

Thank you for sending to the Committee on the Administration of Justice (CAJ) a copy of “Hidden Crimes Secret Pain” for comment. This area is one on which we have limited expertise, and therefore we will respond only on some of the issues highlighted.

1. **Consultation list:** It is not clear in the document which organisations have been involved in the work to date, and which have been sent the consultation document to comment upon. We are assuming, as a minimum, that the organisations listed in Appendix D to the document, and those on the Department of Health’s consultation list to its Equality Scheme, were notified / sent copies for comment. The inter-agency approach taken to the work (see listing Appendix A) seems excellent, but there were no obvious groups outside of the statutory sector included in the listing? We think that it would be particularly important to hear the views of those non-governmental organisations working at local level on these problems for years. If there is a dearth in responses from such groups, and we can be of any assistance in giving contact details please feel free to come back to us. We also see no reference to the NI Human Rights Commission (even in the list of acronyms) but presume that they have been involved in earlier stages of this work? Apart from their institutional interest, the Chief Commissioner Monica McWilliams has extensive personal and professional interest in many of the topics covered.
2. **Criminal Justice Inspection** (proposal 2): CAJ believes that it would indeed be helpful to ask the CJI to undertake a thematic inspection into this issue, though we do not know if the agency can fit it into their already fairly full list of priority inspections? We also welcome the proposals regarding improvements in the criminal justice system regarding its treatment of victims, the management of sex offenders, and the need for staff development and training. I happened to come across some CAJ material from 2003 that may be still relevant – our response on a consultation around domestic violence, as well as a note of a meeting organised with CAJ and members of the Northern Ireland Women’s Aid Federation. We believe that it would be extremely valuable to ascertain if these concerns are still current, and how best to help the agencies respond to such problems.
3. **Statistics sub-group of the Criminal Justice Board** (proposal 6): CAJ also welcomes the proposal to have the Criminal Justice Board carry out a review of interim improvements to be made. CAJ has been critical of the delays in introducing widespread equity monitoring systems across the criminal justice agencies, and interim arrangements might at least start moving a process ahead.
4. **Reporting of crimes:** page 13: Table 3 – CAJ thought that the percentages were relatively high of people not reporting incidents to the police on the grounds that (a) they did not think the police could help; (b) did not think the police would believe them; or (c) did not think that the police would be

sympathetic. These are all issues that the police would be well-advised to try and actively address and to which there is an array of possible options – for example, wider publicity about the value of reporting, clear signals from the police about the seriousness and sensitivity with which they will treat such incidents, and more effective outreach efforts to “trusted” intermediaries, and resourcing for same (in terms of refugees etc).

5. **chapter 3:** is there any reason that the offence of murder seems to be totally excluded from consideration in this policy document? Whilst, we understand that murder is not explicitly a form of “sexual” violence (which is the theme of this study), it may surely on occasion be the inevitable final step in a spectrum of violence that includes sexual violence? If it is decided to exclude any detailed consideration of domestic violence resulting in murder, would there still be a value in recording the statistical data. If not, where can people assessing trends in gender-based violence find a comprehensive picture of these issues?
6. **Statistics:** para 3.11 – these statistics are very worrying (and there were similarly worrying statistics issued today we believe?). What analysis has been undertaken into the reasons that the clearance rate has fairly steadily decreased over the time studied and that the latest year for which figures are available (2005/2006) represents the “lowest clearance rate in the last decade and a decrease of 46 percentage points since 1994”?
7. **Prosecutorial trends:** para 3.12: CAJ understands the difficulty of comparing like with like and the impossibility therefore of simply comparing recorded crime and clearance rates against persons proceeded with, and convictions. Nevertheless, we think that this issue cannot be side-stepped entirely. Nor do we understand the rationale behind some of these statistics in Tables 10-12. For example:
  - a. what analysis has been made of the fact that the numbers of people prosecuted for rape is much higher (year on year) than the figures for prosecutions of attempted rape?
  - b. Why, on the contrary, are the percentages of those convicted of attempted rape much higher on average than those convicted of rape?
8. **Criminal justice responses:** para 3.25: It is easy to understand that there may be several critical junctures in the course of an extended detection and prosecutorial system when victims may choose to “drop out”. Is there any statistical breakdown of the different phases, since this might then allow for the determination of measures to seek to respond to each critical juncture?
9. **Follow up with victims:** para 3.35: whilst CAJ understands, and commends, the fact that the alleged perpetrator must be treated fairly, and accorded full due

process, we think it should be possible for the police to facilitate follow up by victims, without in any way undermining the suspect's rights.

10. **Giving of Reasons;** para 3.42: CAJ has frequently had occasion to criticise the failure of the DPP (in the past) and the PPS (currently) regarding their unwillingness to give reasons for their decision not to prosecute. Again, without prejudicing the due process rights of the alleged perpetrator, we think it is vital that the PPS seek to give reasons for their decision not to prosecute – especially in what might be considered contentious cases. If a victim of an alleged sexual crime has gone through many difficult stages to help ensure that the suspect is arrested, charged and subsequently prosecuted, they should at least insofar as possible be made aware in general terms of the reasons for an eventual decision by the PPS to proceed no further.
  
11. **Special measures** (para 3.51: reference is made here (rightly) to the value of removing wigs and gowns to make courts more 'user-friendly'. Somewhere, reference also ought to be made to the value of "representativeness" in the judiciary, legal profession, and various criminal justice agencies. Victims who find the court environment unwelcoming because of their gender, sexual orientation, religious or political origin, or race, may choose not to pursue their case, and will certainly not encourage others in similar situations to do so.

We hope that these comments have been of some use to you.

Yours sincerely,

Director

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15 December 2003

Dear Ms McGeown,

Re: Tackling Violence in the Home

Many thanks for sending us the above consultation document which we read with great interest. The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

CAJ has worked on issues around domestic violence at different times, both as parts of its information and advice function, and in terms of lobbying international human rights treaty bodies. However, we do not consider that we have very great expertise, certainly in comparison to other groups such as the Northern Ireland Women's Aid Federation and others. Accordingly, we will not be preparing a very detailed submission in response to the consultation document, but there are a few points which we consider need to be addressed in order to ensure that there is an effective strategy in place to combat domestic violence.

On a minor point, for future reference, the deadline for comment is mentioned on your cover letter but then, as far as we can tell, does not appear in the document itself until page 66. CAJ has repeatedly suggested to public bodies

that it is helpful to indicate clearly the deadline for comments and not rely on cover letters that – in a large office, when a document is being circulated for discussion – have a habit of ‘going missing’!

Firstly, we were surprised that there appears to be no reference in the policy document to the 2002 recommendation by the UN Committee on Economic, Social and Cultural Rights on the UK. In its examination of the United Kingdom, the UN Committee recommended (recommendation 35) -

*“that the State party continue its efforts to combat domestic violence, and in particular to ensure that there are sufficient refuge places to meet the needs of victims of domestic violence. The Committee requests that the State party provide information in its next periodic report on the further measures taken by the State party, as well as on the results and effectiveness of such measures, in relation to domestic violence.*

This recommendation suggests that the UN Committee was concerned at the inadequate provision currently, particularly in terms of refuges. Moreover, the Committee expressed deep concern that the incidence of domestic violence had increased in recent years. CAJ drew these various recommendations/concerns to the attention of OFM/DFM (letter dated 23/5/02) and was assured that they had been circulated to the attention of all relevant departments and were being acted upon. It would be particularly important to build this recommendation into the future resource planning in this area, and – as indicated – the UN will be looking at its next examination for clear improvements in this area. Has any consideration be given as to the measurement of change in this area? Is there any figure available for the monies currently spent combating domestic violence, the number of refuge places available, and what additional resources might be focused on this area of work?

Secondly, we would like to raise the issue of data and the gathering of information on the problem of domestic violence. We note that in recent years, figures from the police indicate that there appears to have been a large increase in the number of incidents of domestic violence. Your own statistics on page 58 show that the figures almost doubled between 1997 and 1998. While the figures for “domestic incidents attended by the police” for 1997 were almost 7000; this jumped to over 14,000 in 1998 and has stayed consistently high since. We also understand that the figures for deaths arising from domestic violence incidents have also been consistently higher post 1998 than previously.

We are unclear however as to whether this is due to an increase in the number of incidents, or as a result of better monitoring, or a mixture of both. CAJ had an exchange of correspondence with Her Majesty’s Inspector of Constabulary, regarding his immediate assumption (see his annual report, 2002, Page 24) that increased figures was a ‘good’ sign since it reflected a greater readiness to report such crimes. It appears to us that the increase in statistics may indicate a greater willingness to report such crimes, may

indicate an increase in such crimes, or may reflect both of these developments. Clearly it is imperative that this issue be fully explored and that it be very carefully monitored rather than assume that the entire increase is due to a greater confidence among victims to report the crime. CAJ has no expertise to offer on such difficult questions, however we would recommend that research be commissioned to explore this complex issue.

Thirdly, a related topic to data-gathering is the importance of assessing how the proposals in this paper will operate across the various Section 75 groups. In this context it is important to recognise for example that women are not a homogeneous group, and that the needs of different Section 75 groups must be fully taken on board. We note that according to the EQIA, paras. 313-314 state that there is no data available either in relation to religious belief or political opinion, and that it is not anticipated that the strategy will have an adverse impact on these Section 75 categories. Yet the very discussion above suggests that there could well be a difference in reporting to the police as between women of different socio-economic or different community backgrounds. The report itself indicates that (Para. 22) victims frequently do not feel that they can come forward and report the offence to the police, and CAJ would imagine that the barriers to such reporting may vary depending on the community one lives in. Catholic nationalist women may face different obstacles to Protestant unionist women, and they may both face different obstacles to Traveller women, or elderly Chinese women, or young lesbians.

Your consultation document does recognise some of the differential experiences and notes, for example, that 'minority groups can also experience particular difficulties in gaining access to specialist support and services to address their needs'. However, the EQIA states that there is no data available and it is not anticipated that the strategy will have an adverse impact on this Section 75 categories. It is not satisfactory to conclude that because no data exists one can assume no adverse impact; the very purpose of carrying out. Clearly, if there are not sufficient mechanisms in place to address the needs of ethnic minority groups, then the strategy *will* have an adverse impact. The purpose of a Section 75 EQIA is to examine ways in which a policy may or may not meet the range of needs that exist across the groups covered by the legislation. Moreover, it is not sufficient to assume that difficulties do not exist due to lack of statistics – particularly when the report itself acknowledges these problems. CAJ is of the view that there needs to be a re-examination of the range of specific issues that arise in relation to each of the Section 75 groups. Only when this happens can the strategy meet its obligations under the Northern Ireland Act.

Last but not least, CAJ is very aware of many complaints by sufferers of domestic violence, regarding the real and perceived failings in the criminal justice system. Groups like NIWAF, Victim Support, practising solicitors and others will be well placed to comment in detail on such problems, but we have sought permission to attach herewith a short note that CAJ prepared after just one short session with women active in working with victims of domestic violence. Some of their experiences may be of use to you when bringing forward the debate on part 3 "protection and justice".

Should you have any queries regarding any of the matters raised here please do not hesitate to contact us, we look forward to hearing how you intend to proceed on this issue.

Best wishes,

Tim Cunningham  
Equality Project Worker

**Women's Aid Federation**  
**Working Group on Equality and Human Rights Issues**

**Meeting on 26 June 2003 with CAJ**

**Key concerns raised by NIWAF people present:**

- Need for good analysis of statistics of domestic violence. Figures suggest major increase, even in serious crime, since 1998. This could be due to increased violence, better reporting, better recording, more willingness of police and communities to work together, all or none of these issues.
- The language of rights being used against women suffering in situations of domestic violence. This is experienced in the courts (men have rights to see their children, even if this is – or is perceived as – a further attempt to control the abused partner), from the police (cannot interfere with abuser's rights), or in general parlance.
- There is too little understanding of the phenomenon of domestic violence (beyond its purely physical expression) amongst the judiciary, the police, the court service personnel, the legal profession etc. Social workers were thought to have a much better understanding than was the case even a few years ago. It was noted that while there are established guidelines in use for judicial training in England and Wales regarding domestic violence, there is no similar provision in NI.
- Very specific legal problems:
  - Developing practice (by one magistrate at least) to rule out any 'belated' reliance on domestic violence in child custody actions. Although women often don't cite domestic violence in such actions (either for their own reasons, or to protect the children), it has been made clear that it is not acceptable to raise this at a later stage in the proceedings. This is to underplay the difficulty involved for many women in making such claims in 'public'.
  - Can a woman challenge the criminal justice system on human rights grounds – if for example the court process is being delayed by action by their partner? This is again a form of manipulation and control by the abusive partner and needs to be recognised as such. e.g. perpetrators will often change their plea to 'not guilty' only after the woman has taken the stand and been subjected to further trauma.
  - There is a sense in which the man's right to family life seems to carry more weight than the woman's rights and the child's rights to safety etc.
  - The perception is that victims do not have human rights to the same extent as perpetrators do.

- Children of domestically violent households are not considered to be children in need nor vulnerable children.
- One problem is the ‘grading’ of abuse/assault by the PSNI. There seems to be a sole focus on the physical aspects of abuse and even this requires ‘breaking skin’ etc. So the seriousness of the offence depends on the extent of certain kinds of physical violence.
- Another is that charges are often brought as a matter of ‘breach of the peace’, as opposed to a breach of a Non-Molestation Order. This may be done to suit police (can rely on others than the victim herself for evidence) but is it good? Murders are often classified as homicides and little attention is accorded to a history of domestic abuse.
- There is some perception that female perpetrators of domestic violence will often get heavier sentences than their male counterparts
- Should there be more of a link between rights and responsibilities in that a partner refusing to pay child maintenance should not have unqualified child access
- Child access itself is used as a weapon of control in an abusive relationship and this is not adequately understood

In general there is a widespread feeling that the system of criminal justice is failing too many women. They have no faith in the system; and will often drop charges, or not even approach criminal justice bodies for assistance. It was recognised, however, that it would be good to gather some actual case-histories on these kinds of problems so that the issue could be pursued as a matter of policy (see on).

While the main focus was on the problems posed by the criminal justice and family justice system for women suffering abuse, there are probably many other areas requiring attention. One example of this relates to the question of housing. It was reported at the meeting that a woman being made homeless by virtue of domestic violence ‘scores’ less on the housing points system than a woman made homeless because of intimidation of a sectarian nature. There are probably other examples of public policy which do not reflect the reality or seriousness of domestic violence.

## **General Background**

It is important for all those involved with the criminal justice system (and the public sector generally) to realise that domestic abuse is often more than just physical. The child is often used against the mother, by way of a form of emotional abuse. This manipulation of the child contact issue goes relatively unnoticed in the courts who think they know what is ‘best for the child’. A lack of knowledge of the impact of

domestic abuse – not only on the immediate victim, but on the children - means that officers of the court often misconstrue or increase the distress of the situation.

A problem that Women's Aid are facing increasingly is that of being a women's only organisation, and being accused thereby of ignoring domestic violence experienced by men. They recognise that domestic violence is experienced by men, and that groups should address this specific issue, but see no reason why their particular expertise must automatically be extended to address this different type of violence. They also feel that this criticism is an attempt to undermine any gender analysis of domestic violence, and leads to an insistence that men and women suffer equally from such violence. The conclusion from this incorrect premise then seems to be that funding must be equally divided between male and female victims!

There was a feeling that there needs to be a realisation that domestic abuse violates a person's basic right to security of the person, and the rights aspect of the domestic violence problem more effectively pursued.