



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response to Public Consultation on Draft
Refugee Integration Strategy**

February 2022

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Summary of Recommendations

The NIHRC recommends that:

- 2.12 the Executive Office adds an early statement to the effect that the strategy represents a human rights-based approach, which in turn requires public authorities to adopt a human rights-based approach, which includes Protocol Article 2.**
- 2.13 the list of relevant human rights standards is expanded, as suggested above, and explained, including relevant EU obligations which underpin the non-diminution commitment in Protocol Article 2.**
- 2.14 the Executive Office undertakes a training needs analysis to identify whether human rights training is needed and thereafter to develop the necessary training including on drafting, implementation, monitoring and evaluation of strategy.**
- 2.21 the Executive Office develops this strategy and its outcomes to align fully with relevant substantive rights, including civil and political rights.**
- 2.22 the Executive Office gives particular urgent consideration to the strategy and its outcomes on destitution. This should address immediate need and steps required to prevent destitution.**
- 2.24 the Executive Office reconsiders the context section of the draft strategy and reviews existing law cited there to ensure there are no relevant omissions.**
- 3.6 the Executive Office includes a commitment within the strategy to work with the Home Office and UK Government to ensure that all migrants, including refugees and asylum seekers, have access to, and enjoy, the full array of human rights on an equal basis to everyone else.**
- 3.7 in the interests of clarity, the Executive Office sets out distinctions reflecting the current UK legal framework and consequential impact on access to services.**
- 3.8 the outcomes section of the strategy should make it clear which outcome applies to which group(s).**

- 3.12** the Executive Office ensures that tangible, understandable working definitions of 'integration' and 'full potential' are developed to aid effective implementation and monitoring of the strategy. These definitions should be developed through the effective participation of migrants, including asylum seekers and refugees.
- 3.18** greater consideration is given to language barriers faced by those affected by this strategy to remove those barriers.
- 3.19** the Executive Office review the strategy to ensure that the language used is appropriate and acceptable to those who are referenced. This is best achieved by seeking the views of those with lived experience.
- 4.9** the Executive Office develops a process for identifying and implementing positive action or special measures as required.
- 4.10** the Executive Office includes commitments that ensure an individual's particular characteristics are considered and reasonably accommodated.
- 4.15** the Executive Office ensures the strategy is accessible.
- 4.16** in implementing the strategy the processes and procedures are accessible.
- 4.21** the Executive Office references at the outset that the best interests of the child are a primary consideration and ensures that is reflected throughout the strategy.
- 4.22** the Executive Office references at the outset that the best interests of the child are a primary consideration and ensures that is reflected throughout the strategy.
- 5.4** the Executive Office ensures effective participation in any further steps taken regarding this strategy.
- 5.5** the Executive Office ensures the necessary resources and training are available and accessible.
- 5.6** the Executive Office analyse its learning (including its case studies) and consultation responses to develop specific, measurable, achievable and relevant outcomes.

- 5.7** the Executive Office checks any personal information published to ensure the privacy of all individuals is protected.
- 6.7** the Executive Office develops and publishes a list of the key stakeholders to the delivery of the strategy.
- 6.8** that the Executive Office benchmarks the outcomes.
- 6.9** that the Executive Office includes a requirement that updates and reports to the Strategic Planning Group include information that is disaggregated to give due regard to groups with specific characteristics, for example, children, women, LGBTQI+ and persons with disabilities.
- 6.10** the Executive Office ensures that outsourcing of responsibilities to private entities or civil society will be monitored.
- 6.11** the strategy includes a commitment for the Strategic Planning Group to evaluate and report to the Executive Office.
- 6.20** further research is undertaken on the experiences of refugees and asylum seekers, at regular intervals.
- 6.21** Executive Office ensures a commitment to collect, monitor and publish robust data relevant to integration in NI that is comprehensively disaggregated in a way that reflects society and the range of identities of the subjects of the data. The data should be consistent and offer an opportunity for comparison across time and jurisdictions.
- 7.2** the Executive Office assesses the level of resources necessary and in setting the that the maximum available resources are utilised to ensure human rights compliance.
- 8.5** the Executive Office includes within the strategy a commitment on effective training. Training should include, at a minimum: fundamental human rights; identity awareness and cultural sensitivity; and racial equality. It should be extended to anyone likely to come into contact with a person affected by this strategy.
- 8.6** training is subject to periodic review and evaluation.

1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland (NI) Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in NI. The NIHRC is also mandated, under section 78A(1) to monitor the implementation of Article 2(1) of the Protocol on Ireland/NI of the European Union (EU) Withdrawal Agreement, to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 as a result of the United Kingdom's withdrawal from the European Union. In accordance with these functions the following statutory advice is submitted to the Executive Office in response to its consultation on a draft Refugee Integration Strategy.

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) systems.¹ The relevant regional and international treaties in this context include:

- CoE European Convention on Human Rights 1950 (ECHR);²
- UN Convention Relating to the Status of Refugees 1951 (UN Refugee Convention);³

¹ The NI Executive is subject to the obligations contained within the specified regional and international treaties by virtue of the United Kingdom (UK) Government's ratification. In addition, section 26(1) of the NI Act 1998 provides that "if the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations... [s]he may order direct that the proposed action shall be taken". The NIHRC further recalls that section 24(1)(a) of the NI Act 1998 states that "a Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act... is incompatible with any of the [ECHR] rights".

² Ratified by the UK in 1951. The ECHR was given further domestic effect by the Human Rights Act 1998.

³ Ratified by the UK in 1954.

- CoE European Social Charter 1961 (European Social Charter);⁴
- UN International Convention on the Elimination of All Forms of Racial Discrimination 1965 (UN CERD);⁵
- UN International Covenant on Civil and Political Rights 1966 (UN ICCPR);⁶
- UN International Covenant on Economic, Social and Cultural Rights 1966 (UN ICESCR);⁷
- UN Convention on the Elimination of All Forms of Discrimination against Women 1981 (UN CEDAW);⁸
- UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 1987 (UN CAT);⁹
- UN Convention on the Rights of the Child 1989 (UN CRC);¹⁰
- CoE Framework Convention for the Protection of National Minorities 1995;¹¹ and
- UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD).¹²

1.3 In addition, there exists a body of 'soft law' developed by 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, inter alia:

- UN CEDAW Committee General Comment No 6;¹³

⁴ Ratified by the UK in 1962. The UK has signed, but not ratified, the updated European Social Charter 1991. However, by virtue of Article 18 of the Vienna Convention on the Law of Treaties, the UK is "obliged to refrain from acts which would defeat the object and purpose of" by signing the updated treaty.

⁵ Ratified by the UK in 1969.

⁶ Ratified by the UK in 1976.

⁷ Ratified by the UK in 1976.

⁸ Ratified by the UK in 1986.

⁹ Ratified by the UK in 1988.

¹⁰ Ratified by the UK in 1991.

¹¹ Ratified by the UK in 1998.

¹² Ratified by the UK in 2009.

¹³ 'UN CEDAW Committee General Comment No 6: Effective National Machinery and Publicity', 1988.

- UN CEDAW Committee General Recommendation No 9;¹⁴
- UN ICESCR Committee General Comment No 3;¹⁵
- UN ICESCR Committee General Comment No 4;¹⁶
- UN CERD Committee General Recommendation No 30;¹⁷
- UN CRC Committee General Comment No 5;¹⁸
- UN CRC Committee General Comment No 6;¹⁹
- UN CERD Committee General Recommendation No 32;²⁰
- UN ICESCR Committee General Comment No 20;²¹
- UN CRC Committee General Comment No 14;²²
- UN CRPD Committee General Comment No 2;²³
- UN CEDAW Committee General Recommendation No 32;²⁴
- UN Human Rights Committee Concluding Observations on the UK 2015;²⁵
- UN CRC Committee Concluding Observations on the UK 2016;²⁶
- UN ICESCR Committee Concluding Observations on the UK 2016;²⁷
- UN CEDAW Committee General Recommendation No 35;²⁸

¹⁴ 'UN CEDAW Committee General Recommendation No 9: Statistical Data Concerning the Situation of Women', 1989.

¹⁵ 'UN ICESCR Committee: General Comment No 3: The Nature of States Parties' Obligations', 1990.

¹⁶ 'UN ICESCR Committee General Comment No 4: Right to Adequate Housing', 1991.

¹⁷ 'UN CERD Committee General Recommendation No 30: Discrimination Against Non-Citizens', 1 October 2002.

¹⁸ CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the UN CRC', 27 November 2003.

¹⁹ CRC/GC/2005/6, 'UN CRC Committee General Comment No 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin', 1 September 2005.

²⁰ CERD/C/GC/32, 'General Recommendation No 32: The Meaning and Scope of Special Measures in the UN CERD', 24 September 2009.

²¹ E/C.12/GC/20, 'UN ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009.

²² CRC/C/GC/14, 'UN CRC Committee General Comment No 14: Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration', 29 May 2013.

²³ CRPD/C/GC/2, 'UN CRPD Committee General Comment No 2: Accessibility', 22 May 2014.

²⁴ CEDAW/C/GC/32, 'UN CEDAW Committee General Recommendation No 32: Gender-related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women', 14 November 2014.

²⁵ 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.

²⁶ 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.

²⁷ E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016.

²⁸ CEDAW/C/GC/35, 'UN CEDAW Committee General Recommendation No 35: Gender-based Violence against Women, Updating General Recommendation No 19', 26 July 2017.

- UN CRPD Committee Concluding Observations on the UK 2017;²⁹
- UN CRPD Committee General Comment No 6;³⁰
- UN CRPD Committee General Comment No 7;³¹
- UN CEDAW Committee Concluding Observations on the UK 2019;³² and
- UN CEDAW Committee General Recommendation No 38.³³

1.4 The Commission further advises on the UK Government commitment in Protocol Article 2(1) to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU. This is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. In addition, Section 6 of the Northern Ireland Act 1998 provides that the NI Assembly is prohibited from making any law which is incompatible with Protocol Article 2. Section 24 of the 1998 Act also provides that all acts of the Department should be compatible with Protocol Article 2.

1.5 The NIHRC welcomes the opportunity to respond to the Executive Office's consultation on the draft Refugee Integration Strategy (the Strategy). The NIHRC is ready and willing to meet with the Executive Office to discuss this further or to provide direction on more specific elements.

²⁹ CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 3 October 2017.

³⁰ CRPD/C/GC/6, 'UN CRPD Committee General Comment No 6: Equality and Non-Discrimination', 26 April 2018.

³¹ CRPD/C/GC/7, 'UN CRPD Committee General Comment No 7: Participation of Persons with Disabilities Including Children with Disabilities, Through Their Representative Organisations, In the Implementation and Monitoring of the UN CRPD', 9 November 2018.

³² 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.

³³ CEDAW/C/GC/38, 'UN CEDAW Committee General Recommendation No 38: Trafficking in Women and Girls in the Context of Global Migration', 20 November 2020.

2.0 Structure

Human rights standards

- 2.1 The NIHRC welcomes express reference to human rights standards such as the UN Refugee Convention, UN ICESCR, UN CERD, UN ICCPR and the findings of the UN High Commissioner for Refugees and the UN Committee on the Elimination of Racial Discrimination (UN CERD Committee).³⁴ The NIHRC, however, suggests that the reference to relevant human rights standards should be strengthened.
- 2.2 First, human rights standards should appear, front and centre, throughout the strategy making clear the Executive Office's commitment to a human rights-based approach, as a legal requirement and as a practical tool. The Human Rights Act 1998 and sections 24 and 26 of the NI Act 1998 require a human rights-based approach. Such an approach will only be achieved if it is properly informed by human rights standards. The Refugee Integration Strategy Scotland is one example of how human rights standards can be embedded within a strategy.³⁵
- 2.3 The Universal Declaration on Human Rights 1948 (UDHR) should be included, but the main (subsequent) focus should be on human rights treaties that have been ratified by the UK. The UDHR is important and is the foundation for the present human rights framework. It is helpful to note in this context that by signing a treaty, a State is "obligated to refrain from acts which would defeat the object and purpose of the treaty".³⁶ By ratifying a treaty, however, a State becomes legally bound by what is contained within, unless it has formally issued a declaration or reservation.³⁷ The

³⁴ The Executive Office, 'Draft Refugee Integration Strategy' (TEO, 2021), at 19, 23 and 27.

³⁵ Scottish Government, 'New Scots Refugee Integration Strategy 2018-2022' (Scottish Government, 2018), at 11-14.

³⁶ Article 18, Vienna Convention on the Law of Treaties 1969.

³⁷ Articles 14, 17 and 19, Vienna Convention on the Law of Treaties 1969.

Council of Europe's ECHR has been given effect in domestic courts, its Framework Convention for the Protection of National Minorities and seven UN human rights treaties have been ratified by the UK. They are, therefore, directly enforceable, which should be reflected in the strategy.

- 2.4 Secondly, the human rights standards that are listed should include those that are particularly relevant to certain groups. The draft strategy recognises the possibility of disproportionate adverse impact and observes "women, children, disabled people and those who identify as LGBT can face particular difficulties on their journey to seeking asylum and indeed through the asylum process".³⁸ The NIHRC welcomes that recognition and suggests that more detail is required to ensure protection for those groups in practice. That would include citation of, for example, UN CEDAW, UN CRC and UN CRPD together with guidance for public authorities on the practical effect of those treaties. The concluding observations and general comments of the relevant UN Committee provide helpful guidance on implementing these obligations in practice.
- 2.5 Thirdly, Protocol Article 2 requires the UK Government and the NI Executive to ensure that no diminution of rights, safeguards and equality of opportunities contained in the relevant part of the Belfast (Good Friday) Agreement 1998 occurs as a result of the UK's withdrawal from the EU.
- 2.6 The parties to the Belfast (Good Friday) Agreement affirmed their commitment to "the mutual respect, the civil rights and the religious liberties of everyone in the community" set out a non-exhaustive list of rights, safeguards and equality of opportunity. The rights which are "affirmed in particular" include the right to freely choose one's place of residence and the

³⁸ The Executive Office, 'Draft Refugee Integration Strategy' (TEO, 2021), at 19-20.

right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity.”³⁹

2.7 Protocol Article 2 protects everyone subject to the law in NI, regardless of immigration status. The UK Government recognises that Protocol Article 2 applies to “everyone who is subject to NI law – irrespective of whether that law has been passed by the NI legislature or Westminster”.⁴⁰

2.8 Protocol Article 2 requires the UK Government to “keep pace” with any changes made by the EU to the six EU equality Directives listed Annex 1, which improve the minimum levels of protection available, after 1 January 2021, including relevant case law of the Court of Justice of the EU (CJEU).⁴¹ The Annex 1 equality directives include the Race Directive, which establishes a framework for combating discrimination on the grounds of racial or ethnic origin,⁴² and the Equal Treatment (Goods and Services) Directive, which prohibits sex discrimination in access to goods and services.⁴³

2.9 In Protocol Article 2, the UK Government has also committed to ensuring that there will be no diminution of protections as were contained in relevant EU law on 31 December 2020.⁴⁴ In addition to the Annex 1 equality

³⁹ Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity.

⁴⁰ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 8.

⁴¹ Directive 2000/43/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000; Directive 2000/78/EC, ‘EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000; Directive 2004/113/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services’, 13 December 2004; Directive 2006/54/EC, ‘EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006; Directive 2010/41/EU, ‘EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010.; Directive 79/7/EEC, ‘EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978.

⁴² Directive 2000/43/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000.

⁴³ Directive 2004/113/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services’, 13 December 2004.

⁴⁴ UK Government, ‘UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland’, (NIO, 2020), at para 13.

directives, there are other EU obligations which underpin the rights, safeguards and equality of opportunity within scope of Protocol Article 2. For these standards the commitment to ensure 'no diminution' is measured by the relevant EU standards on 31 December 2020. These additional EU measures of relevance of the strategy include the Reception Directive⁴⁵ and the Qualification Directive.⁴⁶

2.10 The EU Charter on Fundamental Rights also continues to have relevance in the application and interpretation of those provisions of EU law which are relevant to the application of Protocol Article 2.

2.11 The NIHRC has commissioned research on the interaction of Protocol Article 2 and the rights of asylum seekers and refugees and will engage further with the Department when research is completed.

2.12 The NIHRC recommends that the Executive Office adds an early statement to the effect that the strategy represents a human rights-based approach, which in turn requires public authorities to adopt a human rights-based approach, which includes Protocol Article 2.

2.13 The NIHRC recommends that the list of relevant human rights standards is expanded, as suggested above, and explained, including relevant EU obligations which underpin the non-diminution commitment in Protocol Article 2.

2.14 The NIHRC recommends that the Executive Office undertakes a training needs analysis to identify whether human rights training is

⁴⁵ Directive 2003/9/EC, 'Council Directive laying down minimum standards for the reception of asylum seekers' 27 January 2003.

⁴⁶ Directive 2004/83/EC 'Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted', 29 April 2004.

needed and thereafter to develop the necessary training including on drafting, implementation, monitoring and evaluation of strategy.

Substantive rights

2.15 The NIHRC would welcome a greater focus on the substance of rights and their practical protection. For example, as an element of the right to an adequate standard of living, we would encourage specific inclusion of a right to adequate housing.⁴⁷ Domestic and European Court of Human Rights (ECtHR) case law, and the UN Committee's general comments and concluding observations provide guidance on how to implement such a right in practice. On housing, it should include consideration of legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; accessible location; and, cultural adequacy.⁴⁸ A similar approach should be applied to the right to education,⁴⁹ the right to social security,⁵⁰ the right to health care,⁵¹ and the right to work.⁵²

2.16 The draft strategy focuses primarily on social, economic and cultural rights. That is understandable, but the NIHRC suggests that civil and political rights should be considered further in this context. By way of example, the UN

⁴⁷ Article 11, UN International Covenant on Economic, Social and Cultural Rights 1966.

⁴⁸ 'UN ICESCR Committee General Comment No 4: Right to Adequate Housing', 1991, at para 8.

⁴⁹ Article 2, Protocol No 1 to the ECHR 1952; Article 13, UN International Covenant on Economic, Social and Cultural Rights 1966; Article 10, UN Convention on the Elimination of All Forms of Discrimination against Women 1981; Article 5(e)(v), UN Convention on the Elimination of All Forms of Racial Discrimination 1965; Article 28, UN Convention on the Rights of the Child 1989; Article 24, UN Convention on the Rights of Persons with Disabilities 2006.

⁵⁰ Article 9, UN International Covenant on Economic, Social and Cultural Rights 1966; Article 11(1)(e), UN Convention on the Elimination of All Forms of Discrimination against Women 1981; Article 5(e)(iv), UN Convention on the Elimination of All Forms of Racial Discrimination 1965; Article 26, UN Convention on the Rights of the Child 1989; Article 28, UN Convention on the Rights of Persons with Disabilities; Article 12, CoE European Social Charter 1961.

⁵¹ Article 12, UN International Covenant on Economic, Social and Cultural Rights 1966; Article 12, UN Convention on the Elimination of All Forms of Discrimination against Women 1981; Article 5(e)(iv), UN Convention on the Elimination of All Forms of Racial Discrimination 1965; Article 24, UN Convention on the Rights of the Child 1989; Article 25, UN Convention on the Rights of Persons with Disabilities 2006; Article 11, CoE European Social Charter 1961.

⁵² Article 6, UN International Covenant on Economic, Social and Cultural Rights 1966; Article 11, UN Convention on the Elimination of All Forms of Discrimination against Women 1981; Article 5(e)(i), UN Convention on the Elimination of All Forms of Racial Discrimination 1965; Article 32, UN Convention on the Rights of the Child 1989; Article 27, UN Convention on the Rights of Persons with Disabilities 2006; Article 1, CoE European Social Charter 1961.

CRPD Committee has expressed concern specific to “the insufficient support to all asylum seekers and refugees with psychosocial and/or intellectual disabilities in exercising their legal capacity”.⁵³ This requires attention and specific actions.

2.17 It is recognised that the incidence of hate crime can hinder integration and the strategy sets out progress that has been made in NI.⁵⁴ To ensure continued practical progress, we suggest that there are specific actions to improve the reporting of hate crimes. It is worth recalling the UN Human Rights Committee’s recommendation that the UK “should strengthen its efforts to prevent and eradicate all acts of racism and xenophobia”.⁵⁵

2.18 The strategy recognises the real possibility of destitution and aims to “develop a pathway out of destitution for refugees and asylum seekers facing destitution and those who have No Recourse to Public Funds Status”.⁵⁶ While we agree and support that aim, we suggest that greater focus is required to ensure a speedy and practically effective solution to destitution. That is not least because, in extreme circumstances, a destitute person is “frequently cold, tired and hungry and have not had access to washing facilities”.⁵⁷ If that is a result of State action or inaction, it is likely to constitute a violation of Article 3 ECHR (prohibition of torture, inhuman and degrading treatment)⁵⁸ or Article 2 ECHR (the right to life), against which States are required to take steps.⁵⁹

⁵³ CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 30(c).

⁵⁴ The Executive Office, ‘Draft Refugee Integration Strategy’ (TEO, 2021), at 35-37.

⁵⁵ 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 10.

⁵⁶ The Executive Office, ‘Draft Refugee Integration Strategy’ (TEO, 2021), at 8.

⁵⁷ *Regina v Secretary of State for the Home Department, ex parte Limbuela* [2005] UKHL 66, at para 36. See also *Moldovan and Others v Romania (No 2)* (2007) 44 EHRR 16, at para 101; *MSS v Belgium and Greece* (2011) 53 EHRR 2, at para 170.

⁵⁸ *Ibid.*

⁵⁹ *Osman v United Kingdom* (1998) ECHR 101, at para 116; *Regina v Secretary of State for the Home Department, ex parte Limbuela* [2005] UKHL 66, at para 36. See also *Moldovan and Others v Romania (No 2)* (2007) 44 EHRR 16, at para 101; *MSS v Belgium and Greece* (2011) 53 EHRR 2, at para 170; *A v UK* (1998) ECHR 85, at para 22; *VCL and AN v UK* (2021) ECHR 132, at para 152.

2.19 The strategy should therefore consider and deal with those rights. For less extreme cases, further consideration should be given to whether the outcomes reflect the requirement that maximum available resources are utilised to realise the right to an adequate standard of living.⁶⁰ The UN ICESCR Committee has recommended that the UK “increase the level of support provided to asylum seekers, including through the daily allowance, in order to ensure that they enjoy their economic, social and cultural rights, in particular the right to an adequate standard of living”.⁶¹ Additionally, the UK is encouraged “to ensure that asylum seekers are not restricted from accessing employment while their claims are being processed”.⁶²

2.20 The NIHRC remains concerned about the No Recourse to Public Funds Status.⁶³ This is, it seems to us, compounded by the failure to adopt the Crisis Fund on a permanent basis.⁶⁴ In the NIHRC’s view, there are a number of steps that can be taken in the short term. For example, making the Crisis Fund a permanent scheme with guaranteed funding. Also working with the UK Government to immediately suspend the No Recourse to Public Funds status, or in the absence of this, ensuring that the Discretionary Support payments are not treated as ‘public funds’ for immigration law purposes to enable such individuals and families to be eligible for such payments. In the longer term, the NIHRC stresses the necessity to eliminate the causes of destitution.

⁶⁰ Articles 2(1) and 11, UN International Covenant on Economic, Social and Cultural Rights 1966; ‘UN ICESCR Committee: General Comment No 3: The Nature of States Parties’ Obligations’, 1990, at paras 9-11.

⁶¹ E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 25.

⁶² Ibid.

⁶³ NI Human Rights Commission, ‘Submission to the NI Affairs Committee into the Experience of Minority Ethnic and Migrant People in NI’ (NIHRC, 2021), at 5.14.

⁶⁴ Ibid, at para 5.10.

2.21 The NIHRC recommends that the Executive Office develops this strategy and its outcomes to align fully with relevant substantive rights, including civil and political rights.

2.22 The NIHRC recommends that the Executive Office gives particular urgent consideration to the strategy and its outcomes on destitution. This should address immediate need and steps required to prevent destitution.

Context

2.23 The current draft strategy has dedicated significant space to explaining its context.⁶⁵ Context is always important but should perhaps take up less space than content. The NIHRC suggests that this section could be reduced significantly to make the strategy more accessible for example by limiting this to a brief overview of relevant actions, policies and laws. At the same time, the NIHRC suggests that a further review is conducted of relevant laws which are currently missing, such as the Children's Services Co-operation Act (NI) 2015.

2.24 The NIHRC recommends that the Executive Office reconsiders the context section of the draft strategy and reviews existing law cited there to ensure there are no relevant omissions.

3.0 Definitions and Language

Distinction between asylum seekers and refugees

3.1 Fundamental human rights are guaranteed to all human beings regardless of status. Human rights law does not distinguish between asylum seekers,

⁶⁵ The Executive Office, 'Draft Refugee Integration Strategy' (TEO, 2021), at 19-37.

refugees and other individuals in the protection of those rights. Provisions of non-discrimination are common across all human rights treaties.⁶⁶ Using Article 14 of the ECHR (directly applicable under the Human Rights Act 1998) as an example, non-discrimination provisions generally refer to “without discrimination 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”. The use of the term “other status” is important in this context as it allows for the inclusion of immigration status, be that an asylum seeker, unaccompanied or separated child, refugee or otherwise.⁶⁷

3.2 Furthermore, the UN has made multiple recommendations that State Parties should “review and revise legislation, as appropriate, in order to guarantee that such legislation is in full compliance... without discrimination”.⁶⁸ Additionally, it is made clear that there should be “legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens”.⁶⁹ It goes on to guide that any differential treatment based on citizenship or immigration status constitutes discrimination if it does not pursue a legitimate aim and is not proportional to that aim.⁷⁰

3.3 The complex array of UK immigration law distinguishes between asylum seekers, refugees, individuals with humanitarian protection and individuals

⁶⁶ Article 14, CoE European Convention on Human Rights 1950; Article 2(1), 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 Discrimination against Women 1981; UN Convention on the Elimination of All Forms of Racial Discrimination 1965; Article 2(1), UN Convention on the Rights of the Child 1989; Article 5, UN Convention on the Rights of Persons with Disabilities 2006; Article 6(1), CoE Framework Convention for the Protection of National Minorities 1995.

⁶⁷ *Hode and Abdi v UK* (2012) ECHR 1871, at para 47; *Bah v UK* (2011) ECHR 2060, at para 46; CRC/GC/2005/6, ‘UN CRC Committee General Comment No 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin’, 1 September 2005, at para 18.

⁶⁸ ‘UN CERD Committee General Recommendation No 30: Discrimination Against Non-Citizens’, 1 October 2002, at para 6.

⁶⁹ *Ibid*, at para 7.

⁷⁰ *Ibid*, at para 8.

with discretionary leave to remain. Separated or unaccompanied children are also distinguished as a specific category of asylum seeker. These distinctions have practical implications, such as impediments to employment and also to return to country of origin.⁷¹ Another example is that a refugee without indefinite leave to remain will face uncertainty in terms of longer-term accommodation.⁷²

3.4 While definitions are provided within the strategy's glossary, they could explain better the distinction between individual groups of migrants and the different impacts on access to services. This would be particularly helpful if, at the same time, the Executive Office reconsiders the title and context sections. To understand the scope and limitations of the strategy, one needs to understand the distinctions. The title of the draft strategy refers only to refugees, but the substance includes asylum seekers. We suggest this should be addressed.

3.5 Moreover, the outcomes section does not distinguish adequately between different groups and therefore the needs of different groups. The NIHRC recommends that each outcome should be considered in terms of its application to each different group.

3.6 The NIHRC recommends that the Executive Office includes a commitment within the strategy to work with the Home Office and UK Government to ensure that all migrants, including refugees and asylum seekers, have access to, and enjoy, the full array of human rights on an equal basis to everyone else.

⁷¹ Home Office, 'Permission to Work and Volunteering for Asylum Seekers' (Home Office, 2012).

⁷² Crisis, 'Everybody In: How to End Homelessness in Great Britain' (Crisis, 2018), at Chapter 12.

3.7 The NIHRC recommends that, in the interests of clarity, the Executive Office sets out distinctions reflecting the current UK legal framework and consequential impact on access to services.

3.8 The NIHRC recommends that the outcomes section of the strategy should make it clear which outcome applies to which group(s).

Working definitions

3.9 The definition of integration touches on elements that should be considered when understanding integration, for example that it “can mean different things to different people”, that it “can be intergenerational”, that it “takes place at multiple levels including the individual, family and the community and incorporates all aspects of life”, and that it “should not be misinterpreted as assimilation”.⁷³ The NIHRC recognises and agrees with that. However, for the purposes of this strategy we suggest that a clear definition is adopted. In particular, it should be clear as to whom it applies.⁷⁴ This should include asylum seekers, refugees and other migrants. The definition should be developed and adopted in accessible language to ensure it is implemented. This is also necessary if the Executive Office is to reflect the principle of effective participation.

3.10 The strategy also makes reference to the “realisation” of a person’s “full potential”, but provides no definition.⁷⁵ The NIHRC recommends that a definition is developed and adopted in accessible language to ensure it is implemented.

⁷³ The Executive Office, ‘Draft Refugee Integration Strategy’ (TEO, 2021), at 12.

⁷⁴ Noting also the confusion caused over different groups, mentioned above.

⁷⁵ The Executive Office, ‘Draft Refugee Integration Strategy’ (TEO, 2021) at 6, 12 and 14.

3.11 With more precision around definitions the NIHRC suggests that monitoring of the provisions of the strategy will be easier and more reliable. Effective monitoring is a recurring requirement of human rights standards.⁷⁶

3.12 The NIHRC recommends that the Executive Office ensures that tangible, understandable working definitions of 'integration' and 'full potential' are developed to aid effective implementation and monitoring of the strategy. These definitions should be developed through the effective participation of migrants, including asylum seekers and refugees.

Language

3.13 There are phrases used in the draft strategy that, it seems to the NIHRC, could usefully be reconsidered.

3.14 Through wider engagement, migrant groups have advised the NIHRC that 'newcomer' is inaccurate for many migrants who have been in NI for some time. The NIHRC suggests 'migrant families', 'family members of migrant families living in NI' and/or 'children of migrant families living in NI' are used where relevant. The term 'indigenous communities' is likely to confuse. There is no recognised definition of 'indigenous' within international law. Identifying as indigenous is based on the principle of self-determination, but typically indigenous is a term that is applied to "non-dominant groups of society".⁷⁷ The NIHRC suggests that 'indigenous communities' does not accord with the Department's intention in the strategy.

⁷⁶ E/C.12/GC/20, 'UN ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009, at para 41; 'UN CEDAW Committee General Comment No 6: Effective National Machinery and Publicity', 1988, at para 1(b); CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the UN CRC', 27 November 2003, at para 45.

⁷⁷ Article 1(2), International Labour Organisation Indigenous and Tribal Peoples Convention 1989; Article 3, UN Declaration on the Rights of Indigenous Peoples 2007; UN Permanent Forum on Indigenous Issues, 'Factsheet: Who are Indigenous Peoples?' (UN, Unknown).

3.15 The reference to 'LGBTI communities' should be replaced with the preferred, 'LGBTQI+'.

3.16 Reference to 'those with physical or mental disabilities' should be replaced with 'persons with disabilities' or 'disabled people'. As advised, the NIHRC adopts an approach of using the terms.

3.17 The NIHRC has improved its own use of language by involvement in the co-design groups for the NI inclusion strategies and its work as part of the Independent Mechanism on the UN CRPD.

3.18 The NIHRC recommends that greater consideration is given to language barriers faced by those affected by this strategy to remove those barriers.

3.19 The NIHRC recommends that the Executive Office review the strategy to ensure that the language used is appropriate and acceptable to those who are referenced. This is best achieved by seeking the views of those with lived experience.

4.0 Special Considerations

4.1 Human rights law requires that an individual's specific characteristics or needs are taken into account and that, where necessary, positive action or special measures are taken to ensure that individual is not discriminated against. The ECtHR, considering Article 14 of the ECHR, found it not to be discriminatory to treat differently or "to correct 'factual inequalities'".⁷⁸

⁷⁸ *Taddeucci and McCall v Italy* (2016) ECHR 604, at para 81.

Indeed, “in certain circumstances a failure to attempt to correct inequality through different treatment may in itself” be discriminatory.⁷⁹

- 4.2 The right to non-discrimination is “not a passive obligation... but also requires appropriate proactive measures”.⁸⁰ Further, non-discrimination “when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those derived from age and/or gender”.⁸¹ Additionally, the potential for multiple discrimination should be considered.⁸²
- 4.3 Moreover, Article 5 of the UN CRPD requires that “all appropriate steps [are taken] to ensure that reasonable accommodation is provided”. Article 2 of the UN CRPD defines ‘reasonable accommodation’ as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case” to ensure enjoyment or exercise of rights on an equal basis with others. It is also important to recall the requirement on public authorities to take reasonable steps to protect victims of whom they are aware or ought to be aware.⁸³ Note, also, that the duty to identify victims of trafficking is “placed firmly on States, irrespective of the lack of self-identification by a victim”.⁸⁴
- 4.4 Any special measures adopted should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the

⁷⁹ Ibid.

⁸⁰ CRC/C/GC/14, ‘UN CRC Committee General Comment No 14: Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration’, 29 May 2013, at para 41.

⁸¹ CRC/C/GC/2005/6, ‘UN CRC Committee General Comment No 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin’, 1 September 2005, at para 18.

⁸² For example, Articles 6 and 7, UN Convention on the Rights of Persons with Disabilities 2006; Article 23(3), UN Convention on the Rights of the Child 1989; ‘UN CERD Committee General Recommendation No 30: Discrimination Against Non-Citizens’, 1 October 2002, at para 8.

⁸³ Articles 3 and 4(1), European Convention on Human Rights 1950; *A v UK* (1998) ECHR 85, at para 22; *VCL and AN v UK* (2021) ECHR 132, at para 152; CEDAW/C/GC/38, ‘UN CEDAW Committee General Recommendation No 38: Trafficking in Women and Girls in the Context of Global Migration’, 20 November 2020.

⁸⁴ CEDAW/C/GC/38, ‘UN CEDAW Committee General Recommendation No 38: Trafficking in Women and Girls in the Context of Global Migration’, 20 November 2020, at para 38.

principle of fairness and proportionality, and be temporary. The measures should be designed and implemented on the basis of need, grounded in a realistic appraisal of the current situation of the individuals and communities concerned.⁸⁵ To establish when and what is required, an informed approach that is sensitive to particular characteristics or barriers is necessary.

- 4.5 For example, it has been reported that, in the UK, “asylum seeking women, migrants and women with insecure immigration status who experience gender-based violence, including domestic violence and rape, refrain from seeking protection and support services for fear of having their immigration status reported to authorities”.⁸⁶ A gender-sensitive approach will therefore be necessary. The NIHRC appreciates that the draft strategy also acknowledges women, children, persons who identify as LGBTQI+, persons with disabilities and individuals that have been subject to human trafficking as particularly vulnerable.⁸⁷
- 4.6 The NIHRC suggests however that more is required to ensure meaningful and all-encompassing outcomes. By way of further explanation, the outcome to “explore the potential for the development of a vulnerability assessment on arrival for asylum seekers to ensure appropriate support is in place for those most vulnerable such as victims of trafficking, women, children and LGBT” only covers a particular group of migrants (asylum seekers) and does not include reference to persons with disabilities.⁸⁸ This highlights the need for the UN CEDAW, UN CAT, UN CRC and UN CRPD to be identified and incorporated into strategy.

⁸⁵ CERD/C/GC/32, ‘UN CERD Committee General Recommendation No 32: The Meaning and Scope of Special Measures in the UN CERD’, 24 September 2009, at para 15.

⁸⁶ 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, at para 29(a).

⁸⁷ The Executive Office, ‘Draft Refugee Integration Strategy’ (TEO, 2021), at 17 and 19.

⁸⁸ Ibid, at 44.

4.7 For assistance, the NIHRC offers the following example. The 'outcomes' should include a commitment to vulnerability assessments for asylum seekers that are followed, if required, by a personal plan. In cases of families or a similar arrangement of collective circumstances, the specific needs of each member of the family or group should be considered on an individual basis and those conducting the assessments should be trained in how to identify and accommodate different sensitivities. They should also be trained in how to identify and what to do if previous experience of or on-going domestic abuse, trafficking or servitude is suspected.

4.8 Importantly, special measures "should not be confused with specific *rights* pertaining to certain categories of person or community".⁸⁹ They should be "designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities".⁹⁰

4.9 The NIHRC recommends that the Executive Office develops a process for identifying and implementing positive action or special measures as required.

4.10 The NIHRC recommends that the Executive Office includes commitments that ensure an individual's particular characteristics are considered and reasonably accommodated.

Accessibility

4.11 There should be space for appropriate and meaningful assessments of individual needs. Article 12(1) of the UN CRC requires that States Parties shall assure to the child who is capable of forming his or her own views the

⁸⁹ CERD/C/GC/32, 'UN CERD Committee General Recommendation No 32: The Meaning and Scope of Special Measures in the UN CERD', 24 September 2009, at para 15.

⁹⁰ CERD/C/GC/32, 'UN CERD Committee General Recommendation No 32: The Meaning and Scope of Special Measures in the UN CERD', 24 September 2009, at paras 13 and 18.

right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Importantly, for such consultation to be “meaningful, documents as well as processes need to be made accessible” and “listening to children should not be seen as an end in itself”.⁹¹

4.12 Article 9 of the UN CRPD protects the right to accessibility “to enable persons with disabilities to live independently and participate fully in all aspects of life”. Accessibility “should be provided to all persons with disabilities, regardless of the type of impairment, without distinction of any kind” and “accessibility should especially take into account the gender and age perspectives for persons with disabilities”.⁹² In practice, this “requires States Parties to identify and eliminate obstacles and barriers to accessibility”.⁹³ Furthermore, “since a lack of accessibility is often the result of insufficient awareness and technical know-how, Article 9 [of the UN CRPD] requires that States Parties provide training to all stakeholders on accessibility for persons with disabilities”.⁹⁴ New technologies “can be used to promote full and equal participation of persons with disabilities in society, but only if they are designed and produced in a way that ensures their accessibility”.⁹⁵

4.13 The practice of conducting vulnerability assessments has been established in England and Ireland. Lessons learned from these systems, including where they could be improved,⁹⁶ could be used to assist with developing an effective assessment system. Learning should be drawn from vulnerability assessment systems in England and Ireland, including where the existing systems could be improved, to ensure the system put in place in NI is effective.

⁹¹ CRC/GC/2003/5, ‘UN CRC Committee General Comment No 5: General Measures of Implementation of the UN CRC’, 27 November 2003, at 4.

⁹² CRPD/C/GC/2, ‘UN CRPD Committee General Comment No 2: Accessibility’, 22 May 2014, at para 13.

⁹³ Ibid, at para 17.

⁹⁴ Ibid, at para 19.

⁹⁵ Ibid, at para 22.

⁹⁶ ‘Nasc: State’s pilot project on vulnerability of asylum applicants is too limited’, *Irish Examiner*, 11 February 2021.

4.14 It should be recalled that 'accessibility' is separate to 'reasonable accommodation'. Accessibility standards "must be broad and standardised", while reasonable accommodation is individualised and "can be used as a means to ensuring accessibility for an individual with a disability in a particular situation... Thus, a person with a rare impairment might ask for accommodation that falls outside the scope of any accessibility standard".⁹⁷

4.15 The NIHRC recommends that the Executive Office ensures the strategy is accessible.

4.16 The NIHRC recommends that in implementing the strategy the processes and procedures are accessible.

Best interests of the child

4.17 Article 3(1) of the UN CRC provides that "in all actions undertaken concerning children... the best interests of the child are a primary consideration".

4.18 This requirement extends to "decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decision that concern or impact a child".⁹⁸ The elements to take into account when determining the best interests of the child include:

- the child's views;
- the child's identity;

⁹⁷ CRPD/C/GC/2, 'UN CRPD Committee General Comment No 2: Accessibility', 22 May 2014, at paras 25 and 26.

⁹⁸ CRC/C/GC/14, 'UN CRC Committee General Comment No 14: Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration', 29 May 2013, at para 14(c).

- preservation of the family environment and maintaining relations;
- care, protection and safety of the child;
- situation of vulnerability;
- the child's right to health; and
- the child's right to education.⁹⁹

4.19 It is recognised that:

not all the elements will be relevant to every case, and different elements can be used in different ways in different cases. The content of each element will necessarily vary from child to child and from case to case, depending on the type of decision and the concrete circumstances, as will the importance of each element in the overall assessment.¹⁰⁰

4.20 Consideration should be given to the "holistic development of the child".¹⁰¹ Furthermore, "the age and maturity of the child should guide the balancing of the elements. The physical, emotional, cognitive and social development of the child should be taken into account to assess the level of maturity of the child".¹⁰² Consideration should also be given to the fact that "the capacities of the child will evolve".¹⁰³

4.21 The NIHRC recommends that the Executive Office references at the outset that the best interests of the child are a primary consideration and ensures that is reflected throughout the strategy.

⁹⁹ Ibid, at paras 52-79.

¹⁰⁰ Ibid, at para 80.

¹⁰¹ Ibid, at 82.

¹⁰² Ibid, at 83.

¹⁰³ Ibid, at 84.

4.22 The NIHRC recommends that the Executive Office references at the outset that the best interests of the child are a primary consideration and ensures that is reflected throughout the strategy.

5.0 Participation

Effective participation

5.1 The PANEL principles provide guidance on what a human rights-based approach requires in practice.¹⁰⁴ The NIHRC suggests that more is required to ensure participation is built into the draft strategy and its processes. 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.

5.2 Article 4(3) of the UN CRPD provides useful guidance as to what effective participation requires. It states that “in the development and implementation of legislation and policies... and in other decision-making processes... States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations”.¹⁰⁵ The participation should be “meaningful” and occur in a “timely manner”.¹⁰⁶

¹⁰⁴ The PANEL principles (Participation, Accountability, Non-Discrimination, Empowerment and Legality) were developed to assist public authorities to adopt a human rights-based approach to their work.

¹⁰⁵ Article 4(3), UN Convention on the Rights of Persons with Disabilities 2006.

¹⁰⁶ CRPD/C/GC/7, ‘UN CRPD Committee General Comment No 7: Participation of Persons with Disabilities Including Children with Disabilities, Through Their Representative Organisations, In the Implementation and Monitoring of the UN CRPD’, 9 November 2018, at paras 11 and 22.

5.3 The draft strategy refers to an intention to “develop a framework to ensure the lived experience of refugees is taken into account and that the co-production model is embedded in policy making”.¹⁰⁷ The NIHRC welcomes that but would prefer to have seen such a framework in place for the purposes of developing this draft strategy. The same applies to delivery and monitoring of the strategy, which will be taken forward through a partnership approach, but the NIHRC would have liked to see this approach adopted when planning and developing draft strategies.

5.4 The NIHRC recommends that the Executive Office ensures effective participation in any further steps taken regarding this strategy.

5.5 The NIHRC recommends that the Executive Office ensures the necessary resources and training are available and accessible.

5.6 The NIHRC recommends that the Executive Office analyse its learning (including its case studies) and consultation responses to develop specific, measurable, achievable and relevant outcomes.

5.7 The NIHRC recommends that the Executive Office checks any personal information published to ensure the privacy of all individuals is protected.

6.0 Monitoring

Process

6.1 Effective monitoring is essential to ensuring human rights compliance. For monitoring to be effective it “should assess both the steps taken and the

¹⁰⁷ The Executive Office, ‘Draft Refugee Integration Strategy’ (TEO, 2021), at 40.

results achieved” and “national strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination”.¹⁰⁸

6.2 Comprehensive monitoring requires a State to “establish and/or strengthen effective national machinery, institutions and procedures, at a high level of Government, and with adequate resources, commitment and authority”.¹⁰⁹ It includes considering impacts on particular individuals or groups. For example, the UN CRC Committee emphasises the need for continuous child impact assessments and child impact evaluations to be “built into government at all levels and as early as possible in the development of policy”.¹¹⁰

6.3 The draft strategy sets out that it “will be taken forward over a five-year period, in partnership with key stakeholders” and that “the Strategic Planning Group will monitor overall progress on implementation, chaired by The Executive Office”.¹¹¹ It continues that “departments will develop their own detailed implementation plans where they have responsibility for one or more of the priority actions identified”.¹¹² Further, “implementation will be monitored by the Strategic Planning Group through regular updates from departments and an annual report on the progress against implementation plans”.¹¹³ The NIHRC welcomes the inclusion of a plan for monitoring, but suggests that it can be strengthened as follows.

6.4 For ‘key stakeholders’ this should be clarified and defined. There should, at least, include public authorities and organisations that have overall

¹⁰⁸ E/C.12/GC/20, ‘UN ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights’, 2 July 2009, at para 41.

¹⁰⁹ ‘UN CEDAW Committee General Comment No 6: Effective National Machinery and Publicity’, 1988, at para 1(b).

¹¹⁰ CRC/GC/2003/5, ‘UN CRC Committee General Comment No 5: General Measures of Implementation of the UN CRC’, 27 November 2003, at para 45.

¹¹¹ The Executive Office, ‘Draft Refugee Integration Strategy’ (TEO, 2021), at 54.

¹¹² Ibid.

¹¹³ Ibid.

responsibility to deliver the services linked to this strategy. When delegating to private entities or civil society organisations this should be in the confident knowledge that they are appropriately resourced and best placed to take on the responsibility, including comprehensively trained on human rights obligations and identity awareness. Moreover, it would be helpful to identify a Strategic Planning Group with sufficient seniority and specialised knowledge.

- 6.5 The NIHRC particularly welcomes the plan for the Strategic Planning Group to receive regular updates and an annual report on progress from Departments and suggests the updates and reports will be disaggregated to give due regard to groups with specific characteristics, for example, children, women, LGBTQI+ and persons with disabilities.
- 6.6 The NIHRC assumes the Executive Office intends to provide some form of benchmarking and will distinguish those responsible for each outcome. The NIHRC believes such benchmarking and division of responsibility will be critical to successful implementation.
- 6.7 The NIHRC recommends that the Executive Office develops and publishes a list of the key stakeholders to the delivery of the strategy.**
- 6.8 The NIHRC recommends that the Executive Office benchmarks the outcomes.**
- 6.9 The NIHRC recommends that the Executive Office includes a requirement that updates and reports to the Strategic Planning Group include information that is disaggregated to give due regard to groups with specific characteristics, for example, children, women, LGBTQI+ and persons with disabilities.**

6.10 The NIHRC recommends that the Executive Office ensures that outsourcing of responsibilities to private entities or civil society will be monitored.

6.11 The NIHRC recommends that the strategy includes a commitment for the Strategic Planning Group to evaluate and report to the Executive Office.

Data

6.12 Effective human rights compliance depends upon detailed and widely disaggregated data.¹¹⁴ There is also a requirement to publish disaggregated data.¹⁰⁹ It helps “identify inequalities, discriminatory practices and patterns of disadvantage”.¹¹⁵ Disaggregated data should be collected systematically and published “to inform policymaking and assess the impact of measures taken”.¹¹⁶ The UN CRC Committee notes that “data and statistics are often collected by a variety of different ministries or agencies, which can impede further analysis and presents potential concerns with regard to confidentiality and... right to privacy”.¹¹⁷

6.13 In terms of how to collect and disaggregate data, the following is observed. Data collected within such a system should ideally include, but not be limited to: basic biographical data on each child (including age, sex, country of origin and nationality, ethnic group); total number of unaccompanied and separated children attempting to enter the country and the number that

¹¹⁴ CRC/GC/2005/6, ‘UN CRC Committee General Comment No 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin’, 1 September 2005, at para 99; ‘UN CEDAW Committee General Recommendation No 9: Statistical Data Concerning the Situation of Women’, 1989, at 1; CRPD/C/GC/6, ‘UN CRPD Committee General Comment No 6: Equality and Non-Discrimination’, 26 April 2018, at para 34.

¹¹⁵ CRPD/C/GC/6, ‘UN CRPD Committee General Comment No 6: Equality and Non-Discrimination’, 26 April 2018, at para 34.

¹¹⁶ 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, at para 26(d).

¹¹⁷ CRC/GC/2005/6, ‘UN CRC Committee General Comment No 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin’, 1 September 2005, at para 98.

have been refused entry; number of requests for asylum; number of legal representatives and guardians, assigned to such children; legal and immigration status (i.e. asylum seeker, refugee, temporary resident permit); living arrangements (i.e. in institutions, with families or living independently); enrolment in school or vocational training; family reunifications; and, numbers returned to their country of origin. In addition, States Parties should consider collecting qualitative data that would allow them to analyse issues that remain insufficiently addressed, such as for instance, disappearances of unaccompanied and separated children and the impact of trafficking.¹¹⁸

6.14 The UN CRPD Committee recommends that the UK “use the sets of questions and tools developed by the Washington Group on Disability Statistics for the collection of comparable disability statistics”.¹¹⁹ The UN CEDAW Committee further requires that States should include “statistical data and trends over time on asylum claims, countries of origin, reasons for seeking asylum and recognition rates”.¹²⁰

6.15 The UN CEDAW Committee goes on to advise that data collection “needs to be coordinated throughout the jurisdiction, ensuring nationally application indicators. States should collaborate with appropriate research institutes and aim to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies”.¹²¹ The UN CRC Committee has raised concerns specific to the UK that “reliable data on asylum-seeking children, including those whose age is disputed, remain unavailable”¹²² and

¹¹⁸ Ibid, at para 100.

¹¹⁹ CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 65.

¹²⁰ CEDAW/C/GC/32, ‘UN CEDAW Committee General Recommendation No 32: Gender-related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women’, 14 November 2014, at para 39.

¹²¹ CRC/GC/2003/5, ‘UN CRC Committee General Comment No 5: General Measures of Implementation of the UN CRC’, 27 November 2003, at para 48.

¹²² Ibid, at para 76.

recommends that the UK “systematically collect and publish disaggregated data on the number of children seeking asylum, including those whose age is disputed”.¹²³

6.16 In terms of what to do with data, it is noted that “it is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development”.¹²⁴ Furthermore, that “evaluation requires the development of indicators”.¹²⁵ It is considered best practice for there to be “annual publication of comprehensive reports on the state of children’s rights throughout their jurisdiction”.¹²⁶ The “publication and wide dissemination of and debate on such reports, including in parliament, can provide a focus for broad public engagement in implementation”.¹²⁷ Additionally, “translations, including child-friendly versions, are essential for engaging children and minority groups in the process”.¹²⁸

6.17 As quoted in the context section of the strategy, the research conducted by Queen’s University Belfast identified that “lack of accurate data on asylum seekers and refugees in NI makes service design for asylum seekers and refugees more complex”.¹²⁹ The draft strategy acknowledges “due to the scarcity of routinely collected administrative data on refugees and asylum seekers it will be difficult to robustly evidence/quantify the impact this strategy will have”.¹³⁰ This is welcome and important, but insufficient on its own.

¹²³ Ibid, at para 77.

¹²⁴ Ibid, at para 48.

¹²⁵ Ibid, at para 48.

¹²⁶ Ibid, at para 49.

¹²⁷ Ibid, at para 49.

¹²⁸ Ibid, at para 49.

¹²⁹ The Executive Office, ‘Draft Refugee Integration Strategy’ (TEO, 2021), at 25.

¹³⁰ Ibid, at 54.

6.18 While much of the data concerning asylum seekers is managed by the Home Office and this limits the Executive Office's reach, the NIHRC suggests the collection of NI-specific data can be expanded by other means. For example, the work of the NI Strategic Migration Partnership in overseeing the operational management of asylum contracts in NI on behalf of the Home Office is a good place to start regarding data on asylum seekers in NI. The commitment to further ethnic monitoring in NI within the Racial Equality Strategy is also stressed.¹³¹

6.19 By way of illustration, data should be collected which can provide answers to the following:

- how many asylum seekers and refugees are in NI and at what stage are they?
- how many have had their application denied but cannot return?
- what services are required and for how many?
- what services are being provided and where are there gaps?
- who is providing the services?
- how many are destitute?
- how many have special characteristics that need to be considered and what are they?

6.20 The NIHRC recommends that further research is undertaken on the experiences of refugees and asylum seekers, at regular intervals.

6.21 The NIHRC recommends that Executive Office ensures a commitment to collect, monitor and publish robust data relevant to integration in NI that is comprehensively disaggregated in a way that reflects society and the range of identities of the subjects of the

¹³¹ Ibid, at 5.

data. The data should be consistent and offer an opportunity for comparison across time and jurisdictions.

7.0 Resources

7.1 The strategy “aims to make the most effective use of resources by supporting and promoting partnership working and developing a consistent and coordinated approach to the delivery of key services”.¹³² It also aims to “make the most of the resources available”.¹³³ If the intention is to continue without additional resources, the NIHRC suggests that those resources should be assessed against their capacity to deliver human rights compliance.

7.2 The NIHRC recommends that the Executive Office assesses the level of resources necessary and in setting the that the maximum available resources are utilised to ensure human rights compliance.

8.0 Training

8.1 For human rights standards to be effectively applied, it is critical that those delivering services are trained.¹³⁴ Training should, in the NIHRC’s view, extend to include government officials, parliamentarians, members of the judiciary, community and religious leaders, teachers, social workers and other professionals and the media.¹³⁵ Training “should be specifically tailored to the needs and rights of the groups concerned” but all training should include, at least:

¹³² Ibid, at 15.

¹³³ Ibid, at 15.

¹³⁴ CRC/GC/2005/6, ‘UN CRC Committee General Comment No 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin’, 1 September 2005, at para 95.

¹³⁵ CRC/GC/2003/5, ‘UN CRC Committee General Comment No 5: General Measures of Implementation of the UN CRC’, 27 November 2003, at para 53.

- principles and provisions of relevant human rights;
- knowledge of the country of origin;
- appropriate interview techniques;
- development and psychology;
- cultural sensitivity and intercultural communication.¹³⁶

8.2 Initial training should be refreshed regularly.¹³⁷ There should be “systematic and ongoing” training. Human rights standards should be “reflected in professional training curricula, codes of conduct and educational curricula at all levels”.¹³⁸ Further, “understanding and knowledge of human rights must... be promoted” among rights holders “through the school curriculum and in other ways”.¹³⁹ Training should be subject to a “periodic evaluation of the effectiveness”, which reviews “knowledge of” human rights standards and “also the extent to which... [training] has contributed to developing attitudes and practice which actively promote enjoyment... of... rights”.¹⁴⁰

8.3 The draft strategy includes a commitment to “develop training for policy staff on the issues facing those with No Recourse to Public Funds Status, Right to Work Restrictions and/or Migrant Access to Benefits issues”.¹⁴¹ Also a commitment to “ensure front line staff delivering key services receive training to recognise and respond effectively to the needs of refugees and asylum seekers”.¹⁴²

¹³⁶ CRC/GC/2005/6, ‘UN CRC Committee General Comment No 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin’, 1 September 2005, at para 96.

¹³⁷ Ibid, at para 97.

¹³⁸ CRC/GC/2003/5, ‘UN CRC Committee General Comment No 5: General Measures of Implementation of the UN CRC’, 27 November 2003, at para 53.

¹³⁹ Ibid, at para 53.

¹⁴⁰ Ibid, at para 55.

¹⁴¹ The Executive Office, ‘Draft Refugee Integration Strategy’ (TEO, 2021), at 44.

¹⁴² Ibid, at 48.

8.4 The NIHRC welcomes specific commitments and suggests that everyone who will be involved in designing, implementing, monitoring and evaluating this strategy requires appropriate training. Basic training needs to be far reaching and include anyone who is likely to come into contact with someone affected by the strategy. For example, included should be security professionals and call handlers. Where necessary, more specialised training should be delivered, for example to those who conduct interviews with children or other groups with special needs. That would be more likely if a whole school approach is adopted so that all staff are equipped and trained in anti-racism and inclusion.

8.5 The NIHRC recommends that the Executive Office includes within the strategy a commitment on effective training. Training should include, at a minimum: fundamental human rights; identity awareness and cultural sensitivity; and racial equality. It should be extended to anyone likely to come into contact with a person affected by this strategy.

8.6 The NIHRC recommends that training is subject to periodic review and evaluation.

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