



Northern Ireland
Assembly



Queen's University
Belfast



The Open
University



Ulster
University

Knowledge Exchange Seminar Series (KESS)

Advancing Gender Equality in Northern Ireland: Addressing Domestic Violence and Human Rights Protections for Women

***Professor Monica McWilliams and Professor Fionnuala Ní Aoláin
Ulster University***

Over the past two decades, there have been many advances in policy making on domestic and sexual violence in Northern Ireland. In policy and legislation terms, the following have been responded to after many years of research and campaigning:

- The need to remove danger from victims and their children rather than removing them from danger. This has been accomplished through the use of protection and occupation orders accompanied by legal aid and housing support.
- The acknowledgement that leaving a violent relationship is a process, not an event. A more coordinated and consistent approach by health and social services, and the criminal justice system, has been established as good practice throughout Northern Ireland with access to support both during and after the relationship.

The proposed joint strategy by DHSS and DOJ on Stopping Domestic and Sexual Violence and Abuse in Northern Ireland 2013-2020 is a further step

in this direction.¹ However, in policy terms there are two factors that still need to be included. First the strategy needs to address the specificity of the Northern Ireland context in seeking transformative legal and social change to prevent and remedy gender-based violence. Second it needs to place the approach to domestic and sexual violence within a rights' based framework, and embed the strategy in the domestic, regional and international human rights obligations of the United Kingdom and Northern Ireland.

In relation to the first objective, it is widely acknowledged that domestic and sexual violence is a global phenomenon but it takes on specific modalities in each cultural and geo-political setting. However there is a lack of specificity in relation to the multi-dimensional nature of domestic violence in Northern Ireland. McWilliams and Ni Aolain (2013)² have outlined a range of these as follows

- Policing domestic violence during an armed conflict where 'terrorism' was responded to as a 'hard' policing issue in contrast to the 'soft'/laissez faire response to domestic violence
- Barriers to reporting the violence, particularly in 'No Go' areas where paramilitaries had control;
- The availability of legal/illegal weapons leading to an increase in homicides in the context of domestic violence
- Policy focus on religious discrimination rather than sex discrimination
- Women's lack of participation in formal political life and public decision making
- Cultural/religious norms with greater value attributed to the public/male sphere than the private/female one
- An unwillingness to engage with women's organizations mobilizing on domestic violence.

¹ DHSSPS Consultation Document (2013) Stopping Domestic and Sexual Violence and Abuse in Northern Ireland 2013-2020. <http://www.dhsspsni.gov.uk/dsva-strategy.pdf>

² McWilliams, M & Ni Aolain, F (2013) "There is a War Going on You Know": Addressing the Complexity of Violence Against Women in Conflicted and Post Conflict Societies in *Transitional Justice Review*, Vol.1, Iss.2, 2013, 4-44

Women who lived in certain communities, whose partners, families and neighbours were perceived of as operating in defiance or opposition to the state were often marginalised or perceived as threatening. For many this led to an inevitable dearth of confidence in policing and a crisis in public safety with precise and identifiable effects on the state encounters of women experiencing intimate violence.³ There was also a lack of confidence in state institutions to challenge perpetrators and a failure to capture the severity of the crimes or to adequately punish them. An insensitivity to victims' needs meant that crimes against women were largely left unpunished. The societal and media focus remained on the political conflict whilst the policy response to domestic violence was largely one of 'non-interference'. Despite extensive research on both military and paramilitary actors in the jurisdiction, *inter alia* the production of certain kinds of masculinities that fashioned violence against women, the gendered violence received little attention from scholars and policy makers, nor were the linkages between private and public violence viewed as relevant to understanding the forms and modalities of the conflict itself. In this strategy document there was a unique opportunity to move beyond the generalities, and actively engage with the specificity of domestic and sexual violence in the jurisdiction, which includes the historical genealogy shaping the particularity of forms and pathways that emerge. Without a willingness to engage the legacy and context of the conflict, the strategy will have difficulty in engaging the kind of transformative agenda or drive the kind of change that it promises to deliver.

In response to research commissioned by DHSS in the early 1990's, undertaken by McWilliams and McKiernan⁴, the seriousness of domestic violence finally came to the fore. In 'Bringing It Out In The Open', the reality for women living in abusive relationships was outlined alongside the lack of help provision at that time. Since then domestic and sexual violence and abuse have been taken more seriously with the extent and prevalence of the problem recorded by a range of public institutions:

³ The consistency of this challenge is revealed by McMurray, whose data shows that of the women surveyed in 2009, 47% identified that 'breach' of a non-molestation order was not taken seriously. 38% of the group surveyed articulated that the legal system was unable to compel the perpetrator to cooperate and comply with the legal intervention or process. See, Anne McMurray, *Women's Experience of Violence: Mapping Experiences and Responses A Pilot Study* (2009)

⁴ McWilliams, M & McKiernan, J (1993) *Bringing It Out In The Open: Domestic Violence in Northern Ireland*, HMSO, Belfast.

- 27,000 incidents responded to per year by police officers (PSNI)
- 14 incidents of domestic violence per 1000 population (PSNI)
- One incident of domestic violence every 23 minutes (PSNI)
- 44,664 helpline calls answered by Northern Ireland Women's Aid (NIWAF)
- 5,224 high risk victims identified since 2010 by Multi-Agency Risk Assessment Conference (MARAC)
- 236 sexual offences recorded in intimate partner relationships (PSNI)
- One in five murders are of intimate partners (NI Crime Statistics)
- Approximately 700 families have to be re-housed each year (NIHE)

With this extent of violence, it is clear that the response had to move beyond the customary (culture) to the criminal (courts); from the private (home) to the public (state); from the personal (individual) to the political (collective). When law enforcement agencies refuse or take passive positions in response to this violence, they often rely on generally accepted culture and custom to ground their actions. This also applied to the response of non-state paramilitary actors in specific community settings whose practices exhibit the same militarization, passivity and tacit acceptance of gender-based violence throughout the conflict.⁵ A shift in policy needed to place from the traditional thinking of 'an English man's home is his castle' to the 'state's responsibility' to protect its citizens - both in public and in private. However, a problem has remained with the definition of domestic violence in policy terms. Although the United Nations Declaration on the Elimination of Violence against Women (DEVAW) defines this as: "*Any act [of gender-based violence] that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*", the earlier strategies on domestic violence in Northern Ireland (Tackling Violence At Home NI 2005-2010) missed this connection. In arguing for an approach, *irrespective of gender*, it ignored the unequal power in intimate relationships that caused the

⁵. On non-state actors and gender violence generally see Fionnuala Ní Aoláin and Catherine O'Rourke, "Gendered Justice and the Non-State Actor" in *Contested Transitions: Dilemmas of Transitional Justice in Colombia and Comparative Experience*, ed. Michael Reed and Amanda Lyons (Bogota: International Centre for Transitional Justice, 2013).

coercive control to take place.⁶ It is the unequal power in intimate partner relationships that first establishes, then enforces and perpetuates the gender inequality within the relationship. Although the strategy acknowledges gender differences, the definition that is to be adopted does not distinguish clearly between intimate partners or family members, but focuses instead on the act and the location. As a result, the data on domestic and sexual violence will be clouded with child and elder abuse tied in with intimate partner abuse. What is needed is data that tells us whether the victim/perpetrator is an intimate partner and in a same sex relationship or not. This policy focus shift is needed in order to clarify the debate on the increasing numbers of male victims subjected to domestic violence. Without an understanding of the type of intimate relationship, gender differences in relation to victims and perpetrators will remain confused. In contrast to the Northern Ireland definition, the US definition of Interpersonal Violence (IPV) specifically represents violence among intimate partners (Center for Disease Control and Prevention 2014). These global disparities hinder researchers and practitioners in their attempt to understand the nature of IPV. A uniform definition needs to be agreed for policy makers to more accurately reflect the causes of the problem.

A gap also exists in relation to the non-implementation of proposals outlined in 2004 legislation⁷ that made provision for homicide reviews in the UK. In the same way that child death reviews have allowed issues to be considered that may lead to the prevention of such deaths in the future, the provision for domestic violence homicide reviews was to be welcomed. However, there have been no reviews undertaken in Northern Ireland since the legislation was introduced a decade ago. This delay in provision is a serious one as is the absence of learning, provided by these reviews in other parts of Great Britain. Research undertaken by McWilliams and Spence (1996)⁸ and Dobash and Dobash⁹ (2009) notes that most of the

⁶ Domestic Violence was defined as “threatening behaviour, violence or abuse (psychological, physical, verbal, sexual, financial or emotional) inflicted on one person by another where they are or have been intimate partners or family members, *irrespective of gender* or sexual orientation”. Tackling Sexual Violence and Abuse: A Regional Strategy 2008 – 2013 http://www.dhsspsni.gov.uk/tackling_sexual_violence_and_abuse_strategy.pdf

⁷ Domestic Violence, Crime and Victims Act 2004.

⁸ McWilliams, M & Spence, L (1996) Taking Domestic Violence Seriously: Issues for the Criminal and Civil Justice System. HMSO. Belfast

men who murder their intimate partners have been previously known to the justice system whilst some have been known to the medical profession. These men do not 'Come out of the Blue' but information is not being shared with those in a position to protect women and children living in abusive relationships. Sharing information is crucial to safety but there remains too much of a balancing act between issues of data protection and human rights protection. This policy needs to be urgently addressed using a human rights based framework.

The most serious gap identified in the strategy is the failure to acknowledge the importance of such a framework based on the following:

- European Convention on Human Rights,
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁰
- The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) which the UK has signified its intention to ratify.¹¹

Without recognizing this framework of rights in responding to domestic violence, the strategy runs the risk of relegating individuals to the status of pleaders for protection, rather than as independent individuals with rights and status as of right.

The ECHR has taken a highly proactive approach with respect to the obligations of the state concerning domestic violation and all public bodies are obliged to comply with the incorporation of the Convention's rights through the 1998 Human Rights Act. Evidence of recourse from Northern Ireland to the ECHR is illustrated by the case of ***Irene Wilson v. the United Kingdom***, 23 October 2012 (*decision on admissibility*). While the application was declared inadmissible on the claim of an Article 8 violation, the scrutiny to which the system of protection and oversight applied in Northern Ireland is under international checking. More broadly as the case

⁹ Dobash, R. E. & Dobash, R. P. (2009) "Out of the Blue: Men who Murder Intimate Partners." *Feminist Criminology* 4: 194-225. eScholarID:93452 | DOI:10.1177/1557085109332668

¹⁰ Convention on the Elimination of all Forms of Discrimination against Women <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

¹¹ Council of Europe (2012) , Available at: <http://www.conventions.coe.int/Treaty/EN/Reports/Html/210.htm>

histories below reveal, violations of Article 2(right to life), Article 3 (right to be free from torture, inhuman and degrading treatment), Article 8 (right to family life), Article 13 (right to an effective remedy) and Article 14 (non-discrimination and equality) are being consistently sustained in relation to domestic violence. In the case of ***Valiulienė v. Lithuania***, 26 March 2013, the Court found

- A violation of article 3 (prohibition of inhuman or degrading treatment) and article 8 sustained (right to respect for family life)
- Authorities failed to apply the criminal code in a manner that protected the applicant from domestic violence
- Delays in and discontinuation of criminal investigation against the perpetrator also constituted a violation of the victim's rights.

Similarly in ***Eremia and Others v. the Republic of Moldova***, 28 May 2013, the European Court of Human Rights found

- Violations of article 3 (prohibition of inhuman or degrading treatment), article 8 (right to respect for family life), and article 14 sustained (prohibition of discrimination) (read in conjunction with article 3)
- Authorities failed to take effective measures to protect the applicant or her daughters from further domestic violence by her husband (who was a police officer).
- Authorities' attitude condoned the violence and discriminated against the applicant on grounds of gender.

Alongside the HRA, a crucial role is also being played by CEDAW (Convention on Elimination of Violence Against Women) with its requirement on states to address domestic violence within a rights-based framework – a requirement that the current government strategy appears to have ignored. With the role of identifying measures governments should take to eliminate Violence Against Women, the CEDAW Committee periodically conducts country visits and presents annual reports to the UN on how the country is performing on domestic violence and sexual abuse. The failure of the State to directly address and/or appropriately regulate domestic violence has been the subject of judicial and quasi-judicial proceedings and States have also been found in violation of the Convention by failing to offer sufficient police, judicial and administrative protection to victims of domestic violence. Some examples of CEDAW's findings are illustrative. The Committee found that women's human rights to life and

integrity cannot be superseded by other rights (i.e. property/privacy) and that domestic violence violates equal rights of women. It also found that legislation enacted to protect must be also be enforced and supported by state actors. In delivering a strategy on domestic and sexual violence, the obligation for public bodies to pay 'due diligence' in the enforcement of legislation and the introduction of special measures of support promoted by CEDAW should have been central. Given the opportunity to drive forward changes to both policy and practice, the strategy should have reflected the best of international practice and integrated and affirmed the international legal framework within which the United Kingdom operates. This is a serious omission in the case of Northern Ireland's current strategy.

Given the post conflict situation in Northern Ireland, there were also a number of other international standards that needed to be taken account of. For example, the strategy afforded government departments the opportunity to acknowledge the UN Security Council Resolutions (1325;1860 et al) on Women, Peace and Security and measures to combat violence against women.¹² CEDAW has already stated its disappointment that Northern Ireland fails to acknowledge the role that these resolutions could play in enhancing gender equality. In its report to the UK¹³, the Committee stated that it remained concerned at the low representation of women in the post-conflict process in Northern Ireland and the failure to **fully** implement Security Council Resolution 1325 (2000). In a post conflict setting, responding to domestic violence requires a transformation in attitudes, policies and systems. In addressing the lack of focus on gender equality and human rights in the strategy, there is a need to challenge the norms leading to controls on women's lives in Northern Ireland and to develop a more human rights based framework based on best practice and international standards. As Fionnuala Ní Aoláin notes in the context of Northern Ireland as elsewhere¹⁴, in any political transformation the new relationship between the state and the individual should be just, inclusive and fair. However, in deciding which new policies and laws will apply, she also poses the question 'What do constitutions do **to** women and what do

¹² S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000) and U.N. Doc. S/RES/1820 (June 19, 2008).

¹³ See the Concluding Report of the CEDAW Committee on UK at Paragraph 32 at CEDAW/C/GBR/CO/7 26th July (2013).

¹⁴ Ní Aoláin, F, Haynes, D & Cahn, N (2011) *On the Frontlines: Gender, War and the Post-Conflict Process* (Oxford: Oxford University Press).

they do **for women**?' In this regard, we would recommend explicitly referencing international human rights standards when identifying the strategic context of this strategy and when identifying the benchmarks by which the strategy itself will be judged.

