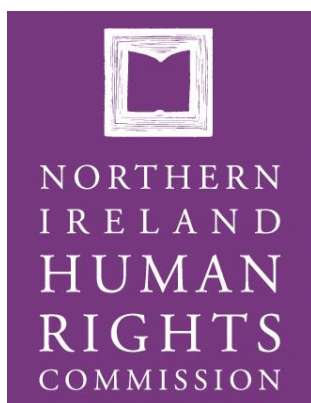


**Northern Ireland Human Rights Commission submission to the UN  
Committee on the Rights of the Child 72<sup>nd</sup> Session on the Fifth  
Periodic Report of the United Kingdom of Great Britain and  
Northern Ireland on compliance with the UN Convention on the  
Rights of the Child**

15 April 2016



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## **EXECUTIVE SUMMARY**

### **Human Rights Act 1998**

**The Committee may wish to recommend that any legislation introduced to replace the Human Rights Act 1998, were such legislation to be passed, should be aimed at building on existing human rights, recognise the standing of the Belfast (Good Friday) Agreement as an international treaty and provide effective protection of those rights across all jurisdictions and further recommend that the process of adoption should ensure the full and effective participation of children.**

### **Bill of Rights for NI**

**The Committee may wish to seek an update from the State Party on measures it has taken to progress the adoption of a Bill of Rights for Northern Ireland.**

### **Legislative Framework**

**The Commission invites the Committee to recommend that the State Party, principally the NI Executive ensure that the Children (NI) Order 1995 is reviewed and, in the interim, ensure that its related guidance are up to date and in compliance with international human rights obligations, including the UNCRC and that appropriate reforms are introduced to ensure a child's right to be heard and to participate meaningfully throughout the care and legal systems is realised.**

**The Commission invites the Committee to recommend that the State Party, in particular the NI Executive, carry out a review of the legal framework in Northern Ireland governing the capacity of children to ensure full respect is given to the emerging capacity of children**

### **Policy Framework**

**The Committee may wish to recommend that the State Party ensures that the current NI Strategy for Children and Young People is replaced with a robust child strategy which includes an action plan including the elaboration of indicators and objectives based on the Convention and making provision for independent monitoring. Furthermore the development of the strategy should include meaningful engagement with children and young people, in line with the right to be heard.**

### **Abuse and neglect**

**The Committee may wish to recommend that the State Party ensure the legal framework protecting children from sexual exploitation is fully in compliance with the UN CRC and its Optional Protocol and specifically that the burden of proof under Sexual Offences (Northern Ireland) Order 2008 should be reversed in appropriate circumstances to safeguard child victims.**

### **Corporal punishment**

**The Committee may wish to recommend that the State Party amend the Law Reform (Miscellaneous Provisions) (NI) Order 2006 to abolish the defence of reasonable chastisement of a child to a charge of common assault and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.**

### **Child, Early and Forced Marriage**

**The Committee may wish to recommend that the State Party take immediate efforts to repeal all legal provisions permitting the marriage of children in Northern Ireland, in line with the Committee's General Comment.**

### **Female Genital Mutilation**

**The Committee may wish to recommend to the State Party that detailed action plans are developed to combat Female Genital Mutilation to include: training; awareness raising; research into the prevalence of Female Genital Mutilation; implementation of regional guidance; care pathways; and actions which can be taken to identify and prosecute perpetrators.**

### **Paramilitary Style Assaults on children**

**The Committee may wish to recommend that the State Party continue to make every effort to bring an end to paramilitary activity in Northern Ireland and to ensure that; all assaults against children by members of paramilitary organisations are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions**

### **Children in care**

**The Commission encourages the Committee to recommend that the State Party;**

**ensure judicial procedures relating to children in care are speedy and efficient in line with the UN CRC, in particular the principle of best interests;**

**review the adequacy of legislation and guidance regarding private fostering and the potential need for reform;**

**take steps to improve the availability of appropriate placements for children in care, including foster care provided by private fostering agencies, which should be based on the child's best interests;**

**bring forward proposals to increase placement stability for children in care;**

**review the adequacy of permanency planning at social services and court levels; and**

**consider necessary reforms to ensure timely permanence planning and better outcomes for children.**

### **Adoption Legislation**

**The Committee may wish to recommend that the State Party review the 1987 Order and bring forward proposals for amendment to ensure adoption legislation in Northern Ireland is fully compatible with the UN CRC.**

### **Child Poverty**

**The Committee may wish to recommend that the State party:**

**prioritises the publication of the Anti-poverty strategy;**

**ensure the full and effective implementation of the Northern Ireland Child Poverty Strategy; and**

**retains the wider and more comprehensive income related targets in measuring child poverty in NI.**

### **Traveller Education**

**The Committee may wish to recommend that the State party ensure the effective implementation of the Northern Ireland Traveller Child in Education Action Framework and the establishment of the Monitoring Group to ensure effective oversight.**

### **Segregation in Education**

**The Committee may wish to recommend, in line with its previous concluding observations, that the State Party take appropriate measures to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demand of a significant number of parents<sup>1</sup> and ensure the roll out of shared education initiatives throughout Northern Ireland to allow children throughout the jurisdiction the opportunity to be educated alongside children from different backgrounds.**

### **Academic Selection**

**The Commission invites the Committee to recommend, in line with its 2008 recommendation, that the State party effectively “put an end to the two-tier culture in Northern Ireland...and ensure that all children are included in admission arrangements in post-primary schools.”<sup>2</sup>**

### **Special Educational Needs and Disability**

**The Committee may wish to recommend that the State Party ensure the implementation of the Special Educational Needs Act 2016 does not result in regression in terms of the numbers of children with special needs who are supported and the level of support which they receive and that revised assessments of children with special needs are sufficiently robust and carried out within an expedited timeframe. Furthermore, the State Party should ensure the pilot of appeal rights to the Special Educational Needs Tribunal for children under the compulsory school age is carried out expeditiously.**

### **Youth Justice Review**

**The Committee invites the Committee to urge the State Party to ensure the effective implementation of the Youth Justice Review NI to ensure there is in place a comprehensive policy for juvenile justice which ensures a holistic approach to the prevention of juvenile delinquency and that children in conflict with the law are treated in line with their best interests and in ways that promote their reintegration and facilitates them assuming a constructive role in society.**

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<sup>1</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, 2002, para 48.

<sup>2</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 67

## **Minimum age of criminal responsibility**

**The Commission invites the Committee to ask the State party, including its devolved administrations, to take immediate action to increase the minimum age of criminal responsibility in Northern Ireland.**

## **Detention of Children**

**The Commission invites the Committee to recommend that the NI Executive take immediate action to ensure that children are held in pre trial detention only in circumstances where it is a measure of last resort.**

## **Education in Detention**

**The Committee may wish to recommend that the State Party ensures that every child detained in Northern Ireland of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment.**

## **Termination of Pregnancy**

**The Committee may wish to recommend that the State Party takes immediate steps in Northern Ireland to decriminalize abortion in all circumstances and reviews its legislation with a view to ensuring children's access to safe abortion and post-abortion care services; and ensure that the views of the pregnant girl are always heard and respected in abortion decisions, in line with the Committee recommendation relating to Ireland.<sup>3</sup>**

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<sup>3</sup> UN CRC Committee, Concluding Observations Ireland CRC/C/IRL/CO/3-4 PARA 58

## **Introduction**

1. The Northern Ireland Human Rights Commission (the NIHRC) is a statutory public body established in 1999 to promote and protect human rights. In accordance with the Paris Principles 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 Northern Ireland (NI).
2. The NIHRC is one of the three A status National Human Rights Institutions in the United Kingdom (UK). The NIHRC's mandate extends to all matters relating to the protection and promotion of human rights in Northern Ireland, both matters within the competence of the Northern Ireland Assembly and those within the competence of the Westminster Parliament. This submission relates to the protection of human rights in Northern Ireland.
3. As part of the NIHRC's engagement with the United Nations and Council of Europe treaty monitoring processes, it presents this submission regarding the UK's Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child (UN CRC) to the UN Committee on the Rights of the Child (the Committee). The Commission submitted to the Committee during the Committee's 72nd session and has developed this submission in line with the List of Issues, taking into account the reply of the State Party.

## **General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)**

### **Human Rights Act 1998**

4. The Reply to the List of Issues reports that 'detailed proposals' to the reform the UK human rights framework, replacing the Human Rights Act 1998 (HRA), are in development.<sup>4</sup> Proposals have not been published at the time of writing.

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<sup>4</sup> Reply to the List of Issues para 3 In October 2014 the Conservative Party issued proposals for the reform of human rights protections in the UK, including the repeal of the HRA 1998 and its replacement with a "British Bill of Rights and Responsibilities". These proposals were refined in the Conservative party manifesto and in the Queen's Speech of May 2015. In the Queen's speech the Government announced that it: will bring forward proposals for a Bill of Rights to replace the Human Rights Act. This would reform and modernise our human rights legal framework and restore common sense to the application of human rights laws. It would also protect existing rights, which are an essential part of a modern, democratic society, and better protect against abuse of the system and misuse of human rights.



5. The Justice Secretary Michael Gove MP in a response to Harriet Harman MP, Chair of the Joint Committee on Human Rights, stated :  
We have been clear that a Bill of Rights will remain faithful to the basic principles which we have signed up to in the European Convention on Human Rights (ECHR). We are confident that we make progress from within the ECHR...While we want to remain part of the ECHR we would not want to stay in at any cost and our plans are aligned to that objective.<sup>5</sup>
6. The EU and Justice Sub-Committee of the House of Lords is currently conducting an Inquiry into the potential impact of repealing the Human Rights Act on EU Law.<sup>6</sup> The Justice Secretary Michael Gove MP gave evidence to the Committee in February 2016 and indicated a number of the underlying reasons for seeking to repeal the Human Rights Act. These included the status of the jurisprudence of the European Court of Human Rights in domestic courts, the extra-territorial effect of human rights and the desire to be able to emphasise the importance of one right over another.<sup>7</sup>
7. The three UK national human rights institutions issued a joint statement to the UN Human Rights Committee setting out the value of the HRA as:  
  
providing essential protection to everyone in the United Kingdom enabling fundamental rights to be enforced in domestic courts...the HRA is well crafted and both reflects and is embedded in the constitutional arrangements for the UK. In particular, it maintains parliamentary sovereignty, a primary role for domestic courts in the interpretation of the ECHR and is central to arrangements for devolution in NI, Wales and Scotland.<sup>8</sup>
8. The Belfast (Good Friday) Agreement was agreed in April 1998. It is a treaty between the UK and Ireland and is lodged at the UN. Therein, the UK Government outlines its intention to incorporate into NI law the ECHR "with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule [NI] Assembly legislation on grounds of inconsistency".<sup>9</sup> The HRA, incorporating the ECHR, came into force in October 2000.

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<sup>5</sup> Letter from Rt Hon Michael Gove MP to Rt Hon Harriet Harman MP (22 November 2015)

<sup>6</sup> <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-justice-subcommittee/inquiries/parliament-2015/potential-impact-of-repealing-the-human-rights-act-on-eu-law/>

<sup>7</sup> The Select Committee on the European Union, Justice Sub-Committee, 'Inquiry on the Potential Impact on EU law of repealing the Human Rights Act' (2 February 2016) pp3-4

<sup>8</sup> EHRC, SHRC, NIHRC 'Correspondence to the UN Human Rights Committee' July 2015

<sup>9</sup> Belfast (Good Friday) Agreement 1998, Annex 1

9. The subsequent St Andrews Agreement 2006 reaffirmed that human rights and equality are at the heart of the new dispensation in NI,<sup>10</sup> and the recent Stormont House Agreement 2014 confirmed that future measures on parades and inquests will comply with the ECHR.<sup>11</sup>

10. The Commission and the Irish Human Rights and Equality Commission made a joint presentation to the House of the Oireachtas Joint Committee on the Implementation of the Good Friday/Belfast Agreement relating to the proposals. In his evidence to the Committee the Chief Commissioner emphasised the centrality of the HRA to the Belfast (Good Friday) Agreement stating:

In effect, human rights protection and compliance has been a cornerstone of the Belfast/Good Friday Agreement and subsequent agreements. Attempts to dilute the role of the European Court of Human Rights and the European Court of Human Rights jurisprudence, runs counter to the Belfast/Good Friday Agreement. The Commission believes that any legislative proposals should not undermine the commitments contained within the Belfast/Good Friday Agreement.<sup>12</sup>

11. Following its examination of the UK in 2015, the UN Human Rights Committee recommended that the UK:

Ensure that any legislation passed *in lieu* of the Human Rights Act 1998, were such legislation to be passed, would be aimed at strengthening the status of international human rights, including the provisions of the Covenant, in the domestic legal order and provide effective protection of those rights across all jurisdictions.<sup>13</sup>

**12. The Committee may wish to recommend that any legislation introduced to replace the Human Rights Act 1998, were such legislation to be passed, should be aimed at building on existing human rights, recognise the standing of the Belfast (Good Friday) Agreement as an international treaty and provide effective protection of those rights across all jurisdictions and further recommend that the process of adoption should ensure the full and effective participation of children.**

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<sup>10</sup> [St Andrew's Agreement 2006](#), para 3

<sup>11</sup> The [Stormont House Agreement 2014](#), states that: any legislation on parades will have “proper regard for fundamental rights protected by the ECHR” (para 19); and, that “the Executive will take appropriate steps to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements.” (para 31)

<sup>12</sup> Joint Statement of IHREC and NIHRC 25 June 2015 available at: <http://www.nihrc.org/news/detail/joint-statement-of-irish-human-rights-and-equality-commission-and-northern>

<sup>13</sup> UN Human Rights Committee Concluding observations on seventh periodic report submitted by the UK CCPR/C/GBR/CO/7 2015 Para 5(c)

## Bill of Rights for NI

13. As required by the Belfast (Good Friday) Agreement and the NI Act 1998, the Commission provided advice to the UK Government on a Bill of Rights for NI in 2008. On receipt of its advice the NIO sought views from the public by way of a public consultation.<sup>14</sup>

14. In December 2010 the Minister of State within the NIO reported that there was:

considerable support from human rights and community groups for a wide-ranging Bill of Rights along the lines of that recommended by the NI Human Rights Commission.<sup>15</sup>

15. Since 2010 it has been consistently stated that there has been a lack of political consensus around a Bill of Rights for NI.<sup>16</sup> The Commission reported on the absence of any significant development to progress a Bill of Rights for NI in its earlier submission.

16. In 2015 the Commission updated the UN Human Rights Committee on the lack of progress in relation to a Bill of Rights for NI. The UN Human Rights Committee subsequently expressed concern:

about the slow progress in introducing the Bill of Rights for Northern Ireland and about the lack of a comprehensive mechanism for the review of existing gaps and inconsistencies between the domestic human rights legal framework and the rights covered in the Covenant.<sup>17</sup>

17. The Committee recommended that the State Party: Ensure that the Bill of Rights for Northern Ireland incorporates all the rights enshrined in the Covenant and expedite the process of its adoption.<sup>18</sup>

**18. The Committee may wish to seek an update from the State Party on measures it has taken to progress the adoption of a Bill of Rights for Northern Ireland.**

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<sup>14</sup> NIO 'Consultation Paper: A Bill of Rights for NI: Next Steps' (November 2009)

<sup>15</sup> Minister of State Hugo Swire MP, Written Ministerial Statement to Parliament, 16 December 2010

<sup>16</sup> Westminster Hall Tuesday 16 July 2013 [Mr Christopher Chope in the Chair] Column 190WH Bill of Rights (NI)

<sup>17</sup> UN Human Rights Committee Concluding observations on seventh periodic report submitted by the UK CCPR/C/GBR/CO/7 2015 Para 5

<sup>18</sup> Ibid., Para 5(b)

## Legislative Framework

- 19.** The Children (NI) Order 1995 is the legislative framework safeguarding children in Northern Ireland. This legislation is now over 20 years old and there is a strong case for review.
- 20.** In 2014 the Commission published a report into alternative care provision for children in Northern Ireland.<sup>19</sup> The report, inter alia, considered the compatibility of the 1995 Order with the UN CRC and its impact on the rights of children in care. The Commission found that in practice a number of the provisions of the 1995 Order are not complied with, for instance the Order requires health and social care authorities to compile registers of children with disabilities, these registers are not currently being produced.<sup>20</sup> The 1995 Order also requires an annual general report on the operation of the Order “to be prepared and laid before the Assembly.”<sup>21</sup> However, although regular statistics are compiled, this statutory requirement has not been fulfilled, reducing the available data and information for analysis of the 1995 Order. Moreover the report concluded that despite Departmental commitments for the rights of the child to be heard and taken seriously there remained inadequate information to allow children to be heard and taken seriously and to participate meaningfully in decision-making, care planning and in court procedures.
- 21. The Commission invites the Committee to recommend that the State Party, principally the NI Executive ensure that the Children (NI) Order 1995 is reviewed and, in the interim, ensure that its related guidance are up to date and in compliance with international human rights obligations, including the UNCRC and that appropriate reforms are introduced to ensure a child’s right to be heard and to participate meaningfully throughout the care and legal systems is realised.**
- 22.** In its earlier submission to the Committee the Commission referred to the Mental Capacity (NI) Act 2016, which will introduce a presumption of capacity in those over the age of 16.<sup>22</sup> It had been anticipated that a review into the capacity of children under the age of 16, including consideration of the 1995 Order would be commenced

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<sup>19</sup> NIHRC ‘Alternative Care and Children’s Rights in Northern Ireland’ 2014

<sup>20</sup> Children Order, Schedule 2(3): Every authority shall open and maintain a register of disabled children within the authority’s area.

<sup>21</sup> Article 181 In its report ‘Alternative Care and Children’s Rights in Northern Ireland’ the Commission recommended that The Children Order requirement to establish a register of disabled children should be addressed; either the legislation should be complied with, or if following consultation it is determined that a different approach is preferable, the legislation should be amended.

<sup>22</sup> See clauses 1 – 3

prior to the enactment of this Act. However there are no plans for this to take place.<sup>23</sup>

**23. The Commission invites the Committee to recommend that the State Party, in particular the NI Executive, carry out a review of the legal framework in Northern Ireland governing the capacity of children to ensure full respect is given to the emerging capacity of children.**

**Policy Framework**

24. In June 2016 the stated timeframe for the OFMDFM Strategy for Children and Young People will come to an end. The replacement of this strategy is yet to be published.<sup>24</sup> The development of a new child strategy presents an opportunity to address many outstanding issues relating to the rights of children, such as early intervention.<sup>25</sup> The Commission notes that OFMDFM has reported that: 'Initial work has now commenced to bring forward the development of a new children and young people's strategy utilising a co-design process, listening to the views of stakeholders and building on the strategic outcomes of the current strategy'.<sup>26</sup> OFMDFM in publishing its child poverty strategy has indicated a new strategy for children and young people is in development.<sup>27</sup> It is noted that following the general election on 5 May 2016 the NI Executive will be re-structured to comprise 9 Departments rather than 11, the responsibilities for children and young people will transfer from the OFMDFM to the Department of Education.<sup>28</sup> In this context it is important that a new strategy focuses the attention of relevant departments on the rights of children.

**25. The Committee may wish to recommend that the State Party ensures that the new strategy replacing the current NI Strategy for Children and Young People is a robust child strategy which includes an action plan including the elaboration of indicators and objectives based on the Convention and making provision for independent monitoring. Furthermore the development of the strategy should include meaningful engagement with children and young people, in line with the right to be heard.**

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<sup>23</sup> NI Assembly Official Report: Tuesday 16 June 2015. Second Stage Mental Capacity (NI) Bill

<sup>24</sup> Committee for the Office of the First Minister and deputy First Minister, OFFICIAL REPORT (Hansard) Delivering Social Change for Children and Young People: OFMDFM Officials 10 September 2014

<sup>25</sup> See CJINI 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations' December 2015 see pg 12 discussion of outstanding recommendation.

<sup>26</sup> Reported on OFMDFM Website <https://www.ofmdfmi.gov.uk/articles/children-and-young-people>

<sup>27</sup> <https://www.ofmdfmi.gov.uk/articles/poverty-and-social-inclusion#toc-1>

<sup>28</sup> Departments Act 2016

## **Violence against children (arts. 19, 24, para.3, 28, para. 2, 34, 37 (a) and 39)**

### **Abuse and neglect**

26. In 2013 the issue of child sexual exploitation became a priority concern for the NI Executive following revelations about the extent of exploitation during an investigation by the PSNI. This investigation focused on 22 children, most of whom were in the care of social services, and suggested that many more may currently be at risk of sexual exploitation.<sup>29</sup> The Minister for Health, Social Services and Public Safety instituted a thematic review of these cases with the aim of identifying key learning points and opportunities for improvement for the agencies involved.<sup>30</sup> At the same time, an independent, expert-led inquiry was jointly commissioned with the Minister for Justice which published in November 2014, the Marshall Report.<sup>31</sup>
27. The evidence received by the Inquiry did not suggest that NI is experiencing the type of organised exploitation seen in other parts of the UK in recent years. It did, however, raise concerns that some perpetrators of exploitation were individuals connected to paramilitary organisations which therefore engendered fear in victims and made it much harder for them to come forward.<sup>32</sup> This finding resonates with claims from adult victims of childhood sexual abuse by members of paramilitary organisations that these organisations acted to hide abuse from the authorities, moved perpetrators to other areas and forced victims to participate in 'kangaroo courts' when dealing with allegations of sexual abuse against their members.<sup>33</sup> The findings of an independent review into the handling of three such cases by the Public Prosecution Service has led to a public apology by the Director after it found serious failures around strategic planning; management of the cases and in the communication and consultation with victims and witnesses.<sup>34</sup>
28. The Inquiry report included 17 key recommendations and 60 supporting recommendations for improvement in combating child

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<sup>29</sup> Northern Ireland Policing Board, Human Rights Annual Report 2013, page 11

<sup>30</sup> See: <http://safeguardingni.org/thematic-review-child-sexual-exploitation>

<sup>31</sup> Kathleen Marshall 'Child Sexual Exploitation in Northern Ireland Report of the Independent Inquiry' (November, 2014)

<sup>32</sup> Kathleen Marshall 'Child Sexual Exploitation in Northern Ireland Report of the Independent Inquiry' (November, 2014) pp. 48-49

<sup>33</sup> See <http://www.bbc.co.uk/news/uk-northern-ireland-29631344>; See also 'At least 60 people were abused by Provos, claims Mairia Cahill' Belfast Telegraph, 12 March 2015

<sup>34</sup> See 'Starmer report: Mairia Cahill and other alleged IRA rape victims 'let down' by PPS' Belfast Telegraph, 22 May 2015

sexual exploitation, outlining measures for improved inter-agency working, education and awareness raising, training for professionals, funding of preventative services, engagement with communities, support for victims and the development of a regional strategy.<sup>35</sup> The recommendations also cover the need for legislative reform in a number of areas, including addressing a gap in protection under the Sexual Offences (NI) Order 2008.<sup>36</sup>

29. In its report on the compatibility of the UK with the Optional Protocol on the sale of children, child prostitution and child pornography the Committee raised concerns that:

the Sexual Offences (Northern Ireland) Order 2008, for certain grave offences of sexual exploitation of children between 13 and 16 years of age, such as meeting a child following sexual grooming, engaging in sexual activity with a child, arranging or facilitating a child sex offence, the defendant may claim that he/she believed the victim to be above 16 years.<sup>37</sup>

30. The Committee recommended reform to the 2008 Order to include “a provision that for child victims, the burden of proof would be reversed”. The DOJ ‘Tackling Child Sexual Exploitation in NI Action Plan’ contains a commitment to consider the 2008 Order and its compatibility with international standards.<sup>38</sup> This commitment was to be realised by December 2015. However, the results of these considerations have not been published and the Commission notes a lack of detail within the reply to the list of issues. The Action Plan also makes provision for the establishment of a inter agency forum on changes to the criminal justice system to achieve more successful prosecutions of the perpetrators.<sup>39</sup> The Commission considers that the inter agency forum must consider the growing risk of online exploitation given the international evidence of its increasing prevalence.

**31. The Committee may wish to recommend that the State Party ensure the legal framework protecting children from sexual exploitation is fully in compliance with the UN CRC and its**

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<sup>35</sup> Kathleen Marshall ‘Child Sexual Exploitation in Northern Ireland Report of the Independent Inquiry’ (November, 2014) p. 149

<sup>36</sup> Ibid., Recommendation 14.

<sup>37</sup> Concluding observations on the report submitted by the United Kingdom of Great Britain and NI under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography CRC/C/OPSC/GBR/CO/1 8 July 2014

<sup>38</sup> DOJ Tackling Child Sexual Exploitation in Northern Ireland Action Plan – March 2015 see <https://www.dojni.gov.uk/sites/default/files/publications/doj/doj-action-plan-tackling-child-sexual-exploitation-august-2015.pdf>

<sup>39</sup> Ibid Key Point 9 pg 5

**Optional Protocol and specifically that the burden of proof under Sexual Offences (Northern Ireland) Order 2008 should be reversed in appropriate circumstances to safeguard child victims.**

### **Corporal punishment**

32. The Commission recalls the Committee's previous concluding observation relating to the removal of the defence of reasonable chastisement of a child (Paragraph 29). The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable chastisement of a child, and provides that this is a defence to a charge of common assault tried summarily. In 2008 the UNCRC Committee recommended that there should be a prohibition "as a matter of priority" of "all corporal punishment in the family, including through the repeal of all legal defences".<sup>40</sup> The UK Government has emphasised to the UNCRC Committee its belief that "parents should not be criminalised for giving a mild smack".<sup>41</sup>

33. The Commission has called on the Department of Justice to bring forward proposals to prohibit corporal punishment of children in the family, including through the repeal of all legal defences, without further delay.

**34. The Committee may wish to recommend that the State Party amend the Law Reform (Miscellaneous Provisions) (NI) Order 2006 to abolish the defence of reasonable chastisement of a child to a charge of common assault and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.**

### **Child, Early and Forced Marriage**

35. The Commission notes that paragraph 13 of General Comment No. 4 (2003) states that:

The Committee strongly recommends States Parties to review and, where necessary, reform legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.<sup>42</sup>

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<sup>40</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 42

<sup>41</sup> The Fifth Periodic Report of the United Kingdom to the UN Committee on the Rights of the Child United Kingdom, CRC/C/GBR/5, 2015 p. 21

<sup>42</sup> CRC/GC/2003/4 Committee on the Rights of the child Adopted at 33rd session 19 May – 6 June 2003



36. The Commission notes that this recommendation reflects that of the CEDAW Committee within its General Recommendation 21.<sup>43</sup> The Commission refers to paragraph 39 of the State Report, the Marriage (Northern Ireland) Order 2003 provides that 18 is the minimum age at which an individual can consent to marriage. However under the 2003 Order a child aged 16 or 17 years of age may be married with the consent of their parents or legal guardians. The law of Northern Ireland therefore runs contrary to the Committee's recommendation.

37. The Commission notes that in Northern Ireland 68 children were married in 2014 of these 42 were girls and 26 were boys.<sup>44</sup> It is estimated that globally over the next decade 140 million girls under the age of 18 years will be forced to marry without their consent. This amounts to a rate of 39,000 girls every day.<sup>45</sup> Whilst most research on the issue of early and forced marriage has focused on developing states, in the calendar year 2014 the Forced Marriage Protected Unit in the UK gave advice or support related to a possible forced marriage in 1,267 cases, the Unit recorded that 11% of victims or potential victims of forced marriage who sought advice or support reported that they were 16 or 17 years of age.<sup>46</sup> The Forced Marriage (Civil Protection) Act 2007 makes provision for protecting individuals against being forced to enter into marriage without their free and full consent, this extends to Northern Ireland.<sup>47</sup>

38. A report of a UK Home Office working group on forced marriage noted the role of parents in the practice of forced marriages:

There is a spectrum of behaviours behind the term forced marriage, ranging from emotional pressure, exerted by close family members and the extended family, to the more extreme cases, which can involve threatening behaviour, abduction, imprisonment, physical violence, rape and in some cases murder. People spoke to the Working Group about

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<sup>43</sup> Committee for the Elimination and Discrimination against Women General Recommendation No. 21 (13th session, 1994) Equality in marriage and family relations

<sup>44</sup> These figures were provided by NISRA upon request from the Commission. 35 were aged 16 and 33 were aged 17

<sup>45</sup> The Commonwealth 'Survivors lead charge to end child marriage in the Commonwealth' 24 November 2015

<sup>46</sup> FMU Statistics 2014

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/412667/FMU\\_Stats\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412667/FMU_Stats_2014.pdf) Where the age was known, 11.1% of cases involved victims below 16 years, 11% involved victims aged 16-17, 17% involved victims aged 18-21, 14% involved victims aged 22-25, 8% involved victims aged 26-30, 5% involved victims aged 31-40, and 2% involved victims aged 41 or over. 32% involved an adult whose age was not known.

<sup>47</sup> 2007 c. 20

'loving manipulation' in the majority of cases, where parents genuinely felt that they were acting in their children and family's best interests.<sup>48</sup>

**39. The Committee may wish to recommend that the State Party take immediate efforts to repeal all legal provisions permitting the marriage of children in Northern Ireland, in line with the Committee's General Comment.**

**Female Genital Mutilation**

40. In 2014, the Commission welcomed the DFP targeted consultation on draft Multi-Agency Guidelines on Female Genital Mutilation. The Guidelines provide advice and support to frontline professionals who are responsible for safeguarding children and protecting adults from the abuses associated with female genital mutilation.<sup>49</sup>

41. The Commission advised the DFP that human rights law requires the NI Executive to "modify social and cultural patterns which see women as subordinate to men." Female genital mutilation is a severe form of child abuse and a violation of human rights, as well as a "manifestation of deeply entrenched gender inequality and patriarchal cultural norms."<sup>50</sup>

42. The NI Executive approved the publication of Multi-Agency Guidelines in July 2014. The NIHRC welcomed the robust measures to combat this ongoing human rights abuse. The NIHRC considers that the practice guidelines and initiatives by the NI Executive should be supported by an action plan to ensure the guidelines are operationalised. In November 2015, the NIHRC wrote to the relevant NI Executive Ministers to seek assurance that a detailed action plan is developed to include: training; awareness raising; research into the prevalence of Female Genital Mutilation; implementation of regional guidance; care pathways; and actions which can be taken to identify and prosecute perpetrators.<sup>51</sup>

43. The Safeguarding Board NI has established a sub group on Female Genital Mutilation and as part of its terms of reference, an action plan will be developed.<sup>52</sup>

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<sup>48</sup> Home Office 'The report of the working group on forced marriage' 2000 pg 11

[http://cdn.basw.co.uk/upload/basw\\_22604-2.pdf](http://cdn.basw.co.uk/upload/basw_22604-2.pdf)

<sup>49</sup> DFP "Multi Agency Practice Guidelines on Female Genital Mutilation",

<https://www.dfpni.gov.uk/sites/default/files/publications/dfp/multi-agency-practice-guidelines-on-female-genital-mutilation.pdf>

<sup>50</sup> DFP "Analysis of the Responses to the Consultation on Multi Agency Practice Guidelines on Female Genital Mutilation" <https://www.dfpni.gov.uk/sites/default/files/publications/dfp/analysis-of-responses-female-genital-mutilation-consultation.pdf>

<sup>51</sup> NIHRC 'The 2015 Annual Statement: Human Rights in Northern Ireland' p 40

<sup>52</sup> Correspondence provided to the NIHRC

44. **The Committee may wish to recommend to the State Party that detailed action plans are developed to combat Female Genital Mutilation to include: training; awareness raising; research into the prevalence of Female Genital Mutilation; implementation of regional guidance; care pathways; and actions which can be taken to identify and prosecute perpetrators.**

### **Paramilitary Style Assaults on children**

45. In its submission to the pre-sessional working group the Commission reported that 12 children reported to the police that they were victims of paramilitary style shootings and 27 of paramilitary style assaults between 2009 and 2014.<sup>53</sup> In its reply to the list of issues the Commission has provided further statistics on this issue, in the financial year 2014/15 five children reported that they were victims of paramilitary style attacks. In the same year 433 people presented as homeless to the NI Housing Executive, including 96 families, as a result of paramilitary intimidation, suggesting that there are low reporting rates of paramilitary assaults.<sup>54</sup>
46. In November 2015 the International Fund for Ireland reported that paramilitary groups continue to recruit children.<sup>55</sup> In 2015 the NI Secretary of State established a body to carry out an assessment: "on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process".<sup>56</sup> The report was published in October 2015 and concluded that all the main paramilitary groups operating during the period of the Troubles remain in existence: this includes the UVF, RHC, UDA (UFF), Provisional IRA and INLA. The assessment body also noted that all of the paramilitary groups maintain a relatively public profile in spite of being illegal organisations.<sup>57</sup> Furthermore:

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<sup>53</sup> Northern Ireland NGO Alternative Report Submission to the United Nations Committee on the Rights of the Child for Consideration During the Committee's Examination of the United Kingdom of Great Britain and Northern Ireland Government Report (May 2015) Children's Law Centre and Save the Children Northern Ireland, June 2015, page 61 para. 12

<sup>54</sup> Statistics provided on request by the Northern Ireland Housing Executive on request. Number accepted as statutorily homeless (Full Duty Applicant) - 312 persons and 75 families

<sup>55</sup> Belfast Telegraph 'Terrorist groups are still recruiting children in Northern Ireland' 16<sup>th</sup> November 2015

<sup>56</sup> Paramilitary groups in Northern Ireland 20 October 2015: An assessment commissioned by the Secretary of State for Northern Ireland on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/469548/Paramilitary\\_Groups\\_in\\_Northern\\_Ireland\\_-\\_20\\_Oct\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469548/Paramilitary_Groups_in_Northern_Ireland_-_20_Oct_2015.pdf)

<sup>57</sup> Ibid., para 2 i.

The majority of paramilitary groups still have leadership structures and sub groups across NI. These groups still organise themselves along militaristic lines and use labels familiar from the Troubles e.g. 'brigades' or 'army council'. These labels makes the groups look more prepared for a campaign of violence than they are. Even in the highly unlikely event that the groups were minded to return to terrorism, we judge they would be unable to resurrect the capability demonstrated at their peak... [t]hey have continuing, albeit much reduced, capability and engage in violence and crime. They cause serious harm to the communities within which they are embedded and undermine support for policing'.<sup>58</sup>

47. By way of the 'Fresh Start Agreement', agreed in November 2015 following the Stormont House Agreement, the NI Executive, UK Government and Irish Government '*further commit* to work together to achieve, the disbandment of all paramilitary organisations and their structures and to challenge paramilitary attempts to control communities'.<sup>59</sup> In accordance with the agreement a four member international body will be established to report annually on progress towards ending continuing paramilitary activity. In addition the NI Executive have committed to publish a strategy and action plan to bring about an end to paramilitarism by the end of June 2016 and a three person panel has been established to make recommendations to the NI Executive by the end of May 2016.<sup>60</sup>

**48. The Committee may wish to recommend that the State Party continue to make every effort to bring an end to paramilitary activity in Northern Ireland and to ensure that; all assaults against children by members of paramilitary organisations are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.**

**Family environment and alternative care (arts. 5, 9-11, 18 (paras. 1 and 2), 20-21, 25 and 27 (para. 4))**

**Children in care**

49. The Commission has raised concerns regarding shortcomings in the provisions of the Children (NI) Order 1995 which, inter alia, regulates the care of 2,858 children who are looked after by Health and Social Care Trusts in Northern Ireland.<sup>61</sup>

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<sup>58</sup> Ibid., para2 xi.

<sup>59</sup> UTV Live Panel established to tackle NI paramilitaries 17 Dec 2015

<sup>60</sup> NIO 'A Fresh Start: The Stormont House Agreement and Implementation Plan' 17<sup>th</sup> November 2015 para 5.1

<sup>61</sup> NIHRC 'Alternative Care and Children's Rights in Northern Ireland' 2014

50. In 2014 the Commission published a report into the rights of children in care.<sup>62</sup> The report highlighted that some children are facing placement moves due to financial pressure within Trusts, for example, moving from private fostering agency placements, to Trust's foster placements. Of the looked after children who had placement moves in the year 2012- 2013, over 20% had between one to three placement moves. While these figures indicate that the majority of Looked After Children are in relatively stable placements, those who continue to experience placement moves are exposed to "a level of intense disruption" and "a risk to their sense of security and stability".<sup>63</sup>

51. In 2014 the Department of Justice and Department of Health conducted a scoping exercise on the operation of the Family Justice System in Northern Ireland, following this, a care proceedings pilot was commissioned to further identify the causes of delay in care proceedings and solutions for dealing with it.<sup>64</sup> Separate to this initiative the Access to Justice Report Part II makes a number of proposals relating to the family justice procedures and practices, including a suggestion that procedures move away from an adversarial and towards a more inquisitorial approach.<sup>65</sup> In addition the Lord Chief Justice has recently commissioned Lord Justice Gillen to consider the case for reform in respect of the civil and family justice.<sup>66</sup>

**52. The Commission encourages the Committee to recommend that the State Party;**

**ensure judicial procedures relating to children in care are speedy and efficient in line with the UN CRC, in particular the principle of best interests;**

**review the adequacy of legislation and guidance regarding private fostering and the potential need for reform;**

**take steps to improve the availability of appropriate placements for children in care, including foster care provided by private fostering agencies, which should be based on the child's best interests;**

**bring forward proposals to increase placement stability for children in care;**

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<sup>62</sup> Ibid

<sup>63</sup> Ibid p. 133

<sup>64</sup> AQW 31734/11-15

<sup>65</sup> DoJ 'Access to Justice Review Part 2 final report' November 2014

<sup>66</sup> Lord Chief Justice Opening of the Legal Year – September 2015

**review the adequacy of permanency planning at social services and court levels; and**

**consider necessary reforms to ensure timely permanence planning and better outcomes for children.**

### **Adoption legislation**

53. In 2006 the DHSSPS outlined a number of problems in the existing adoption legislation and noted that: “there is a disparity between adoption legislation in Northern Ireland and other UK regions”.<sup>67</sup>
54. It is widely accepted that adoption needs a stronger focus in terms of ensuring permanency of care for looked after children and addressing the long term implications of adoption for children and families affected by its processes. Changes to The Adoption (Northern Ireland) Order 1987 are required to reflect these emerging needs and to ensure that where adoption is the plan, the court will deal with each child’s case in a rigorous but expeditious manner.<sup>68</sup>
55. A decade later and the 1987 Order remains in place and no Bill proposing its amendment has yet been published. We understand that draft legislation has been produced but that the NI Executive will not approve its publication due to the proposed inclusion of legislative provision for same sex couples to be considered as adoptive parents. The Commission remains concerned at the lack of an up to date comprehensive legal framework governing the adoption process. Moreover the number of children adopted from care in Northern Ireland dropped from 89 in 2013/14 to 72 in 2014/15 and the average length of time for a child to be adopted has also increased to three years and one month.<sup>69</sup>
- 56. The Committee may wish to recommend that the State Party review the 1987 Order and bring forward proposals for amendment to ensure adoption legislation in Northern Ireland is fully compatible with the UN CRC.**

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<sup>67</sup> DHSSPS, Adopting the Future, June 2006, available at: [http://www.dhsspsni.gov.uk/adopting\\_the\\_future.pdf](http://www.dhsspsni.gov.uk/adopting_the_future.pdf), p. 9.

<sup>68</sup> See DHSSPS ‘Adoption Review’ <https://www.dhsspsni.gov.uk/articles/adoption-review>

<sup>69</sup> DHSSPS ‘Children Adopted from Care in Northern Ireland 2014/15’ 19 November 2015

## **Disability, basic health and welfare (arts. 6, 18 (para. 3) 23, 24, 26, 27 (paras. 1-3) and 33)**

### **Child Poverty**

57. The Commission previously advised the Committee that a revised Child Poverty Strategy 2014-17 and Annual Report for 2014-15 had not been published. The Child Poverty Strategy for 2014-17 and Annual Report for 2014-15 were both published in March 2016.<sup>70</sup> The strategy sets out the indicators that will be used to measure its achievements, including two headline indicators, which are two of the measures set out in the Child Poverty Act 2010, absolute child poverty and relative child poverty.<sup>71</sup> In addition the strategy contains four outcomes: that families experience well being; that child in poverty learn and achieve; that children in poverty are healthy; and that children in poverty live in safe, secure and stable environments.<sup>72</sup> For each of these outcomes, three further population indicators will be used to measure achievements. For example, in relation to the outcome that children live in safe, secure and stable environments one of the indicators is the number of families presenting to the NI Housing Executive as homeless. The Commission will be engaging with the OFMDFM to ensure the indicators are effectively capturing data related to the well being of children. With respect to homelessness the Commission notes the high number of looked after children who find themselves homeless, this issue should be monitored by the strategy.<sup>73</sup>

58. The UK Government introduced new legislation to amend the Child Poverty Act 2010 which received Royal Assent in March 2016. This legislation will change child poverty measures on a UK wide basis which may have implications for the Child Poverty Strategy in NI.<sup>74</sup> The Westminster Government repealed the targets related to relative income, combined low income and material deprivation, absolute low

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<sup>70</sup> NI Executive [The Executive's Child Poverty Strategy](#) (25 March 2016); NI Executive [Annual Report on Child Poverty 2014-15](#) (24 March 2016).

<sup>71</sup> NI Executive [The Executive's Child Poverty Strategy](#) (25 March 2016), pp 3, 65-66.

<sup>72</sup> NI Executive [The Executive's Child Poverty Strategy](#) (25 March 2016), pp 3, 65-66.

<sup>73</sup> See Children and Young Persons Strategic Partnership 'Draft Action Plan for Looked After Children/Youth Homelessness 16+ 2011-2014' 2014

<sup>74</sup> The Welfare Reform and Work Bill proposed to amend the Child Poverty Act to become the Life Chances Act. New legislation to amend the Child Poverty Act 2010 will use: the proportion of children living in workless household as well as long-term workless household; and the educational attainment of all pupils and the most disadvantaged pupils at age 16, see HM Government Press Release ['Government to strengthen child poverty measure'](#) (1 July 2015).

income and persistent poverty. The Child Poverty Action Group (CPAG) argued:<sup>75</sup>

these proposed reporting requirements are not measures of poverty; are supplements to it ...any measures that are not sensitive to changes of income cannot be regarded as a robust measurement of poverty.

**59.** In its place, the UK Government has retained only one requirement to further measure child poverty in low income households. There are reports that the target to eliminate child poverty by 2020 is unlikely to be reached and that the number of children in poverty has actually increased.<sup>76</sup>

**60. The Committee may wish to recommend that the State party:**

**priorities the publication of the Anti-poverty strategy;**

**ensure the full and effective implementation of the Northern Ireland Child Poverty Strategy; and**

**retains the wider and more comprehensive income related targets in measuring child poverty in NI.**

### **Education, leisure and cultural activities (arts, 28, 29, 30 and 31)**

#### **Traveller Education**

61. In November 2013 the Minister of Education for Northern Ireland published the Traveller Child in Education Action Framework, at the launch of the Framework the Minister stated:

This is very much a Framework for action. It is the start of the journey of inclusion, to ensure that Traveller children have the opportunity to benefit from the educational opportunities on offer.<sup>77</sup> [the Minister further stated] An independent Monitoring and Evaluation Group will be established within the next few months to monitor the Action Framework. That group will report progress directly to me.<sup>78</sup>

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<sup>75</sup> CPAG 'Welfare Reform and Work Bill- Commons Second Reading' 21 July 2015

<http://www.cpag.org.uk/sites/default/files/CPAG%20Briefing%20-%20Welfare%20Reform%20and%20Work%20Bill%20Commons%202nd%20Reading%2020-07-15.pdf>

<sup>76</sup> Joseph Rowntree Foundation [Monitoring Poverty and Social Exclusion in NI 2016](#) (March 2016); IFS [Living Standards, Poverty and Inequality in the UK 2015-16 to 2020-2021](#) IFS Report R114, (March 2016) p 2.

<sup>77</sup> NI Executive Press Release: Traveller children and young people should be encouraged to value education and supported to reach their full potential. Wednesday, 13 November 2013

<sup>78</sup> Ibid



62. In January 2016 in responding to a written question the Minister stated that: "The Traveller Education Monitoring Group has not yet been established."<sup>79</sup> This remains the position. The absence of a Monitoring Group is a significant obstacle to assessing the effectiveness of the Framework.

63. **The Committee may wish to recommend that the State party ensure the effective implementation of the Northern Ireland Traveller Child in Education Action Framework and the establishment of the Monitoring Group to ensure effective oversight.**

### **Segregation in Education**

64. The Commission provided the Committee with an update on the related issues of shared education and integrated education. In considering these two forms of education, it is important to note the differences between the two approaches, integrated education refers to a sophisticated arrangement *within* a school modelled around the ethos of integration whereas shared education refers to an arrangement *between* two or more schools, which are each predominantly attended by pupils from the same background.

65. In its earlier submission to the Committee the Commission referred to the Shared Education Bill, which has now progressed through the NI Assembly.<sup>80</sup> This Act places an obligation on the Department of Education to promote: "shared education", which is defined in the Act as "the education together of—(a) those of different religious belief, including reasonable numbers of both Protestant and Roman Catholic children or young persons; and (b) those who are experiencing socio-economic deprivation and those who are not, which is secured by the working together and co-operation of two or more relevant providers."

66. The Bill will place an obligation on the Department to report on the impact of shared education on good relations between participating children and young people and on their attitudes towards persons from backgrounds other than their own.<sup>81</sup> The Commission welcomed the Bill and the reporting obligations on the Department. The delivery of obligations contained within the Shared Education Bill will go some way towards ending segregation in schools in Northern Ireland. Their delivery is dependent on adequate funding and political will.

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<sup>79</sup> AQW 53269/11-16

<sup>80</sup> As of 29 February 2016 the final stage of the Bill is to be scheduled.

<http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/shared-education-bill2/>

<sup>81</sup> Ibid Clause 7

67. In its earlier submission the Commission referred to shortcomings identified by both the NI Assembly and by the NI High Court in the Department of Education planning policy related to the integrated education sector.<sup>82</sup> In January 2016 the Minister of Education announced a review of the planning, growth and development of integrated education.<sup>83</sup> In announcing the review the Minister acknowledged that: "Overall growth of the number of schools with an integrated management type has slowed since 2000 ... [despite]... a high parental demand/support for integrated education".<sup>84</sup> The Review team will: "develop short and medium term proposals to develop a more integrated education system based on current legislation, enhance the network of viable schools and are cost effective and value for money".<sup>85</sup>

**68. The Committee may wish to recommend, in line with its previous concluding observations, that the State Party take appropriate measures to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demand of a significant number of parents<sup>86</sup> and ensure the roll out of shared education initiatives throughout Northern Ireland to allow children throughout the jurisdiction the opportunity to be educated alongside children from different backgrounds.**

### **Academic Selection**

69. As a result of the lack of a legislative framework for school admissions, an informal system of academic testing which is not regulated by the Department of Education, has emerged with most grammar schools continuing to use entrance exam results as the primary determinant for admission to school. Two different exams, both provided by private companies, are commonly used with many children completing both sets of tests.

70. In its earlier submission the Commission highlighted evidence that the lack of a legislative framework for non-selective post primary

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<sup>82</sup> NIHRC 'Submission to the UN CRC Committee Pre-session Working Group' 2015 The last successful transformation to integrated status was in 2010. The Minister also approved development proposals for transformation of Mallusk and Loughries Primary schools to controlled integrated status from September 2015 and September 2016, respectively.

<sup>83</sup> Department of Education 'A review of integrated education setting out how the sector can be developed for the future will be completed by June 2016'. Wednesday, 27 January 2016  
[http://www.northernireland.gov.uk/news-de-270116-review-of-integrated?WT.mc\\_id=rss-news](http://www.northernireland.gov.uk/news-de-270116-review-of-integrated?WT.mc_id=rss-news)

<sup>84</sup> Ibid paras 12 - 13

<sup>85</sup> Ibid para 22

<sup>86</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, 2002, para 48.

school admissions disadvantages children from lower socio-economic groups. In December 2015 the findings of a report into the links in achievement and deprivation further corroborated this evidence. The report, commissioned by the OFMDFM, found that: "access to the best education is too often determined by socio-economic status" and that "The current system significantly favours those with positive family norms around education, for example, academically successful parents, and the financial capacity to afford, for example, private tutors".<sup>87</sup>

71. **The Commission invites the Committee to recommend, in line with its 2008 recommendation, that the State party effectively "put an end to the two-tier culture in Northern Ireland...and ensure that all children are included in admission arrangements in post-primary schools."**<sup>88</sup>

### **Special Educational Needs and Disability**

72. Since the Committee's pre-session meeting the Special Education Needs Act 2016 has received Royal Assent. The Act introduced a new revised process for the statementing of children. There have been concerns that under the revised process children with special needs will receive less support.<sup>89</sup> An announcement by the Education Authority of an intention to reduce from 4.5 hours to 2.5 hours the time pre-school children with moderate to severe learning difficulties attend nurseries has raised further concerns that budgetary constraints will result in regression in educational support to children with disabilities.<sup>90</sup> The revised process will provide for reduced timescales for the assessment of children and their needs, such a reduction would be welcome, to realise this goal significant investment and robust cross-Departmental processes must be put in place.<sup>91</sup> Under the new scheme only children of compulsory school age will be afforded the right to appeal to the Special Educational Needs Tribunal.<sup>92</sup> The Act empowers the Department to pilot the provision of appeal rights for children under compulsory school age.<sup>93</sup> However, there is no

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<sup>87</sup> BBC News NI Academic selection 'reinforces privilege and disadvantage' says report 10 December 2015

<sup>88</sup> UNCR Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 67

<sup>89</sup> Northern Ireland Human Rights Commission "The 2012 Annual Statement Human Rights in Northern Ireland" December 2012 see discussion on right to education

<sup>90</sup> BBC News NI 'Special needs nursery cuts: O'Dowd says decision by Education Authority is 'flawed' 8 March 2016

<sup>91</sup> DHSSPS 'Hamilton announces £2m investment in autism services' 14 February 2016

<sup>92</sup> Sections 11 and 12

<sup>93</sup> Section 13

obligation to actually conduct a pilot and the Department has ten years in which to conduct the pilot.

73. **The Committee may wish to recommend that the State Party ensure the implementation of the Special Educational Needs Act 2016 does not result in regression in terms of the numbers of children with special needs who are supported and the level of support which they receive and that revised assessments of children with special needs are sufficiently robust and carried out within an expedited timeframe. Furthermore, the State Party should ensure the pilot of appeal rights to the Special Educational Needs Tribunal for children under the compulsory school age is carried out expeditiously.**

**Special protection measures (arts. 22, 30, 32-33, 35-36, 37 (b)-(d), 38, 39 and 40)**

**Youth Justice Review**

74. The Commission notes that by way of general comment no. 10 the Committee encouraged State Parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with the UN CRC.<sup>94</sup> A Review of Youth Justice in Northern Ireland was carried out in 2010/11 and a subsequent report contained 49 recommendations for improving the youth justice system in Northern Ireland.<sup>95</sup> While the Review was well received and the Minister of Justice set a target to implement 90 percent of the agreed Youth Justice Review recommendations by March 2014, an inspection of progress against the recommendations carried out by the Criminal Justice Inspectorate reported in December 2015 that:

Of the 45 accepted recommendations and sub-recommendations assessed, 26.5 have been achieved (59%) and 18.5 not achieved (41%). This fell short of the Ministerial target to achieve 90% of the YJR recommendations by 2014 ... The last DoJ update on recommendations was made in January 2014, and the DoJ Youth Policy Team that co-ordinated agency responses, was no longer in place. The role of Criminal Justice Officer in the DHSSPS was no longer funded from April 2015. There was a lack of strategic oversight by the DoJ and the implementation of the recommendations was no longer a feature of the Criminal Justice

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<sup>94</sup> CRC/C/GC/10 para 4

<sup>95</sup> A Review of the Youth Justice System in Northern Ireland, 2011

Board agenda. The onus was therefore on the individual agencies to ensure the YJR aims were achieved.<sup>96</sup>

75. The report by the Criminal Justice Inspectorate acknowledged that some recommendations were less relevant than when they were made and some were unrealistic in expecting delivery within the spirit and letter of what was intended. Nonetheless the report suggested a lack of strategic vision in integrating youth justice goals within the Department of Justice's criminal justice policy and within the NI Executive's approach to children in general.<sup>97</sup> Concerns regarding a lack of momentum around the implementation of the Youth Justice Review recommendations have been compounded by a restructuring within the Department of Justice which has placed the Youth Justice Agency under a new 'Reducing Offending Directorate' alongside the NI Prison Service.<sup>98</sup>

76. In his response to this report the Minister of Justice has: commissioned a scoping study into children in the justice system to consider the entire legislative and structural framework surrounding youth justice with a view to further improving the way the justice system responds to children who come into contact with it.<sup>99</sup> The Minister of Justice provided an overview of the results of the scoping study prior to the dissolution of the NI Assembly for elections.<sup>100</sup>

**77. The Committee invites the Committee to urge the State Party to ensure the effective implementation of the Youth Justice Review NI to ensure there is in place a comprehensive policy for juvenile justice which ensures a holistic approach to the prevention of juvenile delinquency and that children in conflict with the law are treated in line with their best interests and in ways that promote their reintegration and facilitates them assuming a constructive role in society.**

### **Minimum age of criminal responsibility**

78. The age of criminal responsibility remains at 10 years old in Northern Ireland, as in England and Wales, despite the Committee's recommendations on three separate occasions that the State Party increase the minimum age of criminal responsibility. The NIHRC has

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<sup>96</sup> CJINI 'Review of Implementation of the Youth Justice Review' December 2015 p. 38

<sup>97</sup> See recommendations 25 and 26 pg 56 and 57.

<sup>98</sup> AQW 50768/11-16

<sup>99</sup> AQW 51784/11-16 The Minister has stated that he is: 'confident that we can achieve significant progress in delivering on the remaining youth justice review recommendations, either directly or indirectly, through that work'. AQO 9439/11-16

<sup>100</sup> NI Assembly Official Report: Monday 14 March 2016

repeatedly advised the Northern Ireland Executive that the minimum age of criminal responsibility should be raised to at least 12 in line with international human rights standards as expressed in the Committee's General Comment Number 10 which states that a minimum age of criminal responsibility below the age of 12 is not acceptable.

79. The Review of Youth Justice (2011) recommended that, "[t]he minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14".<sup>101</sup> The Minister of Justice for Northern Ireland recently stated:

in line with a strong recommendation from the United Nations Committee on the Rights of the Child, I fully support an increase in the Minimum Age of Criminal Responsibility. However any such change would require cross-party support, and there is currently an absence of sufficient political support to implement such an increase.<sup>102</sup>

80. Whilst the aforementioned scoping study recommended an increase in the age of criminal responsibility the Minister does not intend to bring any legislative proposals before the Northern Ireland Assembly due to a lack of consensus amongst the political parties on this matter.<sup>103</sup>

**81. The Commission invites the Committee to ask the State party, including its devolved administrations, to take immediate action to increase the minimum age of criminal responsibility in Northern Ireland.**

## **Detention of Children**

82. The Youth Justice Review NI (2011) recommended strict adherence to the statutory presumption of bail supported, inter-alia by the application of relevant, proportionate and realistic bail conditions and the availability of an appropriate mix of suitable accommodation.<sup>104</sup>

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<sup>101</sup> A Review of the Youth Justice System in Northern Ireland, 2011 Recommendation 29. See <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/report-of-the-review-of-the-youth-justice-system-in-ni.pdf>

<sup>102</sup> AQW 51784/11-16

<sup>103</sup> Belfast Telegraph 'Call to raise criminal age limit' 12 February 2015

<sup>104</sup> DoJNI 'A Review of the Youth Justice System in Northern Ireland' 2011 Recommendation 9

83. This recommendation was accepted by the Department of Justice and a multi-agency and cross-departmental Bail Action Plan was agreed. An inspection of progress on implementation carried out by the Criminal Justice Inspectorate for NI (CJINI) in December 2015 found that, 'The PACE/Bail Action Plan was no longer viable, with DoJ unable to commit personnel to assist with any future scheme. There was no concrete future date for implementation of this recommendation. Accordingly, this recommendation cannot be considered achieved.'<sup>105</sup>
84. In addition a commitment to legislate to provide that a child will only be remanded in custody where there is a real prospect that they will receive a custodial sentence if convicted has not been realised.<sup>106</sup>
85. In 2015 the National Preventative Mechanism designated under the Optional Protocol to the UN CAT Committee published a report of an announced inspection of Woodlands Juvenile Justice Centre.<sup>107</sup> It recorded that only 9 percent of children imprisoned at Woodlands in 2013-14 were there as a result of being sentenced following a conviction. Of the remainder, 47 percent were formally remanded to custody and 44 percent related to proceedings under the Police and Criminal Evidence (NI) Order 1989 (PACE).<sup>108</sup> During 2014/15 there were 233 Police and Criminal Evidence (Northern Ireland) Order (PACE) admissions to Woodlands JJC involving 130 individual children.<sup>109</sup> The National Preventative Mechanism found that the rate of PACE admissions to the Juvenile Justice Centre has almost trebled between 2008-9 and 2013-14 and has described this as 'disproportionately high'. It recommended that the Youth Justice Agency and its statutory partners should set targets to improve the current arrangements for children who do not have a suitable bail address.<sup>110</sup>
86. The Commission is concerned that Looked-After Children are particularly likely to be held in pre-trial detention, in 2013/14 Looked-After Children accounted for 36 percent of all children admitted to the

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<sup>105</sup> CJINI 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations' (December, 2015) p. 29 The CJINI further noted that the Department of Justice 'were no longer able to offer personnel support for the Bail Action Plan'.

<sup>106</sup> NIHRC 'The 2013 Annual Statement: Human Rights in Northern Ireland' (December, 2013) p. 22

<sup>107</sup> National Preventative Mechanism 'An announced inspection of Woodlands Juvenile Justice Centre' May 2015 . 20 statutory bodies make up the UK National Preventive Mechanism

<sup>108</sup> Ibid., para 2.5

<sup>109</sup> AQW 50671/11-16

<sup>110</sup> National Preventative Mechanism 'An announced inspection of Woodlands Juvenile Justice Centre' May 2015 . 20 statutory bodies make up the UK National Preventive Mechanism Ibid., para 2.18

Juvenile Justice Centre.<sup>111</sup> The Youth Justice Review recommended that: 'Looked-After Children should no longer be placed in custody, either through PACE, on remand or sentenced, where this would not have been an outcome for children in the general population'. This recommendation is yet to be achieved. In 2013, a Health and Social Care Trust was found to have breached its duty under Article 27 of the Children Order when it failed to provide alternative accommodation for a child who was the subject of a Care Order and as a result bail could not be granted and it was necessary for the child to be remanded in custody to a Juvenile Justice Centre.<sup>112</sup> In 2014 the Marshall Report noted that "official documents acknowledge that bail conditions imposed on LAC are likely to be more onerous than for the general population and are often unrealistic or even unachievable and therefore more likely to be breached".<sup>113</sup>

87. The Minister of Justice has acknowledged that pre-trial detention of children: 'is a priority issue for the current Scoping Study of Children in the Youth Justice System as the large number of admissions to Woodlands under PACE runs contrary to the principle of custody as a last resort.'<sup>114</sup>

88. The use of custody in circumstances outside of a measure of last resort is particularly concerning given the high number of children entering the justice system with mental health problems, calculated to fluctuate between 45 percent and 64 percent of all children.<sup>115</sup>

89. The Commission notes that the Committee has emphasised the important of developing alternatives to reduce the use of pre-trial detention.<sup>116</sup> The Commission considers that significant investment in the development of alternatives to pre-trial detention is required as a matter of priority and notes that this has been acknowledged by the Minister. In reporting the scoping study the Minister stated:

Regarding the use of custody, the steering group is clear that it is all too easy for children to enter the juvenile justice centre. It's

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<sup>111</sup> Criminal Justice Inspectorate 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations' December 2015 pg 48 - The Criminal Justice Inspectorate has reported that between 2011 and 2013 the numbers of Looked-After Children being admitted to the Juvenile Justice Centre increased from 146 (2011) and 170 (2012), to 313 (2013).

<sup>112</sup> CM, Re Judicial Review [2013] NIQB 84, paras 3-5.

<sup>113</sup> Kathleen Marshall, CJINI/RQIA/ETI, Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry, 2014, pp.87

<sup>114</sup> AQW 53324/11-16

<sup>115</sup> *ibid*

<sup>116</sup> UN CRC General Comment No. 10 (2007) Children's rights in juvenile justice CRC/C/GC/10 25 April 2007 para



proposals therefore focus on the need to establish alternative accommodation options, especially short-term overnight calm-down spaces. Having those options means that Woodlands no longer needs to be used as a place of safety for children.<sup>117</sup>

**90. The Commission invites the Committee to recommend that the NI Executive take immediate action to ensure that children are held in pre trial detention only in circumstances where it is a measure of last resort.**

**Education in Detention**

91. In its earlier submission the Commission reported that the Minister of Justice and the Minister of Education had agreed that responsibility for the education of child offenders should be transferred to the Department of Education.<sup>118</sup> A cross-departmental working group was established to develop an options paper for delivering this commitment which was to be completed in early 2014. The working group included the Department of Employment and Learning to cover post primary education of 16-18 year old children. The Commission welcomed this development.<sup>119</sup>

92. In 2015 the Ministers of Education and Justice confirmed that Woodlands Juvenile Justice Centre will be recognised under Article 86 of the Education (NI) Order 1998 as part of the Education Authority's responsibility for "Education Otherwise Than At School" and that responsibility for education of children at Woodlands will transfer from the DOJ to the Education Authority.<sup>120</sup> This will facilitate children imprisoned at Woodlands having access to the same standards as any other young person taught outside of a mainstream school. The Department plans to establish an integrated learning and development centre that will draw together high quality teaching and vocational skills.<sup>121</sup> The Commission welcomed the proposed transfer of responsibilities for the education of children at Woodlands Juvenile Justice Centre from the NI Prison Service to the Department of Education and advised that this transfer take place as soon as possible.

**93. The Committee may wish to recommend that the State Party ensures that every child detained in Northern Ireland of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her**

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<sup>117</sup> NI Assembly Official Report: Monday 14 March 2016

<sup>118</sup> NIHRC 'The 2013 Annual Statement: Human Rights in NI' (December, 2013) p.46

<sup>119</sup> Ibid.

<sup>120</sup> Correspondence from the DoJ and DoE to the NIHRC Chief Commissioner Les Allamby 6 October 2015

<sup>121</sup> AQW 53324/11-16

**for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment.**

## **Termination of Pregnancy**

**94.** The Commission notes paragraph 56 of the Committee's General Comment Number 15 in which it states:

Given the high rates of pregnancy among adolescents globally and the additional risks of associated morbidity and mortality, States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services.<sup>122</sup>

**95.** The Commission notes the Committee's recommendation relating to the decriminalisation of access to termination of pregnancy services for children in Ireland, of January 2016.<sup>123</sup> Termination of pregnancy is currently only available in NI if it is necessary to preserve the life of a woman, including where there is risk of serious and adverse effect which is either long term or permanent. The punishment is life imprisonment for a woman who procures a termination or anyone who unlawfully performs a termination.<sup>124</sup>

**96.** The NIHRC initiated legal proceedings in December 2014 against the NI Department of Justice. It argued that the law on termination of pregnancy in instances of serious malformation of the foetus (including fatal foetal abnormality) or pregnancy as a result of rape or incest in NI is incompatible with article 3 (prohibition on torture, inhuman and degrading treatment), article 8 (right to private, family life, home and correspondence) and article 14 (prohibition of discrimination) of the ECHR. In its affidavits to the Court, the Commission referred to the General Comments and concluding observations of the Committee.

**97.** The High Court of Justice in NI ruled in November 2015 that the law on termination on pregnancy in NI is incompatible with Article 8 only of

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<sup>122</sup> General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) Para 56

<sup>123</sup> UN CRC Committee, Concluding Observations Ireland CRC/C/IRL/CO/3-4 PARA 58

<sup>124</sup> The relevant law on termination of pregnancy includes sections 58 and 59 of The Offences Against the Person Act 1861, Section 25 of the Criminal Justice Act (NI) 1945, Section 5 of the Criminal Law Act (NI) 1967 and *R v Bourne* [1939]

the ECHR in cases of fatal foetal abnormality at any time and sexual crime up to the date the foetus becomes capable of an existence independent of the mother.<sup>125</sup> The High Court in December 2015 granted a Declaration of Incompatibility (DOI), which means that the onus is now on the NI Assembly to change the law in respect of termination. The terms of the DOI were that:

Sections 58 and 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (NI) 1945 are incompatible with article 8 of the European Convention on Human Rights in so far as it is an offence: (a) to procure a miscarriage at any stage during a pregnancy where the foetus has been diagnosed with a fatal fetal abnormality; (b) to procure a miscarriage up to the date where a foetus is capable of being born alive where the pregnancy arises as a result of rape or incest.

**98. The Committee may wish to recommend that the State Party takes immediate steps in Northern Ireland to decriminalize abortion in all circumstances and reviews its legislation with a view to ensuring children's access to safe abortion and post-abortion care services; and ensure that the views of the pregnant girl are always heard and respected in abortion decisions, in line with the Committee recommendation relating to Ireland.**<sup>126</sup>

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<sup>125</sup> The Northern Ireland Human Rights Commission's Application [2015] NIQB 96

[http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2015/\[2015\]%20NIQB%2096/j\\_j\\_HOR9740Final.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2015/[2015]%20NIQB%2096/j_j_HOR9740Final.htm)

<sup>126</sup> UN CRC Committee, Concluding Observations Ireland CRC/C/IRL/CO/3-4 PARA 58