

# **Justice (Sexual Offences and Trafficking Victims) Bill - Committee Stage Submission by Northern Ireland Women's European Platform to the Committee for Justice**

**September 2021**

## **1. Introduction**

Northern Ireland Women's European Platform (NIWEP) welcomes the Justice Bill as an important step in strengthening protections for women and children, in particular girls, from sexual offences including online exploitation and trafficking.

NIWEP is a membership organisation of women's NGOs in Northern Ireland. Established as the Northern Ireland link to the European Women's Lobby, the leading European body on women's rights and gender equality, NIWEP also has special consultative status with the UN. A key role for NIWEP is ensuring women and girls are engaged in policy and decision making, as well as promoting gender responsive policy and decision making at local, regional and national level taking account of the state's international obligations. NIWEP also works to share information and good practice at international level with local members and stakeholders, and highlight local learning and good practice internationally.

NIWEP's core objectives involve raising awareness and promoting implementation of key international human rights treaties and initiatives, including the Convention on the Elimination of All Discrimination against Women (CEDAW). NIWEP views implementing the recommendations of CEDAW as a clear roadmap and mechanism to ensuring women's human rights are fully met and upheld in Northern Ireland.

NIWEP also endorses the right of all individuals to self identify in terms of gender and personal identity, and to have that right respected. The comments in this submission are made within this context.

## **2. Endorsement**

NIWEP endorses the responses of Women's Aid Federation Northern Ireland as the leading civil society organisation supporting victims and survivors of gender based violence and trafficking in Northern Ireland and the Women's Policy Group, a platform for women working in policy and advocacy roles in different organisations to share their work and speak with a collective voice on key issues<sup>1</sup>. NIWEP also endorses the response of Victim Support NI.

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<sup>1</sup> The [Women's Policy Group](#) is hosted by the Women's Resource and Development Agency and coordinated by the Women's Sector Lobbyist

NIWEP is a member of the Women's Policy Group and has contributed to the submission of the group. NIWEP would be pleased to expand on any of the points made in this submission in an oral evidence session, should that be helpful.

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## Summary

NIWEP welcomes the Bill as an important step in strengthening protection for women and girls from sexual violence as manifested in online exploitation of children, trafficking and upskirting/downblousing. However, NIWEP is disappointed that the full proposed Bill could not be brought to the Assembly as planned. The abridged Bill does not address many significant issues, including procedural issues that are important for effective and due judicial process.

NIWEP would emphasise that sexual offences and trafficking are gendered crimes; worldwide about 70% of trafficking victims are women<sup>2</sup>, while girls are more likely than boys to be targeted for online exploitation. Upskirting/downblousing is a very specific form of gender based violence against women and girls, rooted in misogyny and patriarchal norms nullifying women's right to control and make decisions about their own bodies. Therefore, it is essential that the gendered nature of sexual violence is recognised fully in the legislation, as outlined in detail in the Gillen review. This is not currently the case, and if not addressed, will reduce the effectiveness of the Bill in addressing gender based sexual violence.

The UK also has obligations in international law to recognise gender based violence against women as a specific human rights issue. As a State Party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UK is required to take action on domestic abuse, which the Convention defines as a barrier to women and girls enjoying their full human rights.<sup>3</sup> The overall aim of CEDAW is to strengthen gender equality, and the CEDAW Committee has highlighted the importance of action on all forms of gender based violence in their Concluding Observations to all recent periodic reports submitted by the UK.<sup>4</sup>

The UK is also a member of the Council of Europe, which integrates gender equality as one of its policy goals. The Council has adopted Standards for Gender Equality, which set out a list of measures to be taken across policy areas, including violence against women. The Standards state that 'Violence against women is one of the most serious violations of human rights and fundamental freedoms of women and an obstacle to the enjoyment of those rights and freedoms. Furthermore, violence against women is a waste of capacities and resources for economic and social development; it is also one of the means by which women are forced into a subordinate position compared with men and is, therefore, a decisive impediment to the achievement of gender equality'.<sup>5</sup> In 2011, the Council adopted the Istanbul Convention of preventing violence against women and combating domestic violence, which sets out

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<sup>2</sup> Police Service of Northern Ireland (2019) [Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2018/19](#)

<sup>3</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), articles 1 and 2. The UK signed the Convention in 1981 and ratified in 1986

<sup>4</sup> [Concluding Observations](#) 2019, 2013, 2008 on examinations of the UK under CEDAW

<sup>5</sup> Council of Europe (2007) [Gender equality standards and mechanisms: Recommendation CM/Rec \(2007\) 17 of the Committee of Ministers and Explanatory Memorandum](#), p. 22.r

clear standards for states to put in place<sup>5</sup>. Compliance with requirements is essential to enable states to ratify the Convention; the UK is yet to ratify the Convention and it is vital that this Bill contributes to ensuring UK compliance and ratification.

In addition, NIWEP would welcome capacity building for all stakeholders, including the police as well as judiciary, on the roots of gender based sexual violence in patriarchal social norms

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and systems, in order to effectively prevent and address future offending. This draws on obligations on the UK as a State Party to CEDAW, further clarified in General Recommendation 35 on gender based violence against women. This would support and encourage victims to come forward, as confidence in effective redress would be strengthened, and would enable more effective action to address offending.

It should, finally, be noted that on a global level, the UN reports that many trafficking victims are forced to commit crimes, or act as fronts for criminal activity.<sup>6</sup> Such activity can include running brothels, forcing others to engage in prostitution, drug trafficking and other offences, and victims are often convicted with no consideration given to the forced nature of the activity; the European Court of Human Rights issued a judgement against the UK in such a case earlier this year<sup>7</sup>. It would be helpful if consideration could be given to this issue, ideally through an amendment to this Bill clarifying the need to investigate cases comprehensively and institute appropriate mitigations, to ensure that victims of trafficking are not victimised a second time without due consideration of all relevant issues of the case.

## **General comments**

NIWEP would like to highlight a number of specific points in relation to the Bill and relevant related issues.

### ***Obligations of the UK under international law***

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) places an obligation on the UK as a State Party to ensure that discrimination against women is prohibited in law and that action to prevent and address discrimination is taken at the policy level.<sup>8</sup> This includes violence against women and girls, and the CEDAW Committee has raised issues in relation to Northern Ireland, as outlined above.

CEDAW General Recommendation 35<sup>9</sup> specifically focuses on gender based violence, and provides guidance on interpretation and implementation of CEDAW in this regard. The CEDAW Committee holds that 'Women's right to a life free from gender-based violence is

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<sup>5</sup> [Council of Europe Convention on the prevention and combating violence against women and girls](#)

<sup>6</sup> Report of the UN Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally Women (July 21) [Implementation of the non-punishment principle](#)

<sup>7</sup> Thomson Reuters 16 February 2021 '[Europe's rights court orders UK to compensate human trafficking victims](#)'

<sup>8</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), articles 1 and 2. The UK signed the Convention in 1981 and ratified in 1986

<sup>9</sup> CEDAW Committee (67<sup>th</sup> session, 2017 ) [General Recommendation 35 on gender based violence against women](#)

indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association'<sup>10</sup>. The Recommendation explicitly includes psychological, sexual, economic and physical harm as well as threats of such acts, harassment, coercion and arbitrary deprivation of liberty in its scope of gender based violence.

The Recommendation clarifies the CEDAW provisions and states that laws prohibiting gender based violence should include sanctions for perpetrators and reparations for

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victims.<sup>11</sup> It further notes that 'all legal procedures in cases involving allegations of genderbased violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory interpretation of legal provisions, including international law', and that capacity building is required to ensure that women's right to equality is not affected by the application of preconceived and stereotyped notions of what gender based violence is, how women do and should react and the standard of proof required in proceedings<sup>13</sup>.

This Bill can significantly contribute to compliance with CEDAW in Northern Ireland, and it is important that it is cross checked against CEDAW and especially CEDAW Recommendation 35.

### ***Equitable provisions across the UK***

NIWEP would also stress that this legislation must ensure that protections for domestic abuse in Northern Ireland are put on an equal footing with protections elsewhere in the UK.

In the examination of the UK under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2019<sup>12</sup>, the CEDAW Committee expressed particular concern that protections in Northern Ireland are inadequate and the legislative gap with England and Wales and Scotland is growing. The Concluding Observations from the examination include a recommendation to ensure that protections for women and girls in Northern Ireland are put on an equitable footing with the rest of the UK. NIWEP is pleased that some progress has been made since 2019, through the Domestic Abuse and Family Proceedings Bill 2021 and the current Protection from Stalking Bill, but would urge that it is ensured this Bill contributes to parity across the UK, to ensure Northern Ireland meets its international obligations in ensuring the human rights of women and girls. This does not take away from devolved authority, but rather strengthens the role of Northern Ireland on the international stage.

### ***Support for women with no recourse to public funds***

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<sup>10</sup> Ibidem, p. 6

<sup>11</sup> Ibidem, p. 10.

<sup>13</sup> Ibidem, p.11.

<sup>12</sup> CEDAW Committee (March 2019) [Concluding Observations on the 8<sup>th</sup> periodic report of the UK](#)

In light of a ruling given by the Divisional Court of the Queen’s Bench Division in May 2020<sup>13</sup>, it is also essential to ensure support for women with no recourse to public funds is available. The ruling holds that the ‘no recourse to public funds’ (NRPF) is unlawful. Specifically, it states that the NRPF condition must be lifted if an individual is at imminent risk of becoming destitute.

Women with no recourse to public funds are among the most vulnerable in relation to domestic violence. The vast majority of women with no recourse to public funds are BME women, refugee and migrant women – now including undocumented EU/EEA nationals - and women with insecure immigration status, who without access to relevant support have no choice but to accept abuse and/or remain in trafficking situations; women from these backgrounds are also extremely vulnerable to blackmail and pressure from traffickers and abusers, who often exploit insecure immigration status or use it as a threat. It is important to note that CEDAW General Recommendation 35 specifically states that access to “all legal proceedings, protective and support measures and services concerning victims/survivors

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respect and strengthen their autonomy” should be available ‘irrespective of residency status’.<sup>14</sup>

## **Specific comments relating to Bill as introduced**

### **PART 1 SEXUAL OFFENCES**

#### **CHAPTER 1 CRIMINAL CONDUCT**

##### **Clause 1: Voyeurism: additional offences**

NIWEP strongly welcomes and agrees with the new offences of upskirting and downblousing, and in particular welcomes the latter as the first of its kind in the UK. These are specifically gendered crimes, which cause significant harm at the psychological and emotional levels as well as the physical level. In addition, due to the nature of the offence, the impact is long lasting as images can be shared and circulated permanently, once taken and particularly where images are shared in any online format.

NIWEP would welcome clear reflection of the gendered nature of these offences in the legislation, to enable effective action to tackle offending as a form of violence against women and girls rooted in misogyny and patriarchal norms. This would particularly strengthen opportunities for effective case preparation and prosecution, and would also enable capacity building and preventative work to more effectively define this type of offending in its proper context. It is vital to recognise that offending of this nature fits within a wider pattern of discrimination and inequality, in particular to avoid treating offending as individualised cases and prevent defence arguments focusing on personal circumstances and characteristics of either the victim or offender.

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<sup>13</sup> R (W , a child) v Secretary of State for the Home Department, [EWHC 1299/2020](#)

<sup>14</sup> CEDAW Committee (67<sup>th</sup> session, 2017 ) [General Recommendation 35 on gender based violence against women](#), p.16

NIWEP would also welcome clarification regarding the proposed focus on summary conviction and the sentencing tariffs available. It is important that these offences are treated in a way that clearly underlines the severity of these offences as harmful to the fundamental sense of victims' personal autonomy, control and safety, and the breach of privacy and the right to bodily integrity they constitute, and provide sufficiently stringent sentences to send a clear message in this regard. This is critical both to reassure women and girls, and clarify to offenders and potential offenders that offences will be dealt with strictly. Reference should be made to sentencing guidelines elsewhere in the UK and Ireland, and the option for indictment would appear relevant.

***Recommendation:***

- 1) Reflect gendered nature of offences in legislation by including reference to misogyny and/or violence against women and girls in the amended text of Clause 71A and 71B.***
- 2) Review mode of trial available and sentencing tariffs***

**Clause 2: Sexual grooming: pretending to be a child**

NIWEP does not have specific expertise in this area, and endorses the views of the children's sector in this regard. However, while NIWEP welcomes Clause 2 and the

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modernisation it brings to the Sexual Offences (Northern Ireland) Order 2008, NIWEP is disappointed that a wider update to the legislation has not been brought at this time. As more stringent legislation is in place elsewhere in the UK, and is proposed in the current Police, Crime, Sentencing and Courts Bill in England and Wales, the omission will create further legislative gaps with other parts of the UK in terms of equality, protection and safeguarding of children, which as noted above has been raised as a concern by the CEDAW Committee in relation to women and girls.

NIWEP welcomes the inclusion of the clarification of interpretation in relation to offending outside Northern Ireland. This is in line with the extraterritorial jurisdiction requirement with the Istanbul Convention, and is critical to enabling Northern Ireland to meet its obligations under international law. In practice, it will also contribute to ensuring that children outside Northern Ireland are protected from offenders based in Northern Ireland, as well as protecting children in Northern Ireland from non resident offenders and offending taking place outside Northern Ireland.

***Recommendation 3: Bring wider update to legislation protecting children from offending by people in positions of trust at the earliest possible opportunity***

**CHAPTER 2 ANONYMITY AND PRIVACY Anonymity of victims**

**Clause 4: Extended anonymity of victims**

NIWEP agrees with the provisions in this Clause and the subsequent, associated Clauses 5-7. Ensuring the anonymity of victims, and complainants, is vital to ensure victims in sexual

offence cases have the confidence to report offences and proceed to trial, without fear of their identity, personal details or histories being made public. It is also a critical element of a fair trial, as jurors will find it difficult to fully avoid media and social media reporting of cases in the modern 24 hour media environment.

NIWEP would urge for clear guidance to be provided to courts and the judiciary on principles under which variations to the anonymity clause may be made, and on the full extent of responsibilities of information society providers. This is not only vital to respect the principles of the European Court of Human Rights, but also to ensure that malicious or spurious requests to disapply the extended anonymity can be dealt with effectively, and that requests are assessed equitably for all individuals, regardless of their background, public role or standing.

***Recommendation 5: Clear guidance on application of provisions should be developed and provided to courts as timely as possible***

### **Clause 8: Anonymity of suspects**

NIWEP agrees in principle with the provisions in this Clause and the subsequent, associated Clauses 9-14. This codifies current common practice, which is important for basic judicial principles and also for safeguarding the identity of victims. However, NIWEP would welcome clarification of proposed procedures in cases where a suspect is later charged with a similar offence, and where previous behaviour appears relevant to the later case. In particular, this is vital where an offender is suspected of serial offending and ensuring all potential victims feel able to come forward; as shown by recent cases involving serial offenders, new evidence may come to light which changes the evidence base on which an original decision not to charge a suspect was made. Similarly, this is relevant in situations where legislation changes in a way that affects the context of a previous decision not to charge; this could relate to information disclosure, as well as handling of evidence by the police, PPS or courts.

### **Clause 15: Serious sexual offences: exclusion of public from court**

NIWEP welcomes this Clause, as an important first step of implementing key recommendations from the Gillen Review into the handling of serious sexual offence cases. This was one of the key asks of the women's sector following the high profile rape trial in 2018, and is vitally important as an adjunct to Clauses 4-7 in ensuring the anonymity of the complainant/s and their privacy.

NIWEP would welcome timely progress on implementation of other recommendations made by the Gillen Review, in particular the recommendations relating to capacity building of the public, police, legal profession and judiciary. An approach including capacity building is also in line with the Istanbul Convention and General Recommendation 35 of CEDAW. The latter states that State Parties should provide 'mandatory, recurrent and effective capacitybuilding, education and training for members of the judiciary, lawyers and law enforcement officers, including forensic medical personnel, legislators and health-care professionals... all education, social and welfare personnel, including those working with women in institutions, such as residential care homes, asylum centres and prisons' to enable professionals to deal

effectively with gender based violence against women. General Recommendation 35 further clarifies that “capacity building should include:

- (i) How gender stereotypes and bias lead to gender-based violence against women and inadequate responses to it
- (ii) (ii) Trauma and its effects, the power dynamics that characterize intimate partner violence and the varying situations of women experiencing diverse forms of gender-based violence, which should include the intersecting forms of discrimination affecting specific groups of women and adequate ways of interacting with women in the context of their work and eliminating factors that lead to their revictimization and weaken their confidence in State institutions and agents;<sup>60</sup>
- (iii) (iii) National legal provisions and national institutions on gender-based violence against women, the legal rights of victims/survivors, international standards and associated mechanisms and their responsibilities in that context, which should include due coordination and referrals among diverse bodies and the adequate documentation of such violence, giving due respect for women’s privacy and right to confidentiality and with the free and informed consent of the victims/survivors;”<sup>15</sup>

## **PART 2 TRAFFICKING AND EXPLOITATION**

### **Clause 16: Support for victims of trafficking etc**

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NIWEP agrees with the provisions under this Clause.

### **Clause 17: Reports on slavery and trafficking offences**

NIWEP agrees with the provisions in this Clause, on the basis that medium term planning is preferable to short term, year on year planning that does not allow for strategic development of effective initiatives. However, ongoing intelligence and data collection and monitoring remains important to ensure timely action both on individual cases of trafficking and trends that may be identified through intelligence gathering. Collaboration with civil society, in particular specialist organisations working with victims/survivors of trafficking such as Women’s Aid, is also vital to ensure services are provided effectively and strategic responses can be applied to concrete situations emerging. In addition, collaboration on a five nations basis is vital to prevent trafficking within the UK and Ireland and effectively target traffickers.

## **PART 3 PREVENTION ORDERS**

NIWEP agrees with the provisions in this Part.

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<sup>15</sup> CEDAW Committee (67<sup>th</sup> session, 2017 ) [General Recommendation 35 on gender based violence against women](#), p.14



## **PART 4 FINAL PROVISIONS**

NIWEP agrees with the provisions in this Part.