

FINAL REPORT OF WOMEN'S WORKING GROUP

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Working Group Membership

Convenor: Margaret Ward (Women's Sector)

Legal Advisor: Professor Aileen McColgan (Kings College London)

Name	Sector	Organisation
Helena Macormac	Ethnic Minorities	NICEM
Irene Miskimmon	Women	NIWEP
Tim Cunningham	Human Rights NGO	CAJ
Elaine Campbell	Older People	Age Concern
Deirdre Nelson (Cllr)	Political	DUP
Jennifer McCann MLA	Political	Sinn Fein
Paula Bradshaw	Political	UUP
Kate Lagan	Political	SDLP
Sara Duncan	Political	Alliance
Vacant		

Process to Date

The Forum initially decided that one working group should deal with Women's Children and Young People. This group was composed of five political and five civic society representatives and was convened jointly by Margaret Ward of the Women's Sector and Sorcha

McKenna of the Children's Sector. The Women and Children's Working Group met on July 27th and August 28th to discuss process and core documents. It was soon apparent that it would be impossible to deal adequately with the concerns of both women and children and young people. At the 7th September meeting the group split into two sub-groups, but that had the effect of seriously reducing the numbers of people available to work on the range of necessary issues. A request was made to the Forum that the groups be considered as two working groups with a full complement of members for each. This was agreed. The Women's Working Group was reconstituted as a full group, with the proviso that a gender-balance be sought amongst its members. In the end, only one man was nominated and the group worked with only nine members. All political party representatives were female and no other civic society organization put forward a male nomination.

A legal advisor was appointed to the group and it met for the first time on 11 October. Subsequent all-day meetings were held on 8th and 28th November and 9th and 31st January, maximizing the attendance of the legal advisor, who travelled from London on each occasion. The draft provisions of the working group, agreed at the 31st January meeting, were subsequently e mailed to all members of the working group for an indication of levels of agreement. In addition, a meeting was organized on 25th February to provide a briefing and receive feedback from groups in the women's sector. This was circulated widely through newsletters, web sites and e mail.

Introduction

From the outset the deliberations of the group were structured around the importance of addressing the particular needs of women in Northern Ireland. In addition, the group was mindful of the necessity of including issues of specific relevance to groups of women who had engaged in previous consultations on a bill of rights. In addition to such views being represented by the members of the working group with particular expertise or knowledge of the complex and multiple needs of women, the group invited two

outside speakers to provide briefings. Eleanor Jordan from Windsor Women's Centre delivered a comprehensive briefing of the diverse needs of women living in a disadvantaged inner city PUL area, informed by extensive consultation with user groups from the centre.

CEDAW and Northern Ireland

Dr Ann Marie Gray from the University of Ulster, on behalf of the NI Women's European Platform, provided an in-depth analysis of the range of issues being included in the Shadow Report compiled by NIWEP to be presented to the United Nations committee examining the UK government on its obligations regarding the Convention of the Elimination of all Forms of Discrimination Against Women. A wide range of women's organizations contributed to the Shadow Report, which provides a comprehensive overview of the position of women in Northern Ireland, linking local issues into a global human rights framework. The key areas that the UK government was required to address following its last periodic examination in 1999 are the following:

- The high rate of teenage pregnancies
- The numbers of older women in poverty
- The treatment of migrant women
- Increasing numbers of women in prison without analysis of reasons for offending
- Need for policies and progress on violence against women
- Under-representation of women in decision-making
- Job segregation and equal pay
- To improve gender-proofing of policies

Comment [A1]: Deirdre Nelson's comments state that "This again is not NI specific and while you may not feel that the UK government has addressed them they have no place in this particular Forum."

Committee on the Elimination of Discrimination Against Women, Concluding Observations: United Kingdom of Great Britain and Northern Ireland (1999).

309. Noting the Government's efforts and will to address the issue, the Committee is nonetheless seriously concerned at the level of

*teenage conception in the State party, which is the highest rate among the countries of Western Europe, and at the consequences of early motherhood, such as lower educational achievement, higher levels of poverty and greater reliance on social welfare. The Committee is also concerned at the high rates of sexually transmitted diseases, especially among teenagers aged 16 to 19. **The Committee notes with concern that the Abortion Act 1967 does not extend to Northern Ireland where, with limited exceptions, abortion continues to be illegal.***

*310. The Committee recommends that teenage conception and pregnancy be addressed by a multiplicity of measures, including a greater focus on male responsibility and a review of the primary school curriculum with a view to introducing age-appropriate sex education. It also recommends the allocation of resources for prevention and treatment programmes for sexually transmitted diseases directed at adolescents within a holistic approach to sexual and reproductive health, including sexual violence. **The Committee also recommends that the Government initiate a process of public consultation in Northern Ireland on reform of the abortion law.***

*311. While noting the legislation and measures in place to address violence against women, the Committee is concerned at the absence of a national strategy on the prevention and elimination of violence against women. **According to information available to the Committee, women in Northern Ireland are particularly affected by violence. The Committee recommends that a unified and multifaceted national strategy to eliminate violence against women be implemented to include legal, educational, financial and social components, in particular support for victims.***

312. The Committee is concerned at several aspects of the criminal justice system in relation to women. It notes the high number of women in prison, particularly those from ethnic minorities. Many women have been imprisoned for drug-related offences or because

*of the criminalization of minor infringements, which in some instances seem indicative of women's poverty. **It also notes that in the United Kingdom, and particularly in Northern Ireland, young female offenders are held in adult prisons, there are inadequate educational and rehabilitative programmes for women prisoners and they are often held in prisons situated far from their families. It also notes that the defence of provocation is not widely available to women victims of violence who are charged with murder and that there is a low level of convictions for rape and sexual violence.***

313. The Committee recommends that the Government intensify its efforts to understand the causes for the apparent increase in women's criminality and to seek alternative sentencing and custodial strategies for minor infringements. It also calls on the Government to improve the education of judges with regard to domestic violence so that these cases are given the same attention and consideration as cases brought under other provisions of the criminal law.

314. The Committee notes that demographic change in the State party requires urgent action with regard to the situation of older women, and of related implications for women's health, poverty and especially pension entitlements, elder abuse, and accommodation.

315. The Committee recommends that the situation of older women be addressed in a cross-cutting and cross-sectoral manner, with a view to ensuring adequate provision for their physical, mental, economic and social well-being.

316. The Committee requests that the Government include in its next report a comprehensive discussion of measures, including legislation and policies, taken to alleviate women's poverty and the results of these measures both in terms of remedying existing poverty and preventing women from falling into poverty and breaking the inter-generational cycle of poverty. The Government is also requested to provide detailed information on progress in

devolution and its impact on women's enjoyment of their rights covered under the Convention.

317. The Committee requests that the Government responds in its next periodic report to the specific issues raised in these concluding comments.

318. The Committee requests the wide dissemination in the United Kingdom of Great Britain and Northern Ireland, including its overseas territories, of the present concluding comments, in order to make the people of the United Kingdom, and particularly government administrators and politicians, aware of the steps that have been taken to ensure de jure and de facto equality for women and the further steps that are required in that regard. It also requests the Government to continue to disseminate widely, and in particular, to women's and human rights organizations, the Convention, the Committee's general recommendations and the Beijing Declaration and the Platform for Action.

Levels of Agreement

The draft recommendations set out below are the product of discussions of the group at its various meetings, with additional comments from absentees as indicated from time to time. No comments were given by the Alliance Party, whose representative attended one meeting. . The DUP representative, Deirdre Nelson did not attend any of the meetings at which these draft recommendations were discussed and did not participate in email or other correspondence relating to them except by way of a response to the draft recommendations circulated for final comment in the week commencing 4th February 2008. In that response she indicated that the draft recommendations “need[] to placed into the context of supplementary rights to the ECHR and any rights already extant do not need to be separately legislated for. We are involved in looking at not what would be beneficial for Northern Ireland but what is particular to the circumstances of Northern Ireland. Thus ...

the whole section of Women's Rights is extra and out of the remit of this Forum. All the rights enumerated are applicable to the rest of the UK, and indeed Europe, therefore they are beyond our scope". Having requested that this "broad caveat ... be included in [the] report", Ms Nelson made the comments on the individual draft recommendations which are mentioned below.

The UUP representative, Paula Bradshaw, whose participation in the discussions around the draft recommendations is detailed in this report, stated at this stage her party's "general view that the report's recommendations would be better addressed through legislation and/or regulation rather than through supplementary right" (this because of the "Party's position on 'particular circumstances', supplementary rights and their relationship to the ECHR/HRA". The comments made at this stage indicate that the "numerous dissents recorded on the part of our representative on the Working Group ... illustrates our unease with the assumptions made concerning supplementary rights and their relationship to the ECHR/HRA".

Sinn Fein responded to the UUP's and DUP's approach to the "particular circumstances of Northern Ireland" in the context of this Working group as follows:

"Women in the North face particular circumstances as a result of the conflict. They have suffered under a policing service that has not treated violence against women as a priority, and in whom many women lacked the confidence to report or otherwise avail of their protection. They have borne a disproportionate economic burden or disadvantage as a consequence of the imprisonment of male relatives, and have been doubly impacted by the poverty levels that have already been established as a factor related to the conflict. Their individual and group rights have been constricted by the conflict-related disproportionate influence of church doctrine over the public sphere. As a result, women's rights in the North as a whole are behind those of women in other OECD countries: this is reflected in higher figures on domestic

violence, lower levels of childcare provision, higher poverty levels, and lower figures on political participation and representation.”

A reflection of ‘particular circumstances’ for immigrant women in the North is that locally accountable politicians are unable to legislate to change their circumstances or to better respect, protect and promote their rights – even when these are being demonstrably violated by current arrangements – as a consequence that such powers have not been devolved. Therefore, these women need additional protections.

Among other relevant ‘particular circumstances’: women are 50% of the population of both major communities. The rights of both nationalist and unionist women alike were neglected during the conflict. Upholding the rights of women is in the interest of every community and therefore a point of common interest and potential unifying force in addressing similar barriers.”

Mainstreaming/Separate Section for women

It is envisaged that some of these proposed provisions would be “mainstreamed” throughout any final document: namely, 1, 4, 5, 6, 9, 10. The general equality provision (2) we would expect to see in the main body of the document while (3), the specific clause on gender equality could be included in a separate section. However, if it was included within the general body of the document it would serve to emphasise that women’s whose needs are regularly overlooked despite their numerical strength have full access to the range of civil, political and other rights safeguarded by the proposed Bill of Rights. Some other gender-specific rights might best be included within a separate section. It is anticipated that these could consist of our proposed provisions 7 and 8.

Draft Recommendations

1. Physical integrity and autonomy

(1) Everyone has the right to physical integrity, which includes

- (a) the right to be free from all forms of violence from either public or private sources including, in particular gender-related violence including:**
 - (i) domestic violence,**
 - (ii) sexual violence,**
 - (iii) harmful traditional practices, and**
 - (iv) sexual harassment;**
- (b) the right to be protected from sexual exploitation and sexual and other forms of trafficking;**
- (c) the right to make decisions concerning reproduction;**
- (d) the right to security in and control over their body;**
- (e) access to appropriate conditions of imprisonment and other forms of detention, in particular, to appropriate protection in this context from any form of harassment, including sexual harassment.**

(2) Public authorities in particular the police, immigration, prison, criminal justice, health and social care systems, shall take all suitable measures effectively to protect this right.

Rationale

The right to physical integrity is modeled in part on section 12 of South Africa's Constitution, amended to include specific reference to physical autonomy. As the NIHRC pointed out in its 2001 consultation, the level of domestic violence against women in Northern Ireland is particularly high.

The 1996 British Crime Survey reveals that one in three women report having suffered domestic violence sometime in their adult life. The problem is no less gendered or severe in Northern Ireland and, sadly, is steadily increasing. Police statistics gathered in 2000 revealed that women make 88% of all domestic calls in Northern Ireland, over half of which involve some sort of physical and/or sexual assault. The Northern Ireland Women's Aid Federation, as of 2000, provided refuge to 9.6 times the number of women it had ten years previously. This violence is a manifestation of women's inequality of status and ineffective access to the legal system.

In 2006/07 there were more domestic violence related crimes (10,115) than the combined total (9,299) of the following crimes: sexual offences against children, indecent exposure, robbery, armed robbery, hijacking, fraud and counterfeiting, shoplifting, dangerous driving, offences under anti-terrorism legislation and firearms offences. *REF: PSNI statistical report 2006-07*

The CEDAW Committee has made it quite clear that the provision of adequate protection in respect of violence against women is central to the pursuit of female equality in practice.

General Recommendation No. 19 (11th session, 1992)
Violence against women
Background

1. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men...
6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects

women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also

be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

The Committee went on to recommend that:

- (a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;
- (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;
- (c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;
- (d) Effective measures should be taken to ensure that the media respect and promote respect for women;
- (e) States parties in their reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report on the measures that they have undertaken to overcome violence and the effect of those measures;
- (f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality (recommendation No. 3, 1987);

- (g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;
- (h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;
- (i) Effective complaints procedures and remedies, including compensation, should be provided;
- (j) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace;
- (k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling;
- (l) States parties should take measures to overcome such practices and should take account of the Committee's recommendation on female circumcision (recommendation No. 14) in reporting on health issues;
- (m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;
- (n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect;
- (o) States parties should ensure that services for victims of violence are accessible to rural women and that where

necessary special services are provided to isolated communities;

(p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;

(q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;

(r) Measures that are necessary to overcome family violence should include:

(i) Criminal penalties where necessary and civil remedies in cases of domestic violence;

(ii) Legislation to remove the defence of honour in regard to the assault or murder of a female family member;

(iii) Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;

(iv) Rehabilitation programmes for perpetrators of domestic violence;

(v) Support services for families where incest or sexual abuse has occurred;

(s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;

(t) States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:

(i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;

- (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- (iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;
- (u) States parties should report on all forms of gender-based violence, and such reports should include all available data on the incidence of each form of violence and on the effects of such violence on the women who are victims;
- (v) The reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

FGM

The Committee on CEDAW has made clear on a number of occasions the incompatibility with CEDAW of female genital mutilation ("harmful traditional practices") (see for example General Recommendation 14 which placed an obligation on states to "take appropriate and effective measures with a view to eradicating the practice").

Abortion

There appeared to be consensus in the group that the best way to deal with the potentially impossible-to-resolve issue of abortion was through the protection of physical autonomy.

Sexual harassment

Following discussion of the working group on 31st January specific reference was made in (1)(a)(iv) to sexual harassment in order to ensure protection against this form of unwanted sexual conduct

across the different spheres of life. Imprisonment and other forms of detention are specifically referred to because of the working group's recognition of the particular difficulties faced in this context by women in Northern Ireland, in significant part because of the very small overall numbers involved. "Harassment" in this context refers to unwanted conduct whose purpose or effect is to create an intimidating, hostile, humiliating or offensive environment while "sexual harassment", which consists of unwanted conduct *of a sexual nature* having that purpose or effect (and to *quid pro quo* sexual harassment, which occurs where submission to or rejection of sexual advances or conduct of a sexual nature is used or threatened as the basis for decisions affecting that individual)¹.

Application

The formulation above clearly includes private as well as public forms of violence (including specifically domestic violence) and by its wording would require suitable positive measures to be taken by the state. This provision could also provide protection for trafficked women and women whose residence in Northern Ireland depends on abusive spouses. These women's situation is rendered extremely vulnerable by the threat of deportation. According to the 1999 Report of the UN Special Rapporteur on violence on trafficking in women, women's migration and violence against women

39... Traffickers use the law, and the threat of deportation, to their advantage. "To immobilize their victims psychologically and prevent their escape,

¹ Sinn Fein's written comments on the penultimate report state that this definition "should be highlighted as an interpretive note" with the substitution of "can be" for "is" in the definition of *quid pro quo* harassment" to reflect that not all sexual harassment results in decision-making, since some may be inflicted by colleagues or others with no decision-making power over the victim". [Legal Adviser's note: the link with decision making is of the essence of *quid pro quo* harassment. Sexual harassment of other forms is caught within the first limb outlined above: unwanted conduct of a sexual nature whose purpose or effect is to create an intimidating, hostile, humiliating or offensive environment.]

frequently they threaten the women with deportation. Since deportation implies risks to the women's families because of the still existing smuggling debt, public humiliation and ostracization because of disclosure of the woman's activity, and possibly further victimization, this threat is highly effective.²

41 In the case of international migration for marriage, legal residence is often linked to the citizen husband's continuing sponsorship. As a consequence, women who enter the marriage market either by choice or by deception, force or coercion, are placed in vulnerable positions under the law. Many immigrant wives are subjected to domestic violence, including marital rape, but have little or no access to legal remedies. To seek the assistance of the police or the judiciary may be to make themselves subject to immediate deportation, which is often not desired by the women. Thus, the lack of formal mechanisms of redress reinforces and legitimizes the women's forced and servile domestic situation. Increasingly, however, countries such as the United States are creating legal exemptions for battered immigrant women, whereby they are able to obtain or retain their legal residency status irrespective of their husband's continuing sponsorship.

Level of Agreement

This provision gave rise to general agreement when it was discussed on 9th January 2008 (present Paula Bradshaw (UU), Elaine Campbell

² Citing Nora Demleitner, *The Law at the Crossroad; the Legal Construction of Migrants Trafficked into Prostitution*, p. 12.

(Age Sector), Helena Macormac (Race), Margaret Ward (convenor), Jennifer McCann (SF), Aileen McColgan (advisor) *save that*:

The SDLP representative (**Kate Lagan**), advised by telephone that her party "stand back from" (c) and (d) because of concern about abortion. In her written comments on the penultimate report of the Working Group **Deirdre Nelson** (DUP) stated that "Whilst I understand the rationale behind these two points I would flag up concerns around the issue of abortion and the rights of the unborn child. I, and my Party, are not in favour of extension of abortion law to NI." In the written comments by Sinn Fein on the penultimate draft the party stated that: Strictly speaking sexual harassment is not a subset or form of violence. Therefore 'the right to freedom from sexual harassment' should be included as a discrete right (ie., a new '(b)') under the right to physical integrity and autonomy", or that it should be "wrapped up" with provisions on freedom from harassment generally being considered by other working groups.

[Legal Adviser's note: the committee on CEDAW classifies sexual harassment as a form of violence against women: General Recommendations 12 and 19.]

Paula Bradshaw expressed concern about the reference to immigration, stating that the taking-into-account of such matters in relation to immigration should be on a UK rather than a Northern Ireland basis.

Miscellaneous related provisions

It was further agreed at the meeting on 31st January that the following additions be suggested to two of the provisions proposed by the Civil and Political Rights Working Group in order to

"mainstream" women's experience into these fundamental rights (the Women's Working Group proposed additions are underlined):

10. Prohibition of torture

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment including, for the avoidance of doubt, rape and other forms of sexual assault.

No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of torture or cruel, inhuman or degrading treatment or punishment.

The state must enact legislative provisions to prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.

11. Prohibition of slavery and forced labour

1 No one shall be held in slavery or servitude, including domestic [or sexual³] servitude.

2 No one shall be required to perform forced or compulsory labour.

3 For the purpose of this article the term "forced or compulsory labour" shall not include:

a any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such

³ Added at the suggestion of Sinn Fein in its written response to the penultimate report. The words are in square brackets because they were not discussed by the Group.

detention. Prison work shall be approached as a positive element of the rehabilitation of the individual and shall never be used as a punishment

b any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

c any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

d any work or service which forms part of normal civic obligations.

4. Traffic in and exploitation of human beings and other similar forms of forced labour are prohibited and shall be offences punishable by law. The state shall protect and assist victims of such trafficking and exploitation with full respect for their human rights, taking into account in particular the age, gender and special needs of victims.

2. Equality

- (a) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (b) Equality includes the full and equal enjoyment of all rights and freedoms.
- (c) Public authorities may not unfairly discriminate, directly or indirectly, against anyone on grounds such as race, nationality, immigration status, sex, pregnancy, gender identity, marital or family status, national, ethnic or social origin, economic status, colour, nomadism, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, birth or other status.
- (d) Public authorities must respect and ensure the rights set forth in this Bill of Rights to each person within the jurisdiction without unfair discrimination on the grounds set out at (c) above.
- (e) Discrimination on one or more of the grounds listed in subsection (c) is unfair unless it is established that the discrimination is fair. Otherwise, unfair discrimination consists of differential treatment or disparate impact which exacerbates, or fails to address, existing disadvantage, which relies on or results in stereotyping or which is inconsistent with human dignity.
- (f) Public authorities must take appropriate positive measures to eliminate discrimination and pursue equality on the protected grounds.
- (g) For the avoidance of doubt, this provision does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of a ground listed at (c) above.
- (h) For greater certainty, discrimination includes a practice based on one or more protected grounds of

discrimination or on the effect of a combination of protected grounds.

Rationale

The reason for including a general as well as a specific equality provision (see 3. below) is that women are differently affected by every type of discrimination whether it be race, sexual orientation or disability (for example). Without an adequate and strong general equality provision the Bill of Rights might limit the protection from discrimination available to women to that which can be demonstrated to be *solely* connected with sex. This would have the effect of stripping much protection from (for example) migrant women, disabled women, older women etc.

The detail of (though not the need for) this general equality provision provoked a great deal of discussion in the Women's Working Group, in particular in relation to the pros and cons of prohibiting "discrimination" defined as less favourable treatment on a protected ground or unjustified indirect discrimination, and allowing specific exceptions to the prohibitions; or prohibiting "unfair" discrimination and leaving more discretion to the courts. The difficulty with the latter approach is that it requires a tighter approach to grounds, since (subject to specific exceptions drawn up in advance) differential treatment cannot be justified.

Level of agreement

There appears to be general agreement that a general equality clause should be included.

The preponderance of views in the Women's Working Group favoured the unfair discrimination approach which is set out in the proposed provision above, which is an amalgam of South Africa's and Canada's constitutional provisions which are generally recognised as the most progressive which exist. This approach is

adaptable over time to emerging new grounds of discrimination (note the protected grounds are not closed). Further, providing specific exceptions in advance is hugely problematic given the wide grounds included and the reach of the equality clause across all spectrums of life. Taking a ground such as age, for example, unfair discriminatory treatment would include arbitrary age limits for treatment but differential treatment as regards (for example) entitlement to purchase alcohol or the targeting of medical screening towards those age groups particularly affected ought not to be impeded.

(e) was amended to include the reference to "differential treatment or disparate impact which exacerbates, or fails to address, existing disadvantage, which relies on or results in stereotyping or which is inconsistent with human dignity" in response to concerns expressed by the Group and others about potential interpretive difficulties with the term "unfair" in "unfair discrimination". Notwithstanding this, it was not possible to reach agreement on this issue. In its written response to the penultimate report Sinn Fein made clear its strong opposition to the inclusion of the word "unfair" in the formulation set out above, favouring an earlier proposal which had coupled a prohibition on direct and indirect discrimination on listed grounds with a proviso that "A difference of treatment which is based on a characteristic related to any of the grounds referred to in clause (c) above shall not constitute discrimination where, by reason of the nature of the particular activities concerned, or of the context in which they are carried out, such a characteristic constitutes a genuine and determining requirement, provided that the objective is legitimate and the requirement is proportionate".

A majority of the Working Group had preferred the "unfair discrimination" approach because of concern that a rigid approach to discrimination/ equality (including, for example, the provision of definitions of direct and indirect discrimination and harassment)

would give rise to very significant difficulties in that it would require the inclusion of detailed provisions regarding exceptions which go further than those currently included, and that it would militate against the gradual recognition of new grounds of discrimination.⁴ The exception suggested in the paragraph above is arguably suited only or predominantly to the employment-related context, and would not readily be applicable in relation (say) to the targeting of particular cancer screening to those age groups most affected. Nevertheless, Sinn Fein's written comments state that "We cannot accept a provision that uses the concept of 'fair discrimination'. All discrimination is unfair. Justified, legitimate difference of treatment does not constitute discrimination where by reason of the nature of the particular activities, or the context in which they are carried out, the objective is legitimate and the requirement of different treatment is proportionate. This is the point of law for the courts to determine. Therefore, we do not support the proposed formulations under the first clause of 2(c) or 2(e) and would seek the amendment of these accordingly."

For decision

Despite the addition of a number of grounds in the meeting on 31st January, the protection of "status as a victim" is at present missing from the formulation (as is "possession of a criminal conviction" which also featured in the NIHRC's earlier proposal). No responses were received to the request contained in the penultimate report for views as to whether these grounds should be covered. Sinn Fein did however express the view that it might be advisable to clarify that

⁴ In *Progressing a Bill of Rights for Northern Ireland* (April 2004) the NIHRC asserted (pp.10-11) that discussions with the Equality Commission had produced a "general consensus ... that any equality clause in the proposed Bill should be in general terms, leaving it to the Equality Commission to propose and implement appropriate legislation on matters of detail."

the protected grounds apply whether the characteristic at issue is that of the discriminated-against person or of "related others" [the Legal Adviser had state that discrimination "on grounds of" x or y includes discrimination on the ground that the discriminated-against person **or another** possesses that ground]

3. Gender equality

Public authorities must ensure equality between men and women in all areas and must eliminate discrimination on grounds of gender. The term “discrimination on grounds of gender” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. This provision does not preclude any law, program or activity that has as its object the amelioration of conditions of individuals or groups disadvantaged because of sex. Further, public authorities are under an obligation to take appropriate positive measures to eliminate discrimination and pursue equality on grounds of gender.

Rationale

This overlaps with 2(d) so far as that provision covers gender. But the International Covenant on Civil and Political Rights includes both a general equality clause and a specific provision (Article 3) requiring states to “ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”. Women are not a minority group yet they suffer discrimination and inequality across all spheres of life, public and private. Women who are disadvantaged by reason of their race, nationality, sexual orientation or any other factor are doubly disadvantaged because of their sex. As the UN’s Human Rights Committee pointed out in its General Comment no 28, “Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes”. This being the case, the eradication of sex discrimination

requires mainstreaming of gender equality across every sphere of life. (In *Progressing a Bill of Rights for Northern Ireland* (April 2004) the NIHRC proposed (section 4(2)) a specific provision on sex equality in addition to the general provision on equality/ non-discrimination, stating that the section:

“Section 4(2) reflects the Commission’s belief that the history of a denial of human rights to women and girls is such that special mention of them in this section of the Bill is justified. By imposing a duty on the State to take all necessary measures to promote the equal enjoyment of all human rights and fundamental freedoms by women and girls the Bill is going further than merely ensuring that women and girls have the same rights as men and boys. A positive action provision like this should ensure that in practice the Bill of Rights makes a real difference to the way in which women and girls experience their rights. It does not mean that they will have more rights than men and boys, merely that they will have an equal chance of relying upon their rights...”

In its 2001 consultation document the NIHRC stated that, although its proposed general equality/ non-discrimination provision applied to “all individuals in Northern Ireland, including women:

The inequality between women and men, however, pervades and informs all other types of discrimination and is arguably the root of so many gender abuses. A provision which deals specifically with gender equality, even if it has the same legal weight as the general equality provision, carries a symbolic and an interpretative value. It demonstrates a commitment on the part of the state to safeguard and promote gender equality and work towards a society wherein gender does not confer a disadvantage. The statement prompts courts

and legislators to consider whether laws and practices adversely affect women and perpetuate inequality between the sexes.

Level of Agreement

There appears to be general agreement on the inclusion of this provision subject to any general reservations on the part of parties noted above.

4. Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

Rationale

This adds nothing to the right to dignity proposed by the civil and political rights working group. The provision is taken from South Africa's Constitution (section 10).

Dignity is increasingly recognised as central to human rights. In the field of gender equality it has particular potential significance to carers (protecting their charges and therefore the role of carers), trafficked and otherwise sexually exploited women, women in prison and those seeking asylum, and women as victims (in particular) of sexual violence (for example, women as actual or potential witnesses in sexual assault trials).

Level of Agreement

There appears to be general consensus within the group that this provision is desirable.

In her comments on the penultimate report **Deirdre Nelson** (DUP) stated that "I do not believe that this right is gender-specific and I feel there is an issue around mainstreaming of rights here.

Therefore I feel the inclusion of this item is beyond our remit in this working group and should be looked at within the wider context".

5. Health

The Women's Working Group did at one point have its own proposed health right but it was agreed at the meeting of 31st January 2008 that this was inappropriate and that it was more appropriate to append specific rights to any health right proposed by the Social and Economic Rights Working Group in order to ensure the mainstreaming of women's particular concerns into the more general provision. The rights which a majority of the group wish to be included are as follows:

- (a) the right to the fullest range of reproductive health care including access to effective advice, delivered in circumstances of confidentiality, and effective sex education. Particular attention must be paid to the needs in this context of adolescent girls and older women, victims of sexual and other violence, rural women and those with disabilities and/or with language difficulties, migrant and trafficked women and women working in the sex industry;**
- (b) the right to appropriate and accessible after-care in respect of sexual and domestic violence. Particular attention must be paid to the needs in this context of adolescent girls and older women, victims of sexual and other violence, rural women and those with disabilities and/or with language difficulties, migrant and trafficked women and women working in the sex industry.**

Rationale

According to General Recommendation No. 24 of the Women's Committee, dealing with Article 12 CEDAW:

11. Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks

services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.

In the view of the Women's Working Group women's particular needs as regards health care are at their most severe in connection with reproductive health care and after care in the event of domestic and sexual violence. These needs are not always adequately addressed and are most severe in the case of vulnerable groups of women specifically mentioned in the text. The state cannot fulfil its positive obligations as regards protecting women from sexual and other forms of violence without an adequate health care response, while adequate reproductive health care is central to women's human flourishing. As the 2001 consultation paper of the NIHRC pointed out:

The right of women to decide in matters of reproductive health has also been asserted in the Programme of Action of the International Conference on Population and Development and in the Beijing Platform for Action agreed at the Fourth World Conference on Women. In addition, the European Court of Human Rights has ruled in *Open Door Counselling and Dublin Well Woman Centre v Ireland* (1992) that the denial of access to information about abortion services and related issues is a breach of the European Convention on Human Rights.

Level of Agreement

There appeared to be consensus in the meeting on 9th January 2008 as to this provision, though at the meeting of 31st January 2008 **Chrissie McAuley** stated that Sinn Fein) could not support the formulation "the fullest range of reproductive health care", though it could support "reproductive health care". This was confirmed in Sinn Fein's written comments on the penultimate draft. Similarly **Deirdre Nelson** (DUP), in her comments on the penultimate draft of the report, stated that "I cannot support the phrase "fullest range of reproductive health care" all though I do not have difficulty with "reproductive health care". Again, my concern is over the issue of abortion and rights of the unborn child".

6. Housing

At the meeting on 31st January 2008 it was agreed (the matter had been discussed at the meeting on 9th January) that any provision on housing should contain the following:

Public authorities must ensure appropriate emergency and other provision for women escaping domestic violence.

Rationale/ Level of Agreement

There was (I think) general agreement with the exception of **Paula Bradshaw** (UUP) that the group should make some suggestion in relation to housing insofar as it impacts on the specific needs of women, these specific needs being concerned most particularly with escape from domestic violence.

The general comments made by Deirdre Nelson (**DUP**) have been noted above.

7. Equality in public life

Public authorities must take active measures to facilitate full participation of women in political and public life including, where appropriate, by the use of temporary special measures to achieve balance in men and women holding domestic and international public positions and the equal representation of men and women in the formulation of government policy.

Rationale

“Public positions” are intended to include judicial and other public positions, elected and appointed.⁵ The CEDAW Committee's General Recommendation No 23 (1997) makes it clear that formal equality of treatment is insufficient in this context and calls for the adoption by states of temporary measures to promote sex equality in public life. The importance of increasing women's participation in public life can scarcely be over-stated given its significance to democratic decision making, the exercise of power, policy developments etc. Further, according to the NIHRC's 2004 *Progressing a Bill of Rights for Northern Ireland*, 73% of those surveyed supported a right for women to fair, full and equal participation in decision-making and power (with only 2% of people regarding this as unacceptable). And as the Commission pointed out in its 2001 consultation document on a Bill of Rights, “On several indicators the position of women in Northern Ireland is worse than it is elsewhere in these islands. ... the level of female participation in political life is very low. There has never, moreover, been a female High Court judge in Northern Ireland.” Further, “As of 2000, women held only 14% of Assembly seats and only 31% of all public bodies had appointed women.” The situation in 2008 has seen little improvement, with women holding

⁵ In its written comments on the penultimate report Sinn Fein requested that this sentence “should be highlighted as an interpretive note”.

18 out of 108 seats in the Assembly and holding 32% of public appointments. As the NIWEP Shadow report for CEDAW points out, 'None of the political parties have used provision under the Sex Discrimination (Election Candidates) Act 2002 to take positive action to address this.'

The CEDAW Committee stated clearly in General Recommendation No 23 that the removal of de jure barriers to women's participation in public life "is necessary, [but] not sufficient"; that "Failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men". The Committee explicitly and strongly endorsed the adoption of "special temporary measures and stated that, if women's participation reaches the "critical mass" of 30 to 35 per cent "there is a real impact on political style and the content of decisions, and political life is revitalized". The Committee on Economic, Social and Cultural Rights also called for the adoption of special temporary measures in its thirty-fourth session (2005) General Comment 16, noting (at para 8) that "Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are, prima facie, gender-neutral" and stating that "As long as these measures are necessary to redress de facto discrimination and are terminated when de facto equality is achieved, such differentiation is legitimate."

Level of Agreement

There appears to be consensus from the Women's Working Group on this right with the exception of **Paula Bradshaw** (UUP) who has expressed concerns about the provision previously and was not in attendance for that part of the meeting on 9th January 2007 in which it was discussed in detail. At the meeting on 31st January 2008 it was agreed that this provision should sensibly follow the current Article 23 of the Civil and political Rights Working Group: "Right to participation"

In her comments on the penultimate report of the Working Group **Deirdre Nelson** (DUP) stated that "I do not agree **at all** with article 7. This is not proactive, it is positively proscriptive and discriminates against men which is a denial of their human rights. This issue is absolutely NOT the business of this forum. If you want sex equality in this area, take it up with political parties and do not attempt social engineering here. 50/50 recruitment has not worked within the police service, why do you think it will work in this situation?"

8. Economic participation

The state shall take active measures to facilitate women's equal and effective access to the economy, including, in particular, by taking appropriate steps in relation to:

- (a) education, including vocational education and career guidance, to eliminate gender stereotyping, and to ensure the effective and accessible provision of educational opportunities to pregnant adolescents, young mothers, carers and older women;**
- (b) the provision of suitable affordable childcare;**
- (c) the provision of effective support to carers;**
- (d) transport policy.**

Rationale

This provision attempts to address the many concerns voiced around, for example, education and childcare difficulties which are seen as partly responsible for the disadvantaged position of women in Northern Ireland. Northern Ireland continues to have one of the lowest levels of child care provision in the UK and Europe.

As far as education is concerned, the CEDAW Committee's General Recommendation No. 3 (sixth session, 1987) stated that, the national reports disclosed "the existence of stereotyped conceptions of women, owing to socio-cultural factors, that perpetuate discrimination based on sex and hinder the implementation of article 5 of the Convention", "Urge[d] all States parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.

The relevance of childcare to women's participation in economic life is obvious as is the provision of effective support to carers, the majority of whom are women (many of them "squeezed" by the needs to provide both child and alder care). The cost to the

economy is very substantial and women experience high levels of poverty in old age as a result of their restricted labour-market participation.

"Transport policy" is included in recognition of the fact that many women are dependent upon public transport to facilitate their access to the economy and that this needs to be taken into account by decision makers.

Level of Agreement

There was a broad measure of agreement as to this provision across the working group with the exception of **Paula Bradshaw**. Sinn Fein favoured an enforceable right to childcare, rather than the weaker provision adopted here, but there was not general support for this amongst the group because of concerns about meeting competing needs.

In her written comments on the penultimate report Deirdre Nelson (**DUP**) stated that "My arguments against the previous Article also apply here. This is not simply pro-women, it is positively anti-men and I am afraid I cannot sign up to it".

9. Employment

Discussion/ rationale

The Forum has expressed concern that the Women's Working Group should include a specific provision on employment. The Women's Working Group took the view that it did not have to engage in much of the controversial aspects of the right, but agreed at the meeting on 31st January 2008 that it would be appropriate to deal with women's rights in this context in the form of specific provisions within the draft general right proposed by the legal convener of the Social and Economics Rights Working Group. The following provision was agreed at that meeting (the Women's Working Groups additions to the Social and Economic Rights Working Group's proposals being underlined in the text):

1. Every person has the right to contribute to the economic and social life of society, including the right to work and the right to choose freely and practice a trade or profession. In particular, appropriate steps must be taken by the State to provide suitable affordable childcare to facilitate [parents'] access to work.

2. Government shall, support, encourage and provide for:

a. the continuous development of skills, knowledge and understanding that are essential for employability and fulfilment.

b. economic and social conditions to ensure full employment

3. Every person has the right to just and favourable conditions of work and terms of employment [on the basis of equality], irrespective of the status of the worker and the nature of the work relationship, including

- a. Fair wages and equal remuneration for work of equal value without distinction of any kind consistent with a decent living and human dignity for individuals and [family/dependents];
 - b. Equitable access to pension arrangements, including in the case of workers who take time out of the paid labour market for the purposes of caring;
 - c. Adequate, paid maternity, paternity and parental leave;
 - d. The right to the maximum flexibility in order to accommodate caring responsibilities which is compatible with the reasonable needs of the employer;
 - e. Safe and healthy working conditions;
 - f. [The right to equality of opportunity]
 - g. [Freedom from any form of harassment, including sexual harassment.]
 - h. [Social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work. Appropriate provision must be made by the state for those whose caring responsibilities have prevented full participation in the paid economy.]
4. [The State shall guarantee the right of all individuals to be employed and conduct a business free from paramilitary activity, other violence and threats, extortion and blackmail].
5. Women are to be guaranteed conditions of work not inferior to those enjoyed by men, with equitable levels of pay]
6. [States shall ensure the equality of opportunity and treatment for workers with family responsibilities. Amongst other measures the State must to take account of their needs in terms of conditions of employment and social security and develop or promote services, public or private, in particular child day-care services and other childcare arrangements].

If no general "right to work" or similar the preferred approach (agreed at the meeting of 31st January 2008) would be to amend the provision on access to economic life to safeguard equitable pay, pensions and freedom from discrimination and harassment etc. At that meeting it was also agreed that any provision on collective bargaining should make specific reference to women's equality (women facing particular difficulties in this context due to their preponderance in part-time work and small workforces where recognition is less common).

In her written comments on the penultimate report of the Working Group **Deirdre Nelson** (DUP) stated that "[the] claim that the State shall provide suitable childcare ... is beyond our scope, and quite frankly, I believe it would allow for unwarranted State interference in family life and actually infringes the right to privacy".

[Comment by the Legal Adviser: there was no intention on the part of the group to suggest that the state should *require* families to make use of childcare, as distinct from providing it for those who wish to make use of it. The former would clearly amount to breach of privacy whereas it is difficult to see how the latter could be regarded as entailing any interference with family/ private life.]

9. Criminal Justice

[To be inserted in the section of the BofR dealing with criminal justice]

For the avoidance of doubt, the application in practice of the right to be free from sex discrimination requires, in this context:

- (a) Appropriate legal protection for victims of sexual assault and domestic violence including, in particular, the prohibition of reliance in criminal justice procedures on discriminatory and prejudicial assumptions about female sexuality;**
- (b) The provision of single-sex custodial institutions and the provision of appropriate and non-discriminatory treatment to women in custody as regards care (including medical care), protection, treatment, training and rehabilitation. Women prisoners must not be attended by male prison officers;**
- (c) Avoidance of the use of imprisonment for non-violent offences attracting short sentences [⁶] and, in particular, in respect of fine defaulting, those with mental health problems, pregnant women and the mothers of young children.**

Rationale

The NIWEP Shadow Report on CEDAW states that recent consultations with women survivors of domestic violence highlighted a deep sense of dissatisfaction by many women with the way in which they had been treated by many personnel connected with the justice system.

⁶ This may be regarded as going beyond the remit of the group but it seems to be justified by the shocking research reproduced below.

The NIHRC 2005 report *The Hurt Inside* on female imprisonment in Northern Ireland disclosed extremely serious problems. A third of all female admissions to detention were for fine default and the majority of those sentenced received tariffs less than three months. The authors of the report took the view that this “raises the question of the appropriateness of a prison sentence for women whose offending behaviour is minimal”. They further expressed concern over the imprisonment of girls aged 14 to 17 “and the revelation that the Northern Ireland Prison Service had no dedicated policy or strategic plan for the treatment of women in custody”, a position which had persisted despite severe criticism by the Chief Inspector of Prisons in 2002:⁷

14. There was no Prison Service policy statement or strategy documentation addressing the particular needs of women and girls in prison, there was no dedicated governor responsible solely for the management of women in prison and no gender specific training for prison management or officers.

Approximately 80% of prison officers allocated to Mourne House were men and it was not uncommon for the night guard duty to be all male.

15. The research found that serious policy matters with profound implications for the health and welfare of women and girl prisoners were decided on an *ad hoc* basis. For example there was no policy regarding the separation of politically affiliated prisoners, no policy regarding the admission of sex offenders to a community of women, some of whom had histories of enduring

⁷ Executive Summary.

abuse, and no policy for the accommodation and protection of child prisoners.

16. The research found a regime in operation that neglected the identified needs of women and girl prisoners, lacked creative or constructive programmes to assist their personal or social development, compromised their physical and mental health and that failed to meet minimum standards of a "duty of care".

17. While accepting that the Northern Ireland Prison Service, and Maghaberry in particular, is emerging from a prolonged period of poor industrial relations, the stagnation of the regime, and the systemic complacency within its operation, has caused considerable and persistent suffering for the women and girls held in Mourne House. It also caused intense and openly voiced frustration for those prison officers and professional workers committed to change and progress.

18. The research found a regime in which women were regularly locked in cells for 17 hours a day, workshops were permanently closed and education classes rarely held. The only regular organised activity was horticulture, offered to sentenced women only. For many women the regime consisted of being locked alone in their cells with a television for extended periods of time.

19. The high level of security, dating back to the operation of a regime for political prisoners, was inappropriate. For example, women were not permitted to attend education classes a short distance from their cells, unless escorted by prison officers.

20. Women received little or no support on reception and there was no structured induction programme or adequate information provision. Structured sentence management or resettlement programmes recommended by the Inspectorate had not been addressed.

21. The right of women in prison and their children to a meaningful family life was not respected. Women were restricted to brief periods of unlock during which they could make telephone calls to their children. For nine consecutive days over Christmas women had no evening unlock or association. There was an absence of appropriate arrangements for special or enhanced family visits. The restrictive regime caused unnecessary suffering for women, their children and their families.

22. The research found that Mourne House was an unsuitable environment for the imprisonment of child prisoners. There were no age-appropriate programmes and prison staff had no training in the management of child or young prisoners. There was no child protection policy available. It is recommended that children under 18 should not be held in Prison Service custody.

23. The punishment and segregation "block", or special supervision unit, was an inappropriate environment for the location of distressed and self-harming women and girls. Strip conditions comprised of a plinth with no mattress and no pillow, an indestructible gown and blanket and a potty for a toilet without access to a sink. There was no other prison furniture and no "humanising features" in the cells. These conditions were degrading and inhumane and, possibly, in breach of Article 3 of the European Convention on Human Rights (ECHR). For those

under 18, these conditions constitute a serious breach of international standards on the rights of the child.

24. The research found that healthcare for women prisoners was dire. Other than to provide basic day support, the purpose-built Mourne House healthcare centre was closed. Women attended the male prison hospital for treatment, including accommodation in cells alongside male prisoners and shared association. Mental health provision, particularly on the residential landings, was inadequate and prison officers had no training in offering appropriate care. Recommended provision for women through healthcare plans was routinely ignored on the landings including those women considered at risk of self-harm and suicide.

25. The research found that there was, and remains, a lack of adequate residential, therapeutic mental health facilities in Northern Ireland for women and girls suffering from mental health problems or diagnosed "behavioural disorder". It is essential that this issue is addressed as an alternative to prison.

26. The research found that women prisoners coming into contact with male prisoners, using shared transport or in the prison hospital, were routinely subjected to verbal abuse and sexual threats.

27. Since the last inspection two women, Annie Kelly (in September 2002) and Roseanne Irvine (in March 2004) have died in Mourne House. The research raises serious concerns regarding the events leading to their deaths. It suggests that the Prison Service failed to address the profound concerns conveyed by the Belfast Coroner

following the inquest into the 1996 death of Janet Holmes in Mourne House.

28. The research finds that the transfer of women prisoners from Mourne House to the Hydebank Wood YOC does not meet the recommendations made by the Inspectorate. The research concludes that Hydebank Wood, designed for young male prisoners, is an unsuitable environment for women and girl prisoners...

30. It also recommends that a discrete women's custody unit should be developed, either on the site of Mourne House or at another appropriate location. It should be managed separately and be self-contained. It should offer a regime based on an inclusive assessment of women prisoners' needs met by gender-specific programmes and administered by trained managers and staff.

The report called for the establishment of a "further independent and public inquiry" into the "deterioration in the regime and the conditions in which women and girl children were held in Mourne House, following the 2002 inspection by the Chief Inspector of Prisons and her subsequent criticisms". In a subsequent article in the authors of *The Hurt Inside* drew the following conclusions from the research upon which that report was based⁸:

Carlen ... concludes: 'because of their different social roles and relationships and other cultural differences' women 'are likely to suffer more pains of imprisonment

⁸ Phil Scraton and Linda Moore, "Degradation, Harm and Survival in a Women's Prison" (2005) 5 *Social Policy & Society*, 67-78.

than men, and to suffer in different ways'. What the Mourne House research demonstrates is that, while the regimes and programmes were not gender specific in design or delivery, regulation, control and punishments were consistently gender specific. Fear, degradation and dehumanisation endured by women prisoners were institutionally gendered. They are most appropriately represented and analysed through their location on a continuum of violence and violation... This ranges from lack of access to telephones or baths, through lock-ups, to strip-searches, personal abuse and punishment. The sharp end of the continuum, where the woman's body is the site of self-harm and of strip searches, is related directly to the sexual comments, innuendo and insults embedded in the prison's daily routine...

It was clear from the research that alternatives to custody should be a priority for the majority of women currently in prison. This includes women with mental health problems. Within prison, priorities include the establishment and resourcing of gender-specific regimes and programmes responding to gender-specific needs. Responding to the diversity of women in prison, a comprehensive strategy should specify policies on reception and induction, regime and programmes, throughcare and aftercare. The research called for an end to holding children in Prison Service custody and the use of punishment cells for self-harming and distressed women. All accommodation, health-care and transport should ensure absolute separation from male prisoners.

Ironically, as the research ended in June 2004, women prisoners were transferred to a lower security unit within Hydebank Wood Male Young Offenders' Centre, a move

which failed to meet the research or Inspectorate's recommendations. The refurbished Ash House unit is adjacent to units housing young men. Health-care and transport continue to be shared and women face daily abuse from young male prisoners. In November 2004, following publication of the research, an unannounced inspection of Ash House took place. The subsequent report (HMCIP/CICJNI, 2005) endorsed the research findings and heavily criticised NIPS for its failure to act on the Inspectorate's 2003 recommendations. It questioned the 'extent to which Ash House can provide a suitable environment for women' and raised the 'safety' of women and girls 'principally in relation to the management of [those] vulnerable and damaged' (ibid.: 5). This was the 'consequence of a poorly implemented decision to move women from a purpose-built environment, which was not being managed or operated as it should have been, to a much less suitable facility – without providing staff with sufficient specialist training, management or support to ensure that they could properly look after the women and girls in their care'.

Ash House failed to provide for 'extremely damaged, and sometimes disruptive, young women and girls'. Two were held in 'anti-suicide suits' in 'unfurnished and cold cells'. Documentation 'revealed an imperfect understanding of the motives, and management, of self-harming women' with 'disciplinary measures . . . used to punish self-harming behaviour'. Punishments, 'including for children, were very severe' and child protection procedures 'were seriously deficient'. Educational and developmental needs for girls 'were not being met, and could not be, within such a mixed and constricted environment' (ibid.).

Women were confined to their cells, without in-cell sanitation or ablutions, for long periods 'compound[ing] feelings of depression and anxiety' (ibid: 6). The physical environment, both inside and outside, was inferior to Mourne House. The move 'succeeded in breaking up *some* of the negative culture that had infused Mourne House' but had lost its 'principal advantage . . . a purpose-built, separate women's facility' (ibid: emphasis added).

Comment [A2]: In her written comments on the penultimate report of the Working Group **Deirdre Nelson** (DUP) asks "Who defines what is inferior?".

The Inspectorate concluded:

There was still no Northern Ireland Prison Service strategy, policies or procedures to deal with the specific needs of women and girls; and no separate, properly trained, management of the women's prison . . . in their longer term it needs to plan for a discrete and suitable separate location in which they [women and girls] can be held safely and purposefully'. (ibid)

In response, the Northern Ireland Prison Service accepted the need for fundamental change regarding the imprisonment of women. However, issues of accountability for women's suffering at Mourne House have yet to be addressed. As this article shows, the demonstrable failure to implement the Inspectorate's earlier recommendations had serious consequences for women and girls. Two women died and others came close to death. The punishment block was used repeatedly for the cellular confinement of self-harming and suicidal women and children. Consequently, the research called for an independent public inquiry focusing on the

deterioration in the regime and the degrading and harmful conditions in which women and girls were held.

The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1955⁹) provide, so far as relevant, as follows:

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

It is clear from this research that the situation of women in detention in Northern Ireland is entirely unacceptable. In September 2007 Hydebank's Independent Monitoring Board reported "an urgent need for a separate prison that could focus on the specific needs of women".

Level of agreement

⁹ Approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

The problems of women in prison were discussed at the meeting of 31st January 2008 at which it was agreed that the legal adviser should formulate a provision emphasising (in addition to current (a) and (b)) the avoidance of imprisonment in respect of those offences for which it was unnecessary and those offenders (many of them women) for whom it was unnecessary. (c) above was not discussed save that there was strong agreement at the meeting on 31st January that women should be held in separate institutions and should not be attended by male staff. (b) was subsequently amended to this effect but the wording was not discussed. This provision was however circulated to the Working Group in the penultimate report of the Working Group.

In her written comments on the penultimate report of the Working group **Deirdre Nelson** (DUP) stated as follows: "On the issue of women prisoners I believe that whilst we would all support the most humane conditions and best practice to be applied across the board we must be careful that in protecting prisoners' rights we do not infringe the rights of their victims. Again, there is an issue of conflicting rights."

In its written comments **Sinn Fein** stated that "these provisions appear out of sync with the Criminal Justice/Victims formulations. The relevant provisions in the CJV final report should be examined". [Given the timing, i.e., the fact that these comments were received on 13th September with the final report having to go to the Forum on 15th February and no opportunity for further consultation among the Working Group personnel in the meanwhile no effort has been made to redraft this provision in light of Sinn Fein's comments.]

Miscellaneous

At the meeting on 31st January 2008 it was agreed that we should propose the amendment of Articles 25 and 26 as they have been put forward by the Civil and Political Rights Working Group in order to mainstream into them women's concerns. This could be done as follows (underlined text added):

25. Freedom of movement:

Comment [Unp3]: UUP reserve their position on the inclusion of this right

1. Everyone has a right to freedom of movement and freedom to choose his or her residence.

2 Everyone shall be free to leave any country, including his or her own.

3. No one shall be arbitrarily deprived of the right to enter his or her own country.

4. Every citizen has the right to a passport.

5. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

6. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health [or morals] or the rights and freedoms of others. In this context the particular needs of trafficked people, domestic workers and the victims of domestic violence must be taken into account.

Comment [RHM4]: The majority of the Working Group felt that this term 'or morals' should be removed. However, three members of the working group requested it remain. In her written comments on the penultimate report of the Working Group Deirdre Nelson (**DUP**) stated that ". I would request that "or morals" should remain in place".

26. Right to nationality

Comment [Unp5]: UUP are not agreed on inclusion of this right. In her written comments on the penultimate report of the Working Group Deirdre Nelson (**DUP**) agreed with the UUP reservations.

1. Everyone has a right to a nationality.

2. No one shall be arbitrarily deprived of his or her

nationality nor denied the right to change his or her nationality.

3. Neither marriage or civil partnership nor the dissolution of a marriage or civil partnership between a national and an alien, nor the change of nationality by one of the spouses during marriage or partners during the civil partnership, shall automatically affect the nationality of the other spouse or partner.

4. The laws on nationality shall not contain distinctions or include any practice which amount to discrimination.

Rationale

The inclusion of "or her" may appear nit-picking but serves to emphasise that women, as well as men, are the intended beneficiaries of these rights. The particular issues which arise for women in the context of freedom of movement concerns the problems faced by women who find themselves in Northern Ireland (either by virtue of having been trafficked or having arrived voluntarily as a domestic worker or spouse). In the former case disclosure of their existence to the authorities renders them vulnerable to removal. In the latter case their entitlement to remain may be in the hands of abusive employers or spouses. The difficulties are obvious.

Level of agreement

These proposals were not discussed in detail though at the meeting on 31st January 2008 there was general agreement in principle to ensure the "mainstreaming" of women's particular concerns into these proposed Articles. They were circulated in the penultimate draft report and attracted no negative comments at that stage except that **Deirdre Nelson** (DUP) stated that "I do not agree that this right should remain in the paper. It is neither sex specific, nor is it particular to Northern Ireland. Again there is an issue

surrounding the mainstreaming of rights and I feel that it is important that rights are mainstreamed as much as possible".