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Abused Men In Scotland (AMIS) contribution to the Universal Periodic Review in relation to the UK.

AMIS (Abused Men in Scotland) is a registered charity in Scotland dedicated to supporting men who are experiencing, or who have experienced, domestic abuse. AMIS has been consolidating its presence as a provider of support and as a source of information and awareness-raising for MSPs and professionals in the field including police, social workers, council and government officials and other charities.

AMIS runs a telephone helpline for men who have experienced domestic abuse, staffed entirely by trained volunteers, 7 evenings a week and much of our insight into what we have perceived as a significant area of human rights deficit in Scotland is drawn from the experience of the individuals who have contacted us through the helpline as well as dialogue with police, social workers, voluntary agencies and legal professionals.

AMIS works with any man over 16 concerned about domestic abuse, regardless of sexuality, age, dis/ability or ethnic origin. We welcome calls from men in immediate need of support or information and from men and women seeking help for male friends or relatives, or an understanding of what male friends or relatives may be experiencing.

In working for recognition of the needs of men who experience abuse, and of the needs of their children, AMIS does not seek to minimise the harm done by domestic abuse directed towards women. AMIS supports efforts to challenge and eradicate domestic abuse directed against women whether from male or female perpetrators.

From our experience we would, however, urge that in addition to the challenge faced by all individuals and society as a whole in relation to domestic abuse the particular *definition* of domestic abuse adopted by the Scottish Government, the hegemony it has established on the “public story” of domestic abuse and the development of support services has resulted in violation of several Articles of the European Convention of Human Rights.

The dominant position of the *definition*¹ and the reluctance of public authorities to engage with its limitations has affected three areas in particular that we will discuss below:

1. Men who suffer domestic abuse
2. Treatment of allegations of domestic abuse
3. Child contact issues

We will be very happy to provide further information on these interlaced areas. In addition to the official statistics we would refer anyone interested in the question of the treatment of men in Scotland experiencing domestic abuse to our website

www.abusedmeninscotland.org

¹“Domestic abuse (as gender-based abuse) can be perpetrated by partners or ex-partners and can include physical abuse (assault and physical attack involving a range of behaviour), sexual abuse (acts which degrade and humiliate women and are perpetrated against their will, including rape) and mental and emotional abuse (such as threats, verbal abuse, racial abuse, withholding money and other types of controlling behaviour such as isolation from family and friends).”

and to the following articles .²

We consider first the relevance of human rights to all forms of domestic abuse and then the specific, additional problems created by the Scottish Government's unique definition of domestic abuse.

All forms of domestic abuse

The perpetration of domestic abuse affects not only the primary individual target but also any children of the family, the wider family and society as a whole. A country that fails to challenge domestic abuse cannot claim to be one which respects human rights. Domestic abuse violates many Articles of the Universal Declaration.

These Articles³ are commonly violated by the individual perpetrators of domestic abuse and in so far as the state fails to provide effective, accessible

² A Waugh, "Male victims of domestic abuse" 2010 SCOLAG Legal Journal 213-15; B Dempsey "Debating Domestic Abuse" 2011 SCOLAG Legal Journal 116-117 and B Dempsey "Gender Neutral Laws and Heterocentric Policies: "Domestic Abuse as Gender-Based Abuse and Same-Sex Couples"" in 2011 Edinburgh Law Review 281-405

³ Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 3. Everyone has the right to life, liberty and security of person.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13(1). Everyone has the right to freedom of movement and residence within the borders of each state.

protections for all people experiencing abuse the state is failing in its duty to protect the human rights of its citizens.

1. Specific issues relating to men experiencing domestic abuse

Domestic abuse is a significant individual and social problem in Scotland. In the year 2009/10 there were a total of just under 52,000 reports of domestic abuse to the police in Scotland⁴. Of these, almost 42,000 were reports from women in mixed-sex relationships. There were also just over 8,500 reports by men who had experienced domestic abuse (7,938 in mixed-sex and 666 in same-sex relationships) constituting 15% of the total.

Since the Scottish Government statistical series began in 2000-01 the number of incidents recorded by the police with a female victim has increased by 42%. Over the same period, incidents recorded by police with a male victim increased by 233% (2011 figures yet to be published).

Article 17. (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association.

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

⁴ Scottish Government, Statistical Bulletin, Domestic Abuse Recorded by the Police in Scotland 2009-10

The Scottish Crime and Justice Survey, 2010⁵ indicates that approximately 1 in 4 cases of domestic abuse against women appear to come to the attention of the police in Scotland while the figure is 1 in 8 for men experiencing abuse so the numbers being reported to the police reflect significant underreporting in relation to female victims but even more extreme underreporting in relation to male victims.

In spite of these figures showing a significant problem of domestic abuse against men, with the impact that has on their children, the Scottish Government has marginalised these victims of domestic abuse in terms of media response and funding of services.

The Scottish Government states it has spent £55m funding domestic abuse public information campaigns and services promoting the message that domestic abuse is fundamentally an issue of “men’s violence against women” – the existence of abuse against men and in same-sex relationships is often “not denied” (though the plight of their children is consistently ignored to the extent that they are not mentioned even in a footnote).

Over the same period we believe less than £30,000 (less than a tenth of 1%) has been allocated to organisations providing a service specifically designed to support men and their children who are affected by domestic abuse. We make clear that we do not seek any reduction in funding for organisations supporting women victims of either male or female partners but call for greater recognition, in publicity campaigns and in terms of funding appropriate organisations, of the needs of men and their children.

Even if ‘only’ 15% of victims of domestic abuse are men (which is to leave aside the issue of under-reporting) we consider that they, and their children, deserve a response from the state which does not marginalise their

⁵ <http://www.scotland.gov.uk/Publications/2010/12/03094109/8>

experiences. We know that every year thousands of men, in mixed- and same-sex relationships take the courageous step of reporting that abuse to the police. Even if these men and their children are a minority, it is entirely unjustifiable to say that attending to their needs should wait until the needs of another group are dealt with. We know of no other area of criminal law where sub-dividing victims of similar criminal behaviour is deemed to be acceptable.

In light of this we submit that there is evidence of failure on the part of the Scottish Government to effectively address the specific articles below in relation specifically to 1. men who experience domestic abuse whether in mixed-sex or same-sex relationships, 2. their children and 3. their wider family and friends and that this also has a significant deleterious impact on society as a whole.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ...

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

We strongly support the principle that there should be no discrimination in relation to the Declaration. For the reasons noted above we submit that there is a clear case of failure to avoid such discrimination in relation to the State's response to domestic abuse with discrimination 1. against adults experiencing domestic abuse based on their sex, which results in men, whether trans, bisexual, gay or heterosexual being denied recognition and access to appropriate minimum protection and services and 2. against children based on the sex of the abused parent or carer which results in

those children with male carers who are experiencing abuse being denied recognition and access to appropriate minimum protection and services.

2. Treatment of Allegations of Domestic Abuse.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Policies which impose a presumption or even requirement of arrest are controversial and AMIS does not have a firm conclusion on that issue. However, we have heard both from men (and family members) and from senior police officers of pressure on police officers to 'remove' someone when called out to an incident where domestic abuse is alleged and that due to a number of factors where the incident involves a mixed-sex couple it is usually the man who is 'lifted', removed from his house and who can spend several nights in police cells until the next court sitting.

Lord Carlway in his review of Scottish Criminal Justice in November 2011 has observed there is already a problem in Scotland that "human rights seem to depend on what day of the week you are arrested."

In many cases we know the man is released without charge having lost liberty for several days. The post *Cadder* requirements for legal advice before interview are often sidestepped because no formal interview takes place. On other occasions even if charged by the police the case may be dropped by the Crown. Even when charged and prosecuted he may be acquitted but bail conditions in the interim effectively prevent contact with his children.

Our concern is that in the politicised area of domestic abuse an allegation is taken as tantamount to evidence. This is a situation that is itself open to abuse and disproportionately affects men in the Scottish environment where the public narrative and the majority of training assumes domestic abuse is

something that men do to women. It is our experience that domestic abuse is about the abuse of power within a relationship regardless of gender.

We are also concerned by a 'zero tolerance' approach currently employed by Scottish Police which has led to charges of 'breach of the peace' being made in response to actions the 'offender' had not appreciated constituted an offence.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

In Scotland police officers, prosecutors and the judiciary are given training that promotes the Government's definition of domestic abuse as primarily a matter of men's violence against women. Such training has, as its aim, the changing of behaviour and attitudes of these public servants and therefore raises concerns about the independence and impartiality of tribunals.

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

The state's response to domestic abuse is clearly relevant to rights within marriage. Presumptions as to who is likely to be a victim of domestic abuse in a particular relationship which underpin the training provided to and the approach of state actors such as the police, social workers and the judiciary which are drawn from estimates of prevalence of abuse in relation to sex,

gender, ethnicity, religion, sexual orientation or any other factor clearly violate the requirement for equality of rights.

3. Child Contact issues

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

It is our experience that there is an institutional bias against men in terms of the procedures and attitudes to child contact after divorce or separation or where the parents have never lived together.

Although the overriding ethos of the Children (Scotland) Act 1995 correctly states that the interests of the children are paramount it is our experience that control of the contact between a child and a non-resident parent (in the considerable majority of cases, the father) is in itself exerted as a form of domestic abuse by the parent with residence.

Non-resident fathers often express to us that they are repeatedly asked to prove their worth as a parent and though contact orders have the force of law there is no effective means of enforcing them. They report that they are asked questions both in court and by court appointed reporters questions about their character that are never asked of the parent with care.

The burden placed on non resident fathers to prove their worth to fulfil the obligations placed on them in terms of the Children (Scotland) Act 1995 would be avoided by a presumption of shared parenting as exists in several countries. Sweden is the best known and Switzerland is about to follow. The UK Supreme Court ruled in K v Principal Reporter that it is as much an abuse of the child's right to family life as it is to the father's when state institutions neglect natural justice in a case where "family life has been established". It has not dealt with the situation that arises where family life has not been established and cannot be established when the parent with care is given an effective veto on contact.

Conclusion

All three areas identified above are known to the State in Scotland. We do not think Scotland should congratulate itself on its human rights record until these are addressed and the discriminations rooted out.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

As stated above, AMIS is not and never has been against the effective challenging of domestic abuse directed towards women. Any argument that the measures which marginalise men who experience domestic abuse and their children and so deny them their human rights are somehow necessary in pursuance of any aspect of the Declaration are unfounded and specifically nullified by Article 30.