



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Submission to DoJ's Sentencing Review  
Consultation**

**February 2020**

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## **Summary of Recommendations**

**The Northern Ireland Human Rights Commission (NIHRC):**

- 2.6 recommends that the Department prioritises judicial independence when considering whether to introduce a sentencing council to Northern Ireland and would suggest any statutory duty on the courts should be to have regard to sentencing guidelines, rather than a more onerous duty.**
- 3.5 recommends that, if the Department is to include whole life sentence tariffs, that it includes a provision that ensures that prisoners know at the outset of their sentence, what they must do to be considered for release and under what conditions, including when review of his/her sentence will take place or may be sought, in compliance with ECHR, Article 3.**
- 3.6 recommends that the Department has regard to the recent research from the Prison Reform Trust and considers the consequences of longer sentences on individual prisoners, including reoffending rates, overall size of the prison population, and potential overcrowding issues.**
- 4.17 recommends and welcomes the development of sentencing measures to ensure the wider use of non-custodial measures and community sentencing as an alternative to imprisonment, particularly short term custodial sentences.**
- 4.18 supports the Department's commitment to restorative and reparative approaches to community sentencing, such as those listed within the review and recommends that a rehabilitative and reparative approach is adopted within Northern Ireland's criminal justice system.**
- 4.23 recommends that, when considering community sentencing measures and the benefit of their rehabilitative nature, that the Department introduces concrete measures to address the overuse of remand and to introduce custodial time limits.**

- 5.2 recommends that the sentencing review dovetails with the recommendations of the independent review of hate crime within the resulting sentencing framework for Northern Ireland.**
- 5.12 welcomes the review’s consideration of specific statutory offences within the consultation and recommends that the review ensures any changes to hate crime sentencing addresses all forms of hate crime and takes into account best practice from the rest of the UK and other jurisdictions.**
- 6.10 recommends that the Department seeks and considers stakeholders’ views in this regard and supports that any new legislation deals with ‘vulnerable’ people, based on personal circumstances, as opposed to simply broad specific categories such as ‘older’ people.**
- 6.11 recommends that the Department considers adopting a similar approach to accommodating vulnerability as within the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, section 1(4).**
- 6.12 recommends that the Department considers special measures that can be adopted to ensure persons who are most vulnerable to crime, are effectively protected. This could include, but is not limited to, creating aggravated offences for crimes against persons whose circumstances make them most vulnerable to crime.**
- 6.13 recommends that the Department takes the opportunity with this review to consider introducing a free-standing offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual.**
- 7.6 recommends that the Department commits to promptly and comprehensively review sentencing for offences committed by children, either in this review or a separate review. Such a review and its outcomes should adopt an approach based on UN CRC**

**obligations. This includes undertaking a human rights impact assessment, which considers ECHR and UN CRC rights.**

- 8.2 recommends that immediate steps are taken by the Department and NI Assembly to amend the legislation on unspent convictions in such a way that it enables discretion and, where it is appropriate to do so, individuals that have served sentences identified in the Rehabilitation of Offenders (Northern Ireland) Order 1978, Article 6(1), can be deemed rehabilitated.**
- 9.2 recommends that the Department conduct a Human Rights Impact Assessment before developing any new legislation, policies or practices as part of the review. The Human Rights Impact Assessment should be presented to the Justice Committee for further analysis to ensure that a human rights based approach is embedded when developing all new legislation, policies and practices.**
- 10.3 recommends that the PANEL principles are used as a guidance tool when considering outreach and communication plans, working with the media and promoting education and information as methods of communicating with the public. This should include direct engagement with relevant community and voluntary sector organisations, as a way of promoting public confidence.**
- 10.5 recommends that the PANEL principles are used by the Department as a tool to guide the Department's continuing work to improve the provision of victim impact statements and awareness of community impact statements.**
- 10.6 recommends that the Department adopts a broad approach to participation. This involves direct engagement with the Public Prosecution Service, the Courts and the Police Service for NI on how they can promote the use of victim and community impact statements. It should also involve methods aimed at obtaining and utilising the views of relevant community and voluntary sector organisations, such as round table discussions or individual meetings aimed at discussing steps to take to improve**

**the awareness and use of victim and community impact statements.**

## 1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to Section 69(1) the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with these functions, the following statutory advice is submitted to the Department of Justice in response to its sentencing review consultation.

1.2 The NIHRC bases its advice 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 (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:

- European Convention on Human Rights (ECHR);<sup>1</sup>
- UN International Covenant on Civil and Political Rights;<sup>2</sup>
- UN International Covenant on Economic, Social and Cultural Rights;<sup>3</sup>
- UN Convention on the Elimination of All Forms of Racial Discrimination;<sup>4</sup>
- UN Convention on Elimination of Discrimination against Women;<sup>5</sup>
- UN Convention against Torture;<sup>6</sup>
- UN Convention on the Rights of the Child;<sup>7</sup> and
- UN Convention on the Rights of Persons with Disabilities.<sup>8</sup>

1.3 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding, but provide further guidance in respect of specific areas. The relevant standards in this context include:

- UN Declaration of Basic Principles of Justice for Victims of Crime

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<sup>1</sup> Ratified by the UK in 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

<sup>2</sup> Ratified by the UK in 1966.

<sup>3</sup> Ratified by the UK in 1966.

<sup>4</sup> Ratified by the UK in 1969.

<sup>5</sup> Ratified by the UK in 1986.

<sup>6</sup> Ratified by the UK in 1988.

<sup>7</sup> Ratified by the UK in 1989.

<sup>8</sup> Ratified by the UK in 2009.

and Abuse of Power;<sup>9</sup>

- UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules);<sup>10</sup>
- UN Standard Minimum Rules for the Treatment of Prisoners;<sup>11</sup>
- UN Basic Principles on the Independence of the Judiciary;<sup>12</sup>
- UN Committee on the Elimination of Discrimination against Women (UN CEDAW Committee) General Recommendation No 19;<sup>13</sup>
- UN Committee against Torture (UN CAT Committee) General Comment No 2;<sup>14</sup>
- UN CAT Committee's 2013 Concluding Observations to UK;<sup>15</sup>
- UN Human Rights Committee's 2015 Concluding Observations to UK;<sup>16</sup>
- UN Committee on Economic, Social and Cultural Rights (UN ICESCR Committee) General Comment No 23;<sup>17</sup>
- UN Committee on the Rights of the Child (UN CRC) 2016 Concluding Observations to UK;<sup>18</sup>
- UN CERD Committee's 2016 Concluding Observations to UK;<sup>19</sup>
- UN CEDAW Committee General Recommendation No 35;<sup>20</sup>
- UN CRPD Committee's 2017 Concluding Observations to UK;<sup>21</sup>
- UN Committee on the Rights of Persons with Disabilities (UN CRPD Committee) General Comment No 6;<sup>22</sup>
- UN Human Rights Committee General Comment No 36;<sup>23</sup>

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<sup>9</sup> UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', 29 November 1985.

<sup>10</sup> UN General Assembly, 'United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)', 14 December 1990.

<sup>11</sup> UN General Assembly, 'Standard Minimum Rules for the Treatment of Prisoners', 13 May 1977.

<sup>12</sup> UN General Assembly, 'Basic Principles on the Independence of the Judiciary', 13 December 1985.

<sup>13</sup> CEDAW/C/GC/19, 'UN Committee for the Elimination of Discrimination against Women, General Recommendation No 19: Violence against Women', 1992.

<sup>14</sup> CAT/C/GC/2, 'UN CAT Committee General Comment No 2: Implementation of Article 2 by States Parties', 24 January 2008.

<sup>15</sup> CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the UK', 24 June 2013.

<sup>16</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and Northern Ireland', 17 August 2015.

<sup>17</sup> E/C.12/GC/23, 'UN ICESCR Committee General Comment No 23: Right to Just and Favourable Conditions of Work', 7 April 2016.

<sup>18</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016.

<sup>19</sup> CERD/C/GBR/CO/21-23, 'UN CERD Committee Concluding Observations on the Combined Twenty-first to Twenty-third Periodic Reports of the UK of Great Britain and Northern Ireland', 3 October 2016.

<sup>20</sup> CEDAW/C/GC/35, 'UN CEDAW Committee General Recommendation No 35: Gender-based Violence against Women', 14 July 2017.

<sup>21</sup> CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 29 August 2017.

<sup>22</sup> CRPD/C/GC/6, 'UN CRPD Committee General Comment No 6: Equality and Non-discrimination', 26 April 2018.

<sup>23</sup> CCPR/C/GC/36, 'UN Human Rights Committee General Comment No 36: Article 6 of the ICCPR on Right to Life', 30 October 2018.



- UN CEDAW Committee’s 2019 Concluding Observations to UK;<sup>24</sup>
- UN CAT Committee’s 2019 Concluding Observations to UK;<sup>25</sup> and
- UN CRC Committee’s General Comment No 24.<sup>26</sup>

1.4 The NIHRC welcomes the opportunity to respond to the Department of Justice’s sentencing review consultation. Considering the range of practical issues in the consultation, the NIHRC has sought to highlight relevant human rights standards and principles, where they may be of assistance in developing new sentencing measures. To avoid repetition, the NIHRC’s response to some of the issues have been grouped together.

## 2.0 Sentencing guidance

2.1 In considering whether to establish sentencing guidelines within legislation the Department should adhere to the ECHR, Article 7. This provides that:

- 1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- 2) This Article shall not prejudice the trial and punishment of any person for any act or omission, which at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

2.2 The European Court of Human Rights (ECtHR) advised in the case of *Coeme and Others v Belgium* (2000) that:

according to its case-law, Article 7 embodies, inter alia, the principle that only the law can define a crime and prescribe a penalty... While it prohibits in particular extending the scope of

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<sup>24</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019.

<sup>25</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

<sup>26</sup> CRC/C/GC/24, 'UN CRC Committee General Comment No 24 on Children’s Rights in the Child Justice System', 18 September 2019.

existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. It follows that offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable.<sup>27</sup>

- 2.3 The review highlights that Sentencing Councils have been established as statutory bodies in England, Wales and Scotland to issue sentencing guidelines and that statutory duties have been placed upon the courts in relation to following or having regard to sentencing guidelines.
- 2.4 The NIHRC recognises that embedding this within statute provides a level of consistency across sentencing however, the NIHRC emphasises that discretion in sentencing is essential to the independence of the judiciary. The NIHRC recognises that sentencing is a complex task, which requires judges to consider the multiple factors to meet the need of individualised judgment and that methods, such as the proportionality test and the margin of appreciation, are key to determining sentencing.
- 2.5 The independence of the judiciary is stressed within the UN Basic Principles on the Independence of the Judiciary, which state that:
  - 1) the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
  - 2) the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.<sup>28</sup>

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<sup>27</sup> *Coeme and Others v Belgium* (2000) ECHR 250, at para 145.

<sup>28</sup> UN General Assembly, 'Basic Principles on the Independence of the Judiciary', 13 December 1985.

- 2.6 **The NIHRC recommends that the Department prioritises judicial independence when considering whether to introduce a sentencing council to Northern Ireland and would suggest any statutory duty on the courts should be to have regard to sentencing guidelines, rather than a more onerous duty.**

### 3.0 Tariff setting for murder

- 3.1 The NIHRC welcomes the review's reference to human rights standards in relation to whole life sentencing by highlighting the relevant ECtHR jurisprudence. The NIHRC recognises that there have been mixed rulings by the ECtHR concerning whole life sentences in the context of the ECHR, Article 3 (prohibition of torture).<sup>29</sup> Relevant case law does not dictate that the existence of whole life tariffs is incompatible with human rights standards however, if they are retained, there must be standards for reviewing sentences in such cases.
- 3.2 In the case of *TP and AT v Hungary* (2016) the ECtHR held that there had been a violation of ECHR, Article 3 (prohibition of torture).<sup>30</sup> This case concerned new legislation introduced in Hungary in 2015 for reviewing whole life sentences. The applicants alleged that despite the new legislation, which introduced an automatic review of whole life sentences (via a mandatory pardon procedure) after 40 years, their sentences remained inhuman and degrading as they had no hope of release. It found in particular that making a prisoner wait 40 years before he or she could expect for the first time to be considered for clemency was too long. In summary, the ECtHR concluded that:

in view of the lengthy period the applicants are required to wait before the commencement of the mandatory clemency procedure, coupled with the lack of sufficient procedural safeguards in the second part of the review procedure as provided for by the new legislation, the Court is not persuaded that, at the present time,

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<sup>29</sup> Article 3, European Convention on Human Rights 1950.

<sup>30</sup> *TP and AT v Hungary* (2016) ECHR 807.

the applicants' life sentences can be regarded as reducible for the purposes of Article 3 of the [ECHR].<sup>31</sup>

3.3 In determining the outcome, the ECtHR drew from its decision in *Vinter and Others v UK* (2013) that:

a whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including a when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration.<sup>32</sup>

3.4 The Prison Reform Trust has recently published research showing that over recent years, there has been a significant increase in the number of people serving long sentences.<sup>33</sup> The research highlighted that there is no clear evidence that increasing tariff lengths in England and Wales reflect changes in the nature of offending and the growth of very long sentences is by no means risk free – “violence, suicide and self-harm, disorder and radicalisation all pose a challenge as people struggle to come to terms with their situation”.<sup>34</sup> The report stated that the growing number of prisoners serving such long sentences virtually guarantees that prisons will remain overcrowded, regardless of any changes in sentencing practice for less serious offending or improvements in reconviction rates.<sup>35</sup> Similar concerns apply in Northern Ireland.

3.5 **The NIHRC recommends that, if the Department is to include whole life sentence tariffs, that it includes a provision that ensures that prisoners know at the outset of their sentence, what they must do to be considered for release and under what conditions, including when review of his/her sentence will take place or may be sought, in compliance with ECHR, Article 3.**

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<sup>31</sup> Ibid, at para 50.

<sup>32</sup> *Vinter and Others v UK* (2013) ECHR 645, at para 121 and 122.

<sup>33</sup> Prison Reform Trust, 'Bromley Briefings Prison Factfile: Winter 2019' (PRT, 2019).

<sup>34</sup> Ibid, at 9.

<sup>35</sup> Ibid.

- 3.6 **The NIHRC recommends that the Department has regard to the recent research from the Prison Reform Trust and considers the consequences of longer sentences on individual prisoners, including reoffending rates, overall size of the prison population, and potential overcrowding issues.**

## 4.0 Community Sentencing

- 4.1 The NIHRC welcomes the review's evidence-based approach to considering community sentencing.<sup>36</sup> The NIHRC recognises the Department has included evidence which conveys that community sentencing reduces reoffending and considers the social justice and rehabilitation needs of the offender. International human rights standards promote the wider use of alternatives to imprisonment and that more restrictive measures, such as custodial sentences are used as a last resort.
- 4.2 In 2013, the UN CAT Committee called for effective diversion from the criminal justice system for non-violent women offenders convicted of minor offences.<sup>37</sup>
- 4.3 In March 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive continues "to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences".<sup>38</sup>
- 4.4 The UN CEDAW Committee requires States to devise rehabilitation programmes for perpetrators of gender-based violence.<sup>39</sup> Such programmes should include awareness raising about gender-based violence "so as to prevent recidivism".<sup>40</sup> Furthermore, the UN Beijing Declaration and Platform for Action requires States to work with other

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<sup>36</sup> Department of Justice NI, 'Sentencing Review Northern Ireland: A Public Consultation' (DoJ, 2019), at Chapter 6.

<sup>37</sup> CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the UK', 24 June 2013, at para 32.

<sup>38</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019.

<sup>39</sup> CEDAW/C/GC/19, 'UN Committee for the Elimination of Discrimination against Women, General Recommendation No 19: Violence against Women', 1992, at para 24(iv).

<sup>40</sup> CEDAW/C/GC/35, 'UN Committee on the Elimination of Discrimination against Women General Recommendation No 35: Gender-based Violence against Women', 14 July 2017, at para 35(b).

sectors to provide, fund and encourage counselling and rehabilitation programmes for the perpetrators of violence.<sup>41</sup>

- 4.5 The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) states that:

Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalise criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.<sup>42</sup>

- 4.6 The Standard Minimum Rules for the Treatment of Prisoners states that regarding prisoners under sentence:

the treatment of prisoners should emphasise not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners.<sup>43</sup>

## **Alternatives to short term prison sentences**

- 4.7 Short term prison sentences continue to be used in Northern Ireland. More than three-quarters (78 per cent) of people entering prison to serve a sentence in 2018/19 were sentenced to a year or less.<sup>44</sup>
- 4.8 Imprisonment of persons for fine default has historically contributed significantly to the prison population in NI. In 2017/18, prison receptions for fine default was 611.<sup>45</sup> In 2018/19, this decreased by 39 per cent to 371.<sup>46</sup>

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<sup>41</sup> 'UN Beijing Declaration and Platform for Action', 15 September 1999, at Annex I, para 125(i).

<sup>42</sup> UN General Assembly, 'United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)', 14 December 1990, at 1.5.

<sup>43</sup> UN General Assembly, 'Standard Minimum Rules for the Treatment of Prisoners', 13 May 1977, at para 61.

<sup>44</sup> Prison Reform Trust, 'Bromley Briefings Prison Factfile: Winter 2019' (PRT, 2019), at 9.

<sup>45</sup> NI Prison Service, 'The NI Prison Population 2017/18' (NIPS, 2018), at 10 and Table 7.

<sup>46</sup> Analytical Services Group, 'The Northern Ireland Prison Population 2018/19', (DoJ, 2019), at 10 and Table 7.

- 4.9 In 2018, the Fine Collection Service became operational within NI Courts and Tribunal Services.<sup>47</sup> It has a range of powers to collect and enforce outstanding financial penalties. However, imprisonment for fine default continues.
- 4.10 There are high reoffending rates associated with short terms sentences. In 2019, the Department of Justice published statistics on reoffending rates for those convicted of criminal offences in 2016/17, which demonstrated that 42.8 per cent of persons released from custody reoffended within one year of release, which is an increase from 40.8 per cent in the previous year. Of those who received a supervised community disposal 33.7 per cent reoffended within one year of completion, which is a decrease from 35.2 per cent in the previous year.<sup>48</sup>
- 4.11 The Department of Justice has previously acknowledged that:
- the actual time served by offenders on short prison sentences provides little opportunity to address offending behaviour. Community sentences, where many offenders are under probation for a prolonged period, provide more opportunities to assist the offender to overcome the difficulties that lead the offender to reoffend.<sup>49</sup>
- 4.12 The NIHRC recognises the Department of Justice’s work in this area with the pilot of an Enhanced Combination Order being developed in NI. This Order offers the courts the option of issuing a community sentence as an alternative to a prison sentence of 12 months or less. The community sentence requires the individual to do unpaid work, victim-focused work, have a psychological assessment and to take part in programmes. The Order aims “to divert offenders from short-term custodial sentences by offering judges a more intensive community order with a focus on rehabilitation, reparation, restorative practice and desistance”.<sup>50</sup>
- 4.13 The evaluation report recorded that there was a 40 per cent reduction in the reoffending rate for those who completed the Order and that the

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<sup>47</sup> Justice (2016 Act) (Commencement No 2) Order (NI) 2018.

<sup>48</sup> Department of Justice, ‘Analytical Services Group: Adult and Youth Reoffending in NI (2016/17 Cohort)’ (DoJ, 2019), at 10.

<sup>49</sup> Department of Justice, ‘Consultation on a Review of Community Sentences’ (DoJ, 2011).

<sup>50</sup> Probation Board NI, ‘Evaluation of the Enhanced Combination Order Pilot’ (PBNI, 2017).

number of prison sentences of 12 months or less awarded by courts involved in the pilot decreased by 10.5 per cent, suggesting that the Enhanced Combination Order was impacting positively on prison numbers.<sup>51</sup>

4.14 Throughout 2018, the Department of Justice promoted the Enhanced Combination Order as part of its approach to problem solving justice.<sup>52</sup> However, the number of custodial sentences of 12 months or less, awarded by courts involved in the Enhanced Combination Order pilot, decreased by 20.7 per cent between 2015 and 2017. Nine in ten service users agreed that the programme had helped them address their offending behaviour and they were unlikely to commit a further similar offence. Just over three quarters of service users agreed that taking part in Enhanced Combination Orders had increased their confidence; 60 per cent agreed it had helped them integrate back into their community and 53 per cent with their family and 68 per cent reporting that it had helped with family relationships.<sup>53</sup>

4.15 There are also concerns that short term sentences lead to overcrowding in prisons. The UN Committee against Torture (UN CAT Committee), in its 2013 Concluding Observations on the UK:

raised concerns regarding the overcrowding of prisons across the UK and recommended a strengthening of efforts and setting of: concrete targets to reduce the high level of imprisonment and overcrowding in places of detention, in particular through the wider use of non-custodial measures as an alternative to imprisonment, in the light of the UN Standard Minimum Rules for Non- custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110).<sup>54</sup>

4.16 In June 2019, the UN CAT Committee recommended that the UK Government and NI Executive:

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<sup>51</sup> Probation Board for NI and NI Statistics and Research Agency, 'The Enhanced Combination Order October 2015 to November 2018' (PBNI and NISRA, 2019).

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the UK', 24 June 2013, at para 31.



continue its efforts to improve conditions of detention and alleviate overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In that connection, the Committee draws the State party's attention to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).<sup>55</sup>

- 4.17 The NIHRC recommends and welcomes the development of sentencing measures to ensure the wider use of non-custodial measures and community sentencing as an alternative to imprisonment, particularly short term custodial sentences.**
- 4.18 The NIHRC supports the Department's commitment to restorative and reparative approaches to community sentencing, such as those listed within the review and recommends that a rehabilitative and reparative approach is adopted within Northern Ireland's criminal justice system.**

### **Custodial time limits**

- 4.19 The lack of custodial time limits in NI impacts on the ability to embed rehabilitative measures in criminal justice.
- 4.20 In 2015, the UN Human Rights Committee recommended the introduction of "concrete measures to reduce avoidable delays in the criminal justice system in NI, including by introducing custodial time limits".<sup>56</sup> The Criminal Justice Inspection NI has stated that failure to introduce statutory custodial time limits in NI "consigns the justice process here to continuing unacceptable delay in processing cases".<sup>57</sup>
- 4.21 As a result of such delay there is a significant issue with high numbers of on remand prisoners in NI prisons. The Department has recorded that the proportion of prisoners on remand has increased each year, rising from

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<sup>55</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 21.

<sup>56</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 22.

<sup>57</sup> Hansard, 'Official Report (Hansard) Session: 2013/2014', 25 June 2014.

23.3 per cent during 2014/15 to 30.1 per cent during 2018/19.<sup>58</sup> There has also been a 37 per cent increase in unsentenced adult females.<sup>59</sup> Northern Ireland continues to hold a high proportion compared with 11 per cent in England and Wales, and 20 per cent in Scotland.<sup>60</sup> Remand accounted for more than half (61 per cent) of all receptions into prison in 2018/19, with 3,206 receptions in total. On average 436 people were held in prison on remand, they spent on average four and a half months in prison.<sup>61</sup> In other cases remand prisoners can be released shortly after sentencing because they had served a lengthy period in custody on remand.

4.22 Periods of remand may hinder efforts to provide effective rehabilitation to offenders. For example, prisoners who serve lengthy remand periods may be unable to complete Offending Behaviour Programmes. The Criminal Justice Inspection NI has highlighted the use of rehabilitative programmes, such as pre-release testing for long term sentenced prisoners, are seen as an integral element of preparation for release for long-term prisoners. These rehabilitative measures are envisaged to uphold human rights standards for long term sentenced prisoners,<sup>62</sup> whereas remand prisoners do not have access to such programmes while in prison on remand, despite how long that period may be.

4.23 **The NIHRC recommends that, when considering community sentencing measures and the benefit of their rehabilitative nature, that the Department introduces concrete measures to address the overuse of remand and to introduce custodial time limits.**

## 5.0 Hate Crime

5.1 The NIHRC welcomes the review's commitment to include hate crime as a standalone issue.<sup>63</sup> The NIHRC further welcomes the review's inclusion of previous issues and recommendations raised by the NIHRC on hate crime

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<sup>58</sup> Department of Justice, 'The Northern Ireland Prison Population 2018/19' (DoJ, 2019).

<sup>59</sup> NI Prison Service, 'Analysis of NIPS Prison Population from 01/04/2017 to 30/06/2018, Department of Justice' (NIPS, 2018).

<sup>60</sup> Prison Reform Trust, 'Bromley Briefings Prison Factfile: Winter 2019' (PRT, 2019), at 59.

<sup>61</sup> Ibid.

<sup>62</sup> Criminal Justice Inspection NI, 'An Inspection of Pre-Release Testing Arrangements within the NI Prison Service', (CJINI, 2019).

<sup>63</sup> Department of Justice NI, 'Sentencing Review Northern Ireland: A Public Consultation' (DoJ, 2019), at Chapter 7.

and unduly lenient sentencing as a way of guiding the review.<sup>64</sup> The NIHRC recognises that an independent review on hate crime is currently under way and due to report in summer 2020.

**5.2 The NIHRC recommends that the sentencing review dovetails with the recommendations of the independent review of hate crime within the resulting sentencing framework for Northern Ireland.**

5.3 The UN Human Rights Committee commented on hate crime in its 2015 concluding observations on the UK, requiring the UK (including the NI Executive) to:

effectively implementing and enforcing the existing relevant legal and policy frameworks on combating hate crimes... [Also to] thoroughly investigating alleged cases of incitement to discrimination, hostility or violence, and alleged hate crimes, prosecuting the perpetrators and, if they are convicted, punishing them with appropriate sanctions, and providing victims with adequate remedies, including compensation.<sup>65</sup>

5.4 The UN Committee on Elimination of Racial Discrimination (UN CERD Committee) stated, in its 2016 Concluding Observations on the UK, that:

the [UN CERD] Committee remains concerned that despite the recent increase in the reporting of hate crimes, the problem of underreporting persists, and the gap between reported cases and successful prosecutions remains significant. As a result, a large number of racist hate crimes seem to go unpunished.<sup>66</sup>

5.5 The UN CERD Committee recommended that the UK, including the NI Executive:

a) Investigate all reported racist hate crimes, prosecute the perpetrators and punish them with sanctions

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<sup>64</sup> Ibid, at para 7.2.

<sup>65</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and Northern Ireland', 17 August 2015.

<sup>66</sup> CERD/C/GBR/CO/21-23, 'UN CERD Committee Concluding Observations on the Combined Twenty-first to Twenty-third Periodic Reports of the UK of Great Britain and Northern Ireland', 3 October 2016.

commensurate with the gravity of the offence, and provide effective remedies to the victims;

- b) Systematically collect disaggregated data on hate crimes, ensure that measures to combat racist hate crimes are developed with the meaningful participation of groups affected, and undertake a thorough impact assessment of the measures adopted, in order to ensure their continued effectiveness;
- c) Adopt concrete measures, in consultation with groups affected, to increase the reporting of racist hate crimes, by ensuring that the reporting mechanism is transparent and accessible and that victims have trust in the police and the justice system.<sup>67</sup>

5.6 The UN CAT Committee, in its 2019 concluding observations on the UK stated that:

while acknowledging the legislative and other measures taken by the State party to tackle hate crime and prejudice, the Committee is concerned by the reports it has received from both government sources and community-based organizations reflecting a marked increase in the incidence of racist, xenophobic, anti-Semitic, anti-Muslim, anti-disabled and anti-transgender crimes in recent years, and by estimates that only 2 per cent of all hate crimes result in a successful conviction with an enhanced sentence for hostility on the basis of a protected characteristic (Article 16).<sup>68</sup>

5.7 Also in 2019, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the UK in 2019 and found that:

in England and Wales, criminal law provisions address “racially or religiously aggravated offences”; prohibit acts and the possession of

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<sup>67</sup> Ibid.

<sup>68</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019.

material “intended or likely to stir up racial hatred”; and enhanced sentencing “for racial or religious aggravation”. Similar provisions exist in Scotland and Northern Ireland. Nonetheless, civil society in England and Wales has expressed concerns with this legal framework, most notably with the difference in legal standards applicable to racially and religiously motivated hate crimes.

5.8 The UN Special Rapporteur further found that:

in contrast to racially motivated hate crimes, intent is required in cases of religiously motivated hate crimes. In practice, the different standards mean that certain groups enjoy lower levels of protection and that accountability for hate crimes against religious groups is much harder to secure. This is an acute problem for Muslims, who are the frequent targets of hate crimes in the UK. Where individuals are targeted for “looking” or “behaving” Muslim, and where perpetrators conflate religion with race, as is often the case in the UK, this difference in legal standard introduces evidentiary barriers that diminishes victims’ capacities to claim their rights and to take full advantage of available legal protections.

The Special Rapporteur urges the UK to address the relevant discrepancies in its hate crime legislation review, initiated in early 2019.<sup>69</sup>

5.9 The UN Special Rapporteur urged the UK to address the relevant discrepancies in its hate crime legislation review, stressing that:

despite progress made, stakeholders highlighted that more concrete measures were needed to effectively combat racially and religiously motivated hate crime. Some of the key issues that were mentioned during consultations included the following: addressing underreporting; improving accountability by closing the gap between reported cases and successful prosecutions; publishing data that allows for end-to-end tracking of hate crime cases; and providing support to victims of racist hate crime.<sup>70</sup>

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<sup>69</sup> A/HRC/41/54/Add.2, ‘Human Rights Council Visit to the UK of Great Britain and Northern Ireland Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance’, 27 May 2019.

<sup>70</sup> Ibid.

5.10 Specific to Northern Ireland, the Criminal Justice Inspection for NI has reported that:

current legislation that provides enhanced sentencing powers does not however recognise sectarian and transphobic motivated crimes. This meant that where offences were recorded by the PSNI as having either of these aggravating factors the legislation which allowed for enhanced sentencing did not apply. In appropriate cases the police procedure was that sectarian motivated cases shown to have a faith/religious or other recognised category of motivation were recorded as such and the enhanced sentencing legislation may then be applicable.<sup>71</sup>

5.11 The Criminal Justice Inspection for NI has also identified that specific statutory offences, such as hate crimes of assault and criminal damage, had been introduced in England and Wales over and above the enhanced sentencing powers that are available in Northern Ireland. Consequently, the Criminal Justice Inspection NI recommended that any review of sentencing should include consideration of the statutory aggravated offences model that already exists in England and Wales.<sup>72</sup>

5.12 **The NIHRC welcomes the review's consideration of specific statutory offences within the consultation and recommends that the review ensures any changes to hate crime sentencing addresses all forms of hate crime and takes into account best practice from the rest of the UK and other jurisdictions.**

## **6.0 Crimes against frontline public service workers, older people and vulnerable persons**

6.1 Reflecting on developments in other jurisdictions, the review is considering whether the proposed legislative changes in sentencing for attacks on people providing frontline public services, older people and vulnerable

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<sup>71</sup> Criminal Justice Inspection NI, 'Hate Crime an Inspection of the Criminal Justice System's Response to Hate Crime in Northern Ireland' (CJINI, 2017).

<sup>72</sup> Ibid.

persons are sufficiently robust.<sup>73</sup>

- 6.2 The requirement for States to protect against discrimination and to promote equality is a common theme throughout international human rights treaties.<sup>74</sup> The ECHR, Article 14, elaborates that discrimination should be prohibited "on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".
- 6.3 Equality does not require that everyone is treated the same, it enables special measures to be adopted to ensure everyone has equal opportunities and does not experience discrimination. A number of human rights bodies have confirmed this approach.
- 6.4 The UN CAT Committee's General Comment No 2 confirms that a flexible approach should be adopted to ensuring rights are respected, protected and fulfilled. In the context of torture and ill-treatment, General Comment No 2 provides that:

States parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented. States parties also have the obligation continually to keep under review and improve their national laws and performance under the [UN CAT] in accordance with the [UN CAT] Committee's concluding observations and views adopted on individual communications. If the measures adopted by the State party fail to accomplish the purpose of eradicating acts of torture, the [UN CAT] requires that they be revised and/or that new, more effective measures be adopted.<sup>75</sup>

- 6.5 In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive:

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<sup>73</sup> Department of Justice NI, 'Sentencing Review Northern Ireland A Public Consultation' (DoJ, 2019), at para 8.1.

<sup>74</sup> Article 14, European Convention on Human Rights 1950; Article 2(2), UN International Covenant on Civil and Political Rights 1966; Article 2(2), UN International Covenant on Economic, Social and Cultural Rights 1966; UN Convention on the Elimination of All Forms of Racial Discrimination; UN Convention on the Elimination of All Forms of Discrimination against Women; Article 3, UN Convention on the Rights of Persons with Disabilities 2006.

<sup>75</sup> CAT/C/GC/2, 'UN CAT Committee General Comment No 2: Implementation of Article 2 by States Parties', 24 January 2008, at para 4.

establish measures to ensure equal access to justice and to safeguard persons with disabilities, particularly women, children, intersex people and elderly persons with disabilities from abuse, ill-treatment, sexual violence and/or exploitation. [And] ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.<sup>76</sup>

6.6 The UN CRPD Committee further recommended that the UK and NI Executive:

establish measures to ensure equal access to justice and to safeguard persons with disabilities, particularly women, children, intersex persons and elderly persons with disabilities from abuse, ill-treatment, sexual violence and exploitation... define comprehensively the offence of disability hate crime, and ensure appropriate prosecutions and convictions.<sup>77</sup>

6.7 This approach is supported by the UN Basic Principles of Justice for Victims of Crime and Abuse of Power, which provides that:

States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

6.8 In establishing what special measures are required it is vital that the human rights principles of legitimate aim and proportionality are considered. This is aided by ensuring that any legislative and policy changes are evidence based and focused on supporting and protecting existing or potential victims and survivors. It also involves the Department considering the rights of all potentially affected, so as to not infringe rights of or discrimination against victims subject to the same offences, but not

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<sup>76</sup> CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 29 August 2017, at para 39.

<sup>77</sup> Ibid.



of a group that has been provided with special protections.

- 6.9 An example of how vulnerability can be accommodated within legislation is provided by the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, section 1(4), which states that “in particular, regard may be had to any of B’s personal circumstances which may make B more vulnerable than other persons”.
- 6.10 **The NIHRC recommends that the Department seeks and considers stakeholders’ views in this regard and supports that any new legislation deals with ‘vulnerable’ people, based on personal circumstances, as opposed to simply broad specific categories such as ‘older’ people.**
- 6.11 **The NIHRC recommends that the Department considers adopting a similar approach to accommodating vulnerability as within the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, section 1(4).**
- 6.12 **The NIHRC recommends that the Department considers special measures that can be adopted to ensure persons who are most vulnerable to crime, are effectively protected. This could include, but is not limited to, creating aggravated offences for crimes against persons whose circumstances make them most vulnerable to crime.**
- 6.13 The Mental Capacity (NI) Act 2016, is a welcomed addition to Northern Ireland’s statute books, however it does not provide for a free-standing offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual. Such a provision was introduced to the Criminal Justice and Courts Act 2015, which applies to England and Wales.
- 6.14 **The NIHRC recommends that the Department takes the opportunity with this review to consider introducing a free-standing offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual.**

## 7.0 Children

- 7.1 The NIHRC highlights the notable absence of sentencing in relation to offences carried out by children within the scope of the sentencing review. The NIHRC is concerned that children can also be perpetrators of the offences of which sentences for adults are subject to policy and legislative change. There are specific considerations that should be taken into consideration regarding child offenders.
- 7.2 The UN CRC, Article 37(b) requires that:
- no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
- 7.3 The UN CRC, Article 3(1), also emphasises that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.
- 7.4 Specific to United Kingdom, including Northern Ireland, the UN Committee on the Rights of the Child (UN CRC Committee) has recommended that the minimum age of criminal responsibility is raised “in accordance with acceptable international standards”.<sup>78</sup> In 2019, the UN CRC Committee elaborated in its General Comment No 24 that:

under Article 40(3) of the [UN CRC] Convention, States parties are required to establish a minimum age of criminal responsibility, but the article does not specify the age. Over 50 States parties have raised the minimum age following ratification of the [UN CRC] Convention, and the most common minimum age of criminal responsibility internationally is 14.<sup>79</sup>

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<sup>78</sup> CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 79(a).

<sup>79</sup> CRC/C/GC/24, ‘UN CRC Committee General Comment No 24 on Children’s Rights in the Child Justice System’, 18 September 2019, at para 21.

- 7.5 The UN CRC Committee further recommended that the UK Government and Northern Ireland Executive:

ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years, and that diversion measures do not appear in the children's criminal records;

abolish the mandatory imposition of life imprisonment for children for offences committed while they are under the age of 18; [and]

establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children.<sup>80</sup>

- 7.6 **The NIHRC recommends that the Department commits to promptly and comprehensively review sentencing for offences committed by children, either in this review or a separate review. Such a review and its outcomes should adopt an approach based on UN CRC obligations. This includes undertaking a human rights impact assessment, which considers ECHR and UN CRC rights.**

## 8.0 Unspent convictions

- 8.1 The NIHRC is currently challenging, by way of judicial review, the lawfulness of the Rehabilitation of Offenders (Northern Ireland) Order 1978, Article 6(1), which prevents certain previous convictions from ever becoming 'spent'. Such sentences include imprisonment for life, imprisonment or corrective training for a term exceeding 30 months and preventive detention. Consequently, this provision prevents those that have served sentences identified within this law from ever becoming a rehabilitated person, irrespective of his or her circumstances.

- 8.2 **The NIHRC recommends that immediate steps are taken by the Department and NI Assembly to amend the legislation on unspent**

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<sup>80</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at paras 79(b)-79(d).

**convictions in such a way that it enables discretion and, where it is appropriate to do so, individuals that have served sentences identified in the Rehabilitation of Offenders (Northern Ireland) Order 1978, Article 6(1), can be deemed rehabilitated.**

## **9.0 Human Rights Impact Assessment**

- 9.1 The Human Rights Act 1998, section 6, requires that public authorities do not act in a way that is incompatible with the ECHR. The Human Rights Act 1998, section 3, further requires that “so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with [ECHR] rights”. To ensure these two requirements are adhered to it is important that a human rights impact assessment is conducted regarding any laws, strategies, policies and practices. Such an assessment provides policy makers with a focused approach to ensure human rights issues are fully considered and addressed. The purpose of the assessment is to help identify the potential rights engaged and if there are particular aspects that need to be considered, for example, if it is a right that should not be interfered with or if it is a right that can be limited, can any possible limitation be justified.
- 9.2 **The NIHRC recommends that the Department conduct a Human Rights Impact Assessment before developing any new legislation, policies or practices as part of the review. The Human Rights Impact Assessment should be presented to the Justice Committee for further analysis to ensure that a human rights based approach is embedded when developing all new legislation, policies and practices.**

## **10.0 Implementation**

- 10.1 The Review proposes principles of sentencing that reflect established expectations and act as a guiding framework for the judiciary when sentencing. These are proportionality, fairness, using punishment sparingly, and transparency.<sup>81</sup> The Review also proposes to incorporate a

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<sup>81</sup> Department of Justice NI, ‘Sentencing Review Northern Ireland: A Public Consultation’ (DoJ, 2019), at Chapter 1.

list of purposes of sentencing that can be used by judges to achieve the desired outcome, which include punishment, protection of the public, deterrence, and reparation.<sup>82</sup> The review also states the Department of Justice's desire to have public confidence, consistency and transparency in sentencing.<sup>83</sup>

10.2 The NIHRC supports the review's recommendation to have a clear understanding of the principles and purposes of sentencing in Northern Ireland and highlights the importance of such an approach in ensuring effective implementation of the review's outcomes. Consequently, the NIHRC suggests that the review's outcomes and further processes adopt the PANEL principles, which can be used as a guide to incorporating a human rights based approach. The PANEL Principles are as follows:

- **Participation** is the process where persons affected by particular policies have a genuine opportunity to input into the development of relevant legislation, policies, strategies and action plans. Effective participation requires genuine opportunities to be offered at every stage of the process - design, development, implementation, monitoring and evaluation. It also requires consideration to be given to accessibility and to reasonable accommodation, which should be established by consulting with those you are seeking to engage with.
- **Accountability** requires monitoring the impact of policy measures on people's rights and offering effective remedy when issues arise.
- **Non-discrimination** requires that any policies or practices do not discriminate, particularly on the grounds of "sex, race, colour, language, religion, political or other opinion, or social origin, association with a national minority, birth or other status".<sup>84</sup> It also requires that equal opportunities are genuinely available to all. This can require special measures to ensure this is possible, such as taking into account language barriers, physical or mental needs, or caring responsibilities. Disaggregation of data is a helpful tool in identifying discrimination.<sup>85</sup> Best practice indicates that, at minimum,

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<sup>82</sup> Ibid.

<sup>83</sup> Ibid, at para 3.8.

<sup>84</sup> Article 14, European Convention on Human Rights 1950.

<sup>85</sup> CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child', 27 November 2003, at para 12.

this data should be disaggregated by “sex, age, ethnicity, migration or displacement status, disability, religion, civil status, income, sexual orientation and gender identity”.<sup>86</sup>

- **Empowerment** is ensuring everyone understands their rights and is fully supported to be able to effectively participate in the relevant processes.
- **Legality** requires that all laws and policies are grounded in international, regional and domestic law.

**10.3 The NIHRC recommends that the PANEL principles are used as a guidance tool when considering outreach and communication plans, working with the media and promoting education and information as methods of communicating with the public. This should include direct engagement with relevant community and voluntary sector organisations, as a way of promoting public confidence.**

10.4 The review refers to the submission of community impact statements to the court in respect of critical incidents that have a significant impact on community confidence.<sup>87</sup> Supporting the participation element of the PANEL principles, the Basic Principles of Justice for Victims of Crime and Abuse of Power states:

the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by...allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected.<sup>88</sup>

**10.5 The NIHRC recommends that the PANEL principles are used by the Department as a tool to guide the Department’s continuing work to improve the provision of victim impact statements and awareness of community impact statements.**

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<sup>86</sup> UN Office of the Human Rights Commissioner for Human Rights, ‘A Human-rights Based Approach to Data’ (UN OHCHR, 2018), at para 7.

<sup>87</sup> Department of Justice NI, ‘Sentencing Review Northern Ireland: A Public Consultation’ (DoJ, 2019), at para 2.43.

<sup>88</sup> UN General Assembly, ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, 29 November 1985.

**10.6 The NIHRC recommends that the Department adopts a broad approach to participation. This involves direct engagement with the Public Prosecution Service, the Courts and the Police Service for NI on how they can promote the use of victim and community impact statements. It should also involve methods aimed at obtaining and utilising the views of relevant community and voluntary sector organisations, such as round table discussions or individual meetings aimed at discussing steps to take to improve the awareness and use of victim and community impact statements.**

## Contact Us

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