



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Proposed Regional Strategy for addressing sexual violence:  
Response of the Northern Ireland Human Rights Commission**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to comment on the proposed regional strategy for addressing sexual violence, and the Government's commitment to addressing the issues faced by victims/survivors and the impact on their families and wider society.
3. In making its response, the Commission's draws particular attention to the following human rights standards:
  - a. The European Convention on Human Rights (ECHR), Article 2 (right to life), Article 3 (freedom from torture or inhuman

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<sup>1</sup> Northern Ireland Act 1998, s.69(1).

<sup>2</sup> *Ibid.*, s.69(3).

<sup>3</sup> *Ibid.*, s.69(4).

<sup>4</sup> *Ibid.*, s.69(6).

or degrading treatment), Article 6 (fair and public hearing) and Article 8 (respect for private and family life).

- b. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 2 (elimination of discrimination against women) and Article 6 (obligation to legislate against traffic in women and the exploitation of women through prostitution).
  - c. General Recommendation No. 12 of the United Nations Committee on the Elimination of Discrimination against Women, which addresses the obligation on states "to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life" and calls on states to include in their periodic reports information about "the legislation in force to protect women against the incidence of all kinds of violence in everyday life".
  - d. The International Covenant on Civil and Political Rights, Article 2(3) (effective remedy) and Article 14(1) (fair and public hearing by a competent, independent and impartial tribunal established by law).
  - e. The International Covenant on Economic, Social and Cultural Rights (CESCR), Article 11 (right to adequate standard of living including housing).
  - f. The UN Convention on the Rights of the Child, Article 3 (child's best interests), Article 6 (inherent right to life and the child's survival and development to the maximum extent possible) and Article 39 (recovery and social integration of child victim).
  - g. The Council of Europe Convention on Action against Trafficking in Human Beings.
4. The Commission broadly welcomes the strategic aim of developing a comprehensive regional framework for addressing sexual violence. Given the commonalities between sexual violence and domestic violence, it is suggested that there should be an integrated strategy addressing both forms of violence. This would enable the work which has informed the five year strategy for tackling domestic violence and abuse, published in *Tackling Violence in the Home*, to be integrated and further developed.
5. It is also suggested that victims/survivors of sexual violence

will be better protected if issues relating to children are addressed primarily through existing Child Protection policies. However, there are a number of issues affecting children which should be addressed within a regional strategy including prevention strategies, witness protection and family support. In relation to formulating effective preventative strategies for children and young people, a recent study by Youth Action NI, entitled *Still Waiting*, provides valuable insights into the attitudes and experiences of women aged 16-25 living and growing up in Northern Ireland. In-depth interviews were carried out with 43 young women. The study provides information on many areas of their lives and in the course of the interviews some of the young women recounted their experience of child abuse and domestic violence. The findings reflect a suggestion of the prevalence of domestic violence in the lives of the young people interviewed either through their own experience or through an awareness of the experience of friends and family. The study also suggests that an effective strategy for violence prevention is through the role of education and that this should involve a "school-wide effort", rather than a "stand-alone class-based curriculum programme".

6. While all age groups are at risk from sexual violence, it must be acknowledged that the most significant differential relates to gender. The strategy should be more gender specific with its focus primarily on protecting women from sexual violence, given that the majority of sexual violence is reported by women against male perpetrators. This is not to underestimate the particular problems facing male victims of sexual violence, whose needs in relation to accessing appropriate support services must be fully researched and addressed.

### **Information**

7. Given the lack of reliable estimates of incidence or prevalence of sexual abuse in Northern Ireland, the Commission welcomes *Key Proposal 1* to support and sponsor a comprehensive study with the aim of providing reliable estimates of the prevalence of sexual violence in Northern Ireland. Consultation should take place with all relevant voluntary and community groups to ensure the aims of the study are fully met. Such information will be vital to informing a regional strategy and strengthening the protection afforded to all those suffering sexual violence.

8. Furthermore, CEDAW recommends that statistical data on the incidence of violence of all kinds against women should be included in periodic reports to the Committee.

## **Prevention**

9. The Commission welcomes the emphasis on preventing sexual violence as a key priority within the regional strategy. It is noted that it is proposed to adopt a public health approach to preventing sexual violence. However, whilst this forms an integral strand of the strategy, it is also crucial that the fundamental importance of challenging the attitudes that underpin unequal power relations between men and women is fully acknowledged and that the gender(ed) aspects of violence are given due recognition. As stated in the UN Declaration on the Elimination of Violence Against Women,

*Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women[...] violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.<sup>5</sup>*

9. A recent public opinion survey conducted for Amnesty International UK shows that a strong 'blame culture' exists against women in relation to sexual violence, with large percentages of respondents holding the view that women are frequently totally or partially responsible for being raped. Issues relating to clothing, drinking, perceived promiscuity, personal safety and consent influenced such views. This finding sits alongside a high degree of public ignorance of the incidence of rape and a lack of awareness of the low conviction rates.<sup>6</sup>
10. Such findings underline the pressing need for effective public information campaigns which are accessible to a diverse range of individuals, in terms of age, disability, sexual orientation, and socio-economic, linguistic, ethnic and cultural background.

## **Protection and justice**

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<sup>5</sup> General Assembly resolution 48/104 of 20 December 1993.

<sup>6</sup> *Sexual Assault Research*, ICM for AIUK, published 21 November 2005.

11. The lack of understanding as to what constitutes sexual violence and the existence of a 'blame culture' impact adversely on the ability of victims to access the criminal justice system. Research carried out in Northern Ireland shows that barriers to reporting sexual violence included fear of perpetrator; fear of not being believed; fear of being blamed; fear for the family; shame and guilt; and loyalty to the perpetrator.<sup>7</sup>
12. In order to further address the incidence of under-reporting in Northern Ireland, it is vital that the views and experience of organisations at the forefront of offering support and information to victims and survivors of sexual violence and victims/survivors themselves inform the development of policy and practice in this area.
13. Of those cases reported, international research demonstrates that many cases are 'lost' at the early stages of investigation. This includes the decision to make an official report and the initial response. Potential barriers to progress involve the process of "reporting to the police, forensic examination, statement taking, evidence gathering and arrest and/or interviewing suspects".<sup>8</sup> Such evidence underlines the importance of ensuring that all police officers involved in initial contact with victims of sexual violence are fully trained to respond in a consistent and sensitive manner.
14. Figures from the Police Service of Northern Ireland (PSNI) show a 46% and 43.3% clearance rate for sexual offences in 2004/05 and 2005/06 respectively.<sup>9</sup> However, the term 'clearance' includes formal sanctions (including charging or issuing of a summons or caution) *and* those instances where the police take no further action. Furthermore, figures for Northern Ireland indicate that the method of clearance includes a very high proportion of cases where the 'complainant declined to prosecute' (an average of 32% between 2000 and 2005). There is also a high proportion of 'otherwise disposed of' clearances, totalling an average of 26.7% across the five year period.<sup>10</sup> Further information is

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<sup>7</sup> NIO Research & Statistical Series: Report No. 10, *Victims' and Witnesses' Views on their Treatment in the Criminal Justice System*, Northern Ireland Office, p2 at point 6.3.5.

<sup>8</sup> Kelly L. & Regan L. (2001) *Rape: The Forgotten Issue?*, London, Child and Women Abuse Unit.

<sup>9</sup> PSNI Statistical Report No 1 *Recorded Crime and Clearances*, 1<sup>st</sup> April 2005 – 31<sup>st</sup> March 2006, National Statistics Publication, 9 May 2006.

<sup>10</sup> NIO Research & Statistical Series: Report No. 10, Table 2a *All sexual offences cleared by method of clearance 2000/01-2004/05*.

required regarding the decision making process in those cases where no further action is taken, including where complainants decline to prosecute, in order to identify possible shortcomings in the reporting process.

15. The Commission therefore supports *Key Proposal 2* that the Criminal Justice Inspectorate be requested to undertake a thematic inspection of how sexual violence cases are handled by the criminal justice system, and put forward recommendations for improvements. This should include improved mechanisms for the gathering and analysis of statistical information relating to sexual violence cases.

## **Prosecution**

16. The findings of a study of attrition rates across Europe<sup>11</sup> show that whilst there are “core problems linking adversarial and investigative legal systems”, England and Wales and Ireland had amongst the lowest rates for prosecutions and convictions. Figures for Northern Ireland show that in 2003, there were a total of 184 prosecutions for sexual offences, with 108 resulting in a conviction. It is a matter of concern that in relation to the category of ‘rape’, there were just 26 prosecutions resulting in eight convictions.<sup>12</sup> While there may be valid legal arguments supporting this outcome, further clarification of the reasons behind the low conviction rate is required so that any identified barriers to victims accessing the criminal justice system can be addressed.
17. The high rate of attrition suggests that there is a pressing need for additional resources for training within the police and the judiciary to ensure that those reporting rape and other sexual offences are treated sensitively and receive an appropriate response throughout all stages of the criminal justice process.
18. International research has found that for those attending trial as a victim, “there was a strong perception that many women... are in effect on trial themselves”.<sup>13</sup> Furthermore, the research found support for the extension of the use of a video link for giving evidence, for consideration of further use

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<sup>11</sup> Kelly & Regan (2001); ‘attrition’ here refers to the multiple factors contributing, at successive stages of investigative and judicial processes, to the gross disparity between the incidence of rape and the successful conclusion of prosecutions: see para. 13 above.

<sup>12</sup> NIO Research & Statistical Series: Report No. 10, Table 3.

<sup>13</sup> Kelly & Regan (2001).

of closed hearings and for the general need to make the court environment less intimidating. Concerns were also raised in relation to aftercare and information provided post-trial to injured parties which was viewed as variable, "and in some cases severely lacking".

19. Just as Kelly and Regan found in 2001, there remains a "need for a coherent, consistent national and practice framework for rape investigations, which covers initial response, statement taking, forensic examinations, interviewing suspects and preparing files" for the PPS.<sup>14</sup> This is in line with *Key Proposal 11*, to develop regional standards for services involved in responding to victims/survivors of sexual abuse.

### **Sentencing and sex offender treatment programmes**

20. In relation to sentencing policy, it is important to achieve a balance between deterrence and rehabilitation of offenders. International standards encourage states to limit the use of deprivation of liberty.<sup>15</sup> However, this must be balanced against the duty of the state to protect life and to ensure that no one is subjected to torture or to degrading treatment or punishment.
21. Sentencing policy for sexual offences must give due recognition to the specificity of sexual offences, including long-established patterns of offending behaviour, high rates of recidivism, and frequent failure to acknowledge guilt and to understand the impact of crimes on the victims. The time spent in custody should be such as to provide protection for the public *and* to facilitate offender participation in treatment programmes; and if there is evidence that present sentencing policy does not secure these ends, consideration must be given to adjusting either sentencing policy or an remission for this class of offences.
22. In that context, legislation is anticipated to provide for Indeterminate and Extended public protection sentences which will allow for the continued detention of dangerous offenders. In the event of such legislation coming into force, it is important that compatibility with the ECHR is ensured. The objectives of retribution, deterrence and protection need to be balanced by the principle, reflected in, for example, Article 10 of the International Covenant on Civil and Political

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<sup>14</sup> Kelly & Regan (2001), p26.

<sup>15</sup> Association for the Prevention of Torture, *Monitoring Places of Detention: a practical guide*, p21.

Rights which states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of that person”. The treatment of offenders must be humane and proportionate, and should at least contemplate the possibility of rehabilitation with an objective of enabling him or her to re-enter society safely and effectively.

23. Campaign groups have highlighted the potential problem whereby sex offenders do not have to agree to any therapy as a condition of their early release.<sup>16</sup> Concerns have also been raised regarding the reduction in the availability of sex offender treatment programmes (SOTPs).<sup>17</sup> It is vital that adequate resources are made available for SOTPs to ensure that all ‘programme ready’ prisoners are able to participate in a treatment programme. This should be available to all those who receive either a custodial, non-custodial, or suspended sentence or other sentencing option available to the Courts. Arrangements should be in place to enable continuity and completion of therapeutic treatment programmes in accessible locations.
24. It is suggested that further research and evaluation of current sex offender programmes needs to be undertaken to assess their effectiveness and impact upon re-offending.

## **Support**

25. The consultation document indicates that a decision has already been taken to set up a Sexual Assault Referral Centre (SARC). As stated in the document, most SARCs are joint ventures between the police and primary care trusts. The point is also made that whereas a SARC can provide a response to the immediate needs of some victims in terms of medical care and evidence gathering, they are not designed to offer long-term support or provide services to survivors of historic sexual violence. The services provided by a SARC should not be geographically limited and should incorporate provision for outreach work.
26. It is recommended that prior to establishing a SARC, further research be carried out to establish how such a Centre would best meet the needs of victims/survivors. Input from non-statutory service providers and from victims/survivors should

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<sup>16</sup> McDonald, H. (2 July 2006) *Call to scrap cut in rapists’ jail terms*, [www.guardian.co.uk](http://www.guardian.co.uk)

<sup>17</sup> *The Guardian* (19 September 2006)

be involved in this process to ensure needs are met and gaps in service provision identified.

27. It is widely recognised that pathways taken by victims of sexual violence to accessing services are dependent upon specific individual circumstances. Formal pathways usually begin with the police, and informal pathways with friends and family. Given this, there is a need for a comprehensive information pack for service providers comprising details of all the services that a victim of sexual violence may wish to access. There is also a need for an information pack for service users and this should be made available at the earliest safe opportunity. It is noted that this priority is reflected in *Key Proposal 10*.
28. There is a need to ensure that adequate resources are in place to provide for the housing needs of those escaping violence or threats of violence in the home. Every human being has a right to live in a safe and secure environment. There is a wide variety of international instruments that address the right to adequate housing. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that everyone has the right to "... an adequate standard of living for himself (*sic.*) and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." It has often been the case in relation to domestic violence that the victim has to flee and the perpetrator stays in the home. There is only passing reference in this report to housing needs, and none to the issue of victim protection by such means as restriction, non-molestation or occupation orders. This point reiterates the need for an integrated strategy that addresses both domestic violence and sexual violence in relation to housing support services.
29. Given the universality of human rights, the rights to protection and redress apply equally to victims with insecure immigration status. In that context, women victims of trafficking for the purposes of sexual or other forms of exploitation may be especially vulnerable to sexual violence, and may be less likely to report it and seek redress. Public authorities need to be particularly attuned to dealing with such issues in a humane and sensitive way. Thus any strategy on sexual violence must address the support needs of victims of human trafficking.

30. The recently created UK Human Trafficking Centre (UKHTC) is directly linked to the introduction of the UK Action Plan on Tackling Human Trafficking published in March 2007 by the Home Office and Scottish Executive. The UKHTC has as one of its central tenets "the development of a victim centred human rights based approach to tackling human trafficking". It is important, therefore, that the relevant authorities in Northern Ireland (in particular PSNI and the immigration authorities) develop strategies that provide sensitive identification and support to victims of trafficking as outlined in the Action Plan. It is also important to ensure that any strategy is compliant with the recently signed Council of Europe Convention on Action against Trafficking in Human Beings.

### **Concluding comments**

31. The proposal for a Regional Strategy for addressing sexual violence in Northern Ireland is welcomed. Lack of knowledge regarding what constitutes sexual violence, the prevalence of sexual violence, its under-reporting and high attrition rates are all serious issues that undermine attempts to provide improved support and legal protection to victims. Much valuable work has been carried out by the voluntary and statutory sector in terms of improving prevention strategies and service provision to victims/survivors of sexual violence. It is vital that this work is further developed and resourced to ensure that all victims/survivors are provided with the assistance and support that is needed at the appropriate time. The right of all persons to dignity and physical integrity must be ensured and protected in law.

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