



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response to
Public Consultation Paper for
Ireland's Third National Action Plan
on Women, Peace and Security**

December 2018

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Summary of Recommendations

2.2 The Commission recommends that Ireland's third National Action Plan include a commitment to effectively integrate the United Nations Security Council Resolution 1325, including mechanisms specific to dealing with the impact of the conflict in Northern Ireland across the island of Ireland. This includes a commitment to work with the UK government and devolved institutions in developing such mechanisms for the island of Ireland.

2.6 The Commission recommends that Ireland's third National Action Plan include a commitment to ensure women on the island of Ireland affected by conflict-related events can effectively participate in peace building and political processes. This includes setting out a commitment to work with the UK government and devolved institutions to ensure the mechanisms for dealing with the past, including implementation of the Stormont House Agreement, enable the effective participation of women in peace building and political processes.

2.7 The Commission recommends that Ireland's third National Action Plan include a commitment to effectively monitor the participation of women in peace building and political processes on the island of Ireland.

2.9 The Commission recommends that Ireland's third National Action Plan sets out a commitment to embed and promote the Gender Principles for Dealing with the Legacy of the Past in Northern Ireland.

2.14 The Commission recommends that Ireland's third National Action Plan include a commitment to effectively address paramilitary intimidation affecting women on the island of Ireland. This includes a commitment to work with the UK government and devolved institutions to effectively address and prevent such intimidation on the island of Ireland.

- 3.9 The Commission recommends that Ireland's third National Action Plan include a commitment to ensure 'no diminution of rights' (including women's rights) across the island of Ireland, as a consequence of EU withdrawal those rights protected in the relevant chapter of the Belfast (Good Friday) Agreement.**
- 3.10 The Commission recommends that Ireland's third National Action Plan include a commitment to work with the UK government and devolved institutions to ensure the North-South equivalence of women's rights are protected on an ongoing basis; and continuing EU citizenship rights, including women's rights, within NI are delivered in a way that is consistent with the Belfast (Good Friday) Agreement 1998.**
- 3.11 The Commission recommends that Ireland's third National Action Plan include a commitment to work with the UK government and devolved institutions to ensure that the free exercise of women's rights across the border and protection for border communities and women migrant workers continues post-Brexit and that evolving justice arrangements are fully human rights compliant.**
- 3.12 The Commission recommends that Ireland's third National Action Plan include a commitment to work with the UK government and devolved institutions to ensure that women's rights under the Common Travel Area are clear, comprehensive and have a legal underpinning.**
- 3.16 The Commission recommends that Ireland's third National Action Plan include a commitment to work with the UK government and devolved institutions to ensure that immigration policies adopted throughout the island of Ireland in advance and following the UK's exit from the EU that shield EU and non-EU migrants, including women, from the threat of racial and ethnic discrimination.**

1.0 Introduction

- 1.1 Ireland's third National Action Plan on women, peace and security adopts an island of Ireland approach and specifically considers its agenda in the Northern Ireland context. The Northern Ireland Human Rights Commission (the Commission), pursuant to Section 69(1) the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland. In accordance with this function, the following is submitted in response public consultation paper for Ireland's third National Action Plan on women, peace and security and its specific call for views concerning the Northern Ireland context.
- 1.2 The Commission welcomes this opportunity to participate in the consultation process. This response specifically addresses question 4 set out in the consultation paper – how should the National Action Plan apply to the Ireland-Northern Ireland context, as well as migrants, asylum seekers, and others living in Ireland who come from conflict and post-conflict affected areas?

2.0 Dealing with the Past

United Nations Security Council Resolution 1325

- 2.1 Northern Ireland is a society in transition, which requires specific mechanisms under Resolution 1325, to ensure women can effectively participate in the peace building and political processes. The United Kingdom (UK) Government has stated "there are no plans to integrate provisions relating to the implementation of the UNSCR 1325 in Northern Ireland into the UK National Action Plan".¹
- 2.2 **The Commission recommends that Ireland's third National Action Plan include a commitment to effectively integrate the United Nations Security Council Resolution 1325, including mechanisms specific to dealing with the impact of the conflict in Northern Ireland across the island of Ireland. This**

¹ CEDAW/C/GBR/8,'Eighth Periodic Report Submitted by the United Kingdom of Great Britain and Northern Ireland under Article 18 of the Convention, Due in 2017', 18 December 2017, at para 75.

includes a commitment to work with the UK government and devolved institutions in developing such mechanisms for the island of Ireland.

Draft NI (Stormont House Agreement) Bill

- 2.3 A draft NI (Stormont House Agreement) Bill was consulted on in 2018. The draft Bill included provision for a Historical Investigation's Unit, Independent Commission of Information Retrieval, Oral History Archive, Implementation and Reconciliation Group and clarifications on prisoner releases. The consultation paper on the draft Bill did not refer to the UNSCR 1325. The Commission broadly welcomed the draft legislation, but raised concerns that the provisions contained within the draft Bill were not fully human rights compliant in law and practice.²
- 2.4 In particular, the Commission raised concerns about the remit, resourcing, independence and use of closed material proceedings regarding the Historical Investigations Unit. The Commission recommended further consideration of the remits and operations of the Independent Commission of Information Retrieval, Oral History Archive and Implementation and Reconciliation Group.³
- 2.5 The Commission highlighted a number of omissions from the draft Bill. Particularly relevant to this consultation, the draft NI (Stormont House Agreement) Bill does not make specific provision for women's involvement. Additional omissions included a mechanism to expediently investigate other serious conflict-related human rights abuses and violations in instances where the victims have not been killed, introduction of a pension for severely physically injured victims in NI, and introduction of advocate-counsellor assistance. The Commission also highlighted the lack of funding available for the Lord Chief Justice's plans for addressing outstanding legacy inquests.⁴

² NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past' (NIHRC, 2018).

³ NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past' (NIHRC, 2018).

⁴ NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past' (NIHRC, 2018).

- 2.6 The Commission recommends that Ireland’s third National Action Plan include a commitment to ensure women on the island of Ireland affected by conflict-related events can effectively participate in peace building and political processes. This includes setting out a commitment to work with the UK government and devolved institutions to ensure the mechanisms for dealing with the past, including implementation of the Stormont House Agreement, enable the effective participation of women in peace building and political processes.**
- 2.7 The Commission recommends that Ireland’s third National Action Plan include a commitment to effectively monitor the participation of women in peace building and political processes on the island of Ireland.**

Gender Principles for Dealing with the Past

- 2.8 The Legacy Gender Integration Group, an informal network of individuals with gender expertise from civil society and academia, has developed the Gender Principles for Dealing with the Legacy of the Past in Northern Ireland. These principles provide guidance on how to embed a gendered lens and sustained inclusion of women on dealing with the past in NI.⁵
- 2.9 The Commission recommends that Ireland’s third National Action Plan sets out a commitment to embed and promote the Gender Principles for Dealing with the Legacy of the Past in Northern Ireland.**

Paramilitary Intimidation

- 2.10 Between October 2017 and November 2018, the Commission engaged with women’s policy groups, grass-roots women’s groups and civil society representatives working on women’s issues in Northern Ireland, for the purposes of our forthcoming shadow report to the United Nations Committee on the Elimination of Discrimination against Women’s examination of the UK in February

⁵ Legacy Gender Integration Group, ‘Gender Principles for Dealing with the Legacy of the Past’ (LGIG, 2015).

2019. During this engagement it was reported to the Commission that paramilitary intimidation continues to prevent women's effective participation in peace building and political processes, and hinders access to funding.⁶

2.11 Additional research has found that there is a "distinct lack of legitimate leadership within many NI communities which is filled by paramilitary groups".⁷ There is also "endemic paramilitary 'bullying' and intimidation at the level of the community".⁸ This is reflected in the significant increase in paramilitary-style punishment shootings and beatings in NI since 2013.⁹ In 2013, there were 64 such attacks from republican dissidents and ongoing loyalist paramilitary violence directed at their own communities. This rose to 101 such attacks in 2017.¹⁰

2.12 The Commission's engagement with women's groups and civil society representatives indicated that for women, paramilitary intimidation means women's community groups feel unable to access funding and to engage with particular peacebuilding initiatives. During this engagement it was highlighted that there is a historical and ongoing fear of paramilitaries (including paramilitaries from within their own communities) that is causing women to feel threatened, which is preventing the empowerment of women in NI. It was raised that women feel displaced by paramilitaries taking leadership roles. It was reported that this is closely linked to drug feuds and domestic violence.¹¹

2.13 The Commission notes that the NI Executive and UK Government each committed £25 million between 2016 and 2021 to tackle paramilitarism.¹² A Tackling Paramilitarism Programme Board was set up in 2016 to set the strategic direction, make decisions on

⁶ Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018

⁷ Claire Pierson and Katy Radford, 'Peacebuilding and the Women's Sector in NI: An Overview of Reports and Programmes (Institute for Conflict Research, 2016), at 31.

⁸ Caroline Walsh, 'Consortium for the Regional Support for Women in Disadvantaged and Rural Areas: Policy Prioritisation for Disadvantaged Women – Women's Perspectives' (Women's Support Network, 2017), at 34.

⁹ Henry McDonald, 'Northern Ireland "punishment" attacks rise 60% in four years', *The Guardian*, 12 March 2018.

¹⁰ Henry McDonald, 'Northern Ireland "punishment" attacks rise 60% in four years', *The Guardian*, 12 March 2018.

¹¹ Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018.

¹² Department of Justice, 'Executive Programme for Tackling Paramilitary Activity and Organised Crime'. Available at: <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>

implementation, delivery and funding, and to monitor and report on progress. The Board is chaired by the Department of Justice, includes senior officials from the Executive Office and NI Office, and the Police Service NI attends in an advisory capacity.¹³ The Paramilitary Crime Taskforce was set up in September 2017 to protect communities by tackling all forms of criminality linked to paramilitarism. It is made up of officers from the Police Service NI, the National Crime Agency and HM Revenue and Customs.¹⁴ In October 2018, the Department of Justice commissioned TV, radio and cinema adverts, which aim to end paramilitary-style attacks in NI.¹⁵

2.14 The Commission recommends that Ireland’s third National Action Plan include a commitment to effectively address paramilitary intimidation affecting women on the island of Ireland. This includes a commitment to work with the UK government and devolved institutions to effectively address and prevent such intimidation on the island of Ireland.

3.0 Brexit

Withdrawal Agreement and Future Relations

3.1 A referendum on whether the UK should leave or remain in the EU took place on Thursday 23 June 2016. The overall vote was to leave, although the majority of people in NI voted to remain. The EU (Notification of Withdrawal) Act 2017 received royal assent on 16 March 2017. On 29 March 2017, the UK formally invoked Article 50(2) initiating the two year countdown before EU Treaties shall cease to apply to the UK.¹⁶ The UK is due to withdraw from the EU on 29 March 2019, though, subject to overall agreement on the terms of withdrawal, there will be a transitional period, which is due to last until 31 December 2020.¹⁷

¹³ Department of Justice, 'Executive Programme for Tackling Paramilitary Activity and Organised Crime'. Available at: <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>

¹⁴ National Crime Agency, 'Press Release: Paramilitary Crime Taskforce launched in NI', 27 September 2017.

¹⁵ Emma Vardy, 'Adverts bid to end paramilitary-style attacks in NI', *BBC News*, 18 October 2018.

¹⁶ Prime Minister's Letter to European Council President Donald Tusk - Invoking Article 50, 29 March 2017.

¹⁷ EU Commission and UK Government, 'Draft Agreement on the Withdrawal of the UK of Great Britain and NI from the European Union and the European Atomic Energy Community, EU Commission and UK Government', 19 March 2018, at Articles 121-126.

- 3.2 Translating the EU-UK political agreement of December 2017 into proposed legal text, the Draft Withdrawal Agreement was published in February 2018 and a version as agreed at negotiator level was published on 14 November 2018.¹⁸ On 25 November 2018, the EU endorsed the Withdrawal Agreement and political declaration of the future EU-UK relations.¹⁹ A vote has now been delayed in the Westminster Parliament.²⁰
- 3.3 Article 4 of the Protocol on Ireland/Ni enshrined the UK's commitment to no diminution of rights but confined it to the Rights, Safeguards and Equality of Opportunity section of the Belfast (Good Friday) Agreement. It also makes reference to an Annex of EU law (including discrimination) to be retained in NI and to the implementation of the Article via 'dedicated mechanisms'. The Article further set out the UK commitment to 'facilitate the related work' of bodies including the Commission, the Joint Committee of the Commission and Irish Human Rights and Equality Commission, and the Equality Commission NI.
- 3.4 In March 2018, the Joint Committee published its Policy Statement on the UK's Withdrawal from the EU, together with the academic discussion paper on Brexit it had commissioned. The Joint Committee recommended that the Withdrawal Agreement:

1) Ensure 'no diminution of rights' is evident and enforceable in Withdrawal Agreement;

2) Safeguard North-South equivalence of rights on an ongoing basis;

3) Guarantee equality of citizenship within NI;

4) Protect border communities and migrant workers;

¹⁸ EU Commission and UK Government, 'Draft Agreement on the Withdrawal of the UK of Great Britain and NI from the European Union and the European Atomic Energy Community, as agreed at negotiators' level', 14 November 2018.

¹⁹ 'EU leaders agree UK's Brexit deal at Brussels summit', *BBC News*, 25 November 2018.

²⁰ 'Brexit: Theresa May meeting EU leaders in bid to rescue deal', *BBC News*, 11 December 2018.

5) Ensure evolving justice arrangements comply with commitment to non-diminution of rights; and

6) Ensure continued right to participation in public life for EU citizens in NI.²¹

3.5 The case for retention of the EU Charter of Fundamental Rights and recognition of an equivalency of rights contained in the Belfast (Good Friday) Agreement was not reflected in the Draft Withdrawal Agreement.

3.6 The equality, safeguards section of the Belfast (Good Friday) Agreement, includes supporting a women's participation in public and political life, which should therefore be reflected in the non-diminution commitment made by the UK Government.

3.7 The commitment to continuing EU citizenship for the people of NI who choose to assert their right to Irish citizenship, was placed in recitals to the Protocol, also raising concern in relation to clarity and enforceability. While some detail has been contained in the Taskforce 50 documents explaining the draft Withdrawal Agreement, the full extent of the EU rights retained and how they will be accessed has still to be provided.

3.7 In November 2018, the Joint Committee published a commissioned paper examining the role of the Common Travel Area in light of the UK Government's exit from the EU.²²

3.8 A further Joint Committee commissioned paper examining the evolving justice arrangements post-Brexit is forthcoming in March 2019.

3.9 The Commission recommends that Ireland's third National Action Plan include a commitment to ensure 'no diminution of rights' (including women's rights) across the island of Ireland, as a consequence of EU withdrawal those rights

²¹ NI Human Rights Commission, 'Press Release: Belfast (Good Friday) Agreement Joint Committee Warns of Brexit Human Rights and Equality Concerns', 13 March 2018.

²² Sylvia de Mars *et al*, 'Discussion Paper on the Common Travel Area' (NIHRC and IHREC, 2018).

protected in the relevant chapter of the Belfast (Good Friday) Agreement.

3.10 The Commission recommends that Ireland's third National Action Plan include a commitment to work with the UK government and devolved institutions to ensure the North-South equivalence of women's rights are protected on an ongoing basis; and continuing EU citizenship rights, including women's rights, within NI are delivered in a way that is consistent with the Belfast (Good Friday) Agreement 1998.

3.11 The Commission recommends that Ireland's third National Action Plan include a commitment to work with the UK government and devolved institutions to ensure that the free exercise of women's rights across the border and protection for border communities and women migrant workers continues post-Brexit and that evolving justice arrangements are fully human rights compliant.

3.12 The Commission recommends that Ireland's third National Action Plan include a commitment to work with the UK government and devolved institutions to ensure that women's rights under the Common Travel Area are clear, comprehensive and have a legal underpinning.

Racial Profiling

3.13 The use of racial profiling has been raised in the context of Brexit. The Parliamentary Under-Secretary (Northern Ireland Office), Lord Duncan, has stated:

I am very happy to reinforce the clear statement that there can be no racial profiling at a border, whether it be routine, quixotic or even accidental. That cannot be the policy or the direction; there cannot be even a hint of that going on at the border...

*There will be no checks whatever for journeys across the land border between Ireland and Northern Ireland, nor between Northern Ireland and Great Britain. As I said earlier, this includes any aspect of what those checks might look like or be interpreted to look like. That is not what will be happening.*²³

3.14 However, concerns have been raised that racial profiling has been occurring on domestic routes between Northern Ireland and Great Britain in the wake of the referendum on whether the UK should leave or remain in the EU. For example, Jules Gnezekora alleges he was singled out four times in queues on one journey from Scotland to Northern Ireland because he is black.²⁴ Further concerns have been raised that such checks will become more common post-Brexit, particularly between Ireland and Northern Ireland.

3.15 The United Nations Special Rapporteur on contemporary forms of racism, Tendayi Achiume, following a visit to the United Kingdom in May 2018 stated:

*even in parts of the UK such as the devolved nations and in areas where immigrants remain fundamental to the economic prosperity and success of British communities, the groups with which I consulted reported high levels of anxiety among immigrants regarding their status following the UK's departure from the EU. In Northern Ireland, groups expressed concerns that even a policy that committed to no routine passport checks in the Common Travel Area might result in non-routine checks due to racial profiling of transiting minorities. I recommend that the UK adopt immigration policies in advance and following its exit from the EU that shield EU and non-EU migrants from the threat of racial and ethnic discrimination.*²⁵

²³ Hansard, 'European Union (Withdrawal) Bill – Volume 790, Column 1609', 23 April 2018.

²⁴ Lisa O'Carroll, 'Black lawyer accuses Northern Ireland immigration of racial profiling', *The Guardian*, 11 June 2018; Committee on the Administration of Justice, 'EU Withdrawal Bill, Clause 13 – New Border Arrangements' (CAJ, 2018).

²⁵ Tendayi Achiume, 'Press Release: End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of her Mission to the United Kingdom of Great Britain and Northern Ireland', 11 May 2018.

3.16 The Commission recommends that Ireland's third National Action Plan include a commitment to work with the UK government and devolved institutions to ensure that immigration policies adopted throughout the island of Ireland in advance and following the UK's exit from the EU that shield EU and non-EU migrants, including women, from the threat of racial and ethnic discrimination.

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