



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Northern Ireland Human Rights Commission
Submission to the Joint Committee on Human Rights**

Violence Against Women and Girls: Call for Evidence

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1. Introduction

1.1. The Northern Ireland Human Rights Commission (the Commission) is a statutory public body established in 1999 to promote and protect human rights. In accordance with Section 69(1) of the Northern Ireland Act (1998) the Commission reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI).

2. Requirement on prosecution to disprove reasonable belief regarding the age of a child victim

2.1. The Commission recalls that in its 2013 Concluding Observations the Committee on the Elimination of Discrimination Against Women ('CEDAW Committee') noted that in NI it is an offence to pay for the sexual services of a child under 18 years of age but expressed concern that "in the case of a child over the age of 13 years and under the age of 18 years, the prosecution is required to prove that the purchaser did not reasonably believe the child to be 18 years old or more."¹

2.2. The Commission is concerned that inadequate protection currently exists in legislation in NI with regard to the sexual exploitation of children between the ages of 13 and 18 through prostitution, pornography, and the payment for sexual services of such children.

2.3. It is an offence in NI to intentionally:

- pay for the sexual services of a child under 13 years old;² or
- pay for the sexual services of a child under 18 years old where the purchaser did not reasonably believe the child to be 18 years or over;³

- cause or incite a child under 13 years old to become a prostitute or to be involved in pornography;⁴ or
- cause or incite a child under 18 years old to become a prostitute or to be involved in pornography where the perpetrator did not reasonably believe the child to be 18 years or over;⁵

¹ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 40.

² Sexual Offences (Northern Ireland) Order 2008, article 37.

³ Sexual Offences (Northern Ireland) Order 2008, article 37.

⁴ Sexual Offences (Northern Ireland) Order 2008, article 38.

⁵ Sexual Offences (Northern Ireland) Order 2008, article 38.

- control the activities of a child under 13 years old relating to that child's prostitution or involvement in pornography;⁶ or
- control the activities of a child under 18 years old relating to that child's prostitution or involvement in pornography where the perpetrator did not reasonably believe the child to be 18 years or over;⁷
- arrange or facilitate the prostitution or involvement in pornography of a child under 13 years old;⁸ or
- arrange or facilitate the prostitution or involvement in pornography of a child under 18 years old where the perpetrator did not reasonably believe the child to be 18 years or over.⁹

2.4. The Commission emphasises that the Explanatory Memorandum to the Sexual Offences Order requires that with respect to each of the offences listed in paragraph 2.3 where the victim of the offence is between 13 and 18 years of age it will be for the prosecution to prove that the defendant did not reasonably believe that the child victim was over 18.¹⁰

2.5. *The Commission advises that the law in NI should be amended in order to provide effective protection for children between the ages of 13 and 18 who are exploited through prostitution, pornography and the payment for sexual services of such children.*

3. UN Security Council Resolution 1325 (UNSCR 1325)

3.1. The Commission recalls that the UK Government has stated that "there are no plans to integrate provisions relating to the implementation of UNSCR 1325 in Northern Ireland into the United Kingdom National Action Plan."¹¹ However the CEDAW Committee in 2013 once again called on the UK to "ensure the participation of women in the post-conflict process in Northern Ireland, in line with Security Council resolution 1325 (2000)."¹²

3.2. The Commission notes that the Draft Agreement published at the conclusion of the recent talks by the Panel of Parties in the NI Executive on Parades and Protests; Flags, Symbols and Emblems, and Related Matters;

⁶ Sexual Offences (Northern Ireland) Order 2008, article 39.

⁷ Sexual Offences (Northern Ireland) Order 2008, article 39.

⁸ Sexual Offences (Northern Ireland) Order 2008, article 40.

⁹ Sexual Offences (Northern Ireland) Order 2008, article 40.

¹⁰ See Explanatory Memorandum to the Sexual Offences (Northern Ireland) Order 2008, article 37, 38, 39, 40.

¹¹ CEDAW State Party Report: para 301.

¹² CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 43.

and the Past¹³ did include a proposal to establish a “Commission on Identity, Culture, and Tradition” which would “submit a report with findings and recommendations to the Office of the First Minister and deputy First Minister.” The Draft Agreement document indicated the intention to address a broad range of issues and specifically identified the issue of gender to be considered by the proposed Commission.¹⁴

3.3. *The Commission advises that the JCHR consider the CEDAW Committee’s repeated calls regarding the role of UNSCR 1325 in NI and be cognisant of the inquiry being conducted by the Associate Parliamentary Group on Women, Peace and Security concerning the application of UNSCR 1325 in NI.*

4. Domestic Violence

4.1. The number of domestic abuse incidents and crimes in NI is high and disproportionately affects women.¹⁵ The Police Service of Northern Ireland (PSNI) responds, on average, to a domestic incident every 21 minutes of every day.¹⁶ There is a domestic abuse motivation for 10% of all crime recorded in NI.¹⁷

4.2. The Commission advises that there is a lack of domestic violence specialist courts, where trained professionals understand the unique issues surrounding domestic violence. A pilot domestic violence specialist court scheme has been in operation in NI since 2011¹⁸ and relevant Departments

¹³ <http://panelofpartiesnie.com/>

¹⁴ Proposed Agreement, 31 December 2013, *An Agreement among the parties of the Northern Ireland Executive on Parades, Select Commemorations, and Related Protests; Flags and Emblems; and Contending with the Past*, <http://www.northernireland.gov.uk/haass.pdf>, p. 17.

¹⁵ In 2012/13, there were 27,190 recorded domestic abuse incidents and 11,160 domestic abuse crimes in NI. In 2012/13, domestic abuse incidents were 7.9% higher than in 2011/12, and 29.7% higher than the level recorded in 2004/05. In 2012/13, domestic abuse crimes were 7.4% higher than 2011/12, and 31.2% higher than the level recorded in 2004/05. See Police Service of NI (PSNI), ‘Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2013’ (9 May 2013). In 2011/12, there were 9 female victims of domestic abuse crimes aged 18+ per 1,000 of the female population aged 18+ compared with 3 male victims of domestic abuse crimes aged 18+ per 1,000 of the male population aged 18+. See Police Service for NI (PSNI), ‘Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2011/12: Annual bulletin’ (05 July 2012).

¹⁶ NI Policing Board (NIPB), ‘Human Rights Annual Report 2012’, pp.104-110.

¹⁷ NI Policing Board (NIPB), ‘Human Rights Annual Report 2012’, p. 106. In 2012/13, two females were murdered in NI as a consequence of domestic abuse. See, Police Service for NI (PSNI), ‘Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2013’ (9 May 2013). Gender breakdown information was obtained from PSNI, Crime Statistics branch by NIHRC (email correspondence, 17 May 2013).

¹⁸ See Crown Prosecution Service website, available at,

have committed to evaluate and assess the feasibility for the implementation of Domestic Violence Specialist Courts across Northern Ireland.¹⁹

4.3. The Government's 2014 consultation on Stopping Domestic and Sexual Violence and Abuse in Northern Ireland states that the role of Independent Domestic Violence Advisors (IDVA) "will be a key to future development of this Strategy and the Action Plan falling out of it."²⁰ However, these advisors are not yet in place and the Commission notes that the Criminal Justice Inspection for Northern Ireland expressed concern in October 2013 "about the implementation of an IDVA service which is not properly resourced to meet the full range of the needs of all high-risk victims who require support."²¹

4.4. The NIHRC notes the unavailability in NI of domestic violence protection notices (DVPNs) that would allow the police to expel the perpetrator from the victim's residence for a set period of time.²² Such a system ensures that there is no gap in protection for the victim, and has been found to be successful in many EU states.²³ In England an evaluation of a pilot of domestic violence protection orders reported in November 2013.²⁴ The Department of Justice in NI had decided to await the outcome of this pilot before making any decisions about the introduction of DVPNs in NI.²⁵

<<http://www.cps.gov.uk/publications/equality/vaw/sdvc.html>> The NI pilot is in operation in the Derry/Londonderry region, and operates as a 'court listing' scheme whereby domestic violence cases are listed for a set day each month. Unlike SDVCs in England and Wales, only contests are listed in the NI pilot. Informal communications between the NIHRC and a local non-governmental organisation close to the pilot indicate that it is working well (13 May 2013). See also, Criminal Justice Inspection Northern Ireland, *Domestic Violence and Abuse, A follow-up review of inspection recommendations*, October 2013, pp. 13-14.

¹⁹ Department of Justice for NI (DOJNI) and NI Department of Health, Social Services and Public Safety (DHSSPS), 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland 2013-2020', Public Consultation Document, December 2013, p. 70. Available at: <http://www.dhsspsni.gov.uk/dsva-strategy.pdf>.

²⁰ Department of Justice for NI (DOJNI) and NI Department of Health, Social Services and Public Safety (DHSSPS), 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland 2013-2020', Public Consultation Document, December 2013, p. 33. Available at: <http://www.dhsspsni.gov.uk/dsva-strategy.pdf>.

²¹ *Ibid* at p. 60, para 4.81 and Criminal Justice Inspection Northern Ireland, *Domestic Violence and Abuse, A follow-up review of inspection recommendations*, October 2013, p. 15.

²² At present, an emergency occupancy order would be used. However, this must be granted by the court and would be applied for by the victim's solicitor. A DVPN protects victim's in the interim and also protects those who do not wish to take legal action.

²³ It was first piloted in Austria in 1997. See, European Institute for Gender Equality, 'Review of the implementation of the Beijing Platform for Action in the EU Member States: Violence Against Women - Victim Support: Main findings' EU (2013), para 1.3.3.

²⁴ Home Office, *Evaluation of the Pilot of Domestic Violence Protection Orders*, Research Report 76, November 2013.

²⁵ Criminal Justice Inspection Northern Ireland, *Domestic Violence and Abuse, A follow-up review of inspection recommendations*, October 2013, p. 9.

4.5. *While acknowledging the significant progress made in recent years with regard to the issue of domestic violence, and the genuine commitment to address this area, the Commission advises that the JCHR should request specific information regarding timescales and resourcing for the assessment and implementation of government commitments regarding domestic violence specialist courts, independent domestic violence advisors, and domestic violence protection notices/orders in NI.*

5. Termination of Pregnancy

5.1. The Commission notes that in NI termination of pregnancy is governed by the Offences Against the Person Act 1861, and the Criminal Justice Act (Northern Ireland) 1945 as interpreted by the courts. Termination of pregnancy is permissible only where continuing the pregnancy threatens the life of the woman, or would adversely affect her physical or mental health in a manner that is 'real and serious' and 'permanent or long term'.

5.2. In 2013 the Department of Health, Social Services and Public Safety (DHSSPS) consulted on draft guidance regarding the circumstances when termination of pregnancy is permitted in NI and is currently revising the guidance.²⁶ This guidance stated that "[i]t is important for practitioners to appreciate that anyone who unlawfully performs a termination of pregnancy is liable to criminal prosecution with a maximum penalty of life imprisonment. A person who is a secondary party to the commission of such an offence is liable on conviction to the same penalty."²⁷

5.3. In July 2013 the Commission responded to the Department's consultation on the draft guidance.²⁸ The Commission advised the Department that the legal and procedural framework governing termination of pregnancy in Northern Ireland would likely be held not to meet the requirements of international human rights law, including the European Convention on Human Rights (ECHR). The draft Guidance does not provide for a mechanism to address differences of opinion that may arise between a pregnant woman and her doctor, or between medical practitioners treating a pregnant woman.

²⁶ DHSSPS, *The Limited Circumstances for a Lawful Termination of Pregnancy in Northern Ireland; A Guidance Document for Health and Social Care Professionals on Law and Clinical Practice*, April 2013.

²⁷ *Ibid*, p. 8.

²⁸ NIHRC, *Response to the Public Consultation on the Draft Guidance on Termination of Pregnancy in Northern Ireland*, July 2013. Available at: <http://www.nihrc.org/documents/advice-to-government/2013/NIHRC%20Response%20to%20Consultation%20on%20Draft%20Guidance%20on%20Termination%20of%20Pregnancy.pdf>

- 5.4.** The Commission highlighted that the section of the draft guidance addressing conscientious objection on the grounds of religion, 'a right of medical practitioners and other employees to refuse to administer treatment' is not in compliance with the requirements of human rights law, as the right is framed too broadly and no provision is made to ensure that women are referred to alternative medical practitioners.
- 5.5.** The Commission further advised that the Guidance should be amended to clarify that women have a right to access information regarding available options for termination of pregnancy outside Northern Ireland, as blanket restrictions on the provision of such information are not in line with international human rights law. Finally, the Commission explained that the statement in the Guidance that there is uncertainty as to whether "it would be lawful in Northern Ireland to advocate or promote, to a pregnant woman in Northern Ireland, the termination of her pregnancy outside Northern Ireland" indicates that any restriction that exists in this regard is not adequately "foreseeable" and thus would likely be found in violation of the ECHR's requirement that it be "prescribed by law".
- 5.6.** The Commission further recalls that in its 2013 Concluding Observations on the UK the CEDAW Committee regretted that "a public consultation on the possible abolition of laws criminalizing abortion, as called for by the Committee in its previous concluding observations... has not been undertaken."²⁹ The Committee called on the UK government to address this issue and "ensure that legal abortion covers not only cases of threats to the life of a pregnant woman but also other circumstances, such as threats to her health and in cases of rape, incest and serious malformation of the foetus."³⁰ The Committee requested the UK to provide written information on the steps taken to implement these recommendations within a year.³¹
- 5.7.** The Commission notes that the Minister for Justice has advised that he intends to propose amendments to the law on termination of pregnancy in 2014. The scope of any such proposals has not been confirmed, however the Commission understands that they may aim to allow abortions in cases of rape, incest and fatal foetal abnormalities.³² While the legislation remains

²⁹ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 50.

³⁰ *Ibid*, para 51.

³¹ *Ibid*, para 68.

³² BBC News, *Abortion: Justice Minister David Ford to consult on changing NI's laws*, 5 December 2013, <http://www.bbc.co.uk/news/uk-northern-ireland-25230152>

unchanged the Commission is concerned that the law remains in violation of provisions of international human rights law requiring access to termination of pregnancy in specific circumstances.

5.8. *Noting that the issue of termination is a devolved matter, the Commission advises that the JCHR should urge the UK Government to engage with the devolved administration to ensure that*

- *the DHSSPS produce comprehensive revised guidance as soon as possible to give certainty to practitioners and women who are subject to uncertainty in this area and to ensure that the Guidance is fully compliant with the requirements of international human rights law; and*
- *the NI Executive, and specifically the Department of Justice bring forward proposals to amend legislation regarding termination of pregnancy in NI to allow access to abortion "in cases of rape, incest and serious malformation of the foetus."³³*

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³³ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 51.