Response To The Public Consultation on Making A Difference: Improving Access to Justice For Victims and Witnesses of Crime

Executive Summary

A. In this submission the Commission provides advice on the Department of Justice draft Victim’s Strategy, which it broadly welcomes. In its advice the Commission sets out the relevant international human rights law treaties and instruments. The Commission refers to the EU Directive on minimum standards on the rights, support and protection of victims of crime. The Commission advises that in addition to ensuring compliance with the EU Directive the NI Executive must ensure compliance with the full range of international human rights law obligations with respect to victims and witnesses.

B. The Commission advises that the Department broadens the definition of victims included in the Strategy to ensure it fully reflects international human rights standards.

C. The Commission advises that the Department, through cross-Departmental working, ensure that police, justice, health, social services and other personnel are appropriately trained on the needs of victims and witnesses. In particular bespoke training should be provided when dealing with particularly vulnerable individuals, such as the disabled.

D. The Commission welcomes the Strategy’s focus on communication and information provision, in particular the commitment to reviewing the post sentence victim information scheme. The establishment of a Victim and Witness Care Unit, with responsibility for ensuring victims and witnesses are continually informed of developments with respect to their case, is also welcomed.

E. The Strategy sets out a number of proposals regarding assistance, support provisions and special measures for victims. These
proposals will go some way to ensuring compliance with international human rights law. The Commission advises that the Strategy, in line with the EU Directive, ensure that access to any victim support services are not dependent on a victim making a formal complaint with regard to a criminal offence. The submission advises that the rehabilitation of victims should be a priority and the Strategy should acknowledge that this will require a cross departmental approach.

F. The Commission identifies a number of groups the members of whom will require bespoke services. The Commission advises that the Strategy draw on relevant international human rights standards and recognise the particular needs of these victims and witnesses. The Commission advises of the importance of preventing secondary and repeat victimization through ensuring adequate protection for victims.

G. The Commission welcomes that the Strategy will refer to the right of victims to review a decision of the Public Prosecution Service not to prosecute an offender. The Commission advises that in circumstances where a decision is taken to prosecute for a lesser charge that the victim should be appropriately informed and have the decision explained to him or her.

H. The Commission welcomes the Strategy’s commitment to taking on board the views of victims and to updating its research base.
Introduction

1. The Northern Ireland Human Rights Commission (‘the Commission’), pursuant to Section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. In accordance with this function the following statutory advice is provided to the Department of Justice (‘the Department’) in response to the public consultation on ‘Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime – a Five-Year Strategy’ (‘the Strategy’).

2. The Commission bases its position on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe and United Nations (‘UN’) systems. The relevant international treaties in this context include;

- The European Convention on Human Rights, 1950 (‘ECHR’) [UK ratification 1951];
- The International Covenant on Civil and Political Rights, 1966 (‘ICCPR’) [UK ratification 1976];
- The United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment (’CAT’) [UK ratification 1988]
- The European Convention on the Compensation of Victims of Violent Crimes [UK ratification 1990]
- Framework Convention for the Protection of National Minorities (’FCNM’) [UK ratification 1998]

1 Northern Ireland Act 1998, s.69 (4)
3. The Northern Ireland (‘NI’) Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom’s ratification. The Commission recalls that Section 24 (1) of the Northern Ireland Act 1998 requires that all Acts of the Department are compatible with the ECHR. In addition, Section 26 of the Act also requires compliance with international obligations. The Commission, therefore, advises that the Department scrutinises the proposed Strategy for full compliance with international human rights standards.\(^2\)

4. In addition to these treaty standards there exists a body of ‘soft law’ developed by the human rights bodies of the United Nations. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include;


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\(^3\) United Nations General Assembly (1985) A/RES/40/34.
and Procedure (‘Committee of Ministers’ Recommendation on the Position of the Victim’)

- **Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice** (UN General Assembly Resolution 52/86, 1997)

- **Recommendation No. R (97) 13 of the Committee of Ministers Concerning Intimidation of Witnesses and the Rights of the Defence** (‘Committee of Ministers’ Recommendation on Intimidation of Witnesses’)


- **Recommendation Rec (2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice**. (‘Committee of Ministers’ Recommendation on protection of witnesses’)

- **Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime**, (Economic and Social Council resolution 2005/20)

- **Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts**, 2005 (‘COE Guidelines on the protection of victims of terrorist acts’)

· The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2006.\(^4\) (‘UN Basic Principles on the Right to a Remedy and Reparation’)

· Recommendation Rec (2006)8 of the Committee of Ministers to member states on assistance to crime victims. (‘Committee of Ministers’ Recommendation on assistance to crime victims’)


· Criminal Justice Assessment Toolkit: Victims and Witnesses, UN Office on Drugs and Crime, 2006. (‘Criminal Justice Assessment Toolkit’).


· The Yogakarta Principles, Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2007 (‘Yogakarta Principles’)


· Manual on Victimization Surveys, UN Office on Drugs and Crime, UN Economic Commission for Europe, 2010


6. The Commission notes that the UK Government and NI Executive are required to transpose EU Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims


7. The Commission notes the EU Directive’s foundation in international human rights law and that the Tampere Presidency Conclusions, which called for minimum standards for the protection of victims of crime to be drawn up,\(^5\) stated that the aim of developing the Union as an area of freedom, security and justice “is an open and secure European Union, fully committed to the obligations of the Geneva Refugee convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity.”\(^6\) Council Conclusions on a strategy to ensure fulfillment of the rights of and improve support to persons who fall victim to crime in the European Union,\(^7\) the Council of the European Union roadmap for strengthening the rights and protections of victims,\(^8\) and the EU Directive itself consistently reference international human rights standards regarding victims, including the ECHR and the Committee of Ministers’ Recommendation on assistance to crime victims.\(^9\)

8. The Commission notes that the EU Directive was finalized after the publication of the current consultation paper. The Commission recognizes the Department’s intention to ensure that the Code of Practice for Victims is in compliance with the provisions in the EU Directive\(^10\) and that the position of victims “will be strengthened following [the Directive’s] implementation.”\(^11\) The Commission suggests that it would be both prudent and practical for the Strategy to act as a vehicle for implementation of the Directive and advises that the Department ensure that the Strategy is fully compliant with the Directive.

\(^7\) Council Conclusions on a strategy to ensure fulfillment of the rights of and improve support to persons who fall victim to crime in the European Union, 2969th Justice and Home Affairs Council meeting, Luxembourg, 23 October 2009, pp. 2-3.
\(^8\) Resolution of the Council on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, Council of the European Union, 3096th Justice and Home Affairs Council meeting, Luxembourg, 9 and 10 June 2011, paras 1-12.
\(^9\) See also, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Strengthening victims’ rights in the EU, Brussels, 18.5.2011, COM(2011) 274 final, pp. 3-4.
\(^10\) Strategy, p. 18.
\(^11\) Strategy, para. 61.
9. The Commission broadly welcomes the Strategy as an important step towards implementing the EU Directive and achieving the goals of the Basic Principles and international human rights standards in this area.

10. The Commission provides this advice cognizant that pursuant to international human rights standards, the Strategy should be implemented without prejudice to the rights of the defendant. In particular the strategy should ensure that the right to a fair trial is not infringed through the provision of protection measures for victims and witnesses.\(^{12}\) In this regard the European Court of Human Rights (‘ECtHR’) has stated that:

“the Court will look at the proceedings as a whole, having regard to the rights of the defence but also to the interests of the public and the victim(s) that crime is properly prosecuted (see Gäfgen v. Germany [GC], no. 22978/05, § 175, ECHR 2010) and, where necessary, to the rights of witnesses (see, amongst many authorities, Doorson v. the Netherlands, 26 March 1996, § 70, Reports of Judgments and Decisions 1996-II). It is also notable in this context that the admissibility of evidence is a matter for regulation by national law and the national courts and that the Court’s only concern is to examine whether the proceedings have been conducted fairly (see Gäfgen, cited above, § 162, and the references therein).”\(^{13}\)

11. In its submission the Commission will provide advice on the application of international human rights standards both generally and in four specific areas. These areas are; the definitions of victims and witnesses, communication and information provision, support provision and special measures, and participation and improved understanding. There may be other aspects of the Strategy which the Department requires advice upon which the Commission will be pleased to provide.

**International Standards**

12. The consultation paper at paragraph 20 notes international developments aimed at improving services for victims, such as the draft EU Directive. The Commission advises that the Strategy

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12 EU Directive, Preamble, para 12; ICCPR, Article 14; ECHR, Art 6; Universal Declaration of Human Rights, Arts 10 and 11.

13 *Pesukic v Switzerland*, § 43, no. 25088/07 ECHR 2012.
should make specific reference to relevant international human rights law standards and obligations emerging therefrom.

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

14. The ICCPR refers to “respect for the inherent dignity of human persons”\(^{14}\) and states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, or to unlawful attacks on his honour and reputation.”\(^{15}\) In accordance with the Covenant, States have a general obligation to undertake necessary steps “to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant.”\(^{16}\)

15. Pursuant to international human rights law the NI Executive must prevent, investigate, prosecute and punish human rights violations.\(^{17}\) The Human Rights Committee has stated that “the obligation under the ICCPR is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals in their jurisdiction. This aspect calls for specific activities by the State parties to enable individuals to enjoy their rights.”\(^{18}\)

16. The jurisprudence of the ECtHR has in particular set out a number of requirements for an investigation into the death or torture, inhuman or degrading treatment of an individual to be considered effective. The ‘Jordan Principles’ identify the essential requirements for effective investigations which must: be prompt; be impartial; have hierarchical independence from those implicated; provide sufficient involvement of next of kin; and have the ability to hold those responsible to account.\(^{19}\)

\(^{14}\) ICCPR, Art 10.
\(^{15}\) ICCPR, Art. 17.
\(^{16}\) ICCPR, Art. 2.
\(^{17}\) Rajapaske v. Sri Lanka, (CCPR/C/87/D/1250/2004). See also, CRPD Art. 16; COE Guidelines on the protection of victims of terrorist acts, Principle IV.1; Yogakarta Principles, Principles 5(D) and 29.
\(^{18}\) UN Human Rights Committee, General Comment No. 3 (Article 2 – Implementation at the national level), para. 1.
\(^{19}\) Jordan v. United Kingdom, 24746/94 [2001], ECHR 327, 4 May 2001.
17. The Basic Principles set out a range of actions which the NI Executive is required to undertake to ensure protection for the rights of victims of crime. This instrument is complimented by the Recommendations of the Committee of Ministers and international human rights standards discussed throughout this response, which set out further measures with respect to victims and witnesses specifically.

18. The Commission notes that as part of the Strategy the Department undertakes to keep under review national and European developments in relation to the treatment of victims. The Commission advises that in addition the Department should undertake to ensure full compliance with developments in international human rights law and this should be reflected in the aims of the Strategy.

The Definition of Victims

19. The Commission advises that the Department broadens the definition of victim included in the Strategy to ensure it fully reflects international human rights standards.

20. The Basic Principles define victims as:

“persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member states, including those laws proscribing criminal abuse of power.”

21. Similarly the EU Directive states that:

“‘victim’ means: (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence.”

22. The Commission advises that the definition of victim in the Strategy should explicitly make clear that:

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20 Committee of Ministers’ Recommendation on assistance to crime victims, para. 1.1:
“Victim means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a member state.”

“A person may be considered a victim... regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.”

23. In line with the guidance laid down in the General Principles, the Commission further advises that the Department should ensure that the definition of victims “includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

**The Definition of Witnesses**

24. The Commission broadly welcomes that the definition of witnesses used in the Strategy is consistent with international standards and draws the Department’s attention to the definition of witnesses contained in the Committee of Ministers’ Recommendation on protection of witnesses:

> “‘witness’ means any person who possesses information relevant to criminal proceedings about which he/she has given and/or is able to give testimony (irrespective of his/her status and of the direct or indirect, oral or written form of the testimony, in accordance with national law)”.

25. Similarly the Committee of Ministers’ Recommendation on Intimidation of Witnesses defines a witness broadly as “any person, irrespective of his/her status under national criminal procedural law, who possesses information relevant to criminal proceedings. This definition also includes experts as well as interpreters.”

**The Status and Treatment of Victims and Witnesses**

26. The Commission welcomes the Strategy’s commitment to ensuring that victims “be treated with courtesy, dignity and respect.” Implementation of this commitment will ensure compliance with one of the key requirements under the Basic Principles, that

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22 Basic Principles, para. 2.
23 Basic Principles, para. 2. See also, Committee of Ministers’ Recommendation on assistance to crime victims, para 1.1: “The term victim also includes, where appropriate, the immediate family or dependants of the direct victim.”
24 Committee of Ministers’ Recommendation on protection of witnesses, para. 1.
25 Strategy, p. 17.
“Victims should be treated with compassion and respect for their dignity.”

**Training**

27. The Commission notes that in accordance with EU Directive, Art 25 (1) the Department has committed to “provide mandatory training on the care and treatment of victims and witnesses for all staff in the criminal justice organizations who interact with them.”

28. The Commission notes that in accordance with international human rights standards, and the Strategy itself, support and assistance for victims should be provided not only by staff in criminal justice organizations. The Strategy states that it "is important that victims and witnesses of crime have access to a range of support services that provide practical assistance and, where necessary, that they are helped to access emotional and psychological support." The document further notes "the importance of collaborative working in delivering this strategy..."

29. The Commission notes that the Strategy recognizes that “Services should be under-pinned by consistent and high quality standards which should be informed by victims and witnesses’ needs and supported by relevant training.” However, the Strategy does not provide detail regarding training to be provided beyond staff in criminal justice organizations. The Commission advises that in order to fully comply with international human rights standards the Strategy should ensure that training is provided more broadly.

30. The Committee of Ministers’ Recommendation on assistance to crime victims outlines requirements regarding training for “paid and voluntary staff”, “police and personnel involved in the administration of justice”, “the emergency services and others attending the scene of a major incident”, and “relevant staff in health, housing, social security, education and employment..."

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26 Basic Principles, para. 4.
27 Strategy, para. 7.
28 Strategy, para. 7.
29 Strategy, para. 92.
30 Strategy, para. 25.
services.” The Basic Principles similarly state that: “Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.” A cross-Departmental approach may be required regarding the provision of training, particularly in the areas of health and social services.

31. In developing appropriate training the Department should have regard to the content of training set out in the relevant human rights standards. This should form part of the action plans to implement the Strategy.

32. Pursuant to the Committee of Ministers’ Recommendation on assistance to crime victims “specialised training should be provided for all personnel working with child victims and victims of special categories of crime, for example, domestic or sexual violence, terrorism, crimes motivated by racial, religious or other prejudice, as well as to families of murder victims.”

33. The CRPD requires that “[i]n order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice.” The COE Guidelines on the protection of victims of terrorist acts call for “specific training for persons responsible for assisting victims of terrorist acts, as well as granting the necessary resources to that effect.”

34. Regarding child victims and witnesses the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime require that “each jurisdiction should ensure that adequate training, selection and procedures are put in place to protect and meet the special needs of child victims and witnesses of crime.” The Committee of Ministers’ Recommendation on Intimidation of Witnesses states that “Criminal justice personnel should have

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31 Committee of Ministers’ Recommendation on assistance to crime victims, para. 12.1 and 12.4. See also, EU Directive, Art. 25.
32 Basic Principles, para. 16. See also, Convention against Corruption, Art. 60 (1)(i).
33 Committee of Ministers’ Recommendation on assistance to crime victims, para. 12.
34 Strategy, para. 88.
35 Committee of Ministers’ Recommendation on assistance to crime victims, para. 12.1.
36 CRPD, Art. 13.2.
37 COE Guidelines on the protection of victims of terrorist acts, Guideline XI. See also, Yogakarta Principles, Principle 8(C).
38 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, para. 4.
adequate training to deal with cases where witnesses might be at risk of intimidation.”

35. The EU Directive requires that:

“In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.”

**Victim Impact Statements**

36. The Commission welcomes the proposals with respect to victim impact statements, we note that this is broadly consistent with paragraph 6 of the Basic Principles which states:

“The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: ... (b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected...”

**Communication and information provision**

37. The Commission welcomes the Strategy’s focus on communication and information provision, in particular the Commission notes that the Victim’s Charter will include an entitlement to reasons for any delay and to reasons for a decision not to prosecute. In addition it is noted that the operation of the post sentence victim information scheme is to be reviewed with a view to streamlining the service. These measures will go some way to ensuring compliance with the State’s obligation to: “ensure that victims have access to information of relevance to their case and necessary for the protection of their interests and the exercise of their rights.”

38. The Commission advises that in implementing “clearly defined communication procedures” the Department should ensure that information on the full range of issues set out in EU Directive, Art

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40. EU Directive, Art. 25(5). See also Committee of Ministers’ Recommendation on assistance to crime victims, para. 12.2.
41. Committee of Ministers’ Recommendation on assistance to crime victims, para. 6.1. See also, Basic Principles, para. 6(a); COE Guidelines on the protection of victims of terrorist acts, Guideline X.
42. Strategy, p. 20.
4 will be provided to victims “without unnecessary delay, from their first contact with a competent authority”.

39. The Commission welcomes the proposed establishment of a Victim and Witness Care Unit, which will assist in ensuring the continued provision of information throughout a victim’s contact with relevant agencies in accordance with international standards.

40. The Commission further welcomes efforts in recent years to “improve the public’s understanding of the criminal justice system.” In this regard, the Commission commends the Strategy’s commitment to “look[...] at providing information in a suitable format for persons with disabilities and also in a child-friendly format.”

41. The Commission advises that to ensure compliance with CRPD the Strategy should make a firm commitment to providing information on the basis of the needs of the individual through “the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities...”

42. Further, the Commission notes the role of the NSPCC Young Witness Service but advises that pursuant to the UNCRC, the Strategy should commit to providing written and oral information, including Codes of Practice, to child victims and witnesses in a child-friendly manner.

Support provisions and special measures

43. The Commission notes that the Basic Principles require that “Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means” and that measures be taken to "minimize inconvenience to victims, protect

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43 EU Directive, Art. 4. See also, Basic Principles, para 15; Committee of Ministers’ Recommendation on assistance to crime victims, para. 6.2.
44 Committee of Ministers’ Recommendation on assistance to crime victims, para. 6.5; EU Directive, Art. 6 (1).
45 Strategy, para. 82.
46 Strategy, Appendix E, Action 20.
47 CRPD, Art. 21(b).
48 Committee on the Rights of the Child, General Comment No. 12 (the right of the child to be heard) CRC/C/GC/12 , para. 34.
their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation. 50

44. The Committee of Ministers’ Recommendation on Intimidation of Witnesses states that “the protection of witnesses, their relatives and other persons close to them, should be organized, where necessary, including the protection of their life and personal security before, during and after trial.” 51 The Recommendation further calls for witnesses to “be provided with alternative methods of giving evidence which protect them from intimidation resulting from face to face confrontation with the accused...” 52

45. The Commission welcomes the Strategy’s proposals regarding assistance, support provisions and special measures as an important step towards satisfying these requirements.

46. The Commission notes the Strategy’s commitment to being “more responsive to victims’ needs, in terms of addressing problems and issues that arise outside of the formal complaints mechanisms.” 53 In this regard, the Commission advises that the Strategy should "ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority." 54 Further, pursuant to the Committee of Ministers’ Recommendation on assistance to crime victims the “granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the criminal act.” 55 In addition, the Convention Against Trafficking stresses that “Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.” 56

Assistance and Rehabilitation

47. The Commission advises that international human rights standards contain specific requirements regarding assistance to, and

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50 Basic Principles, para. 6(d). See also, Convention against Corruption, Art. 32.
51 Committee of Ministers’ Recommendation on Intimidation of Witnesses, para. 2.
52 Committee of Ministers’ Recommendation on Intimidation of Witnesses, para. 6.
53 Strategy, p. 18.
54 EU Directive, Art 8. See also EU Directive, Art 9.1; COE Guidelines on the protection of victims of terrorist acts, Principles I.2 and IV.2;
55 Committee of Ministers’ Recommendation on assistance to crime victims, para. 2.3.
56 Convention against Trafficking, Art. 12.6.
rehabilitation of, victims.\textsuperscript{57} The Committee of Ministers’ Recommendation on assistance to crime victims recommends that “States should identify and support measures to alleviate the negative effects of crime and to undertake that victims are assisted in all aspects of their rehabilitation, in the community, at home and in the workplace.”\textsuperscript{58}

48. The Committee of Ministers notes that “assistance available should include the provision of medical care, material support and psychological health services as well as social care and counseling.”\textsuperscript{59}

49. This obligation is particularly relevant with respect to children as article 39 of UNCRC requires that:

“States parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

50. The Committee on the Elimination of Discrimination against Women has also recommended that States take “protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.”\textsuperscript{60}

51. The Department should ensure that the Strategy provides for assistance to, and the rehabilitation of, victims in compliance with the NI Executive’s obligations under international human rights standards. This is a cross departmental issue and it is important that victims are assisted and referred to appropriate services.

\textsuperscript{57} Committee of Ministers’ Recommendation on Intimidation of Witnesses, para. 22; Yogakarta Principles, Principle 10(B); CRPD, Art. 16(4); COE Guidelines on the protection of victims of terrorist acts, Principles II and III; Convention against Trafficking, Art. 12; CAT, Art. 14(1).

\textsuperscript{58} Committee of Ministers’ Recommendation on assistance to crime victims, para. 3.1.

\textsuperscript{59} Committee of Ministers’ Recommendation on assistance to crime victims, para. 3.2.

\textsuperscript{60} General Recommendation No. 19 (Violence against women), para 24(t)(iii).
Vulnerable and Intimidated witnesses

52. International human rights law places specific obligations on the state with respect to groups who are particularly vulnerable and victims and witnesses of special categories of crime. The Basic Principles note that;

“attention should be given to those [victims] who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 [race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.]”

53. The Commission welcomes the Strategy’s commitment to carrying out an early assessment of victims’ needs, and reviewing those needs at different stages. The Commission recognises recent progress in the provision of support to vulnerable and intimidated victims and witnesses including the introduction of additional support measures through the Justice Act (Northern Ireland) 2011 and the publication of the Achieving Best Evidence Guide, containing “good practice guidance on the provision of therapy ahead of a trial so that vulnerable and intimidated witnesses should not be denied any emotional support and counseling they need before and during the trial.”

54. The Commission commends the proposed development of a guide to working with intimidated witnesses for police and criminal justice system practitioners.

Identification of Vulnerable Groups

55. The UN Committee on the Elimination of Discrimination Against Women have made specific reference to states’ obligations to protect women against sexual and gender-based violence and to provide protection and support for victims. The Committee in their General Recommendation No. 19 require state parties to:

61 See also, EU Directive, Preamble, para. 56 and Art. 22.
62 Basic Principles, paras. 17 and 3.
63 Committee of Ministers’ Recommendation on assistance to crime victims, para. 3.4
64 Strategy, pp. 13 and 41.
“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.”

56. Optional Protocol UNCRC, Art 8 (1)(a) and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime highlight the vulnerability of children at all stages of the criminal justice process. The Committee on the Rights of the Child stressed that;

“A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.”

57. In accordance with the CRPD the NI Executive is obligated to

“ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”

58. The Yokagakarta Principles call on States to

“Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the judicial process... and to ensure that no one’s credibility or character as a

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65 See also Committee of Ministers’ Recommendation on Intimidation of Witnesses, para. 21.
66 See also, Committee of Ministers’ Recommendation on Intimidation of Witnesses, paras. 19 and 20.
67 Committee on the Rights of the Child, General Comment No. 12 (the right of the child to be heard) CRC/C/GC/12, para. 34. See also, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, para. 16.
68 CRPD, Art. 13(1).
party, witness, advocate or decision-maker is impugned by reason of their sexual orientation or gender identity.”

Victims of Special Categories of Crime

59. Victims and witnesses of certain categories of crime, such as human trafficking, require specific treatment. The Committee of Ministers’ Recommendation on assistance to crime victims identifies “domestic or sexual violence, terrorism, crimes motivated by racial, religious or other prejudice” as special categories of crime requiring specific recognition.

60. The UN Trafficking Protocol and the Convention against Trafficking outline the specific requirements of victims of human trafficking. In this regard the Commission notes that the Strategy recognizes that victims of human trafficking may be considered intimidated witnesses and calls on the Department to strengthen measures to identify victims of human trafficking and provide appropriate resources for them.

61. Committee of Ministers’ Recommendation on Intimidation of Witnesses highlights the particularly difficult situation faced by “witnesses giving evidence against family members in criminal cases” and “elderly persons subjected to ill-treatment by their family.” The Committee noted that “When a vulnerable witness first reports allegations to the police, there should be immediate access to professional help” and that “the examination of the witness should be conducted by suitably trained staff.”

62. To the extent that the Strategy will cover criminal justice processes that engage victims and witnesses of the conflict in NI it is insufficient for the Strategy to state that it “does not contain specific actions in relation to victims of ‘the Troubles’.” The Commission notes however that the Strategy refers to responsibilities of the OFMdFM as regards victims and survivors and that complimentarity of departmental work will follow. If and when a complimentary strategy is introduced by the OFMdFM then

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69 Yogakarta Principles, Principle 5(D).
70 See also, EU Directive, Preamble, para. 56 and Art. 22.
71 Committee of Ministers’ Recommendation on assistance to crime victims, para. 12.3.
72 Convention against Trafficking, Art. 10(2).
73 Committee of Ministers’ Recommendation on Intimidation of Witnesses, paras 17 and 21.
74 Committee of Ministers’ Recommendation on Intimidation of Witnesses, para. 24.
it will be necessary to ensure early delivery so that binding human rights standards are complied with.

63. The Commission draws the Department’s attention to the guidance provided by the UN High Commissioner for Human Rights regarding post-conflict states, which notes that prosecutorial initiatives should “pay particular attention to victims, ensuring (as far as possible) their meaningful participation, and ensure adequate protection of witnesses”.76

64. The Commission advises that victims and witnesses of the conflict in NI should be specifically considered within the Strategy. Victims of the conflict should be treated as vulnerable and intimidated victims and witnesses and should be entitled to the assistance, protection and special measures afforded to these victims and witnesses in accordance with international human rights standards including the Rule-of-Law Tools for Post-Conflict States.77

65. The Commission advises that the Strategy’s description of vulnerable and intimidated victims and witnesses should be broadened pursuant to the EU Directive and international human rights standards to include victims and witnesses of the NI conflict. This categorization should be in addition to terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and all victims and witnesses with disabilities.78 The EU Directive states that regarding vulnerable and intimidated witnesses “there should be a strong presumption that those victims will benefit from special protection measures.”79

**Special measures**

66. Special measures and services available to support victims and witnesses should reflect international human rights standards including the Committee of Ministers’ Recommendations on Intimidation of Witnesses80 and the Protection of Witnesses.81

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78 EU Directive, Preamble, para 57.
79 Ibid.
80 Committee of Ministers’ Recommendation on Intimidation of Witnesses, paras. 6, 8-13.
81 Committee of Ministers’ Recommendation on protection of witnesses, paras. 10-28. See also EU Directive Art 23.
67. The Commission recalls that special measures should in particular be available to vulnerable and intimidated witnesses, including victims and witnesses of crimes committed during the NI conflict.

Protection measures

68. The Commission advises that the Department should ensure that protection measures for victims and witnesses provided for in the Strategy are in full compliance with international human rights standards such as the Committee of Ministers’ Recommendation on protection of witnesses, including "where appropriate, witness protection programmes." 82

69. The Human Rights Committee has held that Article 9, paragraph 1 of the ICCPR encompasses the right to protection in order to ensure the enjoyment of the right to security. 83 The State party is obliged to protect the complainant from threats or intimidation and to ensure that similar violations do not occur in the future. 84

70. The Human Rights Council encouraged “States to design programmes and other measures to protect witnesses and individuals who cooperate with judicial bodies and mechanisms of a quasi-judicial or non-judicial nature, such as human rights commissions and truth commissions.” 85 The Council called “upon all States to consider developing comprehensive witness protection programmes covering all types of crimes, including gross human rights violations and serious violations of international humanitarian law.” 86

71. Protection measures should aim to prevent secondary and repeat victimization and should ensure that victims’ privacy is protected. 87 Thus the ECtHR has stated:

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82 Committee of Ministers’ Recommendation on protection of witnesses, para. 23. See also, paras 10-28. See also, Committee of Ministers’ Recommendation on assistance to crime victims, para. 10; Pesukic v Switzerland, §§ 44-51, no. 25088/07 ECHR 2012; EU Directive, Arts 18 and 23; Convention against Corruption, Art. 32; CAT, Art. 13; Committee of Ministers’ Recommendation on Intimidation of Witnesses, paras. 9-16; COE Guidelines on the protection of victims of terrorist acts, Guidelines VIII and IX; Yogakarta Principles, Principle 10 (A) and (B); Convention against Trafficking, Art. 11.


84 Ibid. See also, Delgado Paez v. Colombia (CCPR/C/39/D/195/1985).

85 HRC Resolution on the Right to the Truth, para. 6.

86 HRC Resolution on the Right to the Truth, para. 9.

87 Basic Principles, para. 6(d); EU Directive, Art 21; Committee of Ministers’ Recommendation on assistance to crime victims, para 10.5-10.9; Convention against Transnational Organized Crime, Arts. 6 and 9.
“It is true that Article 6 (art. 6) does not explicitly require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However, their life, liberty or security of person may be at stake, as may interests coming generally within the ambit of Article 8 (art. 8) of the Convention. Such interests of witnesses and victims are in principle protected by other, substantive provisions of the Convention, which imply that Contracting States should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled. Against this background, principles of fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify.”88

72. The Commission draws the Department’s attention to the UNODC, Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, a useful reference tool that draws upon the experience of Member States in setting up effective and sustainable programmes for the protection of witnesses. Key elements of a legal framework for witness and victim protection are further outlined in the Report of the UN High Commissioner for Human Rights on the Right to the truth.89

Participation and improved understanding

Review of Decisions

73. The provision of information to victims regarding the decisions taken by prosecutorial authorities is particularly pertinent to ensuring they are treated with compassion and dignity. The Commission welcomes that the Strategy will provide that victims of crime will be entitled to be given reasons for a decision not to prosecute and that the Code of Practice for Victims permits victims to ask for a review where such a decision has been taken. This is consistent with the Basic Principles and assists in ensuring that victims are treated with compassion and respect for their dignity.90

88 Doorson v. the Netherlands, 26 March 1996, § 70, Reports of Judgments and Decisions 1996-II. See also, Kilic v Turkey (ECHR), application No. 22492/93; Aksoy v. Turkey (ECHR, application No. 21987/93).
90 Basic Principles, para. 4.
74. The Commission notes that the prosecution may take decisions short of a decision not to prosecute an offender which may have significant implications for a victim. The Commission notes that the PPS Victims and Witnesses Policy states that the PPS will endeavour to explain to a victim when a decision is taken to proceed with a lesser charge. In light of the potential implications for the victim and the requirement to ensure that victims are kept informed of the outcome of their complaint, the Commission advises that a reference to this obligation should be included within the Strategy.91

**Compensation**

75. The Commission welcomes the proposed review of operational issues regarding the delivery of the Compensation Agency’s compensation schemes and of legislation underpinning the Criminal Injuries and Criminal Damage Compensation Schemes. The Commission further commends the Strategy’s aim to improve the “delivery of compensation schemes.”92 It advises that the Department should consider applicable international human rights standards as part of the review.93

76. The Basic Principles state that:

> “when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

a. Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

b. The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.”94

77. The Basic Principles call upon States to adopt compensation schemes for victims of crime, a requirement also imposed on the

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91 Committee of Ministers Recommendation on assistance to crime victims para 6.5.
92 Strategy, para. 11.
93 Convention against Corruption, Art. 57 (3)(c).
94 Basic Principles, para. 12. See also, Committee of Ministers’ Recommendation on assistance to crime victims, para. 8.1 and The European Convention on the Compensation of Victims of Violent Crimes.
UK Government and Northern Ireland Executive by the Council Directive on Compensation.95

78. To ensure that victims have full access to compensation, the enhanced communication and information provisions discussed above should also provide comprehensive and accessible information on public compensation schemes to potential applicants.96

79. The Committee of Ministers and the European Convention on the Compensation of Victims of Violent Crimes outline the types of damages requiring compensation.97

80. Furthermore, a number of human rights standards require provision for compensation in the event of violations of protected rights.98 For example, CAT specifies that States parties have a duty to ensure that victims of torture obtain redress and that they have an "enforceable right to fair and adequate compensation."99

81. The Commission advises that pursuant to international human rights law provisions regarding compensation will also be of particular relevance to victims of the NI Conflict as the COE Guidelines on the protection of victims of terrorist acts state that "Victims of terrorist acts should receive fair, appropriate and timely compensation for the damages they suffered."100 Furthermore, the UN Basic Principles on the Right to a Remedy and Reparation call for compensation to be available for victims of gross violations of international human rights law and serious violations of international humanitarian law.101

95 Basic Principles, para. 13: “The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.” See also, Committee of Ministers Recommendation on assistance to crime victims, para. 8.2: “States should adopt a compensation scheme for the victims of crimes committed on their territory, irrespective of the victim’s nationality.”


97 Committee of Ministers’ Recommendation on assistance to crime victims, para. 8.6-8.8. See also, The European Convention on the Compensation of Victims of Violent Crimes, Art. 4.

98 See also, Yogakarta Principles, Principles 5(D) and 28.


100 COE Guidelines on the protection of victims of terrorist acts, Guideline VII.

101 UN Basic Principles on the Right to a Remedy and Reparation, Principles 18 and 21.
Collation of Information and Research on the Experiences of Victims and Witnesses

82. The Commission welcomes the Strategy’s commitment to “listening to the experiences of [victims] who have already come into contact with the system” and to improving the methodology used and increasing research and analysis.\textsuperscript{102} In this regard the Manual on Victimization Surveys, a comprehensive source of information for developing a national victimization survey and the key issues which need to be considered, will be a useful resource.\textsuperscript{103} The EU Directive highlighted that “systematic and adequate statistical data collection is recognized as an essential component of effective policy-making in the field of rights set out in this Directive.”\textsuperscript{104} In addition to keeping its own research base up to date the Department should also take into consideration research undertaken by local and international bodies, including the voluntary sector delivery partners identified in the Strategy.\textsuperscript{105}

83. As the Department develops its Strategy regarding research and analysis in this area the Commission draws attention to the Committee of Ministers’ recommendation that:

“Research should include:
- Criminal victimization and its impact on victims;
- Prevalence and risks of criminal victimization including factors affecting risk;
- The effectiveness of legislative and other measures for the support and protection of victims of crime – both in criminal justice and in the community;
- The effectiveness of intervention by criminal justice agencies and victim services.”\textsuperscript{106}

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\textsuperscript{102} Strategy, p.27.
\textsuperscript{103} Manual on Victimization Surveys, para. 2.
\textsuperscript{104} EU Directive, Preamble, para. 64. See also, Committee of Ministers’ Recommendation on assistance to crime victims, para. 17.1.
\textsuperscript{105} Committee of Ministers’ Recommendation on assistance to crime victims, para. 17.4, para 17.3.
\textsuperscript{106} Committee of Ministers’ Recommendation on assistance to crime victims, para. 17.2.