

February 2018

## **Submission to the UN Independent Expert on Foreign Debt and Human Rights**

*'The impact of economic reform policies on women's human rights'*

1. Just Fair works to realise a fairer and more just society in the UK by monitoring and advocating the protection of economic and social rights. Just Fair is committed to increasing public awareness of international human rights law and the capability to use it. Just Fair is also devoted to the advancement of high-quality thinking, training and practice to ensure that economic and social rights are respected, protected and fulfilled.
2. This submission focuses on two issues documented by Just Fair and other organisations: a) impact of the MoU between the Home Office and the Department of Health on the right to healthcare of undocumented migrant women and b) disproportionate impact of welfare reforms on women. The content of this submission is based on analysis already conducted and partly published by Just Fair.

### MoU between the Home Office and the Department of Health: Impact on Women

3. A Memorandum of Understanding between NHS Digital (formerly Health and Social Care Information Centre), the Home Office and the Department of Health ("MoU") came into effect in January 2017.<sup>1</sup> The intention of this MoU was to formalise and facilitate the access to NHS patients' non-clinical information, including their home address, by Home Office Immigration Enforcement authorities. The MoU claims that the disclosure of data is a matter of "public interest" because of the "importance of maintaining effective immigration controls [to] remove/prevent the entry of those who might pose a danger to the public, [and] harm the economic wellbeing of the country".<sup>2</sup>
4. It has been estimated that around 600,000 undocumented people live in the UK, including children who were born in the country.<sup>3</sup>

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<sup>1</sup> This section is based on *'Right to Health for All'*, a briefing published jointly by Just Fair and Doctors of the World in June 2017.

<sup>2</sup> Home Office, Department of Health and NHS Digital, *Memorandum of Understanding*, 1 November 2016, para. 7.9.

<sup>3</sup> Full Fact, *'Why we can't say for sure how many illegal immigrants are living in the UK'*, June 2014.

5. Nobody is supposed to be denied for maternal, emergency and primary healthcare in the United Kingdom.<sup>4</sup> However, medical charities regularly see migrants for whom this is not guaranteed, and the policies implemented in recent times persist in the breach of their human right to health.<sup>5</sup>
6. The transfer of patients' data from the NHS to the Home Office did not start in 2017. NHS Digital has issued quarterly datasets of personal data trace requests since 2014,<sup>6</sup> but law enforcement authorities have made requests at least since 2008.<sup>7</sup> According to the NHS Digital data register, the Home Office made 8,127 requests for patients' details between January and November 2016, a three-fold increase on the monthly average for 2014 (2,937 in twelve months). According to a more recent NHS Digital submission to the House of Commons Health Committee, 6,171 requests were made in 2017.<sup>8</sup>
7. In light of evidence gathered in the UK and other countries, Public Health England, an official and independent body, has warned of the "unintended serious consequences" of the sharing of information between medical professionals and immigration officers.<sup>9</sup>
8. There are strong reasons to believe that the consequences are even more severe for migrant women. In addition to the pay gap and to women's more precarious access to work, the unbalanced distribution of family care responsibilities in society is bound to have disproportionate effects on women living in particularly vulnerable situations, such as undocumented migrant women. Furthermore, this policy is likely to have a significant impact over women's sexual and reproductive rights.

*"I feel trapped. I'm in a situation where I need to go to the hospital but I can't, because I feel my information might not be confidential. I can't imagine being separated from my partner. Maybe they would make me go back without my baby too. I would be separated from one or even both of them."* (Six-month pregnant Ugandan woman who sought antenatal care from Doctors of the World because she was too scared

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<sup>4</sup> [Section 1\(3\)](#) of the NHS Act 2006 and [National Health Service \(Charges to Overseas Visitors\) Regulations 2015](#).

<sup>5</sup> Doctors of the World, [2015 UK Report](#), 2016; Maternity Action, [The Impact on Health Inequalities of Charging Migrant Women for NHS Maternity Care: A Scoping Study](#), 2017.

<sup>6</sup> Source: [NHS Digital Data Register](#).

<sup>7</sup> Sir Nick Partridge, '[Review of data releases by the NHS Information Centre](#)', 17 June 2014.

<sup>8</sup> NHS Digital's [written evidence](#) to the Health Committee, January 2018, p. 8.

<sup>9</sup> Public Health England's [response](#) to the inquiry by the Parliamentary Health Select Committee, April 2017.

to visit her GP; she is married to a UK citizen and has lived in the UK for five years)

*“I felt like I was carrying the weight of the whole world. I was worried that if I went to the hospital and the immigration authorities know about it, they might get me and deport me. But if I didn’t go to hospital, then what about the lump?”* (Filipina woman who received an appointment for a biopsy but did not attend out of fear for the consequences; she works in the cleaning service and has lived in the UK for several years without visa).<sup>10</sup>

9. The Home Office is currently facing a legal challenge over claims NHS data-sharing violates patients’ right to privacy under the Human Rights Act 1998.<sup>11</sup>
10. In January 2018, the Chair of the House of Commons Health Committee called for NHS Digital to withdraw immediately from the MoU and for the immigration tracing service to be suspended.<sup>12</sup> At the time of this writing, the Government had not yet responded to this call.

### Disproportionate impact of tax, public spending and welfare reforms on women

11. The UK has made significant changes to its social security regime since 2010. In 2016, the UN Committee on Economic, Social and Cultural Rights expressed serious concerns about “the disproportionate adverse impact that austerity measures, introduced since 2010, are having on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups”.<sup>13</sup>
12. The most significant changes to welfare state were introduced through the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016: A benefit cap limiting the total amount of benefits and tax credits initially to £26,000 and later to £20,000, £23,000 in London; Universal Credit with a single payment for those in or out of work replacing other benefits; Tougher sanctions in case of breach of the requirements of compliance by claimants; Replacing the Disability Living Allowance with Personal Independence

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<sup>10</sup> Both of these cases were documented by Doctors of the World. Source: The Guardian, ‘[Crackdown on migrants forces NHS doctors to “act as border guards”](#)’, 20 April 2017.

<sup>11</sup> The Independent, ‘[NHS accused of breaching doctor-patient confidentiality for helping Home Office target foreigners](#)’, 9 November 2017.

<sup>12</sup> [Letter](#) from Sarah Wollaston MP to the Chief Executive of NHS Digital, 29 January 2018.

<sup>13</sup> UN CESCR, [Concluding Observations: UK](#) (2016), UN doc: E/C.12/GBR/CO/6, para. 18.

Payments, with more stringent and frequent medical tests; Replacing Incapacity Benefits with Employment and Support Allowance, also with more stringent and frequent medical tests; Freezing of child benefits and limiting the annual benefit increase rate.

13. The welfare reforms have had a disproportionate impact on families with children, and particularly single-parent households, where by and large the parent is the mother. Women's Budget Group has documented that "women are hit harder than men and households headed by women such as lone parents and single female pensioners are hit hardest, both being about 20% worse-off on average in 2020. [...] Of the £82bn in cumulative tax changes and cuts in social security spending announced since 2010 that will have been implemented by 2020, 81% will have come from women."<sup>14</sup>
14. In November 2017, the Equality and Human Rights Commission (one of the NHRIs in Great Britain) published the interim cumulative impact analysis of the tax, public spending and welfare reforms since 2010.
15. Among other findings, the EHRC's report shows that lone parents, more than 80% of whom are women, have suffered disproportionately. In fact, women have been more negatively affected by tax and welfare reforms in all income brackets. Women lose more from the reforms than men in all age groups except for the 65-74 age group, where men lose slightly more. The difference between average losses for men and women is much bigger in the 18-24, 25-34 and 35-44 age groups than it is in the older age groups. This largely reflects benefit and tax credit payments to children in couple and lone parent families in these age groups, where the transfer payments are allocated to the mother rather than the father in most cases.<sup>15</sup>

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<sup>14</sup> Women's Budget Group, [A cumulative gender impact assessment of ten years of austerity policies](#), March 2016.

<sup>15</sup> EHRC, [Impact of tax and welfare reforms between 2010 and 2017: interim report](#), November 2017, pp. 28-29. (Full report to be published in March 2018)