



The 2019 Annual Statement

Human Rights in Northern Ireland

December 2019



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

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About us

The NI Human Rights Commission (the Commission) protects and promotes the human rights of everyone in NI. We do this by:

- keeping under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights;
- advising the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights;
- advising the NI Assembly whether proposed legislation is compatible with human rights standards;
- promoting understanding and awareness of the importance of human rights in NI, for example, by undertaking or commissioning or otherwise assisting research and educational activities.

In addition, the Commission has powers to:

- give assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights;
- bring proceedings involving law or practice concerning the protection of human rights;
- intervene in legal proceedings concerning human rights where it need not be a victim or potential victim of the unlawful act to which the proceedings relate;
- conduct investigations, and;
- require a person to provide information and documents in their possession, and to give oral evidence, in respect of an investigation;
- enter a specified place of detention in NI, in respect of an investigation, and;
- publish its advice and the outcome of its research and investigations.

Our mission statement

The Commission champions and guards the rights of all those who live in NI.


Chief Commissioner: Les Allamby
Commissioners: Helen Ferguson
Helena Macormac
Paul Mageean
John McCallister
Eddie Rooney
Graham Shields
Chief Executive: Dr David Russell


Abbreviations


ECHR	European Convention on Human Rights
ECt.HR	European Court of Human Rights
EU	European Union
NI	Northern Ireland
UK	United Kingdom
UN	United Nations
UN CAT	United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment
UN CERD	United Nations Convention on the Elimination of All Forms of Racial Discrimination
UN CEDAW	United Nations Convention on the Elimination of Discrimination Against Women
UN CRC	United Nations Convention on the Rights of the Child
UN CRPD	United Nations Convention on the Rights of Persons with Disabilities
UN ICCPR	United Nations International Covenant on Civil and Political Rights
UN ICESCR	United Nations International Covenant on Economic, Social and Cultural Rights

Understanding the annual statement

The Commission's annual statement uses a traffic light system to assist readers.

Red  identifies a subject that requires immediate action by the UK Government, NI Executive or relevant public authorities and the issue may be an ongoing violation or abuse of human rights within NI.

Amber  identifies a subject that initial steps toward providing an effective response could have already been taken or the necessity of taking action acknowledged by the relevant body. Such actions may have commenced, but are not yet completed. The identified subject requires action by the UK Government, NI Executive or relevant public authorities. The issue may not be at a level that constitutes an ongoing violation or abuse of human rights.

Green  identifies a subject that has been acknowledged as requiring action to protect human rights in NI and an effective response has been provided by the UK Government, NI Executive or relevant public authorities. A firm commitment to address the matter will have been demonstrated and undertaken.

The Annual Statement 2019 is structured slightly differently than other years. There are no 'green' issues this year. The 'amber' issues are identified across Chapters 2 and 4. The 'red' issues are clearly set out in Chapter 3. An overview of all issues is provided in the Annex.

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Foreword

This year's annual statement on human rights progress in Northern Ireland is a slim document. It reflects the Commission's decision not to take a 'business as usual' approach, as we complete three years without a Northern Ireland Executive and a Northern Ireland Assembly.

This is the eighth annual statement produced by the Commission and there is not a single green light, signifying that not one human rights concern has been effectively resolved in 2019. As a result, the statement covers the issues needing immediate action, those that have made no progress and the significant developments in 2019. The issues making no progress are substantial, lengthy and broad based.

The absence of the Northern Ireland Executive and Assembly has practical consequences that extend beyond a lack of political accountability and the democratic deficit. In stark terms, two examples will suffice. Figures from the Bureau of Investigative Journalism released in October 2019 revealed that 205 people who were homeless in Northern Ireland have died in the last 18 months. This is more than a quarter of all homeless deaths in the UK during that period. The figures in Northern Ireland are kept in a way that more accurately reflect homelessness than in the rest of the UK. Nonetheless, behind every death is an individual story and a wider tale of society's failure to properly protect vulnerable people.

Moreover, Northern Ireland has not had a childcare strategy since the previous three-year strategy expired in 1992. There is no statutory duty on government departments or public authorities to provide an adequate level of childcare in Northern Ireland. Contrast this with England and Wales, where there are statutory duties to provide the equivalent of 30 hours of free childcare for 38 weeks of the year for three and four year olds, and 15 hours of early years provision for two year olds in certain circumstances. Other legal duties ensure the provision of information advice and assistance to families on the availability of childcare in local areas and the delivery of training for childcare providers. In Scotland, local authorities must provide a mandatory minimum number of hours of early learning and childcare for each eligible pre-school child residing in their areas. Meanwhile, in Northern Ireland the first formal strategy on childcare for almost 30 years remains on the drawing board, awaiting the signature of an absent government Minister.

The Commission has recently published a Cumulative Impact Assessment on all tax and social security reforms from 2010 through to those in the pipeline to 2022. The assessment illustrates the overall adverse impact particularly for those on the lowest incomes, lone parent families, families with three or more children and households with either a child or an adult with a disability. The evidence also outlines the value of the mitigations package agreed, following the review undertaken by Eileen Evason and her colleagues in 2016. The research sets out a costed package of renewed mitigation measures based on the evidence from the Cumulative Impact Assessment. In the absence of the Northern Ireland Executive, the spending of even equivalent sums to mitigate the adverse

impact of social security changes is a receding prospect. The right to an adequate standard of living contained in the UN International Covenant of Economic, Social and Cultural Rights is just one of a number of rights that have regressed unjustifiably and contrary to human rights obligations.

In 1997, the Labour Government announced a plan to end child poverty by 2020. The Cumulative Impact Assessment reveals that the tax and social security reforms have resulted in an 8 per cent increase in child poverty. As a result, almost one in three children will be in poverty measured after housing costs in 2021/2022. That so many of our children will grow up in poverty is a 21st Century scandal. The overall findings chime substantially with the conclusions reached by Professor Philip Alston, the UN Special Rapporteur on extreme poverty and human rights in his report on a visit to the UK presented to the Human Rights Council earlier this year.

The need to deal with the past in a human rights compliant way and complete outstanding legacy investigations remains on hold with legislation stalled. Bearing in mind the timeline between the passing of legislation and the setting up of a new and fully staffed Historical Investigations Unit is significant, we will be well into the next decade before we see the implementation of the institutions envisaged in the Stormont House Agreement, even under a best-case scenario. The longer the delay, the greater the frustration, pain and anger among those affected whether they seek justice, truth, reparations or other closure. Not for the first time, the Commission has highlighted the unacceptable nature of this protracted delay.

This year the UK Government underwent examinations of its record in implementing the UN Convention on the Elimination of Discrimination of Women and UN Convention against Torture. Both treaty monitoring bodies issued significant recommendations impacting on Northern Ireland. Once again, specific Northern Ireland based responses to the recommendations remain in thrall to the ending of stalemate within the devolved institutions.

The UK leaving the EU also remains in stasis, pending the outcome of the forthcoming general election. The Withdrawal Agreement between the UK Government and EU 27 envisages our Commission and Equality Commission NI acting as a Dedicated Mechanism. The role is to ensure the commitment in the Withdrawal Agreement to the 'non-diminution of rights' contained within the Rights, Equalities and Safeguards section of the Belfast (Good Friday) Agreement is adhered to. We will also work in the Joint Committee with the Irish Human Rights and Equality Commission to cover the all-Ireland dimension of this commitment.

The Commission has taken no position on the question of leaving the EU, save for seeking to ensure that existing and future human rights protections are safeguarded. In our role as part of the Joint Committee, we have commissioned a number of papers looking at the fine grained detail of issues around the Belfast (Good Friday) Agreement, its birthright provisions and what exit from the EU means for citizenship issues, and retention of EU law rights for certain people alongside justice and security matters. We have also worked closely with the Equality Commission NI

as the potential provisions to protect human rights and equality under the 1998 Agreement have unfurled. Given the volatility of current politics, it is time, once again, to revisit the value of a Bill of Rights for Northern Ireland to provide a safeguard for everyone as we seek to cement further a durable and peaceful society moving forward.

The EU Withdrawal Bill, which was before the UK Parliament when the December general election was called, contained an amendment to restore the original legislative intention that the Commission could take human rights challenges without requiring an individual victim. This power was lost following the UK Supreme Court decision to the Commission's legal challenge to abortion law in Northern Ireland. Whichever way the chips fall after the election, the Commission would hope to see the power restored as soon as possible.

Despite the absence of working devolved institutions, there has been progress on a number of significant rights issues as a result of the passing of the Northern Ireland (Executive Formation etc) Act 2019 in Westminster. In particular, the Act has paved the way for a human rights compliant abortion law to be in place by the end of March 2020, through implementing the recommendations from the inquiry into abortion law in Northern Ireland conducted by the UN Committee on the Elimination of Discrimination against Women. Equal marriage and equal civil partnership arrangements are also due to be implemented by 13 January 2020, with the first weddings due to take place on Valentine's day 2020. Moreover, a consultation document has also been published on introducing legislation for a Troubles related Victims Payment Scheme by 31 January 2020, with an implementation date of 31 May 2020. The Secretary of State for Northern Ireland sought the advice from the Commission on all three proposals and it was gratifying to see much of that advice was reflected in decisions taken on how to move the legislation and policy towards fruition.

Some have argued that devolved issues should be left until the Northern Ireland Executive is restored. The Commission's position is clear, where there are human rights violations, outstanding issues cannot be left to drift indefinitely and should therefore be dealt with effectively either by the UK Government and UK Parliament or in the courts. Nonetheless, the optimum position is to see the Northern Ireland Executive and Assembly restored as swiftly as possible. In the meantime, as the annual statement illustrates, regardless of political circumstances the Commission will seek to ensure human rights are made real and practical and not theoretical and illusory.



Les Allamby
Chief Commissioner

Chapter 1 Introduction

The Commission was established following the Belfast (Good Friday) Agreement 1998. It is a national human rights institution with 'A status' accreditation at the Global Alliance of National Human Rights Institutions.

Having assessed developments affecting human rights protections in NI throughout 2019, the Commission publishes this annual statement, operating in accordance with the NI Act 1998, and our statutory requirement to:

- *keep under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights; and*
- *to advise the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights.¹*

Under the UN Paris Principles, a national human rights institution has a responsibility to:

submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.²

The Commission's assessment of developments during 2019 is based on domestic human rights standards and those treaty obligations of the UN and European systems that have been ratified by the UK.

The treaties, which the UK has ratified include:

- *European Convention on Human Rights (ECHR) [UK ratification 1951] – given further domestic effect by the Human Rights Act 1998;*
- *European Social Charter [UK ratification 1962];*
- *Framework Convention for the Protection of National Minorities [UK ratification 1998];*
- *Convention on Action against Trafficking in Human Beings [UK ratification 2008];*
- *European Charter for Regional or Minority Languages [UK ratification 2001];*
- *UN International Covenant on Civil and Political Rights (UN ICCPR) [UK ratification 1976];*
- *UN International Covenant on Economic, Social and Cultural Rights, (UN ICESCR) [UK ratification 1976];*

1 Section 69, NI Act 1998.

2 A/RES/48/134, 'UN General Assembly Principles relating to the Status of National Institutions', 20 December 1993.

- *UN Convention on the Elimination of All Forms of Racial Discrimination (UN CERD) [UK ratification 1969];*
- *UN Convention on the Elimination of All Forms of Discrimination Against Women (UN CEDAW) [UK ratification 1986];*
- *UN Convention on the Rights of the Child (UN CRC) [UK ratification 1991];*
- *Optional Protocol to the UN CRC on the Involvement of Children in Armed Conflict [UK ratification 2003];*
- *Optional Protocol to the UN CRC on the Sale of Children, Child Prostitution and Child Pornography [UK ratification 2009];*
- *UN Convention Against Torture, Inhuman or Degrading Treatment or Punishment (CAT) [UK ratification 1988];*
- *UN Educational, Scientific and Cultural Organisation Convention on the Protection and Promotion of the Diversity of Cultural Expressions [UK ratification 2007];*
- *Charter of Fundamental Rights of the EU [UK ratification 2000];*
- *UN Convention on the Rights of Disabled Persons (UN CRPD) [UK ratification 2009].*

Human rights law further applies by virtue of the NI Act 1998, section 24(1). Ministers of the Executive Committee of the NI Assembly (NI Executive) and Executive departments are therefore required to ensure that all legislation and actions are compatible with the ECHR.³

Moreover, the NI Act 1998, section 26, requires compliance with other international human rights obligations, and that for this purpose the Secretary of State for NI may, by direct order, prevent any proposed action by Ministers of the NI Executive and devolved Executive departments.⁴

The ECHR is given further domestic effect in the UK as a consequence of the Human Rights Act 1998. Subject to section 6(3), all public authorities in NI must ensure that their actions are compatible with the Human Rights Act. The definition of a public authority includes a:

*court or tribunal, and any person certain of whose functions are functions of a public nature.*⁵

This means that private sector contractors may, depending on their role, be subject to the requirements of the Human Rights Act. Government departments have the duty to ensure that actions carried out following public procurement exercises comply with the ECHR.

3 Section 24 of the NI Act 1998 states: 'A Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act— (a) is incompatible with any of the Convention rights'.

4 Section 26 of the NI Act 1998 states: 'If the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order, he may by order direct that the proposed action shall not be taken'.

5 Section 6, Human Rights Act 1998.

The Commission, in assessing compliance with international human rights standards, takes account of the findings of the international monitoring bodies that are directed to or otherwise apply to NI, as well as the general comments and other interpretive texts adopted by such bodies.

Treaty examinations and reports issued in 2019:

UN Convention on the Elimination of Discrimination against Women

In February 2019, the UN CEDAW Committee examined the eighth periodic report of the UK of Great Britain and NI on compliance with the Convention. The Committee published its concluding observations in March 2019. The report contained recommendations of specific and general relevance to women in NI.

UN Convention against Torture

In May 2019, the UN CAT Committee examined the sixth periodic report of the UK of Great Britain and NI on compliance with the Convention. The Committee published its concluding observations in June 2018. The report contained recommendations of specific and general reference to NI.

UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Professor E Tendayi, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the UK, including Belfast, from 30 April to 11 May 2018. The Special Rapporteur's report was published in May 2019 and presented to the UN Human Rights Council during its 41st session (24 June-12 July 2019). The report contained recommendations of specific and general reference to NI.

UN Special Rapporteur on extreme poverty and human rights

Professor Philip Alston, the UN Special Rapporteur on extreme poverty and human rights visited the UK, including Belfast, from 5 to 16 November 2018. The Special Rapporteur's report was published in April 2019 and presented to the UN Human Rights Council during its 41st session (24 June-12 July 2019). The report contained recommendations that apply generally to NI.

Chapter 2 – Significant Developments 2019

The trend of a reducing number of ‘greens’ continues. Green issues are those that have been acknowledged as requiring action to protect human rights in NI and an effective response has been provided by the UK Government, NI Executive or relevant public authorities. In essence, a firm commitment to address the matter has been demonstrated and undertaken. The traffic light system was introduced to the annual statement in 2014. In that year, there were two ‘greens’, six in 2015 and six in 2016. However, this reduced to no ‘greens’ in 2017, one ‘green’ in 2018 and, for 2019, no ‘greens’.

All the issues raised in this chapter are categorised as ‘amber’ for 2019. These are issues where initial steps have been taken towards providing an effective response or the necessity to take action has been acknowledged by the relevant body. Such actions may have commenced, but are not yet completed. An ‘amber’ issue may not be at a level that constitutes an ongoing violation or abuse of human rights, but it requires action by the UK Government, NI Executive or relevant public authorities.

There have been a number of significant developments in 2019, some are positive and others are negative. This chapter provides an overview of the significant developments. For details that provide the context to these, please see the Annual Statement 2018.⁶

6 NI Human Rights Commission, ‘The 2018 Annual Statement: Human Rights in NI’ (NIHRC, 2018).

Equality and non-discrimination

Business and human rights

In January 2019, the 'Procurement Guidance Note on Human Rights in Public Procurement' was launched by the Department of Finance, alongside the Commission.⁷

Discrimination on the grounds of sexual orientation

The UK Supreme Court ruling that the refusal of a bakery to make a cake with a slogan supporting extension of civil marriage to same sex couples was not discriminatory, will now be challenged further. Mr Lee has made an application to the ECtHR on the grounds that the Supreme Court failed to give appropriate weight to his ECHR rights.⁸

Equal marriage and civil partnerships

Section 8 of the NI (Executive Formation etc) Act 2019 requires that regulations are introduced by the Secretary of State for NI that provide for the extension of civil marriage to same sex couples and civil partnerships to couples not of the same sex in NI, if an Executive was not formed by 21 October 2019. Section 8(2) of the 2019 Act requires that the Secretary of State's regulations come into force on or before 13 January 2020.

As the NI Executive did not reform by the stated date, the NI Office has committed to introducing the requisite regulations. It announced that from 13 January 2020, couples will be able to give notice of their intent to form a civil same sex marriage or opposite sex civil partnership to the General Register Office for NI.⁹

There will be a consultation on the issue of religious same-sex marriages, to allow religious institutions to give their views on this issue. Consequently, there will be a delay in the introduction of religious same-sex marriages to NI. There will also be a consultation on the right to convert a civil partnership to marriage (and vice versa).¹⁰

On 14 November 2019, Love Equality launched legal proceedings challenging the inability to convert an existing same-sex civil partnership to a marriage.¹¹

Hate Crimes

In response to the 2017 report of the Criminal Justice Inspection NI, the Department of Justice has commenced a review of hate crime legislation to consider whether existing hate crime law represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred.¹² The review will, inter alia, consider if the current enhanced sentence approach is the most appropriate to take, and determine if there

7 Construction and Procurement Delivery, 'Procurement Guidance Note PGN 03/18 Human Rights in Public Procurement' (CPD, 2018).

8 'Ashers 'gay cake' row referred to European Court', *BBC News*, 15 August 2019.

9 NI Office, 'Press Release - Changes to the law in NI: updated', 22 October 2019.

10 Ibid.

11 Owen Bowcott, 'Couples to sue over NI same-sex marriage delays', *The Guardian*, 14 November 2019.

12 Department of Justice, 'Hate Crime Legislation Review - Terms of Reference', (DoJ, 2019).

is an evidential basis to support the introduction of statutory aggravated offences.¹³ The review, chaired by Judge Marrinan, intends to produce a preliminary report for consultation in January 2020, with a view to a final report by autumn 2020.

Right to life

Rule of law: non-State actors

In April 2019, journalist Lyra McKee was shot and killed by the New IRA while observing rioting from behind police lines in the Creggan estate, Derry/Londonderry. Investigations by the Police Service NI into the murder are ongoing.¹⁴ The death led to a substantial public outcry and call for an end to paramilitary violence.

Freedom from torture, inhuman and degrading treatment

Domestic and sexual violence and abuse

Gillen review

In January 2019, Sir John Gillen's report following an independent review into how the NI criminal justice system handles cases of serious sexual assault was published.¹⁵ The review, inter alia, included consideration of support for victims and witnesses, pre-charge anonymity for the accused and measures to ensure the permanent anonymity of the claimant.¹⁶

In May 2019, the Department of Justice Permanent Secretary Peter May announced the establishment of a Sexual Violence Reduction Group. This group will oversee implementation of the Gillen Review's recommendations. It will be comprised of senior officials from the Department of Justice, Prison Service NI, Probation Board NI, NI Courts and Tribunals Service, Office of the Lord Chief Justice, Police Service NI and Public Prosecution Service NI.

In 2019, the Department of Justice undertook a consultation on protecting victims of domestic abuse from cross-examination by the perpetrator in family courts. The Department is considering applying a statutory prohibition on cross-examination in person in certain circumstances and giving the court a discretionary power to prevent such cross-examination. It may be possible that the outcome of the consultation can be included in the Westminster Domestic Abuse Bill, after a new UK Government is elected following the general election. However, otherwise progression will be subject to restoration of the NI Executive and NI Assembly.¹⁷

¹³ Ibid.

¹⁴ 'Lyra McKee: 'New IRA' admits killing of journalist', *BBC News*, 23 April 2019.

¹⁵ Sir John Gillen, 'Report into the Law and Procedures in Serious Sexual Offences in NI - Part 1', (DoJ, 2019).

¹⁶ Department of Justice, 'Review of arrangements to deliver justice in serious sexual offence cases: Terms of Reference'. Available at: <https://www.justice-ni.gov.uk/publications/review-arrangements-deliver-justice-serious-sexual-offence-caseterms-reference>

¹⁷ Department of Justice, 'Protecting Victims of Domestic Abuse from being Cross-examined by Perpetrators in Person in Family Proceedings: A Consultation on Options for Legislation' (DoJ, 2019).

Domestic Abuse Bill

In July 2019, the Domestic Abuse Bill was introduced to the UK Parliament. This Bill aims to bring England and Wales in line with the Istanbul Convention. Given the delays with the NI Domestic Abuse Bill provision has been made within the Westminster Bill to make domestic abuse (including physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse, and psychological, emotional or other abuse) an offence in NI. In August 2019, the Westminster Bill was awaiting its second reading in the House of Commons.¹⁸ In October 2019, it was confirmed that the Bill would be carried over to the 2019-2020 session and would continue its progress through the UK Parliament from the start of the next session (after the December 2019 election).¹⁹

Historical abuse of children and adults

In April 2019, the NI High Court ruled that the failure of Secretary of State NI to introduce a redress scheme, as recommended by the Hart Inquiry, was not unlawful.²⁰ The applicant appealed to the Court of Appeal NI. In November 2019, the Court of Appeal ruled that although the Secretary of State for NI had no power to set up a redress scheme, the Executive Office could exercise the common law prerogative powers to set up such a scheme.²¹ The Court of Appeal also noted that the Secretary of State for NI should consider giving a direction to the Executive Office to do so.²²

In July 2019, the Head of the Civil Service in NI appointed Brendan McAllister as the interim advocate for victims and survivors of historical institutional abuse.²³ Mr McAllister will operate in post until the statutory Commissioner for Victims and Survivors of Historical Institutional Childhood Abuse is appointed.

On 5 November 2019, the Historical Institutional Abuse (NI) Act was given Royal Assent.²⁴ The Act provides for the establishment of a redress board²⁵ and a Commissioner for Survivors of Institutional Childhood Abuse.²⁶ On 15 November 2019, Mr Justice Colton was announced as the President of the Redress Board.²⁷ At the time of writing, the commencement of the Historical Institutional Abuse (NI) Act and the date of the establishment of the Board was still to be announced by the Executive Office. Mr Justice Colton's appointment will take effect from that date.²⁸ There is

18 Parliament UK, 'Domestic Abuse Bill 2017-19'. Available at: <https://services.parliament.uk/Bills/2017-19/domesticabuse.html>

19 Ibid.

20 *In the Matter of an Application by JR80 for Judicial Review* [2018] NIQB 65.

21 Judiciary NI, 'Press Release: Court finds that The Executive Office can set up an ex gratia redress scheme for historical institutional abuse victims,' 4 November 2019.

22 Section 26, Northern Ireland Act 1998.

23 The Executive Office, 'Press Release: Sterling appoints Interim Advocate for Victims and Survivors of Historical Institutional Abuse', 2 July 2019.

24 Parliament UK, 'Historical Institutional Abuse (NI) Act 2019'. Available at: <https://services.parliament.uk/Bills/2019-20/historicalinstitutionalabuseinorthernireland.html>.

25 Part 1, Historical Institutional Abuse (NI) Act 2019.

26 Part 2, Historical Institutional Abuse (NI) Act 2019.

27 Judiciary NI, 'Press Release: Appointment of Mr Justice Colton as President of Historical Institutional Abuse Redress Board', 15 November 2019.

28 Ibid.

also no timeframe for when the Board will issue the first compensation payments.²⁹

Victims' payments

The NI (Executive Formation etc) Act 2019, Section 10(1), provides that:

the Secretary of State must by regulations establish a scheme under the law of NI which provides for one or more payments to be made to, or in respect of, a person who has sustained an injury as a result of a Troubles-related injury.

Under Section 10(2), these regulations “must be made before the end of January 2020 and come into force before the end of May 2020”.

In September 2019, the Commission provided initial advice to the Secretary of State for NI.³⁰ The NI Office subsequently publically consulted on proposals regarding a Victims Payment Scheme, which the Commission responded to.³¹ On 26 November 2019, the public consultation closed and, at the time of writing, the outcome was awaited.

Freedom from slavery

Modern slavery and human trafficking

In April 2019, the Modern Slavery Strategy 2019-2020 was published,³² in line with the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015.

Right to fair trial and the administration of justice

Non-jury trials

The procedure for issuing a non-jury trial certificate has been amended to reflect the fact that juror protection measures are considered before a certificate is issued (despite this not being a statutory requirement).³³

The Public Prosecution Service NI has rejected the recommendation to notify the defendant of its intention to issue a non-jury trial certificate, which was set out in the tenth report of the Independent Reviewer of the Justice and Security (NI) Act 2007, David Seymour.³⁴

29 Jayne McCormack, 'Historical institutional abuse: No timeframe for first compensation payments', *BBC News*, 11 November 2019.

30 NI Human Rights Commission, 'Advice of the NI Human Rights Commission to the NI Office in Respect of the NI (Executive Formation etc) Act 2019: Victims' Payments' (NIHRC, 2019).

31 Letter from NI Human Rights Commission to NI Office, 26 November 2019.

32 Department of Justice, 'Modern Slavery Strategy 2019-2020' (DoJ, 2019).

33 Independent Reviewer of Justice and Security, 'The Eleventh Annual Report of the Independent Reviewer of Justice and Security (NI) Act 2007 from 1 August 2017- 31 July 2018' (Home Office, 2019), at para 19.5.

34 *Ibid*, at para 19.9.

Right to private life

Biometric data

In January 2019, the Commission settled a case on DNA retention, taken against the Police Service NI. As a result, the Police Service NI agreed to produce a formal public policy on the retention of biometric data by October 2019. A draft of this policy was discussed with key stakeholders at a seminar convened by the Commission in October 2019. The policy will take into account human rights and will provide guidance to the public on how they can find out if their DNA or fingerprints have been retained, why this is so, and how to challenge the decision if necessary. The policy is expected to be published shortly.

Environmental regulation

In September 2019, the Department of Agriculture, Environment and Rural Affairs launched a public consultation on an Environment Strategy for NI. This includes a proposal to establish an independent environment protection agency for NI.³⁵

Freedom of religion and belief, expression, association and right to participate in public and political life

Freedom of expression of journalists

In May 2019, the NI High Court ruled that the search warrants issued against journalists Barry McCaffrey and Trevor Birney were unlawful.³⁶ The search warrants were for the suspected theft of confidential documents from the Police Ombudsman NI, relating to a police investigation into the 1994 murder of six men at Loughinisland, Co Down. The Police Service NI has subsequently dropped the case against the two journalists.³⁷

Right to an adequate standard of living and to social security

Social Security

Reforms

In April 2019, Professor Philip Alston, the UN Special Rapporteur on Extreme Poverty, published a report on his visit to the UK.³⁸ The report was highly critical of recent social security reforms and their impact on individuals and families. The report was presented to the Human Rights Council during its 41st session (24 June-12 July 2019).

In April 2019, the Child Poverty Action Group sought leave to appeal to the UK Supreme Court concerning the lawfulness of the two-child tax

35 Department of Agriculture, Environment and Rural Affairs, 'Environment Strategy for NI: Public Discussion Document' (DAERA, 2019).

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

37 Ibid.

38 A/HRC/41/39/Add.1, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights: Visit to the UK of Great Britain and NI', 23 April 2019, at para 86.

credit limit, after failing with its challenge in part on human rights grounds in the Court of Appeal.³⁹ The outcome is awaited.⁴⁰

It was originally intended that existing claimants on legacy benefits would be subject to a managed migration to Universal Credit between July 2019 and March 2022. The completion of this process has been delayed until December 2023.⁴¹ In 2019, 10,000 people in England are to be migrated to Universal Credit, as part of a pilot scheme. This will then move to full migration (including NI) in 2020.⁴²

In July 2019, Capita was given a two-year extension to its contract to deliver Personal Independence Payment assessments for the Department for Work and Pensions.⁴³

Mitigation package

The NI Executive agreed to allocate a total of £585 million from NI Executive funds over a four-year period from April 2016 until March 2020 to top up the UK welfare arrangements in NI, with a review in 2018-19. In April 2019, the Department for Communities published its review. This set out “the evidence that the planned end of the welfare mitigation funding on 31 March 2020 is likely to present significant issues to people who may have benefitted from this financial support”.⁴⁴ In April 2019, the NI Audit Office also published a report on social security reforms in NI. It concluded that:

*claimants in NI have not yet faced the full impact of welfare reforms because of the mitigation measures currently in place. These payments will cease in March 2020. Currently, there are no plans for further mitigations. While the absence of a NI Executive exacerbates the position, it is imperative that options are available for Ministers to consider when the [NI] Assembly returns.*⁴⁵

In 2019, the NI Affairs Committee and Work and Pensions Committee also conducted an inquiry into social security policy in NI.⁴⁶ The report was published in September 2019.⁴⁷ The Committees called for the Secretary of State for NI to commit to legislation, which will extend the social security mitigation package in NI, citing concerns that social security claimants will face a “cliff edge”.⁴⁸ On 6 November 2019, the Department for Work and Pensions issued a memorandum in response to the report, which does not deal with the issue of renewing the mitigations package.⁴⁹

39 *SC and Ors v SSWP* [2019] EWCA Civ 615.

40 Child Poverty Action Group, ‘Press Release: Lone parents aim for Supreme Court in ongoing legal challenge against the “two-child limit” in tax credits and universal credit’, 16 April 2019.

41 Hansard, ‘Universal Credit: Managed Migration - Alok Sharma - Column 174’, 9 January 2019.

42 Ibid.

43 Capita, ‘Press Release: Capita secures £145m Personal Independence Payment contract extensions’, 31 July 2019.

44 Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at para 1.3.

45 NI Audit Office, ‘Welfare Reforms in NI’ (NIAO, 2019), at para 30.

46 Parliament UK, ‘Welfare Policy in NI Inquiry’. Available at: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/northern-ireland-affairs-committee/inquiries/parliament-2017/welfare-policy-in-northern-ireland-inquiry-17-19/>

47 House of Commons Work and Pensions and NI Affairs Committees, ‘Welfare Policy in NI: First Joint Report of the Work and Pensions and the NI Affairs Committees’ (HC NIC and HC WPC, 2019).

48 Parliament UK, ‘Press Release: Introduce legislation to protect welfare payments in NI’, 9 September 2019.

49 Department for Work and Pensions, ‘Memorandum to the Work and Pensions Select Committee and NI Affairs Committee: Department for Work and Pensions’ Response to the Committees’ Inquiry into Welfare Policy in NI’ (DWP, 2019).

The NI (Executive Formation etc) Act 2019, Section 3(21), provides that:

the Secretary of State must, on or before 1 December 2019, publish a report on the future welfare mitigation support measures that will be in place after March 2020 (unless an Executive is formed on or before 1 December 2019).

On 29 November 2019, the NI Office published a report which outlined that:

in the continued absence of the NI Assembly, the Department for Communities is now taking the necessary steps to prepare for a possible extension of the existing welfare mitigation schemes should appropriate legislation be made. Simultaneously, the Department [for Communities] is working with the NI Housing Executive on preparatory work to broaden the eligibility criteria for the Discretionary Housing Payment scheme. This alternative would ensure that if the Social Sector Size Criteria mitigation scheme ends on 31 March 2020, affected claimants will be able to apply for financial support.⁵⁰

Cumulative impact assessment

In 2019, the Commission commissioned a cumulative impact assessment of tax and social security reforms implemented and planned between 2010 and 2022 in NI. The assessment uses the tax-transfer model, which uses data from two UK data sets - the Family Resources Survey and the Living Costs and Food Survey. The model shows the regressive distributional effects of tax and welfare changes by household income decile and by protected characteristics including disability, gender, family size and household composition. In addition, based on the outcomes, the assessment will make recommendations on where specific mitigation measures should be targeted, for example, beyond existing arrangements to not apply the Social Sector Size Criteria and Benefit Cap for families. The findings of the Commission's cumulative impact assessment were published in November 2019.

Travellers' accommodation

In response to the Commission's investigation report on Travellers' accommodation in NI:⁵¹

- *the Department for Communities has published a draft updated design guide for Travellers' sites;*
- *the Department for Infrastructure is consulting on an updated Model Conditions for site licences, covering minimum standards of safety requirements and provision;*
- *the Department for Communities has provided funding for Housing Rights to commission research identifying the housing/accommodation advice needs of Travellers;*

50 NI Office, 'Report Pursuant to Section 3(21) of the NI (Executive Formation etc) Act 2019' (NIO, 2019), at 3.

51 NI Human Rights Commission, 'Out of Sight, Out of Mind: Travellers' Accommodation NI' (NIHRC, 2018).

- *the NI Housing Executive has commenced its next Travellers Accommodation Needs Assessment, establishing an advisory group of key stakeholders (including the Commission) to guide the effectiveness of the assessment; and*
- *all local Councils are active members of the Local Government Partnership on Travellers' Issues.*⁵²

Right to Education

Integrated education

In 2019, the Education Authority issued its Action Plan for Primary, Post-primary and Special Schools 2019/2021.⁵³ By January 2021, options are to be developed to establish integration schools in Lurgan and Craigavon, Derry City area, Newry to Kilkeel area, Whiteabbey area and Holywood. A sectoral body is also to be introduced to develop options to deal with over-subscription for integrated education in East Belfast, South East Belfast and Castlereagh.

In June 2019, Seaview Primary School in Glenarm announced its plans to become the first Catholic primary school in NI to change to integrated status. The plan is under consultation.⁵⁴

Special educational needs

In July 2019, the Department of Education notified the Commission of its intention to publically consult on the draft Regulations and the Code of Practice on special educational needs in November 2019. This will be the second time the Regulations are being consulted on. The Department of Education is consulting again due to the material differences in the Regulations since they were first consulted on and the lack of a NI Assembly to fully scrutinise.⁵⁵

Right to participate in the cultural life of the community

Irish language and Ulster Scots

In June 2019, the Attorney General for NI published human rights guidance on the use of the Irish Language, directed at the Police Service NI and Public Prosecution Service NI.⁵⁶ This sets out their obligations in relation to the organisational culture, communication, training and development, and publications.⁵⁷

The Commission notes the inconsistent provision for bilingual street signs across NI. In June 2019, Antrim and Newtownabbey Borough Council threatened a householder with court action for failing to

52 NI Human Rights Commission, 'Implementation of Travellers' Accommodation Recommendations' (NIHRC, 2019).

53 Education Authority, 'Providing Pathways Strategic Area Plan for School Provision 2017-2020: Action Plan for Primary, Post-Primary and Special Schools – April 2019-March 2021' (EA, 2019).

54 'County Antrim Catholic school 'boosted' by integration plan', *BBC News*, 28 August 2019.

55 Email from Department of Education Officials to NI Human Rights Commission, 16 July 2019.

56 Attorney General for NI, 'Human Rights Guidance by the Attorney General for NI on the Use of the Irish Language' (AGNI, 2019).

57 *Ibid*, at 3-5.

remove an unauthorised Irish language street sign from her property.⁵⁸ A spokesperson for the householder stated that the sign will not be removed by the householder, as it is not believed to breach Council regulations.⁵⁹ In October 2019, Antrim and Newtownabbey Borough Council's Community Planning and Regeneration Committee considered a draft policy for bilingual signage.⁶⁰ Following representations from the Committee on the Administration of Justice and Conradh na Gaeilge, the policy has been withdrawn.⁶¹

The UK is due to submit its report for the fifth cycle of the Framework Convention for the Protection of National Minorities in 2019. However, due to the lack of a NI Executive, there will not be any input from the NI departments to this process. This is not the first time the NI Departments have failed to engage with this treaty process and the lack of a NI Executive has not prevented NI departments from inputting into other human rights monitoring mechanisms.

Constitutional Protections

Commission's powers

In June 2018, the UK Supreme Court ruled that the Commission did not have the powers to take a case in its own name, without a victim.

In April 2019, the Women and Equalities Committee, in its inquiry report into abortion law in NI, highlighted their concern about the Commission's lack of powers to bring a legal challenge to primary legislation without a victim. It recommended:

*the UK Government must rectify the error in the NI Human Rights Commission's standing as a matter of urgency. We welcome the Secretary of State for NI's commitment to rectifying this matter but the [UK] Government's response to this report must set out the timeline for doing so within the next six months.*⁶²

In response, the UK Government stated that it:

*committed to introduce legislation to address the Commission's 'own motion' standing under the Human Rights Act 1998, via its powers under the NI Act 1998, at the earliest opportunity before the end of 2019. This will ensure it has the legal mandate to bring cases in its own name before the UK domestic courts.*⁶³

58 Duncan Elder, 'Row over 'unauthorised' Irish language street sign: Council insists issue is about planning, not equality', *Newsletter*, 20 June 2019.

59 Connla Young, 'Randalstown Irish language sign "will not be removed"', *The Irish News*, 19 June 2019.

60 Antrim & Newtownabbey Borough Council, 'Minutes of the meeting of the Community Planning and Regeneration Committee', 9 September 2019, at Item 4.9.

61 Meeting between NI Human Rights Commission, Committee on the Administration of Justice and Conradh na Gaeilge, 7 November 2019.

62 Women and Equalities Committee, 'Abortion law in NI' (WEC, 2019), at para 83.

63 Women and Equalities Committee, 'Abortion law in NI: Government Response to the Committee's Eighth Report of Session 2017-19, House of Commons' (WEC, 2019), at 5.

In October 2019, an amendment to the NI Act 1998 was introduced under the EU (Withdrawal Agreement) Bill 2019-20.⁶⁴ The Bill did not become law before the General Election was called for in December 2019.

Common Travel Area

In February 2019, as part of the Common Travel Area arrangements, the Governments of the UK and Ireland signed a Convention on Social Security.⁶⁵

In May 2019, both governments signed a Memorandum of Understanding on the Common Travel Area.⁶⁶ The Memorandum is not legally binding, but sets out the two governments' intention to continue longstanding arrangements, including the areas of freedom of movement, the right to work, access to healthcare, social housing, education and social security.

Joint Committee research

In 2018 and 2019, the Joint Committee of the NI Human Rights Commission and the Irish Human Rights and Equality Commission published a discussion paper on Brexit,⁶⁷ a discussion paper on the Common Travel Area,⁶⁸ and research on evolving justice arrangements post-Brexit.⁶⁹ The Joint Committee also has research forthcoming on EU citizenship rights and a legal analysis on incorporating the Belfast (Good Friday) Agreement 'birthright' commitment into UK law, both of which are due to be published in early 2020.⁷⁰

UK membership of the EU

Further to the UK referendum result in 2016 in favour of leaving the EU, and the UK Parliament's failure to ratify the draft UK-EU Withdrawal Agreement of November 2018, a number of steps were taken to mitigate risks associated with a 'no deal' exit.

On 9 April 2019, the European Council announced that it had approved a regulation providing for visa-free travel for UK citizens after Brexit, in respect of visits of up to 90 days within the Schengen area.⁷¹ Continuing implementation of the regulation would be contingent on UK reciprocity.

In July 2019, Prime Minister, Boris Johnson, told the UK Parliament that he wanted to repeat the commitment made to the 3.2 million EU nationals in

64 Parliament UK, 'EU (Withdrawal Agreement) Bill 2019-20'. Available at: <https://services.parliament.uk/Bills/2019-20/europeanunionwithdrawalagreement.html>

65 Convention on Social Security between the Government of the UK of Great Britain and NI and the Government of Ireland, 1 February 2019.

66 Memorandum of Understanding between the Government of Ireland and the Government of the UK of Great Britain and NI Concerning the Common Travel Area and Associated Reciprocal Rights and Privileges, 8 May 2019.

67 Colin Murray, Aoife O'Donoghue and Ben Warwick, 'Discussion Paper on Brexit' (NIHRC and IHREC, 2019).

68 Sylvia de Mars, Colin Murray, Aoife O'Donoghue and Ben Warwick, 'Discussion Paper on the Common Travel Area' (NIHRC and IHREC, 2019).

69 Amanda Kramer, Rachael Dickson and Anni Poes, 'Evolving Justice Arrangements Post-Brexit' (NIHRC and IHREC, 2019).

70 Agreement between the Government of the UK and the Government of Ireland, 10 April 1998, at paragraph (vi), recognises "the birthright of all the people of NI to identify themselves and be accepted as Irish or British, or both, as they may so choose".

71 PE-CONS 71-19, 'Regulation (EU) 2019 of the European Parliament and the Council of Amending Regulation (EU) 2018/1806 Listing the Third Countries Whose Nationals Must Be in Possession of Visas when Crossing the External Borders and Those Whose Nationals are Exempt from that Requirement, as Regards the Withdrawal of the UK from the Union', 4 April 2019.

the UK that “under this Government they will have the absolute certainty of the right to live and remain”.⁷²

The Immigration (European Economic Area Nationals) (EU Exit) Order 2019, enables European Economic Area nationals or Swiss nationals to enter the UK after Brexit, for a period of three months. The Order imposes no restriction on the activities they may undertake, thus allowing them to work or study. This provides an interim arrangement in a ‘no deal’ situation where new immigration law is not in place. It will come into effect when the free movement regulations are revoked – either exit day if there is no deal, or the end of the transition period.

The Withdrawal of the UK from the EU (Consequential Provisions) Act 2019 was enacted in Ireland in March 2019. The Act seeks to mitigate the impact of a no deal exit and provide continuity, where possible, in North-South co-operation. Furthermore, the Tánaiste announced that the Irish Government would underwrite the cost of maintaining the European Health Insurance Card for everyone in NI, in the event of a no-deal exit.⁷³

On 17 October 2019, a revised Withdrawal Agreement between the UK Government and the EU was published, which included an amended Ireland/NI Protocol. Article 2 on individual rights, including the ‘no diminution of rights’ commitment and the establishment of a dedicated mechanism for oversight, was retained as drafted in the Withdrawal Agreement 2018. Omitted from the revised Protocol were the non-regression commitments on labour and social standards and environmental protection.⁷⁴

In November 2018, after publication of the previous Withdrawal Agreement, the Commission had agreed, in principle, to form part of the dedicated mechanism, in partnership with the Equality Commission NI, subject to effective statutory powers and sufficient resources being made available. Furthermore, the Commission argued that such a mechanism should not be the only method of enforcement: that provision should also be made for individual rights of enforcement and access to legal aid for those on low incomes.

On 21 October 2019, the EU (Withdrawal Agreement) Bill was introduced in the UK Parliament. The Bill passed its second reading, but fell when the UK Parliament was dissolved on 5 November 2019, ahead of elections. The Bill provided for all rights, powers, liabilities, obligations and remedies under the Withdrawal Agreement to be enforceable in UK law. Schedule 3 included specific protection for Protocol Article 2 on individual rights and placed the dedicated mechanism on a statutory footing, conferring functions on the Commissions to monitor, supervise, advise and report on Article 2(1), and granting powers to initiate and support related legal challenges. The Bill also provided for citizens’ rights, a transition period

72 ‘Boris Johnson: First speech as PM in full’, *BBC News*, 24 July 2019.

73 Jayne McCormack, ‘Brexit: Coveney in pledge on European health insurance cards’, *BBC News*, 17 April 2019.

74 HM Government, ‘Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community’ (HM Government, 2019).

running until December 2020 and financial liabilities under the Withdrawal Agreement.⁷⁵

On 19 October 2019, as required by the EU (Withdrawal) (No 2) Act 2019 (referred to as the Benn Act), Prime Minister Boris Johnson wrote to the European Council seeking an extension to the terms of the UK's Article 50 notice of withdrawal from the EU. The extension was granted, as requested, until 31 January 2020.⁷⁶

75 Parliament UK, 'EU (Withdrawal Agreement) Bill 2019-20'. Available at: <https://publications.parliament.uk/pa/bills/cbill/2019-2020/0007/20007.pdf>

76 Jon Stone, 'EU grants Brexit extension until February next year', *The Independent*, 28 October 2019.

Chapter 3 – Issues needing immediate action

Red issues are those that require immediate action by the UK Government, NI Executive or relevant public authorities and the issue may be an ongoing violation or abuse of human rights within NI.

The negative impact of the suspension of the NI Assembly and Executive is exemplified by the consistent rise in red issues. In 2014, when the traffic light system was introduced to the annual statement, there were five issues that required immediate action. With the collapse of the devolved institutions in January 2017, this rose to ten in 2017 and 12 in 2018. In 2019, the red issues have increased again to 13.

This chapter sets out the updates from 2019 in relation to the red issues and the Commission's respective recommendations in detail. For details that provide the context to these, please see the Annual Statement 2018.⁷⁷

77 NI Human Rights Commission, 'The 2018 Annual Statement: Human Rights in NI' (NIHRC, 2018).

Right to Life



Conflict related investigations: transitional justice and individual cases

In 2019, the UN CAT Committee recommended the UK Government “take urgent measures to advance and implement the Stormont House Agreement and the mechanisms it contemplates for investigating conflict-related violations, particularly the Historical Investigations Unit”.⁷⁸ The UN CAT Committee also recommended the UK Government “refrain from enacting amnesties or statutes of limitations for torture or ill-treatment”, which are inconsistent with UN CAT.⁷⁹

The UN CAT Committee’s recommendations are supported by the UN Human Rights Committee,⁸⁰ and Pablo de Greiff, the then UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and guarantees of non-repetition.⁸¹

Furthermore, in March 2019, the Council of Europe Committee of Ministers reiterated its deep regret that the implementation of the *McKerr* group judgments by the ECt.HR has still not occurred.⁸²

Stormont House Agreement

On 23 December 2014, the Stormont House Agreement was reached.⁸³ The Agreement sets out a structure for the effective investigation of conflict related deaths including the Oral History Archive;⁸⁴ Victims and Survivors’ Services (including a Mental Trauma Service, pension for severely physically injured victims, and advocate-counsellor assistance);⁸⁵ the Historical Inquiries Unit;⁸⁶ the Independent Commission on Information Retrieval;⁸⁷ and the Implementation and Reconciliation Group.⁸⁸ The UK Government has committed within the financial annex of the Stormont House Agreement to provide up to £150 million over 5 years to help fund the bodies to deal with the past.⁸⁹

In July 2019, the NI Office published a summary of the 17,000 responses to the legacy consultation. This document will be used to inform the UK Government’s next steps, which will be set out “in due course”.⁹⁰ The overarching message from the majority of respondents was “the

78 CAT/C/GBR/CO/6, ‘UN Committee against Torture Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at paras 41(a) and 41(b).

79 Ibid, at para 41(f).

80 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 11(b).

81 A/HRC/34/62/Add.1, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI’, 17 November 2016, at para 39.

82 CM/Notes/1340/H46-30, ‘Council of Europe Committee of Ministers: McKerr Group v the UK – Supervision of the Execution of the European Court’s Judgments’, 14 March 2019. See also CoE Committee of Ministers, ‘McKerr Group v UK (Application No 28883/95) – Supervision of the Execution of the Court’s Judgments’, 1259th Meeting, 7-8 June 2016.

83 Stormont House Agreement, 23 December 2014.

84 Ibid, at para 22.

85 Ibid, at paras 26-29.

86 Ibid, at para 30.

87 Ibid, at para 41.

88 Ibid, at para 51.

89 NI Office, ‘Stormont House Agreement: Financial Annex’ (NIO, 2014), at 1. The Stormont House Agreement includes a further broad financial commitment to all sections covered within the Agreement. It is stated within the Financial Annex that: ‘the total value of the Government’s package is additional spending power of almost £2 billion’.

90 NI Office, ‘Press Release: Government Publishes Summary of Responses to Legacy Consultation’, 5 July 2019

current system needs to be reformed”.⁹¹ The NI Office accepted it has “an obligation to seek to address the legacy of the past in a way that builds for the future... [and confirmed that the UK] Government remains fully committed to the implementation of the Stormont House Agreement”.⁹²

Statute of limitations

In April 2017, the Defence Select Committee issued a report on investigation into fatalities in NI involving British military personnel, in the report the Committee recommended “the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces”.⁹³

In May 2019, Penny Mordaunt MP, the then Secretary of State for Defence stated a commitment to “provide formal input to any process taken forward by the NI Office resulting from the Stormont House Agreement”.⁹⁴ This included sharing the Ministry of Defence’s “experience of the practical difficulties of investigating historical allegations from Iraq and Afghanistan and the unintended consequences that resulted from it, and the impact this has had on Armed Forces personnel”.⁹⁵

In March 2019, the Public Prosecution Service NI issued decisions regarding 19 individuals reported for a range of offences relating to ‘Bloody Sunday’, including murder, attempted murder and wounding committed on 30 January 1972. The Director of Public Prosecutions is prosecuting one former soldier, Soldier F, for the murders of James Wray and William McKinney and for the attempted murders of Joseph Friel, Michael Quinn, Joe Mahon and Patrick O’Donnell.⁹⁶

The NI (Executive Formation etc) Act 2019, section 3(8), requires that the Secretary of State publishes a report on:

progress made towards protecting veterans of the Armed Forces and other security personnel from repeated investigation for Troubles-related incidents by introducing a presumption of non-prosecution, in the absence of compelling new evidence, whether in the form of a Qualified Statute of Limitations or by some other legal mechanism.

Section 3(9) further provides that the report:

must include a report on progress made towards developing new prosecution guidance for legacy cases of Troubles-related incidents by the Attorney General for NI to take into account whether or not the person who allegedly committed an offence had the means to do so because that person had been lawfully supplied with a deadly weapon, with a presumption in favour of prosecuting in cases where a person who has allegedly committed an offence had the means to do

91 NI Office, ‘Addressing the Legacy of NI’s Past: Analysis of the Consultation Responses’, (NIO, 2019), at 4.

92 Ibid.

93 House of Commons Defence Select Committee, ‘Investigations into Fatalities in NI involving British Military Personnel: Seventh Report of Session 2016–17: HC 1064’, 26 April 2017.

94 Parliament UK, ‘Legal Protections and Support for Armed Forces Personnel and Veterans: Written Statement: HCWS1575 – Penny Mordaunt’, 21 May 2019.

95 Ibid.

96 Public Prosecution Service NI, ‘Press Release: Bloody Sunday prosecution decisions’, 14 March 2019.

so because that person had been unlawfully supplied with a deadly weapon.

However, it has since been confirmed that:

under the Justice (NI) Act 2002, the Attorney General for NI does not superintend the Director of Public Prosecutions for NI and therefore is not able to either issue prosecution guidance to the Director of Public Prosecutions or direct the Director of Public Prosecutions to issue such guidance. It is not within the UK Government's powers to direct the Attorney General for NI, recognising that under the Justice (NI) Act 2002, justice is a devolved matter. The UK Government has no plans to alter the current division of responsibilities, and independence as between, the Director of Public Prosecutions and the Attorney General for NI.⁹⁷

Instead, the UK Government:

will continue working with the NI political parties, the Irish Government and the relevant Civil Service departments and independent judicial bodies to consider the issues raised in the recent legacy consultation and to take forward an approach which reforms the current processes for dealing with the legacy of the Troubles which is effective, legally robust and commands consensus.⁹⁸

Recommendation

The Commission highlights concern that the UK has continued to fail to implement ECt.HR judgments stipulating measures to achieve effective investigations into 'Troubles-related' deaths. The Commission is particularly concerned that it has been eighteen years since the McKerr judgment and the ECt.HR's ruling is still not fully implemented. This continued failure is itself resulting in further findings of violations against the UK.

The Commission continues to recommend that the mechanisms for implementing the Stormont House Agreement are fully compliant with human rights law and urges the UK Government that this is enacted and implemented promptly. This includes recognising cases where individuals have died at the scene of a conflict-related incident as being within the scope of the Stormont House Agreement. It also includes introducing a mechanism or procedure to deal with investigations of allegations of torture, inhuman and degrading treatment.

The Commission continues to advise that a statute of limitation restricting the prosecution of State actors would amount to an amnesty. Such an amnesty to excuse acts constituting gross human rights violations and abuses (including the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment), would be incompatible with human rights law.

⁹⁷ NI Office, 'Report Pursuant to Sections 3(1), 3(6), 3(7), 3(8), 3(9) and 3(10) of the NI (Executive Formation etc) Act 2019 - Regarding Executive Formation; Transparency of Political Donations; Higher Education and a Derry University; Presumption of Non-prosecution; Troubles Prosecution Guidance; and Abortion Law Review' (Crown, 2019), at 20.

⁹⁸ Ibid.

Legacy inquests and inquiries

Between 2015 and 2019, the UN Human Rights Committee,⁹⁹ Pablo de Greiff, the then UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and guarantees of non-repetition,¹⁰⁰ and the Council of Europe Committee of Ministers have called for prompt, adequate and effective resourcing of legacy inquests and inquiries.¹⁰¹

The UN Committee against Torture¹⁰² and UN Human Rights Committee¹⁰³ have also specifically called for an inquiry into the killing of Patrick Finucane.

Legacy inquests

Funding for legacy inquests had been delayed for a number of years, despite the Lord Chief Justice, Sir Declan Morgan, making it clear that his plans for addressing legacy inquests were contingent on the necessary resources being allocated to allow for the creation of a Legacy Inquest Unit, to support the Coroner's Service.¹⁰⁴

On 28 February 2019, following a legal challenge,¹⁰⁵ the Department of Justice NI announced that a new Legacy Inquest Unit will be established within the Coroner's Service under the remit of the Lord Chief Justice. The Permanent Secretary of the Department of Justice NI identified the estimated cost would be £55 million over six years.¹⁰⁶ The Department of Justice confirmed that:

*funding for legacy inquests formed part of the discussions on departmental allocations agreed as part of the overall budget for 2019/2020.*¹⁰⁷

The announcement of the budget outcome allowed the work to proceed in 2019/2020. The Department of Justice has stated that:

*it is expected that funding requirements will be updated annually and considered as part of the local budget process.*¹⁰⁸

In June 2019, there was a legacy caseload of 54 cases relating to 95 deaths, including three cases relating to three deaths referred to the coroner by the Attorney General for NI since December 2018. A schedule has been set to hear preliminary hearings into all the outstanding cases starting September 2019, with the exception of the nine Stalker Sampson cases into an alleged RUC shoot-to-kill policy in the 1980s, a date for

99 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 11(b).

100 A/HRC/34/62/Add.1, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI', 17 November 2016, at para 39.

101 CM/Notes/1340/H46-30, 'Council of Europe Committee of Ministers: McKerr Group v the UK - Supervision of the Execution of the European Court's Judgments', 14 March 2019.

102 CAT/C/GBR/CO/6, 'UN Committee against Torture, Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 41(d).

103 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.

104 'Legacy inquests in NI "can be dealt with in five years"', *BBC News*, 12 February 2016.

105 *In the Matter of an Application by Brigid Hughes for Judicial Review* [2018] NIQB 30, at para 12.

106 Department of Justice, 'Press Release: DOJ announces legacy inquest reform', 28 February 2019.

107 *Ibid.*

108 *Ibid.*

which is to be set in due course. The first full hearings are to start in April 2020 and a thematic approach to the hearing schedule is being considered to avoid the potential of missing a bigger picture.¹⁰⁹

In September 2019, the Lord Chief Justice, Declan Morgan, confirmed that “representatives for the families and the relevant agencies have been asked to provide an update on each case in advance of these hearings”.¹¹⁰ The Lord Chief Justice also emphasised that:

*it is important that all those involved work together to ensure that legacy inquest cases are prepared for hearing expeditiously and that disclosure issues are identified early and, through collaboration and dialogue, that reasonable and proportionate solutions are found.*¹¹¹

Finucane

In 2015, the Finucane family unsuccessfully challenged in the NI High Court the decision of the then Secretary of State of NI to hold a review into the death rather than a public inquiry of the kind recommended following a judicial review by Judge Peter Cory.¹¹² A further appeal to the NI Court of Appeal in 2017 was unsuccessful.¹¹³

On 27 February 2019, the UK Supreme Court unanimously made a declaration that there has not been an Article 2 compliant inquiry into the death of Patrick Finucane. The UK Supreme Court identified the lack of ability of Sir Desmond to compel the attendance of witnesses or cross-examine witnesses on the veracity of their evidence as limitations of the De Silva review.¹¹⁴

The UK Supreme Court did not order a public inquiry, noting that:

*it is for the State to decide, in light of the incapacity of Sir Desmond de Silva’s review and the inquiries which preceded it to meet the procedural requirement of Article 2, what form of investigation, if indeed any is now feasible, is required in order to meet that requirement.*¹¹⁵

To date, the UK Government has not set out how it will proceed following the judgment. As a result, the Finucane family has commenced further legal proceedings.¹¹⁶

109 ‘Families assured over timeframe for legacy inquests’, *Belfast Telegraph*, 7 June 2019.

110 ‘The Lord Chief Justice, Declan Morgan’s, Opening of Term Address 2019’, Royal Courts of Justice, 5 September 2019.

111 Ibid.

112 *Finucane’s (Geraldine) Application* [2015] NIQB 57.

113 ‘Finucane family consider legal options after losing appeal for public inquiry’, *Belfast Telegraph*, 21 February 2017.

114 *In the Matter of an Application by Geraldine Finucane for Judicial Review (NI)* [2019] UKSC 7.

115 Ibid, at para 153.

116 Julian O’Neill, ‘Pat Finucane: Family to launch legal action to public inquiry’, *BBC News*, 26 September 2019.

Recommendation

The Commission calls on the NI Executive and UK Government to continue to support the work of the Legacy Inquests Unit, to ensure that all investigations are fully compliant with Article 2 of the ECHR. The Commission further urges that there are no undue delays to the identified hearing schedule and timeframe for the Legacy Inquest Unit.

The Commission further recommends that an Article 2 right to life compliant inquiry is conducted as soon as possible into the death of Patrick Finucane, in line with the judgment of the UK Supreme Court.

Right to liberty and security of person

The remand of children

In June 2016, the UN CRC Committee noted that throughout the UK, including NI:

*the number of children in custody remains high, with disproportionate representation of ethnic minority children, children in care, and children with psycho-social disabilities, and detention is not always applied as a measure of last resort.*¹¹⁷

The UN CRC Committee recommended that the UK Government and NI Executive:

*establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children.*¹¹⁸

In March 2016, the report of an internal scoping study into children in the justice system was published.¹¹⁹ One of the recommendations that emerged was “to develop the disposals available to the judiciary and reduce the use of custody to make it truly a measure of last resort”.¹²⁰ In May 2017, the Department of Justice confirmed that implementation of these recommendations is subject to a functioning NI Assembly and Executive.¹²¹

In December 2018, the Department of Health and Department of Justice published a review of regional specialist facilities for children and young people in NI.¹²² The primary recommendation of the review was the establishment of a new integrated Regional Care and Justice Campus for

¹¹⁷ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 77.

¹¹⁸ Ibid.

¹¹⁹ Minister of Justice, 'Children in the Justice System: Scoping Study, Ministerial Statements - in the NI Assembly', 14 March 2016.

¹²⁰ Ibid.

¹²¹ Declan McGeown, 'Scoping Study Stakeholder Update' (DoJ, 2017).

¹²² Health and Social Care Board, 'Review of Regional Facilities for Children and Young People: Review Report', (HSCB, 2019).

NI, which would encompass the current Secure Care Centre at Lakewood and the Juvenile Justice Centre at Woodlands.¹²³

Between 2014/15 and 2018/19, there has been a general increase in the proportion of movements in the Juvenile Justice Centre attributed to the Police and Criminal Evidence Act 1984 (36.1 per cent in 2014/15 to 49.9 per cent in 2018/19).¹²⁴ The proportions of movements attributed to remand have decreased over this five year period (54.1 per cent in 2014/15 to 44.2 per cent in 2018/19).¹²⁵ Sentence movements have also decreased over the same period (9.8 per cent in 2014/15 to 5.9 per cent in 2018/19).¹²⁶

Throughout 2019, the Departments have taken steps towards the introduction of an integrated care and justice campus in NI, including through the establishment of a stakeholder reference group, which the Commission are serving as an observer on.

Recommendation

The Commission notes the high number of children held in pre-trial detention in NI. The Commission calls on the Department of Justice to introduce legislative amendments that clearly enshrine the principle that a child should be held in pre-trial detention only as a measure of last resort and that suitable accommodation will be provided within a reasonable time if released on bail. In addition, a range of non-custodial accommodation arrangements should be developed for children awaiting trial who cannot return to their homes.

Freedom from torture, inhuman and degrading treatment

Physical punishment of children

In July 2016, the UN CRC Committee again recommended an abolition of corporal punishment of children in the UK.¹²⁷

The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable punishment of a child, and provides that this is a defence to a charge of common assault tried summarily. On 7 November 2019, the Children (Equal Protection from Assault) (Scotland) Act was given Royal Assent. This Act prohibits the physical punishment of children by parents and others caring for them passed the first stage debate in the Scottish Parliament. A Bill that would abolish the common law defence of reasonable chastisement and adopt a holistic approach was introduced to the Welsh Assembly. At the time of writing, the Welsh Bill was at Stage 3.¹²⁸ Furthermore, in Ireland, the Children Act 2011 and Children First Act 2015 abolished the statutory and common law defence of reasonable chastisement.

123 Ibid, at 100.

124 Department of Justice, 'Youth Justice Agency Annual Workload Statistics 2018/19' (DoJ, 2019), at 15.

125 Ibid.

126 Ibid.

127 CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 40.

128 Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill.

In May 2019, the Commission, in conjunction with the NI Commissioner for Children and Young People, launched an animation to support equal protection for children under the law in NI.¹²⁹ Julie Morgan, Deputy Minister for Health and Social Services in the Welsh Assembly, spoke at the launch.

Recommendation

The Commission recommends that the Department of Justice repeal the defence of reasonable chastisement of a child and devise and implement a strategy to effectively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the use of physical punishment in child-rearing.

Freedom from slavery



Child, early and forced marriage

Reflecting its General Comments No 4 and 20,¹³⁰ in May 2016, the UN CRC Committee recommended that the UK Government and the NI Executive raise the minimum age of marriage to 18 years.¹³¹ In 2019, UN CEDAW Committee and UN CAT Committee emphasised the need for the UK Government and the NI Executive to strengthen efforts and effectiveness in combating forced marriage, including preventative and protection measures.¹³²

The Marriage (NI) Order 2003, which is a responsibility of the Department of Finance, permits the marriage of a child aged 16 or 17 years with the consent of their parents or legal guardians or the courts. In 2018, there were 35 girls and 14 boys married in NI.¹³³

In September 2018, the Marriage and Civil Partnership (Minimum Age) Bill 2017-19 was introduced to the House of Commons under the ten minute rule. The Bill sought to raise the minimum age of consent to marriage or civil partnership to eighteen. The Bill failed to complete its passage through the UK Parliament before the end of the 2017-2019 session. This means the Bill will make no further progress.¹³⁴

In May 2019, the Commonwealth Lawyers Association published its report on the role of the law in eliminating child marriage in the Commonwealth.¹³⁵ In September 2019, Chief Commissioner, Les Allamby,

129 NI Human Rights Commission, 'Press Release: Corporal Punishment of Children - United Call to Support Equal Protection for Children in NI', 29 May 2019.

130 CRC/GC/2003/4, 'UN CRC Committee General Comment No 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child', 1 July 2003, at para 20; CRC/C/GC/20, 'UN CRC Committee General Comment No 20: Implementation of the Rights of the Child during Adolescence', 6 December 2016, at para 40.

131 CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 19.

132 CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eight Periodic Report of UK of Great Britain and NI', 8 March 2019, at para 59(b); CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 57(f).

133 Statistics provided to NI Human Rights Commission by NI Statistics and Research Agency, 8 November 2019.

134 Parliament UK, 'Marriage and Civil Partnership (Minimum Age) Bill 2017-19'. Available at: <https://services.parliament.uk/Bills/2017-19/marriageandcivilpartnershipminimumage.html>

135 Commonwealth Lawyers Association, 'The Role of the Law in Eliminating Child Marriage in the Commonwealth: Why More Action is Needed' (CLA, 2018).

addressed the Commonwealth Lawyers Association on the issue of child, early and forced marriage at its seminar in Belfast.

Recommendation

The Commission recommends legislation is introduced to repeal all legal provisions permitting the marriage of children in NI and increase the minimum age for marriage to 18 years, for both girls and boys. The Commission further recommends that efforts to combat forced marriages are strengthened, including by sensitizing parents on the need for full and free consent of their daughter or son, to her or his marriage. Any costs for repatriation of victims should also be paid.

Children missing from care

In 2016, the UN CRC Committee expressed concerns about the practice of children in NI being placed in secure accommodation and recommended that the NI Executive:

*ensure that secure accommodation in NI is only used as a measure of last resort and for the shortest possible period of time, address the reasons for repeated or lengthy stays in such accommodation and develop alternatives to secure accommodation.*¹³⁶

In the course of the Commission's community engagements, the issue of children going missing from care facilities has been raised on a frequent basis.

The Children (NI) Order 1995, Article 44, sets out the conditions under which a child can be placed in secure accommodation, including where they are likely to abscond and likely to suffer significant harm if they do abscond.¹³⁷ However, reports have suggested that the use of secure accommodation does not deal with the underlying issue in respect of going missing from care and that there is also a problem with accessing secure accommodation when it is needed.

In 2019, joint work between the Health and Social Care Board and Police Service NI on addressing the issue of children going missing from care has been ongoing. The Commission understands this work includes an agreed definition of missing person, a consultation on a revision of the Missing Children Protocol and prevention measures being put in place across the NI Trusts. A Children's Strategy and the Looked After Children's Strategy are due to be published in early 2020.

The Commission has taken forward a project analysing the human rights issues relating to preventing children leaving care institutions without permission. It is anticipated this will be finalised by the end of the financial year 2019/2020.

¹³⁶ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016.

¹³⁷ Article 44, Children Order (NI) 1995.

Recommendation

The Commission is concerned at the number of children who have regularly gone missing from care and continues to monitor this situation, working with all parties involved. The Commission recommends that the key agencies implement a strategic, human rights based approach to address the factors contributing to the high number of children going missing from care.

Child sexual exploitation

Between 2015 and 2019, the UN CRC Committee and UN CEDAW Committee have repeatedly raised the need to shift the burden of proof from the prosecution to the perpetrator in legislation governing specific sexual offences.¹³⁸ In particular:

*the Sexual Offences (NI) 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.*¹³⁹

Inquiry

An Independent Inquiry into Child Sexual Exploitation in NI initiated by the Ministers for Health, Justice and Education published its report in November 2014.¹⁴⁰ The recommendations address the need for legislative reform in a number of areas, including addressing a gap in protection under the Sexual Offences (NI) Order 2008.¹⁴¹

In February 2019, the Department of Justice commenced a consultation that considered a number of proposals aimed at implementing the Independent Inquiry into Child Sexual Exploitation in NI's recommendations.¹⁴² The Commission responded to the consultation broadly welcoming the proposal and encouraging the Department to bring forward proposals for reform at the first available opportunity.¹⁴³

138 CRC/C/OPSC/GBR/CO/1, 'UN CRC Committee Concluding Observations on the Report Submitted by the UK 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', 8 July 2014, at para 29; CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 35(g).

139 CRC/C/OPSC/GBR/CO/1, 'UN CRC Committee Concluding Observations on the Report Submitted by the UK 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', 8 July 2014, at para 27.

140 Kathleen Marshall, 'Child Sexual Exploitation in NI Report of the Independent Inquiry' (RQIA, 2014), at 149.

141 Ibid, at Recommendation 14.

142 Meeting between Department of Justice and NI Human Rights Commission, 23 October 2018.

143 NI Human Rights Commission, 'Submission to Department of Justice's Review of the Law on Child Sexual Exploitation' (NIHRC, 2019).

Recommendation

The Commission remains deeply concerned that a defendant charged under the Sexual Offences (NI) Order 2008 may claim that he or she believed the victim to be above 16 years, thus requiring the prosecution to prove that the defendant did not reasonably believe this. It calls on the Department of Justice to expedite the fulfilment of its human rights obligations as required by the UN CRC and UN CEDAW and to introduce legislation to ensure the burden of proof is reversed to protect child victims of sexual offences.

Right to fair trial and the administration of justice

Age of criminal responsibility

In 2016, the UN CRC Committee once again recommended that the UK Government and NI Executive:

*raise the minimum age of criminal responsibility in accordance with acceptable international standards.*¹⁴⁴

In 2019, the UN CRC Committee's General Comment No 24 stated:

*under Article 40(3) of the [UN CRC] Convention, States parties are required to establish a minimum age of criminal responsibility, but the article does not specify the age. Over 50 States parties have raised the minimum age following ratification of the [UN CRC] Convention, and the most common minimum age of criminal responsibility internationally is 14. Nevertheless, reports submitted by States parties indicate that some States retain an unacceptably low minimum age of criminal responsibility.*¹⁴⁵

The age of criminal responsibility remains at ten years old in NI, as in England and Wales. In June 2017, Lord Dholakia introduced a Private Members Bill in the House of Lords that would raise the age of criminal responsibility from ten to twelve in England and Wales.¹⁴⁶ This Bill failed to complete its passage through Parliament before the end of 2017-2019 session, meaning it will make no further progress.¹⁴⁷ In June 2019, the Age of Criminal Responsibility (Scotland) Act 2019 received Royal Assent, thus raising the age of criminal responsibility in Scotland to twelve.¹⁴⁸

In 2011, a Department of Justice review also concluded that “the minimum age should be increased to 12 forthwith and, following a period of review and preparation, perhaps to 14, which has some historical and current significance for criminal law in NI”.¹⁴⁹ Raising the minimum age of criminal

144 CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 79.

145 CRC/C/GC/24, 'UN CRC Committee General Comment No 24 (2019) on Children's Rights in the Child Justice System', 18 September 2019, at para 21.

146 Parliament UK, 'Age of Criminal Responsibility Bill [HL] 2017-2019'. Available at: <https://services.parliament.uk/Bills/2017-19/ageofcriminalresponsibility.html>

147 Parliament UK, 'Age of Criminal Responsibility Bill [HL] 2017-2019'. Available at: <https://services.parliament.uk/bills/2017-19/ageofcriminalresponsibility.html>

148 Age of Criminal Responsibility (Scotland) Act 2019.

149 Department of Justice, 'A Review of the Youth Justice System in NI' (DoJ, 2011), at 107.

responsibility to 14 also fits with the findings of the UN CRC Committee in its General Comment No 24.¹⁵⁰

Recommendation

In light of the UN CRC Committee's General Comment No 24, the Commission calls on the Department of Justice to introduce legislation to the NI Assembly, which raises the minimum age of criminal responsibility to fourteen.

Compensation for a miscarriage of justice

The Anti-social Behaviour, Crime and Policing Act 2014 redefined the test for a miscarriage of justice to require an applicant who has been wrongfully imprisoned to prove his or her innocence of a crime in order to obtain compensation.¹⁵¹ This new test applies for all offences in England and Wales and for offences related to terrorism in NI. The new test is contained within Criminal Justice Act 1988, section 133(1ZA).

The Commission had previously advised that this approach was a disproportionate limitation of the UN ICCPR, Article 14(6), which states:

*when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributed to him.*¹⁵²

In January 2019, the UK Supreme Court considered an application that Criminal Justice Act 1988, section 133 was unlawful, as it was contrary to the presumption of innocence within Article 6(2) ECHR.¹⁵³ By a majority of five-to-two, the Supreme Court dismissed the application that the law violated the ECHR and declined to make a declaration of incompatibility.¹⁵⁴ Lead judgment was given by Lord Mance, who, when considering whether the Supreme Court was bound by the reasoning of the 2013 ECt.HR judgment of *Allen v UK*,¹⁵⁵ did not feel that the ECt.HR had set a clear precedent. He stated "speaking for myself, I cannot regard the current state of ECt.HR's case law as coherent or settled on the points critical to this appeal".¹⁵⁶

One of the applicants indicated he will appeal to the ECt.HR.¹⁵⁷

150 CRC/C/GC/24, 'UN CRC Committee General Comment No 24 (2019) on Children's Rights in the Child Justice System', 18 September 2019, at para 21.

151 The Anti-social Behaviour, Crime and Policing Act 2014 makes amendments to section 133 of the Criminal Justice Act 1988.

152 NI Human Rights Commission, 'The 2013 Annual Statement: Human Rights in NI' (NIHRC, 2013), at 29.

153 *R (on the application of Hallam) (Appellant) v Secretary of State for Justice (Respondent)* [2019] UKSC 2.

154 *Ibid.*

155 *Allen v UK* (2013) 63 EHRR 10.

156 *R (on the application of Hallam) (Appellant) v Secretary of State for Justice (Respondent)* [2019] UKSC 2, at para 73.

157 'Innocent, jailed and uncompensated: these are the men our system fails', *The Guardian*, 31 January 2019.

Recommendation

The Commission calls on the UK Government to review the test for a miscarriage of justice, in line with the UN Human Rights Committee's concluding observation, to ensure its compatibility with the UN ICCPR, Article 14(6).

Right to private and family life

Access to financial support for unmarried couples

In August 2018, the UK Supreme Court ruled that the requirement that couples are married in order to access Widowed Parent's Allowance was in violation of the right to private and family life under Article 8 ECHR and was also discriminatory, contrary to Article 14 ECHR.¹⁵⁸

Despite the UK Supreme Court's ruling, substantive proposals to change the law have yet to be introduced in Westminster. In April 2019, the House of Common's Work and Pensions Committee announced an inquiry into bereavement benefits to "press the Government on its progress in responding to the 2018 Supreme Court ruling".¹⁵⁹

In October 2019, the Work and Pensions Committee published its report, noting:

*we are keen to end the delay faced by bereaved families to accessing the support they need and to which they should be entitled. The Department has acted too slowly in response to the McLaughlin judgment. One option may have been to bring forward a Remedial Order. However, the [UK] Government has not committed to doing so, and it is unclear if such an order would in any case be able to amend the eligibility criteria for Bereavement Support Payment. Ex gratia payments would not change the underlying eligibility criteria for either benefit. It may therefore be easier and quicker to deal with both Widowed Parent's Allowance and Bereavement Support Payment in primary legislation, since the same issue is at stake: how to support families in which the partners are not in a legally recognised relationship.*¹⁶⁰

The Work and Pensions Committee recommended that the UK Government:

consult on options for reform of both Widowed Parent's Allowance and Bereavement Support Payment. Those options should include:

- a) Making children directly eligible for bereavement benefits; and*
- b) Recognising cohabitation in a similar way to elsewhere in the benefits system.*

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

159 House of Common's Work and Pensions Select Committee, 'Press Release: Committee opens follow-up inquiry into "profound injustice" in bereavement benefits,' 9 April 2019.

160 House of Commons Work and Pensions Committee, 'Bereavement Support Payment - First Report of Session 2019-20' (WPC, 2019), at para 64.

*The [UK] Government should start the consultation as soon as possible, and, in any event, before the end of 2019 in order to meet its stated aim of ‘making bereavement benefits more accessible’ as quickly as possible.*¹⁶¹

A change to the law in NI may be delayed until the NI Executive is restored.¹⁶²

Commission’s case

In August 2018, the Commission issued proceedings on behalf of an individual who was denied access to her late partner’s pension by the Ministry of Defence, on the grounds that they were not married. The Commission argues that there is no objective and justifiable reason for treating the individual differently to a married woman in her circumstances and that the failure to make provision for her, and others like her, is in violation of the right to private and family life (Article 8 ECHR), the right to peaceful enjoyment of possessions (Article 1 of the First Protocol ECHR) and is discriminatory contrary to Article 14 ECHR.

The case is due to be heard in late 2019.

Recommendation

The Commission is concerned that access to certain social security benefits and pensions on the grounds of marriage/civil partnership discriminates against those who are unmarried, with particular ill-effect on women, children and same sex couples. The Commission recommends that the criteria for social security benefits and pensions is widened to allow couples in long term, cohabiting relationships access to these benefits.

Right to an adequate standard of living and to social security

Anti-poverty strategy

In 2016, the UN ICESCR Committee, recommended that an anti-poverty strategy was adopted in NI.¹⁶³ In April 2019, Professor Philip Alston, the UN Special Rapporteur on Extreme Poverty, published a report on his visit to the UK, warning that “in NI, the suspension of the devolved coalition government forecloses the possibility of any major efforts to tackle poverty and results in an accountability vacuum”.¹⁶⁴

In June 2015, the NI High Court ruled that the NI Executive had failed to adopt an identifiable strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need in furtherance of its obligation to do so under the NI Act 1998,

¹⁶¹ Ibid, at para 75.

¹⁶² Allan Preston, ‘NI mum facing Stormont delay after Supreme Court victory on pensions for unmarried widows’, *Belfast Telegraph*, 31 August 2018.

¹⁶³ E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 48.

¹⁶⁴ A/HRC/41/39/Add.1, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights: Visit to the UK of Great Britain and NI’, 23 April 2019, at para 87.

section 28E.¹⁶⁵ An anti-poverty strategy based on objective need remains outstanding.

Recommendation

The Commission stresses that the continued failure of the NI Executive to introduce an Anti-poverty Strategy in NI based on objective need is unacceptable and should be remedied urgently. The Commission continues to highlight the disproportionate, adverse impact that social security measures introduced since 2010 are having on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups. It recommends that the NI Executive introduce measures to guarantee targeted support to all those living in poverty or most at risk of poverty, including women, persons with disabilities, single parent families, and families with children.

Right to health



Termination of pregnancy

In March 2019, the UN CEDAW Committee, with reference to paragraph 8 of the present concluding observations, and noting Article 33 of the Belfast Agreement or the Good Friday Agreement of 1998, recommended:

*that the Westminster Parliament shall legislate as necessary to ensure that the UK's international obligations are met in respect of NI, the Committee urges the State party to implement, without further delay, the recommendations contained in the Committee's report following its inquiry under article 8 of the Optional Protocol to the [UN CEDAW] Convention.*¹⁶⁶

The 2018 UN CEDAW Inquiry report also recommended that the UK Government and NI Executive “protect women from harassment by anti-abortion protestors by investigating complaints and prosecuting and punishing perpetrators”.¹⁶⁷

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

ensure that all women and girls in the State party, including in NI, have effective access to termination of pregnancy in situations in which its continuation is likely to result in severe pain and suffering, such as when the pregnancy is the result of rape or incest or in cases of fatal foetal impairment, in addition to cases in which the life or health of the pregnant person is at risk. The State party should also ensure that women and girls in NI have effective access to post-abortion health care and that neither patients nor their doctors face

¹⁶⁵ *The Committee on the Administration of Justice (CAJ) and Brian Gormally's Application* [2015] NIQB 59.

¹⁶⁶ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 47.

¹⁶⁷ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 86(g).

*criminal sanctions or other threats for seeking or providing such care.*¹⁶⁸

In April 2019, the House of Commons Women and Equalities Committee published its inquiry report into abortion law in NI. The Commission gave evidence to inform the Committee's report. While recognising the principle of devolution, the report noted:

*devolution does not remove the UK Government's own responsibilities to comply with its international obligations and internal laws cannot be used to justify a failure to comply with human rights standards.*¹⁶⁹

The UK Government responded that:

under the NI devolution settlement (enacted through the NI Act 1998), the following areas, relevant to the provision of abortion services, are 'transferred matters' and therefore devolved in NI: health and social services; equal opportunities (including as provided for in equality law); and justice and policing.

While Westminster retains power to legislate, that is subject to the Sewel Convention; and during the current period in the absence of devolved government, while the Secretary of State for NI has sought to legislate in respect of devolved matters this has only been taken forward where necessary to maintain the delivery of public services and good governance.

*It remains the UK Government's preference that questions of reform or legislative changes to the law or policy in these areas are matters that remain properly within the competence of the NI Assembly and Executive.*¹⁷⁰

The NI (Executive Formation etc) Act 2019, section 9, provided that if the NI Executive was not restored by 21 October 2019, a number of legal duties would arise for the Secretary of State for NI. This included a requirement that the Secretary of State for NI would ensure that the recommendations in paragraphs 85 and 86 of the UN CEDAW Committee's report are implemented in respect of NI and that any changes to the law by regulation are passed by 31 March 2020. Section 9 requires the repeal of sections 58 and 59 of the Offences against the Person Act 1861 in NI and a moratorium on investigation and prosecution under these provisions. As of the 22 October 2019, termination of pregnancy was decriminalised in NI and the moratorium on criminal investigation and prosecutions came into effect.

The NI Office has also issued interim guidance for healthcare professionals for the period between 22 October and 31 March 2020. This confirms that, during this interim period, there will be no routine services available in NI.¹⁷¹ However, it does permit a health professional to treat a woman in NI

168 CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic report of the UK of Great Britain and NI', 7 June 2019, at para 47.

169 House of Commons Women and Equalities Committee, 'Abortion law in NI' (WEC, 2019), at para 51.

170 House of Commons Women and Equalities Committee, 'Abortion Law in NI: Government Response to the Committee's Eighth Report of Session 2017-19: Tenth Special Report of Session 2017-19' (HC, 2019), at 2.

171 NI Office, 'UK Government Guidance for Healthcare Professionals in NI on Abortion Law and Termination of Pregnancy in the period 22 October 2019 to 31 March 2020 in relation to the NI (Executive Formation etc) Act 2019' (NIO, 2019), at 4.

where a fatal or serious fetal anomaly has been detected.¹⁷² In all cases, the Central Booking Service in England will continue to provide advice, support and counselling and all travel and accommodation will be funded, irrespective of financial means.¹⁷³ The Commission provided formal advice to the Secretary of State for NI in advance of the guidance.

On 4 November 2019, the NI Office launched a public consultation on the new legal framework for abortion services in NI, in line with the NI (Executive Formation etc) Act 2019.¹⁷⁴ The consultation, in conjunction with the UN CEDAW Committee's recommendations, will inform the new legal framework, which is due to be in place by 31 March 2020. The NI Office has also published the equality screening document linked to the new legal framework.¹⁷⁵

Relevant legal cases

A judicial review against a prosecution of a mother for procuring abortion mediation on behalf of her 15 year old daughter under the Offences against the Person Act 1861. A mother is being prosecuted for procuring abortion medication on behalf of her 15 year old daughter. The hearing took place in November 2018. However, on 23 October 2019, in a review of the criminal proceedings, the judge directed the jury to formally acquit.

On 3 October 2019, the NI High Court held in the Sarah Ewart case that the current law is contrary to ECHR, Article 8, in cases of fatal foetal abnormality. In giving the judgment, Justice Keegan drew extensively on the UK Supreme Court judgement in the Commission's legal challenge to current abortion laws.¹⁷⁶

Intimidation at family planning clinics

In December 2017, the Marie Stopes clinic, which provided contraception and termination services in Belfast, was closed following the UK Government's move to fund terminations in other parts of the UK for women from NI.¹⁷⁷ In May 2018, the Family Planning Association, which advised on sexual and reproductive rights, was liquidated leading to the closure of its Belfast clinic.¹⁷⁸ Prior to the closure of these facilities, those seeking to access these family services regularly faced intimidation from protesters.¹⁷⁹

With the legal duty on the Secretary of State for NI to implement the UN CEDAW recommendations coming into effect, under the NI (Executive Formation etc) Act 2019, there is now a duty to protect women from

172 Ibid, at 5.

173 Ibid.

174 NI Office, 'A New Legal Framework for Abortion Services in NI - Implementation of the Legal Duty Under Section 9 of the NI (Executive Formation etc) Act 2019' (NIO, 2019).

175 NI Office, 'Section 75 Equality Screening Form: Establishment of a New Legal Framework for Abortion Services in NI (Implementation of Section 9 of the NI (Executive Formation etc) Act 2019' (NIO, 2019).

176 *Ewart's (Sarah Jane) Application* [2019] NIQB 88.

177 Marie Stopes, 'Press Release: Marie Stopes UK today (Tuesday 5 December) announced that it is closing its independent clinic in Belfast, following the UK Government's move to fund abortion treatment for Northern Irish women', 5 December 2017.

178 Family Planning Association, 'Home'. Available at: <http://www.fpa.org.uk/>

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

harassment by anti-abortion protesters by investigating complaints, prosecuting and punishing perpetrators.

Recommendation

The Commission welcomes the measures introduced under the NI (Executive Formation etc) Act 2019. These measures should be fully implemented within the determined timeframe and effectively in line with the UN CEDAW Committee's recommendations.



Relationship, sexuality and gender identity education

In 2018, the UN CEDAW Committee's Inquiry into the impact of restrictive access to termination of pregnancy for women and girls in NI, found that "NI youth are denied the education necessary to enjoy their sexual and reproductive health and rights"¹⁸⁰ and "that access to abortion services and contraceptives are not statutory requirements of the advisory curriculum".¹⁸¹ The UN CEDAW Committee strongly stated that:

*these factors point to State negligence in pregnancy prevention through failure to implement its recommended curriculum on Relationship and Sexuality Education and ensure age-appropriate, culturally sensitive, comprehensive and scientifically accurate sexuality education.*¹⁸²

In terms of access to reproductive health services and contraceptives, the UN CEDAW Committee noted:

*the centralised and limited availability of facilities in NI providing information, counselling and services in family planning, and particularly about options to access legal abortions in or outside NI. Furthermore, medical professionals are neither trained nor encouraged to provide information on abortion options and rely on this information being provided by non-governmental entities.*¹⁸³

This resulted in women having difficulties in obtaining modern forms of contraception.¹⁸⁴

The UN CEDAW Committee recommended that the NI Executive:

*make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation.*¹⁸⁵

¹⁸⁰ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women', 6 March 2018, at para 19.

¹⁸¹ Ibid, at para 44.

¹⁸² Ibid.

¹⁸³ Ibid, at para 45.

¹⁸⁴ Ibid, at para 46.

¹⁸⁵ Ibid, at para 86(d).

In 2019, the UN CEDAW Committee reiterated this recommendation in its concluding observations on the UK.¹⁸⁶

Relationships and sexuality education is a statutory component of key stages three and four,¹⁸⁷ however, a school can provide such education in line with its ethos,¹⁸⁸ which can include an opposition to contraception.

Women's Aid delivers 'Helping Hands', a preventative education programme funded by the Department of Education, to some NI primary schools.¹⁸⁹ However, this programme is not mandatory.

In October 2019, the Education Authority NI published its non-statutory guidance for supporting transgender pupils in schools, education other than at school centres, and youth services.¹⁹⁰

The NI (Executive Formation etc) Act 2019, section 9(1), states that:

the Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the UN CEDAW report are implemented in respect of NI.

These recommendations include the provision of education on sexual and reproductive health and “non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services”.¹⁹¹ At the time of writing, there was no indication as to how the relevant public authorities planned to implement this particular aspect of the UN CEDAW recommendations.

Recommendation

The Commission welcomes the measures introduced under the NI (Executive Formation etc) Act 2019. These measures should be fully implemented within the determined timeframe and effectively in line with the UN CEDAW Committee's recommendations.

186 CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 41(c).

187 Education (NI) Order 2006.

188 NI Curriculum, 'Relationships and Sexuality Education Guidance: An Update for Post-Primary Schools', (NI Curriculum, 2019).

189 Women's Aid, 'Primary Schools'. Available at: <https://www.womensaidni.org/about-us/our-work/preventative-education/working-with-children-in-primary-schools/>

190 Education Authority, 'Guidance for Schools, EOTAS Centres and Youth Service on Supporting Transgender Young People' (EA, 2019).

191 CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women', 6 March 2018, at para 86(a) and 86(d).

Chapter 4: Issues making no progress

For the majority of issues, there has been a lack of development on taking the necessary steps for resolution. It is important to highlight such inaction, as it can be just as detrimental as a regressive development – the longer the issue remains unaddressed, the greater the impact on those affected and the harder it is to remedy. It is not fully and comprehensively possible to establish if this lack of development would be any different if the devolved institutions were operating. However, there is no doubt that the stagnation created by the suspension of the NI Assembly and Executive is an exacerbating factor.

All of the issues set out in this chapter are ‘amber’; meaning they may not be at a level that constitutes an ongoing violation or abuse of human rights, but require action by the UK Government, NI Executive or relevant public authorities. For details that provide the context to these, please see the Annual Statement 2018.¹⁹²

¹⁹² NI Human Rights Commission, ‘The 2018 Annual Statement: Human Rights in NI’ (NIHRC, 2018).

Equality and non-discrimination

There has been a lack of movement in introducing:

1. a Single Equality Act in NI.
2. legislation to extend protections against age discrimination to include the provisions of goods, facilities and services.
3. a sexual orientation strategy for NI.
4. legal guidance for businesses and customers on what constitutes discrimination.
5. an up-to-date gender equality strategy that reflects gender-specific elements.
6. effective steps to ensure that any change to the gender recognition process within the UK does not in effect deny transgender individuals in NI from accessing a legal gender recognition process.
7. a self-declaration model for identifying gender in NI.
8. legislation providing for intersectional multiple discrimination claims in NI.
9. a disability strategy in NI.
10. a Central Regional Disability Forum by the Department for Communities.
11. a statutory definition of 'sectarianism' or 'good relations'.

Right to life

There has been a lack of movement in introducing:

12. legislative amendments to guarantee the independence of inquiries established under the Inquiries Act 2005.

Right to liberty and security of the person

There has been a lack of movement in introducing:

13. effective steps to address the UK's broad definition of terrorism, despite Counter-Terrorism and Border Security Act 2019.
14. a Home Office-led review of the exercise of arrest powers under section 41 of the Terrorism Act 2000.
15. a prohibition on imprisonment for fine default.
16. a prohibition of imprisoning children with adults, under the Criminal Justice (Children) (NI) Order 1998.
17. a separate custodial facility for women in NI.
18. effective steps to ensure the safety of women immigration detainees that continue to be detained with male detainees in Larne House.

Freedom from torture, inhuman and degrading treatment

There has been a lack of movement in introducing:

19. a free-standing offence in NI where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual.
20. a full, independent, judge-led inquiry into allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas and rendition.
21. a requirement for judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.
22. legislation to criminalise stalking and upskirting.
23. an action plan for female genital mutilation in NI.
24. effective remedy for victims of human rights violations in NI, outside the remit of the Historical Institutional Abuse Inquiry.
25. comprehensive training of all staff in Larne House on identifying and reporting torture.
26. a requirement that healthcare professionals dealing with detained asylum seekers are independent of the company running Larne House.
27. effective implementation of the Prison Ombudsman NI and the Criminal Justice Inspection NI recommendations concerning conditions of detention in prisons that remain outstanding.
28. a Refugee Integration Strategy.

Right to fair trial and the administration of justice

There has been a lack of movement in introducing:

29. promptly a remedial order that will amend section 9(3) of the Human Rights Act and effectively address the inability of certain victims of human rights violations from receiving financial compensation, in line with the House of Commons and House of Lords Joint Committee of Human Rights' proposal.
30. statutory custodial time limits and other concrete measures to reduce avoidable delay in the criminal justice system.

Right to private life

There has been a lack of movement in introducing:

31. an Adoption and Children Act in NI.
32. a Children and Young Persons Strategy.
33. the biometric data retention sections of the Criminal Justice Act (NI) 2013.
34. a Committee to authorise the processing of confidential information under the Health and Social Care (Control of Data Processing) Act 2016 to ensure adequate legal protection against arbitrariness.
35. suitable methodology for recording the community background of individuals stopped and searched under the Terrorism Act 2000 and Justice and Security (NI) Act 2007 throughout NI.

Freedom of religion and belief, expression, association and right to participate in public and political life

There has been a lack of movement in introducing:

36. legislation to abolish the common law offence of blasphemy and blasphemous libel in NI.
37. legal measures to ensure defamation law in NI strikes a fair balance between the right to freedom of expression and the right to private life.
38. devolution of responsibility for parades and protests to the NI Assembly.

Right to work and to just and favourable conditions of work

There has been a lack of movement in introducing:

39. an updated childcare Strategy for NI.
40. a statutory duty to provide affordable and accessible childcare provision.
41. an increase to minimum age of recruitment to the Armed Forces from 16 to 18.
42. regulations to give effect to mandatory gender pay gap reporting in the Employment Act (NI) 2016.

Right to an adequate standard of living and to social security

There has been a lack of movement in introducing:

43. an up-to-date Housing Strategy for NI.
44. an extension of the social security reform mitigation package.
45. a repeal of the two-child tax credit limit.
46. practically available separate payments for Universal Credit.
47. the Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2018, which would amend the 2013 Act to ensure it is compliant with ECHR, Article 6.
48. prompt and full implementation of all the recommendations of independent review into Personal Independent Payment commissioned by the Department for Communities.
49. legal and other reforms to improve provision of Travellers' accommodation to:
 - enable NI Housing Executive to provide caravans;
 - extend Race Relations (NI) Order 1997's duties to all public authorities;
 - repeal Unauthorised Encampments (NI) Order 2005;
 - monitor use of Housing Benefit.

Right to health

There has been a lack of movement in introducing:

50. Amendment or policy direction to ensure a full set of General Practitioner services is genuinely available to any person, including undocumented or irregular migrants.
51. Introduction of dedicated Emergency Department minimum care standards.
52. Review of Mental Capacity (NI) Act 2016 to ensure the best interests and views of the child are taken into account in cases of mental health treatment of children below the age of 16.

Right to Education

There has been a lack of movement in introducing:

53. a non-selective system of post-primary school admission in order to abolish the two tier system of education in NI.
54. a Traveller Education Monitoring Group.
55. commencement of the Addressing Bullying in Schools (NI) Act 2016.

Right to participate in the cultural life of the community

There has been a lack of movement in introducing:

56. an Irish Language Act.

57. a Ulster Scots Strategy and academy.

Constitutional Protections

There has been a lack of movement in introducing:

58. a Bill of Rights for NI.

59. a Charter of Rights for the island of Ireland.

Annex - Traffic light summary of issues for 2019

Equality and non-discrimination

- Age Discrimination
- Business and human rights
- Consolidating, strengthening and clarifying equality protections
- Discrimination on the grounds of sexual orientation
- Equal marriage and civil partnerships
- Gender equality strategy
- Gender recognition
- Hate crimes
- Intersectional multiple discrimination
- Persons with disabilities
- Racial equality
- Sectarianism

Right to life

- Conflict related investigations: transitional justice and individual cases
- Inquiries Act 2005
- Legacy inquests and inquiries
- Rule of law: non-state actors

Right to liberty and security of the person

- Definition of terrorism
- Powers of arrest under the Terrorism Act 2000
- Alternatives to imprisonment
- Imprisonment for fine default
- Imprisonment of children with adults
- The remand of children
- Women in prison

Freedom from torture, inhuman and degrading treatment

- Abuse in health and social care settings
- Allegations of torture and cruel, inhuman or degrading treatment or punishment overseas
- Deprivation of citizenship
- Domestic and sexual violence and abuse
- Female genital mutilation
- Historical abuse of children and adults
- Mechanisms to identify victims of torture detained in immigration facilities
- Prison review and conditions
- Physical punishment of children
- Strip searches
- Syrian refugee crisis and unaccompanied child refugees
- Victims' payments

Freedom from slavery

- Child, early and forced marriage
- Child sexual exploitation
- Children missing from care
- Modern slavery and human trafficking

Right to fair trial and the administration of justice

- Access to justice
- Age of criminal responsibility
- Avoidable delay
- Closed material proceedings
- Compensation for a miscarriage of justice
- Non-jury trials

Right to private and family life

- Access to financial support for unmarried couples
- Alternatives care arrangements for children
- Biometric data
- Environmental regulation
- Health and Social Care (Control of Data Processing) Act 2016
- Stop and search

Freedom of religion and belief, expression, association and right to participate in public and political life

- Blasphemy
- Defamation
- Freedom of expression of journalists
- Parades and protests
- Participation of women in public and political life

Right to work and to just and favourable conditions of work

- Accessible childcare
- Armed Forces Covenant
- Children in the Armed Forces
- Gender pay gap

Right to an adequate standard of living and to social security

- Anti-poverty strategy
- Carers
- Child poverty strategy
- Crisis fund
- Homelessness
- Reduction in asylum financial support
- Social housing
- Social security
- Travellers' accommodation
- Unauthorised Encampments (NI) Order 2005

Right to health

- Access to healthcare for irregular migrants
- Emergency healthcare
- Mental capacity
- Termination of pregnancy
- Relationship, sexuality and gender identity education

Right to education

- Academic selection
- Bullying in schools
- Educational needs of Traveller children
- Integrated education
- Shared education
- Special educational needs

Right to participate in the cultural life of the community

- The Irish language and Ulster Scots

Constitutional protections

- A Bill of Rights for NI
- A Charter of Rights for the island of Ireland
- National human rights institution
- UK membership of the European Union



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ISBN 978-1-912653-31-7



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