

## JUSTICE COMMITTEE

### HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

#### SUBMISSION FROM SCOTTISH WOMEN'S AID

Scottish Women's Aid (SWA) is the lead organisation in Scotland working to end domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. We provide advice, information, training and publications to our 36-member groups and to a wide variety of stakeholders. Our members are local Women's Aid groups, which provide specialist services, including refuge accommodation, information and support to women, children and young people.

We welcome the opportunity to provide feedback on the draft Hate Crimes and Public Order (Scotland) Bill. As specialists in domestic abuse, a form of gender-based violence against women, we confine our comments to hate crimes motivated by gender discrimination and misogyny.

In our previous submission we, along with Engender, Rape Crisis Scotland, and other women's rights organizations, called for a specific piece of legislation to address gaps in legal protection regarding women's experiences of harassment and abuse rather than the addition of the characteristic of sex to the list of groups protected by the Bill. We welcome the current formulation of the Bill which gives permission to Scottish Ministers to make "different provision" for the characteristic of sex.

We reiterate that misogynistic abuse surrounds and supports domestic abuse and the attitudes about women and girls that allow violence against women to flourish in Scotland. We also reiterate that an aggravation model that adds sex to the list of characteristics protected by hate crimes legislation is incompatible with the definition of violence against women contained in Equally Safe: "a function of gender inequality, and an abuse of male power and privilege".<sup>1</sup>

As previously stated by Engender, "Applying a 'gender-based' aggravation to some forms of violence or to some cases and not to others (for example treating one case of domestic abuse as involving 'gender hostility' and another not) would therefore be incoherent with our understanding of those types of crime".<sup>2</sup> We again highlight that international evidence suggests that adding "gender to a laundry-list of groups protected by hate crime legislation leads to underreporting, under-investigation, and under-prosecution".<sup>3</sup>

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<sup>1</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2018/04/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/documents/00534791-pdf/00534791-pdf/govscot%3Adocument/00534791.pdf?forceDownload=true>

<sup>2</sup> <https://www.engender.org.uk/content/publications/Engender-16-Days-of-Action-Hate-Crime-Briefing-26-11-2019.pdf>

<sup>3</sup> <https://www.engender.org.uk/news/blog/womens-organisations-disappointed-by-lord-bracadales-recommendations-seek-further-dialogue/>

The development of the Domestic Abuse (Scotland) Act 2018 included a process of extensive engagement with stakeholders, gender experts, and women's rights organizations. That process produced a piece of legislation grounded in the experiences of those most affected, and crafted by officials with in-depth and extensive understanding of a complex social phenomenon. This type of participatory process needs to be adopted by the Scottish Government in the development of a stand-alone law to address egregious misogyny.

Criminal law and criminal sanctions are an essential element to addressing systemic discrimination and gender-based violence; however, it is not a panacea. Equally Safe recognizes the importance of addressing structural inequality: "Our approach focuses on changing behaviour, building the knowledge and skills of individuals, and ultimately delivering a progressive shift in the structural, cultural and societal contexts in which violence occurs."

The UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) obliges states parties to take "all appropriate measures" to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices".<sup>4</sup> The Council of Europe Convention on preventing and combating violence against women and domestic violence (known as the Istanbul Convention) requires states parties to "condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it".<sup>5</sup>

Along with our call for the participatory development of a robust law to tackle crimes motivated by misogyny, we also highlight the continued need for investment in long-term comprehensive policy, education, and other measures to effect public attitudinal change, in order to eradicate structural gender inequality across Scotland. We welcome the attention of Committee members to these important issues and would be happy to discuss further and answer any questions.

Scottish Women's Aid  
24 July 2020

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<sup>4</sup> <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

<sup>5</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>