



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Submission to the Executive Office's  
Consultation on the Ending Violence Against  
Women and Girls Strategic Framework**

**03 October 2023**

## Table of Contents

Summary of Recommendations .....	3
1.0 Introduction .....	7
2.0 Human Rights Standards .....	10
UN CAT .....	11
UN ICCPR .....	12
UN CERD .....	13
UN CRPD .....	13
UN Palermo Protocol .....	14
3.0 Specific Needs.....	15
Migrant women and women seeking asylum.....	17
Victims of human trafficking.....	18
Poverty .....	19
4.0 Children.....	20
5.0 Disaggregated Data .....	22
6.0 Funding .....	24
7.0 Article 2 of the Windsor Framework.....	25
The EU Victims’ Directive .....	29
The EU Trafficking Directive .....	31
The EU Child Sexual Exploitation Directive .....	33
Proposal for an EU Directive to combat violence against women and domestic violence.....	34

## Summary of Recommendations

- 2.16** The NIHRC recommends that the Executive Office includes in the draft Strategic Framework a full and comprehensive list of relevant human rights standards with corresponding links.
- 3.7** The NIHRC recommends that the Executive Office makes explicit provision in the draft Strategic Framework for women and girls who are at an increased risk of violence or who face additional barriers to accessing justice, service provision and specialised support, including legal support. This should include ensuring that specialised services are consistently available and fully accessible.
- 3.13** The NIHRC recommends that the Executive Office makes clear in the draft Strategic Framework that support is available, regardless of immigration status, and that sufficient refuge places are available in NI according to need, in compliance with international human rights law.
- 3.14** The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework ensures that refugee women and women seeking asylum are provided with information on their rights under domestic law in NI pertaining to violence against women and girls.
- 3.19** The NIHRC recommends that the Executive Office considers how the draft Strategic Framework can complement and enhance other government strategies which take a gender-neutral approach to issues which have a gendered effect.
- 3.23** The NIHRC recommends that the Executive Office, in partnership with other relevant NI departments, ensures that the draft Strategic Framework includes measures to address the effect of poverty in exacerbating violence against women and girls. This should include ensuring that specialised services are accessible and securely funded.
- 4.5** The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework includes specific measures aimed at child victims of abuse, especially girls, and specifies how it will

**complement other strategies aimed at tackling abuse of children and young people.**

- 4.6 The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework is reflective of the Barnahus Model, and that this approach is incorporated across the criminal justice system when dealing with child victims.**
- 5.7 The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework provides for data collection that is disaggregated, regular, comprehensive and comparable.**
- 5.8 The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework provides for disaggregated data collection on violence against women and girls that is reflective and representative of NI society.**
- 6.5 The NIHRC recommends that the Executive Office secures ring-fenced long-term funding that extends across the seven-year span of the draft Strategic Framework and that includes a contingency plan in the latter years of the draft Strategic Framework to ensure long-term initiatives can continue effectively without resource constraints.**
- 7.7 The NIHRC recommends that the Executive Office considers Windsor Framework Article 2 within its current impact assessment framework, including Human Rights Impact Assessments to ensure continuity of human rights and equality protections.**
- 7.8 The NIHRC recommends that, when assessing the impact of policy and legislation on Windsor Framework Article 2, the Executive Office and NI Departments should consider all EU law which underpins relevant ECHR rights and ensure there is no diminution of standards set out in the relevant EU law.**
- 7.9 The NIHRC recommends that the Executive Office develops and implements training and guidance for departmental officials on Windsor Framework Article 2, including Impact Assessments, to embed consideration of Article 2 throughout legislative and policy processes.**

- 7.13** The NIHRC recommends that the Executive Office’s draft Windsor Framework Impact Assessment identifies the relevance of the EU Recast Equal Treatment (Employment) Directive and the EU Equal Treatment (Self-Employment) Directive to the draft Strategic Framework and acknowledges the need to keep a watching brief on these Directives and relevant CJEU jurisprudence in relation to the draft Strategic Framework.
- 7.14** The NIHRC recommends that the Executive Office includes reference to the EU Recast Equal Treatment (Employment) Directive and the EU Equal Treatment (Self-Employment) Directive under its Human Rights Framework in the draft Strategic Framework.
- 7.16** The NIHRC recommends that Windsor Framework Impact Assessments consider all relevant provisions of EU law engaged under the Windsor Framework Article 2 commitment in relation to the legislation or policy being assessed, as well as screening for breaches of the commitment.
- 7.26** The NIHRC recommends that the Executive Office embeds consideration of the EU Victims’ Directive in its draft Strategic Framework.
- 7.27** The NIHRC recommends that the Executive Office define, in future Windsor Framework Impact Assessments, victims’ rights under the Belfast (Good Friday) Agreement to include all victims of crime and considers relevant provisions of the EU Victims’ Directive in future legislation and policy relating to victims of crime.
- 7.34** The NIHRC recommends that the Executive Office considers the EU Trafficking Directive and the EU Child Sexual Exploitation Directive in its Windsor Framework Impact Assessment and embeds these provisions within the draft Strategic Framework.
- 7.40** The NIHRC recommends that the Executive Office keep under review the proposed EU VAWG Directive and ensure that any potential updates to the EU Equality Directives are reflected in NI law in compliance with Windsor Framework Article 2.

**7.41 The NIHRC recommends that, in addition to what is required by the keep pace obligation under the Windsor Framework and as a matter of good practice, the Executive Office should ensure NI law aligns, on a voluntary basis, with any enhancement to equality and human rights pursuant to the EU VAWG Directive.**

## 1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC is also mandated, under section 78A(1) of the Northern Ireland Act 1998, to monitor the implementation of Article 2 of the Windsor Framework, to ensure there is no diminution of rights protected in the “Rights, Safeguards and Equality of Opportunity” chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK’s withdrawal from the EU.<sup>1</sup> In accordance with these functions the following statutory advice is submitted to the Executive Office in response to its consultation on the draft Ending Violence against Women and Girls Strategic Framework.

1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and the United Nations (UN) system and treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:

- European Convention on Human Rights 1950 (ECHR);<sup>2</sup>
- UN Convention on the Elimination of Racial Discrimination 1965 (UN CERD);<sup>3</sup>
- UN International Covenant on Civil and Political Rights 1966 (UN ICCPR);<sup>4</sup>
- UN Convention on Elimination of Discrimination against Women 1981 (UN CEDAW);<sup>5</sup>
- UN Convention against Torture 1984 (UN CAT);<sup>6</sup>
- UN Convention on the Rights of the Child 1989 (UN CRC);<sup>7</sup>

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<sup>1</sup> The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement and all references to the Protocol in this document have been updated to reflect this change. (see Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).

<sup>2</sup> Ratified by the UK 1951.

<sup>3</sup> Ratified by the UK 1969.

<sup>4</sup> Ratified by the UK 1976.

<sup>5</sup> Ratified by the UK 1986.

<sup>6</sup> Ratified by the UK 1988.

<sup>7</sup> Ratified by the UK 1989.

- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime 2000 (UN Palermo Protocol).<sup>8</sup>
- CoE Convention on Action against Trafficking in Human Beings 2005;<sup>9</sup>
- UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD);<sup>10</sup>
- CoE Convention on Protection of Children against Sexual Exploitation and Sexual Abuse 2007 (CoE Lanzarote Convention);<sup>11</sup> and
- CoE Convention on Preventing and Combating Violence against Women 2011 (CoE Istanbul Convention).<sup>12</sup>

1.3 In addition to these treaty standards, the following declarations and principles provide further guidance in respect of specific areas:

- CoE Parliamentary Assembly Resolution 1697;<sup>13</sup>
- UN CEDAW Committee General Recommendation No 19;<sup>14</sup>
- UN Declaration on the Elimination of Violence against Women 1993;<sup>15</sup>
- UN CERD Committee General Recommendation No 25;<sup>16</sup>
- UN Human Rights Committee General Comment No 28;<sup>17</sup>
- UN CAT Committee General Comment No 2;<sup>18</sup>
- UN CEDAW Committee General Recommendation No 30;<sup>19</sup>
- UN Human Rights Committee Concluding Observations 2015;<sup>20</sup>
- UN CRPD Committee General Comment No 3;<sup>21</sup>

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<sup>8</sup> Ratified by the UK in 2006.

<sup>9</sup> Ratified by the UK in 2007.

<sup>10</sup> Ratified by the UK 2009.

<sup>11</sup> Ratified by the UK in 2018.

<sup>12</sup> Ratified by the UK in 2022.

<sup>13</sup> Council of Europe, 'Parliamentary Assembly Resolution 1697: Migrant Women At Particular Risk from Domestic Violence', 20 November 2009.

<sup>14</sup> A/47/38, 'UN CEDAW Committee General Recommendation No 19: Violence Against Women', 30 January 1992.

<sup>15</sup> UN General Assembly, 'Declaration on the Elimination of Violence against Women', 20 December 1993.

<sup>16</sup> 'UN CERD Committee General Recommendation No 25: Gender-Related Dimensions of Racial Discrimination', 20 March 2000.

<sup>17</sup> HRI/GEN/1/Rev.9 (Vol. 9), 'UN Human Rights Committee General Comment No 28: Article 3 (The Equality of Rights between Men and Women)', 29 March 2000.

<sup>18</sup> CAT/C/GC/2, 'UN CAT Committee General Comment No 2: Implementation of Article 2 by State Parties', 27 January 2008,

<sup>19</sup> CEDAW/C/GC/30, 'UN CEDAW Committee General Recommendation No 30: Women in Conflict Prevention, Conflict and Post-conflict Situations', 18 October 2013.

<sup>20</sup> CCPR/C/GBR/CO/7, 'Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015.

<sup>21</sup> CRPD/C/GC/3, 'UN CRPD Committee General Comment No 3: Women and Girls with Disabilities', 25 November 2016.



- UN CRPD Committee Concluding Observations 2017;<sup>22</sup>
- UN CEDAW Committee General Recommendation No 35 2017;<sup>23</sup>
- UN CEDAW Concluding Observations 2019;<sup>24</sup>
- UN CAT Committee Concluding Observations 2019;<sup>25</sup>
- UN CEDAW Committee General Recommendation No 38;<sup>26</sup> and
- UN CRC Committee Concluding Observations 2023.<sup>27</sup>

1.4 The NIHRC further advises on the UK Government's commitment in Windsor Framework Article 2(1) to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU. This is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. In addition, Section 6 of the Northern Ireland Act 1998 provides that the NI Assembly is prohibited from making any law which is incompatible with Windsor Framework Article 2. Section 24 of the 1998 Act also provides that all acts of the Department should be compatible with Windsor Framework Article 2. The relevant EU law in this context includes:

- The EU Victims' Directive;<sup>28</sup>
- The EU Trafficking Directive;<sup>29</sup> and
- The EU Child Sexual Exploitation Directive.<sup>30</sup>

1.5 The NIHRC welcomes the opportunity to consider and provide advice on the proposed Strategic Framework to tackle violence against women and girls in NI (draft Strategic Framework). In terms of its content, the NIHRC

<sup>22</sup> CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 3 October 2017.

<sup>23</sup> CEDAW/C/GC/35, 'Committee on the Elimination of Discrimination against Women General Recommendation No 35: Gender-based Violence Against Women, Updating General Recommendation No 19', 14 July 2017.

<sup>24</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019.

<sup>25</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

<sup>26</sup> CEDAW/C/GC/38, 'UN CEDAW Committee General Recommendation No 38: Trafficking in Women and Girls in the Context of Global Migration', 20 November 2020.

<sup>27</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 22 June 2023.

<sup>28</sup> Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

<sup>29</sup> Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.

<sup>30</sup> Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

welcomes the development of a draft Strategic Framework to tackle violence against women and girls, which is in line with the UN CEDAW Committee’s recommendation by that measures are taken to combat violence against women and girls.<sup>31</sup> The NIHRC welcomes the Executive Office’s approach to developing the draft Strategic Framework which has involved a thorough and efficient co-design process. The NIHRC also welcomes the gender-sensitive approach taken by the Executive Office within the draft Strategic Framework, which has also been recommended by several international human rights bodies.<sup>32</sup> While recognising the positive approach set out within the draft Strategic Framework, there are some additional points that the Executive Office may wish to consider.

## 2.0 Human Rights Standards

- 2.1 The NIHRC welcomes the inclusion of a list of relevant human rights standards pertinent to the content of the draft Strategic Framework.
- 2.2 The NIHRC welcomes the acknowledgement that the draft Strategic Framework will play a key role in embedding international best practice and in bringing about full compliance with UN and Council of Europe standards.<sup>33</sup> The UK ratified the Council of Europe (CoE) Istanbul Convention in 2022 and the Council of Europe are due to evaluate the UK’s compliance with the Convention in 2024. The NIHRC welcomes the commitment of the Executive Office and other NI Departments to take measures to ensure the effective implementation of the CoE Istanbul Convention.
- 2.3 The NIHRC welcomes reference to the Human Rights Act 1998, the ECHR, the UN CEDAW and the UN CRC.<sup>34</sup> These references could be strengthened by ensuring each mentioned human rights standard is appropriately linked. For example, there is a link provided to the Human Rights Act 1998, but not the ECHR.<sup>35</sup>

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<sup>31</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 29.

<sup>32</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 30(b), (d) and (e); CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 57.

<sup>33</sup> The Executive Office, ‘Ending Violence Against Women and Girls Strategic Framework’ (TEO, 2023), at 17.

<sup>34</sup> The Executive Office, ‘Ending Violence Against Women and Girls Strategic Framework’ (TEO, 2023), at 17.

<sup>35</sup> The Executive Office, ‘Ending Violence Against Women and Girls Strategic Framework’ (TEO, 2023), at 17.

- 2.4 Adherence to human rights standards could also be strengthened by ensuring that the full array of relevant standards is included. For example, UN CAT, UN ICCPR, UN CERD and UN CRPD are relevant. The corresponding provisions are set out below.

## **UN CAT**

- 2.5 Article 16 of the UN CAT provides that a State Party, which includes the UK:

shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1 [of the UN CAT], when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

- 2.6 The UN CAT Committee has also made clear that:

where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the [UN CAT]..., the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the [UN CAT]... for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the [UN CAT]... with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The [UN CAT] Committee has applied this principle to States Parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

2.7 The UN CAT Committee has highlighted gender-based violence as a persistent issue in NI.<sup>36</sup> The UN CAT Committee has also raised concerns about the increasing number of domestic and sexual abuse offences, mainly against women, while noting the low prosecution and conviction rates.<sup>37</sup> The UN CAT Committee recommended that the UK Government and NI Executive ensure that “victims have access to effective remedies and means of protection, including strong police protection”.<sup>38</sup>

## **UN ICCPR**

2.8 Article 3 of the UN ICCPR provides for State Parties to the UN ICCPR, which includes the UK, to “undertake to ensure equality of rights between men and women to the enjoyment of all civil and political rights set forth in the [UN ICCPR]”. Article 7 of the UN ICCPR provides for the right to be free from torture or cruel, inhumane or degrading treatment or punishment. Additionally, Article 24 of the UN ICCPR provides that “every child shall have... the right to such measures of protections as are required by his status as a minor”. The UN Human Rights Committee has confirmed that establishing compliance with Articles 7 and 24 of the UN ICCPR includes consideration of the national laws and practice regarding domestic abuse and other types of violence against women and girls.<sup>39</sup>

2.9 The UN Human Rights Committee has noted its concerns about the levels of violence against women and girls and recommended that the UK Government and NI Executive ensures that victims have access to effective remedies and means of protection, including “strong police protection, adequate emergency shelter, rehabilitative services, legal assistance and other support services”.<sup>40</sup>

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<sup>36</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 56.

<sup>37</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 56.

<sup>38</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 57.

<sup>39</sup> HRI/GEN/1/Rev.9 (Vol. 9), ‘UN Human Rights Committee General Comment No 28: Article 3 (The Equality of Rights between Men and Women)’, 29 March 2000, at para 11.

<sup>40</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015.

## **UN CERD**

2.10 Article 5(b) of the UN CERD protects the right to security of person and protections by the State against violence or bodily harm, “whether inflicted by government officials or by any individual group or institution”. The UN CERD Committee has noted that:

certain forms of racial discrimination may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups in detention or during armed conflict; the coerced sterilization of indigenous women; abuse of women workers in the informal sector or domestic workers employed abroad by their employers.<sup>41</sup>

## **UN CRPD**

2.11 Article 6 of the UN CRPD recognises that women and girls with disabilities are subject to multiple discrimination and provides that State Parties, which includes the UK, should “take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms”. Article 15 of the UN CRPD provides that:

- 1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
- 2) States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

2.12 Article 16 of the UN CRPD requires State Parties to “take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from

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<sup>41</sup> ‘UN CERD Committee General Recommendation No 25: Gender-Related Dimensions of Racial Discrimination’, 20 March 2000, at para 2.

all forms of exploitation, violence and abuse, including their gender-based aspects”.

2.13 The UN CRPD Committee has identified that women with disabilities are at heightened risk of violence and exploitation, which violates Article 16 of the UN CRPD. Such violence includes physical force, economic abuse and sexual violence.<sup>42</sup> The UN CRPD Committee has identified its ongoing concerns that the rights of women and girls with disabilities have not been systemically mainstreamed into a gender equality strategy and disability agendas in the UK, including NI.<sup>43</sup> The UN CRPD Committee also noted its concerns regarding abuse, ill-treatment and sexual violence against women, children, intersex persons and older people with disabilities in the UK, including NI.<sup>44</sup>

### **UN Palermo Protocol**

2.14 The UN Palermo Protocol sets out provision to prevent, suppress and punish trafficking in persons, especially women and children. Article 6(4) of the Palermo Protocol requires State Parties, including the UK, to:

take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.<sup>45</sup>

2.15 Article 5 of the CoE Convention on Action against Trafficking in Human Beings obliges State Parties to “promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach”. Additionally, Article 17 requires State Parties to “promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.

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<sup>42</sup> CRPD/C/GC/3, ‘UN CRPD Committee General Comment No 3: Women and Girls with Disabilities’, 25 November 2016.

<sup>43</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 19.

<sup>44</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 38.

<sup>45</sup> Article 6, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UK Convention against Transnational Organised Crime.

- 2.16 **The NIHRC recommends that the Executive Office includes in the draft Strategic Framework a full and comprehensive list of relevant human rights standards with corresponding links.**

### 3.0 Specific Needs

- 3.1 The NIHRC welcomes the intersectional approach within the draft Strategic Framework, which aims to take a whole society and cross-government approach.<sup>46</sup> The draft Strategic Framework identifies that some women face additional risks and barriers to justice and support, including women “who are deaf and disabled, minority ethnic women and girls, LGBTQIA+, financially dependent women, homeless women, those who suffer addiction, children in care settings, as well as those with insecure immigration status and those residing in rural areas”.<sup>47</sup>
- 3.2 The UN Declaration on the Elimination of Violence against Women notes that some groups of women are at a heightened risk of violence including “women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict”.<sup>48</sup> Pursuant to that UN Declaration, States should “adopt measures towards the elimination of violence against women who are especially vulnerable to violence”.<sup>49</sup>
- 3.3 Article 4 of the CoE Istanbul Convention states that its provisions:
- shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

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<sup>46</sup> The Executive Office, ‘Ending Violence Against Women and Girls Strategic Framework’ (TEO, 2023), at 20.

<sup>47</sup> The Executive Office, ‘Ending Violence Against Women and Girls Strategic Framework’ (TEO, 2023), at 10.

<sup>48</sup> A/Res/48/104, ‘UN General Assembly Declaration on the Elimination of Violence against Women’, 1993.

<sup>49</sup> A/Res/48/104, ‘UN General Assembly Declaration on the Elimination of Violence against Women’, 1993, at article 4(l).

- 3.4 The EU Victims' Directive further requires all victims of crime be recognised and treated in a respectful and sensitive manner, without discrimination of any kind based on any ground including, but not limited to, race, membership of a national minority, residence status and disability.<sup>50</sup>
- 3.5 The UN CEDAW Committee identifies that discrimination against women and girls is "inextricably linked" to other factors affecting their lives.<sup>51</sup> The UN CEDAW Committee has highlighted that such factors include:
- women's ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, and being in prostitution, as well as trafficking in women, situations of armed conflict, geographical remoteness and the stigmatization of women who fight for their rights.<sup>52</sup>
- 3.6 The NIHRC welcomes recognition that certain groups face additional barriers in accessing support, however more detail is needed to ensure the draft Strategic Framework is as expansive and inclusive of all women and girls facing additional barriers as possible.
- 3.7 **The NIHRC recommends that the Executive Office makes explicit provision in the draft Strategic Framework for women and girls who are at an increased risk of violence or who face additional barriers to accessing justice, service provision and specialised support, including legal support. This should include ensuring that specialised services are consistently available and fully accessible.**

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<sup>50</sup> Recital 9, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>51</sup> CEDAW/C/GC/35, 'UN CEDAW Committee General Recommendation No 35 on Gender-based Violence Against Women, updating General Recommendation No 19', 26 July 2017, at para 12.

<sup>52</sup> CEDAW/C/GC/35, 'UN CEDAW Committee General Recommendation No 35 on Gender-based Violence Against Women, updating General Recommendation No 19', 26 July 2017, at para 12.



## **Migrant women and women seeking asylum**

- 3.8 The NIHRC welcomes the acknowledgement within the draft Strategic Framework of the barriers to support faced by women without recourse to public funds, and the identification of this as a suitable topic for an early Task Group Sprint. The NIHRC remains concerned about the No Recourse to Public Funds Status,<sup>53</sup> which prevents individuals from accessing safe refuge accommodation or other support.
- 3.9 The CoE Resolution 1697 invites Member States to “adopt dedicated action plans addressing the specific needs of migrant women who are victims of violence, including domestic violence...”.<sup>54</sup>
- 3.10 The UN CEDAW Committee has noted that:
- asylum-seeking women, migrants and women with insecure immigration status who experience gender-based violence, including domestic violence and rape, refrain from seeking protection and support services for fear of having their immigration status reported to authorities.<sup>55</sup>
- 3.11 The UN CEDAW Committee recommended that the UK Government and NI Executive “ensure that asylum-seeking and migrant women and women with insecure immigration status are able to seek effective protection and support services without fear of having their immigration status reported to authorities”.<sup>56</sup>
- 3.12 The draft Strategic Framework acknowledges the importance of awareness raising and early intervention.<sup>57</sup> The UN Human Rights Committee has recommended that the UK Government and NI Executive puts measures in place to encourage reporting of domestic violence “by informing women of their rights and the existing legal avenues through which they can receive

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<sup>53</sup> NI Human Rights Commission, ‘Submission to the NI Affairs Committee into the Experience of Minority Ethnic and Migrant People in NI’ (NIHRC, 2021), at para 5.14.

<sup>54</sup> Council of Europe, ‘Parliamentary Assembly Resolution 1697: Migrant Women At Particular Risk from Domestic Violence’, 20 November 2009, at para 4.2.

<sup>55</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 29(a).

<sup>56</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 30.

<sup>57</sup> The Executive Office, ‘Ending Violence Against Women and Girls Strategic Framework’ (TEO, 2023), at 31.

protection”.<sup>58</sup> The draft Strategic Framework should consider how to best inform migrant women and women seeking asylum of the domestic legal framework in NI and what support is available to them if they experience gender-based violence.

- 3.13 **The NIHRC recommends that the Executive Office makes clear in the draft Strategic Framework that support is available, regardless of immigration status, and that sufficient refuge places are available in NI according to need, in compliance with international human rights law.**
- 3.14 **The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework ensures that refugee women and women seeking asylum are provided with information on their rights under domestic law in NI pertaining to violence against women and girls.**

### **Victims of human trafficking**

- 3.15 The draft Strategic Framework identifies the need to tackle the wider spectrum of violence against women and girls, and the importance of working across government and society to tackle other types of violence including modern slavery and child sexual exploitation.<sup>59</sup>
- 3.16 The UN CEDAW Committee recognises the importance of identifying the gendered dimension of human trafficking, drawing particular attention to the trafficking of women and girls for sexual exploitation.<sup>60</sup> The UN CEDAW Committee has also noted that victims of trafficking are often subject to multiple forms of discrimination.<sup>61</sup> The UN CEDAW Committee has identified the importance of addressing and preventing several root causes of trafficking and sexual exploitation of women and girls, including “the

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<sup>58</sup> CCPR/C/GBR/CO/7, ‘Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015.

<sup>59</sup> The Executive Office, ‘Ending Violence Against Women and Girls Strategic Framework’ (TEO, 2023), at 11.

<sup>60</sup> CEDAW/C/GC/38, ‘UN CEDAW Committee General Recommendation No 38: Trafficking in Women and Girls in the Context of Global Migration’, 20 November 2020, at para 2.

<sup>61</sup> CEDAW/C/GC/38, ‘UN CEDAW Committee General Recommendation No 38: Trafficking in Women and Girls in the Context of Global Migration’, 20 November 2020, at para 12.

systemic gender-based discrimination that creates the economic and social injustices experienced disproportionately by women and girls”.<sup>62</sup>

- 3.17 Article 18(3) of the EU Trafficking Directive recognises the gender-specific nature of modern slavery and human trafficking and the need for gender-specific assistance and support measures and preventative measures where appropriate.<sup>63</sup>
- 3.18 Noting that other government strategies take a gender-neutral approach to types of violence which have a gendered impact (an approach with which the NIHRC disagrees), the NIHRC welcomes the gender-sensitive approach adopted in the draft Strategic Framework, which is in line with human rights standards.<sup>64</sup> The Executive Office may wish to consider how the draft Strategic Framework complements other government strategies, particularly the Department of Justice’s Domestic Abuse and Sexual Violence Strategy and the Modern Slavery and Human Trafficking Strategy.
- 3.19 **The NIHRC recommends that the Executive Office considers how the draft Strategic Framework can complement and enhance other government strategies which take a gender-neutral approach to issues which have a gendered effect.**

## Poverty

- 3.20 There is a risk that the current rise in the cost of living, and the current levels of poverty in NI will exacerbate violence against women and girls. This is an issue that should be emphasised further within the draft Strategic Framework.
- 3.21 The UN CEDAW Committee has recognised the effect of socio-economic circumstances on violence against women noting that “lack of economic independence forces many women to stay in violent relationships”.<sup>65</sup> The UN CEDAW Committee has also expressed concerns that women living

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<sup>62</sup> CEDAW/C/GC/38, ‘UN CEDAW Committee General Recommendation No 38: Trafficking in Women and Girls in the Context of Global Migration’, 20 November 2020, at para 18.

<sup>63</sup> Article 1 and Recitals 3 and 25, Directive 2011/36/EU, ‘EU Council Directive on preventing and combating trafficking in human beings and protecting its victims’, 5 April 2011.

<sup>64</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 56; CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 29.

<sup>65</sup> A/47/38, ‘UN CEDAW Committee General Recommendation No 19: Violence against women’, 1992, at para 23.

poverty in the UK, including NI, are at a greater risk of sexual exploitation.<sup>66</sup>

- 3.22 Recital 18 of the EU Victims' Directive identifies that the impact of domestic abuse is worsened where a victim is financially dependent on their partner and that this disproportionately affects women.
- 3.23 **The NIHRC recommends that the Executive Office, in partnership with other relevant NI departments, ensures that the draft Strategic Framework includes measures to address the effect of poverty in exacerbating violence against women and girls. This should include ensuring that specialised services are accessible and securely funded.**

## 4.0 Children

- 4.1 The Executive Office has included several initiatives in relation to supporting children and young people to develop healthy relationships within the draft Strategic Framework.<sup>67</sup> The NIHRC welcomes these initiatives, but advises that the draft Strategic Framework should include more comprehensive provisions to tackle specific issues in relation to the victimisation of children and young people, especially girls. The draft Strategic Framework draws attention to the need to work cross-departmentally to address all relevant forms of violence, including child sexual exploitation.<sup>68</sup>
- 4.2 There are several relevant human rights standards relating to child victims of abuse. Article 19 of the UN CRC requires State Parties, including the UK, to take all appropriate measures to "protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse". Article 1(2) of the EU Victims' Directive requires, where the victim is a child, the best interests of the child principle shall be a primary consideration, with Article 24 of the EU Victims' Directive providing for protection of child

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<sup>66</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 29(a).

<sup>67</sup> The Executive Office, 'Ending Violence Against Women and Girls Strategic Framework' (TEO, 2023), at 24.

<sup>68</sup> The Executive Office, 'Ending Violence Against Women and Girls Strategic Framework' (TEO, 2023), at 11.

victims during criminal proceedings.<sup>69</sup> The EU Child Sexual Exploitation Directive also identifies the need to take account of the best interests of the child when providing assistance, support and protection to child victims of sexual abuse and exploitation.<sup>70</sup> In addition, the CoE Lanzarote Convention imposes obligations on the UK Government and NI Executive to undertake preventative measures to combat child sexual exploitation.

4.3 The UN CRC Committee has recommended that the UK Government and NI Executive “develop and adopt comprehensive policies and action plans on the implementation of the UN CRC, with the participation of children”.<sup>71</sup> The UN CRC Committee further recommended that such action plans:

include a special focus on children in disadvantaged situations, including asylum-seeking, refugee and migrant children, children belonging to minority groups, children with disabilities, children in care, lesbian, gay, bisexual, transgender and intersex children, socioeconomically disadvantaged children and so-called young carers, or children with caregiver responsibilities.<sup>72</sup>

4.4 The Barnahus model is a child-centred response to victims of child sexual abuse. Barnahus coordinates parallel criminal and child welfare investigations, bringing all relevant services under one roof, with the intention of avoiding revictimising the child.<sup>73</sup> The Gillen Review made a specific recommendation to the Department of Justice to “give urgent consideration to the advantages of the Barnahus scheme and Child House pilots now operating in England and to consider the viability of a similar pilot in NI”.<sup>74</sup>

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<sup>69</sup> Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

<sup>70</sup> Article 18, Directive 2011/92/EU, ‘Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA’, 13 December 2011.

<sup>71</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 22 June 2023, at para 9(a).

<sup>72</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 22 June 2023, at para 9(c).

<sup>73</sup> Council of Europe, ‘Press Release: Barnahus model helps children who suffered sexual abuse from feeling like victims for a second time, say Council of Europe leaders’, 17 November 2022.

<sup>74</sup> Gillen Review, ‘Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations’ (DoJ, 2018), at para 195.

- 4.5 **The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework includes specific measures aimed at child victims of abuse, especially girls, and specifies how it will complement other strategies aimed at tackling abuse of children and young people.**
- 4.6 **The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework is reflective of the Barnahus Model, and that this approach is incorporated across the criminal justice system when dealing with child victims.**

## 5.0 Disaggregated Data

- 5.1 The draft Strategic Framework identifies the need to strengthen data collection across all sectors and age cohorts of society, and notes that “data mapping will be crucial to identify data already available and explore the gaps, including a requirement for disaggregated data within existing data collection methods”.<sup>75</sup>
- 5.2 Article 11(1) of the CoE Istanbul Convention requires State Parties, including the UK, to:
- a) collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of [the Istanbul Convention]; [and]
  - b) support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement [the Istanbul Convention].
- 5.3 Article 11(2) of the Istanbul Convention requires States Parties to “endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of [the Istanbul Convention]”.
- 5.4 The UN CEDAW Committee has identified that States should:

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<sup>75</sup> The Executive Office, ‘Ending Violence Against Women and Girls Strategic Framework’ (TEO, 2023), at 40.

regularly collect, analyse and publish statistical data on the number of complaints about all forms of gender-based violence against women, including technology-mediated violence, the number and type of orders of protection issued, the rates of dismissal and withdrawal of complaints, prosecution and conviction and the amount of time taken for the disposal of cases.<sup>76</sup>

- 5.5 The UN CEDAW Committee recommended that the UK Government and NI Executive “systematically collect and publish data, disaggregated by sex, gender, ethnicity, disability and age, throughout the whole of its territory to inform policymaking and assess the impact of measures taken”.<sup>77</sup> Article 11 of the CoE Istanbul Convention also highlights the importance of data collection and research, which must be disaggregated if it is to be helpful. Furthermore, Recital 64 of the EU Victims’ Directive highlights systematic and adequate statistical data collection as an essential component of effective policymaking in the field of rights set out in the EU Directive.<sup>78</sup>
- 5.6 The NIHRC reiterates the importance of collating reliable and disaggregated data that is fully reflective and representative of NI society. This includes not only focusing on obvious characteristics, such as gender, but also considering specific elements, such as age, disability, race or ethnicity. It is also advisable that data is comparable with other parts of the UK and potentially Ireland. A more comprehensive approach to data collection will assist with understanding the extent and patterns of violence against women and girls in NI.
- 5.7 **The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework provides for data collection that is disaggregated, regular, comprehensive and comparable.**
- 5.8 **The NIHRC recommends that the Executive Office ensures that the draft Strategic Framework provides for disaggregated data**

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<sup>76</sup> CEDAW/C/GC/35, ‘UN CEDAW Committee General Recommendation No 35 on Gender-based Violence Against Women, updating General Recommendation No 19’, 26 July 2017, at para 34(b).

<sup>77</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 26(d).

<sup>78</sup> Recital 64, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

## **collection on violence against women and girls that is reflective and representative of NI society.**

### **6.0 Funding**

- 6.1 The draft Strategic Framework identifies the intention to secure long term collaborative resourcing, which includes a realistic costing of all of the framework initiatives.<sup>79</sup>
- 6.2 Article 8 of the CoE Istanbul Convention states that State Parties, including the UK:
- shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.
- 6.3 The UN CEDAW Committee has identified that States should “allocate appropriate human and financial resources at the national, regional and local levels to effectively implement laws and policies for the prevention of all forms of gender-based violence against women”.<sup>80</sup> The UN CEDAW Committee has also recommended that the UK Government and NI Executive “ensure that the policy of commissioning services does not undermine the provision of specialized services for women who are victims of gender-based violence”.<sup>81</sup>
- 6.4 It is important to explain within the draft Strategic Framework what long-term resourcing constitutes and what that means for the lifespan of the framework. This draft Strategic Framework is intended to cover a period of seven years, it is integral to ensure that it is adequately funded across those seven years to ensure that it remains a meaningful tool for tackling violence against women and girls.

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<sup>79</sup> The Executive Office, ‘Ending Violence Against Women and Girls Strategic Framework’ (TEO, 2023), at 40.

<sup>80</sup> CEDAW/C/GC/35, ‘UN CEDAW Committee General Recommendation No 35 on Gender-based Violence Against Women, updating General Recommendation No 19’, 26 July 2017, at para 34(f).

<sup>81</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 30(e).



- 6.5 **The NIHRC recommends that the Executive Office secures ring-fenced long-term funding that extends across the seven-year span of the draft Strategic Framework and that includes a contingency plan in the latter years of the draft Strategic Framework to ensure long-term initiatives can continue effectively without resource constraints.**

## 7.0 Article 2 of the Windsor Framework

- 7.1 Windsor Framework Article 2 requires the UK Government to ensure that no diminution of rights, safeguards and equality of opportunities contained in the relevant part of the Belfast (Good Friday) Agreement 1998 occurs as a result of the UK's withdrawal from the EU. This includes an obligation to "keep pace" with any changes made to the six Annex 1 Equality Directives which improve the minimum levels of protection available, after 1 January 2021.<sup>82</sup>
- 7.2 For other EU obligations which underpin the rights, safeguards and equality of opportunity in Article 2, the UK Government commitment to ensure 'no diminution' is measured by the relevant EU standards as they were on the 31 December 2020.<sup>83</sup>
- 7.3 The NIHRC welcomes the Executive Office's inclusion of a Windsor Framework Impact Assessment in relation to the draft Strategic Framework. The NIHRC commends the Executive Office for considering and publishing its draft Windsor Framework Article 2 Impact Assessment. The NIHRC has set out its initial views on the draft Impact Assessment below and would welcome further engagement with the Department on this.
- 7.4 Article 2 of the Windsor Framework is the result of the recognition of the central importance of human rights and equality to the Belfast (Good Friday) Agreement 1998. A challenge in interpreting Windsor Framework Article 2 is that the Belfast (Good Friday) Agreement was not drafted as a comprehensive statement of rights protections. In the relevant chapter of the Belfast (Good Friday) Agreement, Parties affirm their "commitment to

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<sup>82</sup> Article 13, Windsor Framework.

<sup>83</sup> UK Government, 'UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland', (NIO, 2020), at para 13.

... the civil rights and religious liberties of everyone in the community” before affirming “in particular” the list of rights, safeguards and equality of opportunity. The inclusion of “affirmed in particular” suggests that this is not an exhaustive list of rights. It is the NIHRC’s view that an Impact Assessment in relation to Windsor Framework Article 2 must include consideration of civil rights, encompassing at a minimum, rights set out in the ECHR.<sup>84</sup>

- 7.5 In the relevant chapter of the Belfast (Good Friday) Agreement 1998, the UK Government commits to the incorporation of the ECHR with direct access to the courts and remedies for breach. The NIHRC, along with ECNI, have adopted the working assumption that the non-diminution commitment in Windsor Framework Article 2 encompasses the full range of rights set out in the ECHR, to the extent that they are underpinned by EU legal obligations in force on or before 31 December 2020.<sup>85</sup> Therefore, when considering Windsor Framework Article 2, it is necessary to consider which EU law underpins ECHR rights relevant to the policy or legislation being assessed. The NIHRC/ECNI working Paper on the scope of Article 2 includes a table of relevant EU law which may be of assistance in this regard and to which officials’ attention could be drawn, subject to any ‘without prejudice’ caveat deemed necessary pending court rulings on the matter.<sup>86</sup>
- 7.6 Rather than separating Windsor Framework Article 2 into a different framework for assessment of impact, the Executive Office may wish to consider the value in including consideration of Windsor Framework Article 2 within current Human Rights Impact Assessments to ensure a holistic approach across human rights and equality protections.
- 7.7 **The NIHRC recommends that the Executive Office considers Windsor Framework Article 2 within its current impact assessment framework, including Human Rights Impact Assessments to ensure continuity of human rights and equality protections.**

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<sup>84</sup> NI Human Rights Commission and Equality Commission NI, ‘Working Paper: The scope of article 2(1) of the Ireland/Northern Ireland Protocol’, (NIHRC and ECNI, 2022), at 12.

<sup>85</sup> NI Human Rights Commission and Equality Commission NI, ‘Working Paper: The scope of article 2(1) of the Ireland/Northern Ireland Protocol’, (NIHRC and ECNI, 2022), at 13.

<sup>86</sup> NI Human Rights Commission and Equality Commission NI, ‘Working Paper: The scope of article 2(1) of the Ireland/Northern Ireland Protocol’, (NIHRC and ECNI, 2022), at 46-62.

- 7.8 **The NIHRC recommends that, when assessing the impact of policy and legislation on Windsor Framework Article 2, the Executive Office and NI Departments should consider all EU law which underpins relevant ECHR rights and ensure there is no diminution of standards set out in the relevant EU law.**
- 7.9 **The NIHRC recommends that the Executive Office develops and implements training and guidance for departmental officials on Windsor Framework Article 2, including Impact Assessments, to embed consideration of Article 2 throughout legislative and policy processes.**

### **Dynamic Alignment**

- 7.10 In relation to the Executive Office's current Windsor Framework Impact Assessment, the Executive Office has identified the six Annex 1 Directives with which the UK Government and NI Executive must keep pace.
- 7.11 The EU Recast Equal Treatment (Goods and Services) Directive<sup>87</sup>, the EU Recast Equal Treatment (Employment) Directive<sup>88</sup>, and the EU Equal Treatment (Self-Employment) Directive<sup>89</sup> are listed in Annex 1. Article 4 of the EU Directives identify harassment and sexual harassment as discrimination on grounds of sex within employment. Workplace sexual harassment is listed as a form of violence against women and girls in the draft Strategic Framework and therefore these EU Directives are engaged. Because these EU Directives are listed under Annex 1, NI must keep pace with any changes which increase the protections under these Directives. Therefore, the Executive Office should monitor legislative and policy developments at EU level, including relevant CJEU jurisprudence, in respect of these Directives on an ongoing basis.
- 7.12 The Executive Office has noted within its Windsor Framework Impact Assessment that the draft Strategic Framework aims to increase protection against discrimination and therefore does not diminish

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<sup>87</sup> Directive 2004/113/EC, 'Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services', 13 December 2004.

<sup>88</sup> Directive 2006/54/EC, 'Directive of European Parliament and of the Council on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

<sup>89</sup> Directive 2010/41/EU, 'Directive of the European Parliament and of the Council on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.

protections enshrined under the Annex 1 Directives.<sup>90</sup> While the NIHRC agrees with this assessment, it notes that the 'keep pace' commitment under Windsor Framework Article 2 requires a dynamic approach to the Annex 1 Directives. The draft strategy is intended to cover a term of seven years, from 2023 to 2030. The relevant EU Directives may be amended or replaced during this period. Therefore, it is useful to use an impact assessment as a means to highlight where relevant Directives are engaged and ensure compliance with Article 2.

- 7.13 **The NIHRC recommends that the Executive Office's draft Windsor Framework Impact Assessment identifies the relevance of the EU Recast Equal Treatment (Employment) Directive and the EU Equal Treatment (Self-Employment) Directive to the draft Strategic Framework and acknowledges the need to keep a watching brief on these Directives and relevant CJEU jurisprudence in relation to the draft Strategic Framework.**
- 7.14 **The NIHRC recommends that the Executive Office includes reference to the EU Recast Equal Treatment (Employment) Directive and the EU Equal Treatment (Self-Employment) Directive under its Human Rights Framework in the draft Strategic Framework.**
- 7.15 The Executive Office's Impact Assessment considers, at this time, Windsor Framework Article 2 in terms of compliance. While the NIHRC appreciates that this will assist in preventing a breach of the commitment under Article 2, it may be more useful to consider how Article 2 is engaged by relevant legislation or policy under an Impact Assessment. This approach could draw the Department's attention to relevant rights and equality protections under EU law that the Department is required to keep pace with or was not previously aware of, and highlight relevant CJEU jurisprudence used to interpret provisions which fall within scope of the non-diminution commitment.
- 7.16 **The NIHRC recommends that Windsor Framework Impact Assessments consider all relevant provisions of EU law engaged under the Windsor Framework Article 2 commitment in relation to**

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<sup>90</sup> The Executive Office, 'Draft Article 2(1) Windsor Framework Impact Assessment for the Draft Strategic Framework to End Violence Against Women and Girls', (TEO), at 9.

## **the legislation or policy being assessed, as well as screening for breaches of the commitment.**

### **The EU Victims' Directive**

- 7.17 The rights, safeguards and equality of opportunity in the relevant part of the Belfast (Good Friday) Agreement include “the rights of victims to remember as well as to contribute to a changed society”.<sup>91</sup> The UK Government has recognised a non-exhaustive list of relevant measures which fall within scope of the commitment in Windsor Framework Article 2, including the Victims' Directive.<sup>92</sup>
- 7.18 The Victims' Directive reinforces existing national laws and EU minimum standards on victims' rights and support and protection for victims of crime.<sup>93</sup> The Directive recognises that where physical, sexual, psychological or economic violence is committed in a close relationship, this can cause psychological and physical trauma and such victims are therefore in need of special protection measures.<sup>94</sup> Moreover, the Directive acknowledges that women are disproportionately impacted by this harm.<sup>95</sup>
- 7.19 Through its Windsor Framework Impact Assessment, the Executive Office has identified that it interprets victims' rights in the Belfast (Good Friday) Agreement as limited to the rights of violence related to the troubles.<sup>96</sup>
- 7.20 NI's status as a post-conflict society is contextually relevant to any framework for addressing violence against women and girls. The UN CEDAW Committee's General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations identifies that conflict exacerbates gender inequalities and places women at heightened

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<sup>91</sup> Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity.

<sup>92</sup> Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

<sup>93</sup> Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

<sup>94</sup> Recital 18, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

<sup>95</sup> Ibid.

<sup>96</sup> The Executive Office, 'Draft Article 2(1) Windsor Framework Impact Assessment for the Draft Strategic Framework to End Violence Against Women and Girls', (TEO, 2023).

risk of gender-based violence.<sup>97</sup> General Recommendation No. 30 specifies that for women in post-conflict settings, violence does not end with peace-agreements, but often increases in post-conflict settings, noting that while forms of and settings for violence can shift, “all forms of gender-based violence, in particular sexual violence escalate in the post-conflict setting”.<sup>98</sup>

- 7.21 If violence against women and girls is exacerbated by conflict and in post-conflict settings, it is difficult to discern who constitutes a victim of the conflict and who does not. Therefore, deciding who are victims of the conflict under the Belfast (Good Friday) Agreement 1998 is not straightforward.
- 7.22 Aside from the difficulty in discerning between victims of the conflict, applying standards of protection under the EU Victims’ Directive differently depending on the category of victimhood is problematic. Article 1 of the EU Victims’ Directive sets out that the rights contained in the Directive “shall apply to victims in a non-discriminatory manner”.
- 7.23 The Belfast (Good Friday) Agreement 1998 protects the right to “equal opportunity in all social and economic activity, regardless of ... gender”. In General Recommendation No. 19, the UN CEDAW Committee recognises that gender-based violence is a “form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.<sup>99</sup> The EU Victims’ Directive also recognises gender-based violence as a form of discrimination, identifying such forms of violence as encompassing “violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called ‘honour crimes’”.<sup>100</sup>

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<sup>97</sup> CEDAW/C/GC/30, ‘UN CEDAW Committee General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations’, 18 October 2013, at para 34.

<sup>98</sup> CEDAW/C/GC/30, ‘UN CEDAW Committee General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations’, 18 October 2013, at para 35.

<sup>99</sup> ‘UN CEDAW Committee General Recommendation No. 19: Violence against women’, 30 January 1992, at para 1.

<sup>100</sup> Recital 17, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

- 7.24 It is the NIHRC’s position that the provisions of the EU Victims’ Directive underpin the right to equality of opportunity under the Belfast (Good Friday) Agreement.
- 7.25 As noted above, the NIHRC, along with ECNI, take the view that the non-diminution commitment in Windsor Framework Article 2 encompasses the full range of rights set out in the ECHR, to the extent that they are underpinned by EU legal obligations in force on or before the 31 December 2020. The ECHR has recognised victims’ rights under Article 2 (the right to life)<sup>101</sup>, Article 3 (freedom from torture, inhuman and degrading treatment)<sup>102</sup>, Article 4 (freedom from slavery and forced labour)<sup>103</sup> and Article 8 (right to a private and family life, including bodily integrity).<sup>104</sup> The EU Victims’ Directive contains provisions which underpin these ECHR rights and was in place before the end of the transition period. Therefore, it is the NIHRC’s view that this EU Directive falls within scope of the non-diminution commitment under Windsor Framework Article 2.
- 7.26 **The NIHRC recommends that the Executive Office embeds consideration of the EU Victims’ Directive in its draft Strategic Framework.**
- 7.27 **The NIHRC recommends that the Executive Office define, in future Windsor Framework Impact Assessments, victims’ rights under the Belfast (Good Friday) Agreement to include all victims of crime and considers relevant provisions of the EU Victims’ Directive in future legislation and policy relating to victims of crime.**

## **The EU Trafficking Directive**

- 7.28 There are other EU Directives which fall within scope of the commitment under Windsor Framework Article 2 which the Executive Office may wish to consider including within its Windsor Framework Impact Assessment

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<sup>101</sup> *Osman v the United Kingdom* (1998) ECHR 101, at paras 115-116.

<sup>102</sup> For example, *Levchuk v. Ukraine*, Application no. 17496/19, 3 September 2020; *Bevacqua and S. v. Bulgaria*, Application no. 71127/01 & *A. v. Croatia*, Application no. 55164/08, 14 January 2011.

<sup>103</sup> *Rantsev v Cyprus and Russia* (2010) ECHR 22, at para 284.

<sup>104</sup> For example, *Milićević v. Montenegro*, Application no. 27821/16, 6 November 2018; *Nitecki v. Poland* (2002) ECHR 21 & *Sentges v. the Netherlands*, Application no. 27677/02, 8 July 2003.



and the draft Strategic Framework. These relevant Directives include the EU Trafficking Directive and the EU Child Sexual Exploitation Directive.

- 7.29 There are several ways in which the NIHRC considers the EU Trafficking Directive to fall within scope of Windsor Framework Article 2. The Directive contains several provisions which are aimed at criminalisation of trafficking offences,<sup>105</sup> non-prosecution and non-application of penalties to victims,<sup>106</sup> investigation and prosecution of offences<sup>107</sup> and supporting victims, including child victims, of trafficking.<sup>108</sup> The relevant chapter of the Belfast (Good Friday) Agreement 1998 protects the rights of victims “to remember as well as to contribute to a changed society”. The EU Trafficking Directive protects a subset of ‘victims’ in NI, therefore the EU Trafficking Directive also falls within the scope of Protocol Article 2.
- 7.30 As noted above, the NIHRC had adopted the working definition that ECHR rights fall within scope if the non-diminution commitment under Windsor Framework Article 2 insofar as they are underpinned by EU law in place on or before 31<sup>st</sup> December 2020.<sup>109</sup> Article 4 of the ECHR on the right to be free from slavery, servitude, forced or compulsory labour, is relevant to trafficked persons, which is underpinned by provisions within the EU Trafficking Directive, and therefore the Directive falls within scope of Windsor Framework Article 2.
- 7.31 The right to equality of opportunity is listed as one of the rights “affirmed in particular” under the relevant chapter of the Belfast (Good Friday) Agreement. Article 1 of the EU Trafficking Directive notes that the Directive “introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof”, with Recital 3 identifying that men and women are often trafficked for different reasons, and therefore “assistance and support measures should be gender specific where appropriate”.<sup>110</sup> The

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<sup>105</sup> Articles 2-7, Directive 2011/36/EU, ‘EU Council Directive on preventing and combating trafficking in human beings and protecting its victims’, 5 April 2011.

<sup>106</sup> Articles 2-7, Directive 2011/36/EU, ‘EU Council Directive on preventing and combating trafficking in human beings and protecting its victims’, 5 April 2011.

<sup>107</sup> Articles 9-10, Directive 2011/36/EU, ‘EU Council Directive on preventing and combating trafficking in human beings and protecting its victims’, 5 April 2011.

<sup>108</sup> Articles 11-17, Directive 2011/36/EU, ‘EU Council Directive on preventing and combating trafficking in human beings and protecting its victims’, 5 April 2011.

<sup>109</sup> NI Human Rights Commission and Equality Commission NI, ‘NIHRC and ECNI Working Paper: the Scope of Article 2(1) of the Ireland/NI Protocol’ (NIHRC and ECNI, 2022).

<sup>110</sup> Recital 3 and Article 1, Directive 2011/36/EU, ‘Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.



third reason the EU Trafficking Directive comes within the scope of Windsor Framework Article 2 is therefore under the right to equality of opportunity.

## **The EU Child Sexual Exploitation Directive**

- 7.32 The rights of child victims of crime fall under the rights of victims to remember and contribute to a changed society under the Belfast (Good Friday) Agreement.<sup>111</sup> The EU Child Sexual Exploitation Directive contains a number of protections for child victims of sexual abuse and sexual exploitation,<sup>112</sup> as well as placing positive obligations on States to prevent and investigate such crimes.<sup>113</sup> These provisions underpin victims' rights under the ECHR, including Article 4 (freedom from slavery and forced labour).<sup>114</sup> Additionally, the Belfast (Good Friday) Agreement commits to create a public sector duty on public authorities in NI to have due regard for equality of opportunity on a wide range of grounds, including age.<sup>115</sup>
- 7.33 For reasons similar to those outlined above in relation to commitments in the Belfast (Good Friday) Agreement, the ECHR, and recognition of equality of opportunity and victims' rights, the NIHRC considers the EU Child Sexual Exploitation Directive as falling within scope of Windsor Framework Article 2.
- 7.34 **The NIHRC recommends that the Executive Office considers the EU Trafficking Directive and the EU Child Sexual Exploitation Directive in its Windsor Framework Impact Assessment and embeds these provisions within the draft Strategic Framework.**

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<sup>111</sup> Belfast (Good Friday) Agreement 1998, Rights Safeguards and Equality of Opportunity.

<sup>112</sup> Articles 18-20, Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

<sup>113</sup> Articles 1-17, Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

<sup>114</sup> Rantsev v Cyprus and Russia (2010) ECHR 22, at para 284.

<sup>115</sup> Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity.

## **Proposal for an EU Directive to combat violence against women and domestic violence**

7.35 The EU Commission has adopted a proposal for an EU Directive on combatting violence against women and domestic abuse (EU VAWG Directive).<sup>116</sup> The NIHRC draws the Executive Office's attention to the proposed Directive for several reasons.

7.36 The proposed EU VAWG Directive notes that:

The 'Gender Equality Directives' stipulate that sex-based and sexual harassment at work and in access to goods and services are contrary to the principle of equal treatment between men and women. The Directives require Member States to prohibit such conduct, ensure remedies (including compensation), and provide for effective, proportionate and dissuasive penalties. The current directive complements these instruments by setting minimum standards on support and access to justice of victims of such harassment.<sup>117</sup>

7.37 The Gender Equality Directives<sup>118</sup> fall within Annex 1 of the Windsor Framework. The NIHRC is keeping a watching brief on the proposed EU Directive in the event that it updates the relevant Annex 1 Directives.

7.38 Additionally, should the proposed EU VAWG Directive not update the Annex 1 Directives, and considering the Directive was not in place on or before the 31 December 2020, the Directive would not fall within scope of the non-diminution commitment under Windsor Framework Article 2. However, should the proposed EU VAWG Directive come into effect across the EU, its provisions will have to be reflected by Ireland, but not in NI. This could create a divergence of rights across the island of Ireland. The Rights, Safeguards and Equality of Opportunity chapter of the Belfast

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<sup>116</sup> COM(2022), 'Proposal for a Directive of the EU Parliament and of the Council on Combatting Violence against Women and Domestic Violence', 8 March 2022.

<sup>117</sup> Recital 38, Recital 51 and Article 24(1), COM(2022), 'Proposal for a Directive of the EU Parliament and of the Council on Combatting Violence against Women and Domestic Violence', 8 March 2022.

<sup>118</sup> Directive 2004/113/EC, 'Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services', 13 December 2004; Directive 2006/54/EC, 'Directive of European Parliament and of the Council on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006; Directive 2010/41/EU, 'Directive of the European Parliament and of the Council on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.

(Good Friday) Agreement requires “at least an equivalent level of protection of human rights” in Ireland as in NI”.<sup>119</sup> The NIHRC, along with ECNI, has published research on the divergence of rights across the island of Ireland, which notes that “legislation passed by the Northern Ireland Assembly can mirror developments in European Union law even where it is not expressly required to do so by the Withdrawal Agreement”.<sup>120</sup>

- 7.39 The Executive Office may wish to consider carefully the provisions of the Proposed EU VAWG Directive to establish whether they provide best practice for protection victims and prevention of violence against women and domestic violence. The Executive Office may wish to voluntarily align with these provisions to mitigate divergence of rights on the island of Ireland.
- 7.40 **The NIHRC recommends that the Executive Office keep under review the proposed EU VAWG Directive and ensure that any potential updates to the EU Equality Directives are reflected in NI law in compliance with Windsor Framework Article 2.**
- 7.41 **The NIHRC recommends that, in addition to what is required by the keep pace obligation under the Windsor Framework and as a matter of good practice, the Executive Office should ensure NI law aligns, on a voluntary basis, with any enhancement to equality and human rights pursuant to the EU VAWG Directive.**

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<sup>119</sup> Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity: “The Irish Government will also take steps to further strengthen the protection of rights in its jurisdiction ... The measures brought forward would ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland”.

<sup>120</sup> Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, ‘EU Developments in Equality and Human Rights: The impact of Brexit on the divergence of rights and best practice on the island of Ireland’, (NIHRC, ECNI, IHREC), at 110.

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