

## Shadow report from the Centre for Women’s Justice for the Eighth Periodic Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Centre for Women’s Justice was founded in 2016 as a specialist legal charity with the mission statement: “*Holding the state to account for violence against women and girls*”. We are a team of lawyers headed by experienced human rights solicitor Harriet Wistrich, and managed by a Board of Trustees with collective and varied experience across the women’s sector.<sup>1</sup>

We were established to support and advocate for women and girls subject to gender-based violence in pursuing better access to legal remedies to defend and enhance their rights. We do this by advising on and leading in strategic legal challenges against the state, and working with others in the field to monitor and challenge harmful trends in policy and practice. A large proportion of our case-work and other projects involve interactions between women and the criminal justice system. We are aware that a Shadow Report has been submitted by a working group of civil society organisations convened by the Women’s Resource Centre, which addresses a range of issues affecting women. We wish to supplement that Shadow Report with the following brief considerations on the specific issue of secondary victimisation by the criminal justice system of women who have survived serious male violence.

We ask the Committee to consider in particular the following key issues which have arisen in our recent work:

### **1. ‘Women who kill’: neglect by the criminal justice system of the effects of men’s violence on women’s offending**

The Centre for Women’s Justice is aware of and continues to campaign in cases of women charged with murder after acting in self-defence against – or after horrific abuse perpetrated by – violent partners. Our sister organization, Justice for Women, has campaigned for the past 30 years on a number of cases.<sup>2</sup>

Stacey Hyde’s case is an indicative example. In 2015, Stacey Hyde was acquitted of all criminal responsibility for the death of the violent boyfriend of her friend who had attacked her, following a six-year ordeal at the hands of the criminal justice system.<sup>3</sup> She was just 17 years old at the time of the killing, was suffering from diagnosed mental health disorders following a traumatic childhood, and had maintained from the outset that she had acted in self-defence to protect her and her friend from the deceased.<sup>4</sup> Her conviction was quashed in 2014 by the Court of Appeal on the grounds that new evidence of her mental disorders substantially diminished her responsibility for the offence, but when she offered a guilty plea to manslaughter, the Director of Public Prosecutions refused to accept it.<sup>5</sup> Ms Hyde, a young woman at high risk of suicide and self-harm, spent a further six months in prison<sup>6</sup> and was forced by the Director of Public Prosecutions to face a fresh murder trial before she was acquitted entirely of criminal responsibility and finally freed.

Ms Hyde’s murder retrial began in the week the Director of Public Prosecutions announced that former peer and alleged child sex offender Greville Janner would not be tried for 22 counts of historical child abuse because he had Alzheimer’s Disease.<sup>7</sup> With a notoriously low rate of conviction for men who assault

<sup>1</sup> <http://centreforwomensjustice.org.uk/>

<sup>2</sup> <https://www.justiceforwomen.org.uk/25-years-on-what-has-changed-for-women-who-kill-their-violent-partners/>

<sup>3</sup> BBC News, ‘Stacey Hyde cleared of murdering Vincent Francis in retrial’, 21 May 2015, available at: <https://www.bbc.co.uk/news/uk-england-bristol-32829878>

<sup>4</sup> Sandra Laville, *The Guardian*, ‘Stacey Hyde: ‘There are many more who need their cases re-examined’’, 11 June 2015, available at: <https://www.theguardian.com/law/2015/jun/11/stacey-hyde-there-are-many-more-who-need-their-cases-re-examined>

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid., see also Cahal Milmo, *The Independent*, Labour peer Greville Janner avoids child sex abuse charges due to ill health, 16 April 2015, available at:

<https://www.independent.co.uk/news/uk/politics/labour-peer-greville-janner-avoids-child-sex-abuse-charges-due-to-ill-health-10182989.html>

women, it is particularly troubling that, in cases that we have worked on, the Crown Prosecution Service is so driven, and draconian, when it comes to prosecuting cases of retaliatory violence committed by vulnerable women against men by whom they are controlled and abused. The last 10 years has seen some reforms in laws around domestic violence, which include revised partial defences to murder in mitigating circumstances with the introduction of the Coroners and Justice Act 2009.<sup>8</sup> We are concerned, however, that when it comes to charging, indicting and considering pleas from such defendants, the Crown Prosecution Service is not making proactive decisions which properly reflect the changes in the law, and their duty under international frameworks to protect survivors of domestic violence. Instead, our concern is that the Crown Prosecution Service is actively resistant to receiving early offered pleas from such defendants which are proportionate to the circumstances of the offence.

The State is bound under Article 2(g) of CEDAW<sup>9</sup> to ensure that penal provisions which discriminate against women are abolished. We are not aware of any criminal proceedings brought against men who have killed female partners so cannot make direct comparisons, but what is clear is that there have been a number of cases in which women have been sentenced to lengthy prison sentences in these circumstances. In connection with its work alongside the campaigning organisation Justice for Women and a dedicated research project entitled '*Women Who Kill*', Centre for Women's Justice is involved in three active campaigns on behalf of women who are serving current sentences in connection with killing violent partners, one of whom, Sally Challen, has recently received permission to appeal her conviction.

## **2. Inadequate protection in the criminal justice system for the most vulnerable women, especially, prison conditions which have a disproportionately harsh effect on vulnerable women**

Further to and related to the above, relating to the conviction of women, and sentencing of vulnerable women to prison terms, the Centre for Women's Justice is dismayed to note that the recommendations set out in the 2007 report of Baroness Corston on women with particular vulnerabilities in the criminal justice system have not been implemented, contrary to the Committee's Concluding Observations on the United Kingdom's Seventh Periodic Report in 2013.<sup>10</sup> Since the publication of the former report, 94 women have died in prisons.<sup>11</sup> In 2016 there were 12 self-inflicted deaths in women's prisons in England – the highest number recorded since 2004.<sup>12</sup> A Report published by the Independent Advisory Panel on Deaths in Custody (IAP) in March 2017, based on 'rapid information gathering exercise' to establish the reasons for the sudden increase and identify mechanisms to prevent self-harm and self-inflicted deaths, collated expert evidence from more than 100 respondents.<sup>13</sup> Amongst the reasons identified for the rise in deaths, the Report highlighted unmet mental health, drug and alcohol treatment needs; a discernible increase in the vulnerability and complex needs of women entering prison, a decrease in use of release on temporary licence (ROTL), an increased likelihood of homelessness on release and high numbers of recalls, the hasty closure of London women's prison HMP Holloway in 2016 resulting in increased pressure on other establishments, and the widespread closure of women-only support services in the community.<sup>14</sup> The IAP made 51 recommendations, advocating *inter alia* for community-based services, prison reform, mental health treatment, family contact and better preparation for release.<sup>15</sup>

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<sup>8</sup> See Sections 52, and 54 to 57 of the Coroners and Justice Act 2009.

<sup>9</sup> "To repeal all national penal provisions which constitute discrimination against women."

<sup>10</sup> CEDAW/C/GBR/CO/7, 17 July 2013.

<sup>11</sup> INQUEST, 'Still Dying on the Inside: Examining deaths in women's prisons', May 2018, available at:

<sup>12</sup> <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=8d39dc1d-02f7-48eb-b9ac-2c063d01656a> IAP, 'Preventing the Deaths of Women in Prison – initial results of a rapid information gathering exercise by the Independent Advisory Panel on Deaths in Custody' (IAP Deaths of Women in Prison Report), March 2017, available at: <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2017/04/IAP-rapid-evidence-collection-v0.2.pdf>, p. 2.

<sup>13</sup> IAP Deaths of Women in Prison Report.

<sup>14</sup> *Ibid.*, p. 3.

<sup>15</sup> IAP Deaths of Women in Prison Report.

The 2016 White Paper Prison Safety and Reform committed the government to building five new ‘community prisons’ for women and the publication of a Women’s Justice Strategy in early 2017.<sup>16</sup> More than a year later, the strategy has not yet emerged and its release was postponed again in May 2018.<sup>17</sup>

### **3. Policy and practice around prosecutions of women alleged to have ‘fabricated’ sexual violence**

We are particularly concerned by an apparent over-willingness of law enforcement authorities to prosecute women who allege sexual violence with offences of perjury and perverting the course of justice, in circumstances where there is no categorical evidence that the allegations have been fabricated and/or where the alleging woman’s mental health might merit a different analysis and approach. We note the comments made in the CEDAW Committee’s General Recommendation 33 on access to justice on Stereotyping and gender bias in the justice system and the importance of capacity-building, which refers to the re-victimizing of women who complain of their experiences of violence.<sup>18</sup>

In one such case, the woman concerned, Eleanor de Freitas, who had bi-polar disorder, took her own life days before facing trial for perverting the course of justice. This case related to allegations of rape that she made to police against a man with whom she had a brief sexual relationship. The police action against this man relating to the rape allegations were quickly discontinued, however, Eleanor de Freitas was prosecuted vigorously for having made them.<sup>19</sup>

We are concerned that the Crown Prosecution Service charges women for perverting the course of justice when police disbelieve their complaints of rape and/or domestic violence. Perverting the course of justice is a very serious charge which carries a maximum of term of life in prison. We are dealing with the case of one woman who has been sentenced to ten years in prison in a case of this kind – a sentence that is much longer than sentences commonly given to those who are found guilty of rape.

Many of the women prosecuted in this way maintain that they are actual victims of these crimes. The majority are vulnerable women: many have mental health issues, and/or are past survivors of rape or domestic violence, and many are quite young. We believe that these prosecutions often take place because of a lack of understanding amongst police and prosecutors regarding the realistic dynamics of sexual assault, which results, in part, from a lack of appropriate training in sexual assault investigation. In a hearing in Parliament about this issue, evidence was heard that the United Kingdom is particularly draconian in its treatment of alleged false reporting: comparisons with the United States for example, demonstrate that such prosecutions are much rarer there, and in the US the prosecutions typically result in noncustodial sentences of a fine, probation, or community service.<sup>20</sup>

### **4. Compulsory disclosure of prostitution-specific criminal records to employers in a number of sectors**

The CEDAW Committee,<sup>21</sup> through its General Recommendation No 35<sup>22</sup> (2017), has recommended that State parties repeal all legal provisions that are discriminatory against women, specifically legislation that criminalises “...prostitution..., or any other criminal provisions that affect women disproportionately” (§31(a),

<sup>16</sup> Ministry of Justice, ‘Prison Safety and Reform’, November 2016, available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/565014/cm-9350-prison-safety-and-reform-web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/565014/cm-9350-prison-safety-and-reform-web.pdf), §§254-256.

<sup>17</sup> Rajeel Syal, The Guardian, ‘MoJ postpones plans to reduce female prison population’, 11 June 2015, available at:

<https://www.theguardian.com/law/2015/jun/11/stacey-hyde-there-are-many-more-who-need-their-cases-re-examined>

<sup>18</sup> CEDAW General Recommendation 33, UN Doc CEDAW/C/GC/33, 23 July 2015, paragraphs 26-29.

<sup>19</sup> ‘Eleanor de Freitas “killed herself ahead of rape claim trial”’ BBC Online, 15 March 2015, <https://www.bbc.co.uk/news/uk-31930196>

<sup>20</sup> “109 women prosecuted for false rape claims in five years, say campaigners” Guardian, 1 December 2014, <https://www.theguardian.com/law/2014/dec/01/109-women-prosecuted-false-rape-allegations>

<sup>21</sup> Established under Article 17, CEDAW.

<sup>22</sup> General Recommendation No. 35 “on gender-based violence against women, updating General Recommendation No. 19” (2017).

see too, General Recommendation 19<sup>23</sup> (1992) §§13-16). Importantly too, Article 6 of CEDAW addresses prostitution in terms and imposes positive obligations on States parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.

The impact of the Disclosure and Barring Service (DBS) regime, however, positively risks trapping women in exploitative and dangerous conditions of prostitution. Women who are seeking to exit, or who have exited, prostitution are very likely to have multiple convictions for offences under section 1 of the Street Offences Act 1957, which criminalises loitering or soliciting for purposes of prostitution.<sup>24</sup> This means that they are caught by the DBS rules and all offences must be disclosed when applying for a range of jobs or volunteering activity.<sup>25</sup> For those women who do overcome the challenges of exiting prostitution, the requirement to disclose prostitution-specific records throughout their life causes huge difficulty in obtaining employment, as well as distress and humiliation.<sup>26</sup> Difficulties securing employment, in particular, are compounded by the fact that women exiting prostitution may have few qualifications and very little ‘employment history’ and consider low-qualification, traditionally female-dominated work in areas that require enhanced DBS disclosure – for example, domestic service, auxiliary nursing, hospitality, cleaning, caring for children or the elderly.<sup>27</sup>

The disclosure requirements are clearly gender-discriminatory, given their specific impact on women who are trying to exit prostitution. The operation of the DBS regime is particularly harsh given that women’s routes into prostitution and women’s experiences within prostitution often involve high levels of abuse and exploitation and coercion, including trafficking, and that they often enter prostitution as children.<sup>28</sup> However, the government has obstinately refused to reform the DBS regime. In 2018, three women who were forced into prostitution as teenagers, and are now burdened with multiple convictions for soliciting or loitering under the Street Offences Act, successfully argued that the operation of the DBS regulations breaches their Article 8 ECHR rights.<sup>29</sup> Despite considerable public support for the women’s campaign, the Home Secretary has appealed this High Court decision.

## **5. Systematic deception and sexual abuse of female political and social justice activists by undercover police officers**

United Kingdom police forces have a disturbing and long-established history, the extent of which has only emerged in the past ten years, of allocating vast resources to undercover police operations for the purpose of infiltrating and undermining largely peaceful political and social justice groups. In the last ten years it has emerged that undercover police forces in England and Wales have infiltrated more than 1,000 political groups since 1968.<sup>30</sup> It has also emerged that female political and social justice activists in particular were specifically targeted and deceived by officers during covert deployment into intimate relationships, which often lasted many years, without revealing their true identities.<sup>31</sup>

In recent years, some of the women who were deceived have started a series of legal actions to hold police to account and uncover the truth of what happened to them. At least 12 women have been paid compensation by police after suing them for the emotional trauma caused by the men’s deception, and

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<sup>23</sup> “Violence Against Women”.

<sup>24</sup> Nia, “I’m no criminal”: Examining the impact of prostitution-specific criminal records on women seeking to exit prostitution’ (‘Nia Prostitution-specific Criminal Records Report’), July 2017, available at: <http://www.niaendingviolence.org.uk/perch/resources/im-no-criminal-final-report.pdf>, p. 16.

<sup>25</sup> Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013, convictions must be disclosed where a person has been convicted of more than one offence: Article 2A(3)(c) (and see Article 2A(2) and (3) generally).

<sup>26</sup> Nia Prostitution-specific Criminal Records Report, pp. 60-62.

<sup>27</sup> Ibid., p. 21.

<sup>28</sup> Ibid., p. 7.

<sup>29</sup> *R (QSA and O’rs) v. Secretary of State for the Home Department* [2018] EWHC 639 (Admin)

<sup>30</sup> Undercover Policing Inquiry, 16 April 2018, available at: <https://www.ucpi.org.uk/>

<sup>31</sup> Rob Evans, The Guardian, ‘Police apologise to women who had relationships with undercover officers’, 20 November 2015, available at: <https://www.theguardian.com/uk-news/2015/nov/20/met-police-apologise-women-had-relationships-with-undercover-officers>

police chiefs have been compelled to issue apologies to most of the women.<sup>32</sup> However, the Crown Prosecution Service (CPS) has refused to prosecute the spies on sexual offences such as rape, indecent assault; misconduct in public office; procurement of a woman for sexual intercourse by false pretences or breach of the Official Secrets Act.<sup>33</sup> Instead, the Director of Public Prosecution (DPP) has maintained a litigious approach. One woman deceived into such a relationship has recently applied for judicial review of the DPP's decision not to charge a Metropolitan Police officer who had at least three undercover relationships during his tenure as a Detective Constable.<sup>34</sup> In addition, the government's public inquiry into alleged abuses in undercover policing – commissioned in 2014 and formerly due to finish this year – will not conclude until at least 2023.<sup>35</sup> Delays have been caused by the police submitting many legal applications to anonymise the identities of undercover officers.<sup>36</sup> Sir John Mitting, the judge in charge of the long-delayed inquiry, has been accused of protecting the identities of officers accused of wrongdoing.<sup>37</sup> If officers remain anonymous, those who have been spied upon cannot bring forward and test evidence of alleged abuses.

The Centre for Women's Justice is at the disposal of the CEDAW Committee if we can assist further.

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<sup>32</sup> Ibid.

<sup>33</sup> CPS, 'Charging decision concerning MPS Special Demonstration Squad', 21 August 2014, available at:

<http://blog.cps.gov.uk/2014/08/charging-decision-concerning-mps-special-demonstration-squad.html>

<sup>34</sup> Dominic Casciani, BBC News, 'Undercover relationship woman wants officer prosecution', 1 May 2018, available at:

<https://www.bbc.co.uk/news/uk-43957299>

<sup>35</sup> Rob Evans, The Guardian, 'Undercover policing inquiry will not deliver final report before 2023', 10 May 2018, available at:

<https://www.theguardian.com/uk-news/2018/may/10/undercover-policing-inquiry-will-not-deliver-final-report-before-2023>

<sup>36</sup> Ibid.

<sup>37</sup> Rob Evans, The Guardian, 'Campaigners stage walkout of 'secretive' police spying inquiry', 21 March 2018, available at:

<https://www.theguardian.com/uk-news/2018/mar/21/campaigners-stage-walkout-of-secretive-police-spying-inquiry>