



Federation Northern Ireland

RESPONSE TO

Consultation on Proposals for Reform of the Law on Murder, Manslaughter and Infanticide

October 2008

Women's Aid Federation Northern Ireland
129 University Street
BELFAST BT7 1HP

Tel: 02890 249041

Fax: 02890 239296

General Email: info@womensaidni.org

Website: www.womensaidni.org

24 Hour Domestic Violence Helpline - 0800 917 1414

Introduction

Women's Aid is the lead voluntary organisation in Northern Ireland addressing domestic violence and providing services for women and children. We recognise domestic violence as one form of violence against women. Women's Aid seeks to challenge attitudes and beliefs that perpetuate domestic violence and, through our work, promote healthy and non-abusive relationships.

Women's Aid services across Northern Ireland include:

- 12 refuges with 300 bed spaces, playrooms and facilities.
- 1102 women and 896 children sought refuge in 2007 - 2008
- 12 resource centres for women seeking information and support; group work and training.
- 24 Hour Domestic Violence Helpline 0800 917 1414
- Move-on houses for women and children leaving refuges.
- Floating Support for women staying at home.
- Training on domestic violence and related issues.
- Inter-agency work across Northern Ireland.
- Young Person's Development Project.

The following response is based on consultation with Women's Aid Federation Northern Ireland and our ten local Women's Aid groups. The term Women's Aid refers to the Federation and the local groups.

Women's Aid welcomes the publication of this consultation on Proposals for Reform of the law on Murder, Manslaughter and Infanticide and the opportunity to comment upon it.

1. DOMESTIC VIOLENCE

Domestic violence is one form of violence against women:

- Domestic violence is a violation of Article 5 of the UN Universal Declaration of Human Rights – that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.
- Women are not passive victims of domestic violence. With support women have the capacity to cope with and survive the violence and abuse they experience.
- Domestic Violence is a crime. PSNI statistics for 2007/08 indicate that there were more recorded crimes with a domestic

motivation (9,283) than the combined total of all the following crimes (9,254). These include all recorded sexual offences (1,822), robbery (607), armed robbery (444), hijacking (92), theft or unauthorised taking of a motor vehicle (3,336), arson (2,244) dangerous driving (513), handling stolen goods (191) and offences under anti-terrorism legislation (5).

2. Core Work of Women's Aid

The core work of Women's Aid in Northern Ireland, including the Federation and local Women's Aid groups is:

- To provide refuge accommodation to women and their children.
- To provide a range of support services to enable women who are leaving a violent situation to rebuild their lives and the lives of their children.
- To provide a range of support services to children and young people who have experienced domestic violence.
- To educate and inform the public, media, police, courts, social services and other agencies of the impact and effects of domestic violence.
- To advise and support all relevant agencies in the development of domestic violence policies, protocols and service delivery.
- To work in partnership with all relevant agencies to ensure a "joined up" response to domestic violence.

Comments:

Women's Aid Federation broadly supports the proposals contained in the consultation on reform of the Law on Murder, Manslaughter and Infanticide. It is our view that these proposals go some way to addressing an area of law which has led to inequality of treatment for abused women. The proposals in respect of the defence of Provocation, are also consistent with the State's obligations in respect of the Convention on the Elimination of Discrimination Against Women (CEDAW)¹ Article 15 of the Convention accords women equality before the law.

It is rare for women subjected to domestic violence to murder the perpetrator. It is however, a much more frequent occurrence that the perpetrator murders their victim. Statistics show that 2 women are killed by their partners in the UK every week. We believe that it is vital to stress the reality of domestic violence, the pattern of sustained physical and emotional abuse and its consequences for the victim, the vast majority of whom are women. We have been particularly

¹ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979: UN General Assembly

disturbed by recent PSNI statistics which indicated that of the 25 murders committed in Northern Ireland in 2007/08, 11 of these crimes were committed with a domestic motivation. It is in this context that we make the following comments and observations:

- Women's Aid Federation broadly welcomes the proposed changes to the partial defence of provocation. Specifically the inclusion and recognition of those who kill in response to fear of serious violence. (Annex A, Clause 1(5))
- We have some reservations regarding aspects of the proposed removal of the existing common law requirement for loss of self-control in these circumstances to be "sudden." We note that the original Law Commission proposals suggested complete removal of the requirement for a loss of self control.
- We recognise that the proposed removal of the term "sudden" formally acknowledges the cumulative effect and impact on an individual, of sustained abuse and feel that this may serve to address the difficulty that women who murder abusive partners, have in mounting a defence of provocation.
- This is particularly the case in instances where, as a result of the fear of serious violence from the perpetrator, coupled with inequalities in physical strength, the women may appear to have killed in a controlled manner, for example whilst the violent partner was asleep.
- In cases such as these, the issue is less with the timing of the incident but with whether or not there was a "loss of self-control."
- In respect of the clause which stipulates that the partial defence of loss of control resulting from fear of violence etc, "does not apply if the qualifying trigger to which the loss of self-control is attributable, is itself predominantly attributable to conduct engaged in by the defendant which constitutes one or more criminal offences." (Annex A Clause1 (8)); We are concerned that whilst this allows for those acts committed in the course of criminal activity such as drug dealing, it may also apply to prostitution. In light of the levels of trafficking and sexual exploitation of women and the risk of sexual violence to which women engaged in prostitution are exposed, we believe that this clause should be amended or clarified so that women in these circumstances are not denied the opportunity to utilise this partial defence.
- We also support the provision that the "Words and Conduct" partial defence should not apply where the words or conduct were incited by the

defendant for the purpose of providing an excuse to use violence.(Annex A, Clause 9 (b))

- We broadly welcome the proposed clarification that allegations, or substantive evidence of sexual infidelity on the part of the victim will no longer constitute an “exceptional happening” and therefore provide grounds for reducing murder to manslaughter.
- We note however that for some women, evidence of infidelity on the part of a violent and abusive partner, may constitute a “trigger” as a result of cumulative provocation. We therefore support the opinion expressed by Justice for Women that, “the words “not of itself” in clause 1 (9) (a) mean that she would still be able to rely on the defence.”²
- We would request some clarification on the partial defence of killing in response to words and conduct which, “amounted to an exceptional happening and caused the defendant to have a justifiable sense of being seriously wronged.” (Annex A, Clause1 (6))
- In particular we are anxious that this should not be utilised as a defence for those who kill as a result of a decision by a partner to terminate a relationship and/or to seek residency of children. Similarly that it should not constitute a partial defence in cases of,“Honour Killings”.
- In respect of the proposed “Safeguards” in the partial defence of provocation. Women’s Aid is concerned that any attempt to establish “reasonableness” will prove difficult for juries who may be unfamiliar with the complexities of domestic violence and the often unique effects of the crime on the individual victim. This may prove problematic for the delivery of a fair verdict in these cases.
- As such we would welcome the inclusion of the Law Commission’s proviso that, “The partial defence should not apply where: the provocation was incited by the defendant for the purpose of providing an excuse to use violence; or the defendant acted in considered desire for revenge.”³
- In respect of Annex B, Diminished Responsibility, Women’s Aid is disappointed that the Government proposal does not include the recommendation of the Law Commission that the definition of Diminished Responsibility should include developmental immaturity as a cause of impairment.

² Response of Justice for Women to “Murder, Manslaughter and Infanticide: Proposals for Reform of the Law” CP 19/08, Pg, 3

³ Murder, Manslaughter and Infanticide Law Com No:304 Paragraph 5:11

- Women’s Aid notes with concern, that the age of criminal responsibility in Northern Ireland is currently 10 years, making it one of the lowest in Europe. The continued low age of criminal responsibility was highlighted by the Children’s Law Centre and Save the Children in their submission to the United Nations Committee on the Rights of the Child in March 2008. In 2002 the UN Committee had stated that the minimum age for criminal responsibility should be considerably raised.⁴
- Women’s Aid welcomes the Government proposals in respect of Infanticide. Specifically that the law be amended, “to make clear that infanticide cannot be charged in cases that would not currently be homicide at all.”
- Whilst acknowledging the positive aspects of the proposals outlined, in the wider context of the criminal justice system, Women’s Aid Federation is of the strong opinion that Northern Ireland requires an integrated approach to the treatment of the crime of domestic violence. Specifically, that further research is required into the merits of introducing Domestic Violence Courts in Northern Ireland, in line with England and Wales. We also believe that the key issue of sentencing needs to be urgently addressed, particularly in respect of breaches of Non-Molestation Orders. It is essential that victims of domestic violence are protected and supported under the law and that perpetrators are punished for their crime.

For further information about this response contact:

Gillian Clifford
 Policy & Information Worker
 Women's Aid Federation Northern Ireland
 129 University Street
 BELFAST BT7 1HP
 Tel: 028 9024 9041

info@womensaidni.org

Website: www.womensaidni.org

24 Hour Domestic Violence Helpline - 0800 917 1414

⁴ UN Committee on the Rights of the Child 2002, Para 62a