



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Response to the public consultation on  
Improving the experiences of victims and  
witnesses in the criminal justice system:**

- **a new three-year Victim and Witness Strategy for Northern Ireland; and**
- **the establishment of a Victims of Crime Commissioner for Northern Ireland.**

**July 2021**

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## Summary of Recommendations

### **The NI Human Rights Commission recommends:**

- 2.5 The Commission suggests that a commitment to joined-up working is required to effectively develop and deliver a Strategy for Victims and Witnesses, including the issue of witness protection and recommends that this work is closely aligned to specific areas of work including but not limited to the Gillen Review, CSE Law Review, Hate Crime Review, Domestic Abuse and Civil Proceedings Act, Stalking Bill, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, and work to reduce delay in the criminal justice system, as well as relevant activity undertaken across other Executive departments and criminal justice agencies.
- 2.7 The Commission recommends that the Strategy is provided with ongoing, ring fenced resources and includes clear goals, targets and timelines to ensure a way in which to measure improvement.
- 3.2 The Commission recommends the Strategy takes a human rights-based approach, is guided by all relevant international human rights standards and that they are specifically referenced within the Strategy.
- 3.8 The Commission advises that the Department should undertake to ensure full compliance with developments in international human rights law and to keep under review national and European developments in relation to the treatment of victims, and that this should be reflected in the aims of the Strategy.
- 4.10 The Commission recommends that trauma-informed approaches including training is expeditely developed and sufficiently resourced within the criminal justice system to prevent re-traumatisation and secondary victimisation of victims and witnesses. Embedding this approach should be informed by the views and experiences of victims and witnesses.
- 4.11 The Commission continues to call on the Department to fully resource and implement the Gillen Review recommendations.

- 5.4 The Commission recommends that in addition to engaging with victims and their representative groups, the Department engages with civic society, alongside colleagues within the Department of Justice on the Review of Hate Crime Legislation and with the Department for Communities on the development of the Social Inclusion Strategies to ensure specific needs and rights are reflected in the Strategy.
- 5.11 The Commission continues to raise concerns about violence against women and girls in NI and supports calls for a strategy to address this. The Commission recommends that gender is mainstreamed through the Victim and Witness Strategy to ensure effective support and remedy for victims of gender-based violence.
- 5.12 The Commission 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, including ensuring that the resulting Victims and Witness Strategy is compliant with the Istanbul Convention.
- 5.20 The Commission recommends that a child-centred, trauma-informed approach is taken to develop specific support measures for child victims and witnesses to ensure children's needs are met and their rights upheld. This should include development of the Barnahus Model.
- 5.21 The Commission recommends that training for legal professionals and all criminal justice personnel and support staff in contact with child victims and witnesses includes the UN Convention on the Rights of the Child, the Lanzarote Convention and an understanding of Adverse Childhood Experiences (ACEs).
- 6.7 The Commission recommends that the Department provides clarity on how the Victims of Crime Commissioner would operate; how they would relate to other Commissioners in the short and long-term; how independence would be assured; and the extent of the Commissioner's powers which should include initiating his or her own investigations and to intervene and initiate legal proceedings.

## 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 improving the experiences of victims and witnesses in the criminal justice system, including a new three-year Victim and Witness Strategy for Northern Ireland and the establishment of a Victims of Crime Commissioner for Northern Ireland.
- 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:
- The European Convention on Human Rights, 1950 ('ECHR')<sup>1</sup>
  - The International Covenant on Civil and Political Rights, 1966 ('ICCPR')<sup>2</sup>
  - The United Nations Convention on the Rights of the Child, 1989 ('UNCRC')<sup>3</sup>
  - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography ('Optional Protocol UNCRC')<sup>4</sup>
  - The United Nations Convention on the Elimination of Discrimination Against Women ('CEDAW')<sup>5</sup>
  - The United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment ('CAT')<sup>6</sup>
  - The European Convention on the Compensation of Victims of Violent Crimes<sup>7</sup>

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<sup>1</sup> UK ratification 1951

<sup>2</sup> UK ratification 1976

<sup>3</sup> UK ratification 1991

<sup>4</sup> UK ratification 2009

<sup>5</sup> UK ratification 1986

<sup>6</sup> UK ratification 1988

<sup>7</sup> UK ratification 1990

- Council of Europe Convention on Action against Trafficking in Human Beings (Convention against Trafficking)<sup>8</sup>
- United Nations Convention against Transnational Organized Crime (Convention against Transnational Organized Crime)<sup>9</sup>
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the UN Convention Against Transnational Organised Crime (UN Trafficking Protocol)<sup>10</sup>
- Convention on the Rights of Persons with Disabilities (CRPD)<sup>11</sup>
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), 2007<sup>12</sup>
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) 2011.<sup>13</sup>

1.3 The Northern Ireland (NI) Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification. The Commission recalls that Section 24(1) of the Northern Ireland Act 1998 requires that all acts of the Department are compatible with the ECHR. In addition, Section 26 of the Act also requires compliance with international obligations. The Commission, therefore, advises that the Department scrutinises the proposed Strategy for full compliance with international human rights standards.<sup>14</sup>

1.4 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:

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<sup>8</sup> UK ratification 2008

<sup>9</sup> UK ratification 2006

<sup>10</sup> UK ratification 2006

<sup>11</sup> UK ratification 2009

<sup>12</sup> UK ratification 2018

<sup>13</sup> 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).

<sup>14</sup> For an overview of the significant body of international human rights law relating to the protection of victims and witnesses see Report of the United Nations High Commissioner for Human Rights on the Right to the Truth, A/HRC/15/33, 28 July, 2010, paras. 6-12. See also, Criminal Justice Assessment Toolkit.

- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985;<sup>15</sup>
- UN Declaration on the Elimination of Violence against Women, 1993;<sup>16</sup>
- Council of Europe, Committee of Ministers, Recommendation No. R (97) 13 Concerning Intimidation of Witnesses and the Rights of the Defence, 1997;
- Council of Europe, Committee of Ministers, Recommendation No. R(2002)5 on the Protection of Women against Violence;<sup>17</sup>
- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2006;<sup>18</sup>
- Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice, 2005;<sup>19</sup>
- Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe to member states on assistance to crime victims, 2006;<sup>20</sup>
- UN Principles on the application of international human rights law in relation to sexual orientation and gender identity, 2007; and
- Council of Europe, Parliamentary Assembly Resolution 1697 (2009) on Migrant women: at particular risk from domestic violence.

1.5 The following European Union standard also applies: Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime.

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<sup>15</sup> A/RES/40/34, 'UN General Assembly Principles of Justice for Victims of Crime and Abuse of Power,' 29 November 1985

<sup>16</sup> A/Res/48/104.

<sup>17</sup> Adopted by the Committee of Ministers on 30 April 2002.

<sup>18</sup> A/RES/60/147.

<sup>19</sup> Adopted by the Committee of Ministers on 20 April 2005.

<sup>20</sup> Adopted by the Committee of Ministers on 14 June 2006.

## 2.0 Part A: General Comments

- 2.1 The Commission welcomes the opportunity to provide comment on the proposed Victims and Witness Strategy and the proposal for a Victims of Crime Commissioner. Due to the practical nature of the questions outlined in the consultation document, the Commission will structure its response according to relevant thematic issues. This response will be divided into two parts, with the latter section focusing on the proposals for a Victims of Crime Commissioner.
- 2.2 The Commission recognises that the Strategy has the potential to raise a number of human rights related issues. Whilst we recognise the role of defendants' rights in the wider discussion, in the interests of ensuring our response is focused and helpful to informing this Strategy for Victims and Witnesses, this response will focus on rights specific to victims and witnesses of crime.
- 2.3 The Commission welcomes that the consultation document recognises that "other existing strategies and programmes of work across the criminal justice system are also relevant to the experiences of victims and witnesses"<sup>21</sup>, for example work to reduce avoidable delay, support victims of domestic abuse, and implementation of the Gillen Review recommendations. The Commission, alongside the Criminal Justice Inspection NI, continues to recommend the need for custodial time limits to reduce delay, which remains a fundamental issue for both victims and witnesses of crime<sup>22</sup>. The Commission suggests that this list is expanded to capture the wide range of work which overlaps with victims' experiences, including the review of the law on Child Sexual Exploitation, hate crime, human trafficking and modern slavery, and data extraction from electronic devices. The Commission has also

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<sup>21</sup> Consultation document, p21

<sup>22</sup> In 2015, the UN Human Rights Committee recommended the introduction of "concrete measures to reduce avoidable delays in the criminal justice system in NI, including by introducing custodial time limits" (CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 22.) The Criminal Justice Inspection NI has stated that failure to introduce statutory custodial time limits in NI "consigns the justice process here to continuing unacceptable delay in processing cases" (Hansard, 'Official Report (Hansard) Session: 2013/2014', 25 June 2014). See the NIHRC response to the Department of Justice consultation on Sentencing Review (2020).



provided detailed responses to the relevant consultations providing specific human rights guidance and recommendations.<sup>23</sup>

- 2.4 Further, the Commission notes the risk of intimidation of witnesses, as indicated in the Witness Charter, and recommends that a joined-up approach is taken between all relevant agencies to ensure witnesses' rights are upheld and effective witness protection strategies developed in line with the Strategy for Victims and Witnesses.
- 2.5 **The Commission suggests that a commitment to joined-up working is required to effectively develop and deliver a Strategy for Victims and Witnesses, including the issue of witness protection and recommends that this work is closely aligned to specific areas of work including but not limited to the Gillen Review, CSE Law Review, Hate Crime Review, Domestic Abuse and Civil Proceedings Act, Stalking Bill, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, and work to reduce delay in the criminal justice system, as well as relevant activity undertaken across other Executive departments and criminal justice agencies.**
- 2.6 The Commission advises that clarification is provided 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 it will be resourced through the Department's existing resources. The Commission would suggest that for the Strategy to be successful, it is allocated with sufficient and ongoing dedicated resources.
- 2.7 **The Commission recommends that the Strategy is provided with ongoing, ring fenced resources and includes clear goals, targets and timelines to ensure a way in which to measure improvement.**

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<sup>23</sup> For example, see the NIHRC responses to: the Department of Justice review of the law on child sexual exploitation (2019); the Gillen Review preliminary report into the law and procedures in serious sexual offences in Northern Ireland (2019); the Hate Crime Review (2020); the Department of Justice consultation on Sentencing Review (2020); advice to the Department of Justice on the Domestic Abuse and Family Proceedings Bill (2020); advice to the Public Prosecution Service on a Policy for Prosecuting Cases of Modern Slavery and Human Trafficking (2021); and advice to the Department of Justice on Data Extraction from Electronic Devices (2021).

2.8 The Commission broadly welcomes the Strategy and its intent, objectives and priorities. The following sections provide comment on relevant themes.

### 3.0 International Standards

3.1 The Commission welcomes that the consultation document makes reference to the rights of victims and witnesses, particularly in relation to those rights and entitlements under the Victim and Witness Charters. However, it is important that this Strategy reflects the full range of relevant human rights standards, beyond those contained within the Charters. To ensure this, we recommend that a human rights-based approach is taken to develop the Strategy, and that human rights language is used to embed human rights throughout the Strategy. This would provide a framework for addressing key issues, ensure rights are central to both policy development and its implementation, and enable rights holders to participate in a meaningful way. In practice, this means applying the 'PANEL' Principles to policy development: Participation; Accountability; Non-discrimination; Empowerment; and Legality.

3.2 **The Commission recommends the Strategy takes a human rights-based approach, is guided by all relevant international human rights standards and that they are specifically referenced within the Strategy.**

3.3 International human rights law places a number of specific obligations on the NI Executive to safeguard the rights of victims of crime and witnesses in judicial proceedings. International standards pre-date the EU Directive and are separate from it.

3.4 Pursuant to international human rights law, the State is under an obligation to prevent, investigate, prosecute and punish human rights violations.<sup>24</sup> In our 2013 report on racist hate crime, the Commission identified the four principles of State obligations: to prevent; prohibit; prosecute; and protect<sup>25</sup>. Taken together, these principles provide a comprehensive framework for ensuring best practice in international human rights law. The UN Human Rights

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<sup>24</sup> *Rajapaske v. Sri Lanka*, (CCPR/C/87/D/1250/2004). See also, CRPD Art. 16; COE Guidelines on the protection of victims of terrorist acts, Principle IV.1; Yogyakarta Principles, Principles 5(D) and 29.

<sup>25</sup> NI Human Rights Commission, 'Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland' (NIHRC, 2013).

Committee, which is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights (ICCPR) by State parties, has stated that “the obligation under the ICCPR is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals in their jurisdiction. This aspect calls for specific activities by the State parties to enable individuals to enjoy their rights.”<sup>26</sup>

- 3.5 The jurisprudence of the European Court of Human Rights (ECtHR) has set out a number of requirements for an investigation into the death or torture, inhuman or degrading treatment of an individual to be considered effective. Where the Article 2 and 3 Convention threshold is met, the ‘Jordan Principles’ identify the essential requirements for effective investigations which must: be prompt; be impartial; have hierarchical independence from those implicated; provide sufficient involvement of next of kin; and have the ability to hold those responsible to account.<sup>27</sup> Further, other cases have explored the relevance of the ECHR in the context of victims and witnesses, particularly in relation to Article 6, the right to a fair trial<sup>28</sup> and Article 8, the right to respect for a private and family life<sup>29</sup>.
- 3.6 The Basic Principles<sup>30</sup> set out a range of actions which the NI Executive is required to undertake to ensure protection for the rights of victims of crime. This includes: access to justice; fair, respectful and compassionate treatment; and prompt redress. It also states that victims should be kept informed of their rights and should receive the necessary assistance.
- 3.7 The Committee of Ministers’ Recommendation on Intimidation of Witnesses<sup>31</sup> provides principles to guide governments in the formulation of criminal policy and practice. It highlights the particularly difficult situation faced by “witnesses giving evidence against family members in criminal cases” and “women who suffer domestic violence and elderly persons subjected to ill-treatment by

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<sup>26</sup> UN Human Rights Committee, General Comment No. 3 (Article 2 – Implementation at the national level), para. 1.

<sup>27</sup> *Jordan v. United Kingdom*, 24746/94 [2001], ECHR 327, 4 May 2001

<sup>28</sup> See *Doorson v. The Netherlands*, 20524/92 [1996], ECHR 14, 26 March 1996

<sup>29</sup> See *J.L. v Italy*, 5671/16 [2021], ECHR 169, 27 May 2021

<sup>30</sup> A/RES/40/34, ‘UN General Assembly Principles of Justice for Victims of Crime and Abuse of Power,’ 29 November 1985

<sup>31</sup> Adopted by the Committee of Ministers 10 September 1997

their family”, amongst others.<sup>32</sup> The Committee noted that “when a vulnerable witness first reports allegations to the police, there should be immediate access to professional help” and that “the examination of the witness should be conducted by suitably trained staff.”<sup>33</sup> The risk of intimidation is also discussed in the Committee of Ministers’ recommendation on the protection of witnesses and collaborators of justice,<sup>34</sup> and the recommendation on assistance to crime victims.<sup>35</sup>

- 3.8 The Commission advises that the Department should undertake to ensure full compliance with developments in international human rights law and to keep under review national and European developments in relation to the treatment of victims, and that this should be reflected in the aims of the Strategy.**

## **4.0 Responding to Trauma and Preventing Secondary Victimization**

- 4.1 The Recommendation of the Committee of Ministers of the Council of Europe to member states on assistance to crime victims<sup>36</sup> defines secondary victimisation as “the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.” It says: “Victims should be protected as far as possible from secondary victimisation”, including through the training of personnel to manage and respond to the risk of secondary victimisation and public awareness to avoid it.
- 4.2 The Commission welcomes that the consultation paper recognises the impact of trauma on victims, both from the crime itself and also the potential for re-traumatisation or secondary victimisation through the experience of engaging with the criminal justice system, and “that is why it is important that we have a criminal justice system that is responsive to the needs of victims and witnesses, treats them with respect, keeps them informed and supported and upholds their rights and entitlements”<sup>37</sup>. The Commission welcomes

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<sup>32</sup> Committee of Ministers’ Recommendation on Intimidation of Witnesses, paras17 and 21

<sup>33</sup> Committee of Ministers’ Recommendation on Intimidation of Witnesses, para 24.

<sup>34</sup> Adopted by the Committee of Ministers on 20 April 2005.

<sup>35</sup> Adopted by the Committee of Ministers on 14 June 2006.

<sup>36</sup> Adopted by the Committee of Ministers on 14 June 2006.

<sup>37</sup> Consultation document, p19

this approach and advises that these rights and entitlements should reflect the full range of international human rights standards.

- 4.3 In particular, we welcome that Strategic Priority 2 commits to ensuring that victims and witnesses receive the emotional and practical support they need. The UN Basic Principles state "Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means"<sup>38</sup>.
- 4.4 Strategic Priority 2 also notes the risk of re-traumatisation, and that success would mean "victims and witnesses immediate and longer-term support needs [are] met to reduce the impact of trauma and re-traumatisation"<sup>39</sup>. Whilst the Commission welcomes the commitment to meeting the needs of victims and witnesses through the provision of emotional and practical support, it is important that the system and processes adapt to proactively prevent re-traumatisation.
- 4.5 In the recent case of *J.L. v Italy*<sup>40</sup>, the ECtHR held there had been a violation of Article 8 of the ECHR in that the applicant (a victim of crime) did not experience adequate protection of her rights and interests. The case concerned criminal proceedings against seven men who had been charged with the gang rape of the applicant and had been acquitted by the Italian courts. In particular, the Court found that the national authorities had not protected the applicant from secondary victimisation throughout the entire criminal proceedings:

*The Court found that the language and arguments used by the court of appeal conveyed prejudices existing in Italian society regarding the role of women and were likely to be an obstacle to providing effective protection for the rights of victims of gender-based violence, in spite of a satisfactory legislative framework.*

*The Court was convinced that criminal proceedings and sanctions played a crucial role in the institutional response to*

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<sup>38</sup> A/RES/40/34, 'UN General Assembly Principles of Justice for Victims of Crime and Abuse of Power,' 29 November 1985, para 14

<sup>39</sup> Consultation document, p30

<sup>40</sup> *J.L. v Italy*, 5671/16 [2021], ECHR 169, 27 May 2021

*gender-based violence and in combatting gender inequality. It was therefore essential that the judicial authorities avoided reproducing sexist stereotypes in court decisions, playing down gender-based violence and exposing women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of discouraging victims' trust in the justice system.*

*In consequence, while acknowledging that the national authorities had sought to ensure in the present case that the investigation and trial proceedings had been conducted in a manner compatible with their positive obligations under Article 8 of the Convention, the Court considered that the applicant's rights and interests under Article 8 had not been adequately protected, given the wording of the judgment delivered by the Florence Court of Appeal. It followed that the national authorities had not protected the applicant from secondary victimisation throughout the entire proceedings, in which the wording of the judgment played a very important role, especially given its public character.*

- 4.6 This case highlights the importance of language and trauma-informed approaches to prevent the re-victimisation and/or re-traumatisation of victims. It demonstrates that in addition to the provision of support, the criminal justice system must be trauma-informed and cognisant of the damaging impact of language and wider societal views. We recommend that the learnings from, and recommendations of, the Gillen Review into the law and procedures in serious sexual offences in Northern Ireland are embedded within the Strategy to reflect this.
- 4.7 The Commission notes that the draft Strategy refers to "training initiatives across the wider CJS [criminal justice system] to mainstream a trauma-informed approach when engaging with victims" in year 2, and to "further develop and deliver 'trauma aware' training initiatives across the wider CJS" in year 3<sup>41</sup>. This is welcome; however, it is essential that this training programme is expedited, sufficiently resourced, and not dependent on the appointment of a Victims of Crime Commissioner.

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<sup>41</sup> Consultation document, p91

- 4.8 We also advise that training on trauma-informed approaches is developed in partnership with organisations representing groups of society who may be more vulnerable to crime or to re-traumatisation, including but not limited to women, children, people with disabilities, people from ethnic minority communities, and victims of domestic and/or sexual violence.
- 4.9 The Commission also notes the potential for re-traumatisation due to data extraction from victims' electronic devices. In our advice to the Department of Justice on data extraction in relation to a Legislative Consent Motion to bring provisions from the Policing, Crime, Sentencing and Courts Bill into effect in NI<sup>42</sup>, the Commission highlighted how the practice of obtaining data from victims' phones is most often used in cases concerning sexual assault. As a result of data extraction practices, many victims of sexual assault have identified that they felt they had to choose between disclosing all of the personal information contained on their digital devices or accessing justice.<sup>43</sup> This was re-traumatising for many victims, who felt that the police were "more interested in investigating them over investigating the defendant"<sup>44</sup>. Data extraction practices must therefore be considered within a trauma-informed approach to prevent secondary victimisation and to protect victims' right to privacy under article 8 of the ECHR.
- 4.10 **The Commission recommends that trauma-informed approaches including training is expeditely developed and sufficiently resourced within the criminal justice system to prevent re-traumatisation and secondary victimisation of victims and witnesses. Embedding this approach should be informed by the views and experiences of victims and witnesses.**
- 4.11 **The Commission continues to call on the Department to fully resource and implement the Gillen Review recommendations.**

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<sup>42</sup> NIHRC advice to the Department of Justice on Data Extraction from Electronic Devices (2021).

<sup>43</sup> Victims Commissioner for England and Wales, 'Police and CPS scrap digital extraction forms for rape cases', (2020).

<sup>44</sup> Ibid.

## 5.0 Marginalised Groups

- 5.1 The Commission recognises that the draft Strategy is for all victims and witnesses. However, as victims and witnesses are not a homogeneous group, it is important that the Strategy is broad in scope to capture the specific needs and vulnerabilities of various victims and witnesses and upholds the rights of particular groups who may be more vulnerable to crime, or have specific needs in navigating the criminal justice system. This should include specific training and adaptation to meet the needs of Section 75 groups or those with protected characteristics, and recognition of relevant international standards including but not limited to the UN Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child, and the UN Convention on the Elimination of All Forms of Discrimination against Women: these are discussed in more detail below.
- 5.2 The Department should also work closely with Departmental colleagues progressing the Hate Crime Review, recognising obligations under the UN Convention on the Elimination of All Forms of Racial Discrimination to understand and support victims of racism-related and other hate crimes. Similarly, the Department of Justice should work collaboratively with the Department for Communities colleagues currently developing Social Inclusion Strategies across gender, sexual orientation and disability, to understand the needs of different marginalised groups who may be more vulnerable to crime.
- 5.3 The World Health Organisation (WHO) has recognised “people with disabilities are at greater risk of violence than those without disabilities... The prevalence of sexual abuse against people with disabilities has been shown to be higher, especially for institutionalised men and women with intellectual disabilities, intimate partners, and adolescents.”<sup>45</sup> The UN Convention on the Rights of Persons with Disabilities (UNCRPD) requires State Parties to “take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age sensitive assistance and support for persons with disabilities and their families and caregivers ... States Parties shall ensure that protection services are age-, gender- and disability-

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<sup>45</sup> World Health Organisation (WHO), World Report on Disability (2011) p59



sensitive”.<sup>46</sup> In accordance with the UNCRPD, the State is obligated to “ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”<sup>47</sup>

**5.4 The Commission recommends that in addition to engaging with victims and their representative groups, the Department engages with civic society, alongside colleagues within the Department of Justice on the Review of Hate Crime Legislation and with the Department for Communities on the development of the Social Inclusion Strategies to ensure specific needs and rights are reflected in the Strategy.**

5.5 The Commission welcomes the commitment in Strategic Priority 1 to understanding the needs, views and interests of victims and witnesses; this work should engage a wide range of groups and also seek to benchmark current awareness of the Victim’s Charter in order to measure success of the Strategy. Ongoing research should also track experiences and identify areas for improvement, with robust disaggregated data collection to ensure victims experiences are understood.

In addition to the general points above regarding the importance of considering the needs of different groups, the Commission wishes to highlight the following two groups for specific consideration within the Strategy:

### **Women and Girls**

5.6 The UN Committee against Torture (UN CAT Committee) and UN Committee on the Elimination of Discrimination against Women (UN CEDAW Committee) have highlighted domestic abuse and violence as a persistent issue in the UK, including NI.<sup>48</sup> Both UN Committees have

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<sup>46</sup> Article 16.2 UNCRPD.

<sup>47</sup> Committee on the Rights of the Child, General Comment No. 12 on the right of the child to be heard, CRC/C/GC/12 (20 July 2009) para 34. See also, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, para. 16.

<sup>48</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 56; 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 29.

also highlighted the disproportionate impact on women and the need for gender sensitive policies to provide protection, prosecution and redress.<sup>49</sup>

- 5.7 The UN CAT Committee raised concerns of sexual and gender-based violence in its 2019 Concluding Observations on the UK<sup>50</sup>. The Committee stated it is concerned about reports that State party officials are recording increasing numbers of domestic abuse crimes and sexual offences, mainly against women, while also recording low prosecution and conviction rates in these cases.<sup>51</sup>
- 5.8 The UN CEDAW Committee, in its 2019 Concluding Observations on the UK, noted “with particular concern the inadequacy of laws and policies to protect women in Northern Ireland (from gender-based violence)” and recommended that the UK ratify the Istanbul Convention.<sup>52</sup>
- 5.9 The Istanbul Convention requires that States, when introducing pursuant measures, shall ensure that measures are “based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim” and “aim at avoiding secondary victimisation”<sup>53</sup>. Further, that states should “take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment”<sup>54</sup>.
- 5.10 The UN Human Rights Committee, in its 2015 Concluding Observations on the UK, noted its concern about continued reports of violence against women, and advised a number of measures including: the introduction of domestic violence protection orders in NI; encouraging the reporting of domestic violence cases by informing women of their rights and existing legal avenues through which they can receive protection; ensuring that all domestic violence cases are thoroughly investigated, with perpetrators prosecuted and,

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid, at para 56.

<sup>51</sup> Ibid.

<sup>52</sup> 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 29.

<sup>53</sup> Article 18(3), Istanbul Convention.

<sup>54</sup> Article 20(1), Istanbul Convention.

if convicted, punished with appropriate sanctions; and ensuring that victims have access to effective remedies and means of protection, including strong police protection, adequate emergency shelter, rehabilitative services, legal assistance and other support services<sup>55</sup>.

**5.11 The Commission continues to raise concerns about violence against women and girls in NI and supports calls for a strategy to address this. The Commission recommends that gender is mainstreamed through the Victim and Witness Strategy to ensure effective support and remedy for victims of gender-based violence.**

**5.12 The Commission 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, including ensuring that the resulting Victims and Witness Strategy is compliant with the Istanbul Convention.**

### **Children and Young People**

5.13 The obligation to protect children from all forms of violence, exploitation and abuse is outlined under the UN Convention on the Rights of the Child (UNCRC).<sup>56</sup> The Committee on the Rights of the Child (CRC) has outlined the need for “children’s rights to be heard and to have their views given due weight must be respected systematically in all decision-making processes, and their empowerment and participation should be central to child caregiving and protection strategies and programmes.”<sup>57</sup> Further, the CRC has noted that the “right of children to have their best interests be a primary consideration in all matters involving or affecting them must be respected, especially when they are victims of violence, as well as in all measures of prevention.”<sup>58</sup>

5.14 The Istanbul Convention requires that the State take “all necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of

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<sup>55</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 13.

<sup>56</sup> Article 19(1), UNCRC.

<sup>57</sup> UN CRC Committee, General Comment 13 on the right of the child to be free from violence, CRC/C/GC/13 (18 April 2012) para 3(e).

<sup>58</sup> UN CRC Committee, General Comment 13 on the right of the child to be free from violence, CRC/C/GC/13 (18 April 2012) para 3(f).

the rights and needs of child witnesses”.<sup>59</sup> Furthermore, that a child victim or witness of violence against women and domestic violence “be afforded, where appropriate, special protection measures taking into account the best interests of the child.”<sup>60</sup>

5.15 The Lanzarote Convention requires that the State “shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery”<sup>61</sup>. It also outlines a range of measures to ensure safe and timely interviews with a child<sup>62</sup>, with the use of video accepted by Courts<sup>63</sup>, and in relation to criminal proceedings that the State “ensure that training on children’s rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers.”<sup>64</sup>

5.16 The Optional Protocol to the UNCRC<sup>65</sup> and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime highlight the particular vulnerability of children at all stages of the criminal justice process.<sup>66</sup> Section three of the latter outlines a number of cross-cutting principles for those responsible for children’s wellbeing and ensuring justice for child victims and witnesses, including: dignity; non-discrimination; best interests of the child; protection; harmonious development; and the right to participation. Paragraphs 10-39 outline rights for children in this context, including the right to: be treated with dignity and compassion; be protected from discrimination; be informed; be heard and to express views and concerns; effective assistance; privacy; be protected from hardship during the justice process; safety; reparation; and special preventive measures.

5.17 The CRC has stressed that, “a child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-

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<sup>59</sup> Article 26(1), Istanbul Convention.

<sup>60</sup> Article 56(2), Istanbul Convention.

<sup>61</sup> Article 14(1), Lanzarote Convention

<sup>62</sup> Article 35(1), Lanzarote Convention

<sup>63</sup> Article 35(2), Lanzarote Convention

<sup>64</sup> Article 36(1), Lanzarote Convention.

<sup>65</sup> Article 8(1)(a), Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

<sup>66</sup> The Guidelines provide a practical framework to ensure respect for the rights of child victims and witnesses of crime and to contribute to the implementation of the UNCRC. See also, Committee of Ministers’ Recommendation on Intimidation of Witnesses, paras 19 and 20.

appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.”<sup>67</sup>

5.18 Both the 2019 Gillen Review<sup>68</sup> and the 2020 Criminal Justice Inspection NI report on child sexual exploitation<sup>69</sup> highlighted a number of barriers for children providing evidence in court, navigating the criminal justice system and engaging with the processes.

5.19 The Commission welcomes the references to children throughout the draft Strategy, and the commitment to continuing support for children through the Registered Intermediaries Scheme, the NSPCC Young Witness Service, the use of remote facilities and a wraparound approach in line with the Gillen Review. We particularly welcome the specific references to practical and emotional support for children under Strategic Priority 2, including the launch of a legal advice pilot for child complainants. This should be developed in tandem with current work to progress the recommendations of the Gillen Review, including the development of a Barnahus Model for NI. A child-centred approach should be taken to develop specific measures for children, rather than adapting an adult-centric system to facilitate children.

5.20 **The Commission recommends that a child-centred, trauma-informed approach is taken to develop specific support measures for child victims and witnesses to ensure children’s needs are met and their rights upheld. This should include development of the Barnahus Model.**

5.21 **The Commission recommends that training for legal professionals and all criminal justice personnel and support staff in contact with child victims and witnesses includes the UN Convention on the Rights of the Child, the Lanzarote**

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<sup>67</sup> Committee on the Rights of the Child, General Comment No. 12 (the right of the child to be heard) CRC/C/GC/12, para. 34. See also, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, para. 16.

<sup>68</sup> Gillen Review (2019), ‘Report into the law and procedures in serious sexual offences in Northern Ireland’, chapter 14

<sup>69</sup> Criminal Justice Inspection NI (2020), ‘Child Sexual Exploitation in NI: An Inspection of the Criminal Justice System’s Response’

**Convention and an understanding of Adverse Childhood Experiences (ACEs).**

## 6.0 Part B: Victims of Crime Commissioner

- 6.1 The Commission broadly welcomes the introduction of a Victims of Crime Commissioner and agrees with the rationale for this development. However, further information is required at this stage in order to clarify the role of the Commissioner and how he or she would operate.
- 6.2 The Commission welcomes the role of a designate Commissioner<sup>70</sup>, provided that there is an understanding that this would be an interim post to develop the role, and the post-holder could not apply for the permanent role.
- 6.3 The Commission welcomes the commitment that there should be no hierarchy of victims and that the Commissioner would be a voice for all victims<sup>71</sup>. The Commission recognises the rationale for an initial strategic focus on victims of domestic and sexual abuse and hate crime<sup>72</sup> and agrees that there are specific needs and rights to be upheld in these areas, as outlined above; however, the Commission recommends that the Department ensures the Victims of Crime Commissioner would maintain a broad mandate across all areas of victims' rights.
- 6.4 The Commission welcomes that the Victims of Crime Commissioner would be independent from government<sup>73</sup>, and suggests that this is made explicit in how the Commissioner relates to the Department, including how it is financed and held accountable.
- 6.5 In terms of statutory powers, we note that the Victims of Crime Commissioner would "highlight and challenge in relation to systemic issues requiring attention"<sup>74</sup> and "undertake or commission research"<sup>75</sup>. It is unclear from the consultation document whether the Commissioner would have powers to initiate or intervene in legal matters, or have own motion legal or investigatory powers. We recommend that these powers should be provided.

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<sup>70</sup> Consultation document, p40

<sup>71</sup> Consultation document, p43

<sup>72</sup> Consultation document, p45

<sup>73</sup> Consultation document, p46

<sup>74</sup> Consultation document, p44

<sup>75</sup> Consultation document, p44

- 6.6 The Commission agrees that there would be opportunity for the Victims of Crime Commissioner to work collaboratively with other Commissions on issues of mutual interest, including the NI Human Rights Commission as well as others, for example the Commissioner for Older People or the Commissioner for Children and Young People. However, we recommend clarity is provided on how the Victims of Crime Commissioner would work with the Commission for Victims and Survivors and the Commissioner for Survivors of Institutional Childhood Abuse, to ensure the most effective use of resources and prevent duplication of effort. We recommend that clarity is provided on each role, how each relates to each other, and the long-term plan for each Commission.
- 6.7 **The Commission recommends that the Department provides clarity on how the Victims of Crime Commissioner would operate; how they would relate to other Commissioners in the short and long-term; how independence would be assured; and the extent of the Commissioner's powers which should include initiating his or her own investigations and to intervene and initiate legal proceedings.**



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