



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**NIHRC Submission to the Committee for Justice
- Protection from Stalking Bill
Call for Evidence**

April 2021

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Summary of Recommendations

The NI Human Rights Commission (NIHRC):

- 2.5 continues to call on the UK Government to ratify the Istanbul Convention and advises the Department to continue to work with the UK Government on achieving this goal.
- 2.10 continues to call on the Department to be effectively resourced in order to fully implement the Gillen Report Recommendations.
- 2.11 recommends the Department consider a public awareness campaign to raise awareness of what constitutes the offence of stalking and the consequences of committing the offence.
- 2.14 continues to recommend the Department introduces a specific criminal offence of upskirting in Northern Ireland and ensures effective protection of victims or potential victims without further delay.
- 3.11 recommends the Department consider amending the Bill to clarify that behaviour amounting to stalking offences must be satisfied after the change in legislation for the application for a Stalking Prevention Order. Only then can previous behaviour be considered retrospective of the change in law.
- 2.15 recommends the Department provide clarity around how rehabilitation of offender legislation will apply to of stalking offenders.
- 4.3 recommends that the Department works with the relevant public authorities and civil society organisations to systematically collect and publish data on stalking that is disaggregated by sex, gender, ethnicity, disability and age. It should also record the journey of stalking investigations through the criminal justice system, including the number of initial reports, number of referrals to the Public Prosecution Service, how many reach different stages of the court process, how many result in prosecutions, what is the resulting remedy and how many repeat offences occur.

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the Commission), pursuant to Section 69(1) the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with these functions, the following statutory advice is

submitted to the Department of Justice in response to its consultation on creating a new offence of stalking in Northern Ireland (NI).

1.2 The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE), European Union (EU) and United Nations (UN) systems. The relevant international treaties in this context include:

- European Convention on Human Rights 1950 (ECHR);¹
- International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR);²
- International Covenant on Civil and Political Rights 1966 (ICCPR);³
- UN Convention on the Elimination of All Forms of Discrimination Against Women 1979 (UN CEDAW);⁴
- European Convention on Compensation for Victims of Violent Crimes 1983;⁵
- UN Convention against Torture 1987 (UN CAT);⁶
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987;⁷
- UN Convention on the Rights of the Child 1989 (UN CRC);⁸
- Charter of Fundamental Rights of the European Union 2000;⁹
- UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD);¹⁰

- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence 2011 (Istanbul Convention);¹¹

¹ Ratified by the UK in 1951.

² Ratified by the UK in 1976.

³ Ratified by the UK in 1976.

⁴ Ratified by the UK in 1981.

⁵ Ratified by the UK in 1990.

⁶ Ratified by the UK in 1988.

⁷ Ratified by the UK in 1988 (as amended by Protocols No. 1 and No.2 1993).

⁸ Ratified by the UK in 1991.

⁹ Ratified by the UK in 2000.

¹⁰ Ratified by the UK in 2009.

¹¹ Signed by the UK in 2012. The UK has not yet ratified this Convention but has committed to do so with the enactment of the Preventing and Combating Violence against Women and Domestic Violence (Ratification of Convention) Act 2017. The UK Mission at Geneva has also stated, "the UK's approach to signing international treaties is that we only give our signature where we are fully prepared to follow-up with ratification in a short time thereafter". See UK Mission at Geneva,

- EU Directive establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime 2012 (EU Victims Directive).¹²

1.3 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the United Nations (UN) and the Council of Europe (CoE). These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985;¹³
- UN Declaration on the Elimination of Violence against Women 1993;¹⁴
- UN Beijing Declaration and Platform for Action 1995;¹⁵
- CoE Committee of Ministers Recommendation on the Protection of Women against Violence 2002¹⁵
- UN Resolutions on the Intensification of Efforts to Eliminate all forms of Violence against Women 2006, 2012;¹⁶
- UN Report of the Secretary General on the Intensification of Efforts to Eliminate all forms of Violence against Women 2010;¹⁷
- UN Resolution on Strengthening Crime Prevention and Criminal Justice responses to Violence against Women 2011;¹⁸

'Universal Periodic Review Mid-term Progress Update by the United Kingdom on its Implementation of Recommendations Agreed in June 2008' (UKMIS), at recommendation 22 (France).

¹² 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.

¹³ A/RES/40/34, 'UN General Assembly Principles of Justice for Victims of Crime and Abuse of Power,' 29 November 1985

¹⁴ A/RES/48/104, 'UN General Assembly Declaration on the Elimination of Violence against Women,' 23 February 1994 ¹⁵ UN Beijing Declaration and Platform for Action adopted by the UN 4th World Conference on Women, 4-15 September 1995.

¹⁵ Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the protection of women against violence, 30 April 2002

¹⁶ A/RES/61/143, 'UN General Assembly Resolution on Intensification of efforts to eliminate all forms of violence against women,' 30 January 2007; A/RES/67/144, 'UN General Assembly Resolution on Intensification of efforts to eliminate all forms of violence against women,' 20 December 2012

¹⁷ A/RES/65/208, 'UN General Assembly Resolution on Extrajudicial, Summary or Arbitrary Executions,' 21 December 2010.

¹⁸ A/RES/65/228, 'UN General Assembly Resolution on strengthening crime prevention and criminal justice responses to violence against women,' 21 December 2010.

- UN Commission on the Status of Women conclusions of the 57th session 2013;¹⁹
- UN Committee on the Elimination of All Forms of Discrimination against Women General Recommendation 35, 2017.²⁰

1.4 The NIHRC has continuously raised concerns that NI is the only jurisdiction within the UK without specific stalking legislation. The Commission therefore welcomes the Prevention from Stalking Bill as standalone legislation prohibiting all forms of stalking in NI.

2.0 General Comments

2.1 The NIHRC has continuously raised the need for legislation to address the prevention of stalking in line with Article 34 Istanbul Convention which states that:

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.

2.2 The NIHRC would refer the Justice Committee to the Commission's Submission to Department of Justice Consultation on Creating a New Offence of Stalking in Northern Ireland within which the Commission sets out in detail the relevant human rights standards and obligations in regards to the prevention and prohibition of stalking.²¹ This response will therefore not go into the detail of such obligations and instead highlight technical issues within the Bill.

2.3 The NIHRC recognises that the Bill as introduced widely adopts recommendations put forward by the Commission within its previous consultation response. The Commission welcomes the introduction of Stalking Prevention Orders and the definition of what constitutes an offence of stalking as non-exhaustive and inclusive. The Commission further welcomes the inclusion of cyber stalking within the scope of the legislation which is a particular growing concern.

¹⁹ E/2013/27, 'Commission on the Status of Women report on the fifty-seventh session', 4 – 15 March 2013

²⁰ CEDAW/C/GC/35, 'UN Committee on the Elimination of Discrimination against Women, General recommendation No.35 on gender-based violence against women', 14 July 2017.

²¹ NI Human Rights Commission, 'Submission to DOJ's Consultation on Creating a New Offence of Stalking in Northern Ireland', 25 February 2019.

2.4 The NIHRC recognises the introduction of the Prevention against Stalking Bill as a step in the right direction towards implementing the Istanbul Convention.

2.5 **The NIHRC continues to call on the UK Government to ratify the Istanbul Convention and advises the Department to continue to work with the UK Government on achieving this goal.**

2.6 However, the Commission would highlight further steps the Department needs to take in regards to developing legislation relating to violence that disproportionately impacts on women and girls to ensure full compliance with the Istanbul Convention and the UN Convention of Elimination of Discrimination against Women.

2.7 Following the introduction of the Bill the Commission would advise that it must be followed by training across the criminal justice system and awareness raising for the wider public.

2.8 The NIHRC continues to recommend that the Department implement the recommendations of the Gillen Review. Of particular relevance to the

implementation of the Prevention of Stalking Bill would be Recommendation 13 of the Gillen Review states that:

The Judicial Studies Board, the Bar Council and the Law Society should afford a higher priority to training and awareness from outside agencies on such matters as the trauma suffered by victims including children, rape mythology, jury misconceptions and jury guidance. Training should also include topics such as under-reporting and the reasons around withdrawal of complainants from the process of sexual offences, and how best to approach the cross-examination of children and vulnerable witnesses.²²

2.9 The Commission acknowledges the Minister of Justice's recent reference to implementing the Gillen Review recommendations in her statement on Civil Justice Modernisation.²³

²² John Gillen, 'Gillen Review Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland Recommendations' (DoJ, 2019).

²³ NI Assembly Hansard, 'Ministerial Statement: Civil Justice Modernisation – Minister for Justice Niaomi Long MLA', 23 March 2021.

2.10 The NIHRC continues to call on the Department to be effectively resourced in order to fully implement the Gillen Report Recommendations.

2.11 The NIHRC recommends the Department consider a public awareness campaign to raise awareness of what constitutes the offence of stalking and the consequences of committing the offence.

2.12 Article 40 of the Istanbul Convention requires Parties to:

take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

2.13 In England and Wales, the Voyeurism (Offences) Act 2019, which criminalises upskirting, came into force on 12 April 2019. Similar legislative provision has been made in Scotland through the Sexual Offences (Scotland) Act 2009. There are no similar provisions that currently provide for the specific offence of upskirting in Northern Ireland though it can be dealt with under other legislation which is not bespoke.

2.14 The NIHRC also continues to recommend the Department introduces a specific criminal offence of upskirting in Northern Ireland and ensures effective protection of victims or potential victims without further delay.

3.0 Specific Clauses of the Bill

3.1 The Commission wishes to highlight a number of technical issues within the Bill that need further consideration to ensure compliance with human rights standards.

Stalking Prevention Orders

3.2 The Commission would highlight that the Stalking Prevention Orders do not explicitly include provision for the potential use of intermediaries in stalking. Considering stalking is a form of controlling

behaviour it may be possible that the perpetrator may procure an individual to carry out offences on their behalf.

3.3 The Commission would highlight that The Protection from Harassment (Northern Ireland) Order 1997 extends to third parties in this regard.

3.4 **The NIHRC recommends that the Department consider amending the legislation to include provision for third parties carrying out offences on behalf of the perpetrator.**

3.5 Section 8 of the Bill concerns the power to make orders and states that it does not matter whether the acts were carried out in a part of the United Kingdom or elsewhere, or whether they were carried out before or after the coming into operation of this section. The Commission is concerned with the inclusion of offences retrospectively to the enactment of the legislation.

3.6 The NIHRC would highlight that this engages Article 7 ECHR which provides that:

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

3.7 In this regard Article 7 ECHR unconditionally prohibits the retrospective application of the criminal law where it is to an accused's disadvantage.²⁴ The principle of non-retroactivity of criminal law applies both to the provisions defining the offence and to those setting the penalties incurred.

3.8 The principle of non-retroactivity is infringed in cases of retroactive application of legislative provisions to offences committed before those provisions came into force. Therefore, it is prohibited to extend the scope of offences to acts which previously were not criminal offences.

3.9 The NIHRC is concerned that the Bill currently provides that a Stalking Prevention Order can be sought for behaviour before the commencement of legislation even if there is no evidence of it having continued after the change in law.

²⁴ *Del Rio Prada v Spain* (2013) ECHR 1004; *Kokkinakis v Greece* (1993) ECHR 397.

3.10 The Commission would propose that the law must be satisfied after commencement of the legislation to ensure compliance with Article 7 ECHR. However, on meeting this requirement the Commission suggests that consideration of a course of conduct prior to the change in legislation can then be taken into account..

3.11 **The NIHRC recommends the Department consider amending the Bill to clarify that behaviour amounting to stalking offences must be satisfied after the change in legislation for the application for a Stalking Prevention Order. Only then can previous behaviour be considered retrospective of the change in law.**

Rehabilitation of Offenders

3.12 The Commission is concerned with the lack of clarity regarding the rehabilitation for offenders who have committed stalking offences.

3.13 The NIHRC would advise the Department provides whether stalking offences will be classified as a general offence under the Rehabilitation of Offenders (Northern Ireland) Order 1978. As well as whether having a Stalking Prevention Order will be a spent conviction or require disclosure for specific employment.

3.14 This would provide clarity on disclosure processes for offenders and employees. If an employer conducts vetting procedures on an employee with a Stalking Prevention Order what detail would be provided and where an individual has several Orders would this require enhanced vetting procedures to identify.

3.15 **The NIHRC recommends the Department provide clarity around how rehabilitation of offender legislation will apply to all stalking offenders.**

4.0 Disaggregated Data

4.1 The NIHRC is concerned that currently very little data on stalking exists in Northern Ireland.

4.2 The UN CEDAW Committee in its 2019 concluding observations on the UK recommended that the UK Government and NI Executive

“systematically collect and publish data, disaggregated by sex, gender, ethnicity, disability and age, throughout the whole of its territory to inform policymaking and assess the impact of measures taken”.²⁵

4.3 The NIHRC recommends that the Department works with the relevant public authorities and civil society organisations to systematically collect and publish data on stalking that is disaggregated by sex, gender, ethnicity, disability and age. It should also record the journey of stalking investigations through the criminal justice system, including the number of initial reports, number of referrals to the Public Prosecution Service, how many reach different stages of the court process, how many result in prosecutions, what is the resulting remedy and how many repeat offences occur.

Contact us

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²⁵ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 26(d).

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New Offence of Stalking in Northern Ireland**

February 2019

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Summary of Recommendations

2.5 The Commission recommends that any legislation, policies, training or additional measures linked to stalking in NI are developed, implemented and monitored in close consultation with the active participation of stalking victims, survivors and their representative organisations. All measures and support should be fully accessible to persons with disabilities. The Commission advises that the requirement to ensure effective participation applies to all the recommendations outlined below.

2.25 The Commission welcomes the Department's intention to introduce a new offence of stalking. The Commission recommends that standalone consolidated legislation prohibiting all forms of stalking is developed and that this legislation effectively reflects human rights standards.

2.27 The Commission recommends that stalking legislation in NI should include a non-exhaustive list of types of behaviours associated with stalking, to be used as a guide in identifying stalking.

2.28 The Commission recommends that the legislation is subject to post legislative scrutiny to ensure its effectiveness, inter alia, to allow for the consideration of additional behaviours.

2.35 The Commission recommends that Stalking Protection Orders are provided for within the proposed stalking legislation and complemented with effective guidance on the process and implementation of these Orders.

3.4 The Commission recommends that all forms of cyberstalking are prohibited within the proposed stalking legislation.

3.10 The Commission recommends that the policies developed in line with any resulting stalking legislation focus on effective implementation and include action plans and monitoring mechanisms.

3.11 The Commission recommends that any stalking policies developed should be accompanied by effective guidance and training for those responsible for their implementation.

3.15 The Commission recommends that data on all forms of stalking is effectively gathered, disaggregated and monitored.

3.21 The Commission recommends that the Department ensures that victims of stalking in NI are effectively protected and supported, including replicating the Hampshire Stalking Clinic model in NI.

3.23 The Commission recommends that specialised support services in Northern Ireland for victims are accessible, localised and sufficiently resourced.

3.28 The Commission recommends that an assessment be conducted as to whether victims of stalking have been able to access compensation to date, including for example through the Criminal Injuries Compensation Scheme. This assessment should aim to ensure that an accessible and effective compensation mechanism is available for all victims of stalking and takes into account the physical and psychological impacts of stalking.

3.34 The Commission recommends that support staff and all staff and professionals involved in the reporting and criminal justice process are effectively trained and qualified to work with stalking victims and survivors. Training should acknowledge and address the fact that victims of stalking may have limited confidence in enforcement bodies.

3.36 The Commission further recommends that stalking, as a form of gender-based violence, is included within any training developed following the Gillen review.

3.40 The Commission recommends that effective measures aimed at preventing recidivism are developed, implemented and monitored in close consultation with and the active participation of rehabilitation experts, stalking victims, survivors and their representative organisations. Any such measures should be accompanied by a support mechanism for victims.

1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (the Commission), pursuant to Section 69(1) the Northern Ireland Act 1998, reviews the adequacy and

effectiveness of law and practice relating to the protection of human rights. In accordance with these functions, the following statutory advice is submitted to the Department of Justice in response to its consultation on creating a new offence of stalking in Northern Ireland (NI).

1.2 The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE), European Union (EU) and United Nations (UN) systems. The relevant international treaties in this context include:

- European Convention on Human Rights 1950 (ECHR);²⁶
- International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR);²⁷
- International Covenant on Civil and Political Rights 1966 (ICCPR);²⁸
- UN Convention on the Elimination of All Forms of Discrimination Against Women 1979 (UN CEDAW);²⁹
- European Convention on Compensation for Victims of Violent Crimes 1983;³⁰
- UN Convention against Torture 1987 (UN CAT);³¹
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987;³²
- UN Convention on the Rights of the Child 1989 (UN CRC);³³
- Charter of Fundamental Rights of the European Union 2000;³⁴

- UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD);³⁵

²⁶ Ratified by the UK in 1951.

²⁷ Ratified by the UK in 1976.

²⁸ Ratified by the UK in 1976.

²⁹ Ratified by the UK in 1981.

³⁰ Ratified by the UK in 1990.

³¹ Ratified by the UK in 1988.

³² Ratified by the UK in 1988 (as amended by Protocols No. 1 and No.2 1993).

³³ Ratified by the UK in 1991.

³⁴ Ratified by the UK in 2000.

³⁵ Ratified by the UK in 2009.

- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence 2011 (Istanbul Convention);³⁶
- EU Directive establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime 2012 (EU Victims Directive).³⁷

1.3 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the United Nations (UN) and the Council of Europe (CoE). These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985;³⁸
 - UN Declaration on the Elimination of Violence against Women 1993;³⁹
 - UN Beijing Declaration and Platform for Action 1995;¹⁵
 - CoE Committee of Ministers Recommendation on the Protection of Women against Violence 2002⁴⁰
 - UN Resolutions on the Intensification of Efforts to Eliminate all forms of Violence against Women 2006, 2012;⁴¹
- UN Report of the Secretary General on the Intensification of

³⁶ Signed by the UK in 2012. The UK has not yet ratified this Convention but has committed to do so with the enactment of the Preventing and Combating Violence against Women and Domestic Violence (Ratification of Convention) Act 2017. The UK Mission at Geneva has also stated, "the UK's approach to signing international treaties is that we only give our signature where we are fully prepared to follow-up with ratification in a short time thereafter". See UK Mission at Geneva, 'Universal Periodic Review Mid-term Progress Update by the United Kingdom on its Implementation of Recommendations Agreed in June 2008' (UKMIS), at recommendation 22 (France).

³⁷ 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.

³⁸ A/RES/40/34, 'UN General Assembly Principles of Justice for Victims of Crime and Abuse of Power,' 29 November 1985

³⁹ A/RES/48/104, 'UN General Assembly Declaration on the Elimination of Violence against Women,' 23 February 1994 ¹⁵ UN Beijing Declaration and Platform for Action adopted by the UN 4th World Conference on Women, 4-15 September 1995.

⁴⁰ Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the protection of women against violence, 30 April 2002

⁴¹ A/RES/61/143, 'UN General Assembly Resolution on Intensification of efforts to eliminate all forms of violence against women,' 30 January 2007; A/RES/67/144, 'UN General Assembly Resolution on Intensification of efforts to eliminate all forms of violence against women,' 20 December 2012

Efforts to Eliminate all forms of Violence against Women 2010;⁴²

- UN Resolution on Strengthening Crime Prevention and Criminal Justice responses to Violence against Women 2011;⁴³
- UN Commission on the Status of Women conclusions of the 57th session 2013;⁴⁴
- UN Committee on the Elimination of All Forms of Discrimination against Women General Recommendation 35, 2017.⁴⁵

1.4 The Commission welcomes the consultation on stalking offences in NI. The Commission is broadly supportive of the proposals set out in the consultation document, particularly the creation of specific stalking offences in NI and introduction of Stalking Protection Orders. However, the Commission stresses the importance that any legislation should fully reflect human rights standards and be comprehensive in its scope. This requires consideration of a number of additional measures including introducing the offence of cyberstalking, devising effective co-ordinated policies, gathering and disaggregating effective data collection, ensuring effective support for victims, developing and implementing effective training programmes and establishing mechanisms for the rehabilitation of perpetrators.

2.0 Proposed Legislation

Effective participation

2.1 To ensure that the steps taken to address stalking are effective in practice, it is crucial that those who have direct experience of stalking, or work with those that have direct experience of stalking are involved at every stage of the process – design, development, implementation, monitoring and

⁴² A/RES/65/208, 'UN General Assembly Resolution on Extrajudicial, Summary or Arbitrary Executions,' 21 December 2010.

⁴³ A/RES/65/228, 'UN General Assembly Resolution on strengthening crime prevention and criminal justice responses to violence against women,' 21 December 2010.

⁴⁴ E/2013/27, 'Commission on the Status of Women report on the fifty-seventh session', 4 – 15 March 2013

⁴⁵ CEDAW/C/GC/35, 'UN Committee on the Elimination of Discrimination against Women, General recommendation No.35 on gender-based violence against women', 14 July 2017.

evaluation. In human rights terms, this is referred to as effective participation.

2.2 The EU Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime provides:

Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved at all administrative levels – at Union level, and at national, regional and local level.⁴⁶

2.3 The UN CRPD has been guided by the motto “nothing about us, without us.” This, according to the Committee on the Rights of Persons with Disabilities, “resonates with the philosophy and history of the disability rights movement, which relies on the principle of meaningful participation”.⁴⁷ This approach should not be limited to disability issues alone, but should be applied more generally to all human rights issues.

2.4 Ensuring effective participation requires consideration of an individual’s specific needs.⁴⁸ This also requires State parties to make reasonable accommodation for persons with disabilities, in line with CRPD, Article 5(3), and CRPD Committee’s General Comment No 2.⁴⁹ This approach is not limited to persons with disabilities, but as set out in the UN Declaration of Basis Principles of Justice for Victims of Crime and Abuse of Power,

⁴⁶ Directive 2012/29/EU, ‘Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA’, 25 October 2012, at para 62.

⁴⁷ CRPD/C/GC/7, ‘UN Committee on the Rights of Persons with Disabilities, General Comment No.7, 9 November 2018, at para 4.

⁴⁸ Article 9, UNCRPD.

⁴⁹ CRPD/C/GC/2, ‘UN Committee on the Rights of Persons with Disabilities, General Comment No.2’, 22 May 2014, at para 26.

“attention should be given to those who have special needs” in providing services and assistance to victims and survivors.⁵⁰

2.5 The Commission recommends that any legislation, policies, training or additional measures linked to stalking in NI are developed, implemented and monitored in close consultation with the active participation of stalking victims, survivors and their representative organisations. All measures and support should be fully accessible to persons with disabilities. The Commission advises that the requirement to ensure effective participation applies to all the recommendations outlined below.

Specific offence

- 2.6 Victims of stalking may experience constant fear, some are physically injured or experience varying levels of assault, criminal damage and, in extreme cases, murder or attempted murder.⁵¹ Research shows a strong correlation between some key stalking behaviours and homicide.⁵² Stalking can also result in serious harm for victims’ family members.⁵³ Thus stalking engages a number of human rights.
- 2.7 The ECHR, Article 1, poses a general duty on States to “secure to everyone within their jurisdiction the rights and freedoms defined in the Convention”. As such, the ECHR places positive obligations on States to undertake certain measures.
- 2.8 The ECHR, Article 2(1), contains the obligation that “everyone’s right to life shall be protected by law”. The European Court of Human Rights (ECtHR) elaborates that:

the first sentence of Article 2(1) enjoins the State not only to refrain from the intention and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It

⁵⁰ A/RES/40/34, ‘UN General Assembly Principles of Justice for Victims of Crime and Abuse of Power’, 29 November 1985, at Principle 17.

⁵¹ Justice Unions’ Parliamentary Group, ‘Independent Parliamentary Inquiry into Stalking Law Reform: Main findings and recommendations’ (February 2012).

⁵² Researchers at University of Gloucester identified the presence of stalking behaviours in 94% of 358 cases of criminal homicide that occurred in UK 2012 – 2014. Monckton-Smith, Jane and Szymanska, Karolina and Haile, Sue, ‘Exploring the relationship between stalking and homicide,’ (2017).

⁵³ Suzy Lamplugh Trust, ‘Restoring the balance,’ (2015), p.10.

is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another individual.⁵⁴ This includes a requirement on State authorities to ensure that "all reasonable steps" have been taken to protect individuals from "serious" threats to life.⁵⁵

2.9 The requirement to protect life by law is also provided for within ICCPR, Article 6(1); UN CRC, Article 6; UN CRPD, Article 10; and Charter of Fundamental Freedoms of the European Union, Article 2.

2.10 The ECHR, Article 3, prohibits torture, inhuman or degrading treatment or punishment. This is an absolute right, which must not be interfered with under any circumstances.³² The ECtHR confirms that taken in conjunction with the ECHR, Article 1, that "Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals".⁵⁶ Such measures include providing "adequate protection" in law.⁵⁷

2.11 The requirement to prohibit torture, inhuman or degrading treatment or punishment by law is also provided for within ICCPR, Article 7; UN CRC, Article 37(a); UN CAT; UN CRPD, Article 15; and Charter of Fundamental Rights of the European Union, Article 4.

2.12 The ECHR, Article 8, protects the right to respect for private and family life. Article 8 is qualified and can be limited in certain circumstances. An interference with this right may be justified if the State's acts or inaction

⁵⁴ *Osman v. UK* (1998) ECHR 101 at para 115.

⁵⁵ *Branko Tomašić and Others v. Croatia* (2009) ECHR 79, at para 52-53; *Opuz v. Turkey* (2009) ECHR 870, at para 129

³² Article 15(2), ECHR.

⁵⁶ *A v United Kingdom* (1998) ECHR 85, at para 22.

⁵⁷ *A v United Kingdom* (1998) ECHR 85, at paras 23-24.

were lawful, served a legitimate aim, and were proportionate.⁵⁸ Article 8(2) provides guidance on what may constitute a legitimate aim:

there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- 2.13 The ECtHR has confirmed that ECHR, Article 8, encompasses a person's physical and moral integrity on the basis that "a person's body concerns the most intimate aspect of private life".⁵⁹ This includes a duty on States "to protect physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals".⁶⁰
- 2.14 Specific to stalking, the ECtHR has found a violation of the ECHR, Article 8, where States have failed to protect victims, particularly in instances where protective measures have not been adequately enforced. In *A v Croatia* (2010), the ECtHR found a violation of Article 8 where the Croatian authorities had failed to implement many of the measures ordered by the courts to protect the applicant from her violent ex-husband who stalked her for several years.⁶¹ In *Hajduová v Slovakia* (2010), the ECtHR found a violation of Article 8 where the authorities refused to adopt a protective measure to prevent a man stalking his ex-wife.⁶²
- 2.15 The requirement to respect physical and moral integrity, as part of the right to respect for private and family life, is also provided for within

ICCPR, Article 17; UN CRC, Article 16; UN CRPD, Article 22; and Charter of Fundamental Freedoms of the European Union, Article 24.

⁵⁸ *Dudgeon v United Kingdom* (1981) ECHR 5, at para 53.

⁵⁹ *YF v Turkey* (2003) ECHR 391, at para 33.

⁶⁰ *Sandra Janković v. Croatia* (2008) ECHR 140, at para 45.

⁶¹ *A v. Croatia* (2010) Application No 55164108.

⁶² *Hajduová v. Slovakia* (2010) App No 2660/03. See also *Bevacqua and S. v. Bulgaria* (2008) ECHR 498

- 2.16 Stalking is a deeply traumatising form of psychological violence. The majority of its victims are women.⁶³⁶⁴ Psychological violence is a recognised form of gender-based violence against women and States are required to protect women from it.⁴¹ The UN Committee on the Elimination of Discrimination against Women (UN CEDAW Committee) specifies that State parties should take “appropriate and effective measures to overcome all forms of gender-based violence, whether committed by public or private act”.⁴² State parties must take “legal and other measures” that provide “effective protection”. Effective legal measures to protect women include “penal sanctions, civil remedies and compensatory provisions”.⁶⁵ Laws against gender-based violence must “respect [the women’s] integrity and dignity”.⁶⁶
- 2.17 The Istanbul Convention, Article 34, includes a specific provision to tackle stalking, requiring States to “take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised”.
- 2.18 Due to the interdependent and interrelated nature of human rights, interference with one right can have a knock on effect on others.⁶⁷ This is particularly relevant for victims of stalking, with the impact of stalking often affecting multiple aspects of the victims’ life and the lives of their family members.⁶⁸ Consequently, stalking may also interfere with the enjoyment of multiple rights for a victim or a victim’s family, for example,

⁶³ Office for National Statistics, ‘Crime in England and Wales: year ending December 2017,’ (26 April 2018). ⁴¹ Article 3(b), Istanbul Convention. Gender-based violence is defined as violence that is directed against a woman because she is a woman or that affects women disproportionately. CEDAW/C/GC/35, ‘UN Committee on the Elimination of Discrimination against Women, General recommendation No.35 on gender-based violence against women’, 14 July 2017

⁴² CEDAW/C/GC/19, ‘UN Committee for the Elimination of Discrimination against Women, General Recommendation No. 19’, 1992 at para 24(a).

⁶⁴ Ibid, at para 24.

⁶⁵ Ibid.

⁶⁷ A/CONF.157/23, Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, at para. I(5).

⁶⁸ Parliamentary Office of Science and Technology, ‘Stalking and harassment - No. 592’ (December 2018); Suzy Lamplugh Trust, ‘Restoring the balance’ (2015), p.10.

in addition to the above, this can include the rights to education,⁶⁹ work,⁷⁰ respect for private life,⁷¹ respect for family life.⁷²

2.19 There is currently no specific legislation prohibiting stalking in NI, nor is there a legal definition. Instead, a number of laws are used to prosecute individuals deemed to engage in stalking behaviour(s). The Protection from Harassment (NI) Order 1997 prohibits a person pursuing a course of conduct that amounts to the harassment of another person.⁷³ The Order also provides for the offence of “putting people in fear of violence” with a maximum sentence of seven years imprisonment on conviction.⁷⁴ Under the Family Homes and Domestic Violence (NI) Order 1998, a nonmolestation order may be sought prohibiting a person from “molesting another person who is associated with the respondent”.⁷⁵

2.20 There are also a number of statutes that may be used to prevent forms of communication, including cyberstalking. These include the Communications Act 2003,⁷⁶ the Malicious Communications (NI) Order 1988,⁷⁷ the Postal Services Act 2000⁷⁸ and the recent amendment to the Justice Act (NI) 2016, which deals specifically with revenge porn.⁷⁹

2.21 In the 2012, the Westminster Justice Unions’ Parliamentary Group conducted an independent parliamentary inquiry into stalking law reform in England and Wales.⁸⁰ It considered the Protection from Harassment Act 1997, which was the main stalking legislation in England and Wales at the time of the Inquiry. The Inquiry report found that victims and professionals

⁶⁹ E.g. Article 10, CEDAW; Article 13, ICESCR; Article 24, CRPD.

⁷⁰ E.g. Article 11, CEDAW; Article 6, ICESCR; Article 27, CRPD.

⁷¹ E.g. Article 8, ECHR; Article 22, CRPD.

⁷² E.g. Article 16, CEDAW; Article 10, ICESCR; Article 23, CRPD.

⁷³ Section 3, The Protection from Harassment (Northern Ireland) Order 1997.

⁷⁴ Section 6(4)(a), The Protection from Harassment (Northern Ireland) Order 1997.

⁷⁵ Section 20 (1)(a), Family Homes and Domestic Violence (Northern Ireland) Order 1998.

⁷⁶ Section 127 of the Communications Act 2003 makes it an offence to send a message that is of menacing character using public electronic communications.

⁷⁷ Section 3 of the Malicious Communications (Northern Ireland) Order 1988 makes it an offence to send letters with the intent of causing distress or anxiety.

⁷⁸ Section 85 of the Postal Services Act 2000 prohibits the sending by post of indecent or obscene articles.

⁷⁹ Section 51, Justice Act (Northern Ireland) 2016.

⁸⁰ Justice Unions’ Parliamentary Group, ‘Independent Parliamentary Inquiry into Stalking Law Reform: Main findings and recommendations’ (February 2012), p.22.

observed that the Protection from Harassment Act 1997 was too broad to achieve its stated objective.⁸¹ The Inquiry found that the Family and Civil

courts processes were being abused as some “convicted men pursue[d] their victims through vexatious claims”,⁸² resulting in re-victimisation. The Westminster Parliament, noting concerns that the 1997 Act was ineffective, amended the 1997 Act to create two new offences of stalking.⁸³ The first offence applies if a person pursues a course of conduct, which amounts to harassment that can be described as stalking behaviour.⁸⁴ The second offence applies if a person is guilty of pursuing a course of conduct that has caused the victim “serious alarm or distress which has a substantial adverse effect on the [victim’s] usual day to day activities”.⁸⁵ The 1997 Act was further amended to confer a new power on police to enter and search premises in relation to the new stalking offences.⁸⁶

2.22 Legislative developments in Scotland predated those in England and Wales by two years. Under the Criminal Justice and Licensing (Scotland) Act 2010, stalking was recognised for the first time in legislation anywhere in the UK. The legislation created a specific offence of stalking and a wider offence of threatening, alarming or distressing behaviour.⁸⁷ The Scottish model was highlighted as good practice in the parliamentary inquiry.⁸⁸ Another example of good practice in Scotland is that, following a high profile case of stalking, the Crown Office and Procurator Fiscal Service in Scotland agreed that it would no longer enter plea bargains with stalkers and that all evidence in stalking trials should be heard and tested in court.⁸⁹ A similar practice has been adopted in England and Wales, where the Crown Prosecution Service issued guidance advising prosecutors to pursue a stalking charge if the “behaviour clearly is indicative of

⁸¹ Ibid, at 21.

⁸² Ibid, at 19.

⁸³ Section 111 of the Protection of Freedoms inserts the two offences.

⁸⁴ Section 2A, Protection from Harassment Act 1997. The section 2A offence of stalking is a summary only offence.

⁸⁵ Section 4A, Protection from Harassment Act 1997. The section 4A offence of stalking is an either way offence.

⁸⁶ Section 112, Protection of Freedoms Act 2012.

⁸⁷ Section 39, Criminal Justice and Licensing (Scotland) Act 2010.

⁸⁸ Justice Unions’ Parliamentary Group, ‘Independent Parliamentary Inquiry into Stalking Law Reform: Main findings and recommendations’ (February 2012), chapter 8.

⁸⁹ RaISE, ‘Briefing Paper: Legislative Position on Stalking and Relevant Statistics in the UK and the Republic of Ireland’ (2017).

stalking”.⁹⁰ The guidance further advises “not to accept a plea to [the lesser offence of] harassment simply out of expediency.”⁹¹

2.23 In NI, the Protection from Harassment (NI) Order mirrors the original Harassment Act 1997. Unlike in England, Wales and Scotland, this original legislation has not been updated to include a specific stalking offence. Therefore, the concerns raised by the Westminster Justice Unions’ Parliamentary Group – specifically in relation to the legislation being too broad to achieve its stated objective – similarly apply in NI.

2.24 The Commission is concerned that NI is the only jurisdiction within the UK without specific stalking legislation.⁹² The Commission is concerned that the current legislation is not effective in protecting victims of stalking from further harassment and re-victimisation. This is particularly concerning in the context that victims of stalking in NI may have to turn to several different legal instruments to seek a remedy depending on how they are victimised; the different legal processes may also complicate criminal prosecutions. Standalone consolidated legislation would provide clarity on any legal developments concerning stalking, that would be lost by amending multiple pieces of existing legislation. This clarity would make it clear for potential perpetrators, victims and legal teams alike that all forms of stalking are prohibited and subject to criminal sanction. This in turn would maximise the potential for increasing awareness, and understanding, of stalking in Northern Ireland.

2.25 The Commission welcomes the Department’s intention to introduce a new offence of stalking. The Commission recommends that standalone consolidated legislation prohibiting all forms of stalking is developed and that this legislation effectively reflects human rights standards.

2.26 The Commission notes that legislation in England, Wales and Scotland provide a list of behaviours associated with stalking.⁹³ Yet, in Scotland, the legislation is explicitly non-exhaustive. The relevant clause is “in this

⁹⁰ CPS guidance, ‘Stalking and Harassment’ (23 May 2018).

⁹¹ CPS guidance, ‘Stalking and Harassment’ (23 May 2018).

⁹² House of Commons briefing paper, ‘Stalking: developments in the law’ (21 November 2018).

⁹³ Section 2A, Protection from Harassment Act 1997; Section 39, Criminal Justice and Licensing (Scotland) Act 2010.

section – ‘conduct’ means... acting *in any other way* that a reasonable person would expect would cause B to suffer fear or alarm [emphasis added]”.⁹⁴ The Attorney General NI’s guidance is similarly nonexhaustive; the list of stalking behaviours is prefixed with “[stalking

behaviour] includes, but is not limited to [the following]”.⁹⁵ Adopting such non-exhaustive language enables the legislation or guidance to encompass emerging forms of stalking behaviour.⁹⁶

2.27 The Commission recommends that stalking legislation in NI should include a non-exhaustive list of types of behaviours associated with stalking, to be used as a guide in identifying stalking.

2.28 The Commission recommends that the legislation is subject to post legislative scrutiny to ensure its effectiveness, inter alia, to allow for the consideration of additional behaviours.

Stalking Protection Orders

2.29 The UN General Assembly notes that victims of violence must have “effective access” to procedures for issuing restraining or barring orders.⁹⁷ The use of protection orders in cases involving stalking are acknowledged as “good practice” by the UN General Assembly.⁹⁸

2.30 The Special Rapporteur on Violence against Women has made a number of detailed recommendations on the use of protection orders in the context of

⁹⁴ Section 39, Criminal Justice and Licensing (Scotland) Act 2010.

⁹⁵ Attorney General, ‘Human rights guidance for PSNI, PPS, PBNI and NICTS: Domestic abuse and stalking’ (20 April 2018) paras 7, 8.

⁹⁶ During parliamentary debates focussed on Criminal Justice and Licensing (Scotland) Act 2010, MSP Rhoda Grant highlighted the need for a non-exhaustive list: “If we included an exhaustive list, a stalker would immediately find a way round it. In their evidence to the committee, the police discussed the benefits of having a list of behaviours. Such a list would enable them to identify more easily the type of behaviour that makes up stalking, to begin a prosecution and to help witnesses much earlier. It is therefore right to have a definition, as is the case in Australia and America. We have heard examples of how the law works better in those places than it does in England and Wales. The list is not exhaustive but merely gives examples of that type of behaviour.” Scottish Parliament, ‘Justice Committee: Session 3’ (13 April 2013).

⁹⁷ A/RES/65/228, ‘UN General Assembly Resolution on strengthening crime prevention and criminal justice responses to violence against women,’ 21 December 2010.

⁹⁸ The Report of Secretary-General highlighted efforts in Italy and Austria. A/RES/65/208, ‘UN General Assembly Resolution on Extrajudicial, Summary or Arbitrary Executions,’ 21 December 2010.

domestic violence.⁹⁹ The Special Rapporteur recommends that protection orders must be “easily available” and must be available to provide “immediate protection in cases of immediate danger [that] remain in effect until long-term term protection orders come into effect”.¹⁰⁰ The Special Rapporteur states that “strict time-limit restrictions on access to protection orders should not be imposed”; this in recognition of the fact that “many forms of violence are courses of conduct which take place over time”.¹⁰¹ Further, the “standard of proof that an applicant must discharge in order to be awarded with an order should not be the same as the standard of criminal proof”.¹⁰² The Special Rapporteur also states that protection orders “should be issued without undue financial or administrative burdens placed on the victim” and also that protection orders can “order the perpetrator to provide financial assistance to the victim”.¹⁰³ The Special Rapporteur further clarifies that States should provide “appropriate criminal sanctions for perpetrators’ non-compliance with protection orders” and that States should “ensure regular monitoring of the implementation of protection orders and their automatic enforceability across jurisdictions”.¹⁰⁴

2.31 Civil stalking protection orders give police the authority to address dangers posed by perpetrators, while gathering more evidence. Protection orders remove the onus from victims to initiate legal action through the civil courts, as police may apply directly on the victim’s behalf. Such protection orders are consistent with the Istanbul Convention, Article 55, which provides:

- 1) Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.

⁹⁹ A/HRC/35/30, ‘Report of the Special Rapporteur on violence against women, its causes and consequences,’ 13 June 2017, Chapter III (D).

¹⁰⁰ Ibid, at para.112 (a) and (c).

¹⁰¹ Ibid, at para. 112 (c).

¹⁰² Ibid, at para. 112 (c).

¹⁰³ Ibid, para. 112 (d).

¹⁰⁴ Ibid, para 112 (h).

2) Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and non-governmental organisations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention.

2.32 A Private Members' Bill is currently before the House of Lords, which proposes to introduce stalking protection orders in England and Wales.¹⁰⁵ In acknowledgement of the "legislative gap",¹⁰⁶ whereby victims of "stranger stalking" enjoy fewer protections than victims of intimate partner stalking,¹⁰⁷ the Home Office has committed to legislating to introduce a new stalking protection order "as soon as parliamentary time allows".¹⁰⁸ In Scotland, a Private Members' Bill containing similar provisions was announced in November 2018.⁸⁷

2.33 As part of its engagement with the UN CEDAW Committee and UN CAT Committee, the Commission has consulted with victims, survivors and civil society organisations on how to address stalking in NI. During these discussions, introducing Stalking Protection Orders in NI was viewed as a positive step.¹⁰⁹ Introducing Stalking Protection Orders would also complement the prospective Domestic Violence Protection Notices and Domestic Violence Protection Orders.¹¹⁰

¹⁰⁵ Parliamentary Business, 'Stalking Protection Bill 2017-19' (12 January 2018).

¹⁰⁶ Home Office, 'Introducing Stalking Protection Orders – a consultation' (December 2015).

¹⁰⁷ House of Commons Briefing Paper, 'Stalking: developments in the law No. 06261 (21 November 2018).

¹⁰⁸ Home Office, 'Introducing Stalking Protection Orders – a summary of consultation responses' (7 December 2016).

⁸⁷ Jane Cassidy, 'New law to protect stalking victims in Scotland' (The National, 12 November 2018). See also NIHRC email correspondence with MSP Rona Mackay 6, February 2019

¹⁰⁹ Commission meeting with civil society representatives, 30 November 2018.

¹¹⁰ Domestic Violence Protection Notices and Domestic Violence Protection Orders grant the police powers attending a domestic abuse incident to issue an emergency non-molestation and eviction notice. The notice is effective from the point of issue and can be issued without the victim's consent. Within 48 hours of a Protection Notice being served, the police can apply to the Magistrates' Court for a Protection Order. This can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. The introduction of these measures require legislative change, which is impossible without a functioning devolved government. Prospective provision for these measures is set out in the Schedule 7, Justice Act (Northern Ireland) 2015.

2.34 As set out below, to ensure Stalking Protection Orders are effectively implemented steps will be required to ensure effective polices are in place, victims are comprehensively supported, effective training is developed and implemented and that data on the use of these Orders is effectively gathered, disaggregated and monitored.

2.35 **The Commission recommends that Stalking Protection Orders are provided for within the proposed stalking legislation and complemented with effective guidance on the process and implementation of these Orders.**

3.0 Additional Considerations

3.1 To ensure the issue of stalking is effectively addressed, there are a number of measures that should be considered, in addition to those discussed within the consultation document. These include introducing the offence of cyberstalking, devising effective co-ordinated policies, gathering and disaggregating effective data collection, ensuring effective support for victims, developing and implementing effective training programmes and establishing mechanisms for the rehabilitation of perpetrators.

Cyberstalking

3.2 The UN Commission on the Status of Women urges State parties to devise specific programmes to tackle cyberstalking.¹¹¹ Where cyberstalking involves children, it engages UN CRC. In addition, to the right to life,¹¹² freedom from torture and ill-treatment,¹¹³ and right to physical and moral integrity,¹¹⁴ the UN CRC Article 3 specifically states:

1) in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

¹¹¹ E/2013/27, 'Commission on the Status of Women report on the fifty-seventh session', 4 – 15 March 2013, rec. (i).

¹¹² Article 6(1), UNCRC.

¹¹³ Article 37(1)(a), UNCRC.

¹¹⁴ Article 16(1), UNCRC.

authorities or legislative bodies, the best interests of the child shall be a primary consideration.

- 2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3.3 The Crown Prosecution Service in England and Wales defines cyberstalking as “harassment that takes place on the internet and through the misuse of email”.¹¹⁵ The Attorney General NI recognises that stalking can occur through online communication and social media.¹¹⁶

3.4 **The Commission recommends that all forms of cyberstalking are prohibited within the proposed stalking legislation.**

Effective policies

3.5 The UN CEDAW Committee confirms that State parties are required to formulate “legal norms, including at the constitutional level, the design of public policies, programmes, institutional frameworks and monitoring mechanisms, aimed at eliminating all forms of gender-based violence against women, whether committed by State or non-State actors”.¹¹⁷ The UN Special Rapporteur on Violence against Women also stresses the need for integrated services and protection measures as well as regular monitoring of measures.¹¹⁸

¹¹⁵ Crown Prosecution Service, ‘Stalking and harassment’ (23 May 2018). Cyberstalking can be an extension of a harasser’s existing activity or it can solely facilitate the harassment of a victim. It can be carried out by a harasser who has never met their victim and to whom they are a complete stranger. It can also be performed through a number of online avenues. For further information on cyberstalking, see the National Centre for Cyberstalking Research situated within the University of Bedfordshire.

¹¹⁶ [Stalking] actions include, but are not limited to: attempting to isolate or humiliate the other person for example, by spreading untruthful or private information about the other person by any other means including online communication or through social media. Paragraph 7(e), Attorney General, ‘Human rights guidance for PSNI, PPS, PBNI and NICTS: Domestic abuse and stalking,’ (20 April 2018).

¹¹⁷ CEDAW/C/GC/35, ‘UN CEDAW Committee General Recommendation No 35 on Gender-based Violence against Women, Updating General Recommendation No 19’, 14 July 2017, at para 24.

¹¹⁸ A/HRC/35/30, ‘Report of the Special Rapporteur on violence against women, its causes and consequences,’ 13 June 2017, Chapter III.

- 3.6 The Istanbul Convention, Article 7, requires States to “develop and adopt coordinated and integrated policies”. The CoE’s Committee of Ministers recommend the development of action plans as a means to implement efforts to reduce violence against women.¹¹⁹
- 3.7 The ‘Stopping Domestic and Sexual Violence and Abuse in NI’ strategy places an emphasis on raising awareness of forms of violence and includes stalking as an act of domestic and sexual violence.¹²⁰ RaISE has identified awareness raising as particularly important in the context of stalking, given the lack of understanding of this issue amongst specialists and the wider public.¹²¹
- 3.8 The ‘Stopping Domestic and Sexual Violence and Abuse in NI’ strategy has had three action plans introduced since its inception.¹²² None of these strategies commit to specific actions to address stalking in NI. In contrast, the action plan attached to the England & Wales ‘Ending violence against women and girls’ strategy includes a number of stalking-specific actions.¹²³ Likewise, the Scottish strategy for tackling violence against women also makes specific reference to stalking.¹²⁴
- 3.9 As an example of good practice, in England and Wales, the Crown Prosecution Service and National Police Chiefs’ Council issued a joint protocol on the appropriate handling of stalking or harassment offences. The protocol aims to, *inter alia*, establish early and effective liaison between both bodies and commits to the establishment of a single point of contact for stalking cases.¹²⁵

¹¹⁹ Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the protection of women against violence, 30 April 2002

¹²⁰ Department of Justice and Department of Health, Social Services and Public Safety, ‘Stopping Domestic and Sexual Violence and Abuse in Northern Ireland – a 7 year Strategy’ (March 2016).

¹²¹ RaISE, ‘Briefing Paper: Legislative Position on Stalking and Relevant Statistics in the UK and the Republic of Ireland’ (2017).

¹²² The three action plans are Implementation Plan (2016), Draft Action Plan (2017), Draft Action Plan (2018).

¹²³ UK Government, ‘Ending violence against women and girls strategy 2016-2020’ (March 2016)

¹²⁴ Scottish government and COSLA, ‘Equally safe: Scotland’s Strategy for preventing and eradicating violence against women,’ (2018)

¹²⁵ CPS & National Police Chiefs’ Council, ‘Joint protocol on the appropriate handling of stalking or harassment offences’ (2018), para. 2.6

3.10 The Commission recommends that the policies developed in line with any resulting stalking legislation focus on effective implementation and include action plans and monitoring mechanisms.

3.11 The Commission recommends that any stalking policies developed should be accompanied by effective guidance and training for those responsible for their implementation.

Data Collection

3.12 The UN CEDAW Committee confirms that statistical information about the situation of women and violence is “absolutely necessary”.¹²⁶ Further, the

UN Beijing Declaration and Platform for Action encourages research, including into perpetrators’ behaviour; research necessitates access to accurate statistics.¹²⁷ The Istanbul Convention, Article 11, requires States to undertake to:

- 1) For the purposes 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...

¹²⁶ Committee for the Elimination of all forms of Discrimination Against Women, ‘General Comments 9 and 12’ (eighth session: 1989).

¹²⁷ Paragraph 125(i), Annex 1, UN Beijing Declaration and Platform for Action adopted by the UN 4th World Conference on Women, 4-15 September 1995.

4) Parties shall ensure that the information collected pursuant to this article is available to the public.

3.13 In 2017, the NI Research & Library Service found “extremely limited” data on the prevalence of stalking data for NI.¹²⁸ This can be attributed to the lack of a specific offence in NI, which results in data being collected under different offences.¹²⁹

3.14 The 2017 crime statistics for England and Wales reported a 33 per cent increase in stalking and harassment offences, compared to 2016.¹³⁰ An improvement in the recording of offences is likely to be an important factor

in this increase.¹³¹ Accurate data collection enables the identification of patterns and trends. Specifically, disaggregated data would identify categories of persons disproportionately affected, for example, in 2015 the Public Health England reported that disabled people experienced twice the rate of stalking, compared to non-disabled people.¹³² Data should also be disaggregated in terms of the type of offence committed, the steps taken to provide an effective remedy and recidivism rates.

3.15 The Commission recommends that data on all forms of stalking is effectively gathered, disaggregated and monitored.

Support for victims

3.16 The UN CEDAW Committee has highlighted the need for specialist support services for victims of violence.¹³³ The Istanbul Convention, Article 22(1), requires State parties to take the “necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution,

¹²⁸ RaISE, ‘Briefing Paper: Incidence and Prevalence of Stalking in NI’ (2017).

¹²⁹ AQW 325/16-21 Mrs Brenda Hale (Democratic Unionist Party) Lagan Valley Tabled Date: 31/05/2016.

¹³⁰ Office for National Statistics, ‘Crime in England and Wales: year ending December 2017’, (26 April 2018).

¹³¹ Note, however, although that accuracy in recording continues to be an issue for police forces. HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services joint inspection, ‘Living in fear: the police and CPS response to harassment and stalking’, (5 July 2017).

¹³² Public Health England, ‘Disability and domestic abuse: risk, impacts and response’ (2015).

¹³³ CEDAW/C/GC/35, ‘UN Committee on the Elimination of Discrimination against Women, General recommendation No.35 on gender-based violence against women’, 14 July 2017 ¹¹³ Articles 8 and 9, EU Directive 2012/20/EU.

immediate, short-term and long-term specialist support services to any victim subjected to [stalking]". Article 22(2) specifies that support specialist services should be provided or arranged to all "women victims of violence and their children". The EU Victims Directive requires that support services are free and confidential.¹¹³

3.17 The UN CEDAW Committee recognises the important role played by nongovernmental organisations in "protecting and supporting victims of gender-based violence".¹³⁴ The Istanbul Convention, Article 8, requires that the work of such organisations is "recognised, encouraged and supported".¹³⁵ Article 9 elaborates that this includes through the allocation of "appropriate financial resources".¹³⁶

3.18 The UN CRPD requires that all services must be accessible to all persons, and, where necessary, reasonable accommodation is provided for persons including those with disabilities.¹³⁷ The UN Declaration of basic principles on justice for victims requires that services for victims should be "readily afforded" to all victims.¹³⁸ Furthermore, "in providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted" or because of other factors "such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability".¹³⁹

3.19 The Istanbul Convention, Article 4, specifically requires:

the implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority,

¹³⁴ A/65/38, 'UN Committee on the Elimination of Discrimination against Women 18 January', 18 January - 5 February 2010, Annex V.

¹³⁵ Article 9, Istanbul Convention.

¹³⁶ Article 8, Istanbul Convention.

¹³⁷ Articles 5 and 9, UNCRPD.

¹³⁸ A/RES/40/34, 'United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', 29 November 1985.

¹³⁹ Ibid, at para 3 and 17.

property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

3.20 In terms of examples of good practice, the Paladin National Stalking Advocacy Service offers specialised services for victims of stalking in England and Wales.¹⁴⁰ The specialised National Stalking Helpline, operated by the Suzy Lamplugh Trust, has a UK-wide remit, but the Trust reports that it receives disproportionately fewer calls from NI, than it does from other parts of the UK.¹⁴¹ The Hampshire Stalking Clinic is a multi-agency panel that reviews high-risk stalking cases within the Hampshire area; it

has been highlighted as a service that should be replicated in NI by civil society representatives.¹⁴²

3.21 The Commission recommends that the Department ensures that victims of stalking in NI are effectively protected and supported, including replicating the Hampshire Stalking Clinic model in NI.

3.22 While NI government, agencies and civil society organisations can learn from good practice and developments in the rest of the UK, it is important that localised support services are available to victims. The Commission notes concerns that the presence of paramilitary organisations in NI can cause additional risks for victims of stalking.¹⁴³ It is therefore essential that support services are skilled in dealing with such risks.

¹⁴⁰ Paladin is a trauma-informed service that assists high-risk victims of stalking. It has developed an accredited Independent Stalking Advocacy Caseworkers (ISAC) training course with the University of Brighton. Paladin's work has been cited by Dr Wollaston MP during a Westminster debate on the Stalking Protection Bill 23 Nov 2018, Vol 549 Colum 1169.

¹⁴¹ Paladin informed the Commission that it currently only provides support to victims living in England and Wales (Email correspondence with Commission dated 17 January 2019).

¹⁴² The Hampshire Stalking Clinic aims to improve responses to stalking across the criminal justice system and the health sector through rehabilitative treatment for stalkers in a bid to make victims of stalking safer. The clinic is a forum for identification, referral, consultation, case formation and risk assessment of stalking cases. It has a multi-agency panel that reviews high-risk stalking cases within the Hampshire area using the stalking risk profile assessment process. See Meeting with civil society representatives, 30 November 2018; Police and Crime Commissioner, 'Press Release: Stalking Clinic highlighted as best practice by HMIC' (7 July 2017).

¹⁴³ Meeting with civil society organisation, 8 February 2019.

3.23 The Commission recommends that specialised support services in Northern Ireland for victims are accessible, localised and sufficiently resourced.

Compensation

3.24 The UN CAT requires that victims have an “enforceable right to fair and adequate compensation”.¹⁴⁴ It also requires that such compensation is available to dependents in the event of the death of a victim.¹⁴⁵ UN CEDAW Committee General Comment No 19 provides that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence and for providing compensation”.^{146,147}

3.25 The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power further provides that:

When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimisation.¹⁴⁸

3.26 Those who have been injured or whose parent, child, husband, wife or partner has died because of violent crime can apply for

¹⁴⁴ Art 14 UNCAT; A/RES/40/34, ‘United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, 29 November 1985

¹⁴⁵ Ibid.

¹⁴⁶ CEDAW/C/GC/19, ‘UN Committee for the Elimination of Discrimination against Women, General Recommendation No. 19’, 1992, at para 9.

¹⁴⁸ A/RES/40/34, ‘United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, 29 November 1985, at para 12.

compensation through the Criminal Injuries Compensation Scheme.
Under the Scheme:

to qualify for an award in respect of mental injury alone, we must be satisfied that you were put in reasonable fear of immediate physical harm to yourself, or that you had a close relationship of love and affection with another person who sustained a physical or mental injury and either witnessed the incident or were closely involved in the giving of assistance in the immediate aftermath of the incident.¹⁴⁹

3.27 The Commission is concerned that the 'immediate harm' element becomes difficult to prove for victims of stalking that have suffered sustained psychiatric injuries, without experiencing physical injury.

3.28 **The Commission recommends that an assessment be conducted as to whether victims of stalking have been able to access compensation to date, including for example through the Criminal Injuries Compensation Scheme. This assessment should aim to ensure that an accessible and effective compensation mechanism**

is available for all victims of stalking and takes into account the physical and psychological impacts of stalking.

Training

3.29 The UN General Assembly calls for "systematic training" for law enforcement officials, the judiciary and other relevant personnel.¹⁵⁰ The UN CEDAW Committee specifies that "gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the UN CEDAW".¹⁵¹ The UN CEDAW Committee further advises that training packages should include an:

¹⁴⁹ Department of Justice, 'Compensation Services: A Guide to the NI Criminal Injuries Compensation Scheme (2009)' (DoJ, 2009), at para 7.7.

¹⁵⁰ A/RES/65/208, 'UN General Assembly Resolution on Extrajudicial, Summary or Arbitrary Executions,' 21 December 2010, para 35.

¹⁵¹ CEDAW/C/GC/35, 'UN CEDAW Committee General Recommendation No 35 on Gender-based Violence against Women, Updating General Recommendation No 19', 14 July 2017, at para 24 (b).

understanding of trauma and its effects, the power dynamics that characterise intimate partner violence, the varying situations of women experiencing diverse forms of gender-based violence; this shall include the intersectional discrimination affecting specific groups of women, as well as adequate ways to address women and eliminate factors that re-victimise them and weaken their confidence in State institutions and agents.

3.30 The Istanbul Convention, Article 15, requires State parties to provide or strengthen appropriate training for relevant professionals dealing with victims or perpetrators of all acts of violence, including stalking.¹⁵² The requirement for generalist and specialist training of all practitioners, including judiciary, prosecutors, police officers and court staff, is also found in the EU Victims Directive.¹⁵³

3.31 An independent parliamentary inquiry has found that victims of stalking have little confidence in the criminal justice system and feel that they are “rarely taken seriously” by law enforcement.¹⁵⁴ Enforcement agencies acknowledge this problem. A joint report by the Crown Prosecution Service

and Inspectorate of Constabulary found that “victims [are] often badly let down throughout the criminal justice process” and that “on too many occasions, the police [and Crown Prosecution Service] failed to take robust action to protect victims”.¹⁵⁵

3.32 The Attorney General NI has identified the need for human rights focussed training and the need for co-ordinated multi-agency cooperation to allow comprehensive and appropriate handling in cases of domestic abuse and stalking.¹⁵⁶

¹⁵² A/RES/48/104, ‘UN General Assembly Declaration on the Elimination of Violence against Women,’ 20 December 1993, Art 4(i).

¹⁵³ Article 25 and paragraph 61, EU Victims Directive.

¹⁵⁴ Justice Unions’ Parliamentary Group, ‘Independent Parliamentary Inquiry into Stalking Law Reform: Main findings and recommendations’ (February 2012), p.9.

¹⁵⁵ See HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services joint inspection, ‘Living in fear: the police and CPS response to harassment and stalking’ (5 July 2017) p. 12, 54.

¹⁵⁶ Attorney General, ‘Human rights guidance for PSNI, PPS, PBNI and NICTS: Domestic abuse and stalking’ (20 April 2018), para 46 – 52.

3.33 A number of training packages have been developed in England and Wales. For example, Paladin has developed a university-accredited training for independent stalking advocacy caseworkers and Continuing Professional Development training for professionals working with victims.¹⁵⁷ Stalking-specific training is not currently available in NI for staff who come into contact with victims of stalking during the reporting and criminal justice process.

3.34 **The Commission recommends that support staff and all staff and professionals involved in the reporting and criminal justice process are effectively trained and qualified to work with stalking victims and survivors. Training should acknowledge and address the fact that victims of stalking may have limited confidence in enforcement bodies.**

3.35 Justice Gillen's preliminary report into the law and procedures in serious sexual offences has recommended that Department of Justice takes the lead in co-ordinating a training strategy that looks at training of all participants in the criminal justice system surrounding sexual offences.¹⁵⁸ The Commission welcomes this recommendation and the proposal to ensure relevant stakeholder engagement in the development of training.¹⁵⁹

3.36 **The Commission further recommends that stalking, as a form of gender-based violence, is included within any training developed following the Gillen review.**

Rehabilitation of Perpetrators

3.37 The UN Beijing Declaration and Platform for Action requires States to work with other sectors to provide, fund and encourage counselling and rehabilitation programmes for the perpetrators of violence.¹⁶⁰ The UN CEDAW Committee requires States to devise rehabilitation programmes for

¹⁵⁷ Paladin, 'Annual Report' (2017).

¹⁵⁸ Sir Justice Gillen, 'Preliminary report into the law and procedures in serious sexual offences in NI' (November 2018), chapter 15.

¹⁵⁹ NIHRC, 'Response to the Gillen Review preliminary report into the law and procedures in serious sexual offences in Northern Ireland (January 2019).

¹⁶⁰ Paragraph 125(i), Annex 1, UN Beijing Declaration and Platform for Action adopted by the UN 4th World Conference on Women, 4-15 September 1995.

perpetrators of gender-based violence.¹⁶¹¹⁶² Such programmes should include awareness raising about gender-based violence “so as to prevent recidivism”.¹⁶³

3.38 The Stopping Domestic and Sexual Violence and Abuse in NI Strategy has introduced a number of initiatives in relation to domestic violence, which it would be worth exploring development of in the context of stalking. The Pilot Domestic Violence Perpetrator Programme was launched in Derry/Londonderry in March 2018 as a nine-month programme for a maximum of 30 perpetrators.¹⁶⁴ This Programme is subject to monthly judicial monitoring and was extended to Belfast in September 2018.¹⁶⁵ It adopts a problem solving justice approach, aimed at changing behaviours of convicted offenders. It involves perpetrators engaging with the Probation Board to undertake weekly group sessions for nine months. The Judge will not pass sentence on the offender whilst they are in this programme. Successful completion will factor into the Judge’s decision regarding sentencing. This Programme does not relieve the Public Prosecution Service NI of its duty to prosecute.

3.39 In its engagement with civil society representatives, it was raised that any measures aimed at the rehabilitation of perpetrators should be accompanied by a support mechanism for victims to ensure that they are kept fully updated and feel supported throughout.¹⁶⁶

3.40 The Commission recommends that effective measures aimed at preventing recidivism are developed, implemented and monitored in close consultation with and the active participation of rehabilitation experts, stalking victims, survivors and their

¹⁶¹ CEDAW/C/GC/19, ‘UN Committee for the Elimination of Discrimination against Women, General Recommendation No. 19, 1992, para 24(iv).

¹⁶³ CEDAW/C/GC/35, ‘UN Committee on the Elimination of Discrimination against Women, General recommendation No.35 on gender-based violence against women’, 14 July 2017, para 35(b).

¹⁶⁴ Department of Health and Department of Justice, ‘Stopping Domestic and Sexual Violence and Abuse Strategy: Draft Year 3 Action Plan’ (DoH and DoJ, 2018); Department of Justice, ‘Domestic Violence and Abuse Disclosure Scheme NI Guidance’ (DoJ, 2018); ‘NI pilot scheme launched to change behaviour of domestic violence offenders and help victims’, *Belfast Telegraph*, 22 March 2018; Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

¹⁶⁵ Belfast Solicitors Association, ‘Information received from DoJ in respect to an extension of the Domestic Violence Perpetrators Courts’, 4 September 2018.

¹⁶⁶ Commission meeting with civil society organisation, 8 February 2019.

representative organisations. Any such measures should be accompanied by a support mechanism for victims.

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