1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights, advising on legislative and other measures which ought to be taken to protect human rights, advising on whether a Bill is compatible with human rights and promoting understanding and awareness of the importance of human rights in Northern Ireland. In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding ‘soft law’ standards developed by the human rights bodies.

2. The Commission welcomes the opportunity to comment on the first fundamental review and proposed reform of the law on sexual offences in Northern Ireland. The proposals go some way to updating the law and providing more legal protection to victims of sexual violence.

3. With specific reference to the human rights of women, the proposed reforms are helpful in respect of fulfilling the requirements of General Recommendation No. 12 of the United Nations.

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1 Northern Ireland Act 1998, s.69(1).
2 Ibid., s.69(3).
3 Ibid., s.69(4).
4 Ibid., s.69(6).
Nations Committee on the Elimination of All Forms of Discrimination Against Women, which reminds states of their obligation “to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life” and calls for states to include in their periodic reports information about “the legislation in force to protect women against the incidence of all kinds of violence in everyday life”.

4. It is noted that the proposed reform of the Law on Sexual Offences in Northern Ireland is based on the review ‘Setting the Boundaries’\textsuperscript{5} which charted the changes recommended for England and Wales. The reforms represent a considered attempt to address current shortcomings in the legislation.

5. Rather than comment on the legal technicalities of the reform, our response focuses upon related policy issues that may impact upon victims’ ability to access the proposed new laws. As has been pointed out by other commentators,\textsuperscript{6} the reform of legislation forms only part of the process for addressing the issue of sexual violence. In conjunction with implementing much-needed legal reforms in this area, it is vital that other steps are taken to address related issues that create barriers to cases being dealt with effectively.

**Under-reporting**

6. Research consistently demonstrates that rape and sexual assault are among the most under-reported types of crime.\textsuperscript{7} International research has reported that reasons cited by victims for non-reporting include fear of being disbelieved; fear of blame; distrust of the police and court process; fear of intimidation, and language/communication issues for disabled women and migrant women.\textsuperscript{8}

7. Research carried out in Northern Ireland showed similar findings. Barriers to reporting included fear of perpetrator;

\textsuperscript{6} Temkin, J. Rape and other sexual assaults: a literature review in Home Office, Setting the Boundaries Volume 2, HMSO
\textsuperscript{7} Kelly, L. (2001) Routes to (in)justice: a research review on the reporting, investigation and prosecution of rape cases
\textsuperscript{8} ibid. p9
fear of not being believed; fear of being blamed; fear for the family; shame and guilt; and loyalty to the perpetrator.\textsuperscript{9}

8. In relation to the situation in Northern Ireland, although there has been some improvement in the way that the PSNI deals with sexual offences, “victims still fear interviews and court appearances”.\textsuperscript{10}

9. Available statistics demonstrate that sexual violence is an offence that impacts upon a great many lives. For example, PSNI statistics for the period April 2004 to March 2005 record 1,686 sexual offences (class 2).\textsuperscript{11} For the period 1 April 2005 to 31 March 2006, the number rose to 1,711. During 2004, the Rape Crisis and Sexual Abuse Centre received 1,946 ‘First Contact Cases’.\textsuperscript{12} These figures are particularly significant when the widely acknowledged under-reporting of this type of offence is taken into account.

10. In order to further address the incidence of under-reporting in Northern Ireland, it is vital that the views and experience of organisations at the forefront of offering support and information to victims and survivors of sexual violence inform the development of policy and practice in this area.

Investigation

11. Research also demonstrates that many cases are ‘lost’ at the early stages of investigation. This includes the decision to make an official report and the initial response. This includes “reporting to the police, forensic examination, statement taking, evidence gathering and arrest and/or interviewing suspects”.\textsuperscript{13}

12. In relation to the forensic examination, research conducted in the UK has highlighted the need for a better balance between therapeutic needs and forensic needs within facilities for forensic medical examination.\textsuperscript{14} Particular concerns raised by

\textsuperscript{9} NIO Research & Statistical Series: Report No. 10, Victims’ and Witnesses’ Views on their Treatment in the Criminal Justice System, Northern Ireland Office, p2 at point 6.3.5.
\textsuperscript{10} Northern Ireland Assembly; www.niassembly.gov.uk 30.9.2002
\textsuperscript{11} Statistical Report No 1, Recorded Crime and Clearances, 1 April 2005—31 March 2006, PSNI. Figures include rape and indecent assault on adults and children.
\textsuperscript{12} Northern Ireland Rape Crisis and Sexual Abuse Centre, Annual Report 2005, p23. Figures include rape, child sexual abuse and other sexual assault.
\textsuperscript{13} Kelly (2001) op cit
\textsuperscript{14} ibid.
women have centred upon the desire for a women doctor to undertake the examination and for greater sensitivity and the presence of a sympathetic third party.\(^{15}\)

13. In Northern Ireland, a female doctor is not always on call. However, the victim must give their permission before being examined by a male doctor. Victims also have the opportunity to request a female doctor. During all examinations a policewoman is present in the room as a witness.\(^{16}\) It is suggested that a female doctor should always be available to examine female victims.

14. The research carried out in the UK highlighted that factors that contribute to a high percentage (i.e. over 50 per cent) of cases being ‘lost’ include: “failure to identify the suspect; designation of the case as a false report; victim withdrawal and police decisions to take no further action”.\(^{17}\)

15. Figures from PSNI show a 46% and 43.3% clearance rate for sexual offences in 2004/05 and 2005/06 respectively\(^{18}\) (PSNI Statistics 2004/05). However, the term ‘clearance’ includes formal sanctions (including charging or issuing of a summons or caution) and those instances where the police take no further action.

16. Figures for Northern Ireland indicate that the method of clearance includes a very high proportion of cases where the ‘complainant declined to prosecute’ (an average of 32% between 2000 and 2005). There is also a high proportion of ‘otherwise disposed of’ clearances, totalling an average of 26.7% across the five year period.\(^{19}\)

**Prosecution**

17. The findings of a study of attrition rates across Europe\(^{20}\) show that whilst there are “core problems linking adversarial and

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\(^{15}\) Kelly (2001).
\(^{16}\) Requested information obtained by NIO Statistics and Research Branch from the PSNI secretariat, 28.9.06.
\(^{17}\) Kelly (2001), p16.
\(^{19}\) NIO Research & Statistical Series: Report No. 10, Table 2a *All sexual offences cleared by method of clearance 2000/01-2004/05*
investigative legal systems", England and Wales and Ireland had amongst the lowest rates for prosecutions and convictions.

18. Figures for Northern Ireland show that in 2003, there were a total of 184 prosecutions for sexual offences, with 108 resulting in a conviction. It is a matter of concern that in relation to the category of ‘rape’, there were just 26 prosecutions resulting in eight convictions.\textsuperscript{21} While there may be valid legal arguments supporting this outcome, further clarification of the reasons behind the low conviction rate would be helpful.

19. The high rate of attrition suggests that there is a pressing need for additional resources for training within the police and the judiciary to ensure that those reporting rape and other sexual offences are treated sensitively and receive an appropriate response throughout all stages of the criminal justice process. Research carried out in Northern Ireland also suggested that there is a need for barristers to have special training in handling sex offence cases.\textsuperscript{22}

20. This research also reported that for those attending trial as a victim, “there was a strong perception that many women ... are in effect on trial themselves”. Furthermore, the research found support for the extension of the use of a video link for giving evidence, for consideration of further use of closed hearings and for the general need to make the court environment less intimidating. Concerns were also raised in relation to aftercare and information provided post-trial to injured parties. This was variable, “and in some cases severely lacking”. However, the positive support gained from a CARE officer was acknowledged as was the extension of the Victim Support NI Witness Service.

21. We note that new data systems are currently under development to enable the tracking of sexual offences cases and “thus allow for more robust statistics to be produced in the future”\textsuperscript{23} in relation to prosecution rates. The availability of such information would be helpful to inform current policy and practice and to assist in the evaluation of the impact of reformed legislation.

22. Furthermore, the Commission supports the view that there is a “need for a coherent, consistent national and practice

\textsuperscript{21} NIO Research & Statistical Series: Report No. 10, Table 3
\textsuperscript{22} Kelly (2001).
\textsuperscript{23} Extract from correspondence between NIO Statistics and Research Branch and the NEXUS Institute, dated 17 May 2006.
framework for rape investigations, which covers initial response, statement taking, forensic examinations, interviewing suspects and preparing files” for the PPS.24

Sentencing and sex offender treatment programmes

23. In relation to sentencing policy, it is important to achieve a balance between deterrence and rehabilitation of offenders. International standards encourage states to limit the use of deprivation of liberty.25 However, this must be balanced against the duty of the state to protect life and to ensure that no one is subjected to torture or to degrading treatment or punishment.

24. Sentencing policy should ensure that appropriate therapeutic sex offender treatment programmes (SOTPs) are available to those who receive either a custodial, non-custodial, or suspended sentence or other sentencing option available to the Courts.

25. When a prisoner is released prior to completing a treatment programme, arrangements should be in place to enable continuity and completion of the therapeutic treatment programme in an accessible location.

26. This is particularly relevant in Northern Ireland where the 50% remission scheme allows for consideration of early release of sex offenders on the same basis as other offenders. This scheme is an historical anomaly, arising from penal policy issues related to the conflict. It does not give due recognition to the specificity of sexual offences, including long-established patterns of offending behaviour, high rates of recidivism, and frequent failure to acknowledge guilt and to understand the impact of crimes on the victims. Whether this can be addressed through sentencing policy or an adjustment in remission for this class of offences, the time spent in custody should be such as to provide protection for the public and to facilitate offender participation in treatment programmes. Campaign groups have highlighted the potential problem whereby sex offenders do not have to agree to any therapy as a condition of their early release.26 Short sentences may create a barrier to effectively challenging sex offending.

24 Kelly (2001), p26
behaviour unless more is done to increase availability and uptake of therapeutic sex offender treatment programmes. It is especially important that those considering prisoners for early release be mindful of the availability of appropriate treatment and supervision of offenders in the community.

27. Concerns have been raised regarding the reduction in the availability of sex offender treatment programmes. Recent Inspection Reports for Magilligan and Maghaberry Prisons also indicate problems in this area. In Maghaberry which accommodates medium to high risk prisoners, insufficient numbers of ‘programme ready’ prisoners delayed the running of SOTPs. The Core SOTP course for high risk offenders consists of approximately 250 hours of group work arranged into 20 blocks structured by session and last between eight and nine months.

28. In relation to Magilligan (which accommodates medium to low risk prisoners), continuing problems were identified in providing an adequate pool of tutors for SOTPs and it was recommended that “the choice of offending behaviour programmes and the number of places available should meet the needs of the prisoner population”. The SOTP Rolling Programme for low to medium risk prisoners is not structured by session but by task. Group members enter and leave the group on a rolling basis.

29. It is vital that adequate resources are made available for SOTPs to ensure that all ‘programme ready’ prisoners are able to participate in a treatment programme.

30. It is suggested that further research and evaluation of current sex offender programmes needs to be undertaken to assess their effectiveness and impact upon re-offending. However, it is understood that the results of an evaluation of SOTPs from the trainers’ perspective will be available shortly.

**Children**

31. The Commission recognises the need for protection of minors from sexual abuse and harmful sexual activity. It also recognises that there will be circumstances where cases will not fit comfortably within the existing or proposed legal framework,

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29 Requested information supplied by NIO Statistics and Research Branch.
particularly when a case concerns two children as victim and perpetrator. The Commission is, however, of a view that blanket criminalisation of sexual activity between children is not a welcome development and can lead to adverse consequences for children and young people in relation to their emotional development and sexuality.

32. Additionally, if sexual activity between children is criminalised and a maximum penalty of 5 years imprisonment imposed, it will lead to difficulties for teachers, parents, youth leaders, sex education workers and others in terms of possible breaches of trust and confidentiality of those in their care. The Commission recognises that the legal obligation in Northern Ireland to report an arrestable offence (i.e. one with a 5 year sentence) may lead to a conflict of interest.

33. As a starting point, the Commission agrees with consultation point 23, in that:

   Those recognised as giving help, advice, treatment and support to children and young people in matters of sexual health should not be regarded as aiding and abetting a criminal offence, nor should the children and young people who seek help and advice about sexual health matters, including contraception.

34. Thorough consultation needs to take place with children’s sector groups to enable the development of effective policy and practice in this area. Under the United Nation Convention on the Rights of the Child (UNCRC), there is a need to be mindful of Article 3 (all decisions taken which affect children’s lives should be taken in child’s best interests) and Article 12 (children’s right to have voices heard in all matters concerning them).

35. Clarification is requested as to how or whether consultation has taken place with children in Northern Ireland on this issue, and other areas of the proposed reforms that directly impact upon children.

36. The Commission would advocate that rather than the emphasis being placed on criminalisation of sexual activity between children, there should be appropriate sex education available in schools that includes raising awareness in the area of human rights and the law in relation to sexual offences. Furthermore, comprehensive policies should be developed to address
teenage pregnancies, sexual health and the promotion of increased tolerance of sexual difference.

37. The Commission draws attention to the draft convention on the protection of children against sexual exploitation and abuse prepared by the Committee of Experts on the Protection of Children Against Sexual Exploitation and Abuse (PC-ES). This document is being prepared and it is recommended that the legislation is reviewed to ensure compliance.

**Trafficking and Sexual Exploitation**

38. In relation to human trafficking, it has been noted that in the UK, victim protection is an “area of greatest relevance and where most of the work still had to be done”. It is an essential element for the successful conviction of traffickers. The point has been made that “legislation needs to be enacted comprehensively addressing all relevant issues of victim protection: identification of victims, in court evidentiary protection, temporary residency and reflection periods, and rules on deportation” (ibid).

39. In relation to discouraging demand, it is useful to look to the Council of Europe Convention Against Trafficking in Human Beings (CoE Convention). Article 6 stipulates that Parties adopt measures to raise awareness of the responsibility of the media and civil society in identifying ‘demand’ as one of the ‘root causes’ of trafficking in human beings. It also stipulates that information campaigns should be targeted at public authorities and policy makers; and that preventative measures including educational programmes for schoolchildren which “stress the unacceptable nature of discrimination based on sex”.

40. The reasons for removing gender issues from the body of offences are noted. However, while it is important that the needs of all victims are addressed, it is also important to acknowledge that rape and sexual assault impact differentially on women and girls. This should be reflected in the development of appropriate responses across the criminal justice system.

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32 To date, the UK has not set up specific schemes. Examples of measures that can be taken can be found in Articles, 5 and 6 of the CoE Convention.
41. As stated in the UN Declaration on the Elimination of Violence against Women,\textsuperscript{33}

\textit{violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women[...]} violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

42. With regards to the proposal to create an offence of kerb-crawling (consultation point 51), the Commission agrees that the law in Northern Ireland ought to emphasise reduction of demand by targeting the anti-social behaviour of customers as one element of a co-ordinated strategy.

43. The international human rights standards do not at present clearly condemn prostitution \textit{per se} as an infringement of human rights, although they are very clear in relation to exploitation through, for example, pimping and trafficking. The Northern Ireland Human Rights Commission nonetheless unequivocally regards prostitution as an affront to the human dignity of those affected, as providers and consumers. The commercial sex trade is very closely associated with many forms of human rights abuse. Many of those working in prostitution are people who are desperately vulnerable and in need of the state’s protection; people who may have addiction problems and/or have experienced sexual abuse, domestic violence and other violations of their personal integrity. It is next to impossible to ensure, whether through regulation or tolerance, that pimping and other economic exploitation does not occur, and moving the trade off-street into brothels or supposedly self-managed premises does not guarantee either the physical safety of those involved in prostitution or the elimination of third-party exploitation.

44. Public policy should seek to address the issue of prostitution through co-ordinated and effective measures to \textit{prevent, protect, and provide}. That should include, for example,

measures to ensure the availability of, and individual access to, alternative work, including re-training provision; public education and media campaigns; the provision of refuge and rehabilitation for persons escaping from prostitution and trafficking; advisory services, drug rehabilitation, counselling and other forms of psychiatric, medical and social support for victims of the trade; and study and implementation of best practice from other jurisdictions. The approach taken by the Northern Ireland authorities in relation to children and young people who get caught up in prostitution is to regard them as victims; this approach ought also to inform the treatment of vulnerable adults.

Conclusion

45. The proposed reforms are largely welcomed as providing more protection to victims of sexual violence. However, it must coincide with improved support for victims of sexual violence. This includes more training for the police and the judiciary in order to increase awareness and understanding of the serious impact of sexual violence upon victims. Under-reporting of sexual violence and high attrition rates remain serious issues that undermine attempts to provide better legal protection to victims.

46. For those convicted of a sexual offence, it is important that effective therapeutic treatment programmes are available within prisons and within the community and that those undertaking therapeutic treatment are enabled and encouraged to complete the programmes so that sexually violent behaviour is effectively challenged.

October 2006

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