



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

ROPU Consultation

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Proposed strategy to support and challenge women and girls in contact with the justice system

The Commission welcomes the Department's consultation to seek views for a proposed strategy for supporting and challenging women and girls in contact with the justice system. Due to the practical nature of the questions outlined in the consultation document, the Commission is instead responding raising a number of thematic issues which raise human rights concerns.

International human rights Standards

The Commission welcomes the Department's reference to relevant human rights standards within the section on international obligations. However, in line with the Departments international obligations, this should be broadened to adopt a more comprehensive rights based approach. A range of additional international treaties, ratified by the UK Government, are relevant to the present strategy, including, the International Covenant Civil and Political Rights, UN Convention Elimination Racial Discrimination, UN Convention Rights of Person with Disabilities and the UN Convention against Torture. As well as relevant soft law standards some of which the strategy references including the Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which could extend to include the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). The

Commission would suggest the strategy is guided by all relevant international human rights standards and that they are specifically mentioned within the strategy.

Resourcing and Implementing the Strategy

The UN Committee on the Elimination of Discrimination against Women (UN CEDAW) highlighted in its 2019 concluding observations that the UK government and NI Executive “allocate sufficient resources to effectively implement the [England and Wales] Female Offender Strategy, and ensure that a similar strategy is also adopted in other administrations of the State party”.¹ The Commission would first like to seek clarification on the funding of the proposed strategy, as this is not contained within the consultation document. It is not clear whether the strategy will be provided with specific allocated funding or whether the strategy will be resourced through the Department’s existing resources. The Commission would suggest that for the strategy to be successful that the strategy is allocated with sufficient dedicated resources.

The Commission is aware that the Criminal Justice Inspectorate for NI is currently in the process of conducting an inspection into women and girls in contact with the criminal justice system. This inspection will involve a wide range of cross sector stakeholder engagement and will produce a number of recommendations. The Commission would recommend that the recommendations of the inspection report contribute to the Department’s work in developing the strategy.

The Commission understands the Department has consulted recently on a number of issues that would be relevant to the development of the proposed strategy, these include but are not limited to the review of sentencing; rehabilitation of offenders; the regional care and justice campus; adult restorative justice and; consent to Serious Harm for Sexual Gratification: Not a Defence. The Commission would suggest the Department is guided by evidence gathered through these consultations in developing the strategy. The Commission has also provided detailed responses to the relevant consultations providing specific human rights guidance and recommendations.

The Commission would broadly support the thematic areas the consultation proposes the strategy will cover including Prevention and Diversion, In the Community and Custody and Reintegration. The Commission would recommend that the strategy reference the need for cross-departmental support to fulfil the requirements of each thematic area. The Commission has highlighted a number of human rights issues that the Commission believes should be encompassed within the thematic areas of the proposed strategy.

¹ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 March 2019, at para 58(a).

The Commission would recommend that the strategy is provided with ring fenced resources and includes clear goals, targets and timelines to ensure a way in which to measure improvement.

Alternatives to Imprisonment

International human rights standards promote the wider use of alternatives to imprisonment and that more restrictive measures, such as custodial sentences are used as a last resort. Instead, alternatives to imprisonment including community sentencing to address offending behaviour and rehabilitation should be encouraged.

In 2013, the UN CAT Committee called for effective diversion from the criminal justice system for non-violent women offenders convicted of minor offences.²

In 2019, the UN CEDAW Committee recommended that the NI Executive continues, “to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences”.³

In June 2019, the UN CAT Committee recommended that the NI Executive:

continue its efforts to improve conditions of detention and alleviate overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In that connection, the Committee draws the State party’s attention to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).⁴

The Commission understands that Hydebank Wood reported increases in their average daily population, with the daily average population of Hydebank Wood Females increasing from 65 to 74.⁵ The Commission would suggest the strategy focuses on investigating why the population is increasing.

The Commission also remains concerned in regards to the number of short-term sentences that continue to be used in Northern Ireland. In 2019/2020 a larger proportion of female receptions were sentenced to a custody sentence length of one year or less compared to males. 85.6 percent (95) of females receptions were sentenced to one year or less in custody, compared to 76.8 per cent

² CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the UK', 24 June 2013, at para 32.

³ CEDAW/C/GBR/CO/7, 'UN Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic report of the UK of Great Britain and NI', 30 July 2013, at para 55(b).

⁴ CAT/C/GBR/CO/6, 'UN Committee against Torture, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland', 7 June 2019, at para 21(a).

⁵ Analytical Services Group, 'The Northern Ireland Prison Population 2019/20', (DoJ, 2020), at 5.

(1,247) of males.⁶ Looking at sentences of six months or less, 56.8 per cent (63) of female receptions received sentences of this length compared to 49.2 per cent (799) of male receptions.⁷ There are high reoffending rates associated with short terms sentences.⁸ The Department of Justice and Criminal Justice Inspectorate for Northern Ireland has previously acknowledged that the actual time served by offenders on short prison sentences provides little opportunity to address offending behaviour.⁹ Community sentences, where many offenders are under probation for a prolonged period, provide more opportunities to assist the offender to overcome the difficulties that lead to reoffending.¹⁰

The Commission would suggest the Department consider the Female offender Strategy for England and Wales¹¹, which is aimed at diverting the most vulnerable women in the criminal justice system from custody through the provision of tailored support.

The Commission recommends that the proposed strategy prioritises measures to ensure the wider use of non-custodial measures as an alternative to imprisonment, in particular as an alternative to short term custodial sentences.

Separate facility for women prisoners

In 2013, the UN CAT Committee recommended that the NI Executive:

commence without further delay the construction of the new custodial facility for women prisoners in Northern Ireland and urgently implement its new strategy for female offenders, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Economic and Social Council resolution 2010/16, annex).¹²

In June 2019, the UN CAT Committee reaffirmed this recommendation by requiring that the NI Executive:

continue its efforts to improve conditions of detention and alleviate overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In that connection, the Committee draws the State party's attention to the United Nations Standard

⁶ Ibid at 13.

⁷ Ibid at 13.

⁸ Department of Justice, 'Analytical Services Group: Adult and Youth Reoffending in NI (2016/17 Cohort)' (DoJ, 2019), at 10.

⁹ Department of Justice, 'Consultation on a Review of Community Sentences' (DoJ, 2011).

¹⁰ Probation Board NI, 'Evaluation of the Enhanced Combination Order Pilot' (PBNI, 2017).

¹¹ Ministry of Justice, 'Female Offender Strategy', (MoJ, 2018).

¹² CAT/C/GBR/CO/5, 'UN Committee against Torture, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 24 June 2013.

Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).¹³

The Commission continues to advise the Department on the need for a separate custodial facility for women prisoners. The absence of a discrete prison facility for women and gender appropriate services in NI undermines the reformatory and rehabilitative aims which imprisonment should strive towards.¹⁴ This has been supported by the UK National Preventative Mechanism, designated under the Optional Protocol to the UN CAT, which recommended that women should no longer be held at Hydebank Wood and that a separate custodial facility should be established.¹⁵

In February 2019, the Department of Justice informed the Commission that work is currently underway to develop a new establishment specifically designed with women in mind and takes account of the issues faced by women in prison and incorporates the advances in modern technology.¹⁶ The Commission has since learned that this has been put back to 2024. However, the Commission is concerned that there is no mention within the consultation document of the plan for developing a separate custodial facility for women prisoners. This is an extremely important matter for women in contact with the justice system, in particular due to the increase in the average daily prison female population, increasing to 74 in 2019/20, from 65 the previous year.

The Commission recommends that the strategy references the need for the delivery of a separate custodial facility for women prisoners in NI and any necessary support to ensure its completion.

Women's healthcare and conditions in prison

In 2019, the UN CEDAW Committee stated it remained concerned about the inadequacy of mental health-care services in prisons and at the disproportionate rates of self-harm and suicide among women. The Committee recommended that the UK Government and NI Executive "take further measures to improve the provision of mental health care in all prisons, taking into account the particular needs of women".¹⁷ The Committee also raised that the UK government and NI

¹³ CAT/C/GBR/CO/6, 'UN Committee against Torture, Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 7 June 2019, at para 21(a)

¹⁴ NI Human Rights Commission, 'Submission of the NI Human Rights Commission to the Department of Justice and Department of Health Consultation on Improving Health within Criminal Justice' (NIHRC, 2016), at para 7.4.

¹⁵ National Preventative Mechanism, 'Report on announced inspection of Ash House, Hydebank Wood Women's Prison 18 – 22 February' (NMP, 2013). Twenty statutory bodies make up the UK National Preventive Mechanism of specific reference to NI the Criminal Justice Inspector NI, the Independent Monitoring Board (NI), the Regulation and Quality Improvement Authority and the NI Policing Board Independent Custody Visiting Scheme are included in the list of bodies.

¹⁶ Email from Department of Justice officials to NI Human Rights Commission, 6 February 2019.

¹⁷ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 March 2019, at para 57(c).

Executive “take immediate measures to end the detention of pregnant women and nursing mothers”.¹⁸

The consultation document states that work is also ongoing on a potential distinct, modern, open and therapeutic female facility at Hydebank Wood. The Commission would suggest the Department considers the specific recommendations of the UN CEDAW Committee to guide the facility.

In June 2020, the Criminal Justice Inspection NI published its report on Ash House Women's Prison. Overall, the findings were positive; however, two key concerns were raised. First, the governance of the use of force was found to not be sufficiently robust and reports did not explain why force had been necessary. Moreover, the report also highlighted issues with de-escalation, reviewing of paperwork and body-worn camera and CCTV footage and the rationale for using anti-tear clothing was not always clearly recorded. The Criminal Justice Inspectorate recommended that the scrutiny of incidents involving the use of force should ensure that it is only used as a last resort, and is legitimate, necessary and proportionate.¹⁹ The inspection report also found that the illicit drugs and diverted prescribed medicines were easily available. The positive drug test rate was high and searches resulted in many finds relating to drug use. The Criminal Justice Inspectorate recommended that an effective strategy should be implemented to reduce the supply of drugs.²⁰

The Commission would also highlight the need to develop policy in regards to the accommodation of transgender prisoners including data collection on where they are being accommodated and whether this is in line with their identity. This should also include ensuring access to healthcare while in custody, in particular gender affirming healthcare.

The Commission recommends that the strategy considers the findings of the Criminal Justice Inspectorate NI and ensure facilities and conditions in detention meet the healthcare needs of women.

Women immigration detainees

In 2019, the UN CEDAW Committee expressed concern about the detention of asylum-seeking women, including pregnant women and nursing mothers and the absence of a general time limit on immigration detention. The Committee referenced the gender-related dimensions of refugee status, asylum, nationality and statelessness of women. The Committee recommended that the UK government and NI Executive:

- a) Introduce a general time limit on immigration detention and implement alternatives to detention

¹⁸ Ibid.

¹⁹ Criminal Justice Inspectorate for NI, 'Report on an Unannounced Inspection of Ash House Women's Prison Hydebank Wood 23-24 October & 4-7 November 2019', June 2020.

²⁰ Ibid.

- b) Take immediate measures to end the detention of pregnant women and nursing mothers.²¹

In NI women immigration detainees are held with men in Larne House which holds up to 19 men and women. The Home Office can hold detainees here for up to five days, seven if removal directions have been set. Detainees arrive from Drumkeen House (short-term holding facility) in Belfast, police stations, prisons or directly from enforcement operations in the community. On departure, detainees are often transferred to immigration removal centres in Great Britain, removed from the UK or released into the community. Within Larne House, three rooms, on a single corridor, are designated for women detainees. This corridor is not separate from the rest of the facility and men can walk through to go to the dining room. Women can lock the doors to their rooms, which can be overridden by staff in the event of an emergency. Concerns were raised to the Commission that women were not able to lock their doors if they were under close observation (for example, if it was believed they were a threat to themselves). Communal areas are shared by men and women and there is no option for a gender-specific communal area.

The Commission would also highlight that measures included within the Strategy recognise and address the disproportionate numbers of those from the travelling community who are in the justice system.

The Commission recommends that the proposed strategy include effective steps to ensure that women immigration detainees are safe and have the option of gender-specific communal areas.

The Gillen Review and sexual offences

The NIHRC continues to support implementation of the recommendations made in the Gillen Review into the law and procedures in serious sexual offences in Northern Ireland. With regard to supporting women and girls in contact with the criminal justice system the implementation of the Gillen Review recommendations are necessary to ensure proceedings of sexual offences are conducted appropriately as these disproportionality effect women and girls. Particularly relevant recommendations for supporting women and girls include Recommendation 6, which requires "a more robust judicial attitude and case management approach to prevent improper cross-examination about previous sexual history". Also recommendation 9, which requires "amendments to the Sexual Offences (Northern Ireland) Order 2008 to ensure juries do not bring sexual stereotypes into play and to impose a discernible shift towards a measure of affirmative expression of consent".

The Commission recommends that in order to support women and girls in contact with the criminal justice system that the Gillen Review

²¹ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 March 2019, at para 56(a) and (b).

recommendations must be implemented and this should be a key element of the Strategy.

The UN CEDAW Committee has also highlighted concerns that in cases of sexual offences the prosecution is required to prove that the accused believed the child to be under 18 years old, rather than the burden of proof being placed on the accused, which contributes to impunity for exploitation of child prostitution. The Committee required the UK government and NI Executive to:

revise its legislation to shift the burden of proof from the prosecution to the purchaser of sexual services for cases involving minors, as previously recommended (CEDAW/C/GBR/CO/7, para. 41).²²

The Committee also recommend that the UK government and NI Executive:

Revise legislation to decriminalize prostitution and clear the criminal records of women who have been convicted for offences related to prostitution to enable them to seek alternative forms of employment.²³

The Commission recommends the strategy consider the recommendations of the UN CEDAW Committee for addressing issues within the justice system on the exploitation of women and girls through prostitution.

Training

The Commission would suggest that the Strategy enables and facilitates resources for appropriate training for those working with women and girls across the justice system to identify gender stereotypes and awareness around issues that women and girls face when in contact with the criminal justice system. Recommendation 13 of the Gillen Review recommended 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 CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 March 2019, at para 36(g).

²³ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 March 2019, at para 36(c).

The UN CAT Committee has raised concerns about reports that law enforcement officers are not adequately trained in identifying victims of trafficking.²⁴ The Committee recommended that the UK government and NI Executive improve the training of law enforcement officers, prison personnel and other first responders by including statutory training on the identification of potential victims of human trafficking and modern slavery.²⁵

The Commission recommends the strategy include measures to ensure that training is provided to those working throughout the criminal justice system including the judiciary, police officers and prison staff to understand issues that affect women and girls in the justice system ensuring a gender sensitive approach.

If the Commission can provide any further clarity or assistance on the wider contents of this letter, please do not hesitate to get in touch.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Les Allamby', with a stylized flourish at the end.

Les Allamby
Chief Commissioner

²⁴ CAT/C/GBR/CO/6, 'UN Committee against Torture, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland', 7 June 2019, at para 58.

²⁵ CAT/C/GBR/CO/6, 'UN Committee against Torture, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland', 7 June 2019, at para 58(c).