



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the UN Human Rights
Committee on the United Kingdom's
Eighth Periodic Report on Compliance
with the International Covenant on Civil
and Political Rights**

February 2024

Table of Contents

1.0 Introduction	5
2.0 Context	5
3.0 Article 1 – Self-determination	6
UK human rights framework	6
Bill of Rights for NI	7
Human rights after Brexit	8
Birthright	9
4.0 Article 2 – Non-discrimination	10
Equality protections	10
Intersectional multiple discrimination	10
Sexual orientation	11
Conversion therapy	12
Hate crimes	12
Racial equality	13
Sectarianism	14
Intersex	15
Refugee Integration Strategy	15
5.0 Article 3 – Gender Equality	16
Gender Equality Strategy	16
Gender recognition	16
UN Security Council Resolution 1325	18
6.0 Article 6 – Right to Life	19
Conflict related investigations: Deaths	19
Legacy inquests	21
Legacy inquiries	22
Inquiries Act 2005	23
7.0 Article 7 – Torture	24
Conflict related investigations: Torture	24
Victims' payments	25

Rule of law: Non-State actors	25
Abuse in health and social care settings	27
Female genital mutilation	28
Intersex genital mutilation	29
Domestic and sexual violence and abuse.....	29
Termination of pregnancy	32
Historical abuse	35
Identifying torture.....	36
8.0 Article 8 – Freedom from Slavery	37
Child sexual exploitation	37
Children missing from care.....	38
Modern slavery	39
9.0 Articles 9, 10 and 11– Liberty and Security of the Person ...	40
Definition of terrorism	40
Powers of arrest.....	41
Fine default.....	42
Imprisonment of children with adults.....	42
Remand of children	43
Prison conditions.....	43
Women in detention	45
10.0 Article 12 – Freedom of Movement.....	47
Racial profiling.....	47
11.0 Article 13 – Non-refoulement	48
Asylum, refugee law and resettlement.....	48
Rwanda asylum proposals	50
12.0 Articles 14, 15, 16 and 26 – Fair Trial Rights.....	51
Access to justice	51
Age of criminal responsibility	53
Avoidable delay	53
Closed material procedures	54

Miscarriages of justice	54
Non-jury trials	55
Cross-border justice arrangements.....	55
13.0 Article 17 – Right to Family, Home and Correspondence	57
Access to financial support	57
Biometric data	58
Stop and search.....	59
Rehabilitation of offenders	60
Biometric surveillance technology	61
14.0 Article 18 – Right to Freedom of Thought, Conscience and Religion	62
Blasphemy	62
15.0 Article 19 – Right to Freedom of Expression	62
Defamation	62
Freedom of expression of journalists	63
16.0 Article 21 – Right to Peaceful Assembly	64
Parades and protests.....	64
17.0 Article 23 – Right to Marry	65
Child, early and forced marriage	65
18.0 Article 24 – Children’s Rights	65
Physical punishment of children	65
Children in armed forces	66
Anonymity	67
Use of police powers on children	67
19.0 Article 25 – Right to Vote and to be Elected	68
Participation in political and public life	68

1.0 Introduction

1.1 The NIHRC is one of three A-status National Human Rights Institutions of the United Kingdom (UK). In accordance with the Paris Principles and pursuant to Section 69(1) of the Northern Ireland (NI) Act 1998, the NIHRC reviews the adequacy and effectiveness of measures undertaken by the UK Government and NI Executive to promote and protect human rights, specifically within NI. In accordance with section 78A(1) of the NI Act, the NIHRC also monitors the UK Government's commitment under Article 2(1) of the Windsor Framework¹ (Windsor Framework Article 2) to ensure there is no diminution of rights and safeguards protected in the relevant part of the Belfast (Good Friday) Agreement as a result of the UK withdrawal from the EU.²

2.0 Context

2.1 Between February 2022 and February 2024, NI was without a fully functioning NI Executive and Assembly. This was the second suspension period within this monitoring round.³ In the absence of elected ministers, government departments were run by civil servants who were unable to make major policy decisions or introduce legislation. The reinstatement of the NI Executive and NI Assembly is welcomed, however it does not guarantee that the required UN ICCPR-related actions will be implemented expeditiously, if at all.

2.2 The 2023-2024 budget for NI resulted in significant reductions across all NI Departments.⁴ Consequently, there have been wide-ranging cuts to public services and programmes. Concerns have

¹ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement 2020 and all references to the Protocol in this document have been updated to reflect this change. (see Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).

² The UK-EU Withdrawal Agreement, including the Windsor Framework, is incorporated into UK law via the EU (Withdrawal) Act 2018, including Section 7A.

³ The previous suspension ran from January 2017 until January 2020.

⁴ Department of Finance, 'Press Release: NI Secretary announces 2023-2024 Budget and contingency plans for governance', 27 April 2023.

emerged regarding the effect on disadvantaged and marginalised groups.⁵

- 2.3 As part of restoration of the NI devolved institutions, the UK Government has pledged a further £1 billion to NI to stabilise public services.⁶ With a continued reliance on annual budgets, this additional money will not address the wider need for long-term stability. It is unclear if this money will be used to reinstate services that were lost due to the cuts. Furthermore, these additional funds will not address the extensive reforms that are urgently required across all NI's public services.
- 2.4 **The Committee may wish to recommend that the UK takes effective steps to ensure that a comprehensive assessment of the cumulative impact of budgets in NI is conducted with a focus on the human rights of disadvantaged and marginalised individuals and groups.**

3.0 Article 1 – Self-determination

UK human rights framework

- 3.1 In 2022, the Bill of Rights Bill was introduced to the UK Parliament. The Joint Committee on Human Rights advised that the UK Government “should not progress the... [Bill of Rights Bill] in its current form”,⁷ as it undermined the universality of human rights, weakened human rights protection and there was an overwhelming lack of support for the proposed reforms.⁸

⁵ NI Human Rights Commission, ‘Submission to the Department for Communities on its Budget 2023-2024 Allocations’ (NIHRC, 2023); Equality Commission for NI, ‘Briefing Note: Concerns regarding Cumulative Equality Impacts of Proposed Departmental Budget Allocations for 2023-24’ (ECNI, 2023); NI Council for Voluntary Action, ‘Budget Cuts and Inequality in NI’. Available at: [Budget cuts and inequality in Northern Ireland | NICVA](#); Letter from Women’s Policy Group to Secretary of State for NI, 15 August 2023.

⁶ In December 2023, the UK Government pledged a total of £3 billion to NI. The remaining £2 billion is to be used to develop a new method of deciding how much money NI receives from the UK Government and to assist in addressing issues with public sector pay. See NI Office, ‘Press Release: Secretary of State – Returning Executive can unleash NI’s potential’, 29 December 2023.

⁷ House of Commons and House of Lords Joint Committee on Human Rights, ‘Legislative Scrutiny: Bill of Rights Bill’ (HC and HoL, 2023), at para 339.

⁸ Ibid, at Chapter 9.

- 3.2 In 2023, the UK Government confirmed that it was not proceeding with the Bill of Rights Bill, instead seeking to reform the UK's human rights framework through a piecemeal approach.⁹ The proposed changes will reduce access to domestic courts for individuals seeking human rights-based remedy.¹⁰
- 3.3 **The Committee may wish to recommend that the UK takes effective steps to ensure the fundamental principles of human rights are adhered to and any reform to the UK's human rights framework does not weaken human rights protections but builds on the Human Rights Act 1998.**

Bill of Rights for NI

- 3.4 In 2020, the NI Assembly Ad Hoc Committee on a Bill of Rights was established to consider the creation of a Bill of Rights for NI.¹¹ A panel of experts was to be appointed by the First Minister and Deputy First Minister to support the work of the Ad Hoc Committee.¹² With no agreement on its membership, the expert panel was not appointed.¹³
- 3.5 In 2022, the Ad Hoc Committee on a Bill of Rights concluded it "supported the creation of a Bill of Rights [for NI] in principle",¹⁴ but it was unable to advise as to what form this should take due to the absence of the expert panel and the Democratic Unionist Party's disagreement with the majority position,¹⁵ with no further progress.

⁹ For example, the Illegal Migration Act, the NI Troubles (Legacy and Reconciliation) Act and the Safety of Rwanda (Asylum and Immigration) Bill. See 'Government officially scraps Dominic Raab's Bill of Rights plan', *Politics.Co.UK*, 27 June 2023.

¹⁰ NI Human Rights Commission, 'Evidence to Joint Committee on Human Rights Legislative Scrutiny of the Bill of Rights Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on the Bill of Rights Bill' (NIHRC, 2022); NI Human Rights Commission, 'Submission to the House of Lords on the Illegal Migration Bill' (NIHRC, 2023); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023); Letter from the NI Human Rights Commission to the Lord Jay, Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Additional Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

¹¹ NI Office, 'New Decade, New Approach' (NIO, 2020), at para 5.26.

¹² *Ibid.*

¹³ NI Assembly, 'Report of the Ad Hoc Committee on Bill of Rights' (NIA, 2022), at para 8.

¹⁴ It concluded that "human rights of many individuals and groups in NI are not sufficiently protected". See NI Assembly, 'Report of the Ad Hoc Committee on Bill of Rights' (NIA, 2022), at paras 9 and 11.

¹⁵ NI Assembly, 'Report of the Ad Hoc Committee on Bill of Rights' (NIA, 2022), at para 13.

- 3.6 **The Committee may wish to recommend that the UK takes effective steps to fulfil its commitment to legislate for a Bill of Rights for NI, as set out in the Belfast (Good Friday) Agreement 1998.**

Human rights after Brexit

- 3.7 Following the UK-EU political agreement in March 2023,¹⁶ the UK Government enacted the Windsor Framework (Democratic Scrutiny) Regulations 2023. This incorporated the 'Stormont brake'¹⁷ and provided for 'applicability motions', enabling the UK to halt the application of EU legal developments potentially relevant to Windsor Framework Article 2 and the protection of human rights in NI after Brexit.¹⁸
- 3.8 In October 2023, the High Court in NI upheld the direct effect of Windsor Framework Article 2,¹⁹ affirmed the EU Charter on Fundamental Rights' enforceability,²⁰ and rejected the argument that Belfast (Good Friday) Agreement rights are frozen in time.²¹
- 3.9 **The Committee may wish to recommend that the UK takes effective steps to:**

¹⁶ See Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework; Joint Declaration No 1/2023 of the European Union and the United Kingdom in the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023.

¹⁷ This is subject to a procedure set out in the Unilateral Declaration by the UK appended as Annex 1 to Decision No 1/2023 of the Joint Committee established by the agreement on the withdrawal of the United Kingdom Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework.

¹⁸ As part of the UK EU Withdrawal Agreement, the UK Government committed in Article 2 of the Windsor Framework, to ensure there is no diminution of the protections in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998, due to the UK's withdrawal from the EU. See 'Equality and Human Rights on the Island of Ireland after Brexit: Annual joint report on the implementation of Article 2 of the Windsor Framework', (NIHRC and ECNI, 2023), at para 2.8-2.17; 'Joint submission: Northern Ireland Human Rights Commission and Equality Commission submission to the Inquiry on Windsor Framework by the House of Lords Sub-Committee on the Protocol', (NIHRC and ECNI, 2023).

¹⁹ *In the Matter of an Application by AA for Judicial Review* [2023] NIKB 102, at para 95. In May 2023, the NI Court of Appeal set out a six-part test to test the engagement of Article 2 of the Windsor Framework test. See *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35, at para 54.

²⁰ *In the Matter of an Application by AA for Judicial Review* [2023] NIKB 102, at para 93. See also *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307.

²¹ A case involving the removal of an asylum seeker from NI to Scotland. See *In the Matter of an Application by AA for Judicial Review* [2023] NIKB 102, at para 107.

- **ensure that Explanatory Memoranda/Human Rights Memoranda to relevant draft legislation, set out what consideration has been given to ensuring compliance with Windsor Framework Article 2.**
- **develop and roll out a comprehensive guidance and training programme on Windsor Framework Article 2.**

Birthright

- 3.10 The Belfast (Good Friday) Agreement 1998 recognises the “birthright of all the people of [NI]... to identify themselves and be accepted as Irish or British, or both”.²² However, section 1 of the British Nationality Act 1981 states anyone born in the UK to a British, Irish, or settled parent, is deemed British. This issue attracted renewed focus in the context of the UK Withdrawal from the EU.²³
- 3.11 In 2022, the NI Court of Appeal noted that Section 1 of the British Nationality Act 1981 was compatible with the UK’s international obligation to protect individuals against statelessness and that the Section 12 of the 1981 Act provides for a right to renounce one’s citizenship.²⁴
- 3.12 In 2022, the Nationality and Borders Act received Royal Assent, with no amendments to address the issue of birthright included.
- 3.13 **The Committee may wish to recommend that the UK takes effective steps to amend nationality and immigration laws**

²² Section 1, British Nationality Act 1981.

²³ In *De Souza* the Upper Immigration and Asylum Tribunal decided that the system requiring a person to renounce their British citizenship in order to be considered Irish only was a proportionate means of achieving the legitimate aim of avoiding statelessness and maintaining a coherent system of nationality law. The High Court of Justice in NI refused a challenge by an Irish identifying applicant to the same legal provision, stating that “she is an Irish citizen; and her additional British citizenship takes nothing away from this in terms of the rights, benefits and privileges which she enjoys as an Irish citizen. See *De Souza (Good Friday Agreement: Nationality)* [2019] UKUT 355 (IAC).

²⁴ In 2022, the NI Court of Appeal found that the appellant’s case in *Ní Chuinneagain* failed to identify any consequences of the operation of 1981 Act or arbitrariness in its provisions which constituted an interference with her private and family life as protected by Article 8 of the ECHR. The Court of Appeal upheld the High Court’s refusal of a challenge by an Irish identifying applicant to the same legal provision, stating that “she is an Irish citizen; and her additional British citizenship takes nothing away from this in terms of the rights, benefits and privileges which she enjoys as an Irish citizen”. See *In the Matter of Ní Chuinneagain* [2022] NICA 56, at paras 75-76.

to reflect the commitment under the Belfast (Good Friday) Agreement 1998 that it is the birthright of all the people of NI to identify as Irish or British or both, without any loss of rights or entitlements.

4.0 Article 2 – Non-discrimination

Equality protections

- 4.1 Unlike the rest of the UK, NI does not have a single legislative instrument to consolidate equality protections. Equality protections are contained in a range of instruments.²⁵
- 4.2 **The Committee may wish to recommend that the UK takes effective steps to prioritise and enable political consensus towards the introduction of a Single Equality Act for NI.**

Intersectional multiple discrimination

- 4.3 NI legislation does not provide for intersectional discrimination. Each ground for discrimination must form its own case, meaning it is considered and ruled on separately.²⁶
- 4.4 In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.²⁷ It is considered that the proposed Directives would amend provisions of the EU Race Equality Directive,²⁸ which is specified in Annex 1 to

²⁵ The Single Equality Act 2010. In NI, equality legislation includes Employment Equality (Age) Regulations (NI) 2006; Disability Discrimination Act 1995; Special Educational Needs and Disability (NI) Order 2005; Equal Pay Act (NI) 1970; Sex Discrimination (NI) Order 1976; Race Relations (NI) Order 1997; Fair Employment and Treatment (NI) Order 1998; Employment Equality (Sexual Orientation) Regulations (NI) 2003; Equality Act (Sexual Orientation) Regulations (NI) 2006; NI Act 1998.

²⁶ Equality Commission for NI, 'Recommendations for Law Reform: Strengthening Protection Against Racial Discrimination' (ECNI, 2014), at 38.

²⁷ COM(2022) 688, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU', 7 December 2022.; COM(2022) 689, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC', 7 December 2022.

²⁸ Directive 2000/43/EC, 'Council of the EU Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

the Windsor Framework. NI equality law should be amended to keep pace with these changes, if the proposals are adopted.²⁹

- 4.5 In March 2023, the Executive Office consulted on proposals for its Review of the Race Relations (NI) Order; intersectional multiple discrimination was not mentioned.³⁰
- 4.6 In 2020, the Independent Hate Crime Review recommended that intersectionality is reflected when considering statutory aggravations to existing offences.³¹ The Department of Justice has acknowledged intersectionality in proposals to amend NI hate crime laws,³² but progress was hindered by the suspension of the NI Executive and NI Assembly.
- 4.7 **The Committee may wish to recommend that the UK takes effective steps to ensure that intersectional multiple discrimination claims in NI are effectively addressed, including providing for intersectionality within equality legislation as required.**

Sexual orientation

- 4.8 In 2023, progress of the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy was hindered by the suspension of the NI Executive.³³
- 4.9 Sexual orientation is recognised as a ground for inciting hatred in NI.³⁴ In 2020, the Hate Crime Review proposed statutory aggravations for all offences, including homophobic hate crime.³⁵

²⁹ This 'keep pace' obligation derives from Article 13(3) of the Windsor Framework which requires that references to EU law in the Windsor Framework are interpreted as references to those measures as amended or replaced. For more detail see section on Human Rights after UK Exit from the EU.

³⁰ The Executive Office, 'Review of the Race Relations (NI) Order 1997 Consultation Document' (TEO, 2023).

³¹ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020), at Recommendation 11.

³² Department of Justice, 'Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views' (DoJ, 2022).

³³ Letter from Department for Communities to the NI Human Rights Commission, 16 June 2023.

³⁴ Article 2(3), Criminal Justice (No 2) (NI) Order 2004.

³⁵ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020).

- 4.10 **The Committee may wish to recommend that the UK takes effective steps to ensure that a robust sexual orientation strategy and action plan for NI is promptly published, implemented, monitored and adequately resourced.**

Conversion therapy

- 4.11 The Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI concluded that conversion therapy should be made illegal.³⁶
- 4.12 In 2023, the Department for Communities was developing proposals to prohibit conversion therapy in NI.³⁷ However, progress was hindered by the suspension of the NI Executive and Assembly.
- 4.13 **The Committee may wish to recommend that the UK takes effective steps to introduce legislation in NI that defines and bans all practices of conversion therapy.**

Hate crimes

- 4.14 In 2022/2023, there were 3,151 recorded hate motivated incidents and 2,265 recorded hate crimes in NI, an increase from 2021/2022.³⁸ The number of hate crimes with a disability motivation in NI reached the highest level since the recording of these motivations began in 2005/2006. In 2023, there have also been increased reports of 'organised' hate crimes in NI, particularly racist hate crimes.³⁹

³⁶ Department for Communities, 'Report from the Sexual Orientation Strategy Expert Advisory Panel' (DfC, 2021), at para 3.12.

³⁷ The resulting policy will be subject to consideration by the NI Executive and to public consultation, before legislation will be introduced. Progress of the policy was hindered by the suspension of the NI Executive and NI Assembly. See Email correspondence from Department of Communities to NI Human Rights Commission, 16 June 2023.

³⁸ In 2021/2022, there were 3,121 hate motivated incidents and 2,239 recorded hate crimes in NI. See Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police Service of NI' (PSNI, 2023).

³⁹ Meeting of refugee and ethnic minority business owners hosted by Participation and Practice of Rights, 31 August 2023; 'Sandy Row: Belfast fire treated as racially motivated hate crime', *BBC News*, 18 August 2023; 'Belfast Multi-Cultural Association building for sale after arson attacks', *BBC News*, 14 February 2023; 'Belfast mosque leader's worries after Nazi flags flown nearby', *BBC News*, 23 August 2023; Sarah McKinley, 'South Belfast businesses in emergency meeting over multiple racist attacks', *UTV News*, 1 September 2023; Sara Girvan and Eimear Flanagan, 'Syrian man to move shop

- 4.15 Following an Independent Hate Crime Review report,⁴⁰ work is continuing on drafting a Hate Crime Bill and related policies.⁴¹ However, implementation was hindered by the suspension of the NI Executive and Assembly.⁴²
- 4.16 **The Committee may wish to recommend that the UK takes effective steps to promptly enhance NI hate crime legislation, ensuring alignment with race and community relations strategies for effective investigation, prosecution, and support for victims.**

Racial equality

- 4.17 In 2015, the Executive Office committed to an independent review of the progress of implementation of the Racial Equality Strategy 2015-2025.⁴³ In 2023, a public consultation inviting views⁴⁴ on the Race Relations (NI) Order 1997 was conducted.⁴⁵ The necessary legislative change was hindered by the suspension of the NI Executive and Assembly.
- 4.18 In 2022, the EU Commission launched a public consultation, to pinpoint potential gaps in the Racial Equality Directive,⁴⁶ which is specified in Annex 1 to the Windsor Framework and identify measures to address these gaps.⁴⁷ To the extent that any amendments to this Directive brought forward by the EU enhance

after four racist attacks', *BBC News*, 18 September 2023; Sara Givern, 'Why has there been a spike in racist attacks in south Belfast?', *BBC News*, 17 October 2023; Paul Ainsworth, 'SDLP councillor says Belvoir residents support removal of racist posters', *Irish News*, 1 November 2023.

⁴⁰ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: An Independent Review - Consultation Paper' (IHCRT, 2020).

⁴¹ NI Human Rights Commission, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI', (NIHRC, 2022);

⁴² Email correspondence from Department of Justice NI to NI Human Rights Commission, 20 June 2023.

⁴³ The Executive Office, 'Racial Equality'. Available at: [Racial Equality | The Executive Office \(executiveoffice-ni.gov.uk\)](https://www.executiveoffice-ni.gov.uk/racial-equality)

⁴⁴ NI Human Rights Commission, 'Response to The Executive Office's Consultation on the Review of the Race Relations (NI) Order 1997' (NIHRC, 2023).

⁴⁵ The Executive Office, 'Racial Equality Strategy 2015-2025' (TEO, 2015).

⁴⁶ Directive 2000/43/EC, 'Council of the EU Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

⁴⁷ EU Commission, 'Addressing possible gaps in the Racial Equality Directive – Public Consultation' (EU, 2022). See NI Human Rights Commission, 'Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)' (NIHRC, 2022).

protections, NI equality law should be amended to keep pace with this change.

- 4.19 **The Committee may wish to recommend that the UK takes effective steps to ensure that implementation of the Racial Equality Strategy 2015-2025 for NI is given priority.**

Sectarianism

- 4.20 In 2022/2023, 1,238 sectarian incidents and 921 sectarian crimes were recorded.⁴⁸ This represents an increase from 1067 recorded incidents and 780 crimes in 2021/2022.⁴⁹ The level of sectarian incidents in 2022/2023 is the second highest financial year recorded since 2015/2016.⁵⁰
- 4.21 The New Decade, New Approach Agreement 2020 recognised “the need to tackle sectarianism... in seeking to eliminate discrimination... [and] to see sectarianism given legal expression as a hate crime”.⁵¹ In 2021, the Department of Justice, in response to a recommendation from Judge Marrinan,⁵² agreed in principle to define sectarian offences in NI legislation.⁵³ The Department of Justice also agreed in principle to include a new statutory aggravation for sectarian prejudice (subject to an agreed definition of sectarianism), which could be monitored by the Victims of Crime Commissioner.⁵⁴
- 4.22 In 2023, the Hate Crime Bill was hindered by the suspension of the NI Executive and NI Assembly.
- 4.23 **The Committee may wish to recommend that the UK takes effective steps to introduce statutory definitions of ‘sectarianism’ and ‘good relations’ in NI.**

⁴⁸ Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in NI: Financial Year Update' (PSNI, 2022), at 4.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ NI Office, 'New Decade, New Approach' (NIO, 2020), at 43.

⁵² Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020), at Recommendation 12.

⁵³ Department of Justice, 'Review of Hate Crime Legislation in NI - Departmental Response' (DoJ, 2021), at 6-7.

⁵⁴ Ibid.

Intersex

- 4.24 There is no legal recognition of intersex persons in NI. There is no provision in the UK, including NI, to register the birth of a child with unspecified or indeterminate sex.
- 4.25 **The Committee may wish to recommend that the UK takes effective steps to promptly ensure legal recognition of intersex individuals in NI, including expedited provision of birth certificates and official documents, respecting their right to self-determination.**

Refugee Integration Strategy

- 4.26 Despite a commitment within the Racial Equality Strategy 2015-2025,⁵⁵ NI remains the only part of the UK without a Refugee Integration Strategy.⁵⁶
- 4.27 In 2021, the Executive Office consulted on a draft Refugee Integration Strategy.⁵⁷ However, further progress was hindered by the suspension of the NI Executive.⁵⁸
- 4.28 In 2022, the NI Affairs Committee published an inquiry report, recommending that the Refugee Integration Strategy is delivered at pace.⁵⁹ In 2023, the NI Refugee and Asylum Forum highlighted that the lack of strategy is hindering all aspects of integration in NI.⁶⁰ The Forum emphasised the need for reliable data and the provision of quality and authoritative information on rights and entitlements of refugees and asylum seekers in NI.⁶¹

⁵⁵ The Executive Office, 'Racial Equality Strategy 2015-2025' (TEO, 2015).

⁵⁶ The NIHRC recommends stating early that the strategy is human rights-based, requiring public authorities to adopt this approach and to expand and clarify the list of relevant human rights standards, incorporating EU obligations supporting Windsor Framework Article 2's non-diminution commitment. NI Human Rights Commission, 'Response to Public Consultation on Draft Refugee Integration Strategy' (NIHRC, 2022), at para 2.12 and 2.13.

⁵⁷ The Executive Office, 'Refugee Integration Strategy Consultation Document' (TEO, 2021).

⁵⁸ The Executive Office, 'Racial Equality Subgroup: Minutes of the Meeting on 29 November 2022' (TEO, 2022).

⁵⁹ Housing provision, access to healthcare services and the Belfast-centred provision of services were identified as particular issues facing refugees in NI. See House of Commons NI Affairs Committee, 'The Experiences of Minority Ethnic and Migrant People in NI' (HoC, 2022).

⁶⁰ Law Centre NI, 'Refugee and Asylum Forum: Priorities for Action 2023' (LCNI, 2023).

⁶¹ Ibid.

- 4.29 **The Committee may wish to recommend that the UK takes effective steps to ensure the prompt introduction and implementation of a NI Refugee Integration Strategy that is effectively monitored and adequately resourced.**

5.0 Article 3 – Gender Equality

Gender Equality Strategy

- 5.1 In 2020, the NI Executive committed to publishing a new Gender Equality Strategy.⁶² In 2022, a public consultation on the Gender Equality Strategy was due to take place, but this process has been delayed. In 2023, the Gender Equality Strategy was hindered by the suspension of the NI Executive.⁶³
- 5.2 **The Committee may wish to recommend that the UK takes effective steps to ensure that a robust up-to-date and gender-sensitive Gender Equality Strategy and action plan is introduced, implemented, monitored and adequately resourced in NI.**

Gender recognition

- 5.3 Eligibility criteria for a Gender Recognition Certificate⁶⁴ requires an applicant is diagnosed with gender dysphoria.⁶⁵ Transgender representatives reported that reasonable adjustments are not

⁶² The existing Gender Equality Strategy for NI expired in 2016. NI Office, 'New Decade, New Approach' (NIO, 2020).

⁶³ Correspondence from Department for Communities to NI Human Rights Commission, 21 July 2023.

⁶⁴ The relevant law is the Gender Recognition Act 2004. A panel considers each application. If the application is successful, the panel will issue a full or interim Gender Recognition Certificate. If the successful applicant's birth was originally registered in NI, the panel will inform the Registrar General for NI when it issues the Gender Recognition Certificate and the Registrar will contact the successful applicant to arrange re-registration of their birth. Once agreed, a new registration showing the successful applicant's new name and gender will be created and a replacement birth certificate (both long and short) will be available showing the new name and acquired gender. A short birth certificate will be issued free of charge. If a successful applicant is adopted, a new extract from the Adopted Children Register will be issued. If an applicant is unsuccessful, the panel will inform them in writing with their reasons. An unsuccessful applicant has a right of appeal. See NI Direct, 'Gender Recognition'. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>

⁶⁵ Other criteria includes requiring that the applicant is over 18, has lived in the acquired gender for more than two years and intends to do so permanently.

made for applicants with disabilities⁶⁶ and that assumptions based on applicants' clothing contribute to a panel's decision.⁶⁷ The application process is found to be "bureaucratic, stressful, intrusive and demeaning".⁶⁸

- 5.4 Consultations on possible amendments to the gender recognition process have been conducted in England, Wales and Scotland, but not in NI.⁶⁹ Changes to the UK process without accommodation for NI applicants may deny transgender individuals in NI access to legal gender recognition.
- 5.5 **The Committee may wish to recommend that the UK takes effective steps to ensure that the gender recognition process in NI is amended to reflect the self-declaration model. Also, that the process is affordable, respectful, and accessible, including effectively training staff.**

⁶⁶ Transgender civil society representatives reported that the Gender Identity Service does not provide reasonable adjustments for transgender women and girls with mental health issues or learning disabilities. See Roundtable discussion with civil society representatives, November 2018.

⁶⁷ The eligibility criteria requires that an applicant has lived in the acquired gender for more than two years and intends to do so permanently. Transgender civil society representatives reported that judgments will be made based on what a transgender woman or girl is wearing. For example, if they wear male clothing this is used as evidence to show that they have not lived in the acquired gender for more than two years. See Roundtable discussion with civil society representatives, November 2018.

⁶⁸ In December 2018, the application fee for a Gender Recognition Certificate was £140. Assistance may be available to individuals on certain benefits or a low income. Within NI, the waiting list to transition is three years and the assessment for eligibility can take between six and 18 months. It was reported that doctors in NI have refused to provide the required medical report to prove gender dysphoria due to their own personal beliefs. There was one doctor in NI that would provide the required medical report for free on the National Health Service, but since 2018 has no longer been able to due to time constraints. As a result, individuals must pay privately to receive the required report, which costs £4,000. Transgender civil society representatives highlighted that barriers in the process can affect mental health and cause poverty, homelessness and trauma. It was also raised that if transgender children are not provided with hormone blockers early that it can lead to them being forced into major surgery in adulthood. It was reported that hormone blockers are provided for children in NI that are deemed not ready for puberty, but are not provided for transgender children. The Gender Equalities Office recently consulted on how to reform the Gender Recognition Act to address these issues. The proposed reform is limited to England and Wales. There are no plans to consider this issue in the context of NI. See NI Direct, 'Gender Recognition'. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>; Focus: The Identity Trust, 'Response to the Government's Consultation on the Reform of the Gender Recognition Act 2004' (Focus, 2018), at para 3.1; Roundtable discussion with civil society representatives, November 2018; Gov.UK, 'Reform of the Gender Recognition Act 2004'. Available at: <https://www.gov.uk/government/consultations/reform-of-the-gender-recognition-act-2004>

⁶⁹ Scottish Government, 'Review of the Gender Recognition Act 2004: A Consultation' (Scottish Government, 2017); Gender Equalities Office, 'Reform of the Gender Recognition Act – Government Consultation' (GEO, 2018).

UN Security Council Resolution 1325

- 5.6 Paramilitary activity is having a particular effect on women in NI, who live in fear of such groups.⁷⁰ In practice, this intimidation (which can include threats to life) is preventing women from accessing funding, to engage with peace initiatives and to be empowered.⁷¹ It has a particular negative effect on women experiencing violence and domestic abuse when trying to access services.⁷² Paramilitary intimidation can also dissuade women and women's groups in NI from participating in public and political life.⁷³
- 5.7 The UK Government and NI Executive have been slow to address this. For example, the UK's National Action Plan on Women, Peace and Security, setting out its plan to deliver on commitments under

⁷⁰ Affiliation with paramilitary groups provides a source of power to perpetrators and paramilitary groups are seen to provide a more "rapid response" to domestic abuse for victims, by-passing the criminal justice system. See Jessical Leigh Doyle and Monica McWilliams, 'Intimate Partner Violence in Conflict and Post-Conflict Settings' (Ulster University, 2018), at 57; Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018.

⁷¹ Research from the Institute for Conflict Research has found that there is a "distinct lack of legitimate leadership within many NI communities which is filled by paramilitary groups". Research from the Women's Support Network found that there is "endemic paramilitary 'bullying' and intimidation at the level of the community". The NIHRC's engagement with civil society organisations as part of the CEDAW process indicated that for women, paramilitary intimidation means women's community groups feel unable to access funding and to engage with particular peacebuilding initiatives. It was highlighted that there is a historical and ongoing fear of paramilitaries (including paramilitaries from within their own communities) that is causing women to feel threatened, which is preventing the empowerment of women in NI. It was raised that women feel displaced by paramilitaries taking leadership roles. It was reported that this is closely linked to drug feuds and domestic violence. See House of Commons NI Affairs Committee, 'The Effect of Paramilitary Activity and Organised Crime on Society in NI' (NIAC, 2024), at paras 33-36; Caroline Walsh, 'Consortium for the Regional Support for Women in Disadvantaged and Rural Areas: Policy Prioritisation for Disadvantaged Women – Women's Perspectives' (Women's Support Network, 2017), at 34; Claire Pierson and Katy Radford, 'Peacebuilding and the Women's Sector in NI: An Overview of Reports and Programmes' (Institute for Conflict Research, 2016), at 31; Margaret Ward, 'Excluded and silenced: Women in Northern Ireland after the peace process', *Open Democracy*, 12 June 2013; Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018; National Crime Agency, 'Press Release: Paramilitary Crime Taskforce launched in NI', 27 September 2017; Emma Vardy, 'Adverts bid to end paramilitary-style attacks in NI', *BBC News*, 18 October 2018; Department of Justice, 'Executive Programme for Tackling Paramilitary Activity and Organised Crime'. Available at: <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>; Jessical Leigh Doyle and Monica McWilliams, 'Intimate Partner Violence in Conflict and Post-Conflict Settings' (Ulster University, 2018), at 57.

⁷² Research identifies issues around housing allocation relating to paramilitary intimidation, where if the perpetrator has a connection to a paramilitary organisation, the leadership will deny the intimidation. The research further notes that, with most social housing estates being segregated and paramilitary-controlled, women can often be placed on housing lists for years awaiting safe accommodation. See Women's Aid Federation NI, 'Hear Her Voice' (WAFNI, 2023), at 19 and 45.

⁷³ Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018.

Security Council Resolution 1325, does not make specific provision for NI despite its post-conflict status.⁷⁴

5.8 **The Committee may wish to recommend that the UK takes effective steps to:**

- **ensure women’s participation in public and private life is proportionate to NI’s population.**
- **consider the specific gendered effect of paramilitarism intimidation in NI when implementing programmes.**

6.0 Article 6 – Right to Life

Conflict related investigations: Deaths

6.1 Recalling the previous recommendation,⁷⁵ between 2021 and 2024, “grave concern” has been expressed at the UK Government’s plans for Troubles-related offences.⁷⁶

⁷⁴ HM Government, 'UK National Action Plan on Women, Peace and Security 2018-2022' (UK Gov, 2018).

⁷⁵ 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 8(a).

⁷⁶ In 2021, the UK Government set out specific plans for legislation to address the legacy of the Troubles. Contrary to the majority of views expressed during a public consultation in 2018, the plans indicated a shift away from conducting human rights compliant Troubles-related investigations, towards seeking and receiving information about Troubles-related deaths and injuries. The plan also included the intention to introduce a statute of limitations to apply equally to all Troubles-related incidents. In 2022, the then NI Troubles (Legacy and Reconciliation) Bill was introduced to the UK Parliament. Throughout the passage of the Bill, the Commission provided advice on its compatibility with the ECHR, international human rights framework and Windsor Framework Article 2. See NI Office, 'Addressing the Legacy of NI's Past' (NIO, 2021); NI Office, 'Addressing the Legacy of NI's Past: Analysis of the Consultation Responses' (NIO, 2019); House of Commons NI Affairs Committee, 'Oral Evidence: Addressing the Legacy of NI's Past - The UK Government's New Proposals', 7 June 2022; NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from the NI Human Rights Commission to Lord Jay, Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023); Office of the UN High Commissioner for Human Rights, 'Press Release: UN experts voice concern at proposed blanket immunity to address the legacy of "the Troubles" in NI', 10 August 2021; Letter from CoE Commissioner for Human Rights, Dunja Mijatovic, to Secretary of State for NI, Brandon Lewis MP, 13 September 2021; CoE, 'Submission by the CoE Commissioner for Human Rights Under Rule 9.4 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements in the Cases of McKerr v UK, Finucane v UK, Kelly and Others v UK, Shanaghan v UK, McCaughey and Others v UK' (CoE, 2022), at para 28; CM/Notes/1443H46-32, 'CoE Committee of Ministers McKerr Group v UK (Application No 28883/95) Supervision of the Execution of the ECtHR's Judgments', 22 September 2022, at para 8; CoE Parliamentary Assembly, 'Resolution

6.2 In September 2023, the NI Troubles (Legacy and Reconciliation) Act 2023 received Royal Assent.⁷⁷ The 2023 Act establishes an Independent Commission for Reconciliation and Information. There are grave concerns that the Independent Commission is not independent in practice and its mandate does not satisfy procedural human rights obligations.⁷⁸ The 2023 Act establishes a conditional immunity scheme, which applies to offences where immunity should not be an option, without adequate consideration of victims' rights.⁷⁹ The 2023 Act also provides for the cessation of criminal investigations (other than those referred by the Independent Commission for Reconciliation and Information Recovery to the prosecutor), police complaints, civil proceedings and inquests/inquiries linked to Troubles-related offences, which is likely contrary to the right to an effective remedy.⁸⁰

2464(2002) – The Impact of Brexit on Human Rights on the Island of Ireland', 31 October 2022, at paras 8 and 9; CommDH(2022)27, 'CoE Commissioner for Human Rights, Dunja Mijatovic: Report Following Visit to UK From 27 June to 1 July 2022', 18 November 2022, at 37-40; A/HRC/52/10, 'Report of the UN Working Group on the Universal Periodic Review: UK of Great Britain and NI', 9 January 2023, at paras 43.27, 43.106 and 43.112; CM/Del/Dec(2023)1459/H46-35, 'McKerr Group v UK (Application No 28883/95 Supervision of the Execution of the European Court's Judgments)', 9 March 2023, at para 5; CM/ResDH(2023)148, 'CoE Committee of Ministers Interim Resolution: McKerr and Four Cases Against the UK', 7 June 2023.

⁷⁷ The 2023 Act establishes an Independent Commission for Reconciliation and Information Recovery which will conduct reviews, on request, into deaths and serious injuries resulting from or connected with conduct during the Troubles. The Independent Commission for Reconciliation and Information Recovery is also tasked with producing a historical record of all remaining deaths that occurred during the Troubles (i.e. Troubles-related deaths that are not subject to a review by the Independent Commission). The Independent Commission for Reconciliation and Information Recovery will operate a conditional immunity scheme for certain Troubles-related offences and most Troubles-related proceedings will cease by 1 May 2024. The 2023 Act also establishes several statutory-based initiatives aimed at memorialising the Troubles such as oral history records, a memorialisation strategy and Troubles-related academic research.

⁷⁸ NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from the NI Human Rights Commission to Lord Jay, Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

⁷⁹ NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from the NI Human Rights Commission to Lord Jay, Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

⁸⁰ NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from the NI Human Rights Commission to Lord Jay, Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

- 6.3 The Independent Commission for Reconciliation and Information Recovery is intended to be fully operational by summer 2024.⁸¹ However, the 2023 Act has been subject to several legal challenges. In November 2023, the initial cases were heard with the judgment awaited.⁸² In December 2023, the Government of Ireland initiated an inter-State case against the UK to challenge the compatibility of the 2023 Act with ECHR obligations.⁸³ The UK Government advised it will defend the legislation and ensure that the work of the Independent Commission continues “without impediment while proceedings are ongoing”.⁸⁴
- 6.4 **The Committee may wish to recommend that the UK takes effective steps to repeal the NI Troubles (Legacy and Reconciliation) Act 2023 and introduce revised legislation that is human rights compliant, victim-centred, and does not restrict the investigation and prosecution of alleged Troubles-related killings.**

Legacy inquests

- 6.5 Recalling the previous recommendation,⁸⁵ in 2019, the Legacy Inquest Unit was established. Despite delays due to the COVID-19 pandemic,⁸⁶ the Legacy Inquest Unit had completed nine inquests by the end of 2023 and was considering a further three.⁸⁷ Despite

⁸¹ Email correspondence from Chief Commissioner of the Independent Commission for Reconciliation and Information Recovery, Sir Declan Morgan, to NI Human Rights Commission, 14 September 2023.

⁸² The NIHRC intervened in the cases raising concerns about compliance with the ECHR, international human rights standards and Windsor Framework Article 2. See Julian O’Neill, ‘Troubles Legacy Act a form of secondary trauma, Belfast High Court hears’, *BBC News*, 21 November 2023.

⁸³ Department of Foreign Affairs, ‘Press Release: Statement by the Tánaiste, Micheál Martin, on the Government decision to initiate an inter-State case against the UK’, 20 December 2023.

⁸⁴ NI Office, ‘Press Release: Statement in response to legacy inter-state case by the Irish Government’, 20 December 2023.

⁸⁵ 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 8(c).

⁸⁶ Coroners Service for NI, ‘Case Management Direction - CMD Legacy No 1’ (CSNI, 2021).

⁸⁷ Six found that the deaths had occurred due to “unjustified” or “disproportionate” use of force. Three found the investigation obligations had not been adequately fulfilled. One found that that “the [military] operation was not planned and controlled in such a way that it minimised to the greatest extent possible the need for recourse to lethal force”. See *In the Matter of an Inquest into the Death of Patrick McElhone* [2021] NICoroner 1; *In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy, West Belfast* [2021] NICoroner 6; Judicial Communications Office, ‘Coroner Finds Soldier Was Not Justified in Shooting Thomas Mills - Summary of Judgment’, 13 May 2022; *In the Matter of An Inquest Into the Death of Kathleen Thompson* [2022] NICoroner1, at paras 412(i) and 412(j); *In the Matter of An Inquest into the Death of Master Stephen Geddis* [2022] NICorner 2, at para 463(v); *In the Matter of an Inquest into the Death of Leo Norney* [2023] NICoroner 11, at

this progress, the NI Troubles (Legacy and Reconciliation) Act 2023 imposes a cessation of criminal investigations,⁸⁸ police complaints, civil proceedings and inquests/inquiries linked to Troubles-related offences by 1 May 2024.

6.6 The Committee may wish to recommend that the UK takes effective steps to:

- **ensure the NI Troubles (Legacy and Reconciliation) Act 2023 does not close off any pursuit of justice outside of the proposed Independent Commission for Reconciliation and Information Recovery.**
- **support the work of the Legacy Inquests Unit to ensure its investigations are adequately resourced and compliant with the right to life.**

Legacy inquiries

6.7 Despite a previous recommendation,⁸⁹ there has not been a right to life compliant inquiry into the death of Patrick Finucane. In 2022, the High Court of Justice in NI found that the UK Government “remains in breach of Article 2 [of the ECHR] on the basis of the ongoing delay in completing an investigation which satisfies the requirements of that provision”.⁹⁰

6.8 In 2023, the High Court awarded the Finucane family further damages due to the ongoing breach.⁹¹ However, the Secretary of State for NI has appealed the High Court’s judgment.⁹² The Court of Appeal in NI has heard the case and the judgment awaited.⁹³

para 315; *In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy, West Belfast* [2021] NICoroner 6; Coroners Court for NI, 'In Matter of An Inquest into the Death of Neil John McConville', 11 April 2022; *In the Matter of An Inquest Into the Death of Kathleen Thompson* [2022] NICoroner1, at paras 412(i) and 412(j); Coroners Court for NI, 'In Matter of An Inquest into the Death of Neil John McConville', 11 April 2022.

⁸⁸ Other than those referred by the Independent Commission for Reconciliation and Information Recovery to the prosecutor.

⁸⁹ 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 8.

⁹⁰ *In the Matter of an Application by Geraldine Finucane for Judicial Review and In the Matter of a Decision of the Secretary of State for NI* [2022] NIKB37, at para 79.

⁹¹ 'Pat Finucane: Widow of murdered solicitor to receive £5,000 in additional damages from Secretary of State', *Newsletter*, 30 March 2023.

⁹² Email correspondence from NI Office to NI Human Rights Commission, 10 August 2023.

⁹³ *Ibid.*

6.9 In 2021, after several legal cases,⁹⁴ the High Court of Justice in NI ruled there are “plausible arguments that there was a real prospect of preventing the Omagh bombing”.⁹⁵ In 2023, the UK Government announced its intention to establish an independent statutory inquiry into the preventability of the Omagh bombing.⁹⁶

6.10 **The Committee may wish to recommend that the UK takes effective steps to:**

- **expeditiously initiate a right to life compliant inquiry into the death of Patrick Finucane.**
- **ensure that the Omagh Bombing Inquiry is compliant with the right to life and freedom from torture.**

Inquiries Act 2005

6.11 Despite a previous recommendation,⁹⁷ the broad mandate of UK government ministers to suppress the publication of inquiry reports under the Inquiries Act 2005 remains.

6.12 **The Committee may wish to recommend that the UK takes effective steps to review and introduce necessary legislative amendments in NI to guarantee the independence of inquiries established under the Inquiries Act 2005.**

⁹⁴ Ibid.

⁹⁵ In 1998, a bomb in the centre of Omagh injured at least 220 people and killed 29 people, including a woman who was pregnant with twins. In 2021, the High Court did not “order a public inquiry to look at arguable grounds of preventability”. However, the High Court stated that “there is a real advantage in an Article 2 [of the ECHR] compliant investigation proceeding in... Ireland simultaneously with one in NI”. Thus, the High Court ruled that “it is for the government(s) to hold an investigation that is Article 2 [of the ECHR] compliant and which can receive both open and closed materials”: See *In the Matter of an Application by Michael Gallagher for Leave to Apply for Judicial Review and in the Matter of a Decision by the Secretary of State for NI Made On 12 September 2013* [2021] NIQB 85, at para 310; ‘Omagh bombing: Timeline of families’ search for justice’, *BBC News*, 11 August 2023.

⁹⁶ NI Office, ‘Press Release: Omagh Bombing Inquiry – Statement to Parliament by Secretary of State Chris Heaton-Harris’, 2 February 2023.

⁹⁷ 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 8.

7.0 Article 7 – Torture

Conflict related investigations: Torture

- 7.1 The NI Troubles (Legacy and Reconciliation) Act 2023 enables the Independent Commission for Reconciliation and Information Recovery to consider on request Troubles-related offences that caused serious physical or mental harm.⁹⁸ However, a narrow, prescriptive interpretation of serious physical or mental harm has been adopted.⁹⁹ There is also an inconsistent application of investigatory human rights obligations throughout the 2023 Act, for example, a historical record is only required regarding Troubles-related deaths.¹⁰⁰
- 7.2 Additionally, the 2023 Act provides for a conditional immunity scheme regarding any Troubles-related offences, including gross violations of human rights.¹⁰¹
- 7.3 **The Committee may wish to recommend that the UK takes effective steps to repeal the NI Troubles (Legacy and Reconciliation) Act 2023 and introduce revised legislation that is human rights compliant, victim-centred, and does not restrict the investigation and prosecution of alleged Troubles-related torture, inhuman and degrading treatment in NI.**

⁹⁸ NI Troubles (Legacy and Reconciliation) Act 2023, Section 10(1).

⁹⁹ Section 1(6) of the NI Troubles (Legacy and Reconciliation) Act 2023 defines “serious physical or mental harm” as “(a) paraplegia; (b) quadriplegia; (c) severe brain injury or damage; (d) severe psychiatric damage; (e) total blindness; (f) total deafness; (g) loss of one or more limbs; (h) severe scarring or disfigurement”.

¹⁰⁰ Section 28, NI Troubles (Legacy and Reconciliation) Act 2023.

¹⁰¹ Section 19, NI Troubles (Legacy and Reconciliation) Act 2023 states that this includes conduct relating to “one or more particular serious or connected Troubles related offences” which, as defined under Section 1(5) of the 2023 Act, “includes murder, manslaughter or culpable homicide; another offence that was committed by causing the death of a person, or causes a person to suffer serious physical or mental harm”.

Victims' payments

- 7.4 In 2021, following the Victims' Payments Regulations 2020, the Troubles Permanent Disablement Payment Scheme was established.¹⁰² The Scheme is due to run until August 2026.¹⁰³
- 7.5 As of 31 March 2022, the Victims' Payments Scheme had received 2,047 applications, of which 61 were withdrawn.¹⁰⁴ Of these, 21 determinations have been made¹⁰⁵ and £150,135 had been paid to successful applicants.¹⁰⁶
- 7.6 By September 2023, approximately 90 appeals had been lodged against a determination made by the Victims' Payments Board.¹⁰⁷ There are concerns about the decision-making process and the length of time it takes.¹⁰⁸
- 7.7 **The Committee may wish to recommend that the UK takes effective steps to ensure that the Victims Payment Scheme in NI offers fair, adequate, and prompt compensation to all who are eligible.**

Rule of law: Non-State actors

- 7.8 In 2022/2023, one security related death, 32 casualties of paramilitary style assaults, 37 shooting incidents, 6 bombing incidents and 11 casualties from paramilitary style shootings were

¹⁰² This Scheme aims to provide "those living with permanent disablement (either physical or psychological) caused by injury through no fault of their own in a Troubles-related incident with payments primarily in acknowledgement of the harm they have suffered": Victims Payments Board, 'Procedural Guidance' (VPB, 2021), at para 4.

¹⁰³ Victims Payments Board, 'About Us'. Available at:

<https://www.victimspaymentsboard.org.uk/about-us-0>; NI Direct, 'Troubles Permanent Disablement Payment Scheme'. Available at: <https://www.nidirect.gov.uk/articles/troubles-permanent-disablement-payment-scheme>

¹⁰⁴ Victims' Payments Board, 'Troubles Permanent Disablement Scheme: Annual Report 2021-2022' (VPB, 2023), at 17.

¹⁰⁵ Six of these cases concluded with a payment being recommended and 15 of these cases were deemed ineligible: Victims' Payments Board, 'Troubles Permanent Disablement Scheme: Annual Report 2021-2022' (VPB, 2023), at 17.

¹⁰⁶ Victims' Payments Board, 'Troubles Permanent Disablement Scheme: Annual Report 2021-2022' (VPB, 2023), at 17.

¹⁰⁷ Jayne McCormack, 'Troubles victims pensions: One third of applicants denied access to scheme', *BBC News*, 28 September 2023.

¹⁰⁸ *Ibid.*

recorded.¹⁰⁹ Many individuals, particularly women and children, that have been exposed to paramilitarism are presenting with resulting trauma.¹¹⁰

7.9 In 2023, the Independent Reporting Commission highlighted that increases in paramilitary shootings and “some shocking incidents” in 2023¹¹¹ contributed to raising the threat level for NI-related terrorism from substantial to severe.¹¹² It noted progress in tackling paramilitarism but advised that the NI political context¹¹³ and financial context¹¹⁴ are inhibiting factors. Coercive control of communities, the cost-of-living crisis and memorialisation of the paramilitary past were also highlighted as concerns.¹¹⁵

7.10 **The Committee may wish to recommend that the UK takes effective steps to ensure that:**

- **NI’s political and financial context does not lead to increased risk of paramilitary activity and that the programme to end paramilitarism continues to be effectively monitored and adequately resourced.**
- **the response to paramilitarism in NI considers and effectively addresses resulting trauma to victims, including reasonably accommodating specific needs.**

¹⁰⁹ In 2021/2022, there was one security related death, 33 casualties of paramilitary style assaults, 20 shooting incidents, 5 bombing incidents and 12 casualties from paramilitary style shootings were recorded. See Police Service of NI, 'Police Recorded Security Situation Statistics - 1 April 2022 to 31 March 2023' (PSNI, 2023), at 1.

¹¹⁰ The Executive Office that 93 per cent of children and 60 per cent of women that engage with its ending paramilitarism programmes in NI are presenting with trauma. See Meeting between The Executive Office and NI Human Rights Commission, 9 January 2024.

¹¹¹ Independent Reporting Commission, 'Sixth Report' (IRC, 2023), at para 1.51 “The attempted murder of Detective Chief Inspector John Caldwell was particularly shocking” and “a number of incidents, including a high-profile drug gang feud, served to underline how quickly situations can escalate. For these reasons, heightened vigilance continues to be needed.”

¹¹² Independent Reporting Commission, 'Sixth Report' (IRC, 2023), at 4.

¹¹³ This includes the lack of a functioning Executive and Assembly, instability around the Protocol on Ireland and Northern Ireland of the EU-UK Withdrawal Agreement and the subsequent Windsor Framework, the stop-start nature of politics in recent decades and controversy around the issue of legacy. See Independent Reporting Commission, 'Sixth Report' (IRC, 2023), at para 1.27

¹¹⁴ “Funding and commitment to tackling paramilitarism must be long-term, multi-year and sustainable, allowing progress and innovation to bed in and avoiding a stop-start approach that is constrained by short budget cycles and associated pressures”. See Independent Reporting Commission, 'Sixth Report' (IRC, 2023), at para 1.65:

¹¹⁵ Independent Reporting Commission, 'Sixth Report' (IRC, 2023), at paras 1.130–1.140.

Abuse in health and social care settings

- 7.11 In NI, it is an offence in statute to ill-treat, or willfully neglect a person who lacks capacity.¹¹⁶ However, the relevant provision has not been fully commenced.¹¹⁷ There is also no equivalent offence in relation to individuals being cared for with capacity in NI.
- 7.12 The Adult Protection Bill aims to improve adult safeguarding in NI,¹¹⁸ but its progression was hindered by the suspension of the NI Executive and NI Assembly. NI remains the only part of the UK without such legislation.¹¹⁹
- 7.13 Between 2018 and 2023, independent investigations revealed significant failings in the approach and governance of adult safeguarding in health care settings in NI.¹²⁰ In 2022, the independent review of Dunmurry Manor care home concluded.¹²¹ Additionally, the Muckamore Abbey Hospital Inquiry¹²² and the UK-wide COVID-19 inquiry commenced.¹²³

¹¹⁶ This offence only applies to patients in mental health hospitals or who are under guardianship under the Mental Health (NI) Order 1986 in relation to a deprivation of liberty. See section 267, Mental Capacity (NI) Act 2016.

¹¹⁷ When fully commenced the offence will extend to situations where a person lacks capacity and where there are care arrangements, detentions or attorney or deputies appointed.

¹¹⁸ Department of Health, 'Adult Protection Bill – Draft Final Policy Proposals for Ministerial Consideration' (DoH, 2021); NI Assembly Hansard, 'Written Question: Adult Safeguarding – Gerry Carroll MLA – AQW27105/17-22' 15 December 2021.

¹¹⁹ The Adults with Incapacity Act (Scotland) 2000; the Criminal Justice and Courts Act 2015 (England and Wales); the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016; ITV news, 'Adult safeguarding in NI 'not fit for purpose', 27 November 2019.

¹²⁰ Commissioner for Older People NI, 'Home Truths: A Report on the Commissioner's Investigation into Dunmurry Manor Care Home' (COPNI, 2018); CPEA, 'Independent Whole Systems Review into Safeguarding and Care at Dunmurry Manor Care Home – Evidence Paper 2: Learning and Change Briefing' (DoH, 2022); CPEA, 'Independent Whole Systems Review into Safeguarding and Care at Dunmurry Manor Care Home – Evidence Paper 3: Regulation and Inspection' (DoH, 2022); CPEA, 'Independent Whole Systems Review into Safeguarding and Care at Dunmurry Manor Care Home – Evidence Paper 4: Assessment and Care Management' (DoH, 2022); CPEA, 'Independent Whole Systems Review into Safeguarding and Care at Dunmurry Manor Care Home – Evidence Paper 5: Care Home Providers' (DoH, 2022); CPEA, 'Independent Whole Systems Review into Safeguarding and Care at Dunmurry Manor Care Home – Evidence Paper 6: A Care Home Market?' (DoH, 2022); Department of Health, 'A Review of Leadership and Governance at Muckamore Abbey Hospital' (DoH, 2020); Public Prosecution Service, 'Press Release: Public Prosecution Service NI issues decisions on one Muckamore Abbey Hospital file', 16 April 2021; UK COVID-19 Inquiry, 'COVID-19 Inquiry Terms of Reference' (UKCI, 2022).

¹²¹ Department of Health, 'Press Release: Care home review reports published', 27 October 2022.

¹²² Involves allegations of physical and mental abuse, use of seclusion rooms, ill-treatment and wilful neglect of patients at Muckamore Abbey Hospital. By June 2023, the total number of people arrested in connection with the investigation into Muckamore Abbey is 38: See, Paul Ainsworth, '38th arrest made in Muckamore Abbey Hospital probe', *The Irish News*, 15 June 2023; Muckamore Abbey Hospital Inquiry, 'Chair's Statement as to the Evidence Plan for 2023 – Issued on 13 February 2023' (MAHI, 2023).

¹²³ In 2022, the England and Wales High Court ruled that the UK Government's policy which allowed untested hospital patients to be discharged into care homes at the start of the pandemic was illegal. The UK Government commenced a UK-wide inquiry to examine the response to the COVID-19 pandemic: UK COVID-19 Inquiry, 'Structure of the Inquiry'. Available at: [Structure of the Inquiry - UK Covid-19 Inquiry \(covid19-public-inquiry.uk\)](https://www.covid19-public-inquiry.uk).

7.14 **The Committee may wish to recommend that the UK takes effective steps to:**

- **fully commence the Mental Capacity (NI) Act 2016 without further delay.**
- **promptly introduce adult safeguarding legislation in NI that makes it an offence for a care worker to ill-treat or wilfully neglect the individual they are caring for.**
- **ensure that findings from investigations into Dunmurry Manor, Muckamore Abbey Hospital and the COVID-19 pandemic are fully addressed and remedied, and that mechanisms are established to ensure breaches do not recur in the future.**

Female genital mutilation

7.15 Female genital mutilation is an offence in NI,¹²⁴ but there have been no prosecutions to date. Maternity appointments are the only point when routine steps are taken to identify such cases in NI¹²⁵ In 2019/2020, there were 25 incidences of female genital mutilation recorded in NI.¹²⁶ Steps have been taken to assist in identifying and tackling female genital mutilation in NI,¹²⁷ however specialised therapeutic interventions are lacking.

7.16 **The Committee may wish to recommend that the UK takes effective steps to:**

- **investigate and prosecute perpetrators of female genital mutilation in NI.**

¹²⁴ Female Genital Mutilation Act 2003.

¹²⁵ The Female Genital Mutilation Protection Order (Relevant Third Party) Order (NI) 2021 enables health and social care trusts in NI to obtain a third-party protection order without the need to seek the leave of a court. It is intended to speed up the process of obtaining a protection order should a Health and Social Care Trust in NI have concerns about the safety of any girl or woman under its care. See Email correspondence from the Department of Finance to the NI Human Rights Commission, 7 July 2023.

¹²⁶ Health and Social Care NI, 'NI Maternity Systems'. Available at: [Metadata \(hscni.net\)](https://www.hscni.net/metadata).

¹²⁷ This includes the Female Genital Mutilation Protection Order (Relevant Third Party) Order (NI) 2021, new care pathways and a risk assessment tool: Email correspondence from Department of Health to NI Human Rights Commission, 5 October 2022.

- **improve the way in which data in NI is gathered and monitored.**
- **ensure specialised, adequately funded and accessible support for victims or potential victims of female genital mutilation in NI.**

Intersex genital mutilation

7.17 In NI, guidance for medical practitioners on consent and treatment for intersex persons has not been updated since 2003.¹²⁸ There are concerns about non-consensual medical intervention for intersex children in NI.¹²⁹ There is also a lack of intersex-specific policy or statistics.¹³⁰

7.18 **The Committee may wish to recommend that the UK takes effective steps to legally prohibit non-urgent and non-essential medical or surgical treatment of intersex children before they are of sufficient maturity to make their own decisions. This includes establishing effective investigation and monitoring mechanisms and ensuring that victims are provided with redress and access to appropriate support services.**

Domestic and sexual violence and abuse

7.19 In 2021/2022, there were 33,186 domestic abuse incidents recorded in NI, the highest level recorded since the data series began in 2004/05.¹³¹ Of all domestic abuse crime victims, 68 per

¹²⁸ Department of Health, Social Services and Public Safety, 'Reference Guide to Consent for Examination, Treatment or Care' (DHSSP, 2003), at para 64.

¹²⁹ In 2021, the Expert Panel for the Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy recommended that there should be a commitment to and guidance around informed consent of intersex children and a commitment to ending intersex genital mutilation in NI. In 2023, progress of the Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy was hindered by the suspension of the NI Executive. See Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations' (DfC, 2021).

¹³⁰ It is unclear if any data exists in relation to the number of children in NI who would be classed as intersex or those undergoing surgery or medical treatment regarding disorders of sexual differentiation/development.

¹³¹ Police Service of NI, 'Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in NI 2004/2005 to 2021/2022' (PSNI, 2022), at 4.

cent were women and 32 per cent were men.¹³² Furthermore, 83 per cent of offenders were men and 15 per cent were women.¹³³ Due to lack of reporting, these figures are only indicative of the extent of the issue, particularly regarding violence against women and girls.¹³⁴ The data available is also not effectively disaggregated.¹³⁵

- 7.20 In 2021/2022, 543 women and 397 children in NI accessed Women's Aid NI refuges.¹³⁶ Women's Aid also supported an additional 7,444 women in NI.¹³⁷
- 7.21 In September 2023, research found that 98 per cent of surveyed women in NI and 73 per cent of surveyed girls aged 12 to 17 years in NI reported having experienced at least one form of violence in their lifetime.¹³⁸
- 7.22 In 2021, the Department of Justice NI consulted on the introduction of Domestic Abuse Protection Order and Notices,¹³⁹ which are yet to be implemented.
- 7.23 In 2022, the CoE Istanbul Convention came into force in the UK.¹⁴⁰ However, the UK Government placed a reservation against Article 59, which requires protections for migrant women. Additionally, the No Recourse to Public Funds Rule continues to operate, preventing individuals with a variety of visas from accessing safe refuge accommodation or other support.
- 7.24 In 2023, the Departments of Health and Justice consulted on a draft domestic and sexual abuse strategy.¹⁴¹ The draft strategy

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Women's Policy Group NI, 'Violence against Women and Girls in NI: Primary Research Findings' (WPGNI, 2022).

¹³⁵ NI Human Rights Commission roundtable meetings with public bodies on CoE Istanbul Convention, 25 September 2023.

¹³⁶ Women's Aid Federation NI, 'Annual Report 2021-2022' (WAFNI, 2022), at 1.

¹³⁷ Ibid.

¹³⁸ Susan Lagdon et al, 'Every Voice Matters: Violence Against Women in NI' (UU, 2023), at 1; Siobhán McAlister et al, 'It's Just What Happens: Girls' and Young Women's Views and Experiences of Violence in NI' (QUB, 2023), at 50.

¹³⁹ Department of Justice, 'Consultation on Enhancing Legal Protections for Victims of Domestic Abuse' (DoJ 2021).

¹⁴⁰ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

¹⁴¹ Department of Health and Department of Justice, 'Draft Domestic and Sexual Abuse Strategy: 2023-2030' (DoH and DoJ, 2023).

adopts a gender-neutral approach, does not include provision for the training of professionals and does not have an allocated budget for its implementation.¹⁴² In addition, NI continues to be the only area of the UK without a Violence Against Women and Girls Strategy.¹⁴³

7.25 Concerns have emerged regarding the NI budget cuts and the disproportionate impact on women and those facing multiple barriers.¹⁴⁴ Groups at particular risk can face additional barriers to accessing support and information for domestic and sexual violence and abuse.¹⁴⁵ This includes D/deaf and disabled,¹⁴⁶ migrant women,¹⁴⁷ LGBTQIA+ people,¹⁴⁸ and rural women.¹⁴⁹

7.26 **The Committee may wish to recommend that the UK takes effective steps to ensure:**

- **the prompt introduction of Domestic Abuse Protection Orders and Notices in NI.**
- **that the Domestic and Sexual Violence and Abuse Strategy in NI includes effective provisions for gender-sensitive training of all professionals across the course of the reporting, judicial and support journey of a**

¹⁴² NI Human Rights Commission, 'Response to the Department of Health and Department of Justice's Consultation on a Draft Domestic and Sexual Abuse Strategy' (NIHRC, 2023).

¹⁴³ In 2023, the Executive Office consulted on a draft Ending Violence Against Women and Girls Strategic Framework. The draft Strategic Framework takes a strong gender sensitive approach to tackling violence against women and girls, which the NIHRC welcomed. The draft Strategic Framework identifies that it will work across government Departments to tackle violence against women and girls. It is unclear whether NI Departments are considering how the draft Strategic Framework can complement other strategies which take a gender-neutral approach. See The Executive Office, 'Ending Violence Against Women and Girls Strategic Framework' (TEO, 2023); NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework' (NIHRC, 2023).

¹⁴⁴ For example, the Executive Office has highlighted cuts to programmes to end violence against women and girls. The Department of Health's cuts to the community voluntary sector through the Core Grant Funding Scheme further disproportionately impact women as organisations providing advice, support, and refuge to women experiencing domestic violence have had their funding cut. See The Executive Office, 'Equality Impact Assessment: The Executive Office's Spending Plans for 2023–2024' (TEO, 2023), at 17 and 18; Liam Tunney, 'Women's Aid NI now only UK federation without government funding, says CEO', *Belfast Telegraph*, 29 September 2023.

¹⁴⁵ The Executive Office, 'Ending Violence Against Women and Girls Strategic Framework' (TEO, 2023), at 10.

¹⁴⁶ Nuala Toman et al, 'Progress Towards the Implementation of the UN Convention on the Rights of Persons with Disabilities in NI' (ECNI, 2022), at 166.

¹⁴⁷ NI Human Rights Commission, 'The 2022 Annual Statement: Human Rights in NI' (NIHRC, 2022), at 103.

¹⁴⁸ SafeLives, 'Free to be Safe: LGBT+ People Experiencing Domestic Abuse' (SafeLives, 2018), at 35.

¹⁴⁹ Women's Aid Federation NI, 'Hear Her Voice' (WAFNI, 2023), at 17.

victim of domestic and sexual abuse. This includes consideration of groups with specific needs.

- **specialised, accessible, gender-sensitive support and services for victims and survivors of domestic and sexual violence and abuse is available across NI, with guaranteed sustainable funding. This includes ensuring that such support is available regardless of immigration status.**
- **extensive disaggregated data is collected, published and effectively monitored to ensure the needs of victims and survivors of domestic and sexual violence and abuse are reflected in all services and strategies.**

Termination of pregnancy

7.27 In 2020, abortion was legalised in NI in specific circumstances.¹⁵⁰ After a delay, in 2022, the UK Government commissioned abortion services in NI.¹⁵¹ However, it remains the responsibility of the Department of Health to administer the services.¹⁵² No additional funding has been provided by the UK Government for this purpose, such funding has been ringfenced within the existing block grant.¹⁵³

7.28 In 2023, provision of abortion services in NI was fragile, often dependent on a single practitioner.¹⁵⁴ It was also difficult to access

¹⁵⁰ Abortion has been legalised in NI on request up to 12 weeks and where there is a risk of injury to the physical or mental health of the pregnant woman up to 24 weeks. Abortion is also permitted in NI on the grounds of immediate necessity, a risk to life or grave permanent injury to physical or mental health of the pregnant woman, a diagnosis of a severe foetal impairment or fatal foetal abnormality. See Regulations 3 and 4, Abortion (NI) (No 2) Regulations 2020.

¹⁵¹ Amy Cochrane, 'Secretary of State to commission abortion services in NI – three years after legalisation', *Belfast Telegraph*, 24 October 2022.

¹⁵² Ibid.

¹⁵³ Department of Health, 'Press Statement: Department of Health Statement', 2 December 2022.

¹⁵⁴ In November 2023, abortion services were available up to 11 weeks and six days in four of five Health and Social Care Trusts in NI. There was a delay in delivering these services in the Belfast Health and Social Care Trust due to challenges in "securing appropriate premise to enable the co-location of both the early surgical and early medical abortions up to 12 weeks". This was expected to be remedied in December 2023. Similarly, four of five Trusts in NI offered surgical abortions up to 11 weeks and six days. The South Eastern Health and Social Care Trust offered surgical abortions up to ten weeks, with it expected to extend its services in line with other Trusts in NI by mid-November 2023. Abortions in cases of immediate necessity were available in all Health and Social Care Trusts in NI. Additionally, abortions were available in all Health and Social Care Trusts in NI on the grounds of risk to life or grave permanent injury to the physical or mental health of the individual or severe fetal

adequate and appropriate facilities to enable consistent abortion services across NI.¹⁵⁵ Steps were being taken to bring abortion services closer to the provision required by the Abortion (NI) Regulations.¹⁵⁶ However, without consistent, long-term abortion services in line with Abortion (NI) Regulations in NI, many individuals continue to see no other option but to travel to England for abortions.¹⁵⁷

7.29 Effective disaggregated data collection and monitoring on the use of abortion services in NI is lacking.¹⁵⁸

7.30 Unlike the rest of the UK, telemedicine for early medical abortions is unavailable in NI.¹⁵⁹ There are plans to consider the introduction of such services,¹⁶⁰ however this was hindered by the suspension

impairment and fatal fetal abnormality. This was an improvement from provision in September 2023. See Email correspondence from the Department of Health to the NI Human Rights Commission, 9 November 2023; Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021); Email correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹⁵⁵ Email correspondence from the Department of Health to the NI Human Rights Commission, 9 November 2023; Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021); Email correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹⁵⁶ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹⁵⁷ Between January and June 2023, 96 individuals travelled from NI to England for an abortion, which included individuals under 9 weeks and six days gestation and minors. See Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Office for Health Improvement and Disparities, 'Abortion Statistics for England and Wales: January to June 2022'. Available at: <https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-january-to-june-2022/abortion-statistics-for-england-and-wales-january-to-june-2022>

¹⁵⁸ In 2023, there was "no framework in place to report on all terminations of pregnancy carried out in NI". Disaggregation of the data was limited to recording medical abortions and termination of pregnancies, age of the individual that had an abortion and the trust area in which the abortion was performed. Many civil society organisations viewed the available statistics as uninformative and lacking in context. The Department of Health is working on improving its data collection process regarding abortion services in NI, which it intends to start utilising in 2024. See Information Analysis Directorate, 'NI Hospital Based Termination of Pregnancy Statistics: 2021/2022' (DoH and NISRA), at 6; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between the NI Human Rights Commission and civil society organisations, 25 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹⁵⁹ Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹⁶⁰ Ibid.

of the NI Executive.¹⁶¹ Telemedicine for the purposes of abortions are obtained through unregistered websites in NI.¹⁶² There is no clear care pathway for such cases, which has caused trauma or put the affected individual's life at risk where complications have arisen.¹⁶³

7.31 There is no plan to introduce statutory, department-led guidance on abortion services specific to NI.¹⁶⁴ There are also no plans to introduce specific guidance on conscientious objection regarding abortion services in NI.¹⁶⁵ However, several stakeholders are aware of frequent misuse or misunderstanding of conscientious objection in the context of abortion services.¹⁶⁶

7.32 **The Committee may wish to recommend that the UK takes effective steps to ensure:**

- **sufficient, long-term, ring-fenced funding is available and fully utilised to maintain consistent abortion services in line with the Abortion (NI) Regulations in every Health and Social Care Trust area in NI. Also, that the necessary funding for abortion services is an addition to the Department of Health's broader budget,**

¹⁶¹ Ibid.

¹⁶² Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹⁶³ Ibid.

¹⁶⁴ Health and Social Care Trusts in NI, Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives and Royal College of Nursing were instructed to develop, review and appropriately revise their own guidance for abortion services in NI, which was to be disseminated to all staff. The Department of Health also directed that "appropriate training and support... [were] provided to all relevant staff". See Letter from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

¹⁶⁵ The Department of Health is content that sufficient guidance already exists. Each Trust in NI has provided 'values clarification' training. This training operated on an opt-in basis and was only offered as one cycle. This training operated on an opt-in basis and was only offered as one cycle. See Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

¹⁶⁶ Operationally, staff that apply for posts within abortion services all have a conscientious commitment to the provision of those services. Other staff that work in sexual and reproductive health are required to follow-up on complications from abortions and to direct patients to abortion services, even if they claim a conscientious objection to providing treatment. It is reliant on staff to express their conscientious objection to their line manager so that this can be accommodated. However, there have been reports of some pharmacists refusing to dispense early medical abortion medication to an abortion service in NI. It has also been reported that abortion services previously collapsed in a Trust area because the doctor providing the service was not provided with necessary administrative support due to other staff conscientiously objecting. See Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Email correspondence from Royal College of Nursing NI to NI Human Rights Commission, 19 July 2023.

to ensure existing healthcare services can be delivered in full.

- **comprehensive disaggregated data is gathered, reported and monitored regarding abortion services in NI.**
- **telemedicine is introduced as an option for early medical abortions in NI under certain circumstances, as in other parts of the UK, and that a clear pathway to care and after care is in place for telemedicine abortions, including for individuals using unregistered sources.**
- **there is regional, abortion-specific, non-stereotyping guidance in NI and that all associated healthcare staff undertake related training that is informed by service users and periodically refreshed, particularly regarding conscientious objection.**

Historical abuse

7.33 In 2020, the Historical Institutional Abuse Redress Board was established for receiving and processing applications for compensation from those who experienced abuse in residential institutions in NI between 1922 and 1995.¹⁶⁷ The Redress Board's remit did not extend to adult residents of Mother and Baby and Magdalene Laundry Institutions.¹⁶⁸ Draft legislation to provide a legal basis for a statutory public inquiry is being developed.¹⁶⁹ Further progress was hindered by the suspension of the NI Executive and NI Assembly.

¹⁶⁷ As of 31 March 2022, the Redress Board had received 2,566 applications relating to 4,104 residential placements covering 100 different institutions in NI. As of 31 March 2022, determinations totalling £40.9 million have been made with 81 per cent of submitted applications considered by the panel: Historical Institutional Abuse Redress Board, 'Annual Report 2021-2022' (HIARB, 2023), at 2.

¹⁶⁸ Recent research found that, between 1922 and 1990 in NI, around 10,500 women were admitted to Mother and Baby institutions and around 3,000 women were admitted to Magdalene Laundries. The last Mother and Baby institution closed in 1990 and the last Magdalene Laundry in 1984. See Dr Leanne McCormick, Professor Sean O'Connell, Dr Olivia Dee, Dr John Privilege, 'Mother and baby homes and Magdalene laundries in NI: report prepared for the inter-departmental working group' (QUB and UUJ, 2021).

¹⁶⁹ The Executive Office, 'Press Release: Appointment of Truth Recovery Independent Panel', 27 April 2023; Email correspondence from The Executive Office to the NI Human Rights Commission, 9 August 2023.

7.34 **The Committee may wish to recommend that the UK takes effective steps to ensure victims of historical abuse in NI, outside the remit of the Historical Institutional Abuse Inquiry, have an effective remedy, including expedited access to thorough and effective independent investigations that offer effective redress (including compensation) and are subject to public scrutiny and meaningful victim participation.**

Identifying torture

7.35 In 2023/2023, there were 302 immigration detainees held at Larne House, an increase from 70 in 2021/2022.¹⁷⁰

7.36 Rule 35(3) of the Detention Centre Rules¹⁷¹ do not apply to Larne House due to its classification as a short-term holding facility. Concerns have been raised in respect of the independence of health assessments within the facility.¹⁷²

7.37 **The Committee may wish to recommend that the UK takes effective steps to ensure:**

- **Larne House staff can effectively identify, report and support victims of torture.**
- **the independence of health care professionals dealing with detained asylum seekers in Larne House.**
- **legislation is amended to allow the NIHRC to enter Larne House without having to provide advance notice.**

¹⁷⁰ These are statistics for over the course of the year. NI only has one short-term holding facility for immigration and detainees called Larne House. Larne House has the capacity to hold 19 men and women at one time. See Home Office, 'National Statistics: How Many People Are Detained or Returned' (HO, 2023), at Table Det_02a.

¹⁷¹ Rule 35(3) of the Detention Centre Rules places an obligation on a medical practitioner to report to the manager of the Centre any detained person who they are concerned may have been the victim of torture.

¹⁷² Meeting between NI Human Rights Commission and civil society representatives, 19 December 2023; Meeting between NI Human Rights Commission and civil society representatives, 8 November 2018.

8.0 Article 8 – Freedom from Slavery

Child sexual exploitation

- 8.1 In 2022/2023, there were 2,324 recorded child sexual abuse offences, the highest figure recorded since the data began in 2007/2008.¹⁷³ Female victims represented 71 per cent of all sexual offence victims under 18 years old.¹⁷⁴
- 8.2 In 2020, the Criminal Justice Inspection NI identified a need for more child-centred support in the justice system.¹⁷⁵ The Barnahus model was proposed as the preferred approach.¹⁷⁶
- 8.3 In cases involving serious sexual offences against children in NI, the onus is on the prosecution to prove that the defendant did not reasonably believe the victim was 16 years and above.¹⁷⁷ In 2014, an Independent Inquiry recommended legislative reform to reverse this arrangement.¹⁷⁸ In 2022, NI legal practitioners raised concerns with this proposal, noting it would undermine the presumption of innocence and the right to a fair trial of the accused.¹⁷⁹ The Department of Justice is considering how to proceed,¹⁸⁰ any proposals require the approval of the NI Executive.¹⁸¹

¹⁷³ For each of the main sexual offence classifications of rape, sexual assault and sexual activity, there have been generally increasing trends between 2007/2008 and 2022/2023 where the victim was under 18 at the time the offence was committed. Rape recorded the highest number of offences in 2021/22 at 519 and sexual assaults reached the highest level in 2022/2023 at 1,087. See Police Service of NI, 'Trends in Police Recorded Crime in Northern Ireland 1998/1999 to 2022/2023' (PSNI, 2023).

¹⁷⁴ In 2022/2023 there were four female victims per 1,000 of the population under 18. See Police Service of NI, 'Trends in Police Recorded Crime in Northern Ireland 1998/1999 to 2022/2023' (PSNI, 2023).

¹⁷⁵ Criminal Justice Inspection NI, 'Child Sexual Exploitation in NI: An Inspection of the Criminal Justice System's Response' (CJINI, 2020), at 80.

¹⁷⁶ Ibid.

¹⁷⁷ Section 16, Sexual Offences (NI) Order 2008.

¹⁷⁸ Kathleen Marshall, 'Child Sexual Exploitation in NI: Report of the Independent Inquiry' (RQIA, 2014).

¹⁷⁹ The Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 made improvements to NI's legislative framework. It includes provisions to create new offence of adults masquerading as children online; widen the scope and strengthen the current law on abuse of position of trust of a child; and remove terms such as 'child prostitution' and 'child pornography' from the Sexual Offences (NI) Order 2008. However, it does not include provisions to reverse the burden of proof regarding the defence of reasonable belief as, during the consultation process, legal practitioners raised concerns that it would erode the presumption of innocence and the right to a fair trial of the accused. See Department of Justice, 'Review of the Law on Child Sexual Exploitation: Summary of Responses and Next Steps' (DoJ, 2020), at paras 2.17-2.20.

¹⁸⁰ NI Assembly Committee for Justice, 'Report on the Justice (Sexual Offences and Trafficking Victims) Bill' (2022), at 115.

¹⁸¹ See NI Human Rights Commission, 'Response to Committee for Justice Call for Evidence on the Justice (Sexual Offences and Trafficking Victims) Bill' (NIHRC, 2021); NI Human Rights Commission,

8.4 The Committee may wish to recommend that the UK takes effective steps to:

- **introduce legislation in NI to ensure the burden of proof in cases concerning child victims of sexual offences is victim centred and does not prevent effective prosecution.**
- **provide specialised training on child sexual exploitation for relevant professionals in the NI criminal justice system and that measures reflective of the Barnahus model are adopted.**

Children missing from care

8.5 In 2022/2023, the Police Service of NI received 5,240 reports of children going missing from care in NI¹⁸², which involved 1,171 individual children.¹⁸³ Children and young people who are missing from care are at greater risk of exploitation.¹⁸⁴

8.6 In 2023, a new interface protocol on children missing from care was launched.¹⁸⁵ Additionally, data that is already shared in local districts will be examined at joint operational meetings.¹⁸⁶

8.7 The Committee may wish to recommend that the UK takes effective steps to review the effectiveness of the new Interface Protocol for when a child is reported missing and

¹⁸² 'Submission to Department of Justice Consultation on the Draft Modern Slavery and Human Trafficking Strategy' (NIHRC, 2023).

¹⁸³ NI Human Rights Commission, 'Submission to the UN Committee on the Rights of the Child 88th Session on the Sixth Periodic Report of the UK of Great Britain and NI on Compliance with the UN CRC (List of Issues)' (NIHRC, 2020).

¹⁸⁴ Of these occurrences, 2,923 reports were from residential children's homes, relating to 166 individual children. See Email correspondence from Police Service of NI to NI Human Rights Commission, 5 July 2023.

¹⁸⁵ NI Human Rights Commission, 'Submission to the UN Committee on the Rights of the Child 88th Session on the Sixth Periodic Report of the UK of Great Britain and NI on Compliance with the UN CRC (List of Issues)' (NIHRC, 2020); Safeguarding Board for NI, 'Getting Focused and Staying Focused, Looked After Children, Going Missing, and Child Sexual Exploitation – A Thematic Review' (QUB, 2015), at 25.

¹⁸⁶ Police Service of NI and Department of Health, 'Interface Protocol between Health and Social Care Trusts and Police Service of NI: Where a Child is Reported Missing and Other Police Interactions with Residential Children's Homes' (PSNI and DoH, 2023).

¹⁸⁷ These meetings are between the Police Service of NI and the Health and Social Care Trusts in NI. See Email correspondence from Police Service of NI to NI Human Rights Commission, 5 July 2023.

other police interactions to ensure any findings are effectively addressed.

Modern slavery

- 8.8 In 2022, 547 potential victims of human trafficking were identified in NI.¹⁸⁷ Of these, 86 were child victims.¹⁸⁸
- 8.9 The Commission has significant concerns that the Illegal Migration Act 2023 denies victims of modern slavery arriving in the UK irregularly access to existing support.¹⁸⁹ This is one of the grounds upon which the NIHRC is legally challenging the compliance of the 2023 Act with the ECHR and Windsor Framework Article 2.¹⁹⁰ For example, sections 22 and 25 of the 2023 Act disapply, in certain circumstances, domestic provisions which reflected obligations previously arising under the EU Trafficking Directive, to protect the rights of potential victims of human trafficking. The NIHRC considers this a diminution of rights contrary to Windsor Framework Article 2.¹⁹¹
- 8.10 In 2023, the implementation of proposals to tackle modern slavery and human trafficking in NI,¹⁹² including the use of Slavery and Trafficking Risk Orders, was hindered by the suspension of the NI Executive and NI Assembly.¹⁹³
- 8.11 **The Committee may wish to recommend that the UK takes effective steps to:**

¹⁸⁷ Home Office, 'Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary 2022: Data Tables' (HO, 2023), at Table 3.

¹⁸⁸ Ibid.

¹⁸⁹ Sections 22-29, Illegal Migration Act 2023. See NI Human Rights Commission, 'Submission to Joint Committee on Human Rights Inquiry on Illegal Migration Bill' (NIHRC, 2023); NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023).

¹⁹⁰ A scheduled High Court hearing is set in January 2024.

¹⁹¹ For further detail, see NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023).

¹⁹² In 2022, the Department of Justice consulted on its three-year strategy on Modern Slavery and Human Trafficking, which sought to operationalise the measures brought in under the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022. As part of this consultation on a range of tools to tackle modern slavery and human trafficking, the Department of Justice sought views on the use of Slavery and Trafficking Risk Orders. See Department of Justice, 'NI Draft Modern Slavery and Human Trafficking Strategy: Consultation' (DoJ, 2022).

¹⁹³ Department of Justice, 'Draft Modern Slavery and Human Trafficking Strategy' (DoJ, 2022), at 24.

- **ensure the root causes of human trafficking in NI are effectively addressed, and that specialised, accessible support in NI is sufficiently and promptly available for victims and adequately funded.**
- **promptly introduce legislation providing for Slavery and Trafficking Risk Orders in NI.**
- **amend the Illegal Migration Act 2023 to ensure human rights compliant support and assistance to potential victims of human trafficking and no diminution of rights under domestic law in NI, in breach of Windsor Framework Article 2.**

9.0 Articles 9, 10 and 11– Liberty and Security of the Person

Definition of terrorism

- 9.1 Recalling the previous recommendation,¹⁹⁴ the Counterterrorism and Border Security Act 2019 does not include a definition of ‘hostile activity’ and moves criminal law into private spaces.¹⁹⁵
- 9.2 In 2023, several counter-terrorism measures were introduced.¹⁹⁶ However, they do not address the definition of terrorism.¹⁹⁷ Additionally, it was noted that “terrorism laws contain relatively little express reference to online activity or content”.¹⁹⁸

¹⁹⁴ NI Human Rights Commission, ‘Parliamentary Briefing Paper on Counter-Terrorism and Border Security Bill’ (NIHRC, 2018); House of Commons and House of Lords Joint Committee on Human Rights, ‘Ten Clauses Government Must Change in Counter-Terrorism and Border Security Bill’ (JCHR, 2018).

¹⁹⁵ Ibid.

¹⁹⁶ Section 89, National Security Bill 2023; Section 11, Terrorism (Protection of Premises) Bill 2023.

¹⁹⁷ 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 14(a).

¹⁹⁸ It is acknowledged that “embedded within the Terrorism Act 2000’s definition of terrorism is a type of terrorist action that would neatly fit a terrorist cyberattack”. See Jonathan Hall KC, ‘The Terrorism Acts in 2021 - Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006 and The Terrorism Prevention and Investigation Measures Act’ (IRTL, 2020), at para 1.4.

- 9.3 **The Committee may wish to recommend that the UK takes effective steps to revise its broad definition of terrorism, including in NI, including providing a definition of 'hostile activity' and ensuring consideration of online activity or content.**

Powers of arrest

- 9.4 Considering the previous recommendation,¹⁹⁹ there has been no progress in ensuring the principles of necessity and proportionality are embedded within arrest powers under section 41 of the Terrorism Act 2000, including in decisions regarding bail.
- 9.5 NI has a disproportionately high number of arrests made under section 41 of the Terrorism Act 2000 compared to the rest of the UK.²⁰⁰ In 2022/2023, 114 individuals were arrested under section 41 of the Terrorism Act 2000 in NI.²⁰¹ Of the 114 individuals arrested, 20 were subsequently charged.²⁰²
- 9.6 **The Committee may wish to recommend that the UK takes effective steps to:**
- **ensure the principles of necessity and proportionality are embedded within section 41 of the Terrorism Act 2000.**
 - **enable bail to be available for persons arrested under the Terrorism Act 2000 and ensures bail is granted for such persons when appropriate, following consideration of public safety, including in NI.**

¹⁹⁹ CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, para 14.

²⁰⁰ Jonathan Hall KC, 'The Terrorism Acts in 2019: Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006' (IRTL, 2021), at para 5.4.

²⁰¹ This is a decrease from 126 in 2021/2022. See Police Service of NI, 'Police Recorded Security Situation Statistics: 1 July 2022 to 30 June 2023' (PSNI, 2023).

²⁰² This is an increase from 111 in 2021/2022. See Police Service of NI, 'Police Recorded Security Situation Statistics: 1 July 2022 to 30 June 2023' (PSNI, 2023).

Fine default

- 9.7 In 2022/2023, there were 109 receptions for fine default in NI.²⁰³ NI has the highest rate of personal debt in the UK,²⁰⁴ which increases the chance of potential fine default.²⁰⁵
- 9.8 In 2018, the Fine Collection Service became operational within NI Courts and Tribunal Services.²⁰⁶ It has powers to collect and enforce outstanding financial penalties, however imprisonment for fine default continues.
- 9.9 **The Committee may wish to recommend that the UK takes effective steps to end imprisonment for fine default in NI and that alternative strategies are promptly developed, implemented, and monitored, including community interventions and support services for actual or potential fine defaulters.**

Imprisonment of children with adults

- 9.10 An administrative scheme prevents offenders aged 15 to 17 years old being detained with young adults aged 18 to 21 years old. However, it is still legally permissible for children to be imprisoned with young adults.²⁰⁷ The necessary legislative change that has been committed was hindered by the suspension of the NI Executive and NI Assembly.²⁰⁸
- 9.11 **The Committee may wish to recommend that the UK takes effective steps to promptly introduce legislation to remove the legal basis for the imprisonment of children alongside adults in NI.**

²⁰³ This is an increase from 85 in 2021/2022. See Department of Justice, 'Press Release: The NI Prison Population 2022/2023', 26 October 2023.

²⁰⁴ Figures for unsecured debt indicate that adults in NI owe £3,990 on average and adults with debts owe an average of £10,730. See Financial Conduct Authority, 'Key findings from the FCA's Financial Lives Survey 2017' (FCA, 2018).

²⁰⁵ The increase in the cost of living for essentials such as food and energy is putting further strain on household budgets. See Women's Regional Consortium, 'Women Living with Debt' (WRC, 2022), at 5.

²⁰⁶ Justice (2016 Act) (Commencement No.2) Order (NI) 2018.

²⁰⁷ Criminal Justice (Children) (NI) Order 1998.

²⁰⁸ Declan McGeown, 'Scoping Study Stakeholder Update' (DoJ, 2017); Email correspondence between NI Human Rights Commission and Department of Justice, 20 July 2020.

Remand of children

9.12 Recalling the previous recommendation,²⁰⁹ in 2021/2022, there were 42 remand omissions to the Juvenile Justice Centre in NI.²¹⁰

9.13 In 2020, a commitment was made to “strengthen the right to bail for children and introduce specific conditions which must be met before a child can be remanded into custody, with a view to ensuring that custody is used as a last resort, in line with our international obligations”.²¹¹ However, progress was hindered by the suspension of the NI Executive and NI Assembly.

9.14 **The Committee may wish to recommend the UK takes effective steps to ensure:**

- **remand of children in NI is a last resort and that suitable accommodation is provided within a reasonable time, if released on bail.**
- **that a range of non-custodial accommodation arrangements is available in NI for children awaiting trial who cannot return to their homes.**

Prison conditions

9.15 In 2022/2023, the overall daily average prison population was 1,685.²¹² In 2023, the NI Prison Service raised concerns regarding overcrowding in NI prisons.²¹³

²⁰⁹ 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 23.

²¹⁰ NI Statistics and Research Agency, ‘NI Youth Justice Agency Annual Workload Statistics 2021/2022’ (NISRA, 2022).

²¹¹ NI Assembly Hansard, ‘Written Question – Custody of Children – Naomi Long MLA – AQO 992/17-22’, 2 November 2020.

²¹² This was an increase from 1,494 in 2021/2022. See NI Statistics and Research Agency, ‘NI Prison Population 2022/2023’ (DoJ, 2023), at 3.

²¹³ The NI Prison Service has been actively recruiting to ensure that the number of prison staff is sufficient for the number of prisoners. However, The NI Prison Service has stated that there is a limit to what can be done with current budgets. Recruiting additional staff also will not address the reasons for the rising numbers of prisoners, including the significant increase in prisoners on remand. See Meeting between NI Human Rights Commission and NI Prison Service, 24 February 2023; Meeting between NI Human Rights Commission and NI Prison Service, 24 February 2023; Meeting between Department of Justice and NI Prison Service, 4 August 2023.

- 9.16 In 2022/2023, there were 102 prisoner-on-prisoner assaults and 68 prisoner assaults on prison staff in NI.²¹⁴
- 9.17 In 2022, there were concerns with the treatment of prisoners and patients in Care and Supervision Units within NI prisons.²¹⁵ For example, some prisoners experienced regimes amounting to solitary confinement and their treatment did not meet the Standard Minimum Rules.²¹⁶ In 2023, significant progress has been made,²¹⁷ but it remains that measures are needed to support the increasing number of people with complex mental health needs in NI prisons.²¹⁸
- 9.18 Drugs are an issue in NI Prisons, particularly Maghaberry. There is a lack of governance and effective action to tackle the issue.²¹⁹ In 2024, the introduction of x-ray body scanners is reportedly improving the identification and deterrence of drugs.²²⁰

²¹⁴ Email correspondence from Department of Justice to NI Human Rights Commission, 7 August 2023.

²¹⁵ Criminal Justice Inspection NI, 'A Review into the Operation of Care and Supervision Units in the NI Prison Service' (CJINI, 2022), at 4.

²¹⁶ Ibid.

²¹⁷ The Criminal Justice Inspection found that the challenging findings of its review prompted substantial action, in partnership with health care, education and training providers. This collaborative effort has resulted in improvements in governance and oversight arrangements, leading to better access to purposeful activity for men and women held in the Care and Supervision Units.

²¹⁸ The review found that 50 per cent of people within the [Care and Supervision Units] at the time of fieldwork had complex mental health needs. The number of people with personality disorder in prison is significant with some held in a [Care and Supervision Unit]. These patients present with some of the most challenging and complex behaviours. It is projected that this number will increase in the coming years. See Criminal Justice Inspection NI, 'A review into the operation of Care and Supervision Units in the NI Prison Service' (CJINI, 2023).

²¹⁹ 41 per cent of prisoners indicated it was easy to obtain drugs and 28 per cent had developed a drug problem while in Maghaberry Prison. See Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Maghaberry Prison 20 September – 6 October 2022' (CJINI, 2023); Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Hydebank Wood Secure College 23-24 October and 4-7 November 2019' (CJINI, 2020); Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Magilligan Prison 21 May – 10 June 2021' (CJINI, 2022).

²²⁰ The NI Prison Service advised that the introduction of x-ray body scanners in March 2023 is having a significant effect on detecting and deterring drug trafficking. Department of Justice, 'Press Release: Record population means prison pressures to continue for some time - Prison Chief', 16 June 2023; NI Human Rights Commission visit to Maghaberry Prison, 19 January 2024.

9.19 Rehabilitation and release planning,²²¹ mental healthcare for prisoners²²² and the hygiene of older parts of the NI prison estate are also concerns.²²³

9.20 The Committee may wish to recommend that the UK takes effective steps to:

- **promptly implement the Criminal Justice Inspection NI's recommendations in relation to the Care and Supervision Units in NI.**
- **effectively monitor and develop measures in NI prisons aimed at reducing prisoner violence.**
- **ensure all prisoners in NI have access to effective mental healthcare and support.**
- **address issues with rehabilitation and release planning, drug use and poor hygiene within NI prisons.**

Women in detention

9.21 In NI, women immigration detainees are held with men in Larne House, with limited separation.²²⁴ In 2023, tenders were submitted for alterations, including a separate communal room for women

²²¹ In June 2023, the Criminal Justice Inspection NI highlighted that purposeful activity, rehabilitation and release planning had been badly affected as a result of the COVID-19 pandemic in Maghaberry Prison. Many prisoners were released without adequate plans and concerns were also identified regarding the adequacy of safeguarding. See Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Maghaberry Prison 20 September-6 October 2022' (CJINI, 2023).

²²² Regulation and Quality Improvement Authority, 'Review of Services for Vulnerable Persons Detained in NI Prisons' (RQIA, 2021); Criminal Justice Inspection NI and Regulation and Quality Improvement Authority, 'The Safety of Prisoners Held by the NI Prison Service: A Joint Inspection by Criminal Justice Inspection NI and the Regulation and Quality Improvement Authority' (CJINI and RQIA, 2019).

²²³ Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Maghaberry Prison 20 September – 6 October 2022' (CJINI, 2023); Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Magilligan Prison 21 May – 10 June 2021' (CJINI, 2022).

²²⁴ Three rooms, on a single corridor, are designated for women detainees in Larne House. This corridor is not separate from the rest of the facility and men can walk through to go to the dining room. Women can lock the doors to their rooms, which can be overridden by staff in the event of an emergency. Women are not able to lock their doors if they were under close observation (for example, if it was believed they were a threat to themselves). Communal areas are shared by men and women and there is no option for a gender-specific communal area. See HM Inspectorate of Prisons, 'Report on an Unannounced Inspection of the Residential Short-term Holding Facilities at Larne House, Manchester Airport and Yarl's Wood by HM Chief Inspector of Prisons' (HMIP, 2021), at para 2.27.

detainees.²²⁵ The target date for the delivery of the alterations is 2025, subject to the necessary funding.

9.22 The Illegal Migration Act 2023 allows pregnant women to be detained for up to 72 hours, or up to seven days if authorised by a Minister of the Crown.²²⁶ The Royal College of Midwives advises that a 72-hour detention period can be harmful and that the practice of detaining pregnant women for immigration purposes must end.²²⁷

9.23 Individuals held in Larne House are transferred to long-term holding facilities in other parts of the UK. There are concerns that such individuals, particularly women, do not have consistent access to identified safeguarding requirements or specialised support.²²⁸

9.24 **The Committee may wish to recommend that the UK takes effective steps to ensure:**

- **the prompt development of a separate custodial facility for NI women.**
- **that pregnant women are not detained for immigration purposes under the new Illegal Migration Act 2023.**
- **that individuals, particularly women, held at any point in Larne House have consistent access to required safeguarding or specialised support throughout the entirety of their immigration application process.**

²²⁵ Email correspondence from Larne Visitors House to NI Human Rights Commission, August 2023.

²²⁶ A pregnant woman who has been released, can be detained again for the specified periods. See Sections 2(2D) and 2(2E), Illegal Migration Act 2023.

²²⁷ Royal College of Midwives, 'Position statement: Detention of Pregnant Women' (RCM, 2017).

²²⁸ Meeting between NI Human Rights Commission and civil society representatives, 19 December 2023.

10.0 Article 12 – Freedom of Movement

Racial profiling

10.1 Racial profiling during custom checks have been reported when travelling between NI and other parts of UK and Ireland.²²⁹

10.2 In 2022, the Nationality and Borders Act introduced Electronic Travel Authorisations which will be required for all non-British citizens who require leave to enter the UK.²³⁰ Irish citizens are excluded.²³¹ The UK Government confirmed that non-visa nationals who are lawfully resident in Ireland will be exempt from the requirement.²³² However, concerns remain that a significant number of individuals who do not hold recognised UK immigration status will be affected despite free movement across the island of Ireland.²³³ The increased risk of racial profiling remains a concern.²³⁴

10.3 **The Committee may wish to recommend that the UK takes effectives steps to ensure that:**

- **measures are in place to prohibit racial profiling in immigration checks in the UK, including along the border between NI and Ireland.**
- **all journeys into NI that originate from Ireland should be exempt from Electronic Travel Authorisation requirements.**

²²⁹ Equality Commission, 'Impact of Brexit on Minority Ethnic and Migrant People in NI' (ECNI, 2022).

²³⁰ The legislative framework was introduced in 2022, but ETAs started in November 2023 for Qatari Nationals and will be further extended in February 2024 to a limited number of other Gulf states. Section 75, Nationality and Borders Act 2022.

²³¹ Section 3ZA, Immigration Act 1971.

²³² Home Office, 'Statement of Changes to the Immigration Rules - HC 1160', 9 March 2023.

²³³ In October 2023, the Sovereign Affairs Committee to the British Irish Parliamentary Assembly published a report on the Common Travel Area post-Brexit.¹³ The Committee raised concerns about the incompatibility of the Electronic Travel Authorisation system with tourism on the island of Ireland and recommended that all permanent residents in NI or Ireland be exempt from the requirement to obtain a visa for short visits to other jurisdictions. See Sovereign Affairs Committee (Committee A) of the British Irish Parliamentary Assembly, 'Protecting the Common Travel Area in the Post-Brexit Era' (BIPA, 2023).

²³⁴ Committee on the Administration of Justice, 'Briefing Note: Electronic Travel Authorisation (ETA) September 2023' (CAJ, 2023).

- **the freedom of movement rights and other associated rights of the Common Travel Area maintains the same level of protection as existed on 31 December 2020.**

11.0 Article 13 – Non-refoulement

Asylum, refugee law and resettlement

- 11.1 The Illegal Migration Act 2023 denies access to the UK asylum system for individuals who have arrived through unofficial routes.²³⁵ It prevents such individuals from presenting claims for protection, no matter how compelling their case may be.²³⁶ Individuals can face detention before being removed to another country.²³⁷ There are concerns with limitations on judicial oversight, the removal of support to victims and potential victims of modern slavery and human trafficking, and the weakening of child protection arrangements.²³⁸ The NIHRC is legally challenging the compliance of the 2023 Act with the ECHR and Windsor Framework Article 2.²³⁹ By way of example, section 13(4) of the 2023 Act amends the Immigration Act 2016, restricting access to immigration bail and providing that specified detention decisions are “final” and not subject to court oversight during the first 28 days, subject to limited exceptions. By contrast, the EU Procedures Directive, which was binding on the UK before Brexit, required “where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review”.²⁴⁰ The NIHRC considers this a diminution of rights, contrary to Windsor Framework Article 2.
- 11.2 The use of privately managed ‘contingency accommodation’ for people seeking asylum has increased across the UK.²⁴¹ In NI,

²³⁵ Section 1(1), Illegal Migration Act 2023.

²³⁶ Section 1(2), Illegal Migration Act 2023.

²³⁷ Section 1(4), Illegal Migration Act 2023.

²³⁸ NI Human Rights Commission, ‘Submission to the House of Lords on the Illegal Migration Bill’ (NIHRC, 2023).

²³⁹ A scheduled High Court hearing is set in January 2024.

²⁴⁰ Article 26, Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection (Recast), 26 June 2013.

²⁴¹ It is intended that there are two types of asylum accommodation in the UK, including NI. The two types of accommodation are initial accommodation (short-term housing for first three to four weeks) and dispersal accommodation (longer-term housing while awaiting determination of asylum claim).

families, including children, are being kept in hotels for long periods with no set timeframe for moving on.²⁴² The move to dispersal accommodation can be conducted in a threatening way, without advance notice and without any meaningful support to ensure access to services.²⁴³ In 2023, the UK Government commenced using alternative forms of asylum accommodation, such as tents and barges.²⁴⁴

11.3 In 2024, the report of the Independent Chief Inspector of Borders and Immigration on contingency asylum accommodation for families with children in NI is awaited.²⁴⁵

11.4 **The Committee may wish to recommend that the UK takes effective steps to ensure:**

- **the support and accommodation provided to refugees and people seeking asylum in NI is urgently reviewed to ensure it is adequate, fit for purpose and culturally appropriate.**
- **the Illegal Migration Act 2023 is amended to ensure compliance with the UK's international human rights obligations and Windsor Framework Article 2, and that there is no diminution of protection for refugees and people seeking asylum in NI.**

The Mears Group PLC is sub-contracted by the Home Office to provide accommodation for people seeking asylum in NI. See UK Visas and Immigration, 'A Home Office Guide to Living in Asylum Accommodation' (HO, 2019); UK Government, 'Contracts Finder – Asylum Accommodation and Support Services Contract NI'. Available at:

<https://www.contractsfinder.service.gov.uk/Notice/af043016-dd83-4308-8b3c-0d134a3a89c9>; Independent Chief Inspector of Borders and Immigration, 'An Inspection of Contingency Asylum Accommodation May 2021-November 2021' (UK Gov, 2022).

²⁴² Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

²⁴³ Ibid.

²⁴⁴ Such an approach is yet to be adopted in NI, but there is the possibility that people seeking asylum in NI could be moved to alternative accommodation such as this elsewhere in the UK. See Andrew McDonald, 'UK to house migrants in ex-army barracks, mulls use of barges', *Politico*, 29 March 2023; Home Office, 'Factsheet: Asylum accommodation on a vessel in Portland Port' 18 July 2023; Kiran Stacey, 'UK ministers accused over asylum backlogs after 2,000 tents bought', *The Guardian*, 28 July 2023; Rajeev Syal, 'First occupants of Bibby Stockholm barge are taken onboard', *The Guardian*, 7 August 2023.

²⁴⁵ Independent Chief Inspector of Borders and Immigration, 'Press Release: An inspection of contingency asylum accommodation for families with children in Northern Ireland'. Available at: <https://www.gov.uk/government/news/an-inspection-of-contingency-asylum-accommodation-for-families-with-children-in-northern-ireland>

- **a realistic, long-term strategy aimed at expeditiously ending the use of the 'contingency' asylum accommodation model in NI, particularly for families with children and people with specific needs.**

Rwanda asylum proposals

- 11.5 In 2022, a partnership between the UK and Rwanda was established to relocate migrants who arrived in the UK irregularly to Rwanda.²⁴⁶
- 11.6 In June 2022, the first group of people were to be relocated to Rwanda.²⁴⁷ However, the initial flight was halted due to the ECtHR issuing an interim measure.²⁴⁸
- 11.7 In November 2023, the UK Supreme Court declared the Rwanda asylum proposals were unlawful.²⁴⁹ In December 2023, the UK Government signed a new treaty with Rwanda and introduced the Safety of Rwanda (Asylum and Immigration) Bill, which proposes to declare Rwanda as a safe third country of removal and remove the possibility of challenging this categorisation.²⁵⁰
- 11.8 **The Committee may wish to recommend that the UK takes effective steps to:**
- **completely withdraw from all asylum agreements declaring Rwanda a safe third country of removal and ensure all people seeking asylum in the UK are**

²⁴⁶ The Memorandum of Understanding also contained a commitment by the UK and Rwanda to uphold "fundamental human rights and freedoms without discrimination". Yet, it is not binding in international law and compliance with this arrangement is not "justiciable in any court of law by third-parties or individuals". See Home Office, 'Press Release: UK and Rwanda migration and economic development partnership', 14 April 2022; Memorandum of Understanding Between the Government of the UK of Great Britain and NI and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement, 13 April 2022

²⁴⁷ Home Office, 'Press Release: First migrants set for Rwanda to be given final notice', 1 June 2022.

²⁴⁸ The ECtHR issued the interim measure to prevent irreversible harm to an applicant challenging the legality of their deportation. See European Court of Human Rights, 'Press Release: The European Court grants urgent interim measure in case concerning asylum-seeker's imminent removal from the UK to Rwanda', 14 June 2022.

²⁴⁹ *AAA and Others Secretary of State for the Home Department* [2023] UKSC 42.

²⁵⁰ The definition of Rwanda as a safe third country is not subject to criteria, such as set out in Article 27 of the EU Procedures Directive, which were reflected in UK law prior to Brexit. The NIHRC considers this may diminish rights contrary to Windsor Framework Article 2. See Home Office, 'UK-Rwanda Treaty: Provision of an Asylum Partnership' (HO, 2023).

processed in a way that is human rights compliant. This includes taking into account the difficult journey and trauma experienced by many prior to arriving in the UK.

- **immediately and thoroughly reassess the Safety of Rwanda (Asylum and Immigration) Bill and amend as required to ensure no diminution of rights in NI, contrary to Windsor Framework Article 2.**

12.0 Articles 14, 15, 16 and 26 – Fair Trial Rights

Access to justice

- 12.1 In 2022/2023, financial pressures and structural issues in the legal aid system were compounded by increased demand,²⁵¹ hindering access to justice for individuals across NI.²⁵² Despite steps being taken to address these concerns,²⁵³ progress was hindered by the suspension of the NI Executive.²⁵⁴
- 12.2 Barriers in accessing justice are prominent for litigants in person²⁵⁵ and persons with disabilities, particularly deaf people.²⁵⁶

²⁵¹ In 2022/2023, the Legal Services Agency NI reports that the continued upturn in demand for legal aid reflects recovery within the NI justice system – relating to the backlog of cases caused by the COVID-19 pandemic and adapting to new ways of working. See Legal Services Agency NI, 'Annual Report and Accounts 2022-2023' (LSANI, 2023), at 1.

²⁵² The budget for legal aid in NI is fixed and funded through the Department of Justice. Legal professionals highlight a disconnect between the budget arrangements and the demand-led nature of publicly funded legal services. Increased demand often results in the Legal Services Agency NI having to delay payments of legal aid, compounding existing delays and backlogs in the system, resulting in a highly pressurised workforce. Many suppliers do not have the cash flow necessary to continue providing legal aid services, threatening legal aid coverage across NI and impeding the ability of citizens to access local solicitor firms. See The Law Society of NI and The Bar of NI, 'Access to Justice Under Threat: A Joint Submission on the Draft NI Executive Budget 2022-25' (LSNI and Bar of NI, 2022); The Law Society of NI and The Bar of NI, 'Written evidence submitted by The Law Society of NI and The Bar of NI, relating to the funding of public services in NI' (LSNI and Bar of NI, 2023).

²⁵³ Department of Justice, 'Press Release: Additional £10.9m for Legal Aid services', 17 November 2023; Department of Justice, 'Press Release: Fundamental review of criminal legal aid commenced', 2 October 2023.

²⁵⁴ Andrew Madden, 'DoJ launches review of criminal legal aid in NI amid dispute over fees for barristers', *Belfast Telegraph*, 3 October 2023.

²⁵⁵ Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord, 'Litigants in Person in NI: Barriers to Legal Participation' (UU, NIHRC and Nuffield Foundation, 2018).

²⁵⁶ Bronagh Byrne, Brent Elder, Michael Schwartz, 'Enhancing Deaf People's Access to Justice in Northern Ireland: Implementing Article 13 of the UN Convention on the Rights of Persons with Disabilities' (SJDR, 2021); Department for Communities, 'Disability Strategy Expert Advisory Panel: Report and Recommendations' (DfC, 2020), at para 5.6; 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 33.

- 12.3 New strategies on technological advancements in the NI Court and Tribunals Service are being welcomed with caution.²⁵⁷ Clear guidance and safeguards are required to ensure there is no impediment to individuals with specific needs accessing justice.²⁵⁸ In 2023, the Criminal Justice Inspection NI highlighted that older people need to be better supported to participate in the criminal justice system.²⁵⁹
- 12.4 There is a low number of specialist immigration solicitors,²⁶⁰ particularly outside Belfast,²⁶¹ which is affecting the availability of immigration legal services.²⁶²
- 12.5 **The Committee may wish to recommend that the UK takes effective steps to ensure:**
- **justice barriers are eliminated, especially for litigants in person, persons with disabilities, and older individuals in NI.**
 - **adopt technologies without hindering access for specific needs, including children, persons with**

²⁵⁷ Department of Justice, 'Digital Justice Strategy 2020-2025' (DoJ, 2020); NI Courts and Tribunals Service, 'Digital Strategy 2021-2026' (NICTS, 2022); Department of Justice, 'Consultation on Proposals on the Use of Live Links for Police Detention/Interviews' (DoJ, 2020); Department of Justice, 'Consultation on Use of Live Links for Courts and Tribunals' (DoJ, 2022). See NI Human Rights Commission, 'Response to the Department of Justice's Consultation on Audio and Video Links for NI Court and Tribunal Hearings' (NIHRC, 2022); The Law Society of NI and The Bar of NI, 'Access to Justice Under Threat: A Joint Submission on the Draft NI Executive Budget 2022-25' (LSNI and Bar of NI, 2022); The Law Society of NI and The Bar of NI, 'Written evidence submitted by The Law Society of NI and The Bar of NI, relating to the funding of public services in NI' (LSNI and Bar of NI, 2023); Department for Communities, 'Disability Strategy Expert Advisory Panel: Report and Recommendations' (DfC, 2020), at para 5.6.

²⁵⁸ NI Human Rights Commission, 'Response to the Department of Justice's Consultation on Audio and Video Links for NI Court and Tribunal Hearings' (NIHRC, 2022).

²⁵⁹ Criminal Justice Inspection NI, 'An Inspection of the Criminal Justice System's Approach to Vulnerable Older People in NI' (CJINI, 2023).

²⁶⁰ There are 14 lawyers on the Law Society of NI's Directory of Solicitors that provide advice in relation to immigration and asylum in NI. See: Law Society of NI, 'Immigration Practitioners' List – Law Society of NI'. Available at: <https://www.lawsoc-ni.org/immigration-practitioners-list-law-society-of-northern-ireland>.

²⁶¹ Meeting between NI Human Rights Commission and the Law Centre NI, 27 November 2023; Law Centre NI, 'Refugee and Asylum Forum Priorities for Action 2023' (LCNI, 2023), at 28; Migrant Centre NI, 'Submission to the UK Parliament NI Affairs Committee's Call for Evidence on "The Experience of Minority Ethnic and Migrant People in Northern Ireland"' (UK Parliament, 2021).

²⁶² Law Society of NI, 'Immigration Practitioners' List – Law Society of NI'. Available at: <https://www.lawsoc-ni.org/immigration-practitioners-list-law-society-of-northern-ireland>; Meeting between NI Human Rights Commission and the Law Centre NI, 27 November 2023; Law Centre NI, 'Refugee and Asylum Forum Priorities for Action 2023' (LCNI, 2023), at 28; Migrant Centre NI, 'Submission to the UK Parliament NI Affairs Committee's Call for Evidence on "The Experience of Minority Ethnic and Migrant People in Northern Ireland"' (UK Parliament, 2021).

disabilities, older persons, unrepresented litigants, and non-English speakers.

- **immigration legal services in NI satisfy needs, preventing unfair penalties for asylum seekers without adequate legal advice.**

Age of criminal responsibility

12.6 In 2024, the age of criminal responsibility remains at ten years old in NI.²⁶³ There is broad community support for raising the minimum age beyond ten years.²⁶⁴ However, cross-party support to address this issue is lacking.²⁶⁵ Further progress was hindered by the suspension of the NI Executive and NI Assembly.

12.7 **The Committee may wish to recommend that the UK takes effective steps to ensure the minimum age of criminal responsibility in NI is raised to at least 14 years of age.**

Avoidable delay

12.8 There are concerns that cuts to the NI budget and existing case back logs are contributing to delays.²⁶⁶

12.9 **The Committee may wish to recommend that the UK takes effective steps to ensure the availability of funding to deliver transformational change and reduce avoidable delay in NI's criminal justice system.**

²⁶³ The Age of Criminal Responsibility (Scotland) Act 2019 raised the age of criminal responsibility in Scotland to 12 years old.

²⁶⁴ A total of 455 responses were received, 109 of these were from children and young people aged 18 years old and under. Overall, 83.7 per cent of respondents supported increasing the minimum age of criminal responsibility beyond ten years. See Department of Justice, 'Increasing the Minimum Age of Criminal Responsibility in NI from 10 Years to 14 Years: Summary of Consultation Responses' (DoJ, 2023), at 25.

²⁶⁵ CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 23; CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at paras 54(a)-54(c).

²⁶⁶ 'NI criminal justice system 'at breaking point'', *BBC News*, 6 June 2023; Criminal Justice Inspection NI, 'The operation of bail and remand in NI' (CJINI, 2023), at para 4.9.

Closed material procedures

12.10 In 2020/2021, there were six applications for a closed material procedure,²⁶⁷ five declarations to allow a closed material procedure,²⁶⁸ one revocation of a declaration,²⁶⁹ and two final judgments made through the closed material procedure in NI.²⁷⁰

12.11 It has been reported that the increased litigation time and costs associated with closed material proceedings are particularly significant in NI, due to the “complicated factual backdrop to many of the NI legacy cases”.²⁷¹

12.12 **The Committee may wish to recommend that the UK takes effective steps to ensure that:**

- **closed material procedures in cases of serious human rights violations do not create obstacles to accountability or the rights to a fair trial and effective remedy in NI.**
- **sufficient, long-term resources are available where closed material procedures are used in NI.**

Miscarriages of justice

12.13 Recalling the previous recommendation,²⁷² in 2019, the UK Supreme Court found the test for a miscarriage of justice was not incompatible with Article 6(2) of the ECtHR. In 2023, the ECtHR considered the issue, including an intervention by the NIHRC.²⁷³ The judgment is awaited.

²⁶⁷ Ministry of Justice, ‘Report on the Use of Closed Material Procedure (from 25 June 2020 to 24 June 2021)’ (MoJ, 2022), at 4.

²⁶⁸ Ibid.

²⁶⁹ Ibid, at 6.

²⁷⁰ Ibid, at 7.

²⁷¹ Sir Duncan Ouseley, ‘Review of Closed Material Procedure in the Justice and Security Act 2013’ (MoJ, 2022), at 115.

²⁷² CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 17 August 2015, at para 22(b).

²⁷³ European Court of Human Rights, ‘Press Release: Grand Chamber to examine case concerning refusal of compensation following unsafe convictions’, 3 March 2023.

12.14 **The Committee may wish to recommend that the UK takes effective steps to ensure the test for a miscarriage of justice is human rights compliant in NI.**

Non-jury trials

12.15 In 2022, there were 13 defendants disposed of at non-jury trials in NI.²⁷⁴ Provision for non-jury trials in NI has been extended for the seventh time until July 2025.²⁷⁵ There is no clarity around the conditions whereby the use of non-jury trials will be discontinued.²⁷⁶

12.16 In 2021, a Non-Jury Trial Working Group was established.²⁷⁷ It developed a list of indicators to assist the Secretary of State in NI in determining whether non-jury trials remain necessary.²⁷⁸ It is unclear whether these have been adopted.

12.17 **The Committee may wish to recommend that the UK takes effective steps to ensure that the use of non-jury trials do not become normalised in NI. This includes clarity on the indicators used to determine the conditions whereby the use of non-jury trials will be discontinued.**

Cross-border justice arrangements

12.18 Following UK withdrawal from the EU, the UK-EU Trade and Cooperation Agreement established a fast-track system which enables the extradition of either UK or EU nationals.²⁷⁹

²⁷⁴ Section 1 of the Justice and Security (NI) Act 2007 enables the Director of Public Prosecutions for NI to issue a certificate in relation to any trial on indictment of a defendant (and anyone tried with that defendant). The effect of the certificate is that the trial is conducted in the Crown Court without a jury. Of the 13 defendants in 2022, 12 were found guilty of at least one offence while the remaining defendant was found not guilty on all charges. See NI Office, 'NI Terrorism Legislation: Annual Statistics 2022' (NIO, 2023), at 6.

²⁷⁵ Justice and Security (NI) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023.

²⁷⁶ Letter from the NI Human Rights Commission to the Secretary of State for NI, Brandon Lewis MP, 11 February 2021.

²⁷⁷ NI Office, 'Non-Jury Trials Working Group: Report to the Independent Reviewer of the Justice and Security (NI) Act 2007' (NIO, 2022); Professor Marie Breen-Smyth, 'Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007 Fifteenth Report 1 August 2021 – 31 July 2022' (NIO, 2023) at 109.

²⁷⁸ Ibid.

²⁷⁹ Article 596-632, UK-EU Trade and Cooperation Agreement 2020.

- 12.19 Neither the UK-EU Withdrawal Agreement, nor the UK-EU Trade and Cooperation Agreement address cooperation on matters of cross-border civil justice and no replacement of the Brussels IIa system²⁸⁰ has been put in place. For cases instituted after 1 January 2021, the mechanisms for inter-country child placement are now governed by common law and the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention).²⁸¹
- 12.20 The Data Protection and Digital Information Bill raises concerns in terms of cross-border data sharing as the Bill opens up to the potential for divergence on the Island. This might influence the data adequacy agreement between the UK and the EU.²⁸²
- 12.21 **The Committee may recommend that the UK takes effective steps to ensure that:**
- **the highest standards of victims’ rights and rights of accused persons are central to cross-border criminal justice cooperation.**
 - **in the absence of CJEU oversight in the extradition process, establish clear safeguards within the Trade and Cooperation Agreement oversight mechanisms to ensure human rights and legal protections for accused persons and crime victims in the UK and the EU.**
 - **consideration is given to ensure there are no adverse effects on the cross-border placement of children resulting from the UK’s withdrawal from the EU.**
 - **ensure Data Protection and Digital Information Bill is compliant with EU GDPR, the EU E-Privacy Directive**

²⁸⁰ Before 1 January 2021, cross-border disputes within the EU relating to children were regulated under the Brussels IIa Regulation (‘Brussels IIa’). Regulation 2201/2003/EU, ‘EU Council Regulation Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility (Brussels IIa)’, 27 November 2003.

²⁸¹ Ratified by the UK in 2012.

²⁸² NI Human Rights Commission, ‘NIHRC Briefing on the Data Protection and Digital Information Bill’ (NIHRC, 2023), at para 3.10.

and the EU Data Protection and Law Enforcement Directive falling within the scope of the non-diminution commitment in Windsor Framework Article 2.

13.0 Article 17 – Right to Family, Home and Correspondence

Access to financial support

- 13.1 In 2018, the UK Supreme Court declared the requirement that couples must be married to access Widowed Parent's Allowance is incompatible with the ECHR.²⁸³
- 13.2 The Bereavement Benefits (Remedial) Order 2023 enables remedial payments for non-married couples to be made back to 30 August 2018.²⁸⁴ Under the 2023 Order, claimants are also eligible for Widowed Parent's Allowance.²⁸⁵ Additional payments are not extended to non-married couples without dependent children. It is considered that ex gratia payments should fully recompense those bereaved back to February 2016 when the High Court of Justice in NI first considered this issue.²⁸⁶
- 13.3 **The Committee may wish to recommend that the UK takes effective steps to ensure:**
- **the Bereavement Benefits (Remedial) Order is retrospective to February 2016 for the families who made claims based on the High Court of Justice in NI's judgment.**

²⁸³ *In the Matter of an Application by Siobhan McLaughlin for Judicial Review (NI)* [2018] UKSC 48.

²⁸⁴ Where a claimant's late partner died before this date, the Remedial Order provides for a part payment of the higher rate of Bereavement Support Payment, if the death was after 5 April 2017, provided that the claim is made by 8 February 2024.

²⁸⁵ Where their late partner died before 6 April 2017, and they continue to meet the entitlement conditions on 30 August 2018. See Department for Work and Pensions, 'Explanatory Memorandum to The Bereavement Benefits (Remedial) Order 2022' (DWP, 2022), at para 7.13.

²⁸⁶ NI Human Rights Commission, 'Submission to Joint Committee for Human Rights on the Proposal for a draft Bereavement Benefits (Remedial) Order 2021' (NIHRC, 2021); House of Commons and House of Lords Joint Committee for Human Rights, 'Proposal for a Draft Bereavement Benefits Remedial Order 2021: Discrimination against Cohabiting Partners' (JCHR, 2021).

- **that bereavement benefits in NI are provided on equal terms to non-married couples without dependent children in NI.**

Biometric data

13.4 Existing legislative provisions on DNA data retention in NI have not been commenced.²⁸⁷

13.5 In 2020, the ECtHR found that the policy of indefinite biometric retention in the UK was a disproportionate interference with Article 8 of the ECHR.²⁸⁸

13.6 Despite attempts to progress this issue, a lack of political agreement has hampered efforts to develop a legislative framework for NI.²⁸⁹ Following legal challenge,²⁹⁰ the Police Service of NI implemented an interim policy on biometric retention.²⁹¹ However, this approach “does not attempt to remedy the faults identified by the two ECtHR judgments ...[and] is much more limited in its aims”.²⁹² Additionally, any necessary legislative change was hindered by the suspension of the NI Executive and NI Assembly.

13.7 **The Committee may wish to recommend that the UK takes effective steps to:**

- **commence the DNA retention sections of the Criminal Justice Act (NI) 2013 without further delay, ensuring that its implementation complies with *Gaughran v UK (2020)*.**

²⁸⁷ In 2008, the ECtHR found that UK laws on retention of biometric data violated Article 8 of the ECHR. The Criminal Justice Act (NI) 2013 aimed to rectify this. However, Schedule 2 of the Criminal Justice Act (NI) 2013 that provides the statutory framework for the retention of biometric data was not commenced pending political agreement on its effect on legacy investigations in NI.

²⁸⁸ *Gaughran v UK (2020)* ECHR 144, at 96.

²⁸⁹ Department of Justice, ‘Consultation on Proposals to Amend the Legislation Governing the Retention of DNA and Fingerprints in NI’ (DoJ, 2020), at 96.

²⁹⁰ NI Human Rights Commission, ‘Press Release: Human Rights Commission secures settlement in DNA fingerprint retention case’, 9 January 2019.

²⁹¹ Police Service of NI, ‘Service Instruction SI9999 on Biometric Retention’ (PSNI, 2022).

²⁹² NI Policing Board, ‘Human Rights Review of Privacy and Policing’ (NIPB, 2023), at 113.

- **ensure the Police Service of NI’s policy on biometric data retention is human rights compliant, effectively implemented and independently monitored.**

Stop and search

- 13.8 In 2022/2023, 23,650 persons were stopped in NI under all legislative stop, search and question powers.²⁹³ Counter terrorism powers accounted for 16 per cent (3,744) of all stops.²⁹⁴ Of the 23,650 persons stopped in 2022/2023, 11 per cent (2,561) were children.²⁹⁵
- 13.9 Despite previous recommendations,²⁹⁶ there has been little progress regarding the lack of community background recording of persons stopped and searched under the Justice and Security (NI) Act 2007.²⁹⁷ In 2023, the Independent Reviewer of the Act reiterated concerns regarding the use of ‘no-suspicion’ powers against children and the need for adequate safeguards.²⁹⁸

²⁹³ This represents a four per cent increase since 2021/2022. Of the 23,650 stops in 2022/2023, 73 per cent were conducted under the Misuse of Drugs Act (subsequent arrest rate of 5 per cent), 11 per cent were conducted under the Police and Criminal Evidence (NI) Order 1989 (arrest rate 20 per cent) and 16 per cent were conducted under counter terrorism powers (further breakdown below). See NI Statistics and Research Agency, 'Use of Stop and Search Powers by the Police in NI: 1 April 2022 to 31 March 2023' (NISRA, 2023), at 3.

²⁹⁴ In 2022/2023, 616 persons were stopped under Section 24 (search for munitions - without suspicion) of the Justice and Security Act (subsequent arrest rate of 1 per cent); 3,037 persons were stopped under Section 21 (stop and question) of the Justice and Security Act (subsequent arrest rate of 1 per cent); 55 persons were stopped under Section 43 (search of persons) of the Terrorism Act 2000 (subsequent arrest rate of 9 per cent); 36 persons were stopped under Section 43A (search of vehicles) of the Terrorism Act 2000 (subsequent arrest rate of 0 per cent); no stops were conducted under Section 47A (searches in specified areas or places- without suspicion) of the Terrorism Act 2000. See NI Statistics and Research Agency, 'Use of Stop and Search Powers by the Police in NI: 1 April 2022 to 31 March 2023' (NISRA, 2023).

²⁹⁵ 2,499 were aged 13 to 17 years old, while 62 were aged 12 years and under. See NI Statistics and Research Agency, 'Use of Stop and Search Powers by the Police in NI: 1 April 2022 to 31 March 2023' (NISRA, 2023), at 6.

²⁹⁶ The UN Human Rights Committee and eight successive Independent Reviewers of the Justice and Security (NI) Act 2007 have repeated this recommendation. See Professor Marie Breen-Smyth, 'Report of the Independent Reviewer Justice and Security (NI) Act 2007: Fifteenth Report - 1 August 2021-31 July 2022' (NIO, 2023), at 6.25; and CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 11.

²⁹⁷ *In the Matter of an application by Stephen Ramsey (No 2)* [2020] NICA 14, at paras 55-58; Professor Marie Breen-Smyth, 'Report of the Independent Reviewer Justice and Security (NI) Act 2007: Fifteenth Report - 1 August 2021-31 July 2022' (NIO, 2023), at para 2.35.

²⁹⁸ The Justice and Security (NI) Act 2007 Act applies to the Police Service of NI only. In relation to the power to stop and search for wireless apparatus or munitions under Section 24, the officer does not need to have reasonable suspicion that the person is carrying any such items. See Professor Marie Breen-Smyth, 'Report of the Independent Reviewer Justice and Security (NI) Act 2007: Fifteenth Report - 1 August 2021-31 July 2022' (NIO, 2023), at paras 5.29-5.47.

13.10 The Committee may wish to recommend that the UK takes effective steps to ensure the:

- **expedited development and implementation of a suitable methodology for recording disaggregated data on the community background of individuals stopped and searched under the Justice and Security (NI) Act 2007 in NI.**
- **provision of adequate safeguards, including appropriate mitigations, for any use of stop and search against children in NI.**

Rehabilitation of offenders

13.11 In NI, people sentenced to more than 30 months in prison are not able to apply to have their criminal convictions considered spent.²⁹⁹

13.12 In 2020, the NIHRC initiated legal action to challenge the legality of this position.³⁰⁰ In 2022, the High Court of Justice in NI declared the relevant provision incompatible with the applicant's Article 8 ECHR rights.³⁰¹

13.13 In November 2023, the NIHRC was granted permission to appeal by the UK Supreme Court, with a hearing awaited.³⁰²

13.14 The Committee may wish to recommend that the UK takes effective steps to amend the Rehabilitation of Offenders

²⁹⁹ Article 6(1) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 prevents certain previous convictions from ever becoming 'spent' or removed from an individual's criminal record. 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 their circumstances. See NI Human Rights Commission, 'Submission to Rehabilitation of Offenders Reform Consultation' (NIHRC, 2021).

³⁰⁰ The NIHRC was challenging the failure to provide a mechanism by which the applicant could apply to have their criminal convictions considered spent irrespective of the passage of time and their personal circumstances. See *In the Matter of an Application by JR123 for Judicial Review* [2022] NIQB 42.

³⁰¹ For failing to provide a mechanism by which the applicant could apply to have their criminal convictions considered spent irrespective of the passage of time and their personal circumstances. See *In the Matter of an Application by JR123 for Judicial Review* [2022] NIQB 42.

³⁰² UK Supreme Court, 'Permission to Appeal – November 2023'. Available at: <https://www.supremecourt.uk/pta/permission-to-appeal-2023-11.html>

(NI) Order 1978 to enable an offender to be rehabilitated if their circumstances satisfy human rights criteria. This includes ensuring an effective review mechanism is operational.

Biometric surveillance technology

- 13.15 In 2020, the England and Wales Court of Appeal found South Wales Police’s use of facial recognition technology breached privacy rights and data protection laws.³⁰³ However, police in the UK, including NI, continue to consider the utility of this technology.³⁰⁴
- 13.16 In 2023, the UK Biometric and Surveillance Camera Commissioner identified the need for legislation and guidance to provide greater certainty and accountability in this area.³⁰⁵ Despite providing a timely opportunity, the UK’s current Data Protection and Digital Information (No 2) Bill does not make provision for these concerns.³⁰⁶ In NI, a rights-based review of policing identified a “democratic deficit” regarding public consultation on the use of biometric surveillance techniques in policing.³⁰⁷

³⁰³ *R (Bridges) v Chief Constable of South Wales Police* [2020] EWCA Civ 1058.

³⁰⁴ Metropolitan Police, ‘Facial Recognition Technology’. Available at: <https://www.met.police.uk/advice/advice-and-information/fr/facial-recognition-technology/>; NI Policing Board, ‘Human Rights Review of Privacy and Policing’ (NIPB, 2022), at 45.

³⁰⁵ In particular, the Commissioner identified “the need for greater transparency and understanding of how the technology is used, the potential for racial and gender bias, why an individual would be placed on a watchlist, the accuracy of the technology, proportionality and the link between use and the number of arrests, and how deployment decisions are made”. See Office of the Biometrics and Surveillance Camera Commissioner, ‘Commissioner for the Retention and Use of Biometric Material Annual Report January 2021- March 2022 and Surveillance Camera Commissioner Annual Report March 2021 -March 2022’ (HO, 2023), at 18-19.

³⁰⁶ “It is worth noting that police accountability in their use of new technology such as facial recognition, voice pattern analysis and other Artificial Intelligence-driven capabilities is one of the most contentious aspects of biometric surveillance yet remains unaddressed, either in the Bill (the focus of which remains solely the regulation of DNA and fingerprints in certain, limited circumstances) or at all. As an advocate of the accountable and proportionate use of new technology by the police I think this lacuna is problematic as much for the police themselves as for the communities they serve”. See Letter to the House of Commons from the Biometrics and Surveillance Camera Commissioner, 15 May 2023.

³⁰⁷ “Apart from the lack of information available to people in NI about the activities of the Police Service of NI in relation to our privacy there appears to be an absence of significant consultation by the police, the Department of Justice, or the Northern Ireland Office on these issues. The driving force for all these developments and some significant erosion of privacy appears to originate from the law enforcement agencies in the UK. The Home Office, the College of Policing and others are developing more and more techniques and sometimes there appears to be no equivalent democratic input in NI, even during the times that the Assembly is functioning.” See NI Policing Board, ‘Human Rights Review of Privacy and Policing’ (NIPB, 2022), at 15.

- 13.17 **The Committee may wish to recommend that the UK takes effective steps to promptly ensure the use of biometric surveillance technologies in policing and criminal justice in NI are appropriately regulated, non-discriminatory and proportionate, in accordance with human rights obligations. Any legislative or policy proposals should be subject to a human rights impact assessment and extensive public consultation process.**

14.0 Article 18 – Right to Freedom of Thought, Conscience and Religion

Blasphemy

- 14.1 In NI, although no prosecutions have occurred since 1855, blasphemy and blasphemous libel remain common law offences.³⁰⁸
- 14.2 **The Committee may wish to recommend that the UK takes effective steps to promptly abolish the common law offence of blasphemy and blasphemous libel in NI.**

15.0 Article 19 – Right to Freedom of Expression

Defamation

- 15.1 The Defamation Act (NI) 2022 does not contain a requirement to prove 'serious harm'.³⁰⁹ This creates a disparity with England and Wales and risks libel tourism.³¹⁰ Additionally, the 2022 Act does

³⁰⁸ The common law offence of blasphemy and blasphemous libel has been abolished in England and Wales. In 2018, the Constitution of Ireland was amended to remove blasphemy as an offence. See Section 79, Criminal Justice Act 2008; Thirty-seventh Amendment of the Constitution (Repeal of offence of publication or utterance of blasphemous matter) Act 2018; BJAC Valentine, 'Booklet of Criminal Offences in NI' (LSNI, 2016).

³⁰⁹ The principal changes arising from the Act are the removal of the presumption in favour of a trial by jury in defamation cases in NI; and the introduction of statutory defences of truth, honest opinion, and publication on matters of public interest (replacing common law defences).

³¹⁰ In England and Wales, the Defamation Act 2013 introduced a 'serious harm' test, requiring a claimant to prove that a statement caused, or was likely to cause, serious harm to the reputation of a claimant before it would qualify as defamatory. This replaced the previous position under the common law by increasing the burden on a claimant seeking to successfully pursue a legal action for defamation in England and Wales. By not replicating this, the threshold for a plaintiff to prove defamation remains lower in NI than in England and Wales. In addition, unlike the 2013 Act, there is no clarification around specific defences open to website operators and no codification of the 'single publication rule'. During the passing of the Defamation Act (NI) 2022, debates in the NI Assembly

not make specific provision to address Strategic Lawsuits Against Public Participation.

- 15.2 **The Committee may wish to recommend that the UK takes effective steps to ensure defamation law in NI eradicates the risk of libel tourism and adequately addresses Strategic Lawsuits Against Public Participation.**

Freedom of expression of journalists

- 15.3 In 2018, two journalists – Mr McCaffery and Mr Birney – were arrested over the suspected theft of confidential documents from the Police Ombudsman NI.³¹¹ In 2020, the High Court of Justice in NI ruled that the search warrants issued were unlawful.³¹² The Police Service of NI subsequently dropped the case.³¹³
- 15.4 In 2023, it was revealed that the UK Investigatory Powers Tribunal is examining a separate incident regarding an authorisation obtained by the Police Service of NI to access Mr McCaffrey's phone records in 2013.³¹⁴ Mr McCaffrey previously complained to the Tribunal regarding his arrest in 2018, however he was unaware of its current line of inquiry and that his phone records had been accessed in 2013.³¹⁵
- 15.5 **The Committee may wish to recommend that the UK takes effective steps to ensure journalists in NI have effective,**

suggested no evidence of any increase in defamation actions being brought in the NI jurisdiction since 2013. Members of the Legislative Assembly were content that the removal of the presumption in favour of jury trials in defamation cases further minimised the risk of libel tourism. However, the disparity enables this to be a possibility. See Department of Finance, 'Review of Defamation Law in NI: Engaging with Stakeholders' (DoF, 2023), at 10.

³¹¹ 'Loughinisland: Journalists arrested over documents investigation', *BBC News*, 31 August 2018.

³¹² *In the Matter of an Application by Fine Point Films and Trevor Birney for Judicial Review and the in the Matter of an Application by Barry McCaffrey and the in the Matter of an Application by Police Service of NI and Durham Constabulary for Search Warrants* [2020] NIQB 55, at para 55.

³¹³ 'Loughinisland: Police drop case against two journalists', *BBC News*, 3 June 2019.

³¹⁴ Hearings by the Investigatory Powers Tribunal can take place in private, without complainants present. Mr McCaffrey contacted the Police Service of NI's Press Office in 2013 in relation to a story he was investigating into alleged financial corruption in the police service. It is alleged that the Police Service of NI then started monitoring the journalist's phone in order to identify a whistleblower: See, 'Police Service of NI monitored phone of journalist Barry McCaffery', *BBC News*, 24 July 2023; The Investigatory Powers Tribunal, 'Open and closed proceedings'. Available at: <https://investigatorypowerstribunal.org.uk/open-and-closed-proceedings/>

³¹⁵ 'Police Service of NI monitored phone of journalist Barry McCaffery', *BBC News*, 24 July 2023.

human rights compliant protection to report on issues of public importance.

16.0 Article 21 – Right to Peaceful Assembly

Parades and protests

- 16.1 In 2022/2023, the Parades Commission for NI was notified of 3,585 parades and parade-related protests.³¹⁶ Of these, 192 were considered 'sensitive', with the potential to raise concerns and community tensions.³¹⁷
- 16.2 By June 2015, proposals for devolving responsibility for parades and related protests were to be brought to the NI Executive.³¹⁸ The Office of Legislative Counsel was also to produce legislative options for addressing the remaining key issues.³¹⁹ In 2024, these were still awaited.
- 16.3 **The Committee may wish to recommend that the UK takes effective steps to:**
- **devolve responsibility for parades and protests to the NI Assembly, in line with the Stormont House Agreement.**
 - **ensure a range of options underpinned by human rights aimed at resolving disputes relating to parades and protests in NI are addressed in legislation, as required by the Stormont House Agreement.**

³¹⁶ This included 2,558 Protestant/Unionist/Loyalist, 92 Catholic/Republican/Nationalist and 935 'other' parades. In 2021/2022, 2,488 notifications were received, comprising of 1,846 Protestant/Unionist/Loyalist, 42 Catholic/Republican/Nationalist and 600 'other' parades. See Parades Commission for NI, 'Annual Report and Financial Statements for the Year Ended 31 March 2023' (PCNI, 2023), at Table 1.

³¹⁷ Of these, 177 were recorded as protestant/unionist/loyalist, one as catholic/republican/nationalist, and 14 as 'others'. In 2021/2022, there were 141 parades and parade-related protests considered sensitive, including 135 protestant/unionist/loyalist, two as catholic/republican/nationalist, and four 'others'. See Parades Commission for NI, 'Annual Report and Financial Statements for the Year Ended 31 March 2023' (PCNI, 2023), at Table 1.

³¹⁸ NI Office, 'Stormont House Agreement', 23 December 2014, at paras 17 and 18.

³¹⁹ Remaining issues include the Code of Conduct, criteria and accountability.

17.0 Article 23 – Right to Marry

Child, early and forced marriage

- 17.1 The marriage of a child aged 16 or 17 years, with consent of parents, legal guardians or the courts is permitted in NI.³²⁰ In 2022, 36 girls and 9 boys were married in NI.³²¹
- 17.2 There is strong support in NI for increasing the minimum age for marriage and civil partnerships to 18 years.³²² However, the necessary legislation was hindered by the suspension of the NI Executive and NI Assembly.³²³
- 17.3 **The Committee may wish to recommend that the UK takes effective steps to:**
- **increase the minimum age for marriage to 18 years for all children in NI.**
 - **strengthen efforts to combat forced marriages in NI, including by sensitising parents on the need for full and free consent of their child to marry.**

18.0 Article 24 – Children’s Rights

Physical punishment of children

- 18.1 NI legislation continues to allow for a defence of reasonable punishment of children through the Law Reform (Miscellaneous Provisions) (NI) Order 2006.³²⁴ There are no statistics on the number of cases where the defence of reasonable chastisement has been used in NI.³²⁵

³²⁰ Section 22, Marriage (NI) Order 2003.

³²¹ In 2021, 39 girls and 15 boys were married in NI. See Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 21 June 2023.

³²² Department of Finance, 'Marriage Law Consultation: Results and Analysis' (DoF, 2022); NI Human Rights Commission, 'Response to the Department of Finance Consultation on Marriage Law' (NIHRC, 2022).

³²³ Email correspondence from Department of Finance to the NI Human Rights Commission, 3 July 2023.

³²⁴ Section 2, Law Reform (Miscellaneous Provisions) (NI) Order 2006.

³²⁵ Meeting between Department of Justice and NI Human Rights Commission, 29 November 2018.

18.2 There is a lack of cross-party support to address this.³²⁶ However, options continue to be explored.³²⁷ In 2023, legislative change was hindered by the suspension of the NI Executive and NI Assembly.

18.3 **The Committee may wish to recommend that the UK takes effective steps to repeal the defence of reasonable chastisement of a child in NI and to devise and implement a NI strategy to effectively promote positive and non-violent forms of discipline in NI.**

Children in armed forces

18.4 The UK continues to be the only country in Europe that routinely recruits 16- and 17-year-olds into the armed forces.³²⁸ Evidence suggests such recruitment adversely affects the child's mental and physical health.³²⁹

18.5 **The Committee may wish to recommend that the UK takes effective steps to:**

- **promptly raise the minimum age of recruitment to the Armed Forces from 16 to 18 years to ensure the protection of children, including in NI.**
- **prohibit all forms of advertising and marketing for military service targeted at children in NI.**

³²⁶ NI Assembly Hansard, 'Committee for Justice: Report on the Justice (Sexual Offences and Trafficking Victims) Bill - NIA 165/17-22' (NIA, 2022).

³²⁷ Email correspondence from the Department of Justice to the NI Human Rights Commission, 22 June 2022.

³²⁸ Children aged 16 and 17 years old can be recruited to the British Armed Forces, provided it is voluntary and there are safeguards in place. It remains that the consent of only one parent or legal guardian is required. The issue was considered by the UK Parliament during the passage of the Armed Forces Act 2021 when a proposed amendment that would have raised the minimum recruitment age to 18 years of age was rejected. See Article 3, Optional Protocol to the UN CRC on the Involvement of Children in Armed Conflict 2000; British Army, 'Register'. Available at: <https://Apply.army.mod.uk/register>; UK Parliament Hansard, 'Public Bill Committee: Armed Forces Bill (First sitting)', 25 March 2021.

³²⁹ British Medical Journal, 'Press Release: Stop recruiting children, UK Armed Forces urged', 25 February 2019.

Anonymity

- 18.6 It is not prohibited in NI to name a child suspected of committing an offence in the media.³³⁰ There are reporting restrictions for minors in post-charge and court scenarios,³³¹ but not for minors who are pre-charge.
- 18.7 **The Committee may wish to recommend that the UK takes effective steps to ensure all children allegedly involved in an offence are granted anonymity at every stage of the legal process in NI.**

Use of police powers on children

- 18.8 In 2022, spit and bite guards became a permanent tactic for all front-line police officers in NI. Spit and bite guards can be used on children aged ten years old and upwards, in line with the age of criminal responsibility. In 2022/2023, spit and bite guards were used seven times on children under 18 years old in NI.³³²
- 18.9 In 2022, 1,279 children were brought into custody and 27 were strip searched.³³³ One was 14 years old, one was 15 years old, three were 16 years old and 22 were 17 years old.³³⁴ An appropriate adult was present on only six occasions.³³⁵ Steps are being taken to improve monitoring and governance arrangements.³³⁶
- 18.10 **The Committee may wish to recommend that the UK takes effective steps to:**

³³⁰ Section 44 of the Youth Justice and Criminal Evidence Act 1999 prohibits the naming of a child suspected of committing an offence in the media. It is intended that this provision applies in England, Wales and NI, but has not been enacted in NI.

³³¹ Article 22, Criminal Justice (Children) (NI) Order 1998.

³³² Four instances involved a child under 16 years old and three instances were on a child aged between 16 and 17 years old: Email correspondence from Police Service of NI to NI Human Rights Commission, 11 July 2023.

³³³ NI Policing Board, 'Human Rights Review - Children and Young People: Strip Searching in Police Custody' (NIPB, 2023), at 15.

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ Ibid, at 16.

- **minimise, with a view to eliminating, the use of spit and bite guards on children. This includes ensuring that the best interests of the child are a primary consideration in such scenarios. Also, while working towards the elimination for the use of spit and bite guards on children, policies in NI are amended to ensure the exceptional scenarios in which spit and bite guards can be used on children is clear, effective training is provided.**
- **to eliminate the use of strip searches on children. This includes ensuring availability of less intrusive methods for conducting searches that are effectively monitored, regularly reviewed and consider the child’s best interests.**

19.0 Article 25 – Right to Vote and to be Elected

Participation in political and public life

- 19.1 Women, particularly minority women, remain under-represented in political life in NI. In 2023, 37 per cent of the NI Assembly and 26 per cent of NI Councillors were women.³³⁷ There are no members elected to the NI Assembly from minority ethnic groups.³³⁸
- 19.2 Political parties can take positive measures to reduce inequality between men and women elected to Parliament, the NI Assembly and District Councils.³³⁹ However, this has not been utilised.
- 19.3 Inaccessibility of childcare in NI is a barrier to women participating in political and public life.³⁴⁰ Unlike the rest of the UK, there is no

³³⁷ UK Parliament, 'House of Commons Library: Research Briefing - Women in Politics and Public Life' (HoC, 2023).

³³⁸ Equality Commission for NI, 'NI Assembly Election 2022 Results'. Available at: <https://www.equalityni.org/Blog/Articles/May-2022/Assembly-Election-2022-Results>.

³³⁹ Section 43A, Sex Discrimination (NI) Order 1976.

³⁴⁰ Parents are adjusting work hours or leaving jobs due to childcare challenges, particularly in lower-income households. About 76 per cent are considering changes in work arrangements, and 95 per cent of those using childcare feel it impacts work productivity, with 61 per cent reporting weekly stress. See Employers for Childcare, 'Northern Ireland Childcare Survey 2023' (Employers for Childcare, 2023); Equality Commission for NI, 'NI Assembly Election 2022 Results'. Available at: <https://www.equalityni.org/Blog/Articles/May-2022/Assembly-Election-2022-Results>; Department of Education, 'Review of Childcare Services in NI – Final Report' (DE, 2023).

statutory duty to provide childcare in NI.³⁴¹ An up-to-date Childcare Strategy is also lacking.³⁴² Progress was hindered by the suspension of the NI Executive.³⁴³

19.4 Persons with disabilities are under-represented in both political and public life in NI.³⁴⁴ In 2023, the Electoral Commission advised that more work is needed in NI to ensure persons with disabilities receive adequate information at each stage of the electoral cycle.³⁴⁵

19.5 **The Committee may wish to recommend that the UK takes effective steps to:**

- **improve the representation of women, particularly women from minority groups, in NI local government, NI Assembly, and UK Parliament.**
- **implement a Childcare Strategy and action plan in NI that recognises non-traditional working patterns and provides for affordable and accessible childcare facilities and/or arrangements.**
- **introduce a statutory duty to provide adequate and effectively resourced childcare provision in NI, in line with the rest of the UK.**

³⁴¹ In England and Wales, qualifying children can receive up to 30 hours of free childcare over 38 weeks of the year; in Scotland, qualifying children can receive up to 600 hours (approximately 16 hours per week) over a year. There is no comparable provision on NI. There is a statutory duty to secure childcare provision free of charge for qualifying children in England (Childcare Act 2016), Scotland (Children and Young People (Scotland) Act 2014) and Wales (Childcare Act 2006).

³⁴² In 2015, a new Childcare Strategy was consulted on, but there has been no updated strategy implemented since 1992. See NI Executive Office, 'Delivering Social Change Through Childcare: A Ten Year Strategy for Affordable and Integrated Childcare 2015-2025' (NIEO, 2015).

³⁴³ Clodagh Rice, 'Childcare costs: Average yearly fee for one child hits £10k', *BBC News NI*, 6 December 2023; Matt Fox, 'NI childcare: New year, same call for government support', *BBC News NI*, 6 December 2024.

³⁴⁴ NI Statistics and Research Agency, 'Equality Statistics for the Northern Ireland Civil Service – 2023' (NISRA, 2023); NI Judicial Appointments Commission, 'Equality Monitoring – 2020/2021, 2021/2022 and 2022/2023' (NIJAC, 2023); NI Statistics and Research Agency, 'Public Appointments Report for Northern Ireland: 2019/20; 2020/21; 2021/22' (NISRA, 2023); Department for Communities, 'Disability Strategy Expert Advisory Panel: Report and Recommendations' (DfC, 2020), at para 5.7; Disability Action, 'Response to Electoral Office's Draft Disability Action Plan and Equality Action Plan for the period 2022 – 2027'. Available at: https://www.disabilityaction.org/news/response-to-electoral-offices-draft-disability-action-plan-and-equality-action-plan-for-the-period-2022-2027#_ftn1.

³⁴⁵ The Electoral Commission, 'Report on the May 2023 local elections in NI'. Available at: <https://www.electoralcommission.org.uk/research-reports-and-data/our-reports-and-data-past-elections-and-referendums/report-may-2023-local-elections-northern-ireland>.

- **identify and remove barriers to participation in public and political life people with disabilities in NI. This includes ensuring the provision of adequate information and reasonable adjustments at all stages.**

Contact Us

For queries, please contact: Hannah.Russell@nihrc.org

www.nihrc.org | info@nihrc.org | +44 (0)28 9024 3987
4th Floor, Alfred House, 19-21 Alfred Street, Belfast, BT2
8ED

