



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Response to the Public Consultation on the Draft Strategy on Stopping Domestic and Sexual Violence and Abuse in Northern Ireland, 2013-2020

1. Introduction

1.1. The Northern Ireland Human Rights Commission (the NIHRC or 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). In accordance with this function the following statutory advice is submitted to the Department of Justice (DoJ) and the Department of Health, Social Services and Public Safety (DHSSPS) in response to the consultation on the draft strategy on Stopping Domestic and Sexual Violence and Abuse in Northern Ireland, 2013-2020.

1.2. The Commission bases its position 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 (HRA) and the treaty obligations of the Council of Europe and United Nations (UN) systems. The relevant international treaties in this context include:

- The European Convention on Human Rights, 1950 (ECHR) [UK ratification 1951];
- The International Covenant on Civil and Political Rights (ICCPR) [UK ratification 1976];
- The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) [UK ratification 1976];

- The United Nations Convention on the Elimination of Discrimination Against Women (CEDAW)[UK ratification 1986];
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) [UK ratification 1988]
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [UK ratification 1988]
- Convention on the Rights of the Child (CRC) [UK ratification 1991]
- Charter of Fundamental Rights of the European Union [UK ratification 2000]
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the UN Convention Against Transnational Organised Crime (UN Trafficking Protocol) [UK ratification 2006]
- Convention on the Rights of Persons with Disabilities (UNCPRD)[UK ratification 2009];
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) [UK ratification 2009]

1.3. The NI Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom's (UK) ratification.¹ In addition, Section 26(1) of the Northern Ireland Act 1998 provides that "*If the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken.*" Further, Section 26(2) states that "*the Secretary of State may, by order, direct that an action be taken on a matter within the legislative competency of the Assembly as required for the purpose of giving effect to international obligations. Such action can include the introduction of a Bill into the Assembly.*"

1.4. The NIHRC further recalls that Section 24 (1) of the Northern Ireland Act 1998 provides that "*A Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention [ECHR] rights.*"

1.5. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the United Nations and the Council

¹ Treaties are written agreements to which the participating States are legally bound. See Shaw, M., *International Law* (Cambridge, 2003), p 88.

of Europe. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- UN General Assembly Declaration on the Elimination of Violence against Women, A/Res/48/104, 1993
- Beijing Platform for Action adopted by the United Nations 4th World Conference on Women (Beijing, 1995);
- Council of Europe, Committee of Ministers, Recommendation No. R (2002) 5 on the Protection of Women against Violence, adopted 30 April, 2002;
- UN General Assembly Resolution, 'Intensification of efforts to eliminate all forms of violence against women', A/Res/61/143, 19 December 2006;
- Council of Europe, Parliamentary Assembly Resolution 1697 (2009): Migrant Women: at particular risk from domestic violence
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN General Assembly Resolution, A/Res/65/229, 16 March 2011.
- Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, Annex to UN General Assembly Resolution on Strengthening crime prevention and criminal justice responses to violence against women, A/Res/65/228, 31 March 2011
- UN General Assembly Resolution on Intensification of efforts to eliminate all forms of violence against women, A/Res/67/144, 20 December 2012
- Conclusions of the 57th session of the UN Commission on the Status of Women on the elimination of all forms of violence against women and girls, (adopted 2013);
- Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), (UK signature 2012)

1.6. Furthermore, the European Union has adopted various resolutions and directives relevant to the Strategy, having regard to the Charter of Fundamental Rights of the European Union and provisions in the human rights sphere, including:

- European Parliament resolution on the elimination of violence against women, 26 November 2009, OJ C 285 E, 21.10 2010, p. 53;
- European Parliament resolution on priorities and outline of a new EU policy framework to fight violence against women, 5 April 2011, OJ C 296 E, 2.10.2012, p. 26;

- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (OJ L 315. 14.11.2012, p.57)
- European Parliament resolution on the impact of the economic crisis on gender equality and women's rights, 12 March 2013 (2012/2301(INI))
- European Parliament resolution with recommendations to the Commission on combating Violence Against Women, 25 February 2014 (2013/2004(INL))

1.7. The Commission welcomes the Government's commitment in this Strategy to increase efforts to address domestic and sexual violence and abuse in NI and notes the potential for the Strategy to increase compliance with various international human rights obligations. In this regard the Commission recalls in particular that the CEDAW Committee in 2013 urged the UK to "increase its efforts to protect women, including black and ethnic minority women, against all forms of violence, including domestic violence, and so-called 'honour killings'".²

2. International Human Rights Obligations

2.1. Although the Draft Strategy references several human rights standards, the binding nature of relevant international human rights standards is not recognised. Further, a number of relevant standards are omitted. In this regard the Commission recalls the European Court of Human Rights' (ECtHR) extensive case law in this area,³ which makes explicit reference to protections at the international level, including the UN Human Rights Treaties⁴ and the Council of Europe.⁵ The Court has stressed the gravity of the problem of domestic violence and that:

² CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 35 (b).

³ See for example, *Hajduova v Slovakia*, Application no. 2660/03, 30 November 2010; *Kalucza v Hungary*, Application No. 57963/10, 24 April 2012; *Valiuliene v Lithuania*, Application no. 33234/07, 26 March 2013; *I.G. v Moldova*, Application no. 53519/07, 15 May 2012; *Bevacqua and S v Bulgaria*, Application no. 71127/01, 12 June 2008.

⁴ See for example, *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 72-79, 147, and 184-190; *Eremia v The Republic of Moldova*, Application no. 3564/11, 28 May 2013, para. 36; *Bevacqua and S v Bulgaria*, Application no. 71127/01, 12 June 2008, paras 52-53.

⁵ See for example, *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 80-82 and para 164: "in interpreting the provisions of the Convention and the scope of the State's obligations in specific cases... the Court will also look for any consensus and common values emerging from the practices of European States and specialised international instruments, such as the CEDAW, as well as giving heed to the evolution of norms and principles in international law through other developments... which specifically sets out States' duties relating to the eradication of gender-based violence." See also, *Eremia v The Republic of Moldova*, Application no. 3564/11, 28 May 2013, para. 33-35; *Bevacqua and S v Bulgaria*, Application no. 71127/01, 12 June 2008, paras 49-51.

It is a general problem which concerns all member States and which does not always surface since it often takes place within personal relationships or closed circuits and it is not only women who are affected. The Court acknowledge[d] that men may also be the victims of domestic violence and, indeed, that children, too, are often casualties of the phenomenon, whether directly or indirectly.⁶

2.2. Domestic and sexual violence and abuse can engage a number of ECHR Articles, including Article 2 (right to life), Article 3 (prohibiting torture and cruel, inhuman or degrading treatment), Article 8 (right to private and family life, which includes a person's physical and psychological integrity) and Article 14 (prohibition of discrimination).

2.3. In *Opuz v Turkey*, in the context of Article 2, the Court "reiterate[d] that a failure to take reasonable measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State."⁷ In *Eremia v The Republic of Moldova* the "fear of further assaults was sufficiently serious to cause the first applicant to experience suffering and anxiety amounting to inhuman treatment within the meaning of Article 3 of the Convention,"⁸ thus engaging the State's positive obligations under that Article. In that case, in the context of the Applicant's children who witnessed their father's violence against their mother in the family home, the State's positive obligations under Article 8 were engaged.⁹ In the context of Article 14, the Court has held that "the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional."¹⁰ In finding violations of Article 14 in the context of domestic violence against women the Court has considered factors such as "the general and discriminatory judicial passivity [which] created a climate that was conducive to domestic violence,"¹¹ and the "authorities' passivity... apparent from their failure to consider protective measures before a formal application to that end was made."¹²

⁶ *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 132.

⁷ *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 136.

⁸ *Eremia v The Republic of Moldova*, Application no. 3564/11, 28 May 2013, para. 54. See also, *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 161; *I.G. v Moldova*, Application No. 53519/07, 15 May 2012.

⁹ *Eremia v The Republic of Moldova*, Application no. 3564/11, 28 May 2013, para. 73-79. See also, *Kalucza v. Hungary*, Application No. 57693/10, 24 April, 2012. *M.C. v Bulgaria*, Application No. 39272/98, 4 December 2003.

¹⁰ *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 191.

¹¹ *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 198.

¹² *T.M and C.M. v. The Republic of Moldova*, Application no. 26608/11, 28 January 2014, para 60.

2.4. The UN Human Rights Treaty Bodies, including but not limited to the Committee on the Elimination of Discrimination against Women (CEDAW Committee),¹³ have regularly emphasised States Parties' obligations in relation to domestic and sexual violence and abuse. For example, the UN Committee Against Torture (CAT Committee) noted that:

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 Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The 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.¹⁴

2.5. The UN Committee on Economic, Social and Cultural Rights (CESCR) stated that:

Implementing article 3, in relation to article 10 [of the International Covenant on Economic, Social and Cultural Rights], requires States parties, inter alia, to provide victims of domestic violence, who are primarily female, with access to safe housing, remedies and redress for physical, mental and emotional damage; ... Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.¹⁵

2.6. The Commission advises that the Strategy should explicitly recognise the mandatory nature of relevant obligations, as outlined above.

2.7. The Commission notes that the UK Government has signed, but not yet ratified, the Council of Europe Convention on preventing and combating

¹³ See for example, CEDAW Committee, General Recommendation 19 on Violence against Women and General Recommendation 24 on Women and Health.

¹⁴ UN Committee Against Torture, General Comment 2, para 18.

¹⁵ CESCR, General Comment 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, para 27.

violence against women and domestic violence (the Istanbul Convention).¹⁶ In light of its signature, the UK is “obliged to refrain from acts which would defeat the object and purpose” of the Convention.¹⁷

2.8. In July 2013 the head of the interpersonal violence team of the Home Office stated that the Home Office “was working with the devolved administrations and other government departments to develop a time frame for ratification of the Istanbul Convention.”¹⁸ In 2013, the CEDAW Committee called on the UK to ratify the Convention.¹⁹

2.9. The Istanbul Convention applies to all forms of violence against women, as well as domestic violence, which affects women disproportionately, but can affect men and women, children and the elderly.²⁰ Parties to the Convention are encouraged to apply the Convention to all victims of domestic violence.²¹ Parties to the Convention must pay particular attention to women victims of gender-based violence in implementing the provisions of the Convention.²²

2.10. The Commission advises that the Departments should take cognisance of the Istanbul Convention and consider the role of the Strategy in ensuring the NI Executive’s fulfillment of its obligations.

3. Data collection and research

3.1. The CEDAW Committee has stated that “States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and

¹⁶ The UK Government signed the Convention in June 2012. The Convention will enter into force on 1 August, 2014.

¹⁷ Article 18 of the Vienna Convention on the Law of Treaties.

¹⁸ CEDAW/C/SR.1142, Summary record of the 1142nd meeting of the Committee on the Elimination of Discrimination against Women, para 47. *See also*, CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 34. *See also*, *Special Rapporteur on violence against women finalizes country mission to the United Kingdom and Northern Ireland and calls for urgent action to address the accountability deficit and also the adverse impacts of changes in funding and services*, 15 April 2014, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E>

¹⁹ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 35 (a). *See also*, UN Human Rights Council, 2012 Universal Periodic Review of the UK, A/HRC/21/9, 6 July 2012, recommendations 29 and 74; and Council of Europe, Parliamentary Assembly, Resolution 1963 (2013) on Violence against women in Europe, para 7.1.

²⁰ Istanbul Convention, Article 2 – Scope of the Convention. *See also*, Preamble to the Convention.

²¹ Istanbul Convention, Article 2 – Scope of the Convention.

²² Istanbul Convention, Article 2 – Scope of the Convention.

deal with violence.”²³ The Commission recalls that pursuant to the UN Declaration on the Elimination of Violence against Women, States should

Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public.²⁴

3.2. The Council of Europe, Committee of Ministers, Recommendation on the Protection of Women against Violence, further states that:

Research, data collection and networking at national and international level should be developed, in particular in the following fields:

- a. the preparation of statistics sorted by gender, integrated statistics and common indicators in order to better evaluate the scale of violence against women;
- b. the medium- and long-term consequences of assaults on victims;
- c. the consequence of violence on those who are witness to it, *inter alia*, within the family;
- d. the health, social and economic costs of violence against women;
- e. the assessment of the efficacy of the judiciary and legal systems in combating violence against women;
- f. the causes of violence against women, i.e. the reasons which cause men to be violent and the reasons why society condones such violence;
- g. the elaboration of criteria for benchmarking in the field of violence.²⁵

²³ CEDAW Committee, General Recommendation 19 on violence against women, para 24(c). *See also*, CEDAW Committee, General Recommendation 26 on women migrant workers, Para 23 (c).

²⁴ UN General Assembly Declaration on the Elimination of Violence against Women, A/Res/48/104, 1993, Article 4(k).

²⁵ Council of Europe, Committee of Ministers, Recommendation No. R (2002) 5 on the Protection of Women against Violence, adopted 30 April, 2002, Appendix, para 5. *See also*, Council of Europe, Parliamentary Assembly Resolution 1697 (2009): Migrant Women: at particular risk from domestic violence, para 4.1.2. States were invited to gather statistics “broken down by gender and community, to provide a better insight into the nature and magnitude of the phenomenon and enable adequate strategies to be adopted.”; Istanbul Convention, Article 11: 1. For the purpose of the implementation of this Convention, Parties shall undertake to: a) collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention; 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 this Convention. 2. Parties shall 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 this Convention. 3.

3.3. Despite these commitments the European Union Agency for Fundamental Rights (EUFRA) noted in 2014 that “one area where there is agreement – embracing the UN, the Council of Europe, the European Commission, the European Parliament and civil society – is with respect to the continued lack of comprehensive, comparable data on the phenomenon of violence against women.”²⁶

3.4. The Commission recalls that the UN Special Rapporteur on Violence against Women has noted that “coherence and sustainability in data collection is essential for the effective development and implementation of laws, policies and programmes. It is also essential to include both quantitative data, to measure prevalence and forms, and qualitative data, to assess the efficacy of measures.”²⁷

3.5. The Commission advises that the Strategy should include information regarding the collection of data and the conduct of research and analysis. In addition, the Strategy should set out how monitoring to ensure the effectiveness of relevant legislation, strategies and action plans will be conducted.²⁸

4. Translating Policy into Practice

4.1. The Commission welcomes references to increased training regarding domestic and sexual violence and abuse in the draft Strategy. The Commission notes that difficulties are regularly encountered in translating policy commitments into changes on the ground. A HMIC inspection in England and Wales, which reported in April 2014, found that “domestic abuse is a priority on paper but, in the majority of forces, not in practice... All forces told us that it is a priority for them. This stated intent is not translating into

Parties shall provide the group of experts, as referred to in Article 66 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking. 4. Parties shall ensure that the information collected pursuant to this article is available to the public.

²⁶ EUFRA, Violence against women: an EU-wide survey, 2014, p. 12.

²⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/23/49, 14 May 2013, para 61.

²⁸ See, Her Majesty’s Inspectorate of Constabulary, *Everyone’s business: Improving the police response to domestic abuse*, 2014, available at: <http://www.hmic.gov.uk/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf>, Recommendation 4, p. 21.

operational reality in most forces.”²⁹ In *Opuz v Turkey*, the ECtHR found that “[d]espite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in [that] case, indicated that there was insufficient commitment to take appropriate action to address domestic violence.”³⁰

4.2. The Commission recalls that the CEDAW Committee has stated that

in order for the individual woman victim of domestic violence to enjoy the practical realization of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the... comprehensive system... must be supported by State actors, who adhere to the State party’s due diligence obligations.³¹

4.3. Specifically in relation to the police, the Commission recalls that in its 2013 Concluding Observations the CEDAW Committee urged the UK to “step up efforts to train police officers in order to eliminate prejudices concerns the credibility of victims of domestic violence.”³² The Commission notes that in October 2013 the Criminal Justice Inspection Northern Ireland found that its recommendation that the “PSNI should review the role of, and skill set requirements for Domestic Abuse Officers and Public Protection Unit Supervisors, and specifically consider the need for a proportion of Officers working in the area of domestic abuse to be trained to the relevant investigative standards via the Initial Crime Investigators’ Development Programme,” had not been achieved.³³

4.4. Article 15 of the Istanbul Convention, which the UK has signed and intends to ratify, states that:

1. Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the

²⁹ Her Majesty’s Inspectorate of Constabulary, *Everyone’s business: Improving the police response to domestic abuse*, 2014, available at: <http://www.hmic.gov.uk/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf>, p. 6.

³⁰ *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 200.

³¹ CEDAW Committee, *Yildirim v. Austria*, CEDAW/C/39/D/6/2005, 1 Oct 2007, para 12.1.2.

³² CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 35 (d).

³³ Criminal Justice Inspection Northern Ireland, *Domestic Violence and Abuse, A follow-up review of inspection recommendations*, October 2013, p. 10.

needs and rights of victims, as well as on how to prevent secondary victimisation.

2. Parties shall encourage that the training referred to in paragraph 1 includes training on coordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.³⁴

4.5. The Commission advises that the Strategy should outline systemic and targeted interventions to ensure that the commitments outlined in the Strategy are effectively operationalised, including through the use of training.

4.6. The Commission advises that in developing training the Departments should recall the 2014 findings of the HMIC that “the poor attitudes that some police officers display towards victims of domestic abuse... may stem from a lack of understanding [and] the current approach to training, which is largely reliant on e-learning, is failing to address this issue.”³⁵

5. Gender sensitive and age appropriate responses

5.1. The Istanbul Convention states that:

Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women.³⁶

5.2. The CEDAW Committee has noted that “Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.”³⁷ The UN Declaration on the Elimination of Violence against Women notes that States should “ensure that re-victimization of women does not occur because of laws insensitive to

³⁴ See also, Council of Europe, Committee of Ministers, Recommendation No. R (2002) 5 on the Protection of Women against Violence, adopted 30 April, 2002, paras 8-16; UN General Assembly Declaration on the Elimination of Violence against Women, A/Res/48/104, 1993, Article 4(i).

³⁵ Her Majesty’s Inspectorate of Constabulary, *Everyone’s business: Improving the police response to domestic abuse*, 2014, available at: <http://www.hmic.gov.uk/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf>, p. 9.

³⁶ Istanbul Convention, Article 6.

³⁷ CEDAW Committee, General Recommendation 19 on violence against women, para 24(b).

gender considerations, enforcement practices or other interventions.”³⁸ The Council of Europe, Committee of Ministers, states that Member states should: “take all necessary measures to ensure that none of the victims suffer secondary (re)victimisation or any gender-insensitive treatment by the police, health and social personnel responsible for assistance, as well as by judiciary personnel.”³⁹

5.3. UNCRPD, Article 16.2 requires that:

States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers... States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

5.4. Similarly, the UN CAT Committee has stated that:

Judicial and non-judicial proceedings shall apply gender-sensitive procedures which avoid re-victimization and stigmatization of victims of torture or ill-treatment. With respect to sexual or gender-based violence and access to due process and an impartial judiciary, the Committee emphasizes that in any proceedings, civil or criminal, to determine the victim’s right to redress, including compensation, rules of evidence and procedure in relation to gender-based violence must afford equal weight to the testimony of women and girls, as should be the case for all other victims, and prevent the introduction of discriminatory evidence and harassment of victims and witnesses. The Committee considers that complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress.⁴⁰

5.5. In relation to older women, the CEDAW Committee has stated that “States parties should give due consideration to the situation of older women

³⁸ UN General Assembly Declaration on the Elimination of Violence against Women, A/Res/48/104, 1993, Article 4(f).

³⁹ Council of Europe, Committee of Ministers, Recommendation No. R (2002) 5 on the Protection of Women against Violence, adopted 30 April, 2002, Appendix, para 33.

⁴⁰ UN CAT Committee, General Comment 3 on the implementation of Article 14 by States Parties, para 33.

when addressing sexual violence..."⁴¹ In the context of children, Article 19 of the UNCRC sets out State obligations to protect children from all forms of violence, exploitation and abuse.⁴² The Committee has outlined that "children's rights to be heard and to have their views given due weight must be respected systematically in all decision-making processes, and their empowerment and participation should be central to child caregiving and protection strategies and programmes."⁴³ Further, the Committee has noted that the "right of children to have their best interests be a primary consideration in all matters involving or affecting them must be respected, especially when they are victims of violence, as well as in all measures of prevention."⁴⁴

5.6. The Commission advises that the Strategy should outline how the Departments will ensure that the responses to domestic and sexual violence and abuse are gender sensitive and age appropriate.

6. Prevention

6.1. The CEDAW Committee has stated that

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women.⁴⁵

6.2. The Council of Europe, Committee of Ministers, Recommendation on the Protection of Women against Violence, further recommends that governments "Recognise that male violence against women is a major structural and societal problem, based on the unequal power relations

⁴¹ CEDAW Committee, General Recommendation 27 on older women and protection of their human rights, para 38.

⁴² Article 19.1: "States Parties shall take all appropriate legislative, administrative, social and educational 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, while in the case of parent(s), legal guardian(s) or any other person who has the care of the child."

⁴³ UN CRC Committee, General Comment 13 on the right of the child to be free from violence, para 3(e).

⁴⁴ UN CRC Committee, General Comment 13 on the right of the child to be free from violence, para 3(f).

⁴⁵ CEDAW Committee, General Comment 19 on violence against women, para 11.

between women and men and therefore encourage the active participation of men in actions aiming at combating violence against women."⁴⁶

6.3. The Istanbul Convention recognises that "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."⁴⁷ The Convention further notes "the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men."⁴⁸

6.4. The ECtHR has noted that "the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional."⁴⁹

6.5. The UN CRC Committee states that

States should address all forms of gender discrimination as part of a comprehensive violence-prevention strategy. This includes addressing gender-based stereotypes, power imbalances, inequalities and discrimination which support and perpetuate the use of violence and coercion in the home, in school and educational settings, in communities, in the workplace, in institutions and in society more broadly. Men and boys must be actively encouraged as strategic partners and allies, and along with women and girls, must be provided with opportunities to increase their respect for one another and their understanding of how to stop gender discrimination and its violent manifestations.⁵⁰

6.6. The Commission advises that in addition to recognising that women are disproportionately the main victims of domestic and sexual violence and abuse,⁵¹ the Strategy should recognise the structural and societal issues which cause this disproportionate impact and should include measures to address these issues.

⁴⁶ Council of Europe, Committee of Ministers, Recommendation No. R (2002) 5 on the Protection of Women against Violence, adopted 30 April, 2002, para (III).

⁴⁷ Istanbul Convention, Preamble.

⁴⁸ *Ibid.*

⁴⁹ *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 191.

⁵⁰ UN CRC Committee, General Comment 13 on the right of the child to be free from violence, para 72(b).

⁵¹ Draft Strategy, para 2.2. See also for example, Istanbul Convention – Preamble.

7. Socio-Economic Issues

7.1. The Commission welcomes the inclusion of financial abuse in the definition of Domestic Violence and Abuse in the draft Strategy. The Commission recalls that the CEDAW Committee has recognised the impact of socio-economic circumstances on violence against women noting that: "Lack of economic independence forces many women to stay in violent relationships"⁵² and that "poverty and unemployment increase opportunities for trafficking in women."⁵³

7.2. The Commission recalls that in 2013 the CEDAW Committee urged the UK "to mitigate the impact of austerity measures on women and the services provided to women, especially women with disabilities and older women. It should also ensure that spending reviews continuously focus on measuring and balancing the impact of austerity measures on women's rights. It should further review the policy of commissioning services wherever this may undermine the provision of specialized services for women."⁵⁴

7.3. The Commission advises that the Strategy should consider and monitor the impact of proposed welfare reforms on victims of domestic and sexual violence and abuse, including the potential exploitation of the Universal Credit system.⁵⁵

7.4. The Commission recalls that the CEDAW Committee further urged the UK to "ensure effective access by women, in particular women victims of violence, to courts and tribunals" and to "continuously assess the impact of the reforms of legal aid on the protection of women's rights."⁵⁶

7.5. The Commission advises that the Strategy should outline provisions to monitor the impact of proposed legal aid cuts on victims of domestic and sexual violence and abuse.

⁵² CEDAW Committee, General Comment 19 on violence against women, para 23.

⁵³ CEDAW Committee, General Comment 19 on violence against women, para 14.

⁵⁴ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 21.

⁵⁵ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 63: "The Committee urges the State party to adopt measures to prevent the potential exploitation of the Universal Credit system by an abusive mal spouse."

⁵⁶ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 23.

8. Increased vulnerability

8.1. The Commission recalls that the UN Declaration on the Elimination of Violence against Women noted that some groups of women are especially vulnerable to 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.”⁵⁷ Pursuant to that Declaration, States should “Adopt measures towards the elimination of violence against women who are especially vulnerable to violence.”⁵⁸

8.2. Members of certain groups, including but not limited to those discussed below,⁵⁹ as well as individuals with particular characteristics or experiences, for example certain groups of children⁶⁰ and individuals who have previously been victims of

⁵⁷ UN General Assembly Declaration on the Elimination of Violence against Women, A/Res/48/104, 1993.

⁵⁸ UN General Assembly Declaration on the Elimination of Violence against Women, A/Res/48/104, 1993, Article 4(l).

⁵⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/17/26, 2 May 2011, para 14: “The Fourth World Conference on Women recognized the particular vulnerability to violence of ‘women belonging to minority groups, indigenous women, refugee women, women migrants, including women migrant workers, women in poverty living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women, displaced women, repatriated women, women living in poverty and women in situations of armed conflict, foreign occupation, wars of aggression, civil wars, terrorism, including hostage-taking.’”

⁶⁰ See for example, UN CRC Committee, General Comment 13 on the right of the child to be free from violence, para 72(g): “*Children in potentially vulnerable situations.* Groups of children which are likely to be exposed to violence include, but are not limited to, children: not living with their biological parents, but in various forms of alternative care; not registered at birth; in street situations; in actual or perceived conflict with the law; with physical disabilities, sensory disabilities, learning disabilities, psychosocial disabilities and congenital, acquired and/or chronic illnesses or serious behavioural problems; who are indigenous and from other ethnic minorities; from minority religious or linguistic groups; who are lesbian, gay, transgender or transsexual; at risk of harmful traditional practices; in early marriage (especially girls, and especially but not exclusively forced marriage); in hazardous child labour, including the worst forms; who are on the move as migrants or refugees, or who are displaced and/or trafficked; who have already experienced violence; who experience and witness violence in the home and in communities; in low socio-economic urban environments, where guns, weapons, drugs and alcohol may be easily available; living in accident- or disaster-prone areas or in toxic environments; affected by HIV/AIDS or who are themselves HIV infected; who are malnourished; looked after by other children; who are themselves carers and heads of households; born to parents who are themselves still under 18; who are unwanted, born prematurely or part of a multiple birth; hospitalized with inadequate supervision or contact with caregivers; or exposed to ICTs without adequate safeguards, supervision or empowerment to protect themselves. Children in emergencies are extremely vulnerable to violence when, as a consequence of social and armed conflicts, natural disasters and other complex and chronic emergencies, social systems collapse, children become separated from their caregivers and caregiving and safe environments are damaged or even destroyed.”

domestic violence,⁶¹ are at increased risk of domestic and sexual violence and abuse. The Commission advises that the Strategy should recognise, and make provision for, individuals with increased vulnerabilities to domestic and sexual violence and abuse, including ensuring accessibility of services and targeting information to reach these vulnerable individuals.

8.3. *Individuals with disabilities:* The World Health Organisation has stated that "People with disabilities are at greater risk of violence than those without disabilities... The prevalence of sexual abuse against people with disabilities has been shown to be higher, especially for institutionalised men and women with intellectual disabilities, intimate partners, and adolescents."⁶² The UN Committee on the Rights of the Child (CRC Committee) noted that: "children with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings, including the family, schools, private and public institutions, inter alia alternative care, work environment and community at large. It is often quoted that children with disabilities are five times more likely to be victims of abuse."⁶³ Similarly, States Parties to the UNCPRD recognise "that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation."⁶⁴

8.4. In *A.T. v Hungary*, the CEDAW Committee considered a number of factors, including that the author, subjected to domestic violence, "had been unable to flee to a shelter because none are equipped to take her in together with her children, one of whom is fully disabled", and found that the author's rights under the Convention had been violated.⁶⁵

8.5. The Commission recalls requirements for action in this regard in accordance with the UNCPRD, in particular Article 16:

⁶¹ See for example, *T.M. and C. M. v. The Republic of Moldova*, Application no. 26608/11, 28 January 2014; *Opuz v Turkey*, Application no. 33401/02, 9 June 2009; CEDAW Committee, *Yildirim v. Austria*, CEDAW/C/39/D/6/2005, 1 Oct 2007.

⁶² World Health Organisation (WHO), World Report on Disability, 2011, available at: http://whqlibdoc.who.int/D970EE65-19CF-440E-8FA7-2E348E3CE455/FinalDownload/DownloadId-95931DC8D43C8DCCF0F52B68ACAD9355/D970EE65-19CF-440E-8FA7-2E348E3CE455/publications/2011/9789240685215_eng.pdf?ua=1, p. 59.

⁶³ CRC Committee, General Comment 9 on the rights of children with disabilities, para 42.

⁶⁴ UNCPRD, Preamble, para q.

⁶⁵ CEDAW Committee, *A.T. v Hungary*, CEDAW Communication No. 2/2003, CEDAW/C/32/D/2/2003, 26 January 2005, para 9.4.

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

...

5. States shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

8.6. The Commission notes that while individuals with disabilities are mentioned in the draft strategy, no disability specific programmes are proposed. **The Commission advises that the Strategy should explicitly recognise the increased vulnerabilities of individuals with disabilities and should outline the specific provisions to be undertaken by the NI Executive to provide for their needs.**

8.7. *Individuals in detention:* The Commission notes that the draft Strategy does not provide adequate information regarding the protection and fulfillment of the rights of victims of domestic and sexual violence and abuse in detention.⁶⁶ Such victims fall into two broad categories (a) individuals who may be victimised while in detention, and (b) individuals who were victimised before entry into detention.

8.8. In relation to individuals who may be victims of sexual violence or abuse while in detention, the Commission recalls the ECtHR's "constant approach that Article 3 imposes on States a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees..."⁶⁷

8.9. The ICCPR requires that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human

⁶⁶ In 2014, the UN Special Rapporteur on Violence Against Women stated that the "strong links between violence against women and women's incarceration, whether prior to, during or after incarceration, needs to be fully acknowledged." *Special Rapporteur on violence against women finalizes country mission to the United Kingdom and Northern Ireland and calls for urgent action to address the accountability deficit and also the adverse impacts of changes in funding and services*, 15 April 2014, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E>. Please note that the Special Rapporteur will submit her full report regarding her country mission in June 2015.

⁶⁷ *Premininy v. Russia*, Application no. 44973/04, 10 February 2011, para. 73.

person.”⁶⁸ The Committee has explained that this Article “applies to any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals – particularly psychiatric hospitals – detentions camps or correctional institutions or elsewhere.”⁶⁹ The ultimate responsibility to ensure respect for this Article lies with the State which “should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.”⁷⁰

8.10. The CAT Committee in 2013 recommended that the UK “step up efforts to prevent violence and self-harm in places of detention.”⁷¹ The UN Declaration on the Elimination of Violence against Women noted that some groups of women are especially vulnerable to violence, including “women in institutions or in detention.”⁷²

8.11. The Commission advises that the Strategy should recognise the heightened vulnerability of individuals in detention, including those subject to immigration control, those in police custody and those in mental health institutions. The Strategy should indicate measures for the prevention of, and response to, sexual violence and abuse perpetrated against such individuals.⁷³

8.12. In relation to individuals who were subjected to domestic or sexual violence or abuse before their detention the Commission notes that in 2013 the CEDAW Committee urged the UK to “improve the provision of mental health care in all prisons.”⁷⁴ The CAT Committee examining the UK similarly stated that “Detainees who require psychiatric supervision and treatment should be provided with adequate accommodation and psychological support care.”⁷⁵ In the context of women prisoners the Committee recommended that

⁶⁸ ICCPR, Article 10(1).

⁶⁹ UN Human Rights Committee, General Comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty), para 2.

⁷⁰ *Ibid.*

⁷¹ CAT Committee, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 24 June 2013, para 31.

⁷² UN General Assembly Declaration on the Elimination of Violence against Women, A/Res/48/104, 1993.

⁷³ *See also*, Council of Europe, Committee of Ministers, Recommendation No. R (2002) 5 on the Protection of Women against Violence, adopted 30 April, 2002, Appendix, paras 77-78.

⁷⁴ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 55(c).

⁷⁵ CAT Committee, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 24 June 2013, para 31.

the UK “implement changes to the prison regime to further reduce deaths and incidents of self-harm.”⁷⁶

8.13. In the context of immigration detainees the CAT Committee urged the UK to “take necessary measures to ensure that vulnerable people and torture survivors are not routed into the Detained Fast Track System, including by... (iii) conducting an immediate independent review of the application of Rule 35 of the Detention Centre Rules in immigration detention, in line with the Home Affairs Committee’s recommendation and ensure that similar rules apply to short-term holding facilities...”⁷⁷

8.14. The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders state that the “health screening of women prisoners... also shall determine: ... (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.”⁷⁸ Rule 7 provides

1. If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.

2. Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counseling.

3. Specific measures shall be developed to avoid any form of retaliation against those making such reports or taking legal action.

8.15. The Commission recalls that a 2010 DOJ strategy recognised that:

Many women offenders also have a history of serious and sustained sexual or other violent abuse, including domestic violence. Statistics from Her Majesty’s Inspectorate of Prisons (HMIP), Her

⁷⁶ CAT Committee, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 24 June 2013, para 32.

⁷⁷ *Ibid*, para 30(b).

⁷⁸ UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN General Assembly Resolution, A/Res/65/229, 16 March 2011, rule 6.

Majesty's Prison Service (HMPS) and the National Offender Management Service (NOMS) in 2008/09 show that up to 50% of women in prison in England and Wales reported having experienced violence at home.⁷⁹

8.16. The Commission advises that the Strategy should outline specific measures to ensure accessible services, including health and justice for individuals in any form of detention who have been victims of domestic or sexual violence or abuse before their detention.

8.17. *Migrant Women:* The Commission recognises that migrant women are particularly vulnerable to domestic and sexual violence.⁸⁰ The Parliamentary Assembly of the Council of Europe noted that

migrant women in Europe face twofold discrimination based both on their gender and their origin. In addition, in communities marked by a strong patriarchal culture, they may be exposed to an aggravated risk from domestic violence. Confronted with the language barrier and family pressure, they often end up isolated and unable to express their views and have only limited access to any facilities that exist to protect the victims of domestic violence. Migrant women may also have faced violence in their home country or in transit or in the host country. Irregular migrant women face a further problem in that they risk being sent back to their home country if they manifest themselves to the authorities.⁸¹

8.18. Similarly, in CEDAW Committee jurisprudence the Committee has noted the vulnerable position of migrant women. In *Jallow v Bulgaria* the Committee took the fact that "the author and her daughter were in a vulnerable position, in particular because the author is an illiterate migrant

⁷⁹ DOJ, *Women's offending behaviour in Northern Ireland: A Strategy to Manage Women Offenders and Those Vulnerable to Offending Behaviour*, 2010-2013, October 2010, para 2.8.

⁸⁰ Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/17/26, 2 May 2011, para 14: "The Fourth World Conference on Women recognized the particular vulnerability to violence of 'women belonging to minority groups, indigenous women, refugee women, women migrants, including women migrant workers, ... women living in poverty...'" See also, *Women's Access to Justice: from reporting to sentencing*, All-Party Parliamentary Group on Domestic and Sexual Violence/Women's Aid, 2014, paras 24-27; Special Rapporteur on violence against women finalizes country mission to the United Kingdom and Northern Ireland and calls for urgent action to address the accountability deficit and also the adverse impacts of changes in funding and services, 15 April 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E>.

⁸¹ Council of Europe, Parliamentary Assembly Resolution 1697 (2009): *Migrant Women: at particular risk from domestic violence*, para 1.

woman without command of Bulgarian or relatives in the State party, and dependent on her husband” into consideration in concluding that Bulgaria had failed to comply with its obligations under the Convention.⁸²

8.19. In the context of women migrant workers the CEDAW Committee noted that:

Women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate. Domestic workers are particularly vulnerable to physical and sexual assault, food and sleep deprivation and cruelty by their employers. Sexual harassment of women migrant workers in other work environments, such as on farms or in the industrial sector, is a problem worldwide (see E/CN.4/1998/74/Add.1). Women migrant workers who migrate as spouses of male migrant workers or along with family members face an added risk of domestic violence from their spouses or relatives if they come from a culture that values the submissive role of the women in the family.⁸³

8.20. The Commission recalls that the Council of Europe Resolution invites member states to “adopt dedicated action plans addressing the specific needs of migrant women who are victims of violence, including domestic violence and trafficking.”⁸⁴

8.21. The Commission further notes that the CEDAW Committee recommended that the UK “extend the concession under the ‘no recourse to public funds’ policy to all women who are subjected to gender-based violence and exploitation” and “provide access to justice and health care to all women with insecure immigration status, including asylum seekers, until return to their countries of origin.”⁸⁵

⁸² CEDAW Committee, *Jallow v Bulgaria*, Communication No. 32/2011, CEDAW/C/52/D/32/2011, 28 August 2012, para 8.5.

⁸³ CEDAW Committee, General Recommendation 26 on women migrant workers, para 20.

⁸⁴ Council of Europe, Parliamentary Assembly Resolution 1697 (2009): Migrant Women: at particular risk from domestic violence, para 4.2. See also, CEDAW Committee, General Recommendation 26 on women migrant workers, para 26.

⁸⁵ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 57.

8.22. The Commission advises that the Strategy should recognise the increased vulnerabilities of migrant women and outline provisions to be taken to address their specific needs.⁸⁶

9. Active State involvement

9.1. The Commission notes that in the context of Delivering Change and Protection and Justice, the draft Strategy focuses largely on encouraging victim disclosure and states

Whilst we would encourage all victims of domestic and sexual violence and abuse to report to relevant authorities, we acknowledge that there are some who feel unable to do so. Sometimes they do not wish to, or are not ready to, engage with the Justice system, others are prevented from accessing the system through the use of intimidation, violence and abuse. These victims are protected through the services provided by recognised voluntary and community organization as well as relevant authorities.⁸⁷

9.2. The Commission does not believe that the draft Strategy adequately reflects the ECtHR's recognition of "the particular vulnerability of victims of domestic violence and the need for active State involvement in their protection..."⁸⁸ For example, the Court has considered State obligations to take action in circumstances even when a victim of domestic violence does not make a formal complaint about domestic violence, or withdraws a complaint that has been made. The Court has reiterated that

once the situation has been brought to their attention, the national authorities cannot rely on the victim's attitude for their failure to take adequate measures which could prevent the likelihood of an aggressor carrying out his threats against the physical integrity of the victim.⁸⁹

9.3. In *T.M. and C.M. v The Republic of Moldova*, the Court held that:

⁸⁶ See, CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, paras. 56-57; Council of Europe, Committee of Ministers, Recommendation No. R (2002) 5 on the Protection of Women against Violence, adopted 30 April, 2002, Appendix, para 59, Istanbul Convention, Articles 59-60.

⁸⁷ Draft Strategy, para 4.106.

⁸⁸ *Eremia v The Republic of Moldova*, Application no. 3564/11, 28 May 2013, para. 73. See also, *Bevacqua and S. v Bulgaria*, Application no. 71127/01, 12 June 2008, para 65.

⁸⁹ *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 153.

Despite the lack of a formal complaint about domestic violence, it is clear from the medical reports and the fines imposed... that the police knew of the applicants' allegation that M.M. had abused them. In such a situation, it was the duty of the police to investigate of their own motion the need for action in order to prevent domestic violence, considering how vulnerable victims of domestic abuse usually are. ... The fact that relatively few victims of domestic violence know about [the relevant law] and implicitly about protection orders... only compounds the problem.⁹⁰

9.4. In *Opuz v Turkey* the Court considered the authorities' actions in response to domestic violence perpetrated against the applicant and her mother, who had made, and withdrawn, a number of complaints over several years of abuse. The Court noted that there was "no indication that the authorities considered the motives behind the withdrawal of the complaints" and found it "striking that the victims withdrew their complaints when [the husband] was at liberty or following his release from custody."⁹¹

9.5. The ECtHR has further "underline[d] that in domestic violence cases perpetrators' rights cannot supersede victims' human rights to life and to physical and mental integrity."⁹²

9.6. The Commission welcomes the commitment in the draft Strategy "to the provision of protective measures through multi-agency working, providing services to ensure the safety and security of victims of violence or individuals who are at risk of violence."⁹³ However, **the Commission advises that the Strategy should provide more detailed commitments and specific information regarding the protection of victims, including those seeking protection through the civil justice system**

⁹⁰ *T.M. and C. M. v. The Republic of Moldova*, Application no. 26608/11, 28 January 2014, para 46. See also, *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, paras. 87-88: "In eleven member States of the Council of Europe, namely in Albania, Austria, Bosnia and Herzegovina, Estonia, Greece, Italy, Poland, Portugal, San Marino, Spain and Switzerland, the authorities are required to continue criminal proceedings despite the victim's withdrawal of complaint in cases of domestic violence. In twenty-seven member States, namely in Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, England and Wales, Finland, 'the former Yugoslav Republic of Macedonia', France, Georgia, Germany, Hungary, Ireland, Latvia, Luxembourg, Malta, Moldova, the Netherlands, the Russian Federation, Serbia, Slovakia, Sweden, Turkey and Ukraine, the authorities have a margin of discretion in deciding whether to pursue criminal proceedings against perpetrators of domestic violence. ..."

See also, para 171: "Taking into account the overall amount of violence perpetrated by [the husband], the public prosecutor's office ought to have applied on its own motion [measures for protection against domestic violence] without expecting a specific request to be made by the applicant for the implementation of that Law."

⁹¹ *Opuz v Turkey*, Application no. 33401/02, 9 June 2009, para. 143.

⁹² *Ibid*, para. 147. Citing CEDAW Committee jurisprudence, *Yildirim v. Austria* and *A.T. v. Hungary*.

⁹³ Draft Strategy, para 4.112.

and “the possibility of implementing Domestic Violence Protection Notices and Orders.”⁹⁴

9.7. The Commission further advises that the Strategy should include a specific, timebound, commitment regarding the feasibility of the implementation of Domestic Violence Specialist Courts across Northern Ireland.⁹⁵

9.8. The Commission advises that the Strategy should include concrete information regarding resourcing and timelines for the establishment of Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs).⁹⁶

9.9. Noting that IDVAs “will be part of the support system provided to address the safety of victims at high risk of harm from domestic violence and abuse”⁹⁷ the Commission advises that the Strategy should provide more detailed information in relation to the support provisions available to victims who are not considered to be “at high risk”, including resourcing for such services if they are provided by voluntary and/or community organisations.

10. Domestic and Sexual Violence and Abuse in a post-conflict society

10.1. The Commission recalls the CEDAW Committee’s General Recommendation on women in conflict prevention, conflict and post-conflict situations, which covers the application of the CEDAW to international and non-international armed conflict, as well as foreign occupation, “internal disturbances, protracted and low-intensity civil strife, political strife, ethnic and communal violence, states of emergency and suppression of mass uprisings, war against terrorism and organized crime, which may not necessarily be classified as armed conflict under international humanitarian law.”⁹⁸ The CEDAW Committee noted that “all forms of gender-based

⁹⁴ Draft Strategy, para 4.127. *See also*, NI Policing Board, Human Rights Annual Report 2013, p. 115.

⁹⁵ Draft Strategy, para 4.120.

⁹⁶ 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.” Criminal Justice Inspection Northern Ireland, *Domestic Violence and Abuse, A follow-up review of inspection recommendations*, October 2013, p. 15.

⁹⁷ Draft Strategy, para 60.

⁹⁸ CEDAW Committee, General Recommendation no. 30 on women in conflict prevention, conflict and post-conflict situations, 1 Nov 2013, para. 4.

violence, in particular sexual violence, escalate in the post-conflict setting”⁹⁹ and stated that the “failure to prevent, investigate and punish all forms of gender-based violence, in addition to other factors such as ineffective disarmament, demobilization and reintegration processes, can also lead to further violence against women in post-conflict periods.”¹⁰⁰

10.2. The Istanbul Convention similarly recognises “the potential for increased gender-based violence both during and after conflicts.”¹⁰¹ 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).”¹⁰²

10.3. The Commission advises that the Strategy should recognise the impact of the conflict on domestic and sexual violence and abuse and outline specific measures to be taken in this area to address the particular circumstances of a post-conflict society.

11. National Crime Agency/Child Exploitation and Online Protection Centre

11.1. The Commission recalls that due to the absence of a Legislative Consent Motion the National Crime Agency (NCA) is not fully operational in NI.¹⁰³ The NCA’s “remit to tackle serious and organised crime is limited to excepted and reserved matters which include customs offences, immigration crime and some asset recovery work, in collaboration with the PSNI and other NI enforcement partners. ... the NCA’s inability to operate fully in NI increases pressure on PSNI operational capabilities and reduces the NCA’s ability to fully support the local police service in tackling CSE.”¹⁰⁴

11.2. In relation to the issue of child exploitation Minister Ford has stated that “the reality is that the specialist expertise for the United Kingdom exists in Child Exploitation and Online Protection Centre at the moment, which is becoming part of the NCA, and which, in the absence of agreement in [the NI Assembly], will not be able to operate in the devolved sphere in Northern

⁹⁹ CEDAW Committee, General Recommendation no. 30 on women in conflict prevention, conflict and post-conflict situations, 1 Nov 2013, para. 35.

¹⁰⁰ *Ibid.*

¹⁰¹ Istanbul Convention, Preamble.

¹⁰² CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 43.

¹⁰³ See for example, UK Reply to List of Issues, OPSC, CRC/C/OPSC/UK/Q/1/Add.1, 29 April 2014, para 32; House of Commons, Hansard, 26 February 2014, Column 243.

¹⁰⁴ See for example, UK Reply to List of Issues, OPSC, CRC/C/OPSC/UK/Q/1/Add.1, 29 April 2014, para 32-33.

Ireland.”¹⁰⁵ The Commission further notes that the Police Service of Northern Ireland (PSNI) advised the Committee for Justice of the NI Assembly that “after five months without the National Crime Agency, we can start to see where cracks are opening up... we are missing out on the operational assistance that the NCA can bring.”¹⁰⁶ The Minister of Justice has stated that he is “becoming concerned by the delay”¹⁰⁷ and reiterated that “the reality is that the longer the impasse, the more the impact. The beneficiaries will simply be organised crime groups.”¹⁰⁸

11.3. The Commission notes with concern that the NCA has identified that “live streaming of child abuse for payment is an emerging trend” and predicts likely “increased use of ‘hidden web’ leading to wider use of indecent images of children.”¹⁰⁹ Furthermore, “live video streaming of real-time contact abuse is a growing threat, with countries in the developing world at particular risk from exposure to this abuse and the involvement of organized criminals.”¹¹⁰ The Child Exploitation and Online Protection Centre (CEOP) explained that offenders of live video streaming “have been seen to target vulnerable families overseas to facilitate live access to children over webcam. The children are made to engage in sexual activity in exchange for payment to the family or to an organised crime group.”¹¹¹

11.4. The Commission notes that the UNCRC Committee requested the UK to “provide detailed information on the operation of the CEOP in Northern Ireland, particularly in relation to the recent concerns regarding the NCA’s ability to operate fully in Northern Ireland”¹¹² and is likely to consider this issue at the State examination in May 2014.

¹⁰⁵ Hansard report, Northern Ireland Assembly, 24 September 2013, Volume 87, No. 6, p. 34.

¹⁰⁶ Hansard report, Northern Ireland Assembly, Committee for Justice, Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill: Police Service of Northern Ireland, 20 February 2014, p. 9. See also, *PSNI statement on National Crime Agency*, 14 May 2013, available at: http://www.psni.police.uk/general__psni_statement_on_national_crime_agency_14_05_13. The Chief Constable of the PSNI has raised concerns that the NCA will not be fully operational in Northern Ireland and describing “Northern Ireland as ‘poor cousins to the rest of GB in terms of what the NCA can do.’” BBC News, *Crime agency block ‘will hamper policing’*, 14 May 2013, available at: <http://www.bbc.co.uk/news/uk-northern-ireland-22524011>.

¹⁰⁷ Northern Ireland Assembly, AQW 31324/11-15, 24/02/2014.

¹⁰⁸ Hansard report, Northern Ireland Assembly, 11 March 2014, Volume 93, No. 2, p. 35.

¹⁰⁹ NCA, National Strategic Assessment of Serious and Organised Crime 2014, 1 May 2014, p. 15.

¹¹⁰ *Ibid.*

¹¹¹ CEOP, Threat Assessment of Child Sexual Exploitation and Abuse, June 2013, para. 24.

¹¹² UN Committee on the Rights of the Child, List of Issues in relation to the initial report of the United Kingdom submitted under the Optional Protocol on the sale of children, child prostitution and child pornography, 30 October 2013, para 4.

11.5. The Commission advises that, in light of the restrictions on the operation of the NCA in NI, the Strategy should indicate how the Government will provide the protections required by international human rights obligations.

12. Health

12.1. The Commission welcomes the involvement of the DHSSPS in the draft Strategy and recalls the relevance of the right to health, as protected under international human rights law, to this Strategy.¹¹³ The World Health Organisation (WHO) has stated that “there is a growing recognition that violence against women has a large public health impact, in addition to being a gross violation of women’s human rights.”¹¹⁴

12.2. The Commission welcomes the establishment of the Sexual Assault Referral Centre (the Rowan SARC),¹¹⁵ which will address the needs of some victims of sexual crime in NI.

12.3. The Commission notes that the CESCRC states that “health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS.”¹¹⁶

12.4. Further, the CEDAW Committee has stated that “States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities.”¹¹⁷

¹¹³ See for example, CESCRC, GC 14 on the right to the highest attainable standard of health, *inter alia*, para 21.

¹¹⁴ World Health Organisation, Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence, 2013, available at: http://apps.who.int/D970EE65-19CF-440E-8FA7-2E348E3CE455/FinalDownload/DownloadId-F5ADF809B7FF641728AC26256879DBCD/D970EE65-19CF-440E-8FA7-2E348E3CE455/iris/bitstream/10665/85239/1/9789241564625_eng.pdf?ua=1, p. 4.

¹¹⁵ See Draft Strategy paras 4.66-4.67.

¹¹⁶ CESCRC, General Comment No. 14 on The right to the highest attainable standard of health (Art. 12), para 12(b)(ii). See also, CESCRC, General Comment No. 20 on Non-discrimination in economic, social and cultural rights, para 34; UNCRPD, Art. 25; Istanbul Convention, Art. 25.

¹¹⁷ CEDAW Committee, General Recommendation 19 on violence against women, para 24(o). See also, CEDAW Committee, General Recommendation No. 24 on Article 12: Women and Health, para 21: “report on measures taken to eliminate barriers that women face in gaining access to health care services and what measures they have taken to ensure women timely and affordable access to such services. Barriers include... distance from health facilities and absence of convenient and affordable public transport. “

12.5. The Commission advises that the Strategy should outline measures to ensure the availability and accessibility of relevant services to all victims of sexual violence and abuse, including those in parts of NI which are not geographically accessible to the Rowan SARC, and those individuals with increased vulnerabilities or particular needs.

12.6. The Istanbul Convention calls on Parties to “take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.”¹¹⁸

12.7. The Commission notes that the CEDAW Committee has explained that States parties should ensure:

- (a) The enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services;
- (b) Gender-sensitive training to enable health care workers to detect and manage the health consequences of gender-based violence;
- (c) Fair and protective procedures for hearing complaints and imposing appropriate sanctions on health care professionals guilty of sexual abuse of women patients.¹¹⁹

12.8. In 2013 the CEDAW Committee urged the UK to “strengthen the implementation of programmes and policies aimed at providing effect access to health care for women, especially women with disabilities, older women, women seeking asylum and Traveller women.”¹²⁰

12.9. The Commission recalls that the Rowan SARC is not intended to provide services to victims of domestic violence and abuse that is not of a sexual nature. **The Commission advises that the Strategy should set out steps to be taken to ensure the provision of adequately**

¹¹⁸ Istanbul Convention, Article 20(2).

¹¹⁹ CEDAW Committee, General Recommendation 24 on Women and Health, para 15. See also, CEDAW Committee, General Recommendation 19 on violence against women, para 24(k).

¹²⁰ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 53 (a), see also, paras 57(b) and 61.

resourced, accessible¹²¹ and acceptable¹²² health care services, in particular in relation to the physical needs of victims of domestic violence and abuse.¹²³ As noted at section 8 above, specific provision should be made to ensure services are available and accessible to individuals with increased vulnerabilities, at times necessitating specific arrangements.

13. Termination of Pregnancy

13.1. In the context of health care provision in the aftermath of sexual violence and abuse, the Commission notes that in its 2013 Concluding Observations on the UK the CEDAW Committee called on the UK government to “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.”¹²⁴ The

¹²¹ CESCR, General Comment No. 14 on The right to the highest attainable standard of health (Art. 12), para 12(b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions: Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health... are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

¹²² CESCR, General Comment No. 14 on The right to the highest attainable standard of health (Art. 12), para 12(c): *Acceptability*: All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, people and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

¹²³ See also General Comment No. 14 on The right to the highest attainable standard of health (Art. 12), para 12.

¹²⁴ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 51. *See also*, CEDAW Committee, Concluding Observations regarding Jordan, 23 March 2012, paras 39-40; CEDAW Committee, Concluding Observations regarding Angola, 1 March 2013, para 32(g).

Committee requested the UK to provide written information on the steps taken to implement these recommendations within a year.¹²⁵

13.2. The Commission notes that the Minister for Justice has advised that he intends to consult on possible amendments to the law on termination of pregnancy in 2014.¹²⁶ **The Commission advises that the Strategy should indicate how the NI Executive intends to ensure access to termination of pregnancy “in cases of rape, incest and serious malformation of the foetus.”¹²⁷**

14. Miscellaneous issues

14.1. The Commission recalls that the UN Declaration on the Elimination of Violence against Women states that States should “include in government budgets adequate resources related to the elimination of violence against women.”¹²⁸ Pursuant to the Istanbul Convention, “Parties 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.”¹²⁹ **The Commission advises that the Strategy should include a commitment to ensure adequate resourcing.**

14.2. The Commission recalls 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.”¹³⁰ The Commission notes that “in order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination.”¹³¹ **The Commission advises that the Departments should consider in their resource allocations that the CESCR has stated that “[e]conomic policies, such as budgetary allocations... should pay attention to the need to**

¹²⁵ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 68.

¹²⁶ 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>

¹²⁷ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 51.

¹²⁸ UN General Assembly Declaration on the Elimination of Violence against Women, A/Res/48/104, 1993, Article 4(h).

¹²⁹ Istanbul Convention, Article 8 – Financial resources.

¹³⁰ CEDAW Committee, General Recommendation 19 on Violence against Women, para 1.

¹³¹ CESCR General Comment, No. 20 on Non-discrimination in economic, social and cultural rights, para 9.

guarantee the effective enjoyment of the Covenant rights without discrimination.”¹³²

14.3. The Commission notes that the draft Strategy references the ongoing revision of the policy guidance *Co-operating to Safeguard Children*.¹³³ The Commission recalls that this main guidance governing child protection in Northern Ireland has not been comprehensively revised since 2003. As a result, what has been described as an “inexorable tide of material generated by the many and constant changes in law, practice and procedure affecting this dynamic area”¹³⁴ is not reflected in this single document, potentially hampering the effectiveness of the work of professionals in this area. **The Commission advises that the Strategy should include a deadline for publication of the revised guidance. Furthermore, the Commission advises that the Strategy should also include a commitment regarding revision of the Policy and Procedures¹³⁵ which are based on the Guidance.**

14.4. The Commission notes that the draft Strategy defines a child as “anyone who has not yet reached their 14th birthday.”¹³⁶ **The Commission advises that both the Convention on the Rights of the Child¹³⁷ and the Children (Northern Ireland) Order¹³⁸ define a child as every human being below the age of 18, except in limited circumstances. Defining a child as a human being under 14 for the purposes of the Strategy may give rise to confusion and inconsistency, thus the Commission advises that a child should be defined as a human being below the age of 18.**

14.5. The draft Strategy states that a number of complex issues that are related to domestic and sexual violence and abuse “such as stalking; female genital mutilation; forced marriage; ‘honour’ based crimes; sexual exploitation, including child sexual exploitation; sexting; trafficking; and historical institutional abuse” will be addressed through other mechanisms.¹³⁹ **The Commission advises that in light of the importance of these issues and their significant relevance to domestic and sexual violence**

¹³² CESCR General Comment No. 20 on Non-discrimination in economic, social and cultural rights, para 38.

¹³³ Draft Strategy, para 4.41.

¹³⁴ Children Order Advisory Committee (2012), *Best Practice Guidance, 2nd Edition 2010*, Belfast: COAC, p.4.

¹³⁵ Currently the ACPC (2005) *Area Child Protection Committees’ Regional Policy and Procedures*. Belfast.

¹³⁶ Draft Strategy, p. 87.

¹³⁷ UNCRC, Article 1.

¹³⁸ Children (NI) Order 1995, Article 2(1).

¹³⁹ Para 2.6.

and abuse, the Strategy should include information and timeframes on how these issues will be addressed.¹⁴⁰

14.6. Specifically in relation to child sexual exploitation the Commission recalls that in its 2013 Concluding Observations the 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.”¹⁴¹

14.7. The Commission is concerned that inadequate protection currently exists in legislation in NI with regard to the sexual exploitation of children between 13 and 18 years of age through prostitution, pornography, and the payment for sexual services of children, as in these cases it will be for the prosecution to prove that the defendant did not reasonably believe that the child victim was over 18.¹⁴²

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¹⁴⁰ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 35, 37, 39.

¹⁴¹ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 40.

¹⁴² See Explanatory Memorandum to the Sexual Offences (Northern Ireland) Order 2008, article 37, 38, 39, 40.