern Irish women have played throughout the pandemic: para 5, Witness Statement, Case ref: 008

Ms Powell referred to the 'gender neutral' philosophy permeating all levels of policymaking, ignoring the differential impact on women of those 'gender neutral' policies and practices. Women could not and should not be consigned to a category failing to acknowledge the specific factors pertaining to them as women. In this, she first noted the negative impact on women's representation, going on to highlight the impact on programmes ostensibly designed to address Covid 19 and the consequences of the pandemic. Here, she observed that the 'first step in promoting female representation in politics and public life is to stop gender-neutral policy making in Northern Ireland' for it 'is harming women':

In every department and at every level of decision making in Northern Ireland we need awareness of the disproportionate impact that certain policies have on women. One example of this is welfare reform - we have research that shows that 86% of tax revenue savings across the UK in the decade of austerity following the financial crash came from women – that is a deeply misogynistic policy. It is essential that following covid, gender-neutral policy making is

¹²⁵ See for example Women's Policy NI, [APG-Early-Years-and-Childcare-Key-Briefing-WPG-Feminist-Recovery-Plan-12.11.20.pdf \(wrda.net\)](#) (accessed 9 July 2021); *Covid-19 Feminist Recovery Plan*, July 2020, [covid-19 feminist recovery plan \(wrda.net\)](#) (accessed 9 July 2021); Women's Policy NI, *Covid-19 Feminist Recovery Plan – Childcare*, November 2020.

¹²⁶ PPE – Personal Protective Equipment, see [Personal protective equipment \(PPE\) - COSHH \(hse.gov.uk\)](#) (accessed 12 July 2021).

scrapped, and that ‘roadmaps out of lockdown’ and subsequent economic recovery plans take into account these stark realities, with gender budgeting and respect of the caring economy and intersectionality at their core: para 8, *ibid*

Ms Goldsmith’s evidence mirrored this concern. She saw that plans for ‘Build Back Better’¹²⁷ are inhibited by ‘hypermasculine thinking of prioritising building and construction, a patriarchal attitude towards economics’. If the same amount of money were ‘invested in the care industry and caring rather than construction and building, society would be hugely different’, creating ‘many more jobs and bring back the principles of caring, sustainability, anti-patriarchy, and protection of the environment that the women’s movement has ever build upon. Ms Goldsmith referenced, in this regard, the leadership of Prime Minister Jacinda Ardern¹²⁸ in Aotearoa/New Zealand, which ‘shows how caring and kindness can successfully form the basis of Government ethics and policy’. She pointed also to the ‘highest performing countries in the world during the COVID epidemic being led by women’, citing Aotearoa/New Zealand, Iceland, Denmark, Taiwan, and Finland.¹²⁹ This ‘demonstrates that feminist leadership is effective in a crisis and works when the patriarchy has run out of ideas’: para 7, Witness Statement, Case ref: 036

Elizabeth Sclater, OBE, General Secretary of the Older Women’s Network Europe (OWNE)¹³⁰ said that the impact of Covid 19 built on that brought about as a result of the austerity measures or cuts brought in by the 2010 Coalition Government budget. ‘The COVID-19 pandemic may have highlighted to local authorities a higher number of older people in the community who are considered “vulnerable” and who are isolated’, however, the Government introduced the Care Act easements,¹³¹ created under the Coronavirus Act 2020,¹³² mainly due to financial pressure [with] local authorities being forced to make big budget cuts ...’ She added that as a large part of local government budgets ‘goes into children’s services and adult social services’ the cutbacks will create a significant difficulty. Then, ‘reinstating the legal requirements of the Care Act will require the Government to properly fund local authorities, as currently local authorities are struggling financially and having to borrow’. She noted that rather than having introduced the Care Act easements, ‘the Government [should] be alert to and responsive to the older population in the UK and recognise the right to health and social care as expressed ‘under CEDAW’: paras 17-18, 22, Witness Statement, Case ref: 001

¹²⁷ A slogan that might be better expressed by an alternative ‘Reconstruction, Recovery and Renewal’ to provide the true essence of what governments should be doing, constructively for the present and future.

¹²⁸ See for example Julia Gillard and Ngozi Okonjo-Iweala (eds), *Women and Leadership: Conversations with some of the world’s most powerful women*, 2020; Michelle Duff, *Jacinda Ardern: The Story Behind an Extraordinary Leader*, 2020; Madeleine Chapman, *Jacinta Ardern: A New Kind of Leader*, 2020; Supriya Vani and Carl A. Harte, *Jacinda Ardern – Leading with Empathy*, 2021; David Hill and Phoebe Morris, *Taking the Lead: How Jacinda Ardern Wowed the World*, David Hill Kiwi Legends (for ages 4-8 years), 2020.

¹²⁹ See Supriya Garkikipati and Uma Kambhampati, ‘Leading the Fight Against the Pandemic: Does Gender Really Matter?’ *Feminist Economics*, vol 27, issue 1-2 (A Special Issue on Feminist Economic Perspectives on the COVID-19 Pandemic), pp. 401-418, 2021, [Full article: Leading the Fight Against the Pandemic: Does Gender Really Matter? \(tandfonline.com\)](#) (accessed 21 July 2021); Supriya Garkikipati and Uma Kambhampati, *Leading the Fight Against the Pandemic: Does Gender Really Matter?* [emdp202013.pdf \(reading.ac.uk\)](#) (accessed 21 July 2021); Ana Abras, Ana Claudia Polato e Fava and Monica Yukie Kuwahara, ‘Women Heads of State and Covid 19 Responses’, vol 27, issue 1-2 (Special Issue ...), pp. 380-400, 2021, [Women Heads of State and Covid-19 Policy Responses: Feminist Economics: Vol 27, No 1-2 \(tandfonline.com\)](#) (accessed 21 July 2021).

¹³⁰ **Older Women’s Network, Europe** promotes the voice and contribution of older women by influencing policy development and encouraging change at local, national and international levels: <https://owneurope.org> (accessed 21 July 2021).

¹³¹ [Care Act easements and what they mean for you | Care Choices](#) (accessed 21 July 2021); [\[Withdrawn\] Care Act easements: supporting guidance - GOV.UK \(www.gov.uk\)](#) (accessed 29 July 2021) – Note this Care Act easements guidance was withdrawn when the provisions were amended by regulation on 16 July 2021.

¹³² See [The Coronavirus Act 2020 \(Early Expiry\) Regulations 2021 \(legislation.gov.uk\)](#) (accessed 22 July 2021).

Applying her adult education expertise, Alice Fookes focused on training courses and online learning coming out of the pandemic. Forecasting cutbacks, she said that in light of 'barriers to adult education for marginalised women in the UK [being] significant' in any event, the women with whom she works, facing literacy challenges and whose first language is not English 'will be particularly hard hit in the realms of access to higher and further education'. Where courses are online, women may lack space to study, and may miss the opportunity to leave the house 'to seek help from domestic violence'. Where a 'hierarchy of skills required for jobs supported by government measures' exists, this will favour male-orientated fields 'such as butchery and bakery (appealing more to men) but the hospitality and similar sectors (appealing more to women)' will be less likely to be promoted. She advocated steps to 'ensure gender parity of access to all courses equally appealing to women and men': paras 7-12, Witness Statement Case ref: 037

In her private capacity, Cherie Blair, CBE, QC commented upon the handling of the Covid 19 crisis and the fashioning of 'guidelines' for coming out of lockdown and lifting restrictions. 'In light of the pandemic and its disproportionate impact on women,' she said, 'it would seem logical to pursue and maintain temporary special measures to ensure women were not adversely affected. Yet our government failed in this regard.' She went on to surmise that this 'could be attributed to an absence of female decision-makers informing the government's response':

Last year [2020], it was more important for the pubs to reopen than to ensure children were able to return to school. Very little consideration was given to the impact of domestic violence and lockdown confining people to their homes, and the ongoing funding crisis faced by refugees exacerbated the risk of trapping women in their homes with violent and abusive partners. Generally, women have been suffering a double shift: whilst men may have been helping with housework or home-schooling, the reality is that these tasks have been shouldered more by women than by men, and the impact has been significant on women's mental health: para 18, Witness Statement, Case ref: 027

She went on to address the consequences of the work required on the domestic front having meant that women were unable to carry on in paid employment,¹³³ with 'no consideration being given to whether caring responsibilities should be a reason for women to request placement on the furlough scheme':

Part-time workers, most of whom are women, have also disproportionately lost their jobs. Further, the UK's already paltry sick pay regime has been unavailable for many women as their wages are often too low to qualify. No special arrangements were made for women throughout the coronavirus response. It was just assumed that if it worked for men, then it would work for women: para 18, *ibid*

As with a number of the witnesses, Joeli Brearley of Motherhood Planned expressed a hope that coming out of the pandemic, work conditions for women might see improvement. Yet she expressed concern that the hope may be misplaced. As she said:

Because women do the majority of unpaid work in the home, they require flexible working to manage their personal and professional obligations. But only 14% of jobs were advertised as flexible prior to the pandemic. We hope that the way companies see flexible working will change for the better following the pandemic, but certainly companies remain reluctant to advertise jobs as flexible from the outset. Many requests for flexible working are refused. This provides challenges for women and can mean choosing between their career and their children as a result: para 9, *ibid*

¹³³ An issue recognised elsewhere – see for example [Why Did Hundreds of Thousands of Women Drop Out of the Work Force? - The New York Times \(nytimes.com\)](https://www.nytimes.com/2021/08/14/us/politics/women-workforce-covid-19.html) (accessed 14 August 2021).

SUMMATION

COVID 19 – IMPACT OF PANDEMIC ON WOMEN

Cris McCurley's evidence summed it up well. Working as a family solicitor in private practice for thirty-one years, she like all other witnesses registered that despite the reality of a surge in the increase of 'the amount of abuse and all forms of cultural abuse' through the course of the pandemic:

... there are just not the resources, court time, or social services time. The police, social services, Cafcass (Children and Family Court Advisory and Support Service) are all in need of funding. The women's sector has been absolutely decimated. There is a small fraction of refuge places where the need is absolutely enormous: para 33, Witness Statement, case ref: 015

Meanwhile, studies continue to illustrate the differential impact on women. In a report released on 15 August, the Autonomy Thinktank reported that Covid working from home 'has caused an "epidemic of hidden overtime" particularly affecting women, leading to a need for new "right to disconnect" laws'.¹³⁴ A 'growing problem in the age of increased home working', the report said that women are 'at greater risk of negative health impacts and mental distress'. The report proposes industrial or employment law changes based on French law, creating a 'right to disconnect': this provides that employees are exempt from taking work-related calls or reading work-related e-mails during 'time off'. The Employment Rights Act 1996 would be amended to support this homework-based employer responsibility.¹³⁵

- An employer should not 'require a worker employed by the organisation to monitor or respond to any work-related communications, or to carry out any work, outside the worker's agreed working hours';
- An employer should not subject the worker to any detriment for abiding by this provision.

An earlier Autonomy report focused on hours worked during a standard work-week found similarly that the Covid 19 burden was falling unduly on women, who were 43 percent more likely than men to have increased hours, and for women with children, these home-based conditions of work were 'even more clearly associated with mental distress'. Furthermore, at all stages of the crisis, 'negative mental health impacts have been felt disproportionately by women'. Unsurprisingly, though far more easily said than done, the research confirmed that the pandemic has 'accelerated the need to create much clearer boundaries between work-life and home-life'.¹³⁶

The failure of government planning prior to and immediately with the onset of the Covid 19 crisis, and the reported incompetence every step of the way apart from the vaccine roll-out which is due to the National Health Service (NHS), is yet more evidence of the importance of embedding women in the interstices of policy and decision-making processes. UN Security Council Resolution 1325 and its interaction with CEDAW is as relevant here as in relation to Brexit.¹³⁷ No armed conflict, but a crisis and

¹³⁴ [UK workers need right to disconnect amid 'overtime epidemic', says report \(bmmagazine.co.uk\)](https://www.bmmagazine.co.uk/news/2021/08/16/uk-workers-need-right-to-disconnect-amid-overtime-epidemic-says-report/) 16 August 2021 (accessed 17 August 2021); Rowena Mason, 'UK workers need the right ...', *Guardian*, 16 August 2021, [UK workers need right to disconnect amid 'overtime epidemic', says report | Working from home | The Guardian](https://www.theguardian.com/uk-news/2021/aug/16/uk-workers-need-right-to-disconnect-amid-overtime-epidemic-says-report) (accessed 16 August 2021).

¹³⁵ Exemptions would apply for industries where the provision is not feasible and where an employer has taken 'all reasonable steps to minimise working outside agreed hours': *ibid.*

¹³⁶ Citing Will Stronge, director of research, Autonomy, *ibid.* See also [UK workers need right to disconnect amid 'overtime epidemic', says report - NEWSCABAL](https://www.bmmagazine.co.uk/news/2021/08/16/uk-workers-need-right-to-disconnect-amid-overtime-epidemic-says-report/) (accessed 17 August 2021).

¹³⁷ See **SUMMATION - BREXIT – WITHDRAWAL FROM THE EUROPEAN UNION (EU)**, earlier.

one of enormous proportions, in sheer terms of contraction of the virus and deaths amounting to Coronavirus cases: 6,492,906. Deaths: 131,640. Recovered: 5,056,571.¹³⁸

To paraphrase Rachel Minto's project planning for Brexit, five key issues for government, essential not only to mitigate the already known harmful impacts of the coronavirus pandemic on gender equality, but to ensure that the United Kingdom will continue to progress and work towards gender equality in coming through the crisis must be applied: legislation, funding for social projects, social inclusion for all, access for civil society organisations to European networks, and representation of women decision-making, with gender budgeting at the core and incorporation of : para 5, Witness Statement, Case ref: 022

2. National machinery for advancement of women

CEDAW Committee raised the following matters:

- Operation of Government Equalities Office (GEO)¹³⁹
- Establishment of national oversight mechanism
- National strategy for implementation of CEDAW
- Systematic collection of disaggregated data

Evidence before the Tribunal raised each of these matters, referring in particular to the negative impact of the gender neutrality proposition upon women and girls' rights and the downgrading of women and girls' rights as a consequence, particularly in the context of the Government Equalities Office; the urgent need for an oversight mechanism operating on a national basis; the vital importance of CEDAW's implementation and that this must be secured on a national basis, through a national approach rather than the devolved authorities being required effectively to 'go it alone'; and not only the need for disaggregated data collection on a systematic basis, but – particularly in Northern Ireland – the need for data collection period.

GOVERNMENT EQUALITIES OFFICE (GEO) AND NATIONAL OVERSIGHT MECHANISM

Dr Annette Lawson, OBE, a founder of the UK Civil Society Women's Alliance (UKCSWA),¹⁴⁰ chair and trustee of a number of women's organisations and former academic, speaking in a personal capacity, reflected upon the present governmental approach to CEDAW and UN expectations, as contrasted with the past. Originally, she explained, the Women's National Commission (WNC)¹⁴¹ was established by government in concert with the UN's 'request that all Member States should establish ways of listening to women'. The WNC 'evolved over time' and played a significant role in promoting CEDAW rights for women and girls, with its abolition bringing about a significant loss. Having 'a direct line to ministers in a way no current organisation has, because this was legitimised in law', the WNC received modest financial support from government and was positioned within the department that housed the office of

¹³⁸ [United Kingdom COVID: 6,492,906 Cases and 131,640 Deaths - Worldometer \(worldometers.info\)](https://www.worldometers.info/coronavirus/country/uk/) (accessed 17 August 2021).

¹³⁹ See Government Equalities Office, <https://www.gov.uk/government/organisations/government-equalities-office> (accessed 7 July 2021).

¹⁴⁰ [Welcome to Civil Society Alliance - Civil Society Alliance, UK](https://www.civilsocietyalliance.org/) (accessed 21 July 2021).

¹⁴¹ The Women's National Commission (WNC) was established in July 1969 on the merger of two previous predecessor bodies (the Woman's Consultative Council, and the Women's Consultative Committee) as the official and independent advisory body whose aim was to ensure that the informed opinions and views of women were given due weight in the deliberations of the UK government and in matters of public interest. The WNC was an umbrella organisation representing women and women's organisations in England, Northern Ireland, Scotland and Wales. From October 2007 the WNC became an advisory Non Departmental Public Body of the Government Equalities Office (GEO), and on 31 December 2010 the WNC was wound up and its continuing functions were transferred to the GEO: [Women's National Commission Website | The National Archives](https://www.nationalarchives.gov.uk/women/) (accessed 2 July 2021); [UK Government Web Archive \(nationalarchives.gov.uk\)](https://www.nationalarchives.gov.uk/women/) (accessed 2 July 2021).

Minister for Women. The WNC was ‘completely independent body, with a team of civil servants working for it and comprising at the outset 50 member organisations, then growing to in excess of 500 from across the country. Co-chairs – one elected and one appointed by government – led the WNC, working cooperatively together under whichever government was in power. Before its abolition the WNC was headed by a sole chair, appointed by government. Then, however, in 2010 with the austerity budget introduced by the incoming coalition government, the WNC was abolished:

We are still struggling to have another organisation that everyone recognises as the legitimate voice UKCSWA is one of those that does speak collectively, is careful to ensure a 4-nation approach, and has an extremely strong relationship with the Government Equalities Office and is respected within government. But there are others like the Gender and Development Network, and other women’s organisations, that maybe wouldn’t agree that this was the most appropriate voice. So at present there is no collective voice speaking that is recognised by everyone. CEDAW has said, a number of times in its concluding observations, ... that government should re-examine this issue ... arguing that there should be an institutional mechanism for listening to women’s voices, and one of the important complaints for women is that our government has no intention of reinstating anything like the WNC ... : para 2, Witness Statement, Case ref 026

Paying tribute to Baroness Gould of Potternewton, who was appointed to the post of interim-chair of the WNC in 2007 and shortly after appointed as chair,¹⁴² Dr Lawson emphasised the necessity for having ‘some kind of institutional mechanism’ as a pipeline direct to government, to ensure that the voices of women have collective representation at policy levels: para 3, *ibid*

Speaking on behalf of her organisation, Widows for Peace through Democracy, Margaret Owen, OBE, echoed Dr Lawson’s concerns, stating her belief that in abolishing the Women’s National Commission (WNC) in 2010, the government ‘has been in breach of our international obligations in relation to CEDAW and the Beijing Platform for Action’.¹⁴³ This was, she said, ‘done without any consultation’ despite the WNC having ‘received global admiration’ and commendation during New York meetings of the Commission on the Status of Women:

Based on legislation, our national commission [the WNC] gave us an immediate direct line to the Prime Minister, the Foreign Office, ministers and ultimately the government ... it was vital, and acted as an umbrella for many UK women’s organisations. Now, there is just the Government Equality Office: para 13, Witness Statement, Case ref: 016

On the operation of the Government Equalities Office (GEO), Ms Owen, said that the CEDAW Committee ‘have persistently told the UK since 2010 that the Government’s Equality Office is not an institutional mechanism as defined in the CEDAW Convention and referenced in the Beijing Platform for Action’, for it ‘is still the government, and the CEDAW Committee persistently tell the UK to replace the gap left by the WNC’. In the absence of government action, non-government organisations (NGOs) had endeavoured to fill-in by creating the UK Civil Society Women’s Alliance (earlier the UK Women’s Alliance), referenced by Dr Lawson, to ‘ensure women still had some institutional mechanism through which to communicate directly with government’. However, ‘lacking statutory backing weakens the body’: para 14, *ibid*

¹⁴² [Parliamentary career for Baroness Gould of Potternewton - MPs and Lords - UK Parliament](#) (accessed 21 July 2021); now, on Facebook, tributes appear to Baroness Gould’s work on the WNC: [\(12\) Baroness Joyce Gould | Facebook](#) (accessed 20 August 2021).

¹⁴³ [The Beijing 12 critical areas of concern deconstructed | UN Women – Headquarters](#) (accessed 7 July 2021); [The Beijing Platform for Action: inspiration then and now | UN Women – Beijing+20](#) (accessed 7 July 2021); [Fourth World Conference on Women, Beijing 1995 \(un.org\)](#) (accessed 2 July 2021).

SUMMATION

GOVERNMENT EQUALITIES OFFICE (GEO) AND NATIONAL OVERSIGHT MECHANISM

Democracy depends on an equal voice and responsive engagement ...

Carol Gilligan and Naomi Snider
Why Does Patriarchy Persist?
Polity Press, Cambridge, UK, 2018 p. 119

Margaret Owen went on to observe that, additionally, the ‘mandate of the GEO is too broad to focus on the urgent and cross-cutting issues concerning the status of women and girls in this country and the impact of government policy on women and girls, not just in this country but beyond: Transcript, Day 1, 9.33 This concern was expressed in a number of ways throughout the hearing, with the emphasis on the need for an office or agency whose brief is directed solely and specifically at the rights of women and girls. In commenting upon the impact of ‘gender neutrality’, witnesses lamented that the way this is interpreted means that the society and institutions are regarded as impacting equally on women and men, with women and men equally disadvantaged (or equally advantaged).

This false construction of women and men as ‘equal’ in the advantage or disadvantaged stakes, was applied under the ‘gender neutrality’ principle as requiring equal resources and attention being focused on men and women, without specialist or specialised services or any recognition of the unequal distribution of opportunities and resources, nor of pervasive stereotyping that affects male and female status. The point made was that this ignores the structural and systemic nature of discrimination against women and girls and the need for applying resources to address this. The misplaced idea that the latter approach is somehow unfair or inequitable, or wrongly skewed, should be set aside in the recognition that bringing about equality requires differential resourcing, investigation, research, consistency and surety, to bring women and girls into parity. Institutions and structures not favouring nor being egalitarian in their approach to and accommodation of women, means that ‘equality measures’ are required. The differential resourcing does not constitute ‘special’ measures; what it does constitute is measures to bring about equality in both principle and practice, formally and substantively.

The evidence before the Tribunal confirms the need for a specialised, focused agency or department of government charged with addressing the United Kingdom’s commitment to implementation of CEDAW. After all, this Convention applies to more than 50 percent of the population, whom research shows, alongside the evidence of the witnesses, suffer disadvantage that requires redress. Ignoring distinctions in disadvantage does not make them disappear. The principle of ‘justice is blind’, for example, is not supposed to convey the message that relevant differences should be ignored. Nor does it mean that irrelevant differences should be taken into account. What it does mean is that everyone has a right to be treated with the respect and dignity¹⁴⁴ accorded to all human beings, with equal rights and entitlements. It means that governments have a responsibility to ensure that all gain that respect, are extended that dignity, and are enabled to avail themselves of equal rights and entitlements. This requires mechanisms devoted to bring about formal equality based in substantive equality, arrived at through transformative equality. A transformative approach in planning, implementation and delivery of specific targets is required to effect this.¹⁴⁵ The disparities are so great and the shift required so

¹⁴⁴ On dignity as a human right, see Anne Hughes, *Human dignity and fundamental rights in South Africa and Ireland*, Pretoria University Press, , Pretoria, South Africa, 2014.

¹⁴⁵ See Sandra Fredman, Jaakko Kuosmanen and Meghan Campbell, ‘Transformative Equality: Making the Sustainable Development Goals Work for Women’, *Ethics & International Affairs*, 9 June 2016, vol 30 (Issue 2), pp.

substantial that this requires a department dedicated to moving as swiftly as possible, formulating and implementing policies and practices to end the disadvantage and eliminate the disparities.

This will not be done without the Department for Women being given full backing by and support by government and, indeed, by the Parliament. Added to this is the need for national oversight mechanism with national machinery to evaluate the steps taken in implementing CEDAW, along with designing essential training and education for all in public, parliamentary and judicial office, and all engaged in development and implementation of policy. Gender budgeting must be a part of the training and education of officers of all departments and government authorities, to be applied in budgeting and policy making, with private sector bodies in their discharge of public functions being similarly obligated.¹⁴⁶

Returning to ‘gender-blindness’ or ‘gender-neutrality’, it is important to confront directly the import of this concept. As a concept, it is designed to baffle in an effort to render without a voice those whose voices need to be heard, because it is they who are traditionally denied a voice, remain unheard or are unlistened to. As a practice, it is designed to preserve the world as it is, to maintain the disparities that should be ended, and to leave undisturbed the disadvantage that enables privilege to remain, to persist and remain endure unchecked. Operating as concept and practice hand in hand, its aim is to preserve the status quo, to leave matters as undisturbed as possible, to project a purported superiority in neutrality and objectivity, when these operate to leave ‘the prevailing cultural framework unchallenged or unquestioned’.¹⁴⁷

(LACK OF) SYSTEMATIC COLLECTION OF DATA

The lack of data, as well as the failure to collect systematically disaggregated data, arose not infrequently in the evidence as a general matter and as to its differential impact. Her main area of expertise being law and practice at the CEDAW Convention and CEDAW Committee, Lisa Gormley, consultant and qualified solicitor, Visiting Fellow at the LSE Centre for Women, Peace and Security, and for much of her working life a legal advisor for Amnesty International, gave evidence in her personal capacity, referring to General Recommendation 35 on coordination and data gathering.¹⁴⁸ She pointed out that it is women’s organisations and service providers that are collecting and disseminating data, rather than government upon which the responsibility properly lies. General Recommendation (GR) 35 ‘says that kind of work should be done by government, and the findings integrated automatically into state practice’. She provided the example of Femicide Census in the UK which ‘gathers information about killings of women by men, and extrapolates from these cases ideas about good practices, what needs to change, to save women from these killings’: para 14, Witness statement, Case ref 009

177-187, [Transformative Equality: Making the Sustainable Development Goals Work for Women | Ethics & International Affairs | Cambridge Core](#) (accessed 2 July 2021); Anna Arstein-Kerslake, and Eilionoir Flynn, ‘The Right to Legal Agency: Domination, Disability, and the Protections of Article 12 of the Convention on the Rights of Persons with Disabilities’, *International Journal of Law in Context*, vol 13(1), pp. 22-38, [CRPD and transformative equality | International Journal of Law in Context | Cambridge Core](#) (accessed 2 July 2021) .

¹⁴⁶ See *R v Take-Over Panel, ex parte Datafin PLC* [1987] 1 QB 815, [1986] 2 All ER 257, [1986] 1 WLR 763, (1986) 2 BCC 99086, [1986] EWCA Civ 8, [R v Panel on Take-overs & Mergers, ex parte Datafin \[1987\] 1 All ER 564 \(oxbridgenotes.co.uk\)](#) (accessed 2 July 2021). Where private bodies or organisations implement public policy, judicial review applies in recognition of the importance of scrutiny of decisions made by them relating to the exercise of their public functions. This is clearly as it should be: public functions are rightly to be scrutinised and their delegation to private bodies, agencies or enterprises should not allow decisions to slip under the net.

¹⁴⁷ See Carol Gilligan and Naomi Snider, *Why Does Patriarchy Persist? Polity Press, Cambridge, UK, 2018, p. 115*

¹⁴⁸ On gender-based violence, updating GR 19, [OHCHR | Launch of CEDAW General Recommendation No. 35](#) (accessed 9 July 2021).

Ms Gormley added that the numbers of women 'killed every year in the UK are a huge issue ... just on that one issue, just on that level of detail, the state should be gathering that data and acting on it, but the UK is not compliant with that duty':

... generally, the UK is not compliant with the CEDAW Committee's general recommendations 19 and 35 on violence against women. There are important initiatives such as coordination, appropriate allocation of resources; women civil society organisations are providing services for victims of violence, facing levels of violence that are really egregious, as well as the lack of funding, even during the lockdowns during a pandemic. One would want to think that any woman at risk, who needed safety, would find a place in a refuge. However, the statistics on how many women were being turned away because there is no space was really quite striking and quite depressing. That kind of detail can be found from women's organisations who are the service providers ...: para 15, *ibid*

Hence, on this as a matter affecting rural women and girls, Nick Newland for the Associated Country Women of the World noted 'there is a lack of disaggregated data accounting for both gender and rurality in the UK' but the statistics do give some indications of differential access to services with consequent impact on women's life outcomes. He said:

In light of the lack of official disaggregated data masking the true impact of [those] issues on rural women, it is vital that policy is formulated with involvement from rural communities, in particular rural women ... from my experience in a development organisation, when women's outcomes improve, society as a whole benefits: paras 4, 6, 9, Witness Statement, Case ref: 011

Esuantsiwa Jane Goldsmith referenced rural women, too, incorporating into her concern the lack of statistical data for Black and minoritised women. Referring to research she conducted in the 1980s for the National Alliance of Women's Organisations (NAWO) 'into the position of BAME rural women in the UK, who reported isolation and experience of racism and exclusion in the countryside', her evidence confirms the longstanding nature of failures in collection of data and in responsibility for ensuring that statistics are collected, analysed and held for policy-making and practical purposes. At this time, she said, because she was 'talking about Black women, nobody knew where to direct me'. She had approached the Commission for Racial Equality, the mechanism for race equality at that time, where she was told 'they were not handling policy or data related to women' with advice to 'contact the Equal Opportunities Commission'. Ms Goldsmith did so, only to find that 'they were not responsible for matters related to race', referring her back to the Commission for Racial Equality. Thus, '... because I was talking about Black women, nobody knew where to direct me and no statistics were collected about rural women at all': para 10, Witness Statement, Case ref: 036

Sam Smethers, formerly CEO of the Fawcett Society and speaking in her present role as freelance consultant, set the need for data as crucial, particularly in the context of the recovery from the Covid 19 pandemic. She observed that over the period of austerity then the pandemic and measures during and designed for exit from the pandemic:

.. we have seen an erosion of men and women's rights, particularly in the workplace [requiring] a conscious strategy from the Government that takes a gendered approach to society's recovery and makes deliberate efforts to make up lost ground, or it will literally take decades to return to pre-pandemic [conditions]. We must have a recovery based on gendered data and intersectional disaggregated data, focusing on characteristics such as ethnicity and disability. The economy and society will not recover without women. CEDAW is fundamental to this: paras 9-11, Witness Statement, Case ref: 030

Founder and CEO of the charity Motherhood Planned, Joeli Brearley, pointed to the importance of data from another perspective, that of legislative scrutiny and lack of government transparency. Current legislation, she said, is 'very fragmented [and] we do not have any monitoring or data about how legislation being put forward might disproportionately impact on women and other minority groups'. In addressing this, she saw a benefit in 'bringing everything together under a consolidated instrument' whereby 'we should be able to more clearly see how legislation is impacting those different groups and what needs to change to improve the lives of all women'. She cited Iceland as a country where 'they have worked hard to understand the challenged faced by women and have brought in a package of solutions that will deal with all the different issues women face': para 27, Witness Statement, Case ref: 035 This could ensure ongoing scrutiny of impact and increased awareness.

Jonna Monaghan, project coordinator for Northern Ireland Women's European Platform (NIWEP), speaking on behalf of NIWEP, raised concerns about data collection – or lack of it – in the context of policy formulation. Saying that NIWEP 'comes back to this issue very often', and noting it is 'highlighted in the CEDAW Shadow Report':

Improved data collection and use of data that is available for policy development and analysis is critical, because there is very limited data currently broken down by gender. There is not always evidence that the data is being used whilst policies and legislation are being prepared. Similarly, improving monitoring and evaluation would be important to gathering data. Data and evidence on how our laws and policies function, and that they are having the intended impact, is what needs to be looked at: para 22, Witness Statement, Case ref: 003

Data collection have a particular relevance to gender budgeting, 'a practice which can address the issues individual women in Northern Ireland, a way of making sure the resources are used effectively': para 21 Here, she drew attention to an important feature of arguments that might be used to undermine the importance of collecting and maintaining disaggregated data and particularly that referencing 'women' and 'men' or 'male' and 'female'. The contention that this in connection with gender impact assessments leads to prioritising women's rights or issues over those of men is false, for 'it is not about channelling resources to women in front of men. Gender impact assessments [are] about strengthening the gender competence of policy and decision makers:

Section 75 of the Northern Ireland Act imposes a duty of public bodies to promote equality of opportunity on nine protected grounds. It has been proposed that gender budgeting and gender impact assessment could be used to make sure that gender equality and women's rights are promoted, and resources are being used effectively. The response you might get is that 'we cannot do that because that would mean promoting women over men'. It is that kind of gender competence that is missing and if CEDAW were incorporated into domestic law, it would be easier to challenge it and hopefully easier to strengthen gender competence in that sense: para 20, *ibid*

Data collection in a new and emerging area was raised by Durham University's Dr Kelly Johnson in her evidence relating to cybercrime and image-based sexual abuse. Giving evidence in her personal capacity, she pointed out that information and data are developing, yet existing sources 'are quite partial', being conducted with students or a particular age group. Dr Johnson saw a need for data relating to both victim/survivors of these crimes or conduct requiring criminal law classification, and those who are conducting research and undertaking analysis. Required, she said, is a 'comprehensive picture and better representation of intersectional identities in academia who are asking the questions'. She also referenced 'limited data' in relation to women and girls impacted by online violence, abuse and exploitation: paras 6, 7, Witness Statement, Case ref 029

Like other witnesses, Dr Johnson was concerned about data collection by and reporting to police of ‘domestic abuse’ and the impact of the pandemic. She endorsed the value of long-term data collection, illustrating at the same time the importance of disaggregated data. She observed that reports and figures ‘from ten to twenty years ago on policing of domestic abuse show it was very different then from what it is today’. This meant that an assessment could be made of whether violence against women was being addressed more or less positively in terms of policing. In this regard, noting the ‘significant steps forward in police responses to domestic abuse particularly in the past ten years’, Dr Johnson said:

It has become a clear priority and area for so many forces, and that has been reinforced by our experience of working with police forces on [our] most recent project. However, there remains work to be done, particularly where we are seeing some officers still not understanding the dynamics of domestic abuse. This can minimise the abuse victims are reporting to them, or victim survivors feel they are not believed or taken seriously: para 10, Witness Statement, Case ref: 029

The drop-in conviction and charge rates can be attributed to a ‘complex mix of factors’, with a need for more training ‘around understanding domestic abuse and all other forms of violence against women encountered by police’, she averred, noting that criminal justice system issues including delays through the court process require attention so that ‘victims can have confidence in and feel supported through rather than being diminished by the process’. She went on to emphasise that data can be misleading, underscoring the need for it not only to be maintained, but to be an accurate reflection of (in this instance) complaints by women to police, police recording and assessment – investigation or the matter being dropped, for example. Police could take action that may be seen by them as both appropriate and helpful, but the lack of transparency and oversight means there is no way to assess the action taken and whether, ultimately, it does lead to a satisfactory conclusion: paras 11, 12

Dr Johnson’s statement tallied with concerns raised by other witnesses about training and the need for improvement, whilst she added:

... Beyond the police response, as with all forms of violence against women there is a really concerning drop-in conviction rates and charge rates. This needs improvement because ... only a small number of offences are getting through to a successful prosecution in a criminal justice context ...: para 10, *ibid*

Engagement with police forces indicates there ‘definitely is much more work to be done’ and ‘beyond the way police are responding ... we are also seeing, as with all forms of violence against women, a really concerning drop in conviction rates and charge rates ...’ Dr Johnson compared this with the recent report showing the decriminalisation of rape,¹⁴⁹ confirming that in both that area and the area of her research ‘only a small number of offences are getting through to a successful prosecution in a criminal justice context ...’: para 10, *ibid* Without the initial data, the drop in prosecution and conviction would not be known, and without disaggregated data¹⁵⁰ and, as Dr Johnson points out, evidence from victim/survivors behind police reporting, a true picture remains elusive.

¹⁴⁹ See further [End-to-End Rape Review Report on Findings and Actions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97842/End-to-End_Rape_Review_Report_on_Findings_and_Actions_-_GOV.UK_(www.gov.uk).pdf) (accessed 12 July 2021); Rachel George (Home Office) and Sophie Ferguson (Ministry of Justice), [Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97842/End-to-End_Rape_Review_Report_on_Findings_and_Actions_-_GOV.UK_(www.gov.uk).pdf) (publishing.service.gov.uk), June 2021 (accessed 12 July 2021).

¹⁵⁰ **Disaggregated data** refers to numerical or non-numerical information that has been (1) collected from multiple sources and/or on multiple measures, variables, or individuals; (2) compiled into **aggregate data**—i.e., summaries of data—typically for the purposes of public reporting or statistical analysis; and then (3) broken down in component parts or smaller units of data. For example, information about whether individual students graduated from high school can be compiled and summarized into a single graduation rate for a school or a graduating class,

Esuantsiwa Jane Goldsmith emphasised the importance of data ‘to ensure BAME women have equal access to justice’ and in the criminal justice system. It is vital, she said, to ‘carry out more research and collect more disaggregated information, case studies and data and monitoring’. It is important, too, ‘to pick upon the expertise that women already have themselves, and to consider the way BAME women are treated compared to white women’. Here, she pinpointed the media response to femicides:

Sadly, these cases of the murders of BAME women do not make headline news in the way that attractive white women do. This is not to denigrate or to take away from anything done in recognition of [a] tragic death, but to recognise at the same time the inherent racism ongoing in the media and in public perception: para 35, *ibid*

Disaggregated statistics are necessary, too, she said, to show ‘the differential experiences of women in different BAME communities’, and to ensure the establishment of services and appointment of personnel attuned to the realities that should be addressed within and by the system:

Victims and witnesses need to be protected from reprisals from perpetrators when they give evidence. There should be mandatory anti-racism and anti-sexism training for the judiciary and police services as well as an understanding of white male privilege and bias in the culture of administering justice. [A] specialist service for mental health crises should be created as a fourth emergency service to respond to the huge crisis of mental health, which has worsened because of the pandemic and lockdown: para 36, Witness Statement, Case ref: 036

SUMMATION (LACK OF) SYSTEMATIC COLLECTION OF DATA

The failure of governments, institutions, organisations, the public sector, the private sector, the polity to see women in the landscape was a theme repeated throughout the evidence presented to the Tribunal. The call for data recognising women’s existence and for disaggregated data acknowledging rural women, Black and minoritised women, women with a disability, migrant women, women refugees and asylum seekers, aged and ageing women, women at all stages of the lifecycle, women of varying class and status, women in detention ... was made for solid reasons. Without this information, it is impossible for governments to formulate policy for a diverse society. Policymaking by nation states, devolved authorities, local government and indeed any entity charged with the responsibility for framing policy and the budgets underpinning them should be undertaken on the basis of information founded in the realities of the human beings who inhabit a nation state.

This concern is not new. Christine de Pisan, born Venice 11 September 1364, educated University of Bologna, died 1430, aged 66 years, Poissy, France wrote *The City of Ladies* for just this reason.¹⁵¹ Some 500 years later, Simone de Beauvoir wrote *The Second Sex* with the same motivating force.¹⁵² This is the

and annual graduation rates for individual schools can then be aggregated into graduation rates for districts, states, and countries. Graduation rates can then be *disaggregated* to show, for example, the percentage of male and female students, or white and non-white students, who graduated. Generally speaking, data is disaggregated for the purpose of revealing underlying trends, patterns, or insights that would not be observable in aggregated data sets, such as disparities in [standardized-test scores](#) or enrolment patterns across different categories of students, for example: [Disaggregated Data Definition \(edglossary.org\)](#) (accessed 7 July 2021).

¹⁵¹ Christine de Pisan, *The City of Ladies (Le Livre de la cité des dames)* original publication in French 1405, Penguin Classics, Revised edn, London, UK, 2003; [The Book of the City of Ladies \(Penguin Classics - Kindle \(amazon.co.uk\)\)](#) (accessed 2 August 2021); see Amanda Prah, [Biography of Christine de Pisan, Medieval Writer \(thoughtco.com\)](#) (accessed 2 August 2021).

¹⁵² Simone de Beauvoir, *The Second Sex*, Constance Borde and Sheila Malovany-Chevallier (trns), original publication in English 1953, Jonathan Cape, London, UK, 2009.

lament of Caroline Criado Perez in *Invisible Women: Exposing Data Bias in a World Designed for Men*¹⁵³ her work coming atop the work of numerous others. Like Beauvoir, Perez writes that ‘the male experience, the male perspective, has come to be seen as universal, while the female experience - that of half the global population – is seen as ... niche’.¹⁵⁴

The point was made, implicitly and explicitly, throughout the hearing that data is available, and disaggregated data at that. But it is collected and held by women’s organisation, despite all the funding cuts suffered and the chronic lack of resources. These organisations do the government’s work in gathering the data, yet the value of what they do and the worth of that which they hold is too little recognised. Where it is called upon, its application can be invaluable. Yet this gives no impetus to support for increased funding and resources and, sadly, does not seem to ensure that those in authority see that the collection of useful, targeted and informed data is a responsibility government should accept and implement. It matters at all levels, and if only government were to follow through, would impact positively at all levels.

As Ms Goldsmith said in relation to racism, when reflecting upon intersectionality and movements to highlight the need for responsible action to end it, the Black Lives Matter movement has highlighted the acute problem of anti-black racism, based on African and Caribbean heritage. This ‘particularly acute problem ... exists in other non-white communities as well as white communities’. Different lived experience should be factored into government policies and policy making, for ‘... an intersectional approach will help combat racism’. She went on to add that this approach would also ‘help to shine a spotlight on women’s organisations [and the] enormous amount of data and expertise [they have] on these issues’, through having been applying an intersectional approach ‘for many years’. Yet they ‘have not been able to get the legal and structural machinery in place to enable more progress to happen’. Data collection and using it in the focused, informed and informative way it ought be applied could ensure the fashioning of services shaped toward providing the support necessary for varied and varying needs. As she said, ‘... Tailor-made services are important for the constituency, the community, and the women concerned, and [where] the service-uses run the services and service delivery, this not only meets their needs but helps to empower them as a group and as individuals’: paras 15-16, Witness Statement, Case ref: 036,

Witnesses raised the problem, too, of an almost all-pervasive obeisance of government to the notion of ‘gender-blindness’ or ‘gender-neutrality’ as if there are no differences between women and men that require recognition so that inequality can be addressed and its elimination constructively be worked towards. This appears to stem from a view that to provide focused programmes and services for women is somehow detrimental to men’s interests or actively denies them their rightful entitlement. As a number of witnesses reiterated, this is sheer ignorance of a refusal to see the world as it is. It is odd that a notion of government neutrality should persist at least in some regards, when statistics that are available show gross disparities. For example, the ‘wage gap’.¹⁵⁵

In the words of then UN Secretary General Kofi Annan:

It is impossible to realise our goals while discriminating against half the human race. As study after study has taught us, there is no tool for development more effective than the empowerment of women.¹⁵⁶

¹⁵³ Caroline Criado Perez, *Invisible Women: Exposing Data Bias in a World Designed for Men*, Chatto & Windus, London, UK, 2019.

¹⁵⁴ Ibid, p. 12.

¹⁵⁵ [Gender pay gap in the UK - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/people-and-work/earnings-and-payments/articles/understanding-the-gender-pay-gap) (accessed 8 August 2021).

¹⁵⁶ [TOP 25 QUOTES BY KOFI ANNAN \(of 333\) | A-Z Quotes \(azquotes.com\)](https://www.azquotes.com/quote/1000000) (accessed 8 August 2021).

This does not apply to countries ‘over there’ or ‘not us’. It is applicable equally to north and south, east and west, and ignorance of the principle is revealed in the failure to ensure that clear and accurate data is available – recording workforce participation, occupation, wage and wealth gap, health and wellbeing factors and features, pricing of goods and services, tax regimes and their impact, distribution of economic and social benefits, access to justice, education opportunities and outcomes ... the list goes on, but that is no reason to stop collecting the data, and disaggregating it in accordance with impacts of disability, Black and minoritised status, rural and other geographical location, migrant and refugee or asylum seeker status ... As Caroline Criado Perez says in relation to taxation and tax formulae:

It’s clear that tax systems around the world, presented as the objective trickle-down of market driven forces, have intensely gendered impacts. They have been created based on non-sex-disaggregated data, and male-default thinking. Together with our woman-blind approach to GDP¹⁵⁷ and public spending, global tax systems are not simply failing to alleviate gendered poverty: they are driving it. And if the world cares about ending inequality, we need to adopt an evidence-based economic analysis as a matter of urgency.¹⁵⁸

Notions of ‘gender-blindness’ or ‘gender-neutrality’ also feed into the proposition that recognising disadvantage, denial of opportunity, the invidiousness of stereotyping and the damage it creates serves to rob those who are not disadvantaged, nor denied opportunity, nor hit by invidious stereotyping to ‘their’ ‘entitlement’. Surely it should be self-evident to government that such an approach serves to maintain power structures as they are, with the disadvantaged remaining so, the entitlements remaining with those who comprise the advantaged group. Or – perhaps it is?

The renowned academic Professor Margaret Thornton has coined the appellation ‘benchmark man’ to signify the male standard against which all others must be measured and, if not matching up, found wanting. Thornton’s ‘benchmark man’ is ‘white, heterosexual, able-bodied and class-privileged’.¹⁵⁹ This standard eliminates not only women, but men who are not so advantaged, too. Hence, proceeding on the task of policymaking with an eye shut to differences that advantage will serve only to create and recreate existing social norms. This ultimately serves to advantage most, those already most advantaged. This is in the interests only of those in that category. Hence, the collection and application of data and disaggregated data is imperative if the Social Development Goals (SDGs) adopted by the United Kingdom along with other nation states of the United Nations are to be met. The introduction to the SDGs provides:¹⁶⁰

We recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development. All countries and all stakeholders, acting in collaborative partnership, will implement this plan. We are resolved to free the human race from the tyranny of poverty and want and to heal and secure our planet. We are determined to take the bold and transformative steps which are urgently needed to shift the world onto a sustainable and resilient path. As we embark on this collective journey, we pledge that no one will be left behind. The 17 Sustainable Development Goals and 169 targets which we are announcing today demonstrate the scale and ambition of this new universal Agenda. They seek to build on the Millennium Development

¹⁵⁷ GDP – Gross Domestic Product: ‘Gross domestic product or GDP is a measure of the size and health of a country’s economy over a time period (usually one quarter or one year). It is also used to compare the size of different economies at a different point in time. GDP is perhaps the most talked about economic concept. This guide explains how GDP is measured, as well as which things GDP doesn’t capture’: [What is GDP? | Bank of England](#) (accessed 2 July 2021).

¹⁵⁸ *Invisible Women*, *ibid*, p. 264.

¹⁵⁹ Margaret Thornton, *Dissonance and Distrust*, Oxford University Press, Oxford, UK, 1996, see particularly pp. 3-4.

¹⁶⁰ [Social Development for Sustainable Development | DISD \(un.org\)](#) (accessed 2 July 2021).

Goals¹⁶¹ and complete what these did not achieve. They seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls. They are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental.

The United Kingdom is a part of this. The population of the United Kingdom is impacted by poverty, unequal education opportunities and attainment, inequality of employment opportunities and career goals and gains, failures in access to justice, failures in ensuring equality of political voice and public office ... The gender-blindness and gender-neutrality approach is pernicious. As differences are real, ignorance of their disadvantaging impact is detrimental to policy and policymaking, law and legislative formulation, and proper advance in the polity. The evidence before the Tribunal, and the sources available from all the organisations represented or research studies referenced, confirm the vital importance of data and disaggregated data to this project.

3. Women's access to justice

CEDAW Committee raised the following matters:

- Legal aid
- Immigration, asylum seekers/refugee status
- Differential access – in terms of status such as Black and minoritised women and disability

Additional matters to consider:

- Judicial awareness and training

In addition to the CEDAW Committee areas of concern, witnesses focused the criminal justice system, massive court backlogs and violence against women - particularly rape and criminal assault at home and other forms of domestic violence, and in family law – the impact on women and prospects of success of self-representation and the problem for women in both criminal and civil matters (in the latter, mainly family law) in the absence of legal aid having to cross-examine partners/ex-partners or be cross-examined by them or by defendants,¹⁶² as well as language, information (lack of) and difficulties with court interpreters. An additional matter was that of credibility of women as litigants and witnesses, and the conduct of court proceedings including judicial awareness and the potential for bias.

Witnesses presented forceful evidence on the disproportionate effect on women of cuts to legal aid. Yasmin Rehman raised concern that 'lack of access to UK civil proceedings and courts worsens the risk of violence against women'. She considered also 'the economic fallout of a global pandemic will have an impact again on public services and access to legal aid, already very stretched'. This meant that women of faith 'are left to seek some form of redress through the parallel legal systems' established under religious auspices. Here, she referred to Sharia councils and Jewish practices: paras 20, 21, Witness Statement, Case ref: 013

Ms Rehman added that in this, she believes 'the state is abrogating its duty of care to its citizens'. The practices applied can be 'intrusive' and against women's interests, yet:

Minoritised communities are also citizens of this country, and that is something legislators, policy makers and politicians forget. With lack of access to justice and these parallel legal

¹⁶¹ [Microsoft Word - List of MDGs English.doc \(ndi.org\)](#) (accessed 2 July 2021) – also signed up to by the United Kingdom.

¹⁶² Cross-examination in certain matters is proposed to be addressed by the Domestic Abuse Bill 2021 (now the Domestic Abuse Act 2021, [Domestic Abuse Act 2021 \(legislation.gov.uk\)](#) (accessed 9 August 2021), however considerable concerns were raised in evidence about this Bill, its scope, gaps, impact, terminology and other deficiencies, despite its also being recognised as an essential advance in all the circumstances. See later.

systems in place, women, particularly from minoritised backgrounds, are deemed to be of less worth than their white sisters. I think that that is immoral, indefensible and unacceptable: para 22, *ibid*

She raised the decision in *Akhter v Khan*¹⁶³ as an illustration of the way in which Black and minoritised women were being denied access to justice and being forced into a parallel system which is antithetical to their rights. There, the trial judge granted a degree of nullity as a void marriage under section 11 of the Matrimonial Causes Act 1973. This route was adopted by him, as the marriage was a religious marriage that had not followed the civil law requirements under the Marriage Act 1949,¹⁶⁴ and hence was not a formally solemnised marriage according to the applicable law. On appeal, this decision was overturned on the basis that there was no marriage to be declared a 'void marriage', because of the lack of compliance with the Marriage Act provisions.¹⁶⁵ This decision, Ms Rehman posited,¹⁶⁶ failed women of the Muslim faith who had married in a traditional Muslim ceremony and would now, should they wish to seek some redress, be forced into a parallel system, 'whether or not Sharia councils'. This raises a serious question to be answered, and to which attention must be paid for several reasons, including:

The *Akhter v Khan* judgment, in which the Court of Appeal ruled that Muslim women who have had an Islamic faith marriage only, do not have access to UK court and family law protections upon [religious] divorce,¹⁶⁷ is deeply disappointing. I think it is a failure of the courts to recognise how women and their families are coerced into having these religious marriages. It also fails to recognise that marriage laws within this country have not kept up with the changes in demographics and the diverse nature of the communities in this country and how some women and men are being left outside any protections of the state. People who are in a religious-only marriage are not only restricted access to divorce [through the marriage not being recognised in civil law and hence being a non-marriage so not qualifying for divorce], but also cannot claim pension if their spouses die. Claiming inheritance can be incredibly difficult. England and Wales do not have the same laws around cohabitation as in Scotland. A cohabitee has far fewer rights than a wife or a husband could have ... The government and courts in this case have failed so many people ...: para 19, *ibid*

Access to divorce is limited to a marriage that is valid according to law: that is, a marriage solemnised under the Marriage Act 1949. Even then, limitations to legal aid can stand in the way of that access. Margaret Owen, OBE, of WPD¹⁶⁸ alluded to the 'absence of legal aid in divorce cases now, except when the ground for divorce is domestic abuse', this 'keeping women in appalling relationships' or sometimes requiring proof of 'domestic abuse through production of a medical certificate itself requiring a fee'.¹⁶⁹ The poorest women, she said, are 'particularly affected', including 'migrant women, disabled women

¹⁶³ *Akhter v Khan* [2020] EWCA Civ 122; [Court of Appeal Judgment Template \(familylaw.co.uk\)](#) (accessed 2 July 2021); [Akhter-Khan-Media-Summary.pdf \(judiciary.uk\)](#) (accessed 2 July 2021); [What does the decision in the Akhter v Khan case tell us? - Stowe Family Law](#) (accessed 2 July 2021); [Akhter v Khan \[2020\] EWCA Civ 122 \(familylaw.co.uk\)](#) (accessed 2 July 2021); [Akhter -v- Khan \(judiciary.uk\)](#) (accessed 2 July 2021); see further **13. Marriage and family**, later.

¹⁶⁴ Marriage Act 1949, [Marriage Act 1949 \(legislation.gov.uk\)ukpga_19490076_en.pdf \(legislation.gov.uk\)](#) (accessed 2 July 2021); [Marriage Act 1949 \(legislation.gov.uk\)](#) (accessed 2 July 2021).

¹⁶⁵ Further on this, see **MARRIAGE AND FAMILY - SUMMATION**, later.

¹⁶⁶ A position with which others agreed – see for example Southall Black Sisters (SBS) intervening. See also discussion [Akhter v Khan - summary of family law case - Family Law Partners](#) (accessed 2 July 2021); [Akhter v Khan: Recognising \(or not recognising\) religious marriages in the UK | OHRH \(ox.ac.uk\)](#) (accessed 2 July 2021).

¹⁶⁷ Or where there is no religious divorce – see further **13. Marriage and family**, later.

¹⁶⁸ [Widows for Peace through Democracy](#), founded by Margaret Owen, OBE, works to ensure widows of all ages, irrespective of religion, ethnicity, caste, age or nationality are protected from violence, marginalisation and can enjoy their full human rights:

¹⁶⁹ [Legal aid: Domestic abuse or violence - GOV.UK \(www.gov.uk\)](#) (accessed 21 July 2021).

and BME women'. Having already had their benefits cut, 'disabled women ... are often unable to do anything about it': para 4, Witness Statement, Case Ref 016 Asylum seeking women 'detained in awful places, such as Yarl's Wood ... are unable to be properly represented by lawyers' due to legal aid cuts: paras 7/8, *ibid*

Lisa Gormley, consultant and visiting fellow at the LSE Centre for Women, Peace and Security, extended the scope of restrictions caused by the 'very strict criteria for awarding legal aid' in referencing the '... negative impact on women's access to justice and effective remedies, particularly in areas such a family, housing, immigration and welfare benefits'. She echoed Ms Owen's concerns as to the impacts on women with a disability, Black and minoritised women, asylum-seeking and refugee women and, in particular victim/survivors of gender-based violence: paras 5/6, Witness Statement, Case ref: 009

Restrictions on legal aid were reaffirmed by other witnesses. Jenny Beck, QC (Hons), solicitor speaking in her personal capacity, said 'access to justice is severely comprised', the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) having 'effectively decimated legal aid for family law cases' making access to justice 'much harder for everyone', yet much more so for women: where access to justice is 'already difficult to secure for everybody, it is much harder for women': this results from women's lesser earnings and, hence, greater reliance on legal aid so as to uphold and understand their rights. This followed for 'all aspects of family law: divorce, financial proceedings, proceedings relating to children, and domestic violence' whether the parties were married or unmarried, whilst the 'most marginalised women', including those 'with limited English', a disability, or not 'having had their abuse recorded at the doctors or anywhere else' are at greatest risk of exclusion. In respect of 'divorce and all early advice', she said, 'women have many hurdles to secure the funding that is available, just to get any assistance at all:

Women are also more severely compromised in respect of getting help for protection from a domestic abuse injunction, primarily because domestic abuse is a gendered crime, so women are suffering more abuse than men. This means the same difficult rules that apply with regards to accessing justice continue to impact them more. Additionally, the current means test threshold results in the exclusion of more and more people. With men generally earning more than women, in a situation when you are trying to achieve equality of arms, quite often men can afford to be represented and women must fall back on legal aid. However, cuts to legal aid mean that fewer women have this safety net to fall back on. As a result, women are prevented from exercising their legal rights. Overall, one of my primary concerns regarding women talking issues of divorce and domestic abuse is the ability to access advice early because of LASPO and the reduction of legal aid: paras 3-5, Witness Statement, Case ref: 031

Chris McCurley, partner at Ben Hoare Bell LLP, a family solicitor in private practice in the North East of England for some 31 years and speaking in her personal and professional capacity referred to LASPO and 'decimation', too. She said that Act (LASPO) 'has absolutely decimated protection for women experiencing domestic abuse':

Before LASPO, the starting point was that everything was in scope for legal aid unless specifically excluded. Post-LASPO, the position was reversed, and everything is excluded from legal aid unless specifically included ... For [some] ten years we have been fighting to reverse the damage done by LASPO to victims of domestic abuse and to restore their ability to access justice: paras 6-7, 10, Case ref: 015

Ms McCurley went on to say that all women 'are finding it difficult to access justice and LASPO plays an enormous part in that. Even the government's own equality impact assessment pre-LASPO said that women would be disproportionately impacted by the fallout from LASPO'. She located the reasons for this in that women are 'far more likely to be carers, to be in part time employment, zero-hours contracts,

and with a significantly smaller earning potential than men, so more likely to need legal aid ...': para 11, *ibid* She referred also to the increased difficulties in accessing legal aid and access to justice for women 'who do not speak English', for even where interpreters are available, they may suffer from a lack of freedom from their own biases and cultural prejudices: paras 24, 28, 29-32, *ibid*

Referring to Article 15 of CEDAW as 'specifying that a woman has equal rights before the law', whilst CEDAW Article 16 'says that a woman has equal rights in the family and family life', Ms McCurley added that the effect of LASPO was 'effectively that any human rights women had become meaningless because there was no way of enforcing them as the legal aid was not available ... Some improvements have been made over the years but there remain significant justice gaps'. This impact was of such importance, that 'in attending the 2013 CEDAW inquiry, access to justice for women and domestic abuse were the chief issues we went to raise with the Commissioners because women were being significantly failed and so were their children': paras 7-8, *ibid*

Inadequacies of legal aid in family matters were attested to by barrister and junior research fellow at Queen's College, University of Cambridge, Dr Charlotte Proudman, too. Also practicing in the field, she observed that 'the most abusive' occurrence in family courts is where, lacking legal representation, one party cross-examines the other. Where a case involves 'domestic abuse', 'mothers are re-victimised, re-traumatised and experiencing PTSD as a result ...':¹⁷⁰ para 10, Witness Statement, Case ref 017 Dr Proudman also highlighted the position of 'migrant women and asylum seekers' lacking legal aid in applications for female genital mutilation (FGM) orders': paras 17/18, *ibid*.

Jolie Brearley, Founder and CEO of the charity Motherhood Planned,¹⁷¹ outlined three barriers 'preventing mothers and pregnant women accessing justice':

The first is the three-month time limit on raising a tribunal complaint. Raising a tribunal complaint and going through the legal process is highly stressful, which can have long-term health impacts for both mother and baby. This is a very vulnerable time for women, with around 81% of pregnant women and new mothers experiencing mental health issues. Forcing people to go through a stressful, complicated process when pregnant, or having just had a baby, is unreasonable, especially when other forms of discrimination [such as access to paid jobs and unequal pay exist]. Motherhood Planned research found that 14% of women chose not to raise a tribunal claim due to the limitation period. With fewer than 1% of women who experience pregnancy and maternity discrimination raising a tribunal claim it's clear that the limit creates a huge barrier to accessing justice: paras 5, 6 *ibid*

Cost presents the second barrier: 'Legal support for pregnancy and maternity discrimination costs £8000 on average. Most pregnant women and new mothers do not have a spare £8000 and legal aid is not available for these cases', while the third barrier is lack of clear information: paras 6-7

The stress and complexity noted by Jolie Brearley in relation to pregnant women and new mothers was echoed in relation to Black and minoritised women, and migrant women, by Esuantsiwa Jane Goldsmith, writer, strategist, facilitator, activist and worker in the not-for-profit sector, reiterating that difficulties have been 'exacerbated by Brexit', making it 'even more difficult for minority women and particularly migrants to operate within the system':

¹⁷⁰ As Dr Proudman pointed out, a proposal to prevent cross-examination by a party in such cases was as she gave her evidence being debated in the Domestic Abuse Bill 2021, although this Bill had been before the Parliament for some years and in the urging long before. The Domestic Abuse Act 2021 (now passed) incorporates such a provision: [Domestic Abuse Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk) (accessed 8 August 2021); [Domestic Abuse Act: Factsheet - Home Office in the media \(blog.gov.uk\)](https://blog.gov.uk) (accessed 8 August 2021).

¹⁷¹ In the Founder and CEO's words 'better known as Pregnant then Screwed': Witness Statement, Case ref: 035, para 1

BAME women often cannot access justice because they do not have access to legal aid, and therefore cannot afford to take their cases to court. Going to court is incredibly stressful, complex, and time-consuming. The adversarial form of justice often means that personal information and aggressive questioning techniques are routinely used to discredit the complainant and witnesses and retraumatise female victims. Many women feel reluctant to go through with it and fail to appear in court: para 33, Witness Statement, Case Ref 036

This problem was strongly emphasised by Baljit Banga, executive director of Imkaan,¹⁷² speaking on the organisation's behalf. The 'No Recourse to Public Funds' provision¹⁷³ cuts women with insecure immigration status and migrant women from government services. She advocated 'abolition of the ... rule for women subjected to violence' in the UK because all women 'should have access to safety from violence and abuse regardless of their immigration status ...': paras 27, 33/34-36, Witness Statement, Case ref 018 She observed that the Domestic Abuse Bill (now Act) was remiss in this regard, leaving immigrant Black and minoritised women without protections in law, and 'the Domestic Abuse Bill not offering the protections anticipated for No Recourse to Public Funds' meaning that gaps remain 'for what is required to provide rights and protections to women with No Recourse to Public Funds and other migrant women finding themselves in precarious situations': para 33, Witness Statement, Case ref: 018

Pragna Patel, director at Southall Black Sisters (SBS) speaking on behalf of the organisation, raised the 'No Recourse to Public Funds' issue, too, adding:

The lack of legal aid is the single most important indicator of just how devastating austerity measures have been for women. We have seen several cases where women have had to represent themselves even in contexts where their opposite party are their abusers. They find themselves in positions where they have to cross-examine their own abusers. That imbalance of power in the courtroom directly leads to an imbalance in access to justice; justice is not accessed equally. It leaves women unable to articulate exactly what their concerns are in court and, as a result, jeopardises their access to their children and their own safety. They may also find themselves in situations where they are even more vulnerable because abusers often use the litigation as a form of abuse: paras 13, 20, Witness Statement, Case ref: 023

Ms Patel went on to point out that legal aid cuts impact on organisations representing women, too, for it is more difficult to obtain legal aid advice and representation because remuneration for lawyers who conduct cases on a legal aid basis has shrunk, [so] many legal aid firms have ceased doing legal aid work':

... that means many of the women we work with have little or no access to legal aid advice and representation, often facing delays in accessing advice and representation> This affects areas where we need advice and representation on an urgent basis which includes in areas such as housing, community care, family law and immigration law ...: para 21, *ibid*

Rosie Lewis, speaking on behalf of The Angelou Centre, a Black and minoritised women's led centre based in Newcastle,¹⁷⁴ referred to a 'three-tier system in the UK in terms of the quality of equitable access to service and justice, with women of colour, migrant women and women without recourse to funds particularly disadvantaged by current structures'. She referred in this regard to the Domestic

¹⁷² Imkaan is 'the only UK-based, umbrella women's organisation dedicated to addressing violence against Black and Minoritised women and girls i.e. women who are defined in policy terms as Black and 'Minority Ethnic' (BME)': [Imkaan](#) (accessed 7 July 2021).

¹⁷³ [No Recourse to Public Funds \(NRPF\) - Home Office in the media \(blog.gov.uk\)](#) (accessed 21 July 2021); [Public funds - GOV.UK \(www.gov.uk\)](#) (accessed 21 July 2021).

¹⁷⁴ [Angelou Centre \(angelou-centre.org.uk\)](#) (accessed 8 August 2021).

Abuse Bill 2021 (now Act) and the Equality Act 2010, observing that ‘rapid legislative changes are having a negative impact on minoritised women who already face compounded intersectional inequalities and are not afforded the same protections as other women’. Here, she cited the Domestic Abuse Bill, ‘which excludes migrant women who face violence against them’: paras 3,7, 9, Witness Statement, Case ref: 024 As for the Equality Act, it ‘and other legislation has not been implemented in an equitable manner, with limited consideration of how different regions of the country operate in terms of cultural competence and the extent to which the presentation of Black and minoritised women is proportionally represented within different statutory services’: para 8, *ibid*

A further matter of access to justice raised by Ms Patel for SBS revolved around the purpose and procedure of judicial review. She emphasised the key nature of judicial review in holding government actors, authorities and agencies to account, citing the application SBS ran against Ealing Borough Council.¹⁷⁵ In response to indications by government of an intention to limit judicial review through the Judicial Review and Courts Bill 2021,¹⁷⁶ she said that the stated aim of ‘weeding out “vexatious” proceedings being brought against public bodies’ was misplaced:

... the evidence already shows that judicial review proceedings are not brought as often as the government likes to think they are. In many situations, just the threat of judicial review and legal action is sufficient to make institutions act more lawfully and in line with policies, procedures and good practice. The idea that judicial review is being misused is simply a myth ... The government is continuously withdrawing access to justice based on this idea that somehow the law is being misused without providing any evidence to support this claim: para 26, *ibid*

She observed that SBS had provided evidence to the Ministry of Justice that judicial review applications have declined in the past decade, whilst SBS uses judicial review ‘sparingly as a tool of last resort when all other avenues and persuasions, negotiations have failed’. The costs implications are significant, with checks and balances already built into the judicial review process making it difficult to initiate action, with action being brought ‘only where there are strong legitimate grounds And prospects of succeeding are at least good’. Actions taken by SBS, whether initiated¹⁷⁷ or intervening, arise only where issues of wider public interest are involved, and in the result outcomes have been successful leading to ‘improved practices and forms of governance on the part of public bodies’: para 27, *ibid*

There are implications here, too, for Black and minoritised women ‘who already face considerable pressure from their families and communities to avoid the formal justice system and keep family matters, in particular, private’. More and more, she said, are South Asian women, in particular, ‘being pushed into access community (religious) based arbitration systems, based on fundamentalist and conservative religious laws that are inherently discriminatory against women’: para 28, *ibid*

Access to justice relates not only to being able to get into a court or tribunal and due process in getting there, but receiving both procedural and substantive fairness once there. As Nazmin Akhtar, co-chair of

¹⁷⁵ *R (on the application of Kaur and Shah) v London Borough of Ealing* [2008] EWH 2062 (Admin), [Kaur & Shah, R \(on the application of\) v London Borough of Ealing & Anor \[2008\] EWHC 2062 \(Admin\) \(29 July 2008\) \(bailii.org\)](#) (accessed 21 July 2021).

¹⁷⁶ Judicial Review and Courts Bill 2021, [Judicial Review and Courts Bill - Parliamentary Bills - UK Parliament](#) (accessed 9 July 2021); [Government publishes Bill designed to limit judicial review » Humanists UK \(humanism.org.uk\)](#) (accessed 9 July 2021); [Solicitors Journal - Judicial Review and Courts Bill: ‘better for this government, but not for its citizens’](#) (accessed 27 July 2021); [News focus: Judicial Review and Courts Bill - bigger reforms on the horizon? | News | Law Gazette](#) (accessed 29 July 2021).

¹⁷⁷ See for example *R (on the application of Kaur and Shah) v London Borough of Ealing* [2008] EWH 2062 (Admin), [Kaur & Shah, R \(on the application of\) v London Borough of Ealing & Anor \[2008\] EWHC 2062 \(Admin\) \(29 July 2008\) \(bailii.org\)](#) (accessed 21 July 2021).

Muslim Women’s Network UK said, barriers to accessing rights ‘can take various forms’. This can lie in the obstacles ‘when trying to access rights in the first place, whether that is legal rights or Islamic rights as per faith’. She cited the Network’s Report on Muslim women’s experiences of the criminal justice system which ‘highlighted a range of issues faced by Muslim women when they engage with the likes of police or judiciary’:

UK laws and policies give Muslim women the ability to take a matter to court, if they have been physically or sexually abused, yet our case studies highlighted that just because the law exists and the criminal justice system is in place, it does not mean it is accessible. Just because justice is in principle available, that does not mean that Muslim women are actually going to be able to access justice. Various issues were highlighted by the report, including loopholes in laws and policies: para 4, Witness Statement, Case ref: 039

The right to be heard, whether on paper or in person, bespeaks the right to be listened to (or read) with an unbiased eye and ear.¹⁷⁸ In this regard, family law presented a multiplicity of concerns for a number of witnesses, including problems confronting women whose first language is not English and deficiencies in the provision of interpreters; a lack of understanding of the nature of violence in the family context, on the part of members of the judiciary; a failure to regard women’s evidence as credible or to exhibit the capacity to take an apparently unbiased view; a lack of awareness as to cultural differences or the impact of trauma and, apart from anything else, its potential for affecting the way in which a woman presents her evidence. In addition to this is the right to be represented adequately: what training do practitioners have in representing diverse clients and representing them effectively?¹⁷⁹

Partner at Ben Hoare Bell LLP, Cris McCurley, providing her evidence both in a personal and professional capacity, spoke of ‘the Harm Report’ – *Assessing Risk of Harm to Children and Parents in Private Law Children Cases – Final Report*.¹⁸⁰ She said that existing law and practice directions would work well in ‘providing protections to women suffering domestic abuse in the UK if it were used properly ...’ However, she added, ‘there is a vast gulf between what the law is supposed to do and what it actually does in practice’, for ‘the way the law is supposed to be implemented in abuse cases is often ignored and there is a significant resource problem, meaning domestic abuse is not dealt with adequately’. She observed that the position ‘for Black and Asian women experiencing domestic abuse is worse’, noting that the Harm Report demonstrates this, in ‘finding that domestic abuse is not dealt with adequately and is often not understood, minimised and written off ... women are frequently assumed to be dishonest and believed to be attempting to alienate themselves and their children from the “so-called innocent parent” when in reality the women are trying to protect their child and themselves’: paras 2-3, 4, Witness Statement, Case ref: 015

Ms McCurley expressed a hope that the Harm Report, being ‘more important than the Domestic Violence Bill¹⁸¹ which (apart from a few amendments inserted such as the offence of non-fatal

¹⁷⁸ The issue of representation and by whom cases are heard is also of course significant – see for example Alexandra Wilson, *In Black and White – A Young Barrister’s Story of Race and Class in a Broken Justice System*, Endeavour/Octopus Publishing, London, UK, 2021; see also [Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2021 Statistics - GOV.UK \(www.gov.uk\)](#) (accessed 8 August 2021); [Diversity-at-the-Bar-2019.pdf \(barstandardsboard.org.uk\)](#) (accessed 8 August 2021).

¹⁷⁹ Ibid, and see also [Universal-Womens-accesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf \(icj.org\)](#) (accessed 21 July 2021).

¹⁸⁰ [Assessing risk of harm to children and parents in private law children cases - GOV.UK \(www.gov.uk\)](#) (accessed 21 July 2021); [Assessing Risk of Harm to Children and Parents in Private Law Children Cases \(publishing.service.gov.uk\)](#) (accessed 21 July 2021).

¹⁸¹ Now enacted – the Domestic Abuse Act 2021, [Domestic Abuse Act 2021 \(legislation.gov.uk\)](#) (accessed 2 August 2021); [Domestic Abuse Act: Factsheet - Home Office in the media \(blog.gov.uk\)](#) (accessed 2 August 2021).

strangulation)¹⁸² seriously misses the mark in addressing what is needed’, would be a ‘starting point’: the government having ‘promised to implement it ... we would see a real difference in approach taken to domestic abuse, and that would be far better for women and children’:

... a real understanding around the impact of abuse and particularly the impact of trauma on victims of abuse and their ability to be able to give the best evidence [is needed]. The Harm Report noted that the way trauma impacts the brain means that women are not able to give a clear historical chronology of the abuse from start to finish ... Because of the impact of trauma of the abuse on the brain, they are not able to give what is generally considered to be ‘best evidence’: 4-5, 12 *ibid*

She went on to observe that case reports ‘show that judges will say ... “I much preferred the evidence of the father in this case because he was very clear. He said things in the chronological way. It was a clear narrative and did not jump about. He was just very, very confident in his approach, whereas the woman’s [evidence is] all over the place. She did not have credibility.”¹⁸³ The system is failing all women because women experiencing trauma are not understood in the way they present themselves and give their evidence’: para 13, *ibid*

Dr Charlotte Proudman’s evidence also addressed ‘access to justice’ from the perspective of the right to procedural and substantive fairness once in the courtroom. As a barrister practicing in the family jurisdiction she instances representing ‘two of four mothers who brought an appeal to the court of appeal, following dismissal of their allegations of rape, domestic abuse and coercive control’:¹⁸⁴

During this appeal it became clear that there are patterns of minimisation of domestic violence in family courts and a lack of definition of what rape and consent is in family law.¹⁸⁵ Coercive

¹⁸² [Strangulation and suffocation - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 2 August 2021); see Susan Edwards and Chris Gledhill, [Strangulation and false narratives of consent | COUNSEL | The Magazine of the Bar of England and Wales \(counselmagazine.co.uk\)](https://www.counselmagazine.co.uk) (accessed 2 August 2021); S. Edwards and H. Douglas, [\(PDF\) S. Edwards, H. Douglas - Non fatal strangulation England and Wales and Australia pre pub copy \(researchgate.net\)](https://www.researchgate.net) (accessed 2 August 2021); Susan SM Edwards, ‘Coercion and compulsion – re-imagining crimes and defences’, *Criminal Law Review*, (2016), vol 12, pp. 876-899; Susan SM Edwards, ‘The Strangulation of Female Partners’, *Criminal Law Review* (2015), vol 12, pp. 949-966; also V. Bettinson, ‘Aligning partial defences to murder with the offence of coercive or controlling behaviour’, *Journal of Criminal Law* (2019), vol 83 No 1, pp. 71-86.

¹⁸³ Mary Ann Sieghart’s *The Authority Gap ...*, Doubleday/Transworld, London, UK, 2021 is relevant here: if women generally are seen as less authoritative than men, simply because women are women, men are men, as indicated by the wealth of research referenced in Sieghart’s book, then adding violence, abuse and the consequent trauma to a woman’s history and disposition will entrench or render even more so the perception inculcated by traditionally trained judges adhering to traditional ways of seeing the world.

¹⁸⁴ It needs to be noted here that rape in marriage was at last recognised as a crime: *R v R* [1991] 3 WLR 767; *R v R* [1991] 2 WLR 1065; [R. v R \[1991\] UKHL 12 \(23 October 1991\) \(bailii.org\)](https://www.bailii.org) (accessed 21 July 2021); [R v R | \(1991\) 155 JPN 752 | United Kingdom House of Lords | Judgment | Law | CaseMine](https://www.criminal.lawcase.com) (accessed 21 July 2021); [Criminal law HC 167 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk) (accessed 21 July 2021); it might equally be noted that the purported foundation for the legitimacy of the proposition that rape in marriage was not a crime (in its proposition that *R v Clarence* (1888) 2 QB 23 reinforced *Hales Pleas of the Crown* vol 1, p. 629), is more than flimsy: Jocelyne A. Scutt, ‘Consent in Rape – The Case of the Marital Contract’, *Monash University Law Review*, vol 3, 1977, pp. 255-288, <https://www.austlii.edu.au/au/journals/MonashULawRw/1977/5.pdf> (accessed 2 July 2021).

¹⁸⁵ ‘Rape’ is defined in the [Sexual Offences Act 2003 \(legislation.gov.uk\)](https://www.legislation.gov.uk) (accessed 21 July 2021): s. 1 Rape

(1) A person (A) commits an offence if—

(a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
(b) B does not consent to the penetration, and
(c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

control is often dismissed as not being relevant to issues relating to contact. The justice system is failing, as all this occurs under the courts' watch. There is no accountability because these cases take place in private and judges have judicial immunity. There is nothing you can do apart from complain: para 8, Witness Statement, Case ref: 017

Jenny Beck, QC (Hons) saw 'the impact of funding cuts on legal aid and the impact it has on access to justice for women' as matched, effectively, by the courtroom process, 'particularly in respect of domestic abuse cases and cases concerning children'. This she saw as 'partly because we have an adversarial system which tends to disadvantage people who have been traumatised'. Here, she observed that court or judicial comprehension is vital, for 'the ability to provide good evidence in court within an adversarial system when you have been traumatised is entirely dependent upon the courts being "trauma informed" in understanding the impacts trauma has on evidence and protecting those who may be traumatised so that they can achieve best evidence':

... in our adversarial system, women are faced with a situation where they have to be very direct in their evidence with lots of corroboration and hard facts; these are exactly what is jettisoned during traumatic events. So, when asked, a woman might not remember the day on which the last incident occurred because days are not a priority when you are seeking to protect yourself or your children. However, this inability to recognise and remember exactly will prejudice the credibility of evidence in a court that is not "trauma informed". An adversarial system can load itself against victims of domestic abuse, predominantly women, unless there is sufficient training and understanding within the court environment on the impact of trauma on evidence: paras 6-7, Witness Statement, Case ref: 031

Ms Beck added that as the adversarial system itself 'will always struggle to make that a balanced playing field, an inquisitorial approach, particularly in domestic abuse cases, should be considered in order to establish the facts of the case': para 7, *ibid*

From the perspective of 'inside the courtroom', too, Ms McCurley testified as a trial advocate to the 'high disadvantage' suffered by Black and minoritised women and children in the present system:

It is very difficult for white women from the majority culture to have faith that they will have a fair hearing, far less somebody from a different culture who does not speak English or who faces another barrier. There is a long way to go, something exercising the CEDAW Commissioners for the last two inquiries.¹⁸⁶ The government has been charged with looking particularly at minority ethnic women and the law and how they access justice. We have not seen much action on that, though there was a huge groundswell of campaigning work trying to have the government engage with this: para 28, *ibid*

(3) Sections 75 and 76 apply to an offence under this section. [Defining 'consent' and see also s. 74.]

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life. The Act defines as 'assault by penetration' insertion of another part of the body or object into the anus or vagina: s. 2 There is no good reason and indeed no reason at all for failing to apply this definition (or that of 'assault by penetration' where applicable) – the definition in England, Wales, Scotland and Northern Ireland comes under the Sexual Offences Act; there is no 'different' definition to be chosen at whim or by recourse to bias, prejudice, muddle-headed thinking or upon any other basis.

¹⁸⁶ As background, for country reports pre 2007, see [CEDAW: Country Reports](#) (accessed 2 August 2021); also <https://www.bing.com/search?q=c daw+committee+reports+UK&qs=n&form=QBRE&msbrank=1 1 0&sp=-1&pq=c daw+committee+reports+uk&sc=1-26&sk=&cvid=5EE07E6689EB4BC18BCC580AC2DCF26C> (accessed 2 August 2021); [8th report to the Committee on the Elimination of Discrimination against Women - GOV.UK \(www.gov.uk\)](#) (accessed 2 August 2021).

One aspect she spoke of observing ‘a lot of the time [is] women from minority ethnic communities struggling with language’. This is compounded by problems with interpreters, for ‘male interpreters [can be] brought to court to interpret for women who are trying to explain extremely sensitive forms of abuse, [say] rape or sexual assault, and it is extremely difficult for them to do that anyway, without being asked questions or being interpreted by a male interpreter’. She cited a case where a Punjabi born mother was ‘vigorously cross-examined by a male barrister from her own community for two hours, ... shamed and humiliated by questions which were, at best unnecessary ...’ In other instances, ‘interpreters have been caught out deliberately misinterpreting what the woman is saying, because they believe the woman should go back to her husband. And I have seen the wrong interpreter booked, and judges insist that the case carry on ...’ In one instance, ‘the IDVA [independent domestic violence advocate]¹⁸⁷ in court with the woman realised [an event] had been wrongly misinterpreted’. Rather than being supported by the judge, ‘the IDVA was told to sit down and shut up, or she would be removed from the court’. This and other examples illustrate ‘a real barrier erected for women from different communities, particularly women who do not speak English’: paras 22-24, *ibid*

As for the problems confronting women as asylum seekers and refugees, witnesses confirmed the multiplicity of barriers standing in the way of their access to justice. The question of credibility was very much at the heart of witness’ evidence. From Apna Haq, Zlakha Ahmed, MBE, said that the Home Office ‘seems to assume that all women are liars, and assume that women make up stories to stay in the UK. In my 25 years of experience, the women I have supported in court have never had a different response’. The failure of the system to recognise the problems faced by migrant women were an issue for Apna Haq too, she said, as ‘migrant women who are considered over-stayers’ are not often entitled to any protection. Migrant status should not matter, ‘women and girls have a right to be protected’. Further:

A Home Office directive states that if police become involved with a migrant woman and find out that she is a migrant woman with insecure immigration status, they have a duty to report the woman to the Home Office. This deters women from allowing the police to get involved. Instead, the woman just puts up with the violence. The fear is that women will not seek any help because they are too scared about what might happen to them. They no longer feel that the police are protective force. For example, in 2019 a woman from an EU country was murdered. She had not sought any help: paras 8, 13, Witness Statement, Case ref: 005

Furthermore, said Ms Ahmed, when women are reported to the Home Office, ‘it appears to be the Home Office’s automatic response to deport the woman back to her country of origin. This leaves the path open for the abuser, who is male in the majority of the cases we have dealt with, to track the woman down in her country of origin. Then the woman no longer has protection, and the abuser can do what they want’: para 14, *ibid*¹⁸⁸

Like Ms Beck, Dr Proudman noted that ‘family courts ... do not understand the impact of trauma on the way victims give evidence’, including here the position of women who are migrants or refugees. She said that refugee addresses ‘are currently not confidential in family cases ... it is left to the discretion of the judge, and in one case the father found the address, stalked and harassed the victim, and abducted the child abroad, causing a lot of harm’:

There is currently no mandatory training for family judges hearing rape, domestic abuse and coercive control cases. There is no evidence that social workers and CAFCASS officers undergo

¹⁸⁷ [Independent Domestic Violence Advocates \(IDVAs\) - Safer Futures](#) (accessed 2 August 2021).

¹⁸⁸ Note that the matters referred to by Kevin Hyland and Jonna Monaghan as to the European Arrest Warrant and European Protection Orders should come into play here: [EUR-Lex - 32011L0099 - EN - EUR-Lex \(europa.eu\)](#) (accessed 8 August 2021); [EPRS_STU\(2017\)603272_EN.pdf \(europa.eu\)](#) (accessed 8 August 2021). See under **Brexit – Withdrawal from the European Union**, earlier.

regular training about these issues. There is a lack of understanding the impact of domestic abuse: paras 12-14, Witness Statement, Case ref: 017

Cris McCurley of Ben Hoare Bell LLP noted that a 'lack of credibility' can be greater for 'certain groups of women who experience significant forms of control and surveillance [meaning] they cannot access help and the, when they do, they are very often disbelieved. There is a generalised lack of understanding of cultural forms of abuse, the lack of English, disinformation from the abuser, being able to deport migrant women if they complain, lack of knowledge of the system': para 14, Witness Statement, Case ref: 015

Solicitor Jenny Beck, QC (Hon) considered the question of court processes being appropriated for unjust reasons. She noted the ways in which courts are 'being increasingly used as a weapon of abuse by perpetrators, and this is happening increasingly because of legal aid cuts':

More men are going to court as litigants in person, and in doing so are recognising that the court system itself can occasionally be used as a tool to abuse further. This occurs through perpetual applications for child contact; late filing of evidence; volumes of unnecessary evidence; permanently using the court to control women; and constantly making applications repeatedly during the course of a case. All these are mechanisms to further traumatise the woman under a facade of pursuing justice: para 8, Witness Statement, Case ref: 031

The principle of open justice and transparency was raised, both tangentially and implicitly by witnesses, as well as explicitly by Darragh Mackin, partner at Phoenix Law, Belfast. Justice sometimes takes a long time coming, and it was this to which he referred in relation to the wrongs done to women as mothers of babies who were removed from them, with inhumanity and denial of rights. Northern Ireland, he said, 'could learn from recent criticisms in the Republic of Ireland regarding the shortcomings of the investigative report commissioned to examine systemic abuse in mother and baby homes':

The criticisms are made up of two main areas. First is the lack of access to data and the access to information; the second is lack of public, open justice and transparency. Those failings cumulatively have created a lack of equality between the state and the victims, who are deeply affected by the systemic abuses that they suffered: para 6, Witness Statement, Case ref: 025

Mr Mackin stressed as 'absolutely essential' that the investigative process due to commence in the jurisdiction of Northern Ireland 'will have at its heart all the components that are well established by the ECHR [European Convention on Human Rights]¹⁸⁹ and under international law in general':

First of all – access to information and data on behalf of those victims. Secondly, access to public open justice, full transparency, scrutiny and accountability. The classic quotation, '*unless justice is seen to be done, it won't be done at all*' is particularly apt in this context. For too long those victims and survivors of fundamental human rights abuses have been silenced: para 7, *ibid*

¹⁸⁹ [European Convention on Human Rights \(coe.int\)](https://www.coe.int/) (accessed 21 August 2021).

SUMMATION ACCESS TO JUSTICE

... the temptation to avert one's eyes from seeing the ways in which gender, race, ethnicity, class and sexual orientation frame judgments is powerful ... What does one do in the face of pervasive gendered and racialized interpretations of fact, of credibility, and of legal doctrine? How does one run a court system?

Judith Resnick, 'From the Senate Judiciary Committee to the County Courthouse: The Relevance of Gender, Race, and Ethnicity to Adjudication' in *Race, Gender and Power in America - The Legacy of the Hill-Thomas Hearings* Oxford University Press, Oxford, UK, 1995¹⁹⁰

The cuts to legal advice and representation in consequence of the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) has had a devastating effect upon women's access to justice. The evidence shows this indisputably, as do demonstrations by the legal profession, representations by the profession to government, and the Parliamentary Inquiry conducted by the House of Commons Parliamentary Justice Select Committee¹⁹¹ – the call for evidence of which closed on 2 November 2020, Terms of Reference being:¹⁹²

The Committee welcomes evidence on:

- How LASPO has impacted access to justice and for views on the post-implementation review and the criminal legal aid review;
- The role of the Legal Aid Agency;
- Recruitment and retention problems among legal aid professionals;
- The impact of the court reform programme and the increasing use of technology on legal aid services and clients;
- The impact of Covid-19 on legal aid services and clients; and
- What the challenges are for legal aid over the next decade, what reforms are needed and what can be learnt from elsewhere.

Figures from December 2018 indicate that in 2017-2018, some 140,000 people received legal aid. This contrasts against 785,000 in receipt of legal aid in the period 2010-2011. In 2017-2018, the drop in civil cases receiving legal aid assistance was more than 80 percent. Mark Rice-Oxley and Owen Bowcott report that cuts amounting to 'about £950m annually (in real terms) has resulted in 'half of all law centres and non-for-profit legal advice services in England and Wales have closed over the past six years', the Ministry of Justice confirming that in 2013-2014 'there were 94 local areas with law centres or agencies offering free legal services ... By [2018], the number had fallen to just 47.¹⁹³ Between 2010-2011 and 2018-2019, Ministry of Justice funding for law centres through legal aid contracts 'dropped

¹⁹⁰ Anita Faye Hill and Emma Coleman Jordan (eds), *Race, Gender and Power in America - The Legacy of the Hill-Thomas Hearings*, Oxford University Press, Oxford, UK, 1995, pp. 201-229.

¹⁹¹ [Call for Evidence - Committees - UK Parliament](#) (2 August 2021); [Thousands of lawyers protest against legal aid cuts | News | Law Gazette](#) (accessed 2 August 2021); [Legal aid services are on brink of collapse, lawyers tell MPs | Legal aid | The Guardian](#) (accessed 2 August 2021); [The Future of Legal Aid - Committees - UK Parliament](#) (accessed 2 August 2021)

¹⁹² [Call for Evidence - Committees - UK Parliament](#) (2 August 2021)

¹⁹³ [How legal aid cuts filled family courts with bewildered litigants | Legal aid | The Guardian](#) (accessed 2 August 2021).

from £12.1m to £7.1m'. Rice-Oxley and Bowcott make the point that this was 'caused by a double blow' through 'removal of legal aid eligibility for many types of cases coinciding with a financial crisis among local authorities, which have been forced to withdraw support for local law centres'.¹⁹⁴ This financial crisis was, of course, generated by the 2010 central government budget cuts and, for local government, the phased withdrawal of the local government grant.

Notably, cuts to legal aid are skewed against women and women's representation. This is because the cuts are imposed more directly and heavily upon family matters, with criminal proceedings better ringfenced against the cuts. Men are more likely than women to require legal advice, assistance and representation in criminal matters.¹⁹⁵ The rationale behind this skewing of legal aid towards the criminal jurisdiction and away from the civil is, presumably, that being subject to criminal prosecution has greater consequences – a finding of guilt and criminal record may be the end result, and the experience itself can be devastating: engagement in legal proceedings is recognised as one of the most stressful experiences an individual can have. Yet the consequences of civil proceedings can be, and often are, enormous – particularly in family law and immigration. The assessment of stress in conjunction with being engaged in litigation applies here, too and, as noted by witnesses, access to legal aid for family litigation is subject to stringent rules. The cuts to legal aid are contrary to the access to justice principle. In that they impact differentially upon women is contrary to the 'indirect discrimination' principle.¹⁹⁶

Whether the nod to cases where family violence is established (when the evidence is accepted by legal aid authorities) can be argued to overcome this is questionable and at least capable of challenge. As witnesses said, in denial of legal aid for family matters there are few exceptions, including evidence of criminal assault at home or other forms of domestic violence or under the exceptional case funding scheme. But 'domestic violence needs to be proved by hard evidence, such as a criminal conviction, civil injunction or a letter from social services or a refuge'. Notably, here, each of these requirements involves (a) criminal conviction: police and prosecution ready to accept the truth of the woman's report and to take it seriously; (b) civil injunction: legal advice and assistance required, legal aid not available or restricted – a 'chicken and egg' conundrum here; (c) social services letter – credibility, taking the matter seriously required, or refuge letter – refuges/shelters closed, underfunded, under resourced – available? As to exceptional case funding, this 'is extremely difficult to obtain: where funding used to apply to about 5,000 to 7,000 cases a year, in 2018 the number of people who managed to obtain financial support was 954'.¹⁹⁷

Added to this is the closure of many Magistrates Courts meaning that travel costs or increased travel costs are added to the financial burden of attending at a hearing, or simply to lodge documents. Women's more precarious financial circumstances increase the negative effect of withdrawal of legal aid. This differential impact of legal aid (non) funding applies not only on the ground of sex, but from the evidence on the ground of race or ethnicity. The evidence confirmed that legal aid cuts compound the issues for Black and minoritised women, and for migrant women, asylum seekers and refugees. Interpreter services are essential where a woman's first language is not English and an interpreter is required. There is little point in providing an interpreter in the wrong language, not versed in the dialect, or has difficulties with a particular accent. Equally, interpreters must be professionals: that an interpreter may misinterpret consciously or subconsciously, or deliberately reflect a woman's words so as to project her evidence in a way that will persuade the decision-maker that she is embellishing or

¹⁹⁴ Ibid.

¹⁹⁵ [Arrests - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](https://ethnicity-facts-figures.service.gov.uk) (accessed 2 August 2021).

¹⁹⁶ This terminology – 'indirect' vs 'direct' discrimination, albeit incorporated into equal opportunity, anti-discrimination and discrimination legislation in so many jurisdictions is often not well understood and its application can be patchy. Consideration needs to be given to an alternative terminology. See **17. Overarching matters**, later.

¹⁹⁷ [How legal aid cuts filled family courts with bewildered litigants | Legal aid | The Guardian](https://www.theguardian.com/law/2021/aug/02/legal-aid-cuts-family-courts) (accessed 2 August 2021).

being untruthful or ‘really’ does not want to proceed with the action – where the subject matter is divorce and the interpreter’s cultural disposition is opposed to divorce, or it relates to the children’s welfare and the interpreter is convinced that father-right is indisputable, or the matter is one revolving around criminal assault at home and other forms of domestic violence, and the interpreter is firmly of the view that wives are obliged to serve their husbands, come what may. Women may also be reluctant to reveal the realities of criminal assault at home and other forms of domestic violence where the interpreter is male. Judges need to be aware of this possibility and able to guard against it. Albeit Interpreter services will be ‘certain’ that no conduct in the nature of that attested to by the witnesses occurs with ‘their’ interpreters, their service, that bias and prejudice and cultural diktats can be influential whatever service is being provided is a reality. Interpreter services must be required to be fully aware of the standards required and interpreters must be guided in this too.¹⁹⁸ Where an IDVA (independent domestic violence advocate) is present, as in the instance provided by solicitor Cris McCurley, and makes a request to speak, courts need to be able to address this as of possible assistance, rather than interpreting it as an unwelcome and unnecessary intrusion. Judges run their courts, after all, and must be taken to be able to courteously exclude persistent interruptions where no emergency or untoward circumstances are apparent or indicated.¹⁹⁹

All witnesses in legal practice raised concerns about women’s reception in courtrooms, by judges and tribunal members. Witnesses representing women through proceedings did so, too. The real tragedy of this is that this evidence is not new or different from that which has been raised in previous inquiries, in conferences, seminars, workshops and generally. This raises squarely not only substantive and procedural aspects of the law, but brings into stark focus the composition of the courts and justice system as a whole, as highlighted by Alexandra Wilson in *Black and White*.²⁰⁰ There is no assurance that an influx of women – including of course Black and minoritised women, women with a disability ... would radically change decision-making so as to bring a more justice-orientated perspective into the courtroom. However, as a matter of justice, it is wrong that courts are peopled in the skewed way they are, and this does impact on decision-making.²⁰¹ Sometimes, individual women judges do make a difference. Furthermore, there is evidence that changing the composition substantively can make a real difference.²⁰²

¹⁹⁸ This issue is not of course isolated to the United Kingdom. See for example, Law 360 (US), August 2021, [Non-English Speakers Find Justice Can Be Lost In Translation](#) -Some courts have improved access for litigants who don’t speak English, but a lack of interpreters, training, awareness and funding means that access is inconsistent, with some states leading the way while others are still in ‘the dark ages.’

¹⁹⁹ Courts are certainly not obliged to hear from IDVAs ([Independent Domestic Violence Advocates \(IDVAs\) - Safer Futures](#) (accessed 2 August 2021) on an interruptive or ongoing basis that would interfere with the proper dispensing of justice through the hearing. However, they do need to be attuned to instances where a matter as serious as the one instanced arise. A protocol could be devised to address this.

²⁰⁰ Alexandra Wilson, *Black and White*, *ibid*.

²⁰¹ See for example Louise Milligan, *Witness – An investigation into the brutal cost of seeking justice*, Hatchette Press, Sydney, NSW, 2020; Chanel Miller, *Know My Name – A Memoir*, Random House/Viking, New York, NY, USA, 2019 – like *Black and White* compulsory reading for anyone working in the justice system who truly wishes to see just how the system impacts on those coming within its walls.

²⁰² It cannot go unremarked that the Canadian Supreme Court has led the way in, for example, recognising the importance of expert evidence where a woman is prosecuted for murder in circumstances where the husband/partner has engaged in a pattern and practice of criminal assault at home and other forms of domestic violence; *R v Lavallee* (1990) CanLII 95 (SCC), [1990] 1 SCR 852, [1990 CanLII 95 \(SCC\) | R. v. Lavallee | CanLII](#) (accessed 2 August 2021). This has been followed in other jurisdictions, including Aotearoa New Zealand, Australia, the United States and the United Kingdom. The Canadian Supreme Court has also led the way in asylum seeker/refugee cases in for example recognising ‘well-founded fear of persecution’ constituted by criminal assault at home and other forms of domestic violence, and same sex relationships, as well as ‘sexually transmitted debt’ – the tying up of banks and other financial providers of women as guarantors for their husband/partners loans, overdrafts and financially precarious missteps, holding women responsible for the debt, and

Those responsible for judicial and magistrate appointments and training, for the appointment of personnel in the Crown Prosecution Service (CPS) and for educating and training lawyers – solicitors and barristers – may protest that action is being taken. Yet are these voices truly being listened to? Are they truly being acted upon? If they were, then the concerns would not be raised and reiterated on this continual and continuing basis. This responsibility needs to be discharged effectively – and urgently.

Jenny Beck, QC (Hon), solicitor, summed up in terms of ‘access to justice’. The points made aptly fit under that head, yet even more so under the heading of ‘gender-based violence against women’:

There are various barriers women face in achieving access to justice within family law – the inability to access legal aid; our legal system which does not recognise the breadth, severity or consequences of domestic abuse in all its forms; the way in which we measure this abuse through the courts, how we identify whether abuse has taken place and what this means; the unwritten presumption that parental contact must always be in the child’s best interest, rather than considering the whole picture and seeing how dangerous contact might be; the absence of funding or the underfunding of escape mechanisms, such as refuges and escape networks; the underfunding of perpetrator programmes to prevent more women experiencing the same abuse; the failure to understand sexual consent properly; and finally an absence of public education surrounding rape and consent, which should be targeted at a much younger age group with preventative social policies: para 11, Witness Statement, Case ref: 013

Indeed, in *AT v Hungary*²⁰³ the Committee on the Elimination of All Forms of Discrimination Against Women recognised that violence against women is a human rights violation and constitutes sex discrimination. This was the first case ever dealt with by the Committee in relation to criminal assault at home and other forms of domestic violence. The Committee determined that women’s ‘human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy.’²⁰⁴

The Committee decision disclosed that, living in an apartment with her husband, LF and their two children (one of whom was severely brain damaged), AT ‘suffered severe domestic violence at the hands of LF’ for more than four years. The apartment was jointly owned. In March 1999, LF moved out. The attacks continued. A year on, he removed most of the furniture and other household items, moving in with a new partner. AT changed the locks. LF engaged in further acts of violence to AT and damage to the property, as well as threatening to kill her with a gun he possessed and harm the children. AT ‘repeatedly requested help from local child protection authorities. None was forthcoming. There were no shelters in Hungary equipped to meet the needs of AT’s disabled son. The hospital providing treatment to AT in order for her to recover from injuries to her kidney inflicted by LF, and one other criminal procedure was initiated. LF was never detained. The Hungarian authorities took no steps to ensure her and the children’s safety.

husbands/partnership imposing economic violence on their wives/partners. See also [Fraser v. Canada: Supreme Court Expands Substantive Equality Rights | Bennett Jones](#) (accessed 16 August 2021); [Women and Justice: Court: Supreme Court of Canada | Women And Justice | US Law | LII / Legal Information Institute \(cornell.edu\)](#) (accessed 16 August 2021). It must be observed, however, that concerns continue to be raised about decisions of the Supreme Court, Canada ... see for example Natasha Kim and Tina Piper, ‘Women, Social Assistance and the Supreme Court of Canada’, *Canadian Women’s Studies*, vol 23, nos 2/3, pp. 175-183, [270288931.pdf \(core.ac.uk\)](#) (accessed 16 August 2021);

²⁰³ *AT v Hungary*, [Annex III A-60-38 English - CEDAW Decision on AT vs Hungary.doc](#) (accessed 2 July 2021); *AT v Hungary A.T. v. Hungary: CEDAW | Tackling Violence against Women (lse.ac.uk)* (accessed 2 July 2021).

²⁰⁴ Para [9.3], *ibid.*

AT filed civil proceedings regarding LF's access to the apartment ('the family home'). The application failed, permission for LF to return being based upon:

- Lack of substantiation of the claim that LF regularly battered AT – albeit 10 medical certificates relating to 'separate incidents of severe physical violence suffered by AT between March 1998 and July 2001 were issued to her;
- LF's right to the property, including possession, could not be restricted. AT's application for division of the property was suspended.

Hungary was found to have violated AT's rights under CEDAW:

- Article 2(a), (b) and (e.) – policy measures²⁰⁵
- Article 5(a) – sex role stereotyping and prejudice²⁰⁶
- Article 16 – equality in marriage and family life²⁰⁷

In supporting these determinations, the Committee referred to General Recommendations (GRs) 19 on violence against women and 21. As to the former, the Committee considered that gender-based violence comes within the definition of discrimination and, further, despite CEDAW's not explicitly referring to violence against women, it was proper to conclude that it may breach specific CEDAW rights,²⁰⁸ and that GR 19 applied to state and non-state actors, meaning '... States may be responsible

²⁰⁵ **Article 2** States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; ... (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; ... : [Microsoft Word - Document1 \(ohchr.org\)](#) (accessed 2 July 2021).

²⁰⁶ **Article 5** States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; ...: [Microsoft Word - Document1 \(ohchr.org\)](#) (accessed 2 July 2021).

²⁰⁷ **Article 16** 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; 7 (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. 2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. [Microsoft Word - Document1 \(ohchr.org\)](#) (accessed 2 July 2021).

²⁰⁸ This jurisprudential approach is consistent with that taken, for example, by the United States Supreme Court in cases addressing privacy rights – see for example *Roe v Wade* 410 US 113 (1973), [Roe v. Wade :: 410 U.S. 113 \(1973\) :: Justia US Supreme Court Center](#) (accessed 23 June 2021); and the High Court of Australia, in addressing freedom of political speech: *Lange v Australian Broadcasting Corporation (ABC)* [1997] HCA 25, [Lange v Australian](#)

also for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation'. 'Private acts' include criminal assault at home and other forms of domestic violence: para 9, GR 19 For the latter, GR 21 addresses equality in marriage and family relations, emphasising the crucial importance of GR 19 in its imprecations for the security of women's enjoyment of equal human rights and fundamental freedoms. Observing that throughout Hungary widespread 'gender stereotyping ... had situated women in a subordinate position to men' the Committee held that this contributed to gender-based violence inflicted upon them. For AT, '... the facts ... reveal aspects of the relationships between the sexes and attitudes towards women that the Committee recognises vis-à-vis the country as a whole': [9.4]. This gave rise to the breach of obligations under Articles 5(a) and 16 of CEDAW.

The decision in *AT v Hungary* has a particular resonance for the United Kingdom and for the outcome of this Tribunal, particularly in relation to access to justice. The Recommendations provided that Hungary should:

- Respect, protect, promote and fulfil women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence
- Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women
- Take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated
- **Take all necessary measures to provide regular training on the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to judges, lawyers and law enforcement officials**
- **Implement expeditiously and without delay the Committee's concluding comments of [its recommendations on] the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, ... [referencing] support services, including shelters**
- Investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards
- **Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, ... to ensure them available, effective and sufficient remedies and rehabilitation**
- Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods

All Recommendations have application to the situation pertaining in the United Kingdom. Those highlighted have a particular resonance. Regular training on CEDAW (including the General Recommendations) and the Optional Protocol and decisions of the CEDAW Committee made in accordance with it should be obligatory. No one in a position of power and authority within the justice system is equipped to do the job, particularly in those fields of law where CEDAW has greatest impact, without this training – an initial introduction and ongoing training on a regular basis: a one-off session is more than seriously inadequate. The reference to 'implementing expeditiously and without delay' matters relating to 'support services, including shelters' is seriously applicable to the United Kingdom today. All witnesses, particularly from the support sector, including emphatically those with a brief for Black and minoritized women, spoke of the paucity of funds and resources, the impact of the cuts

[Broadcasting Corporation \("Political Free Speech case"\) \[1997\] HCA 25; \(1997\) 189 CLR 520; \(1997\) 145 ALR 96; \(1997\) 71 ALJR 818 \(8 July 1997\) \(austlii.edu.au\)](#) (accessed 21 July 2021); [Lange v ABC: the High Court rethinks the "constitutionalisation" of defamation law - \[1998\] MurUEJL 3 \(austlii.edu.au\)](#) (accessed 2 July 2021).

imposed by the 'austerity budget' of 2010, the compounding of the problem through the pandemic and, effectively, the insufficient funding and resources base from the start.

The evidence provided by witnesses to the Tribunal speaks for itself. However, two further aspects require explicit consideration at this point. One is the suggestion that the adversarial system should be abandoned in favour of the inquisitorial system in family and immigration, refugee and asylum seeker proceedings, where issues of crimes against women and children – including criminal assault at home and other forms of domestic violence, female genital mutilation (FGM), forced marriage and the like are in contention. The other is that of 'public open justice, full transparency, scrutiny and accountability'. The latter was raised by Darragh Mackin in his plea for an inquiry into the wrongs done to women of Northern Ireland and the children who were forcibly removed from them, in pursuit of some unfathomable goal of maintaining 'purity' where 'chastity' had been 'lost' and ensuring that children born of unwed mothers should be spirited away, by force, to be placed in the care, custody and control of others, under the supervision and scrutiny of the Catholic Church, the Church of Ireland and the Salvation Army.²⁰⁹ Jenny Beck raised it in the context of family proceedings, observing that at present 'there is no transparency within the courts, understandable for reasons of anonymity and protection of children, but without it the ability to see what is happening within the courts you can have inconsistency in decision-making' that fails to build 'accountability into court decision-making': Witness Statement, Case ref: 013 The two issues – of inquisitorial versus adversary, and transparency and open justice – linked.

The call for an inquisitorial system comes because of the failures in the courts and tribunals in their conduct of the cases where women are put on trial effectively, when making applications to have a 'well-founded fear of persecution' recognised in an application for asylum, or violence against them and/or their children in family court matters. Yet there is no assurance that changing the system will effect the change desired. As *AT v Hungary* affirmed, at the heart of the problem lies (in that instance) not simply with the bureaucracy, but with all implicated in the case: judges, lawyers and law enforcement officials. There was no proposal to change the system from what it is in Hungary. That is not at the core of the problem. At the problem's heart is the way proceedings are conducted from the very first lodging of an application or claim and, even before then, in finding legal representation and securing the funding for it. Further at its heart lies the fact that what happens in the courtroom or tribunal is not scrutinised by any outside eye: the personnel are limited, when hearings are closed; litigants are restricted in the supporters whom they can call to their aid, to listen and to look, to observe and to scrutinise. The tradition that justice be open to public view is there for a reason: it ensures that there is some public knowledge of what happens in our courtrooms, how proceedings are conducted, whether untoward, irrelevant and inadmissible evidence is being allowed to be elicited because stereotypes and tropes are allowed to inhabit the space.²¹⁰

Women are too often susceptible to the proposition that a closed court will be to their benefit. From the evidence before the Tribunal, what is transparent is that this is untrue. What is essential is scrutiny of courtroom conduct and court proceedings. The question needs to be focused on why irrelevant and inadmissible material is being allowed in, and what underpins the approach that condones the eliciting of the material in the first place. What is also needed is a means of ensuring that courtroom conduct is not dismissive of concerns that are real, and based in the real life experience of women and particularly Black and minoritised women. The record before the Tribunal is stark. As Dr Proudman stated:

²⁰⁹ [Mother and baby homes: the case for a public inquiry - Investigations & Analysis - Northern Ireland from The Detail](#) (accessed 2 August 2021). As Mr Mackin observed, the Republic of Ireland has already taken up this issue, the wrongs to the mothers often multiplied by the deaths of the children to whom they gave birth – see for example [Hidden history of Northern Ireland's mother and baby homes | Belfast News Letter](#) (accessed 2 August 2021); [Ireland confronts past treatment of unmarried mothers - BBC News](#) (accessed 2 August 2021).

²¹⁰ See for example Louise Milligan, *Witness*, Hatchette Publishing, Sydney, NSW, 2020.

I have heard judges say, 'it is just a bit of DV.' Many judges have become desensitised to domestic violence because they see it so often and assume it happens in most relationships: para 7, Witness Statement, Case ref: 017

A report in the *Guardian* where a journalist was permitted to attend family court proceedings is instructive. The journalist writes of the Judge 'gently trying to "tease" evidence in a child contact case from the tearful, unrepresented mother as she sits opposite her former husband, ... represented by a barrister':

The father hasn't seen his children for five years and accuses her of manipulating them into refusing to see him. She disputes this.

When the time comes for the main witnesses, the parents, to be cross-questioned, she has to do it herself. His barrister will cross-question her afterwards. 'Do you want to ask [your former husband] any questions?' [The Judge] asks her gently. 'If you like, you can tell me what you'd like to know and I'll ask him for you.' He gives the mother every opportunity to take her time and converse with the friend she's brought with her. But she asks just one question, which goes nowhere, then wipes her eyes with a tissue and says she's finished.

Cross-questioning her on behalf of her former husband, the barrister is as considerate as possible but the experience is inevitably uncomfortable for her. Nevertheless, [the] judgment is an equitable one and the mother quietly agrees to it, with only a slight show of reluctance.

As soon as she steps outside the courtroom, her memory warps. Her overriding impression is of having been bullied and outgunned. 'I was totally executed by his barrister,' she weeps. With no legal representative to explain what has happened in court, she misremembers and misinterprets. By the time she gets out onto the street her memory has hardened.

'The judge didn't listen to me at all,' she says. 'Perhaps he'll listen when my daughter kills herself. She's threatened to. Maybe this time she will. Then they'll have to listen to me.'²¹¹

This recitation illustrates why scrutiny is essential, for the litigants and for counsel and the Judge. The journalist seems to be unaware of the impact her presence may have. True, the Judge may be one of the most professional, caring and considerate members of the bench, with patience and a readiness to ensure that both parties, the one unrepresented, the one represented, have a fair, unbiased hearing. The barrister may be one of the most considerate members of counsel, conducting cross-examination without bombast or bullying, neither slipping in irrelevant or inadmissible questions to deliberately unsettle, nor pressing to the nth degree in an unnecessary repetitiousness designed to interfere with the equilibrium of the litigant questioned. However, if this were not so, and the Judge were not as here described, most assuredly s/he would be, in the journalist's presence, or at least mindful of not overstepping in a show of uncontrolled irritation or untoward authority, even authoritarianism – or bias. Similarly with the barrister: the presence of a journalist would surely temper the performance if, ordinarily, it were of the hectoring kind. As for the agreement, the journalist decides it is 'an equitable one' yet without no cross-examination of the father, from where does this assurance come? As to 'agreement' – is the 'slight show of reluctance' absent of any meaning, requiring no consideration or interrogation? One question 'going nowhere' is surely insufficient (and that no fault of the woman who asked it). Thence to the 'misremembering' and 'misinterpreting'. The journalist having been present provides an assurance to Judge and barrister that their actions are not (as she perceives) as rendered

²¹¹ [How legal aid cuts filled family courts with bewildered litigants | Legal aid | The Guardian](#) (accessed 2 August 2021).

by the litigant. Had they been, the community surely has a right to know that proceedings are not as litigants and public not only believe they ought to be, but to which they are entitled.

This issue needs proper reflection and a wholesale revisiting of the notion that ‘closed courts’²¹² and, hence, ‘closed justice’ truly delivers fair, unbiased and just outcomes.

4. Gender-based violence against women

CEDAW Committee raised the following matters:

- Ratification of Istanbul Convention
- Status of asylum-seeking women, migrant women, women with insecure immigration status
- Status of women with disabilities
- Female genital mutilation (FGM)
- Commissioning of services, including specialised services
- The UK Government Violence Against Women (VAW) Strategy 2021-2024²¹³

Additional matters to consider:

- Devolved authorities and fragmentation of approach and services
- ‘Everyday sexism’ and misogynist speech
- Violence against older women and LGBT+
- Battered woman syndrome (BWS) vs battered woman reality

Evidence before the Tribunal encompassed these matters, as well as forced and arranged marriages, the status of religious marriages and polygamy,²¹⁴ the impact of Covid 19²¹⁵ and what UN Women terms ‘the shadow pandemic’ – the exponential explosion of violence against women during Covid 19,²¹⁶ as well as the situation in the devolved states, particularly Ireland, and the impact of Brexit. A question of court processes being used to perpetuate abuse, or to add to the trauma of abuse, arose too, as did the expansion of violence against women through social media, mobile phones and cyber space, with a particular impact on young women and girls at school,²¹⁷ the subject of evidence from a number of witnesses, with a recognition that ‘traditional’ crimes of violence, including (but not limited to) sexual assault and stalking can be reflected in newly developed or developing guises through the operation of the internet. Here, an issue is whether existing laws as they are, or modified, are sufficient to embrace all types and levels of violence against women occurring through the facility of the internet, or whether there are internet crimes of violence so substantially different that they require newly framed laws. As for violence against women in public spaces and private places, including abuses which may be classed as ‘everyday sexism’²¹⁸ or recognised as criminal and covering the entire demographic constituting women, this was raised almost universally by witnesses.

²¹² See further **SUMMATION – GENDER-BASED VIOLENCE AGAINST WOMEN**, later.

²¹³ A report is pending: the call for evidence concluded 19 February 2021, see [Violence Against Women and Girls \(VAWG\) strategy 2021 to 2024: call for evidence - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/94444/vawg_strategy_2021_to_2024_call_for_evidence.pdf) (accessed 7 July 2021).

²¹⁴ Including the ‘harm’ element (for women and children born of a polygamous marriage) as well as the implications for family law – property, child custody, marital status – see [Polygamous / potential polygamous marriages: SET14 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/94444/polygamous_potential_polygamous_marriages_set14.pdf) (accessed 8 August 2021); and see **13. Marriage and family**, later.

²¹⁵ See **COVID 19 – IMPACT OF PANDEMIC ON WOMEN**, earlier.

²¹⁶ [The Shadow Pandemic: Violence against women during COVID-19 | UN Women – Headquarters](https://www.unwomen.org/en/news/stories/2020/07/the-shadow-pandemic-violence-against-women-during-covid-19) (accessed 7 July 2021).

²¹⁷ European Institute for Gender Equality, [Cyber violence is a growing threat, especially for women and girls | European Institute for Gender Equality \(europa.eu\)](https://www.eige.europa.eu/en/cyber-violence-is-a-growing-threat-especially-for-women-and-girls) (accessed 9 July 2021).

²¹⁸ See Laura Bates, *Everyday Sexism*, Simon & Schuster, London, UK, 2014.

The United Kingdom signed the Istanbul Convention in 2012. In October 2020 it delivered its fourth report on ‘progress toward ratification’ of the Convention, saying that the UK ‘already complies with, or goes further than, almost all the Convention’s articles’, referring to the Domestic Abuse Bill 2021²¹⁹ incorporating provisions ensuring that extraterritorial jurisdiction over offences committed by UK nationals or residents overseas (Art 44) will become law, enabling their prosecution in the UK.^{220 221} Yet the Domestic Abuse Bill (now Act) came in for not inconsiderable criticism from witnesses, the Istanbul Convention remains unratified, witnesses were universal in their condemnation of current laws, approaches and policies, and many spoke of the lack of social and institutional awareness of the realities of criminal assault at home and other forms of domestic violence and violence against women on the street, in public and private, on the internet and through media and social media generally. This was a central theme running through the evidence, whether presented by witnesses working in academe, in the field, in legal practice, or in women’s policy organisations and campaigning bodies, and from all backgrounds, age groups and geographical locations. The importance of addressing these crimes through the criminal law was stressed.

As Baljit Banga, executive director at Imkaan said:

We must understand that violence against women is a pervasive problem and it is global. Before the current Covid 19 crisis and over a 12-month period just before Covid 19, 243 million women and girls around the world were subjected to physical and sexual violence. 87,000 were killed by intimate partners or family members. 40% of women reported violence to support agencies seeking help, and the cost of violence against women globally was about \$2 trillion ...²²² In the UK, at the end of 2019, the government reported 2.4 million people – using the term people because it is gender neutral and they do not disaggregate the data – were subjected to domestic violence, but we know that women are disproportionately impacted by male violence. The police recorded 1.3 million domestic abuse related incidents in that year, a 24% increase in domestic abuse related crime reported as compared to the previous year: paras 13-14, Witness Statement, Case ref: 018

She went on to observe that data from ‘frontline specialist women’s organisations suggested there were higher rates of violence against women presented by Black and minoritised women and migrant women’. Nevertheless, only 37% reported violence to police, ‘the reason for low reporting ... including experiences of racial discrimination and feelings of judgement’ together with the disbelief Black and minoritised women, and migrant women, confront when approaching police – ‘resulting in secondary victimisation’: para 15, *ibid*

Furthermore, what falls into the private and public space realm of violence is now accompanied by the noted expansion of violence against women through social media, mobile phones and cyber space, with a particular impact on young women and girls at school.²²³ This was the subject of evidence from a number of witnesses, with a recognition that ‘traditional’ crimes of violence, including (but not limited to) sexual assault and stalking can be reflected in newly developed or developing guises through the operation of the internet. In her role as Policy Officer with the Suzy Lamplugh Trust, Saskia Garner raised the issue of safety in the streets, as well as in the use of personal hire vehicles (PHVs) and taxis.

²¹⁹ Now the Domestic Abuse Act 2021, [Domestic Abuse Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk) (accessed 8 August 2021).

²²⁰ [Ratification of the Council of Europe convention on combating violence against women and domestic violence - progress report 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 9 July 2021), p. 7.

²²¹ [Ratification of the Council of Europe convention on combating violence against women and domestic violence - progress report 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 9 July 2021).

²²² Citing [The Shadow Pandemic: Violence against women during COVID-19 | UN Women – Headquarters](https://www.unwomen.org) (accessed 21 July 2021).

²²³ European Institute for Gender Equality, [Cyber violence is a growing threat, especially for women and girls | European Institute for Gender Equality \(europa.eu\)](https://www.europa.eu) (accessed 9 July 2021).

Observing that misogyny ‘permeates public space, with women’s freedom and safety in streets, parks, public transport, and other public places restricted daily by the perpetual threat of violence and harassment’, she listed the dangers for women involving ‘... violent acts ranging from sexual assault and rape to endemic forms of “everyday” sexual harassment and unwanted behaviours, such as catcalling lewd comments and non-consensual physical contact’.²²⁴ These latter behaviours, she added:

... have often been invisible in wider public debates around VAWG [violence against women and girls] and are largely normalised by society. Yet, as highlighted by recent research by UN Women UK, 71% of women in the UK have experienced public sexual harassment, this rising to 86% among 18-24-year-olds. This spectrum of public gendered violence is rooted in deep-seated misogynistic attitudes, which objectifies and belittles women as inferior to men, and denies women their equal right to public space: para 8, Witness Statement, Case ref: 040

The Suzy Lamplugh Trust ‘has ongoing concerns about women’s safety’ in public transport, too, Ms Garner bringing to attention the Department for Transport’s estimate of taxis and PHVs as a ‘high risk environment’, with an estimate of ‘around 623 sexual assaults by taxi or PHV drivers reported in England every year’:

As highlighted by data provided by TfL,²²⁵ in London alone there were a total of 1294 taxi and private hire journey related sexual offences in 2018. Not only are women more likely to experience sexual assault than men according to the CSEW [Crime Statistics for England and Wales],²²⁶ women’s safety in taxis/PHVs is of further concern given that they may be more likely to use these mediums of transport than men: para 6, *ibid*

She cited Department for Transport records showing that in 2019 in England, ‘women made on average 12 taxi or PHV trips per year as compared with 10 trips by men’, adding the admonition that it is ‘vital that women feel safe in all forms of transport – including taxis/PHVs – to guarantee their right to free and full mobility in equality with men’: para 6, *ibid*

In addressing the need for focused attention being paid to the vast array of violent impositions on women, Saskia Garner said that the Trust ‘welcomes legislation to promote and protect women’s rights’, stressing ‘the importance of prosecuting stalking crimes primarily under stalking legislation’:

... stalking is underpinned by a fixation and obsession, and it is paramount that stalkers are appropriately identified and prosecuted through the stalking legislation to enable effective offender management to address that specific fixation and obsession and recognise the gravity of the crime: para 13, Witness Statement, Case ref: 040

Ms Garner quoted figures illustrating the nature of stalking as ‘a pervasive and widespread crime’. ONS statistics recorded under the Crime Survey for England and Wales (CSEW):

²²⁴ ‘Everyday sexism’ is a term attributed to Laura Bates, who in 2012 established the ‘Everyday Sexism Project’ enabling women to share experiences on a website set up to record instances of daily, ‘normalised’ sexism, including street harassment and workplace discrimination as well as rape and sexual assault’. Her book, *Everyday Sexism*, was published in 2016 by Simon & Schuster, London, UK, and her work has included presentations to (amongst other audiences) members of the United Kingdom Parliament. On the latter, see Mary Ann Sieghart, *The Authority Gap*, Doubleday/Transworld, London, UK, 2021, pp. 56-57.

²²⁵ [Travel in London Report 7 \(tfl.gov.uk\)](https://www.tfl.gov.uk) (accessed 8 August 2021); see also [Mind the Gender Gap: The Hidden Data Gap in Transport - London Reconnections](#) (accessed 8 August 2021).

²²⁶ CSEW – Crime Statistics for England and Wales – are recorded by the Office for National Statistics (ONS), see: [Crime in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk) (accessed 2 August 2021).

... estimates that there were around 1.5 million victims of stalking [in] the year ending March 2020. While anyone can become a victim of stalking, statistics show that stalking is a gendered crime and linked to other forms of gender-based violence, such as femicide and domestic abuse. In the UK, around 1 in 5 women as compared with 1 in 10 men will experience stalking in their lifetimes, with 977,000 women estimated to have been victims of stalking in comparison with 526,000 men 2019-2020 in England and Wales: para 4, *ibid*

She outlined the definition of stalking adopted by the Trust, which comes within the acronym 'FOUR' – as 'a pattern of repeated unwanted behaviour that cause fear and distress, and in some cases trauma and a fear of physical violence'. The four elements comprising stalking are: its basis in fixation and obsession, unwanted and repeated', and went on to observe that the Trust's National Stalking Helpline²²⁷ reflects these patterns in the contacts made to it:

While women constitute 82% of victims supported by the helpline, 79% of perpetrators are male. Furthermore, according to recent research into 358 cases of femicide, 94% of cases analysed presented stalking behaviours, while coercive control and stalking were more often simultaneously present where there had been an intimate partner relationship, constituting 71% of femicide cases analysed. Related, 55% of stalking victims presenting to the National Helpline are pursued by an ex-partner: paras 3, 4, *ibid*

The 'high risk of repeat offending or continued fixation and obsession if not specifically addressed' was, she added, a principal issue requiring attention. In that context, then, she advocated the 'bolstering of the protections of stalking legislation, where such behaviours are evident, to ensure the risks for this specific crime are identified and mitigated'. Here, Ms Garner referred also to the Istanbul Convention and its importance for the United Kingdom, urging the government 'to ratify and integrate the ... Convention into UK law and thereby recognise the crime of stalking as a gender-based crime'. This, she noted, would 'enable stalking victims to benefit from a new set of minimum standards introduced by the government in line with the Convention to protect and support women, prosecute perpetrators and prevent violence against women'. It would also place an obligation on the United Kingdom, as upon all states parties, 'to set up specialist support services for victims of any kind of violence covered by the Convention, including vital services for victims of stalking': paras 12, 13, *ibid*

Stalking in person can be replicated by stalking online, just as other crimes lend themselves to cyberspace. Hence, image-based sexual abuse, a concept developed by Professor of Law at Durham University, Clare McGlynn and colleagues,²²⁸ and cyberspace violence, were the subject of Dr Kelly Johnson's evidence. Speaking in a personal capacity, she explained 'image-based sexual abuse' as a term employed to 'capture an umbrella of abusive practices that take place through images';

It covers a range of sexually abusive practices which in the media may be referred to as [matters such as] 'revenge porn' and 'upskirting'. But really it is capturing a range of practices that involve the taking or sharing of intimate images or threatening to do so, including practices like deep fakes and altered images: para 2, Witness Statement, Case ref: 029

'Cyberflashing', she said, is a 'growing problem' experienced by women online as a consequence of the increase in use of technology for sexual harassment and abuse. This relates to 'unsolicited "dick pics" where genital images are sent to another person without their prior consent': para 3, *ibid* The growth in technology has rendered existing law obsolete as it does not, for example, cover 'threats to distribute intimate images or "deep fakes", sexually altered images ...': para 4, *ibid* Even where the law does apply,

²²⁷ [National Stalking Helpline | Suzy Lamplugh Trust](#) (accessed 12 July 2021).

²²⁸ Professor Clare McGlynn, [Image-Based Sexual Abuse – Professor Clare McGlynn QC \(Hon\)](#) (accessed 7 July 2021).

such as with the sharing of intimate images, 'there are 'additional evidential thresholds such as [the requirement of] evidencing specific motives, such as causing distress':

In practice, it can be very difficult to evidence perpetrator's motivation for doing something, and this also means that offenders driven by other motivations, such as sharing images for financial gain or a prank, cannot be responded to under this legislation, leaving a significant gap': para 5, *ibid*

Dr Johnson said that the 'patchwork of offences is confusing and piecemeal, with many evidential hurdles, meaning prosecutions are unlikely'. This was so, similarly, with cyberflashing, she added:

While it is against the law to flash someone or indecently expose yourself in person, it is not currently clearly against the law, in England and Wales, to do so online or in a digital setting. Victims or survivors are being let down by the criminal justice system in England and Wales. Other jurisdictions do have some legislation that speaks to these behaviours but in England and Wales, the law needs to be reformed: para 5, *ibid*

For Northern Ireland, Darragh Mackin of Phoenix Law, Belfast, referred to the failure to 'fully master' the need for comprehensive action addressing 'the use of technology and data in attacking women's rights'. Although the internet and information access provide a 'huge benefit', they also present 'a huge danger'. cursory examination alone identifies that the use of data, the internet and social media have 'detrimentally affected women's rights'. Northern Ireland is primed to 'bring in protections for women subjected to sexual-based violence by way of imagery or videos'. Despite its being 'a welcome step introducing an instrument bringing about legislation to protect women subjected to misuse of social media and the internet more generally ... this is too little too late ... ': paras 11, 12, *ibid*

Further on the social media dimension, Dr Jurasz commented on steps that can be taken through the positive use of social media itself: 'Social media platforms have a key role to play in tackling OVAW' (online violence against women),²²⁹ where 'several areas for improvement' can be identified:

... including allowing victims of OVAW to flag their abuse as gender-based, and formulating content moderation policies that are culturally, linguistically and context sensitive, as to not infringe on freedom of speech but to recognise and address the ways in which threats and derogatory comments are made to women online as well as their impact on the recipient': para 3, *ibid*

Mindful that this not be interpreted as a proposal to place the onus of action upon the victim/survivors, she stressed as important that from a human rights perspective the 'ultimate responsibility for protecting women from violence as well as prevention and providing adequate remedies' lies upon the state. Here:

... there is scope to envisage reporting acts of OVAW not only to the platforms themselves, but also where appropriate to the police, with the caveat that such laws need to be carefully drafted with respect to thresholds as to what constitutes an offence, in order to sufficiently prevent, protect and provide avenues for redress for OVAW: para 4, *ibid*

At the same time as recognising that criminal law 'is not a fix-all', there being 'a fair degree of scepticism over the deterrent effect of the criminal law with regards to VAW [violence against women]', she

²²⁹ Dr Jurasz explained this as an 'umbrella term for technology-facilitated abuse including but not limited to image-based sexual abuse, text-based abuse, doxing and online harassment, targeting women' as women: para 1, *ibid*; 'doxing' is the 'action or process of searching for and publishing private or identifying information about a particular individual on the internet, typically with malicious intent': [doxing meaning - Bing](#) (accessed 9 July 2021).

emphasised the crucial role of ‘adequate, progressive, meaningful and most of all workable laws addressing violence against women, and online violence against women specifically – meaning that current ongoing reform must produce laws that are enforceable and fit for purpose’. Reform where image-based sexual abuse is in issue ‘is generally welcome’ and ‘may have been rapid’, yet ‘unfortunately we lack the same degree of clarity and accountability for text-based abuse, a common form of OVAW in the context of social media platforms such as Twitter or Facebook’. This means that there are, currently, ‘no straightforward avenues of redress and support for victims of OVAW’: paras 11, 7, *ibid*

Whilst ‘progress has been made in several legislative areas, including reform on image-based sexual abuse across England and Wales, Scotland, and Northern Ireland, and online reform concerning hate crime and communications offences’, Dr Jurasz said that issues remain requiring ‘a comprehensive and meaningful reform’, starting with a ‘broader conception of online harms’. Her research with Dr Kim Barker²³⁰ identified more than ten categories of harms arising from online violence against women,²³¹ ‘which is in stark contrast with the approach presented in the 2019 White Paper on Online Harms’.²³² Furthermore, she said, ‘recognition of specific harms arising from OVAW is needed’. She cited the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015,²³³ in particular, its provisions ‘concerning public sector response mechanisms’, as ‘a positive example of progressive legislation ... from which inspiration could be drawn on a national level ...’: para 7, *ibid* The lack of ‘joined up thinking’ inhibits progression toward constructive and comprehensive ways of addressing this burgeoning problem, with the Law Commission working on a hate crime reform project and online communications reform project,²³⁴ the Department for Digital Culture, Media and Sport (DCMS) with its Online Harms White Paper,²³⁵ and a consultation by the Violence Against Women and Girls Strategy²³⁶ taking place with no obligation for collaboration or aligned approaches, with the possibility of consistent and consolidated legislation being thereby less likely’: para 8, *ibid*

Dr Sofia Collignon, lecturer in political communication at Royal Holloway University of London, speaking in her personal capacity, proposed possible ways of addressing the phenomenon of online (and sometimes on street or in other public settings) violence against women in the political arena. Her research has involved women in politics – standing, campaigning and being in office at a parliamentary level, and in local government, as well as collaborating with the ‘Representative Audit of Britain Survey’ team.²³⁷

²³⁰ Dr Kim Barker is a Senior Lecturer in law at the Open University Law School, specialising in internet law including online violence against women, online misogyny, online hate speech, regulation of online content (especially via social media platforms and online games), and intellectual property law (copyright, and digital content): [Dr Kim Barker | OU people profiles \(open.ac.uk\)](#) (accessed 2 August 2021).

²³¹ Dr Kim Barker and Dr Olga Jurasz, ‘Written Evidence to the House of Lords Communications and Digital Committee Inquiry into Freedom of Expression Online’, *Parliamentary Committees UK*, <https://committees.parliament.uk/writtenevidence/22997/html/> (accessed 9 July 2021); Kim Barker and Olga Jurasz, ‘Online Misogyny: A Challenge for Digital Feminism, vol 72, no 2, *Journal of International Affairs/Dynamics of Global Feminism*, Spring/Summer 2019, [ONLINE MISOGYNY on JSTOR](#) (accessed 9 July 2021); Kim Barker and Olga Jurasz, *Online Misogyny as Hate Crime: a Challenge for Legal Regulation?* Routledge, UK, 2019.

²³² [Online Harms White Paper - GOV.UK \(www.gov.uk\)](#) (accessed 9 July 2021).

²³³ [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015 \(legislation.gov.uk\)](#) (accessed 9 July 2021); [guidance-for-local-strategies.pdf \(gov.wales\)](#) (accessed 9 July 2021).

²³⁴ [Hate Crime | Law Commission](#) (accessed 7 July 2021).

²³⁵ [Online Harms White Paper - GOV.UK \(www.gov.uk\)](#) (accessed 9 July 2021).

²³⁶ [Violence Against Women and Girls \(VAWG\) strategy 2021 to 2024: call for evidence - GOV.UK \(www.gov.uk\)](#) (accessed 9 July 2021).

²³⁷ [Representative Audit of Britain | Department of Political Science - UCL – University College London](#) (accessed 21 July 2021).

Harassment and intimidation 'manifest in a distinctive way for women', she said, its being important to consider 'the frequency of the harassment, the content of the threats, the nature in which [women] receive it, and the emotional and career consequences it may have'. Intersectionality, she said, 'plays a huge role in the abuse women in politics receive':

[In] receiving abuse women will be unable to pinpoint whether that abuse is targeted towards their race, gender, age, religion, disability, or sexuality. It is difficult to disentangle the abuse ... Often, we think of the abuse as one instance where we can easily identify the perpetrator, the motive, and the content. In reality, it is the accumulation of abuse from different sources which is damaging to women: paras 23-25, Witness Statement, Case ref: 006

She cited one local candidate whom she interviewed, who articulated this problem of combined characteristics, attributes or identities, saying that the abuse she receives is 'because she is a woman, because she is young, and because she wears a head scarf, with all the abuse combining and have an effect upon her'. Dr Collignon said further that in local politics women are particularly vulnerable to the circulation of false tales, with women 'having to leave their committees because of rumours spread about them, leading to feelings of isolation in their own community'. Here, she remarked upon the value women candidates can have from 'being a member of a specific community, as the [community] knows who or what they are standing for. At the same time, smear campaigns often attempt to isolate the candidate from their community, preventing them from being a part of their community': paras 26-27, *ibid*

Referring to current efforts to address the problem confronting women, Dr Collignon commented upon their limitations in being intended to 'increase police resources, encourage social media to flag content and block abuse and promote safe campaigning for women', yet:

... this is problematic: the damage has already been done if the abuse has already been seen online. Women see the threats but find it difficult to go to the police since not all abusive or intimidatory comments are taken seriously by the police. However, for victims of harassment, it is not just one single tweet: it is a recurrent threat that accumulates to devastating effect ... A new way to combat the significant presence of online harassment against women in politics must be found: paras 9, 11-12, *ibid*

Dr Collignon said that violence 'can be facilitated by members of the public and other politicians'. The violence can, sometimes, 'come from fellow politicians of the same party'. She made the point that when writing abuse online 'it seems as if you are shouting on your own, however, your words can travel to another person's living room making them feel unsafe', adding that 'not a lot of people understand that distinction'. This and the overall problem of online abuse and particularly abuse aimed at politicians and political candidates is a problem that cannot be brushed aside under the rubric 'that's politics'. The 'culture of misogyny that makes women in politics targets of abuse' requires, said Dr Collignon, 'systemic change on why people think it is okay to attack women in this way online and offline'. Identifying 'online political violence ... as':

... any form of harassment, intimidation and abuse facilitated by technologies of information [as well as] the spread of misinformation and smear campaigns, becoming viral before female politicians are given a chance to respond. They are guilty before being charged ...,

she proposes establishing 'an unofficial way of reporting abuse', as well as 'encouraging peer-to-peer support, and educating the public into what is and what is not acceptable online and offline': para 10, *ibid*

Rape and other sexual offences were referred to by witnesses with an understandable scepticism about how these offences are addressed at all levels of the criminal justice system and associated conventional service provision. Regular reports of mishandling, failure to handle, lack of prosecution, problems with reporting by women and in data compilation appear to be standard,²³⁸ with concerns about the lack of credibility extended to women who report or come before prosecution services or the courts being at the centre of much of the evidence. With some regularity, reviews are undertaken by government or government appointed bodies, yet with the same regularity reports of failures in any effective addressing of this violation of women's bodily and psychic integrity, the right to be and be regarded as human, arrive.

Reporting on this situation for Northern Ireland, Jonna Monaghan of NIWEP said 'serious concerns [arise] around how serious sexual offence cases are handled and those arise from a very high-profile case a number of years ago, where social media became an issue. There was speculation around the identity of the complainant, her personal history, raised in court. It was then debated on social media and that had an impact on the jury ... Accordingly, there was a review, the Gillen review²³⁹ ... It made a large number of recommendations on how cases like that could be handled better, starting from capacity building and training for all parties involved, to limiting access to the public to cases like that²⁴⁰ and looking at how you could deal with social media speculation. But none of those recommendations have been implemented and there are no legislative proposals at this stage to take it forward': para 7, Witness Statement, Case ref: 003

Whatever a woman's class, ethnicity, race, background, violence on the homeground is pervasive, too. For Apna Haq²⁴¹ - 'our right' in Urdu – Zlakha Ahmed, MBE, referred to Black and minoritised women as approaching the organisation 'with issues such as domestic violence, sexual violence, forced marriage and honour-based²⁴² violence'. She said that supporting women and girls 'with these issues involves long-term work to ensure they remain safe and their family remains safe ... the amount of time taken to support BME women and girls is often longer than for non-BME women and girls [with] long-term work required to ensure that community attitudes are changed', too: para 3, Witness Statement, Case ref: 005

Child marriage was raised as an issue – its impact on health an issue of concern along with the criminal dimension. As Professor Rebecca Cook said, along with 'human rights challenges at all levels of clinical care and health systems level, there are human rights issues to consider at the level of underlying conditions or determinants of health, such as social, legal and economic determinants':

An example of a social determinant of health is the issue of child marriage. When children marry and subsequently become pregnant, they have a much higher risk of morbidity and mortality in childbirth than women who marry later in life. States are often held accountable when they do not take reasonable steps to prevent child marriage ...: para 3, Witness Statement, Case ref: 019

²³⁸ Sources are far too numerous to list – see for example [Annual rape prosecutions fall again | Rape Crisis England & Wales](#) (accessed 8 August 2021); [Prosecution statistics published for 2020-21 | The Crown Prosecution Service \(cps.gov.uk\)](#) (accessed 8 August 2021); [Why are rape prosecutions falling? - BBC News](#) (accessed 21 July 2021).

²³⁹ [Gillen Review Recommendations | Department of Justice \(justice-ni.gov.uk\)](#) (accessed 8 August 2021); [gillen-report-recommendations.pdf \(justice-ni.gov.uk\)](#) (accessed 8 August 2021); https://www.lawsoc-ni.org/DatabaseDocs/new_8655264_gillen-review-report-into-the-law-and-procedures-in-serious-sexual-offences-in-.pdf (accessed 8 August 2021).

²⁴⁰ On proposals for closed courts, see Part 3 Conclusions and Recommendations, later.

²⁴¹ [Apna Haq – | Supporting Black and minoritised women in Rotherham](#) (accessed 2 August 2021); [Response to rape overhauled - GOV.UK \(www.gov.uk\)](#) (accessed 8 August 2021); [RAPE PROSECUTIONS: New report finds system collapse and calls for political intervention on juries, police and prosecutors — Centre for Women's Justice \(centreforwomensjustice.org.uk\)](#) (accessed 21 July 2021).

²⁴² The term 'honour-based' needs to be addressed – see later, also **17. Overarching Matters**, later.

Yasmin Rehman addressed the question of marriage, too: that of the harms done to women and children by polygamy. She questioned why this issue did not ‘capture public attention in the way forced marriage or honour-based violence has’, providing the example of a young Afghan woman, Sahar Daftary,²⁴³ ‘who committed suicide because she discovered her husband was already married, with children’ something of which she was unaware at the time of her marriage’:

Following her death, her family campaigned for the government to look at polygamous marriage within the UK. Unlike honour-based violent deaths, such as those of Banaz Mahmood²⁴⁴ or Heshu Yonas,²⁴⁵ Sarhar’s case did not capture the public imagination or the attention of the media and politicians in the same way: para 12, Witness Statement, Case ref: 013

Again, she speculated, ‘it is because it is in the “too difficult” box’.

Baljit Banga for Imkaan referenced figures indicating that every week in the United Kingdom, ‘two women are killed in domestic violence’ and that for Black and minoritised women ‘the rate of homicide within this figure is slightly higher [in consequence of] the structural inequalities and discrimination and other barriers they face’:

Violence against women and girls’ cuts across race, class, caste, disability and all other lines. A woman being Black and minoritised does not expose her to more violence against women than it does any other woman, because violence against women is pervasive. However, the existence of structural inequalities means she will not get the support she needs when she needs it: paras 16-17, Witness Statement, Case ref: 018

Ms Banga went on to explain that a ‘spike in the data’ relating to Black and minoritised women ‘is the cumulative effect of unmet needs for services’. This, she said, ‘creates points of crisis for Black and minoritised women and girls, where it appears as if rates are higher – but the spikes are attributable to gaps in services’. She reiterated her earlier allusion to ‘secondary victimisation’ arising out of service failures. Where specialist support suffers from a lack of availability – due to cuts in funding or no funding or resource-base provided at all – or another barrier confronts Black and minoritised women so preventing them from accessing appropriate support, ‘rates of repeat and secondary victimisation could appear higher because of those service failings and existing gaps’: para 18, *ibid*

Addressing police action (or inaction), she said that reporting to police can result in Black and minoritised women being ‘criminalised rather than supported, finding themselves scrutinised’, with the system ‘not seeing them as human beings or as victims of violence: aspects such as compassion and empathy are missing in the response they receive’. That is, she summed up, ‘... race discrimination and other barriers may prevent women from accessing support services, this meaning the woman will not receive the support when she needs it, or it may not be the right kind of support she receives’. In turn, ‘this means that her experience of support may leave her feeling victimised and significantly impacted

²⁴³ [How Sahar Daftary’s death fall exposed polygamy in Britain | The Times](#) (accessed 21 July 2021); [Model's family say 'she would never have committed suicide' \(telegraph.co.uk\)](#) (accessed 21 July 2021); [It wasn't suicide, love-split model's family tell police | London Evening Standard | Evening Standard](#) (accessed 21 July 2021).

²⁴⁴ [Banaz: A Love Story - Top Documentary Films](#) (accessed 21 July 2021); [Murdered By My Family | Banaz: An Honour Killing \(Crime Documentary\) | Real Stories - YouTube](#) (accessed 21 July 2021); [Two-hour rape and torture of honour killing girl murdered by her family | London Evening Standard | Evening Standard](#) (accessed 21 July 2021).

²⁴⁵ [BBC NEWS | England | London | 'Honour killing' father begins sentence](#) (accessed 21 July 2021); [Kurd who slit daughter's throat in 'honour killing' is jailed for life | UK news | The Guardian](#) (accessed 21 July 2021); [The tragic schoolgirl victim of UK's first 'honour killing' | Daily Mail Online](#) (accessed 21 July 2021); [Where is the honour in her murder? Heshu Yones and Shahida Mohammed died at their fathers’ hands in so-called honour killings. But their brutal deaths have no place in Islam, learns Jennifer Cunningham | HeraldScotland](#) (accessed 21 July 2021).

by secondary victimisation from institutions and services she accesses, because she is not believed, because she is judged, and because she is told that her culture is to blame': paras 19-20, *ibid*

A key focus of organisations such as Southall Black Sisters and similar services, said Pragna Patel, 'is the impact on women due to the overlap between migration status and gender-based abuse':

... 60% of the women who come to us have uncertain immigration status and are subject to various forms of violence and abuse. The current immigration policies and laws which have become increasingly harsher and more draconian, and which form part of the wider government policy and the hostile environment, have had a devastating impact on migrant women who need to escape abuse. When women have insecure migration status and are subject to abuse, their insecure status makes it difficult, if not impossible, for them to leave the abuse without facing deportation or removal ...²⁴⁶

The combination of fear of deportation from the UK and fear of becoming destitute because they cannot access welfare support, leaves women feeling trapped in situations of abuse and violence. The immigration rules themselves become weaponised by abusers who use a woman's insecure immigration status to continue and escalate abuse, and to keep women in captive situations. Most of the women coming to us recount experiences of heightened forms of abuse, including domestic servitude or domestic slavery, acute imprisonment and isolation within their homes, and complete financial dependency on abuse; even if allowed to work, they often have to hand over their wages to their abusers: paras 13-14, Witness Statement, Case ref: 023

She went on to add that many women in this situation are 'not allowed to go to work at all'. Isolated from the outside world and 'often denied contact with their own families' (who are usually abroad), they are 'kept in constant fear and told that if they disclose their experiences to an outside body, including police, they will be arrested, detained and deported'. As many of these women come from countries where significant stigma is attached 'to having come from a broken marriage and to being separated and divorced, almost always isolation and destitution follow'. This results from rejection by families and communities as they are seen as 'bringing shame and dishonour on their families'. Further, 'in their countries of origin, the welfare state is weak or non-existent so they cannot live independently'. This means, for many, that 'survival is impossible': para 14, *ibid*

Issues of policing rose again and again. Nick Newland as Policy and Communications Officer for the Associated Country Women of the World spoke of the difficulties confronting rural women, generally and increased by extraordinary events, citing the Coronavirus crisis:

Rural women often lack access to law enforcement, with the absence of local police stations made more critical with rising rates of domestic violence during Covid-19 and its associated lockdown measures. If there are local police staff, they will likely be known to both the victim and perpetrator, making the process more traumatising for the survivor and servicing as a barrier to reporting mechanisms: para 2, Witness Statement, Case ref: 011

Problems with policing and failures in prosecution of crimes against women were referred to frequently. Zlahka Ahmed, MBE, of Apna Haq raised the problem of racism in the context of sexual crimes:

During the last two years, there has been discourse about sexual violence in the UK. Racist stereotypes were involved. For example, there was a stereotype that Pakistani men rape white

²⁴⁶ Here Ms Patel referred to the 'No Recourse to Public Funds' (NRPF) provision applied to people subject to immigration controls, which means they lack access to the welfare safety net – comprising housing and most forms of social security benefits: para 13, Witness Statement, Case ref: 023 This is addressed elsewhere in this Report by reference to witness evidence including that of Ms Patel.

girls. Members of Parliament and leading newspapers even ran stories about it. However, recently, the government published findings that overwhelmingly show that it is white males who abuse girls. I am also aware that, since 2014, 10% of the girls reported to have suffered sexual abuse were from BME communities. That is 2,400 girls. 110 of those girls were from the Pakistani community.

Throughout the UK, Pakistani or other BME girls are being sexually exploited. However, social workers and the police are not looking for victims of sexual violence in those communities. When those victims do come forward, they are not taken seriously or believed. This results in men thinking they are getting away with abusing girls from these communities: paras 15-17, Witness Statement, Case ref: 005

Where police are contacted, women face potential barriers. A recently reported drop in charge, prosecution and conviction rates was said by Durham University's Dr Kelly Johnson, speaking in her personal capacity, to stem from 'a complex mix of factors' one of which she noted as lying with police, courts and the criminal justice system as a whole. She cited the need for training 'around understanding domestic abuse and all other forms of violence against women which police are encountering'. Further, innovative policy and practice are required, along with addressing 'criminal justice system issues such as cases taking two or three years to get to court'. Services provided must be such that victim/survivors can 'have confidence in and feel supported through rather than being diminished by'. This issue, though complex, she said, 'is an important one which needs to be addressed': para 11, Witness Statement, Case ref: 029

Rape and policing were considered by Nazmin Akhtar of Muslim Women Network, UK, too, referencing research carried out by the Network into Muslim women's experiences of the criminal justice system. She acknowledged the existence of the laws in this area, yet emphasised that whilst this may be so, 'the way Muslim women are treated exacerbates injustices' for them:

There are many cases where women have been brave enough to report sexual offences to the police but the process becomes too long, or they have to keep chasing for updates leading to either the case being dropped (due to for example, missing opportunities to speak to a perpetrator or obtain evidence) or the victim herself stops cooperating. This exacerbates injustice because 1) these perpetrators have gone free without ever seeing court which means that they are now even more emboldened and out there free to target other women and girls, 2) the women concerned never get the justice they deserve, and 3) it is unlikely that these women will ever turn to the police again for support having failed to receive justice on the one occasion they tried: para 17, Witness Statement, Case ref: 039

Dr Johnson drew attention to the fact that when police respond to criminal assault at home and other forms of domestic violence, '... they do so many things beyond criminal justice investigation and outcome'. The way they are engaging and how well they work requires attention. Her research with Dr Katrin Hohl found 'quite a high level of officer use of out of court resolutions to respond to domestic abuse'. This involved what police considered to be 'resolving a case by means beyond seeking a conviction or closing it and facing no further action'. This included matters such as 'words of advice, making referrals and asking perpetrators to pay for criminal damage committed'. Dr Johnson said that the key aspect drawn from the research was that while '... some of these practices might be what the victim wanted and it might be good practice, we know that there is no transparency around these practices and no oversight'. Crucially, she concluded:

We need to ensure that these practices are keeping victims safe and not denying them access to justice and safety, particularly when we know from other studies that police officers might

not understand the dynamics of domestic abuse and the serious risk of harm that can be involved: para 12, *ibid*

Taking up this issue through a focus on the courts and prosecution process, former police officer Kevin Hyland, now of the Santa Marta Group, acknowledged ‘... systems and mechanisms in place to protect women from violence in the UK are in need of an overhaul’. He noted the ‘particularly concerning aspect of lack of convictions, whereby of 55,000 reported rapes in the UK last year [2020], fewer than 2% resulted in a conviction’. He saw as essential to address this, a combination of ‘education, women’s rights promotion, reporting mechanisms, and sanctions’ as ‘all vital tools to send the message that Violence Against Women and Girls is not acceptable in our society’: para 2, Witness Statement, Case ref: 038

Barrister at Goldsmith Chambers, junior research fellow at Queens College, Cambridge University, and speaking in a personal capacity Dr Charlotte Proudman considered the courts’ approach to be ‘very poor ... in family law cases for rape, domestic abuse and coercive control’. She illustrated this through her experience in practice, saying:

Where there is not a particular mark left because of the abuse, it is not seen as being proved unless there’s corroborating evidence to support it. Family courts are out of date especially with regards to the impact of domestic violence on victims directly, particularly mothers and children. There is a perception among family judges that because a child is in the house when the abuse occurred, but not in the same room, then they are not directly a victim. However studies have shown this is far from true. It can have a corrosive impact on them, especially when they are growing up: paras 4-4, Witness Statement, Case ref: 017

Further, ‘myths still exist in family courts, especially with regard to how victims should react’. She provided as an example that ‘if a woman consents to sex in a relationship, then her consent is presumed to continue throughout the relationship’. Sexual history, she said, ‘is used to support these stereotypes.’ She added that the family court approach ‘suggests you can disclose anything you want. This is highly abusive – especially where the victim does not know these videos and photos were being taken’. Here, Dr Proudman instanced a case ‘where a man had thousands of photos and videos of them having sex. She claimed she was under duress and coerced into the recordings. It was held that because some of the videos appeared consensual, she must have consented to sex on every occasion’. There are insufficient ‘rigorous rules to protect victims from being traumatised in the family law process: paras 5-6, *ibid*

Solicitor Jenny Beck, QC (Hon) addressed this issue in the context of coercive control, saying that ‘our current system fails to properly recognise coercive control or its impact on sexual consent very well’:

Instead, during the legal process, it focusses on incidents of abuse. This fails to consider the holistic picture; it does not properly take into account coercive control; it certainly does not recognise coercive control as one of the most abusive behaviours and its impact on the entire family dynamic. It does not recognise the risks which coercive control poses to women and their children: par 9, Witness Statement, Case ref: 031

She also considered the question of the justice system being appropriated for unjust reasons that might objectively be seen as compounding the abuse, or abusive in itself. One aspect lay in the use of court processes. The other related to the fashioning of theories that, unless properly scrutinised, are employed for an ulterior purpose. In regard to the first, Ms Beck stated a belief that courts are ‘being used increasingly as a weapon of abuse by perpetrators, and this is happening increasingly because of legal aid cuts’:

More men are going to court as litigants in person, and in doing so are recognising that the court system itself can occasionally be used as a tool to abuse further. This occurs through perpetual applications for child contact; late filing of evidence; volumes of unnecessary evidence; permanently using the court to control women; and constantly making applications repeatedly during the course of a case. All these are mechanism's to further traumatise the woman under a facade of pursuing justice: para 8, Witness Statement, Case ref: 031

For the second, she observed the 'growing problem of allegations of parent alienation, now seen regularly as mechanism for silencing women and stopping them from raising allegations of domestic abuse. Thus, 'on an application for contact to children via the courts, our current, binary system tests out whether abuse has occurred or not in a fact-finding hearing to ascertain any risk contact would pose':

The current process permits six allegations as a maximum to be raised to establish the risk. In any case where facts cannot be proven (for example, the victim is too traumatised to give 'convincing' evidence, or because the abuse is a pattern of behaviour, like coercive control, rather than physical abuse – then the finding is not made and the case proceeds as if the abuse does not exist. If there is no finding of abuse, the woman is unable to rely on abuse having occurred. As the case moves forward, if children are fearful of not wanting to see the fathers, this is often flipped around and the mother is accused of alienation. In the absence of being able to rely on abuse findings, she has a risk that the child will be taken from her and given to the abuse on the basis that she is an alienator: para 10, ibid

Ms Beck went on to advise that 'the fear and risk of this increasing practice is so great, it is preventing women from disclosing abuse in the first place':

They are so afraid that the justice system will not enable them to prove the abuse they have experienced, and the result of not being able to prove that abuse within this structure will mean that a counter allegation of parental alienation will be brought against them. As a result, they will then be at risk of losing their child to an abuser, and the child will therefore be at risk of abuse in that new environment: para 11, ibid

Nazmin Akhtar raised another element inhibiting women's being able to find support within the legal system. She observed that Muslim women face various forms of abuse, 'as do women in wider society'. However:

... the issues can be exacerbated due to cultural factors and due to the Islamic faith being misused to manipulate Muslim women into thinking that what is being done to them is spiritually acceptable. For example, some may attempt to justify domestic abuse by saying that a Muslim woman's husband can hit her, because the Quran has given him the right to do so, or other similar arguments may be made even though that is not actually correct. The Islamic faith is being misused because the Quran does not say that, but depending on their levels of religiosity, a Muslim woman who is told that the Quran allows abuse against her may feel that she cannot question the abuse. So, these are some of the ways that Muslim women are being abused and stopped from seeking help or raising their voices against the abuse: para 7, Witness Statement, Case ref: 039

Going on to address the problems for Black and minoritised women who, as a consequence of failures in funding, are forced to attempt to access generic services, Nazmin Akhtar put into fine focus the need for specialised services. Acknowledging 'domestic violence impacts every community', its being 'the real pandemic that has been ignored for years and it affects everybody in every possible way'. However, she added, 'there are added cultural and faith barriers that exacerbate the situation when we consider the effects of domestic violence on Muslim women in comparison to non-Muslim women':

For example, there is a stigma around leaving the home, leaving one's husband, and getting a divorce. When facing abuse, Muslim women can also be ostracised for speaking up or taking steps to leave an abusive situation. So, when we think of the common issues women face, such as the need for financial independence in order to be able to leave or needing a secure home to move to, Muslim women may have the added pressure of not having their family to support them. For many Muslim women leaving a domestic abuse situation can mean leaving their entire life and family behind. Added to this, they may be battling with their own emotions in the sense that they are battling with what they have been brought up to believe is their faith or culture and may be trying to figure out what is the right thing to do without any support, which can then impact their mental health or exacerbate mental health issues: paras 13-14, *ibid*

Witnesses referred to issues facing women through violence inflicted by practices including forced marriage and so-called 'honour' crimes.²⁴⁷ Speaking of forced marriage and her work at Imkaan, Baljit Banga said that one problem lay with the construction of the law as well as lack of services for women confronting this wrong:

The law addresses the issue of consent, and where there is lack of consent the remedy is criminalisation. What we have felt for a very long time in our sector is that other measures need to be implemented – other actions that could be much more supportive of the young woman and help her to rebuild her life and to move on. Support to specialist services is critical. There are many cases of women who access support and re-establish their lives after the threat of forced marriage, so it does work to prevent forced marriage, and it does work to support the young woman who may be subjected to forced marriage: para 30, Witness Statement, Case ref: 018

The 'many instances where a disjointed response' to forced marriage 'and many of the other issues regarding violence against women' arise, need to be addressed effectively. She referenced the case of a woman who reported a forced marriage risk to safeguarding. The social worker 'went to her home, visited with the father, and came out saying, "well, you know, he seems like nice guy; he doesn't look like he would force his daughter into marriage"'. Hence, where there is statutory intervention in forced marriage cases, '... we are still talking about better training for statutory services, for social workers, for safeguarding staff, so that they are able to identify and appropriately support women who are subjected to forced marriage ... The law does not address these issues. The law criminalises forced marriage which actually pushes it underground, so that means women do not come forward as much because they do not get the support they need': para 31, *ibid*

Cris McCurley urged that it be recognised that proceedings involving women experiencing honour-based violence 'are some of the most sensitive proceedings because it is usually young and vulnerable women who are taking on the people that she loves most in the world before a legal tribunal. That is one of the hardest things I think anyone could be asked to do'. From her practical and professional experience as a family solicitor, practicing in North East England for some three decades, she lamented 'very little understanding of any form of cultural practices such as forced marriage or honour-based violence':

²⁴⁷ 'Honour Based Violence (HBV) is a term used to describe violence committed within the context of the extended family which are motivated by a perceived need to restore standing within the community, which is presumed to have been lost through the behaviour of the victim. Most victims of HBV are women or girls, although men may also be at risk. Women and girls may lose honour through expressions of autonomy, particularly if this autonomy occurs within the area of sexuality. Men may be targeted either by the family of a woman who they are believed to have 'dishonoured', in which case both parties may be at risk, or by their own family if they are believed to be homosexual': [HONOUR BASED VIOLENCE \(hbv-awareness.com\)](https://www.hbv-awareness.com) (accessed 7 July 2021)..

In such cases, the Respondent family may come across as being very credible when they give their evidence, and the complainant usually comes across as traumatised and is not able to give very clear evidence at all. There is no appreciation of that trauma, so very often we let young people down, particularly young people who may be on a forced marriage protection order and living independently, supposedly with social services or maybe even returning home with social services support. One of the main problems is a lack of resources in every part of the system. There is not the aftercare for those very vulnerable young women: para 29-31, Witness Statement, Case ref: 015

This, she said, had some mitigation at the upper end of the court hierarchy. Reflecting upon her experience in the judicial system, she said she had observed 'at the higher level, judges do have an understanding of honour abuse'. She instanced appearing in the Court of Appeal where 'one of our most senior judges questioned my client about the fact that she was a victim of honour abuse'. That 'would never happen,' she added, 'in one of the more junior courts. I am routinely told by judges at junior level tribunals that this does not amount to abuse.' She illustrated this with an example of once having heard a judge say 'he thought myself and my client (who was a victim of honour-based abuse) had "over-egged" the allegations of HBA [honour-based abuse], and he would not allow the words "Honour abuse" to be used within the proceedings':

Immediately she was not believed and told she was lying. On appeal, the judge was removed from the case but as an advocate, you are aware that the next time you are before that same judge, he or she may not be well disposed to you or to your client. It is very difficult for white women from the majority culture to have faith that they are going to get a fair hearing, far less somebody from a different culture who does not speak English or who faces another barrier. There is a long way to go and that is something that exercised the CEDAW commissioners for the last two inquiries. The government has been charged with looking particularly at minority ethnic women and the law and how they access justice. We have not seen much action on that, unfortunately, but there was a huge groundswell of campaigning work that is trying to get the government to engage with that:²⁴⁸ paras 26-28,

As for services, all witnesses addressing this issue lamented the lack of funds, lack of funding because 'generic commissioned services' were favoured and a practice of defunding smaller, focused services designed to support women's particular requirements, funnelling resources and funds to larger services ill-versed or unversed in the realities of women's needs or even basic prerequisites. Again, the question of policing was raised by Margaret Owen, OBE, of Widows for Peace through Democracy, speaking on behalf of the organisation and also as a patron of Peace in Kurdistan and a member of the United Kingdom Women's Civil Alliance. She observed that crimes of 'honour based violence' are 'complex situations to handle, but the police can fail to take such calls seriously ...' Instancing a case where the victim had 'continuously called the police for many weeks' to no avail, as they failed to believe her ... and she was killed by her father and her brother', she added: 'I believe that more needs to be done by the UK law enforcement officials': para 11, Witness Statement, Case ref: 016

Lack of recognition of Black and minoritised women was raised on behalf of Apna Haq by Zlakha Ahmed, MBE. Saying that she did not consider that the Domestic Abuse Bill would help with the issues addressed by her organisation, she considered: 'All that will be achieved will be a replication of existing generic services as presently being commissioned. The smaller BME women's organisations are reaching women whom the bigger organisations do not reach and [therefore will] not have a voice.' She gave her evidence against a backdrop where 'the number of large generic commission services has increased and have begun winning more of the tenders'. Providing the example of Apna Haq's having lost a local

²⁴⁸ On this campaigning, see later re the critique of the Domestic Abuse Bill (now Domestic Abuse Act 2021 – 29 April 2021): [Domestic Abuse Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk) (accessed 8 August 2021); [Domestic Abuse Act: Factsheet - Home Office in the media \(blog.gov.uk\)](https://blog.gov.uk) (accessed 2 July 2021).

authority contract held for 12 years, so that as of January 2020, Apna Haq was down to half-staffing. In the last 10 years, she explained, 'the UK has lost around half the BME organisations that previously existed. When community led organisations shut down, the women from those communities will no longer be reaching out'. However, the vital need for services based in the recognition of Black and minoritised women's existence within the community is readily proven:

Due to the availability of some additional funds, Apna Haq has been able to put 20 women from BME communities through counselling. They are women suffering from anxiety and depression. They have gone to generic counselling services and said that the generic counselling services did not meet their needs. They found the generic counselling services not to be culturally or faith responsive: paras 6-7, *ibid*

Problems of policy development and implementation were raised generally and specifically in relation to the devolved jurisdictions, most particularly Northern Ireland. Dr Olga Jurasz, speaking in her personal capacity, referred to inadequacies in the present system, including differences between the various United Kingdom jurisdictions. As well as ratification of the Istanbul Convention,²⁴⁹ Dr Jurasz noted the fragmented nature of existing laws, the lack of 'fit for purpose' legislation, and 'fragmentation in the policy and law-making landscape': paras 6, 8, 9, Witness Statement, Case ref 007. In this, she echoed the concerns and analysis of Dr Johnson, as well as the witnesses expressing reservations as to the limitations of law and policy-making where little or no attention is paid to the need for overarching laws and policy for the United Kingdom, rather than a patchwork which is undermining of women's rights as human rights, in light of the variations and variances of approaches by the United Kingdom government and Parliament and those of the devolved nations.²⁵⁰

Commenting on this question overall and in the context of criminal assault at home and other forms of domestic violence, Jonna Monaghan, project coordinator for Northern Ireland Women's European Platform (NIWEP) raised concerns as to the position of women of Northern Ireland subjected to violence, the issue of fragmentation and slow or no movement in addressing the issue:²⁵¹ Witness Statement, Case ref 003. She said there are policy gaps that are crucial:

... we have been without an up-to-date strategy for about four years. The last one lapsed in 2016. Work on a new strategy has only just begun several months ago.²⁵² There is no childcare strategy and never has been one. There remain issues with reproductive health care. There is currently a domestic violence and family proceedings bill passing through the assembly which is designed to change how trials are conducted, but mostly to prepare the way for a coercive control offence. However, it is being held up for several reasons, including an amendment on access to legal aid and was considered by the Minister to create too much of a financial burden, so was being stalled.²⁵³ But as part of that process, it was stated that there is no remit within that legislation to look at a violence against women and girls' strategy. This is a particularly good example of how gender is just being written out of legislation and policy, which is not happening quite to that extent in the other devolved administrations:²⁵⁴ para 3, Witness Statement, Case ref: 003

²⁴⁹ [Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence \(Istanbul Convention\) – 2018 Report on Progress \(publishing.service.gov.uk\)](#) (accessed 9 July 2021).

²⁵⁰ See 1. **Constitutional, legislative and policy framework.**

²⁵¹ See further later.

²⁵² That is, within the last year – 2020-2021.

²⁵³ The Domestic Abuse and Civil Proceedings Act was passed in January 2021, [Domestic Abuse and Civil Proceedings Act \(Northern Ireland\) 2021 \(legislation.gov.uk\)](#) (accessed 8 August 2021).

²⁵⁴ This issue of 'gender neutrality' was raised as a matter of concern by many witnesses. See generally throughout this Report, and **17. Overarching Matters**, later.

Further, coercive control ‘has been an offence in the other jurisdictions in the UK since 2015, the Scottish law has gone further now for several years’.²⁵⁵ Rachel Powell, Women’s Sector Lobbyist with the Women’s Resource and Development Agency expressed similar concerns, noting of particular concern ‘Northern Ireland’s lack of strategy on violence against women and girls. This, despite the fact that in 2017 it was ‘revealed that Northern Ireland has some of the highest rates of femicide and domestic violence in Europe’. This reality was, however, ‘continually distorted by gender neutral policy making in the region [which] disregards it’. This was a result of concerns about diminishing the experience of male victims, yet it ‘serves to hide victims overall’. She echoed concerns expressed by other witnesses as to the United Kingdom position as a whole, ‘that gender neutral policy making in the region is a danger to women, leading to such absurdities as gender equality plans without any reference to women’:

Throughout the Covid 19 pandemic, which has seen rates of domestic abuse increase dramatically, women in Northern Ireland have found their local domestic violence services funded at a less favourable rate than in other parts of the country. While in recent weeks, tragic events in England and Northern Ireland have encouraged our representatives to commit to the VAW strategy for the first time, much work needs to be done, in particular with respect to educational measures to combat gender stereotyping, as required under Article 5 of CEDAW: para 4, Witness Statement, Case ref: 008

Darragh Mackin, in his personal and professional capacity as a partner in the law firm Phoenix Law, Belfast, referred to the fragmentation issue, too, and raised the impact of violence against women in terms of their paid working lives and retaining jobs despite suffering inflictions of harm to their health:

In terms of some of the issues affecting women in the UK’s devolved states, one that presently cannot be overstated is the issue of domestic violence. Taking into consideration the consequential impacts of domestic violence, I do not believe this has been fully thought through. There are questions such as how we cater for domestic violence services for women that remain largely unresolved.²⁵⁶ One example might be the debate about potential leave from work as a result of domestic violence. This is a concept that should be required as a matter of policy, and as a matter of law. If you are the victim of such treatment, you should be entitled to the same protections as would be afforded to you if you were ill; you should be entitled to the leave from employment: Witness Statement, Case ref: 025

Critique of Domestic Abuse Bill/Act

The Domestic Abuse Bill 2021 (now Act) was criticised on a number of levels although there was a view for some as to its being an advance, albeit limited; for some, ‘better than nothing’ and, for some, particular elements gaining a positive ‘tick’ – for example, definition covering young women aged 16

²⁵⁵ **What is coercive control?** Coercive control is when a person with whom you are **personally connected**, repeatedly behaves in a way which makes you feel controlled, dependent, isolated or scared. The following types of behaviour are common examples of coercive control: isolating you from your friends and family; controlling how much money you have and how you spend it; monitoring your activities and your movements; repeatedly putting you down, calling you names or telling you that you are worthless; threatening to harm or kill you or your child; threatening to publish information about you or to report you to the police or the authorities; damaging your property or household goods; forcing you to take part in criminal activity or child abuse:

Some of the behaviours can be other offences and coercive control, so your abuser can be arrested for more than one offence for the same behaviour ... [Coercive control and the law - Rights of Women Rights of Women](#) (accessed 21 July 2021); [Controlling or Coercive Behaviour in an Intimate or Family Relationship | The Crown Prosecution Service \(cps.gov.uk\)](#) (accessed 21 July 2021).

²⁵⁶ Note the issues raised by Kevin Hyland, OBE of the Santa Marta Group and Jonna Monaghan of Northern Ireland Women’s European Platform (NIWEP) – namely the European Arrest Warrant and European Protection Order: [EUR-Lex - 32011L0099 - EN - EUR-Lex \(europa.eu\)](#) (accessed 8 August 2021); [EPRS STU\(2017\)603272 EN.pdf \(europa.eu\)](#) (accessed 8 August 2021). See under **Brexit – Withdrawal from the European Union**, earlier.

years and above,²⁵⁷ the recognition that a child can be a victim/survivor whether the violence occurs out of their sight (for example, in another room) or not,²⁵⁸ inclusion of coercion and control,²⁵⁹

²⁵⁷ s. 1(2)(a) (16 years) [Domestic Abuse Act 2021 \(legislation.gov.uk\)](#) (accessed 8 August 2021).

²⁵⁸ s. 3 Children as victims of domestic abuse

(1) This section applies where behaviour of a person (“A”) towards another person (“B”) is domestic abuse.

(2) Any reference in this Act to a victim of domestic abuse includes a reference to a child who—

(a) sees or hears, or experiences the effects of, the abuse, and

(b) is related to A or B.

(3) A child is related to a person for the purposes of subsection (2) if—

(a) the person is a parent of, or has parental responsibility for, the child, or

(b) the child and the person are relatives.

(4) In this section—

- “child” means a person under the age of 18 years;
- “parental responsibility” has the same meaning as in the Children Act 1989 (see section 3 of that Act);
- “relative” has the meaning given by section 63(1) of the Family Law Act 1996: [Domestic Abuse Act 2021 \(legislation.gov.uk\)](#) (accessed 8 August 2021).

²⁵⁹ Coercion and control: s. 1(3)(c.), Part 6, s. 68 [Domestic Abuse Act 2021 \(legislation.gov.uk\)](#) (accessed 8 August 2021); see also [Controlling or Coercive Behaviour in an Intimate or Family Relationship | The Crown Prosecution Service \(cps.gov.uk\)](#) (accessed 21 July 2021); see [Serious Crime Act 2015 \(legislation.gov.uk\)](#) – s. 76 Controlling or coercive behaviour in an intimate or family relationship

(1) A person (A) commits an offence if—

(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,

(b) at the time of the behaviour, A and B are personally connected,

(c) the behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

(2) A and B are “personally connected” if—

(a) A is in an intimate personal relationship with B, or

(b) A and B live together and—

(i) they are members of the same family, or

(ii) they have previously been in an intimate personal relationship with each other.

(3) But A does not commit an offence under this section if at the time of the behaviour in question—

(a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and

(b) B is under 16.

(4) A’s behaviour has a “serious effect” on B if—

(a) it causes B to fear, on at least two occasions, that violence will be used against B, or

(b) it causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities.

(5) For the purposes of subsection [\(1\)\(d\)](#) A “ought to know” that which a reasonable person in possession of the same information would know.

(6) For the purposes of subsection [\(2\)\(b\)\(i\)](#) A and B are members of the same family if—

(a) they are, or have been, married to each other;

(b) they are, or have been, civil partners of each other;

(c) they are relatives;

(d) they have agreed to marry one another (whether or not the agreement has been terminated);

(e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);

(f) they are both parents of the same child;

(g) they have, or have had, parental responsibility for the same child.

(7) In subsection [\(6\)](#)—

- “civil partnership agreement” has the meaning given by section 73 of the Civil Partnership Act 2004;
- “child” means a person under the age of 18 years;
- “parental responsibility” has the same meaning as in the Children Act 1989;
- “relative” has the meaning given by section 63(1) of the Family Law Act 1996.

(8) In proceedings for an offence under this section it is a defence for A to show that—

(a) in engaging in the behaviour in question, A believed that he or she was acting in B’s best interests, and

(b) the behaviour was in all the circumstances reasonable.

criminalisation of the threat to share images (revenge porn),²⁶⁰ and the provision recognising strangulation.²⁶¹

The lack of a gendered recognition in the Bill of violence against women and girls was raised by a number of witnesses, both in relation to the Bill/Act and across the board generally as to the neutrality projected by the failure to disaggregate statistics in this and other areas. Baljit Banga for Imkaan made the point with acuity. The omission of any recognition of violence against women and girls as being gendered, she said, ‘means that the root causes of violence, which is patriarchy and inequality, are not covered by the definition’. In policy terms ‘the government assumes a gender-neutral stance to the problem of violence against women and girls, ... an ineffective framework for understanding violence against women and girls, not addressing it through any kind of comprehensive response’:

Women represent many diverse experiences, and by locating policy in such experiences, the nature of structural inequality and patriarchy and the power and control dynamic embedded in such systems must be addressed. So, we are calling for very explicit redress in the law based on the principles of CEDAW. And what we have in the Domestic Abuse Bill really does not go far enough ...

CEDAW Recommendation Number 19 recognises that women experience abuse because they are women, recognising the disproportionate impact and need for specific measures. We have a Domestic Abuse Bill that does not recognise this, so we have a gender-neutral Domestic Abuse Bill, and that is problematic: paras 23, 40, 42, Witness Statement, Case ref: 018

This problem of ‘gender neutrality’ was raised, too, in the compounding failure of the legislation to encompass crimes and harms based in practices said to derive from cultural foundations and directed specifically at women. This meant that Black and minoritised women’s rights ‘are not adequately protected by UK legislation’ making it inconsistent with international conventions, including CEDAW and the Istanbul Convention: ‘the definition in the government’s Bill does not go far enough to cover all forms of violence against women and girls,’ Baljit Banga said, adding: ‘harmful practices have been removed from the definition, so this excludes a group of women who are subjected to a particular form of violence’:²⁶² paras 22, 24, Witness Statement, Case ref: 018

(9) A is to be taken to have shown the facts mentioned in subsection (8) if—

- (a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and
- (b) the contrary is not proved beyond reasonable doubt.

(10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

(11) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

²⁶⁰ On this, see further **4. Gender-based violence against women**, and critique of the limitations of online violence laws, later.

²⁶¹ Strangulation: Part 6, s. 70 (amending the Serious Crime Act by introducing ss 75A and 75B). The Act creates a new criminal offence of non-fatal strangulation or suffocation. The offence will apply to any case where a person intentionally strangles or suffocates another person, including in cases of domestic abuse. The offence will also apply where strangulation or suffocation is committed abroad by a British national or by a person who is habitually resident in England or Wales, as if the offence had happened in England and Wales: [Strangulation and suffocation - GOV.UK \(www.gov.uk\)](#) (accessed 8 August 2021).

²⁶² See ‘dishonour killings’, for example; see also Rachael Aplin, *Policing UK Honour-Based Abuse Crime*, Palgrave MacMillan, Basingstoke, UK, 2019; Caroline Blyth, Emily Colgan, Katie B. Edwards (eds), *Rape Culture, Gender Violence & Religion – Biblical Perspectives*, Palgrave Macmillan, Basingstoke, UK, 2018; Catherine Donovan and Rebecca Barnes, *Queering Narratives of Domestic Violence and Abuse – Victims and/or Perpetrators?* Palgrave Macmillan, Basingstoke, UK, 2014.

Nazmin Akthar, co-chair of Muslim Women's Network UK, speaking on behalf of the organisation, said that amendments to the Domestic Abuse Bill when it was going through the Parliament 'created further protections for Muslim women'. However, she added, 'they could go further'. Here, Ms Akthar provided as an example that:

... the threat to share intimate images (the so-called revenge-porn offence) will now be criminalised but there are still limitations in the law, specifically for Muslim women, in that often their cases do not just deal with images but with audio recordings too. These audio recordings can still be used to blackmail their victims, and although it is not showing a face, the risk is still present if the audio footage is shared with family and friends: para 15, Witness Statement, Case ref: 039

Limitations arising out of the failure to encompass migrant women were raised by Ms Banga and other witnesses. Speaking in both her personal and professional capacity, from her experience in private practice as a family solicitor in the North East of England, as a partner in Ben Hoare Bell LLP, Cris McCurley said she has been 'very critical of the Domestic Abuse Bill':

There has been a significant rolling campaign that I have been part of to extend the domestic abuse discretionary concession to allow women with any form of visa to be able to access legal help and to be able to access money to live on and somewhere to live if they are fleeing abuse. But the government voted that down, which has been one of the great disappointments for me about the Bill. It means that a huge proportion of the most vulnerable women and children have been left out of the justice system': Witness Statement, Case ref: 015

Southall Black Sisters (along with other organisations) was involved in campaigning, too, with Pragna Patel noting that the Domestic Abuse Bill going through Parliament was 'lauded as a once in a generation Bill that will protect women from violence and abuse, purporting to strengthen the forms of redress they have and forms of protection they should be entitled to'. Yet, she said, as it stood at the time (in Bill form), it did not include protection for migrant women:

We and other migrant women's organisations have been lobbying government to ensure that protections for migrant women are enshrined in the Bill. The government has shown no inclination to do so, instead suggesting that a pilot project be undertaken to assess the needs of migrant women. We argued that the needs are well-known; we and others have engaged with the Home Office for a period of 18 months, making countless written and oral submissions highlighting exactly the extent of the need and what are the gaps in protection, but all this evidence has been ignored or misconstrued: para 17, Witness Statement, Case ref: 023

Despite this, the government 'has insisted on proceeding with the pilot project. It will provide £1.5 million for charity organisations to support migrant women with NRPF [No Recourse to Public Funds] who are subject to abuse'. She pointed out that this would help only, 'at the most and at a very basic level, 500 women a year'. However, 'the number of women subject to abuse who have NRPF probably runs into the low thousands'. Additionally, being destined for a period of one year only means the project is, even for the small number of women to whom it can extend, 'wholly inadequate, not being able to cover the costs needed to support women properly until they have regularised their stay': para 18, *ibid*

This concern was echoed by Rosie Lewis, speaking on behalf of the Angelou Centre, which offers ‘a range of holistic women-only services for Black and minoritised women across the North East of England’²⁶³ as it was by Baljit Banga for Imkaan, who reflected that ‘women coming under the No Recourse to Public Funds provision, women with other insecure immigration status, and migrant women are amongst the groups of women excluded from the Bill, which means they are excluded from protections in this country’: para 27, Witness Statement, Case ref: 018

Ms Akthar expressed concerns on this aspect, too, saying that the lack of recourse to public funds, with its detrimental effects on ‘migrant women, of whom Muslim women make up a significant proportion’ is a particular issue because the women may be from families or countries ‘where honour killings are prevalent’:

This means they cannot leave an abusive marriage because not only do they not have protections in the UK, but also going back to their country of birth could actually exacerbate the situation because then they might be at risk of honour-based abuse. This is a huge blind spot in the Domestic Abuse Bill and in fact it cannot even be called a blind spot as this issue has been raised a number of times but nothing has been done about it yet. Essentially the Domestic Abuse Bill could have gone further to provide Muslim women with much more protection: para 16, *ibid*

Cris McCurley went on to point out that the failure to extend equal rights and recognition to women in this category, leaving them subject to a discretionary regime in the circumstance of criminal assault at home and other forms of domestic violence, has had another impact on migrant women:

Women who have a spouse visa are able to access the discretionary immigration help and the financial support to allow them to do that, when they are leaving a violent relationship. The impact that has had, is that abusers are now aware that women on spouse visas can get this discretionary concession and help to leave their abusive partner. Therefore, we are now seeing more women being brought in on alternatives such as a fiancée visa, a family relocation visa, a student visa or just a visitor visa rather than a spouse visa, because there is the knowledge that if [the man wishes] to dispose of that woman, the woman will not be able to access her rights, whereas she would if she were on a spouse visa: paras 16-17, *ibid*

She observed that the strong emphasis on the criminal justice system creates a reporting environment about policing violence against women and girls, yet the role of police is problematic in terms of addressing and supporting women who report. This highlights in turn a deficiency in that ‘... there is no mention of safe reporting for women and girls, and no mention of specialist support pathways so that women and girls can get the support they need. Women and girls’ specialist support agencies are not mentioned. Multi-agency working, in terms of the government’s approach, specifically focuses on statutory pathways yet structural barriers impact the ability of women and girls to access the appropriate services they need through the statutory pathway. So, specialist services are relevant to getting the kind of support they need. The inference in the Bill is that there is a single pathway, meaning only statutory pathways for reporting and identifying will provide women and girls and victims of domestic abuse and violence with support they need. Yet this is very limited. It is not sufficient. It does not address No Recourse to Public Funds’: paras 26, 27, *ibid*

The separation of ‘domestic abuse’ from other forms of violence against women was noted by many witnesses as not only a disturbing trend, but as one which, consolidated in and by the Domestic Abuse Bill/Act effectively ‘de-genders’ criminal assault at home and other forms of domestic violence. As

²⁶³ The organisation remains unique as one of the few remaining Black-led women’s organisations in the north east of England, providing specialist support for black and minoritised women and children, locally, regionally and nationally: [Angelou Centre \(angelou-centre.org.uk\)](https://www.angelou-centre.org.uk) (accessed 21 July 2021).

Pragna Patel said, her words echoed by others, government plans ‘to separate domestic abuse from the VAWG Strategy ... is a backwards step’:

It makes no sense to have a VAWG strategy divorced from domestic abuse, given that each forms part of the wider continuum of violence women face. There is a lack of transparency as to why such a dual strategy approach has been taken. There is no evidence or sound basis for why the government have made this decision. VAWG is always experienced as a continuum. There are many forms of violence and abuse women face on the basis of their sex. The continuum at one end can involve sexual harassment and everyday forms of sexism and, at the other, homicide and suicide. In between are a whole range of abuses women and girls experience, including cultural forms of abuse such as forced marriage, and honour-based violence: para 30, Witness Statement, Case ref: 023

She added that on a practical level, it was ‘difficult to see how ... Police and Crime Commissioners will decide which forms of abuse a project should cater to and which it should fund. Conceptually it makes no sense, and will cause confusion at a commissioning level’. She went on to point out a real ‘... fear that there will be duplication of consultations and resources. Black and minority women’s organisations like ours, for instance, will find ourselves having to respond to two sets of consultations and two sets of policies, a complete waste of time and resources’: paras 31-32, *ibid*

Furthermore, the approach is inconsistent with the principles of the Istanbul Convention,²⁶⁴ which provides ‘a single framework capable of encompassing known and emerging forms of VAWG ... [encapsulating] non-discrimination and the promotion of equality and women’s human rights’. The urgent concern expressed by Ms Patel and equally so by other witnesses was that this dual strategy would lead to ‘domestic abuse eventually being understood as a gender-neutral phenomenon ... no longer aligned with the principles of the Istanbul Convention or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)’:

If you de-gender what is essentially a gendered phenomenon, you remove the understanding that underpins VAWG: that it is rooted in gender inequality. Removing that understanding removes the need to tackle the root cause of gender-based violence, which is gender inequality’: paras 33, 34, *ibid*

SUMMATION GENDER-BASED VIOLENCE

Ending violence against women has been in the forefront of women’s activism for aeons. Fast-forwarding to the 19th century, women railed against criminal assault at home and other forms of domestic violence, including rape in marriage. This was an impetus to the changes to divorce laws, which under ecclesiastical law was denied, so that the only recourse was by a Bill of Divorcement – an Act of Parliament, obviously restricted to a very few – and those, men. Separation from bed and board – ‘divorce’ *a mensa et toro* could be effected by a court determination and divorce – recognising that the marriage was absolutely at an end – was campaigned for by Caroline Norton and others, resulting in the

²⁶⁴ [Council of Europe Convention on preventing and combating violence against women and domestic violence \(coe.int\)](https://www.assembly.coe.int/LifeRay/EGA/WomenFFViolence/2019/2019-HandbookIstanbulConvention-EN.pdf) (accessed 2 July 2021); *The Istanbul Convention – A Powerful Tool to End Gender-Based Violence – A Handbook*, www.assembly.coe.int/LifeRay/EGA/WomenFFViolence/2019/2019-HandbookIstanbulConvention-EN.pdf (accessed 2 July 2021); [Council of Europe Convention on preventing and combating violence against women and domestic violence \(coe.int\) Istanbul Convention Fact Sheet](https://ec.europa.eu/info/sites/default/files/factsheet_istanbul_convention_web_en.pdf), https://ec.europa.eu/info/sites/default/files/factsheet_istanbul_convention_web_en.pdf (accessed 2 July 2021);

Divorce and Matrimonial Causes Act 1857.²⁶⁵ Her husband, George Norton, barrister and MP, was notorious for his violence, yet she realised in the course of her campaign that upon separation or divorce, if it were possible, her husband had complete rights over the children: they were seen as ‘his’ and his exclusively.²⁶⁶ Rape in marriage was no silent crime, evident in the dictum that women should ‘lie back and think of England’ rather than protest.²⁶⁷ As for violence beyond the marital realm, Josephine Butler campaigned against the ‘lock hospitals’ and the laws that supported them: violence was inflicted by the state, through medical practitioners and gaolers, on any woman picked up by the authorities for being alone on the street – where it was assumed she was plying her trade for sexual services. Captured by police to undergo genital ‘inspection’, she could be imprisoned in a facility established for this purpose, or if she refused police handling. Forcible subjection to ‘rape by instrument’ to determine whether or not she was a virgin, any woman who was, would be no more and all women subjected to this cruelty would suffer psychological as well as physical damage. As Helen Mathers in *Josephine Butler – The Patron Saint of Prostitutes* points out:²⁶⁸

In Victorian England, police forces were granted powers to force any woman they suspected of being a ‘common prostitute’ to undergo compulsory and invasive medical examinations, while women who refused to submit willingly could be arrested and incarcerated. This scandal was exposed by Josephine Butler, an Evangelical campaigner who did not rest until she had ended the violation and helped repeal the Act that governed it. She went on to campaign against child prostitution, the trafficking of girls from Britain to Europe, and government-sponsored brothels in India. In addition, Josephine was instrumental in raising the age of consent from 13 to 16.

Rape and sexual offences inflicted by men upon women and girls outside marriage was campaigned against, too. Often the impetus has been the reporting of trials – if a prosecution occurred, which has been rare, historically just as it is today. The 1970s and 1980s saw reporting of activism in demands for changes to laws, arising in the United Kingdom from the reporting of the *Morgan case*.²⁶⁹ There, Morgan invited his army mates home from the pub to rape his wife, advising that if she shouted, screamed and resisted this was simply because she was ‘kinky’ and this was the only way she ‘could get turned on’.²⁷⁰ Revolving around the question whether a man should be excused on the ground that he ‘honestly’ believed a woman is consenting, however unreasonable that ‘belief’ might be, the House of Lords held that ‘honest’ belief is sufficient: it did not have to be ‘honest and reasonable’.²⁷¹ That was simply one of

²⁶⁵ [Divorce and Matrimonial Causes Act \(UK\): 1857 - WOMEN CAN BE PRIESTS \(womenpriests.org\)](#) (accessed 2 August 2021); see also Caroline Norton, *Caroline Norton’s Defence*, originally published circa 1850s; Caroline Norton, *English Laws for Women in the 19th Century*, originally published London, UK, 1854; Academy Chicago Publishers, Chicago, Ill, USA, 2012; George Anthony Denison, *The Public Sin of the Divorce Act. A Sermon Preached I the cathedral Church of S. Andrew, Wells, on Sunday, November 8, 1857, The Public Sin of the Divorce Act. A sermon preached in the Cathedral Church of S. Andrew, Wells, on Sunday, November 8, 1857: Amazon.co.uk: George Anthony Denison: Books* (accessed 2 August 2021).

²⁶⁶ Henrik Ibsen in *A Doll’s House*, makes this point tellingly, and history has it that it was a brave woman who would play the role of Nora, leaving the children behind as she left Torvald, her husband. Social mores said it was ‘wrong’ of a woman to abandon her children, and for an actress to fill the role meant she would wear the public opprobrium as if it were really her own children left. Yet the law gave her no choice: father right prevailed.

²⁶⁷ Some male voices joined the struggle – see for example the rape of Irene by Soames in John Galsworthy’s *The Forsyte Saga* a trilogy comprising *A Man of Property*, *In Chancery* and *To Let*, see [The Forsyte Saga by John Galsworthy \(The Man of Property\) – Rebecca Reads \(rebeccareid.com\)](#) (accessed 2 August 2021).

²⁶⁸ Helen Mathers, *Josephine Butler – The Patron Saint of Prostitutes*, 2nd new edn, The History Press, 2021, blurb.

²⁶⁹ *DPP v Morgan*, *DPP v McDonald*, *DPP v McLarty*, *DPP v Parker* [1975] UKHL 3 · [1976] AC 182 · [1975] 2 WLR 913 · [1975] 2 All ER 347 · 61 Cr App R 136 · [1975] Crim LR 717, [DPP v Morgan \[1975\] UKHL 3 \(30 April 1975\) \(bailii.org\)](#) (accessed 2 August 2021).

²⁷⁰ *Ibid*, at 7.

²⁷¹ Per the majority, although the decision was unanimous that the appeal should be dismissed so that the appellants remained convicted of rape.

a litany of cases giving impetus to women’s activism, with laws going to this issue, and to the substantive (the definition of rape and its gradation by penetration versus no penetration, and the definition of ‘consent’), evidentiary (sexual history) and procedural (the ‘prompt complaint’ and corroboration rules) aspects of rape and other sexual offences (indecent assault, penetration by objects or body parts not being the penis).²⁷²

Following various amendments to and repeal of existing laws relating to rape and other sexual offences,²⁷³ the Sexual Offences Act 2003²⁷⁴ was introduced to ‘cover the field’ insofar as substantive law (definition of rape, etc and ‘consent’ ss 74, 75 and 76). Problems nonetheless remain – the definition of rape is problematic: it is difficult to understand why a distinction is drawn between rape by a penis: s 1 (penetration of vagina, anus or mouth) and by what is equally or even more potentially damaging ‘another part of his body’ (presumably not a penis) or ‘anything else’: s 2. The question of ‘consent’ remains an issue, although section 74 of the Act has been given some recognition to the notion that, as expressed in that provision, ‘a person consents if [she or he] agrees by choice, and has the freedom and capacity to make that choice’.²⁷⁵ The question of voluntary drunkenness gives rise to concern,²⁷⁶ as does the meaning of section 76 (2) where the circumstances are that (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act’. ‘Nature’ is easily understood but ‘purpose’ is problematic: his purpose or hers? In *R v Linekar*²⁷⁷ the woman agreed to sexual intercourse for a £25 payment. The sexual intercourse went ahead, then the man refused to pay. This was ruled not to be rape because (presumably) his sole purpose was to obtain sex and a sexual thrill, and that his purpose was to obtain it without payment and that hers was to provide sex for money was ruled out of the operation of the provision. This may have been a case better argued in contract with a claim for the payment plus general damages for psychological pain and suffering at having been deceived in the course of the woman’s work, however, it highlights the problematic nature of this provision and requires attention.

Indeed, a problem with the focus on ‘consent’ is that the way it is addressed places full focus on the principal witness and her conduct as alleged, whereas surely the focus in a criminal trial is required to be

²⁷² See WEL (Women’s Electoral Lobby) *Draft Bill on Rape and Other Sexual Offences and Additional Recommendations 1976/1977*, published as an Appendix to Criminal Law Review Division, *Supplementary Report on Rape*, Department of Attorney-General and of Justice, Government Printer, Sydney, NSW, 1979; Home Office, Report of the Advisory Group on the Law of Rape, Cmnd 6352, 1975 (‘the Heilbron Report’); *Rape Law Reform*, Australian Institute of Criminology, Canberra, ACT, 1979, [Rape law reform: a collection of conference papers | Australian Institute of Criminology \(aic.gov.au\)](#) (accessed 2 August 2021); Jennifer Temkin, *Rape and the Legal Process*, 2nd edn, Oxford University Press, Oxford, UK, 2002.

²⁷³ See s 139 (‘minor and consequential amendments’), Schedule 7, and 140 (‘repeals and revocations’), Schedule 7, [Sexual Offences Act 2003 \(legislation.gov.uk\)](#) (accessed 2 August 2021).

²⁷⁴ [Sexual Offences Act 2003 \(legislation.gov.uk\)](#) (accessed 2 August 2021).

²⁷⁵ [Sexual Offences Act 2003 \(legislation.gov.uk\)](#) (accessed 2 August 2021), and see for example *R v Jheeta* [R v Jheeta | \[2008\] 1 WLR 2582 | England and Wales Court of Appeal \(Criminal Division\) | Judgment | Law | CaseMine](#) (accessed 22 August 2021); and *R v Assange* [2011] EWHC 2849 (Admin), [Assange v Swedish Prosecution Authority | \[2011\] EWHC 2849 \(Admin\) | England and Wales High Court \(Administrative Court\) | Judgment | Law | CaseMine](#) (accessed 2 August 2021)(see para 54ff and particularly para 72ff and para 81ff referencing s 74 Sexual Offences Act 2003; [Rape and Sexual Offences - Chapter 6: Consent | The Crown Prosecution Service \(cps.gov.uk\)](#) (accessed 2 August 2021).

²⁷⁶ *R v Bree* [2007] EWCA Crim 804 (26 March 2007), [Bree, R v \[2007\] EWCA Crim 804 \(26 March 2007\) \(bailii.org\)](#) (accessed 2 August 2021).

²⁷⁷ *Linekar* [1995] 2 Cr App R 49, [REGINA v Linekar | \[1995\] 2 CAR 49 | England and Wales Court of Appeal \(Criminal Division\) | Judgment | Law | CaseMine](#) (accessed 2 August 2021); [Sex, Lies and Consent | The Sexual Offences Handbook](#) (accessed 2 August 2021).

required.²⁸³ On the other hand, what arises in some of these cases is that the trial judge disallows the evidence (that is, having had a full opportunity to consider it, decides against exercising discretion to admit it), however, that decision is overturned on appeal. This raises an issue as to the need for judicial education and training in the field of rape and other sexual offences at the highest levels, as well as generally. This proposal was made more than forty years ago in the *WEL Draft Bill*,²⁸⁴ and was implemented in Canada this year (2021) by amendment to the Criminal Code.²⁸⁵ Furthermore, the importance of detailed written reasons for admitting sexual history evidence so long as the discretionary ‘rape shield’ statute approach is taken, is essential: again mandatorily required in the *WEL Draft Bill*.

The *WEL Draft Bill* and Canadian Criminal Code amendment fit with the concerns raised by witnesses not only in relation to rape, but in family court proceedings and immigration tribunals and courts. This highlights a crucial issue: legislative change may be required but, in the end, it may be the understanding and disposition of those making decisions not only in policing or prosecution, but at the ultimate decision-making level, the courts, that is fundamental to positive change. This is consistent with the concerns raised in relation to access to justice, where a central factor is that of ‘how is the justice system populated and managed’.²⁸⁶

The language of the law is crucial, too. As one example, the constant iteration of the term ‘grooming’ should be ended. It implies that conduct is reprehensible and criminal only as a precursor to sexual exploitation, abuse or imposition. Truth is that the conduct labelled ‘grooming’ is in and of itself sexual exploitation, abuse and imposition. For an adult to lead a child or young person to believe that he (the adult) has a caring concern for the child or young person as a human being, as an individual with an entitlement to be loved and cared for, when the aim is to gain submission to sexual imposition, is a wholesale betrayal of trust. It is abuse, not simply conduct leading to abuse. This is so whether it happens in person or online. The faith and confidence of the child or young person is betrayed. The entire purpose of the adult is to do just that, aiming for selfish and exploitative ‘reasons’ to impose upon the child or young person. ‘Grooming’ with its downgrading and downplaying of the enormity of this conduct must be eliminated from the criminal law and from the language of those who seek to address this harm. The damage must be acknowledge as damage by this conduct itself, whether it leads to further harm or not. The conduct must be recognised and named as the sexual abuse, exploitation and imposition that it is. If (for example) the child escapes what is aimed at by the adult as the ultimate

²⁸³ The jurisprudential basis for similar fact evidence is challenged in relation to offenders, Peter Makin, ‘Similar Facts – or *Makin Out?*’ *Cambridge Law Journal*, vol 46, Issue 1, March 1987, pp. 83-105, [Similar Facts—Makin Out? | The Cambridge Law Journal | Cambridge Core](#) (accessed 21 August 2021); TRS Allan, ‘Some favourite fallacies about similar facts’, *Legal Studies*, vol 8, issue 1, march 1988, pp. 35-47 [Some favourite fallacies about similar facts | Legal Studies | Cambridge Core](#) (accessed 21 August 2021). Why it should be seen as appropriate to apply it to principal witnesses in rape cases is even more questionable.

²⁸⁴ WEL (Women’s Electoral Lobby) *Draft Bill on Rape and Other Sexual Offences and Additional Recommendations 1976/1977*, *ibid*. The proposal was that legislative changes contain a standard provision requiring mandatory education and training of the judiciary and magistracy (and counsel whether defence or prosecution). The *Draft Bill* also contained a provision requiring judges to write full reasons for allowing evidence in, were such a discretion to remain in regard to sexual history evidence rather than its being deemed inadmissible as irrelevant – that is, setting down clearly the basis upon which relevance and admissibility have been determined.

²⁸⁵ [Bill C-3: An Act to amend the Judges Act and the Criminal Code \(justice.gc.ca\)](#) (accessed 2 July 2021); [Legislative Summary of Bill C-3: An Act to amend the Judges Act and the Criminal Code \(parl.ca\)](#) (accessed 2 July 2021); [Sexual assault case training isn’t mandatory for judges — a bill is trying to change that - National | Globalnews.ca](#) (accessed 2 July 2021); [Canada Passes New Law Requiring Sexual Assault Training for Judges — We Worthy Women](#) (accessed 2 July 2021).

²⁸⁶ Reflections directly from witnesses, particularly principal witnesses (‘complainants’) themselves are essential and instructive reading for judges and practitioners, as well as those working in the field. See for example Chanel Miller, *Know My Name – A Memoir*, Random House/Viking, New York, NY, USA, 2019; Louise Milligan, *Witness*, Hachette Press, Sydney, Australia, 2020.

outcome, the betrayal remains. It is this that the law must acknowledge and recognise by naming the conduct for what it is.

The question of ‘everyday sexism’²⁸⁷ and misogynist speech, along with violence against older women, were implicit if not explicit in the evidence relating to gender-based violence against women. The economic abuse of ‘sexually transmitted debt’ affects women in marriage, living together or intimate relationships, and impacts on older women as mothers of adult children. This relates to pressure ranging from emotional manipulation, coercive control, physical restraint and other violent conduct resulting in women signing guarantees or entering into other financial arrangements where their consent or agreement is not ‘full and free’.²⁸⁸ As solicitor Jenny Beck observed, ‘Whilst economic abuse is increasingly being recognised, there remains very little safeguarding against it’. Greater social awareness of it, she said, is required so that its inclusion in the Domestic Abuse Bill/Act ‘is a great step in the right direction’. However, she added, ‘in terms of institutions having mechanisms in place to prevent it from happening, and mechanisms to protect victims, we are a long way from having a satisfactory framework of protection’: para 16, Case ref: 031

Violence against older women from partners, carers and adult (and sometimes teenaged) children needs attention, and Black and minoritised women are particularly vulnerable due to racism and, where language is not their first language, the loss or lessening of a learned language with older age.²⁸⁹ In addition, the violence inflicted upon women in the LGBT+ community requires significant attention in intimate partnerships and on the street.²⁹⁰

Insofar as so called ‘honour killings’ are in issue, the language should change to acknowledge that these crimes are, from the outset, unlawful killing and murder. Retention of this terminology feeds into two notions hostile to women and women’s rights. First, the contention that there is any ‘honour’ or anything ‘honourable’ about the killing of women – ever, whatever the cultural or other background of the perpetrator/s. Secondly, the proposition that a woman somehow brings her family into disrepute – encroaches upon the family’s honour – by making her own decisions about whom she will or will not marry, or whether she begins a relationship with a person of whom her family does not approve, must not be accorded any, or any further traction. It must be rejected absolutely and women must be acknowledged in the language (as in practice and life itself) as being entitled to conduct themselves as they so choose. Condonation of these notions by retaining the language of ‘honour’ killing is simply unacceptable and effectively condones this anti-woman prejudice.

As for women who, having been subjected to criminal assault at home and other forms of domestic violence, kill the perpetrator, this requires further attention. Pragna Patel and SBS have pursued this issue in supporting women wrongly convicted of murder.²⁹¹ Reported cases addressing this question in the United Kingdom context are instructive, and a reconsideration of changes to the law made with the

²⁸⁷ See Laura Bates, *Everyday Sexism*, Simon & Schuster, London, UK, 2014 and **4. Gender-based violence against women**, earlier.

²⁸⁸ See Jenny Lawton and Emma Swart, *How to get out of sexually transmitted debt: a guide for workers assisting clients with credit problems*, 2nd edn, Consumer Credit Legal Service, Melbourne, Victoria, 1999, and **MARRIAGE AND FAMILY – SUMMATION**, later.

²⁸⁹ See Greta Bird and Jo Bird ‘No Place Like Home – The Human Rights of Women in Aged-Care’ in JA Scutt, *Women, Law & Culture – Conformity, Contradiction & Conflict*, Palgrave Macmillan, Basingstoke, UK, 2016, pp. 141-160; also Hannah Bows (ed), *Violence Against Older Women – Nature and Extent*, vol 1, Palgrave Macmillan, Basingstoke, UK, 2019; Hannah Bows (ed), *Violence Against Older Women - Responses*, vol 2, Palgrave Macmillan, Basingstoke, UK, 2019; and **SUMMATION – HEALTH**, later.

²⁹⁰ See for example Catherine Donovan and Rebecca Barnes, *Queering Narratives of Domestic Violence and Abuse – Victims and/or Perpetrators?* Palgrave Macmillan, Basingstoke, UK, 2020.

²⁹¹ See Pragna Patel, ‘No Place for a Woman: Harmful Practices, Religion and State Responses’ in JA Scutt (ed), *Women, Law and Culture – Contradiction, Conformity and Conflict*, Palgrave Macmillan, Basingstoke, 2016, pp.181-204.

intention of undoing the bias existing at common law – in provocation and self-defence – is necessary. This follows insofar as the position of women who kill is in issue, with regard to sections 52, 53, 54 and 55 of the Coroners and Justices Act 2009, replacing provisions of the Homicide Act 1957 and, insofar as men who kill wives, particularly, in relation to the interpretation of sections 54 and 55 in *R v Clinton*.²⁹²

In ‘No Place for a Woman ...’, Pragna Patel notes the series of cases, including *R v Ahluwalia (Kiranjit)*,²⁹³ and *Zoora Shah*,²⁹⁴ where women were convicted of murder in circumstances of extreme violence and abuse, including in the latter case being ‘rented out’ by the male partner for the purposes of sexual imposition and exploitation by other men.²⁹⁵ The problem confronting women in this situation is that the partial defence of provocation (as it was – now replaced by ‘loss of control’) and defence of self-defence were constructed at common law according to patterns of conduct more likely to absolve or partially absolve male defendants. Hence, both relied on (originally) immediate response to – in self-defence, an immediate threat of and fear of deadly attack, the response being use of proportionate force; and in provocation, a provocative act, the response being sudden and temporary loss of control.²⁹⁶ Where death resulted, in self-defence the result was acquittal, in provocation reduction of murder to manslaughter. Traditionally, the principle was of attack by fists to be met by a response of fists, knife with a knife, sword with a sword ... This did not fit with possible scenarios involving a woman attacked or fearing attack by a man, and with provocation the typical provocative circumstances were that of a man returning home to find his wife in bed with another man, with other scenarios involving his being told by a prostitute that he was impotent, or having the epithet ‘dwarf’ thrown at him. Each of these figures as an attack on masculinity or masculine pride. The latter two have little relationship to circumstances confronting women, whilst in the former it is unlikely that a woman would meet the requirements of immediate response with proportionate force: her fists as against his will hardly avail her, and the likelihood of her possessing sword or knife or other weapon in response to his wielding such a weapon is rare. If she met fists with a kitchen knife, say, under the traditional law of self-defence this would create difficulties for her in a defence of self-defence.

The change from provocation to loss of control was designed to guard against the notion that sexual infidelity could be a justification effectively for killing one’s spouse or intimate partner, at least to the extent of reducing murder to manslaughter. Thus sexual infidelity was to be ruled out of contention as admissible evidence in a trial for murder raising the partial defence of loss of control.²⁹⁷ In *R v Clinton*, however, sexual infidelity was ruled back in, so long as accompanied by ‘other’ matters that could bring

²⁹² *R v Clinton* [2012] EWCA CRIM 2, [2012] MHLO 2, [Clinton, R. v \[2012\] EWCA Crim 2 \(17 January 2012\) \(bailii.org\)](#) (accessed 2 July 2021).

²⁹³ *R v Ahluwalia (Kiranjit)* [1992] 4 All ER 889; (1993) 96 Crim App R 133 CA (Crim Div), [REGINA v Kiranjit Ahluwalia | \[1992\] EWCA Crim 1 | England and Wales Court of Appeal \(Criminal Division\) | Judgment | Law | CaseMine](#) (accessed 2 July 2021).

²⁹⁴ [Zoora Shah - Southall Black Sisters](#) (accessed 2 August 2021); [Zoora Shah — Justice for Women](#) (accessed 2 August 2021); [other_zoora.pdf \(infotextmanuscripts.org\)](#) (accessed 2 August 2021); and see also, for example, [challen-approved.pdf \(judiciary.uk\)](#) (accessed 2 August 2021); [REGINA v Thornton | \[1996\] 1 WLR 1174 | England and Wales Court of Appeal \(Criminal Division\) | Judgment | Law | CaseMine](#) (accessed 2 August 2021).

²⁹⁵ On these cases see Susan SM Edwards, ‘From victim to defendant – a life sentence’, *Case Western Reserve Journal of International Law*, 2010, vol 26 (2-3), pp. 261-293; Susan SM Edwards, ‘Anger and fear as justifiable precludes for loss of self-control’, *Journal of Criminal Law*, vol 74(3), p. 223-241, [ps://www.researchgate.net/publication/269621097_Anger_and_Fear_as_Justifiable_Preludes_for_Loss_of_Self-Control](https://www.researchgate.net/publication/269621097_Anger_and_Fear_as_Justifiable_Preludes_for_Loss_of_Self-Control) (accessed 2 July 2021), [Anger and Fear as Justifiable Preludes for Loss of Self-Control - Susan S. M. Edwards, 2010 \(sagepub.com\)](#) (accessed 2 July 2021); Susan SM Edwards, *Journal of Criminal Law*, vol 83 (issue 6), [Recognising the Role of the Emotion of Fear in Offences and Defences - Susan SM Edwards, 2019 \(sagepub.com\)](#) (accessed 2 July 2021), [Vol 83, Issue 6, 2019](#) (accessed 2 July 2021).

²⁹⁶ See *R v Duffly* [1949] 1 All ER 932; *R v Dawson* [2021] EWCA Crim 40, [Loss of Self-Control: A Reminder of the Particularly High Threshold: R v Dawson \[2021\] EWCA Crim 40 - Mark Thomas, 2021 \(sagepub.com\)](#) (accessed 2 July 2021).

²⁹⁷ See s 54 and s 55 Coroners and Justices Act 2009. On diminished responsibility, see s 2 Homicide Act 1957.

about loss of control. Yet what is apparent from *R v Clinton* is that the stricture against sexual infidelity has simply been overturned. In that case, the other factors were a contention that the deceased spouse had said she was leaving the children permanently in their father's care, and that she laughed at his efforts at suicide – he had been searching sites on the internet ostensibly for this purpose. It is hardly likely that those two factors could qualify within the partial defence as it now stands under sections 54 and 55 of the Homicide Act 1957, and that sexual infidelity – and the purported emasculation that brings with it when a wife tells (as these scenarios portray it – the woman is dead, so what was or was not said or done is within the realm of knowledge alone of the man who kills her), is back into solid (and effectively sole) contention. Arguably, this not only undermines the intended reform, but undoes it.²⁹⁸

As to the case of the woman who kills the violent partner, 'battered woman syndrome' has been introduced as an explanation.²⁹⁹ This is a form of what is conceptualised as post traumatic stress disorder (PTSD) or akin to it, comprising a number of features, including what Lenore Walker, who formulated the battered woman syndrome concept, terms 'learned helplessness':³⁰⁰

Symptoms

According to the National Coalition Against Domestic Violence (NCADV) a person experiencing abuse may:

- feel isolated, anxious, depressed, or helpless
- be embarrassed or fear judgment and stigmatization
- love the person who is abusing them and believe that they will change
- be emotionally withdrawn
- deny that anything is wrong or excuse the other person
- be unaware of the type of help that is available
- have perceived moral or religious reasons for staying in the relationship

The person may also behave in ways that can be difficult for people outside the relationship to understand.

These behaviours include:

- refusing to leave the relationship
- believing that the other person is powerful or knows everything
- when things are calm, idealizing the person who carried out the abuse
- believing that they deserve the abuse

The impact of an abusive relationship can continue long after leaving it. For some time, the person may:

- experience sleep problems, including nightmares and insomnia

²⁹⁸ In *Clinton* paras [41], [42] and [43] of the judgment, comments during the Second Reading Debate are cited from *Hansard* as supporting the view that the intention was to allow sexual infidelity into evidence, so long as there were other matters or circumstances alongside it. On another reading, the reform was introduced to eliminate the notion that there was any justification in a man's killing his partner because of a revelation of sexual infidelity. This is not simply a matter of rejecting notions of 'ownership' (as *Clinton* frames it), but to reject the proposition that any society should accept killing as an excuse or at least a partial excuse because a partner or former partner chooses to begin a sexual relationship with another.

²⁹⁹ See Lenore F. Walker, *The Battered Woman*, HarperCollins, New York, NY, USA, 1979; [Battered woman syndrome: Definition, symptoms, and getting help \(medicalnewstoday.com\)](https://www.medicalnewstoday.com/articles/322822) (accessed 2 July 2021); [Battered Woman Syndrome: Key Elements of a Diagnosis and Treatment Plan \(psychcentral.com\)](https://www.psychcentral.com/health/battered-woman-syndrome-key-elements-of-a-diagnosis-and-treatment-plan/) (accessed 2 July 2021).

³⁰⁰ [Battered woman syndrome: Definition, symptoms, and getting help \(medicalnewstoday.com\)](https://www.medicalnewstoday.com/articles/322822) (accessed 21 July 2021).

- have sudden intrusive feelings about the abuse
- avoid talking about the abuse
- avoid situations that remind them of the abuse
- experience feelings of anger, sadness, hopelessness, or worthlessness
- have intense feelings of fear
- have panic attacks or flashbacks to the abuse

Physical abuse can also lead to injuries such as organ damage, broken bones, and lost teeth. Sometimes, these injuries can be lasting and possibly life threatening.

The impact of abuse on a person's well-being can be severe. For this reason, it is important to understand that help is available and to seek help if possible.

Cases employing this conceptualisation of a woman's killing her husband or intimate partner in the context of a pattern of abuse – sexual, physical, controlling or a combination of these – medicalise the woman's conduct, fitting it within the partial defence of diminished responsibility. The danger here is that it is difficult to see a woman who kills as 'helpless': in the very act of killing, she engages in conduct the very opposite of helplessness. To kill takes a certain degree of the exercise of power and control. For many women enduring criminal assault at home and other forms of domestic violence, despite the ongoing conduct their lives are led with the violence hidden from (some parts of) the outer world: they often have jobs, some at managerial level, earn money, enter into mortgages, pay off loans.³⁰¹ That they hide the conduct from 'everyone' as is so often said, almost by rote, is not infrequently untrue, too: they may vary in from whence they seek help or in whom they confide, but many *have* sought help, only to find police are no help, religious confidants – priest, minister, imam, rabbi ... are likely to say that to remain 'is their wifely duty', medical practitioners can omit to provide help other than treatment not infrequently soporific drugs such as Valium or Diazepam and its equivalents,³⁰² counsellors, psychologists, psychiatrists and family members are not necessarily sympathetic or helpful. Far from "learned helplessness", what many women in this situation learn is that there *is no help*.³⁰³ Hence, the resort to 'self-help' – or, better, self-defence. The newly framed loss of control provision and diminished responsibility may of course be useful and applicable where the conditions do rightly lead to a conviction for manslaughter rather than murder. However, the failure to recognise women's response as self-defence denies a complete acquittal where that may be the correct result – if rather than 'battered woman syndrome' the position is recognised as 'battered woman reality': the reality is that, without help, the woman is in the position of being killed, or killing to save herself: self-defence. Although the picture may not be as originally envisaged under self-defence laws, they were as noted framed according to how a man might act or respond in circumstances confronting him, not with an eye to the circumstances of the battered woman.³⁰⁴

³⁰¹ See for example *Regina v Zoora Ghulam Shah* Case No. No: 9400393/Y5 Court of Appeal Criminal Division 30 April 1998 [1998] EWCA Crim 1441, [other zoora.pdf \(infotextmanuscripts.org\)](#) (accessed 2 July 2021); *Osland v R* [1998] HCA 75, [Osland v R \[1998\] HCA 75; 197 CLR 316; 159 ALR 170; 73 ALJR 173 \(10 December 1998\) \(austlii.edu.au\)](#) (accessed 2 July 2021); see also *R v Lavallee* (1990) CanLII 95 (SCC), [1990] 1 SCR 852, [1990 CanLII 95 \(SCC\) | R. v. Lavallee | CanLII](#) (accessed 2 July 2021), <<https://canlii.ca/t/1fsx3>> (accessed 21 July 2021).

³⁰² Although reporting requirements and education of the medical and nursing professions is in effect or pursued.

³⁰³ See Jocelyne A. Scutt, *Even in the Best of Homes – Violence in the Family*, Penguin, Melbourne, 1983, reprinted/update McCulloch Publishing, Melbourne, Australia, 1990; Jess Hill, *See What You Made Me Do – Power, Control and Domestic Abuse*, Black Inc., Melbourne, Australia, 2019; Lundy Bancroft, *Why Does He Do That?* Berkely, Calif., USA, 2003; Jane Wilson, *Domestic Abuse – Practice and Precedents*, Law Society Publishing, London, UK, 2010.

³⁰⁴ Elizabeth Sheehy, Julie Stubbs and Julia Tolmie, 'Securing Fair Outcomes for Battered Women Charged with Homicide: Analysing Defence Lawyering in *R v Falls*' 38 [2014] *Melbourne University Law Review* 666-672, [Sheehy, Elizabeth; Stubbs, Julie; Tolmie, Julia --- "Securing Fair Outcomes for Battered Women Charged with Homicide: Analysing Defence Lawyering in R v Falls" \[2014\] MelbULawRw 25; \(2014\) 38\(2\) Melbourne University Law Review](#)

The provision relating to loss of control includes within its terms reference to ‘fear of serious violence’.³⁰⁵ For murder to be reduced to manslaughter requires that the loss of self-control is by reason of a ‘qualifying trigger’:

54 Partial defence to murder: loss of control

(1) Where a person (“D”) kills or is a party to the killing of another (“V”), D is not to be convicted of murder if—

- (a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,
- (b) the loss of self-control had a qualifying trigger, and
- (c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

(2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.

(3) In subsection (1)(c) the reference to “the circumstances of D” is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint.

(4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.

(5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.

(7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.

(8) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

55 Meaning of “qualifying trigger”

(1) This section applies for the purposes of section 54.

(2) A loss of self-control had a qualifying trigger if subsection (3), (4) or (5) applies.

(3) This subsection applies if D's loss of self-control was **attributable to D's fear of serious violence from V against D** or another identified person. [emphasis added]

(4) This subsection applies if D's loss of self-control was attributable to a thing or things done or said (or both) which—

- (a) constituted **circumstances of an extremely grave character**, and
- (b) caused D to have a justifiable sense of being seriously wronged. [emphasis added]

[666 \(austlii.edu.au\)](http://666.austlii.edu.au) (accessed 21 July 2021); Heather Douglas, ‘A consideration of the merits of specialised homicide offences and defences for battered women’ (2012) 45 (3) *Australian & New Zealand Journal of Criminology* 367-382, [A consideration of the merits of specialised homicide offences and defences for battered women | Request PDF \(researchgate.net\)](https://www.researchgate.net/publication/311111111) (accessed 21 July 2021).

³⁰⁵ S 55 (3) Coroners and Justices Act 2009 (loss of control).

- (5) This subsection applies if D's loss of self-control was attributable to a **combination of the matters** mentioned in subsections (3) and (4). [emphasis added]
- (6) In determining whether a loss of self-control had a qualifying trigger—
- (a) D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence;
 - (b) a sense of being seriously wronged by a thing done or said is not justifiable if D incited the thing to be done or said for the purpose of providing an excuse to use violence;
 - (c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.
- (7) In this section references to “D” and “V” are to be construed in accordance with section 54.

Looking at section 55 (3), this could readily constitute self-defence. When considering this provision in conjunction with paragraph (4)(a) and ss (5), again what shines through is the prospect of self-defence. Yet when constructed under section 55, this will not be self-defence leading to an acquittal, but loss of control leading to a conviction for manslaughter. The very real danger here is that the woman who kills in this circumstance may be deprived of the chance of an acquittal, because the ‘easy’ way out is taken rather than thinking carefully about the event/s and whether self-defence can be argued. The problem is that the common law approach to self-defence may well have such a powerful sway on counsel and courts that distancing oneself from the traditional construction which – as observed – favours a response to event/s of this nature by a masculine approach, and the event/s are more likely to be envisaged as those of the stereotypical self-defence circumstances than those confronting women. Where a battered woman kills – her killing by reason of ‘her fear of serious violence’, constituted by ‘circumstances of an extremely grave character’ and being a ‘combination of the matters’ needs to be to be reconsidered in the context of the battered woman reality, with the realisation that this *is* self-defence. Even the reaction to ‘fear of serious violence’ is sufficient for self-defence without the others.

Where women are serving prison terms or convicted of manslaughter under this provision, a review should be undertaken, just as there should be a review of women in prison for murder/manlaughter where criminal assault at home indications are present. Such a review was undertaken by Canada, and justice requires it.³⁰⁶ A review of historic cases is also vital, because women convicted of murder where there was no campaign, and those convicted of murder and whose appeals succeeded to the extent of reducing murder to manslaughter (if they did) may well have suffered injustice. It is not without noticing that additional circumstances can be involved for Black and minoritised women. For example, in *R v Ahluwalia*, an ‘arranged’ marriage was part of the history. Such elements may infuse the stories of women who, like Kiranjit Ahluwalia, kill.

State failure to address violence against women, or failure to address it properly or adequately as is reflected in the evidence before the Tribunal, arises in relation to both women and children. One of the central features is a disregard for women’s credibility. Here, the CEDAW Committee cases of *X and Y v Georgia* (2015)³⁰⁷ and *Angela Gonzalez Carreño v Spain*³⁰⁸ are instructive. Both combine this failure to

³⁰⁶ Elizabeth A. Sheehy, *Defending Battered Women on Trial: Lessons from the Transcripts*, University of British Columbia Press, Vancouver, Canada, 2014; [Defending Battered Women on Trial by Elizabeth A. Sheehy :: SSRN](#) (accessed 21 July 2021); [Helen Naslund Got An 18-Year Sentence For Killing Her Abusive Husband \(chatelaine.com\)](#) (accessed 21 July 2021).

³⁰⁷ *X and Y v Georgia* (2015) [Jurisprudence \(ohchr.org\)](#) (accessed 2 July 2021), [X and Y v. Georgia | Tackling Violence against Women \(lse.ac.uk\)](#) (accessed 2 July 2021).

³⁰⁸ *Angela Gonzalez Carreño v Spain* (2014) CEDAW/C/58/D/47/2012, [Carreno v. Spain, Decision, Comm. 47/2012, U.N. Doc. CEDAW/C/58/D/47/2012 \(CEDAW, Jul. 16, 2014\) \(worldcourts.com\)](#) (accessed 2 July 2021), [AG Carreño](#)

take women seriously, and the superficiality of response or condemnatory or retributive approach against the woman who dares seek state intervention, which is her entitlement. In *X and Y*, mother and daughter (and a son, who was not a part of the case) were subjected to physical, sexual and psychological abuse over years. The most the authorities did, was to have the husband and father sign non-enforceable ‘agreements’ not to engage in the conduct. This, despite more than five reports to authorities and medical reports gained by X in relation to injuries inflicted by her husband’s abuse. Having gone through the European Court without success despite evidence from X and Y, the medical reports, confirmation of the reports to police, and evidence of the ‘agreements’ police had the man sign, the parties took the case to the CEDAW Committee which found in their favour, determining that Georgia had violated the rights of X and Y:³⁰⁹

- under Article 2(b)-(f), Article 1 (‘discrimination against women’) and 5(a)(gender stereotyping and prejudice): para [9.2]
- General Recommendation (GR) 19 on Violence against Women: para [9.3]

and per Articles 1 and 2 of CEDAW in conjunction with GR 19 had failed its due diligence obligations – namely failure to prevent, investigate and punish acts of domestic violence by non-state actors; para [9.3]

*Angela Gonzalez Carreño v Spain*³¹⁰ is particularly important in light of evidence before the Tribunal relating to women endeavouring to have courts take seriously their concerns about psychological and sexual abuse of children who are being forced, or at risk of being forced, into the care of the abuser. The CEDAW Committee was asked to investigate and adjudicate where Spanish authorities and services were claimed not to take seriously domestic violence, forcing the mother to impose on her child to see her father, with the end result of the daughter being killed. This case is illustrative of embedded and institutionalised sexism within the judicial system, police and social services. It raises issues going to (lack of) access to justice, gender-based violence against women – and its consequences for children, as well as gender based violence against the children themselves, and failures in marriage and family justice. Why did every one of these state sectors fail? Why did none of them believe the woman?

Having been subjected for many years to ongoing violence by FRC, the father of her child Andrea, Angela González Carreño separated from him. Often the acts of violence, including repeated threats to Kill Angela with a knife, were committed in Andrea’s presence. Following the separation, although he failed to pay child support, FRC was granted on-going contact with Andrea. Sometimes contact was supervised by social services, but often, despite Andrea’s expressions of fear of her father, it was unsupervised. Angela González Carreño made more than 30 complaints to the court, applied for protection orders to guard against FRC’s harming her or Andrea due to his continued threats (including threats to kill Angela), insults and acts of violence, and applied for divorce. The divorce was finalised without any reference by the court to the domestic violence. Once, FRC was prosecuted and convicted of harassment, being fined €45 only. Social services sought to increase contact between FRC and Andrea, although she said she was afraid of him, he didn’t treat her well, and that he ‘tore up her paintings’. As FRC flouted the child support order, Angela González Carreño applied for the marital home to be returned to her for her and Andrea’s occupation. Eventually, the application was successful. FRC announced to Angela González Carreño that he ‘would take away what mattered most to her’ and upon the next unsupervised visit, he killed Andrea, then committed suicide.

[v Spain 2014 | Tackling Violence against Women \(lse.ac.uk\)](#) (accessed 21 July 2021); *Angela Gonzalez Carreño v Spain* (2014), [Jurisprudence \(ohchr.org\)](#) (accessed 2 July 2021); [Microsoft Word - Angela Gonzalez Carreño v Spain - amicus brief \(2.02.14 FINAL\).docx \(womenslinkworldwide.org\)](#) (accessed 2 July 2021).

³⁰⁹ The CEDAW Committee also cited Articles 1 and 2 of CEDAW, in conjunction with GR 19 on violence against women: para [9.3]

³¹⁰ [Carreno v. Spain, Decision, Comm. 47/2012, U.N. Doc. CEDAW/C/58/D/47/2012 \(CEDAW, Jul. 16, 2014\) \(worldcourts.com\)](#) (accessed 2 July 2021). Thank you to Patricia Schulz for flagging this case.

Angela González Carreño filed with the Ministry of Justice a claim for compensation for miscarriage of justice, claiming that the authorities acted negligently in failing in their obligation to protect Andrea's life, despite having been repeatedly informed of the danger she faced. The application further noted:³¹¹

... the existence of prejudices by the authorities showed itself in their inability to correctly gauge the gravity of the situation she and her daughter were facing and her suffering due to the situation of the child. Further, no inquiry was ever conducted into the consequences for the child of living in an atmosphere of violence and her condition as a direct and indirect victim of that violence. Instead, the authorities responsible for providing protection chose to follow the stereotypical view that even the most abusive should enjoy visitation rights and it is always better for a child to be raised by its father and mother; thus failing to appreciate the rights of the child and disregarding the fact that she had expressed fear of her father and rejected the contact. The courts took it for granted that it is better to have contact even with a violent father. The circumstances of the case called for the authorities and courts to evaluate whether the visits respected the child's right to life, to live free of violence, and the principle of the best interests of the child.

In the course of concluding that FRC's violence against Angela González Carreño and the murder of Andrea were foreseeable, the CEDAW Committee said:³¹²

... during the time when the regime of judicially determined visits was being applied, both the judicial authorities and the social services and psychological experts had as their main purpose normalizing relations between father and daughter, despite the reservations expressed by those two services on the conduct of F.R.C. The relevant decisions do not disclose an interest by those authorities in evaluating all aspects of the benefits or harms to the child of the regime applied. It is also noteworthy that the decision which ushered in a regime of unsupervised visits was adopted without a prior hearing of the author and her daughter, and that the continued non-payment of child support by F.R.C. was not taken into account in that context.

In recommending that Spain provide Angela González Carreño reparations and investigate whether failures in its structures and practices led to Angela González Carreño and Andrea being denied appropriate protection, the Committee observed that FRC had committed numerous acts of violence against Angela González Carreño, often witnessed by Andrea; was not held legally liable for ignoring court protective orders; and had been diagnosed with an 'obsessive-compulsive disorder with aspects of pathological jealousy and a tendency to distort reality which could degenerate into a disorder similar to paranoia'. Before it, too, was social services report regarding the need for continuous monitoring of visits between FRC and Andrea. Despite this, the social worker who wrote the report was also instrumental in the approach taken of 'normalising' father-daughter relations as well as advocating for unsupervised visits.

According to the Committee, Spain's due diligence obligations were not met: no reasonable steps were taken to protect Angela González Carreño and Andrea against FRC's violence and, in Andrea's case, murder. Additionally, Spain had failed to investigate whether its authorities had erred entirely in its obligation to protect Angela González Carreño and Andrea against violence, or were negligent in this. A father's parental rights to contact with their children may be invoked as entitlement of men accused of violence to violate the safety and wellbeing of women and their children. However, the CEDAW

³¹¹ Ibid.

³¹² Ibid.

Committee stated, in such a situation, the best interests of the child must be taken into account in the existence of a context of domestic violence:

All of these elements reflect a pattern of action which responds to a stereotyped conception of visiting rights based on formal equality which, in the present case, gave clear advantages to the father despite his abusive conduct and minimized the situation of mother and daughter as victims of violence, placing them in a vulnerable position. In this connection, the Committee recalls that in matters of child custody and visiting rights, the best interests of the child must be a central concern and that when national authorities adopt decisions in that regard they must take into account the existence of a context of domestic violence: para [9.4]

Further recommendations included ensuring that domestic violence is taken into account in custody and visitation matters, and that the best interests of the child prevail in related decisions; ensuring that Spain's authorities exercise due diligence and respond appropriately to domestic violence; and providing mandatory training for judges and administrative personnel on the legal framework relating to domestic violence and gender stereotyping. Notably, the CEDAW Committee made use of terminology employed by the Committee on the Rights of the Child (under the Convention on the Rights of the Child)³¹³ particularly that of 'best interests of the child as paramount' in all official decisions relating to a child's wellbeing, and that children have a right to be heard by decision-makers.

Apart from anything else in this case, it is vital to note the CEDAW and Rights of the Child Committee interpretation of 'best interests of the child'. As Dr Proudman, Ms McCurley and others working in the family jurisdiction raised in evidence the problem confronting children in the apparently universal approach of interpreting it as the 'best interests of the father' – whatever the circumstances and whatever evidence is sought to be adduced.³¹⁴

Other issues arise out of the evidence before the Tribunal. Joeli Brearley raised the issue of non-disclosure agreements, the implications of which are significant in the case of violence against women, where they are employed to 'cover up' (or, in press language as recounted by Ronan Farrow in *Catch and Kill*).³¹⁵ Non-disclosure agreements are often included as a part of an agreement between a company or individual and a woman who has complained about sexual harassment on the job or some other form of violence, usually with a sexual-power element. These are 'sold' to the woman as if it is to her benefit to sign the agreement, which commits her to never disclosing the terms of the agreement or that there has been any conduct to settle between the company/employer and her as an employee (as it often is) who has suffered intrusive and unlawful conduct on the job. The reality is that the benefit in non-disclosure agreements lies with the predator and, where a company or institution is involved, the company or institution. Ultimately, it is to their benefit to have the matter covered up. As Joeli Brearley explained, the woman faced with 'sign here' or choose not to and the matter ends in a tribunal or court, generally will sign as lacking the resources to go through the legal process. Yet as she said, that means that companies are able to escape public knowledge of their health and safety failures, and even go on to win plaudits as 'model equal opportunity employers' because the conduct is not in the public arena. A problem in all this is that legal representatives may be all too ready to advise on the settlement – including the non-disclosure agreement. Of course it is true that if the matter goes through to a court or tribunal this is expensive and well-resourced respondents can engage in a war of attrition, too, using

³¹³ [OHCHR | Convention on the Rights of the Child](#) (accessed 2 July 2021).

³¹⁴ Note GR 35 on gender-based violence against women, and GR 33 on access to justice here, and note **3. Women's access to justice**, earlier and **4. Gender-based violence against women**, earlier, **5. Discriminatory stereotypes**, earlier and **13. Marriage and family**, later.

³¹⁵ Ronan Farrow, *Catch and Kill – Spies, Lies and a Conspiracy to Protect Predators*, Fleet, New York, NY, 2019; see also Jody Kantor and Meghan Twohey, *She Said*, Bloomsbury Circus, London, UK, 2019. See also [NDAs: Government must end cover-up culture over discrimination and harassment cases - News from Parliament - UK Parliament](#) (accessed 2 August 2021).

all manner of procedural steps to drag the matter out, adding to the expense, anxiety and time of legal action. On the other hand, because the covering up of the matter is enormously to the benefit of one side and not the other, there is room to push. Covering up means that, as with the history of Harvey Weinstein, Miramax and later the Weinstein Company, the predator (and, where a party, the business) goes on to subject another woman to the same conduct. It is possible to engineer settlements without entering into a non-disclosure agreement and this approach needs to be at least considered rather than legal representatives simply going along. It is, after all, instructive that when ‘non-disclosure agreement’ is googled, what comes up is Intellectual Property Office site with information about the standard non-disclosure agreement that is not a ‘cover up’ but a legitimate business tool to protect industrial and trade secrets.³¹⁶

5. Discriminatory stereotypes

CEDAW Committee raised the following matters:

- Media and its role in stereotyping and objectification of women
- Schools and girls’ education and rights
- Public campaigns

Additional matter to consider:

- Emerging consequence - bodily damage – untrained, unregistered and abusive ‘practitioners’ in the ‘beauty industry’

Here, the Council of Europe Committee of Ministers Recommendation on Combatting Sexism, adopted March 2019,³¹⁷ and the ongoing work of the European Women’s Lobby (EWL) Observatory on Violence Against Women in relation to stereotyping and online or cyber violence against women³¹⁸ provide ballast to the CEDAW Committee’s work. Similarly with the Black Lives Matter movement and other anti-racist campaigns and calls for decolonising education and history, which means bringing marginalised groups (including women) and ‘majority’ women into the forefront of history, reorientating the ‘told by the victors and colonisers’ perspective so as to welcome other voices and ‘othered’ voices.

The role of the media, school as a repository of stereotyping and the importance of education and the education system in lifting the bonds that solidify and sanctify stereotyping and objectification of women and girls have resonance in the evidence. Witnesses also commented on the impact of social media and online conduct, also making particular reference to racialisation and harmful stereotyping of Muslim women through Islamophobia.

Race as a stereotyping factor was referred to by Baljit Banga. She spoke of ‘racialised assumptions about women and girls’ and its impact on institutions, government and private, and society as a whole: para 9, *ibid* Race of women and girls ‘is used to stereotype,’ she said, with ‘existing biases coming into play’. Thus:

Black and minoritised women and girls have said that they often feel judged when accessing support ... told it is your culture that is to blame for violence or that violence is a part of your culture, or that the violence and abuse they are reporting is so horrendous that they could only

³¹⁶ [Intellectual Property Office – ‘Non-disclosure agreements – Use a non-disclosure agreement \(NDA\) to keep your invention a secret when talking to others ... : 12 March 2015’](#) (accessed 8 August 2021); see also [The use of non-disclosure agreements in discrimination cases - Women and Equalities Committee - House of Commons \(parliament.uk\)](#) (accessed 8 August 2021); [Committee calls on government to require employers to investigate all discrimination and harassment complaints - Doyle Clayton](#) (accessed 8 August 2021).

³¹⁷ Council of Europe, [Recommendation on Preventing and Combating Sexism \(coe.int\)](#) (accessed 7 July 2021).

³¹⁸ EWL Observatory on Violence Against Women, [Our work \(womenlobby.org\)](#) (accessed 7 July 2021).

have made it up. Victimisation, blame, judgement, abuse minimisation, are constructed on race, and are critical to women's experiences with mainstream, non-specialist services ...

... If a woman is accessing housing support services, she is often not believed as someone who is fleeing domestic violence. She is viewed as someone wanting council housing. With housing services, and other social services, women are presented with obstacles and punitive measures ... if she misses an appointment, this is used against her, she being told she is not taking her situation seriously, so why should we as council or local authority take her seriously. Services may not be available in other languages and many women do not have English as their first language. When you bring all these barriers and obstacles together, they create institutionalised discrimination against Black and minoritised women: paras 7-8, ibid

Professor Cook referenced the 'mother stereotype' as influential in the health sector. This stereotype exists as an imposition on women's right to exist in the world free and independent, a human being with scope for a multiplicity of opportunities in her life, motherhood being one she is entitled to determine for herself:

Harmful gender stereotypes are both persistent and pervasive in the health sector. Healthcare providers have been known to deny women contraception. They justify this denial by the prescriptive stereotype that women should be mothers, and do not treat them according to their actual needs and desires to use contraception. Many women wish to become mothers at a time of their choosing, and that is to be celebrated. When women are denied contraception because of a prescriptive stereotype that they should be mothers, and not treated according to their actual needs and choices to use contraception, that is when stereotyping becomes wrongful: para 13, Witness Statement, Case Ref: 019

Sam Smethers, now freelance consultant, raised the question of 'gender norms' as detrimental to both girls and boys. She referred to a commission run by the Fawcett Society 'looking at the impact of gender norms and stereotypes of children under seven years old'. This showed that many 'attitudes and norms are established' before the age of seven, with adults 'constantly trying to fight these stereotypes and redress the balance'. She pointed to 'some of the most damaging gender norms' as surrounding 'the normalisation of harmful body images girls perceive about themselves':

Girls see themselves as second to boys and think they are playing a supporting role in life, and are conditioned not to assert themselves or put themselves first. With boys, we see them struggle with language and expression, and this can turn into aggressive behaviours. This normalises aggression, meaning that this is their way of expressing themselves, and can turn into violent behaviour against girls or anyone in later life. These gender stereotypes repress, restrain, and constrain boys which is harmful to them and can have a harmful effect on women and girls ...: paras 12-13, Witness Statement, Case ref: 030

In her evidence on image-based sexual abuse, Dr Kelly Johnson observed that misogyny and gender inequality 'play a massive part in all contexts of violence and abuse' she studies, with 'both image-based sexual abuse and cyberflashing heavily gendered and sexualised forms of abuse, as is domestic abuse' and perpetrators drawing on 'tropes around gender constructions to justify so many of those behaviours'. Entitlement to power and control, along with 'problematic constructions of masculinity and sexual entitlement', together with the 'diminishing status of women' underpin 'so many of the harms women experience from these abuses,' she added, noting sexual double standards constrict and constrain women, whilst impacting on boys and men's construction of masculinity. She observed that women, having to live by this double standard, suffer shame if not complying, saying:

This can add to abuse and have a broader fallout from society which can be worse than the initial abuse. We need to tackle misogyny and gender inequality at all societal levels to really address the violence and abuse: para 13, *ibid*

Saskia Garner's evidence was persuasive in this regard too, in her submissions on 'stalking and other unwanted criminal behaviours across public and private spheres', made in her role with the Suzy Lamplugh Trust. She highlighted the 'systemic and endemic nature of violence against women and girls grounded in pervasive misogyny', her evidence being that the government must, 'complementary to any legislative reform, ... take urgent wide-ranging and creative action to tackle misogyny and its pernicious effects for the safety and equal participation of women and girls in all spheres of life'. To this end, she said:

... we urge the government to develop a national prevention strategy to challenge misogynistic attitudes and the links with VAWG, such as through education and public awareness raising, including school curriculum content covering healthy relationships, consent, stalking, harassment and all forms of violence and aggression, and how to seek support: paras 2, 12, Witness Statement, Case ref: 040

Similarly Dr Jurasz referred to the importance of 'education measures' not only in schools but 'aimed at everyone including children, adolescents and adults ... focusing on the root causes of violence against women, both online and offline ... with the aim of combatting gender stereotypes as well as raising awareness about harms associated with OVAW'. Additionally, she said, education 'should focus on responsible use of technology and social media, challenging the notion that OVAW is somehow less serious than offline forms of violence'. This, she added, required a focus on the multiplicity of harms it can cause: para 5, *ibid*

Nazmin Akhtar spoke of the problem as coming from within a community, inhibiting women's participation in and interaction with the world outside. She noted that Islamophobia and religious stereotyping operates 'from the Muslim community itself':

Some Muslims can use the prevalence of Islamophobia to their advantage to further control Muslim women and girls. For example, there is an instance of a young Muslim girl who was told to not pursue a career in law because there was no point as there is so much discrimination and Islamophobia and that it was actually better for her to just get married and not bother going to university. This is a perfect example of using Islamophobia and religious stereotyping to stop Muslim women from pursuing their career choices, from pursuing employment or education and directing them into a life that they did not want or choose: para 8, Witness Statement, Case ref: 039

She cited other examples as including preventing women and girls from going outside, 'such as telling Muslim girls and women that they cannot go out because they may get attacked at night'. This, she said, is 'always done in this paternalistic, protective way under the pretence of protecting Muslim women and girls from Islamophobes or protecting them from hate crimes, but at the core of it is misogyny': para 9, *ibid*

Many witnesses referred to stereotyping and its impact on women and girls, its influences on men and boys and society as a whole. Rebecca Cook, retired law professor at the University of Toronto's Law Faculty, commented:

Wrongful gender stereotyping is a social practice of gender that discriminates against women. Harmful stereotypes are pictures in our heads that allow people to treat others according to fixed types or categories, and not according to their own individual needs and aspirations. When

wrongful gender stereotypes are perpetuated over time and are pervasive across sectors, they are especially damaging to women: para 13, Witness Statement, Case ref 019

Dr Cook spoke of this damage and detriment in the context of women's health care, pointing out that stereotyping can stand in the way of ensuring women's equal access to health care. Her explanation provides a clear recitation of the effect stereotyping can have on women, preventing access to a service (health care) that should not be trammelled by artificial propositions having no place. Health guidelines, she said, need to explain this, and the International Federation of Gynaecology and Obstetrics ethical guideline on gender stereotyping could serve as a useful model:

Guidelines could usefully explain the forms gender stereotypes take in the health care sector. For example, women are often treated in the healthcare sector as if they have no moral agency, as if they had no conscience, and as if they had no ability to call their souls their own. The very articulation of these stereotypes and the prejudices that feed them and why they are wrongful would help to explain why health care providers treat women as if they had no right of conscience. Women's ability to call their souls their own, to exercise their right of conscience, is critical to ensuring they have equal access to health care and to their overall health and well-being: para 15, *ibid*

Cherie Blair, chair of Omnia Strategy and the Cheri Blair Foundation for Women, speaking in a personal capacity, referenced stereotyping in another field of human endeavour, namely women's representation, particularly in the parliamentary and public office. Obstacles confronting women in public, political and economic life include 'patriarchal views and stereotypes' which:

... remain prevalent and dictate that woman are unfit for politics, and they often continue to be regarded *only* as their caring roles. These stereotypes not only inhibit women's access to public and political positions, but dictate the positions they hold once they have entered public life ...: para 9, Witness Statement, Case ref 027

Here, she referenced 'the most commonly held positions by women ministers [as continuing] to be within the areas of family, children, elderly, disabled, social affairs and women's affairs'. Women, too, are 'still extremely unlikely to hold financial positions in public life, with Ngozi Okonjo-Iweala,³¹⁹ Christine Lagarde,³²⁰ and Kristalina Georgieva³²¹ remaining an exception here': para 9, *ibid*

She emphasised that this stereotyping has not only an immediate effect, but long-term and potentially lifetime implications. Research conducted by the Cherie Blair Foundation for Women 'revealed that nearly two-thirds of women entrepreneurs in low and middle income countries had experienced negative stereotyping':

... they had heard that women are bad with money, too risk-averse, too self-conscious or women were not assertive enough to be successful entrepreneurs. This prejudicial language and ongoing stereotypical assumptions, whether in economic or political life, has dogged women for centuries: para 10, *ibid*

³¹⁹ The first female Director General appointed to the World Trade Organisation (WTO): [Ngozi Okonjo-Iweala | World Bank Live](#) (accessed 7 July 2021).

³²⁰ Managing Director, IMF (International Monetary Fund) (*July 5, 2011—September 12, 2019*), [Christine Lagarde - Biographical Information \(imf.org\)](#) (accessed 7 July 2021); now first female president of the European Central Bank, [The President of the European Central Bank \(europa.eu\)](#) (accessed 9 July 2021).

³²¹ Managing Director, IMF (International Monetary Fund) (appointed 25 September 2019, commenced 1 October 2019), [Kristalina Georgieva \(imf.org\)](#) (accessed 7 July 2021).

PriceWaterhouse, Ann Hopkins' claim was that she had been denied partnership as she was 'too macho'. In a field of eighty-eight candidates, she was the only woman, with a record surpassing any other candidate: she had generated more business (above \$US 34m) and billed more hours. When her name did not appear on the list of forty-seven new partners and was told she lacked 'social grace' would be more successful in a future application if she 'walked more femininely, dressed more femininely, wore make-up, had her hair styled and wore jewellery', while another partner advised her 'to go to charm school'.³²⁵ The Supreme Court upheld the claim.³²⁶ In Australia, the New South Wales Anti-Discrimination Board in 1977 upheld as sex discrimination Deidre Harrison's claim against the Department of Technical and Further Education when she was denied a place on the promotions list. Evidence in *Harrison v Department of TAFE* was that she was not 'failed' for promotion on the ground of sex, but as a result of what it was said were personality defects rendering her as a person, not as a woman, unfit to discharge the duties required to perform were she promoted. Amongst other matters, Ms Harrison was told she was 'too aggressive', this being illustrated, it was said, by her putting herself forward for promotion in the first place.³²⁷ Yet the logic belies belief. Had she been sufficiently timid and mild not to put her name forward on the promotions list, she would not have had a chance to be considered for, much less have gained, promotion.

It is no good asserting that all this happened last century, or thirty years ago. In *The Authority Gap*, as Mary Ann Sieghart's extensive review of what is happening in the world of work today, the same old stereotypes are being promulgated. Perhaps the difference may be that they are not being seen as sufficiently serious for the Supreme Court of the United States, or 'top' courts in this country, to consider. Yet the deleterious effects continue, and the denial of women a place in the boardroom, at the consulting table and in the cabinet room continues, protestations that a 'few' are there, one or two, or even one – as may be asserted, continues. Albeit numbers have improved in Parliament and in the top echelons, their participation remains problematic. What woman, at least, has not seen this graphically illustrated on international television when the European Union Commission President, Ursula van der Leiden, was 'left without a seat in diplomatic fiasco' at a meeting in Turkey held on 7 April 2021. The video record of the meeting shows her colleague Charles Michel and President Erdogan of Turkey firmly ensconced in 'their' chairs whilst a scramble occurs with functionaries finally finding a couch for her. Notably, courtesy 'for the ladies' was not the order of the day: apart from a half-hearted movement from Michel, neither of the men vacated their chairs for her.³²⁸ Examples providing sad evidence that such events are not isolated appears in another report, this in Sieghart's book:³²⁹

When Mary McAleese was President of the Republic of Ireland, she led an official visit to the Vatican to meet Pope John Paul II. She was in the audience room, at the head of her delegation, about to be introduced to the pontiff, when he reached straight past her, held out his hand to her husband instead, and asked him, 'Would you not prefer to be President of Ireland rather than married to the President of Ireland?'

³²⁵ *Hopkins v PriceWaterhouse*, *PriceWaterhouse v Hopkins* 44 Fair EmplPracCase 825, 43 EmplPrac Dec P 37,230, 263 US AppDC 321, 56 USLW 2088 (1987), [Ann B. Hopkins v. Price Waterhouse. Ann B. Hopkins v. Price Waterhouse :: Court of Appeals for the D.C. Circuit :: Appeal No. 85-6052 \(plainsite.org\)](#) (accessed 2 July 2021).

³²⁶ [Price Waterhouse v. Hopkins :: 490 U.S. 228 \(1989\) :: Justia US Supreme Court Center](#) (accessed 2 July 2021).

³²⁷ *Harrison v Department of Technical and Further Education* (unreported, Anti-Discrimination Board NSW, 19 June 1979, No 3 of 1978); and see [Adlib Internet Server 5 | Details \(nsw.gov.au\)](#) (accessed 2 July 2021); Jocelyne A. Scutt, *Women and the Law – Cases and Commentary*, Law Book/Thomson Regulatory, Sydney, Australia, 1990, pp. 52-59 – extracts from transcript plus commentary.

³²⁸ [EU Commission president left without a seat in 'diplomatic fiasco' at Turkey meeting | The Independent](#) (accessed 27 July 2021); [EU Commission president left without a seat in 'diplomatic fiasco' at Turkey meeting | The Independent](#) (accessed 27 July 2021).

³²⁹ Mary Ann Sieghart, *The Authority Gap*, Random House/Transworld, London, 2021, p. 2.

Mary McAleese ... reached and took the hand which was hovering in mid-air and said: 'Let me introduce myself. I am the President of Ireland, Mary McAleese, elected by the people of Ireland, whether you like it or whether you don't'.

Discriminatory stereotypes also result in violence against women and failure of state authorities to act, or act effectively. In *KK v Russian Federation*³³⁰ KK, an activist for lesbian, gay, bisexual and transgender rights and a volunteer legal counsel for the organisation Vykhod,³³¹ an LGBT rights organisation, submitted a claim to the CEDAW Committee in the following terms:

Complaint

3.1 The author claims that the State party has not provided effective legal protection tools and has not recognized the violation of her rights nor provided compensation or application of any other procedures aimed to restore her rights.

3.2 The author alleges a violation of her rights under articles 2 (b), (d) and (e) of the Convention, due to the humiliation and insult of her honour and dignity on the basis of her sexual orientation and gender identity and her affiliation with the lesbian, gay, bisexual and transgender communities.

3.3 The author also claims violation of her rights under article 5 (a) of the Convention, because she was humiliated and insulted for her non-compliance with stereotypes regarding the traditional role of women in gender relations and the social roles of lesbian, bisexual and transgender women.

3.4 Furthermore, the author claims a violation of article 7 (c) of the Convention, due to the discrimination and negative attitude that she experienced working as an advocate for an organization for lesbian, gay, bisexual and transgender rights.

Amongst other matters, when assisting in the running of the QueerFest festival held in 2013, she recognised a deputy of the Saint Petersburg Legislative Assembly, with representatives of the police and several other men, whom she recognised as perpetrators of previous assaults against activists for lesbian, gay, bisexual and transgender rights. The deputy instructed police to request from the event organisers the venue lease documents. KK intervened to clarify the legal aspects of the request. The deputy interrupted, saying she and other participants 'were not Russians and bowed to foreign diplomats and begged them for money'. He and his party continued to threaten and insult festival visitors and volunteers, using words such as 'spidozny', 'petukh' and 'petushatnik' (derogatory terms in Russian). To the women, he used the phrases 'cut your hair, animal' and 'beast', calling one woman the 'husband' of another woman. He called out 'stukachka' and 'kovyryalka' to KK, when, seeing one of his men trying to use violence against an event participant, she asked police officers to intervene. Police officers took no action in response to the offensive conduct against KK. Ultimately the claim was rejected by the CEDAW Committee due to the 'exhaustion of remedies' provision and the balancing of expert witnesses on both sides during proceedings in the Russian Federation court, on questions as to the meaning of the words employed. On the matter of stereotyping and the reasons for finding the application inadmissible under the CEDAW protocol, the Committee said:³³²

4 The Committee considers that it is generally for the courts of the States parties to the Convention to evaluate the facts and evidence and the application of national law in a particular case, unless it can be established that such evaluation was biased or based on harmful gender

³³⁰ *KK v Russian Federation* (2016) CEDAW/C/72/D/98/201623, [pdf \(undocs.org\)](https://undocs.org/) (accessed 21 July 2021).

³³¹ Vykhod is an LGBT Rights Group working in the Russian Federation, see [The Facts on LGBT Rights in Russia - Council for Global Equality](#) (accessed 21 July 2021).

³³² Ibid.

stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. In that connection, the Committee notes that nothing in the material before it suggests elements likely to demonstrate that the examination by the courts of the author's case, whether regarding her claims of insult or discrimination, suffered from any such defects. The Committee observes that both sides of the lawsuit were able to put forward their specialists' opinions on the meaning of the words used towards the author, some of which had several meanings, including offensive, and that the courts determined that the author's claims of discrimination and humiliation due to her sexual orientation were not corroborated by sufficient evidence. In the light of the foregoing, and in the absence of any other pertinent information on file, the Committee considers that the communication is insufficiently substantiated for the purposes of admissibility and that it is therefore inadmissible under article 4 (2) (c) of the Optional Protocol...

However, two subsequent cases brought to CEDAW under the Optional Protocol by Russian Federation citizens met with success, both involving stereotyping. In *ON and DP v Russia*³³³ the stereotyping related to a lesbian couple. *ST v Russia* related to stereotyping involving an ex-husband's contention that his wife had 'provoked him' into attempting to kill her – the 'see what you made me do' approach to criminal assault at home and other forms of domestic violence.

ON and DP had lived in a stable relationship as a lesbian couple for several years. On the night of 19-20 October 2014, they walked to the subway station to take a train home to St Petersburg. At about 12.47am as they stood on the subway platform, two unknown men came to their attention, and they realised the men were following them. ON and DP continued on their way with the men trailing in their wake. Walking along the street towards their flat, the couple openly demonstrated their relationship, hugging and kissing and holding hands. Suddenly, at one point, one of the men attacked ON from behind, striking her. He then hit both ON and DP on the head, face and body, all the while shouting homophobic insults and threatening to kill them should he meet them again. The second man, meanwhile, filmed the attack using his mobile phone. Not long after, the men departed.

In considering the matter, the Committee considered that the case showed 'a failure by the State party [Russia] to uphold the women's rights, particularly in the context of violence and discrimination against women on the basis of their sexual orientation'. The rights breached lay in the failure also to eliminate the barriers faced by ON and DP in seeking justice in their case, notably, negative stereotypes against lesbian women, as well as the failure of the law enforcement officials to strictly apply the legislation prohibiting gender-based discrimination against women. The determination was that Russia must take steps to address each of these failures and in particular to ensure that the justice apparatus, including all law enforcement personnel, apply properly laws prohibiting gender-based discrimination against women.

A year earlier, on 12 April 2019 in *ST v Russia*³³⁴ a claim relating to criminal assault at home and other forms of domestic violence which included a stereotyping component was held admissible by the Committee. Shema Timagova's case was that she had endured many years of domestic violence inflicted by her former husband, the violence growing increasingly severe. In 2009 she filed for divorce, following an episode where her husband attacked her, beating her with a shovel until she lost consciousness. He was punished with a small monetary fine. The divorce was finalised, and Ms Timagova continued to live in the former matrimonial home as did her now ex-husband, the local court having granted her a share in their property. Threats from her ex-husband continued on a regular pattern, so that she lived in a

³³³ *ON and DP v Russia* (2020), [Treaty bodies Download \(ohchr.org\)](#) (accessed 7 August 2021); [O.N. and D.P. v. Russia \(CEDAW, 27 March 2020\): negative stereotypes against lesbian women — International and Comparative SOGIESC Law | International Law in Switzerland – Professor Andreas R Ziegler \(wordpress.com\)](#) (accessed 7 August 2021).

³³⁴ *Timagova v Russia* (2017) CEDAW/C/75/D/119/2017, [CEDAW Committee issues first decision on domestic violence in Russia \(srji.org\)](#) (accessed 20 August 2021).

permanent state of fear. At the end of December 2010, after complaining to the bailiff's service that her ex-husband had turned off the heating in her part of the house, her ex-husband attacked her with an axe, saying: 'I will kill you.' The blade struck her in the head and he left her unconscious and bleeding near the outhouse in the backyard.

Ten days after the attempted murder, Ms Timagova's ex-husband was arrested and charged with the offence. The Achkoy-Martan Magistrates Court refused to postpone court hearings despite Ms Timagova's ill-health, proceeding in her absence. The ex-husband's defence comprised a lengthy series of witnesses attesting to 'provocation' on Ms Timagova's part and without any objection by the prosecution. Indeed, prosecution and defence joined together in opposing any court-ordered moral compensation for Ms Timagova. Ultimately the charges were reduced to infliction of gross bodily harm in a state of temporary insanity under Article 113 of the Russian Federation Criminal Code. The court refused to hear witnesses called by Ms Timagova's counsel. The court's verdict was that Ms Timagova's own 'amoral behaviour' had provoked the attack. Her ex-husband was found guilty under Article 113 of the Criminal Code and sentenced to approximately 10 months' imprisonment, but was released immediately at the end of the trial, having already spent several months in detention. On appeal, the Chechen Supreme Court upheld the local court's decision.

After the verdict, Ms Timagova's village shunned her, so that she was forced to leave and live in rented accommodation elsewhere, despite her entitlement to one half of the former matrimonial home. The shunning occurred because of the determination that Ms Timagova was guilty of behaviour inappropriate for a Chechen woman, namely, provocation. The axe attack left her permanently disabled and unable to earn a living or afford medical treatment.

The Committee determined that Russia had violated Ms Timagova's rights under the CEDAW Convention, both by not upholding her rights as a victim/survivor (with serious health problems) of domestic violence and by directly perpetuating sex-based discrimination and stereotypes in its handling of her case. Monetary compensation was recommended, together with a series of general recommendations designed to bring Russia's legislation and practice into line with international standards, including:³³⁵

- Ensuring that all acts of gender-based violence, including those in the family sphere, are criminalized and that legal instruments such as restraining orders are legally available to victims;
- Investigating promptly and effectively all allegations of gender-based violence and imposing appropriate penalties on perpetrators;
- Providing victims of violence with safe and prompt access to justice, including free legal aid as well as shelter and psychological support where necessary;
- Providing mandatory training for state officials, including members of law-enforcement and the judiciary, on Russia's obligations under the CEDAW Convention;
- Developing and implementing with a range of stakeholders effective mechanisms to combat stereotypes, customs and practices that condone or tolerate domestic violence.
- Ratifying the Istanbul Convention.

This decision is compelling in its gender stereotyping perspective, for this type of stereotyping appears to be universal – the notion that male violence in the domestic setting is triggered by a woman's provocation which can take a number of forms, ranging from 'nagging' to (allegedly) flouting sexual

³³⁵ Ibid. The Committee determined that Russia must submit to the Committee a written response within six months concerning actions taken in the light of the Committee's views on this case. The legal organisation representing her, SJI, has committed to continue to represent Ms Timagova 'in her attempts to seek moral and material redress'.

infidelity – a charge that has lain so readily to be heard in courtrooms where the unlawful killings of women are tried.³³⁶

As Sieghart’s research and research of the research shows, the media has an enormous role in the stereotyping of women (and men) – although some members of the media are making efforts to bring to their work a better representation of women as, for example, experts and political commentators. But the production of images is relentless and impacts on women and girls, men and boys, so that women and girls’ bodies are being targeted by make-over ‘experts’, whether plastic, cosmetic or aesthetic surgeons, or untrained and dangerously unskilled³³⁷ ‘beauty professionals’, ‘correcting’ female bodies, reshaping them and remaking every possible part in a frenzy of reshaping nature into what the surgeon or the surgeon’s would-be counterpart sees as ‘what a woman should be’. Research into influences on young girls and teenagers in the ‘body beautiful’ stakes shows that teenage girls ‘are surrounded by images that either “talk of” cosmetic interventions or allude to them’. Principle sources creating the illusion that one’s body can be changed to fit the latest fashion – botoxed lips, the Brazilian butt lift, young, still developing breasts altered to size – come through social media and television, as well as magazines. This stereotyping finds its way into the interstices of girls’ and women’s lives, not only shaping too the perfect shape for the male eye, but going beyond this to project the notion that ‘body is all’, demoting other realms of endeavour to a lower rung. Of course, not all women and girls are trapped into this cycle – for repair and renewal is essential once embarked on this pathway – but its objectification of women is damaging beyond those who may be physically or psychologically injured by going this route.³³⁸ If the authority of women is to be instated, then this form of stereotyping is inimical to the project.

The Authority Gap proposes measures that can be taken at all levels of society and in all realms of the policy to redress the balance. Mary Ann Sieghart proposes that as the media ‘create the climate in which women in public life are judged [then] if newspapers devote more column inches to a female prime minister’s hair or shoes than to her tax policy, her power and authority will be diminished. If their political editors are men (and they usually are), politics and female politicians will always be seen as through a male lens’. So, what steps can the media take?³³⁹

- Broadcasters can allow older, authoritative women to appear on TV. Broadcast regulators, such as Ofcom, should insist on this as part of their diversity policy.
- Newspapers can have more female columnists on serious subjects and more women in senior editing jobs.
- The media can stop using tired old sexist tropes about female politicians and always ask themselves, ‘Would I say this about a man?’ If not, delete.
- The media can interview as many female experts as men, keeping real-time records of contributors to ensure this happens.

³³⁶ See for example Phil Cleary, *Just Another Little Murder*, Allen & Unwin, Sydney, Australia, 2002; [Man nagged for 30 years killed partner | Yorkshire Post](#) (accessed 11 August 2021); [Nagged husband plotted wife's murder on personal organiser \(telegraph.co.uk\)](#) (accessed 11 August 2021); [Roger Kearney murdered Paula Poolton after she nagged him to move in with her | Daily Mail Online](#) (accessed 11 August 2021).

³³⁷ Department of Health, *Final Report – Review of the Regulation of Cosmetic Interventions*, 2013, [Review of the Regulation of Cosmetic Interventions - GOV.UK \(www.gov.uk\)](#) (accessed (1 July 2021); Independent Research, *Regulation of Cosmetic Interventions – Research among teenage girls*, Department of Health, Job No 623/Version I, 11 March 2031, [Report \(publishing.service.gov.uk\)](#) (accessed 2 July 2021); *Review of the Regulation of Cosmetic Interventions*, [Microsoft Word - Final doc PDF \(publishing.service.gov.uk\)](#) (accessed 2 July 2021).

³³⁸ See Jocelyne A. Scutt, *Beauty, Women’s Bodies and the Law – Performances in Plastic*, Palgrave Macmillan, Basingstoke, UK, 2020.

³³⁹ Mary Ann Sieghart, *ibid*, pp. 303-304.

- Political journalists can ask themselves if they are using double standards and treating female leaders more harshly than men.
- The media can stop commenting so much more on women's appearance than men's; it is very easily done, if there's a will.
- Editors should always 'lift' the descriptors in the articles and asks whether the same would be said of a man. If not, cut it out.
- Advertisers can catch up with real life in their portrayal of women and men.
- The film industry can bring in more female directors and give female characters more agency, dimensions, and
- Film companies can back films with female leads with as much money, distribution and marketing as films with male leads.

Steps can and should be taken in other sectors, by institutions and government, to embark seriously on the task of undoing the damage done through the pernicious stereotyping that permeates society.

6. Trafficking and exploitation of prostituted women and girls

CEDAW Committee raised the following matters:

- Compliance of national legislation with Palermo Protocol³⁴⁰
- Adoption of national strategy
- Reform of national referral mechanism
- Action in support of women in vulnerable situations to avoid resort to prostitution
- Reform legislation to decriminalise prostitution + shift burden of proof; clear criminal records of women convicted of offences related to prostitution
- Educational + employment opportunities for women who exit prostitution
- Research on prevalence of prostitution in Northern Ireland and Scotland, the Modern Slavery Act 2015³⁴¹ its potential and limitations

Adopted in November 2000 in Palermo, Italy, the Palermo Protocol is one of three protocols designed to supplement the UN Convention against Transnational Organised Crime.³⁴² Hence, it stands together with the Convention and the Protocol against the Smuggling of Migrants by Land, Sea and Air (the Smuggling Protocol) and the Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components, and Ammunition (the Firearms Protocol). Articles 2 and 3 are key to the approach of the Protocol, which recognises women and children as particularly vulnerable to exploitation and abuse through human trafficking:

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

³⁴⁰ [OHCHR | Protocol to Prevent, Suppress and Punish Trafficking in Persons](#) (accessed 21 July 2021).

³⁴¹ [Modern Slavery Act 2015 \(legislation.gov.uk\)](#) (accessed 21 July 2021); [The Modern Slavery Act 2015: A quick guide to what it is and how to stay compliant | Coffin Mew](#) (accessed 21 July 2021); see also reported cases European Court of Human Rights, [FS Forced labour ENG \(coe.int\)](#) (accessed 21 Jul 2021).

³⁴² [UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO \(unodc.org\)](#) (accessed 21 July 2021); https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOL_S_THERETO.pdf (accessed 8 August 2021).

Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.³⁴³

CEDAW General Recommendation N38 on Trafficking in Women and Girls in the Context of Global Migration provides a guide to states parties as to the application of and adherence to the principles outlined in the Palermo Protocol.³⁴⁴ The introduction refers to Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, which 'sets out the legal obligation of States parties to take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women'. It goes on to point out that despite 'the plethora of existing legal and policy frameworks to combat trafficking at national, regional and international levels', it is women and girls who 'continue to comprise the majority of detected victims of trafficking across the world', whilst perpetrators 'enjoy widespread impunity'.³⁴⁵ The evidence before the Tribunal bears this out for the United Kingdom, commencing with reference to the National Referral Mechanism,³⁴⁶ purportedly the framework for identifying and referring potential victim/survivors of modern slavery to ensure they receive appropriate support.

The Home Office approach to trafficking met with not inconsiderable critique from witnesses. Former police officer Kevin Hyland, now with the Santa Marta Group,³⁴⁷ advocated replacing the 'one size fits all' approach with a 'more realistic long-term plan'. Observing that the Home Office culture 'stigmatises all forms of irregular migration, playing into the hands of traffickers and running the risk of victims of a crime carrying life imprisonment "going missing" or being afraid to come forward', he said this 'has fuelled hotbeds of organised crime'. Addressing the issue with 'solutions' such as 'tougher entry rules or offshoring asylum processing is not the answer'. They are 'ineffective and come at great expense':

... for those trafficked from outside the UK, campaigns must be targeted to educate rather than threaten or shame. Threats to those trafficked to work in the sex industry, for example, do not effectively dissuade those (often young women) targeted for such work, and often play into the hands of traffickers. Educating girls in the UK and abroad, and non-patronising work with 'source

³⁴³ [OHCHR | Protocol to Prevent, Suppress and Punish Trafficking in Persons](#) (accessed 21 July 2021).

³⁴⁴ [CEDAW General Recommendation N38 on Trafficking in Women and Girls in the Context of Global Migration: Summary on Sexual Exploitation and Prostitution – European Network of Migrant Women \(migrantwomennetwork.org\)](#) (accessed 10 August 2021).

³⁴⁵ *Ibid.*

³⁴⁶ [National referral mechanism guidance: adult \(England and Wales\) - GOV.UK \(www.gov.uk\)](#) (accessed 9 August 2021); [The National Referral Mechanism \(NRM\) \(gravesham.gov.uk\)](#) (accessed 9 August 2021); [Modern slavery victims: referral - GOV.UK \(www.gov.uk\)](#) – see re Scotland and Northern Ireland (accessed 9 August).

³⁴⁷ [Santa Marta Group - Preventing Human Trafficking and Modern Slavery](#) (accessed 7 July 2021).

countries' is key to tackling the issue at its root causes': para 5, Witness Statement, Case ref: 038

As to the NRM, this describes modern slavery as 'a complex crime [that] may involve multiple forms of exploitation ... encompassing human trafficking, slavery, servitude, and forced or compulsory labour'.³⁴⁸ Mr Hyland stated a 'belief that the National Referral Mechanism has not achieved its purpose in the UK'. This belief was based on his experience in the sector combined with research indicating that 'too many people are lost in the system or have not been able to access it, with 18,000 people awaiting a decision between 2019-2020, and figures estimating 100,000 trafficking victims the UK in total'.³⁴⁹

In the NRM, a decision that should take 45 days maximum is taking on average up to two years. There is a need to ensure that the NRM is proactive in seeking out victims, rather than relying on victims to present themselves, and would benefit greatly from being localised, with local councils being funded to provide support services to those in their local communities that need it. [Section] 50 of the Modern Slavery Act [2015]³⁵⁰ should be properly enacted, to ensure adequate funding is made available for such services. The NRM must also be sensitive to women and gendered issues, and offer sufficient support for female victims, with current additional financial support available for mothers and pregnant victims being meagre at only an additional £3-£5 per week: para 3, *ibid*

He said that a further issue was the 'shift' in 'types of human trafficking represented in the NRM ... over the years', with the present focus on forced labour and county lines.³⁵¹ Whilst important, at the same time 'other forms of trafficking including domestic servitude and sexual exploitation must not be forgotten as disproportionately affecting women and girls'. As to county lines, he expressed concern at 'the emerging trend of girls under 18 years being involved ... being overlooked': para 4, *ibid*

Particular enterprises – 'such as beauty and textiles production' – are 'risk industries' for women. This was highlighted by Mr Hyland, pointing out that supply chain legislation in the United Kingdom 'is far

³⁴⁸ [National referral mechanism guidance: adult \(England and Wales\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98212/national-referral-mechanism-guidance-adult-england-and-wales.pdf) (accessed 9 August 2021).

³⁴⁹ [National Referral Mechanism statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98212/national-referral-mechanism-statistics.pdf) (accessed 9 August 2021).

³⁵⁰ s. 50 Regulations about identifying and supporting victims

(1) The Secretary of State may make regulations providing for assistance and support to be provided to persons—
(a) who there are reasonable grounds to believe may be victims of slavery or human trafficking;
(b) who are victims of slavery or human trafficking.

(2) The Secretary of State may make regulations providing for public authorities to determine (for the purposes of regulations under subsection (1) or other purposes specified in the regulations) whether—
(a) there are reasonable grounds to believe that a person may be a victim of slavery or human trafficking;
(b) a person is a victim of slavery or human trafficking.

(3) Regulations under subsection (2) may in particular make provision about the public authorities who may make such determinations, and the criteria and procedure for doing so: [Modern Slavery Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2015/31/section/50) (accessed 8 August 2021).

³⁵¹ 'County Lines' is the expression applied by the Home Office Serious Crime Strategy to describe 'gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas [within the UK], using dedicated mobile phone lines or other forms of "deal line"' and 'are likely to exploit children and vulnerable adults to move [and store] the drugs and money and ... often use coercion, intimidation, violence (including sexual violence and weapons'. Whilst citing the Home Office designation, the National Crime Authority (NCA) provides the following definition: 'County Lines is where illegal drugs are transported from one area to another, often across police and local authority boundaries (although not exclusively),. Usually by children or vulnerable people who are coerced into it by gangs. The 'County Line' is the mobile phone line used to take the orders of drugs. Importing areas (areas where the drugs are taken to) are reporting increased levels of violence and weapons-related crimes as a result of this trend'. Both definitions overlook the increasing use of these 'lines' for trafficking women and girls (often extremely young girls) to prostitute them across domestic borders: [County Lines - National Crime Agency](https://www.nca.gov.uk/county-lines) (accessed 8 August 2021).

short of where it needs to be to tackle exploitation and modern slavery sufficiently'. Furthermore, 'having blind spots on exploitation in supply chains poses a risk to Britain's ability to trade'. Here, he noted the United States' Tariff Act³⁵² and recent legislation in Germany,³⁵³ saying that these should lead to a consideration of 'more rigorous protections, and greater sanctions for companies that do not comply':

Existing regulations require more stringent enforcement – modern slavery statements are often not complied with and require little of the companies that do have them. Additionally, the 'ought to know' element of the Modern Slavery Act is in need of being legally tested, to clarify application of the law. Last but not least, companies failing to comply with modern slavery regulations should not be considered for government procurement in any circumstances. As £1 in every £5 is spent by a government, this initiative would have a great potential to disincentivise such unethical business practices. Businesses must bear responsibility for supply chain exploitation and make measure to do so as much a part of day-to-day business as health and safety requirements in the office: para 8, *ibid*

Member of the campaign One Law for All, and speaking in her personal capacity, Yasmin Rehman raised the issue of trafficking in the context of polygamy. Observing the lack of any effective United Kingdom government response to the polygamous marriages issue, apart from the immigration aspect of not recognising polygamous unions, she surmised that the answer may lie in its being 'put into the "too difficult" box because it goes to the heart of religious practices'. Albeit 'politicians such as Baroness Warsi and Baroness Flather have raised the issue of polygamy (Baroness Flather linking it to benefit fraud and Baroness Warsi to immigration), neither ever talked of the harm of the practice to women and children and how the practice is exploited not just for marriage purposes':

My research has shown that polygamy is increasingly being used to traffic women. Men from the West go, for instance, to the Indian subcontinent, the Middle East or Africa, and marry under the laws of that state where polygamy is permitted. Then, they bring the women back and these women are being trafficked into either domestic servitude or the sex industry. The government has no response on that: paras 11, 13, Witness Statement, Case ref: 013

She had, she said, attempted through her research to speak with politicians and legal professionals to shine a better focus on the issue. This, however, 'has been without success'. She expressed a deep concern because it 'is an issue that will be exploited, particularly with the movement of refugees and vulnerable people from across the world'. Here, Ms Rehman instanced information that came to her attention in the course of her research:

Several years ago, ... I came across an e-mail that was being circulated amongst Muslim communities, where Syrian women in refugee camps were being offered up as second and third wives and Muslim men were being told to do their Islamic duty by marrying these women. These e-mails did not only sell very vulnerable women, but also transmitted messages focussing on chastity and virginity such as: 'These are not the typical Syrian beauties you would imagine, these are women impacted by war. They may not be virgins.' Since then, I have wondered how much polygamy is being used for overseas and internal trafficking. [There is also the aspect] of domestic servitude. A number of the women with whom I spoke were in polygamous marriages as second or third wives, saying that they were not more than domestic servants within the

³⁵² [\[USC02\] 19 USC Ch. 4: TARIFF ACT OF 1930 \(house.gov\)](#) (accessed 8 August 2021); [Harmonized Tariff Schedule Search \(usitc.gov\)](#) (accessed 8 August 2021).

³⁵³ [Germany | Together Against Trafficking in Human Beings \(europa.eu\)](#) (accessed 8 August 2021); [Germany - 3. IMPLEMENTATION OF ANTI-TRAFFICKING POLICY | Together Against Trafficking in Human Beings \(europa.eu\)](#) (accessed 8 August 2021); [Germany | Global Slavery Index](#) (accessed 8 August 2021).

household. They may have been brought in to care for elderly parents or to work in a business. It is the commodification of women through religion that I find deeply upsetting: para 15, *ibid*

Kevin Hyland, speaking in his capacity as representative of the Santa Marta Group, advanced two proposals for immediate implementation to address the deficiencies in the NRM, Home Office and police response. As to the latter, he said that in his experience (in Haringey, Birmingham or on specialist departments) as a police officer, ‘engaging with civil society had a tremendous impact on protecting women and victims of trafficking’:

Developing rapport and building trust with such groups benefitted my team as well as the organisations and led to higher conviction rates. In my experience, this collaborative approach with women’s rights and experiences in mind can only improve outcomes for women as well as criminal justice overall: para 9, Witness Statement, Case ref: 038

As to the former, he advocated ‘greater political and financial commitment [as] necessary to support victims of human trafficking, and particularly to improve outcomes for women. Looking at the NRM, setting out the pathways to access support; putting it in a legal framework; funding it properly and creating an accountability process are all vital to achieving long-term change. Proper investment and dedication to these systems is necessary to achieve meaningful change for years to come’: para 11, *ibid*

SUMMATION

TRAFFICKING AND EXPLOITATION OF PROSTITUTED WOMEN AND GIRLS

The silencing voice of prostitution abuse speaks with great conviction, and much of the world believes it.

Rachel Moran
Paid For - My Journey Through Prostitution
WW Norton & Co, New York, NY, USA, 2013, p. 268

The provision in CEDAW states simply:³⁵⁴

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

The Palermo Protocol is drafted as an accompaniment to the UN Convention on Transnational and Organised Crime. As its full title provides, it is a Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, and was adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000. The Preamble provides:³⁵⁵

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

³⁵⁴ [CEDAW 29th Session 30 June to 25 July 2003](#) (accessed 2 August 2021).

³⁵⁵

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in ...

Purposes are to prevent and combat trafficking in persons, with particular attention to women and children; to protect and assist the victims of trafficking 'with full respect for their human rights'; and to promote cooperation among State parties to effect this. The 'consent of a victim of trafficking in persons' is irrelevant where any of the following means in the definition of trafficking are employed:³⁵⁶

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; ...

The CEDAW Committee is presently concentrated on shaping a General Recommendation on Article 6 of CEDAW, specifically addressing the issue of trafficking of women and girls in the context of migration. This General Recommendation will become GP 38, which will further assist in the development of CEDAW jurisprudence. This area is problematic, and it is important for women's groups and organisations with concerns about the rights of women in prostitution and trafficking to keep abreast of the development of the General Recommendation. The European Women's Lobby Observatory on Violence Against Women holds regular consultations and meetings with members on this issue.

At the same time, the existing provisions of the Palermo Protocol in conjunction with CEDAW Article 6 govern trafficking and the prostitution of women. It is important to observe that albeit trafficking for the purposes of prostitution and sexual exploitation is more likely to gain headlines, other forms of trafficking do involve women, particularly (but not only) domestic exploitation and abuse. Forced labour in commercial enterprises is also a

Hence in *CN v UK*³⁵⁷ the European Court of Human Rights heard a claim by a woman originally from Uganda, determining that allegations of domestic servitude were proven and constituted a violation of

³⁵⁶ Insofar as the Protocol covers children, the means set out ('threat', 'use of force' etc) in the definition of 'trafficking in persons' are not necessary to prove, in cases of 'recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation': a child in that circumstance is said to be the victim of 'trafficking in persons' and 'child' applies to a person under the age of 18 years: Article 3 (c)(d),

³⁵⁷ *CN v United Kingdom* [2013] (*Application no. 4239/08*) [C.N. v. THE UNITED KINGDOM \(coe.int\)](#) (accessed 8 August 2021); [Case of C.N. v. the United Kingdom \(unodc.org\)](#) (accessed 8 August 2021); [c.n. v. the united kingdom 1.pdf \(europa.eu\)](#) (accessed 8 August 2021); [C.N. v. the United Kingdom | Together](#)

Article 4 (prohibition of slavery and forced labour) of the European Convention on Human Rights. CN's case was that she had been forced into working as a live-in carer. Having travelled from Uganda to the United Kingdom to escape from sexual and physical violence she had experienced in her home country, she arrived into the initial care of a relative, PS, with the help of a Mr Abdul who assisted her in obtaining a false passport and a visa. Upon arrival, she said, PS took the passport and travel documents, warning her she should talk with no one as she 'could easily be arrested or otherwise come to harm' in London. Violence on television was shown to her, with the message that 'this could happen to her if she was not careful'. Introduced to 'Mohammed' who ran a business providing carers and security personnel, she received some short course training, then did overnight shifts as a carer and as a security guard. Payments made to Mohammed were retained by him, apart from a portion paid into PS' bank account, apparently on the understanding that he would pass it on to her. PS transferred no money to her. She then began working as a live-in carer for an elderly couple. This involved physically and emotionally demanding work, because one of the couple suffered from Parkinson's disease. One Sunday a month she was given 'off', that generally involving her being taken by Mohammed to PS' home. Later she was allowed to take public transport, but with a warning it 'was not safe' and she 'should speak to no one'. Again, monies went directly to Mohammed, with a percentage to PS, and nothing to her except an occasional present or second-hand clothing from the couple and 'from time to time' £20 or £40 given by PS on her day off. The contention that PS was saving the money for her education was refuted. Eventually she escaped when the couple went on holiday, PS went on a business trip, she was left alone with PS' partner and managed to seek help from the local bank. Hospitalised for a month she was diagnosed HIV positive and suffering from psychosis, including auditory hallucinations.

When she finally gained legal assistance, the police investigation was perfunctory, the approach being taken that she was not a trafficked person as she had willingly come to the United Kingdom and engaged in work, using false documents. A police report noted:³⁵⁸

It is clear that this female was not trafficked into the UK for labour exploitation. She having applied for a visa in her real name to come to the UK was refused. She then in agreement with her father then obtained a false passport with a forged visa stamp. These false documents were paid for by her father with the assistance of her uncle... She willingly commenced work that was arranged by her uncle as a live-in carer for an elderly couple. The family at first wanted to pay her wages direct. But on the request of the victim she stated the money should be paid to the agency and then the money should then be transferred to her uncle's account who in turn would send the money back to Uganda. This agreement was made in order to hide from the authorities the fact that the victim did not have a national insurance number. If money was paid to her then she would have had to pay tax and her false identity would have come to the notice of the tax office and then to the [United Kingdom Border Agency]. This would then lead to her arrest and eviction from the UK... ..There is no evidence to show that this female is/was a victim of slavery or forced labour. She willingly worked and was in fact paid but she chose that the money should go via her uncle in order to conceal being in the UK. It is basically a situation that one criminal (her uncle) has taken all the proceeds of their crime ...

When her lawyer pressed the matter, noting that no proper investigation had been carried out, the advice was that the Border Agency was unable to investigate further because its resources had to be deployed usefully elsewhere. When the matter finally arrived in the European Court of Human Rights, the United Kingdom was found to have violated Article 4 of the European Convention on Human Rights (ECHR), namely the prohibition of slavery and forced labour) and determined that the state should pay to NC €8,000 for non-pecuniary damage; £20,000 for costs and expenses, together with any tax chargeable on those amounts, and interest payable during any default period. The provisions in force

[Against Trafficking in Human Beings \(europa.eu\)](#) (accessed 8 August 2021); [C.N. v. United Kingdom: the Court addresses domestic servitude | Strasbourg Observers](#) (accessed 8 August 2021).

³⁵⁸ Ibid.

at the time were found to be inadequate to afford practical and effective protection against treatment contrary to Article 4, the Court determining that the absence of specific legislation criminalising domestic servitude meant that the investigation into NC allegations of domestic servitude were ineffective.

This case worked to generate a change in the law, with the introduction of the Modern Slavery Act 2015. However, it remains relevant to recite the nature of the conduct to which NS was subjected and the failure of the authorities to adequately address it. Trafficking remains problematic for women and girls remain vulnerable, problems of credibility remain, and the sorts of psychological pressure that can be brought to bear, whether with or without overt violence, remain difficult even for those working in the field to understand. Sometimes particularly for them. As witnesses in the Tribunal said time and again, the credibility of women remains in question whatever the forum, and just as in other predatory behaviour and crimes of violence against women, ‘consent’ is a feature with all its inherent difficulty.

For trafficked women under asylum seeking and refugee law, cases can revolve around whether ‘former victims of trafficking’ constitute a social group within the meaning of the Convention relating to the Status of Refugees 1951.³⁵⁹ The issue whether ‘former victims of trafficking’ (in this case, victim/survivors whose country of origin is Thailand) did constitute members of a particular social group for the purpose of asylum seeking under the ‘well-founded fear of persecution’ principle arose in *AZ (Trafficked woman Thailand) v Secretary of State for the Home Department*.³⁶⁰ It was held that former victims of trafficking in Thailand do constitute members of a particular social group for the purpose of the Convention test. However, ‘not all will be at risk of serious harm on return; the risk will depend upon a number of factors [to] be assessed on a case by case basis. Factors to be taken into account include age, marital status, domestic background, educational level, qualifications and work experience. In addition, familial or other support network and the availability of employment are also to be considered as ‘significant factors’. Ultimately AZ’s case was dismissed and her appeal unsuccessful. However, it was considered that despite anti-trafficking legislation, ‘the involvement of corrupt officials with traffickers and/or criminals has weakened the steps taken by the government to combat trafficking’. As with *CN v United Kingdom*³⁶¹ this case predates the Modern Slavery Act 2015, but the principle in refugee and asylum seeking law remains cogent.

Under the Modern Slavery Act, section 45 has resonance, particularly for women accused of crimes engaged in as trafficked persons. Just as NC was seen as an offender rather than offended against, attention focusing on the false passport to the exclusion of the circumstances of the forced labour, this provision may not be in the forefront of those investigating trafficking. NC could not have claimed protection under section 45, because her offences relating to the passport took place to enable her to travel to England and did not take place when she was subjected to the conditions of slavery. However, it is the police and Boarder Agency’s focus which is highlighted here, indicating that that focus may interfere with the application of this defence where it is applicable.

45 Defence for slavery or trafficking victims who commit an offence

(1) A person is not guilty of an offence if—

- (a) the person is aged 18 or over when the person does the act which constitutes the offence,
- (b) the person does that act because the person is compelled to do it,
- (c) the compulsion is attributable to slavery or to relevant exploitation, and

³⁵⁹ [OHCHR | Convention relating to the Status of Refugees](#) (accessed 2 August 2021); [Refworld | Convention Relating to the Status of Refugees](#) (accessed 2 August 2021).

³⁶⁰ *AZ (Trafficked woman Thailand) v Secretary of State for the Home Department* [2010] UKUT 118 (IA), [Refworld | AZ \(Trafficked women\) Thailand v. Secretary of State for the Home Department](#) (accessed 2 August 2021).

³⁶¹ *Ibid.*

- (d) a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act.
- (2) A person may be compelled to do something by another person or by the person's circumstances.
- (3) Compulsion is attributable to slavery or to relevant exploitation only if—
- (a) it is, or is part of, conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or
 - (b) it is a direct consequence of a person being, or having been, a victim of slavery or a victim of relevant exploitation.
- (4) A person is not guilty of an offence if—
- (a) the person is under the age of 18 when the person does the act which constitutes the offence,
 - (b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and
 - (c) a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act.
- (5) For the purposes of this section—
- “relevant characteristics” means age, sex and any physical or mental illness or disability;
 - “relevant exploitation” is exploitation (within the meaning of section 3) that is attributable to the exploited person being, or having been, a victim of human trafficking.
- (6) In this section references to an act include an omission.
- (7) Subsections (1) and (4) do not apply to an offence listed in Schedule 4.
- (8) The Secretary of State may by regulations amend Schedule 4.

This provision recognises that persons who are trafficked may be forced into committing crimes whilst being held in slavery or servitude. Indeed, they may be trafficked specifically for that purpose: say, an illegal drug operation.³⁶² Many crimes are exempt from being included in the list as possibly to be excused under this provision, but some remain susceptible to it. Its construction and application need to be considered, in light of reports detailing institutionalised racism and the reality of institutionalised sexism that may militate against trafficked women's gaining the full protection of the defence. That is, what are the crimes that can be excused – with requisite proof; and how are they considered in practice, where a woman seeks to make use of the provision.

Insofar as domestic trafficking is in issue, County Lines are being reported as including trafficking for sexual exploitation on top of the already well-applied purpose of drug trafficking. Police report that young girls are being inculcated into these schemes, so that this is homegrown trafficking rather than trafficking from abroad. Those seeking to draw a distinction between trafficking and prostitution need, therefore, to revisit this conceptualisation. Ideology ought not to operate so as to leave young, vulnerable women and girls without legal rights and protections. The importance of not subjecting women who are prostituted to criminal laws is a given. Conflating this with the activities of traffickers

³⁶² For cases prior to the Modern Slavery Act 2015 where coercion into performing criminal offences when trafficked, see for example *R v O* [2008] EWCA Crim 2835; *R v M(L) and others* [2010] EWCA Crim 2327, [2010] WLR(D) 266). (*CPS Policy on Prosecuting in Human Trafficking*, May 2011, at p 17); *R v Oseyomwabor (Precious)* (2012) [2012] EWCA Crim 752; *R v N*; *R v E* [2012] EWCA Crim 189, [2012] 3 WLR 1159 ; *R v LM and others* [2010] EWCA Crim 2327, [2011] 1 Cr App Rep 135; *R v H (Anthony)* (2013) [2013] EWCA Crim 744.

and exploiters of women, so as to move towards an exculpatory approach to perpetrators of gender-based violence does not appear helpful, nor consistent with CEDAW principles.

7. Equal participation in political and public life

CEDAW Committee raised the following matters:

- Targeted measures to improve representation of Black and minoritised women and women with a disability in Parliament, judiciary, foreign service and diplomatic missions

The paucity of women in elected roles within the polity is a matter of note generally, and for women with a disability and Black and minoritised women.³⁶³ Dr Olga Jurasz, speaking in her personal capacity, referred to the underlying problem of ‘gendered misinformation’ – the ‘deploying of false narratives against women in the public eye to negatively portray women and to push a premediated political or social agenda’ as at the heart of the matter. This, she said, is ‘one of the key issues to tackle, owing to the psychological and reputational harm it can inflict on victims, as well as having serious implications for women’s representation in politics and the quality of democratic processes as a whole’. Her observation was that this ‘affects general equality overall’ as well as undermining the UK’s compliance with Article 7 of CEDAW and the 5th UNDP Sustainable Development Goal, namely to ‘achieve gender equality and empower all women and girls’.³⁶⁴ para 2, Witness Statement, Case ref: 007

Alexandra Pavliuc of the Oxford Internet Institute,³⁶⁵ speaking in her personal capacity, provide evidence effectively following through on this, looking at the development of internet sources and resources and the serious implications they have for women’s equality and recognition of equal status and authority³⁶⁶ generally and in political and public life. Her research, she said, focuses on the issue of ‘gendered and sexualised disinformation, relating to false narratives about a woman’s gender and identity, that are spread online with the intent of discrediting them or shunning them from public life’:

We can see the impact this has had on women’s representation in politics, leading to women withdrawing from politics and discouraging women and girls from taking on roles in the public eye, and that often these attacks include ageist, racist, and transphobic tropes. In addition to politicians, journalists, activists and, in some cases, academics have been targets: paras 3, 5, Witness Statement, Case Ref 033

Her research has identified a ‘barrier’ in reporting such disinformation: ‘the issue of “malign creativity” by which disinformation and abuse take on coded language to avoid detection by algorithms’. Platforms, she said, must ‘invest more in human moderators to deal with this issue, and while human moderators may still face difficulty discerning whether or not something is abuse, this may be mitigated in part with training and documentation’. At the same time:

... as the role of human moderators can be upscaled only so much, there is a need to invest in developing algorithms that pick up not only on more subtly gendered language, but on the coordination of these attacks which, while “spontaneous” and not explicitly arranged, take on patterns that are not typically present in ordinary communication: paras 6, 7, *ibid*

³⁶³ For current statistics, see House of Commons Library Research Briefing, *Women in Politics and Public Life*, March 2021, <https://commonslibrary.parliament.uk/research-briefings/sn01250/> (accessed 9 July 2021).

³⁶⁴ [Goal 5 | Department of Economic and Social Affairs \(un.org\)](#) (accessed 9 July 2021).

³⁶⁵ [OII | Homepage \(ox.ac.uk\)](#) (accessed 9 July 2021).

³⁶⁶ On authority, see Mary Ann Sieghart, *The Authority Gap – Why Women are **Still** taken Less Seriously than Men, and What We Can Do About It*, Doubleday/Transworld Publishers, London, 2021.

Here, too, attention needs to be paid to teams of developers of Apps³⁶⁷ for if sex and gender differentials are built-in to Apps, this simply perpetuates gender stereotyping and the misrepresentation and undermining of authority that dogs women's equal participation in all fields, including political and public life. Ms Pavliuc emphasised the imperative need for teams of developers to be 'representative of the people who will eventually use the app':

In app development, I would promote a gender-centric approach that takes into account men and women's different styles of communication, problem solving, and where appropriate, biological differences, to ensure apps work for their intended audience: para 3, *ibid*

This question of differing styles of women and men arose in the evidence of a number of witnesses in contexts including that of public office and politics. Participation in political representation and public life provides – or should provide - opportunities for women at national, devolved assemblies and local government levels, and in the opportunity to represent the nation state. Women's role in the diplomatic service is equally significant and equally inhibited by conventional and traditional notions of 'what is appropriate' and, more tellingly, of 'who is appropriate' – which brings in the issue of style and perceptions of authority. Dr Jennifer Cassidy of the University of Oxford, editor of *Gender and Diplomacy*,³⁶⁸ provided evidence to the Tribunal in her personal capacity. Like Ms Pavliuc, she referenced the importance and impact of the internet and social media on woman's place in the polity.

Dr Cassidy located a reason for a 'rise in female diplomats around the world [is] social media and the highlighting of an elected female, be it an ambassador or a politician'. Nevertheless, 'very low numbers of women in the FCDO³⁶⁹ and globally in the diplomatic service remain ...', despite 'foreign ministries around the world and the UK Foreign Office, when that is raised, responding always, "we have a 50/50 percent intake"'. If that is so, the question arises of 'how the women drop out, how they are pushed out, or how the hurdles come into play and women do not make it to the top ranks ... Or, even when they do, they do not get the top diplomatic postings': para 2, Witness Statement, Case ref: 021

She said that reasons are dependent upon each institution, however, 'this is a common and ongoing global threat'. Here, she cited figures of 'an average of 16 percent female ambassadors around the world' and, when she was working at the United Nations, of the 193 states, there were on her calculations nine female ambassadors, one of them 'hers'. Today, she noted, 'a female UK ambassador is on the Security Council,³⁷⁰ and Ireland has a female ambassador also on the Security Council',³⁷¹ going

³⁶⁷ Techopaedia, 'What Does App Mean?' 'An app is computer software, or a program, most commonly a small, specific one used for mobile devices. The term app originally referred to any mobile or desktop application, but as more app stores have emerged to sell mobile apps to smartphone and tablet users, the term has evolved to refer to small programs that can be downloaded and installed all at once. There are thousands of apps designed to run on today's smartphones and tablets. Some apps can be downloaded for free, while others must be purchased from an app store': [OII | Homepage \(ox.ac.uk\) \(accessed 9 July 2021\)](#).

³⁶⁸ Jennifer Cassidy (ed.), *Gender and Diplomacy*, Taylor & Francis/Routledge, Oxford, UK, 2021.

³⁶⁹ The Foreign, Commonwealth and Development Office (created in 2020 by a merger of the Foreign and Commonwealth Office with the Department for International Development, formerly the Foreign and Commonwealth Office (created in 1968 by the merger of the Foreign Office and the Commonwealth Office: [Foreign & Commonwealth Office - GOV.UK \(www.gov.uk\) \(accessed 9 August 2021\)](#); [Foreign, Commonwealth & Development Office - GOV.UK \(www.gov.uk\) \(accessed 9 August 2021\)](#)).

³⁷⁰ BBC, 'The UK has named Dame Barbara Woodward as its permanent representative to the United Nations, its most senior diplomat to the New York-based body. Dame Barbara, currently British ambassador to China, is a previous international director of UK Border Force. She replaces Dame Karen Pierce, who was named ambassador to the US in February 2020. The UK is a founding member of the UN, and one of five permanent members of its security council': [UK names new top diplomat to United Nations - BBC News \(accessed 8 August 2021\)](#).

³⁷¹ Paul Gillespie, *Irish Times*, Saturday 3 June 2021, [Ireland's role on UN Security Council deserves more attention than it gets \(irishtimes.com\) \(accessed 8 August 2021\)](#).

on to say that, nonetheless, there remains ‘a severe lack of top female diplomats’ a matter ‘dependent upon features not unique to diplomacy:

First, is the institutional make up. Investigation of these institutions is important to show how masculine norms have shaped them ... I write about a lot of these traits in *Gender and Diplomacy*, about what a diplomat is. Traditionally, they are seen to be rational, objective, strong, even tall. But with all these traits, we are led to believe they are masculine characteristics. Harold Nicolson,³⁷² the Godfather of Modern Diplomatic Literature, said: ‘Women are prone to the qualities of zeal, sympathy and intuition which unless kept under firmest control can be dangerous qualities to international affairs.’ [Yet] zeal, sympathy and intuition are some of the best qualities you can have as a diplomat: paras 3-4, *ibid*

Observing that the ‘general perception of women in diplomacy and politics is changing’, she acknowledged ‘there are still so many barriers to overcome’. Nonetheless, once in the service, advantaged can accrue to women who are able, by sheer dint of persistence, to confront and overcome obstacles produced by cultural imposition. In this, she cites the instance of the United Kingdom High Commissioner to Kenya, who served also as ambassador to Yemen and Iran, as well as being director of the Counter Terrorism Unit.³⁷³ Confronted with a situation in Yemen where a diplomatic dinner was arranged for ambassadors with a parallel event for their spouses, she sought to enter the ambassadors’ dining room, only to be refused by guards who directed her to the parallel event. However, ‘the Spanish and Brazilian ambassadors intervened, saying they went wherever she did, upon which the bodyguards allowed her to enter’. Reflecting on this, Dr Cassidy noted that the importance of allies was crucial, and ‘with this issue came a unique strength, particularly in countries not having gender equality as a key cornerstone of their policies’.³⁷⁴

Having a female ambassador, as the High Commissioner points out, in Yemen and Iran, enabled her to gather so much more information than her male counterparts because she was allowed into the communities and allowed to speak to the women. This had never happened before, as she had been the first female ambassador there: para 5, *ibid*

Women’s representation and women as representatives in the context of climate change (as well as international development) was stressed by Malini Mehra, providing her evidence in a personal capacity. She regretted backward steps having occurred in DIFD³⁷⁵ - ‘previously the largest and most significant funder in terms of women’s empowerment, but in the UK recently, Alok Sharma’s top team has come under fire for its lack of senior women’.³⁷⁶

When the campaign group, She Changes Climate, was formed and 400 women wrote a letter objecting to the largely male leadership, there was a slight, but insufficient, response. The government should have brought in immediately the expertise they already had within DFID, but they might have been unaware that this was an option. Interdepartmental communication would have been key in this case: para 8, Witness Statement, Case ref: 020

³⁷² Harold Nicolson, *Diplomacy*, 1938, Oxford University Press, Oxford, UK, 1969.

³⁷³ [New British High Commissioner to Kenya presents credentials: speech by Jane Marriott - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/new-british-high-commissioner-to-kenya-presents-credentials) (accessed 8 August 2021).

³⁷⁴ See Jennifer Cassidy, *Gender and Diplomacy*, *ibid*.

³⁷⁵ The Department for International Development, now replaced by the Foreign, Commonwealth and Development Office: [Department for International Development - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/organisations/department-for-international-development) (accessed 10 August 2021); [Foreign, Commonwealth & Development Office - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/organisations/foreign-commonwealth-and-development-office) (accessed 10 August 2021).

³⁷⁶ The Rt Hon Alok Sharma, MP, Secretary of State for International Development (July 2019-February 2020), Secretary of State for Business, Energy and Industrial Strategy and President for COP26 (February 2020-January 2021); appointed full-time President for COP26, the 26th United Nations Climate Change Conference 8 January 2021: [The Rt Hon Alok Sharma MP - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/people/loks-sharma) (accessed 10 August 2021).

Where there are positive steps, she said, these have received insufficient publicity, as in the appointment of gender envoy Alicia Herbert which ‘was positive, but was never press-released’. This, Ms Mehra added, ‘is not good enough. It does not send a convincing signal that the government gets the issues or is committed to women’s empowerment in a credible manner’: para 8, *ibid*

Chair of the Women’s Policy Group in Northern Ireland, Rachel Powell, also made the point that a ‘strategy of gender parity must go beyond party politics to consider public appointments, schools and our entire public sector ...’ She referred to a Northern Ireland Assembly report ‘Gender Equality in 2020’³⁷⁷ which showed that even in sectors where women are the majority, such as education:

... they are still a minority when it comes to leadership or senior level positions. This problem is even worse in the private sector. As it stands, a lot of the CEDAW recommendations on tackling gender stereotyping and childcare provision are not being acted upon. The basic barriers need to be addressed before making widespread systemic change: para 10, Witness Statement, Case 008

The public office issue was raised, too, by Cherie Blair, CBE, QC who observed that ‘globally’ progress in appointment of women to public office is progressing,³⁷⁸ adding, however, that exceptions to the rule – as these appointments are – are notable for that very reason. She cites 119 countries as ‘never having had a female leader’, with 21 countries alone sporting female ‘heads of States and governments’:

Given our current rate of progress, calculations by UN Women reveal we will not reach gender parity within the highest levels of power for another 130 years, which is 129 years too late ... Christine Lagarde, a woman who has risen to the highest levels, once said that not using women, particularly within the economy, is similar to flying an airplane but using one of two engines only ... You may arrive at your destination eventually, but could have done so much better having utilised both engines ...’: paras 3, 5, Witness Statement, Case ref: 027

She emphasised the importance of ‘placing a gender lens on public appointments’, adding the requirement, also, ‘to consider *multiple* disadvantages’:

Indeed, women may encounter overlapping forms of discrimination that reinforce their marginalisation and unequal access to public and political space. Intersectional forms of discrimination may include their status as indigenous or minority women, migrant women or women with precarious citizenship status, women from the lesbian, bisexual, trans and queer community, and rural women, amongst others: paras 21-22, *ibid*

Dr Sofia Collignon referred to the importance of diversity in political representation, too, referencing ‘women political candidates, candidates of colour and candidates from other protected characteristics’ for ‘as a society we are all losing: women who have important things to say, women who are diverse, women who gain political experience over time (and political experience is human capital) are all being shut out of the political sphere’. There is a difference, she added, ‘between political discussions surrounding policies, and discussions based on the personal characteristics of an individual’:

³⁷⁷ [Annual Report to the Equality Commission 2019-2020 \(niassembly.gov.uk\)](#) (accessed 12 July 2021); see also [Gender Inequality in Northern Ireland: Where are we in 2020? – Women’s Resource and Development Agency \(wrda.net\)](#) (accessed 12 July 2021).

³⁷⁸ Citing Ngozi Okonjo-Iweala, [Ngozi Okonjo-Iweala | World Bank Live](#) (accessed 7 July 2021); Christine Lagarde, [Christine Lagarde - Biographical Information \(imf.org\)](#) (accessed 7 July 2021); [The President of the European Central Bank \(europa.eu\)](#) (accessed 9 July 2021), and Kristalina Georgieva, [Kristalina Georgieva \(imf.org\)](#) (accessed 7 July 2021).

It is acceptable to disagree in politics, but women's opinions are often disregarded. The targeting of women by reference to protected characteristics or women expressing a specific viewpoint shows that these women are still seen as disruptive in politics. We have not reached the point where [society accepts that] women have a right to be involved in politics, with society imposing additional barriers preventing women from standing for office, with these barriers accumulating over time and making it difficult for women to remain politically active: paras 42, 48-50, Witness Statement, Case ref: 006

Her research indicates 'there are multiple ways that gender inequality presents in politics':

These are disparities between parties, for example this year [2021] we see more women in opposition than in government. There are also difficulties in getting women elected. Women are being targeted by harassment and intimidation at different stages of their political career. One of the most prominent stages is when campaigning for office. Women are targeted online and offline ... with more women subject to harassment and abuse than men: para 3, *ibid*

Dr Collignon reference to the first data collection undertaken for her research was in 2017, 'following the tragic Joe Cox murder'.³⁷⁹ This elicited the differential statistics on harassment and abuse of women. Then, in 2019, 'the percentage of both men and women being harassed increased, but so did the gap between then (more women being harassed than men)'. Further, the research showed that women who 'do not comply with the "mainstream", receive even more abuse:

Voices of women are silenced when they break from the stereotypes, along with an increase of online harassment ... It would not be surprising to see a decrease of female candidates running for office in the next election due to the rise of online harassment following Covid and the increased use of social media: paras 5-6, *ibid*

Outlining the harassment and intimidation experienced, she nominated three key aspects: frequency, the conduct meted out against women in campaigns, and that levelled at women once holding office:³⁸⁰

When you are a female parliamentary candidate there is higher frequency of abuse online or via email. There is also more probability to be followed in the street and receive threats of physical abuse ... These threats usually include misogyny, ableism or abuse targeted to the candidate's race or religion. Women are also more likely to receive Islamophobic abuse. We therefore see that women are more likely to feel significantly more unsafe than men when running for office: paras 7-8, *ibid*

Ms Blair referred to parliamentary representation, too, along with efforts to ensure women's participation. She referenced the British Labour Party's 'All Women Shortlists' by which some constituencies are designated by the NEC (National Executive Committee) of the Party as chosen to benefit from selecting a candidate from a shortlist comprising women. This follows for parliamentary candidature as well as for selection for local government. She pointed out that in the 1997 General Election, won by Labour, 'the number of women MPs in Parliament exceeded 100 for the first time'. She added that women 'account for less than 10% of Parliament members in 27 countries, and in many no women are elected despite standing', but no country can take a superior attitude in this, for it had 'taken the UK a long time to reach at least a third of women parliamentarians': para 6, Witness Statement, Case ref: 027

³⁷⁹ [About Jo Cox - The Jo Cox Foundation](#) (accessed 21 July 2021); [Jo Cox MP dead after shooting attack - BBC News](#) (accessed 21 July 2021); [Jo Cox: Man jailed for 'terrorist' murder of MP - BBC News](#) (accessed 21 July 2021).

³⁸⁰ For Dr Collignon's proposals for addressing this issue, see back **4. Gender-based violence against women.**

Esuantsiwa Jane Goldsmith referenced women's participation with an eye toward the representation of Black and minoritised women. Some progress in representation has occurred in public and political life in the UK, she said, nonetheless, 'overall it remains woefully inadequate', neither happening sufficiently fast, nor reflecting the proportion of Black and minoritised women in the nation today. Hence, as of March 2021, some 35 Black and minoritised women were MPs, the 'highest number ever in the UK'. Yet 'it is only two-thirds of where we should be ... to be proportionately representative of the British public, as ethnic minorities are currently 14% of the UK population'. Ms Goldsmith here raised once more the problem of statistical deficient in terms of numbers 'on the ground' and numbers in government data:

There is an urgent need to collect disaggregated statistics, not only on discrimination and deprivation but also on BAME women who have achieved success. When I was at university, not one single university chancellor was non-white or non-male. Currently, I know that two BAME women recently became chancellors of universities – the writer Jackie Kay³⁸¹ and the academic Margaret Casely-Hayford³⁸² ... the importance of this data on attainment is that it will be an inspiration for more women to come forward: paras 18-19, Witness Statement, Case ref: 036

She spoke of the need for government to take its obligations in this respect seriously, observing that the experience of Black and minoritised women in public life 'is much harsher than for black men or other women'. Their experience encompasses more hatred, tolling, harsher criticism, racism, sexism, and abuse, than either white men, black men or white women' resulting in an 'incredibly stressful, wounding, and negative experience, a deterrent to BAME women participating in public and political life'. She provided the example of Diane Abbott MP having received 'death threats and threats to attack her family', whilst the murder of Jo Cox 'in the run-up to Brexit has now been largely forgotten'. It is, therefore, 'important to protect women in public life and to extol their success, rather than trolling it':

CEDAW places responsibility on governments to support and encourage the advancement of women, including a duty to acknowledge and demonstrate their successes. This space is currently not in the public discourse. Young women need to know of this and be inspired, and BAME women's progress should be embedded in the national curriculum, as part of the decolonisation of the curriculum at every level of education: para 20, *ibid*

Recitation of history 'should be about the success of Black women, not only duly recognising and exposing the atrocities and injustices of the past and present, but inspiring cases showing how BAME women survived and flourished': para 20, *ibid*

Sam Smethers in her freelance consultant capacity commented on the 'structural barriers to equality found within political life'. Here, she references work done by the Fawcett Society on the design of the political system 'from the way candidates are selected, to how we run election campaigns and how our parliamentary system is designed'. Barriers at every stage and throughout the process prevent women from participation:

... we can look at sexist attitudes on selection panels. The Fawcett Society has strong evidence from research conducted in 2018 that attitudinal barriers to women being selected and seen as the idea candidate cross all political parties. The white, able-bodied, middle-class man is still the idea candidate. Then, chasing a seat and travelling around the country while carrying caring responsibilities is extremely difficult. Further barriers work activity against women. Networking in political parties is done in formal, male dominated spaces. We normalise online harassment in our political system, creating an alienating space for women. Parliament still does not properly recognise parental leave. It has been introduced only recently, and only now are they

³⁸¹ University of Salford, 2015, [Jackie Kay - Literature \(britishcouncil.org\)](https://www.britishcouncil.org/jackie-kay-literature) (accessed 21 July 2021).

³⁸² Coventry University, 2017, [Margaret Casely-Hayford](https://www.coventry.ac.uk/margaret-casely-hayford) (accessed 21 July 2021).

consulting on a parental leave system, because the Attorney-General needed to take maternity leave ... It is one thing after another, designed for the male model of work and male model of power. If you do not fit that, you will be excluded: paras 24-27, Witness Statement, Case ref 030

In addition to public office, the importance of women's place in the political arena was emphasised by Rachel Powell in the context of Northern Ireland. She referred to the commendation of 'many people' in the fact that 'half of the Northern Ireland executive right now³⁸³ are women and believe this to be an achievement for gender equality':

To me this is tokenism rather than representation, because if you do not have women embedded in every party, and at every level of local politics, then women's voices are still being left out. For example, when you see the Northern Ireland executive making a pathway to recovery regarding existing lockdown and forgetting to mention childcare, that is indicative of the fact that people working behind the scenes on those policies are not considering gendered issues: para 7, Witness Statement, Case ref: 008

Ms Powell observed that as matters stand currently, 'economic policy is not conducive to women's involvement in political and public life'. As an example, she cited the 'two child policy', saying '... if we are targeting women for having more than two children and putting a child tax credit cap on that, and taking away their ability to live above the poverty line, how are we making it possible for women to ever become involved in politics and public life?' In addressing the need for 'solutions to barriers to entry for women', she named the importance of access to childcare, women's employment strategy, and education and training on gender equality. She, too, made mention of the 'need to target online misogynistic abuse', naming it 'a disease in our society'. Here, she focused on the importance of 'adequate legislation that recognises misogyny as a hate crime'³⁸⁴ to 'tackle the targeting of women when they put themselves forward into positions of leadership': para 9, *ibid*

As to what should be done, Malini Mehra said that effecting change should be signalled from the top. With an eye to the climate emergency and sustainable development, she noted that at senior government levels there are insufficient women:

While the current cabinet is certainly diverse, more room must be made for women in political leadership. There is Anne-Marie Trevelyan MP³⁸⁵ who is lead in adaptation and resilience – however, it is not enough to have one senior woman. Such appointments should come from the very top in order to send the right signal and have a cascading effect through the bureaucracy and positively influence attitudes and behaviour on gender equality. Women have always had a prominent role in the climate activism community, which can be seen clearly today, in particular in the youth climate movement as well as in key appointments in important global institutions such as Kristalina Georgieva to the IMF,³⁸⁶ and Ngozi Okonjo-Iweala to the WTO³⁸⁷.

³⁸³ As at 12 April 2021, the date of Ms Powell's written statement to the CEDAW People's Tribunal: Witness Statement, Case ref: 008.

³⁸⁴ On misogynist speech, see **EQUALITY ACT 2010**, earlier.

³⁸⁵ The Rt Hon Anne-Marie Trevelyan was appointed as Minister of State (Minister for Energy, Clean Growth and Climate Change), Department of Business, Energy and Industrial Strategy on 8 January 2021; she was appointed UK International Champion on Adaptation and Resilience for the COP26 Presidency on 7 November 2020; previously Secretary of State for International Development (February-September 2020), Minister of State for the Armed Forces (December 2019-February 2020), and Minister for Defence Procurement (July 2019-December 2019): [The Rt Hon Anne-Marie Trevelyan MP - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/people/anne-marie-trevelyan) (accessed 10 August 2021); [Anne-Marie Trevelyan | Conservative MP for Berwick-upon-Tweed \(teamtrevelyan.co.uk\)](https://www.teamtrevelyan.co.uk/) (accessed 10 August 2021).

³⁸⁶ Managing Director, International Monetary Fund (IMF), [Kristalina Georgieva \(imf.org\)](https://www.imf.org/en/About/Our-Work/Leadership) (accessed 10 August 2021).

³⁸⁷ Director General, World Trade Organisation (WTO), [WTO | 2021 News items - History is made: Ngozi Okonjo-Iweala chosen as Director-General](https://www.wto.org/press/2021/08/21-2021-NGOZI-OKONJO-IWEALA-DIRECTOR-GENERAL.htm) (accessed 10 August 2021).

Trade is a key element of sustainable development and having women and feminist men in key positions is one way to influence policy in terms of both sustainability and gender equality objectives: para 9, *ibid*.

Lecturer in Politics at the University of Cardiff and speaking in a personal capacity, Rachel Minto focused on changes to advance women's presence on the political scene. Highlighting the organisation of working hours and other barriers militating against women's participation, particularly adverse to 'diversity in terms of race, and people who are disabled and from diverse socio-economic backgrounds', she said:³⁸⁸

The assumption that work in politics must be all-consuming should be challenged, and accommodations such as family-friendly working hours, including sensible hours for debates and committee meetings, the possibility of continuing some remote working post-Covid, and job sharing should be considered, benefitting all parents in politics: para 7, Witness Statement, Case ref: 022

From Northern Ireland, Jonna Monaghan for Northern Ireland Women's European Platform (NIWEP) referred to measures that could make a difference:

Legislation is in place that has special measures to strengthen women's representation in public life and within political parties, but again that is not really being implemented in any way whatsoever ... Legally, it would be possible to have women on the shortlist with quotas, but they are not being used. Here was an inquiry some five years ago, in 2015, in the Assembly, on whether that should be used.³⁸⁹ The inquiry made no conclusions, and nothing has happened since'. That was one of the 'numerous ways in which Northern Ireland is falling behind in terms of the advancement of women's rights': para 4, Witness Statement, Case ref: 003

Dr Cassidy advanced a number of recommendations for change in the diplomacy landscape, first observing that in the realm of 'abusive cyber messages, more men are speaking up, with a growing allyship which is a positive change. More, however, is required, proposals applicable to all institutions and layers of society:

First, shifting the burden of representation, with the burden of equality shifting from underrepresentation of women to the overrepresentation of men: The LSE's Commission on Gender Inequality and Power in 2015 recommended that diplomatic parties establish a ceiling gender quotation, a maximum of 70 percent of either sex should be hired and present within their institution – the most controversial of any recommendation as involving a mandatory quota, however shifting the burden of representation is an increasing practice across Europe;

³⁸⁸ Referencing the work of colleague Professor Laura McAllister (who has undertaken significant work on women's representation in politics), see for example [Gender Representation in Wales: New Approaches to Candidate Selection in UK's Devolved Legislatures and Beyond | Request PDF \(researchgate.net\)](#) (accessed 8 August 2021); [Candidate selection: Methods and consequences | Request PDF \(researchgate.net\)](#) (accessed 8 August 2021); [Chronicling National Assembly committees as markers of institutional change -ORCA \(cardiff.ac.uk\)](#) (accessed 8 August 2021); [Failure in welfare partnerships – A gender hypothesis: Reflections on a serendipity pattern in Local Safeguarding Children Boards - CORE](#) (accessed 8 August 2021).

³⁸⁹ [Women in Politics and the Northern Ireland Assembly - Barriers and Challenges: Women's Resource and Development Agency \(niassembly.gov.uk\)](#) (accessed 21 July 2021); Assembly and Executive Review Committee, *Report on Women in Politics and in the Northern Ireland Assembly*, 17 February 2012, [www.niassembly.gov.uk/globalassets/documents/reports/assem_exec_review/women-in-politics.pdf](#) (accessed 2 July 2021).

Secondly, carrying out gender audits – which can be applied to anything institutional, including diplomacy – there is a recommended call for the introduction of gender audits for national ministries and international diplomatic bodies. The archetypal structure of diplomacy, developing based on gender norms, remains solid. To facilitate alteration of the reigning archetype, ministers of foreign affairs should be required to carry out gender audits of all policies they propose to introduce. This requires policymakers to explicitly address the likely impact of policy on women and men to demonstrate they have considered and provided justification as to whether the opportunities and burdens will be distributed differentially between the sexes;

Thirdly, achieving work life balance – why do people ‘fall off’? because they have children. It should not be a choice between work and personal life. Personal life of women currently serving in the diplomatic corps plays a substantial role in the trajectory of the diplomatic career. Men and women both juggle the competing commands of work and family, but the problem of balancing these responsibilities does not fall equally on both sexes ... There is no excuse for this, particularly with the money most ministries have, there should be onsite nurseries: paras 6, 7, 8, 10, Witness Statement, Case ref: 021

As for numerical targets, she acknowledged that numbers ‘do not translate into equality’,³⁹⁰ although the ‘numeric inferiority of women to men is a systemic problem [that] matters because of the messages conveyed about women as second-class citizens, better suited to the private world of the family and household than the public political life’. Still, ‘alongside the question of how many women, we should always be asking, where are the women? ...:

A quantitative map of ambassadors around the world, and female ambassadors around the world [shows] that over 85 percent of them are not getting the New York, Geneva, Paris, Brussels power postings. Institutions can show all the numbers saying there are plenty of women, but where are they? Do they have the power to make the change? Even on a junior level, women in diplomacy are not posted to violent and war-torn regions due to safety concerns. The problem is that these are seen as promotion postings. So at a junior level a woman is immediately on the back foot. Always ask, where are the women, not how many women? para 21, *ibid*

She added that the proposition advanced by policymakers that a proper gender and racial equality balance could be achieved by adhering to a target of ‘one in three’ was flawed:

Its primary flaw stems from the valid beliefs that whilst changing the gender composition of an organisation enables different voices to be heard and new agendas to be addressed, it is clear that needs, interests and experiences do not vary by gender alone, but by location within a range of power hierarchies, structure by race, ethnicity, age, sexuality, religion, gender and disability. The same is true in the diplomatic sphere, requiring us to re-evaluate the ‘one in three’ target so frequently cited by governments, and work towards a composition that captures the diversity of experiences and concerns: para 9, *ibid*

Without this, Dr Cassidy observed, the ‘professional practice of diplomacy [which] remains adherent to conventional notions of gender’ will continue, with the continuing result of diplomacy ‘continu[ing] to be a sphere rife with power dynamics and privileges’: para 8, *ibid*

Finally, linking policymaking that has discriminatory effects on women with the importance of equal participation of women in political and public life, Dr Catherine O’Rourke, of Ulster University School of

³⁹⁰ They can certainly make a difference, and are an essential element to gaining equal participation of women in public life, however, stereotyping and inbuilt notions of authority and the authoritative voice militate against change being premised simply on a change to numbers.

Law, speaking in her personal capacity, said ‘there is no substitute for resourcing women’s grassroots organisations’:

They are the ones who are closest to the gender inequalities on a daily basis and are forging meaningful responses to it. Unfortunately, we have moved in all the wrong directions on this. Austerity has a hugely gendered impact, as has universal credit. We are moving backwards on those socio-economic issues and it will not be possible to empower women to participate politically if we continue to force women to live in poverty. Those issues are connected, it is key at family level, a community level and at the larger political level. That is what CEDAW is all about, connecting all those different levels of participation and empowerment: para 7, Witness Statement, Case ref: 012

Dr O’Rourke signals the importance of reframing leadership and qualifications for power and power-sharing. This, too, is key to changing the public and political landscape: those traditionally at the top are not those who necessarily have the expertise and qualifications for leading. Indeed, not infrequently the opposite may be true. Real change needs a changed focus on what abilities, capabilities and understandings are required. Real change at the top requires an appreciation of the nature of expertise, how it is gained and developed, and that the traditional and conventional way of assessing leadership qualities is wanting.

SUMMATION

EQUAL PARTICIPATION IN POLITICAL AND PUBLIC LIFE

Dr Samuel Johnson claims notoriety for this contention that a woman speaking publicly is akin to a dog dancing on its hindlegs.³⁹¹ This, in face of the extraordinary talent women display from public platforms - possibly what prompted Dr Johnson’s acerbic comment. Efforts are being made to address the problems of inadequate representation and the issues underlying this, the vast majority of which are external – as the witnesses point out, a culture that encourages abusive conduct toward women as candidates, as councillors and as members of Parliament. Reports and enquiries include the *UK Gender-Sensitive Parliament Audit 2018. Report of the gender-sensitive Parliament audit panel to the House of Commons Commission and the House of Lords Commission*,³⁹² with an agreed response from both Commissions published in June 2019 as the *UK Parliament Gender-Sensitive Report Response*.³⁹³

The audit itself provided statistics indicating that since 1997 the ‘percentage of female MPs has risen from 18.2% to 32% ... while the percentage of women in the House of Lords has increased from 7.1% to 26.1%’ over that same time span. The audit, conducted by a panel comprising four MPs, four members of the House of Lords, together with two members of staff of each House, set out recommendations ‘for addressing the challenges’ presented by the four barriers identified as potentially making it more difficult for women to enter the House of Lords or become MPs:

- The culture of Parliament, as highlighted in recent reports of bullying and harassment, and sexual harassment;
- Online threats and threats to physical security, in particular gender-based intimidation, harassment and violence against female parliamentarians and female candidates;
- The challenges that working in Parliament poses for family life, including the unpredictability of business and potentially long hours;

³⁹¹ [Quote by Samuel Johnson: “Sir, a woman's preaching is like a dog's walking...” \(goodreads.com\)](#) (accessed 9 July 2021). The precise quotation is: ‘Sir, a woman’s preaching is like a dog’s walking on his hind legs. It is not done well, but you are surprised to find it done at all.

³⁹² [UK Parliament Gender Sensitive Parliament Audit Report](#) (accessed 21 July 2021).

³⁹³ [UK Parliament Gender Sensitive Report Response Cover.indd](#) (accessed 21 July 2021).

- The financial impact of standing for Parliament.

The *Report* referred to the *Independent Inquiry Report* produced by Dame Laura Cox in relation to bullying and harassment of House of Commons staff and noted the ‘forthcoming reports on the experiences of Lords’ staff, members’ staff and members,³⁹⁴ and highlighted ‘the growing menace of online and physical threats to parliamentary candidates, and in particular the gendered nature of the abuse aimed at women candidates. In regard to this, the Report acknowledged a concern that this could make more difficult the goal of achieving a ‘better gender balance in Parliament’.³⁹⁵ Somewhat astonishingly, however, the panel in relation to this ‘menace’ simply:

... calls for the parliamentary authorities to take steps to ensure that MPs, members of the House of Lords and all staff are aware of the support available from their local police and the Parliamentary Liaison and Investigation Team to address abuse and threats via social media.³⁹⁶

This reflects the concern raised by Dr Collignon and others as to the damage having already been done, with its consequent impact, the reticence of women MPs as to reporting the abuse to police, and failure of police to take the abuse seriously: Witness Statement, Case ref: 006 It also fails to acknowledge that the abuse does not come from ‘outside’ the parliamentary arena, but from within it and, as witnesses before the Tribunal noted, from fellow MPs or in local politics from fellow councillors. What of action within the arena to stop the abuse before it occurs? What of responsibility placed upon those engaging in the conduct, rather than upon those subjected to it?

Consultation on the *Report* resulted in a commitment by the respective Commissions ‘to monitoring and publishing progress against ... priority recommendations on an annual basis’ and, ‘more broadly’ affirming the audit ‘as the first in a series’, the expectation being for ‘our successors to repeat the exercise regularly, and thereby monitor progress against the report in its totality’.³⁹⁷ The agreed action plan, including ‘much good work already underway’ and focusing ‘on those recommendations that fall within the remit of the Commons Service and the Lords Administration’, prioritised, ‘in particular’:

- Developing a parliamentary policy for children and families, informed by good practice in other parliaments; and facilities which support the policy (recommendations 24 and 25 – ...)
- Responding to the Cox report, and those of the forthcoming inquiries, in relation to bullying, harassment and sexual misconduct (recommendations 31 and 32 – ...)
- Awareness of the support available to MPs, peers and all staff to address abuse and threats via social media, and keeping this support under review (recommendation 34 – ...)
- Making information more readily available and more clearly signposted on the different groups or organisations in Parliament with specialist knowledge, to support parliamentarians to take account of gender impacts in their work (recommendation 45 – ...)

Parliament has also established ‘Workplace Equality Networks’ designed to ‘provide an opportunity for groups of people to discuss and consider issues relevant to their situation or of interest to them ... WENs

³⁹⁴ *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report – Dame Laura Cox*, 15 October 2018, [dame-laura-cox-independent-inquiry-report.pdf \(parliament.uk\)](#) (accessed 21 July 2021).

³⁹⁵ See also *Implications of the Dame Laura Cox report for the House’s standards system – Initial proposals*, 5th Report Session 2017-2019, [House of Commons standards system \(interim proposals\) \(parliament.uk\)](#) (accessed 21 July 2021).

³⁹⁶ [Women in Parliament: new report highlights progress and recommends new measures - UK Parliament](#), 20 December 2018 (accessed 21 July 2021).

³⁹⁷ *Ibid*, p. 1. The *Response* then goes on to address each of the *Report’s* recommendations in full.

can be useful forums for groups protected by equality legislation’ but are not limited to those bearing ‘protected characteristics’, including those interested in the work of the WENs.³⁹⁸ Some years earlier, in 2014, the Parliament produced a report *Improving Parliament – Creating a Better and More Representative House*,³⁹⁹ stating ‘all political parties agree that there is much more to do to create a modern, aspirational and representative Parliament’ and recommending a standing Women and Equalities Select Committee, subsequently established.⁴⁰⁰ The Speakers Conference on Parliamentary Selection indicates sessions dating from 2008-2009 and 2009-2010, with data from each political party on candidate selection.⁴⁰¹ As no further reports appear at this site, to which those accessing ‘women and Parliament’ information, it seems the Speakers Conference is no more or is no longer active. As all witnesses before the Tribunal who addressed the issue of women and politics were dissatisfied with women’s representation, it is apparent that the activity undertaken by the Parliament and, hence, the Parliamentary parties and their constituency bodies is insufficient.

Further, the work of Alexandra Pavliuc resonates in its reflections on male and female styles of communication, et al, reminiscent of the work of Carol Gilligan published *In a Different Voice*⁴⁰² and that of Dale Spender in relation to the internet and its development through tools such as Google:⁴⁰³ just as the dictionary was composed by men,⁴⁰⁴ so that it reflected and continues to reflect male concerns and language as pre-eminent, so too search engines if built and compiled by male technologists and technicians will reflect or prioritise male sources and resources. This impacts on the world as a whole, individual societies, and upon the women and men operating within those societies and girls and boys educated within them. This in turn will be reflected in political and public life. Dr Cassidy’s proposals and Malini Mehra’s intervention are applicable to all socio-political spheres and institutions, including the judiciary, and Dr O’Rourke’s insightful signalling the need to recognise and affirm in a redrawing of the nature of leadership and where expertise is located bespeaks the necessity for redrawing qualifications for power.

8. Women and peace and security

CEDAW Committee raised the following matters:

- Concrete measures to ensure effective participation of women in post-conflict peace-building and transitional justice mechanisms in Northern Ireland;

Additional matters to consider:

³⁹⁸ [Workplace Equality Networks - UK Parliament](#) (accessed 21 July 2021).

³⁹⁹ *Improving Parliament – Creating a Better and More Representative House*, July 2014, [appgimprovingparliamentreport.co.uk](#) (accessed 21 July 2021); [APPG-Women-In-Parliament-Report-2014.pdf \(appgimprovingparliamentreport.co.uk\)](#) (accessed 21 July 2021).

⁴⁰⁰ ‘Recommendations’, [APPG-Women-In-Parliament-Report-2014.pdf \(appgimprovingparliamentreport.co.uk\)](#) (accessed 21 July 2021); [Women and Equalities Committee - Summary - Committees - UK Parliament](#) (accessed 21 July 2021).

⁴⁰¹ [Speaker's Conference on Parliamentary Representation](#) (accessed 21 July 2021).

⁴⁰² Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development*, Harvard University Press, Harvard, MA, 1982; further on the importance of women’s participation in the polity and in particular in the assurance of true democracy, see Carol Gilligan and Naomi Snider, *Why Does Patriarchy Persist?. Polity Press, Cambridge, UK, 2018*; Carol Gilligan and David AJ Richards, *Darkness Now Visible – Patriarchy’s Resurgence and Feminist Resistance*, Cambridge University Press, Cambridge, UK, 2018.

⁴⁰³ Dale Spender, *Nattering on the Net: Women, Power and Cyberspace*, Spinifex Press, Nth Melbourne, Australia, 2003.

⁴⁰⁴ See Simon Winchester, *The Meaning of Everything: The Story of the Oxford English Dictionary*, Oxford University Press, Oxford, UK, 2003.

- The efficacy of the National Action Plan on Women, Peace and Security,⁴⁰⁵ how it is being implemented and progress made;
- Extraterritoriality and action on Women, Peace and Security, and UK capabilities.⁴⁰⁶

Speaking as project coordinator on behalf of Northern Ireland Women's European Platform (NIWEP), Jenna Monaghan referred to the failure in terms of the Women, Peace and Security agenda as 'a further example' of not moving forward on a women's rights agenda in Northern Ireland: para 4, Witness Statement, Case ref: 003 Dr Catherine O'Rourke, senior lecturer in human rights and international law at Ulster University School of Law and director of the Transnational Justice Institute in the School of Law, speaking in a personal capacity as an academic, referred to this gap, too. Alluding to the non-inclusion of Northern Ireland by the United Kingdom in its national action plan on Women, Peace and Security, she noted that this approach has been raised by the CEDAW Committee, as a limitation the United Kingdom has set upon itself by treating 'women peace and security' purely as a matter of foreign policy. Yet:

For a long time, advocates for Northern Ireland have been pressing for Northern Ireland to be included in the UK National Action Plan, in the hope that it would bring coordination, resources and more dedicated attention to post conflict specific issues around gender equality in Northern Ireland: para 2, Witness Statement, Case ref: 012

Dr O'Rourke added that in raising this in the 2009 periodic examination of the United Kingdom by the CEDAW Committee, Civil Society 'were successful in convincing the Committee that it was an important issue'. This led to the CEDAW Committee calling upon the UK to 'include Northern Ireland in its national action plan and security activities'; notably, this was 'the first time the CEDAW Committee held state party to account on its Women, Peace and Security activities': para 2, *ibid*

That the Committee has 'continued to raise this issue and the UK continues to decline to consider its women, peace and security activities [brings into question] the commitment of the UK' on these matters generally, 'especially if it is unwilling to address post conflict gender issues in its own jurisdiction'. Dr O'Rourke said that the 'lack of a coherent response to post conflict gender issues in Ireland' indicates a 'real failure at policy and resourcing level', with 'post conflict institutions and issues including transitional justice and accountability for past human rights violations, resourcing and peace building work being questioned, not least because women's organisations are at the front line of most of these activities and there has not been a strong effort from the UK government to include Northern Ireland in those activities': para 3, *ibid*

She referred to CEDAW Committee General Recommendation 30⁴⁰⁷ which provides 'authoritative guidance to States parties on legislative, policy and other appropriate measures to ensure full compliance with their obligations under the Convention to protect, respect and fulfil women's human rights':

It also builds upon principles articulated in previously adopted general recommendations. 2. Protecting women's human rights at all times, advancing substantive gender equality before, during and after conflict and ensuring that women's diverse experiences are fully integrated

⁴⁰⁵ [UK National Action Plan \(NAP\) on Women, Peace and Security \(WPS\) 2018 to 2022: report to Parliament \(December 2018\) - GOV.UK \(www.gov.uk\)](#) (accessed 9 July 2021).

⁴⁰⁶ [FCO1215-NAP-Women-Peace-Security-ONLINE V2.pdf \(publishing.service.gov.uk\)](#) (accessed 9 July 2021); [Informing-the-new-UK-NAP-on-WPS-GAPS-submission-April-2017.pdf \(gaps-uk.org\)](#) (accessed 9 July 2021).

⁴⁰⁷ [Refworld | General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations](#) (accessed 21 July 2021); [GR 30 Final design \(iwrap-ap.org\)](#) (accessed 21 July 2021).

into all peacebuilding, peacemaking and reconstruction processes are important objectives of the Convention.⁴⁰⁸

The General Recommendation goes on to reiterate the Committee's 'repeatedly having expressed concern' about:

- the gendered impacts of conflict;
- women's exclusion from conflict prevention efforts, post-conflict transition and reconstruction processes;
- the failure of reports of States parties to provide sufficient information on the application of the Convention in such situations; and
- the implementation of States parties obligation of due diligence in respect of acts of private individuals or entities impairing the Convention's enshrined rights.⁴⁰⁹

Consistent with Dr O'Rourke's evidence, that the intention is to include domestic and extraterritorial jurisdictions within the scope of the General Recommendation⁴¹⁰ is clear from paragraph 12 which provides:

12. The Committee recommends that State parties:

- (a) Apply the Convention and other international human rights instruments and humanitarian law comprehensively in the exercise of territorial or extraterritorial jurisdiction, whether acting individually or as members of international or intergovernmental organizations or coalitions;
- (b) Regulate the activities of all domestic non-State actors within their effective control who operate extraterritorially, and ensure full respect of the Convention by them;
- (c) Respect, protect and fulfil the rights guaranteed by the Convention, which applies extraterritorially, as occupying Power in situations of foreign occupation.⁴¹¹

Dr O'Rourke referred, in this respect, to the 'power sharing executive model' applied in Northern Ireland. She observed that this meant that the executive 'must include members of the key nationalist and unionist groupings, which is very important in terms of securing the peace agreement'. However, she said, this meant that 'other identities are excluded such as gender identity':

Unfortunately, where these otherwise opposing groups agree is on regressive gender attitudes, whether that be abortion or same sex marriage, we have a litany of them. There are conflict legacy issues about political representation which are pretty exclusionary to women and gender rights and beyond that there are ongoing legacies of violence. For example, paramilitary control that continues in particular communities is consistently exercised to silence women and gender minorities. When it comes to dealing with outstanding human rights violations, which happened during the conflict, that is a process that has been very politically contentious. It has been wholly exclusionary of any kind of gender perspective despite the fact that women have been at the forefront, particularly for the care issues that came of it: para 4, *ibid*

⁴⁰⁸ *Ibid.*

⁴⁰⁹ *Ibid.*

⁴¹⁰ Just as this follows in relation, for example, to Security Council Resolution 1325: [Security Council Resolution 1325 - UNSCR](#) (accessed 9 July 2021).

⁴¹¹ [Refworld | General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations](#) (accessed 9 July 2021).

She gave the sample of ‘caring for survivors and continuing to demand accountability for the deaths of their loved ones’. This, she observed, is ‘a heavily gendered issue but it is never approached with a gender perspective and that has presented an ongoing challenge’. This is, she said, ‘a place where the CEDAW perspective would be very helpful to begin to surface those gender issues that are never talked about in terms of conflict legacy’:

Every conflict is different. We had our own conflict dynamics but there has been no effort to take a gendered approach to dealing with the past, to deal with the accountability issues and there has been no official mechanism by which we can ask meaningful questions such as what was the nature and extent of sexual violence in the Northern Ireland conflict? There has been no official mechanism by which we can ask meaningful questions such as what was the nature and extent of sexual violence in Northern Ireland conflict ... para 5, *ibid*

That the evidence is unsystematic, limited, coming from an occasional newspaper report and from various women’s organisations as Dr Rourke notes, does not rule out its importance. Indeed, it serves to highlight the need to address this compelling dimension of the conflict, to dig down to unearth systematic, comprehensive evidence, not simply to pass it over as if it does not count. Yet passing over is what happens: para 5, *ibid*

Dr Jennifer Cassidy’s view was that a ‘feminist foreign policy’ is essential to ensure a transition to a peaceful (or at least more peaceful) world. Central to this is the acknowledgement in principle and in practice of women as equal on the home ground and abroad, to be brought about by the application of a process ‘consisting of three R’s: rights, resources and representation’. Resources are available, she said, to secure and implement the rights of all women, making sure ‘that women are not the ones left behind in every crisis such as with Covid, women losing their jobs, taking on all the burden of the household, of the childcare, ... suffering and [without] acknowledgement’. She said it is essential to ‘look at how men have shaped foreign policy and have shaped decisions and how can we change them? A feminist foreign policy based on rights, resources and representation needs to reflect the UK’s values and beliefs, with women centrally involved in the discussion’. For her, women in the frontline of diplomacy, parliamentary representation and public office is essential, as well as the question ‘where are the women behind the scenes’ being a core part of the policy: paras 13-15, 18, Witness Statement, Case ref: 021

Here, it is equally important to ensure that a blinkered vision of what ‘counts’ is avoided, an assurance that can be reached *only* by including women as equals in negotiations. Dr O’Rourke observes that the potential for resolution lies in ensuring that post-conflict evidence is not overlooked, ignored, downplayed or forced to remain in the recesses of the hearts, minds and souls of those who experienced the struggle. Again referencing the situation in Northern Ireland, she points out that the evidence ‘we have is very limited, it is unsystematic, it comes from different women’s organisations and occasional newspaper reporting, but it is not consistent. How do you surface it and what would that look like?’ She goes on to recount that in talking with ‘most women about their gendered experience of the Troubles, they explain aspects of living in a violent society in which the police could knock down their front door and the paramilitary could intimidate their children. They will discuss efforts to mobilise and support the community’. Here, she makes the vital point that the sexual violence suffered is important and must be recognised in all its dimensions of horror, yet at the same time:

It is important not to misrepresent the gendered nature of experience by focusing only on sexual violence. How we begin to surface these gendered experiences, particularly through official processes to deal with the past, is a place where CEDAW or General Recommendation

30⁴¹² would be hugely valuable. If the UK government can commit to that in a meaningful way, it would transform the entire approach to dealing here with the past ...: para 5, ibid

SUMMATION WOMEN AND PEACE AND SECURITY

We cannot achieve democracy and lasting peace in the world unless women obtain the same opportunities as men to influence developments at all levels of society ...

Thorbjorn Jagland, former Prime Minister of Norway –
citation upon the conferring on
President Ellen Johnson Sirleaf, first woman to be elected president in Modern Africa
and her compatriot, peace activist Leymah Gbowee
of the Nobel Peace Prize 2011⁴¹³

This evidence is a stark reminder of the importance of granting equal weight to women's voices and participation in conflict and post-conflict situations. Where matters central to the damage inflicted during the conflict, and an intrinsic part of the conflict and the continuing hurt of the aftermath, is excluded through the lack of attention to women, women's voices, women's concerns, women's rights and women's rights as human rights, human rights as women's rights, no conflict resolution of any real value or lasting nature can occur. This is obvious. At least, the elevation of men's voices, views, concerns, rights to the wholesale exclusion of fifty percent of the population – with an equal right to be not simply consulted, but an integral part of the community being implicated in and a part of the conflict – should be obvious. Sadly, it appears not. Elevating male voices and participation to the exclusion of women ensures a partial addressing only of the issues based in, giving rise to and arising out of the conflict, an approach that does not resolve any conflict and indeed can generate its own afresh, or solidify or leave differences festering, simmering or seething under the surface simply to boil up in some other form or guise, or even in precisely the same way as before.

At the end of the First World War whilst the leaders of nations met in France, at Versailles, women were meeting in Switzerland. The women's alternative and parallel conference took place in Zurich, because they were refused passage to France, as they invited representatives from all nations involved in the conflict, including women from the Axis countries. It was this that led to their being persona non grata

⁴¹² II. Scope of the general recommendation 4. The general recommendation covers the application of the Convention to conflict prevention, international and non-international armed conflicts, situations of foreign occupation and other forms of occupation and the post-conflict phase. In addition, the recommendation covers other situations of concern, such as internal disturbances, protracted and low-intensity civil strife, political strife, ethnic and communal violence, states of emergency and suppression of mass uprisings, war against terrorism and organized crime, which may not necessarily be classified as armed conflict under international humanitarian law and which result in serious violations of women's rights and are of particular concern to the Committee. For the purpose of the present general recommendation, the phases of conflict and post-conflict have at times been divided, given that they can encompass different challenges and opportunities with regard to addressing the human rights of women and girls. The Committee notes, however, that the transition from conflict to post-conflict is often not linear and can involve cessations of conflict and then slippages back into conflict, a cycle that can continue for long periods: [Refworld | General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations](#) (accessed 8 August 2021); [Guidebook on CEDAW general recommendation no. 30 and the UN Security Council resolutions on women, peace and security | UN Women – Headquarters](#) (accessed 8 August 2021); [Publications | UN Women – Headquarters](#) (accessed 8 August 2021).

⁴¹³ The Nobel Peace Prize 2011 was conferred upon three persons, the third being Tawakhol Karman of Yemen, pro-democracy campaigner - see Carol Gilligan and David AJ Richards, *Darkness Now Visible – Patriarchy's Resurgence and Feminist Resistance*, Cambridge University Press, Cambridge, UK, 2018, p.67.

in Paris.⁴¹⁴ The Women's International League for Peace and Freedom,⁴¹⁵ established in 1915, was one of the leading participants in the Zurich Conference. The principle followed was that talks should be had across what had been the divide of war. Unlike the divvying up of spoils that was occurring in Versailles, the talks over the Swiss border were aimed at creating a permanent peace. Hence, on 14 May the leaders who saw themselves and their countries as the victors emerging from the destruction of the 1914-1918 war, received a formal despatch from the women meeting in Switzerland, stating:⁴¹⁶

WOMEN DENOUNCE TERMS

Conference at Zurich Adopts Resolution Denouncing Pact

Paris, May 14

The Peace Conference today received from the Women's International Conference for Permanent Peace at Zurich the Resolution adopted yesterday by the conference, denouncing the terms of peace with Germany. The resolution declares that the terms sanction secret diplomacy, deny the principles of self-determination, recognize the right of the victor to the spoils of war, and violate the principles of justice.

The conference at Zurich also telegraphed to the Peace Conference a resolution deploring the famine and pestilence in Central and Eastern Europe and urging that the inter-allied war organization be transformed immediately to an international peace organization to deal with food, finance and transport throughout the world.

As war broke out again in 1939, running through with further destruction and death to 1945,⁴¹⁷ it is evident that if the Versailles leader were listening to any other than their own voices, they were certainly paying no attention to the Zurich communique. The inevitable retort to a contention that listening to the women may have the consequences of Versailles, is to raise the vision of a Margaret Thatcher and her Falklands War, the sinking of the Belgrano, and other any other warlike images able to be conjured up. Even if it were true that women are 'no better' at diplomacy than men, that is no answer to eliminating them almost altogether from the table. Nor does it answer the contention that upon receiving the message from Zurich, it would have done better to read, listen and follow through.

Some seventy years later, at Greenham Common Airforce Base, attention was paid – eventually.⁴¹⁸

Begun with the march from Cardiff of Welsh women of Women for Life on Earth, the women of Greenham Common remained in situ from 5 September 1981, circling the RAF Airbase. For more than

⁴¹⁴ Women's International League for Peace and Freedom, *Report of the International Congress of Women*, Zurich, Switzerland, 12 May-17 May 1919, [BvS ICW 1919.jpg \(huntdarkness.com\)](#) (accessed 18 August 2021).

⁴¹⁵ [WILPF – Women's International League for Peace and Freedom](#) (accessed 18 August 2021) - Founded in The Hague (the Netherlands) in 1915 and granted consultative status with the United Nations Economic and Social Council (ECOSOC) in 1948 the Women's International League for Peace and Freedom (WILPF) and its members are united in our determination, aims and goals to study, make known the causes of war and to abolish the legitimization and practices of war. Toward this purpose, we unite our world efforts by working to build the just foundations on which a durable global peace, a just economy and social justice are achieved for all. A. Name The name of this organisation shall be the Women's International League for Peace and Freedom, hereinafter referred to as WILPF. WILPF is a non-profit association independent of all political parties, and of unlimited duration. With headquarters in the Canton of Geneva (Switzerland), WILPF is governed by the constitution (the "Constitution") and, secondly, by Article 60 et seq. of the Swiss Civil Code: [WILPF Constitution-and-By-Laws Web.pdf](#) (accessed 18 August 2021).

⁴¹⁶ [BvS ICW 1919.jpg \(huntdarkness.com\)](#), *ibid.*

⁴¹⁷ [World War II Timeline From 1939 to 1945 \(thoughtco.com\)](#) (accessed 18 August 2021).

⁴¹⁸ *Greenham Common Women's Peace Camp 1981-2000*, [Greenham Common Women's Peace Camp \(greenhamwpc.org.uk\)](#) (accessed 18 August 2021); Sarah Hipperson, *Greenham – Non-Violent Women v The Crown Prerogative*, Greenham Publications, London, UK, nd.

ten years, through to the early 1990s, their demand that Cruise Missiles be removed from the Common had an impact. After arrests, court hearings, successes and continued demonstrations reported around the world, and living hand to mouth whatever the weather, when the Cruise Missiles departed with the USAF personnel, back to the US in 1991/1992, this testified to the power of women's voices. Not only did the missiles go. The agreement between the Soviet Union and the United States included the clause: 'Conscious that nuclear weapons would have devastating consequences for mankind', taken directly from the Greenham Common Women's Statement of Principle.

What the voices of activist women show, and those of women working at grassroots and at varying levels of the polity, is that ignoring what women have to say, women's expertise and what women know is not just short-sighted. It's foolish.

As the evidence of witnesses affirmed, it is not only in pre- or post-conflict that women's voices must be heard, listened to and taken into account fully and effectively. And it's not just 'taken into account'. Rather, women and women's voices, women's participation on a level of equality that recognises them as equal in authority is essential as central to policy formulation at all times – in peacetime too. The remarkable women appearing at the Tribunal are a testament in itself. As Dr Cassidy said, a foreign and domestic policy that follows through with practice incorporating women at every level of power, policy formulation and politics is not simply to be called into action at specified times. It is essential as a matter of course.

9. Education

CEDAW Committee raised the following matters:

- Measures to encourage girls to pursue STEM subjects.
- Age-appropriate education on sexual and reproductive rights
- Human rights education - The Aims of Human Rights Education

Additional matters to consider:

- COVID-19 impact on education, for example, unequal access to online learning
- Cuts to nursery education funding and maintained nursery staff numbers, cuts to Sure Start and its entire elimination in some or perhaps many areas and regions,
- Cuts to adult education and learning, and further education⁴¹⁹
- Aid cuts and impact on girls' education globally
- Impact of withdrawal from the European Union – research, funding and collaboration

The impact of 'a very harmful gender stereotype or norm' in educational opportunities and choices for girls and boys arose in Freelance Consultant Sam Smethers' evidence. This features in 'what is desirable in subject choices and career paths for boys and girls', notions 'becoming embedded early on':

Often education professionals and parents do not realise what is happening in early years settings, but by the time children come to choose their A-Levels or degrees, girls are dropping out of [particular] subjects': para 15, Witness Statement, Case ref: 030

Those STEM subjects⁴²⁰ – Science, Technology, Engineering and Mathematics – were the focus of Alexandra Pavliuc, speaking in her personal capacity, said that whilst her current institution, OII (Oxford Internet Institute)⁴²¹ has 'a social science focus', with more female than male scholars, her previous education in Data Science suffered from a 'stark gender disparity', with some 70% of students on her

⁴¹⁹ [SMC Investing in 'what works' activity in Further Education and Adult Learning \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/94444/Investing_in_what_works_activity_in_Further_Education_and_Adult_Learning.pdf) (accessed 9 July 2021).

⁴²⁰ [What Are STEM Subjects? | STEM Subjects \(successatschool.org\)](https://www.successatschool.org/what-are-stem-subjects/) (accessed 9 July 2021).

⁴²¹ [OII | Homepage \(ox.ac.uk\)](https://www.oii.ox.ac.uk/) (accessed 9 July 2021).

Master's course being male. To promote gender equality in STEM subjects, she 'would encourage education that introduces all children, including young girls, to technology and tech-related skills such as coding, to present STEM careers as a viable option for girls': Witness Statement, Case ref: 033

Yasmin Rehman, campaign member of One Law for All⁴²² and providing evidence in a personal capacity, introduced the question of 'faith schools' and 'faith schooling'. She adverted to the rights embodied in the UN Convention on the Rights of the Child, signed by and ratified by the United Kingdom on 19 April 1990 and 16 December 1991, respectively, and which came into force on 15 January 1992.⁴²³ Article 15, to which she referred, provides:⁴²⁴

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Confirming she 'a woman of faith, a practising Muslim, but also a human rights activist [recognising] tensions between freedom of religion and other freedoms [s] part of [her] daily existence' she added that she also sees it 'on a wider platform, in terms of struggles within Islam and Muslim communities, and particularly within the dominant interpretations of Islam (Wahabi and Shia and some Sunni forms of Islamic belief) and what that does in terms of religious and other freedoms': para 5, Witness Statement, Case ref: 013

It is necessary, she said, to 'take a much wider look at what faith-based abuse is, [for] the position of the UK is to look at spirit possession and witchcraft, particularly within African Christian communities. However, in seminars I hosted in 2012-2013 with the Muslim Institute, a number of Muslim community members, scholars and I also looked at faith-based abuse in relation to child sexual exploitation, forced marriage, polygamy, honour-based abuse, and abuse in religious and educational institutes ('madrasa' and faith schools):

One incredible point of debate was Article 31 of the UN Convention on the Rights of the Child, which recognises the right of every child to rest, leisure, play, recreation activities, and free and full participation in cultural and artistic life. Several Muslim parents felt that their children's lives were curtailed by religious practices. Indeed, children go to school all day, then go to 'madrasa' for several hours in the evening, which inhibits their right to play: para 25, *ibid*

She said that faith schools 'are a focus of the campaigns of One Law for All and National Secular Society,⁴²⁵ campaigns which have 'challenged the enforced wearing of hijab by children within faith schools and unequal treatment of girls and boys':

This has been difficult as, every time certain faith-based practices are challenged, one is accused of being anti-Muslim or Islamophobic. We need to be really careful that we do not, as a society,

⁴²² [Home - One Law for All](#) (accessed 2 July 2021).

⁴²³ [United Nations Convention on the Rights of the Child \(UNCRC\): how legislation underpins implementation in England - GOV.UK \(www.gov.uk\)](#) (accessed 2 July 2021).

⁴²⁴ UN Convention on the Rights of the Child, [Layout 1 \(unicef.org.uk\)](#) (accessed 2 July 2021);

⁴²⁵ [Data and statistics - National Secular Society \(secularism.org.uk\)](#) (accessed 8 August 2021).

silence dissent and silence a call for our rights to be recognised and delivered by the statement and those in power: para 26, *ibid*

Pragna Patel raised the issue of education and faith schools, too. Observing that an issue Southall Black Sisters (SBS) 'has tackled is the resurgence of fundamentalism' in the United Kingdom, she noted that this is, 'of course, part of a much wider global phenomenon, but the impact of this is particularly devastating for women and their rights, because at the heart of all religious fundamentalist movements is the need to control women and limit access to their rights'. She added that SBS has seen 'rising demands made by religious conservatives and fundamentalists for gender-segregation in schools, universities and other public spaces, for justice systems to be aligned with religious law'. Thus, a direct impact can be had on the school system, yet a broader influence can arise from what occurs within the community as a whole:

As an organisation, we have been particularly concerned by the ways in which in our communities, women are diverted away from the formal legal system, which is seen to be incompatible with religious beliefs and values. Those who define those religious beliefs and values and fundamentalists who have particularly monolithic dogmatic, literal and regressive interpretations of religion. These interpretations are imposed on entire constituencies within minority communities which in turn has increased pressure on minority women to forgo the formal justice system as a site of constation of their rights and instead to use community and religious arbitration forums to resolve family disputes in particular.

In such forums women are denied their fundamental rights and freedoms and are pushed back into situations of abuse and oppression. Our submissions to various independent and government inquiries on access to justice provides countless examples of the ways in which fundamentalist interpretations of religion has led to women being reconciled with abusive e partners manly because the priority is to maintain the patriarchal family structure. Women are told that if they transgress from religious norms there will be severe consequences and so in effect, they are silenced from speaking out and the gains that have been made to progress women's rights are in danger of being wiped out: par 38, Witness Statement, Case ref: 023

These influences within the family will affect how boy and girl children see themselves, how they perceive their opportunities and rights, and will feed back into the school system and their expectations. This has an influence on both boys and girls: girls' expectations for themselves and their growing up, and boys learning that their importance outweighs that of their sisters and other girls.

Yasmin Rehman added a concern as to the importance of religion and religious beliefs being protected under the Equality Act. However, she said:

... there are few protections for those who leave religion or remain within a faith community but challenge religious orthodoxy. This can be seen from the allegations of Islamophobia often levelled against those who challenge literalist interpretations of faith and imposition of gender norms that is, dress codes, enforced fasting, attacks on minorities etc. This is something I and others have experienced first-hand. There are already laws to protect religious majorities and minorities. The laws relating to religion or belief, in my view, need to be extended to leaving religion: para 5, Supplementary Witness Statement, Case ref: 039

This is a concern in the wider community, however, it too can feedback into education and schooling, where a girl may wish to dress in a way that does not conform to the 'dress code' or other gender norms sought to be imposed. Protection for those who take this route are required, too.

This leads into conditions of schooling as a whole for girls from the youngest in preschool, nurseries or kindergartens, into primary school and secondary school or college, their development as adolescents and growing into young women. Here, the issue of opportunity and careers advice and prospects was raised. Simultaneously, however, the problems of online abuse and sexualisation of conduct amongst school children, and sexual harassment at school, as well as bullying. Sexting and cyberflashing, raised by Dr Kelly Johnson, interfere with girls' schooling and create an atmosphere of misogyny. Saskia Garner, referencing the work of the Suzy Lamplugh Trust, emphasised similar concerns. Dr Collignon spoke of this, too, in the context of girls' and women's ambitions for entry into politics. She drew attention to the importance of young women 'starting out on their political careers ... with different characteristics and backgrounds' and the importance of 'coming forward to run for politics'. However, she said, 'the abuse and prejudice against them start from an early stage, when they begin getting involved with politics, maybe in university'.

Issues of access to online learning were raised in the context of rural women and girls. Nick Newland of Associated Country Women of the World raised access (or lack of access) to the internet in relation to higher education, and with Covid 19 all levels of education have been affected: para 4, Witness Statement, Case ref: 011. Albeit impediments to access to schooling by lack of transport in rural and agricultural areas might have been minimised by the pandemic's bringing about the change from face to face classrooms to online teaching and learning, this simply created (or exacerbated) another obstacle. Online classes and study brought to attention not only the matter of children's education having been affected during the pandemic by problems of Wifi and Broadband, but the need to have internet access as an educational tool even when classroom teaching and learning recommence.

Poverty and disadvantage within the education sector have been highlighted too, with the importance of free school meals being widely publicised by the efforts of Manchester United footballer Marcus Rashford.⁴²⁶ His efforts ultimately led to an extension of the free school meals system during the schools' shutdown, after local government authorities said they would fund the extension if funds were not forthcoming. Marcus Rashford's efforts to mitigate disadvantage was not, however, without initial refusal and, particularly in light of the Alston Report⁴²⁷ on extreme poverty in the United Kingdom, particularly impacting on children, unfounded criticism on the part of some in central government.⁴²⁸

SUMMATION EDUCATION

... regardless of their own gender, people tend to assume that men in historically male-dominated positions of power are more competent than women, unless this assumption is explicitly contradicted by further information. And when it is so contradicted, women are liable to be disliked and regarded, in particular, as 'interpersonally hostile', a measure [encompassing] being perceived as conniving, pushy, selfish, abrasive, manipulative, and untrustworthy ... How could a woman win, given the prevalence of these biases?

Kate Manne, *Entitled – How Male Privilege Hurts Women*
Allen Lane, London, UK, 2020, pp. 161-162

⁴²⁶ [Marcus Rashford calls for government free school meals U-turn - BBC Sport](#) (accessed 2 August 2021).

⁴²⁷ [EOM_GB_16Nov2018.pdf \(ohchr.org\)](#) (accessed 2 August 2021).

⁴²⁸ [School meals: Cabinet minister defends refusal to extend holiday scheme - BBC News](#) (accessed 2 August 2021); [Headteachers back Marcus Rashford over Christmas holiday free school meals | Tes](#) (accessed 2 August 2021); [Free school meals: the Tory MPs defending refusal to support campaign | School meals | The Guardian](#) (accessed 2 August 2021); [School meals: Pressure mounts on government to reverse decision - BBC News](#) (accessed 2 August 2021).

Recognised by the UN Declaration of Human Rights 1948, education is a human right.⁴²⁹ The right of access to education, rights to education itself, and rights gained through education are embodied in CEDAW GR 36, affirming the importance of accessibility and availability, the vital requirement of affordability, and the need within the educational context and setting, for adaptability.⁴³⁰ This recognises, as was said by Lord Benholme in *Jex-Blake and Ors v Senatus of the University of Edinburgh*⁴³¹ not only the pure joy and opportunities that come within the scope of the educational right, but that ‘... knowledge is power’. Certainly, that Lord Benholme said it in a judgment denying women the right to attend university - to continue (Sophia Jex-Blake) or take up (Ors) the study of medicine, was more than unfortunate. Yet it reflected a disposition that can too often arise, namely that of denying knowledge to those who are to be ‘kept out’ of full participation in the polity.

Although it may be posited that such an attitude would not be countenanced today – after all, women did eventually win the right to enter universities and the professions, yet elements remain that reflect to some degree the reception with which Sophia Jex-Blake was met when she succeeded so well in her first year of medicine at Edinburgh.⁴³² So many elements arise in relation to education: subjects taught, opportunity during school and college, as well as in higher education, stereotyping, sex education, online violence and abuse, sexual harassment, imposition of class dogma, social values and cultural beliefs that may hinder girls’ development, simultaneously influencing boys’ development – promoting notions of male superiority and entitlement.⁴³³

The right to education, prohibiting discrimination against women and girls, is contained in CEDAW Article 10, which states:⁴³⁴

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

⁴²⁹ See also CEDAW GR 36, [OHCHR | General Recommendations](#) (accessed 2 July 2021).

⁴³⁰ Ibid.

⁴³¹ *Jex-Blake and Ors v Senatus of the University of Edinburgh* (1873) 11 McPh 784, at 786.

⁴³² For sources, see Jocelynne A. Scutt, *Women and the Law – Cases and Commentary*, Law Book/Thomson Regulatory, Sydney, Australia, 1990, pp. 4-7, 39.

⁴³³ See Kate Manne, *Entitled: How Male Privilege Hurts Women*, Allen Lane, London, 2020

⁴³⁴ [OHCHR | Convention on the Elimination of All Forms of Discrimination against Women](#) (accessed 2 July 2021).

- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Detailed and comprehensive in its terms, Article 10 has been enhanced by General Recommendation 28, which rests on core obligations under Article 2 of CEDAW in the context of harms likely to come to women and girls simply by reason of being women and girls, which can impact on educational access and opportunities.⁴³⁵

21. States parties in particular are obliged to promote the equal rights of girls since girls are part of the larger community of women and are more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence. All these situations of discrimination are aggravated when the victims are adolescents. Therefore, States shall pay attention to the specific needs of (adolescent) girls by providing education on sexual and reproductive health and carrying out programmes that are aimed at the prevention of HIV/AIDS, sexual exploitation and teenage pregnancy.

CEDAW Article 2 requires restating here, for it is important that girls have sex education, just as it is for boys. It is equally important that all working in the field of adolescent health, protection and safety be attuned to these issues, too, in order to work responsibly and supportively where girls and young women may be being exploited.⁴³⁶

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

⁴³⁵ [Refworld | General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#) (accessed 2 July 2021).

⁴³⁶ [OHCHR | Convention on the Elimination of All Forms of Discrimination against Women](#) (accessed 2 July 2021).

- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

The breaches of rights imposed upon young women – girls – in Rotherham, alluded to by Zlakha Ahmed of Apna Haq, indicates the vital importance of recognition of this obligation on police, local government officers and others. Schoolgirls who were being subjected to sexual imposition, exploitation, rape and abuse were ignored by those who ought to have had their interests at the centre of their work. Rather, the ‘appalling abuse’ was allowed to continue because racist, classist and sexist assumptions were made about the victim/survivors, allowing the perpetrators to continue their abuse.⁴³⁷ The estimate made by Professor Alexis Jay in her independent report into the handling of these crimes was that between 1997 and 2013, 1400 children were sexually exploited in Rotherham, without action by social services or police.⁴³⁸ Yet despite attention at long last being paid to the abuses and dereliction of duty, as Ms Ahmed observed, social workers and police ‘are not looking for victims of sexual violence’ in the communities of Black and minoritised young women and girls: paras 15-17, Witness Statement, Case ref: 005

Continuing in the theme of educational rights and the duties of the state, GR 28 says further:

22. Inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. States parties are called upon to use exclusively the concepts of equality of women and men or gender equality and not to use the concept of gender equity in implementing their obligations under the Convention. The latter concept is used in some jurisdictions to refer to fair treatment of women and men, according to their respective needs. This may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities.

These principles go to the heart of reports of conduct and concerns within the education system, and to which attention must be paid so that all girls – whatever their background, whatever their class, race, ethnicity, religion, ableness or disability, sexuality ... - are enabled to access an education that provides them with full and fair opportunities for their futures. Reports of cyberflashing or cyberabuse and sexual harassment in schools demand effective government intervention. This is conduct is not only troubling in and of itself as evidence before the Tribunal attested, but it affects educational experience and outcomes, with the prospect of enormous damage to individuals and hence to the community and economy as a whole.

A Report by the National Education Union and Feminista⁴³⁹ found that ‘sexual harassment is prevalent in schools’ and ‘for many students ... is simply the norm’. Reports from students and teachers attested to the gendered nature of sexual harassment in the school setting, the ‘majority of cases involving boys targeting girls’:⁴⁴⁰

... 37% of girls report experiencing sexual harassment, compared to 6% of boys. Female students are also significantly more likely to describe multiple incidents and more severe cases of sexual assault. They are also less likely to dismiss their experience as ‘a joke’ ...

⁴³⁷ [Rotherham child abuse scandal - BBC News](#) (accessed 2 July 2021).

⁴³⁸ [Rotherham child sexual exploitation report: At a glance - BBC News](#) (accessed 2 July 2021); [Independent Inquiry into Child Sexual Exploitation in Rotherham \(1997 – 2013\) | theneedleblog \(wordpress.com\)](#) (accessed 2 July 2021).

⁴³⁹ [It's just everywhere - sexism in schools | NEU](#) (accessed 18 July 2021).

⁴⁴⁰ Ibid.

Sexual harassment at university is also the subject of concerning reports.⁴⁴¹ Furthermore, the use of 'sexist, misogynist language - which denigrates girls and femaleness - is commonplace in schools', with both female and male students reporting on the common use of language 'associating negative characteristics with being female': 'you throw like a girl', 'don't be a pussy' ... and more positive characteristics being associated with being male: 'man-up'. This language, it was found, was more likely to be 'targeted at male students', putting them down in association with female characteristics, or elevating their standing if seen as 'manly'. Female students, on the other hand, were 'more likely to be subjected to gendered sexual name-calling – such as “slut”, “slag” and “whore”'. This use of sexist language 'is also interlinked with homophobic bullying, students and teachers reporting phrases 'such as “that's so gay” being used by students to refer pejoratively to boys doing things stereotypically associated with girls'. It is unsurprising that on these aspects, the Report concludes:⁴⁴²

The accepted and often casual use of language that denigrates girls/ women/femaleness fuels harmful and narrow ideas about what it means to be a man or a woman in society today. It contributes to a conducive context for sexist attitudes and behaviours – including sexual harassment ...

Sexual harassment has a detrimental impact on girls' confidence and self-worth. Both students and teachers report that as a result of sexual harassment, girls learn to 'take up less space'; to position themselves at the edges (of corridors, playgrounds and classrooms). Girls also adopt strategies to avoid being noticed and singled out for unwanted attention, even if this means they miss out on more positive attention and recognition of their achievements.

The NEU/Feminista Report focuses also on stereotyping projecting 'false beliefs and over-generalisations about differences in girls' and boys' behaviour, preferences and abilities'. These, 'prevalent throughout society' create a serious imbalance in male-female relations, the world of employment, public office and the media, and in education, all fields of concern raised before the Tribunal. In focusing on education, gender stereotypes 'can have a deeply harmful impact on girls and boys, placing arbitrary restrictions on children's behaviour and aspirations while fuelling prejudice and discrimination'. In schools, this:⁴⁴³

... reinforces particular ideas about what is expected and acceptable behaviour from women and men: such as that women are weak and emotional, while men are strong and brave. [Yet] a significant proportion of teachers report that sexism is an everyday occurrence in the classroom, and that small, seemingly significant events together create an environment in which pupils of both sexes come to see each other as different.

Progression through school is affected, meaning that subject choices are influenced by gender stereotyping, the old saw that 'maths and science are for boys', 'art and English and other languages are for girls' remains embedded in thinking that can too often hold sway in the classroom along with the outside world. The impact is bad enough when it restricts girls' (and boys') choices. But the consequences can also promote, through 'sex segregation' in classes within the same school, inhibitions on 'the development of equal, respectful relationships between male and female students'. Certainly there may be and are changes. Nonetheless, the evidence of Alexandra Pavliuc, a scholar now working in social science but with a background in data science, confirms that greater efforts to ensure girls access to STEM subjects is essential. Bearing in mind her evidence, this Report indicates the distance to be travelled and the obligation resting upon government to effect it.

⁴⁴¹ [SWGGR1 Sexual-Harassment-in-the-Research-Higher-Ed.-National-Policies-Measures.pdf \(genderaction.eu\)](#) (accessed 2 August 2021).

⁴⁴² [It's just everywhere - sexism in schools | NEU](#) (accessed 18 July 2021).

⁴⁴³ Ibid.

CEDAW General Recommendation 36 further enhances the recognition of rights of women and girls to education, stating that education ‘plays a pivotal transformative and empowering role in promoting human rights values and is recognized as the pathway to gender equality and women’s empowerment’.⁴⁴⁴ The exclusion of girls from schooling and women and girls’ illiteracy rates was illustrated in statistical information, which the Committee confirmed indicated disproportionate disadvantage accruing to women and girls in education. This problem is one alluded to before the Tribunal, arising for poverty and class or cultural reasons: the lack of sanitary pads or tampons, a requirement that girls take on household chores and care for other siblings, or family beliefs in education being of no benefit to girls, or causing them to move beyond family expectations. This disadvantages girls as girls in schooling, and it creates future disadvantage. The disproportionate disadvantage lies in access to schooling, school retention rates, treatment at school and learning outcomes as well as in career choices. That girls and women are entitled to inclusive and equitable quality education is affirmed through linking GR 36 to the Sustainable Development Goals (SDG 4) which seeks to ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’.

This fits with concerns for rural women and girls’ educational access, and concerns for women in older years, and with the issue of disability – hidden and unhidden all raised by witnesses before the Tribunal. GR 36 recognises the importance of internet and communications technologies in the delivery of learning and the development of skills. It recognises that information and communications technologies provide ‘distinct benefits for girls and women with limited access to conventional forms of education and training, including those excluded through distance from school in rural areas, domestic work and parental responsibilities – recognising teenage pregnancy and problems of child marriage, and exclusion based on other social and cultural barriers.’⁴⁴⁵ This recognition brings with it the need for States parties to ensure that there is access to learning how to use these skills, and then having the opportunity to use them. The Wifi and Broadband issues raised by witnesses is vital here, and indeed the Committee emphasises the importance of recognising and catering for the needs of women and girls differently situated. Article 10 interrelates with Article 14 on rural women and girls in this regard, and GR 36 includes intersectionality as a key, mainstreams disability, and recognising the need for attention to be paid to disadvantaged girls and women, including ethnic minorities and indigenous women, refugees and asylum seekers, women and girls with a disability, and LGBTI women.⁴⁴⁶

The proper and adequate resourcing to the education sector, from nurseries upward and beyond, through adult learning or life-long learning, and the support of a curriculum that is not infused with an ideology that privileges male prospects over female, or ‘white’ affirmation over that of and for Black and minoritised women and girls, is essential. Yet cuts to Sure Start, to children’s centres, to maintained nurseries through cuts to local government, and cuts to adult education and learning, and further education,⁴⁴⁷ give little reason to assume that the government takes seriously its obligations under CEDAW, the SDGs (Sustainable Development Goals)⁴⁴⁸ Brexit has not only jeopardised but already done serious damage to opportunities for funding and collaboration with European universities, and higher education-scientific and development collaborations are at risk due to cuts to aid which also have an impact on girls education globally. ERASMUS is scheduled to end, depriving students of an exchange

⁴⁴⁴ [CEDAW/C/GC/36 \(ohchr.org\)](https://www.ohchr.org/en/instruments-treaties/instruments-treaties-item-36-1-treaty) (accessed 2 July 2021); [OHCHR | General Recommendations](https://www.ohchr.org/en/instruments-treaties/instruments-treaties-item-36-1-treaty) (accessed 2 July 2021).

⁴⁴⁵ Ibid.

⁴⁴⁶ Paras 40-46, *ibid.*

⁴⁴⁷ [SMC Investing in ‘what works’ activity in Further Education and Adult Learning \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/98444/smc-investing-in-what-works-activity-in-further-education-and-adult-learning.pdf) (accessed 9 July 2021).

⁴⁴⁸ SDGs – particularly SDG 4 on education.

programme that brought so many benefits to the country, albeit the government advises that the Turing Scheme is to be instituted from September 2021 to replace it.⁴⁴⁹

Generally in regard to girls and women and educational rights, the importance education has is seen to have as a right and in eliminating discrimination against women and girls is illustrated in *Rosendo Cantú et al v Mexico*⁴⁵⁰ and *Lopez Soto v Venezuela*⁴⁵¹. In *Rosendo Cantú et al*, Ms Cantú was interrogated, bashed, beaten, raped by soldiers as a 'payback' for not having disclosed or known information they sought, with the rape being watched by others of the group. Neither the health system nor the response of the legal system was satisfactory, providing no and then inadequate care, being unsympathetic and lacking in any or any proper investigation when eventually the rape was reported to police, with no interpreter provided and with no just outcome. The Inter-American Court upheld Ms Cantú's claim, determining amongst other matters that the rape constituted torture, and ordering reparations including scholarships in Mexican public establishments to Rosendo Cantú and her daughter, ' ... covering all the costs of their education until the completion of their higher education, whether of technical or university studies'.⁴⁵²

Similarly in *Lopez Soto v Venezuela*,⁴⁵³ again before the Inter-American Court, reparations were ordered with the state being obliged to pay for Ms Lopez Soto's education, covering the cost of university – including living allowance and support in whichever country she gained entry to continue her studies. Further orders were made that Venezuela provide scholarships to public educational institutions in Venezuela for some of her family members, including her sister.⁴⁵⁴

10. Employment and economic empowerment

CEDAW Committee raised the following matters:

- Measures to increase representation of women in decision-making positions in the workplace
- Increasing access for women to apprenticeships
- Improving and extending mandatory pay gap reporting
- Mandatory duty on employers to initiate steps to eliminate sexual harassment and racial discrimination
- Measures to facilitate access for women from marginalised groups, including Black and minoritised women and women with a disability, to the labour market
- Affordable and accessible childcare
- Parental leave and childcare responsibilities and men's role

Additional matter to consider:

- Employment leave for recovery from criminal assault at home and other forms of domestic violence

⁴⁴⁹ [Home | Erasmus+ \(erasmusplus.org.uk\)](#) (accessed 18 August 2021); [New Turing scheme to support thousands of students to study and work abroad - GOV.UK \(www.gov.uk\)](#) (accessed 18 August 2021).

⁴⁵⁰ *Rosendo Cantu v Mexico*, [LOYOLA OF LOS ANGELES \(lls.edu\)](#) [Rosendo Cantú et al. v. Mexico | IACHR \(lls.edu\)](#) (accessed 2 August 2021); [Rosendo Cantu v. Mexico | Women And Justice | US Law | LII / Legal Information Institute \(cornell.edu\)](#) (accessed 2 August 2021)

⁴⁵¹ [López Soto v Venezuela: The Inter-American Court of Human Rights' answer to violence against women | OHRH \(ox.ac.uk\)](#) (accessed 2 August 2021); [López Soto v Venezuela \(2018\) | Tackling Violence against Women \(lse.ac.uk\)](#) (accessed 2 August 2021).

⁴⁵² Ibid.

⁴⁵³ [López Soto v Venezuela: The Inter-American Court of Human Rights' answer to violence against women | OHRH \(ox.ac.uk\)](#) (accessed 2 August 2021); [López Soto v Venezuela \(2018\) | Tackling Violence against Women \(lse.ac.uk\)](#) (accessed 2 August 2021).

⁴⁵⁴ Ibid.

Evidence before the Tribunal included also the impact of Covid 19 on women's employment, economic status and well-being;⁴⁵⁵ the continuing gender pay gap and the ethnicity pay gap;⁴⁵⁶ and the entry of women into professional careers including the foreign service,⁴⁵⁷ as well as into elected roles in parliament and local government,⁴⁵⁸ issues of intersectionality and the impact of race in every regard, as well as disability,⁴⁵⁹ safety for women at work, and particular disadvantages in the job stakes for women from rural and agriculture communities.

Nick Newland for the Associated Country Women of the World commented on the impact lack of access to higher education through limitations on transport, access to the internet and acquisition of technological skills have in terms of women from rural and agricultural communities work and career opportunities: para 4, Witness Statement, Case ref: 011 Catherine Casserley, barrister, appearing in a personal capacity, spoke of disability as a factor in employment:

I deal with a variety of clients, both within the employment sphere and in the non-employment sphere. Apart from the broad issues to do with people being dismissed, failure to make adjustments, ability to access services, regarding the societal issues and their underlying problems, awareness of disability and disadvantage are two key issues for disabled women. There is a fundamental lack of investment and income. And involvement. This is apt in many other spheres but, the context of disability, it is 'Nothing About Us Without Us'. This is the slogan of the disability movement, but it works across the board: para 25, Witness Statement, Case ref: 028

The importance and value of broadening participation in the workplace were stressed by witnesses. Barry Harwood, speaking as a lawyer from Harwood Law, addressed the lost opportunities to employers in the lack of diversity in the employment pool from which their employees are selected. This arises because 'people from disadvantaged backgrounds are not getting the same opportunities as people from more advantaged backgrounds'. This, he said:

... might be due to lack of educational funds or limited parental means, but it is not a level playing field. Many people who achieve social mobility scholarships have had a lot of help from other people because they do not have the same opportunities as others who, for example, have wealthy parents or attended private schools. They might not be able to afford a laptop; their family may be on universal credit and going to the food bank. Particularly during the

⁴⁵⁵ On Covid 19 impact generally see: **COVID 19 – IMPACT ON WOMEN OF THE PANDEMIC**, earlier.

⁴⁵⁶ Reported mean figure as of 31st March 2020 is 16.9% and median figure is 15.3%, compared to 31st March 2019 figures where the mean gender pay gap was 18.0% and median 15.5% respectively. Although the gap has decreased, progress is not good enough and we know that there is still much work ahead to close the gap. Our actions this year will harness the whole organisation to work together to create an inclusive, welcoming environment for all genders: [Gender Pay Gap Report 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/92441/gender-pay-gap-report-2020.pdf) (accessed 23 June 2021); <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2020#:~:text=The%20gender%20pay%20gap%20among,10%25%20for%20older%20age%20groups.&text=The%20gender%20pay%20gap%20was,Wales%2C%20Scotland%20and%20Northern%20Ireland> (accessed 21 July 2021). Note that the race/ethnicity pay gap needs to be factored in, too. Local authorities are beginning to incorporate this into their reports – see for example Cambridgeshire County Council, Full Council Resolution that the race/ethnicity pay gap should be reported on along with the gender pay gap already reported on – [Cambridgeshire County Council 2020 Gender Pay Gap Report | Cambridgeshire Insight Open Data](https://www.cambridgeshire.gov.uk/media/1000000/cambridgeshire-county-council-2020-gender-pay-gap-report) (accessed 2 July 2021).

⁴⁵⁷ See **7. Equal participation in political and public life**, earlier.

⁴⁵⁸ See **7. Equal participation in political and public life**, earlier.

⁴⁵⁹ On improving gender balance in FTSE leadership, see: Feb 2021 statistics: *Hampton-Alexander Review*, https://ftswomenleaders.com/wp-content/uploads/2021/02/Hampton-Alexander-Review-Press-Notice_24-Feb-2021.pdf (accessed 21 July 2021).

pandemic, many are struggling, becoming redundant and have even had to completely change career paths: para 3, Witness Statement, Case ref: 010

Lifecycle can inhibit employment prospects for women. Mr Harwood referred here to menopause which can 'severely disadvantage women in the workplace' for they may feel constrained to say, simply, that they are 'ill' or 'feeling sick so unable to attend work', which can lead to their being viewed as unreliable. Male managers 'are not confident enough to talk to women about their performance and as a result, lots of talent leaves the workplace' for it is 'often easier to terminate employment than to talk and make reasonable adjustments'. The statistic 'on discrimination and menopause are glaring,' he said, with women 'leaving very well-paid positions and [abandoning] a very hard-earned career, often disillusioned with how menopause is approached. It is a "don't ask, don't tell" situation'. Further, the condition may in some cases develop into a disability as defined in the Equality Act, namely as 'a physical or mental impairment that has a "substantial" or "long-term" negative effect on the ability to do normal daily activities': paras 6-9, *ibid*

Like many other witnesses, Mr Harwood referenced the matter of 'flexible working hours' or 'flexible work' or 'flexible workplaces', to which he applied the term 'family-friendly'. A 'raft of policies' including 'maternity leave regulations, flexible working regulations, part-time regulations' have been introduced 'because of the abuse of women in the workplace'. Here, he adverted to women's vulnerability whilst on maternity leave, fearing for their jobs upon return to the workplace. Some employers are, he added, 'tough on access to these policies':

Flexible working is a request, and not an automatic right – it is at the employer's discretion. Some women might then be viewed as less important because they have undertaken part-time or flexible work to put their family first: paras 4-5, *ibid*

Joeli Brearley's evidence bore out the concerns expressed by Mr Harwood. Founder and CEO of Motherhood Planned and speaking on behalf of the charity, Ms Brearley author of *Pregnant Then Screwed: The Truth About the Motherhood Penalty and How to Fix It*,⁴⁶⁰ said that those engaging the services of Motherhood Planned 'have experienced pregnancy and maternity discrimination':

Every year around 54,000 women are pushed out of their jobs because they are pregnant or taking maternity leave. In addition, 77% of working mothers encounter some form of discrimination in the workplace ... That discrimination can take the form of anything from bullying and harassment, being side-lined or demoted, to being made redundant or sacked. This can happen because you are pregnant or are taking or recently returned from maternity leave: para 2, Witness Statement, Case ref: 035

Motherhood Planned 'provides a mentor service to help affected women take their case to the [employment] tribunal ... Mothers face challenges in the workplace not experienced by their childless counterparts such as receiving less pay [and] also face challenges with benefits'. Thus, 'the motherhood penalty':

Single mothers are disproportionately affected, being more likely to experience pregnancy and maternity discrimination. As they have more unpaid labour to do, they are more likely to face challenges with managing their paid work. As a proportion of income, the UK has the highest childcare costs in the world. For a single parent this proportion is even higher, meaning childcare is often prohibitively expensive. Single parents are also less likely to be offered flexible working. Before the pandemic around 46% of single parents were living in poverty. That figure has

⁴⁶⁰ Joeli Brearley, *Pregnant then Screwed – The Truth About the Motherhood Penalty and How to Fix It*, Simon & Schuster, London, UK, 2021, [Pregnant Then Screwed: The Truth About the Motherhood Penalty and How to Fix It: Amazon.co.uk: Brearley, Joeli: 9781471192678: Books](https://www.amazon.co.uk/Brearley-Joeli-9781471192678-Books/dp/1471192678) (accessed 21 July 2021)..

increased drastically. This is in large part due to children being at home and the parent having to manage paid work whilst being the only carer for their children: para 4, ibid

Freelance consultant Sam Smethers reflected these concerns, observing:

One structural barrier to equality is the way we structure work and the way we normalise long working hours. We still normalise a 35-45 hour working week, the default model still followed by men and women. [Yet] in the UK there is a lot of low-paid, part-time work, which is female dominated, while full-time work is more likely to be male dominated, and the structure of most work is not catering to the needs of the people in caring roles. Unpaid caring roles are invisible and devalued and we do not consider unpaid care when structuring paid work: paras 18-19, Witness Statement, Case ref 030

On flexible working, she noted that although 'we have created the right to request flexible working, and we are currently in the middle of a pandemic where suddenly more people are working from home, it remains difficult for workplaces to adjust their work and job design to support and enable these people in caring roles'. Caring roles 'are crammed around full-time jobs'. This means that women can be 'working a four-day week for a full-time job, which is very stressful'. Women are 'compressing their work into four days, while not necessarily doing less'. Work is 'not designed in a way that considers the unequal impact of caring roles and who is doing them'. Women are impacted, this 'excluding them from more senior roles'. Women 'see the culture and demanding roles and ... rule themselves out ...'. If, she added, the way 'we think about jobs were to change to meet women's needs, that would be better for everyone, women, society, the economy, families, and for men: paras 20-23, ibid

Equal pay, equal pay for work of equal value, and pay equity – now so often tagged 'the gender pay gap'⁴⁶¹ arose in many witnesses' evidence. As Mr Harwood stated bluntly, equal pay remains a discrepancy, with 'men still paid more than women': para 10, ibid Here, of immediate concern was the continuing impact of austerity measures and Covid 19. Cherie Blair, CBE, QC in her personal capacity noted that the government 'belatedly introduced gender pay gap reporting in 2017, but recently extended its suspension for a further six months following its cancellation in the year 2020'. She said that gender pay gap reporting did have 'an important impact, highlighting the differences between women's pay and men's pay':

Internally, it has helped and/or forced companies to review their own business practices. Externally, it has drawn attention to the disadvantage that women suffer. The government announced the suspension to alleviate pressure on businesses during Covid 19, despite its being the very largest of businesses only that are required to report, and despite the abundance of research that has shown the positive impact such disclosure has had: para 17, Witness Statement, Case ref: 027

Janet Veitch, OBE, observed that the global gender pay gap 'currently sits at about 23%',⁴⁶² acknowledging that the United Kingdom 'has done some work towards closing this gap domestically',

⁴⁶¹ UK statistics calculate as 'gender pay gap' differences in pay between women and men by age, region, full-time and part-time, and occupation: see generally [Gender pay gap in the UK - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/people-in-work/pay-and-earnings/gender-pay-gap) (accessed 2 July 2021).

⁴⁶² This is dependent upon what measure is used to make the calculation. As the World Economic Forum report for 2020 notes, gender parity in pay 'is proving hard to achieve. Pay differentials between men and women are a persistent form of gender inequality in the workplace and the Global Gender Gap Index 2020 finds that the progress towards closing the gender gap on this aspect has stalled. No country (including the top-ranked ones) has yet achieved gender parity in wages. Given that women continue to be less rewarded than men in the workplace, it is important to assess the extent of this difference in monetary terms and if there has been some

referencing the Equal Pay Act 1970, the Equality Act 2010, the European Union requirements applicable until recently, and acceptance of the principle of equal pay for work of equal value, as well as ‘mandating equal wage rates regardless of then number of hours worked – whether working part-time or full-time’. Nonetheless, she said, many barriers remain, citing here ‘women’s reproductive roles, and that therefore women are still doing the main share of the caring roles, both paid and unpaid, in the economy:

The labour market remains segregated both vertically and horizontally by sex. So, the top jobs, the well-paid jobs ... are largely dominated by men. The more junior jobs, poorly paid jobs, with zero hours contracts, that are insecure, the jobs at the bottom, are dominated by women. Looking at the sectors, women mainly are overrepresented in the 5 C’s: caring, cleaning, cashiering, catering and clerical: para 5, Witness Statement, Case ref: 002

She added that the ‘UK has more work to do in this area to close the gender pay gap on a domestic level.’ Bearing in mind that women ‘are doing the caring roles and may need to have local work, and do part-time work, making them less competitive than men in the labour market’, and the likelihood of ‘taking career breaks to look after their children again pushes women into lower skilled jobs’, over a woman’s lifetime, ‘her income is reduced and her ability to progress in her career is reduced’, the ‘government should think, “how do we restructure the economy to make a difference?”’: para 6, *ibid*

From Northern Ireland, Rachel Powell’s submission was that more work ‘on the value assigned to women’s work, paid and unpaid, in and out of the home’ is vital. Statistics for Northern Ireland, she said, indicate that insofar as ‘economic inactivity’ is in issue ‘... 30% of women ... are considered economically inactive, yet such domestic labour and caring roles women perform are essential to our economies’. For her, ‘one of the biggest drivers for gender equality would be putting care at the core of our economy, as part of our essential economic infrastructure’:

The solution is not just ‘make it possible for women to do everything’ – because women are doing more than enough – something we have seen and continue to see through this pandemic. Women act as professionals, parents, carers, domestic labourers, teachers and more. We need to lessen the load to make it possible for women to find alternative paths to enter political arenas and public life. We should also pay attention to the roles women and girls are encouraged into when taking on paid work – for example, in hospitality or caring over technology and innovation, and tackle the gender stereotypes [at the core of such assumptions: para 11, Witness Statement, Case ref: 008

In this, she reflected the words of witnesses speaking of the impact of images relayed to girls and boys, women and men, as depicting ‘real’ women or what a ‘real’ woman is or should be, and the gender and gendered stereotypes pervading the media and society, particularly but not only through social media.⁴⁶³

progress looking at a longer time series, at least in some countries ... [I]t is first necessary to define how wage gaps are measured and what they include. [W]age gaps refer only to differences in pay of employees, not taking into account differences in men’s and women’s revenues due to non-employment contracts. For instance, revenues from corporate profits or from financial assets are not considered. As fewer women than men feature among entrepreneurs or investors, and non-salary revenues are higher than wages, income gaps (including all types of revenues) tend to be larger than wage gaps. According to the estimate provided by this report, income differences are quite large: the global average of woman’s income is about \$11,000 (in Purchasing Power Parity, PPPs) while the average income of a man is \$21,000 (in PPPs).’ The report then goes on to indicate different means of measuring male-female wage differentials: [Global Gender Gap Report 2020 - Reports - World Economic Forum \(weforum.org\)](https://www.weforum.org) (accessed 21 July 2021).

⁴⁶³ See 5. **Discriminatory stereotypes**, earlier.

Assumptions about women as workers, arising out of gender and gendered stereotypes, were raised as significant by Joeli Brearley, too. Like other witnesses, she said that the pandemic has exacerbated the already existing problems for women in the world of paid (and unpaid) work.

She saw this reflected in the bias against women in the context of pregnancy:

From the moment a woman gets pregnant, she's seen as less committed and less capable of doing her job. That bias becomes obvious through the fact that so many women are pushed out of their jobs from the point that they become pregnant, or their promotion opportunities vanish. Then when women want to return to work, they face issues with childcare availability and costs. Before the pandemic there were 870,000 stay-at-home mums who wanted to return to work, but who were prevented by these issues. That figure has likely increased during the pandemic due to nurseries closing their doors. These nurseries can no longer afford to stay open due to the government cutting funding to the childcare sector during the pandemic. At the same time, people's income has decreased and the cost of childcare has continued to rise faster than the rate of inflation: para 8, *ibid*

She noted that 'some unique challenges' face Black and minoritised women, for 'you are more likely to face pregnancy and maternity discrimination if you are Black Asian or ethnically diverse'. She went on to say that Motherhood Planned was 'not identifying anything very specific to Black and minoritised women, 'we know that mothers in this group are more likely to face discrimination, pregnancy and maternity discrimination and, of course, racism'. Along with this, Black and minoritised women 'are also more likely to have been suspended on incorrect terms and are more likely to have been put in dangerous positions, where they have had to work with patients suffering from Covid 19': para 18, *ibid*

Nazmin Akhtar noted that Muslim women experienced discrimination on varying levels and for varying reasons. Identifying the main issues 'facing Muslim women in wider society', incorporated into broad categories, include 'issues around discrimination, issues around accessing rights, issues in terms of abuse and other forms of injustices'. This, she said:

... covers Muslim women facing issues in terms of entering and remaining in the workplace. This may, for example, be due to discrimination within the workplace, such as discriminatory barriers within the recruitment process but it can also be due to cultural barriers. Many Muslim women can find that they are stopped from entering the workplace by their own family members who think their place is within the home. For example, Muslim women may wish to seek employment but are told to stay at home and look after the family and extended family. There are various layers of issues affecting women, from trying to gain financial independence to the pressures and hurdles involved in just wanting to make their own life choices; whether that choice is to seek employment and progress in careers or whether that is to stay at home. Regardless of which choice they are making, or want to make, there is always someone or some other barrier that gets in the way - which again could be institutional barriers, or it could be cultural barriers: para 2, Witness Statement, Case ref: 039

She added that employers can bring pronounced prejudice when assessing young Muslim women as potential job applicants, for just as within the young woman's community there may be pressure against seeking independence in the world of paid work, 'equally a potential employer may see a young Muslim woman and assume she will want to get married or have babies, so this can further impact accessing the workplace': para 19, *ibid*

Stereotyping was a feature impacting on Muslim women in a broad sense, as well as in the paid workplace, she added. When considering the role Islamophobia and religious stereotyping play in the protection of the rights of Muslim women and children, its impact could be seen in two ways:

First, Islamophobia and religious stereotyping have the obvious impact of creating barriers to progression and life choices. For example, when looking in the workplace it can be very difficult for Muslim women to obtain employment and also obtain promotions or other benefits because the stereotypes that may be prevalent. On the one hand Muslim women can be seen as being submissive and therefore not someone who would be worth promoting to management level, but at the same time they can be seen as troublemakers who will be demanding and obstructive. We know of cases of Muslim women who have felt that they would be perfect for a managerial role but who were not promoted because, in their opinion, there were stereotypes in play, namely that a Muslim woman cannot be a manager because she would be too submissive or the other team members will not respect her: para 5, *ibid*

Ms Akhtar went on to observe that another contradictory element could emerge for, ‘secondly, we have seen the ... impact whereby a Muslim woman has complained about issues in the workplace ...’ The complaint may not necessarily relate to pay or promotion, but to ‘issues around bullying or harassment ... and immediately the stereotype of “they’re troublemakers” or “they’re just here to cause trouble” kicks in’. She concluded that it is ‘very easy to add barriers to Muslim women in trying to obtain their rights, but also very easy to dismiss them trying to access rights because of Islamophobia and religious stereotyping’: para 6, *ibid*

Additional issues in paid work emerged around family responsibilities. Childcare and nurseries were a recurring concern attested to by witnesses from both perspectives: that of the children requiring childcare and their parents (mothers in the main) doing so in order to engage in paid employment and to pursue paid working lives and careers, and that of the childcare and nursery workers and their rates of pay. Furthermore, the impact on children is crucial, too. In addition, restrictions on entitlement to access childcare, whether by rules and regulations or cost, the impact of Covid 19, as well as limitations of parental leave provisions were raised.

Hilary Watson for Women’s Equality Network (WEN) Wales adverted to the situation pertaining in Wales, with reference also to the Coronavirus effect. She said that in relation to caring, ‘the Welsh Government Childcare Offer (WGCO) has previously been highlighted by WEN Wales in the CEDAW Wales Shadow Report of 2019, criticising [the policy] as it does not cater for all women’. Then, with the pandemic, ‘the WGCO was suspended ... and childcare was offered to children of key workers only’. She went on:

Furthermore, we believe the system of shared parental leave offered at UK level does not promote equality: the provision for male carers to take leave is often so poor financially that the female partner in a heterosexual partnership must take on the caring responsibilities for financial reasons. We believe that the limitations of the offer have been exacerbated by the lockdown measures of the pandemic, especially as many people rely on grandparents (who may have been self-isolating) to provide care: para 4, Witness Statement, Case ref: 004

Caring for all is vital, she observed, saying that women should be properly rewarded for both paid and unpaid care work:

Women make up 80% of people employed in health and social care activities in Wales, which has historically been undervalued in financial terms. Furthermore, many women carry out unpaid care work. Care work is generally undervalued, despite its key place in the structures of our society, but the coronavirus pandemic has highlighted the importance of these roles. Women in these roles deserve proper payment and respite: para 4, *ibid*

Joeli Brearley said that Planned Motherhood ‘would like to see the government undertake an independent investigation into the childcare sector and what is going wrong’:

The sector is crippled and without infrastructure will fall apart.⁴⁶⁴ This requires proper investment. Free childcare isn't free, it is subsidised and is currently underfunded. Funding is approximately 20% less than it actually costs to provide a childcare place. As a result, childcare providers were struggling financially to provide those places and began charging extra for nappies and meals, etc. They were also passing costs down to parents of younger children in order to stay afloat. At the same time, rates of pay for childcare workers is appalling, most surviving on minimum wages. You are paid almost twice as much to be an Amazon delivery driver for example. This isn't to say that Amazon delivery drivers don't deserve that pay, but something has gone very wrong with our value system if we're paying people more to deliver commercial goods than to look after our kids. Childcare workers feel completely undervalued: paras 14-15, *ibid*

The undervaluing of this work and the low pay mean that nursery owners 'are struggling to recruit staff ... The majority of nursery owners would say they have gaps in their recruitment and that those working for them are underqualified'. The pandemic worsened this, because of the 'enormous pressure placed on childcare workers [who] haven't been thought about at all in the government planning'. As Ms Brealey said: 'You can't socially distance from a baby, and testing kits have not been provided to ensure infection rates within the nursery can be managed.'⁴⁶⁵

The long-term consequences for society of failures of government in its lack of attention to the childcare sectors are apparent, she added:

We currently have badly paid, undervalued childcare workers and the most expensive childcare system in the world as proportion of income. For the childcare system to work, it has to be good quality. And we know that good quality childcare has a huge impact on the attainment gap. For every £1.00 invested in childcare, there is a return of £3.00. We need proper investment and training for staff. We need to pay staff well and ensure childcare is affordable. Then will we see the benefits of investing in childcare: para 17, *ibid*

The importance of ensuring that workplace health and safety applies in the full meaning of this concept – incorporating comprehension of unsafe practices and conduct as they impact specifically or with differential impact upon women – was raised in witnesses' evidence. Policy officer Hilary Watson noted the concern of Women's Equality Network (WEN) Wales in relation to the pandemic and in general

⁴⁶⁴ Notably, the original infrastructure plan devised by the Biden administration and put to Congress included traditional infrastructure – roads, bridges, construction – along with matters not ordinarily included in the conventional 'infrastructure' approach. The plan includes investment in surface transportation, grid modernization, schools, federal buildings, housing, broadband, clean water, workforce retraining, and other initiatives including childcare, nursery provision and the like, generating a debate as to 'what is infrastructure'. The matter has been resolved by getting the traditional infrastructure plan through and following up with the more expansive infrastructure plans. This does not mean, however, that the original notion of infrastructure was abandoned by the administration. The need for political expediency does not demolish the principle nor, in terms of the efforts being made to ensure that the second infrastructure Bill goes through, does it defeat the recognition and realisation of the vital importance of these additional measures to the economy and economic sustainability and rebuilding: [Public Memo Biden Infra Plan 4 2021.pdf \(aia.org\)](#) (accessed 8 August 2021); [FACT SHEET: The American Jobs Plan | The White House](#) (accessed 8 August 2021); [FACT SHEET: President Biden Announces Support for the Bipartisan Infrastructure Framework | The White House](#) (accessed 8 August 2021); [How would Biden's infrastructure plan work? | Financial Times \(ft.com\)](#) (accessed 8 August 2021); see also Mike DeBonis, 'Bernie Sanders Lost His Fight to Be President. But Now He's Written a Budget That Could Secure His Legacy', [Bernie Sanders Lost His Fight to Be President. But Now He's Written a Budget That Could Secure His Legacy. \(readersupportednews.org\)](#) (accessed 14 August 2021); also [The Washington Post](#) 14 August 2021 (accessed 14 August 2021).

⁴⁶⁵ As at 15 March 2021, the date of Ms Brealey's witness statement.

terms. She said that at the beginning of the coronavirus pandemic ‘we were very concerned about the provision of personal protective equipment (PPE)⁴⁶⁶ and the efficacy of risk assessments at work’:

In particular, we were concerned about high-risk groups, including BAME women and pregnant women. We believe that the pandemic has been important in demonstrating that working from home is possible, and reflects issues of disabled women previously being told this could not be accommodated. In relation to this, we want both the continuation of women being able to work from home, and also a reduction in the culture of presenteeism: women who cannot attend the workplace should not be at a disadvantaged [compared with] individuals who can: para 7, Witness Statement, Case ref: 004

Sexual harassment at work was broached by witnesses, too. Policy officer Saskia Garner’s evidence noted the ‘heightened risk’ run by women in the workplace, extending from ‘violence, aggression and harassment ... including threats as well as physical assault’. She referenced HSE⁴⁶⁷ findings from the 2018-2019 CSEW statistical records showing ‘1.5% of women in comparison with 1.2% of men being] victims of violence at work once or more during the previous year’, adding information from a 2018 survey of retail sector workers conducted by the Suzy Lamplugh Trust in which ‘67% of survey respondents identified as female’. This, she said, ‘also highlights that abuse at work may be gendered’:

66% of respondents had experienced violence or aggression in the workplace, while amongst those who gave details about the kind of behaviour they experienced, 14% had experienced sexual harassment or unwanted attention at work. Furthermore, 29% of respondents indicated that violent incidents in the workplace were motivated by gender, which was the most prevalent factor for incidents relating to respondents’ personal characteristics: para 7, Witness Statement, Case ref: 040

The Trust, said Ms Garner, is ‘concerned that gendered abuse at work constitutes a violation of women’s “right to protection of health and to safety in working conditions” in equality with men as outlined in CEDAW Article 11(1)(f)’:⁴⁶⁸ para 7, *ibid* This dovetails with Mr Mackin’s raising the need for ‘leave from work as a result of domestic violence [which] should be required as a matter of policy and as a matter of law’: Witness Statement, Case ref: 025

Ms Watson referred to violence against women in the workplace, including sexual harassment, making the point that employment away from home can ‘break the cycle of home-based violence’ and that employers should recognise this as well as ensuring that ‘employer policies against issues such as sexual harassment are adapted for home use’: para 7, *ibid*

Dr Christine Cooper raised the issue of women and pensions. The adjustments to the pension age effected by the Pensions Act 1995 and the impact of the Pensions Act 2011 had imposed ‘mental, physical and financial’ angst for the women affected. The Act, she explained, increased the state pension age for women from 60 to 65 years in stages between May 2010 and March 2020, so to align with men’s pension age. Some 2.7m women have been caught up in this change, raising issues of governmental duty. First, she said:

⁴⁶⁶ [Coronavirus \(COVID-19\): personal protective equipment \(PPE\) hub - GOV.UK \(www.gov.uk\)](https://www.gov.uk/coronavirus-covid-19-personal-protective-equipment-ppe-hub) (accessed 2 July 2021).

⁴⁶⁷ [HSE: Information about health and safety at work](https://www.hse.gov.uk/information-about-health-and-safety-at-work/) (accessed 21 July 2021).

⁴⁶⁸ [CEDAW: Article 11\(1\)\(e\)\(f\) - The Good Men Project](https://www.thegoodmenproject.org/cedaw-article-11(1)(e)(f)-the-good-men-project/) (accessed 21 July 2021); see also reported case *MS v The Philippines*, brought under the CEDAW Optional Protocol, where the CEDAW Committee upheld a claim of ‘sexual harassment communication’ at work: [CEDAW art 11\(1\)\(f\) | Optional Protocol to CEDAW \(wordpress.com\)](https://www.thegoodmenproject.org/cedaw-art-11(1)(f)-optional-protocol-to-cedaw/) (accessed 21 July 2021).

... the lack of notice given to women is without a doubt one of the most contested implications arising out of the Pension Acts. The government has stated that citizens require ten years notice of pension reforms to be able to adjust to them.⁴⁶⁹ The 1995 Act gave women a 15 year notice period of the change to their retirement dates, however it took almost 14 years from the passing of the 1995 Act for confirmation letters to be sent to women. Only 14% of women were aware that the state pension age was due to rise – and only 2% felt they had sufficient information on the state pension scheme.⁴⁷⁰ Furthermore, 650,000 women born between 6 April 1953 and 5 April 1955 were expecting to retire between April 2013 and April 2015, however were only notified of the changes in Jan/Feb 2012: para 2, Case ref: 041

Noting that in *R (On the Application of Julie Delve and Karen Glynn) v Secretary of State for Work and Pensions*,⁴⁷¹ the Court of Appeal rejected arguments that women had ‘not had sufficient notice of the changes and that this was contrary to the requirements of public law, breached their legitimate expectation and was procedurally unfair’,⁴⁷² Dr Cooper went on to explain that the Parliamentary Work and Pensions Select Committee observed in its March 2016 report that it was ‘apparent with hindsight that previous governments could have done a lot better in communicating the changes’.⁴⁷³ She added that research:

... suggests that there is a socio-demographic inequality and those with the least resources to deal with Pension changes, such as minorities and women who are less active in the labour market were more likely not to be informed about such changes. Additionally, there was further criticisms about the ineffectiveness of the advertisements. The Department for Work and Pensions claimed to have advertised the equalisation of state pension age on TV and magazines – they refused to provide information on such advertisements: para 2, *ibid*

She cited 1990s research finding ‘few mentions of the pension age increase, most of which were found in business and money pages of broadsheet newspaper’. This meant, she said, that the government has, ‘thus far, failed to promote any kind of income support for those who are unable to work or are suffering financial, emotional and physical hardship as a result of their pension reforms’.⁴⁷⁴

Dr Cooper then explained the ‘gender pension gap’ by reference to statistical data and cultural and historical implications for women. In money terms, the gender pension gap is ‘currently at 40.3% (2021), equating to a difference of £7,500 in pension income annually’. This she noted, is ‘twice the size of the gender pay gap ... with a gulf in pension wealth across all age groups, but particularly for women born in the 1950s (now aged 62-72)’:

⁴⁶⁹ Department for Work and Pensions, State Pension age review, July 2017, [State Pension age review \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) (accessed 2 July 2021).

⁴⁷⁰ The Pension Advisory Service, 2008, p 1; see also [The Pensions Advisory Service - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 2 July 2021); [Pensions and retirement | Help with pensions and retirement | MoneyHelper](#) (accessed 2 July 2021).

⁴⁷¹ *R (On the Application of Julie Delve and Karen Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, [Delve and Glynn -v- SSWP judgment \(judiciary.uk\)](#) (accessed 21 July 2021); *R (On the Application of Julie Delve and Karen Glynn) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin), [High Court Judgment Template \(judiciary.uk\)](#) (accessed 21 July 2021); [Delve-and-Glynn-v-SSWP-media-summary-v-2-002.pdf \(judiciary.uk\)](#) (accessed 21 July 2021).

⁴⁷² *ibid*; and on legitimate expectation see *R v North and East Devon Health Authority, ex parte Coughlan* [1999] EWCA Civ 1871, [2001] Q.B. 213, [Coughlan & Ors, R \(on the application of\) v North & East Devon Health Authority \[1999\] EWCA Civ 1871 \(16 July 1999\) \(bailii.org\)](#) (accessed 2 July 2021).

⁴⁷³ [House of Commons - Communication of state pension age changes - Work and Pensions Committee \(parliament.uk\)](#) (accessed 21 July 2021).

⁴⁷⁴ [Paul Lewis Money: WOMEN GIVEN JUST 2 YEARS' NOTICE OF STATE PENSION AGE RISE](#) (accessed 2 July 2021); [Paul Lewis Money: MARRIED WOMEN PENSIONERS SHORT-CHANGED](#) (accessed 2 July 2021).

Women receive £29,000 less state pension than men over 20 years. The average pension pot for a 65-year-old woman in the UK is £35,800, just 1/5th of the average 65-year-old man's. Assets Survey sets out the three main factors contributing to an overall gender gap of 49% in pension wealth for people in their late 50s. Most of the gap was caused by women being more likely to take time off work or reduce their hours to take on caring responsibilities. Additionally, the impact of the gender pay gap also greatly reduces the average amount of pension wealth that women can build up in their careers. One significant mitigating factor is that women are more likely to work in the public sector and therefore have access to a defined benefit pension scheme. As a result, 1950's women have endured a gulf in pension savings due to part time working; pay differentials; gendered age discrimination; different life expectations; caring responsibilities and so on: para 3, *ibid*

Dr Cooper provided to the Tribunal a report written in collaboration with Clara Guirau, Manuella Attoh and Mini Chandran Kurian setting out the consequences beyond this loss of finances to the psychological and physical impacts on the women affected.⁴⁷⁵ The personal, financial and mental impacts were 'worse for single women and those who had to wait longer for their pensions', with increases in depression, decline in physical health and decline in mental health, with the 'worst impacted facing lower life expectancy, higher barriers to re-employment, lower health literacy and access to good quality care alongside lower pension literacy'. The issue, she said, was based in a lack of accountability on the part of government. Subsequently, 'the government failed to promote any kind of income support for those who are unable to work or are suffering financial, emotional and physical hardship as a result of their pension reforms ... [W]omen at every facet have lost, and will continue to lose at the expense of these implementations': para 4, *ibid*

SUMMATION

EMPLOYMENT AND ECONOMIC EMPOWERMENT

The pensions issue raised by Christine Cooper goes to employment. As a work-related issue it relates to rights, rather than being a matter of social benefits. Social benefits are vital in any civilised society. At the same time, pension rights based in paid work are employment rights, and beneficiaries' entitlements must be recognised in those terms. That the government should fail, first, in omitting to give any or any proper notice to those impacted is a breach of government responsibility. Those affected did have a legitimate expectation that they would be notified properly and effectively by government. The proposition that they are somehow responsible in the rejection of their application by 'delay' on their part sits ill with the reality, namely that the government's delay in any attempt to advise those affected is at the heart of the matter. That further, government should resist the legitimate claims of those affected is indicative of gender bias based in the intersectionality between the protected characteristics sex and age.

This case in many respects seems to sit on all fours with *R (On the Application of The Motherhood Plan and Ms Kerry Chamberlain) v Her Majesty's Treasury and Her Majesty's Revenue and Customs*,⁴⁷⁶ brought to the Tribunal's attention by Joeli Brearley of Motherhood Planned. *The Motherhood Plan case* revolved around the Self-Employment Income Support Scheme (SEISS) introduced by Treasury under sections 71 and 76 of the Coronavirus Act 2020. The aim of the Scheme was to 'provide for payment to those who carried on a business, [the] business having been adversely affected by the coronavirus emergency'. Generally, payments under the Scheme were to be based on average trading profits (ATP)

⁴⁷⁵ Christine Cooper, Clara Guirau, Manuella Attoh and Mini Chandran Kurian, *Report on the 1995 and 2011 Pension Acts*, 2021, copy held by the Tribunal.

⁴⁷⁶ *R (On the Application of The Motherhood Plan and Ms Kerry Chamberlain) v Her Majesty's Treasury and Her Majesty's Revenue and Customs*, [Final-Judgment-Motherhood-Plan-and-Chamberlain-v-HMT-and-HMRC-.pdf \(pregnantthenscrewed.com\)](https://pregnantthenscrewed.com) (accessed 2 July 2021).

of the individual's business over the preceding three full tax years (2016/17, 2017/18, 2018/19)'. The applicants challenged the Scheme on two bases:

- First, because contrary to Article 14 of the European Convention on Human Rights (ECHR)⁴⁷⁷ read with Article 1 of Protocol 1 of the Convention,⁴⁷⁸ it 'unlawfully discriminates against self-employed women who have taken a period of leave relating to maternity or pregnancy in the three preceding tax years', with consequent unjustified disadvantage to them;
- Secondly, because Treasury breached section 149 of the Equality Act 2010, namely the public sector equality duty.⁴⁷⁹

In response to the second ground, Treasury argued that speed was essential due to the pandemic and the 'significant public health restrictions necessary to combat' it, and that the 'overriding consideration when designing and implementing SEISS was to help as many eligible people as possible in as short a time as possible, without creating an unacceptable risk of fraud or error'.⁴⁸⁰ Looking first to this aspect, what is clear is the need, as referred to earlier, for regard to be given by government in such times to following UN Security Council Resolution 1325.⁴⁸¹ The co-director of Personal Tax, Welfare and Pensions at Treasury whose evidence was before the court on this point, was a woman. However, the principle of SC Resolution 1325 is that women be an equal part of consultation and decision-making. Had that been so, there is no reason why urgency would not have been complied with, but it would have meant that the reality of some women being in Ms Chamberlain's position (and those women represented by Motherhood Panned) would have been recognised quickly – potentially immediately – with rapid steps being taken to accommodate them. After all, as the case makes clear, some 'exceptions' were built into the Scheme.⁴⁸² As to the first ground, the way discrimination law is constructed jurisprudentially, gives rise to concern. All the more reason for that which witnesses before the Tribunal sought, namely regular training and education in the justice system of principles of CEDAW – that is, discrimination principles – so that a better understanding develops within all parts of the legal hierarchy.

Why *The Motherhood Plan case* and the *Julie Delve and Karen Glynn case* resonate is that both relate to women, both relate to women and paid employment, and both relate to women, paid employment, and employment rights. What shines out is that women as paid workers and the paid work of women is not really taken seriously. If it were, then for a start the Department of Work and Pensions would have taken into account the impact of the pension changes on those affected – bearing in mind that paid work for women is not a matter of 'pin money' but a serious financial and career enterprise; furthermore, there would have been no ignoring of the need to notify properly, effectively and in a timely manner those affected; finally, were those oversights nevertheless engaged in, there would be

⁴⁷⁷ Article 14 requires that all rights and freedoms set out in the Convention must be protected and applied without discrimination: [Article 14: Protection from discrimination | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/equality-law/article-14-protection-from-discrimination) (accessed 2 August 2021).

⁴⁷⁸ Protocol 1, Article 1 protects the right to enjoy one's property peacefully, property including land, houses, objects owned, shares, licences, leases, patents, money/cash, pensions and certain types of welfare benefits. It provides that a public authority cannot confiscate a person's property or place restrictions upon its use, without good reason: [Article 1 of the First Protocol: Protection of property | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/equality-law/article-1-of-the-first-protocol-protection-of-property) (accessed 2 August 2021).

⁴⁷⁹ Para [3], *R (On the Application of The Motherhood Plan and Ms Kerry Chamberlain)*, *ibid*.

⁴⁸⁰ Para [16], *ibid*

⁴⁸¹ See **SUMMATION – BREXIT WITHDRAWAL FROM THE EUROPEAN UNION**, earlier; and **COVID 19 – IMPACT OF THE PANDEMIC ON WOMEN**, earlier.

⁴⁸² Para [1], *R (On the Application of The Motherhood Plan and Ms Kerry Chamberlain)*, *ibid*. It would be instructive to know what, precisely, those exceptions were, how they came to attention and how and why they were factored in – yet the circumstances of women taking the case before the Court could not be.

no leaving those affected languishing, as is now the case.⁴⁸³ Similarly, Treasury would not have acted, ignorant of the likelihood of women's being out of the employment theatre for reasons of maternity and hence some alternative to the three-year plan having to be fixed upon nor, once having been enlightened, been incapable of adjusting the plan so as to fit this into the 'exceptions' already catered for. Women *do* take paid work, employment and careers seriously. That governments in the 21st century evidently do not, indicates that they remain firmly affixed in the notion that every woman is kept by a man, or has one upon whom to fall back.

The pay gap is an essential element of gaining equal rights and ending discrimination in paid (and unpaid) work. This will not be overcome by conventional work value assessments, nor by adjusting wage rates as traditionally envisaged. Segregation of the workforce needs to be addressed effectively, and one way to do this is by reassessment of wage levels in areas of traditional women's work – librarianship, teaching, nursery and childcare sectors, shop assistants, cleaning staff, cafeteria workers ... The starting point must be a return to the base of work that was never valued properly in the first instance, with Work Skills Value Assessments (WSVEs) that calculate in real terms, not terms that already incorporate sex-orientated bias.⁴⁸⁴

Flexible work was proposed frequently by witnesses as a response to the need for ensuring that family responsibilities are factored in effectively. That is, that no one with childcare or adult-care (whether a parent or older child or other relative with a disability) responsibilities should be precluded from engaging in paid employment. Like part-time work, this has been fought for by unions and rightly so. At the same time, caution is essential, to ensure that any system of flexible work is not skewed towards employer interests with no proper attention to the initiating purpose of flexible work, namely to accommodate those other legitimate parts of workers' lives. For example, some employers in the retail trade have adopted flexible work, patterning it along the following lines. Shopworkers are rostered for the busy times of the shopping day, meaning they have hours set to conform to when the 'customer rush' arrives, then free time – meaning unpaid time – during the lull. A woman with childcare responsibilities then has to either put her child in childcare for the entire day, or fit childcare around hours suited to the employer 'customer rush' schedule: an unrealistic proposition. If the job is a distance from home, the broken hours during the day mean that she must find 'something to do', 'somewhere to go' in the time off. This adds expense and time unproductively spent, but it saves the employer paying wages for the whole day, when a full complement of staff is not needed.

⁴⁸³ This idea of 'pin money' is one that turns up in other jurisdictions where the contributions of women are not seen as serious in the financial stakes – this is a not insignificant feature of the existence of the pay gap, too. See for example work done on Work Skills Value Enquiry (WSVE) formulation – Jocelyne A. Scutt, *The Incredible Woman – Power and Sexual Politics*, vol 2, Artemis Publishing, Melbourne, Australia, 1997, Part III – 'The Economic Politics of "A Woman's Place"', pp. 3-162; also for example [Thornton, Margaret --- "Towards Embodied Justice: Wrestling with Legal Ethics in the Age of the 'New Corporatism'" \[1999\] MelbULawRw 28; \(1999\) 23\(3\) Melbourne University Law Review 749 \(austlii.edu.au\)](#) (accessed 2 August 2021); [The Mirage of Merit: Reconstituting the 'Ideal Academic' by Margaret Thornton :: SSRN](#) (accessed 2 August 2021); [Thornton, Margaret --- "Otherness' on the Bench: How Merit is Gendered" \[2007\] SydLawRw 16; \(2007\) 29\(3\) Sydney Law Review 391 \(austlii.edu.au\)](#) (accessed 2 August 2021); Sara Charlesworth, 'Understanding Discrimination in the Workplace ...', [\(PDF\) The Clare Burton Memorial Lecture 2007 Understandings of Sex Discrimination in the Workplace: Limits and Possibilities | Sara Charlesworth - Academia.edu](#) (accessed 2 August 2021); [Microsoft Word - CLARE BURTON Memorial Lecture 2007.doc \(psu.edu\)](#) (accessed 2 August 2021);

⁴⁸⁴ WSVEs have been carried out on childcare and welfare work in Australia but the starting point meant that the real value was never arrived at. See Julie Kun, 'What do the wages of childcare workers say about Australia's values?' 25 November 2013, [What do the wages of childcare workers say about Australia's values? | Women's Agenda \(womensagenda.com.au\)](#) (accessed 2 August 2021); Eliza Harvey, 'Equal Pay for Childcare Workers before Fair Pay Australia', 15 July 2013, [AM - Equal pay case for childcare workers before Fair Work Australia 15/07/2013 \(abc.net.au\)](#) (accessed 2 August 2013); [Child Care / Day Care Worker Hourly Pay in Australia | PayScale](#) (accessed 2 August 2021).

Ensuring that voluntary workers are covered by discrimination laws, including sexual harassment provisions, is important too.⁴⁸⁵ The reality of violence against women in employment – whether paid or in the voluntary sector, arose not infrequently in the evidence. As noted in regard to online conduct, references to ‘purpose or effect’, by including ‘purpose’ provide a potential loophole for those who wish to assert that conduct is not within the provision because no negative purpose was intended. This needs to be revisited to ensure that those engaging in this conduct cannot wrongly escape the consequences of their actions and those against whom conduct is directed do not have their concerns undermined.

The impact of criminal assault at home and other forms of domestic violence on women’s engagement in paid employment brings with it a need to ensure that time off from work as a consequence does not result in women’s pay being docked or the job being lost. Paid leave in such circumstances is being addressed and should be pursued.⁴⁸⁶ The better outcome is to end gender-based violence whether at home, at work, on the streets or online. Resources are needed for that purpose however, this does not rule out the importance of, as what might be hoped to prove a temporary measure, leave for women suffering the consequences of violence at home.

As to home working, which has taken hold in some parts of the paid work world, Ms Watson referred to violence against women in the workplace, including sexual harassment, making the point that employment away from home can ‘break the cycle of home-based violence’ and that employers should recognise this as well as ensuring that ‘employer policies against issues such as sexual harassment are adapted for home use’: para 7, *ibid* 004 Working from home means that women are vulnerable to more violence on the home ground.⁴⁸⁷ In addition, on top of the impact on the individual woman at work, negative consequences of sexual harassment and bullying in employment include the burden on the economy and disruption to the workplace.

Way back in 1988, the US District Court for the District of Columbia recognised the disruptive consequences of ‘pervasive sexuality and hostility at work’. In *Broderick v Ruder*⁴⁸⁸ (the claimant being a lawyer at the Securities and Exchange Commission (SEC)) it was held that a person not the subject of sexual harassment herself nonetheless has a claim in sexual harassment law. This follows, even if those who create the ‘sexually hostile work environment’ are ready participants in consensual sexual and sexually charged conduct in the workplace. There, the court said:⁴⁸⁹

⁴⁸⁵ See for example s 3 Anti-Discrimination Act 1998 (Tasmania) - **employment** includes –

- (a) employment or occupation in any capacity, with or without remuneration; and
- (b) membership of partnerships; and
- (c) registration or recognition by, or membership of, professional and trade organisations; and
- (d) registration or recognition by qualifying bodies; and
- (e) engagement of commission agents; and
- (f) registration or placement by employment agencies; and
- (g) engagement under a contract for services; and
- (h) employment by any person; and
- (i) registration or enrolment by vocational training bodies; ...

Note: S 39 Equality Act 2010 (covering employment) does not indicate it covers voluntary employment and its terms appear to be drafted with paid employment alone in mind.

⁴⁸⁶ [New advice to help employers deal with domestic abuse and stigma - GOV.UK \(www.gov.uk\)](#) (accessed 2 August 2021); [in brief: ACTU wants domestic violence leave | lip magazine](#) (accessed 21 July 2021); [ACT Government supports ACTU case for paid domestic violence leave](#) (accessed 18 August 2021).

⁴⁸⁷ [UK firms face up to threat of domestic abuse as more staff work from home | Domestic violence | The Guardian](#) (accessed 2 August 2021).

⁴⁸⁸ *Broderick v Ruder* (unreported, United States District Court for the District of Columbia, 13 May 1988, Civil Action No 86-1834; see Jocelyne A. Scutt, *Women and the Law – Cases and Commentary*, Law Book Company/Thomson Regulatory, 1990, Sydney, Australia, pp. 158-165.

⁴⁸⁹ *Ibid*.

The Securities and Exchange Commission in effect argues that this is a ‘quid pro quo’ sexual harassment case and, except for isolated instances, [Ms Broderick] was not sexually harassed. This contention is in error, and misses the mark. The [Securities and Exchange Commission’s] attempt to justify the sexual misconduct on the part of the supervisory personnel as ‘social/sexual interactions between and among employees’ which Title VII never intended to regulate is unacceptable on the facts of this case. However relaxed one’s views of sexual morality may be in a different context, such views do not cover the pattern of conduct disclosed by the record in this case. We hold, and [Ms Broderick] has proved, that consequence sexual relations, in exchange for tangible employment benefits, while possibly not creating a cause of action for the recipient of such sexual advances who does not find them unwelcome, do, and in this case did, create and contribute to a sexually hostile working environment. The Securities and Exchange Commission was the employer of, and had authority over, the personnel who persisted in this activity of which it had actual, as well as constructive, knowledge. It took no action. It is therefore liable under agency principles for the acts of these high-ranking subordinates.

11. Health

CEDAW Committee raised the following matters:

- Access to abortion services for women in Northern Ireland
- Access to healthcare for women belonging to marginalised groups, esp. asylum seeking and refugee women; migrant women; Roma and Traveller women; trafficking victims; older women (GR 24, 27)

Tribunal evidence on these and additional matters recognised the centrality of women’s health to every element of equality and the means to achieve it. Rebecca Cook, retired professor with the University of Toronto Faculty of Law put it squarely. Referencing Sandra Fredman’s work,⁴⁹⁰ she reflected upon the importance of articulating why discrimination is wrongful, and ‘understanding the capacious nature of equality’ as applicable to health:

The distribution of health care that only women need is essential to ensuring the first dimension of equality, the distribution dimension. The second dimension of equality is seen in how health systems treat women according to their actual needs, and not according to harmful stereotypes. The third dimension of equality is apparent in how health systems, enable women’s participation, respect their voice, to ensure health systems provide women’s sex-specific healthcare. The fourth dimension of equality is its structural dimension where health systems need to be designed in ways to ensure women’s equal access to health care services: para 11, Witness Statement, Case ref: 019

Dr Cook went on to advance the proposition that in any field of life, including health, it is women’s lack of political power that ‘makes them vulnerable to a lack of protection of their rights’. This lack of political power brings with it the problem that for these rights to accrue, ‘people need an understanding of the context in which women live’. However, this is particularly difficult when it comes to discrimination against women, because such discrimination is ‘camouflaged, it has become normalised’. Yet to correct discriminatory wrongs, it is necessary to ‘attend to the preconditions required for the realisation of those rights, such as equal conditions of power and resources’. This requires in turn ‘that we understand the context, to prepare the ground to ensure the seeds we plant will grow’: para 12, *ibid*

However, the normalisation and the camouflage remain, without equal conditions of power and resources that enable the reality of women’s lives and entitlements to equality to emerge.

⁴⁹⁰ [Sandra Fredman | OHRH \(ox.ac.uk\)](#) (accessed 8 August 2021); [Sandra Fredman FBA, QC \(hon\) | Oxford Law Faculty](#) (accessed 8 August 2021).

Modern developments continue to replicate poor outcomes for women's health, through adherence to standards that 'see' men in the landscape whilst ignoring women. Here, the evidence of Alexandra Pavliuc of the Oxford Internet Institute, speaking in her personal capacity, was telling. Referring to the development of technology and in particular Apps and adding to her earlier evidence in the context of public and political office, she referenced the limitations inevitable where programming and development are male-dominated or even male-exclusive. This male-centric approach is highly detrimental to women generally and in the health field in particular:

In app development, I would promote a gender-centric approach ... to ensure apps work for their intended audience. I refer to the development of the Apple health app, which had functionality ranging from measuring sodium intake to blood alcohol levels but did not have an option to track menstrual cycles and symptoms when it was released in 2014: para 3, Witness Statement, Case ref 003

She raised also key questions surrounding technology and issues of privacy and data protection, for whilst apps 'have enabled women to live more predictable lives and to better understand their bodies', the onus 'is primarily on the consumer at present' which means that 'women's intimate information [can run the risk] of being made public or otherwise exploited in case of a privacy breach'. She recommended that app development should 'factor in privacy by design, with information encrypted' to overcome this: para 4, *ibid*

Ms Pavliuc's concerns were mirrored in Darragh Mackin's evidence, as he raised the issue of privacy and health apps too, observing that 'enhanced protections for women are required in the evolving world where ... technology has become a way of life, a cornerstone of how we all operate our daily routine'. This, he said, '... means we should have as our centre focus ... counteracting the misuse of technology in a way that is discriminatory and has an adverse impact on women':

An example is excess data storage and sharing on women's health apps. Women are encouraged to include very private data within the context of such apps, while men are not. The consequences of the intrusion or interception of that private data on women is far beyond what could ever be envisaged for that of men. This area in particular is one where huge risks of discrimination against women arise, not only in terms of the potential unlawful interception or access to that data, but also in terms of targeted advertisements. Women are now seeing targeted adverts on the internet premised upon their personal data they have entered into private health apps: paras 13-14, Witness Statement, Case ref: 025

He made the point that two aspects arise here, the first that this is 'completely inappropriate in the circumstances in which that data has been intercepted', the second being that it is 'inappropriate given what the data entails'. He went on to emphasise the gravely concerning nature of such developments 'by virtue of the data protection concept, but also because of the breach of the rights of privacy and dignity at their heart':

These rights are currently lacking in the protections required in the context of the technological evolution. There is a need for greater protections in privacy and data protection because women in particular area at risk of extremely personal data being intercepted, disclosed, and used for malicious purposes: paras 14-15, *ibid*

The health consequences of online and on street or otherwise in public stalking were addressed by Saskia Garner of the Suzy Lamplugh Trust. She said the Trust was concerned that stalking victim/survivors 'are not always able to access adequate health support to manage the devastating

psychological impact of stalking and rebuild their lives'. Citing a recent pilot study of stalking victims (of whom 94 percent were women)⁴⁹¹ she expounded:

... 91% reported suffering mental health problems following their experience of stalking, yet only 28% of respondents how had accessed healthcare services as a victim of stalking felt that their experience of asking for support was positive. Furthermore, 78% of respondents reported symptoms consistent with PTSD, yet only 24% seen by their healthcare practitioner were assessed for PTSD. Given that stalking disproportionately affects women, we are concerned that inadequate health support for victims of stalking constitutes substantive discrimination against women in healthcare , and in violation of CEDAW Article 12. As point 15(b) of the CEDAW Committee's General Recommendations No 24 highlight, states parties should ensure 'gender-sensitive training to enable health-care workers to detect and manage the health consequences of gender-based violence: para 5, Witness Statement, Case ref: 040

The impact of Covid 19 on access to health care and the stark revelation of health inequalities were laid bare for those with health problems and those employed in health care, in the hospital sector and in the care home sector. Regional, rural and racial factors were identified as well as pregnancy and maternity, maternal mortality rates⁴⁹² and the impact of ageing along with mental health for women and girls and health provision or lack of it for women in the corrections system and particularly in prison.⁴⁹³

Nick Newland, Policy and Communications Officer, emphasised that there are 'important inequalities not unique to rural women' and the organisation he represents, Associated Country Women of the World, wished it to be noted that '... the inequalities faced by rural women are not exclusive to rural women', however, it was vital to recognise that these inequalities are exacerbated 'on a multiple and intersectional level'. Here, he nominated 'lack of access to transport, a 47 percent reduced access to basic services, health services, and lack of adequate transport available to rural communities, bus services are inadequate and investment in roads is necessary'. Rural women generally are impacted, and 'older women and those with disabilities suffer particularly'. All these factors, including 'distance from healthcare facilities', affect health and health provision and, as a reminder of the differences between city and rural or agricultural regions, he said, the "'Save the NHS" call was an issue in London, but imagine if that hospital had a tenth of the capacity but five times the number of people across the rural community': Transcript, Day 2, 13.14-13.17 This, he said supported the proposition that the 'participation of women in decision making in rural areas, ensuring rural women have access to adequate health services, and have a voice generally' is vital. This, because it would mean 'services take into account the needs of the community, which can lead to improved outcomes': para 6, Witness Statement, Case ref: 011

⁴⁹¹ [Stalking: findings from the Crime Survey for England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/crime-and-justice/crime-in-england-and-wales/crime-survey-for-england-and-wales) (accessed 8 August 2021).

⁴⁹² [Maternal Mortality Rates Are Higher In Black Women | LittleThings.com](https://www.littlethings.com/maternal-mortality-rates-are-higher-in-black-women/) (accessed 21 July 2021); EHRC assessment on access to healthcare: <https://humanrightstracker.com/en/progress-assessment/access-to-healthcare-uk-government-assessment/> (accessed 21 July 2021); [Black Women Maternal Mortality \(stkate.edu\)](https://www.stkate.edu/black-women-maternal-mortality) (accessed 21 July 2021) CHECK EVIDENCE INSERT WITNESS HERE

⁴⁹³ [Women in prison: standards to improve health and wellbeing - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/gender-specific-standards-for-women-in-prison-to-improve-health-and-wellbeing) (accessed 21 July 2021); [Gender Specific Standards for Women in Prison to Improve Health and Wellbeing \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/publications/gender-specific-standards-for-women-in-prison-to-improve-health-and-wellbeing) (accessed 21 July 2018) (these sources date from 8 March 2018 and at least insofar as this website notice is concerned, there is no indication of any update or outcome of the report 'Gender Specific Standards ... to Improve Health and Wellbeing' – which is, of course, no reflection upon the authors of the report, an important contribution); Prison Reform Trust, [Women in the criminal justice system \(prisonreformtrust.org.uk\)](https://www.prisonreformtrust.org.uk/women-in-the-criminal-justice-system); Prison Reform Trust, [mental health in prisons \(prisonreformtrust.org.uk\)](https://www.prisonreformtrust.org.uk/mental-health-in-prisons) (accessed 21 July 2021);

Mr Newland referred to both physical and mental health, and the consequences of living in a rural community generally when suffering from criminal assault at home and other forms of domestic violence. In the latter case, reluctance to seek help whether from police or health services including hospitals is pronounced for rural and agricultural women, because of the potential for 'being known' by the service providers: 'Gender based violence is a real concern because of the sensitivities of reporting' and already existing problems have been exacerbated by the Covid pandemic. This raises 'real concerns are that there is obviously a mental health crisis, affecting everyone, but this is particularly impacting in rural and agricultural communities. Suicide rates for male farmers increase, and that impacts on women and families'. He emphasised that mental health and lack of adequate mental health services in rural communities means that this is having a particular impact on rural and agricultural communities': Transcript, Day 2, 13.12-14

The impact of technology and the importance of the internet for communication have emphasised the divide between city and rural and agricultural communities, with increased differential access for women and men, and for Black and minoritised communities, although there is 'little data so far, but racism exists in less diverse communities': 'Access to technology impacts disproportionately, particularly on education, and increases isolation and mental health issues. The disparity divide between men and women' is significant, and 'of those having zero digital skills in 2018, 61 percent were women'. Lack of digital infrastructure and lack of confidence means that many of those affected are women. This divide is narrowing, but women continue to lag behind: Transcript, Day 2, 13.06-08 Both Mr Newland and Elisabeth Sclater, OBE, raised the issue of ageing as a factor inhibiting women's access.

Rachel Powell provided evidence in her capacity as the Women's Sector Lobbyist with the Women's Resource and Development Agency (WRDA), as well as relying upon research and reports of the Women's Policy Group of which she is Chair and WRDA is Secretariat. Women in Northern Ireland are, she said, 'consistently left behind on matters of gender equality ... evidenced through access to abortion':

... whilst the executive Reform Act and its subsequent implications for abortion access were a welcome step, women in Northern Ireland continue to face less favourable access to abortion than in Great Britain, with a more restrictive cut-off point of twelve weeks, and lack of commissioning and implementation of services ...: para 3, Witness Statement, Case ref: 008

CEDAW recommendations had brought about some 'welcome changes', yet decriminalising abortion had not been accompanied by meaningful action commissioning abortion services to prevent pregnant women having to travel: para xx, *ibid* This was exacerbated by the Covid 19 pandemic, forcing Northern Irish women to travel to access reproductive health services, whilst in pregnancy and maternal health, women have 'less favourable access to IVF services than in Great Britain (one round versus three), lack of specialist mother and baby units for women with perinatal mental health needs, and lack of childcare provision ...': para 3, *ibid*

The impact of Covid 19 on health provision was referred to by Hilary Watson, too. Speaking as Policy Officer on behalf of Women's Equality Network (WEN) Wales, where she leads the WEN Wales policy work (including on CEDAW), she commented upon the pandemic's having had 'the effect of compounding pre-existing issues in the healthcare system'. With women's health, 'often there is very poor diagnosis and services are inconsistent, many of these issues intersecting with those caused by the coronavirus pandemic'. In addition, 'there has also been an increase in waiting times ..., with many procedures or appointments being cancelled or postponed'.

On the other hand:

something that is a shared endeavour. It becomes the woman's individual responsibility. We leave the woman to struggle alone, but at the same time we have very strong opinions about what a mother should be and how they should behave. We feel an ownership over her body: paras 28-30, Witness Statement, Case ref: 030

On abortion rights and reproductive rights, she commented upon the need for women 'to fight very hard for these, because for some reason society believes it has a right to tell women what they can do with their bodies': para 31, *ibid* This struggle for women's health rights was repeated by every witness giving evidence for Northern Ireland.⁴⁹⁹ Each of them recounted the struggle campaign in the country to ensure safety and the proper medical approach to the extension of this health right to all women.⁵⁰⁰

The health rights of older women were broached by Elizabeth Sclater, OBE. She pointed to the differentials between women and men in terms of longevity. Although men age and die sooner, women 'linger with chronic conditions so are likely to be the consumers of healthcare, hospital care, health services, as well as needing care and being looked after':

These days we may be seeing more older men and older people generally in residential and nursing homes, but it is still very much the domain of older women either because older men have managed to marry younger women who are still caring for them at home, or that they'll get ill and die quickly and therefore do not need the care, or families may be more willing to look after their older father or uncle than their mother or aunt ... But the reality is that women do live longer than older men and therefore are more likely to live in greater poverty than men, our pensions must go further and our housing is not necessarily satisfactory: para 8, Witness statement, Case ref: 001

This, she said, had implications for women's health and for health care and aged care. 'Health' relates not only to the need to ensure that those suffering illness and from disease receive proper and appropriate attention, treatment and care, but that wellness is factored in, too. The right to leisure is a human right,⁵⁰¹ just as much as the right to services and hospitalisation. These rights were suspended for older people during the Covid 19 crisis by passage and implementation of the Coronavirus Act 2020 permitting local government to suspend care statutorily required under the Care Act 2014.⁵⁰² Further, this had exacerbated an already existing situation whereby a person '... almost has to be dying before help is available in some situations ... this has become significantly worse during Covid, because what is called the 'Easement Act' was introduced ... Under the Act, if somebody requested an assessment for services, an older person, a person with disability, or any vulnerable person whom the local government was required to provide an assessment, the local authority was required to do it. During Covid the Easement Act was introduced to free up staff to do other duties': para 11, Witness Statement, Case ref: 001

⁴⁹⁹ See for example BBC, 'Abortion law change blocked in NI Assembly', 3 June 2015, <http://www.bbc.co.uk/news/uk-northern-ireland-32987714> (accessed 5 June 2015). In relation to the situation in the Republic of Ireland and campaigning there, see for example BBC, 'Woman dies after abortion request "refused" at Galway hospital', 14 November 2012, <http://www.bbc.co.uk/news/uk-northern-ireland-20321741> (accessed 5 June 2015); Kitty Holland, *Savita - The Tragedy that Shook a Nation*, Random House/Transworld, London, UK, 2013.

⁵⁰⁰ See **1. Constitutional, legislative and policy framework**, earlier.

⁵⁰¹ Article 24, UN Declaration of Human Rights, 'Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay': [udhr.pdf \(un.org\)](#) (accessed 8 August 2021); [Leisure: A Human Right | Request PDF \(researchgate.net\)](#) (accessed 8 August 2021).

⁵⁰² Note that on 16 July 2021 the legislative right to 'easements' (as the practice was popularly known) was withdrawn, however, the fact of its introduction and application, and the lingering effects, remain: [The Coronavirus Act 2020 \(Early Expiry\) Regulations 2021 \(legislation.gov.uk\)](#) (accessed 21 July 2021); [\[Withdrawn\] Care Act easements: supporting guidance - GOV.UK \(www.gov.uk\)](#) (accessed 2 August 2021); .

Ms Sclater went on to draw attention to the interlinkage between health rights and wellbeing through recreation and leisure elements, observing that the recession along with other factors ‘has certainly impacted on the services to older people, who are so reliant on local government services:

The cuts to the voluntary sector, the cuts to those organisations running day services for older people, such as day clubs, opportunities to meet together and be active during older age and keep you ageing well, for example, lifelong learning and opportunities for adult education. When I was first working in this area in the 1990s, the costs of adult education classes were a few pounds year only, enabling older people and older women particularly to participate in a whole range of classes whether it was intellectual stimulation, creative arts, conversations, or becoming involved in local community groups. But now you have to pay full fees if the classes are run at all. There has been a huge dearth of services, meaning that people are staying indoors and not going out so much’: para 12

Here, she referenced the Freedom Pass (a pass for use on London Transport by persons over 60 years and persons with a disability)⁵⁰³ issued by Transport for London as a positive measure retained despite regular suggestions that it may be abolished or its scope reduced. Its retention, said Ms Sclater, is based on two factors:

- (a) Because older people are reliable votes; and
- (b) It particularly keeps us fit and active and without it we’d be sat at home not doing anything, and becoming more dependent in our old age: para 13, *ibid*

SUMMATION HEALTH

For women’s health, access to health care unbound by patriarchal and misogynist notions of ownership of women’s bodies or the right to dictate to women as to ‘the right to our bodies’ or ‘our bodies ourselves’⁵⁰⁴ were at the core of concerns articulated by witnesses. Throughout all stages of a woman’s life, she is at risk of being the centre of controversy, with her health needs ignored in favour of social, ideological or religious demands. Health is recognised, too, as at the centre of the proposition that data collection, maintenance, retention and data disaggregation is essential, whilst ensuring the protection of privacy.

Article 24 of the UN Declaration of Human Rights:⁵⁰⁵

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay -

is essentially to be noted here, too. As Elizabeth Sclater advanced in her evidence, health and wellbeing are maintained not only by addressing the ill-health of the population, but by ensuring an active life is

⁵⁰³ The Freedom Pass covers all forms of transport within London – bus, underground and overground. Local authorities provide a bus pass as the rough equivalent for persons over 60 years and persons with a disability. See [Freedom Pass - Transport for London \(tfl.gov.uk\)](https://tfl.gov.uk) (accessed 8 August 2021); [Free bus pass and transport concessions for seniors | Age UK](#) (accessed 8 August 2021); [Apply for a disabled person's bus pass - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 8 August 2021).

⁵⁰⁴ The title of the discussion series, later pamphlet, booklet, then fully fledged book reclaiming the right of women to ‘know’ their own bodies and speak to their own bodily and health needs - see [Boston Women’s Health Book Collective, later Our Bodies Ourselves \(1969–\) | The Embryo Project Encyclopedia \(asu.edu\)](#) (accessed 2 July 2021); [OBOS Timeline: 1969-Present - Our Bodies Ourselves](#) (accessed 2 July 2021).

⁵⁰⁵ [Article 24 \(claiminghumanrights.org\)](#) (accessed 2 July 2021).

possible into old age. The lack of leisure activities whether they are unavailable or out of the income or pension range of the individual has a deleterious effect on health and has a regressive impact on the community as a whole, with repercussions for economic wellbeing and advancement. Hence, the euphemistically named ‘austerity budget’ of 2010, imposing cuts on local government leading to diminution of essential services, has imposed inevitably negative consequences for the polity. This has a deleterious impact on health and with greater numbers of older women in the population, the impact of these cuts is differentially focused on the ‘protected characteristics’ of sex and age under the Equality Act 2010.⁵⁰⁶

This has a deleterious impact on health. All older women are affected, and migrant women may be particularly susceptible to discrimination when older. If from a non-English speaking background, with ageing they may revert to their original language which can create a negative response from carers and care home staff.⁵⁰⁷ Older age vulnerability may mean they suffer bullying and race discrimination and intolerance, the language factor exacerbating their situation.

At the earlier end of the spectrum, girls growing to womanhood have a right to proper health and wellbeing attention. Cultural diktat or religious fiat should not be allowed to encroach upon health rights and rights to wellbeing. The Female Genital Mutilation Act 2003⁵⁰⁸ is a step in the right direction, however, as Dr Proudman said in her evidence: para 17, Witness Statement, Case ref: 017, the legislation may be working for girls and women ‘at home’ in the United Kingdom, but for migrants, refugees and asylum seekers this may well not be so.

The right to health and wellbeing, in addition to not being subjected to the gross criminal abuse of mutilation, falls for young girls growing into womanhood in terms of access to the monthly necessity of sanitary pads and tampons. Although far distant from the wilful damage, harm and hurt of female genital mutilation, that girls and women should be in a position anywhere in the world where these products are not available to them, by reason of poverty, is wrong. That it should exist in one of the richest countries in the world is a disgrace. Throughout the United Kingdom, women’s organisations, women councillors and officers in local government, students⁵⁰⁹ and nurses have worked together to establish ‘Period Poverty’ schemes.⁵¹⁰ Sadly, this is, however, on all fours with the evidence revealed by the Report of Philip Alston in relation to child poverty in the United Kingdom.⁵¹¹

⁵⁰⁶ See judicial review application made by the Fawcett Society challenging the 2010 budget on the failure of government to comply with the public sector duty requirement under s 149 Equality Act 2010, the provision coming into force in April 2011: *R (On Application of the Fawcett Society v Chancellor of the Exchequer* [2010] EWJC 3522 (Admin), [Fawcett Society v Chancellor of the Exchequer - Case Law - VLEX 792911661](#) (accessed 2 July 2021); [Public sector equality duty - GOV.UK \(www.gov.uk\)](#) (accessed 2 August 2021); see commentary on this case Richard A. Sykes, ‘The equality duty ...’, 26 September 2011, [The equality duty in the economic downturn - Lexology](#) (accessed 8 August 2021); Jocelyne A. Scutt, chapter 5, ‘Access to Law and Justice’ in *Women and Magna Carta – A Treaty for Rights or Wrongs*, Palgrave Macmillan, Basingstoke, 2016. Note that the public sector duty requirement does not confer any right of action on the part of individuals: s 1(3) A failure in respect of a performance of a duty under section 1 does not confer a cause of action at private law: [Equality Act 2010 \(legislation.gov.uk\)](#) (accessed 8 August 2021).

⁵⁰⁷ See Greta Bird and Jo Bird, ‘No Place Like Home – The Human Rights of Women in Aged-Care’ in JA Scutt, *Women, Law & Culture – Conformity, Contradiction & Conflict*, Palgrave Macmillan, Basingstoke, UK, 2016, pp. 141-160.

⁵⁰⁸ See Female Genital Mutilation Act 2003, [Female Genital Mutilation Act 2003 \(legislation.gov.uk\)](#) (accessed 2 July 2021).

⁵⁰⁹ [Cambridge student’s period poverty petition nears 3,000 signature target | Varsity](#) (accessed 21 July 2021).

⁵¹⁰ [Period poverty | Womens health | Royal College of Nursing \(rcn.org.uk\)](#) (accessed 21 July 2021).

⁵¹¹ UN General Assembly, *Visit to the United Kingdom of Great Britain and Northern Ireland Report of the Special Rapporteur on extreme poverty and human rights*, [uk-alston-poverty-report-final.pdf \(wordpress.com\)](#) (accessed 2 July 2021).

The risks women run in medical treatment associated with care not only in obstetrics, but in gynaecological care needs attention. Two CEDAW Committee determinations on obstetric care, one in relation to forced sterilisation, are important. In *AS v Hungary*⁵¹² the CEDAW Committee held that Ms AS' rights were violated when she attended a public hospital in Hungary and was subjected to sterilisation without being properly and fully informed prior to the procedure so that she could, if she wished, give her consent or not, as the case may be. A member of the Roma community, Ms AS found herself going into labour. At the hospital it was found that an emergency Caesarean was necessary. Immediately before the surgery, a doctor provided her with consent forms upon which he had penned a hand-written statement that Ms AS consented to a sterilisation procedure. Ms AS signed, not understanding the statement nor that it committed her to being sterilised. Only after the operation took place did she realise what had happened. She claimed civil rights violations and negligent sterilisation, claims rejected by the local courts of Hungary. The CEDAW Committee found the claim to be made out, the case raising issues of free and informed consent and the requirements of this standard; the right to decide upon number and spacing of children; the right to access sexual and reproductive health education and family planning information, and the right to equality and non-discrimination under Articles 10(h), 12 and 16(1)(e). Several procedural points are important too: first the question of application of the Optional Protocol into which Hungary entered after the sterilisation was performed; the second as to exhaustion of all remedies. On the latter, because there was no avenue of appeal for Ms AS through the court system of Hungary, she was held to have exhausted all remedies. On the former, it was accepted that because sterilisation is a continuous injury, and because it is permanent and irreversible (despite the state's claims to the contrary) and success of reversal is low, the matter was open to being heard by the Committee.

In *SMF v Spain*⁵¹³ a claim of obstetric violence was upheld against Spain under CEDAW Articles 2, 3, 5 and 12 and the Optional Protocol Articles 4(1) and 2(c). The history as outlined in the CEDAW judgment relates such an appalling series of events as to find it difficult to describe it as anything other than a horror story, which began with the most simple of events, namely, the visit of SMF to the public hospital to receive guidance. Thirty-nine weeks and six days pregnant, she was experiencing prodromal contractions. Her pregnancy having proceeded normally and in a well-monitored fashion, albeit she was not in the active phase of labour, upon her arrival SMF was subjected to a series of interventions. Every intervention was unnecessary. All were conducted without providing to her any information or obtaining her consent. The outcome – of some ten digital vaginal examinations throughout the day and night and other intrusive, uncaring and controlling conduct – was to cause a significant adverse effect upon her physically and mentally, damaging her health, her psychological integrity was abused, and the health of the baby was impacted seriously. The digital vaginal examinations put her at risk of infection. She had administered to her, without her consent being requested and therefore without her being informed of its adverse effects, oxytocin intravenously to induce, stimulate or bring forward labour. This increased her pain, caused convulsions, frequent dark vomiting, shivering and fever, and the foetal monitoring recordings became a cause for anxiety. At 5.15am, after she had been in the hospital for more than thirty-six hours, a ninth vaginal examination was conducted even whilst she vomited and shivered from fever. At 6am she was transferred to the delivery room, a tenth vaginal examination was

⁵¹² *AS v Hungary*, Communication No 4/2004, CEDAW/C/D/4/2004 (2006), [A.S. v. Hungary, Communication No. 4/2004, CEDAW/C/36/D/4/2004 | ESCR-Net](#) (accessed 21 July 2021); [A.S. v. Hungary | Optional Protocol to CEDAW \(wordpress.com\)](#) (accessed 21 July 2021); [Case of A.S. v. Hungary | Violence Against Women Initiative Research \(harvard.edu\)](#) (accessed 21 July 2021).

⁵¹³ *SFM v Spain* (2020), CEDAW/C/75/D/138/2018, [Treaty bodies Download \(ohchr.org\)](#) (accessed 21 July 2021); [OHCHR | Spain needs to combat obstetric violence - UN experts](#) (accessed 21 July 2021); [Spanish Courts' Handling of Obstetric Violence Violated CEDAW, Committee Finds – International Justice Resource Center \(ijrcenter.org\)](#) (accessed 21 July 2021)

performed and her request to sit up to give birth was denied. Then, without explanation or information, wielding a pair of scissors the medical staff cut her vagina and extracted her daughter with a ventouse.⁵¹⁴

The baby was removed immediately and diagnosed with a temperature of 38.8°C, caused by E.coli bacteria (probably the direct consequence of the multiple unnecessary digital examinations, warned against by scientific studies. Further physical interventions to SFM after the birth caused further damage, distress, humiliation and shock. The baby was kept in the neonatal unit for seven days, bottle feeding was imposed without the mother's permission, and the mother was denied the right to breastfeed her as 'mothers ringing the bell area nuisance' and the father was allowed to be with the baby for two 30-minute periods a day. At the CEDAW hearing, SFM states:⁵¹⁵

... going into hospital was like going into a car wash or onto an assembly line; everyone does things to you in a mechanical way. The woman does nothing, but she comes out of the car wash with a baby. Although the same thing happens in other types of medical assistance, like, for example, a heart operation, where the patient doesn't have to do anything and is prepared for passivity, in childbirth a woman is physically and psychologically prepared to give birth, not for others to deliver the baby for her. I felt disempowered, with no self-esteem. I had to create the bond with my daughter the hard way, rationally, without the help of the complex natural neurological and hormonal mechanisms that make mothers fall in love with their newborn children.

The psychological report said it took the parents a year to work through their feelings of not bonding with the child at birth. SFM's 'ability to function in all areas of her life' was found to be impaired, as she 'suffers from anxiety, insomnia and repeated memories of scenes experienced during labour'. Additionally, she required specialised physiotherapy to rehabilitate her pelvic floor and repair the damage caused by the episiotomy, making it impossible for her to engage in sexual intercourse for some two years. She declared that she experienced the events as 'obstetric violence'. The CEDAW Committee upheld the application, determining that Spain should:

- provide SFM with appropriate reparation for the damage she suffered to her physical and psychological health;
- provide health workers and people working in the judicial system with adequate professional training on women's reproductive health rights, and to ensure access to effective legal procedures in cases of obstetric violence.

The CEDAW Committee saw the decision as one to be widely disseminated so to 'promote substantial changes in health care protocols in many countries ...'⁵¹⁶

Other CEDAW Committee cases on health systems care (or lack of it) include *Alyne Da Silva Pimentel Teixeira v Brazil*⁵¹⁷ where Ms Pimentel, an Afro-Brazilian woman, died at the age of twenty-eight years as a result of complications arising from pregnancy, after a Rio de Janeiro health centre failed to provide for 'appropriate and timely access to emergency obstetric care'. The Committee considered that Ms

⁵¹⁴ **Vacuum extraction** (VE), also known as ventouse, is a method to assist delivery of a baby using a vacuum device. It is used in the second stage of labour if it has not progressed adequately. It may be an alternative to a forceps delivery and caesarean section. It cannot be used when the baby is in the breech position or for premature births: [Forceps or vacuum delivery - NHS \(www.nhs.uk\)](https://www.nhs.uk) (accessed 21 July 2021).

⁵¹⁵ *SFM v Spain* (2020), CEDAW/C/75/D/138/2018, *ibid*.

⁵¹⁶ [OHCHR | Spain needs to combat obstetric violence - UN experts](#) (accessed 21 July 2021).

⁵¹⁷ *Alyne da Silva Pimentel v Brazil* (2011) Communication No 17/2008, [Alyne da Silva Pimentel v. Brazil \(Communication No. 17/2008\) | ESCR-Net](#) (accessed 21 July 2021); [Alyne da Silva Pimentel Teixeira v. Brazil - Unite for Reproductive Rights \(uniteforreprorights.org\)](#) (accessed 21 July 2021); [LAC Alyne Factsheet.pdf \(reproductiverights.org\)](#) (accessed 21 July 2021);

Pimentel's death 'could have been prevented, had the health center correctly diagnosed and treated her for intrauterine fetal death'. The Committee further concluded that this was not an isolated case, as '4,000 maternal deaths occur' annually in Brazil, 'representing one third of all maternal deaths in Latin America' with a 'disproportionately high number of victims among vulnerable groups, "especially women of African descent"'.⁵¹⁸ Brazil was determined to be in breach of CEDAW Article 12(2), citing GR 28 (2010) which provides that the policies of Brazil 'must be action-and result-oriented as well as adequately funded'. Importantly, in light of so many public services now being farmed out to private providers, the Committee said further that the state 'is directly responsible for the action of private institutions when it outsources its medical services and that, furthermore, the State always maintains the duty to regulate and monitor private health-care institutions'.⁵¹⁹

Amongst other cases relating to women's health and health systems or impacts on women's health, important in themselves and in illustrating the potential for intersectionality operating within the health sector. The CEDAW Committee has:⁵²⁰

- Found against Macedonia for evicting pregnant Roma women, order the State to pay compensation, provide suitable accommodation, access to clean water, nutrition, and immediate access to affordable health-care services – sex and ethnicity combining to underpin the discriminatory conduct;⁵²¹
- Found against Bulgaria for not providing protection or appropriate health services to a girl who had been a victim/survivor of sexual violence – sex and age in combination to deny essential health care.⁵²²

Although it may be asserted that treatment of this kind happens elsewhere, 'not here', instances of poor medical care of women at all stages of life are recounted, not just to the extent of claims of negligence being made, but with successful criminal action instituted.⁵²³ Furthermore, concerns are raised by women suffering from cancer of the vulva of substandard and even grievously harmful surgical intrusion.⁵²⁴

Finally, to the matter of abortion. This was raised by witnesses appearing in relation to Northern Ireland. The evidence disclosed that women in Northern Ireland continue to experience difficulty in accessing this health right. At the same time, despite the advantage women have in availability of this health and medical treatment in Scotland, England and Wales, the Abortion Act 1967, accepted as an advance at the time, is now fifty years old. In making termination of pregnancy subject to conditions exclusive to a

⁵¹⁸ CEDAW, Concluding Observations on Brazil, August 2007, *Alyne da Silva Pimentel v Brazil* (2011), *ibid*.

⁵¹⁹ *Ibid*.

⁵²⁰ See in particular Professor Rebecca Cook, para 9, Witness Statement, Case ref: 019

⁵²¹ [North Macedonia Ordered to Pay Compensation for Evicting Pregnant Roma - European Roma Rights Centre \(errc.org\)](#), 23 March 2020 (accessed 21 July 2021); [INT_CEDAW_NGO_MKD_30006_E.pdf \(ohchr.org\)](#) (accessed 21 July 2021).

⁵²² *VPP v Bulgaria* (2013) [Failure to provide effective protection against rape and sexual assault violated CEDAW \(V.P.P. v. Bulgaria\) | Optional Protocol to CEDAW \(wordpress.com\)](#) 21 April 2013 (accessed 21 July 2021).

⁵²³ See for example *R v Patterson* [2017] EWCA Crim 1625; *R v Patterson* (31 May 2017), Nottingham Crown Court, Sentencing Remarks, Justice Jeremy Baker, [R v Paterson Sentencing Remarks of Mr Justice Jeremy Baker 31 May 2017 \(judiciary.uk\)](#) (accessed 21 July 2021); [A decade after the Butcher of Bega, red flags are still being missed | Emil Shawky Gayed | The Guardian](#) (accessed 21 July 2021); [Butcher of Bega: Graeme Reeves' sinister promise to woman he mutilated | news.com.au — Australia's leading news site](#) (accessed 21 July 2021).

⁵²⁴ Personal communication with records provided from a number of women: Kath Mazzella, 2 July 2021, who is working with others to establish International Gynaecology Day for 10 September.

medical procedure which, when required, is required by women only, is undoubtedly susceptible to challenge as discriminatory against women by reference to the protected characteristic of sex.

The Act provides:

1 Medical termination of pregnancy.

(1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith—

(a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or

(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) or (b) of subsection (1) of this section, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(3) Except as provided by subsection (4) of this section, any treatment for the termination of pregnancy must be carried out in a hospital vested in the Secretary of State for the purposes of his functions under the National Health Service Act 2006 or the National Health Service (Scotland) Act 1978 or in a hospital vested in a National Health Service trust or an NHS foundation trust or in a place approved for the purposes of this section by the Secretary of State.

(3A) The power under subsection (3) of this section to approve a place includes power, in relation to treatment consisting primarily in the use of such medicines as may be specified in the approval and carried out in such manner as may be so specified, to approve a class of places.

(4) Subsection (3) of this section, and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

Until the Act was passed, medical practitioners carrying out abortions relied upon the common law principle established in *R v Bourne*⁵²⁵ where a medical practitioner was acquitted when charged under section 58 of the Offences Against the Person Act 1861 with unlawfully procuring abortion.

⁵²⁵ *R v Bourne* [1939] 1 KB 687, (1938) 3 All ER 615, [gjo-reinounido-1939-en-pdf.pdf \(womenslinkworldwide.org\)](https://www.womenslinkworldwide.org/gjo-reinounido-1939-en-pdf.pdf) (accessed 18 August 2021); see also Michael D. Kandiah and Gillian Staerk (eds), *The Abortion Act 1967*, ICBH

The direction to the jury was put in these terms:⁵²⁶

... it was for the prosecution to prove beyond reasonable doubt that the operation was not performed in good faith for the purpose only of preserving the life of the girl. The surgeon had not got to wait until the patient was in peril of immediate death, but it was his duty to perform the operation if, on reasonable grounds and with adequate knowledge, he was of opinion that the probable consequence of the continuance of the pregnancy would be to make the patient a physical and mental wreck.

So, from 1939 until 1967, where carried out by a medical practitioner in accordance with that direction, termination of pregnancy would not be unlawful under the Offences Against the Person Act. The 1967 Act came in effectively to protect medical practitioners in carrying out abortions. With two doctors signing off on the operation, individual doctors were not running the risk of being charged with the section 58 offence (which remained on the statute book) and being cross-examined as to carrying out the termination 'in good faith for the purpose only of preserving the life ...' However, it meant that a woman seeking a legal abortion was required to find two doctors to attest that continuing the pregnancy would make her 'a physical and mental wreck'.

Advances in new reproductive technology led to an amendment to the Abortion Act, inserting the following provision, to address the practice of inserting more than the required number of embryos (fertilised *in vitro*) into a woman's uterus. This provision would allow for the aborting of a foetus if more than one embryo developed, and the woman or couple wanted fewer than the number which would otherwise develop:

5 Supplementary provisions.

(1) No offence under the Infant Life (Preservation) Act 1929 shall be committed by a registered medical practitioner who terminates a pregnancy in accordance with the provisions of this Act.

(2) For the purposes of the law relating to abortion, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by section 1 of this Act and, in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that section if—

(a) the ground for termination of the pregnancy specified in subsection (1)(d) of that section applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus, or

(b) any of the other grounds for termination of the pregnancy specified in that section applies.

Notwithstanding the passage of this provision, sections 58 and 59 of the Offences Against the Person Act remained extant, prohibiting termination of pregnancy. The Abortion Act 1967 was not extended to Northern Ireland, so other than the *Bourne* common law decision applying, abortion was prohibited.

Ironically, despite the issues of rightful urgency raised by witnesses as to the position in Northern Ireland vis-à-vis termination of pregnancy, it now appears that the CEDAW Committee's inquiry has meant that

Witness Seminar Programme, Institute of Contemporary British History, London, UK, 2002, [abortion.book \(kcl.ac.uk\)](http://abortion.book.kcl.ac.uk) (accessed 18 August 2021); Barbara Brookes, *Abortion in England 1900-1967*, Croome Helm, London, 1988; Joni Lovenduski and Joyce Outshoom (eds), *The New Politics of Abortion*, Sage Publishers, London, UK, 1986.

⁵²⁶ Ibid. The extract here is taken from the charge to the jury and sets out the nub of the matter.

at least insofar as statute law is in issue, the women of Northern Ireland⁵²⁷ are better off than those in the remainder of the United Kingdom who are covered by the Abortion Act 1967.

Section 9 of the Northern Ireland (Executive Formation etc) Act 2019 states:

9 Abortion etc: implementation of CEDAW recommendations

(1) The Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland.

(2) Sections 58 and 59 of the Offences Against the Person Act 1861 (attempts to procure abortion) are repealed under the law of Northern Ireland.

(3) No investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections under the law of Northern Ireland (whenever committed).

(4) The Secretary of State must by regulations make whatever other changes to the law of Northern Ireland appear to the Secretary of State to be necessary or appropriate for the purpose of complying with subsection (1).

(5) Regulations under subsection (4) must, in particular, make provision for the purposes of regulating abortions in Northern Ireland, including provision as to the circumstances in which an abortion may take place.

(6) Regulations under subsection (4) must be made so as to come into force by 31 March 2020 (but this does not in any way limit the re-exercise of the power).

(7) The Secretary of State must carry out the duties imposed by this section expeditiously, recognising the importance of doing so for protecting the human rights of women in Northern Ireland.

(8) The Secretary of State may by regulations make any provision that appears to the Secretary of State to be appropriate in view of subsection (2) or (3).

(9) Regulations under this section may make any provision that could be made by an Act of the Northern Ireland Assembly.

(10) In this section “the CEDAW report” means the 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 (CEDAW/C/OP.8/GBR/1) published on 6 March 2018.

This repeals sections 58 and 59 of the Offences Against the Person Act 1861, so that they no longer apply in Ireland, meaning that no medical practitioner or woman seeking an abortion can be prosecuted under those provisions, and those provisions do not apply to women from Northern Ireland who may seek abortion outside Northern Ireland: s 9(2)(3). For England, Wales and Scotland, those provisions

⁵²⁷ [Abortion law in Northern Ireland set to change - BBC News](#) (accessed 21 July 2021); [What are the UK's laws on abortion? - BBC News](#) (accessed 21 July 2021).

were replaced by section 5(2) of the Abortion Act, as noted, making unlawful any termination of pregnancy not carried out in accordance with section 1 of that Act.

It seems that sections 58 and 59 were superseded for England, Wales and Scotland when section 5 of the Abortion Act was passed. Northern Ireland does not appear to have incorporated such a provision into its law. With the provisions of the Offences Against the Person Act having been repealed for Northern Ireland in 2019, the repeal appears to be complete.⁵²⁸ However, criminal prosecution remains possible for women and medical practitioners conducting abortions in England, Wales and Scotland, so long as section 5 of the Abortion Act remains. This leaves some uncertainty for medical practitioners in terms of a potential criminal liability in terms of section 5, and women similarly disadvantaged in the discriminatory nature of a provision that potentially renders criminal an operation for health reasons. In *CES v Superclinics Australia*⁵²⁹ it was recognised that a pregnancy termination could occur for health reasons beyond the risk of the life of the putative mother, and recognition was given to disadvantage relating to economic circumstances. That this would be recognised under the Abortion Act 1967 bearing in mind section 5 remains in issue.

Other jurisdictions have decriminalised termination of pregnancy completely, by removing criminal provisions from their respective criminal laws. They have thus recognised this medical operation as just that: a medical operation, a health measure, for the benefit of the health and wellbeing of women patients.⁵³⁰ The law in South Australia was similar to that under the 1967 Abortion Act, and in 2020 the law was decriminalised completely. If women are to be accepted as entitled to make health and wellbeing decisions about their own bodies, rather than living under a regime where an operation applicable to women alone is subject to special criminal laws, and the operation is legal only when two medical practitioners say so, then sections 58 and 59 of the Offences Against the Person Act should no longer have a place, just as they do not in Northern Ireland. The 1967 Act should be reviewed, and in that regard it behoves those concerned to look at the scope and import of the Abortion Regulations 1991 which, amongst other matters, require ‘any practitioner who terminates a pregnancy in England or Wales [to] give to the appropriate Chief Medical Officer (a) notice of such termination; and (b) information as required under Schedule 2 within 14 days ‘either in a sealed envelope’ or by ‘electronic communication transmitted by an electronic communications system used solely for the transfer of confidential information to him or her’: 4((1). Schedule 2 runs for more than a page of *Blackstone’s Statutes*⁵³¹ and in the original is even more lengthy, listing a detailed series of data required to be sent to the Chief Medical Officer for England (where the termination is conducted in England) or the Chief Medical Officer for Wales (where the termination is carried out there), including full name and post code or if that is not available then the address of the patient having undergone the operation, and if

⁵²⁸ If the intention was to have section 5 govern the criminal law position vis-à-vis abortion under the Abortion Act 1967, and to eliminate application of sections 58 and 59, or if it were the intention in repealing those provisions for Northern Ireland by the 2019 Act, to do so for the rest of the United Kingdom, it certainly does not appear, on any reading of the provisions, to be the case.

⁵²⁹ See also *CES v Superclinics Australia* (1995) 38 NSWLR 47 per Kirby A-CJ & Priestley JA, Meagher JA dissenting; see also [imageREAL Capture \(austlii.edu.au\)](https://www.austlii.edu.au/au/other/dfat/special/imageREAL_Capture) (accessed 2 August 2021).

⁵³⁰ For example, abortion is legal in all Australian jurisdictions, having been fully decriminalised commencing with Western Australia in 1998, and finally in South Australia (2020) and New South Wales (2021). Access to abortion varies between the territories and states: surgical abortions are available on request within the first 14-24 weeks of pregnancy, although there is no limit on the gestational term in the ACT (Australian Capital Territory). Later term abortions generally require approval of two medical practitioners, but in the Northern Territory are prohibited after 24 weeks unless necessary to save the woman’s life, and after twenty weeks are heavily restricted in Western Australia – see [Australia abortion laws: Terminations now legal in New South Wales - BBC News](https://www.bbc.com/news/health-58111111) (accessed 21 July 2021); [Abortion decriminalisation bill passes Lower House after heated debate in SA Parliament - ABC News](https://www.abc.net.au/news/2020-12-15/abortion-decriminalisation-bill-passes-lower-house-after-heated-debate-in-sa-parliament/12111111) (accessed 21 July 2021); [Abortion law finally passes South Australian Parliament in win for human rights | Human Rights Law Centre \(hrlc.org.au\)](https://www.hrlc.org.au/news/abortion-law-finally-passes-south-australian-parliament-in-win-for-human-rights) (accessed 21 July 2021).

⁵³¹ Anne E. Morris and Michael A. Jones (eds), *Blackstone’s Statutes on Medical Law*, Oxford University Press, Oxford, UK, pp. 276-277.

she is not resident in the United Kingdom, then her country of residence, marital status, parity, ethnicity (if disclosed by the patient), whether it was paid for privately, method of termination ...⁵³² Is this necessary?

Why should this information of a personal nature be held by Chief Medical Officers when information about other operations is not subject to what some might consider to be intrusively heavy-handed officiousness. If abortion is a health right, then review of the position in the United Kingdom seems warranted.

Finally on the matter of health: language. The proposition that women's genitals should be called other than what they are seems odd, yet the term 'vagina' has now become a substitute for vulva, which it most certainly is not. The vagina is the passage leading to the uterus from the vulva. The vulva is not the vagina: the vulva comprises the outer and inner labia of the woman's body. If an assertion were to be made that the scrotum is the penis, or that popular language is somehow 'better off' if the scrotum were to take on the title of penis, people would be astonished. Yet women are no longer entitled to be seen as being possessed of genitals that include vagina and vulva. It's time for women at least to reclaim our body parts, in recognition of our rights to our bodies ourselves.

12. Economic and social benefits

CEDAW Committee raised the following matters:

- Access to universal credit for domestic abuse victims
- Repeal two-child tax credit limit

Additional matters for consideration:

- Address discrimination caused by increase in State pension age from 60 to 66⁵³³
- Housing including housing benefit and discrimination across gender and race

The issues raised by the CEDAW Committee under the category 'economic and social benefits' were at the heart of a number of witness' evidence. As Margaret Owen pointed out, with the imposition of austerity measures and 'some of the highest childcare costs in Europe', women with children bear the brunt, 'particularly where it is not worth women working part-time as the costs of childcare are greater than what they could potentially earn'. As she noted, the 'knock-on effects of this are dependency on a husband, boyfriend or cohabitee', creating an economic dependency that leaves them 'even more vulnerable to abuse, not just physical but forms of coercive control'. Austerity measures 'and cuts to essential services that women depend on' have been substantial, impacting on local government which in turn passes on the consequences to women, in particular: para 5, Witness Statement, Case ref: 016

Loss of jobs in the local government sector, caused by cuts to central government funding,⁵³⁴ has hit women more than men, and cutbacks to programmes – eldercare and childcare, children's centres and

⁵³² [Abortion Regulations 1991 - UK Non-devolved - Legislation - VLEX 812401089](#) (accessed 21 July 2021); [The Abortion \(Scotland\) Regulations 1991 \(legislation.gov.uk\)](#) (accessed 21 July 2021)

⁵³³ As this is an employment-related matter, not a welfare issue (in that pensions are or should be regarded as a right, not 'welfare', it is addressed under **10. Employment and economic empowerment**, earlier.

⁵³⁴ The Revenue Support Grant - [Title \(publishing.service.gov.uk\)](#) (accessed 8 August 2010) was phased out from the 2010 Coalition government austerity budget, coming to an end in 2020, leaving local government authorities dependent basically on business revenue and Council tax, with some grants for specified purposes, leaving most local authorities and likely all struggling to fund those services statutorily required: [Local Authority Provision of Essential Services - House of Lords Library \(parliament.uk\)](#) (accessed 8 August 2021); lacking any capacity for providing additional services that had been a part of their provision: [Croydon's bankruptcy is the result of austerity – and more councils will follow | Adam Lent | The Guardian](#) (accessed 8 August 2021); [Poor urban councils bear majority of Tory funding cuts, study shows | Local government | The Guardian](#) (accessed 8 August 2021).

Sure Start⁵³⁵ – mean that women must take up the slack. Thus women who were employed in work provided by local government are left to take on the care of their elderly parents and, often, grandchildren – unpaid roles which should be provided by properly paid staff providing adequately funded care.⁵³⁶ The Sure Start and children’s centres impact goes directly to children’s rights, too – the denial of projects aimed at ‘supporting a child’s learning skills, health and wellbeing, social and emotional development’, for example, puts at risk not only their everyday opportunities provided through these programmes, but jeopardises their futures.⁵³⁷

Rebecca Munro, PhD researcher with the European University Institute, speaking in a personal capacity, focused on the disadvantage accruing to women by reason of a lack of or lesser socio-economic rights ‘in the UK in comparison with men’. This she located in the fact that the ‘breadwinner model is being reinforced by universal credit, and women are being pushed further into poverty’. The pandemic was influential here, too:

... 14% more women have been furloughed than men, and there has been an increase in universal credit applications from women over men since the pandemic began. Plus, women are already at a disadvantage because of the past austerity measures, so women tend to suffer more because they are expected to take up the childcare arrangements as well, suffering in socio-economic terms due to the already imposed austerity measures ... Even in the sense of the two-child limit benefit that was introduced, meaning that mean single mothers suffered more because they lost part of their benefits if they had more than two children: para 8, Witness Statement, Case ref: 014

Pointing to the terms of Article 13 of CEDAW, she said that this illustrated how ‘the UK has failed to secure women’s socio-economic rights, [for] the provision pays particular tribute to the right to family benefits, the right to financial credit and the right to participate in recreational activities, sports and all aspects of cultural life’:

The austerity measures hindered socio-economic rights in those respects. The incorporation of the CEDAW Convention into the UK domestic framework would push the government to take equality impact assessments when making government policy on socio-economic issues and create an obligation to take into consideration the impact on women in particular. There has not been a sufficiently strong commitment to making sure that these policies do not disadvantage women, and universal credit is probably the biggest example of that. There has been no sufficiently strong equality impact assessment to see the impact that having one payment to one household would have on women. If the provisions in CEDAW had to be at the forefront of policy making, and if socio-economic policy making had to take into consideration

⁵³⁵ [Impact of cuts to local government spending on Sure Start children’s centres on childhood obesity in England: a longitudinal ecological study \(bmj.com\)](#) (accessed 8 August 2021); [Children’s care cash crisis: children’s centres in fight for survival | Local Government Association](#) (accessed 8 August 2021); citing research from the Sutton Trust: [Sure Start numbers plummet as cuts hit children’s services | Welfare | The Guardian](#) (accessed 8 August 2021); [1,000 Sure Start children’s centres may have shut since 2010 | Children | The Guardian](#) (accessed 8 August 2021); citing research from Barnardo’s: [More than 500 children’s centres have closed in England since 2010 | Public sector cuts | The Guardian](#) (accessed 8 August 2021).

⁵³⁶ ‘1.3. **Local government** is in the grip of a financial stranglehold that is threatening the future of even statutory services. Billions have been stripped from **local authority** budgets and almost a million **jobs** have been **lost** since 2010. The cuts are disproportionately **falling** on women workers, and women who rely on council services’: [GMB19-LocalAusterity.pdf](#) (accessed 8 August 2021); Richard Vize, ‘Public Sector Workers ...’, 1 October 2018, [Public sector workers have been pummelled by austerity. It’s a scandal | Richard Vize | The Guardian](#) (accessed 8 August 2021).

⁵³⁷ [Sure Start Services | nidirect](#) (accessed 2 August 2021); [Sure Start | Department of Education \(education-ni.gov.uk\)](#) (accessed 2 August 2021).

the impact it would have on women, that would be beneficial to [women's equality rights]: para 9, ibid

Ms Munro concluded that women's 'lack of socio-economic rights in social welfare specifically, especially in comparison to men through universal credit, the two-child limit and the housing benefits cap, means that women are negatively impacted'. She added that measures consequent upon the imposition of austerity, 'such as the Sure Start nursery closures' added to the disadvantage in 'women losing the childcare help they had previously': para 10, ibid

Universal credit was in issue for Women's Equality Network (WEN) Wales,⁵³⁸ too. Hilary Watson raised this in her evidence, citing Covid 19 as a factor, too:

In relation to poverty in Wales, we have concerns about the universal credit system, as well as the incredibly high use of foodbanks. While there has been some increase in Universal Credit from the UK government during the coronavirus pandemic, it is thought that this will decrease rapidly when the pandemic ends, which will cause difficulties for families in poverty or near poverty. We also have concerns about the number of women who have given up work during the pandemic, as well as woman who have been put on furlough in industries such as hospitality, which are in danger of collapse: para 5, Witness Statement, Case ref: 004

She noted also that women with pre-existing health conditions 'are the most likely to be in poverty. Single parents are also very likely to be in poverty. To tackle these issues, we are calling for the possible implementation of universal income':⁵³⁹ para 5, ibid

Jonna Monaghan, project coordinator for the Northern Ireland Women's European Platform (NIWEP)⁵⁴⁰ and speaking on behalf of the organisation, referred to the issue in the Northern Ireland context. Here, she said, the adherence to policies promulgated by the United Kingdom Parliament had had a negative effect on Northern Ireland women. Although 'policy on benefits and welfare is devolved, in Northern Ireland there has been a tendency to keep parity with the rest of the UK and there is very little scope for local decision-making ...' Further:

The implementation of austerity measures can be measured through UK wide figures. The UK wide figure is that 85% of cuts have been to women over the decade. A lot of this is relating to welfare reform. That is a particular concern in Northern Ireland because women are struggling to make ends meet and local research carried out by the network the Women's Regional Consortium⁵⁴¹ details how women are making choices between eating and feeding their children. On top of that, but not unique to Northern Ireland, is concern about the two-child cap. The specific context in Northern Ireland is that on the whole, families tend to be larger, particularly in lower income brackets, and of course until 2020 there was no abortion legislation in place either. While we do not want to make a link between the two, that is a consideration, whereas elsewhere in the UK that choice has been available to women: paras 10, 13, ibid

Referencing the impact of economics on older women, Elizabeth Sclater noted that a report from 2010 showed 'over two thirds of older women living in poverty'. Remarking upon the pensions gap, she saw it as 'having remained or grown, even though the principle applied now is of "opting out" of a pensions

⁵³⁸ [We are the Women's Equality Network Wales - Womens Equality Network Wales \(wenwales.org.uk\)](https://www.wenwales.org.uk) (accessed 21 July 2021).

⁵³⁹ Universal income – trialling in Wales – announcement May 2021: [Universal basic income to be tested in Wales - BBC News](https://www.bbc.com/news/health-57844444) (accessed 21 July 2021); [About Us - Basic Income UK](https://www.basicincome.org.uk) (accessed 21 July 2021).

⁵⁴⁰ [Northern Ireland Women's European Platform | \(niwep.org\)](https://www.niwep.org)(accessed 8 August 2021).

⁵⁴¹ [Giving Disadvantaged Women a Voice in the Sector \(womensregionalconsortiumni.org.uk\)](https://www.womensregionalconsortiumni.org.uk) (accessed 8 August 2021).

scheme rather than “opting in” which was previously the case’. Although this would likely mean that more women would qualify for a pension in an employer’s scheme, contrary to this, ‘for women who are in lower paid work or on basic wages, they will not be interested in having a pension because if it is a choice between a child’s pair of shoes and your pension contributions – your money does not go very far. This means that there are issues building for the future, when these women are older’. Insecure employment will have ‘a cumulative impact in older age, impacting more on women than on men because women tend to be in the lower paid, less secure jobs’: para 9, Witness Statement, Case ref: 001

Linking policymaking that has discriminatory effects on women with the importance of equal participation of women in political and public life, Dr Catherine O’Rourke, of Ulster University School of Law, speaking in her personal capacity, said ‘there is no substitute for resourcing women’s grassroots organisations’:

They are the ones who are closest to the gender inequalities on a daily basis and are forging meaningful responses to it. Unfortunately, we have moved in all the wrong directions on this. Austerity has a hugely gendered impact, as has universal credit. We are moving backwards on those socio-economic issues and it will not be possible to empower women to participate politically if we continue to force women to live in poverty. Those issues are connected, it is key at family level, a community level and at the larger political level. That is what CEDAW is all about, connecting all those different levels of participation and empowerment: para 7, Witness Statement, Case ref: 012

SUMMATION ECONOMIC AND SOCIAL BENEFITS

As long as discrimination and inequities remain so commonplace around the world—as long as girls and women are valued less, fed less, fed last, overworked, underpaid, not schooled and subjected to violence in and out of their homes—the potential of the human family to create a peaceful, prosperous world will not be realized.

Hillary Clinton
‘Women’s Rights are Human Rights’
United Nations Fourth World Conference on Women
Beijing, China 1995⁵⁴²

CEDAW’s provision underscoring the right to economic and social benefits links into women’s position overall, not the least in respect of other categories, in particular:

1. **Gender-based violence against women**
2. ...
3. **Trafficking and exploitation of prostitutes**
4. **Equal participation in political and public life**
5. ...
6. **Education**
7. **Employment and economic empowerment**
8. ...
9. **Marriage and family**

⁵⁴² [Hillary Clinton "Women's Rights are Human Rights" Speech at 1995 Women's Conference Beijing Transcript - Rev](#) (accessed 21 August 2021).

This is not to say that the categories omitted from this list are not implicated or affected by the ‘Economic and social benefits’ category, and indeed all categories as provided in CEDAW Articles are linked the one to the other. However, economics lies at the heart of discrimination against women and the disadvantaged position of women in society as a whole. As the United States’ feminist Betty Friedan once said of a system that effectively requires all women to marry, and in that role to be dependent upon her husband for housekeeping money, is ‘just one husband away from welfare’.⁵⁴³ Even where, as more often than in the period when Friedan wrote (early 1960s), women have their own jobs and expect to remain in them after marriage, the ‘one husband away ...’ anecdote is not so removed from women’s lives. As witnesses said in relation to women’s place in the paid workforce, this can be precarious and provisions such as pregnancy and maternity leave may be little or no protection against job losses, particularly in times of austerity and Covid 19.⁵⁴⁴

When money comes into play, too often unknown, little realised or ignored (although women are likely to remark upon it on occasion, at least) is that atop the confronting issues falling under the economic and social benefits head is that facing all women and girls, namely paying more for goods and services than do men and boys. *Do Women Pay More?* written by Allyson Foster for the Australian scene and published in 1997⁵⁴⁵ dovetails with ‘Why Women Pay More’ an article written by Lea Goldman and published in 2012, outlining ‘gender pricing’ for the United States.⁵⁴⁶ Both match with the report by Yulia Chuzha, Strategy Lead at Aimbalance marketing agency in the Ukraine reporting on figures for 2020,⁵⁴⁷ along with that of Zoe Miller for the United Kingdom, outlining the position for women in 2018.⁵⁴⁸ As research projects confirm, whether it is dry cleaning, haircuts, clothing, razors, shampoo, even mortgages,⁵⁴⁹ women pay more. Yulia Chuzha lists the ten products where the greatest differential is shown – reflecting the position not only for the Ukraine, but ‘universal’ at least insofar as countries with a European or Western cultural influence:

- Shampoo and conditioner: 48% more expensive for women
- Personal urinals (incontinence pads): 21% more expensive for women
- Shirts: 15% more expensive for women
- Supports and braces: 15% more expensive for women
- Dress shirts: 13% more expensive for women
- Helmets and pads for sports: 13% more expensive for women
- Canes: 12% more expensive for women
- Lotion: 11% more expensive for women
- Razor cartridges: 11% more expensive for women
- Razors: 11% more expensive for women

⁵⁴³ *One husband away*, [one husband away from welfare betty friedan - Bing images](#) (accessed 8 August 2021); Betty Friedan, *The Feminine Mystique*, WW Norton, New York, NY, USA, 1963 (original edition); [\[PDF\] The Feminine Mystique Book by Betty Friedan Free Download \(592 pages\) \(blindhypnosis.com\)](#) (accessed 8 August 2021) and other works.

⁵⁴⁴ See **10. Employment and economic empowerment**, earlier.

⁵⁴⁵ Allyson Foster, *Do Women Pay More?* Vol 1, Consumer Law Centre, Melbourne, Australia, 1997.

⁵⁴⁶ Lea Goldman, 15 March 2012, [Why Women Pay More \(marieclaire.com\)](#) (accessed 2 August 2021); [Study-of-Gender-Pricing-in-NYC.pdf](#) (accessed 2 August 2021).

⁵⁴⁷ Yulia Chuzha, 6 March 2020, [Pink Tax, White Paper: Why Do Women Still Pay More? | by AIMBULANCE | Medium](#) (accessed 2 August 2021).

⁵⁴⁸ Zoe Miller, 20 August 2018, [Things That Are More Expensive for Women Than for Men \(insider.com\)](#) (accessed 2 August 2021).

⁵⁴⁹ [\(PDF\) Do Women Pay More for Mortgages? \(researchgate.net\)](#) (accessed 2 August 2021).

In the United States, research shows women pay more for health insurance – a warning in light of proposals to privatise the National Health System (NHS).⁵⁵⁰ Further, that women have expenditure peculiar to their needs, such as sanitary pads and tampons, leading to ‘Period Poverty’ schemes where these are provided free in libraries and community centres, recognising that lack of these products can interfere with women being able to attend work (with suggestions of untoward absences and using up sick leave or recreation leave unfairly) and girls being able to attend school (again with negative implications – as to untoward absences, plus educational impact).⁵⁵¹ Research indicates that occasion differentials favour women over men – for example, United States’ import duty on Men’s gloves came in at 14 percent, whilst women’s were taxed at 12.6 percent, but this is rare – in contrast, men’s sneakers were taxed at 8.5 percent, women’s at 10 percent, this just one of those setting import tariffs higher in respect of goods directed at the female market.⁵⁵² The Ukraine research confirmed the skewing of customs duty against women, too: on average, ‘clothing imports for women are taxed at a higher rate than clothing imports for men – 15.1% compared to 11.9%’. This will be passed on to consumers and ‘contributed to the markup on some goods targeted to women’.⁵⁵³ For the United Kingdom, research confirms women pay more than men, one more area of concern being that women’s income is charged with £17k more to borrow over her lifetime.⁵⁵⁴

This is sufficiently challenging for women in paid employment. For those dependent on the state, the costs differentials add the struggle. Lacking an independent income, women are unable to realise personal independence and, where she is dependent upon the state, as through the need for benefits to sustain life, universal credit is key to survival. Then, in retirement, without alternative forms of income and assets, women will be dependent upon a state pension and, in the United Kingdom, a pension is or should be seen as a right. As for the two-child tax credit limit, this can dictate to women, by placing limitations on their reproductive lives and implying that this cap is required to prevent women from becoming pregnant and bearing more children, simply to qualify for a benefit: if the benefit is capped, so the argument goes, women (allegedly) taking the ‘easy’ route of pregnancy in order to escape the world of ‘real’ work will be required to reorientate themselves to engaging in productivity rather than reproductivity.⁵⁵⁵

If economic and social benefits provided by the state are inadequate or bound up in rigid rules applied by a retributive and harsh regime that sees those who apply for benefits as seeking to ‘cheat’ the state or failing to ‘put their shoulders to the wheel’ – that is, too ‘lazy’ to ‘get out there and get a job’ (whatever the state of the economy, whatever the state of the job market), and those who are ‘on’ benefits as required to get off them as soon as possible, whatever their circumstances, this will impact differentially upon women. No one, whether woman or man, should live in a state of fear, afraid that punitive and retaliatory measures will be used against them, wrongly. Nor should a nation state operate a benefits system in that way.

⁵⁵⁰ [nwc 2012 turningtofairness report.pdf](#) (accessed 2 August 2021); [Women Pay More for Health Insurance Than Men \(hormonesmatter.com\)](#) (accessed 2 August 2021).

⁵⁵¹ [Home \(periodpoverty.uk\)](#) (accessed 2 August 2021).

⁵⁵² Lea Goldman, ‘Why Women ...’, *ibid*, citing 2000 figures provided by Michael Cone, New York City trade lawyer.

⁵⁵³ Yulia Chuzha, 6 March 2020, ‘Pink Tax, White Paper ...’, *ibid*.

⁵⁵⁴ [Gender credit gap: women pay £17k more to borrow over lifetime | MyWalletHero \(fool.co.uk\)](#) (accessed 2 August 2021).

⁵⁵⁵ [Stop this hysteria! Why should the state pay for women on benefits to have more than two children? | Daily Mail Online](#) (accessed 8 August 2021); [Government policy forced 190 women to prove they were raped in order to get child benefits, figures show | The Independent | The Independent](#) (accessed 8 August 2021); [Tories' two-child benefit limits and rape clause 'legal', Supreme Court rules | The National](#) (accessed 8 August 2021).

If married, a woman is dependent upon her partner's living up to his 'bargain with the state' under the universal credit rules.⁵⁵⁶

6. Claimant Commitment

A Claimant Commitment is your record of the responsibilities that you have accepted in return for receiving Universal Credit and the consequences of not meeting them.

Your Universal Credit payments may be cut if you don't meet your responsibilities.

If you claim Universal Credit as a couple both of you will need to accept a Claimant Commitment. You will each have your own Claimant Commitment, and yours may be affected if your partner starts work or their circumstances change.

7. Sanctions

If you do not do what you've agreed to in your Claimant Commitment to find work, for example, fail to attend appointments or turn down job offers you may receive a sanction.

A sanction is a reduction in your benefit which is imposed if we think you have not completed a mandatory activity you agreed on your Claimant Commitment and you can't give a good reason to explain why. Sanctions are a last resort and you will always be asked for your reasons for your actions before a decision is made.

If a sanction is applied to your Universal Credit we will tell you how much you will lose and for how long.

The statement in the rules that sanctions are 'a last resort' does not always match claimants' experience. If an adult child returns, this must be disclosed unless the parent is sure that the return is temporary or the child has a permanent address elsewhere. Disclosure will impact on, say, housing benefit or council tax liability, despite the child coming and going, if s/he has no alternative permanent address.

For a woman who is a single with dependent children from the outset or by reason of desertion, divorce or separation, applying for government benefits can be fraught. Furthermore, women are particularly susceptible to prosecution in relation to failure to disclose alleged changes of circumstance. Women suffer enormous disadvantage in this regard, for they run the risk of being prosecuted for failing to update their status or incorrectly completing update forms or complying with update requirements. This risk is run because single, separated and divorced women do not always remain so. Yet a man who comes into their life may not be prepared to support or provide sustenance for her children. He may also be unreliable as a 'partner', coming in and out of her life in an itinerant way that means she has no means of knowing how long he will stay or whether his intention is to be a stable part of her life. A peripatetic man in her life is a danger for a woman on universal credit, for if she does not disclose this (potential?) contributor to the household, she will be seen as denying her obligation to the state.⁵⁵⁷

Report a change of circumstances

You need to report changes to your circumstances so you keep getting the right amount each month.

Changes can include:

- finding or finishing a job
- having a child

⁵⁵⁶ [Universal Credit: further information for couples - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 21 July 2021); [Universal Credit - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 21 July 2021).

⁵⁵⁷ [Universal Credit: Report a change of circumstances - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 2 August 2021).

- moving in with your partner
- starting to care for a child or disabled person
- changing your mobile number or email address
- moving to a new address
- changing your bank details
- your rent going up or down
- changes to your health condition
- becoming too ill to work or meet your work coach
- changes to your earnings (only if you're self-employed)
- changes to your savings, investments and how much money you have
- changes to your immigration status, if you're not a British citizen

You could be taken to court or have to pay a penalty if you give wrong information or do not report a change in your circumstances.

The burdens imposed on recipients of universal credit can be illustrated in many ways, save as to illustrate here by two specific applications of the rules.

Universal Credit – Disability Component⁵⁵⁸

A recipient with two children, one now adult (20 years), one seventeen, both with a disability, was in receipt of child tax credits, with the child benefit ceasing when the oldest son turned twenty. This meant an immediate loss of £690 per month, adding to a loss of £8,280 annually or tax credits of £7204. No universal credit payment at all was received by her for some eight weeks. Then commenced a payment of £250 monthly, being a shortfall of £440 a month. A Universal Credit (UC) 'Work Capability Assessment' form was required to be completed, together with collecting medical reports and caring full-time (calculated as 168 hours per week) for the children. The authorities then sought to interview the adult child (for the purpose of assessment), which was contrary to the medical assessment of his capability and was estimated medically to be detrimental to his health. Following submissions, including medical communications, a paper-based assessment was then carried out, resulting in his being awarded disability component of universal credit. Under the rules as applied by the authority, the disability component is not paid for the first 12 weeks and, according to the report, is never paid. The adult child was diagnosed with a disability at the age of three, to the knowledge of the Department of Work and Pensions, with disability living allowance having been paid since the child was three. The parent thus asks why, therefore, was there no acknowledgement of his disability for that first 12 weeks of universal credit. The net result is that the recipient is minus £2500 annually, whilst continuing as full-time carer of the adult child and the younger child – calculated as being paid 37p per hour for that care.

The breakdown of tax credits is:

- Child - £2780 + disabled child - £3149 + high-level disability £1275 = £7204
- Child benefit loss - £1076
- Adult child – basic £251.77 + £315.60 (with the acknowledgement that the child was unable to engage in paid work)
- Yearly total £6808.44

Universal Credit – Impact of Paid Work⁵⁵⁹

Single parent working 30 hours per week loses £573 per month of the universal credit entitlement, equivalent to a marginal tax rate of 75 percent. This contrasts sharply with the tax rate applied to

⁵⁵⁸ [Sarah's story: #UniversalCredit cost us £2,500 immediately – SKWAWKBOX](#) (accessed 2 July 2021).

⁵⁵⁹ ["A profound mistake" – Reynolds' speech on cutting Universal Credit – LabourList](#) (accessed 2 August 2021).

individuals not in the universal credit scheme. Under the tax regime applicable to 'ordinary' workers, those earning over £150,000 a year face a marginal tax rate of 47%.

As for housing, housing benefit can be precarious, and housing costs can be daunting.⁵⁶⁰ Homelessness for women is less well recognised as homelessness for men, yet women are most likely to constitute the hidden homeless. Although figures from 2017 showed women as constituting 14 percent of rough sleepers only, the Genesis Trust confirms that 'in the past five years, the numbers of homeless women has risen disproportionately'.⁵⁶¹ Further, women who are pregnant and women with a disability or mental health issues are extremely vulnerable – both to becoming homeless and when homeless being at risk on the street or in hostels or other temporary accommodation:⁵⁶²

Crisis has identified that 58% of females sleeping rough nationally have been intimidated or threatened and that, over the course of a year, one in four were sexually assaulted. Women are more likely to have experienced trauma and abuse both before and during homelessness, including separation from children ... [M]any ... are fleeing a violent relationship and/or have had children taken into care ... Gender therefore acts as both a symptom and a cause of homelessness ...

The Women's Budget Group undertook a review of housing policy from 2010 to the end of 2017, conducted by the University of York's Becky Tunstall, Professor of Housing Policy,⁵⁶³ confirming the skewed nature of government policy, which favours through the taxation system individual investment in housing as landlords in the private rental market. The following key points are highlighted:⁵⁶⁴

- Housing can contribute to living standards, opportunities and wellbeing. But it can also cause low income after housing costs, disadvantage and poor health;
- Women's housing situation differs from that of men;
- Women are the 'household reference person' in 56.6% of social tenancies but only 39% of private tenancies, 42% of those owning outright, and 31% of those buying with a mortgage;
- Nearly 63% of adults in households claiming housing benefit are women, reflecting women's lower incomes;
- Since 2010 there has been –
 - a sharp reduction in overall government spending,
 - reductions in housing benefit rates and eligibility, and
 - changes to the size and status of the social housing sector. All of these have reduced the 'housing welfare safety net', and will affect disadvantaged women;
- Within its reduced housing budget, government has shifted support from social housing to encouraging additional home building and access to home ownership for people on middle incomes;
- There is no evidence to suggest this will benefit women, and it is unlikely to compensate poorer women for the changes to the safety net;
- The treatment of housing assets, rental income and imputed rents (the flow of benefits homeowners get from their homes) in the taxation system is generous, and has been an overlooked option for fiscal and housing policy goals.

⁵⁶⁰ [Housing benefit deductions when living with non-dependants - Shelter England](#) (accessed 2 August 2021).

⁵⁶¹ [Gender and Homelessness - Genesis Trust Bath](#) (accessed 2 August 2021).

⁵⁶² [New research reveals the scale of violence against rough sleepers | Crisis | Together we will end homelessness](#) (accessed 2 August 2021).

⁵⁶³ [Microsoft Word - housing pre-budget nov 2017 final.docx \(wbg.org.uk\)](#) (accessed 2 August 2021).

⁵⁶⁴ Ibid.

The honouring of any commitment to women's equality must taken into account that the right to housing as the economic, social and cultural right to adequate housing and shelter has been signed up to by the United Kingdom, in its adoption of the Universal Declaration of Human Rights⁵⁶⁵ and the UN International Covenant on Economic, Social and Cultural Rights.⁵⁶⁶

This brings into focus, along with ensuring that organisations are able to work on 'gender just fiscal policies so to have a much bigger impact on inequality reduction'⁵⁶⁷ – the need for a review of taxation generally. This is not only to prohibit engagement in offshore schemes diverting potential taxation monies away from provision of services and policies aimed at redressing the skewed nature of the system, but to address provisions that discriminate directly or by impact. There, the two child tax limit, introduced by the Welfare Reform and Work Act 2016,⁵⁶⁸ addressed by a number of witnesses before the Tribunal – requires attention. The question whether this provision, limiting child tax credits to apply to two children only,⁵⁶⁹ so that families with children numbering more than two would receive no child tax credit in respect of each child exceeding the limit, breaches various articles of the European Convention on Human Rights (ECHR), hence contravening provisions of the Human Rights Act 1998,⁵⁷⁰ was addressed by the Supreme Court in *R (on the Application of SC, CB and 8 Children) v Secretary of State for Work and Pensions and Ors*.⁵⁷¹ The grounds argued were:

- Article 8 - incompatible with the rights of adults and children affected by it⁵⁷²
- Article 12 - incompatible with the rights of adults affected by it⁵⁷³
- Article 14 (in conjunction with Article 8 or Article 1) – constitutes indirect discrimination against women as compared with men and, if a presumption is raised, the government must establish the limitation has 'an objective and reasonable justification'⁵⁷⁴
- Article 14 (together with Article 8) – constitutes direct discrimination against children as compared with adults or indirect discrimination against children as compared with adults
- Whether, in light of answers to those questions:

⁵⁶⁵ Article 25 (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control: [udhr.pdf \(un.org\)](#) (accessed 2 August 2021).

⁵⁶⁶ Article 11 (1) The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent: https://treaties.un.org/doc/Treaties/1976/01/19760103_09-57_PM/Ch_IV_03.pdf (accessed 2 August 2021); [OHCHR | International Covenant on Economic, Social and Cultural Rights](#) (accessed 2 August 2021).

⁵⁶⁷ See for example The Women's Budget Group/Oxfam review: [A Short Guide to Taxing for Gender Equality \(wbg.org.uk\)](#) (accessed 21 July 2021).

⁵⁶⁸ [Welfare Reform and Work Act 2016 \(legislation.gov.uk\)](#) (accessed 2 July 2021).

⁵⁶⁹ The third or subsequent child born after 5 April 2017 – to comply with the principle that tax law should not apply retrospectively.

⁵⁷⁰ [Human Rights Act 1998 \(legislation.gov.uk\)](#) (accessed 2 July 2021).

⁵⁷¹ [R \(on the application of SC, CB and 8 children\) \(Appellants\) v Secretary of State for Work and Pensions and others \(Respondents\) \(supremecourt.uk\)](#) (accessed 12 July 2021); [R \(on the application of SC, CB and 8 children\) \(Appellants\) v Secretary of State for Work and Pensions and others \(Respondents\) - Press Summary \(supremecourt.uk\)](#) (accessed 12 July 2021).

⁵⁷² [Guide on Article 8 - Right to respect for private and family life, home and correspondence \(coe.int\)](#) (accessed 8 August 2021).

⁵⁷³ [Guide on Article 12 - Right to marry \(coe.int\)](#) (accessed 8 August 2021).

⁵⁷⁴ [Article 14: Protection from discrimination | Equality and Human Rights Commission \(equalityhumanrights.com\)](#) (accessed 8 August 2021); [Guide on Article 1 - Obligation to respect human rights – Concepts of "jurisdiction" and imputability \(coe.int\)](#) (accessed 8 August 2021).

- (i) the measure in question has an objective and reasonable justification, notwithstanding its greater impact on women, and
- (ii) the differential treatment of children living in households with more than two children is justifiable.

The conclusion reached in each case was that the measure has such a justification, and that the appeal should accordingly be dismissed.

The decision itself can be subject to critique, however, ultimately the issue lies with central government and the formulation of the policy. Figures published on 15 July 2021 showed the number of families affected by the policy ‘jumping by 67,000 in the year to April 2021 to reach 318,000’. This confirmed 1.1m children now affected, an increase from 900,000 in April 2020.⁵⁷⁵

One need go no further than the Statement made by Professor Philp Alston, United Nations Special Rapporteur on extreme poverty and human rights, on his visit to the United Kingdom,⁵⁷⁶ that ‘ideologically driven policies’ have resulted in ‘... 14 million people, a fifth of the population, living in poverty’. Four million of this number are living at ‘more than 50% below the poverty line’, whilst 1.5 million ‘are destitute, unable to afford basic essentials’:⁵⁷⁷

The widely respected Institute for Fiscal Studies predicts a 7% rise in child poverty between 2015 and 2022, and various sources predict child poverty rates of as high as 40%. For almost one in every two children to be poor in twenty-first century Britain is not just a disgrace, but a social calamity and an economic disaster, all rolled into one. But the full picture of low-income well-being in the UK cannot be captured by statistics alone. Its manifestations are clear for all to see. The country’s most respected charitable groups, its leading think tanks, its parliamentary committees, independent authorities like the National Audit Office, and many others, have all drawn attention to the dramatic decline in the fortunes of the least well off in this country.

Nonetheless, he continues, ‘... through it all, one actor has stubbornly resisted seeing the situation for what it is’:⁵⁷⁸

The Government has remained determinedly in a state of denial. Even while devolved authorities in Scotland and Northern Ireland are frantically trying to devise ways to ‘mitigate’, or in other words counteract, at least the worst features of the Government’s benefits policy, Ministers insisted to me that all is well and running according to plan. Some tweaks to basic policy have reluctantly been made, but there has been a determined resistance to change in response to the many problems which so many people at all levels have brought to my attention.

He concluded with the message of ‘good news’, that many of the problems ‘could readily be solved if the Government were to acknowledge the problems and consider some of the recommendations made’ and based upon the extensive research undertaken by him, including meeting with ‘... people living in poverty, whether old, young, disabled, in work or not’; talking with ‘... civil society, front line workers, work coaches, and officials from local, devolved, and UK governments’; visiting ‘... community organizations, social housing, a Jobcentre, a food bank, an advice center, a library, and a primary school; meeting ‘... a range of Ministers in the central government and in Wales, as well as with the First Minister in Scotland; speaking at length with ‘... politicians from all of the major political parties’; talking with ‘... people who depend on food banks and charities for their next meal, who are sleeping on friends’ couches because they are homeless and don’t have a safe place for their children to sleep, who have

⁵⁷⁵ [Two child limit | CPAG](#) (accessed 8 August 2021).

⁵⁷⁶ [EOM GB 16Nov2018.pdf \(ohchr.org\)](#) (accessed 2 August 2021).

⁵⁷⁷ Ibid (footnotes omitted).

⁵⁷⁸ Ibid (footnotes omitted).

sold sex for money or shelter, children who are growing up in poverty unsure of their future, young people who feel gangs are the only way out of destitution, and people with disabilities who are being told they need to go back to work or lose support, against their doctor's orders ...'.⁵⁷⁹

Amongst other matters, it might be noted that this Statement was published on 16 November 2018, before the latest reports of 1.1m children impacted by the two-child tax policy. As reported, the government response was for the Work and Pensions Secretary to state she would 'lodge a formal complaint to the UN about it', arguing that the report is 'politically biased' and that Professor Alston 'did not do sufficient research'.⁵⁸⁰

13. Marriage and family

CEDAW Committee raised the following matters:

- Reform divorce law to:
 - provide for non-fault divorce
 - introduce obligation to civilly register religious marriages
- Measures to combat forced marriages
- Best interests principle and domestic violence – *Angela Gonzalez Carreño case*⁵⁸¹

Additional matter to consider:

- Sexually transmitted debt

Evidence in relation to marriage revolved principally around the question of religious marriages and their consequences for women and children, and that of forced marriage (addressed in the context of 'gender-based violence against women').⁵⁸² The evidence in these regards was compelling. At the same time, it is relevant at this point to note that as a consequence of the Supreme Court decision in *Owens v Owens*,⁵⁸³ the CEDAW Committee's injunction to 'reform divorce law to provide for non-fault divorce' has been followed through, at least for England and Wales. Beyond that, issues of relevance to all women who enter into a 'living together' relationship, whatever their background or religious status or other attributes, include questions of property ownership during marriage and assets division upon divorce or separation. Jenny Beck, QC (Hon), solicitor's evidence is crucial here. First, however, to the issue of no-fault divorce as raised by the CEDAW Committee.

The Matrimonial Causes Act 1973, applicable to England and Wales, covers marriage, civil partnerships and divorce. It was amended by the Divorce, Dissolution and Separation Act 2020 so as to conform the requirement that there be provision for non-fault divorce. Once the Divorce, Dissolution and Separation Act comes into force,⁵⁸⁴ divorce no longer requires grounds to be established to provide evidence of the

⁵⁷⁹ Ibid.

⁵⁸⁰ [Amber Rudd to lodge complaint over UN's austerity report | Poverty | The Guardian](#) (accessed 8 August 2021); [UN reports on poverty in the UK – and the Tory response is WORSE than expected | Vox Political \(voxpoliticalonline.com\)](#) (accessed 8 August 2021).

⁵⁸¹ See *Angela Gonzalez Carreño v Spain* (2014), <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/angela-gonzalez-carreno-v-spain-2014-2/> (accessed 2 July 2021), see **4. Gender-based violence**, earlier.

⁵⁸² Evidence before the Tribunal addressed criminal assault at home and other forms of domestic violence and so called 'honour' based crimes committed within the realm of marriage, such as forced marriage and murder involving marital circumstances or associated with them are addressed under **4. Gender-based violence against women**, earlier.

⁵⁸³ *Owens v Owens* [2018] UKSC 41 (25 July 2018), [Owens \(Appellant\) v Owens \(Respondent\) - The Supreme Court](#) (accessed 8 August 2021); [Owens v Owens \[2018\] UKSC 41 \(25 July 2018\) \(bailii.org\)](#) (accessed 8 August 2021).

⁵⁸⁴ The date of commencement has been set at 6 April 2022: <https://resolution.org.uk/news/government-commits-to-6th-april-for-introduction-of-divorce-dissolution-and-separation-act/> (accessed 19 August 2021) – noted in response to a question by Jane Stevenson, MP: [Written questions and answers - Written questions, answers and statements - UK Parliament](#) (accessed 19 August 2021).

kind listed in section 1, such as to illustrate or substantiate ‘irretrievable breakdown’. All now required is that the application not be brought before 12 months, and that the parties have lived separately and apart for a minimum 12 months.⁵⁸⁵ Divorce having been devolved to Scotland, the not having been affected by the Divorce, Dissolution and Separation Act,⁵⁸⁶ the Divorce (Scotland) Act 1976 provides for ‘irretrievable breakdown of a marriage’ by which divorce can be effected as being established on grounds of adultery (s. 2(a)), behaviour (s. 2(b)), separation for 12 months where both parties agree (s. 2(d) or separation between the parties for two years (where there is no agreement)(s. 2(e)).⁵⁸⁷ For Northern Ireland, no divorce action can be instituted before the parties have been married for two years.⁵⁸⁸ The grounds are as were for England and Wales prior to the 2020 Act, namely two years separation with consent by the other partner; five years separation with no consent from the other partner required; ‘unreasonable behaviour’⁵⁸⁹ or adultery, or desertion. Apart from adultery, these grounds apply equally to civil partnerships.⁵⁹⁰ Northern Ireland and Scotland remain out of step, a simple straightforward advance which other jurisdictions with similar demographics adopted last century.⁵⁹¹

Now to those matters going beyond a (sometimes) simple severance of a relationship by divorce, where issues remain problematic. The popular notion expressed by the late 20th century in the United Kingdom and countries with similar demographics was that marriage constituted a partnership of equals. Yet addressing this proposition, Jenny Beck, QC (Hon) solicitor, speaking in a personal capacity, said that she did not believe that the United Kingdom has been successful in ‘providing women with substantive equality in family life’, because:

⁵⁸⁵ The 12 month period is set out in the Matrimonial Causes Act 1973, which the Divorce, Dissolution and Separation Act amends: [Divorce, Dissolution and Separation Act 2020 \(legislation.gov.uk\)](#) (accessed 8 August 2021); [Matrimonial Causes Act 1973 \(legislation.gov.uk\)](#) (accessed 8 August 2021); see also [No Fault Divorce in the UK - What’s the Latest? | Acclaimed Family Law](#) (accessed 8 August 2021); see also [Owens \(Appellant\) v Owens \(Respondent\) - The Supreme Court](#) (accessed 8 August 2021); [Owens v Owens \[2018\] UKSC 41 \(25 July 2018\) \(baillii.org\)](#) (accessed 8 August 2021); [Owens and Owens: Unreasonable law not unreasonable behaviour? | The Law Society](#) (accessed 8 August 2021); [No-fault divorce | The Law Society](#) (accessed 8 August 2021).

⁵⁸⁶ [Divorce \(Scotland\) Act 1976 \(legislation.gov.uk\)](#) (accessed 8 August 2021); [Family Law \(Scotland\) Act 2006 \(legislation.gov.uk\)](#) (accessed 8 August 2021): see also <https://www.lawscot.org.uk/members/journal/issues/vol-62-issue-07/family-law-still-scope-for-reform/> (accessed 8 August 2021).

⁵⁸⁷ The Family Law (Scotland) Act 2006 reduced the period of separation where there was agreement between the parties from the original 2 years to one year, and the period of separation where there was no agreement between the parties from the original 5 years to two years: [Family Law \(Scotland\) Act 2006 \(legislation.gov.uk\)](#) (accessed 8 August 2021).

⁵⁸⁸ [Matrimonial Proceedings | Department of Justice \(justice-ni.gov.uk\)](#) (accessed 8 August 2021).

⁵⁸⁹ The interpretation of this provision in *Owens v Owens* [2018] UKSC 41 (25 July 2018) is what precipitated the passage of the Divorce, Dissolution and Separation Act 2020 (England and Wales).

⁵⁹⁰ See [Matrimonial Causes \(Northern Ireland\) Order 1978 \(legislation.gov.uk\)](#) (accessed 8 August 2021); Civil Partnership Act 2004; Family Proceedings Rules (Northern Ireland) 1996 (and Brussels IIA Regulation for cases involving a party in an EU Member State ongoing at 31 December 2020); [Matrimonial | Department of Justice \(justice-ni.gov.uk\)](#) (accessed 8 August 2021); [Getting a divorce or dissolving a civil partnership | nidirect](#) (accessed 8 August 2021).

⁵⁹¹ For example, in the US, California – 1970, Family Law Act of 1969 (accessed 8 August 2021); [Fifty-Year Anniversary of California No-Fault Divorce Brings History Into Spotlight | Lauzon Paluch \(lpfamilylaw.law\)](#) (accessed 8 August 2021); [An Appraisal of California’s No-Fault Divorce Law on JSTOR](#) (accessed 8 August 2021); [vol32p509.pdf \(iu.edu\)](#) (accessed 8 August 2021); [Community Property and Family Law: The Family Law Act of 1969 \(ggu.edu\)](#) (accessed 8 August 2021); in Australia, the Family Law Act 1975 (Cth) - [Family Law Act 1975 \(legislation.gov.au\)](#) (accessed 8 August 2021); in Fiji, the Family Law Act 2003 - [FAMILY LAW ACT 2003 - Laws of Fiji](#) (accessed 8 August 2021).

... legal rights are of no benefit if there is restricted access to them. LASPOA⁵⁹² has disproportionately impacted on women. An impact assessment survey taking place before LASPO was enacted found it to disproportionately impact women, but it was pursued irrespective of that finding. Thus it was already clear that LASPO would affect more women than men; women tend to be primary caregivers and earn less than men, and because domestic abuse is a gendered crime, they were thus more likely to be disproportionately in need of advice and support to protect their children. Ensuring there were no cuts to the services which enable people to access their legal rights was really for women. This is an equality of arms issue, and without equality of arms we do not have justice: para 11, Witness Statement, Case ref: 013

Acknowledging ‘... that in respect of both categories of women, the access mechanism by which rights are protected is significantly impeded by cuts to legal aid’, she goes on to outline the ways in which unmarried women in cohabiting circumstances are at a pronounced disadvantage for, despite obstacles confronting married women or women living in a civil partnership, they are better off than women living in a relationship lacking that status.

The Matrimonial Causes Act 1973 (as amended), does not apply to ‘living together’ or ‘de facto marriage’.⁵⁹³ As Jenny Beck said, ‘whether a woman is married or unmarried within a family dispute determines how well protected her economic and social rights are’. Looking at the law as it stands, she said, ‘there is insufficient protection for unmarried women, particularly those who are caregivers’:

Divorce law has been developed on sharing principles between couples upon separation and provides some fairness towards women who were caregivers rather than breadwinners, but these principles do not apply to unmarried women. Family law fails to protect sufficiently the caregivers of children in the absence of marriage. The laws governing unmarried women are based on legal ownership or property, with beneficial interests being difficult and expensive to prove. So, for unmarried families, women do not have their rights as well protected as in married families: para 13, *ibid*

The evidence before the Tribunal addressing issues of criminal assault at home and other forms of domestic violence and so called ‘honour’ based crimes committed within the realm of marriage (and other living together or intimate partner arrangements) as noted has been addressed under **4. Gender-based violence against women.**

As to issues confronting women and religious marriage, Yasmin Rehman of One Law for All, giving evidence in her personal capacity, spoke eloquently on the subject of polygamy ‘as a breach of women’s human rights’. She has, she said, spent ‘more than a decade researching polygamous marriages within the UK context, predominantly amongst Muslim women and some non-Muslims’. She said she had ‘yet to hear of any woman or even any of the men with whom I have spoken, who were either children of polygamous unions or husbands who had several wives, for whom there was not some level of harm’. Referring to the ‘definition of domestic violence used internationally’, she noted its inclusion of ‘psychological harm, emotional harm, financial and economic abuse, and sexual harm. All are contained within polygamous marriages: para 7, Witness Statement, Case ref: 013

The ‘inherent gender inequality’ represented by and in polygamy that lies in a ‘man’s right to have more than one wife’ is, said Ms Rehman, also a reason for polygamy’s being recognised as ‘a violation of

⁵⁹² [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(legislation.gov.uk\)](#) (accessed 2 July 2021); [LASPO Act | The Law Society](#) (accessed 21 July 2021); [Legal aid | The Law Society](#) (accessed 21 July 2021); and see further **3. Women’s Access to Justice**, earlier.

⁵⁹³ [What is a De Facto Marriage? \(with pictures\) \(mylawquestions.com\)](#) (accessed 2 July 2021); [What’s The Definition Of A De Facto Relationship In Australia? \(separationagreementtemplate.com.au\)](#) (accessed 2 July 2021). Jurisdictions elsewhere have made provision

women's human rights'. Coercive control is employed by men, as an exercise in putting an obligation upon the wife of a potentially polygamous marriage to 'prevent' her husband from taking another wife and thus being replaced or, where the marriage is already polygamous, to 'prevent' the man from bringing yet another woman into the relationship. She cited Jan Goodwin's book, *The Price of Honour*,⁵⁹⁴ as providing an authentic portrait of a polygamous marriage, in the recitation of this relationship involving polygamy's 'being used as a weapon against women throughout their lives as, once they enter into a marriage, husbands use it as a mechanism of control'. She said that in interviewing women coming into a polygamous marriage as second or third wife, they 'explained that women are coerced into doing multiple things that they would not normally freely consent to. They notably face the pressure to be the last wife, to always be sexually available, to do whatever it takes to maintain the marriage and maintain the favour of their children': para 8, *ibid*

This also raised the issue of children's rights, which Ms Rehman posited as being breached by the very nature of polygamy. Having interviewed adults who grew up in polygamous households, she found that the impact of polygamy upon them was 'huge', for even where a father may have provided for them financially, '... noting that their mother had been replaced and that they had also been replaced in the pecking order was hugely difficult, particularly where son preference was a major factor'.

Furthermore:

Polygamy sends a message to children about how replaceable women are and what the status of women is within society. Polygamy makes them think that if a woman is ill, she can be replaced; if she cannot produce a son, she can be replaced; if she is no longer in favour, she can be replaced. The mother may have been replaced because she had daughters, and the man wanted a wife who could produce a son, an heir. That has a huge impact on both young women and young women: para 9, *ibid*

As to religious marriage, Zlakhah Ahmed, MBE, making her statement on behalf of Apna Haq,⁵⁹⁵ raised the 'current state of the law in regard to Muslim women when they are leaving a marriage. In UK law, Christian and Jewish marriages are recognised as joint civil marriages and religious marriages. This is not the case for Muslim marriages'. She went on to explain:

A Muslim woman can leave an Islamic marriage only by going through an Islamic divorce. They can issue a civil divorce, but if a Muslim woman has a civil divorce, they still consider themselves to be married Islamically. The woman's family and even their husband will still consider them to be married. They had an Islamic marriage, so they must go through an Islamic divorce. They just want that piece of paper giving them an Islamic divorce so they can move on. Apna Haq has supported at least 300 women who have gone through Islamic divorces: paras 19-20, Witness Statement, Case ref: 005

Ms Ahmed said there is a need for 'continued work so that a civil divorce can be automatically recognised as an Islamic divorce. Nationally, work needs to be done in terms of registering Islamic marriage.' A number of organisations 'are raising awareness about the issues faced by Muslim women trying to leave their marriage, but it is not enough,' she added, 'for they often do top-down work, work on what they think the solutions are, rather than talking to women about how it is impacting their lives and what solutions they need. The law around Muslim women wishing to leave a marriage in the UK needs to be brought into line with that of Christian and Jewish Marriage': para 2, *ibid*

⁵⁹⁴ Jan Goodwin, *The Price of Honour – Muslim Women Lift the Veil of Silence*, Penguin Books, New York, NY, USA, 1994.

⁵⁹⁵ [Apna Haq – | Supporting Black and minoritised women in Rotherham](#) (accessed 21 July 2021).

Co-chair of Muslim Women's Network Nazmin Akhtar spoke of this problem confronting women in the Muslim community too:

One of the key issues that we deal with at Muslim Women's Network is this issue of Islamic only marriages where Muslim women are finding themselves married but only religiously so they have no legal rights which means their husbands can just leave them. If their Islamic marriage ends, they have no rights to the home or to finances which is obviously particularly problematic. CEDAW and the Council of Europe and various international bodies have essentially said that the UK need to do something about this, to bring in laws to address these issues of Islamic only marriages and the abuse and injustice that exists, but nothing has happened. The CEDAW Committee raised this in 2019 and we are now in 2021 but we have still not seen any legislative changes ... para 20, Witness Statement, Case ref: 039

Yasmin Rehman's evidence reflected concerns about the religious marriage under Islam, too, making the point that so often the contention is repeated that Muslim women 'are not aware of their rights'. Yet, she said, that her mother's generation as the first generation arriving in the United Kingdom from the Indian subcontinent in the 1950s and 1960s 'knew that they needed to have a legally recognised marriage in order to live in this country'. She added that in many cases, many would have gone through the 'nikkah' ceremony (the Muslim marriage ceremony in Pakistan, India or Bangladesh) which is legally recognised in those countries, and would then have arrived in the United Kingdom and had a civil marriage for immigration purposes': para 16, *ibid* Explaining the principles underlying the nikkah, she said:

It is challenging for Muslim women to face the demands for public demonstrations of piety, such as the way they dress, they speak, how good of a Muslim they are, and how important their faith is to them. These demands for piety also extend to marriage practices. To demonstrate this, all that is needed is a Muslim marriage ceremony to be married in the eyes of God and not commit the sin of 'zina', which is sex outside marriage. That is deemed to be the greatest of all sins because it leads to 'fitna' (which is chaos and the breakdown of society, which has parallels in Christianity): para 17, *ibid*

However, she stressed, once in a religious-only marriage, it is problematic [for a woman] to argue for a civil marriage to take place'. This places the woman in the invidious position faced by the plaintiff in *Akhter v Khan*,⁵⁹⁶ leaving open the avenue for polygamous marriages to thrive.

Where does the woman go, having partnered under the 'nikka' ceremony and unable to secure a civil marriage, if as in *Akhter v Khan* she is left without redress through the marriage and divorce laws applicable to civil marriage, that is, marriage as recognised by United Kingdom laws.⁵⁹⁷ 'Women of faith are,' said Ms Rehman, left to seek some form of redress through parallel legal systems, whether Sharia councils or not. With Jewish women, men can withhold the "get" (the Jewish divorce) and women

⁵⁹⁶ Her Majesty's Attorney General (Appellant) v Nasreen Akhter and Mohammed Shabaz Khan (Respondents) and Atima Mohammed Hussain and Southall F Black Sisters (Interveners) [2020] EWCA Civ 122 ; On appeal from *Akhter v Khan* [2018] EWFC 54, [Akhter -v- Khan \(judiciary.uk\)](https://www.judiciary.uk/cases/appellate/civil/civil-appeal-akhter-v-khan/) (accessed 2 July 2021); [Court of Appeal Judgment Template \(familylaw.co.uk\)](https://www.familylaw.co.uk/cases/court-of-appeal-judgment-template/) (accessed 2 July 2021).

⁵⁹⁷ Note that differences appear to lie between the laws of England and Wales, and Scotland: [Family Law \(Scotland\) Act 2006 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2006/19/section/1); see also generally for the position in Scotland and consideration by the Law Commission of issues relating particularly to cohabitation rights and 'de facto marriage'. There is no such relationship as 'common law marriage' recognised in law, and parties are more advantaged if married or in a civil partnership because the law is stipulated as to (for example) divorce, property rights and asset distribution on divorce, any maintenance needs or rights, etc. For Scotland further, see also [Marriage and civil partnerships - mygov.scot](https://www.marriageandcivilpartnerships.gov.scot/) (accessed 2 August 2021); [Aspects of Family Law - Discussion Paper on Cohabitation \(DP No 170\) \(scotlawcom.gov.uk\)](https://www.scotlawcom.gov.uk/discussion-paper-on-cohabitation/) (accessed 2 August 2021).

cannot remarry without it. It is a form of coercion and control, which women's organisations have commented upon': para 20, *ibid* This raises issues relating to property and distribution of assets as well as any issues going to maintenance needs. As to property, she said that the religious marriage raised this issue: the protection of assets:

Only religious-only divorce can end a religious-only marriage. A woman can ask for a 'khula' from a Sharia court, whereas the husband can pronounce the divorce three times and after a period of time the marriage is ended, the marriage is dissolved. However, the requirements for maintenance under English civil law are greater than under Islamic law. Because of a level of protecting assets and demonstrating piety and faith, there has been an exponential growth in women with men in religious-only marriages ... : para 18, *ibid*

She went on to explain the disadvantage that accrues to women, observing that even if Islamic scholars challenge the text, women are left without any maintenance in practice':

The power lies with the man. The woman can ask for 'khula', but she needs to go to present her case. Some of the questionings in those cases are incredibly intrusive. I have supported women over several decades who wanted to go through that 'khula' process. One of the questions ... asked is when was the last time they had sex with their husband, because that will determine whether or not they need to go through a period of seclusion (*iddat*) to ensure they are not pregnant and carrying the man's child. Women can ask for a divorce, but the power to grant the divorce sits with those sitting and presiding over the Sharia courts. Whereas the man can pronounce divorce and that is done. Even if the court says they should reconcile, he can decide not to, and divorce. He can remarry without having a divorce, whereas the woman needs to be divorced. She cannot remarry or enter into another relationship without having that release from the first marriage: para 21, *ibid*

Ms Rahman concluded by stating her belief that the government must act in at least two regards in relation to this matter and the consequences for women in their vulnerability to being caught in a polygamous marriage:

- To resolve these issues and provide sufficient protection to Muslim women within the UK the government needs to make a clear statement about its position on polygamy: para 23, *ibid*
- The rights of women already in polygamous marriages must be protected, but in so doing, generations to come must not be condemned to polygamous practices – in the past, many African and Arab countries that banned polygamy, such as Tunisia, Uganda, Tanzania, South Africa, are now legislating in support of such harmful practices. This is being done, it is said, to protect those in such unions. We are now seeing customary marriage and polygamy laws emerging, and we must be careful not to condemn future generations to this practice. We must not protect customs and harmful religious practices at the expense of people's human rights: para 24, *ibid*

Marriage also arose in terms of 'arranged' marriage. A distinction has been drawn by government between 'arranged' and 'forced' marriage.⁵⁹⁸ Nazim Akhtar, observing that the Muslim Women's Network, UK 'is founded upon Islamic feminism' defined as deriving its understanding and mandate

⁵⁹⁸ [The Difference Between Arranged Marriage and Forced Marriage \(highspeedtraining.co.uk\)](https://www.highspeedtraining.co.uk) (accessed 2 August 2021); [Forced marriage | Childline](https://www.childline.org.uk) (accessed 2 August 2021).

from the Quran, 'seeking rights and justice within the framework of gender equality for women and men, in the totality of their existence', went on to say that Islamic feminism is 'about distinguishing between Sharia law, or the will of God, as opposed to men's opinions'. An example could, she said:

.... be seen when we look to domestic abuse and how faith is used to manipulate domestic abuse victims or used to arrange forced marriages. For example, victims will be pressurised by being told Islam tells them to listen to and respect their parents and therefore should accept their parents' decision when it comes to marriage. However, at no point does the Quran allow forced marriages. The Quran makes clear that a person's choice in marriage is absolute and whilst parents should be respected, that does not mean that parents have the right to force you into marriage: para 12, Witness Statement, Case ref: 039

Childline draws a distinction between 'forced' and 'arranged':

A forced marriage is different from an arranged marriage. Sometimes an arranged marriage can lead to a forced marriage. For example, if you agree to marry someone but then change your mind and decide not to. If your parents or family don't accept your decision and still make you go ahead with the marriage, this becomes a forced marriage.

The question here is where does 'arranged' end and 'forced' begin.

SUMMATION MARRIAGE AND FAMILY

To no one will we sell, to no one will we refuse or delay, right or justice.

*Cap 40, Magna Carta 1215*⁵⁹⁹

It is little wonder that *Owens v Owens*,⁶⁰⁰ a case ultimately decided by the Supreme Court, precipitated the change to the law of divorce for England and Wales. Nor, indeed, that the result was heralded with an outcry, amounting even to derision directed at the law's failure to be in tune with developments in divorce law. Mrs Owens, who petitioned for divorce, based the application on section 1(2)(b) of the Matrimonial Causes Act, namely that the marriage between she and Mr Owens had broken down irretrievably, the evidence being that he had 'behaved in such a way that she could not reasonably be expected to live with him'. The petition was refused on the basis that Mr Owens' behaviour did not fall within the strictures of the provision, despite (for example) his saying to Mrs Owens when she approached him with a solicitor's letter and draft of the original application and he said that he would 'never speak to her again' should she proceed with it. At one stage in the course of the proceedings that wended their way to the Supreme Court, it was suggested that because she had embarked upon an affair, this somehow precluded her from bringing the application on the basis of Mr Owens' alleged behaviour. How this follows is not easily discerned and, indeed, the Supreme Court referred to the contention in passing, not conceding to any necessary logic in it.⁶⁰¹ Initially the appellate grounds were couched in terms of section 1 (2)(b) requiring 'not that *the behaviour* of Mr Owens had been such that

⁵⁹⁹ Magna Carta 1215 was not the only one promulgated during this part of the 13th century, however, 1215 is generally taken, popularly, as the date for 'Magna Carta' (that promulgated under King John is taken as 'the' Magna Carta) so this is the date set here: Jocelyne A. Scutt, *Women and Magna Carta – A Treaty for Rights or Wrongs*, Palgrave MacMillan, Basingstoke, UK, 2016.

⁶⁰⁰ [Owens \(Appellant\) v Owens \(Respondent\) \(supremecourt.uk\)](#) (accessed 8 August 2021); [Owens v Owens \[2018\] UKSC 41 \(25 July 2018\) \(bailii.org\)](#); see also Court of Appeal, [Owens v Owens \[2017\] EWCA Civ 182 \(24 March 2017\) \(bailii.org\)](#) (accessed 8 August 2021); [Owens v Owens \[2017\] EWCA Civ 182 \(24 March 2017\) \(bailii.org\)](#) (accessed 8 August 2021).

⁶⁰¹ See para [8], [Owens v Owens \[2018\] UKSC 41 \(25 July 2018\) \(bailii.org\)](#) (accessed 8 August 2021); [Owens \(Appellant\) v Owens \(Respondent\) - The Supreme Court](#) (accessed 2 August 2021).

she could not reasonably be expected to live with him, but that *the effect of it on her* had been of that to invoke, or need to apply' it. This approach was ultimately dropped, although it is difficult to see that the impact of behaviour upon the party alleging that a marriage has broken down irretrievably has no relevance in assessing the behaviour of the other party.

In the upshot, the allegation of 'behaviour' was couched in the following terms: Mr Owens had prioritised his work over their life at home; his treatment of her had lacked love or affection; he had often been moody and argumentative; he had disparaged her in front of others; and as a result she had felt unhappy, unappreciated, upset and embarrassed and had over many years grown apart from him.⁶⁰² Mr Owen not having instructed his solicitors to receive service of the petition, it was served on him personally. He defended against the petition, denying that the marriage had broken down irretrievably and alleging, as it transpired incorrectly, that in bringing it Mrs Owens was motivated by a wish to continue the affair, with the other man engaged in 'exercising a malign influence over her'. Mr Owens substantially denied the allegations about his behaviour, saying that, 'although never emotionally intense', the marriage was successful, he and Mrs Owens having 'learned how to "rub along"'. Mrs Owens lost. The petition was denied. She was forced to wait for the full period of separation to expire in order to bring a successful petition under section 1 (2)(e) – without Mr Owens' consent.

It bears setting out those facts in full, for they may be interpreted as showing a lack of understanding of an unhappy marriage evidencing 'irretrievable breakdown' through behaviour – its dimensions and its lived reality, and the futility of a court interpreting the law so as to keep the parties together. It may also indicate something of a failure to grasp the nature of spousal abuse, insofar as the trial proceeded. At minimum, what lies within the phrase 'he disparaged her in front of others'? Perhaps the unaware may miss it, however, those working in the field of criminal assault at home and other forms of domestic violence would likely recognise the depth of unconscionable behaviour and the unreasonableness that this portends. At trial, the petition was dismissed upon the basis that 'the idea that the lifestyle, whatever it may have been, now contributes to the breakdown of the marriage is fanciful' and 'I find no behaviour such that the wife cannot reasonably be expected to live with the husband ...'⁶⁰³ In the Supreme Court, 'uneasy' feelings were expressed,⁶⁰⁴ together with the position that as an appellate court, it was not for the Supreme Court to effectively reconsider that nature of the evidence and return the case for retrial,⁶⁰⁵ and concern that the case is 'very troubling' yet the law as it is must be applied: 'It is not for [the Supreme Court] to change the law laid down by Parliament – our role is only to interpret and apply the law that Parliament has given us'.⁶⁰⁶

Ultimately agreeing with the dismissal of the appeal, although considering that the 'correct disposal of it would be to allow the appeal and send the case back for retrial, Lady Hale determined against this course. She did so on the basis that in some 18 months (February 2020) five years would have expired, enabling Mrs Owen to gain a divorce without Mr Owen's consent, and Mrs Owen's counsel having indicated that the prospect of a retrial was to be viewed 'with dread'.

Lady Hale's judgment is, however, instructive insofar as it recognises the nature of the conduct of which the petition complained, locating the 'most troubling of all' of her 'misgivings' as to the trial and its

⁶⁰² See para [10] *ibid*.

⁶⁰³ Cited per Lord Mance, para [59] *ibid*. See also para [20] of Lord Wilson's judgment where he sets out briefly the assessment of the appellate court as to the matters pleaded as evidence of 'behaviour' on the part of Mr Owens in support of the petition.

⁶⁰⁴ See paras [42], [43] *ibid*, per Lord Wilson, with whom Lord Hodge and Lady Black agreed. Note also that a clear analysis and rejection of earlier cases ruling out the contention of 'unreasonable behaviour' is useful and, although straightforward for those working in the field, insightful.

⁶⁰⁵ *Ibid*, and see para [45] per Lord Wilson for the suggestion that: 'Parliament may wish to consider whether to replace a law which denies to Mrs Owens any present entitlement to a divorce in the above circumstances.'

⁶⁰⁶ Para [46], *ibid*, per Lady Hale.

outcome that the case ‘depended upon the cumulative effect of a great many small incidents said to be indicative of authoritarian, demeaning and humiliating conduct over a period of time’.⁶⁰⁷

Those who have never experienced such humiliation may find it difficult to understand how destructive such conduct can be of the trust and confidence which should exist in any marriage.

Lady Hale drew an analogy in this with constructive dismissal in employment law, referring to *Unkegheson v London Borough of Haringey* and the judgment of the President of the Employment Appeal Tribunal, Langstaff J.⁶⁰⁸

The meaning that correspondence or observations have when they are directed by one person to another may often depend very much on the context of the relationship between the two ... [Looking at incidents in isolation] is perhaps to fail to see the eloquence of the story painted by the whole of the series of events and to focus instead upon events taken individually as though they were in silos. In a constructive dismissal case arising out of a poisoned relationship between parties, what matters is the totality of the picture rather than any individual point along the way.

The problem, she concluded – directing that the outcome was a matter for the Parliament to consider and to reform the law, not for the judiciary to do so.⁶⁰⁹ One can see the jurisprudential pragmatism in this, for interpreting the provision so as to enable Mrs Owens to gain the divorce would mean that the provision would remain in the law, along with the other evidential grounds substantiating ‘irretrievable breakdown’ of a marriage, including adultery. This would retain a design for divorce long-since abandoned in similar jurisdictions as noted. Yet some may be surprised at the evident lack of attention to definitions of conduct existing in other areas of law, which surely should be applicable in the family jurisdiction as well. After all, as an example, ‘coercive control’ arguably appears to have been evidenced in the material provided to the trial court.⁶¹⁰ This problem of variance in application of standard definitions – that is, rape, coercive control – or failure to apply them, is an issue raised by witnesses in relation to their practice in the family jurisdiction. That ‘rape’ is defined in criminal law does not mean that courts in non-criminal jurisdictions are entitled to ‘make it up’: rather, apply the definition, apply the civil standard.

The right to divorce was a long time coming for women married according to civil law in the United Kingdom. The no-fault divorce system will advantage women who no longer are required to prove grounds leaving themselves open to discriminatory interpretations. However, some women have not been able to leap the initial hurdle, namely the freedom to marry in a civil ceremony, which brings with it the right to divorce according to secular law.

Two pressing issues arise. First, the status of a marriage contracted according to the Muslim faith, which is not recognised in United Kingdom marriage and family law as a civil marriage. Secondly, the status of polygamous marriages made according to the Muslim faith, none of which will be recognised in United Kingdom marriage and family law as a civil marriage. In relation to both, that they are marriages according to faith alone denies the parties the rights and protections provided to women married according to the Marriage Act 1949.⁶¹¹

⁶⁰⁷ Para [50], *ibid*, per Lady Hale and for two other reasons she cites as troubling in the case, see paras [48] and [49], *ibid*.

⁶⁰⁸ UKEAT/0312/14/RN, at paras 30-31, cited Lady Hale, para [50], *ibid*.

⁶⁰⁹ Para [46], *ibid*, per Lady Hale.

⁶¹⁰ Home Office, [Controlling or coercive behaviour - statutory guidance.pdf](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60444/controlling-or-coercive-behaviour-statutory-guidance.pdf) ([publishing.service.gov.uk](https://www.publishing.service.gov.uk)) (accessed 2 August 2021).

⁶¹¹ [Marriage Act 1949 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1949/30) (accessed 2 July 2021).

In the United Kingdom, polygamous marriage is addressed in marriage law,⁶¹² immigration law⁶¹³ and criminal law.⁶¹⁴ As Pragna Patel of SBS, Yasmin Rehman campaigning with One Law for All, and others stated, none of these laws provide women in polygamous marriages with the status of a married woman in law, with any protection as a married woman or a woman entitled to a divorce, or as now appears from *Akhter v Khan*⁶¹⁵ with any assurance that the law in England and Wales, at least, will recognise her entitlement to property or assets, to any division of them, or to other rights that accrue upon civil marriage under United Kingdom law. The decision by Justice Williams at first instance⁶¹⁶ held that there was a void marriage, which would have enabled financial remedies to apply. This was overturned in the Court of Appeal, as the religious marriage was not a 'marriage' as recognised by the law of the United Kingdom. One commentator, solicitor Siddique Patel, points out, consistent with the concerns raised by witnesses in the Tribunal, that the Court of Appeal decision 'appears to be more in line with the law and public policy'. Noting that the case confirms the urgent need for 'reform of the law in relation to unregistered faith marriages', he goes on to note that in touching upon important issues, the case 'highlights a low awareness of existing legislation which allows buildings (including religious places of worship) to register their premises to perform lawful marriages':⁶¹⁷

Clearly, if more people took advantage of these provisions, more faith marriages would be classed as valid marriages which would in turn mean more divorcing couples [undergoing faith marriages qualifying as civil marriages through having been conducted in a registered building] having access to financial remedies upon divorce ...

Mr Patel refers to the reference before the Law Commission, which is inquiring into the law governing how and where couples can marry, noting that the Law Commission's work 'is needed, [but] is constrained by its terms of reference':⁶¹⁸

Vulnerable people (usually women) continue to learn too late that they do not have legal protection, so in the short term, there should be a change to update current legislation, specifically the Marriage Act 1949, to make provision for marriages of *all faiths* to be brought under the definition of a valid marriage as defined by law. This will give a more immediate access to financial remedies to more people ...

Mr Patel concludes in this regard that what is also required is 'increased awareness of the impact of unregistered faith marriages at all levels of society'. Nonetheless, 'it is ... still disappointing to know that even though, for example, the Law Society supports reform of the law so that marriages of all faiths are equal before the law and the family unit protected, there are still people who do not seem to accept that there is a problem. For them, there can be no bigger eye-opener than the case of *Akhter v Khan*'.⁶¹⁹

Another commentator says firmly that although the decision 'is disappointing for Ms Akhtar, ultimately, the law of the land must apply. Otherwise, where do we draw the line?' The position there is that as 'new religious movements ... emerge on a weekly basis, each providing their own set of prescribed rules, traditions and formalities relating to marriage and divorce' [so] 'can we give legal recognition to couples to marry in the future by complying with religious traditions whatever they

⁶¹² S 11 [Matrimonial Causes Act 1973 \(legislation.gov.uk\)](https://legislation.gov.uk) (accessed 12 August 2021).

⁶¹³ [Polygamous / potential polygamous marriages: SET14 - GOV.UK \(www.gov.uk\)](https://www.gov.uk) (accessed 12 August 2021).

⁶¹⁴ S 57 [Offences against the Person Act 1861 \(legislation.gov.uk\)](https://legislation.gov.uk) (accessed 12 August 2021).

⁶¹⁵ [Court of Appeal Judgment Template \(familylaw.co.uk\)](https://familylaw.co.uk) (accessed 2 July 2021).

⁶¹⁶ *Akhter v Khan* [2018] EWFC 54.

⁶¹⁷ Siddique Patel, 'Court of Appeal ...', 5 March 2020, [Court of Appeal clarifies the law on marriage formalities \(Akhter v Khan\) \(familylaw.co.uk\)](https://familylaw.co.uk) (accessed 21 July 2021).

⁶¹⁸ *Ibid.*

⁶¹⁹ *Ibid.*

may be?’ Further, if the marriage does not comply with the Marriage Act 1949, ‘can we provide them with the ability to pursue a financial claim from a valid/void marriage?’⁶²⁰ This commentator goes on to conclude that the jurisprudence of the United Kingdom ‘cannot be stretched to include a reference to every celebration or act considered to be a “legal” or “valid” form of marriage. It is compliance with the law which must be the primary focus, not that which one “thought” to be compliant’.⁶²¹

Akhter v Khan raises squarely the issue of faith marriages and polygamy. If the faith marriage between Ms Akhter and Mr Khan had been solemnised in a registered building, she would have had the protection of being married in accordance with the Marriage Act 1949 and the remedies of divorce, property settlement, maintenance and any other remedies associated with a civil (legal) marriage. A marriage under the Marriage Act 1949 would carry with it the prohibition against polygamy – that is, if a male partner married under the Marriage Act wished to take on another wife, he would have to do so other than by marrying in a registered building.

In evidence to the Tribunal, Yasmin Rehman said she did not consider that any cultural or religious wedding ceremony should be allowed to take place ‘without evidence of civil marriage having been conducted prior to the religious ceremony’:

This was accepted practice amongst South Asian communities for many decades (until 1990s) as families were clear about the need to adhere to the laws of the land and for the protection of sons and daughters. In many cases, families were so keen to ensure the marriage was legally recognised that couples who had married overseas – for example in India or Pakistan in a legally recognised and registered union in that jurisdiction also underwent a civil service in the UK. The shift to religious only marriages has arisen, as I stated in my witness statement, since the 1990s with the rise of conservative, literal interpretations of Islam (I am not aware nor have seen evidence of this happening in Hindu or Sikh communities) and the (re) emergence of polygamous and temporary marriages. Religious ceremonies enable men to exploit the current legal loophole in marriage laws: para 7, Supplementary Witness Statement, Case ref: 013

The *Akhter case*, she said, illustrated the existence of a ‘legal loophole’ whereby ‘marriage laws of the state could be circumvented’. Further:

In the case, the nikaah is described as a blessing. The nikaah is a contract of marriage in Sharia. Further, in Islam, marriage is a contract and not a sacrament as in other faiths. By having a civil marriage prior to any religious ceremony taking place [this] would remove the potential for families to ‘protect their assets’ over and above the rights of their daughters and any children of the marriage and ensure that marriages between couples were recognised by state and religious authorities: para 8, *ibid*

Ms Rehman further emphasised that the need for clarity ‘is essential for all and this must include the status of the marriage’:

The current position leaves women and children increasingly vulnerable to abuse and harms. I have listened to countless cases of women who have attended religious courts on the dissolution of their marriages (by unilateral pronouncement of divorce by their husbands) and then ordered to hand over their children to their former husbands by Sharia judges. This cannot continue: para 9, *ibid*

⁶²⁰ [What does the decision in the Akhtar v Khan case tell us? - Stowe Family Law](#) (accessed 8 August 2021).

⁶²¹ *Ibid*.

Article 16 – Convention on the Elimination of All Forms of Discrimination Against Women

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

CEDAW also clarifies, if there is any need for it – as seems apparent in that the government has taken no action, or no apparent action, to address the matters going to damage to children in consequence of polygamy as raised before the Tribunal – the rights of children in relation to the marriage of their parents. As Article 16(1)(d) and (f) state, ‘the interests of the children shall be paramount’.

As to forced and arranged marriages, ‘forced marriage’ is covered by the Forced Marriage (Civil Protection) Act 2007.⁶²⁴ Forced marriage protection orders are governed by section 63A, which provides:

63A Forced marriage protection orders

- (1) The court may make an order for the purposes of protecting—
 - (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or
 - (b) a person who has been forced into a marriage.
- (2) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.

⁶²⁴ [Forced Marriage \(Civil Protection\) Act 2007 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2007/20/section/63A) (accessed 18 July 2021).

(3) In ascertaining that person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person's age and understanding.

(4) For the purposes of this Part a person ("A") is forced into a marriage if another person ("B") forces A to enter into a marriage (whether with B or another person) without A's free and full consent.

(5) For the purposes of subsection (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.

(6) In this Part—

- "force" includes coerce by threats or other psychological means (and related expressions are to be read accordingly); and
- "forced marriage protection order" means an order under this section.

A distinction has been sought to be drawn by policy between 'forced' and 'arranged' marriage. Here, attention needs to be paid to the provisions of CEDAW and to the Covenant on Civil and Political Rights.⁶²⁵

Article 23 – Covenant on Civil and Political Rights

1. ...

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Pressure amounting to duress can take many forms, and family 'duty' or obedience to the wishes of parents is one of them. If a marriage is entered into under duress, then it can on application by the party be annulled: that is, ended in law on the basis that it was never a valid marriage. In *Nagri and Chapal*⁶²⁶ 'duress' was held to include 'strong feelings of family loyalty' to the uncle who was standing in *loco parentis*, and subjection to 'religious and cultural beliefs' along with the belief on the part of the husband that 'his situation was one where his uncle was entitled to demand his obedience'. This meant that the marriage was brought about by duress, not one constituted by 'free and full consent'. These were the major factors supporting the 'duress' determination, although additionally the court referred to matters 'to a lesser extent, but ... still of significance' in the 'duress' determination, 'that his uncle had sponsored him [to be accepted as a migrant to the country] and was giving him employment'. This

⁶²⁵ Article 23 (2)(3)(4) Covenant on Civil and Political Rights, [Ch IV 04.pdf \(un.org\)](#) (accessed 18 August 2021); [OHCHR | International Covenant on Civil and Political Rights](#) (accessed 18 August 2021); [OHCHR | Convention on the Elimination of All Forms of Discrimination against Women](#) (accessed 18 August 2021).

⁶²⁶ *Nagri and Chapal* [2012] FamCA 464 (1 June 2012); [Nullity – Marriage declared void - Husband's consent was obtained by duress \(jolimanlawyers.com.au\)](#) (accessed 18 August 2021); see also S. Anitha and Aisha Gill, 'Coercion, Consent ...', [Coercion, Consent and the Forced Marriage Debate in the UK | Semantic Scholar](#) (accessed 18 August 2021); K.Chantler, G. Gangoli, and M. Hester, 'Forced Marriage in the UK ...', [Forced marriage in the UK: Religious, cultural, economic or state violence? | Semantic Scholar](#) (accessed 18 August 2021); Jocelyne A. Scutt, [HUMAN RIGHTS, 'ARRANGED' MARRIAGES AND NULLITY LAW: SHOULD CULTURE OVERRIDE OR INFORM FRAUD AND DURESS? | The Denning Law Journal \(ubplj.org\)](#) (accessed 18 August 2021); Pragna Patel, 'No Place for a Woman: Harmful Practices, Religion and State Responses' in JA Scutt (ed), *Women, Law and Culture – Contradiction, Conformity and Conflict*, Palgrave Macmillan, Basingstoke, 2016, pp.181-204.

meant that,' when taken together, the applicant's will was overborne to the extent that he was not acting of his own freewill ... thus his consent to the marriage as not a true full and informed consent'. Nullity was the correct disposition. The distinction is important, for nullity is distinguished from divorce. The latter means that a valid marriage has taken place, which is required to be severed by a divorce decree. The former means that there never was a marriage, so that when severed the parties go forward as single, never married, persons. This is a vital distinction, particularly for women where cultural mores classify a divorced woman as someone shamed or shameful, 'spoiled goods', so robbed of a chance within that setting to remarry or to do so easily.

As Nazmin Akthar of Muslim Women's Network said, '... when we look at the types of prejudices faced by Muslim women within their communities and how it informs their experiences and positions within the wider communities that they may inhabit I would firstly highlight the sexism within Muslim communities which women are facing':

... various other prejudices within Muslim communities include colourism and racism, as well as ageism in that a Muslim woman must be married by a certain age or she will not be able to get married and also the stigma around marrying widows or divorcees. All these issues impact their lives and life choices in a way that others may not experience, and obviously this then limits their choices within the wider community in relation to personal choices ...: paras 18-19, Witness Statement, Case ref: 039

Additionally in relation to marriage and equality, 'sexually transmitted debt', which arises out of marriage, intimate partner or living together arrangements, requires attention, too.⁶²⁷ This term, coined by lawyer Jenny Lawton and barrister Emma Swart recognises the position of women who, believing their signature does not 'count' and under pressure that is difficult or impossible to counter, sign contracts – including mortgages and guarantees – at the behest of husband or partner, plunging them into debts they did not envisage, from which they do not profit, and which they did not wish to accumulate. Not infrequently, this occurs with the complicity, to a greater or lesser degree and even amounting to collusion, with banks or other financial providers. The irony here is that banks and finance providers reluctant to lend to women in their own right,⁶²⁸ are keen to tie women into lending arrangements the financing party engages in with husbands or male partners. The reason? Women are seen as ready to take on responsibility for repayments where the husband or male partner defaults and, sometimes, disappears. Albeit financially less well-heeled, women are likely in such circumstances to come to arrangements for repayments, so that the bank or finance provider does not lose out. *Barclays Bank v O'Brien*⁶²⁹ is a typical case.

To secure his business borrowings, Mr O'Brien had his wife, Mrs O'Brien, sign documents constituting a charge on the family home. He did not advise her of the consequences flowing from the charge or from her signing up to it. Indeed, he misrepresented the truth of the transaction or used 'undue influence' (arising from the marriage relationship) to obtain her signature. The business went bad, the Bank sought to gain possession to pay off the debt, and Mrs O'Brien sought legal advice in her efforts to extract herself from liability for the debt and to save the home if she could. Fortunately for her, she was able to gain legal representation and, ultimately, the House of Lords determined that the Bank was not entitled to enforce the charge. The Bank was held to be under constructive notice, and ought to have known of the undue influence of the husband upon his wife. The security having been obtained by undue influence or misrepresentation. Lord Browne-Wilkinson set down the rule to govern such a

⁶²⁷ Jenny Lawton and Emma Swart, *How to get out of sexually transmitted debt: a guide for workers assisting clients with credit problems*, 2nd edn, Consumer Credit Legal Service, Melbourne, Victoria, 1999.

⁶²⁸ See for example [No Loans, No Credit, No Funding: Why More Women Aren't Millionaires - The New York Times \(nytimes.com\)](https://www.nytimes.com) (accessed 1 August 2021);

⁶²⁹ *Barclays Bank v O'Brien* [1993] 3 WLR 786, [1994] 1 AC 180, [1993] 4 All ER 417, [1993] UKHL 6, [Barclays Bank v O'Brien](https://www.bailii.org) [1993] UKHL 6 (21 October 1993) (bailii.org) (accessed 8 August 2021).

RURAL WOMEN OLDER WOMEN

Both men and women experience discrimination based on old age, but older women experience ageing differently. The impact of gender inequalities throughout their lifespan is exacerbated in old age and is often based on deep rooted cultural and social norms. The discrimination that older women experience is often a result of unfair resource allocation, maltreatment, neglect and limited access to basic services.

Paragraph 10
General Recommendation 27, CEDAW Committee

Evidence relating to rural women and older women, the imposts lying upon them due to their status and location, and the importance of giving credence to their voices and contribution, was given, in the main, by Nick Newland of the Associated Country Women of the World: Witness Statement, Case ref: 011, and that of older women by, in the main, Elizabeth Sclater, Older Women's Network Europe (OWNE), Witness Statement, Case ref: 001 Both provided a wealth of information supporting the need for proper and adequate attention to be paid, in policy formulation and provision of services, to these two constituencies which of course overlap. Rights under CEDAW must be extended to them through policy, gender budgeting, and ensuring their public voice is heard. Malini Mehra focused on the impact of climate change on rural women, noting that at the UN Fourth World Conference on Women, held in Beijing in 1995, discussion had centred around many of the disadvantages faced by women as farmers:

We knew already then that not having access to title to land, or access to credit and finance, or access to technology or irrigation were serious impediments for rural women. The inability to provide something as fundamental as irrigation illustrates the lack of consideration given to these issues when they are seen as a women's rights agenda as opposed to an economic necessity. Water insecurity is major climate risk and in light of the public health implications of water scarcity and lack of irrigation – something we have come to recognise particularly during the Covid 19 pandemic - the lack of progress since Beijing on this point is particularly concerning: para 5, Witness Statement, Case ref: 020

These matters are directly relevant to rural women in the United Kingdom who are farmers, yet because of traditional notions that the son inherits the farm may be left without title to the land, whatever contribution she has made and continues to make. Women married into rural communities may be the ones who sustain the farms during downturns in the rural economy, through bringing income into the household as nurses, teachers or other work.

Ms Mehra observed, too, that '... despite Beijing and the Platform of Action emerging from it, these basic issues of rights, access and representation have not improved sufficiently': para 5, *ibid* This brings into sharp focus an aspect that needs attention along with all others raised by her, Ms Sclater and Mr Newland and generally before the Tribunal: that of democratic participation. The Electoral Integrity Bill 2021 provides for production of identification by voters when they go to the polls. This is premised on the proposition that voter ID is essential to wipe out voter fraud.⁶³² The rationale is framed briefly in a paper produced by the Parliamentary Library.⁶³³

⁶³² [Electoral Integrity Bill: voter protection or voter suppression? - Committees - UK Parliament](#) (accessed 2 July 2021); Neil Johnston and Elise Uberoi, *Voter ID*, 9 July 2021, [CBP-9187.pdf \(parliament.uk\)](#) (accessed 2 July 2021).

⁶³³ [Voter ID - House of Commons Library \(parliament.uk\)](#) (accessed 2 July 2021).

The [Elections Bill 2021-22](#) was introduced on 5 June 2021. If enacted, it would require voters to show voter ID in polling stations for UK parliamentary elections, local elections in England and police and crime commissioner elections in England and Wales. The requirements would not apply at Scottish Parliament and Senedd Cymru elections, nor local council elections in Scotland and Wales. The types of ID required include passports, driving licences, PASS scheme and Blue Badge cards, and some travel passes. People without existing photo ID will be able to apply for a free voter card from their local council to use in the polling station. [Research](#) commissioned by the Government found 96% of respondents had suitable photo ID with a recognisable picture. The Government's view is that asking voters to prove their identities will [safeguard against the potential voter fraud](#) in polling stations. It says 'showing identification is something people of all backgrounds do every day.'

The Library report goes on to acknowledge the position taken by opponents of the Bill, namely that the crime of taking on the identity of another person when voting, or 'personation', is rare, and 'introducing voter ID is a disproportionate response'.⁶³⁴ Records show that as of August 2020, for the elections held in 2019, of 34 allegations, one conviction and one caution had been secured for personation offences.

If the Bill becomes law, from 2023 every United Kingdom voter will be required to produce proof of identity (Voter ID) when attending at the polling station to vote. *Driver's licence*: restrictions on older people's retaining a drivers licence may impact here, and making an application carries stringent ID qualifications, as well a monetary cost – presenting £34 (online)(for a provisional licence). *Passport*: £75.50 (online) - £85 (hardcopy) for a standard 39 pager. *Library card*: £00 – so far. *Local government ID*: £ unknown. As *photographic ID* is required, photography costs must be factored in, too: variable say £5.00-£15.00 (possibly minimum).

Thus, in its design the Bill reimposes property, status and class qualifications into the voting system. This is of concern generally, however, its impact on rural and older women is likely to be more pronounced. As noted, the nominated ID documentation will cost voters money, and even the library cards, perhaps a concession to 'lower-income people' unable to pay for a passport or drivers licence, requires identification in itself. A temporary card is secured by providing evidence of residence – such as a utility bill (a sign of property ownership or rental status) possibly in the name of the male householder rather than his female counterpart), and transport to the library to acquire it. With so many libraries having closed or had services reduced due to austerity measures,⁶³⁵ getting to the library – difficult for many rural and older women in the first instance, is made even more so.

From 1832, through 1867, 1884 and 1918, the right to vote was extended so as, ultimately, to include all the male working-class plus some women of 30 years. Women had to wait until 1928 for a differential age and property (potentially including marital status) qualification to be removed for the right to vote in general elections, whilst for all 18-year-olds the right to vote came in 1970. This fits and starts progression is ready confirmation that enfranchisement did not come without struggle.⁶³⁶ That class/status, race/ethnicity and sex/gender restrictions are effectively written into the Bill is worthy of reflection.

With the job market uncertain, zero hours contracts, unequal pay (the 'gender pay gap', the 'race/ethnicity pay gap'), employment discrimination, literacy discrimination (the library card), bureaucratic impediments (local government plus overall), and Covid 19 impacts – unemployment, income, health, isolation ... impositions standing in the way of exercising ballot-box rights are the more

⁶³⁴ Ibid. See also [Electoral Integrity Bill: voter protection or voter suppression? - Committees - UK Parliament](#) (accessed 29 May 2021).

⁶³⁵ [Britain has closed almost 800 libraries since 2010, figures show | Libraries | The Guardian](#) (accessed 12 August 2021).

⁶³⁶ [Key dates - UK Parliament](#) (accessed 12 July 2021).

severe. When women and men fought for the right to vote, they put their lives on the line. Their courage and tenacity, will to be recognised as equally to play a part in the polity, desire to have a say in government and demand that all women and men would have the right to do so resonates down the centuries. Making voting more accessible is a necessary element of democracy, and the potential stifling of participation by rural and older women, for the measures may impact more because of circumstance, needs attention.

The more obstacles are placed in the way of their voting, the more concerns expressed during the hearing as to lack of sufficient attention being paid to the needs and rights of rural and older women will be exacerbated.

BLACK AND MINORITISED WOMEN LGBTI+ WOMEN

The Committee notes that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.

Paragraph 1, Gender Related Dimensions of Racial Discrimination
General Recommendation 25⁶³⁷

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, para 1, of the Convention and GR 25.

Paragraph 18, Core Obligations of States Parties under
Article 2, CEDAW
General Recommendation 28⁶³⁸

Throughout the Tribunal hearing, and in the written Witness Statements, the position of Black and minoritised women was illustrated well, with the issue of intersectionality bringing in the issues confronting LGBTI+ women. The CEDAW Committee, as noted, emphasises the intersectionality question as a key element of CEDAW, incorporating it into General Recommendations. As witnesses observed, without section 14 of the Equality Act 2010 proclaimed, intersectionality is possible to argue but less well-able to present than if section 14 could be relied upon. At the same time, the provision is

⁶³⁷ [OHCHR GeneralRec25 March2000 \(peacewomen.org\)](#) (accessed 2 July 2021).

⁶³⁸ [CEDAW Adopts General Recommendations Including Sexual Orientation and Gender Identity | OutRight Action International \(outrightinternational.org\)](#) (accessed 2 July 2021).

limited⁶³⁹ and requires reconsideration and redrafting so as to encompass the real life presence of whole women.

General Recommendation 28 acknowledges:⁶⁴⁰

Although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women. The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community. The application of the Convention to gender-based discrimination is made clear by the definition of discrimination contained in article 1. This definition points out that any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms is discrimination, even where discrimination was not intended. This would mean that identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face. The views of the Committee on this matter are evidenced by its consideration of reports, its general recommendations, decisions, suggestions and statements, its consideration of individual communications and its conduct of inquiries under the Optional Protocol: Paragraph 5

The rights of lesbian to claim a ‘well-founded fear of persecution’ if made to return to their home country or country of residence has been upheld in the United Kingdom as a ground for asylum seekers and refugees,⁶⁴¹ which is some recognition of the status of lesbians as entitled to a life free of persecution and violence disparagement.⁶⁴²

⁶³⁹ See **17. Overarching Matters**, later.

⁶⁴⁰ [Refworld | General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#) (accessed 2 August 2021).

⁶⁴¹ [HJ & HT \[2010\] UKSC 341, HT \(Cameroon\) \(FC\) \(Appellant\) v Secretary of State for the Home Department \(Respondent\) and one other action \(supremecourt.uk\)](#) (accessed 2 July 2021); [SW Jamaica CG \[2011\] UKUT 00251; ND \(Jamaica\) v Secretary of State for the Home Department \[2013\], R \(on the application of Jamar Brown \(Jamaica\)\) \(Respondent\) v The Secretary of State for the Home Department \(Appellant\) - The Supreme Court](#) (accessed 2 July 2021); [R \(on the application of Jamar Brown \(Jamaica\)\) \(Respondent\) v SSHD \(Appellant\) \(supremecourt.uk\)](#) (accessed 2 July 2021); [R \(on the application of Jamar Brown\) \(Respondent\) v Secretary of State for the Home Department \(Appellant\) \(supremecourt.uk\)](#) (accessed 2 July 2021); [Brown \(Jamaica\), R \(on the applications of\) v Secretary of State for the Home Department \[2015\] UKSC 8 \(4 March 2015\) \(bailii.org\)](#) (accessed 2 July 2021); and see Nicole LaViolette, ‘Sexual Orientation, Gender Identity and the Refugee Determination Process in Canada’, [Sexual Orientation, Gender Identity and the Refugee Determination Process in Canada by Nicole LaViolette :: SSRN](#) (accessed 2 July 2021); [Sexual Orientation, Gender Identity and the Refugee Determination Process in Canada by Nicole LaViolette :: SSRN](#) (accessed 2 July 2021); [SW \(lesbians – HJ and HT applied\) Jamaica CG \[2011\] UKUT; \(IAC\) \(moj-tribunals-documents-prod.s3.amazonaws.com\)](#) (accessed 2 July 2021); [HJ & HT \[2010\] UKSC 341, HT \(Cameroon\) \(FC\) \(Appellant\) v Secretary of State for the Home Department \(Respondent\) and one other action \(supremecourt.uk\)](#) (accessed 2 July 2021); [SW Jamaica CG \[2011\] UKUT 00251 \(IAC\)](#).

⁶⁴² See further **ASYLUM SEEKING AND REFUGEE WOMEN**, later And

ASYLUM SEEKING AND REFUGEE WOMEN

The position of asylum-seeking and refugee women was a recurring theme throughout the hearing, with the No Recourse to Public Funds⁶⁴³ issue lying at the heart of an extensive range of concerns. ‘First and foremost, we have to abolish the No Recourse to Public Funds rule for women subjected to violence in this country, said Baljit Banga of Imkaan:

Women in this country should have access to safety from violence and abuse, regardless of their immigration status. Women with insecure immigration status, inclusive of No Recourse to Public Funds, have been viewed as immigration cases by local authorities and by central government. Their needs have been neglected, and their human rights violated, and these practices must end. There must be complete abolition of the No Recourse to Public Funds rule, because it does nothing to support women who may be in need of support: para 34, Witness Statement, Case ref: 018

The need for ‘a single violence against women and girls’ policy framework, protecting and supporting all women, regardless of their immigration status’, was essential, she said. Here, however, she drew attention to data sharing between agencies including police and other statutory services, a practice inhibiting women’s access to essential services and putting women’s lives at risk. Women must have ‘safe reporting pathways, made up of, by and for, expert sectors: as well as statutory pathways, access to GPs and other health services – enabling women to access the kind of support they need and choose what kind of support they need without fear of detention and deportation’. However, this is hampered by ‘data sharing practices when victims approach police or other statutory services’. This ‘acts as a deterrent for many women in need of support, placing women at risk of detention and deportation. Data sharing practices must be ended’: paras 35, 36, *ibid*

The ‘safe reporting’ question arose in a number of instances throughout the hearing, as did that of access to services. Margaret Owen, OBE, of Widows for Peace through Democracy, previously having worked as an immigration and asylum lawyer for the United Kingdom Immigrants’ Advisory Service, observed that ‘women how have migrated to, or sought asylum in, the UK have experienced hardship when trying to access services or assert their rights ...’. She added that it was ‘devastating to learn how the Home Office has structured their asylum system. Migrant women and asylum seekers, and no women from the EU due to Brexit, face enormous issues with securing their rights:

The process of seeking asylum in the UK, and elsewhere, can prevent a woman disclosing some of the persecution they have faced. Many of the women seeking asylum in the UK are facing persecution in their own countries or have experienced various forms of gender-based violence. I have dealt extensively with widows who have escaped persecution in their own countries due to being widows. In many countries, widows are subject to discriminatory and harmful traditional practices; they can be forcibly inherited by their husbands’ cousin or brother, there may be burial rites they must take part in, they may be forced to have ritual sex with many people and some widows with whom I have worked have been tortured: paras 6, 9, *ibid*

Ms Owen went on to explain that many women ‘find it difficult to speak about such experiences at the beginning of an asylum claim’:

⁶⁴³ [Who has no recourse to public funds \(NRPF\) | NRPF Network](#) (accessed 21 July 2021).

When they have been victims of rape, gang rape, sexual slavery, these are often terribly taboo in the country from which they have come, and they may fear that by speaking about such experiences they put themselves in a dangerous position vis-à-vis their own families. Accordingly, they are reluctant to disclose such facts openly to immigration officers straight away: para 10, *ibid*

As for progress of refugee and asylum seeker claims through the tribunal and court decision-making process, concerns are raised at all levels.⁶⁴⁴ The bases upon which a ‘well-founded fear of persecution’ can be established to the satisfaction of the courts, a failure to recognise the very real ‘well-founded fear’ generated by crimes against women has to some extent been rectified. In *Shah and Islam*,⁶⁴⁵ the House of Lords recognised that criminal assault at home and other forms of domestic violence can provide a basis for a claim for asylum were a ‘well-founded fear’ is established.⁶⁴⁶ Although again delayed in the recognition, lesbians, like gay men, have been able to make legitimate claims for asylum by establishing a ‘well-founded fear of persecution’ if forced to return to their home country or country of origin.⁶⁴⁷ The ‘heterosexual narrative’ – the idea that there would be no problem of ‘persecution’ unless the individual lived openly and failed to conform to a pattern of subservice to the heterosexual imperative – was addressed and overridden for lesbians and gay men. That is, it was posited that persons of homosexual orientation could ‘pass’ by marrying someone of the opposite sex and having children or simply by living quietly and effectively keeping their sexual orientation secret, or not disclosing it, or repressing it. The precise words were:

Not all lesbians are at risk. Those who are naturally discreet, have children and/or are willing to present a heterosexual narrative for family or societal reasons may live as discreet lesbians without persecutory risk, provided that they are not doing so out of fear ... Single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion ...⁶⁴⁸

⁶⁴⁴ See Poonam Joshi, ‘Jumping through Hoops: Immigration and Domestic Violence’ in Rahila Gupta (ed), *From Homemakers to Jail Breakers: Southall Black Sisters*, Zed Press, London, UK, 2003, pp. 132-142.

⁶⁴⁵ *Shah and Islam* [1999] 2 All ER 545; *R v Immigration Appeal Tribunal & Anor, ex parte Shah* (UN High Commissioner for Refugees intervening); *Islam & Ors v Secretary of State for the Home Department* (UN High Commissioner for Refugees intervening) HofL [1999] 2 All ER 545.

⁶⁴⁶ Followed in *Horvath v Secretary of State for the Home Department* [2000] 3 All ER 577, [2001] EWCA Civ 127, *The Times* 18 September 2001; see also *R (on the application of Mishto) v Immigration Appeal Tribunal* [2003] All ER (D) 242, [Mishto, R \(on the application of\) v Immigration Appeal Tribunal \[2003\] EWHC 1449 \(Admin\) \(19 May 2003\) \(bailii.org\)](#) (accessed 8 August 2021); [Mishto v Secretary of State For Home Department \[2003\] EWCA Civ 1978 \(12 December 2003\) \(bailii.org\)](#) (accessed 8 August 2021); *Harrison* [2003] All ER (D) 238.

⁶⁴⁷ *HJ & HT* [2010] UKSC 341, [HT \(Cameroon\) \(FC\) \(Appellant\) v Secretary of State for the Home Department \(Respondent\) and one other action \(supremecourt.uk\)](#) (accessed 2 July 2021); *SW Jamaica CG* [2011] UKUT 00251; *ND (Jamaica) v Secretary of State for the Home Department* [2013], [R \(on the application of Jamar Brown \(Jamaica\)\) \(Respondent\) v The Secretary of State for the Home Department \(Appellant\) - The Supreme Court](#) (accessed 2 July 2021); [R \(on the application of Jamar Brown \(Jamaica\)\) \(Respondent\) v SSHD \(Appellant\) \(supremecourt.uk\)](#) (accessed 2 July 2021); [R \(on the application of Jamar Brown\) \(Respondent\) v Secretary of State for the Home Department \(Appellant\) \(supremecourt.uk\)](#) (accessed 2 July 2021); [Brown \(Jamaica\), R \(on the applications of\) v Secretary of State for the Home Department \[2015\] UKSC 8 \(4 March 2015\) \(bailii.org\)](#) (accessed 2 July 2021); and see Nicole LaViolette, ‘Sexual Orientation, Gender Identity and the Refugee Determination Process in Canada’, [Sexual Orientation, Gender Identity and the Refugee Determination Process in Canada by Nicole LaViolette :: SSRN](#) (accessed 2 July 2021); [Sexual Orientation, Gender Identity and the Refugee Determination Process in Canada by Nicole LaViolette :: SSRN](#) (accessed 2 July 2021).

⁶⁴⁸ *SW (lesbians – HJ and HT applied) Jamaica CG* [2001] UKUT [Refworld | SW \(lesbians - HJ and HT applied\) Jamaica v. Secretary of State for the Home Department](#) (accessed 2 July 2021).

The test case – *HJ & HT* overruled the position that there was no legitimate claim if it were possible for individuals to live ‘discreetly’ in their country of origin: the ‘heterosexual narrative’ was ruled out of order and lacking validity.⁶⁴⁹

What of female genital mutilation? Dr Charlotte Proudman raised this in the context of her practice relating to ‘FGM Protection Orders’.⁶⁵⁰ Female genital mutilation may be carried out or threatened when a female baby is newly born, during a girl’s childhood or adolescence, just before a woman’s marriage, or during pregnancy.⁶⁵¹ Dr Proudman said that the Orders ‘work well in protecting British citizens, but not for migrant women and asylum seekers’:

These women are not protected in domestic law. When they apply for an FGM protection order they are seen as manipulating the court process to their advantage. There is often an assumption that because they are going through both immigration and family courts, they are using the family court process to distort the immigration process. However in fact these are vulnerable people with no financial support and often young parents: para 17, Witness Statement, Case ref: 017

She added that the position of the Secretary of State in these proceedings is problematic:

... the Secretary of State is allowed to intervene in these cases in family courts. They are allowed to cross-examine these women in the family court. The family court almost becomes an immigration tribunal. Many forget the paramount principle is a small girl at risk of FGM ...: para 18, *ibid*

Dr Proudman concluded, ‘... there is inadequate protection for female asylum seekers ...’: para 18, *ibid*. This is concerning, for the House of Lords has held that a well-founded fear of persecution can arise where the fear is of the imposition of female genital mutilation. In *Fornah v Secretary of State for the Home Department*⁶⁵² Ms Fornah had, as a young woman of 15 years, overheard discussions in her home in a Sierra Leone village that disclosed plans to ‘initiate her into womanhood by her undergoing FGM’. Running away, she was captured by rebels (Sierra Leone was engaged in civil war at the time) and made forcibly pregnant through having been repeatedly raped by the rebel leader. Escaping to the United Kingdom with the help of her uncle, she sought asylum. The Secretary of State for the Home Department accepted Ms Fornah was telling the truth and that she would be ‘subjected to inhuman and degrading treatment if returned to Sierra Leone. However, humanitarian status only was granted to her, not refugee status. She appealed. Overturning a denial of her appeal in the Court of Appeal, the High Court held, contrary to the Court of Appeal majority, that she was a member of a social group bringing her

⁶⁴⁹ *HJ & HT* [2010] UKSC 341, [HT \(Cameroon\) \(FC\) \(Appellant\) v Secretary of State for the Home Department \(Respondent\) and one other action \(supremecourt.uk\)](#) (accessed 2 July 2021); *SW Jamaica CG* [2011] UKUT 00251 (IAC)

⁶⁵⁰ [FGM protection orders: factsheet - GOV.UK \(www.gov.uk\)](#) (accessed 21 July 2021); [Protecting children from female genital mutilation \(FGM\) | NSPCC Learning](#) (accessed 21 July 2021);

⁶⁵¹ *Ibid*, and see Female Genital Mutilation Act 2003, Female Genital Mutilation Act 2003 (legislation.gov.uk) (accessed 2 June 2021); [fgm701-eng.pdf \(publishing.service.gov.uk\)](#) (accessed 2 July 2021); Female Genital Mutilation Act 2003 - Explanatory Notes (legislation.gov.uk) (accessed 2 June 2021).

⁶⁵² *Fornah v Secretary of State for the Home Department, linked with Secretary of State for the Home Department v K* [2006] UKHL 46, [UK - House of Lords, 18 October 2006, Fornah v. Secretary of State for the Home Department \(linked with Secretary of State for the Home Department v. K\) \[2006\] UKHL 46 | European Database of Asylum Law \(asylumlawdatabase.eu\)](#) (accessed 2 August 2021), and see Susan SM Edwards, ‘Female Genital Mutilation – violence against girls and women as a particular social group’, *Fornah v Secretary of State for the Home Department*, House of Lords [2006], *Denning Law Journal* vol 19, 2007, pp. 271-278, [Fornah v Secretary of State for the Home Department, House of Lords \[2006\] UKHL 46, \[2006\] 3 FCR 381, \[2007\] 1 All ER 671 - CORE Reader](#) (accessed 2 August 2021); [House of Lords victory: Fornah v Secretary of State for the Home Department | News | Garden Court Chambers | Leading Barristers located in London, UK](#) (accessed 2 August 2021).

within the required meaning of the UN Refugee Convention so as to enable her to achieve refugee status. Lord Bingham, with whom Baroness Hale agreed, found on the evidence that it was ‘clear that women in Sierra Leone are a group of persons sharing a common characteristic which, without a fundamental change in social mores is unchangeable, namely a position of social inferiority as compared with men’:

They are perceived by society as inferior. That is true of all women, those who accept or willingly embrace their inferior position and those who do not. To define the group in this way is not to define it by reference to the persecution complained of: it is a characteristic which would exist even if FGM were not practised, although FGM is an extreme and very cruel expression of male dominance.⁶⁵³

Despite this recognition of female genital mutilation as a proper ground for refugee status claims, at issue is whether or not claimants are believed. This is the issue Dr Proudman raised, and which was raised by other witnesses as to the credibility of women within the justice system. This denial of credit to women’s claims or evidence in whatever jurisdiction – family, immigration, crime – raises serious questions about the system’s decision-making process.

MIGRANT WOMEN AND WOMEN WITH INSECURE IMMIGRATION STATUS

Witnesses affirmed the ‘in jeopardy’ position of migrant women and women with insecure immigration status, who experience the everyday discrimination imposed on women not in these categories, together with the additional impositions in consequence of their migrant or ‘insecure immigration’ status. Here, the Tribunal refers back to the evidence given, referring also to the Report of UN Women, *Recommendations for Addressing Women’s Human Rights in the Global Compact for Safe, Orderly and Regular Migration*, the outcome of an expert meeting held in November 2016, hosted in Geneva by UN Women and the Office of the High Commissioner for Human Rights (OHCHR). Leading experts from relevant treaty bodies, select UN agencies, and civil society organisations were brought together to address ways of ensuring delivery of rights and protections to migrant women and women with insecure immigration status. This Report constitutes the key document for formulating government policy, in conjunction with consultation with United Kingdom women and women’s organisations with on the ground expertise in the field.⁶⁵⁴

So many witnesses before the Tribunal spoke of the No Recourse to Public Funds issue, that it would behove the government and the Parliament to address it promptly.

WOMEN IN DETENTION

When women are placed in detention, whether in the context of migrant, refugee or asylum seeking matters, or in relation to arrest and detention on remand or following conviction, the proportionately small numbers (compared to men) is not an advantage.⁶⁵⁵ In 2020, approximately 77.42 thousand men and 3.41 thousand women were held in United Kingdom prisons, a net decrease of some three thousand men and seven hundred women.⁶⁵⁶ The Prison Reform Trust reports that the women’s prison population in England and Wales ‘more than doubled between 1995 and 2010 - from under 2,000 women to over 4,000’. Then, from April 2012 to April 2016, the numbers declined by more than 10 percent - from 4,279

⁶⁵³ *Fonah v Secretary of State ...*, *ibid.*

⁶⁵⁴ [Recommendations for Addressing Women’s Human Rights in the Global Compact for Safe, Orderly and Regular Migration \(unwomen.org\)](https://unwomen.org/recommendations-for-addressing-women-s-human-rights-in-the-global-compact-for-safe-orderly-and-regular-migration) (accessed 8 August 2021).

⁶⁵⁵ [Women \(prisonreformtrust.org.uk\)](https://prisonreformtrust.org.uk/women) (accessed 2 August 2021); [Layout 1 \(prisonreformtrust.org.uk\)](https://prisonreformtrust.org.uk/layout-1) (accessed 2 August 2021).

⁶⁵⁶ • [UK: man vs female prison population 2019 | Statista](https://www.statista.com/statistics/1091147/uk-man-vs-female-prison-population-2019/) (accessed 2 August 2021).

to 3,821 women. Nonetheless, ‘the UK still has one of the highest rates of women’s imprisonment in Western Europe’.⁶⁵⁷ Yet, representing less than five percent of the prison population, women’s constituting that small minority in the criminal justice system means they are ‘easily overlooked in policy, planning, and services – they have been described as “correctional afterthoughts”’.⁶⁵⁸ Women are overrepresented in categories of less serious offences and, similarly to the position vis-à-vis men in prison, as Esuantsiwa Jane Goldsmith said, there are ‘disproportionate numbers of black and minority ethnic women in prison’. She observed that women in prison were generally incarcerated for crimes which are essentially ‘social problems, and not criminal and ... most women should not be in prison, requiring access to other kinds of help and support. Their incarceration has disastrous consequences for their families, especially children’: para 34, Witness Statement, Case ref: 036

Ms Goldsmith’s evidence is borne out by the facts. In 2006, Baroness Jean Corston undertook a review of vulnerable women in the criminal justice system, reporting in 2007 with a summation comprising forty-three recommendations on the treatment of women, proposing ‘the need for a distinct, radically different, visibly-led, strategic, proportionate, holistic, woman-centred, integrated approach’.⁶⁵⁹ Referring to the Corston Report, Ms Goldsmith noted that the Report:

... found that most of the women in prison were non-violent and did not pose a threat to the public. Their families and children were suffering through poverty and exclusion, so the women were often trying to meet their needs by shoplifting, or they had drug problems, or were victims of abuse or trafficking, or were under the control of men or pimps: para 34, *ibid*

Unfortunately, little has changed substantially since Baroness Corston’s Report, albeit some steps have been taken but this does not reflect an effective implementation of the Report, albeit upon its delivery to government in 2007, the vast bulk of the 143 recommendations was accepted.⁶⁶⁰ As the Prison Reform Trust says, it ‘has long called for a reduction in women’s imprisonment and a step change in how the criminal justice system responds to women’. Reflecting that not only the Corston Report, but the Angiolini Commission on Women Offenders (Scotland) and ‘many other inquiries and reports have all concluded that prison is rarely a necessary, appropriate or proportionate response to women who get caught up in the criminal justice system’.⁶⁶¹:

The Prison Reform Trust has long called for a reduction in women’s imprisonment and a step change in how the criminal justice system responds to women. March 2017 marks ten years since the Corston Report on Women with Particular Vulnerabilities in the Criminal Justice System, and five years since the Angiolini Commission on Women Offenders (Scotland).⁶⁶² These and many other inquiries and reports have all concluded that prison is rarely a necessary, appropriate or proportionate response to women who get caught up in the criminal justice system.⁶⁶³

However, a review conducted on 20 July 2021 revealed that the government has fully implemented ‘only 31 of 65 commitments’ with the majority of ‘promises made in the strategy remaining unachieved

⁶⁵⁷ [Women \(prisonreformtrust.org.uk\)](https://www.prisonreformtrust.org.uk) (accessed 2 August 2021).

⁶⁵⁸ [Women \(prisonreformtrust.org.uk\)](https://www.prisonreformtrust.org.uk) (accessed 2 August 2021).

⁶⁵⁹ [The Corston Report - NICCO](#) (accessed 2 August 2021).

⁶⁶⁰ [Corston Report: What's changed since it was commissioned 15 years ago? | Working Chance](#) (accessed 2 August 2021); [Concordat on women in or at risk of contact with the Criminal Justice System - GOV.UK \(www.gov.uk\)](#) (accessed 2 August 2021).

⁶⁶¹ [Layout 1 \(prisonreformtrust.org.uk\)](https://www.prisonreformtrust.org.uk) (accessed 2 August 2021).

⁶⁶² [Commission on Women Offenders - Parliamentary Business : Scottish Parliament](#) (accessed 2 August 2021); [Angiolini Commission on Women Offenders | Howard League Scotland](#) (accessed 2 August 2021); [Angiolini Commission on Women Offenders | Irish Penal Reform Trust \(iprt.ie\)](#) (accessed 2 August 2021).

⁶⁶³ [Layout 1 \(prisonreformtrust.org.uk\)](https://www.prisonreformtrust.org.uk) (accessed 2 August 2021).

or partially achieved’ almost three years after a strategy for implementation was publicised in June 2018.⁶⁶⁴ The government has now announced 500 new prison places for women, ‘reversing a key aim of the strategy to reduce the women’s prison population’, says the Trust, pointing out that had the strategy been implemented successfully, no new places would be required. Furthermore, research shows that where prison bed numbers are increased, prison numbers increased.⁶⁶⁵: the beds are filled leading either to:

- A call for more beds – which again will respond in per the recognised ‘bed push’ factor;⁶⁶⁶ or
- A belated recognition that the ‘strategy’ was wrong-headed in the first place, heralding, as it might be hoped, a return to the approach of the Corston Report and implementation of the recommendations in full.

It is worth setting out in full a letter sent to the Ministry of Justice in relation to the 500 new beds proposal, one containing an impressive list of signatories:

Ministry of Justice
102 Petty France
London, SW1 9AH
CC: Alex Chalk MP, Justice Minister
25 July 2021

Dear Secretary of State and Lord Chancellor,

We are writing to express our grave concern about the impact of the proposed 500 new prison places for women, announced at the end of January this year. The proposals fly in the face of the Government’s own evidence and criminal justice strategy which admits most women should not be in prison and commits to reducing the women’s prison population, as well as re-offending rates. There is well established evidence that community settings rather than prisons are more successful at addressing the root causes of women’s offending, so often including experiences of trauma, domestic abuse, mental ill-health, debt, homelessness and harmful substance use.

Most women enter prison for sentences of six months or less, with prison sentences more likely to increase re-offending rather than reduce it. We are also concerned about a rise in self-harm for women in prison, which is now at the highest level in a decade.

The harm of prison affects not only women, but their families and children, as women are more likely to be primary carers and the majority of women in prison have children under the age of 18. We know 95% of children have to leave their home when their mother goes to prison. Parental imprisonment is a recognised adverse childhood experience, with the risk of significant negative impact on children’s long-term health and wellbeing, their school attainment, and later life experiences, including life expectancy and the likelihood of being imprisoned themselves.

⁶⁶⁴ [Women \(prisonreformtrust.org.uk\)](https://www.prisonreformtrust.org.uk)(accessed 2 August 2021).

⁶⁶⁵ [Front Matter | The Growth of Incarceration in the United States: Exploring Causes and Consequences | The National Academies Press \(nap.edu\)](#) (accessed 2 August 2021); also information imparted by Professor Rosemary Sarri, School of Social Work and Centre for Political Studies, University of Michigan, Ann Arbor, MI, USA, [Rosemary A. Sarri | University of Michigan School of Social Work \(umich.edu\)](#) (accessed 2 August 2021).

⁶⁶⁶ Per Professor Rosemary Sarri, UofM, *ibid*.

It's even more concerning that these plans include accommodation for children to visit mothers overnight in prison, where a much more sensible and humane approach would see mothers released in the community to spend the night with their child.

We refute the Government's claim that additional places are needed to prepare for a projected rise in the prison population due to hiring more police officers. Not only does this completely undermine its own strategy on women, but experts from across police, probation, prisons and service providers agree that it doesn't have to be like this. Where schemes that divert women away from the criminal justice system before reaching court exist, there is a proven reduction in imprisonment and re-offending rates.

There is another way. The UK has a network of local services embedded in communities working alongside women to address their needs, including Women's Centres, which provide an anchor to help stop women being swept up into crime. The Government has recognised these are more effective at rehabilitation and can choose to invest in them instead.

We urge the Government to rethink these plans, and take the common-sense approach already outlined which has broad support, before more families and communities are unnecessarily torn apart. We are ready and willing to work with Government to achieve the aim of its strategy to radically reduce the number of women in prison, but these new prison places thwart this goal.

Yours faithfully,

Dr Kate Paradine, CEO, Women in Prison
Alphonsine Kabagabo, Director, Women for Refugee Women
Kathy Evans, Chief Executive, Children England
Frances Crook, Chief Executive, The Howard League
Gill Walton, Chief Executive, Royal College of Midwives
Farah Nazeer, Chief Executive, Women's Aid Federation of England
Polly Neate CBE, Chief Executive, Shelter
Sarah Hughes, Chief Executive, Centre for Mental Health
Katie Lomas, National Chair, Napo, the Probation and Family Courts Union
Anne Fox, CEO, Clinks
The Rt Hon Baroness Corston of St George
Campbell Robb, CEO, Nacro
Deniz Uğur, Deputy Director, End Violence Against Women Coalition
The Rt Hon the Lord Bradley of Withington
Estelle du Boulay, Director, Rights of Women
Ian Lawrence, General Secretary, Napo, the Probation and Family Courts Union
David Challen, domestic abuse campaigner
Penelope Gibbs, Director, Transform Justice
Deborah Coles, Director, INQUEST
Pavan Dhaliwal, Chief Executive, Revolving Doors Agency
Harriet Wistrich, Director, Centre for Women's Justice
Suzanne Jacob, CEO, SafeLives
Angela Cairns, Chief Executive, Unlock
Fiona Dwyer, CEO, Solace
Jemima Olchawski, CEO, Agenda Alliance

Nina Champion, Director, Criminal Justice Alliance
Laura Seebohm, Executive Director, Changing Lives
Amy Gibbs, Chief Executive, Birthrights
Alice Dawnay, Founder & CEO, Switchback
Janet Dalrymple, CEO, Safer Places
Pippa Goodfellow, Director, Alliance for Youth Justice
Charlotte Day, Chief Officer, Bedford Women's Centre
Joy Doal, CEO, Anawim
Vivienne Hayes, Chief Executive, Women's Resource Centre
Dr Liza Thompson, CEO, SATEDA
Khatuna Tsintsadze, Co-Director, Zahid Mubarek Trust
Dr Mary-Ann Stephenson, Director, UK Women's Budget Group
Joeli Brearley, CEO, Pregnant Then Screwed
Naomi Delap, Director, Birth Companions
Janey Starling, Co-Director, Level Up
Seyi Falodun-Liburdu, Co-Director, Level Up
Rose Dowling, Chief Executive, Leaders Unlocked
Chris Price, CEO, Pecan
Marchu Girma, CEO, Hibiscus
Hannah Shead, CEO, Trevi
Lisa Dando, Director, Brighton Women's Centre
Angela Everson, CEO, WomenCentre
Stef Martinsen-Barker, CEO, Cambridge Women's Resource Centre
Jackie May, Chief Executive, Women's Centre Cornwall
Kellie Ziemba, CEO, Kairos Women Working Together
Niki Scordi, CEO, Advance
Sara Swire, CEO, New Dawn New Day
Rokaiya Khan, CEO, Together Women
Natasha Finlayson, CEO, Working Chance
Niki Gould, Head of Women's Community Services, Nelson Trust
Helen Pankhurst, Convener, Centenary Action Group
Caroline Allouf, Co-ordinator, Tricky Period
Jenny Adjene, Co-Founder, Hip Hooray (Social Enterprise)
Sandra Brown MA, Chartered FCIPD Chair of Trustee Board, Stepping Stones Luton
Sofia Buncy, National Coordinator, Khidmat Centres
Gemma Fox, Managing Director, North Wales Women's Centre
Kate Lill, Women Prisoners' Caseworker, Prisoners' Advice Service
Anna Herrmann, Joint Artistic Director, Clean Break
Helen Mills, Head of Programmes, Centre for Crime and Justice Studies
Naima Sakande, Women's Justice Advocate, APPEAL
Lauren Nickolls, Senior Project Manager, Maslaha
Cyrene Siriwardhana, Legal and Policy Advisor, Surviving Economic Abuse
Sara Garton, Head of Client Services, Nottingham Women's Centre
Emily Reynolds, Campaigns and Communications Manager, Wish
Nicole Guy, Centre Manager, Stockport Women's Centre

15. Nationality

Additional matters to consider:

- Hostile environment
- Windrush scandal – Windrush Lessons Learned Independent Review March 2018
- Shamima Begum Case
- Brexit: impact on children of EU citizens living in the UK

HOSTILE ENVIRONMENT WINDRUSH SCANDAL – WINDRUSH LESSONS LEARNED INDEPENDENT REVIEW

On Thursday 13 June 2018, Lord Bassam of Brighton moved a motion in the House of Lords to affirm taking note of ‘the impact of the Government’s “hostile environment” approach towards illegal immigration on those with residency and employment rights’.⁶⁶⁷ The evidence before the Tribunal not only support the proposition that the ‘hostile environment’ policy – now euphemistically described by those in government as the ‘compliant environment’ policy⁶⁶⁸ – militates against the safety and wellbeing of ‘those with residency and employment rights’, but those with United Kingdom citizenship. It was not until some two years later that a House of Commons Review reported on what had become known as the ‘Windrush Scandal’, in a volume entitled *Windrush - Lessons Learned*.⁶⁶⁹

In a submission subsequent to the *Lessons Learned Review*, Steve Valdez-Symons of Amnesty International⁶⁷⁰ ‘invited the Committee’ to draw a number of ‘primary conclusions’:

- a. Racism remains embedded in laws governing British citizenship and in their application.
- b. Officials are licensed and encouraged to perceive many minority ethnic British people as not belonging to this country and exercise immigration powers against them – powers from which they would and should be exempt by British citizenship. This can only provide wider licence and encouragement to racist attitudes and prejudices, including attitudes and prejudices that may be neither overt nor recognised.
- c. The causes and consequences of this are integrated with racism in other areas of law, policy and practice

These conclusions were drawn from the facts underpinning the Windrush Scandal, directly related to the Home Office nationality and immigration functions. At bottom lies the disregard of human rights entitlements of British citizens and so too those rights in relation to the eligibility of many other people to an immigration status permitting their stay in the United Kingdom. Inequalities being the ‘cause and consequence of this neglect significantly include racism’. Albeit both Prime Minister and Home Secretary eventually ‘offered apologies’, consideration of the Home Office’s exercise of its nationality and immigration functions ‘indicates that one reason progress is impeded remains a widespread unwillingness or incapacity to understand and recognise racism’.

⁶⁶⁷ [Motion to Take Note - House of Lords Business - UK Parliament](#) (accessed 18 August 2021).

⁶⁶⁸ [Impact of ‘Hostile Environment’ Policy - House of Lords Library \(parliament.uk\)](#) (accessed 18 August 2021).

⁶⁶⁹ Wendy Williams, *Windrush Lessons Learned Review Independent Review*, House of Commons, London, UK, 2020, [6.5577 HO Windrush Lessons Learned Review \(publishing.service.gov.uk\)](#) (accessed 2 August 2021).

⁶⁷⁰ Steve Valdez-Symons, *Black People, Racism and Human Rights*, Amnesty International, London, UK, September 2021, <https://committees.parliament.uk/writtenevidence/11496/pdf/> (accessed 8 August 2021)

The Amnesty Submission observes that in the post-War decades:⁶⁷¹

... British people from across the colonies and Commonwealth came and settled in the UK. Successive administrations responded by introducing and promoting practices, policies and legislation expressly motivated to deter and constrain entry of black and Asian British people because of their colour ... That response culminated in Acts of Parliament that still underpin the UK's nationality and immigration systems: the British Nationality Act 1981 and Immigration Act 1971 respectively ... One effect ... was to remove the unfettered right of many British people to enter and stay in the UK by, firstly, limiting the people who were to possess that right on the basis of 'patriality' (a concept introduced by the Immigration Act 1971) and, later, introducing a new British nationality ... Many black and Asian British people already settled here thereby ceased to be recognised as this country's citizens ... Many people – disproportionately minority ethnic people – born in the UK since the commencement of the British Nationality Act 1981 have, therefore, been born without British citizenship ...

Parliament did endeavour to address some of the racist consequences these changes may have projected, with rights to British citizenship by registration '... expressly included in the British Nationality Act 1981 to provide security of United Kingdom citizenship to all people connected to it, and 'to avoid racial disharmony'.⁶⁷²

The registration rights extended to members of the Windrush generation and to children born and growing up in the United Kingdom. However, the Home Office intentionally discouraged members of the Windrush generation from exercising their time-limited right to register as British citizens. People, therefore, lost that right. Ministers had said time-limiting the right was necessary to encourage people to exercise it - but the Home Office did the opposite. Decades later – even after this scandal's exposure – the Home Office continues to obstruct and discourage people from exercising their British citizenship rights ...

The Submission goes on to outline how this is being done ...

This recitation of the reasons underlying the damage done and, it would appear, continuing to be done to the Windrush Generations is reflected in the evidence before the Tribunal as to government approaches and political and public consequences, in relation to Black and minoritised women – both citizens and migrants or asylum seekers and refugees. Witness after witness attested to the ways in which racism, ethnophobia and Islamophobia play out, intersected with sex and gender, affecting in their daily lives and in their interactions with institutions of the state.

The evidence further provided a snapshot view of the rise in hostility in the lead-up to, the confirmation of, and the continuing aftermath of Brexit. The Covid pandemic has exacerbated this, in that because Black and minoritised women (along with their male counterparts) have been in the forefront – both as doctors, nurses, healthcare workers and cleaning staff in hospitals, and suffering from being more susceptible to the virus – this has militated against their interests in the community, too – drawing racist attacks as if they are to blame because of that greater susceptibility.

Attention has been paid in recent years to the Black Lives Matter movement and to concerns about the intersection of colonialism and race. Gender is a significant element in this, as revealed by the evidence before the Tribunal. It is thus appropriate to turn, then, to the Shamima Begum case.

⁶⁷¹ Ibid (paragraph numbers omitted).

⁶⁷² Ibid (paragraph numbers omitted).

SHAMIMA BEGUM CASE

The image of three young East London school girls walking through security at Heathrow on what proved to be their way to Syria to join the 'the Islamic State' made national and international media. Eventually, each of them having reached Syria and married a soldier of the group, only one survived: Shamima Begum. Having born two children whilst in Syria with the group she joined, then giving birth when in a refugee camp to which she escaped, and each child having died, she sought to return to the United Kingdom. Born in England, she was a British citizen and United Kingdom national. However, ill-advisedly, she gave at least one media interview wherein the impression was given that she regretted nothing of her joining a group classified as an enemy of the state.

The Secretary of State for the Home Department signalled an intention removed Shamima Begum's British citizenship. This, he said, was in contravention of no nationality laws, as she was not (he said) rendered thereby stateless. Her parents had come to the United Kingdom from Bangladesh. Hence, it was asserted, she was not stateless but entitled to hold citizenship of Bangladesh. Indeed, the Secretary of State said, Ms Begum was a British/Bangladeshi with dual nationality. The Bangladesh authorities apparently denied this claim. Ms Begum, in any event, did not wish to go anywhere other than to rejoin her family in England.⁶⁷³ At that time she was, and still is, being held at a camp in Syria by the Syrian Democratic Forces.

In the tribunal and court proceedings undertaken by her, Ms Begum sought to regain her citizenship and to return to the United Kingdom to instruct her legal team in person. It was impossible to do so, it was argued, from the remote location of a Syrian refugee camp, and further, she wished to avoid the risk of mistreatment. The three matters initiated by her surrounded the question of statelessness in various ways, with the Secretary of State advising that the stated reason for removing her citizenship was:⁶⁷⁴

Ms Begum is 'a British/Bangladeshi dual national who it is assessed has previously travelled to Syria and aligned with ISIL', and it is assessed that Ms Begum's '... return to the UK would present a risk to the national security of the [UK].' The Secretary of State certified that his decision had been taken partly in reliance on information which, in his opinion, should not be made public in the interests of national security and in the public interest.

On 13 June 2019, the Secretary of State refused her application, certifying that this decision had also been taken 'partly in reliance on information which, in his opinion, should not be made public in the interests of national security and in the public interest'. All this resulted in appeals in three separate sets of proceedings brought by Ms Begum being heard in the Supreme Court. There, all her appeals were dismissed and the Court of Appeal decision that she be permitted to return to pursue her action for the return of her citizenship was decided against her. It remains to be seen what steps will be taken

⁶⁷³ *R (On the Application of Begum) v SIAC and SSHD* [2021] UKSC 7, [R \(on the application of Begum\) \(Appellant/Respondent\) v SIAC and SSHD \(Respondent/Appellant\) \(supremecourt.uk\)](#) (accessed 8 August 2021); [R \(on the application of Begum\) \(Appellant\) v Special Immigration Appeals Commission \(Respondent\)](#) (accessed 8 August 2021); [R \(on the application of Begum\) \(Respondent\) v Secretary of State for the Home Department \(Appellant\); Begum \(Respondent\) v Secretary of State for the Home Department \(Appellant\) \(supremecourt.uk\)](#) (accessed 8 August 2021); *R (On the Application of Begum) v SIAC and SSHD* [2020] EWCA Civ 918, [Begum v Special Immigration Appeals Commission \(SIAC\) \[2020\] EWCA Civ 9 | Adam Bernard Solicitors](#) (accessed 8 August 2021).

⁶⁷⁴ [R \(on the application of Begum\) \(Appellant\) v Special Immigration Appeals Commission \(Respondent\); R \(on the application of Begum\) \(Respondent\) v Secretary of State for the Home Department \(Appellant\); Begum \(Respondent\) v Secretary of State for the Home Department \(Appellant\) \(supremecourt.uk\)](#) (accessed 8 August 2021).

by her legal team to gain a hearing that is not bound about by a confusion of provisions in the immigration and nationality field.⁶⁷⁵

Nationality, immigration, and asylum raise some of the most telling issues of human and civil rights. For female litigants traversing the field, failures inherent in the legal system itself impede their access to law and justice. It is only recently that courts in have acknowledged as potentially creating a well-founded fear of persecution matters specifically referable to women's lot – namely fear founded in violence suffered domestically, through criminal assault at home and other forms of domestic violence, female genital mutilation (FGM), forced or arranged marriage, and child marriage.⁶⁷⁶ The sex/gender ignorance exhibited by the law and its interpretation is writ large in the *Begum case*. For women, the legal system has a tendency to categorise them as properly subject to paternalism, putting them implicitly into a non-adult category whatever their age, or classifying them as 'all powerful' and entirely in charge of their own subjection.⁶⁷⁷ Ms Begum appears to have been classified as wholly in charge of her own fate from the time she set foot in the departure lounge at Heathrow, through her indoctrination in to the cult of ISIS, through marriage and three pregnancies all ending in infant death, and now sitting isolated in a refugee camp deprived of her citizenship and thence rendered stateless.

Yet apart from the substantive issues this case raises in relation to this and to citizenship and ministerial powers, *R (on the application of Begum) v SIAC and SSHD* reveals a failure at the heart of government to get its house in order as to the legislative pattern – or lack of it – governing key questions. In what can fairly be said to be extraordinarily mild tones, far less reproof, the Supreme Court points out that SIAC's jurisdiction and powers under sections 2 and 2B of the Special Immigration Appeals Commission Act 1997 are 'a matter of some complexity, as a result of the interlocking of the provisions in different legislation'.⁶⁷⁸ In this, the Court cites the 1997 Act itself and the Nationality, Immigration and Asylum Act 2002, admonishing that care must be taken 'in identifying the provisions in force at any relevant time, including the time when relevant authorities were decided'.⁶⁷⁹

Then, with droll understatement referencing the Nationality, Immigration and Asylum Act 2002, the Court observes that it 'has also undergone repeated amendment'.⁶⁸⁰ That rights so fundamental as the right to a fair trial and the right to retain the citizenship into which one was born can be subject to adjudication in circumstances where the law is pronounced by the highest court in the country as being in such a state that mistakes as to jurisdiction and method of adjudication can be made, as illustrated by the *Begum case*, give reason for pause. Perhaps one of the most basic outcomes of the case might be a revision by the government of this complex, interwoven and muddled legislative regime, so that lawyers, litigants, and the tribunals themselves are no longer obliged to navigate through the clutter. It might also be well to give consideration to whether a gender perspective might be infused into the thinking that is guiding the Secretary of State. It is difficult to see that this has no influence – particularly considering research that indicates a sometimes retributive approach taken where a woman is perceived to have stepped out of line: not only does she transgress where the law is concerned, but she transgressed in terms of expectations of 'how women should act'. That when she departed, Ms Begum

⁶⁷⁵ [Shamima Begum loses fight to restore UK citizenship after supreme court ruling | Shamima Begum | The Guardian](#) (accessed 8 August 2021).

⁶⁷⁶ Home Office, [gender-issues-in-the-asylum-claim-v3.pdf \(publishing.service.gov.uk\)](#) (accessed 21 May 2021).

⁶⁷⁷ See Jocelyne A. Scutt, *The Incredible Woman – Power and Sexual Politics*, vols 1 and 2, Artemis Publishing, Melbourne, Australia, 1997.

⁶⁷⁸ Para [30], *R (On the Application of Begum) v SIAC, R (On the Application of Begum) v Secretary of State for the Home Department, R (On the Application of Begum) v Secretary of State for the Home Department* [2021] UKSC 7, [R \(on the application of Begum\) \(Appellant/Respondent\) v SIAC and SSHD \(Respondent/Appellant\) \(supremecourt.uk\)](#) (accessed 21 May 2021).

⁶⁷⁹ Ibid.

⁶⁸⁰ Para [33], Ibid, and see also *Begum v SIAC* [2020] EWCA Civ 9, [Begum v Special Immigration Appeals Commission \(SIAC\) \[2020\] EWCA Civ 9 | Adam Bernard Solicitors](#) (accessed 8 August 2021);

was 15 years of age, and hence still a child, may go against her rather than engender any more tempered approach. A bad woman is a bad woman, but a bad girl is beyond the pale.⁶⁸¹

Beyond this, CEDAW and GR 28⁶⁸² and GR 32⁶⁸³ require attention.

GR 28 provides, amongst other matters, that States parties are 'obliged to promote the equal rights of girls since girls are part of the larger community of women and are more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence. All these situations of discrimination are aggravated when the victims are adolescents ...⁶⁸⁴ The provision goes on to refer to 'paying attention to (adolescent) girls' specific needs', listing '... education on sexual and reproductive health and carrying out programmes that are aimed at the prevention of HIV/AIDS, sexual exploitation and teenage pregnancy'.

Ms Begum's present living circumstances alone, even putting to one side her status of being a stateless person, puts her highly at risk in these regards. This appears to have been ignored entirely by the Secretary of State, and should have been factored in as principal matters, providing due regard to CEDAW, by the tribunal and courts before which her case has been heard. In this regard, attention must be paid, too, to the Convention on the Rights of the Child (CRC),⁶⁸⁵ under which the United Kingdom also has obligations. Ms Begum was born on 25 August 1999 in the United Kingdom. She was a child when she departed for Syria. She was married in 2015, below marrying age. These factors need to be considered consistent with CEDAW and CRC.

Insofar as CEDAW GR 32 is in issue, this covers the spectrum of statelessness, refugee and other statuses, referring to States parties' obligations to stateless persons and the reduction of statelessness under international human rights law, including CEDAW, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, and the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Intersectionality is emphasised: [16], as are dangers to women rendered stateless, including gender-based violence: [15] Furthermore, beyond these instruments, the provisions of the International Covenant on Civil and Political Rights (ICCPR)⁶⁸⁶ need to be considered in conjunction with CEDAW and GR 28 and 32, insofar as it relates to the right to a fair trial. In Ms Begum's case, of course, the proceeding is civil, not criminal – ironically, where she charged with any offence, Article 14 (3)(b) and (d) of the ICCPR provides that a defendant is entitled, amongst other matters, '(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [and] (d) To be tried in his presence, and to defend himself in person or through legal assistance ... '. As a young woman who has had her citizenship removed without the right to be heard in the first instances, and never having been charged with any offence, the import of this denial of a right to which she would be entitled under the ICCPR had she been so, gives reason for pause. In the event, it seems that the Secretary of State has effectively acted as judge and jury, condemning Ms Begum without her having a right to be heard.

⁶⁸¹ Jocelyne A. Scutt, 'Schemers, Dragons and Witches: Criminal "Justice" and the Fair Sex' in Barbara Garlick, Suzanne Dixon and Pauline Allen (eds), *Stereotypes of Women in Power – Historical Perspectives and Revisionist Views*, Greenwood Press, Westport, CT, USA, 1992, Chapter 10, pp. 181-108.

⁶⁸² [Refworld | General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#) (accessed 18 August 2021).

⁶⁸³ [Refworld | General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women](#) (accessed 18 August 2021).

⁶⁸⁴ GR 28 [21], [Refworld | General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#) (accessed 18 August 2021).

⁶⁸⁵ [OHCHR | Convention on the Rights of the Child](#) (accessed 2 August 2021).

⁶⁸⁶ [OHCHR | International Covenant on Civil and Political Rights](#) (accessed 2 August 2021).

BREXIT – IMPACT ON CHILDREN OF EU CITIZENS LIVING IN THE UNITED KINGDOM

Estimates of European Union children in the United Kingdom range from 600,000 to close to 1m. Like their parents, EU children seeking to remain in the UK after 1 July 2021 require an immigration status. This means, for most children, having pre-settled or settled status. The position of children in care is of concern, for their status is dependent upon an application under the EU Settlement Scheme having been made, within the deadline, by the local authority under whose responsibility their care is placed. If no application has been made, then the children are at risk of returned to Europe or being left in limbo awaiting an outcome that is not clear. Dr Alexandra Bulat, Young Europeans Network Co-Manager, the3million and Cambridgeshire County Councillor, reports that locally in Cambridgeshire ‘all EU children in care had an application made – but some of these applications are still waiting in the Home Office backlog of 100,000 applications. In her County Councillor role, she moved a motion at the Cambridgeshire Full Council meeting in July seeking EUSS (European Union Settlement Scheme) support. The plea remains unanswered.⁶⁸⁷

Under the EU Settlement Scheme, a child’s application can be linked to that of a parent or guardian. This means that the child would ordinarily gain an identical status as the parent or guardian. Unfortunately, many myths about the EU Settlement Scheme have circulated throughout the community. One was that children gain automatic status if their parent(s) have it. This is not so - each child needs an individual application. This raises considerable disquiet. Immigration advisers report constantly coming into contact with parents who now realise, months after the deadline, that they should have made an application for their children as well as themselves.⁶⁸⁸ While late applications are permitted with ‘good reason’, this will not solve the issue. The reality is that the UK does not have an exact number of EU citizens in the UK - for instance, in 2016 the estimate was around some 3m, yet over 6m applications were made to the EU Settlement Scheme. Thus, it is impossible to know how many EU children are yet to have their status secured. Some will find out soon, but for others, it may be when they have their first job and are asked for proof of work, or even later in life. This is why campaigners are concerned about another scandal such as that surrounding the Windrush generation.⁶⁸⁹

16. Gender and climate change

Additional matters to consider:

- UK commitments on climate change GR 37
- Climate change litigation – Netherlands 2015, Germany 2021, Australia 2021 – the duty to protect human rights of citizens in the face of climate change or provide clear provisions as to reaching targets
- *Duarte Agostinho & Ors v Portugal* and 32 Other States – ECtHR complaint filed 2020 against 33 countries
- Working from home – impact on environment and employer obligations
- Women’s contribution – clothing industry

Emphasising that a ‘gendered lens as essential to understanding climate impacts’, Malini Mehra’s evidence was that the environmental and climate change emergencies have a disproportionate impact on women ‘due to the gendered nature of [women’s] social roles, as well as impacting on health and in particular on [women’s] reproductive health’. Absent a gendered lens, she said, ‘we do not fully

⁶⁸⁷ Dr Alexandra Bulat, Motion to Full Council, Cambridgeshire County Council, July 2021, https://docs.google.com/document/d/1jL_KOPGSTw5gG_RA_tCnOOjy41t5AQoMYIGcMwUO2o/edit?usp=sharing (accessed 21 August 2021).

⁶⁸⁸ Information provided by Dr Bulat, *ibid*.

⁶⁸⁹ Thank you to Dr Alexandra Bulat for the information provided here.

understand the differential impacts of climate on women and men’, nor the ‘intersecting vulnerabilities faced by different groups of women, on whom the climate may have a differential impact based on characteristics such as class, geography, age, ethnicity, religion or disability, etc’. These realities must be factored in to promote an understanding that enables functionally targeted policy-making: para 2, Witness Statement, Case ref: 020

Ms Mehra’s examples illustrated her call for gender awareness to address neglect of attention to women in the field, including:

- Farmers – the typical image is of a male farmer, yet in many parts of the world, in particular sub-Saharan Africa and Asia, women are over 75% of the agricultural workforce so women are disproportionately affected by droughts or flash floods, with crops decimated, harvests, lost and families going hungry, and women affected s producers of food and as carers and feeders of families ... food insecurity is one of the primary effects of climate change, deepening hunger and poverty, in turn leading to greater dislocation and internal and international migration: the UN has projected numbers of climate migrants as well into the hundreds of millions;
- Cultural norms – women and girls can be more vulnerable to floods and drowning in parts of the world such as South Asia, impacted by cultural norms regarding modesty, clothing and physical activity – here, she noted the campaign Teach A Girl to Swim,⁶⁹⁰
- Great East Japan Earthquake & Tsunami of 2011, with the rise of climate-related disasters including floods, hurricanes, fires and drought highlighted the essential need to improve understanding of gendered impacts to enable targeted investment in prevention and capacity building, involving women in the chain from community organisers to first responders, planners and ministers, thereby setting a good model for investment and capacity building:⁶⁹¹ paras 3-4, ibid

She added that not only food security, but water security ‘is a major climate risk, with public health implications and (impacting on food production and wellbeing) lack of irrigation’: para 5, ibid

Additionally as to the gendered nature of climate change and the importance of a gendered response, the Tribunal was referred to Decision 18/CP.20 of the Lima work programme on gender and climate change⁶⁹² and the *Enhanced Lima Gender Action Plan, UNFCC*:⁶⁹³

Underscoring the importance of coherence between gender-responsive climate policies and balanced participation of women and men in the Convention process, and the provisions of international instruments such as the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration and Platform for Action ...

⁶⁹⁰ [TEACH A GIRL TO SWIM](#) (accessed 19 July 2021).

⁶⁹¹ Note that during the 2004 Tsunami in Thailand ‘more women than men died because they stayed back to look for children and relatives ..., and because they did not know how to swim and climb trees as the men and boys did: ‘Women may be more vulnerable to climate change but data absent’, [Women may be more vulnerable to climate change but data absent | PreventionWeb.net](#) (accessed 11 July 2021).

⁶⁹² Decision 18/CP.20 Lima work programme on gender, [10a03 \(gendercc.net\)](#) (accessed 11 July 2021); Witness Statement of Malini Mehra, Case ref: 020, p. 7.

⁶⁹³ [Report of the Conference of the Parties on its twentieth session, held in Lima from 1 to 14 December 2014. Addendum. Part two: Action taken by the Conference of the Parties at its twentieth session. | UNFCCC](#) (accessed 11 July 2021); see also Ursula van der Leyen, President of the European Commission in Conversation, [Making the Green Deal a Reality - YouTube](#) (accessed 20 July 2021).

That is, recognising the gender realities of the environmental and climate emergencies is vital, but simply the first step. Women must be involved centrally and equally in discussion and action, and devising action, to address them. At the same time, the evidence available confirms the need noted in other areas for data collection and disaggregated data collection, so that the implications and realities of the impact and potential impact of climate change can be factored in effectively to government policy and practice.⁶⁹⁴

SUMMATION GENDER AND CLIMATE CHANGE

On 24 June 2015 the Hague District Court ruled that the Netherlands government must take more action to reduce greenhouse gas emissions so as to ensure that for the year 2020, Dutch emissions will be 'at least 25% lower than in 1990'.⁶⁹⁵ In an action taken by the Urgenda Foundation requesting a ruling, the parties agreed 'that the severity and scope of the climate problem make it necessary to take measures to reduce greenhouse gas emissions'. The Court's ruling provides that based on the current policy, 'the Netherlands will achieve a reduction of 17% at most in 2020, which is below the norm of 25% to 40% for developed countries deemed necessary in climate science and international climate policy'. The parties agreed that the Netherlands has a duty to provide protection and must do so, by doing more '... to avert the imminent danger caused by climate change, also in view of its duty of care to protect and improve the living environment'. Further:

The State is responsible for effectively controlling the Dutch emission levels. Moreover, the costs of the measures ordered by the court are not unacceptably high. Therefore, the State should not hide behind the argument that the solution to the global climate problem does not depend solely on Dutch efforts. Any reduction of emissions contributes to the prevention of dangerous climate change and as a developed country the Netherlands should take the lead in this.

With this order, the court has not entered the domain of politics. The court must provide legal protection, also in cases against the government, while respecting the government's scope for policymaking. For these reasons, the court should exercise restraint and has limited therefore the reduction order to 25%, the lower limit of the 25%-40% norm.

In France on 14 January 2021, the Paris Administrative Tribunal followed suit.⁶⁹⁶ Oxfam, Everyone's Business (or Our Business for All), Foundation for Nature and Man (Nicolas Hulot Foundation) and Greenpeace, backed by more than 2m French citizens, joined together in an action to hold the French government to its commitments made under the 2015 Paris Agreement. The tribunal ruled in their favour.⁶⁹⁷ Then, in Germany on 24 March 2021 the Federal Constitutional Court held that the German government was not taking sufficient action, nor working sufficiently swiftly, to honour its human rights

⁶⁹⁴ On data collection and disaggregated data collection, see – **(LACK OF) SYSTEMATIC COLLECTION OF DATA**, earlier.

⁶⁹⁵ *Urgenda Foundation v The Netherlands*, 2015, [ECLI:NL:RBDHA:2015:7196, Rechtbank Den Haag, C/09/456689 / HA ZA 13-1396 \(English translation\) \(rechtspraak.nl\)](#) (accessed 27 July 2021); [Are Countries Legally Required to Protect Their Citizens from Climate Change? - Our World \(unu.edu\)](#) (accessed 27 July 2021); [Dutch Court Ruling on Human Rights Obligations to Halt Climate Case | Human Rights Watch \(hrw.org\)](#) (accessed 27 July 2021). Note: The legal proceedings were instituted by the Urgenda Foundation, a citizens' platform which develops plans and measures to prevent climate change. The foundation also represents 886 individuals in this case.

⁶⁹⁶ *Oxfam & Ors v France*, 2021, [20210203-Jugement-Affaire-du-Siècle.pdf \(laffairedusiecle.net\)](#) (accessed 2 July 2021).

⁶⁹⁷ Louise Guillot, 'French court condemns ...', *Politico*, 3 February 2021, [French court condemns government for climate inaction – POLITICO](#) (accessed 2 July 2021).

obligations to the people.⁶⁹⁸ Partially upholding an action brought by two individuals and two organisations (the latter being refused standing), the First Senate of the Court held that the provisions of the Federal Climate Change Act of 12 December 2019,⁶⁹⁹ designed to regulate national climate targets and permitted annual emission quantities by 2030 ‘are incompatible with fundamental rights insofar as they lack sufficient specifications for further emission reductions from 2031 onwards’.⁷⁰⁰ The 2019 Bundes-Klimaschutzgesetz makes it obligatory to ‘reduce greenhouse gas emissions by at least 55% by 2030, relative to 1990 levels, and sets out the reduction pathways applicable during this period by means of sectoral annual emission amounts ...’ The Court held that in introducing these provisions, it:⁷⁰¹

... could not be ascertained’ that the government ‘violated its constitutional duty to protect the complainants from the risks of climate change or failed to satisfy the obligation arising from Article 20a of the Basic Law (Grundgesetz – GG) to take climate action. However, the challenged provisions do violate the freedoms of the complainants, some of whom are still very young. The provisions irreversibly offload major emissions reduction burdens onto periods after 2030 ... For [the Paris Accord targets] to be reached, the reductions necessary after 2030 will have to be achieved with ever greater speed and urgency. These future obligations to reduce emissions have an impact on practically every type of freedom because virtually all aspects of human life still involve the emission of greenhouse gases and are thus potentially threatened by drastic restrictions after 2030. Therefore, the legislator should have taken precautionary steps to mitigate these major burdens in order to safeguard the freedom guaranteed by fundamental rights. The statutory provisions on adjusting the reduction pathway for greenhouse gas emissions from 2031 onwards are not sufficient to ensure that the necessary transition to climate neutrality is achieved in time.

That is, the greater burden of reduction, with consequent restrictions on freedoms, would be imposed after 2030, hence burdening all those now young – some of whom brought the action. Furthermore, there was no assurance that the provisions intended post 2030 would effect the reductions necessary to preserve the human rights of the young. The Court therefore ordered the enactment of provisions on or before 31 December 2022 specifying ‘in greater detail how the reduction targets for greenhouse gas emissions are to be adjusted for periods after 2030’.⁷⁰²

On 27 May 2021 in Australia, the Federal Court in the first instance upheld a claim founded in climate change principles and the impact on youth, too.⁷⁰³ The application was made in relation to a decision by the Minister for the Environment under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) to approve the extraction of coal from a coal mine. The applicants claimed that the Minister owes them and other Australian children a duty of care to be taken into account in the making of that decision and sought an injunction to restrain the apprehended breach of that duty. In the upshot, the Court upheld the claim in relation to the children, whilst refusing to issue the injunction. The claim of duty was framed in the following way:⁷⁰⁴

⁶⁹⁸ [Bundesverfassungsgericht - Press - Constitutional complaints against the Federal Climate Change Act partially successful](#) (accessed 27 July 2021); [‘Historic’ German ruling says climate goals not tough enough | Germany | The Guardian](#) (accessed 27 July 2021).

⁶⁹⁹ Bundes-Klimaschutzgesetz – KSG 2019.

⁷⁰⁰ In all other respects, the constitutional claims were rejected by the Court: [Bundesverfassungsgericht - Press - Constitutional complaints against the Federal Climate Change Act partially successful](#) (accessed 27 July 2021).

⁷⁰¹ Ibid.

⁷⁰² Ibid.

⁷⁰³ *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560 (accessed 2 June 2021); [Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment \[2021\] FCA 560 \(fedcourt.gov.au\)](#) (accessed 2 June 2021); [In a landmark judgment, the Federal Court found the environment minister has a duty of care to young people \(theconversation.com\)](#) (accessed 2 July 2021).

⁷⁰⁴ Ibid.

10 The applicants apprehend that the Minister will fail to discharge the duty by exercising her discretion in favour of the approval of the Extension Project. The applicants seek declaratory and injunctive relief designed to preclude the Minister from failing to discharge the duty of care they claim she has.

11 The particular harm relevant to the alleged duty of care is mental or physical injury, including ill-health or death, as well as economic and property loss. The applicants assert that the Children are likely to suffer those injuries in the future as a consequence of their likely exposure to climatic hazards induced by increasing global surface temperatures driven by the further emission of CO² into the Earth's atmosphere. The feared climatic hazards include more, longer, and more intense bushfires, storm surges, coastal flooding, inland flooding, cyclones and other extreme weather events.

12 The applicants allege that such harm will occur in the future and mainly towards the end of this century when global average surface temperatures are forecast to be significantly higher than they are currently. Broadly speaking, it is at that time that, unlike today's adults, today's children will be alive and will be the class of persons most susceptible to the harms in question. Indeed, the applicants say that today's children will live on Earth during a period in which, if CO² concentration continues to increase, some harm is very probable, serious harm is likely and cataclysmal harm is possible. This seems to be the basis for the proceeding being directed to providing relief to children, as distinct from all persons. On this basis, the applicants say that the Children are vulnerable to a known, foreseeable risk of serious harm, which the Minister can control, but they cannot. In addition, the applicants say that by her position in the Commonwealth Executive, the Minister has special responsibilities to Australian children.

13 The applicants say that if the Minister approves the Extension Project, carbon presently stored safely underground at the mine site of the Extension Project will be extracted, combusted, and emitted as CO² into the Earth's atmosphere and will materially contribute to CO² concentration.

14 The applicants accept that by this proceeding they seek that the Court recognise a novel duty of care. They say that the salient features of the relationship between the Minister and the Children support the recognition of the posited duty. Further, they say that such a duty raises a natural extension of the historical development of the law of tort in making responsible a person with the ability to cause or control harm to their "neighbour". They say today's adults have gained both previously unimaginable power to harm tomorrow's adults, and the ability to control that harm. The applicants seek the aid of the Court to impose a correlative responsibility to protect them from what they say is a serious threat of irreversible future harm.

Whilst not disputing that climate change 'presents serious threats and challenges to the environment, the Australian community and the world at large', she denied the existence of the alleged duty of care, denying that injury to the children from the approval of the mine extension project is reasonably foreseeable (as required by the claim in negligence) and said that the relevant salient features of the claim 'pointed overwhelmingly against the recognition of the novel duty of care contended for by the applicants'. Further, if a duty of care were held to exist, '... there is no reasonable apprehension that the duty will be breached and for that and other reasons no proper basis to grant injunctive relief'. Hence, she contended, the proceeding should be dismissed. Not unsurprisingly, the finding of the duty has gone on appeal.

The day before, on 26 May 2021, the Hague District Court ordered Royal Dutch Shell Plc to reduce its world-wide carbon emissions by 30 percent (as against its emissions levels of 2019) by 2030.⁷⁰⁵ Dutch tort (civil wrong) law imposes a duty ‘not to act in conflict with “what according to unwritten law has to be regarded as proper social conduct”’. This so-called “unwritten standard of care” is an open norm that courts may interpret in light of prevailing social norms and conventions, and as a result inherently revolves with time ...’⁷⁰⁶ By reference to this legal principle, the Court held Shell owes:⁷⁰⁷

- an ‘obligation of result’ to reduce CO² emissions generated worldwide by its group’s operations (an obligation to ensure that the emission reduction is achieved to the level specified by the court);
- a ‘significant best-efforts obligation’ to reduce CO² emissions generated worldwide by its business partners, including suppliers and end-users (an obligation to take necessary steps to remove serious risks and limit any lasting consequences to the best of its abilities).

Shell immediately announced its intention to appeal.⁷⁰⁸ However, what is particularly riveting about this decision is that it appears to be the first time, anywhere in the world, that such a decision has been made against a private company: notably, all previous decisions have been in relation to the actions – or inactions – of governments.

Then, before the European Court of Human Rights is a case that goes beyond borders⁷⁰⁹ – involving some thirty-countries within the setting of Europe.⁷¹⁰ Filed on 3 September 2020, *Duarte Agostinho and others v. Portugal and others* is a claim made by six Portuguese youths who accused thirty-three European countries of violating their human rights, including their right to life, by failing to take adequate steps to limit greenhouse gas emissions. A case summary states that a group of human rights organisations and academics ‘have intervened’ in this, the ‘first claimant change case before the European Court of Human Rights, to show that justice must not stop at borders and to emphasise the need for special protection of children’. The interveners have provided legal arguments positing that international law ‘requires states to not harm, and to not allow companies within their jurisdiction to harm, the human rights of people outside their borders’. The argument is that the European Court should ‘rule on cases brought by people facing drought, heatwaves, fires and other climate-related harms against foreign states party to the European Convention on Human Rights and who have failed to take adequate steps to phase out greenhouse gas emissions’. Further, those affected by claimant change ‘should not be prevented from making claims against governments other than their own’.⁷¹¹

⁷⁰⁵ *Vereniging Milieudefensie and other parties it represents and Ors v Royal Dutch Shell Plc*, 2021, [ECLI:NL:RBDHA:2021:5339, Rechtbank Den Haag, C/09/571932 / HA ZA 19-379 \(engelse versie\) \(rechtspraak.nl\)](#) (26 May 2021)(accessed 2 June 2021).

⁷⁰⁶ Ibid.

⁷⁰⁷ Ibid.

⁷⁰⁸ [Reactie Shell op uitspraak klimaatzaak | Shell Nederland](#) (accessed 6 June 2021).

⁷⁰⁹ [The Case \(youth4climatejustice.org\)](#) (accessed 18 August 2021); [Detail :: Extraterritorial Obligations \(etoconsortium.org\)](#) (accessed 18 August 2021).

⁷¹⁰ An annexure to the claim appears here, listing all respondent countries: [Application-form-annex.pdf \(youth4climatejustice.org\)](#) (accessed 18 August 2021).

⁷¹¹ For an analysis of the climate change impact as submitted by interveners to the Court, see [Microsoft Word - glan impact profile portugal august 20200827 FINAL.docx \(youth4climatejustice.org\)](#) (accessed 18 August 2021). See also Mathew Lawrence and Laurie Laybourn-Langton, *Planet on Fire – A Manifesto for the Age of Environmental Breakdown*, Verso/New Left Books, London, 2021.

As with the Australian Federal Court case, the focus is on legal arguments designed to show that states ‘must design climate policies in a way that protects the best interests of children, including by taking account of the greater climate risks they face compared to adults’. To protect the development of children and their survival, ‘states must take ambitious measures to minimize the negative impacts of climate change on children’. Yet this goes further, for it argues that with climate-related human rights violations, bringing of claims against states other than that in which claimants live, is supported in that:

- This step is essential to live up to the objective and purpose of the European Convention Human Rights, otherwise there would be a vacuum in human rights protection and a denial of justice.
- The Court should be able to address the obligations of several states together rather than individually so as hold each of them to account for their contribution to the harms caused.
- The European Court should take into account that eight UN human rights treaty bodies, the Inter-American Court of Human Rights and the African Commission on Human and Peoples Rights have each clarified that states must not harm, nor permit corporations under their jurisdiction, to harm the human rights of people outside their borders. Several of them have applied this obligation specifically to the impacts of climate change on human rights.

The respondent countries have now lodged their defences, which have gone to the claimants and the interveners for their consideration and any answering response. Hearing dates are not yet set.

Akin to the activism where claims to halt French nuclear testing in the Pacific were lodged and won, these are judgments by courts in an ever-growing movement by human rights, environmental and community organisations to initiate legal action in the face of climate change. Yet they are certainly not the first environmental protection action fought and won in courts locally and internationally, when organisations such as the Environmental Foundation, Green Peace, the World Wildlife Fund and more were established to fight for the environment. This is replicated in today’s global warming or climate change activism and legal action. In 1972, Christopher Stone’s landmark article ‘Should Trees Have Standing’ was published in the *Southern California Law Review*,⁷¹² proposed that legal standing (the right to, for example, take court action) should be extended to ‘...forests, oceans, rivers and other so-called “natural objects” in the environment – indeed, to the natural environment as a whole’.⁷¹³ The article was preceded by environmental activism where communities mobilised to ‘... protect their public spaces, services and culture ... to stop the destruction of heritage buildings, the encroachment of urban development onto green spaces and the gentrification of working-class neighbourhoods ...’⁷¹⁴ ‘Green bans’ were implemented by unions, boycotting development projects and standing in the way of developers. This movement began with the activism of women – women in Hunter’s Hill lying down in front of bulldozers to save the bush on the Sydney foreshore, activism replicated by women’s movements around the world for environmental protection.

What this wave of cases shows is that courts are prepared to take seriously claims made by committed individuals and activists in recognition that the climate and biodiversity emergencies are real. The

⁷¹² Christopher D. Stone, ‘Should Trees have Standing? Toward Legal Rights for Natural Objects’, *Southern California Law Review*, vol 45, 1972, pp. 450-501, [stone-christopher-d-should-trees-have-standing.pdf \(wordpress.com\)](https://www.stone-christopher-d-should-trees-have-standing.pdf) (accessed 2 June 2021).

⁷¹³ *Ibid*, p. 456.

⁷¹⁴ [Sydney's Green Bans: worker boycotts that saved the city | ROAR Magazine](#) (accessed 21 July 2021).

United Kingdom government has obligations under CEDAW GR 37,⁷¹⁵ which sets out the obligations of States parties to ensure that all legislation, policies, budgets and action relating to disaster risk reduction and climate change are gender responsive and grounded in three core principles: equality and non-discrimination; participation and empowerment; and accountability and access to justice. It, as with any other country, runs the risk of action taken by children and youth, whether from within or from without, if it lags in following through on climate change commitments.

The objective of GR 37 is to ‘underscore the urgency of mitigating the adverse effects of climate change and to highlight the steps necessary to achieve gender equality ...’ It recognises the differential impact of climate change and its consequences upon women and girls,⁷¹⁶ amongst other factors noting that in times of disaster and emergency women and girls are vulnerable, particularly, to increased levels of violence – illustrated by the evidence before the Tribunal on the Covid 19 pandemic and the crisis generated by Brexit exacerbating racism, ethnophobia and Islamophobia, so impacting even more greatly on Black and minoritised women.

This is another area providing impetus for the proper and effective implementation of the public sector duty under the Equality Act 2010, along with gender budgeting and applying the principles of SC Resolution 1325, to engage women equally in consultation and decision-making. Here again, the recognition that it is women on the ground, working in the services directly in the community and with the most vulnerable, who will have the more directly intelligent information essential to effective decision-making.⁷¹⁷

17. Overarching Matters

A number of issues arose throughout the hearing with a consistency across each area of consideration, hence are applicable to CEDAW Committee matters:

- Language and terminology
- Gender neutrality
- Intersectionality
- ‘Direct’ and ‘indirect’ discrimination
- ‘Special measures’ or ‘Reasonable adjustments’
- Equality standards – formal, substantive, transformative
- Affirmative action or ‘Positive discrimination’
- Information – its paucity, opaqueness and/or difficulty of accessing;
- Training in CEDAW

⁷¹⁵ CEDAW GR 37, [Cedawgr37-en.pdf \(huji.ac.il\)](#) (accessed 21 July 2021).

⁷¹⁶ Contentions that women and girls are no more at risk than men and boys, or that men and boys may be more so, do not contest the position set out in GR 37 (see for example [Four myths about gender and disaster risk reduction | PreventionWeb.net](#) (accessed 2 June 2021)): the reality is that because of existing differences in, say, jobs – more men than women are likely to undergo some forms of danger in say bushfires (more will be employed in emergency services due to job discrimination) whilst women and girls undergo others. Existing inequalities are inevitably impacted more by disasters and emergencies.

⁷¹⁷ This is all the more so, in that women have led environmental movements in the past and continue to do so, and with the shift to homeworking where, now, greater attention must be paid to the environmental impact transferring from the external to the internal workplace. Further, women-led movements for sustainable food and sustainable fashion emphasise even more the importance of women sitting equally at the policy- and decision-making table. See for example Susan Buckingham, *Gender and Environment*, 2nd edn, Routledge, London, 2020; Luran Bravo, *How to Break-up with Fast Fashion*, Headline, London, 2020.

LANGUAGE & TERMINOLOGY
INTERSECTIONALITY & ‘SPECIAL MEASURES’ OR ‘REASONABLE ADJUSTMENTS’
‘DIRECT’ & ‘INDIRECT’ DISCRIMINATION
GENDER NEUTRALITY

Professor Kimberlé Crenshaw, Professor of Law at UCLA and Columbia Universities,⁷¹⁸ is attributed with the popularisation of intersectionality theory and practice. The Merriam Webster dictionary definition is that ‘intersectionality’ denotes ‘the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect especially in the experiences of marginalized individuals or groups’.⁷¹⁹ Professor Crenshaw ‘introduced the theory of *intersectionality*, the idea that when it comes to thinking about how inequalities persist, categories like gender, race, and class are best understood as overlapping and mutually constitutive rather than isolated and distinct’.⁷²⁰ The theory of intersectionality can best be understood against the backdrop and reality of what happens in the community, on the ground and then within the bureaucracy and at all levels of the polity. It must inform government, decision-makers, funding providers and those controlling resources, and a failure to appreciate intersectionality bespeaks a failure of government and governance.

Like Ms Casserley in relation to disability – visible and invisible,⁷²¹ Baljit Banga referred to intersectionality, this in the context of Black and minoritised women.⁷²² She explained that Imkaan uses the term ‘Black’ in the political sense ‘to encompass all women whose histories originate from Africa, Asia, the Caribbean, Latin America, including the indigenous peoples of Australasia, the Americas and the islands of the Atlantic, Indian and Pacific Oceans’. In employing this terminology, Imkaan ‘is identifying the root causes of racism’:

The histories of colonialism and imperialism are important considerations because of their exploitative nature in subjecting diverse groups of people to socioeconomic and political inequality. We use the term ‘minoritised’ to reference that we are actually the global majority, but we are minoritised in policy, and in institutions and structures through experiences of migration, diaspora, and racism. So, this makes reference to structural inequality and discrimination that creates conditions for our minoritisation in this country.

We are not a global minority population, rather the social and economic condition of minoritisation is imposed upon us when we migrate. In the use of these terms we understand that racism is structural and embedded in the economic, social and political systems, so it is historical: paras 4-5, Witness Statement, Case ref: 018

Speaking in the context of violence against women, yet applicable to women’s lived reality as a whole, Ms Banga pointed to the importance of ceasing to view ‘all women’s experiences ... as homogenous or shared, because they are not. There are common threads like patriarchy and inequality, and these are structural. But we also have to understand that many women are subjected to intersecting oppressions,

⁷¹⁸ [Crenshaw, Kimberlé | UCLA Law](#) (accessed 2 August 2021); Kimberlé Crenshaw, Neil Gotanda, Gary Peller and Kendall Thomas (eds), *Critical Race Theory – The writings that formed the movement*, Columbia University Press, New York, NY, USA, 1995; Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado and Kimberlé Crenshaw (eds), *Words that Wound: Critical Race Theory, Assaultive Speech and the First Amendment – New Perspectives on Law, Culture and Society*, Columbia University Press, New York, NY, USA, 1993; Ruby Hamad, *White Tears/Brown Scars – How White Feminism Betrays Women of Colour*, Orion/Trapeze, London, UK, 2020.

⁷¹⁹ [Intersectionality | Definition of Intersectionality by Merriam-Webster](#) (accessed 2 August 2021).

⁷²⁰ Ibid.

⁷²¹ See **Equality Act 2010**, above.

⁷²² Rather than BME – ‘Black and minority ethnic ...’.

based on race, class, caste disability, sexuality, among other categories ...’ Intersectionality, she said, ‘... enables us to fully identify the lived experiences of women vis-à-vis the oppressions they face, so this is a critical lens through which we need to view the issues impacting the lives of women’: paras 5, 41, ibid

Nazmin Akhtar for Muslim Women’s Network UK observed that ‘intersectionality’ recognises, or should recognise, multiple characteristics as residing in, being a part of, or making up the humanity of an individual. For Muslim women, she said:

... intersectional characteristics, such as ethnicity and race, are in fact the most important factors to take into account when considering the gender inequalities they face. This is especially evident in the workplace where for example Asian men and white women may not have the same experiences and may not face the same discrimination as Asian women and it is the combination of being the Asian ethnicity and being a woman, or indeed being a Muslim Asian woman, that leads to inequalities. So for Muslim women, the discrimination and inequalities they face could be due to a combination of their gender, faith and ethnicity and could also be due to other additional, intersectional factors such as age or disability: para 9, Witness Statement, Case ref: 039

In addition, the evidence arising out of research conducted by the Network ‘found and has been accepted by the [Parliamentary] ‘Women and Equalities Committee’ that Muslim women do face triple discrimination: they face it because of their gender, because of their ethnicity and because of their faith’. It is, said Ms Akhtar, ‘this collective that causes them to be disadvantaged in comparison to others, and obviously if we then add disabilities to that, if we add age discrimination to that, the inequalities continue to increase and compound’. Thus, she emphasised, ‘Intersectional characteristics are therefore exceptionally important here: para 10, ibid

Failure to recognise intersectionality impacts on both the law and the provision of services. Ms Banga raised this in the context of ‘the UK’s obligations to end forced marriage as stated under CEDAW Article 16’:

We have forced marriage legislation in this country.⁷²³ But the problem is the focus on the criminalisation of parents, of siblings, of grandparents, extended family members, of anyone who would be involved in the forced marriage circumstance. The focus is not on the young woman. The focus is also not on supporting the woman with intersectional needs, so if she is disabled, lesbian, bisexual, that makes her vulnerable to forced marriage, but the law does not do enough to eliminate discrimination through the criminalisation route because it does not address discrimination: para 29, ibid

The evidence before the Tribunal, as affirmed in supporting research,⁷²⁴ showed that no organisations designed to address women’s needs was adequately funded or resourced. However, as Ms Banga explained, a consequence of ‘resourcing issues and funding shortfalls’ hitting all such organisations, combined with a failure to recognise or address intersectionality, is that the poverty of organisations in the ‘white-led’ category is replicated approximately two-thirds over in Black and minoritised services. The underpinning of this level of inadequate servicing of women and girls’ needs rests in ignoring intersectionality:

⁷²³ [Forced Marriage \(Civil Protection\) Act 2007 \(legislation.gov.uk\)](#) (accessed 8 August 2021); [Forced marriage - GOV.UK \(www.gov.uk\)](#) (accessed 8 August 2021).

⁷²⁴ See for example [All Party Parliamentary Group on Sexual and Reproductive Health - Faculty of Sexual and Reproductive Healthcare \(fsrh.org\)](#) (accessed 8 August 2021); [No evidence and little research – it’s no wonder that women and babies continue to die | Sonia Sodha | The Guardian](#) (accessed 8 August 2021); [Women in England struggling to access contraception as result of underfunding | Contraception and family planning | The Guardian](#) (accessed 8 August 2021).

... the Black and minoritised women and girls sector employs 1/3 fewer staff compared to white-led organisations. 50% of members have 10 or fewer staff compared to generic organisations. Members are 6 times less likely to achieve funding because of restrictions when applying for funding, the main restriction being that if they are specialist organisations supporting Black and minoritised women, they may not qualify to submit a funding application. [Consequently] there are fewer choices for Black and minoritized women ...: paras 11-12, *ibid*

Defunding and decommissioning leaves women with fewer access routes to support them. The generic or racialised perspective then offered to Black and minoritised women and girls ‘fails to understand intersectional oppression and perpetuates structural inequalities because barriers to support are solidified, not eradicated’: para 12, *ibid* Angelou Centre’s Rosie Lewis similarly noted that an intersectional approach ‘is fundamental to understanding the range of oppression and discrimination experienced by minority groups, an approach recognised by the 2019 CEDAW Committee report on the United Kingdom: para 13, Witness Statement, Case ref: 024 Likewise Zlakha Ahmed, MBE, making her statement on behalf of Apna Haq, an organisation providing ‘holistic support to BME women and girls based on their needs’, formed some 26 years ago ‘on knowledge of the experiences of BME women and young girls and what needs to be done’.⁷²⁵ Referring to intersectionality as crucial, she said:

85% of the women referring themselves to Apna Haq, or their friends or family referring them, would not approach generic commission services. Generic commission services can provide short-term support, but nothing really changes in their communities.

The women and girls we support report a horrendously poor level of support from generic commissioned services. Often the women and girls have been told to go back to their family. This includes policing services, domestic violence advocates, sexual violence advocates and social workers. Many of the women and girls approaching us also have no recourse to public funds, meaning they do not have access to financial benefits: paras 4-6, Witness Statement, Case ref: 005

Dr Kelly Johnson referred to intersectionality in the context of online violence, exploitation and abuse, referencing particular attributes, identities or characteristics:

We know from limited data that women and young girls are disproportionately experiencing these abuses. This may be because the younger generation are more engaged with digital technologies, but also younger women are more likely to be targeted by perpetrators ... Black and minoritised women disproportionately experience abuse online and, when they do, the abuse is racialised. This is so for disabled women and LGBT women, who are experiencing abuse as an intersection with other types of discrimination and oppression ... It is important to consider intersectionality when we come to these different kinds of behaviours ...: para 6, Witness Statement, Case ref: 029

The complexity of ‘who one is’ within the context of the intersectionality debate was raised by Yasmin Rehman, making her statement in a personal capacity but also as part of the ‘One Law For All’ campaign. She emphasised the importance of recognising that the import of ‘intersectionality’ lies in multiple factors. Referring back to Kimberlé Crenshaw’s concept of intersectionality, she said that it ‘cannot be looked at as one-dimensional’:

My understanding of it is that this was looking at the way that multiple oppressions come together, coalesce and interact. However, how intersectionality is looked at now as is as a one-dimensional concept, whether it is about race, faith or sexuality and not as multiple layers of

⁷²⁵ [Apna Haq – | Supporting Black and minoritised women in Rotherham](#) (accessed 8 August 2021).

oppression acting singly or together on a woman and her life. People and their identities are far more complex. I am not just a Muslim woman, I am also South-Asian, British-born, and a middle-aged woman. Each of those will interact and intersect to make my experiences different. I think there is a need for a better conversation about intersectionality: para 28, Witness Statement, Case ref: 013

SUMMATION
LANGUAGE & TERMINOLOGY
GENDER NEUTRALITY
INTERSECTIONALITY & ‘SPECIAL MEASURES’ OR ‘REASONABLE ADJUSTMENTS’
‘DIRECT’ & ‘INDIRECT’ DISCRIMINATION

Just as intersectionality is a key to understanding the experience of the ‘whole person’, gender neutrality and have the opposite impact: as Pragna Patel put it, failing to acknowledge that gender has relevance in areas – like criminal assault at home and other forms of domestic violence, and all forms of violence against women generally – where its recognition is vital to policy making, practice, funding, resources and ending it, undermines reality. How, she asked:

... do you have a ratification of the Istanbul Convention yet produce a gender-neutral strategy on domestic abuse removed from a wider framework on VAWG? This itself is a key warning sign that we are moving away from the principles of international law as enshrined in the Istanbul Convention [and CEDAW] ...: para 35, Witness Statement, Case ref: 023

Intersectionality is impacted by this ‘gender-neutral’ strategy and approach, too:

This has implications for women of all backgrounds, but particularly for women from Black and minoritised backgrounds, because it will make it more difficult for organisations like Southall Black Sisters to work out which strategy we should be responding to. It will duplicate our work. It is unnecessary and it is impractical. Furthermore, it does not align with international standards on women’s human rights: para 35, *ibid*

In addition to the substantive application of intersectionality in policymaking, service provision, distribution of resources and legal action, the term ‘intersectionality’ was subject to critique by Dr Annette Lawson on the final day of the Tribunal hearings. She referred to its opacity as a term, and the confusion it can generate – which is detrimental to its proper application and understanding. This highlights a problem with other language developed in the discrimination field, which requires attention, too. The issue goes beyond activating section 14 of the Equality Act 2010, the failure to do so being raised by many witnesses. In effectively recognising intersectionality (albeit in a limited way), this provision at least provides a guide and a confirmation that more than one ‘protected characteristic’ can be a part of an individual’s makeup. However, the provision does not go beyond the acknowledgement that one person can possess or be possessed of ‘two relevant protected characteristics’:

14 Combined discrimination: dual characteristics

- (1) A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.
- (2) The relevant protected characteristics are—
 - (a) age;
 - (b) disability;
 - (c) gender reassignment;

- (d) race
- (e) religion or belief;
- (f) sex;
- (g) sexual orientation.

(3) For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).

(4) But B cannot establish a contravention of this Act by virtue of subsection (1) if, in reliance on another provision of this Act or any other enactment, A shows that A's treatment of B is not direct discrimination because of either or both of the characteristics in the combination.

(5) Subsection (1) does not apply to a combination of characteristics that includes disability in circumstances where, if a claim of direct discrimination because of disability were to be brought, it would come within section 116 (special educational needs).

(6) A Minister of the Crown may by order amend this section so as to—

- (a) make further provision about circumstances in which B can, or in which B cannot, establish a contravention of this Act by virtue of subsection (1);
- (b) specify other circumstances in which subsection (1) does not apply.

(7) The references to direct discrimination are to a contravention of this Act by virtue of section 13.

Thus, attention must be given to bringing section 14 into effect, however, the limitation to 'dual' characteristics needs to be amended. That is, although the provision lists 'protected characteristics' (a)-(g), the implication of the wording is that two along may be argued at any one time. This is inconsistent not only with the reality of women's lives as witnesses established, but falls foul of CEDAW and General Recommendations insofar as 'intersectionality' is in issue. Intersectionality is referred to in General Recommendations, as for example GR 28, which informs Article 2 of CEDAW:

18. Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25.⁷²⁶

Yasmin Rehman's reference to multiple characteristics, effectively affirming GR 28 in its recognition of intersectionality, needs to be acknowledged. A most obvious example is that of age and ageing: inevitably, the category Black and minoritised woman will include women who have aged. This is not to say that in every instance of discrimination age will necessarily play a part, but for an older or aged Black and minoritised woman, the chances are that it will. In any event, she should not be precluded from progressing a claim in those terms. Similarly the Black and minoritised woman with a disability. Without section 14, a claimant is bound to frame her claim under, say, race and sex – setting down each

⁷²⁶ [Refworld | General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures](#) (accessed 2 July 2021).

characteristic in a statement of claim or application individually without the inbuilt legislative recognition that these characteristics interact and are ‘collectively’ a part of the claimant. This is the problem presented by the very framing of discrimination and equality laws so as to ‘silo’ characteristics. Even with section 14 operative as it is, or as suggested to be amended, how does one write up the claim? Presenting it as a section 14 claim makes clear that the claim is one whereby the discrimination is alleged to have occurred on the basis of more than one protected characteristic, and amending it to ensure that it covers all ‘protected characteristics’ would do similarly for, say, a Black or minoritised woman with a disability. But does this really take the matter further than presenting an application by reference to two or three or more individual characteristics? The difficulty is that a woman who claims sex and race discrimination is not a woman with ‘race’ attached; nor is she a member of a particular ‘race’ group with ‘sex’ attached nor, if adding say disability, is she a woman with disability and race attached, or a person fitting into ‘race’, with ‘woman’ and ‘disability’ attached. She is a whole woman entire, and the law as framed even recognising intersectionality does not encompass the reality of her existence.⁷²⁷

This is recognised by CEDAW and General Recommendations – as for example in GR 28, which informs Article 2 of CEDAW:

18. Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25.

Furthermore, intersectionality requires that reference be made under CEDAW to, for example, the Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁷²⁸ and, as the Committee has done in various ways including General Recommendations and Committee decisions on claims. Article 5 of the CERD applies to women, just as it applies to men, and intersectionality means that this recognition must be a given. Indeed, that ‘everyone’ is referred to in CERD yet with no reference to women makes clear (a) the vital need for CEDAW to protect and promote the rights of Black and minoritised women, and (b) that ‘sex’ as a ground for governmental action, including as it does more than 50 percent of the population is necessarily to be recognised by an explicit Convention:

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

⁷²⁷ As an example of a case run on ‘sex’ and ‘race’ with a finding of discrimination and award of \$50k, see *Katje Fares v Box Hill College of TAFE & Anor* (1992) EOC π92-391, [Discrimination law - School of Law - University of Queensland \(uq.edu.au\)](https://www.uq.edu.au/academic/queensland-law-school/teaching-research/teaching/subjects/anti-discrimination-law/) (accessed 2 August 2021); [What Price Dignity? - Remedies in Australian Anti-Discrimination Law – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/what-price-dignity/) (accessed 2 August 2021).

⁷²⁸ [OHCHR | International Convention on the Elimination of All Forms of Racial Discrimination](https://www.ohchr.org/en/instruments-treaties/instruments-treaties-main/1965-international-convention-elimination-racial-discrimination) (accessed 2 August 2021).

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
 - (i) The right to freedom of movement and residence within the border of the State;
 - (ii) The right to leave any country, including one's own, and to return to one's country;
 - (iii) The right to nationality;
 - (iv) The right to marriage and choice of spouse;
 - (v) The right to own property alone as well as in association with others;
 - (vi) The right to inherit;
 - (vii) The right to freedom of thought, conscience and religion;
 - (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;
 - (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

Just as 'intersectionality' may be misunderstood, or not understood at all, so too with 'direct' and 'indirect' discrimination. This is not simply a matter of layperson confusion, or lack of understanding on the part of the untrained. Those whose role it is to apply the law in making decisions in the field and writing judgments determining claims of discrimination are known to err, too.⁷²⁹ A better way of expressing these terms is:

- 'direct' discrimination = unequal treatment discrimination
- 'indirect' discrimination = equal treatment discrimination

⁷²⁹ A review of cases addressing or purporting to address 'indirect discrimination' or apply it will be instructive. See also on the issue of education and training in the legal system, **3. Women's access to justice**, earlier.

Unequal treatment discrimination occurs where a decision or rule or requirement ‘targets’ on the basis of a protected characteristic. Thus – a person is refused a post, a promotion, a salary increase, higher duties, accommodation, a service, access to an educational programme, etc – because she is a Black or minoritised woman, or a woman, or a woman with a disability, or a woman of a particular age, etc.

Equal treatment discrimination occurs where a rule or requirement appears ‘equal’ because it applies to everyone, without exception. No one is excluded specifically on the basis of a protected characteristic. However, the rule or requirement impacts differentially on a woman who (say) has family responsibilities (where this is a protected characteristic) so that she cannot comply. The employer sets the staff meetings to occur every Wednesday at 4.00pm, or the employer sets the staff meeting for every Monday at 9.30am. Having the responsibility of collecting her child from day-care each afternoon, the woman must choose between collecting her child or attending the staff meeting. Or she delivers the child to pre-school at 9am, meaning (again) being confronted with attending the staff meetings and finding a costly and possibly impossible alternative for child-to-school delivery, or regularly missing staff meetings. Thus, the ‘equal treatment’ disadvantages her.⁷³⁰

‘Intersectionality’, ‘direct’ and ‘indirect’ discrimination may not be the most illuminating way of describing and explaining what is meant. So too with ‘special measures’ or ‘reasonable adjustment’ when disability discrimination is in issue. This terminology implies, and is read by many, as meaning that persons with a disability are gaining favourable treatment, or a ‘getting something extra’ when this is far from so. A person requires access to a building that houses the Human Rights Commission, or the Parliament, or the supermarket, or their place of work. Using a wheelchair for mobility and confronted with stairs, the proposal is that a ramp be installed. Far from a ‘special measure’ or ‘reasonable adjustment’, this is an equality measure: a measure introduced, or steps taken, to ensure that the person reliant upon a wheelchair for perambulation is able to access the building – just as those who are able to use the steps can access the building. Persons with a disability do not ask for ‘special’ treatment or ‘favours’. They ask only that they be enabled to participate on an equal basis with others.

The question what terminology should be used in respect of Black and minoritised women is apparent from the words of the witnesses, variously employing ‘BAME’ – Black and Minority Ethnic or, in some usage Black Asian Minority Ethnic, otherwise ‘BME’ – Black Minority Ethnic, and Black and minoritised women. The term BAME has been used for some time in the United Kingdom but has come in for criticism by members of the titled ‘BAME’ community, with discussion occurring in the latest report from the Commission on Racial and Ethnic Disparities.⁷³¹ The *Government Style Guide* states:⁷³²

⁷³⁰ See *Thlimmenos v Greece* (2001) **31 EHRR 15** (on Article 14 ECHR European Convention on Human Rights), [Oxford Public International Law: Thlimmenos v Greece, Preliminary objection, merits and just satisfaction, App no 34369/97, ECHR 2000 \(ouplaw.com\)](#) (accessed 2 August 2021); and see discussion [Disability and discrimination: the Court of Appeal upholds the rights of disabled people | CPAG](#) (accessed 2 August 2021); [EducationNewsletter November2019.pdf \(39essex.com\)](#) (accessed 2 August 2021); [What is 'discrimination' under Article 14 European Convention? - Stammeringlaw - Disability discrimination and stuttering/stammering: Equality Act 2010](#) (accessed 2 August 2021).

⁷³¹ Note: This Report received stringent criticism for its sanguine approach of discounting the continuing existence of racism and ethno-phobia, and ‘downplaying racism’: [Inequality in Britain report: Doreen Lawrence says government's race review gives 'racists the green light' | UK News | Sky News](#) (accessed 8 August 2021), despite reports including [The Stephen Lawrence Inquiry - GOV.UK \(www.gov.uk\)](#) – institutionalised racism in the Metropolitan Police Service (accessed 8 August 2021); [An Avoidable Crisis \(lawrencereview.co.uk\)](#) (accessed 8 August 2021) – disproportionate impact of Covid 19, and the lived experience of (for example) Black and minoritised women, and the continuing legacy of slavery. [The report of the Commission on Race and Ethnic Disparities - GOV.UK \(www.gov.uk\)](#) (accessed 8 August 2021); [Foreword, introduction, and full recommendations - GOV.UK \(www.gov.uk\)](#) (accessed 8 August 2021); [So the term BAME has had its day. But what should replace it? | Race - The Saxon](#) (accessed 8 August 2021); [So the term BAME has had its day. But what should replace it? | Alex Mistlin | The Guardian](#) (accessed 8 August 2021).

⁷³² [Writing about ethnicity - GOV.UK \(ethnicity-facts-figures.service.gov.uk\)](#) (accessed 8 August 2021).

3. Ethnic minorities and ethnic groups

Ethnicity and race

We refer to ethnicity and not race. This is because:

- surveys usually ask people for their ethnicity and not their race
- using consistent terms helps people to understand our data

Ethnic minorities

We use 'ethnic minorities' to refer to all ethnic groups except the White British group. Ethnic minorities include White minorities, such as Gypsy, Roma and Irish Traveller groups.

For comparisons with the White group as a whole, we use 'all other ethnic groups combined' or 'ethnic minorities (excluding White minorities)'. We also refer to 'White' and 'Other than White' if space is limited.

We do not use 'Non-White' because defining groups in relation to the White majority was not well received in user research.

Broad and specific ethnic groups

We avoid using 'broad' and 'specific' when referring to ethnic groups. For example, the 'broad Asian group' or the 'specific Pakistani group'. This is because these terms aren't widely used outside of data collection.

If we need to, we refer to either 'aggregated' ethnic groups or ethnic groups 'as a whole'. For example, 'the Black ethnic group as a whole'.

Phrasing

In research, 'people from a Black Caribbean background', 'the Black ethnic group' and 'Black people' were all acceptable phrases. 'Blacks' was not.

Similarly 'people from a White British background', 'the White ethnic group' and 'White people' are all acceptable.

However, we don't say 'Mixed people' or 'Mixed race people'. We usually say 'people with a Mixed ethnic background' or 'people from the Mixed ethnic group'.

Gypsy, Roma and Traveller ethnic groups

'Gypsy or Irish Traveller' is one of the 18 standardised ethnic groups. We differentiate between Gypsy, Roma and Irish Traveller communities if data is collected for them separately.

We don't use slashes (/) in commentary as this can imply these terms are the same. Instead we refer to:

- 'the White Gypsy and Roma ethnic group' or 'White Gypsy and Roma people'
- 'the White Gypsy and Irish Traveller ethnic group' or 'White Gypsy and Irish Traveller people'

4. BAME and BME

There is not a consistent approach across government to the terms:

- BAME (Black, Asian and minority ethnic)
- BME (Black and minority ethnic)

In the RDU, we publish data on all ethnic groups on our website. We do not use the terms BAME and BME because they emphasise certain ethnic minority groups (Asian and Black) and exclude others (Mixed, Other and White ethnic minority groups).

In our user research with members of the public in July 2018, no participants knew what the terms meant. This research was about our website, rather than the term BAME and its political and social aspects.

In March 2021, the Commission on Race and Ethnic Disparities recommended that the government stop using the term BAME. The government is currently considering its response to the Commission's 24 recommendations.

Language and its meanings are not trivial and engaging in critique of the language of equality, discrimination and rights is important. The issue of language is central to discrimination. Language is powerful, and has a power all its own. Language theorists see the first power of language is its role in 'maintaining existing dominance in legal, sexist, racist, and ageist discourses that favor particular groups of language users over others'.⁷³³ Professor Catharine A. Mackinnon, internationalist, intellectual and legal activist writes eloquently of the reality that 'Words Matter', they are not *Only Words*.⁷³⁴ And as renowned jurisprudential scholar Glanville Williams said, the law is the most powerful language of all.

At minimum, therefore, attention needs to be paid to the language employed in women's rights laws, for women have so often been precluded from speaking, far less writing, in the language of the law. To bring a proper dimension to the language of rights, women in all diversities must be central to and in shaping laws designed to advance women's equality rights.

EQUALITY STANDARDS – FORMAL, SUBSTANTIVE, TRANSFORMATIVE AFFIRMATIVE ACTION or 'POSITIVE DISCRIMINATION'

Some judges and legal commentators seem genuinely to believe they are called upon to apply their minds neutrally to abstract legal questions. While the attempt may rein in their biases to some extent, it more surely conceals them, even from themselves, and permits unconscious commitments on substance, which tend to favor the status quo and established interests, to control. No wonder legal change is so intractable. Besides, what is principled about not permitting real effects on real people in real life to matter in law?

Catharine A. Mackinnon, *Women's Lives – Men's Laws*
Harvard University Press/Belknap, London, 2005, p. 6

Formal equality recognises rights to equality in formal terms alone – that is, failing to take into account disadvantage and differences that deny certain groups access to equal rights. Substantive equality looks to ensure that those groups who are disadvantaged and whose equal rights are denied, gain equal access, equal opportunities and the affirmation of equal outcomes. Transformative equality works to ensure fairness and justice in equalities of outcomes, so that a society moves toward and is able to gain the advantages of a truly democratic society where women and men have and hold equal rights in substantive terms.

Affirmative action – sometimes termed 'positive discrimination' although this terminology does more to confuse than to assist in explanation are designed to ensure that equal rights can be achieved. This is done by introducing programmes and practices, procedures and operative principles that enable women (and other disadvantaged groups) to participate equally in the polity and ultimately to gain equal substantive rights with men.

INFORMATION – CLARITY, LANGUAGE, ACCESSIBILITY TRAINING – CEDAW FOR ENLIGHTENMENT

Witnesses before the Tribunal raised the importance of clear, accurate information being available freely to women, published in English and community languages so that women are properly and

⁷³³ Sik Hung Ng and Fei Deng, [Language and Power | Oxford Research Encyclopedia of Communication](#) (accessed 2 August 2021).

⁷³⁴ Catharine A. Mackinnon, *Only Words*, Harvard University Press, Boston, MA, USA, 1996 (first published 1993).

accurately informed about their rights. This information should be made available through national and local pathways, both on the internet and, recognising that women in particular can be disadvantaged where no paper or hardcopy information is available, proper and adequate provision be made to ensure that no woman or girl is denied access to information about her rights.

In drafting this information, grassroots and community women's organisations must be consulted, and women's voices should not be denied a place in any consultation with community groups, including religious organisations. Marginalisation of the voices of female religious scholars and leaders is inimical to the good administration of the state, and must be included in any discussion on matters affecting communities and in government consultations. Secular voices based in the lived experience of minority women must be paid proper, effective attention and consideration.⁷³⁵

Training of all members of the polity in CEDAW is essential – for members of the judiciary and magistracy, for elected members of central, devolved authorities and local government, for the civil service and all public servants and government officers at all levels, and an obligation on private sector and community organisations is also required to ensure that all bodies operating within the polity are apprised of the rights and freedoms enshrined in it to ensure that women and men have equal voice and equal rights in society.

PART 3: CONCLUSIONS AND RECOMMENDATIONS

Women's rights are human rights, human rights are women's rights.

(1) Major Recommendation –

That the Government introduce a Women's Bill of Rights incorporating CEDAW, CEDAW General Recommendations and taking into account CEDAW Committee Findings & Recommendations to the United Kingdom, and the jurisprudence developed by the CEDAW Committee through its decisions, with its provisions to be directly enforced through the courts and with associated national machinery to ensure the provision of remedies where breaches occur and to provide education and training at a community level, in government at local and national levels, and for the private sector.

PRINCIPAL MATTERS

That the Women's Bill of Rights include a provision making it mandatory for members of the judiciary and magistracy at all levels to receive education and training on an initial and regular basis, including remaining up to date with CEDAW jurisprudence, and that this provision extend to all holders of public office, whether by appointment or election, in international, national and local bodies and authorities.

⁷³⁵ Secularism as employed here does not mean the absence of religion but rather a state structure that defends both freedom of expression and freedom of religion or belief, where there is no state religion, where law is not derived from God and where religious actors cannot impose their will on public policy. A secular state does not simply limit religion, it also maintains the essential right of religious freedom as a duty not a favour. This means that it defends the freedom to worship and the right to maintain churches and temples, unhindered, and also defends minorities from attack. Religious freedom also includes the right to challenge dominant religious interpretations, to change religions, and to leave religion altogether. These rights are crucial, not only for women, but for religious minorities, and a secular state is necessary to defend them. Indeed it is the only kind of state in which religious fundamentalists have a voice that is capable of limiting the inevitable harm they will cause. Definition of Secularism quoted in <https://www.opendemocracy.net/en/5050/secular-space-bridging-religious-secular-divide/> - submission from Yasmin Rehman, Supplementary Witness Statement, Case ref: 039 [CHECK]

That the Women’s Bill of Rights include a provision making it mandatory for gender impact assessments and the scrutiny of a ‘gendered lens’ before the introduction of new legislation, without which legislation be precluded from proceeding.

That the Women’s Bill of Rights include a provision making it mandatory for all government departments and authorities at international, national and local level to apply gender budgeting and gender impact assessments to policy measures from the outset of their proposed development, and before their introduction, without which they cannot proceed.

That the Women’s Bill of Rights incorporate further measures as set out in these Recommendations and that the government take action in relation to the matters listed below requiring attention and/or legislative change in respect of other Acts of Parliament.

JURISDICTION

That the United Kingdom Women’s Bill of Rights cover the United Kingdom in its entirety, including England, Northern Ireland, Scotland and Wales. All women of the United Kingdom are entitled to equal rights without limitations by way of geography, region, country, postcode or any other differentiation or distinction.

Each of the devolved authorities to retain power to incorporate CEDAW into its domestic law, just as other jurisdictions which are federations maintain human rights laws at federal level and state or provincial levels.

No devolved authority to have the power to undercut or reduce the provisions, extent or scope of the Women’s Bill of Rights and to address any potential conflict or proposal by any devolved authority to do so, the UK Act to include a provision prohibiting its terms from being excised from operation in the devolved jurisdictions. This provision to be based in the principle herein stated, namely that all women of the United Kingdom, wherever residing, are entitled to equal rights without being deprived of them by reason of residency in any devolved jurisdiction. Nothing in this provision to preclude any devolved authority from incorporating into its legislation provisions that advance, expand or improve upon those contained in the Women’s Bill of Rights, so as to increase or upgrade the terms applicable in that devolved jurisdiction and to extend those increased or upgraded rights to women within the devolved jurisdiction.

UNITED KINGDOM’S INTERNATIONAL STANDING AND OBLIGATIONS

Consistent with its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, the United Kingdom has committed to take the following steps and undertaken to introduce the following measures in regard to discrimination against women, namely to address ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’: Article 1, CEDAW:

PART I

Article 1

...

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3 States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

UNITED KINGDOM'S 2018 RESPONSE

In 2018, **19,471 signatures** attested to a Petition providing:⁷³⁶

In 1986 the UK government ratified the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). It gives rights to UK women & obligates government to advance women's lives, recognising past inequalities & remedying them. Its provisions must become part of domestic law.

Government responded

This response was given on 20 November 2018

The United Kingdom is a recognised world leader in gender equality and the Government is committed to tackling the major injustices that hold women back.⁷³⁷

Notwithstanding that the government conceded that it was:

⁷³⁶ [UK government to integrate all rights in UN CEDAW Convention into domestic law. - Petitions \(parliament.uk\)](#) (date closed 23 April 2019) (Accessed 20 August 2021).

⁷³⁷ The government response can be read in full at [UK government to integrate all rights in UN CEDAW Convention into domestic law. - Petitions \(parliament.uk\)](#) (accessed 20 August 2021).

... clear there is an incredibly broad range of work still to be done. Building on the introduction of our world leading regulations which requires every large employer to publish their gender pay and bonus gaps every year, we will continue to step up our efforts to eliminate the gender pay gap entirely, which is central to growing our economy ...'

the government of the day's response failed to recognise the importance of being on the right side of history, namely affirming in domestic legislation in accordance with its undertaking already given in 1986 with ratification of CEDAW, the terms of the Treaty.⁷³⁸

By its response through the Government Equalities Office, the government of the day said.⁷³⁹

Women and girls' rights under CEDAW are largely reflected in existing domestic legislation, such as the Equality Act 2010 and the Human Rights Act 1998. As such, we do not agree that domestic legislation needs to incorporate all the provisions of CEDAW. Moreover, were we to do this within the scope of the Equality Act 2010, it would create a hierarchy of rights in terms of sex as compared to other protected characteristics where the equivalent of CEDAW does not exist.

This response affirms the evidence of witnesses before the CEDAW People's Tribunal, of the need for the re-establishment of a body to recognise and reflect the needs and rights of women. The Government Equalities Office focus omits to recognise that women, more than 50 percent of the population, are not simply one of a number of groups with rights, needs and with state obligations owed. Women comprise a diverse range of human beings, by reference to all attributes, characteristics and identities affirmed in CEDAW, some of which are included in the Equality Act 2010. The Equality Act in itself is incomplete, with gaps in the recognition of the diversity of women, who represent and are represented in the vast range of possibilities, including but not limited to Black and minoritised women, women with a disability, women young, mature, ageing and aged, women with political, industrial and religious affiliation, membership and activity, women with family responsibilities, women with pregnancy and maternity needs, women of diverse sexualities, and more.

The proposition that incorporating CEDAW into domestic legislation is 'to create a hierarchy of rights' is –

- first, to seek to renounce the United Kingdom's international obligations when, after all, the United Kingdom has already undertaken to do so; and
- secondly, betrays a crucial misunderstanding of the nature of CEDAW and the reality of sex discrimination – discrimination which impacts on more than 50 percent of the population and which needs to be addressed in order to achieve a democratic polity, a properly functioning economy, and to ensure that the United Kingdom takes its place on the world stage as a leader in human rights, and the world's leading economy.⁷⁴⁰

⁷³⁸ Furthermore, on 17 December 2004 the United Kingdom endorsed and acceded to the CEDAW Optional Protocol, recognising the competence of the CEDAW Committee to receive and consider complaints from individuals or groups within the United Kingdom jurisdiction, and for the CEDAW Committee to initiate inquiries into situations of grave or systematic violations of women's rights.

⁷³⁹ Ibid.

⁷⁴⁰ Eliminating sex discrimination improves economic growth: [This is why women must play a greater role in the global economy | World Economic Forum \(weforum.org\)](#) (accessed 18 August 2021); [Women, Work, and the Economy: Macroeconomic Gains From Gender Equity; Katrin Elborgh-Woytek, Monique Newiak, Kalpana Kochhar et al.; IMF Staff Discussion Note SDN 13/10; September 23, 2013](#) (accessed 2 July 2021);

Women's rights are human rights, human rights are women's rights.

The Women's Bill of rights to incorporate the principles of the Equality Act insofar as it relates to women, with the inclusion of additional 'protected characteristics' most importantly:

- Family responsibilities
- Political affiliation or belief
- Political activity
- Industrial affiliation or belief
- Industrial activity
- Sexual orientation
- Lawful sexual activity
- Irrelevant medical record
- Irrelevant criminal record
- Association with a person who has or is believed to have any of these protected characteristics

Association with a person having or believed to have one or more of the 'protected characteristics' can suffer discrimination and this should be explicitly covered in the 'protected characteristics' list.

The Women's Bill of Rights to include also provisions recognising the need to condemn and provide an avenue of redress for misogynist speech and vilification of women and girls.

The Women's Bill of Rights to recognise that violence against women, including criminal assault at home and other forms of domestic violence (euphemistically now known as 'domestic abuse') is gender-based violence and must be addressed within the scope of 'violence against women', not isolating 'domestic abuse' from the continuum of violence against women, ranging from 'everyday sexism' to rape and murder, and this to be recognised in all legislation addressing these matters.

The Women's Bill of Rights to recognise the vital importance of grassroots organisations in their work in representing and supporting women, including Black and minoritised women, women with a disability and women in the LGBTI+ community ... and to fund and resource these organisations as vital to the health, wellbeing and participation of women in society.

The Women's Bill of rights to recognise the need to ensure women's equal participation in the polity, in public office and elected office including national, devolved and local government – to this end, public funding for elections be based on political parties ensuring at least 50 percent of candidates be selected (selections to be distributed fairly within the constituencies, wards and divisions) so that women are selected in winnable and safe seats. Without this commitment and visible, measurable outcomes, public funding will not be allocated to the defaulting party. Further, to ensure women's equal opportunity for participating in voting, voter ID provisions should be abandoned and compulsory voting considered and introduced to place an obligation on government to ensure that every person entitled to vote has free and open access to polling stations.

Polygamous Marriage

In addition, immediate action on the question of polygamous marriages under religious law. As was drawn to attention by Yasmin Rehman in her evidence, this appears to be being used in some quarters as a means of trafficking:

My research has shown that polygamy is increasingly being used to traffic women. Men from the West go, for instance, to the Indian subcontinent, the Middle East or Africa, and marry under the laws of that state where polygamy is permitted. Then, they bring the women back and these women are being trafficked into either domestic servitude or the sex industry. The government has no response on that: paras 11, 13, Witness Statement, Case ref: 013

Those who as a matter of religious belief wish to undergo religious marriages retain the right, but civil marriage should be required to precede this. So long as the United Kingdom does not accept bigamy or polygamy, then women's rights should not be able to be undermined by this religious practice being used to do so. Sincere religious members of the community will recognise the importance of married partners to have the standing of a civil marriage as the underpinning to their religious ceremonial commitment.

No Recourse to Public Funds

Immediate attention required in accordance with the evidence before the Tribunal, as well as ensuring that the right to engage in paid work is not limited or denied.

Legal Aid to be Reinstated

Immediate attention required in accordance with the evidence before the Tribunal. Access to justice is a right that should not be denied, yet as the evidence indicates this is occurring and the impact is differential against women and particularly Black and minoritised women.

Inquiry into Women in Prison

As cases come to light by reason of campaign action, which reveal the discriminatory way in which the laws of murder and manslaughter are applied where women subjected to violence kill the perpetrator, the government to institute an Inquiry into Women In Prison in circumstances where they have been found guilty of crimes of violence, most particularly murder or manslaughter, so that their cases can be reviewed.⁷⁴¹

Sections 54, 55 of the Coroners and Justice Act 2009

These provisions require review in light of the *Clinton* case which arguably and effectively reinstates the law of provocation, and the matters adverted to in the body of this report where women charged with unlawful killing of a violent spouse or intimate partner or former spouse or intimate partner. In relation to the latter, the framing of those provisions which arguably place women with a legitimate or potentially legitimate claim of self-defence as at risk of being able to gain a reduction of murder to manslaughter only.

Provisions relating to Sexual History Evidence

Rape Law Review – Consent & Definition of Rape

As adverted to in the body of this Report, these provisions require review. The current sexual history evidence provision equates a principal witness (complainant)'s position with that of an accused person, akin to the position pertaining with the corroboration rule, which effectively equated complainants with accomplices to crime. Further, the definition of rape should be amended so that penetration by a penis is not elevated above penetration by another part of the body or an object: those who are victim/survivors of this crime do not see or experience the damage and invasion of person and psyche in this bifurcated way.

⁷⁴¹ The Criminal Cases Review Commission (CCRC) has instituted a review of 'cold cases' in light of the appeal in *Challen v R* [2019] EWCA Crim 916m, [challen-approved.pdf \(judiciary.uk\)](https://www.judiciary.uk/wp-content/uploads/2019/08/challen-approved.pdf) (accessed 8 August 2021), however, consistent with the review of ss 54 and 55 of the Coroners and Justice Act 2009, and the problems of 'Battered Woman Syndrome' vs Battered Woman Reality, a more complete review is required.

‘Consent’ remains problematic.

As currently addressed, the focus lies upon the woman as complainant rather than focusing where it should, upon the defendant. As prosecution and defence counsel direct their attention wholly or almost wholly upon what the woman did or did not do, said or did not say, how she acted or did not act, the accused remains without or with little scrutiny. Yet surely it is upon the defendant that the focus should rest for, ultimately, it is there that guilt or lack of guilt lies. This does not rest with the woman – yet, observing trials, reading trial transcripts, and reflecting on the experience of the woman as complainant there are few who, fairly, would doubt but that it is she who takes her place in the court room not as victim/survivor but as one who is culpable. Urgent attention must be paid to the way in which ‘consent’ is incorporated into rape and other sexual offences law.

Work Skills Value Enquiries (WSVE)

The Equal Pay Act was introduced last century, in 1970 – last century. Women remain waiting, and are entitled to action. That women’s earning power is considered to be less than that of men indicates institutionalised and endemic sex discrimination not only in the paid workforce but in evaluation of the abilities and skills that constitute women’s work in traditional fields. Women should not have to wait another fifty or more years for the wage gap to be dematerialised. Work Skills Values Enquiries (WSVEs) must be instituted to ensure that traditional women’s fields of work are acknowledged in true terms of their value. WSVEs need to incorporate a perspective that avoids as far as possible the infusion into the assessment of value of calculations and skills standards beholden to masculinised notions of worth.

Additional Matters

Attention must be paid to additional matters raised by witnesses in their evidence and in the body of this Report, with action instituted to effect redress and re-evaluation of systems and institutions that militate against women and girls’ status as equal, depriving society as a whole.

CONCLUSION

At G7 Spring 2021, the Prime Minister acknowledged the importance of ‘feminising’ international politics and the approach to the climate change emergency by listening to women’s voices and ensuring that women are equally engaged in discussion, decisions and action to save the planet:

The UK has reaffirmed its commitment to promoting gender equality as part of ‘building back better’ on many occasions. Prime minister Boris Johnson told G7 leaders that he wanted to see a ‘fairer’ and ‘more feminine’ post-covid world”.

So ... deeds not words -

The proposal now made by the CEDAW People’s Tribunal that the United Kingdom seize the opportunity now presented to it and introduce a Women’s Bill of Rights into the United Kingdom Parliament provides a real opportunity to do this – create a climate where women’s rights are truly recognised as human rights, and human rights as women’s rights – with the United Kingdom taking the lead.

As the feminist Adrienne Rich recognised, women’s courage needs embedding wholly into the polity, to bring about positive change. This is the opportunity presented by the work of the CEDAW People’s Tribunal and this report. Adrienne Rich’s words bear repeating:

If I could have one wish for my own sons, it is that they would have the courage of women. I mean by this something very concrete and precise: the courage I have seen in women who, in their private and public lives, both in the interior world of their dreaming and thinking, creating, and the outer world of patriarchy, are taking greater and greater risks, both psychic and physical, in the evolution of a new vision.

Adrienne Rich – in
Feminist Quotations – Voices of Rebels, Reformers and Visionaries
Thomas Y. Crowell, New York, NY, USA, 1979

Each of the witnesses giving evidence before the CEDAW People’s Tribunal spoke with courage and wisdom. It is that wisdom upon which the Prime Minister has the honour to draw to take the world stage as a leader in women’s rights, through the passage of the Women’s Bill of Rights.

Dr Jocelynn A. Scutt
President
CEDAW People’s Tribunal
August 2021

Bibliography of Library References

Book Chapters:

Akram A and Symonds T (ed.), 'Muslim Women & Religious Law' (Basira for Universal Women's Rights)

Byrnes A and Campbell M, 'Article 2: General Obligations' in Schulz P et al (eds), *The Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (2nd ed., Oxford University Press, 2022 forthcoming)

Byrnes A and Kapai P, 'Article 1: Definition of Discrimination against Women' in Schulz P et al (eds), *The Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (2nd edn, Oxford University Press, 2022 forthcoming)

Byrnes A and Simm G, 'Introduction' in Byrnes A and Simm G (eds), *Peoples' Tribunals and International Law* (Cambridge University Press, 2018)

Byrnes A and Simm G, 'Reflections on the Past and Future of International Peoples' Tribunals' in Byrnes A and Simm G (eds), *Peoples' Tribunals and International Law* (Cambridge University Press, 2018)

Gill AK, 'Introduction: "Honour" and "Honour"-Based Violence: Challenging Common Assumptions' in Aisha K Gill, Carolyn Strange and Karl Roberts (eds), *'Honour' Killing and Violence – Theory, Policy and Practice* (Palgrave Macmillan, 2014)

Kambel E-R, *A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women* (2nd ed., Forest Peoples Programme, 2012)

Scutt J, '(Dis)honour, Death and Duress in the Courtroom' in Aisha K Gill, Carolyn Strange and Karl Roberts K (eds), *'Honour' Killing and Violence* (Palgrave Macmillan, 2014)

Journal Articles:

Chinkin C, Gordon J and Hemingway J, 'The UK CEDAW Story' (2011) 3 *European Human Rights Law Review* 274

Harman S, 'COVID-19 Vaccines and Women's Security' (2020) 397 *The Lancet* 357

Sneh A, Banda F et al, 'Montreal Principles on Women's Economic, Social and Cultural Rights' (2004) 26 *Human Rights Quarterly* 760-780

Lotta G, Fernandez M, Pimenta D and Wenham C, 'Gender, Race, and Health Workers in the COVID-19 Pandemic' (2021) 397 *The Lancet* 1264

'Montreal Principles on Women's Economic, Social and Cultural Rights' (2004) 26 *Human Rights Quarterly* 760-780

O'Conneide C, 'The Place of Equal Opportunities in the Devolution Settlement: A Legal Analysis' (2009) 33 *Equality and Human Rights Commission Research Report* 1

Thompson J, 'Explaining Gender Equality Difference in a Developed System: The Case of Abortion Law in Northern Ireland' (2016) 11(3) *British Politics* 371

Wenham C and Herten-Crabb A, 'Why We Need a Gender Adviser On SAGE' (2021) 1(4) *LSE Public Policy Review* 1

Wenham C, 'The Gendered Impact of the Covid-19 Crisis and Post-Crisis Period' (2020) *Policy Department for Citizens' Rights and Constitutional Affairs* 1

Reports:

Alston P et al, *Public Transport, Private Profit. The Human Cost of Privatizing Buses in the United Kingdom*

<https://chrgi.org/wp-content/uploads/2021/07/Report-Public-Transport-Private-Profit.pdf>

Alston, P, *UK Report of the Special Rapporteur on Extreme Poverty and Human Rights*

<https://digitallibrary.un.org/record/3806308>

CEDAW Guide – Indigenous Women's Rights

<https://asianindigenouswomen.org/index.php/indigenous-womens-human-rights/cedaw/19-a-guide-to-indigenous-womens-rights-under-the-international-convention-on-the-elimination-of-all-forms-of-discrimination-against-women-second-edition/file>

Cohen M and Macgregor S, *A Draft Roadmap for a Feminist Green New Deal* (2021) Women's Budget Group

Davies N and Furlong C, *Deeds Not Words Summary Report: Review of Gender Equality in Wales* (Phase Two) (2019) Chwarae Teg

Davies N, Furlong C and Wharf H, *Rapid Review of Gender Equality 2018* (Phase One) (2018) Chwarae Teg

Eighth periodic report of the government of the United Kingdom on measures taken to give effect to CEDAW, Engender (Scotland), Northern Ireland Women's European Platform, Women's Equality Network Wales, Women's Resource Centre (England), 2018

<https://www.engender.org.uk/content/publications/Eighth-periodic-report-of-the-government-of-the-United-Kingdom-on-measures-taken-to-give-effect-to-CEDAW---four-nations-report.pdf>

Equality and Human Rights Commission Human Rights Tracker

<https://humanrightstracker.com/en/>

Equality and Human Rights Commission, 'Pressing for progress: women's rights and gender equality in 2018' (2018)

<https://www.equalityhumanrights.com/en/publication-download/pressing-progress-women%E2%80%99s-rights-and-gender-equality-2018>

Equality and Human Rights Commission, *Sexual Harassment and Harassment at Work* (Scotland)

<https://www.equalityhumanrights.com/en/sexual-harassment-workplace>

A Lever for Change: Using the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

https://www.equalityhumanrights.com/sites/default/files/a_lever_for_change.pdf

Equality and Human Rights Commission, *Women's Rights and Gender Equality in 2018: Update Report: Formal Submission to the UN Committee on the Elimination of All Forms of Discrimination Against Women, in Response to the UK List of Issues* (2019) Equality and Human Rights Commission <https://www.equalityhumanrights.com/en/publication-download/womens-rights-and-gender-equality-2018-update-report>

European Court of Human Rights, *ECHR Gender Equality Factsheet* (2021) https://echr.coe.int/Documents/FS_Gender_Equality_ENG.pdf

European Court of Human Rights, *Guide on Article 1 of the Europe Convention on Human Rights: Obligation to Respect Human Rights – Concepts of Jurisdiction and Imputability* (2020) https://www.echr.coe.int/documents/guide_art_1_eng.pdf

European Court of Human Rights, *The European Convention on Human Rights - A Living Instrument* (2021) https://www.echr.coe.int/Documents/Convention_Instrument_ENG.pdf

Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 apply to private and voluntary sector organisations with 250 or more employees. The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 apply to public bodies with 250 or more employees, <https://www.legislation.gov.uk/ukxi/2017/172/contents/made>

Changes to Reporting 2020/2021 (COVID 19 temporary adjustment) <https://www.gov.uk/guidance/gender-pay-gap-reporting-changes-to-enforcement>

Ginn J, *Pensions and Gender: Briefing from the UK Women's Budget Group on Pension Gender Inequality* (2019) Women's Budget Group

-- *Equality and Human Rights Commission: Sexual Harassment and Harassment at Work* (2019) Women's Budget Group

-- *Pensions and Gender Inequality: A Pre-Budget Budget from the Women's Budget Group* (2020) Women's Budget Group

-- *Pensions and Gender: Spring Budget 2021 Pre-Budget Briefings* (2021) Women's Budget Group

Gordon A and Gordon J, *The Role and Rights of Victims of Crime in Adversarial Criminal Justice Systems: Recommendations for Reform in England & Wales* (2020) Sisters for Change, Victims Commissioner

<https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2020/12/OVC-International-Comparison-Victims-Rights-2020.pdf>

Government Consultation response re *Immigration and Modern Slavery Act* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005042/CCS207_CCS0621755000-001_Consultation_Response_New_Plan_Immigration_Web_Accessible.pdf

Modern Day Slavery Act

<https://www.gov.uk/government/collections/modern-slavery-bill>

Hayes C, *A Lever for Change: Using the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (2019)

https://www.equalityhumanrights.com/sites/default/files/a_lever_for_change.pdf

Hodge P, Davies N and Furlong C, *Gender Equality: A Roadmap for Wales* (2019) Chwarae Teg

<https://www.equalityhumanrights.com/en/sexual-harassment-workplace>

Joint Shadow Report, *Eighth periodic report of the government of the United Kingdom on measures taken to give effect to CEDAW* (2018) Engender, Northern Ireland Women's European Platform, Women's Equality Network Wales, Women's Resource Centre

<<https://www.engender.org.uk/content/publications/Eighth-periodic-report-of-the-government-of-the-United-Kingdom-on-measures-taken-to-give-effect-to-CEDAW---four-nations-report.pdf>

Just Fair, *Written Submission of Evidence to the Joint Committee on Human Rights, 'The Government's Independent Human Rights Act Review' Inquiry* (2021)

Peace N and Massala T, *Pensions Reforms in the UK: 1997 to 2015* (2020) Nest Insight

Phillips J and Farris L, *Women's Wellbeing at Work: Toolkit and Annual Report 2020* (2020) Women and Work All Party Parliamentary Group

Powell R, *Women's Policy Group Northern Ireland Covid-19 Feminist Recovery Plan- CEDAW Committee Executive Summary* (2020) Women's Policy Group <https://wrda.net/wp-content/uploads/2021/05/WPG-Feminist-Recovery-Plan-CEDAW-Executive-Summary.pdf>

-- *Women's Policy Group Northern Ireland Covid-19 Feminist Recovery Plan: CEDAW Committee Longer Report*

<https://wrda.net/wp-content/uploads/2021/05/WPG-Feminist-Recovery-Plan-CEDAW-Longer-Report.pdf>

-- *Women's Policy Group Northern Ireland Covid-19 Feminist Recovery Plan: CEDAW Committee Shorter Report* (2020) Women's Policy Group

<https://wrda.net/wp-content/uploads/2021/05/WPG-Feminist-Recovery-Plan-CEDAW-Shorter-Report.pdf>

-- *Women's Policy Group Northern Ireland Covid-19 Feminist Recovery Plan* (2020) Women's Policy Group

<https://wrda.net/wp-content/uploads/2020/07/WPG-NI-Feminist-Recovery-Plan-2020.pdf>

-- *Women's Rights and Gender Equality in 2018: Update Report* (2019)

<https://www.equalityhumanrights.com/en/publication-download/womens-rights-and-gender-equality-2018-update-report>

Reilly N and Posluszny L, *Women Testify: A Planning Guide for Popular Tribunals & Hearings* (2005) Centre for Women's Global Leadership <https://www.cwgl.rutgers.edu/docman/coalition-building-publications/694-testify-a-planning-guide-for-popular-tribunals-hearings/file>

Bold and fearless, Towards an independent human rights funding agenda for Scotland
<https://www.corra.scot/news/rightsreal/>

Incorporating CEDAW into Scots Law
<https://www.engender.org.uk/content/publications/5-organisations-CEDAW-incorporation-paper.pdf>

First Minister's National Advisory Council on Women and Girls, *2020 Report and Recommendation*
https://onescotland.org/wp-content/uploads/2021/01/562006_SCT1120576152-002_NACWG.pdf

National Taskforce for Human Rights Leadership, *Report*
<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/03/national-taskforce-human-rights-leadership-report/documents/national-taskforce-human-rights-leadership-report/national-taskforce-human-rights-leadership-report/govscot%3Adocument/national-taskforce-human-rights-leadership-report.pdf>

A New Era for Human Rights: Commission welcomes Scottish Government commitment to ground-breaking new human rights law for Scotland
<https://www.scottishhumanrights.com/news/a-new-era-for-human-rights-commission-welcomes-scottish-government-commitment-to-ground-breaking-new-human-rights-law-for-scotland/>

Sisters for Change, *Domestic Abuse Bill UK*
<https://www.sistersforchange.org.uk/domestic-abuse-bill-uk/>

Thiara R and Roy S, *Reclaiming Voice: Minoritised Women and Sexual Violence Report* (2020) Imkaan
https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/f98049_1a6181417c89482cb8749dbcd562e909.pdf

UK Home Office, *Multi-agency Statutory Guidance for the Conduct of Domestic Homicide Reviews* (2016)

UN Committee for the Elimination of All Forms of Discrimination against Women, *General Recommendation No 25 on Article 4 paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures* (2004)
<https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20%28English%29.pdf#:~:text=Temporary%20special%20measures%20should%20also%20be%20implemented%20in,subjected%20to%20multiple%20discrimination%2C%20including%20rural%20women.%2039>

UN, *The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol: Handbook for Parliamentarians* (2003)
http://archive.ipu.org/pdf/publications/cedaw_en.pdf

UN, *General Recommendations*,
<https://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

UNCHR, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on Visit to the United Kingdom of Great Britain and Northern Ireland* (2018) UN Doc A/HRC/41/39/Add.1

United Nations, *Concluding observations on the 8th periodic report of United Kingdom of Great Britain and Northern Ireland: Committee on the Elimination of Discrimination against Women* (2019)

Welsh Government, Consultations available at
<https://gov.wales/consultations>

Women's Budget Group, *WBG Briefing Shared Parental Leave Reform*
<https://wbg.org.uk/analysis/uk-policy-briefings/shared-parental-leave-reform/>

Maternity Action, *Shared Drive Failure – Why We Need to Scrap Shared Parental Leave and Replace it with a More Equitable System of Maternity & Parental Leave*
[Shared-Parental-Leave-briefing-May-2021.pdf \(maternityaction.org.uk\)](#)

Women and Equalities Committee, Fifth Report of Session 2017–19, *Sexual Harassment in the Workplace*, July 2018
<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/725/72502.htm>

Women and Equalities Committee, *Report - Government Response*
<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1801/180102.htm>

Women in Europe Network, *Brexit: Voices of Women in Wales Matter* (2019) National Assembly for Wales's Cross-Party Group on Women Working Paper

Women's Working Party Submission to the Independent Expert on the Human Rights of Older Persons, *UNCHR Call for Input: Thematic Report on the Human Rights of Older Women* (2021)

Legislation:

Anti-Social Behaviour, Crime and Policing Act 2014 *Chapter 12*
<https://www.legislation.gov.uk/cy/ukpga/2014/12/contents>

Criminal Justice and Courts Act 2015, *Chapter 2*

Domestic Abuse Bill 2020, *Overarching Factsheet*
<https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-bill-2020-overarching-factsheet>

Equality Act 2010, *Chapter 15*

Female Genital Mutilation Act 2003, *Chapter 32*
<https://www.legislation.gov.uk/ukpga/2003/31/contents>

Human Rights Act 1998, *Chapter 43*
<https://www.legislation.gov.uk/ukpga/1998/42/contents>

Modern Slavery Act 2015, *Chapter 30*
<https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

Protection from Harassment Act 1997, *Chapter 40*
<https://researchbriefings.files.parliament.uk/documents/SN06648/SN06648.pdf>

Protection of Freedoms Act 2012, *Chapter 9*

<https://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

Scottish Government legislation

<https://www.legislation.gov.uk/asp/2015/12/contents/enacted>

Serious Crime Act 2015, *Chapter 9*

Websites/Blogs:

ACWW The Global Goals for Sustainable Development Poster

https://www.acww.org.uk/docs/sdg_poster_1.pdf

‘Coming Together to Put Women’s Rights on the Agenda’ (Equality and Human Rights Commission, 8 March 2019)

<https://www.equalityhumanrights.com/en/our-work/blogs/coming-together-put-women%E2%80%99s-rights-agenda>

Casla K, ‘Consultation Document on a Draft Bill: Article 22 An Initiative on Economic, Social and Cultural Rights in the UK’ (2019) Newcastle University

<https://research.ncl.ac.uk/article22/consultation/>

Centre for Women’s Global Leadership Women Testify: A Planning Guide for Popular Tribunals & Hearings

<https://www.cwgl.rutgers.edu/docman/coalition-building-publications/694-women-testify-a-planning-guide-for-popular-tribunals-hearings/file>

Council of Europe

<https://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination>

CNN “Treaties alone can’t protect women from violence”, CNN, September 2020, Rahila Gupta

<https://edition.cnn.com/2020/09/26/opinions/violence-against-women-turkey-intl/index.html>

Coombes H, ‘Social and Economic Rights – Article 13, CEDAW’ (Women’s Resource Centre)

<https://www.wrc.org.uk/blog/social-and-economic-rights-article-13-cedaw>

Council of Europe, ‘Intersectionality and Multiple Discrimination’ (Council of Europe, 2015)

<https://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination>

De Schutter O, ‘Women in Europe need ‘greater economic independence’ to avoid poverty: UN Special Rapporteur’ (UN News, 6 March 2021) <https://news.un.org/en/story/2021/03/1086542>

Devolution links:

<https://blogs.lse.ac.uk/politicsandpolicy/women-representation-westminster-stirbu/>

<https://researchportal.bath.ac.uk/en/publications/explaining-gender-equality-difference-in-a-devolved-system-the-ca>

https://www.equalityhumanrights.com/sites/default/files/research_report_33_the_place_of_equal_opportunities_in_the_devolution_settlement_-_a_legal_analysis.pdf

Engender: Incorporating CEDAW into Scots Law
<https://www.engender.org.uk/content/publications/5-organisations-CEDAW-incorporation-paper.pdf>

Fawcett Society, 'BAME Women and Covid-19 Research Evidence' (2020)
<https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=cae4917f-1df3-4ab8-94e7-550c23bdc9cf>

Fawcett Society, 'New Data reveals demand for mental health and skills 'pop-ups' in city regions' (2020) <https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=f213cdd4-fefe-4b4c-b5d5-40021d338d5e>

FEMM, 'FEMM Committee on Women's Rights and Gender Equality Newsletter' (2020)
<https://www.europarl.europa.eu/cmsdata/211862/FEMM%20Newsletter%20September%202020.pdf>

Gov.uk, 'Domestic Abuse Bill 2020 Overarching Factsheet' (2020)
<https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-bill-2020-overarching-factsheet>

Gupta R, 'Treaties alone can't protect women from violence' (CNN, September 2020)
<https://edition.cnn.com/2020/09/26/opinions/violence-against-women-turkey-intl/index.html>

Harvey F, 'Climate Breakdown 'Is Increasing Violence Against Women'' (The Guardian, 29 January 2020) <https://www.theguardian.com/environment/2020/jan/29/climate-breakdown-is-increasing-violence-against-women>

Hencke D, 'A New Campaign: A People's Tribunal To Get Rid Of ALL Discrimination Against Girls And Women' (Westminster Confidential, 18 July 2020) <https://davidhencke.com/2020/07/18/a-new-campaign-a-peoples-tribunal-to-get-rid-of-all-discrimination-against-girls-and-women/>

Hencke D, 'Exclusive: How The People's Tribunal Will Fight For Every Discriminated Woman And Girl In The UK' (Westminster Confidential, 1 August 2020)
<https://davidhencke.com/2020/08/01/exclusive-how-the-peoples-tribunal-will-fight-for-every-discriminated-woman-and-girl-in-the-uk/>

Hencke D, 'Liz Truss's Thin Initiative on Equality: Political Sloganeering Without Substance' (Westminster Confidential, 17 December 2020) <https://davidhencke.com/2020/12/17/liz-truss-thin-initiative-on-equality-political-sloganeering-without-substance/>

Hencke D, 'The Two Legal Views on The Rights of 3.8 million 1950s Women to Get Full Restitution for Their Lost Pensions' (Westminster Confidential, 4 October 2019)
<https://davidhencke.com/2019/10/04/the-two-legal-views-on-the-rights-of-3-8-million-1950s-women-to-get-full-restitution-for-their-lost-pensions/>

Hencke D, 'Top International Experts Join The People's Tribunal Campaign To End Discrimination Against Women And Girls' (Westminster Confidential, 14 September 2020)
<https://davidhencke.com/2020/09/14/top-international-experts-join-the-peoples-tribunal-campaign-to-end-discrimination-against-women-and-girls/>

Joint Call by IPU and CEDAW Committee on International Women's Day 2021
<https://www.ipu.org/iwd-2021-statement>

LSE news Statement on Gender Equality 2021 Leaders of Economic Institutions
<https://www.lse.ac.uk/News/News-Assets/PDFs/2021/Statement-on-Gender-Equality-2021.pdf>

Murdoch J, 'Convention for the Elimination of Discrimination Against Women'
https://en.wikipedia.org/wiki/Optional_Protocol_to_the_Convention_on_the_Elimination_of_All_Forms_of_Discrimination_against_Women

[Northern Ireland legislation and consultations - Northern Ireland Assembly website](http://www.niassembly.gov.uk/)
<http://www.niassembly.gov.uk/>

Pring J, 'DWP Staff Admit Inflicting 'Psychological Harm' on Claimants During Coalition Years' (Disability News Service, 1 April 2021) <https://www.disabilitynewsservice.com/dwp-staff-admit-inflicting-psychological-harm-on-claimants-during-coalition-years/>

Sisters for Change, 'Domestic Abuse Bill' (2021)
<https://www.sistersforchange.org.uk/domestic-abuse-bill-uk/>

Statement on Gender Equality 2021 Leaders of Economic Institutions
<https://www.lse.ac.uk/News/News-Assets/PDFs/2021/Statement-on-Gender-Equality-2021.pdf>

Stirbu D, 'Westminster Can Learn a Lot about Gender Equality by Looking at Welsh and Scottish Levels of Political Representation' (LSE, 26 March 2012)
<https://blogs.lse.ac.uk/politicsandpolicy/women-representation-westminster-stirbu/>

Teasdale J, 'Protecting Individuals from Exploitation by Criminal Traffickers and Unscrupulous Employers: Identifying and Mitigating Risks in the EU Settlement Scheme and the UK's New Points-Based System' (2021) Independent Anti-Slavery Commissioner
<https://www.antislaverycommissioner.co.uk/media/1563/identifying-and-mitigating-risks-in-the-eu-settlement-scheme-and-the-uks-new-points-based-system.pdf>

Wenham C, 'Why Vaccine Passports Are Gendered' (The BMJ Opinion, 1 April 2021)
<https://blogs.bmj.com/bmj/2021/04/01/clare-wenham-why-vaccine-passports-are-gendered/>

Videos/Interviews:

CEDAW by Rosie Lewis (Angelou Centre) (video)
<https://www.wrc.org.uk/sector-conversation-with-rosie-lewis-on-cedaw>

International Women's Rights Action Watch A Feminist Analysis of CEDAW General Recommendation No. 38 on Trafficking in Women & Girls (video)
<https://youtu.be/3tnZFJQMZro>

Women, Poverty, Equality Megan Campbell (video)
https://www.youtube.com/watch?v=Fzv_kWPWiUg

Correspondence:

Letter from Guy Opperman to Bill Esterson (19 April 2021)

Letter from Minister for Women and Equalities regarding CEDAW (2019)
<https://www.equalityhumanrights.com/sites/default/files/letter-from-minister-women-and-equalities-regarding-convention-on-the-elimination-of-discrimination-against-women-may-2019.docx>

Letter from SHE Changes Climate to UK Government (10 December 2020)

Women's Aid Letter to Prime Minister VAWG Response 2021
<https://www.womensaid.org.uk/wp-content/uploads/2021/03/Letter-to-Prime-Minister-VAWG-Response-2021.pdf>

Legal Submissions (Court Hearings):

Centenary Action Group, 'Written Evidence Submitted by the Centenary Action Group to the Procedure Committee Inquiry into Proxy Voting' (2020)

Centenary Action Group, 'Written Evidence Submitted by the Centenary Action Group to the Women and Equalities Inquiry into Coronavirus and the Impact on People with Protected Characteristics' (2021)

Smith J and Childs S, 'The Remotely Representative House? Lesson Learning from the Hybrid Commons' (2021) Centenary Action Group

Sturgeon K et al, 'Data Drives Diversity: A Simple Step Towards More Transparent Politics' (2020) Centenary Action Group

Bibliography (Reports from Witnesses)

Ahmed Zlakha

<https://www.apnahaq.org.uk/>

<https://www.apnahaq.org.uk/about-us/consultations-evaluations/>

Akthar Nasmin

<https://www.mwnuk.co.uk/reports.php>

[Muslim Women Network \(mwnuk.co.uk\)](https://www.mwnuk.co.uk/)

Reports on Covid-19 impact on people with protected characteristics (women & equalities)

MWNUK Consultation on support for victims of domestic abuse in the workplace

Covid-19: domestic abuse and risks of harm within the home (home affairs)

MWNUK annual report 2020

Baljit Banga

<https://www.imkaan.org.uk/>

<https://www.imkaan.org.uk/resources>

Imkaan (2021) Joint Principle for the VAWG Strategy 2021-2024. [VIEW](#)

Centre for Women's Justice, the End Violence Against Women Coalition, Imkaan and Rape Crisis England and Wales (2020) The Decriminalisation of Rape: Why the justice system is failing rape survivors and what needs to change. [VIEW](#)

Baljit Banga & Sumanta Roy (2020) The Impact of the Dual Pandemics: Violence Against Women & Girls and COVID-19 on Black and Minoritised Women and Girls. London: Imkaan [VIEW](#)

Dr Ravi Thiara, University of Warwick & Sumanta Roy, Imkaan (2020) Reclaiming Voice: Minoritised Women and Sexual Violence Key Findings (2020) [VIEW](#)

Imkaan (2013) Beyond the Labels: Women and girls' views on the 2013 mayoral strategy on violence against women and girls. London: MOPAC. [VIEW](#)

Beck Jenny

Owen Bowcott, 'Family Courts not safe ... - Letter signed by 130 legal professionals raises concerns about judges' "outdated views"', *Guardian*, 19 February 2020,

<https://www.theguardian.com/law/2020/feb/19/family-courts-not-safe-for-domestic-violence-victims-lawyers-say>

Brearley Joeli

Pregnant Then Screwed: The Truth About the Motherhood Penalty and How to Fix It – 4 March 2021:

<https://pregnantthenscrewed.com/> by [Joeli Brearley](#)

Cassidy Jennifer

Gender and Diplomacy [Jennifer A. Cassidy](#) (ed), Routledge/Taylor & Francis, 2017.

Women's Rights and Brexit: Collateral Damage? How is Brexit going to affect women's rights in the UK? Jennifer Cassidy offers an overview of future risks. [Jennifer Cassidy](#). Heinrich Boll Stiftung – The Green Political Foundation [Feminist Foreign Policy | Heinrich Böll Stiftung \(boell.de\)](#), 8 November 2019.

Collignon Sofia

[The 2019 election campaign shows that abuse, harassment and intimidation of candidates is getting worse, especially for women | The Constitution Unit Blog \(constitution-unit.com\)](#)

Cook Rebecca

Stereotypes and Human Rights Law 9 May 2016, [Eva Brems](#) (ed), [Alexandra Timmer](#) (ed) pp 175-198

Gender Stereotypes in the Military, Rebecca Cook and Cornelia Weiss
International Journal of Gynaecology and Obstetrics 109 (2010) 255–25 Unethical female stereotyping in reproductive health Rebecca J. Cook, Simone Cusack, Bernard M. Dickens

Cooper Christine

Report on the 1995 and 2011 pension acts. (May 2021) Christine Cooper, Clara Guirau, Manuella Attoh, Mini Chandran Kurian

Fookes Alice

Poets Versus Sexual Harassment: An Anthology Published by Poets Versus, Julia Smith and Shelly Harder (eds) Preface by [Alice Fookes](#) First electronic edition 2020

Garner Saskia

<https://www.suzylamplugh.org/>

Gormley Lisa

<https://www.icj.org/womens-access-to-justice-for-gender-based-violence-icj-practitioners-guide-n-12-launched/>

Hyland Kevin

<https://www.unwomen.org/en/digital-library/publications/2020/07/guidance-addressing-emerging-human-trafficking-trends-and-consequences-of-the-covid-19-pandemic>

<https://santamartagroup.com/survivor-well-being-and-recovery-remains-long-term-priority-of-santa-marta-group/>

http://www.scienzaevita.org/wp-content/uploads/2019/11/booklet_digitalchilddignity.pdf

<https://www.thetablet.co.uk/news/11850/trafficking-awareness-programme-for-nurses-welcomed-by-santa-marta-group->

Johnson Kelly

McGlynn, Clare, Rackley, Erika, Johnson, Kelly, Henry, Nicola, Flynn, Asher, Powell, Anastasia, Gavey, Nicola, Scott, Adrian (2019) *Shattering Lives and Myths: A Report on Image-Based Sexual Abuse*.

Available at:

<https://dro.dur.ac.uk/31320/2/31320.pdf?DDD19+dvwl25>

McGlynn Clare, Johnson Kelly, Rackley Erika, Henry Nicole, Gavey Nicola, Flynn Asher, Powell Anastasia, “‘It’s Torture for the Soul’”: The Harms of Image-Based Sexual Abuse’, forthcoming.

Rackley Erika, McGlynn Clare, Johnson Kelly, Henry Nicola, Gavey Nicola, Flynn Asher, Powell Anastasia, ‘Seeking justice and redress for victim survivors of image-based sexual abuse’, forthcoming.

Henry Nicola, McGlynn Clare, Powell Anastasia, Scott Adrian, Johnson Kelly, Flynn Asher Image-based Sexual Abuse: a study on the causes and consequences of non-consensual nude or sexual imagery. Routledge, in press.

Rackley Erika, McGlynn Clare, and Johnson Kelly, ‘Sexual abuse happens online, too – but current laws leave too many victims unprotected,’ 01 July 2019, The Conversation:

<https://theconversation.com/sexual-abuse-happens-online-too-but-current-laws-leave-too-many-victims-unprotected-119604>

McGlynn Clare and Johnson Kelly, ‘It’s Time The Government Recognised The Harm Of Upskirting And Image-based Sexual Abuse’, 10 December 2018, Huffington Post:

<https://www.huffingtonpost.co.uk/entr>

Police use of discretion in response to domestic violence [Andy Myhill](#), [Kelly Johnson](#), June 11 2015.

Putting Coercive Control into Practice: Problems and Possibilities

[Charlotte Barlow](#), [Kelly Johnson](#), [Sandra Walklate](#), [Les Humphreys](#)

The British Journal of Criminology, Volume 60, Issue 1, January 2020, pp 160–179,

<https://doi.org/10.1093/bjc/azz041>, 22 July 2019.

https://researchmgt.monash.edu/ws/portalfiles/portal/283526655/Shattering_Lives_and_Myths_revised_Aug_2019_1_.pdf

Law Commission Harmful Online Communications Offences Consultation. Cyberflashing and Image-Based Sexual Abuse. Submission by Professor Clare McGlynn and Dr Kelly Johnson, claremcglynn.files.wordpress.com › 2020 › 12

British Journal of Criminology, 'Under the radar: the widespread use of "out of court resolutions" in policing domestic violence and abuse in the United Kingdom', Nicole Westmarland, Kelly Johnson and Clare McGlynn, [Under the Radar: The Widespread Use of 'Out of Court Resolutions' in Policing Domestic Violence and Abuse in the United Kingdom \(2017\) British Journal of Criminology by Clare McGlynn, Kelly Johnson, Nicole Westmarland :: SSRN](#)

Jurasz Olga

Online Misogyny as Hate Crime: A Challenge for Legal Regulation? [Barker, Kim](#) and [Jurasz, Olga](#). *Online Misogyny as Hate Crime: A Challenge for Legal Regulation?* Routledge. 2018.

DOI: <https://doi.org/10.4324/9780429956805>

URL: <https://www.routledge.com/Online-Misogyny-as-Hate-...>

Submission of Evidence on Online Violence Against Women to the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, Dr Dubravka Šimonović

[Barker, Kim](#) and [Jurasz, Olga](#) (2017). *Submission of Evidence on Online Violence Against Women to the UN Special Rapporteur on Violence Against Women, its Causes and Consequences*, Dr Dubravka Šimonović. United Nations. <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages...>

[Barker, Kim](#) and [Jurasz, Olga](#) (2018). *Written Submission of Evidence to the Women and Equalities Committee inquiry into sexual harassment of women and girls in public spaces*. Stirling Law School & Open University Law School.

Lewis Rosie

Rosie Lewis on CEDAW

<https://youtu.be/kiqMN63jCFs>

McCall-Smith Casey

<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/03/national-taskforce-human-rights-leadership-report/documents/national-taskforce-human-rights-leadership-report/national-taskforce-human-rights-leadership-report/govscot%3Adocument/national-taskforce-human-rights-leadership-report.pdf>

Incorporating the United Nations Convention on the Rights of People with Disabilities (CRPD) in Scotland [Kasey McCall-Smith](#)

<https://www.alliance-scotland.org.uk/wp-content/uploads/2020/11/ALLIANCE-Inclusion-Scotland-CRPD-Incorporation-in-Scotland-Main-Report-Nov-2020.pdf>

Incorporating International Human Rights in a Devolved Context [Kasey McCall-Smith](#)
<http://www.europeanfutures.ed.ac.uk/article-7114>

McCurley Cris

[Family courts not safe for domestic violence victims, lawyers say | Family law | The Guardian](#)

Mehra Malini

Women and gender constituency, United Nations Framework Convention on Climate Change (UNFCCC)

<https://womensgenderclimate.org/body/global-gender-and-climate-alliance/>

The Enhanced Lima Gender Action Plan, UNFCCC <https://unfccc.int/topics/gender/workstreams/the-enhanced-lima-work-programme-on-gender>

[FACTSHEET: Exposing Gender Gaps in Financing Climate Change Mitigation – and Proposing Solutions](#)

[“Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability” – UNDP March 2015](#)

[Men and Women Taking Action on Gender Equality and Climate Change: How Far Have We Come?](#)

<https://blogs.worldbank.org/climatechange/four-myths-about-gender-and-disaster-risk-reduction>

Centre for Gender & Disaster <https://www.ucl.ac.uk/risk-disaster-reduction/research/centre-gender-and-disaster>: <https://www.unwomen.org/en/docs/2013/7/gender-equality-economic-development-and-environmental-sustainability>

Minto Rachel

<https://chwaraeteg.com/wp-content/uploads/2019/09/Deeds-Not-Word-full-report.pdf>

<https://chwaraeteg.com/wp-content/uploads/2019/09/Gender-Equality-a-roadmap-for-Wales.pdf>

‘Sticky Networks in Times of Change: The Case of the European Women’s Lobby and Brexit’ RACHEL MINTO Wales Governance Centre, Cardiff University School of Law and Politics *Journal of Common Market Studies* vol 8, no 6, pp 1–18 DOI: 10.1111/jcms.13110

The European Union and Regional gender equality agendas: Wales in the shadow of Brexit Rachel Minto and Alison Parken (2020), *Regional Studies*, DOI: 10.1080/00343404.2020.1826422

<https://doi.org/10.1080/00343404.2020.1826422>

Monaghan Jonna

https://blog.niwep.org/sites/default/files/NIWEP%20CEDAW%20shadow%20report%20%20FINAL_0.pdf

<https://womensregionalconsortiumni.org.uk/wp-content/uploads/2021/04/March-2019-Impact-of-Ongoing-Austerity-Womens-erspectives.pdf>

<https://womensregionalconsortiumni.org.uk/wp-content/uploads/2021/04/September-2020-The-Impact-of-Universal-Credit-on-Women.pdf>

<https://womensregionalconsortiumni.org.uk/wp-content/uploads/2021/04/Making-Ends-Meet-Womens-Perspectives-on-Access-to-Lending.pdf>

Newland Nick

<https://www.wrc.org.uk/blog/rural-women-article-14-cedaw>

https://www.acww.org.uk/docs/sdg_web.pdf#:~:text=RURAL%20WOMENIN%20ACTION%20or%20Global%20Goals%2C%20are%20a,fight%20inequality%20and%20injustice%2C%20and%20protect%20the%20planet. Re Global Goals for Sustainable Development

O'Rourke Catherine

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875380/FINAL_Government_response_-_Northern_Ireland_abortion_framework.pdf

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2563665 Re optional protocol

Submission of Evidence to the CEDAW Committee Optional Protocol: Inquiry Procedure

[*Transitional Justice Institute Research Paper No. 15-01*](#)

100 Pages Posted: 18 Feb 2015 Last revised: 27 Feb 2015.

<https://www.legislation.gov.uk/ukpga/2019/22/enacted> re Northern Ireland (Executive Formation etc) Act 2019.

Patel Pragna (Southall Black Sisters)

'Women Who Walk on Water: Working Across "Race"' Women Against Fundamentalism' in *Women, Gender, Religion – A Reader*. Elizabeth A Castelli (ed) chpt 23. 2001.

In 'The Politics of Culture in the Shadow of Capital' (with Clara Connolly), (eds) L Lowe and D Lloyd. Duke University Press. 1997.

Essays on policing, religion and human rights in *From Homebreakers to Jailbreakers*, Rahila Gupta (ed), Zed Press. 2003.

'Every Child Matters? The Challenge of gender, religion and multiculturalism'. *Forum* vol 49 no 3 2007.

'Multiculturalism in Secondary Schools' by P Patel and S Dhaliwal. Southall Black Sisters and Working Lives Institute (London Metropolitan University) 2007.

'Faith in the State? Asian Women's Struggles for Human Rights' *Feminist Legal Studies*, 2008.

Shrinking Secular Spaces: Asian Women at the intersect of race, religion and gender. P Patel and H Siddiqui in RK Thiara and A Gill (eds). Jessica Kingsley Press. 2010.

'Faith Organisations and Migrants Today' *Feminist Review*, 2010.

'Cohesion, Multi-Faithism and the Erosion of Secular Spaces in the UK'. *Women Living Under Muslim Laws*. 2010.

Samia Bano and Pragna Patel, 'R v Zoora (Ghulam) Shah' in *Feminist Judgments from Theory to Practice*'. Chpt 16. Rosemary Hunter, Clare McGlynn and Erika Rackley. Bloomsbury. 2010.
Feminist Legal Studies (2008) Spring issue, September 2010.

‘Standing in the Same Dream’ Black and Minority Women’s Struggles Against Gender Based Violence and for Equality in the UK’ by P Patel and H Siddiqui in *Violence Against Women and Ethnicity: Commonalities and Differences across Europe* (eds) R Thiara, S Condon, M Schrottle (eds) Barbara Budrich Publishers. 2011.

‘Freedom to’ and ‘Freedom From’: Rebalancing the tension in favour of gender equality.in 50-50 ‘Religion, Gender and Politics Dialogue’ Open Democracy
Cohesion, Faith, and Gender, P Patel and U Sen, Southall Black Sisters. 2011.

‘Moral panics and social evils: forced marriage and gender-related violence in immigration law and policy in the UK’ in Floya Anthias and Mojca Pajnik (eds), *Contesting Integration, Engendering Migration: theory and practice*. Palgrave Macmillan. 2014.

‘Shariafication By Stealth in the UK’ in Open Democracy

‘Feminism in the Shadow of Multi-Faithism: The implications for ethnic minority women in the UK’ P. Patel and S. Dhaliwal in *New South Asian Feminisms*. Srila Roy (ed). Zed Books. 2012.

‘Multifaithism and the Gender Question: Implications of Government Policy on the Struggle for Equality and Rights for Minority Women in the UK’ in *Moving in the Shadows* Yasmin Rahman, Liz Kelly and Hannana Siddiqui (eds) Ashgate Publishers. 2013.

‘The Growing Alignment of Religion and the Law: What Price Do Women Pay?’ in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, Samia Bano (ed). [Brandeis University Press. 2017.](#)

‘The Story of a Feminist Victory Against Fundamentalists and Gender Segregation in Schools in the UK’ in Open Democracy

‘Forced Marriage (Civil Protection Act) 2007’. Ericka Rackley and Rosemary Auchmuty (eds). *Women’s Legal Landmarks*. Hart Publishing. 2019.

Pavliuc Alexandra

[Kamala Harris abuse campaign shows how trolls evade social media moderation](#) in *The Conversation UK*

[Malign Creativity full report](#) (executive summary, pp 1-2 PDF)

https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/Report%20Malign%20Creativity%20How%20Gender%2C%20Sex%2C%20and%20Lies%20are%20Weaponized%20Against%20Women%20Online_0.pdf

[An article from 2014 about the Apple Health Tracking app not providing menstruation tracking - an example for the need for diversity in the technology sector](#)

Powell Rachel

[Gender Inequality in Northern Ireland: Where are we in 2020? – Womens Resource and Development Agency \(wrda.net\)](#)

<https://wrda.net/wp-content/uploads/2020/07/WPG-Feminist-Recovery-Plan-Summary-of-Recommendations.pdf>

Proudman Charlotte

<https://www.telegraph.co.uk/women/womens-life/10985328/Come-on-Cameron.-If-you-really-want-to-end-FGM-its-time-to-act-and-fast.html>

<https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/5KX9-X191-DYW7-W2JK-00000-00/Failure-to-act-on-female-genital-mutilation>

<https://www.thetimes.co.uk/article/abuse-victims-deserve-a-well-funded-justice-system-tw09pjwv8>

<https://www.magonlinelibrary.com/doi/abs/10.12968/bjom.2020.28.7.418>

‘The Law on FGM and Travel Ban’, Dr Proudman (Family Law Journal):

<http://usir.salford.ac.uk/id/eprint/57903/>

<http://nationalfgmcentre.org.uk/wp-content/uploads/2018/06/A-Barrister%E2%80%99s-Perspective-on-the-Challenges-of-Appling-for-FGM-Protection-Orders-.pdf>

Rehman Yasmin

Islamisation of the Muslim World Yasmin Rehman Independent researcher

<https://doi.org/10.31273/fd.n1.2016.14>

https://www.welshwomensaid.org.uk/wp-content/uploads/2016/03/Are_you_listening_and_am_I_being_heard_FINAL_July_2016.pdf

<https://www.opendemocracy.net/en/5050/islamist-terrorism-chilling-echoes-of-pastor-niemoller/>

<https://www.opendemocracy.net/en/5050/refusing-to-recognise-polygamy-in-west-solution-or-soundbite/>

<https://www.opendemocracy.net/en/tagged/continuum-of-violence/page/2/>

https://www.london.gov.uk/sites/default/files/mopac_survivors_consultation.pdf

<https://journals.warwick.ac.uk/index.php/feministdissent/article/view/329>

Sclater Elizabeth

Older Women’s Rights in the United Kingdom NGO Thematic Shadow Report

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_NGO_GBR_13326_E.pdf

UK Civil Society Women’s Alliance The impact of the Covid-19 pandemic on older women Briefing note Executive summary 5 July 2020

https://www.age-platform.eu/sites/default/files/Impact_COVID19_on_Older_Women_UK-BriefingNotes_Jul20.pdf

Effective protection of the human rights of older women through the CEDAW Convention and the general recommendation number 27, Ferdous Ara Begum former member of the UN CEDAW Committee

<https://wunrn.com/2011/04/older-women-protection-by-cedaw-general-recommendation-27/>

Committee on the Elimination of Discrimination against Women General recommendation No. 27 on older women and protection of their human rights

<http://hrlibrary.umn.edu/gencomm/CEDAW%20Gen%20rec%2027.pdf>

Smethers Sam

BAME women and Covid-19 – Research evidence (Fawcett Society)

<https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=cae4917f-1df3-4ab8-94e7-550c23bdc9cf>

Disabled women and Covid-19 - Research evidence (Fawcett Society)

<https://www.fawcettsociety.org.uk/disabled-women-and-covid-19>

The Coronavirus Crossroads Equal Pay Day 2020 report

<https://www.fawcettsociety.org.uk/coronavirus-crossroads-equal-pay-day-2020-report>

Exiting Lockdown: The Impact on Women

<https://www.fawcettsociety.org.uk/exiting-lockdown-the-impact-on-women-1>

Gender pay gap reporting regulations: advancing gender equality policy in tough economic times
Susan Milner Jan 2019

<https://link.springer.com/article/10.1057/s41293-018-00101-4>

Hers and His: Opening up the Household Budget

<https://link.springer.com/article/10.1057/s41293-018-00101-4>

Coronavirus: Impact on Parents

<https://www.fawcettsociety.org.uk/parenting-and-covid-19>

Veitch Janet

<https://wbg.org.uk/analysis/new-report-exploring-the-economic-impact-of-brexit-on-women/>

<https://wbg.org.uk/analysis/new-report-exploring-the-economic-impact-of-brexit-on-women/>

<https://wbg.org.uk/resources/women-and-austerity/>

Watson Hilary

<https://wenwales.org.uk/wp-content/uploads/2020/04/Feminist-Scorecard-Report-2020-Eng.pdf>

<https://wenwales.org.uk/campaign/our-manifesto-equality-for-women-and-girls-in-wales/>

<https://wenwales.org.uk/wp-content/uploads/Wales-UN-CEDAW-shadow-report-UK-Jan-2019-WEN-Wales.pdf>

<https://wenwales.org.uk/campaign/covid-19-womens-rights/>

Women’s Budget Group Mary-Ann Stephenson and Diane Elson

<https://wbg.org.uk/wp-content/uploads/2019/06/Benefits-or-barriers-4-nations-report.pdf>

<https://wbg.org.uk/analysis/intersecting-inequalities/>

<https://wbg.org.uk/analysis/creating-a-caring-economy-a-call-to-action-2/>

<https://wbg.org.uk/analysis/reports/lessons-learned-where-women-stand-at-the-start-of-2021/>