**Submission on the rights of persons with disabilities for the**

**CESCR Committee’s review of the United Kingdom**

**May 2016**

**Introduction**

This short submission, prepared by Sisters of Frida,[[1]](#footnote-1) relates to persons with disabilities in the United Kingdom, with the aim of identifying the restrictions they face with respect to their economic and social rights, particularly the impact of austerity measures in their rights enjoyment and exercise.

The UK government is a party to all of the UN human rights instruments. In particular, it ratified the ICESCR in 1976 and in 2009 the UK Government ratified the Convention on the Rights of People with Disabilities (CRPD)[[2]](#footnote-2) and the Convention's Optional Protocol in 2010. It is clear that these treaties intersect and reinforce each other when it comes to the economic, social and cultural rights of persons with disabilities.

Below, we offer some responses to the list of issues to provide information to help prepare the Committee for its dialogue with the UK government delegation, in particular concerning the right to housing, adequate standard of living, social protection, employment and the issue of domestic violence against women with disabilities

**Response to list of issues**

**Articles 2(1), 9, 11, ICESCR- Maximum available resources / right to social security / right to housing / adequate standard of living**

4. Please provide information on the steps taken by the State party to ensure that austerity measures introduced through the Welfare Reform Act of 2012 do not disproportionately affect the enjoyment of economic, social and cultural rights, in particular by disadvantaged and marginalized individuals and groups.

15. Please indicate whether the new proposed reforms to the social security system in the Full Employment and Welfare Benefits Bill will ensure a minimum amount of social assistance benefits that provides an adequate standard of living for the system’s beneficiaries and their families.

23. Please provide concrete information on how current housing policies and welfare reform are contributing to addressing the housing deficit in the State party. Please provide statistical information on the supply of social and affordable housing, especially for the most disadvantaged and marginalized individuals and groups, including middle- and low‑income individuals and households, young people and persons with disabilities. Please also provide information on how security of tenure is guaranteed, particularly in the private rental sector, and on the measures adopted to protect tenants from forced eviction.

Examples http://www.theguardian.com/society/2014/jul/26/disable-people-hidden-uk-housing-crisis

The savage cuts and the decimation of services in the name of austerity have had a significantly negative impact on the disability community in the UK.

Independent Living Fund (ILF)

As an addition to the local authority funding, the ILF has provided a considerable degree of domiciliary support for disabled people with higher support needs to enjoy social and cultural rights in an equal footing to their non-disabled counterparts.

**The closure of this fund in 2015 has put seriously in peril the ability of a large number of disabled people with high support needs to live independently in their own homes and communities**, and their active involvement in employment and education. Despite calls by this Committee and other treaty bodies, and World Health Organisation in the World Report on Disability that countries should provide services in the community and not in residential or segregated institutions and plan how to achieve this, the closure of ILF has undermined human rights of disabled people of all ages.

**Housing strategies are not inclusive of persons with disabilities in terms of affordability, accessibility and the provision of supports and community based services.** As a result**, people with disabilities across the country are being compelled to live in segregated institutions which violate their right to dignity, freedom from violence -which has been widely documented in these settings- right to live with their family and the right live in the community on an equal basis with others.**[[3]](#footnote-3)

The limited ‘round-the-clock’ needs support in the community together with the low standards, poor management and rigid approaches to personal care found in many residential and nursing homes has had grave effects on disabled people’s lives and their opportunities to participate and be included in the community. Further, **People with learning difficulties are at a greater risk of physical and emotional abuse or neglect in segregated settings where restraint and drugs are the norm to control behaviour which is labelled as ‘challenging’ rather than being treated with kindness and dignity. The case of Connor Sparrowhawk who died while a resident at Slade House, an NHS assessment and treatment unit in Oxfordshire, is a prime example of this**.[[4]](#footnote-4) See also where the Care Quality Commission (CQC) took action to protect people being cared for at Westgate College[[5]](#footnote-5) in Margate.

Access to Work (ATW)

As an effective model of disability-support in employment, Access to Work (ATW) has had the potential to address the considerable gap between disabled people’s employment rate with that of non-disabled population, and has transformed the lives of many disabled individuals. The latest figures, published in October 2015[[6]](#footnote-6), show 36,820 disabled people were helped in 2014-15, still below the figure of 37,270 for 2009-10.[[7]](#footnote-7)

However**, recent changes introduced by the Department of Work and Pensions (DWP) have driven ATW users to crisis**. **The changes have been an amalgamation of restructures and the introduction of targets to increase numbers using the scheme without significantly increasing its budget. The discriminatory measures include the introduction of a cap on ATW packages, which affects significantly Deaf British Sign Language (BSL) users and those with higher cost support needs**. For example a reduction in BSL interpreters’ pay and decline in working conditions have been noted leading to outsourcing and privatisation of the BSL interpreting services.

Consequently, Deaf and disabled people have been pushed out of long standing professional positions, established careers and businesses[[8]](#footnote-8) into unskilled, lower paid work, fearing for their futures, with many thousands of pounds in debt. The employers are also under pressure to redesign jobs to reduce support needs.

Employment Support Allowance (ESA)

Despite a U-turn over the cuts to Personal Independent Payments (PIP) in a bid to contain the political crisis that arose after the budget, there are still less-publicised cuts that already have been approved by parliament and are due to take effect from next year.

The Employment Support Allowance, commonly known as the ESA, replaced incapacity benefit. ESA is a much harder benefit to claim than incapacity benefit, primarily because the medical test called the work capability assessment - is a much more prescriptive test than its previous incarnation. (See the descriptors for the test)[[9]](#footnote-9) When recipients of the old incapacity benefit were retested to see if they were eligible for the new employment and support allowance (ESA), the initial assumption was that 23% of people who went through the test would be found fit for work.  This change meant that large numbers of people who had previously been classified as ill or disabled enough to qualify for benefits were suddenly and unexpectedly being told that they were well enough to work. According to the government's own figures (in 2013), 1,300 people had died after being told they should start preparing to go back to work, and another 2,200 had died before their assessment was complete.[[10]](#footnote-10) In this respect, Labour MP Meacher questioned: "Is it reasonable to pressurise seriously disabled persons into work so ruthlessly when there are 2.5 million unemployed and when, on average, eight persons chase every vacancy, unless they are provided with the active and extensive support they obviously need to get and hold down work, which is certainly not the case currently?" He also raised the fact that significant amounts of public money was being spent on administering appeals, because so many decisions were contested and that the British Medical Association had described the assessments as "not fit for purpose".[[11]](#footnote-11)

Currently people who are deemed to be too ‘sick’ to work by the government’s work capability assessment are put into two groups: those judged permanently unable to work are moved into the ‘support group’; those judged to be too ill or disabled to work immediately (but theoretically capable of work at a later date) are put in the ‘work-related activity group’ (WRAG). It is new applicants in the latter group who will see their income cut, according to the **welfare reform and work bill**, which was passed in early March. From April 2017, the **new WRAG applicants will receive the same amount of money as jobseeker’s allowance claimants and be at a disadvantage as they will continue to face barriers related to their impairment without support in this respect**. The original values of these two benefits recognised that disabled people are likely to be unemployed for longer than other jobseekers who are not disabled or experiencing health difficulties, and were supported accordingly. **Their impairments and disability related needs are no longer being taken in to account, expecting them to be at the same starting level as non-disabled, unemployed counterparts, which is an unrealistic situation.**

There is real anxiety among claimants about how they would manage if they had to lose the WRAG to take tentative steps into employment but then had to return on to it at the reduced rate. The government claims that this change will bring £1.4bn of savings by 2020**. Yet, the impact upon persons with disabilities is immeasurable putting at risk their survival and inclusion within the community.** The Equalities and Human Rights Commission recognised that cutting £30 a week from Employment Support Allowance benefits will disproportionately hit disabled people[[12]](#footnote-12).

As has been reported in the media: ‘Most current recipients find it hard to understand the government’s justification that the cut will incentivise people to step up their job search. About 69% of disabled people surveyed by the Disability Benefits Consortium say that cuts to ESA will cause their health to suffer and 45% believe it will mean it takes them longer to return to work. A third said they already had difficulty feeding themselves at the benefit’s current levels. Almost 70% said they would struggle to pay their bills if they were claiming the benefit on the reduced rate.’ (Amelia Gentleman, 2016 - Guardian)

**The cuts to ATW have excluded us from our economic rights, and the adjustments to ESA, the payments and how it is assessed, have further marginalised us and will no doubt penalise us yet again if there is a worsening of our impairments, or even if the job market declines due to another economic downturn. All these cuts to disability benefits in the name of austerity have denied the advancement of our equality of opportunity by promoting our equal participation in public and social life and has maximised the disadvantages we face. Our social, cultural and economic rights have been dismantled and we have been denied our human right to independent living.**

**Article 10, ICESCR - Protection of the family, mothers and children**

17. Please provide information on access to justice and on the protection and support services available to victims of domestic and gender-based violence. Please indicate the number of cases investigated and brought before the courts, and the penalties imposed on the perpetrators.

Research commissioned by Women's Aid[[13]](#footnote-13) reveals that **women with disabilities are more vulnerable to domestic violence than non-disabled women and will often face additional difficulties in attempting to access support.** It included the following findings:

* **50% of disabled women have experienced domestic abuse** compared with 25% of non-disabled women.
* **Disabled women are twice as likely to be assaulted or raped as non-disabled women**.
* Both men and women with a limiting illness or disabilities are more likely to experience intimate partner violence.
* Disabled women are likely to have to endure it for longer because appropriate support is not available.
* A study of women who access mental health services identified between 50% and 60% had experienced domestic violence, and up to 20% were currently being abused.

There is a **paucity of data on women and girls who have experienced domestic abuse and even less on women with disabilities,** apart from statistics from Women’s Aid report and more recently from the ‘Access to Specialised Victim Support Services for Women with Disabilities who have experienced Violence’ a joint European report from Leeds University on the UK. The UK government’s response to the List of Issues does not identify any research or collection of data on this issue.

We would like to highlight some barriers faced by disabled women and of those, disabled women from black and ethnic minorities (BME) as identified in the report concluded by the University of Leeds in June 2014 from that report which pertains to the UK.[[14]](#footnote-14) Through conducting interviews, in particular with many black disabled women and disabled women belonging to an ethnic minority, it explores the intersectional forms of discrimination to which they are subjected based on their gender, disability, race, ethnic background and other layers of their identity.

1. Women interviewed for this study experienced different types of violence.
Psychological violence, control and isolation, were common experiences. Sometimes this was connected to their impairment, other times it was not. In the majority of cases the perpetrators were intimate partners, and the abuse took place in their private homes.
2. Women had different levels of knowledge about their rights. Lack of access was compounded by the way the law segments rights into those related to gender, disability, race, sexuality etc., making it difficult to tell which rights applied to their situation.
3. Competition for resources and funding impacted on the ability and willingness of support services to assist disabled women. Service providers anticipated increased demand for resources that accompanied support of disabled women and this acted as a deterrent for some at least. Lack of funding to pay for specific adaptations to premises was also highlighted in the interviews and it was felt that if these were made available, it would need to be ring fenced for the purpose.
4. **Some women were reluctant to access social services for a range of reasons, such as the fear that children might be removed on the basis of assumed incapacity.**Issues mentioned included disabling attitudinal barriers from support services, including social services, women’s support services and the court and barriers to women’s safety. Despite experiencing on-going violence from partners, some women could not access formal or informal support, with safeguarding services reported by some as especially problematic.
5. **Obstacles arose from perpetrators, family members, people considered to be ‘carers’ or other individuals as well as those associated with accessing formal or informal support.
For some women, family members perpetrated violence such as in the case of BME Deaf women.** Other barriers imposed by BME families included restrictions on the choice of partners and forced marriage, which further led to abuse by women’s husbands and in-laws. For some, it was not considered culturally appropriate to ask for external support and challenge the familial arrangement.  The ‘keep it in the family’ philosophy was reported as typical in the Asian community.  Another barrier faced was the inability to communicate with members due to lack of knowledge of use of sign language by family members.
6. **Disabled women had concerns about being left without support, if they decided to leave the perpetrator.** However, this idea was reinforced by others who disregarded the possibility that a ‘carer’ might be the perpetrator of sexual violence.  This indicated a disregard for disabled women’s sexuality, suggesting that the man was more of a carer than a partner, and conversely a disregard for violence on the basis that the man was somebody who ‘cared’. Therefore, getting others to recognise the problem of abuse and violence was very problematic for some. Even if it was recognised, getting action presented further problems.
7. **However, even in specialist services for Deaf women/women with hearing impairments and minority ethnic women, problems arose with regard to confidentiality. There are only a small pool of sign language and language interpreters in the UK, which may create additional barriers to maintaining privacy and confidentiality**. This may especially be problematic for services offered in small communities, and can prevent disabled women from disclosing their stories or actively seeking support.
8. Women interviewed had little knowledge about the law and how it was implemented in practice. Often they were not clear about their formal rights under criminal law, or had partial knowledge of the criminal prosecution process. Beyond this many expressed a lack of confidence in dealing with the criminal justice process or were sceptical about the degree to which it could help. Many felt they were disadvantaged compared with non-disabled women. While improvements in recent years were reported, disabled women stated that the police could be judgemental towards disabled women, operate on the basis of mistaken assumptions about women’s mental abilities and situations and be unwilling to press charges unless the woman did so herself. They were reported to disbelieve disabled women or to be judgmental of the coping mechanisms they employed to deal with experiences of sexual abuse. Further, women felt the police hindered their access to justice. Issues of accessibility of the police services to the disabled population and especially the deaf and hearing impaired were also commented on.

Given the findings of this report and the reality of the barriers for women with disabilities in facing violence, we would like to express our concern and **request as priority the amendment to the Serious Crime Act 2015.**

There would be serious impact on disabled women as **it allows a defence for “carers” accused of the new crime of coercive control to argue that they are acting in their disabled partner’s “best interest” and reduces the maximum sentence for the crime from 14 to 5 years. We believe this is open to challenge under ICESCR, CEDAW and the CRPD.**

On the one hand we are happy that women will have the added protection from the new legislation, that part of the Serious Crime Act 2015 will make it illegal for someone to exercise psychological, emotional or financial control over their partner. The law has been welcomed by women’s groups, who have long called for coercive control, which they say is often a prelude to violence, to be recognised as a crime. **However, in a context where violence against disabled women is barely addressed within the Criminal Justice system, we believe this amendment Serious Crime Act 2015 Section 76 would put the onus on the victim to prove that the abuser was not acting in her best interest.** There are complex issues here related to the disproportionate power relationship and cultural and social stereotypes which impact on what is considered to be in one’s “best interest” and which continue to result in more weight given to the views of partners/carers over those of the individual concerned (all the more so when it concerns a disabled woman).[[15]](#footnote-15) We see this as an attack on disabled women’s human rights as it does not respect their legal capacity and decision-making on an equal basis with others in violation of Articles 10 & 12, ICESCR, Article 15, CEDAW and Article 12, CRPD.

We would also like to point out that **no disabled persons’ organisation (DPO) was consulted concerning the drafting of this amendment despite the huge impact of this amendment to disabled women.** Only the Women’s Aid’s views were sought - which is a national charity. We have huge respect for the work they, do but they do not and cannot represent the voices of disabled people /women.

**“Decriminalisation” of rape and abuse of disabled women in the judicial system**Finally, we would like to point out that there is a grave failure to protect disabled women from rape and sexual abuse to the extent that it has been described as the decriminalisation of rape and abuse of disabled women in the judicial system. This has huge consequences for disabled women and violates their right to non-discrimination, effective protection from violence, right to dignity and bodily integrity and access to justice.

Research shows that 18% of women who report rape have a mental health issue. People with mental health issues were 40% less likely to have their case referred to the police for prosecution than people without these difficulties. People with learning difficulties were 67% less likely to have their case referred for prosecution.[[16]](#footnote-16)

This means that disabled women are less likely to seek help or redress because acts perpetrated against them are **not** effectively investigated, perpetrators are **not** prosecuted and appropriately sanctioned, and disabled victims have much less access to adequate remedies.

A 2014 study[[17]](#footnote-17) found that only around 15% of rapes recorded by police as crimes last year resulted in rape charges being brought against a suspect. The research shows that more than 80% of people reporting rape to the Metropolitan Police are vulnerable to sexual attack (women with psychosocial disabilities and women with learning disabilities) but that these same vulnerabilities mean their cases are less likely to be result in a suspect being charged.

It was documented that if a victim has mental health problems or is in a current relationship with the suspect then the most likely outcome is that the case will be dropped. Two thirds of rape complaints drop out of the criminal justice system before they are sent to prosecutors, and detectives’ decisions on rape cases are rarely subject to outside scrutiny. Unlike the Crown Prosecution Service, the police do not record their reasons for dropping cases consistently and there is no centralised data collection.

**Proposed recommendations:**

* Improve assessments for supports and benefits for persons with disabilities (e.g. the Employment Assessment Allowance (ESA), Personal Independent Payments (PIP)) by having more and better trained staff.
* Continue funding disabled workers with Access to Work with more advisors to help disabled work get support for employment, especially those with higher support needs and deaf people needing BSL. Include support for young people to access apprenticeships
* Take steps to reinstate benefits (such as the Independent Living Fund) and open it to new claimants to ensure that persons with disabilities have an adequate standard of living and can participate and be included in the community on an equal basis with others.
* Build more accessible and affordable housing for disabled people as well as expand the availability and access to community based services to enable them to live independently out in the community not in institutions
* In both mainstream legislation and disability-specific legislation, address the heightened risk for girls and women with disabilities of becoming victims of violence, abuse and exploitation in the home, institutions, and the community. Adopt urgent measures to ensure the prosecution of perpetrators, and the accessibility of support services, shelters, hotlines, complaints mechanisms and information for victims with disabilities. Collect adequate data on women and girls which is systematically disaggregated by age, background, disability, geographical location, etc., across all sectors including protection from violence, access to justice, consultation, etc.
* Take urgent steps to train police, health workers, court personnel, judges, lawyers and other interlocutors of victims of violence on communicating with persons with disabilities and on their rights including the risks to which they are exposed on account of multiple and intersectional discrimination. Implement a system to monitor police decisions for dropping cases relating to sexual violence.
1. Sisters of Frida is a disabled women’s collective based in the UK, http://www.sisofrida.org/ [↑](#footnote-ref-1)
2. http://www.un.org/disabilities/countries.asp?navid=12&pid=166 [↑](#footnote-ref-2)
3. Examples : <http://www.theguardian.com/society/2014/jul/26/disable-people-hidden-uk-housing-crisis>

<http://www.bbc.co.uk/newsbeat/article/35682556/campaign-to-help-autistic-boy-matthew-garnett-who-thinks-hes-in-prison>

<http://www.mirror.co.uk/news/uk-news/autistic-lad-trapped-care-home-4095665>

https://www.sundaypost.com/news/uk-news/my-autistic-son-is-a-prisoner-in-hospital-200-miles-from-home/ [↑](#footnote-ref-3)
4. http://www.theguardian.com/society/2016/mar/01/people-learning-disabilities-human-connor-sparrowhawk-winterbourne-view. [↑](#footnote-ref-4)
5. http://www.cqc.org.uk/content/action-taken-cqc-protect-people-being-cared-westgate-college-deaf-people-and-road-project [↑](#footnote-ref-5)
6. https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/468889/access-to-work-statistics-apr-jun-2015.pdf [↑](#footnote-ref-6)
7. http://www.disabilitynewsservice.com/dwp-silence-over-figures-that-would-reveal-scale-of-access-to-work-cuts/ [↑](#footnote-ref-7)
8. http://dpac.uk.net/2015/03/response-to-ministerial-statement-on-access/ [↑](#footnote-ref-8)
9. https://www.sense.org.uk/content/esa-descriptors-determine-whether-you-have-limited-capability-work [↑](#footnote-ref-9)
10. http://www.theguardian.com/society/2013/jan/17/atos-attack-emotional-commons-debate [↑](#footnote-ref-10)
11. http://www.theguardian.com/society/2013/jan/17/atos-attack-emotional-commons-debate [↑](#footnote-ref-11)
12. https://www.equalityhumanrights.com/en/welfare-reform-and-work-bill-report-stage-clauses-11-12-13-and-14-house-lords-27-january-2016 [↑](#footnote-ref-12)
13. http://bit.ly/1L5zxdq [↑](#footnote-ref-13)
14. <http://www.sociology.leeds.ac.uk/assets/files/research/cds/vadw/Empirical-Report-UK.pdf> [↑](#footnote-ref-14)
15. See explanatory notes to Section 76, Annex I :

“This defence is intended to cover, for example, circumstances where a person was a carer for a mentally ill spouse, and by virtue of his or her medical condition, he or she had to be kept at home or compelled to take medication, for his or her own protection or in his or her own best interests. In this context, the person’s behaviour might be considered controlling, but would be reasonable under the circumstances.” [↑](#footnote-ref-15)
16. <https://www.thebureauinvestigates.com/2014/02/28/rape-has-been-decriminalised-for-the-most-vulnerable-says-senior-met-adviser/> [↑](#footnote-ref-16)
17. https://www.thebureauinvestigates.com/2014/02/28/revealed-why-the-police-are-failing-most-rape-victims/ [↑](#footnote-ref-17)