

The 2015 Annual Statement

Human Rights in Northern Ireland

2015



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 Northern Ireland (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 by, for example, 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;
- institute, or 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 the human rights of those who live in NI. The Commission is NI's human rights guardian and centre of excellence. It holds to account and works in partnership with Government, elected representatives, statutory organisations and civil society. The Commission, established on the basis of the Belfast (Good Friday) Agreement, plays a central role in shaping a society that, as it emerges from conflict, respects the Universal Declaration of Human Rights by upholding human rights and responsibilities.

Chief Commissioner: Les Allamby

Commissioners: Christine Collins
John Corey
Milton Kerr QPM
Grainia Long
Alan McBride
Marion Reynolds MBE
Paul Yam MBE

Director: Virginia McVea

Deputy Director: Dr David Russell

Acronyms

CFREU	Charter of Fundamental Rights of the European Union
CAT	Convention Against Torture, Inhuman or Degrading Treatment or Punishment
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of Discrimination Against Women
COMEX	Committee of Experts for the European Charter for Regional or Minority Languages
CRPD	Convention on the Rights of Disabled Persons
DCAL	Department for Culture Arts and Leisure
DENI	Department of Education NI
DOE	Department of the Environment
DFP	Department of Finance and Personnel
DHSSPS	Department of Health, Social Services and Public Safety
DOJ	Department of Justice
DSD	Department of Social Development
ECHR	European Convention on Human Rights
ECt.HR	European Court of Human Rights
ECNI	Equality Commission Northern Ireland
ESC	European Social Charter
FCNM	Framework Convention for the Protection of National Minorities
HRA	Human Rights Act
HSC	Health and Social Care
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights,
INLA	Irish National Liberation Army
IRA	Irish Republican Army
MOJ	Ministry of Justice
NCA	National Crime Agency
NGO	Non Governmental Organisation
NHRI	National Human Rights Institution
NI	Northern Ireland
NIO	Northern Ireland Office
NICCY	Northern Ireland Commissioner for Children and Young People
OFMDFM	Office of the First Minister and Deputy First Minister
OHCHR	Office of the High Commissioner for Human Rights
PACE	Police and Criminal Evidence Act
PSNI	Police Service of Northern Ireland
RHC	Red Hand Commando
UDA	Ulster Defence Association
UFF	Ulster Freedom Fighters
UK	United Kingdom
UN	United Nations
UVF	Ulster Volunteer Force

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Foreword

The current state of the world provides a sombre backdrop to the Commission's Annual Statement for 2015. Events elsewhere illustrate the importance of universal international human rights standards, many of which were introduced to prevent conflict and to provide benchmarks and safeguards where conflict has arisen.

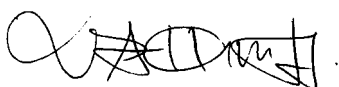
Closer to home, the Stormont House Agreement has been revised through 'A Fresh Start: The Stormont House Agreement and Implementation Plan.' The failure to reach agreement on dealing with the legacy of the past and bring forward legislation and further details of the institutions outlined in the Stormont House Agreement is disappointing. Victims and survivors are getting older and investigations and justice becomes more difficult to achieve as time passes. There is also a trans-generational impact to be considered. The need to secure an agreed basis for moving forward in the near future is critical to Northern Ireland's long term future.

A Fresh Start has dealt with the outstanding social security legislation. Nonetheless, further significant changes are being made to both existing social security benefits and universal credit which will have an adverse impact on many claimants in Northern Ireland, particularly those of working age. Spending wisely the money set aside to ameliorate the changes will be vital and the Commission wishes the body set up to bring forward proposals, well in its deliberations. The annual statement highlights the importance and prevalence of economic and social rights. This year, the Commission published findings of its inquiry into health care in emergency departments. An outcome of the review is that the Commission is now working with the Belfast Health and Social Care Trust which has agreed to introduce an initiative to pilot a human rights based approach on emergency departments and in a community care setting. Moreover, the Commission has produced a number of training products for the NI Civil Service illustrating how human rights standards and concepts can be applied to policy and decision-making alongside a similar initiative undertaken with the Northern Ireland Ombudsman.

Some areas have significantly progressed this year including the extension of the role of the National Crime Agency to Northern Ireland, the agreement to introduce domestic violence protection orders and a victim charter, the implementation of human trafficking legislation, care standards for nursing homes and the announcement that responsibility for the education of child offenders will be transferred from the DOJ to DENI imminently. These are all issues actively canvassed by the Commission alongside other organisations. However, much remains to be done, the amber light designates areas which have seen progress this year next to many where there is little sign of tangible improvement.

It was once said that Northern Ireland used to launch ships – now it launches strategies. Arguably, we are failing to achieve even the latter. In giving evidence to the UN Committee on Economic and Social Rights in Geneva the Commission highlighted the continuing lack of strategies for racial equality, sexual orientation, childcare, stopping domestic and sexual violence and to tackle poverty. All these strategies have been in the pipeline for a very significant period and the time is long overdue for publication and implementation.


The annual statement is designed to facilitate the reader who wishes to dip in and out of his or her chosen field as well as those who want to see the complete picture. Whichever reader you are I hope you find the annual statement informative and useful in your work.





Les Allamby
Chief Commissioner

Understanding the annual statement

The Commission's annual statement uses a traffic light system to classify the actions taken by or required the UK Government, NI Executive or relevant public authorities in response to the issue.

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.

Amber  identifies a subject that 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. 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.

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.

Chapter 1 Introduction

The Commission was established following the Belfast (Good Friday) Agreement 1998. It is a National Human Rights Institution (NHRI) with 'A status' accreditation at the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Having assessed developments affecting human rights protections in NI throughout 2015, the Commission publishes this annual statement, operating in accordance with the NI Act 1998, and its mandate 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 (NI Executive) and other measures which ought to be taken to protect human rights.*¹

The Commission also recognises the UN Paris Principles, and, in particular, the responsibility of a NHRI 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 2015 is premised on the requirements of domestic human rights standards and those treaty obligations of the UN and European systems that are legally binding in NI on the basis of their ratification 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 (HRA) 1998;

- *European Social Charter (ESC) [UK ratification 1962];*
- *Framework Convention for the Protection of National Minorities (FCNM) [UK ratification 1998];*
- *Convention on Action against Trafficking in Human Beings [UK ratification 2008];*
- *European Charter for Regional or Minority Languages [UK ratification 2001];*
- *International Covenant on Civil and Political Rights (ICCPR) [UK ratification 1976];*
- *International Covenant on Economic, Social and Cultural Rights, (ICESCR) [UK ratification 1976];*
- *Convention on the Elimination of All Forms of Racial Discrimination (CERD) [UK ratification 1969];*
- *Convention on the Elimination of Discrimination Against Women, (CEDAW) [UK ratification 1986];*
- *Convention on the Rights of the Child (CRC) [UK ratification 1991];*

¹ NI Act 1998 section 69

² Principles relating to the Status of National Institutions, adopted by UN General Assembly resolution 48/134 of 20 December 1993

- *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict [UK ratification 2003]*
- *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography [UK ratification 2009]*
- *Convention Against Torture, Inhuman or Degrading Treatment or Punishment (CAT) [UK ratification 1988];*
- *the UN Educational, Scientific and Cultural Organisation (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions [UK ratification 2007]*
- *Charter of Fundamental Rights of the European Union (CFREU) [UK ratification 2000]*
- *Convention on the Rights of Disabled Persons, (CRPD) [UK ratification 2009].*

Human rights law further applies through the NI Act 1998, section 24 (1). The NI Executive is therefore required to ensure that all legislation and actions are compatible with the ECHR.³ Section 26 further requires compliance with other international human rights obligations.⁴

The ECHR is given further domestic effect in the UK as a consequence of the Human Rights Act 1998 (HRA). Subject to section 6 (3), all public authorities in NI must ensure that their actions are compatible with the 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, at times, be subject to the requirements of the HRA. Government departments have the duty to ensure that actions carried out following public procurement exercises comply with the ECHR.⁶

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

Treaty examinations and reports issued in 2015:

International Covenant on Civil and Political Rights

The UN Human Rights Committee examined the UK’s seventh periodic report on compliance with the ICCPR in 2015. The Committee published its concluding observations in July 2015, the report contained recommendations of both specific and general reference to NI. These are set out under the relevant heading within the annual statement.

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 See section 6, Human Rights Act 1998

6 NIHRC ‘Public Procurement and Human Rights in Northern Ireland’ (February, 2013) p. 19

Chapter 2 Substantive rights and issues

Equality and non-discrimination

ICCPR	Article 2(1) Article 3 Article 24 Article 26
CRC	
ECHR	Article 14
CFREU	Article 20 Article 21 Article 23
CRPD	
ICESCR	Article 2(2) Article 3
CERD	
CEDAW	
FCNM	



Consolidating, strengthening and clarifying equality protections

As previously reported by the Commission, the Equality Act 2010 developed and streamlined equality protections in the rest of the UK but no comparative Act has been introduced in NI.⁷ Three UN treaty bodies have raised concerns that NI law does not provide for a single legislative instrument to consolidate, clarify and enhance existing equality protections.⁸

In NI discrimination is prohibited by a number of laws and regulations, resulting in a complex framework.⁹ The Commission notes that the OFMDFM has expressed its intent to review the current equality framework through a step-by-step approach rather than through a single legislative instrument.¹⁰ The Commission has once again reported the matter to the UN in 2015.¹¹

The Commission continues to advise the OFMDFM on the need to strengthen, simplify and harmonise equality legislation within a single equality act.

⁷ The Equality Act 2010 applies to England and Wales, with a majority also applying to Scotland. Its application to NI is limited

⁸ CESCR, 'Concluding observations on the UK', UN Doc. E/C.12/GBR/CO/5 (12 June 2009), para 16; CERD, 'Concluding observations on the UK' UN Doc. CERD/C/GBR/CO/18-20 (14 September 2011), para 19; CEDAW, 'Concluding observations on the UK' UN Doc. CEDAW/C/GBR/CO/7 (26 July 2013) para 18

⁹ See, Employment Equality (Age) Regulations (NI) 2006; Disability Discrimination Act 1995; Special Educational Needs & Disability (NI) Order 2005; Equal Pay Act (NI) 1970; Sex Discrimination (NI) Order 1976; Race Relations (NI) Order 1997; Fair Employment & Treatment (NI) Order 1998; Employment Equality (Sexual Orientation) Regulations (NI) 2003; Equality Act (Sexual Orientation) Regulations (NI) 2006; and, Northern Ireland Act 1998

¹⁰ See for example, comments to the CEDAW Committee: "In Northern Ireland, the Office of the First Minister and deputy First Minister (OFMDFM) are undertaking a scoping of equality legislation to identify gaps in provision and how existing legislation could be harmonised, simplified and streamlined, without any loss of the protections in law already available. It will consider legislation relating to discrimination on grounds of gender including ...". See, CEDAW, 'Reply of the UK to the List of Issues', UN Doc. CEDAW/C/GBR/Q/7/Add.1 (5 February 2013), para 17. See also comments in the draft Racial Equality Strategy: "There are a range of views on legislation. A key stakeholder is the Equality Commission, which has written that legislation here does not provide the same level of protection as that provided in GB." Consultations questions included,

"Do you think that reform of Race Relations (Northern Ireland) Order 1997 is a priority?; Do you agree with the Equality Commission's proposals?; Do you think that there are any areas of Race Relations law which require reform, additional to those identified by the Equality Commission?". See, OFMDFM, 'A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014 – 2024' (pp38 and 40), consultation period August – October 2014

¹¹ NIHRC Submission to the ICESCR Committee in relation to the Fifth Periodic Report of the UK on compliance with the ICESCR (August, 2015), p. 16 http://www.nihrc.org/uploads/publications/NIHRC_Parallel_ICESCR_Report_2015.pdf



Intersectional multiple discrimination

NI legislation does not recognise intersectional multiple discrimination cases.¹² At present, each discrimination ground has to be considered and ruled on separately. The ECNI reports “clear evidence” that individuals in NI experience multiple discrimination.¹³ For example, over a twelve month period during 2013/14, the ECNI received 113 hybrid ‘race’ discrimination enquiries/applications.¹⁴

There is no commitment from the NI Executive to introduce legislation providing for intersectional multiple discrimination claims in NI.¹⁵ The Commission has raised the matter with the UN ICESCR Committee in 2015.¹⁶



Age discrimination

There is currently no prohibition on discrimination in the provision of goods, facilities and services in NI on the basis of age. The OFMDFM published a consultation document in 2015 proposing to extend age discrimination legislation to cover the provision of goods, facilities and services.¹⁷ The Commission welcomes the initiative but, along with the NICCY and a number of children’s NGOs, is concerned that these proposals exclude children under 16 and sought an assurance that children under 16 are protected against discrimination within a specific and expedited timeframe.¹⁸

NI Executive Ministers have stated that the decision to exclude under 16s was made on the basis of seeking to advance legislation as quickly as possible with the aim of eventually extending age discrimination protection to children under 16.¹⁹ They have described the proposals as “a work in progress” and highlighted that including 16 and 17 year olds will provide better protection for children than that which exists in England, Wales and Scotland under the Equality Act 2010, which only applies to those aged 18 and over.²⁰



Sectarianism

Sectarian attitudes and violence continue in NI. The PSNI has reported 1,517 sectarian incidents and 1,043 sectarian crimes in the financial year 2014/15 an increase on the previous year, with 82 additional incidents and 333 additional crimes recorded.²¹ This raises significant human rights concerns, including: individuals being subjected to torture, inhuman and degrading treatment; individuals being forced from their homes and denied the right to choose their place of residence; and individuals being denied the right to express their culture.

12 ‘Intersectional discrimination’ refers to a discriminatory experience based on two or more grounds taken together, but where each ground could not prove the discrimination if taken individually

13 ECNI, ‘Strengthening protection against racial discrimination: Recommendations for law reform (full report)’ (August 2014), p 35 (see pp33-38)

14 Ibid.

15 The Commission notes that the UK Government has not brought into force a narrowly drafted provision within the Equality Act 2010 permitting dual discrimination cases elsewhere in the UK. The Equality Act 2010, Section 14 (applicable in GB only) includes provision for dual discrimination cases limited to direct discrimination claims only but this provision has never been brought into force

16 NIHR Submission to the ICESCR Committee in relation to the Fifth Periodic Report of the UK on compliance with the ICESCR (August, 2015), p. 17 http://www.nihrc.org/uploads/publications/NIHRC_Parallel_ICESCR_Report_2015.pdf

17 OFMDFM ‘Proposals to extend age discrimination legislation: consultation document’ (July 2015)

18 NICCY ‘Don’t exclude us! Strengthening Protection for Children and Young People when Accessing Goods, Facilities and Services’ (2013); Northern Ireland NGO Alternative Report ‘Submission to the UNCRC Committee for consideration during the Committee’s examination of the UK Government’s report’ (coordinated by Children’s Law Centre & Save the Children) (May 2015), p 14. NIHR ‘Response to consultation on Proposals to Extend Age Discrimination Legislation Services, Goods and Facilities (October 2015) http://www.nihrc.org/uploads/publications/Age_Discrimination_GFS_final_%2814.10.15%29.pdf

19 Committee for the Office of the First Minister and Deputy First Minister, OFFICIAL REPORT (Hansard) ‘Age Discrimination Legislation: OFMDFM Junior Ministers and Officials’ (15 April 2015)

20 Ibid., p.4

21 Police Service of Northern Ireland ‘Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2014/15’ Annual Bulletin published 06 August 2015 p. 10 available at: http://www.psnipolice.uk/hate_motivated_incidents_and_crimes_in_northern_ireland_2004-05_to_2014-15.pdf

Throughout 2015, flags, cultural symbols and emblems remained a source of dispute.²² The Stormont House Agreement proposed the establishment of a Commission on Flags, Identity, Culture and Tradition. This was to be established by June 2015 and produce a report within 18 months.²³ The Commission on Flags, Identity, Culture and Tradition has not yet been established. The Implementation Plan agreed in relation to the Stormont House Agreement in November 2015 states that:

*The advertisement and information pack to enable the recruitment of the eight non-political members of the Commission will be placed by OFMDFM in December 2015.*²⁴

In addition, 7 political members will be appointed. The NI Assembly OFMDFM Committee published a report into its inquiry 'Building a United Community' in 2015.²⁵ The Committee recommended that the OFMDFM produce an annual report on the 'Together Building a United Community' strategy and lay this before the NI Assembly.²⁶ Referring to advice provided by the Commission and others, the Committee recognised the need for statutory definitions of both 'sectarianism' and 'good relations.' This is an outstanding commitment contained within the 'Together Building a United Community' strategy.²⁷

The Commission also advised the Committee that the current legal requirement on NI public authorities to 'have regard to the desirability' to promote good relations is not fully in accordance with the human rights obligation to take 'immediate and effective measures'.²⁸ The Commission recommended amending and strengthening domestic legislation to address this issue.²⁹ This matter should be addressed urgently.



Racial equality strategy

In its 2014 annual statement, the Commission recorded that the OFMDFM had published for consultation a draft Racial Equality Strategy.³⁰

The Commission noted that unlike its predecessor³¹, the draft strategy was not action oriented. It was proposed to be 'over-arching and high-level' and to 'establish a framework' centred on six broad aims.³² The Commission advised the OFMDFM that it would be more appropriate if the final Strategy was modelled on UN guidance and framed as a National Action Plan Against Racism.³³ Specifically, the Commission recommended that the Strategy should be amended so as to specify precise, tangible, concrete and achievable steps within a reasonable timeframe and mechanisms for monitoring progress.³⁴

In June 2015, the Commission co-hosted an expert from the OHCHR who provided advice on developing a Racial Equality Strategy.³⁵ The Commission has called on OFMDFM to expedite the production of a racial equality strategy, accompanied by an action plan in line with UN guidance.

22 BBC News NI 'Irish tricolour flag flown over Stormont' 3 June 2015

23 The Stormont House Agreement, 2014, p. 4

24 NIO 'A Fresh Start: The Stormont House Agreement and Implementation Plan' 17th November 2015 para 15

25 OFMDFM Committee Report on the Inquiry into Building a United Community Reference: NIA 257/11-16

26 Ibid., Recommendation 3

27 OFMDFM 'Together Building a United Community' 2015 para 136 see: <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf>

28 NI Act 1998 section 75

29 NIHRC 'Advice to OFMDFM Committee on its Inquiry into Building a United Community' (February, 2015) para 63

30 <http://www.ofmdfmi.gov.uk/racial-equality-strategy-2014-2024-consultation.pdf>

31 OFMDFM, 'A Racial Equality Strategy for Northern Ireland, 2005-2010' (July 2005)

32 OFMDFM, 'A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014 - 2024', hereafter referred to as the 'Draft RES', p 11 and p 6

33 NIHRC, 'Response of the Northern Ireland Human Rights Commission to the OFMDFM consultation on 'A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014 - 2024' (October 2014), available at, <http://www.nihrc.org/uploads/publications/NIHRC_-_Advice_on_RES_%28final%29.pdf> (accessed 20 April 2015)

34 Ibid.

35 See , OHCHR, Developing National Action Plans against Racial Discrimination: A Practical Guide (New York & Geneva: 2014)



Racist hate crimes

In 2015 the PSNI reported increasing numbers of hate incidents and crimes; a trend that is most pronounced where the incident is perceived to be based on a racist motivation.³⁶ The PSNI has reported 1,356 racist incidents and 921 racist crimes in the financial year 2014/15, an increase on the previous year, with 374 additional incidents and 230 additional crimes recorded.³⁷

The primary prosecutorial tool for the hate element of a crime in NI is the ‘aggravated by hostility’ sentencing legislation, namely, the Criminal Justice (No. 2) (NI) Order 2004. This legislation can be applied in conjunction with a base offence, such as criminal damage or assault, and covers hostility based on the grounds of race, religion, disability and sexual orientation.³⁸ The courts must treat such offences more seriously. The Order also requires judges to “state in open court that the offence was so aggravated”.³⁹

The Public Prosecution Service publish statistics on cases considered by a prosecutor to have been ‘aggravated by hostility’. For the first time in 2015, these statistics included whether or not the judge accepted the ‘aggravated by hostility’ element and imposed an enhanced sentence. In 2014/15, 53 people (13 in the Crown Court and 40 in the Magistrates and Youth courts) received an enhanced sentence on the basis that the offence was aggravated by hostility under the 2004 Order.⁴⁰

As reported in previous annual statements, the Commission has published an investigation report ‘Racist hate crime: human rights and the criminal justice system in NI’. This included 66 findings and 29 recommendations. Seven recommendations were to be addressed by the OFMDFM.⁴¹

Correspondence received from the OFMDFM in July 2014 indicated that the relevant recommendations would be considered within the context of the Racial Equality Strategy. In October 2015, the OFMDFM and DOJ met with the Commission to discuss which department was best placed to lead on the recommendations directed towards the NI Executive. The DOJ has accepted the Commission’s report and has worked towards implementing the recommendations through the Hate Crime Delivery Group.

Throughout 2015 the NI Policing Board has been carrying out a human rights thematic review on how the PSNI are addressing hate crime.⁴² In addition, the Criminal Justice Inspectorate NI has been conducting an inspection of the Criminal Justice Response to Hate Crimes.⁴³ The Commission has met with and provided advice to both organisations and hosted a roundtable on hate crime in November 2015.

In 2015 the Commission also reported to the UN Human Rights Committee on how the NI Executive is meeting its obligations to address hate crimes.⁴⁴ The UN Human Rights Committee recommended that the UK, including the NI Executive seek to eradicate racism through:

(a) Effectively implementing and enforcing the existing relevant legal and policy frameworks on combating hate crimes; (b) Introducing new awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity; (c) Improving the reporting of cases of incitement to discrimination, hostility or violence, and of hate crimes; (d) Thoroughly investigating

36 See earlier statistics on sectarianism

37 Police Service of Northern Ireland ‘Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2014/15’ Annual Bulletin published 06 August 2015 p. 10 available at: http://www.psnipolice.uk/hate_motivated_incidents_and_crimes_in_northern_ireland_2004-05_to_2014-15.pdf

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

39 Criminal Justice (No. 2) (Northern Ireland) Order 2004, Article 2

40 PPS, ‘Statistical Bulletin: Cases Involving Hate Crime 2014/15 (1 April 2014 to 31 March 2015)’, p 16. NB. This figure includes all hostility grounds and not just race

41 NIHRC ‘Aggravated by Racial Hostility: Human rights and the criminal justice system’ (Belfast 2013)

42 Policing Board NI ‘Policing of Race Hate Crime under review’ 20 November 2014

43 <http://www.cjini.org/>

44 NIHRC ‘Submissions to the UN Human Rights Committee on the UK’s Seventh Periodic Report on compliance with the ICCPR’ May 2015

*alleged cases of incitement to discrimination, hostility or violence, and hate crimes, prosecuting perpetrators and, if convicted, punishing them with appropriate sanctions, and providing victims with adequate remedies, including compensation.*⁴⁵

The Commission continues to actively encourage relevant public authorities, particularly the DOJ, OFMDFM, PSNI and Public Prosecution Service, to work towards the full implementation of the recommendations contained in the Commission's report.

Religious tolerance

In February 2015, the Commission responded to a consultation by Paul Givan MLA on a proposed Freedom of Conscience Amendment Bill.⁴⁶ The stated intention of the proposal was: "to amend our current law designed for the sexual orientation equality strand in relation to goods and services provision, so that it does not undermine another equality strand, religion".⁴⁷

In its advice the Commission stated that the right to manifest one's religion as protected by the ECHR, Article 9 and ICCPR, Article 18 is a qualified right which may be subject to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. The Commission referred to the ruling of the Court of Appeal that a Christian couple operating a Bed and Breakfast could not refuse a double bedroom to a same sex couple on the basis of their religious convictions. In the Court of Appeal judgement, which the Supreme Court upheld, Lady Justice Rafferty stated:

*It would be unfortunate to replace legal oppression of one community (homosexual couples) with legal oppression of another (those sharing the Appellants' beliefs)... Any interference with religious rights, specifically identified in article 9 and listed in article 14 of the ECHR, must satisfy the test of 'anxious scrutiny'. However, in a pluralist society it is inevitable that from time to time, as here, views, beliefs and rights of some are not compatible with those of others... I do not consider that the Appellants face any difficulty in manifesting their religious beliefs, they are merely prohibited from so doing in the commercial context they have chosen.*⁴⁸

In upholding this judgement Baroness Hale in the Supreme Court ruled that there was no question of replacing: "legal oppression of one community (homosexual couples) with legal oppression of another (those sharing the defendants' beliefs)".⁴⁹

On the basis of this judgement and corresponding rulings of the ECt.HR the Commission advised that the Bill was incompatible with the ECHR and therefore outside the legislative competence of the NI Assembly.⁵⁰

Gender equality strategy

The OFMDFM Gender Equality Strategy 2006-2016 is the policy framework under which the NI Executive promotes gender equality in NI. Between 2008 and 2011, the strategy was complemented by two cross-departmental action plans, one for women and one for men. In 2013, a 'midterm review' of the strategy considered that while its vision, objectives and key actions were still relevant,

45 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192 para 10

46 Consultation on the Northern Ireland Freedom of Conscience Amendment Bill, 2015- available at http://www.nihrc.org/uploads/publications/NIHRC_Advice_on_Freedom_of_Conscience_Bill.pdf

47 *Ibid.*, p. 2

48 Bull and Bull (Appellants) Hall & Preddy (Respondents) (2012), para.56

49 *Ibid.*, para 54

50 Consultation on the Northern Ireland Freedom of Conscience Amendment Bill, 2015- available at http://www.nihrc.org/uploads/publications/NIHRC_Advice_on_Freedom_of_Conscience_Bill.pdf para 11 See further Eweida and Others v the UK 48428/10, 36516/10, 5167/10

“progress against it had been limited and implementation and monitoring could be improved.”⁵¹ Among many conclusions, the review noted that, “[o]utcomes and targets in the action plans were generally not SMART (Specific, Measureable, Achievable, Realistic and Timebound) and ... this made it difficult to judge if a target or outcome had been achieved”.⁵² The review gave an indicative achievement rate of 29% of the action points across all departments.⁵³

After the review in November 2013 the OFMDFM Gender Equality Unit indicated that it would be revising the current strategy. Instead, the Gender Equality Unit decided to develop a draft of the post-2016 strategy given the proximity in time to the end of the current Strategy. The Gender Equality Unit consulted with the Gender Advisory Panel and the ad hoc Women’s Policy Group (a NGO collaboration) on a draft of the new Gender Equality Strategy in June 2015. The Commission understands that the Gender Equality Unit is pursuing a process of ‘co-design’ for the strategy but that consultation with the Women’s Policy Group has recently stalled. No public consultation has to date taken place.

The UN ICESCR Committee has recommended that the NI Executive “conduct a comprehensive review of its policies to overcome gender inequalities.”⁵⁴ The Commission has called on the OFMDFM to prioritise the publication of a draft NI Gender Equality Strategy for public consultation.



Persons with disabilities

In May 2015, the OFMDFM Junior Ministers Michelle McIlveen and Jennifer McCann announced that the NI Executive’s ‘Strategy to Improve the Lives of People with Disabilities 2012 – 2015’ would be extended until March 2017.⁵⁵ This extension had been anticipated as many of the actions proposed by the strategy had not been implemented. The OFMDFM has now published the first annual report on the strategy. Whilst this report records outputs against each of the strategic priorities within the strategy many of these are limited, indicating a lack of effective implementation.⁵⁶ The implementation of the strategy has been undermined by the absence of effective oversight.

The OFMDFM annual report on the Disability Strategy reported on the establishment of a Departmental Disability Strategy Focus Group, made up of representatives from a number of Departments. The aim of the Focus Group is to ensure coordinated and joined up approaches to the implementation of the strategy across all Departments.⁵⁷ Given the cross departmental nature of issues affecting persons with disabilities this is a welcome development. The Executive has also committed to the establishment of:

*an oversight group to drive forward and monitor the implementation of the strategy. This group will be comprised of key stakeholders from the statutory, voluntary and academic sectors as well as individuals with disabilities. The group will also assist with monitoring and reporting against the UN CRPD more generally.*⁵⁸

The Commission remains concerned that many of the actions within the OFMDFM Strategy are outstanding.

51 OFMDFM/NISRA, Gender Equality Strategy, 2006-2016, Review (April 2013), para 2.2 (see also para 2.1)

52 Ibid., para 2.6

53 Ibid., para 4.16

54 See, for example CESCR, ‘Concluding observations on the UK’, UN Doc. E/C.12/GBR/CO/5 (12 June 2009), para 18

55 OFMDFM - Junior Ministers Jennifer McCann and Michelle McIlveen have announced the Executive’s Disability Strategy will be extended until the end of March 2017. ~ Tuesday, 12 May 2015

56 NI Executive ‘A Strategy to improve the lives of people with disabilities 2012 – 2015’ Annual Report (June, 2015)

57 Ibid., p. 29

58 Ibid., p. 28

Extension of civil marriage to same sex couples

Since 2013 the Commission has referred to the Marriage (Same Sex Couples) Act 2013 which provides for same sex marriage in England and Wales but does not extend to NI. The UN Human Rights Committee has welcomed the adoption of the 2013 Act.⁵⁹

There have been no further legislative initiatives in NI to extend civil marriage to same sex couples. In October 2015 the NI Assembly debated a motion calling on the NI Executive to table legislation to allow for same-sex marriage. Whilst a majority of members of the NI Assembly voted for this motion it did not pass as a petition of concern was lodged requiring that the motion be passed on a cross community basis.⁶⁰

A same sex couple has been granted leave in the High Court to challenge the unavailability of same sex marriages in NI and a same sex couple who has been married elsewhere in the UK are also seeking to have their marriage recognised in NI.⁶¹

Eligibility to donate blood

Since 2012 the Commission has reported on the lifetime ban in NI on blood donations from men who have sex with other men. The Commission reported this issue to the UN ICESCR Committee in 2015.⁶²

In 2011 the Advisory Committee on the safety of Blood, Tissues and Organs completed a review of the Donor Selection Criteria which are used to ensure the safety of the blood stock for transfusion in the UK. This review considered the appropriate eligibility criteria for various donor types including men who have had anal or oral sex with another man, and sex workers in particular.⁶³ The outcome of this process was that it was recommended that the previous policy of permanent deferral applying to such donors be replaced by a temporary 12 month deferral period.⁶⁴

In September 2011, the UK Department of Health announced that a permanent deferral will no longer apply to men who have sex with other men provided that they have not had male to male sexual relations during the 12 month period prior to such donation.⁶⁵ The policy, applying in England, Wales and Scotland, came into effect from 7 November 2011 and the decision to change those policies was taken by the relevant Health Ministers for each jurisdiction.⁶⁶ However the NI Health Minister did not adopt the same approach and chose to retain the lifetime ban.⁶⁷

In 2013, the High Court in NI ruled that the lifetime ban on blood donation from men who have sex with other men was irrational.⁶⁸ The Court also ruled that the UK Secretary for State for Health was responsible for the determination of appropriate deferral periods in NI and whether or not to maintain the lifetime ban.⁶⁹ The DHSSPS and the UK Department of Health both appealed the decision. The UK Health Secretary is appealing the decision as its position is that blood donation is a matter for the devolved government and ministers.⁷⁰

59 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192 para 3

60 NIA Official Report: Monday 02 November 2015 . Private Members Business: Marriage Equality

61 BBC News NI 'Gay marriage: Two NI couples win permission to challenge NI ban in court' 26 June 2015

62 NIHRC Submission to the ICESCR Committee in relation to the Fifth Periodic Report of the UK on compliance with the ICESCR (August, 2015) p. 59 http://www.nihrc.org/uploads/publications/NIHRC_Parallel_ICESCR_Report_2015.pdf

63 Advisory Committee on the Safety of Blood, Tissues and Organs (2011) Donor Selection Criteria Review p. 40

64 Ibid.

65 For analysis of developments see JR65's Application [2013] NIQB 101 para 5

66 Ibid., para 7

67 Ibid., para 6

68 Ibid., para 151

69 Ibid., para 151

70 BBC News NI 'Gay men's blood: Jeremy Hunt says donation is "devolved matter"' (7 April 2014)

The applicant in the case also appealed the finding that the then Minister's decision was not influenced by his religious beliefs as the court originally determined it was not necessary to reach any conclusion on the ground of apparent bias.⁷¹ The Court of Appeal directed that the case had to be sent back to the High Court for a determination on the applicant's appeal before the court would consider the broader ground. In January 2015, the High Court further ruled that the Minister's decision to retain the lifetime ban was influenced by his religious beliefs and "infected by apparent bias".⁷² This was appealed further by the Minister and the application was considered by the Court of Appeal in November 2015 with judgment being reserved.

The current NI Health Minister has said he: "will be guided by the science and medical evidence" in deciding whether to lift the ban on donations from men who have sex with other men.⁷³

The European Court of Justice ruled in April 2015 that the permanent deferral from blood donation for men who have had sexual relations with another man, may be justified, having regard to the situation prevailing in the Member State concerned. It must be established whether those persons are at a high risk of acquiring severe infectious diseases, such as the Human Immunodeficiency Virus, and that there are no effective detection techniques or less onerous methods for ensuring a high level of health protection for recipients.⁷⁴

The Commission remains concerned at the apparent absence of an objective justification for a permanent deferral in NI on blood donation from men who have had sexual relations with men.

71 JR65's Application [2013] NIQB 101, para 142

72 JR65's Application [2015] NIQB 1, para 13

73 Belfast Telegraph 'Gay blood ban: New health minister Simon Hamilton vows to be "guided by science"' (18 May 2015)

74 *Leger v Ministre des Affaires sociales, de la Santé* Case C-528/13

Right to life

ICCPR	Article 6
ECHR	Article 2
CRFEU	Article 2
CRC	Article 6(1)
CRPD	Article 10

Conflict related deaths: transitional justice and individual cases

Since 2012 the Commission's annual statement has set out repeated calls from the UN and others for the UK Government and NI Executive to adopt holistic transitional justice measures aimed at addressing the legacy of the conflict.⁷⁵ The Commission has also detailed its continuing concerns on three main mechanisms established to investigate conflict related deaths in NI – extensive delays in the coronial process; the closure of Historical Enquiries Team and the resourcing difficulties within the Office of the Police Ombudsman for NI.

In 2014 the NI Secretary of State announced that she would convene cross-party talks to try to solve outstanding political issues, including flags, parades and the past.⁷⁶ On 23 December 2014 the Stormont House Agreement was reached.⁷⁷ This envisaged creating a number of institutions for dealing with the past, including the investigation of troubles related deaths.

The Agreement provides that '[a]s part of the transition to long-term peace and stability the participants agree that an approach to dealing with the past is necessary which respects the following principles:

- *promoting reconciliation;*
- *upholding the rule of law;*
- *acknowledging and addressing the suffering of victims and survivors;*
- *facilitating the pursuit of justice and information recovery;*
- *is human rights compliant; and*
- *is balanced, proportionate, transparent, fair and equitable.*⁷⁸

Four bodies and one specific service to deal with 'The Past' are to be established. These are:

- *The Oral History Archive, which will 'provide a central place for peoples from all backgrounds (and from throughout the UK and Ireland) to share experiences and narratives related to the Troubles.'*⁷⁹
- *Victims and Survivors' 'Services', which will include a Mental Trauma Service, a proposal 'for a pension for severely physically injured victims', and advocate-counsellor assistance.*⁸⁰

⁷⁵ The 2012 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2012) p 16.; The 2013 Annual Statement: Human Rights in NI' (Belfast, NIHRC, 2013) p.16; The 2014 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2014) p 16

⁷⁶ Speech by the Secretary of State for Northern Ireland, Rt Hon Theresa Villiers MP, to the Conservative Party Conference, September 28, 2014, available at: http://www.politicshome.com/uk/article/105468/secretary_of_state_for_northern_irelands_rt_hon_theresa_villiers_mp_conference_speech.html

⁷⁷ NI Office 'Stormont House Agreement' 23 December 2014

⁷⁸ Stormont House Agreement, 2014, para 21

⁷⁹ Ibid., para 22

⁸⁰ Ibid., para 26-29

- *The Historical Inquiries Unit, which will 'take forward investigations into outstanding Troubles-related deaths'.*⁸¹
- *The Independent Commission on Information Retrieval, which will 'enable victims and survivors to seek and privately receive information about the (Troubles-related) deaths of their next of kin'.*⁸²
- *The Implementation and Reconciliation Group, which will 'oversee themes, archives and information recovery' and commission an academic report after 5 years analysing themes.*⁸³

The UK Government has stated that specific measures of the financial package to NI will include 'up to £150m over 5 years to help fund the bodies to deal with the past'.⁸⁴ It further states that:

*[t]he paper from the party leaders estimates the potential costs of the new bodies to be higher than Government estimates. The Government recognises the burden that this work puts on the PSNI and that the costs could be higher and so will provide further funding. Therefore the Government will contribute up to £30m per year for five years to pay for the institutions to help deal with the past.*⁸⁵

The Stormont House Agreement contains proposals for a five year mandate for both the Historical Inquiries Unit and the Independent Commission on Information Retrieval.⁸⁶ The Implementation and Reconciliation Group is to commission a report 'on themes' after five years, the evidence for which is to be provided 'from any of the legacy mechanisms'.⁸⁷ In September 2015 the NIO published a position paper on a Stormont House Agreement Bill and providing detail on the proposed status, remit and functions of each body.⁸⁸ The position paper states that the Historical Inquiries Unit will carry out investigations into outstanding Troubles related deaths occurring between 1 January 1966 and 10 April 1998. The NIO proposes that the PSNI and Office of the Police Ombudsman will "certify their existing caseloads as complete or incomplete in advance of the establishment of the Historical Inquiries Unit".⁸⁹ It proposes that the Historical Inquiries Unit will "produce and publish a Statement which will set out the manner and standards by which the Historical Inquiries Unit will conduct its investigations, including how it will ensure that its investigations are compliant with Article 2 of the ECHR".⁹⁰ Within the Stormont House Agreement the UK Government commit to make "full disclosure" to the Historical Inquiries Unit.⁹¹ Within its position paper the NIO states that the Stormont House Agreement Bill; "will include a duty on UK Government bodies to provide the Historical Inquiries Unit with such information, documents or other material, information and documentation as it may reasonably require for the purposes of, or in connection with, the exercise of its functions".⁹² The position paper suggests a number of measures to "prevent damaging onward disclosure".⁹³

The NIO state that the Independent Commission on Information Retrieval will be an international body established by the UK and Irish Government.⁹⁴ It is proposed that the "Independent Commission on Information Retrieval will be entirely separate from the criminal justice system" and will not

81 Ibid., 2014, para 30

82 Ibid., 2014, para 41

83 Ibid., 2014, para 51

84 Stormont House Agreement, Financial Annex, 2014, p1. The SHA includes a further broad financial commitment to all sections covered in the SHA; 'The total value of the Government's package is additional spending power of almost £2 billion.' Stormont House Agreement, Financial Annex, 2014, para 3

85 Stormont House Agreement, Financial Annex, 2014, p2

86 Stormont House Agreement, 2014, para 40 and 43

87 Ibid., para 51

88 Northern Ireland Office 'Northern Ireland (Stormont House Agreement) Bill 2015 Summary of measures September 2015

89 Ibid., p. 13

90 Ibid., p. 15

91 Stormont House Agreement, 2014, para 37

92 Northern Ireland Office 'Northern Ireland (Stormont House Agreement) Bill 2015 Summary of measures September 2015 p. 17

93 Ibid., p. 17

94 Ibid., p. 22

prejudice ongoing criminal investigations or court proceedings.⁹⁵ The position paper states that “the Independent Commission on Information Retrieval will not test information to an evidential standard, Independent Commission on Information Retrieval reports will not identify alleged perpetrators, or contributors”.⁹⁶

The Stormont House Agreement highlights that ‘the integrity and credibility of this agreement is dependent on its effective and expeditious implementation. Accordingly, progress in implementing the provisions of this Agreement must be actively reviewed and monitored.’⁹⁷ The Agreement provides for review meetings between ‘the Northern Ireland Executive party leaders as well as the UK Government and Irish Government’.⁹⁸

Political agreement around the detail of the establishment of the institutions envisaged by the Stormont House Agreement has not been reached and an Implementation Plan agreed in relation to the Stormont House Agreement on 17 November 2015 does not address the issue of investigations into conflict related deaths.⁹⁹ The Implementation Plan states:

The parties to this Agreement reaffirm their commitment to the full and fair implementation of the SHA provisions on the past.

A large measure of agreement has been found on the detail of many of the issues addressed by the SHA. Some of these remain a work in progress.

While progress has been made on most aspects of the legacy of the past, we have been unable to agree a way forward on some of the key issues.

*There remains a need to resolve the outstanding issues and the UK Government and Irish Government will reflect on the options for a process to enable this.*¹⁰⁰

In November 2015 the United Nations Special Rapporteur on transitional justice, Pablo de Greiff carried out a visit to the UK to assess the initiatives undertaken to deal with the legacies of the violations and abuses that took place during the conflict.¹⁰¹ The Commission met with the Special Rapporteur during his visit. The Special Rapporteur issued preliminary observations and recommendations on 18 November 2015, the day following the publication of the Implementation Plan, in his observations the Special Rapporteur stated that the failure to deal with the past was:

evidenced at the ground level by the continued dissatisfaction of victims, obvious both in their self-reported suffering and in a variety of indicators that point towards unaddressed sequelae. At the social level it is manifested in abiding fractures between social groups in Northern Ireland, but also between communities there and other stakeholders, including the Republic of Ireland and, especially, the UK. At the political level, the fact that the past has not been adequately addressed is obvious not only in the way in which it continues to be an extraordinarily resilient polarizing and organizing fact of Northern Ireland politics, but also in the way in which it bursts into the political stage, often with the capacity to generate what without exaggeration can be

95 Ibid., p. 25

96 Ibid., p. 26

97 Stormont House Agreement, 2014, para 73

98 Ibid., para 74

99 NIO ‘A Fresh Start: The Stormont House Agreement and Implementation Plan’ 17th November 2015 p. 6 In his foreword to the Implementation Plan the Minister for Foreign Affairs and Trade states, ‘While important progress was made on taking forward aspects of the Stormont House Agreement dealing with the legacy of the past, it did not prove possible to resolve all of the key issues within the timescale of this negotiation. Nevertheless, the two Governments will persist in our efforts to secure an agreed basis for the establishment of the institutions dealing with the past envisaged in the Stormont House Agreement’

100 NIO ‘A Fresh Start: The Stormont House Agreement and Implementation Plan’ 17th November 2015 pp. 34-35

101 OHCHR Press Release ‘Northern Ireland: “Twenty years on, the UK is yet to fully address the legacies of the past” – UN rights expert - available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16780&LangID=E#sthash.T9fsWBnS.dpuf>

*called crises. Finally, at the level of institutions, there is no question that legacy issues impose huge burdens –of various kinds, not just economic—on a range of institutions and on relations between citizens and official institutions.*¹⁰²

In 2015, the UN Human Rights Committee once again focused its attention on NI, recommending that the UK, including the NI Executive:

(a) Ensure, as a matter of particular urgency, that independent, impartial, prompt and effective investigations, including those proposed under the Stormont House Agreement, are conducted to ensure a full, transparent and credible account of the circumstances surrounding events in Northern Ireland with a view to identifying, prosecuting and punishing perpetrators of human rights violations, in particular the right to life, and providing appropriate remedies for victims;

*(b) Ensure, given the passage of time, the sufficient funding to enable the effective investigation of all outstanding cases and ensure its access to all documentation and material relevant for its investigations*¹⁰³

The Commission conducted a technical legal analysis of the human rights obligations engaged by the package of measures contained within the Stormont House Agreement.¹⁰⁴ This analysis was primarily directed towards those responsible for giving operational effect to the bodies and services set out within the Agreement's package of measures for dealing with 'The Past'. It sets out a number of recommendations for each of the bodies to be established with a particular focus on the procedural obligations arising from the ECHR, Articles 2 and 3. The Commission has noted that violations and abuses which occurred after 10 April 1998 are subject to the rule of criminal law independent of the provisions contained in both the Belfast (Good Friday) Agreement 1998 and Stormont House Agreement.¹⁰⁵

The UK has failed to implement ECtHR judgments stipulating measures to achieve effective investigations into 'Troubles-related' deaths since 2001,¹⁰⁶ and this failure is itself resulting in further findings of violations against the UK.¹⁰⁷



Legacy inquests and inquiries

The Stormont House Agreement does not contain specific commitments relating to legacy inquests but states that:

*Processes dealing with the past should be victim-centred. Legacy inquests will continue as a separate process to the [Historical Inquiries Unit]. Recent domestic and European judgments have demonstrated that the legacy inquest process is not providing access to a sufficiently effective investigation within an acceptable timeframe. In light of this, the Executive will take appropriate steps to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements.*¹⁰⁸

In 2015 the Commission briefed the UN Human Rights Committee and referred to comments from the Lord Chief Justice for NI Sir Declan Morgan QC that the system of inquests is currently in a 'lamentable state of affairs', and that: "If existing legacy inquests are to be brought to a conclusion

¹⁰² Preliminary observations and recommendations by the Special Rapporteur on his visit to the United Kingdom of Great Britain and Northern Ireland London, 18 November 2015 – available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16778&LangID=E#sthash.hJpysiU0.dpuf>

¹⁰³ UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192 para 11(b)

¹⁰⁴ NIHRC 'Technical Analysis of the Section Dealing with 'The Past' within the Stormont House Agreement 2014' (September 2015)

¹⁰⁵ Ibid., p22-23

¹⁰⁶ See the McKerr Group of Cases, Council of Europe, Committee of Ministers, Cases No. 25, 1201st meeting – 5 June 2014, Cases against the United Kingdom

¹⁰⁷ See Hemsworth v. The United Kingdom, Application No. 58559/09, 16 October 2013

¹⁰⁸ NI Office 'Stormont House Agreement' 23 December 2014

under the present system someone could easily be hearing some of these cases in 2040".¹⁰⁹ In 2015 the senior coroner retired and his replacement has not been appointed at the time of writing.¹¹⁰ However, the Minister of Justice announced in May 2015 that the existing County Court judicial complement would be increased to allow County Court judges to hear inquests.¹¹¹ In addition the Lord Chief Justice has assumed the presidency of the Coroners court.¹¹²

The UN Human Rights Committee recommended that the UK, including the NI Executive:

*Ensure that the Legacy Investigation Branch [PSNI] and the Coroner's court in NI are adequately resourced and are well-positioned to effectively review outstanding legacy cases.*¹¹³

The Commission notes that the difficulty in obtaining full disclosure of documentation held by the UK Government and the PSNI has been a factor contributing to the delays in inquest proceedings.¹¹⁴ The Historical Inquiries Unit will have the remit to pursue particular lines of inquiry into legacy inquest deaths on behalf of the coroner.¹¹⁵

Finucane

In previous annual statements the Commission recorded that the family of Pat Finucane maintain their call for an independent inquiry.¹¹⁶ In 2015 the Finucane family unsuccessfully challenged the decision of the Prime Minister to hold a review into the death rather than a public inquiry of the kind recommended following an independent investigation by Judge Peter Cory.¹¹⁷

The family argued that by refusing to establish a public inquiry and instead ordering a review the Prime Minister acted in a manner that was incompatible with the applicant's rights pursuant to Article 2 of the ECHR and therefore in breach of section 6 of the HRA 1998.¹¹⁸ In his judgement Stephens J ruled that the Article 2 procedural obligation does apply to the murder of Pat Finucane. Stephens J set out the nature of the Article 2 procedural obligation and noted that the form of the investigation may vary in different circumstances and that a police investigation remains ongoing. In refusing the application that a public inquiry must be held Stephens J noted that the Council of Europe Committee of Ministers had closed supervision of the UK's compliance with the ECtHR judgement in *Finucane v UK* 2000.¹¹⁹ The Finucane family have appealed this judgement.¹²⁰

This issue was considered by the UN Human Rights Committee in 2015, which subsequent to the high court judgment recommended that the UK:

*Consider launching an official inquiry into the murder of Pat Finucane.*¹²¹



Inquiries Act 2005

The Commission has consistently expressed the view that the Inquiries Act 2005 makes it impossible to set up truly independent inquiries by virtue of a subordination of the inquiry process to the control

109 NICTS 'Court of Appeal suggests approach to deal with Legacy Inquests' Summary of Judgement 17 November 2014

110 UTV News 'NI inquest system 'in chaos' without coroner' 2015

111 NIA Official Report (Hansard) Monday 18 May 2015 Vol. 104, no. 7 p. 35

112 The Legal Aid and Coroners' Courts (2014 Act) (Commencement No. 2) Order (Northern Ireland) 2015 19 April 2015

113 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192, para 11(b)

114 NICTS 'Court of Appeal suggests approach to deal with Legacy Inquests' Summary of Judgement 17 November 2014

115 Department of Justice 'Policy arising from the Stormont House Agreement: Position Paper' August 2015 – made available at stakeholder engagement workshops

116 NIHR 'The 2014 Annual Statement: Human Rights in Northern Ireland' December 2014 p. 19

117 Finucane's (Geraldine) Application 2015 NIQB 57

118 Ibid.

119 Ibid.

120 BBC News NI 'Pat Finucane murder: Widow lodges legal appeal over inquiry ruling' 14 October 2015

121 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192, para 8

of Government ministers at every stage, even though the actions of the executive arm of the State may, more often than not, be the very subject of the investigation.¹²²

In 2015 a House of Lords Select Committee published a report on the operation of the 2005 Act, containing 33 recommendations.¹²³ The Select Committee did not recommend amendments to sections 13 and 14 of the 2005 Act, which empower Government Ministers to suspend and terminate inquiries, respectively.¹²⁴ These powers have been the principal source of concern for the Commission and others.¹²⁵ Furthermore, of the Select Committee's 33 recommendations the Government rejected 14, including all but one recommendation relating to the independence of inquiries.¹²⁶

The UN recommended in 2015 that the UK:

*Reconsider its position on the broad mandate of the executive to suppress the publication of Inquiry reports under the Inquiries Act 2005.*¹²⁷



On the runs: administrative scheme

In its 2014 annual statement the Commission referred to the administrative scheme established by the UK Government through which 'comfort letters' were issued to individuals living outside of the UK, who believed they might face questioning or arrest in connection with terrorist or other criminal offences relating to the conflict in NI if they returned to the UK.¹²⁸

The Government has emphasised that the letters do, "not amount to immunity, exemption or amnesty from arrest".¹²⁹ Prime Minister David Cameron established an inquiry, led by Lady Justice Hallett, to review the operation and extent of the administrative scheme. Lady Justice Hallett reported in July 2014 and concluded that the administrative scheme did not grant immunity from prosecution and that the judgement in the Downey case is non-binding.¹³⁰

The NI Affairs Committee published a report on the operation of the administrative scheme and the use of the Royal Prerogative of Mercy in March 2015.¹³¹ The Committee noted that the impact of a 'comfort letter' on any future prosecution of a recipient remains unclear.¹³² This issue is yet to be tested by the courts. The Committee recommended:

*The Government should set its mind to ensuring that all necessary steps are taken, including, if necessary, introducing legislation to ensure the letters have no legal effect.*¹³³

The Committee also specifically highlighted failings in the case of Gareth O'Connor. An inquest into the death of Mr O'Connor was stayed by the Coroner pending an investigation by the PSNI into one of the suspects in Mr O'Connor's murder. It emerged during the course of the inquest that this suspect was

122 NIHRC Correspondence to the UN Human Rights Committee, 24 August 2009. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fGBR%2f11876&Lang=en

123 House of Lords Select Committee on the Inquiries Act 2005 Report of Session 2013–14 The Inquiries Act 2005: post-legislative scrutiny March 2015

124 Ibid.

125 NIHRC 'Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights.' May 2015 paras 6.1.2 and 6.1.3

126 Ministry of Justice 'Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005' June 2014

127 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 8

128 NIHRC 'The 2014 Annual Statement: Human Rights in Northern Ireland' December 2014 p. 18 see further NIHRC 'Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights.' 2015 paras 6.1 and 6.2

129 Northern Ireland Office Statement by Secretary of State following the decision to hold an independent inquiry into the operation of the OTR administrative scheme 27 February 2014 available at: <https://www.gov.uk/government/news/villiers-further-statement-on-otr-scheme>

130 BBC News 'On the Runs: Lady Justice Hallett to head review' 24 March 2014 <<http://www.bbc.co.uk/news/uk-northern-ireland-26528449>>. See Hallett Review online report at <http://www.hallettreview.org/chapter/conclusions/conclusions-legal-issues/>

131 House of Commons Northern Ireland Affairs Committee The administrative scheme for "on-the-runs" HC 177 24 March 2015

132 Ibid.

133 Ibid., para 157

in receipt of a 'comfort letter', despite the fact that this murder was committed in 2003, five years after the signing of the Belfast (Good Friday) Agreement.¹³⁴

The Commission informed the UN Human Rights Committee in 2015 that the operation of the scheme has potentially hampered the prosecution of individuals for offences committed both during and following the conflict in NI.¹³⁵

The Commission has advised the NIO, that it is required to ensure independent, impartial, prompt and effective investigations surrounding events relating to the conflict in NI.¹³⁶ These must be conducted with a view to identifying, prosecuting and punishing the perpetrators of human rights violations and abuses, and providing appropriate remedies for their victims.



Rule of law: non-state actors

PSNI statistics for the financial year 2014/15 record three security related deaths, 73 shooting incidents and 36 bombing incidents.¹³⁷ During the same period there were 36 casualties resulting from paramilitary style shootings, eight more than the previous year (2013/14) and there were 58 casualties as a result of paramilitary style assaults in 2014/15, this is 16 more than in 2013/14.

The Commission reported to the UN CRC Committee in 2015 on the ongoing threat that paramilitary groups pose to children.¹³⁸ It highlighted that at least 12 children were victims of paramilitary style shootings and 27 of paramilitary style assaults between 2009 and 2014.¹³⁹ In November 2015 the International Fund for Ireland reported that paramilitary groups continue to recruit children.¹⁴⁰ The Commission also noted a lack of specific policies and approaches to address paramilitary style attacks on children and requested that the UN CRC Committee ask the UK Government through the NI Executive to take immediate and effective action to address the issue of paramilitary style assaults.¹⁴¹

In the summer of 2015 Gerard Davidson and Kevin McGuigan were murdered.¹⁴² The Chief Commissioner made a statement to the UN Human Rights Council noting that:

In August 2015 Kevin McGuigan, was shot dead in Belfast. The Police Service has indicated that in its assessment those involved in this murder included members of the Provisional IRA and that there is "no information at this stage" to say whether the murder was sanctioned at a command level.

Prior to its dissolution in 2011 an official body monitoring paramilitary activity, said it believed the Provisional Irish Republican Army had "maintained its political course" and the Chief Constable has indicated this remains the situation. On the 1 September 2015, in response to the murder the First Minister of Northern Ireland urged the convening of talks. The United Kingdom Government has from 8 September confirmed that urgent, intensive and focused cross party talks will commence.

Both Governments agree that the current situation is serious and without urgent progress there is a real threat to the stability of the devolved institutions.

134 House of Commons Northern Ireland Affairs Committee The administrative scheme for "on-the-runs" HC 177 24 March 2015 paras 279-282

135 NIHRC 'Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR' May 2015 para 6.1 and 6.3

136 NIHRC Press Release 'NI Human Rights Commission expresses concern over the government's handling of On The Run cases' 27 February 2014

137 Police Recorded Security Situation Statistics Annual Report covering the period 1st April 2014 – 31st March 2015

138 NIHRC 'Submission to the UN Committee on the Rights of the Child on the United Kingdom's Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child' (July, 2015) para 15

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

140 Belfast Telegraph 'Terrorist groups are still recruiting children in Northern Ireland' 16th November 2015

141 NIHRC 'Submission to the UN Committee on the Rights of the Child on the United Kingdom's Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child' (July, 2015) p. 10

142 Belfast Telegraph "This is payback for Jock Davison" - IRA hitman Kevin McGuigan killed in a hail of bullets at his Belfast home' 13th August 2015

*The institutions created by the Northern Ireland peace process are at significant risk. We ask the Council to note these developments and to encourage all those involved to take decisive action to promote political stability and the peace process.*¹⁴³

Following political talks the NI Secretary of State established a body to carry out an assessment: “on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process”.¹⁴⁴ The report was published in October 2015 and concluded that all the main paramilitary groups operating during the period of the Troubles remain in existence: this includes the UVF, RHC, UDA (UFF), Provisional IRA and INLA. The assessment body also noted that all of the paramilitary groups maintain a relatively public profile in spite of being illegal organisations.¹⁴⁵ Furthermore:

*The majority of paramilitary groups still have leadership structures and sub groups across NI. These groups still organise themselves along militaristic lines and use labels familiar from the Troubles e.g. ‘brigades’ or ‘army council’. These labels makes the groups look more prepared for a campaign of violence than they are. Even in the highly unlikely event that the groups were minded to return to terrorism, we judge they would be unable to resurrect the capability demonstrated at their peak.*¹⁴⁶

The assessment body continued to state that:

*individual members of paramilitary groups with a legacy of violent activity still represent a threat to national security, are engaged in organised crime and undermine NI’s post-conflict transformation. They have continuing, albeit much reduced, capability and engage in violence and crime. They cause serious harm to the communities within which they are embedded and undermine support for policing.*¹⁴⁷

Under the heading ‘Purpose’ the assessment body noted:

The existence and cohesion of these paramilitary groups since their ceasefire has played an important role in enabling the transition from extreme violence to political progress. Much of the leaderships’ ability to influence, restrain and manage the expectations of its members draws on the authority conferred through these hierarchies.

These structures have also enabled leaderships to address dissent (individuals within the group might become dissatisfied and revert to a path of violence). This has been important because if individual members of the paramilitary groups were to break away from the mainstream, their experience and capability has the potential to increase the threat posed to national security by DRs and other dissident paramilitary groups.

The assessment body considered that the most serious current terrorist threat in NI is posed by paramilitary groups not on ceasefire, who reject the Belfast (Good Friday) Agreement. These are “the so-called ‘new’ IRA, Óglaigh na hÉireann and the Continuity IRA.”¹⁴⁸

The Implementation Plan agreed in relation to the Stormont House Agreement in November 2015 proposes the establishment of a four member international body to report annually on progress

143 Oral Statement submitted by the Northern Ireland Human Rights Commission, (A Status NHRI of the United Kingdom of Great Britain and Northern Ireland). 30th Session UN Human Rights Council Agenda Item 3 SR on truth, justice, reparation and non-recurrence

144 Paramilitary groups in Northern Ireland 20 October 2015: An assessment commissioned by the Secretary of State for Northern Ireland on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469548/Paramilitary_Groups_in_Northern_Ireland_-_20_Oct_2015.pdf

145 Ibid., para 2 i

146 Ibid., para 2 iii

147 Ibid., para 2 xi

148 Ibid., para 2 ii

towards ending continuing paramilitary activity.¹⁴⁹ The Commission recognises as a fundamental principle that human rights must operate and can only be truly effective within the framework of the rule of law.

Investigations of deaths in custody

The Commission welcomed the introduction of the Justice (No. 2) Bill 2015 to the NI Assembly by the DOJ and the proposal to place the Prison Ombudsman for NI on a statutory footing.¹⁵⁰ In providing advice on the Bill, the Commission noted that the ECt.HR has ruled that:

*persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody, which obligation is particularly stringent where that individual dies.*¹⁵¹

The Commission advised that the ECHR, Article 2 requires an effective investigation into all deaths in custody.¹⁵² It further acknowledged that an investigation by the Prison Ombudsman will form part of the actions needed to meet this procedural obligation. The Commission provided specific advice on the requirements of an effective and independent investigation and advised that the Bill be amended to empower the Ombudsman to publish reports.¹⁵³ It also recommended that the Bill provide the Prison Ombudsman with a power to carry out investigations on his or her own initiative and that consideration should be given as to whether a specific power to compel witnesses might assist in its investigations.¹⁵⁴

149 NIO 'A Fresh Start: The Stormont House Agreement and Implementation Plan' 17th November 2015 para 5.1

150 Justice (No. 2) Bill (Bill 57/11-16). Part II

151 Keenan v. UK 27229/95 (2001) ECHR 242

152 NIHRC 'Submission to the Committee for Justice Call for Evidence on the Justice (No. 2) Bill' September 2015 paras 49 - 52

153 *Ibid.*, para 44

154 *Ibid.*, para 60

Right to liberty and security of the person

ICCPR	Article 9 Article 10 Article 11
CRPD	Article 14
ECHR	Article 5
CFREU	Article 6
CRC	Article 37 (b)

Alternatives to imprisonment

In 2013 the UN CAT Committee raised concerns about the overcrowding of prisons across the UK and recommend, a strengthening of efforts and setting of:

*concrete targets to reduce the high level of imprisonment and overcrowding in places of detention, in particular through the wider use of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110).*¹⁵⁵

In 2014/15 of 1,624 adult male prisoners 768 were serving sentences of less than 6 months and of 95 adult female prisoners 50 were serving sentences of less than 6 months.¹⁵⁶ This represented 48 per cent of the total number of adult prisoners. The DOJ has acknowledged that: “[t]he actual time served by offenders on short prison sentences provides little opportunity to address offending behaviour. Community sentences, where many offenders are under probation for a prolonged period, provide more opportunities to assist the offender to overcome the difficulties that lead the offender to reoffend”.¹⁵⁷

In 2015 figures on reoffending rates for those convicted of criminal offences demonstrated that 46.8 per cent of persons released from custody reoffended within one year of release. Of those who received a supervised community disposal 34.2 per cent reoffended within one year of completion.¹⁵⁸

The Prison Review Team recommended in 2011 that proposals be developed: “to ensure that effective community sentences are the preferred method of dealing with those who would otherwise get short custodial sentences”.¹⁵⁹ In 2014, the Prison Review Oversight Group noted that this particular recommendation had not secured political consensus and no adequate proposals were forthcoming.¹⁶⁰ The Oversight Group held its final meeting in 2015, the recommendation remained outstanding.¹⁶¹ The Commission has again reported the matter of alternatives to imprisonment in NI to the UN.¹⁶²

155 UN CAT Committee ‘Concluding observations on the fifth periodic report of the UK, adopted by the Committee at its fiftieth session (2-31 May 2013) CAT/C/GBR/CO/5 para 31

156 DOJ ‘Analytical Services Group: The Northern Ireland Prison Population 2014 and 2014/15’ (September 2015) p. 24 NB NIPS consider an adult to be over 18

157 DoJ ‘Consultation on a Review of Community Sentences’ 26 April 2011

158 DoJ ‘Analytical Services Group: Adult and Youth Reoffending in Northern Ireland’ (2012/13 Cohort) Research and Statistical Bulletin 17/2015

159 Prison Review Team ‘Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons’ Recommendation 3 October 2011

160 Prison Review Oversight Group ‘Second Annual Report’ March 2014

161 Prison Review Oversight Group : Justice Committee Summary Report May 2015

162 NIHR ‘Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR’ May 2015, para 8.3 http://www.nihrc.org/uploads/publications/NI_Human_Rights_Commission_submission_to_the_UN_Human_Rights_Committee_114th_Session_on_the_Seventh_Periodic_Report_of_the_United_Kingdom.pdf

The Commission has continued to encourage the DOJ to introduce measures that will enable the administration of effective community sentences as the preferred method of dealing with those who would otherwise receive a short term custodial sentence.

Imprisonment for fine default

The Commission has consistently raised concerns about the numbers of people imprisoned in NI for fine default and has reported concerns to the UN on a number of occasions.¹⁶³ The Commission notes that the imprisonment of persons for fine default has historically contributed significantly to the prison population in NI.¹⁶⁴

In 2013, the UN CEDAW Committee recommended that the UK, including the NI Executive continue to develop alternative sentencing and custodial strategies for women convicted of minor offences.¹⁶⁵ In 2013, the UN CAT Committee called for effective diversion from the criminal justice system for non-violent women offenders convicted of minor offences.¹⁶⁶

In 2015 the Justice (No. 2) Bill was introduced to the NI Assembly proposing a statutory framework for the collection of fines.¹⁶⁷ In its submission to the Committee for Justice, the Commission welcomed the emphasis on ensuring the collection of fines to avoid the imprisonment of persons for fine default.¹⁶⁸ The Commission advised that imprisonment should be used as a measure of last resort, in order to reflect human rights standards.¹⁶⁹ This measure builds on earlier work undertaken by the DOJ to strengthen the fine enforcement system without recourse to imprisonment.¹⁷⁰

Women in prison

It is ten years since the Commission first advised that the absence of a discrete prison facility for women in NI undermines the reformative and rehabilitative aims which imprisonment should strive towards.¹⁷¹

In previous annual statements the Commission recalled that both the UN CAT Committee and the National Preventative Mechanism, designated under the Optional Protocol to the UN CAT, have recommended that women should no longer be held at Hydebank Wood and that a separate custodial facility should be established.¹⁷²

The Minister of Justice has indicated his support for the construction of a separate custodial facility for women in NI. However, he has emphasised that the delivery of this commitment is subject to appropriate funding.¹⁷³ In 2014 the Minister updated the NI Assembly following approval of the

163 See, NIHRC, 'Response to Department of Justice Consultation on Fine Default in Northern Ireland' (October 2011). See also, NIHRC submissions to the UN CEDAW Committee: 'Parallel Report on the 7th Periodic Report of the United Kingdom of Great Britain and Northern Ireland under the Convention on the Elimination of all Forms of Discrimination against Women' (June 2013), paras 32-34; 'Shadow Report on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (May 2008), paras 16-19. See also, NIHRC submission to the Committee Against Torture: 'Parallel Report on the 5th Periodic Report of the United Kingdom under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', para 5.3 - 5.5. See also, NIHRC Annual Statement 2012, p 19-20 and NIHRC Annual Statement 2013, p 20

164 See Prison Population statistics at <http://www.dojni.gov.uk/index/ni-prison-service/nips-population-statistics-2.htm>

165 CEDAW Committee "Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland" July 2013, para 55 (b), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en

166 CAT Committee "Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013)", para 33, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

167 Justice (No. 2) Bill 57/11-16 Part 1

168 NIHRC 'Submission to the Committee for Justice Call for Evidence on the Justice (No. 2) Bill' (September 2015) para 15

169 Ibid., para 19

170 DoJ Press Release 'Ford highlights reforms to fine enforcement system' (2 February 2012)

171 NIHRC 'The Hurt Inside: The imprisonment of women and girls in NI' (NIHRC: 2005) See also: NIHRC, 'Response to DoJ Prison Estate Policy Consultation' (December 2012) para 33

172 National Preventative Mechanism 'Report on announced inspection of Ash House, Hydebank Wood Women's Prison 18 - 22 February' October 2013. 20 statutory bodies make up the UK National Preventive Mechanism of specific reference to Northern Ireland the Criminal Justice Inspector NI, the Independent Monitoring Board (NI), the Regulation and Quality Improvement Authority and the Northern Ireland Policing Board Independent Custody Visiting Scheme are included in the list of bodies

173 AQO 5401/11-15 Ms Michaela Boyle (SF - West Tyrone) 16/01/2014 AQO 6690/11-15 Ms Bronwyn McGahan (SF - Fermanagh and South Tyrone) 18/09/2014

Strategic Outline Case by the DFP. NI Prison Service officials were in the process of appointing an Integrated Design Team, to progress the project through the business case, exemplar design and procurement processes that would lead to the construction and handover of the new facility.¹⁷⁴

In 2015 a step-down facility for women prisoners, nearing the end of their sentence, has been established at Hydebank Wood.¹⁷⁵ However, the construction of a new separate custodial facility for women has not commenced. The Commission has recommended that the DOJ expedite this project.



Imprisonment of children with adults

The UN CRC Article 37(c) requires that: “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so”.¹⁷⁶

Throughout 2015 the imprisonment of children alongside adults has continued to be permissible in NI. The Criminal Justice (Children) (NI) Order 1998, makes provision for a 15-17 year old offender, considered likely to injure him or herself or others to be detained in the young offenders centre at Hydebank Wood, which accommodates offenders up to 21 years of age. However, the Commission notes that no children have been imprisoned with adults since 2012.

In previous annual statements the Commission noted that the DOJ had indicated its intention to amend the 1998 Order removing the legal basis for the imprisonment of children at Hydebank Wood.¹⁷⁷ This commitment has not been met in 2015. The Commission has once again raised the matter with the UN CRC Committee and has continued to advise the DOJ that the provision in NI law permitting imprisonment of children alongside adults is incompatible with human rights and should be removed.¹⁷⁸



The remand of children

The UN CRC Article 37(b) requires that:

*No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*¹⁷⁹

In 2015 the National Preventative Mechanism designated under the Optional Protocol to the UN CAT published a report of an announced inspection of Woodlands Juvenile Justice Centre.¹⁸⁰ It recorded that only 9% of children imprisoned at Woodlands in 2013-14 had been sentenced following a conviction. Of the remainder, 47% were formally remanded to custody and 44% related to PACE proceedings.¹⁸¹ The National Preventative Mechanism found that the rate of PACE admissions to the Juvenile Justice Centre has almost trebled between 2008–9 and 2013–14 and has described this as ‘disproportionately high’. It recommended that the Youth Justice Agency and its statutory partners should set targets to improve the current arrangements for children who do not have a suitable bail address.¹⁸²

In its 2013 annual statement the Commission acknowledged the commitment of the DOJ to legislate to provide that a child would only be remanded in custody where there is a real prospect that they

174 AQO 6690/11-15 Ms Bronwyn McGahan (SF - Fermanagh and South Tyrone) 18/09/2014

175 AQO 7610/11-15

176 CRC, Article 37(c)

177 NIHRIC The 2013 Annual Statement: Human Rights in NI (Belfast 2013) p. 21

178 NIHRIC ‘Submission to the UN Committee on the Rights of the Child on the United Kingdom’s Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child’ (July, 2015) para 102

179 CRC, Article 37 (b)

180 National Preventative Mechanism ‘An announced inspection of Woodlands Juvenile Justice Centre’ May 2015 . 20 statutory bodies make up the UK National Preventive Mechanism

181 Ibid., para 2.5

182 Ibid., para 2.18

will receive a custodial sentence if convicted.¹⁸³ This commitment is yet to be realised and there continues to be a lack of suitable bail arrangements in NI.

The Commission raised this matter with the UN Human Rights Committee in 2015, which subsequently called for actions to:

*ensure that detention on remand of child defendants is used only as a measure of last resort and for the shortest possible period of time and that suitable bail packages are available to child defendants in Northern Ireland.*¹⁸⁴

The Commission has sought immediate action from the DOJ to introduce suitable bail arrangements and bring to an end the serious risk of human rights violations.



Definition of terrorism

The present definition of terrorism used in the UK is to be found in the Terrorism Act 2000, section 1. Under section 1 “terrorism” means the use or threat of action designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause. Section 1 goes on to list a range of actions and provides that the definition includes actions committed outside of the UK.

The Commission notes that the definition of terrorism is central to counter-terrorism legislation in the UK.¹⁸⁵ The Independent Reviewer of Terrorism, David Anderson QC has referred to the definition of terrorism within the Terrorism Act 2000 as, “remarkably broad – absurdly so in some cases”.¹⁸⁶ The UK Supreme Court in the case of *R v Gul* stated that: “the concerns and suggestions about the width of the statutory definition of terrorism which Mr Anderson has identified... merit serious consideration”.¹⁸⁷ In 2014 the Independent Reviewer of Terrorism recommended: “a thorough review of the criminal law in areas related to national security, focused on the question of to what extent it is necessary to supplement ordinary rules and procedures”.¹⁸⁸

In response to this recommendation the Home Secretary stated:

*I remain ever mindful of the complexity and fluidity of changing political events in the terrorism context and its ability to evolve and diversify at great speed. This environment demonstrates the importance of having a flexible statutory framework - with appropriate safeguards – to ensure that our law enforcement and intelligence agencies can continue to disrupt and prosecute those who pose a threat to the public. It is for this reason that I do not think it is the right time to make changes to the statutory definition.*¹⁸⁹

The Home Secretary further noted a number of ongoing legal cases relating to the definition of terrorism.¹⁹⁰

183 NIHRC ‘The 2013 Annual Statement: Human Rights in Northern Ireland’ (December, 2013) p. 22

184 NIHRC ‘Submission to the UN Committee on the Rights of the Child on the United Kingdom’s Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child’ (July, 2015) para 23

185 The Definition of Terrorism A Report by Lord Carlile of Berriew Q.C. Independent Reviewer of Terrorism Legislation Cm 7052 para 12

186 Report of the Independent Reviewer of Terrorism : The Terrorism Acts in 2012, July 2013 para 4.3 See comments: “Particularly striking is its indiscriminate criminalisation of those attacking “countries which are governed by tyrants and dictators” (*R v F* [2007] EWCA Crim 243, [32])”

187 [2013] UKSC 64, paras 33-34, 62

188 The Terrorism Acts in 2013, see further The Terrorism Acts in 2012, July 2013, 4.5; cited in *R v Gul* [2013] UKSC 64, para 34

189 The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2013 by the Independent Reviewer of Terrorism Legislation March 2015 Cm 9032 p. 8

190 *Ibid.*

In 2015 the Commission provided an update to the UN Human Rights Committee and supports the recommendation of the Independent Reviewer of Terrorism.¹⁹¹ The Committee subsequently recommended that the UK Government:

*Consider revising the broad definition of terrorism to require intent to coerce, compel, or intimidate a government or section of the public, and implementing the recommendations of the Independent Reviewer of Terrorism Legislation.*¹⁹²

Powers of arrest under the Terrorism Act 2000

Under the Terrorism Act 2000 section 41 a constable may arrest without a warrant a person whom he reasonably suspects to be a terrorist. In 2014/15, 227 people were arrested under section 41 of the Terrorism Act of which 35 were subsequently charged.¹⁹³ Therefore, only 15 per cent of persons arrested were charged, this is the smallest proportion of persons arrested under section 41 to be charged for the last ten years.¹⁹⁴

In 2015 the Commission provided an update to the UN Human Rights Committee and called for a review of the exercise of the section 41 arrest power. The Committee subsequently recommended that the UK Government:

*Undertake a review of the exercise of arrest powers under section 41 of the Terrorism Act 2000 to ensure that the principles of necessity and proportionality are strictly observed when using such powers; ensure that any detention of suspects arrested under the Terrorism Act 2000 is based on an individualized determination that it is reasonable and necessary taking into account all the circumstances rather than on the nature of the crime; and, whilst ensuring public safety, make bail available to such persons, as recommended by the Joint Committee on Human Rights and the Independent Reviewer of Terrorism.*¹⁹⁵

191 NIHRC 'Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR' May 2015

192 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 14

193 Police Service of Northern Ireland Police Recorded Security Situation Statistics Annual Report covering the period 1st April 2014 – 31st March 2015

194 Ibid., see Table 3

195 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 14 (d)

Freedom from torture, inhuman and degrading treatment

ICCPR	Article 7
CAT	
ECHR	Article 3
CFREU	Article 4
CRPD	Article 15 Article 17
CRC	Article 37 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Prison review and conditions

The Oversight Group established to review implementation of the recommendations of the Prison Review Group held its final meeting in May 2015, two of the recommendations of the Review Group remained unaddressed,¹⁹⁶ including recommendation 13 that:

*a joint healthcare and criminal justice strategy, covering all health and social care trusts, with a joint board overseeing commissioning processes within and outside prisons, to ensure that services exist to support diversion from custody and continuity of care.*¹⁹⁷

Healthcare provision in prisons, in particular mental health care, has been a source of concern for a number of years.¹⁹⁸ Closely related to the issue of mental health is the issue of substance abuse, both legal and illegal.¹⁹⁹ The Prison Ombudsman has reported in 2015 that the abuse of legal highs and prescribed medications featured in many situations in which prisoners almost lost their lives and that: “[t]he trend of prisoners abusing illicit substances appears to be increasing and is a major concern since it poses very serious risk to life”.²⁰⁰ In November 2015 a report on an independent inspection of Maghaberry Prison has revealed that significant failures in local leadership combined with an ineffective relationship with senior management within the NI Prison Service, has contributed to the prison becoming unsafe and unstable for prisoners and staff.²⁰¹

The Commission briefed the UN Human Rights Committee in 2015 on prison conditions and highlighted the contributory influence the misuse of substances has on the mental health of prisoners and rates of suicides in prison.²⁰² The UN Human Rights Committee recommended robust measures:

to prevent self inflicted deaths (suicides), including suicides and self-harm in custody, inter alia by: (a) Studying and addressing the root causes of the problem, continuing improving the identification of persons at risk of suicide and self-harm and operating effective early prevention strategies and programmes; (b) Providing adequate training to prison officials on suicide and self-

196 Prison Review Oversight Group : Justice Committee Summary Report May 2015 available at: <http://www.niassembly.gov.uk/globalassets/documents/raise/deposited-papers/2015/dp1474.pdf>

197 Prison Review Team ‘Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons’ October 2011 p. 44 available at: http://cain.ulst.ac.uk/issues/prison/docs/2011-10-24_Owers.pdf

198 *Ibid.*, pp. 40 – 47

199 *Ibid.*

200 Prisoner Ombudsman for Northern Ireland Annual Report 2014-15 p. 24 http://www.niprisonerombudsman.com/publications/Annual_Report_2014-15.pdf

201 CJINI ‘Inspectors find Maghaberry Prison to be unsafe and unstable’ 5 November 2015

202 NIHRC ‘Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR’ May 2015 8.4 see further CJINI and RQIA ‘The Safety of Prisoners held by the Northern Ireland Prison Service’ October 2014

*harm prevention; (c) Ensuring adequate protection of, and appropriate mental health and other support services to, prisoners; (d) Combating bullying in custody facilities effectively.*²⁰³

The Minister of Justice has indicated that the NI Prison Service and DHSSPS are continuing to work on the development of a Joint Health and Justice Strategy.²⁰⁴ The Commission has highlighted to the Minister that it is important that this strategy also addresses the social care of prisoners alongside physical and mental health and include actions to address the misuse of both legal and illegal substances amongst prisoners.



Abuse in health and social care settings

In 2015 the Mental Capacity (NI) Bill was introduced to the NI Assembly.²⁰⁵ The Commission welcomed the Bill which makes provision for a statutory definition of restraint in circumstances where a person lacks capacity.²⁰⁶

In its advice to the Ad Hoc Joint Committee, established to consider the Mental Capacity Bill, the Commission suggested a number of amendments to further ensure that restraint is applied only when it is a proportionate response to the risk of imminent harm in accordance with the recommendation of the Council of Europe.²⁰⁷

The Bill, as introduced, proposes a new offence of ill treatment or wilful neglect of a person who lacks capacity.²⁰⁸ The proposed clause broadly reflects section 44 of the Mental Capacity Act 2005. The Commission has advised the NI Assembly that the House of Lords in its post legislative scrutiny of the 2005 Act raised concerns about the low number of prosecutions brought under section 44.²⁰⁹ The House of Lords noted that the: “decision and time specific nature of capacity assessment, along with the presumption of capacity, are a defining feature of the Act, but appeared to create problems when applied to the question of capacity in section 44”.²¹⁰

The Commission notes that following a report by the National Advisory Committee on the Safety of Patients in England, the Westminster Parliament passed the Criminal Justice and Courts Act 2015 which at section 21 makes it an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully neglect that individual.²¹¹ In addition section 22 creates a similar corporate offence where a care provider has committed a gross breach of a relevant duty of care.

These offences were introduced as the Department of Health considered a lacuna existed in the law of England & Wales, the Department stated:

*It is entirely possible that a situation could arise where two patients, one with full capacity and one without, are being subjected to the same type of conduct, by the same person with the same intent, but a prosecution for ill-treatment or wilful neglect could only be brought in respect of the patient without capacity. Clearly, this is a situation we would want to avoid.*²¹²

203 UN Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 16

204 AQO 8899/11-16 Separately the National Preventative Mechanism has recommended the establishment of a comprehensive substance misuse strategy CJINI and RQIA ‘The Safety of Prisoners held by the Northern Ireland Prison Service’ October 2014

205 NIA Bill 49/11-16 Mental Capacity Bill

206 NIHRC ‘Submission to the Ad Hoc Committee on the Mental Capacity (NI) Bill’ 2015

207 Council of Europe Recommendation (2004)10, Concerning the Protection of the Human Rights and Dignity of persons with Mental Disorder. NIHRC ‘Submission to the Ad Hoc Committee on the Mental Capacity (NI) Bill’ 2015 Para 67

208 Mental Capacity (NI) Bill - Clause 256

209 House of Lords Mental Capacity Act 2005: post-legislative scrutiny - Select Committee on the Mental Capacity Act 2005 HL Paper 139

210 Ibid., para 304

211 Criminal Justice and Courts Act 2015 c. 2

212 See proposals in England & Wales by Department of Health ‘New offence of ill-treatment or wilful neglect Consultation document’ (February 2014) para 15

The Commission has advised that two additional clauses modelled on sections 21 and 22 on the Criminal Justice and Courts Act 2015 should be included within the Bill.²¹³



Historical abuse of children and adults

In 2015 the Historical Institutional Abuse Inquiry established by the NI Executive was extended by one year. The Inquiry report is now expected in January 2017.²¹⁴ The report will consider, inter alia, the: “requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims”.²¹⁵ Victims of abuse who have provided evidence to the inquiry have suffered with the consequences of abuse for many years and a number are of advanced age.²¹⁶ A number of groups representing the victims of institutional abuse have raised concerns regarding this delay.²¹⁷ In November 2015 the Chairman of the Inquiry announced that:

*... from the evidence we have heard so far we will recommend that there should be a scheme to award financial compensation to those children who suffered abuse in children’s homes and other institutions in Northern Ireland between 1922 and 1995.*²¹⁸

The Inquiry has commenced consideration of files and documents relating to Kincora Boys Home.²¹⁹ As reported in the Commission’s 2014 annual statement, the Chair of the Inquiry has received an assurance by the UK Government that all departments and agencies will cooperate to the utmost of their ability with the Inquiry’s investigations into Kincora.²²⁰ On the basis of this assurance, the Chair stated that the Inquiry will have the ability and resources to carry out an effective and thorough investigation into all the Kincora allegations.²²¹ Concerns remain, however, that the Inquiry may not be properly constituted to review abuse allegations relating to Kincora Boys Home.²²² In particular, it lacks the power to compel production of Government documents and the attendance of certain witnesses, including British Army or MI5 personnel.

The UN CEDAW Committee has recommended that the remit of the Inquiry should be extended to include adult residents of Magdalene laundry type institutions.²²³ In addition, the UN CAT Committee has noted that clerical abuse survivors who were abused in private settings were not included within the scope of the inquiry.²²⁴ Since then, there has been some discussion concerning other categories of abuse victims.²²⁵ However, attempts to have cases considered outside of institutional settings have been rejected.²²⁶

The Commission has continued to advise the UK Government and NI Executive of the need to ensure thorough and effective investigations into all allegations of abuse.²²⁷ The Commission notes that the Inquiry’s remit does not extend to adult residents of Magdalene laundry type institutions or those abused in private settings. It has highlighted that the OFMDFM and NI Executive should set out how the victims of such human rights violations and abuses, outside the remit of the current Inquiry, can

213 NIHRC ‘Submission to the Ad Hoc Committee on the Mental Capacity (NI) Bill’ 2015 p. 34

214 Inquiry into Historical Institutional Abuse (Amendment of Terms of Reference) Order (Northern Ireland) 2015

215 Historical Institutional Abuse Inquiry - Terms of Reference http://www.hiainquiry.org/index/acknowledgement_forum/terms-of-reference.htm

216 See NI Assembly debate Inquiry into Historical Institutional Abuse (Amendment of Terms of Reference) Order (Northern Ireland) 2015 Executive Committee Business – in the Northern Ireland Assembly at 11:15 am on 3rd February 2015

217 Ibid.

218 BBC News NI ‘HIA: Chairman announces a further six institutions to be investigated’ 4 November 2015

219 BBC News Kincora boys’ home abuse: Files handed to HIA inquiry 23 July 2015

220 NIHRC ‘Annual Statement 2014: Human Rights in Northern Ireland’ (2014, Belfast) p. 25

221 Ibid.

222 NIHRC ‘Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR’ May 2015 pp. 13 -14

223 CEDAW, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and NI, 30 July 2013, para 25

224 CAT, Concluding Observations on the fifth periodic report of the UK, adopted by the Committee at its fiftieth session (6-31 May 2013), para 24

225 Committee of the Office of the First and deputy First Minister minutes of proceedings 3 July 2013

226 CM’s Application [2013] NIQB 145

227 NIHRC Correspondence from Interim Chair John Corey to Home Secretary Rt. Hon. Theresa May MP June 2014

access thorough and effective independent investigations.²²⁸ Such processes must be open to public scrutiny and ensure the involvement of victims. They must be capable of leading to the identification and punishment of perpetrators, of establishing the truth, and of providing an effective remedy.



Domestic violence

There were 28,287 domestic abuse incidents and 13,426 domestic abuse crimes recorded by the PSNI in the financial year 2014/15. These are the highest recorded levels for 10 years. The number of domestic abuse incidents increased by 35% over the year and the number of crimes increased by 39%. There were 15 domestic abuse incidents per 1,000 people and seven domestic abuse crimes per 1,000 people.²²⁹

In December 2013 the DOJ and DHSSPS issued a public consultation on the strategy “Stopping Domestic and Sexual Violence and Abuse in NI, 2013-2020”.²³⁰ The Commission responded to the consultation advising that the binding nature of relevant international human rights standards was not recognised in the draft strategy.²³¹ The UK Government has signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) and the Home Office is working with the devolved administrations and other government departments to develop a timeframe for ratification.²³² The Commission advised that the DHSSPS and the DOJ should take cognisance of the Istanbul Convention and consider the role of the strategy in ensuring that the NI Executive fulfils its obligations. One year on a final strategy is yet to be published. The Minister of Justice indicated to the Assembly in November 2015 that: ‘Consideration continues to be given as to how the aims of this Strategy may be progressed in the current difficult financial environment. The publication of the final Strategy will be subject to clearance by the Minister of Health and the Executive’.²³³

In June 2015 the Special Rapporteur on Violence Against Women reported on her 2014 mission to the UK. The Special Rapporteur noted concerns in NI: “regarding the exclusion of women from the peacebuilding processes and how their experiences of violence during and after the conflict have been mostly unrecognized”.²³⁴ The Special Rapporteur recommended: that the UK ensure the full implementation in NI of UN Security Council resolution 1325.²³⁵

The Commission, along with the other UK NHRIs, made an oral intervention at the UN Human Rights Council in 2015 welcoming the publication of the Special Rapporteur’s Report. The intervention referred to the absence of a NI domestic violence and sexual abuse strategy and recommended that:

*the UK Government and devolved administrations implement comprehensive and co-ordinated strategies to prevent and combat violence against women and girls, introduce robust monitoring and accountability mechanisms to monitor the impact of these strategies, and ensure the provision of services for victims.*²³⁶

228 NIHRC ‘Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR’ May 2015 para 6.17-6.19

229 Police Service of Northern Ireland Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2014/15 Annual Bulletin published 06 August 2015

230 DHSSP and DoJ ‘Stopping Domestic and Sexual Violence and Abuse in NI 2013-2020 Public Consultation Document’ December 2013

231 NIHRC ‘Response to the Public Consultation on the Draft Strategy on Stopping Domestic and Sexual Violence and Abuse in NI, 2013-2020’ May 2014

232 CEDAW/C/SR.1142, Summary record of the 1142nd meeting of the Committee on the Elimination of Discrimination against Women, para 47. See also, CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and NI, 30 July 2013, para 34. See also, *Special Rapporteur on violence against women finalizes country mission to the United Kingdom and NI and calls for urgent action to address the accountability deficit and also the adverse impacts of changes in funding and services*, 15 April 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E>

233 AQW 50395/11-16 Mrs Pam Cameron (DUP - South Antrim) 04/11/2015

234 Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo Addendum Mission to the United Kingdom of Great Britain and Northern Ireland 19 May 2015

235 Ibid., para 106 (c) (x)

236 UK National Human Rights Institutions Oral statement on the Special Rapporteur on violence against women country report on the United Kingdom and Northern Ireland, Human Rights Council, 29th Session, Item 3, 16 June 2015

Domestic Violence Protection Orders

In its 2014 advice on the Justice (NI) Bill the Commission noted that provision had been made for protecting the public against violent offenders, but there was no provision to introduce Domestic Violence Protection Orders to protect the victims of domestic abuse.²³⁷ The Chief Commissioner advised the NI Assembly Committee for Justice:

*They were recommended by Criminal Justice Inspection in 2010. There have been pilots in England and Wales. The evaluation of the pilots was broadly positive in that the practitioners and victims and survivors viewed them positively as a way of providing some additional safeguards against domestic violence. They were introduced in England and Wales in March 2014. One of the interesting things in the evaluation was that they reduced further victimisation when they were used in chronic cases. Interestingly, the perpetrators seemed to respond reasonably well to them.*²³⁸

Following its Committee Stage the Justice (NI) Bill was amended making provision for Domestic Violence Protection Orders.²³⁹ The Commission welcomed and reported this matter to the UN Human Rights Committee which recommended that the provisions be enacted as a matter of priority.²⁴⁰

Allegations of torture and cruel, inhuman or degrading treatment or punishment overseas

In its 2014 annual statement the Commission recorded that the UK Government has accepted the credibility of a number of allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas. The Commission's view is that investigations by the UK Government into these allegations have not satisfied the investigative duty under Articles 2 and 3 of the ECHR, nor its obligations under the UN CAT.²⁴¹

This matter was passed to the Intelligence and Security Committee of the Westminster Parliament. The Committee's work throughout 2015 had been frustrated due to the resignation of the Chairman and delay in the appointments process after the UK general election.²⁴² In June 2012 the Commission, in conjunction with the other UK NHRIs, addressed the UN Human Rights Council highlighting:

*that the delay reinforces the need for a full, independent, judge-led inquiry which complies with the investigative obligation under international human rights law.*²⁴³

In its concluding observations on the ICCPR the UN Human Rights Committee called on the UK to:

*Address the excessive delays in the investigation of cases dealt with by the Iraq Historical Allegations Team and consider establishing more robust accountability measures to ensure prompt, independent, impartial and effective investigations.*²⁴⁴

237 NIHRC 'Submission to the Committee for Justice on the Justice (NI) Bill' 2014 para 26

238 Official Report: Minutes of Evidence Report Committee for Justice, meeting on Wednesday, 12 November 2014

239 Official Report: NI Assembly Tuesday 16 June 2015 See clause 95A and Schedule 6A

240 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 13(a)

241 See NIHRC, EHR and SHRC 'Follow-up regarding Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the UK' September 2014 p. 3

242 Hansard Script House of Commons Thursday 9 July 2015 9 July 2015 : Column 460

243 UN Human Rights Council Twenty Ninth Session Agenda Item 3 Joint Oral Statement submitted by the Northern Ireland Human Rights Commission, Equality and Human Rights Commission, and the Scottish Human Rights Commission (A Status NHRIs of the United Kingdom of Great Britain and Northern Ireland). Title: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (June 2015)

244 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 9(b)

In October 2015 the newly appointed chair of the Intelligence and Security Committee made a statement to the House of Commons on its forward work plan.²⁴⁵ The plan identified a number of immediate priorities and stated:

*Our longer-term priority is the substantial Inquiry into the role of the UK Government and Security and Intelligence Agencies in relation to detainee treatment and rendition, where there are still unanswered questions.*²⁴⁶

Deprivation of citizenship

In February 2015 the UK Government reported that:

*Nearly 600 people from the UK who are of interest to the security services are thought to have travelled to Syria and Iraq since the start of the conflicts and we estimate that around half of those have returned; a number of these individuals have joined terrorist organisations including the Islamic State of Iraq and the Levant.*²⁴⁷

The British Nationality Act 1981, as amended section 40 empowers the Home Secretary to deprive a naturalised British citizen of their citizenship if they have engaged in conduct “seriously prejudicial” to the UK’s vital interests, and the Home Secretary has reasonable grounds to believe the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory. The UK Government may exercise powers to deprive an individual of their citizenship both when they are in the UK and when they are abroad.²⁴⁸ This power came into force on 28th July 2014, on its proposal the Commission was concerned that this additional power to deprive an individual of their citizenship would be used excessively with the result that a not insignificant number of individuals may be deprived of their citizenship potentially leaving them stateless. In December 2014, the Home Office responded to a freedom of information request indicating that no individuals had at that time been deprived of their citizenship leaving them stateless, suggesting that the new power is being used sparingly.²⁴⁹ Furthermore, the Commission notes that the Home Secretary has asked the Independent Reviewer of Terrorism, David Anderson QC to conduct an inquiry into the use of the additional deprivation of citizenship power covering the initial year that this power has been in force.²⁵⁰

In 2015 the Westminster Parliament passed the Counter Terrorism and Security Act 2015 making provision for Temporary Exclusion Orders. These prohibit the return of an individual to the UK unless the return is in accordance with a permit to return.²⁵¹ The Act makes provision for an individual subject to a Temporary Exclusion Order to be able to apply to the court for a statutory review of the Order on their return to the UK.²⁵² The UK Government has stated that “It is not possible to predict how many temporary exclusion orders will be served”.²⁵³ During the passage of the Act the Commission provided a briefing to a number of NI peers emphasising the need for appropriate judicial safeguards.²⁵⁴

245 Intelligence and Security Committee – Work Priorities Statement The Rt. Hon. Dominic Grieve QC, MP, Chairman of the Intelligence and Security Committee of Parliament https://b1cba9b3-a-5e6631fd-s-sites.googlegroups.com/a/independent.gov.uk/isc/files/20151029_Committee_priorities_statement_2.pdf?attachauth=ANoY7cfExS4W-LyM88g2U45KJHxYZdGk9UU04j3Shf9de1ybFHQEnV6LwJ-VWVGcgPhZVTA6ISDmKSNJ1a1AQZwxwDFQJtISVE6py1KQCQvAwDujRqeKaBIPUhwZafTlxali8qOE-1cFbqRiNqmda8l5q5A8zFZ6XYGsMm4xaitgwxQ-ydcBPx2KfWjDc-b1tELsm_3CSrvHL96W6CW00eAXcfhQ2RX5Tw7JcQWwPWS1XKxLolwmxLscKqUxBllxBBS1yveo-d8attredirect-s=0

246 Ibid.

247 Title: Counter-Terrorism and Security Act 2015 - Temporary Exclusion Orders – Royal Assent IA No: H00144 11 February 2014

248 For discussion see House of Commons Library ‘Deprivation of British Citizenship and withdrawal of passport facilities’ SN/HA/6820 30 January 2015

249 Home Office ‘FOI release: Individuals deprived of British citizenship since 2013’ Published 18 December 2014

250 HC Deb, 17 September 2015, cWS To cover the initial year that this power has been in force, which ended on 28 July 2015

251 Counter Terrorism and Security Act 2015 Section 2(1)(a)

252 Ibid., Section 10

253 Title: Counter-Terrorism and Security Act 2015 - Temporary Exclusion Orders – Royal Assent IA No: H00144 11 February 2014

254 Correspondence dispatched from the Chief Commissioner to NI Members of the House of Lords (January 2015)

Noting the wide range of measures taken by the UK Government to address the flow of foreign fighters to conflict zones, the Commission, along with the other UK NHRIs, made an oral intervention to the UN Human Rights Council stating:

*The Commissions fully recognise the need to prevent individuals travelling for the purpose of the perpetration, planning of or participation in terrorist acts. Nonetheless, it is important that such powers are exercised in a manner consistent with international human rights law and these powers are subject to stringent judicial safeguards to ensure individuals are not arbitrarily deprived of the right to leave and return to their own country. An individual should not be prevented or delayed from returning to the UK where there is an imminent threat to their life or to their freedom from torture. Furthermore, the exercise of these powers must not frustrate efforts to ensure accountability for individuals suspected of committing gross abuses of international human rights.*²⁵⁵

The Commission also provided an update to the UN Human Rights Committee on legislative developments to frustrate the travel of individuals suspected of intending to commit acts of terrorism or gross abuses of human rights.²⁵⁶ The UN Human Rights Committee recommended:

*The State party should review its laws to ensure that restrictions on re-entry and denial of citizenship on terrorism grounds include appropriate procedural protections, and are consistent with the principles of legality, necessity and proportionality. The State party should also ensure that appropriate standards and procedures are in place to avoid rendering an individual stateless.*²⁵⁷

The Commission has written to the Home Secretary calling for a review of restrictions on re-entry and denial of citizenship on grounds of terrorism.²⁵⁸



Mechanisms to identify victims of torture detained in immigration facilities

The Immigration Detention Centre Rules make provision for the regulation and management of detention centres.²⁵⁹ The Rules provide for matters such as the welfare and health care of immigration detainees. Rule 35 (3) of the Detention Centre Rules places an obligation on a medical practitioner to report to the manager of the Centre any detained person who he/she is concerned may have been the victim of torture. In 2013 the UN CAT Committee had recommended that the UK Government:

*conduct an immediate independent review of the application of Rule 35 of the Detention Centre Rules in immigration detention, in line with the Home Affairs Committee's recommendation and ensure that similar rules apply to short term holding facilities.*²⁶⁰

255 The Commission intervened under agenda item 3

256 NIHRC 'Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR' May 2015 para 11.1 – 11.6

257 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 15

258 Correspondence dispatched from the three UK NHRIs to the Home Secretary 26 October 2015

259 2001 No. 238 IMMIGRATION The Detention Centre Rules 2001

260 UN CAT Committee 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para 30

In March 2015 the report of a Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration into immigration detention was published.²⁶¹ The report recommended that:

*when completing a Rule 35 report GPs [General Practitioners] should give a clinical opinion rather than just passing on what they have been told by the detainee. Caseworkers should be properly trained in how to respond to Rule 35 reports, so that responses are in accordance with Home Office policy.*²⁶²

The UK Government is yet to initiate a review of the application of Rule 35. Baroness Ruth Lister, presenting the All Party Report to the House of Lords, stated:

*What became clear during the inquiry was the disconnect between official policy and what actually happens. The current Home Office guidance that detention should be used sparingly and for the shortest possible period is rendered ineffective by working practices and culture.*²⁶³

In NI irregular migrants are detained at Larne House short term holding facility. Detainees are held for a maximum period of five or seven days, if Removal Directions are in place. Detainees are then released, transferred to Immigration Removal Centres in Great Britain or removed, including to the Republic of Ireland.²⁶⁴ The Detention Centre Rules do not apply to Larne House due to its classification as a short term holding facility.²⁶⁵ Measures in place for the identification of victims of torture in Larne House appear to rely heavily on self identification.



Female genital mutilation

In 2014 the Commission welcomed the DFP targeted consultation on draft Multi-Agency Practice Guidelines on Female Genital Mutilation.²⁶⁶ The Guidelines provide advice and support to frontline professionals who are responsible for safeguarding children and protecting adults from the abuses associated with female genital mutilation.²⁶⁷

The Commission advised the DFP that human rights law requires the NI Executive to “modify social and cultural patterns which see women as subordinate to men”.²⁶⁸ Female genital mutilation is “a severe form of child abuse and a violation of human rights”, as well as a “manifestation of deeply entrenched gender inequality and patriarchal cultural norms”.²⁶⁹

The NI Executive approved the publication of the Multi-Agency Practice Guidelines in July 2014. The Commission welcomed the robust measures initiated to combat this ongoing human rights abuse. The Commission considers that the Practice Guidelines and initiatives by the NI Executive should be supported by an action plan to ensure the Guidelines are operationalised. The Commission has written to the relevant NI Executive Ministers to seek assurance that a detailed action plan is developed to include; training; awareness raising; research into the prevalence of Female Genital Mutilation; implementation of regional guidance; care pathways; and actions which can be taken to identify and prosecute perpetrators.

261 The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration 2015 available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

262 Ibid., key recommendations

263 House of Lords 26 Mar 2015 : Column 1574

264 Law Centre NI ‘Parliamentary inquiry into the use of immigration detention in the UK’ October 2014

265 The UKBA has informed the Commission that at Larne House “The Detention Centre Rules do not apply.” Email correspondence between UKBA and NIHRC dated 26 March 2013

266 On 13 January 2014 the DFP initiated a targeted consultation on draft Multi-Agency Practice Guidelines on Female Genital Mutilation

267 Guidelines are available at: <http://www.dhsspsni.gov.uk/fmg.pdf>

268 See DFP ‘Analysis on Consultation on draft Multi-Agency Practice Guidelines on Female Genital Mutilation’ (October 2014)

269 Ibid.

Strip searches

The Commission has previously acknowledged that the NI Prison Service is committed to the development of a modern approach to searching persons that is less intrusive than the current methods.²⁷⁰ A trial of millimetre wave scanning equipment had proved unsuccessful and preparation was being made to pilot an x-ray scanner. The pilot of the x-ray scanner was also delayed due to the need to obtain statutory approvals.

In 2015, the NI High Court heard a judicial review challenging a NI Prison Service policy permitting the recording of strip searches in Maghaberry Prison. The applicant argued:

*The prisoner, he or she is in a state of undress, there's a video camera there and we are told that none of the prisoners intimate parts will be filmed. Although when we look at the guidance there's conflicting guidance on what should or shouldn't be filmed. Even if it is accepted that strip searches can be proportionate and necessary in certain circumstances, the need to record the degrading experience is neither.*²⁷¹

Judgement is awaited and the DOJ has indicated that it remains committed to the ongoing review of search technologies, however the matter is still to be finally resolved.²⁷²

Syrian refugee crisis

In September 2015 the UN Human Rights Council held an interactive dialogue with the Commission of Inquiry on Syria. The Commission's Chairperson stated:

*Syria had fallen apart before the world's eyes, the ties that bound a nation together had disintegrated and the shared history of Syria's diverse communities had been torn asunder by this brutal war. This disintegration, this rending of a nation, was the price of doing nothing made manifest. As the war was heading to its fifth year, the Syrian tragedy had now reached European shores. The deaths of children, suffered daily by Syrian families for more than four and a half years, were being mourned afresh; the profound human suffering, long seen in the hospitals and camps of Syria's neighbours, was etched on the haggard faces of refugees huddled in European train stations and camping behind razor wire at Schengen borders. This was the spiralling cost of the failure to bring Syria back to peace.*²⁷³

In response to the refugee crisis the UK Government has committed to receive 20,000 Syrian refugees.²⁷⁴ This commitment has been criticised for not representing a "fair and proportionate share of refugees, both those already within the EU and those still outside it".²⁷⁵

The Chief Commissioner has stated:

Article 14 of the Universal Declaration of Human Rights says everyone has the right to seek and enjoy asylum from persecution in other countries. There is clearly a need for a co-ordinated European Union-wide approach to those arriving, alongside humanitarian support for those countries shouldering the burden in countries neighbouring war-torn zones. Moreover, solving the conflict in Syria and elsewhere through diplomatic and political means is also a vital but far from easy component in any durable resolution.

270 Official Report (Hansard) Session: 2012/2013, Committee for Justice 'Prison Service Reform Programme: Update' 16 May 2013

271 Belfast Telegraph 'Prisoner in Maghaberry 'degraded' by having his strip search filmed, court hears' 22 June 2015

272 AQZ 33305/11-15 Mr Phil Flanagan (SF – Fermanagh and South Tyrone) 07.05.2014

273 See Human Rights Council holds interactive dialogue with the Commission on Inquiry on Syria – 21 September 2015 at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16474&LangID=E#sthash.u8awwbBS.dpuf>

274 BBC News 'UK to accept 20,000 refugees from Syria by 2020' (7 September 2015)

275 Refugee Crisis 'Call from the Legal Community for Urgent Action' 12th October 2015 see <http://www.lawyersrefugeeinitiative.org/>

The Refugee and Asylum forum locally has identified key actions that could be delivered by the Northern Ireland Executive.

They include a long-term commitment to funding the Syrian refugee settlement as the UK Government is only guaranteeing funds for the first year; developing a refugee integration strategy to co-ordinate and monitor interventions and develop initiatives to ensure refugees from Syria, or elsewhere, do not face destitution; providing access to free accredited English language classes for those who need it and making the OFMDFM crisis fund a permanent arrangement.²⁷⁶



Corporal punishment of children

The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable chastisement of a child, and provides that this is a defence to a charge of common assault tried summarily. In 2008 the UN CRC Committee recommended that there should be a prohibition “as a matter of priority” of “all corporal punishment in the family, including through the repeal of all legal defences”.²⁷⁷ The UK Government has emphasised to the UN CRC Committee its belief that “parents should not be criminalised for giving a mild smack”.²⁷⁸

All of the UK Children’s Commissioners, including NICCY, have called in 2015 for a prohibition of “all corporal punishment in the family and in all other institutions and forms of alternative care, including through the repeal of legal defences, and actively promote positive and non-violent forms of childrearing and behaviour management”.²⁷⁹

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

276 Belfast Telegraph Opinion Piece ‘Playing our part to help refugees’ 22/09/2015 – see further The Telegraph “Accept more refugees’ petition gains over 400,000 signatures’ 2nd September 2015

277 UNCR Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 42

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

279 Report of the UK Children’s Commissioners, UN Committee on the Rights of the Child Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland p. 19 available at: <http://www.niccy.org/media/1489/uk-ccs-uncrc-examination-of-the-fifth-periodic-report-july-2015.pdf>

Freedom from slavery

ICCPR	Article 8
ECHR	Article 4
CFREU	Article 5
CRC	Article 34 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Child prostitution and sexual exploitation

In 2013 the issue of child sexual exploitation became a priority concern for the NI Executive following revelations about the extent of exploitation during an investigation by the PSNI. This investigation focused on 22 children, most of whom were in the care of social services, and suggested that many more may currently be at risk of sexual exploitation.²⁸⁰ The Minister for Health, Social Services and Public Safety instituted a thematic review of these cases with the aim of identifying key learning points and opportunities for improvement for the agencies involved.²⁸¹ At the same time, an independent, expert-led Inquiry was jointly commissioned with the Minister for Justice which published in November 2014, the Marshall Report.²⁸²

The Commission notes that the UN CRC Committee recommended in 2008 an intensifying of: “efforts to collect data on the extent of sexual exploitation and abuse of children, essential to prepare adequate responses to and to combat these phenomena”.²⁸³ In this regard, the publication of the Marshall Report provided an overview of the nature and extent of child sexual exploitation in NI, whilst acknowledging the difficulties with providing a definition and uncovering hidden victims.

The evidence received by the Marshall Inquiry did not suggest that NI is experiencing the type of organised exploitation experienced in other parts of the UK in recent years. It did, however, raise concerns that some perpetrators of exploitation were individuals connected to paramilitary organisations which therefore engendered fear in victims and made it much harder for them to come forward.²⁸⁴ This finding resonates with claims from adult victims of childhood sexual abuse by members of paramilitary organisations that these organisations acted to hide abuse from the authorities, moved perpetrators to other areas and forced victims to participate in ‘kangaroo courts’ when dealing with allegations of sexual abuse against their members.²⁸⁵ The findings of an independent review into the handling of three such cases by the Public Prosecution Service has led to a public apology by the Director after it found serious failures around strategic planning; management of the cases and in the communication and consultation with victims and witnesses.²⁸⁶ In July 2015 the Commission raised this matter in its submission to the UN CRC Committee.²⁸⁷

The Marshall Report contains 17 key recommendations and 60 supporting recommendations for improvement in combating child sexual exploitation, outlining measures for improved inter-agency

280 Northern Ireland Policing Board, Human Rights Annual Report 2013, page 11

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

282 Kathleen Marshall ‘Child Sexual Exploitation in Northern Ireland Report of the Independent Inquiry’ (November, 2014)

283 UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 74

284 Kathleen Marshall ‘Child Sexual Exploitation in Northern Ireland Report of the Independent Inquiry’ (November, 2014) pp. 48-49

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

286 See ‘Starmar report: Mairia Cahill and other alleged IRA rape victims ‘let down’ by PPS’ Belfast Telegraph, 22 May 2015

287 NIHRC ‘Submission to the UN Committee on the Rights of the Child on the United Kingdom’s Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child’. July 2015 para 75

working, education and awareness raising, training for professionals, funding of preventative services, engagement with communities, support for victims and the development of a regional strategy.²⁸⁸

The recommendations also cover the need for legislative reform in a number of areas, including addressing a gap in protection under the Sexual Offences (NI) Order 2008.²⁸⁹ Presently for a number of serious sexual offences against children aged between 13 and 18 years, “the defendant may claim that he/she believed the victim to be above 18 years” thus requiring the prosecution to prove that the defendant did not reasonably believe this.

The Commission had previously advised the Marshall Inquiry on the deficiency of the Sexual Offences (NI) Order 2008 and therefore welcomed its inclusion in the final report.²⁹⁰ It also raised the matter with the UN CRC Committee, which subsequently reached the same conclusion as the Inquiry, recommending legislative reform to include, “a provision that for child victims, the burden of proof would be reversed”. The Commission has continued to engage with the DOJ and has called upon the DOJ to introduce legislation that will reverse the burden of proof in cases of serious sexual offences against children above 13 years, where a defendant may claim that he/she believed the victim to be above 18 years. The DOJ Tackling Child Sexual Exploitation in NI Action Plan contains a commitment to consider the 2008 Order by December 2015.²⁹¹



National Crime Agency

In its 2014 annual statement the Commission noted that the NI Assembly had not passed a motion of legislative consent permitting the NCA to operate in NI with respect to devolved matters.²⁹² The Agency has responsibility for gathering, storing, processing, analysing and disseminating information that is relevant to activities to combat organised crime or serious crime. It came into existence by way of the Crime and Courts Act 2013.

The PSNI Chief Constable was on record having advised the Policing Board NI that:

*the absence of a Legislative Consent Motion has created a significantly reduced capability for NCA reducing the operational resources working to tackle serious and organised crime in NI. PSNI resources are increasingly stretched in filling the void created by the lack of a Legislative Consent motion and in supporting NCA operations. ... The National Crime Agency remains an important operational and strategic partner and continues to share information with the PSNI. We are experiencing an increased level of international crime... yet the agency set up to provide that international reach is unable to operate inside NI and unfortunately the consequence of NCA not having a full complement of operational powers in NI means that they are legally unable (whilst willing) to support the PSNI effort to frustrate, disrupt and dismantle Organised Crime Groups. Neither can they surge to support PSNI in relation to Child Sexual Exploitation investigations... In essence NI does not have access to the same level of resources and expertise in relation to serious and organised crime investigations as the rest of the United Kingdom and PSNI does not have the resource capacity to fill this void.*²⁹³

The UN CRC Committee in its concluding observations on the Optional Protocol on the sale of children, child prostitution and child pornography noted:

288 Kathleen Marshall 'Child Sexual Exploitation in Northern Ireland Report of the Independent Inquiry' (November, 2014) p. 149

289 Ibid., Recommendation 14

290 NIHRC 'Submission to the Independent Inquiry into Child Sexual Exploitation in NI' March 2014 pp.3-4

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

292 NIHRC '2014 Annual Statement: Human Rights in Northern Ireland' (December, 2014) p. 32

293 Policing Board Members Questions to Chief Constable – September 2014 Meeting, available at: http://www.nipolicingboard.org.uk/written_response_to_questions_for_september_2014_meeting.pdf

*the work of the National Crime Agency and, specifically, the Child Exploitation and Online Protection Centre, which comes under NCA, to help identify the main risks to children and prevent them from becoming victims of sexual exploitation. However, the Committee is strongly concerned that, in the absence of a legislative consent motion, NCA does not have powers in the devolved sphere in NI and therefore CEOP, which is part of NCA, is not fully operational in NI.*²⁹⁴

The UN CRC Committee urged the establishment of:

*safeguards to ensure that devolution does not lead to discrimination in the enjoyment of rights by children in different regions and that mechanisms such as the Child Exploitation and Online Protection Centre are extended to NI, to ensure the full implementation of the Optional Protocol throughout the State party's jurisdiction.*²⁹⁵

In 2015 the NI Assembly resolved:

*That this Assembly consents to the making of the draft Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 laid before Parliament on 29 January 2015.*²⁹⁶

The Commission welcomed the NI Assembly legislative consent motion providing for the operation of the NCA in NI. The NCA became operational in NI on 20 May 2015.²⁹⁷



Human Trafficking

The National Referral Mechanism (NRM) a framework operated by the NCA for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support. During 2014, 45 potential victims of human trafficking were referred to the NRM from NI. This figure included: 24 adult males; 13 adult females; five boys; and, three girls. Labour exploitation was the primary reason for referral comprising 71 per cent of the referrals; while nine per cent were referred for sexual exploitation; two per cent for domestic servitude; and another 18 per cent referred as exploitation unknown.²⁹⁸ Latest available statistics record three referrals (one adult and two minors) from NI during the period January to March 2015.²⁹⁹ Figures released in September 2015 indicate that there have been three convictions in NI courts for human trafficking offences.³⁰⁰

The NI Assembly approved a legislative consent motion in December 2014 permitting aspects of the Modern Slavery Act 2014 to apply in NI.³⁰¹ This included extending the remit of the UK Anti-Slavery Commissioner to NI. The first UK Anti-Slavery Commissioner was appointed in 2015 and his first strategic plan was published in October 2015.³⁰²

In October 2015 the Group of Experts established to review compliance with the Council of Europe Convention on Action against Trafficking in Human Beings visited NI and met with the Commission.³⁰³

294 Committee on the Rights of the Child Concluding observations on the report submitted by the United Kingdom of Great Britain and NI under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography CRC/C/OPSC/GBR/CO/1 8 July 2014 para 25

295 Ibid., para 26

296 Assembly Consent to the Making of the draft Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015

297 NCA Press Release 'NCA fully operational in Northern Ireland' 20 May 2015

298 NCA, 'National Referral Mechanism Statistics - End of Year Summary 2014' (19 January 2015), p 25

299 NCA, 'Human Trafficking: National referral Mechanism Statistics - January to March 2015' (29 July 2015), Annex E

300 DOJ, 'Final Northern Ireland Human Trafficking and Exploitation Strategy 2015/16', p 10

301 Legislative Consent Motion: Modern Slavery Bill 08.12.2014

302 See <https://www.gov.uk/government/news/uks-first-independent-anti-slavery-commissioner-announced>

303 The countries which have signed up to the Convention are monitored by the Group of Experts on Action against Trafficking in Human Beings (GRETA). See http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp



Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 received royal assent on 17 January 2015. The Act makes provision about human trafficking, slavery and other forms of exploitation, including measures to prevent and combat such exploitation and to provide support for victims of such exploitation.

The Commission had engaged extensively on the proposed legislation during 2013 and 2014 and welcomes that a number of provisions reflect the advice given, for example: the retention of the exception to the mandatory minimum sentence of two years (section 7); the extension of the provision criminalising the payment of sexual services, to children (section 15); the inclusion of a review period to the provision criminalising the payment of sexual services (section 15); the establishment of an independent guardian for child victims of human trafficking who are separated or unaccompanied (section 21); and increased protections for victims of human trafficking who are compelled to commit a criminal offence due to the exploitation (section 22). The Commission also notes that the legislation places a requirement on the DOJ to produce an annual strategy on human trafficking and slavery-like offences, and that the first annual strategy was published on 15 September 2015.³⁰⁴ The Commission welcomed the Act and awaits full implementation of its provisions. The Act was welcomed by the UN Human Rights Committee.³⁰⁵

³⁰⁴ Ibid.

³⁰⁵ UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 3

Right to fair trial and the administration of justice

ICCPR	Article 14 Article 15 Article 16
ECHR	Article 6 Article 7
CFREU	Article 47

Avoidable delay

The Commission has recommended on a number of occasions the introduction of custodial time limits in the NI criminal justice system. These were first introduced to England and Wales in 1991.³⁰⁶ The Criminal Justice Inspector for NI has stated that failure to introduce statutory custodial time limits in NI, “consigns the justice process here to continuing unacceptable delay in processing cases”.³⁰⁷

Throughout 2015, there have been no proposed legislative reforms providing for statutory custodial time limits within the adult criminal courts in NI.³⁰⁸ There are plans to introduce time limits in the Youth Court, however it is unclear if these time limits will be set in statute or will instead operate as administrative guidance.³⁰⁹ The Commission notes that there have been a number of bills relating to criminal justice introduced to the NI Assembly in the current mandate. However these legislative opportunities have not been used to introduce statutory custody time limits.

In September 2015 prisoners held on remand accounted for just under 25% of the overall prison population.³¹⁰ This represents an improvement on previous years, but remand prisoners continue to be disproportionately represented in the overall prison population.³¹¹ A report by the European Commission for the Efficiency of Justice into justice systems in 33 European countries ranked the NI justice system as the second most inefficient on the basis of criminal prosecution clearance rates.³¹²

In 2015, the Commission once again raised concerns regarding the extent of delays in the NI criminal justice system with the UN Human Rights Committee, which subsequently recommended the introduction of:

*concrete measures to reduce avoidable delays in the criminal justice system in Northern Ireland, including by introducing custodial time limits.*³¹³

The Commission has continued to note unacceptable delays in processing criminal cases in NI and has called upon the DOJ to expedite legislation to mitigate the risk of human rights violations.

306 NI Assembly Research ‘Statutory Time Limits’ 125-12 (31 March 2012)

307 Official Report (Hansard) Session: 2013/2014 Date: 25 June 2014

308 The Justice (No. 2) Bill progressing through the NI Assembly currently does not make provision for statutory time limits

309 Department of Justice NI ‘Time Limits in the Youth Court’ 2014 See Official Report (Hansard) Session: 2014/2015 Committee for Justice Date: 24 September 2014 See further Committee for Justice minutes of proceedings Thursday 8 October 2015 Room 30, Parliament Buildings

310 NIPS ‘Analysis of NIPS prison Population from 01/07/2014 to 30/09/2015’ October 2015

311 The prison population in England and Wales as of 30 June 2014 was 85,509 of which 12,197 were on remand representing just over 14% See Ministry of Justice Offender Management Statistics Bulletin, England and Wales Quarterly – January to March 2014

312 The European Commission for Efficiency of Justice ‘Evaluation of Judicial systems’ 5th Report - Edition 2014 (2012 data) The Clearance rate is calculated by dividing the number of cases closed by the number of cases received. Thirty three states were included in the study. The average time from committal to hearing for April to June 2015 was 90 days

313 UN Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 22



Victim Charter

On 14 January 2015 the Minister for Justice launched the Victim Charter.³¹⁴ The draft Victim Charter (Justice Act (NI) 2015) Order (NI) 2015 was approved by the NI Assembly on 19 October 2015 placing the Charter on a statutory footing.³¹⁵ The Charter took effect from mid November coinciding with the transposition of the EU Directive on minimum standards on the rights, support and protection of victims of crime.³¹⁶

The Commission welcomed the establishment of the Victim Charter and will monitor its impact on the victim's experience of the justice system in NI.



Witness Charter

The Justice Act (NI) 2015 makes provision for a Witness Charter, the DOJ intend to bring forward and consult on a Witness Charter during the second half of the five year Victim and Witness strategy 2013 to 2018.³¹⁷



Compensation for a miscarriage of justice

In 2014 the Anti-social Behaviour, Crime and Policing Act 2014³¹⁸ 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.³¹⁹ This new test applies for all offences in England and Wales and for offences related to terrorism in NI.

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

*[w]hen 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.*³²⁰

Prior to the introduction of the 2014 Act Lord Phillips observed that:

*The travaux [to the ICCPR] clearly demonstrate that the parties intended article 14(6) to cover the situation where a newly discovered fact demonstrated conclusively that the defendant was innocent of the crime of which he had been convicted. They were not, however, prepared to agree an interpretation which restricted the ambit of article 14(6) to this situation.*³²¹

Noting that the UN Human Rights Committee General Comment on Article 14 does not define the term 'miscarriage of justice', the Commission updated the Committee on the 2014 Act and requested its views.³²²

314 DoJ Press Release 'Justice Minister David Ford has launched a new Charter for victims of crime'. 14 January 2015

315 NI Assembly Official Report: Monday 19 October 2015: Executive Committee Business: Victim Charter (Justice Act (Northern Ireland) 2015) Order (Northern Ireland) 2015, available at: <http://aims.niassembly.gov.uk/officialreport/report.aspx?eveDate=2015/10/19&docID=246357>

316 DoJ Press Release 'Ford welcomes improved rights for victims of crime' 13 November 2015

317 DoJ Press Release 'Charter for victims of crime to be placed on a statutory footing' 19 October 2015

318 2014 c. 12

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

320 NIHRC 'The 2013 Annual Statement: Human Rights in NI' (Belfast, 2013) p. 29

321 R (on the application of Adams) (FC) (Appellant) v Secretary of State for Justice (Respondent) [2011] UKSC 18 para 21

322 Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007)

The Commission has advised that the redefined test for a miscarriage of justice is a disproportionate limitation on the right to compensation as protected by ICCPR Article 14(6).

The UN Committee recommended that the UK:

*Review the new test for a miscarriage of justice with a view to ensuring its compatibility with article 14, para. 6, of the Covenant.*³²³



Closed material proceedings

The Justice and Security Act 2013 makes provision for closed material proceedings in civil cases allowing for the introduction of sensitive security evidence to proceedings involving the Government, without disclosure to the claimant.³²⁴

In July 2015 the Court of Appeal in England and Wales considered the compatibility of the 2013 Act with the ECHR. The Court stated that the Act represented:

*Parliament's assessment of how, in relevant civil proceedings, the balance is to be struck between the competing interests of open justice and natural justice on the one hand and the protection of national security on the other. . .*³²⁵

In considering the compatibility of the Act with the right to a fair trial the Court considered that the Act contained:

*Appropriate safeguards against inappropriate or excessive use of a closed material procedure are built into the provisions themselves, starting with the conditions for a section 6 declaration and encompassing the provisions for review and revocation of a declaration and those governing applications for permission not to disclose material in proceedings in relation to which a declaration is in place.*³²⁶

The UN Human Rights Committee has raised concerns regarding the 2013 Act and recommended that the UK:

*Ensure that any restrictions or limitation to fair trial guarantees on the basis of national security grounds, including the use of closed material procedures, are fully compliant with its obligations under the Covenant, particularly that the use of closed material procedures in cases involving serious human rights violations do not create obstacles to the establishing of State responsibility and accountability as well as compromise the right of victims to a fair trial and an effective remedy.*³²⁷

The Commission, in conjunction with the other UK NHRIs, has written to the Home Secretary highlighting this recommendation.

323 UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192, para 22(b)

324 Section 12 (1) of the Justice and Security Act 2013 requires the Secretary of State to prepare an annual report on the use of the closed material procedure under section 6 of the Act. Report on use of closed material procedure (from 25 June 2014 to 24 June 2015) October 2015 records that 9 applications for a declaration that a CMP application may be made in proceedings during the reporting period were made by the Secretary of State and two were made by the Chief Constable of the PSNI

325 *McGartland & Asher v SSHD* [2015] EWCA Civ 686 para 35

326 *Ibid.*

327 UN Human Rights Committee 'Concluding observations on sixth periodic report submitted by the UK' (30 July 2008) CCPR/C/GBR/CO/6 30, para 22



Access to Justice

In 2015 the Commission advised the DOJ on the scope of civil legal aid in NI. The DOJ had sought views on re-structuring legal aid in private law children order cases to facilitate resolution, minimise conflict and produce sustainable solutions for all parties. The proposals included, limiting access to legal aid in such cases or removing them from scope entirely.³²⁸

In its advice, the Commission referred to the UNCRC General Comment 12 which recognises that:

*all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes.*³²⁹

The Commission also referred to the experience of England and Wales where private law children order cases have been removed completely from the scope of civil legal aid, resulting in a significant increase in the number of litigants in person before the court.³³⁰

The Commission noted published research commissioned by the MOJ examining litigants in person in private family law cases. The research noted that family law courts in England and Wales are still operated and managed on a basis that assumes both parties would be represented. It also noted approaches where one or both parties were underrepresented was ad-hoc and inconsistent. A number of valuable recommendations were made covering information needs, provision of emotional support and legal knowledge. Many of the recommendations are pertinent to NI and the Commission recommend that these be considered when bringing forward proposals to amend access to representation in private family law issues.³³¹ Following the consultation, the DOJ reported that private law children order cases would not be removed from the scope of civil legal aid.³³²

In March 2015 the Commission met with Colin Stutt who was appointed by the DOJ to conduct the second access to justice review. The Access to Justice Report Part II was published on 3rd November 2015.³³³ In addition the Lord Chief Justice has announced a fundamental review of civil and family justice and has invited the NIHR to participate in the reference group.³³⁴



Age of criminal responsibility

The age of criminal responsibility remains at ten years old in NI, as in England and Wales. Whilst it remains at eight in Scotland, the Criminal Justice and Licensing (Scotland) Act 2010 renders any prosecution of a child under twelve incompetent.³³⁵ The Commission has repeatedly advised that the minimum age of criminal responsibility should be raised to at least twelve in line with international human rights standards.³³⁶

The Review of Youth Justice (2011) recommended that the:

minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14.

328 DoJ 'Scope of Civil Legal Aid' November 2014 – January 2015 see further NIHR 'Submission to Department of Justice consultation on the scope of civil legal aid' January 2015

329 UN CRC Committee, General Comment No. 12 The right of the child to be heard CRC/C/GC/12 1 July 2009 para 51 – 52

330 NIHR 'Submission to the DoJ Consultation on the Scope of Civil Legal Aid' (January, 2015) para 7.3

331 Trinder, Liz et al (November 2014) 'Litigants in person in private family law cases', Ministry of Justice Analytical Series

332 AQO 7784/11-15

333 DOJ 'Access to Justice Part II' 3rd Nov 2014

334 LSNI 'Lord Chief Justice Announces a Fundamental Review of Civil and Family Justice' September 2015

335 Criminal Justice and Licensing (Scotland) Act 2010, s. 52

336 UN CRC Committee, Concluding Observations on the UK's third and fourth periodic report, 3 October 2008, CRC/C/GBR/CO/4; Concluding Observations on the UK's second periodic report, 9 October 2002, CRC/C/15/Add 188; Concluding Observations on the UK's initial report, 15 February 1995, CRC/C/15/Add 34

The Minister of Justice has publicly stated his support for increasing the age of criminal responsibility to twelve but has not brought any legislative proposals before the NI Assembly due to a lack of consensus on this matter.³³⁷

In July 2015 the UN Human Rights Committee recommended raising: “the minimum age of criminal responsibility in accordance with international standards”.³³⁸ This recommendation echoed the recommendation of the UN CAT Committee in 2013.³³⁹ The Commission has continued to advise that the law is incompatible with human rights standards and that DOJ should address the issue immediately. The Commission has once again raised the matter with the UN CRC Committee.³⁴⁰

Public Services Ombudsperson Bill

The Public Services Ombudsperson Bill was introduced to the NI Assembly in 2015. It proposes to establish and make provision for the office of the NI Public Services Ombudsperson and to abolish the offices of the NI Commissioner for Complaints and the Assembly Ombudsman for NI.

When advising the NI Assembly the Commission welcomed the Bill and made a number of specific recommendations to strengthen the NI Public Services Ombudsperson by utilising human rights standards.³⁴¹ The Commission advised that the legislation should include a clause that specifically states that the role of the NI Public Services Ombudsperson is to consider the extent to which the listed authority has acted with regard for the human rights of others, as an aspect of investigating maladministration.³⁴² The Commission advised therefore that specific references to human rights in the Bill would offer clarity to listed authorities in terms of the NI Public Services Ombudsperson’s duty to use human rights a benchmark in its assessment of them.³⁴³ The Commission further recommended that human rights standards should be reflected in the procedures of the NI Public Services Ombudsperson and that there should be a specific requirement to ensure that the rights of all are respected and promoted in his/her conduct of investigations.³⁴⁴ The Further Consideration stage of the Bill is to be scheduled.

337 Belfast Telegraph ‘Call to raise criminal age limit’ 12 February 2015

338 UN Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192 para 23

339 UN CAT Committee ‘Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para 27

340 NIHRC ‘Submission to the UN Committee on the Rights of the Child on the United Kingdom’s Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child’ (July 2015) p. 7

341 NIHRC ‘Advice on The Public Services Ombudsperson Bill [NIA 47/11-16]’

342 *Ibid.*, para 18

343 *Ibid.*, para 9

344 *Ibid.*, para 28

Right to private and family life

ICCPR	Article 17 Article 23
CRPD	Article 19 Article 22
ECHR	Article 8 Article 12
CFREU	Article 7 Article 8 Article 9
CRC	Article 16 Article 20 Article 21
ICESCR	Article 10 (1)

Alternative care arrangements for children

In 2008 the UN CRC Committee raised concern at the level of instability in alternative care arrangements for children with, “too frequent moves between places for children in alternative care.”³⁴⁵ The Commission published a report in 2015 entitled ‘Alternative Care and Children’s Rights in NI’.³⁴⁶ This report made 29 recommendations and highlighted the following shortcomings, particularly in the context of suitable and stable care placements.

- A shortage of foster carers can sometimes mean that matching is restricted, resulting in a less suitable foster placement for children,³⁴⁷ including in the context of emergency foster placements.³⁴⁸ The Regulation Quality Inspection Authority has indicated that a wider pool of foster families is required.³⁴⁹
- A Judge, approving an application to arrange a care placement outside of NI for a child requiring urgent specialised and intense intervention, noted in 2014 that there: “is no available specialised foster placement in NI [for her] and placing her in a children’s home would not help her.”³⁵⁰
- Some children are facing placement moves due to financial pressure within Trusts, for example, moving from private foster placements, to Trusts’ foster placements.³⁵¹
- Of the looked after children who had placement moves in the year 2013-2014; 47.1% had three or more placement moves.³⁵²
- At 31 March 2014 a total of 39 children were deemed to be in an inappropriate placement given their assessed needs.³⁵³

345 UNCR Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 44

346 NIHRC ‘Alternative Care and Children’s Rights in Northern Ireland’ August 2015

347 RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 19. “Each foster care panel chair indicated that they try to ensure the needs of children are met by placing children with foster carers who have the competence and skills required to meet their needs. However, a shortage of carers can sometimes mean that matching is restricted, resulting in a less suitable placement”

348 BBC News Northern Ireland, *Special-needs boy lived in elderly home over lack of foster carers*, 20 Jan 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-25812807>. See also, RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013

349 RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 29

350 *In the matter of S (arranging for a child in care to live outside Northern Ireland)* [2014] NIFam 7, paras. 44-45

351 RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 58

352 *Ibid.*, p. 32

353 HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 34. There were a total of 66 homeless children, 16-17 years of age, at 31 March 2014, p. 12

- During 2013/2014 11 children were accommodated for three months or more in an adult setting: residential care home, nursing home, or private hospital.³⁵⁴
- Almost half (48.5%) of participants in a 2013 survey by Voices of Young People in Care reported having four or more social workers since they came into care.³⁵⁵

Despite a legislative requirement in the Children (NI) Order 1995 to avoid delay in making determinations about a child's care arrangements due to the fact that delay is "likely to prejudice the welfare of the child"³⁵⁶, the Commission is aware of ongoing problems of delay in public law cases.³⁵⁷

In recognition of concerns regarding delay and the family justice system in England and Wales, the Westminster Government commissioned an independent panel in 2010 to review the family justice system.³⁵⁸ Many of the review recommendations were accepted³⁵⁹ and legislation was introduced which seeks to address a number of issues, including problems of delay.³⁶⁰

The Commission further notes:

- that despite DHSSPS recognition, as far back as 2006, that the "Adoption Order is based on an English equivalent from the 1970s and is out of date, and potentially out of step with various pieces of recent domestic equality legislation and European Conventions,"³⁶¹ the Adoption (NI) Order 1987 has not been [replaced];
- the absence of a revision of the Children Order, in contrast to the frequent revisions of the Children Act in England, on which it is based, means that the introduction of new provisions, for example Special Guardianship Orders is still awaited in NI; and
- the series of Regulations and Guidance, which accompany the Children Order has not been updated since 1996.³⁶²

The Commission notes that the UN CRC Committee has stated that:

*a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. ... The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation.*³⁶³

354 Ibid., 2014, p. 26

355 Ibid., p. 20

356 Children (Northern Ireland) Order (1995), Art. 3(2)

357 *Access to Justice Review Northern Ireland*, August 2011, available at: http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx, para 2.16

358 Family Justice Review: Final Report, November 2011, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf

359 Ministry of Justice, *Family Justice Review: Government Response*, June 2012. Available at: <https://www.gov.uk/government/publications/family-justice-review-government-response>

360 Children and Families Act 2012-2013 and 2013-2014

361 DHSSPS, *Adopting the Future*, June 2006, available at: http://www.dhsspsni.gov.uk/adopting_the_future.pdf, p. 9

362 http://www.dhsspsni.gov.uk/index/child_care/children-order/children-orderguidance-regulations.htm

363 UNCRC Committee, General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 18

In the context of the protection of children from violence the UN CRC Committee has also noted that:

*Authorities at all levels of the State responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementation of obligations under the Convention. Such omissions include the failure to adopt or revise legislation and other provisions, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children.*³⁶⁴

The Commission held a round table with key stakeholders as part of our approach to encourage the implementation of our recommendations.³⁶⁵

Stop and search

The Commission has previously referred to the NI Policing Board recommendation of 2013 that the PSNI, as soon as reasonably practicably, consider how it records the community background of all persons stopped and searched under powers contained within the Terrorism Act 2000 and within the Justice and Security (NI) Act 2007.³⁶⁶

This recommendation is still under consideration and a pilot has been planned.³⁶⁷ In 2015 the UN Human Rights Committee called for implementation:

*as a matter of priority, the recommendation of the Policing Board to the Police Service of NI (PSNI) concerning the inclusion in the PSNI's recording form of community background of persons stopped and searched under the Justice and Security (NI) Act 2007.*³⁶⁸

In August 2015 the Commission highlighted and supported this recommendation to the Independent Reviewer of the Justice & Security (NI) Act 2007.³⁶⁹

Housing (Anti-social Behaviour) Bill

In 2014 the Commission advised the DSD on measures proposed to tackle anti-social behaviour in social housing.³⁷⁰ The DSD introduced the Housing (Anti-social Behaviour) Bill in 2015. The Bill, inter alia, provides a legal basis for the sharing of information in relation to anti-social behaviour.³⁷¹

The Commission provided advice on the Housing (Amendment) Bill to the NI Assembly.³⁷² In particular, it noted the proposal that "a person may disclose relevant information about any other person to the [Housing] Executive or to a registered housing association, if the information is disclosed for a relevant purpose".³⁷³

364 UNCR Committee, General Comment No 13 (2011), The right of the child to freedom from all forms of violence, para 32

365 NIHRC Press Release 'Call for Improvement to Protect the Rights of Children in Care' 21 August 2015

366 Policing Board NI, 'Human Rights Thematic Review on the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007', October 2013

367 Policing Board NI 'Human Rights Annual Report 2014' Belfast 2015 p. 32

368 Para 11(b)

369 See <https://www.gov.uk/government/publications/7th-annual-report-of-independent-reviewer-of-justice-security>

370 DSD 'NI Proposed Housing (Anti-Social Behaviour) Bill (NI) A Consultation Document' 2013

371 Bill 58/11-16

372 NIHRC 'Response of the Northern Ireland Human Rights Commission to the Housing (Amendment) Bill. NIA Bill 58/11-16' (September 2015)

373 Ibid., para 4.1

The Commission recognised the need for appropriate powers for the DSD, NI Housing Executive and for housing associations to be able to access information to enable them to discharge their responsibilities fairly and effectively. However, it considered the phrasing in the Bill to have been drafted in very broad terms and questioned the proportionality of the proposed interference with the right to private and family life, protected by Article 8 of the ECHR.³⁷⁴

Environmental Better Regulation Bill

In 2015 the DOE introduced the Environmental Better Regulation Bill to the NI Assembly.³⁷⁵ The Bill, *inter alia*, provides for a review of powers of entry and associated powers relating to the protection of the environment and for the repeal or rewriting of such powers and for safeguards in relation to them.

The Commission broadly welcomed the Bill and provided specific advice on the Council of Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.³⁷⁶ In its advice on the Bill the Commission highlighted the need to ensure powers to enact secondary regulations are sufficiently circumscribed and appropriately drafted to ensure adequate legislative scrutiny and participation of the public.³⁷⁷ In addition the Commission highlighted the need to consider additional safeguards to avoid environmental legislation impacting adversely on certain groups, in particular members of the Traveller community.³⁷⁸

Health and Social Care (Control of Data Processing) Bill

In 2015 the DHSSPS introduced the Health and Social Care (Control of Data Processing) Bill, the Bill proposes a statutory framework, including safeguards, which will enable the use of health and social care information for the benefit of health and social care research.

The Commission broadly welcomed the Bill and provided specific advice to the NI Assembly DHSSPS Committee.³⁷⁹ The Commission advised that the ECt.HR has held that the protection of medical data falls within the ambit of the right to private and family life, protected by Article 8 of the ECHR.³⁸⁰ The Commission further advised that laws which interfere with the right to private and family life must be formulated with sufficient precision to afford adequate legal protection against arbitrariness and indicate with sufficient clarity the scope of discretion conferred on the competent authorities.³⁸¹

Central to the safeguards proposed within the Bill is a Code of Practice, the Commission noted that despite its centrality under the Bill health and social care bodies are required merely to “have regard to the Code of Practice in exercising their functions in relation to the provision of health and social care” and not to comply with the Code of Practice.³⁸² The Commission advised that the Bill be amended to ensure that health and social care bodies must comply with the Code of Practice.

374 *Ibid.*, para 4.17

375 NIA Bill 55/11-16 Environmental Better Regulation Bill

376 NIHRC ‘Submission to the NI Assembly Committee for Environment on the Environmental Better Regulation Bill’ 2015

377 *Ibid.*, pp. 14 and 15

378 *Ibid.*, p. 13

379 NIHRC ‘Advice on the Health and Social Care (Control of Data Processing)’ NIA Bill 52/11-16

380 *Ibid.*, para 13

381 *Ibid.*, para 14. See further *L.H v Latvia*, 52019/07, 29 April 2014, paras 59 and 60

382 Health and Social Care (Control of Data Processing) Bill, clause 3(4)

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

ICCPR	Article 18 Article 19 Article 20 Article 21 Article 22 Article 25
ECHR	Article 9 Article 10 Article 11 Protocol 1 Article 3
CFREU	Article 10 Article 11 Article 12
CRC	Article 13 Article 14 Article 15
CEDAW	Article 3
CRPD	Article 19 Article 21 Article 29

Parades and protests

The Commission has previously referred to the call by the UN Special Rapporteur on Peaceful Assembly, Parades and Association for “political resolution of the issues – such as parades, flags and emblems – that still make the enjoyment of freedom of peaceful assembly problematic in NI”.³⁸³ The Stormont House Agreement proposed that responsibility for parades and related protests should, in principle, be devolved to the NI Assembly.³⁸⁴ It also proposed that the Office of Legislative Counsel, working in conjunction with the OFMDFM, should produce a range of options on how the remaining key issues which include the Code of Conduct, criteria and accountability could be addressed in legislation. The OFMDFM was to bring forward proposals to the NI Executive by June 2015.³⁸⁵

The majority of parades and protests in 2015 have occurred peacefully in compliance with rulings of the Parades Commission.³⁸⁶ However, there have been a number of notable exceptions. For example, there has been significant public disorder in Belfast on occasions when the police have enforced Parades Commission determinations relating to an Orange Order parade on 13 July 2015 and an

383 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to the United Kingdom (14-23 January 2013) A/HRC/23/39/Add.1, para 96 . available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-39-Add1_en.pdf

384 Stormont House Agreement, 2014, para 17

385 Stormont House Agreement, 2014, para 18

386 See <https://www.paradescommission.org/>

anti-internment parade in August 2015.³⁸⁷ A high profile protest at Twadell Avenue following the restriction of an Orange Order parade continued throughout 2015.³⁸⁸

The Commission has consistently advised all those participating or responsible for the regulation of parades and protests that a broad range of human rights and state obligations are engaged. Human rights law, in particular the jurisprudence of the ECt.HR, is a valuable resource for resolving disputes relating to parades, protests and related adjudicative processes. Furthermore, it is sufficiently flexible to accommodate alternative mechanisms for resolution which seek to develop innovative compromise agreements.³⁸⁹

Participation of women in public and political life

In October 2014 the results of an independent assessment into gender equality at the executive level in the public sector in NI identified: “a significant degree of inequality in the gender composition at executive level of the N.I public sector: males and females holding 70.8% and 29.2% of all executive positions respectively”.³⁹⁰ The research report identified a number of barriers to career progression amongst women in the civil service including: those related to caring responsibilities, a lack of recognition of work life balance, long hours’ culture and exclusion from informal networks of communication.³⁹¹

There are 297 female judicial office holders in NI representing 43% of the total.³⁹² Female judicial office holders have traditionally been broadly concentrated amongst the lower ranking judicial posts.³⁹³ However in 2015 two women, Denise McBride QC and Siobhan Keegan QC, were appointed as High Court judges for the first time in the history of the NI judiciary. Their appointments were welcomed by the Lord Chief Justice, Sir Declan Morgan, who said:

*This sends out a message that the judiciary are interested in getting the best people for the job and there are no barriers.*³⁹⁴

The Sex Discrimination (NI) Order 1976, section 43A allows political parties to take positive measures to reduce inequality between men and women elected to Parliament, the NI Assembly, District Councils and the European Parliament.³⁹⁵ The Commission notes, however, that this provision has not been utilised in NI and women continue to be under-represented in political life (albeit there are variations in the patterns of representation depending on the particular office concerned).

In 2015 the UN Human Rights Committee recommended:

*that all existing and future gender equality strategies and policies, including the Gender Equality Strategy for Northern Ireland, identify and address effectively the barriers hindering women’s access to high positions in the civil service and in the judiciary.*³⁹⁶

387 BBC News NI “Nine officers hurt at Belfast Parade Flashpoint” 14 July 2015, <http://www.bbc.co.uk/news/uk-northern-ireland-33516423> Arrests after anti-internment parade violence in Belfast 10 August 2015

388 A camp was set up in Twadell Avenue in July 2013 by Loyalists protesting against a Parades Commission determination which stopped an Orange Order Parade taking place on a stretch of the adjoining Crumlin Road. See Belfast Telegraph “Twadell protest camp policing bill now stands at £330k a month”, 15 June 2015

389 Parades and Protests in Northern Ireland, 2013, p.2. http://www.nihrc.org/uploads/publications/110720_NIHRC_Parades_and_Protests_in_NI_REPORT_cover_inners_Single_Col_V3_LOW.pdf

390 An Investigation of Gender Equality Issues at the Executive Level in Northern Ireland Public Sector Organisations Determining baseline data and reporting on the findings from a survey of current and aspiring executives attitudes Professor Joan Ballantine, University of Ulster Dr Graeme Banks University of Ulster Professor Kathryn Haynes, Newcastle University Dr Melina Manochin, University of Aston Mr Tony Wall, University of Ulster October 2014

391 *Ibid.*, p. 118

392 NIJAC ‘The Judiciary Northern Ireland 2014 Equality Monitoring Report’ (April 2014)

393 *Ibid.* See further QUB ‘Rewarding Merit in Judicial Appointments’ (January 2013)

394 BBC News NI ‘First women appointed as NI High Court judges’ 23 October 2015. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-34613920>

395 The Sex Discrimination (Northern Ireland) Order 1976, section 43A. The provisions have been extended to 2030 by section 105(3) of the Equality Act 2010

396 UN Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192 para 12

In year, John Keanie stood down as Public Appointments Commissioner for NI. In doing so he raised concerns through the press that boards are “under-representative of the people they serve”, in particular he highlighted that 64% of board members are men.³⁹⁷



Defamation

In 2008 the UN Human Rights Committee raised concerns that the:

*practical application of the law of libel [in the UK] has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as “libel tourism.” ... The State party should re-examine its technical doctrines of libel law, and consider the utility of a so-called “public figure” exception, requiring proof by the plaintiff of actual malice in order to go forward on actions concerning reporting on public officials and prominent public figures...*³⁹⁸

The Defamation Act 2013, to some extent, addressed this recommendation. However the territorial extent of the Act does not include NI. The Minister for Finance and Personnel asked the NI Law Commission to consider and report on the possible reform of NI libel law, including the possible extension of the 2014 Act.³⁹⁹ In 2015, the NI Law Commission ceased operating before reporting on this matter.

The Commission provided an update to the UN Human Rights Committee on this matter. It advised of a report that Sky TV had decided not to broadcast *Going Clear*, an exposé into Scientology due to a fear of a libel actions being taken in NI.⁴⁰⁰ In addition, the Commission informed the Committee that there appears to be a lack of political consensus to consider the case for reform.⁴⁰¹ In April 2015 the First Minister, stated that there are:

publishers and broadcasters who would like to say and do whatever they want and have no consequences for what they say or do ... In some areas, I think there would be a good case for tightening libel laws and defamation laws because there are some people who are totally irresponsible, and I think particularly of social media...

The DFP has asked Dr Andrew Scott, who was undertaking the review on behalf of the Law Commission, to complete the review and produce a final report, with recommendations.⁴⁰² A final report has not been produced in year. The Commission notes that a Private Members Bill on libel law reform, which it previously advised upon, has not been introduced to the NI Assembly in 2015.⁴⁰³



Blasphemy

The UN Human Rights Committee has elaborated on ICCPR, Article 19 on the right to freedom of expression and opinion by way of a General Comment stating that:

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.⁴⁰⁴ Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17,

397 BBC News NI ‘John Keanie wants Executive to tackle perception that NI boards are for an ‘elite’ 23 July 2015

398 UN Human Rights Committee ‘Concluding observations on sixth periodic report submitted by the UK’ (30 July 2008)CCPR/C/GBR/CO/6

399 NI Law Commission Consultation Paper: Defamation Law in Northern Ireland - NILC 19 (2014)

400 NIHRC ‘Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR’ May 2015 para 10.1 and 10.2 NB the documentary was subsequently shown on UK TV see : Guardian News ‘Scientology film Going Clear is Sky’s most-watched documentary since 2012’ 2nd October 2015

401 Belfast Newsletter ‘Robinson unapologetic on libel law, despite Scientology move’ 22 April 2015

402 AQW 48758/11-16 Mr Mike Nesbitt (UUP - Strangford) 14 September 2015

403 BBC News NI ‘Libel laws: Nesbitt claims ‘overwhelming support’ for NI reform’ 29 January 2014

404 ICCPR article 20, paragraph 2 states ‘Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’

*18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.*⁴⁰⁵

In its 2008 report on the UK the UN Human Rights Committee welcomed the introduction of the Criminal Justice and Immigration Act 2008 abolishing the common law offence of blasphemy in England and Wales.⁴⁰⁶ During the passage of the 2008 Act the House of Lords debated extending the Act to include NI.⁴⁰⁷ The Lords noted that blasphemy was part of the common law of Ireland but that it was unclear if the common law precedent survived the disestablishment of the Church of Ireland by the Irish Church Act 1869.⁴⁰⁸ Furthermore the Lords noted that there was no reported blasphemy prosecution in the period between 1855 and the creation of the independent state of Ireland and that the offence had not been prosecuted since the establishment of NI.⁴⁰⁹

Since the devolution of policing and justice powers to the NI Assembly, the NI Executive has not undertaken a review of blasphemy laws to determine if the common law offence is still in place.

405 UN Human Rights Committee, General Comment 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011. Available at: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

406 UN Human Rights Committee 'UN Human Rights Committee 'Concluding observations on sixth periodic report submitted by the UK' (30 July 2008) CCPR/C/GBR/CO/6 30

407 Hansard script Wednesday 28 Oct 2009 Volume No. 713 Part No. 125

408 House of Lords 'Religious Offences in England and Wales - First Report' HL Paper 95 -1 10 April 2003 see appendix 5

409 Ibid.

Right to work and to just and favourable conditions of work

ICESCR	Article 6 Article 7
CEDAW	Article 11
ESC	Article 1 Article 2 Article 3 Article 4 Article 5 Article 6 Article 19
CFREU	Article 15

Accessible childcare

In September 2015, the Commission raised concerns with the UN ICESCR Committee about the accessibility of childcare in NI emphasising the need for gender equality in the enjoyment of the Covenant rights.⁴¹⁰ These concerns included the cost of childcare as a per centage of earnings, and that this cost is disproportionately larger in NI than in the rest of the UK, as well as the availability of childcare for certain groups. The Commission also highlighted the reliance on informal childcare in NI and noted that there is no statutory duty on public authorities to ensure adequate childcare unlike in the rest of the UK.⁴¹¹

In its 2014 annual statement the Commission referred to the absence of a childcare strategy for NI.⁴¹² In year the NI Executive has consulted on a draft strategy.⁴¹³ The Commission has provided advice on the draft strategy and called on the NI Executive to introduce an adequately funded childcare strategy which ensures affordable and accessible childcare is available throughout NI.⁴¹⁴

Armed Forces Covenant

Throughout 2015 the full implementation of the Armed Forces Covenant throughout NI has remained outstanding. The Commission has raised this issue since 2013. The NI Affairs Committee at Westminster announced its inquiry into the implementation of the Covenant in NI in 2012. The Committee reported that it had received mixed evidence about the level of progress on implementing the Armed Forces Covenant in NI, compared to other parts of the UK.⁴¹⁵ In particular, certain benefits were not available in NI, including improved access to in vitro fertilisation treatment, priority in accessing healthcare, additional priority in accessing social housing, schools and other educational entitlements.⁴¹⁶ However, the Committee also received evidence that indicated that local solutions could be found in most cases where the above differences affected the Armed Forces community and that there was no significant disadvantage to veterans who chose to settle in NI.

410 NIHRC, 'Submission to the United Nations' Committee on Economic, Social and Cultural Rights: Parallel report on the sixth periodic report of the United Kingdom under the International Covenant on Economic, Social and Cultural Rights' (September 2015)

411 Ibid., paras 8.1-8.3

412 NIHRC 'The 2014 Annual Statement: Human Rights in NI' (December 2014) p. 43

413 OFMDFM 'A Ten Year Strategy for Affordable and Integrated Childcare 2015-2025' (September 2015)

414 NIHRC 'Response to the OFMDFM Consultation on a Ten Year Strategy for Affordable and Integrated Childcare 2015-2025' (November 2015)

415 Northern Ireland Affairs Committee 'Implementation of the Armed Forces Covenant in Northern Ireland', First Report of session 2013/14 HC 51 (17 July 2013), p 7

416 Ibid., p3

On 16 December 2014 the Secretary of State for Defence laid the 2014 Annual Report on the Armed Forces Covenant in the HM Parliament. Whilst recording that the Armed Forces Covenant remained unimplemented in NI the report recorded that the DSD had adopted the position that applicants for social housing or homelessness assistance must not be disadvantaged because of a background in the Armed Forces and development of a veterans support forum.⁴¹⁷ The DSD issued guidance to the NI Housing Executive that former armed forces personnel are at particular risk of homelessness and rough sleeping and applications should be considered carefully to assess whether an applicant is vulnerable as a result of their service.⁴¹⁸ The Commission welcomed this initiative. In January 2015 the Minister of State, Ministry of Defence, stated that 'nearly all of the measures in the Covenant now extend to Northern Ireland or will soon do so'.⁴¹⁹ A BBC Spotlight documentary in May 2015 identified that the greatest shortfall in treatment in NI was for those suffering from post-traumatic stress disorder.⁴²⁰

The Commission notes that the Ulster University and Queen's University Belfast have obtained funding to conduct research in the area of support available to former and current members of the armed forces.⁴²¹

417 Ministry of Defence Armed Forces Covenant Annual Report 2014

418 *Ibid.*, pp38-39

419 UK Parliament, Armed Forces Covenant: Northern Ireland: Written question – 220197, Answered on: 19 January 2015, Anna Soubry

420 BBC Spotlight NI (26/05/15). See also BBC News, 'Captain Doug Beattie accuses government of 'abandoning' Northern Ireland military veterans' (26 May 2015)

421 Ulster University have secured over £355,000 to review support services available to veterans in NI and QUB have been awarded over £96,000 to explore the experiences of military personnel involved in counterinsurgency operations and their transition back into civilian life

Right to an adequate standard of living and to social security

ICESCR	Article 7 Article 9 Article 11
CRC	Article 26 Article 27
CEDAW	Article 14
CRPD	Article 28
ESC	Article 12 Article 13 Article 14
CFREU	Article 15

Social security

In its previous annual statements the Commission reported on the advice provided to the NI Assembly in relation to the Welfare Reform Bill, which identified a number of potential consequential impacts on the protection of human rights.⁴²²

In the Stormont House Agreement 2014, a package of measures was agreed by NI's political parties on a number of issues, including on the 2015-16 budget and welfare reform. The Agreement contained a commitment to bring legislation before the NI Assembly in January 2015: to "give effect to welfare changes alongside further work to develop and implement flexibilities and top-ups from the block grant as part of a package of measures to address local need".⁴²³ The Agreement proposed that implementation of the welfare changes would take place in the financial year 2015-16 and the implementation would be completed by 2016-17.⁴²⁴

In February 2015 the Minister for Social Development attempted to progress the Welfare Reform Bill through the NI Assembly. The Commission provided advice to the Speaker of the NI Assembly on the Welfare Reform Bill. The Commission advised, inter alia, that sanctions should not be applied to penalise those who cannot reasonably access child care and that the Bill did not provide clarity as to how the sanction system will ensure that no individual or family fall into destitution.⁴²⁵

In May 2015, however, the Welfare Reform Bill did not pass the final stage of the legislative process causing uncertainty.⁴²⁶

Since the 2015 General Election, the Westminster budget has included a number of further social security measures, some of which will also have an adverse impact on some claimants in NI. These include; a new benefits cap to be set at £20,000⁴²⁷; the abolition of work related activity component of Employment and Support Allowance and limited capability for work element of Universal Credit

⁴²² NIHRC 'The 2012 Annual Statement: Human Rights in NI' (December 2012)

⁴²³ The Stormont House Agreement, 2014, para 6

⁴²⁴ Ibid., para 7

⁴²⁵ NIHRC 'Briefing for the Assembly Debate on the Welfare Reform Bill' (February 2015)

⁴²⁶ Sinn Fein, the SDLP and the Green Party members of the Assembly signed a Petition of Concern that the Bill pass by way of a cross community vote which was not obtained. Gov.UK 'Theresa Villiers provides the UK government perspective on the current state of politics in Northern Ireland' (5 September 2015). At a speech at the British Irish Association annual conference in September 2015, the Secretary of State for NI stated: ... we have come to the conclusion that if the Executive cannot reach agreement on implementing the budget and welfare aspects of the Stormont House Agreement, as a last resort the Government will have to step in and legislate at Westminster for welfare reform in Northern Ireland. We would do so reluctantly, and only if we had exhausted all the realistic alternatives

⁴²⁷ HM Treasury 'Summer Budget 2015', p 40

with transitional protection for claimants already entitled to these payments;⁴²⁸ working age benefits (excluding maternity pay, paternity pay and sick pay) will be frozen for four years; and, support through Child Tax Credit will be limited to two children for new claimants after 2017.⁴²⁹ A number of these proposals are outside of the competence of the NI Assembly and can be introduced to NI without the consent of the NI Assembly. In October 2015, the House of Lords voted to delay the introduction of changes to tax credits, calling on Government to outline a package of compensation for low paid workers.⁴³⁰ In November 2015 the Chancellor altered some of the plans for tax credits while making social security budget savings elsewhere, including changes to Universal Credit and housing benefit.

Following the Implementation Plan agreed in relation to the Stormont House Agreement in November 2015 the NI Assembly passed a legislative consent motion to enable primary and secondary legislation to make changes to the welfare system to proceed at Westminster.⁴³¹ The legislative consent motion stated:

That this Assembly consents to the Northern Ireland (Welfare Reform) Bill 2015 being taken forward by the Westminster Parliament; approves the welfare clauses of the Welfare Reform and Work Bill as initially introduced at Westminster; the draft Welfare Reform (Northern Ireland) Order 2015; and the Executive's proposals to enhance payments flowing from the agreement announced on 17 November 2015.

During the NI Assembly debate on the motion the Minister for Social Development stated:

*Let me assure Members that the Welfare Reform Order 2015 will reflect the amendments and provisions that were agreed by the Assembly at Consideration Stage and Further Consideration Stage of the Welfare Reform Bill.*⁴³²

Following this the UK Government introduced:

A Bill in Parliament to allow for changes to the welfare regime in Northern Ireland, including:

- *equivalent reforms to those introduced in GB by the Welfare Reform Act 2012, amended where necessary to reflect previous agreements between the UK Government and the NI parties on differences in e.g. sanctions;*
- *the welfare provisions only of the Welfare Reform and Work Bill as currently drafted; and*
- *interactions as required which ensure the Executive can implement the range of additional support which it intends to fund.*
- *A sunset clause [was also] included in the Bill to bring this arrangement to an end at the end of 2016.*⁴³³



Social housing and the availability of data

In its September 2015 parallel report, the Commission informed the UN ICESCR Committee that:

- (i). *Disaggregated data on the ground of religion for persons in housing stress per housing district is not routinely published in Northern Ireland but can be accessed via a Freedom of Information request.*

428 Ibid pp41; clause 13 and 14 of the Reform and Work Bill 2015-2016

429 HM Treasury 'Summer Budget 2015' (July 2015) pp37-38. See also the Welfare Reform and Work Bill at Westminster which contains a number of provisions that extend to Northern Ireland on these issues

430 See the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015. See also Parliamentary Debates (Hansard) House of Lords Official Report, 26 October 2015, <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/ldan56.pdf>

431 NIO 'A Fresh Start: The Stormont House Agreement and Implementation Plan' 17th November 2015 para 3.3

432 NI Assembly Official Report: Wednesday 18 November 2015 available at: <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/11/18&docID=249944>

433 NIO 'A Fresh Start: The Stormont House Agreement and Implementation Plan' 17th November 2015 para 3.3

- (ii). *Segregated housing is a particular issue for the DSD in providing social housing in North Belfast, as is the availability of suitable land on which to build new stock. The Commission also informed the Committee of the Participation and Practice of Rights (PPR) 2015 publication which photo-mapped proposed sites suggesting their suitability.*

The Commission's 2015 engagement follows the 2009 concluding observations in which the ICESCR Committee expressed concern about the "chronic shortage of housing, in particular social housing for the most disadvantaged and marginalised individuals and groups, such as ... Catholics in Northern Belfast"⁴³⁴. The Committee has recommended an intensification of efforts to ensure everyone has access to housing, aimed at increasing the levels of affordable housing, including social housing. In addition, the Committee recommended that the equality impact assessment framework in NI be "effectively implemented" by,

*ensuring the participation of affected populations and the development of adequate policies and targeted measures to promote substantive equality ... and adequate housing programmes for the poor, and in particular, Catholic families.*⁴³⁵

Equality Commission investigation

Since 2014 the Equality Commission NI has been conducting an investigation into whether or not the DSD complied with its Equality Scheme in relation to four DSD policies/programmes. As reported in the 2014 annual statement, the Commission has provided an advice to the Equality Commission NI's investigation outlining which procedural requirements should be examined during the course of any domestic assessment of equality in order to determine whether the right to adequate housing and the right to non-discrimination have been complied with.⁴³⁶

The Commission stressed the importance of the availability of disaggregated data and suggested that the Committee probe the State party on what targeted, concrete and deliberate steps it is taking to address the lack of provision of social housing, in particular for Catholics in North Belfast. In October 2015, the DSD provided the Commission with information on the measures it was taking and the difficulties it faces in the context of the UN ICESCR Committee's concluding observations.⁴³⁷

In November 2015 the Equality Commission published its Investigation Report.⁴³⁸ The Equality Commission found that the DSD failed to comply with a number of its Equality Scheme commitments in relation to two housing policy proposals 'Facing the Future: Housing Strategy for Northern Ireland 2012-2017' and 'Building Successful Communities'.⁴³⁹

434 ICESCR Committee, 'Concluding observations on the UK', UN Doc. E/C.12/GBR/CO/5, (12 June 2009), para 29

435 Ibid., para 31

436 NIHRC, 'Submission to the Equality Commission for Northern Ireland's investigation into the Department for Social Development's compliance with the approved Equality Scheme' (2014)

437 Follow-up information received by the NIHRC from DSD via email (12 October 2015)

438 NIHRC 'The 2014 Annual Statement: Human Rights in Northern Ireland' December 2014 p. 47

439 Equality Commission 'Investigation Report - Department for Social Development: Housing Policy Proposals' 16.11.2015

Homelessness

In 2014-2015 19,621 households presented as homeless to the NI Housing Executive, this represented a 4 per cent increase on figures for 2013-14 when 18,862 households presented as homeless to the NI Housing Executive.⁴⁴⁰

The 'Homelessness Monitor: NI 2013', an independent report published in 2014 found:

Rates of statutory homelessness acceptances are notably higher in Northern Ireland than anywhere else in the UK, standing at 13.4 per 1,000 households in 2012/13, as compared with 11.8 in Scotland (where the 'priority need' criterion has been abolished), and 4.2 and 2.3 in Wales and England respectively. Linked with this, the proportion of social housing lets absorbed by statutory homeless households is also strikingly high (73%).

In February 2015 the Mortgage Repossession Taskforce reported. The Taskforce was established by the DSD in 2014 following concerns about higher levels of repossessions and negative equity in NI, compared to other parts of the UK.⁴⁴¹ The Taskforce found:

*While affordability problems or the risk of repossession may be familiar to many households in Great Britain, the magnitude of the crash in Northern Ireland fundamentally distinguishes the region from the aggregate UK picture. As a result of the heavier impact there is a bigger proportion of households with problem debt and at risk of repossession in Northern Ireland than in other parts of the UK.*⁴⁴²

The Taskforce made a suite of recommendations including for the development of a Mortgage Options Hub to support individuals and families facing repossession.⁴⁴³

The Commission has recognised the need to review housing policy, to positively tackle homelessness and to ensure those presenting as homeless do not have to wait an unreasonable length of time before being housed.⁴⁴⁴

Traveller accommodation

In its 2014 annual statement the Commission reported that it had raised concerns regarding the methodology and expedience of the assessment process of the NI Housing Executive third Comprehensive Traveller Accommodation Needs Assessment.⁴⁴⁵ This Needs Assessment had been due to be completed in 2012-13. In March 2015 the NI Housing Executive published the third comprehensive Travellers' Accommodation Needs Assessment which updates previous assessments carried out in 2002 and 2008.⁴⁴⁶

The Assessment is intended to assist strategic/operational managers to plan future accommodation schemes for the Traveller community. The analysis showed a gross need for 18 units of grouped accommodation, 28 serviced site pitches, two transit site pitches, 51 units of social housing and 13 units of other accommodation forms: accommodation for 112 households in total.⁴⁴⁷ The NI Housing

440 NISRA 'Northern Ireland Housing Statistics 2014-15' (November 2015) available at: <https://www.dsdni.gov.uk/sites/default/files/publications/dsd/ni-housing-stats-1415.pdf>

441 Description taken from <http://housingrights.org.uk/news/repossession-taskforce-reports#sthash.fGTRjK1.dpuf>

442 DSD Housing Repossession Taskforce : Final Report (February 2015) available at: <https://www.dsdni.gov.uk/sites/default/files/publications/dsd/housing-repossessions-taskforce-final-report.pdf>

443 Ibid., recommendations

444 NIHRG 'No Home from Home Homelessness for People with No or Limited Access to Public Funds' (September 2009) <http://www.nihr.org/uploads/publications/no-home-from-home-september-2009.pdf>

445 NIHRG 'The 2014 Annual Statement: Human Rights in Northern Ireland' December 2014 p. 53

446 NI Housing Executive 'Traveller Accommodation Needs Assessment 2014', available at: http://www.nihe.gov.uk/traveller_accommodation_needs_assessment_2014_published_march_2015_.pdf

447 Ibid., p 29

Executive has said that, in giving consideration to the findings of the assessment, it will draw up a programme of Traveller specific schemes over the next five years.⁴⁴⁸

Planning permission has hampered the building of new facilities. For example, the NI Housing Executive is appealing a decision by a local council to refuse planning permission for a temporary facility for Travellers in Antrim. The appeal has been lodged with the Planning Appeals Commission and two grounds of refusal are being contested: that the development would adversely affect the setting of a monument; and, that it is not in keeping with the local area.⁴⁴⁹ This temporary accommodation was for an extended family who were living on an unauthorised site in North Belfast and were displaced following legal action by the landowner.⁴⁵⁰

The Advisory Committee on the FCNM expressed concern in 2011 on the difficulties facing Gypsies and Travellers in all regions of the UK when seeking to obtain planning permission for private sites. The Advisory Committee called for planning rules to be applied in a manner that takes into account the specific needs of Gypsies and Travellers and that does not lead to discriminatory practice.⁴⁵¹

The Commission has previously reported on a legislative anomaly, which can create a practical difficulty in ensuring adequate site provision to the Traveller community.⁴⁵² Under the Caravans Act (NI) 1963,⁴⁵³ Traveller sites had been among a number of caravan sites exempt from licensing requirements, but no consequential amendment was introduced when the power to provide sites was transferred from local councils to the NI Housing Executive.⁴⁵⁴ The Commission called for an amendment to the 1963 Act via the Caravans Bill in 2011 to rectify the anomaly.⁴⁵⁵ However, no amendment was made and the position remains that the NI Housing Executive is required to obtain a site licence.⁴⁵⁶

In 2011, the Advisory Committee on the FCNM expressed concern that the NI Housing Executive had not met its objectives in providing additional sites for travellers, and identified that the need for the NI Housing Executive to obtain licences from local councils in order to deliver new sites seemed to be one of the reasons for a lack of delivery.⁴⁵⁷

The Commission has raised the matter of inadequate housing provision for members of the Traveller community with the UN ICESCR Committee in 2015.⁴⁵⁸



Unauthorised Encampments (NI) Order 2005

The Unauthorised Encampments (NI) Order 2005 provides a power for a police officer to direct a person to leave land and remove any vehicle or other property on that land.⁴⁵⁹ It also provides an offence and a power of seizure for non-compliance with a direction. The Commission has highlighted previously that the 2005 Order actively contributes to the disadvantages faced by the Traveller

448 Ibid.

449 BBC News 'Planning appeal bid over travellers' site close to historic Rathenraw Fort' 21 July 2015

450 Antrim and Newtownabbey Borough Council Planning Report, (18 May 2015)

451 Council of Europe 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Third Opinion on the United Kingdom for the Protection of National Minorities', para 88 ACFC/DP/III (2011)006

452 NIHR 'Parallel Report to the Advisory Committee on the Framework Convention on National Minorities' February 2011

453 Schedule 1, paragraph 11 of the Caravans Act (Northern Ireland) 1963 provided that a site licence shall not be required for the use as a caravan site of land occupied by a district council

454 The power was transferred from local councils to the Northern Ireland Housing Executive under Section 125 and Schedule 2 of the Housing (NI) Order 2003, inserting Article 28A to the Housing (NI) Order 1981

455 NIHR 'Written evidence to the Committee for Social Development on the Caravans Bill' May 2010, para 21

456 An amendment was tabled to the Caravans Bill to amend the Caravans Act however a Petition of concern was tabled, ensuring that the amendment was defeated, see NI Assembly 'Caravans Bill: Notice of Table of Amendments (22 November 2010)

457 Council of Europe 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Third Opinion on the United Kingdom for the Protection of National Minorities', para 94 ACFC/DP/III (2011)006

458 NIHR Submission to the ICESCR Committee in relation to the Fifth Periodic Report of the UK on compliance with the ICESCR (August, 2015) para 16

459 CESCR Committee 'Consideration of reports submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland', para 58 E/C.12/GBR/6

community in NI and conflicts with equality and human rights obligations.⁴⁶⁰ The Commission also understands that the powers under the 2005 Order have rarely been used.⁴⁶¹

In 2015 the Commission raised concerns regarding the 2005 Order with the UN ICESCR Committee recommending the repeal of the powers.⁴⁶² The Commission remains concerned that the provisions of the Unauthorised Encampments (NI) Order 2005 could be used in a way which disadvantages members of the Traveller community.



Anti-poverty strategy

In 2009, the UN ICESCR Committee called on the UK to intensify its efforts to: “combat poverty, fuel poverty and social inclusion, in particular with regard to the most disadvantaged and marginalised individuals and groups and in the most affected regions and city areas”. The Committee also called on the UK to intensify its efforts to reduce child poverty by half by 2010.⁴⁶³

The NI Poverty Bulletin for 2013/14 reports that one-fifth of the population lives in poverty. According to the report, in 2013/14, 21% of individuals were in poverty (c. 376,000 individuals), an increase from 19% the previous year.⁴⁶⁴ Furthermore, figures from the Institute for Fiscal Studies (IFS) predict that child poverty in NI will increase from: 21.8% in 2015-16 to 26.0% by 2020-21 using the relative low income measure; and, 25.3% in 2015-16 to 29.3% by 2020-21 using the headline absolute low-income measure.⁴⁶⁵

Preliminary research undertaken by the Commission in its report on “Human Rights and Poverty” in 2014 found that despite a number of favourable strategies, the numbers of people living in poverty and not experiencing full enjoyment of their socio-economic rights is rising.⁴⁶⁶ According to the Commission’s findings, the poor are becoming poorer, creating a greater risk of destitution. In addition, a ‘middle class poor’ is emerging.⁴⁶⁷ Many are facing barriers to state assistance as a result of ineligibility, administrative delays and cuts. These barriers will be compounded as a result of welfare reform.⁴⁶⁸

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 section 28E. Mr. Justice Treacy ruled:

*The Oxford English Dictionary defines a “strategy” as a “plan of action designed to achieve a long term or overall aim”. In adopting only the “architecture and principles”, the Executive adopted something that was inchoate. There is no evidence before me that this inchoate strategy was ever finalised. There is no evidence that it was ever crafted into a road map designed to tackle the issues referred to in the section.*⁴⁶⁹

460 NIHRC “Written evidence to the Committee for Social Development on the Caravans Bill” (May 2010), para 22

461 Correspondence from DSD on 12 October 2015 reported that only one direction was issued the 2005 Order during the period of the current monitoring report and on only two occasions over a seven year period was it necessary to confiscate a vehicle

462 NIHRC Submission to the ICESCR Committee in relation to the Fifth Periodic Report of the UK on compliance with the ICESCR 2015 para 16

463 CESCR Committee “Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and Overseas Dependent Territories: Concluding Observations of the Committee on Economic, Social and Cultural Rights” E/C 12/GBR/CO/5. 12 June 2009, para 28

464 Department of Social Development “The Northern Ireland Poverty Bulletin 2013/14 is released” 25 June 2015, <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dsd/news-dsd-250615-the-northern-ireland-poverty.htm>. Note the press release states the figures are presented in a Before Housing Costs basis as used within the Child Poverty Act 2010

465 Institute for Fiscal Studies “Child Poverty and Working age poverty in Northern Ireland over the next decade: an update” IFS Briefing Note BN154, September 2014

466 NIHRC “Poverty and Human Rights” March 2014, p. 166

467 Ibid., p. 166

468 Ibid., p. 167

469 NICTS Press release “Court Finds Executive Failed to Adopt Strategy on Poverty and Social Exclusion : Summary of Judgment” 30 June 2015 https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20finds%20executive%20committee%20failed%20to%20adopt%20strategy%20on%20poverty%20and%20social%20exclusion/f_j_Summary%20of%20judgment%20-%20In%20re%20Committee%20on%20the%20Administration%20of%20Justice%20and%20Brian%20Gormally%2030%20Jun%202015.htm

The Commission raised the need for an Anti-Poverty Strategy for NI with the ICESCR Committee in September 2015.⁴⁷⁰

Child poverty strategy

In its previous annual statement the Commission noted that whilst it had been anticipated that a Child Poverty Strategy to cover the period 2014-2017 would be laid before the NI Assembly in autumn of 2014 this had not occurred.⁴⁷¹ Officials from OFMDFM informed the NI Assembly OFMDFM Committee in January 2015, that a new Child Poverty Strategy has been developed which sets out the department's actions and a new approach to efforts on tackling child poverty. The strategy will use the child poverty outcomes framework as a tool and future annual reports, will use the outcomes based accountability methodology to report on outputs and outcomes.⁴⁷² At the time of writing the Child Poverty Strategy for 2014-17 has not been published. The Commission raised the issue and called for OFMDFM to expedite publication of the strategy with the UN ICESCR Committee in September 2015.⁴⁷³

Reductions in asylum seeker financial support

People who claim asylum are not permitted to work while they are awaiting the processing of their claim. However, claimants can access asylum support under section 95 of the Immigration and Asylum Act 1999. On the 16th July 2015, new Regulations came into force introducing a flat rate in asylum support to take effect from 10th August 2015. The standard rate is now £36.95 per week provided to each supported person of all ages.⁴⁷⁴ This cash amount is in addition to free accommodation and free medical care; dental care and free education for children from age 5 to age 17.⁴⁷⁵

The Refugee Council called on the UK Government to commission an independent review into the adequacy of current support levels before implementing the reductions.⁴⁷⁶ In 2015 the Commission raised this matter with the UN ICESCR Committee highlighting that the proposed reduction raises issues of non-retrogression and adjustment to rights in times of crisis similar to those discussed in relation to social security reform and tackling poverty.⁴⁷⁷ The House of Lords debated a motion to annul the Regulations in October 2015, however, the motion was not agreed. A further motion to regret the Regulations was not moved.⁴⁷⁸

In August 2015 the Home Office consulted on proposals to reform existing support to failed asylum seeker and other "illegal migrants". The proposals included:⁴⁷⁹

- Repealing section 4(1) of the Immigration and Asylum Act, which provides support to those on temporary admission, and those temporarily or otherwise released from immigration detention. Section 95 support will be available for those who are destitute;

470 NIHRC 'Submission to the UN Committee on Economic, Social and Cultural Rights: Parallel Report on the Sixth Periodic Report of the United Kingdom under the International Covenant on Economic, Social and Cultural Rights' (September 2015), pp. 29-30

471 AQW 36520/11-15 Mr Chris Lyttle (APNI - East Belfast) 26/09/2014

472 Committee for the Office of the First Minister and deputy First Minister Official Report (Hansard) Child Poverty: OFMDFM Officials 21 January 2015 <http://data.niassembly.gov.uk/HansardXml/committee-11491.pdf>

473 NIHRC 'Submission to the UN Committee on Economic, Social and Cultural Rights: Parallel Report on the Sixth Periodic Report of the United Kingdom under the International Covenant on Economic, Social and Cultural Rights' (September 2015), pp30-31

474 See Regulation 2 of The Asylum Support (Amendment No.3) Regulations 2015

475 See Explanatory Memorandum to The Asylum Support (Amendment No.3) Regulations 2015

476 Refugee Council 'Families' asylum support drastically cut' (16 July 2015)

477 NIHRC 'Submission to the UN Committee on Economic, Social and Cultural Rights: Parallel Report on the Sixth Periodic Report of the United Kingdom under the International Covenant on Economic, Social and Cultural Rights' (September 2015), para 20.2

478 House of Lords Hansard of Debate on 27 October 2015, available at <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/151027-0002.htm#15102761000523>

479 Home Office, 'Reforming support for failed asylum seekers and other illegal migrants' consultation (August 2015) para 20

- Closing off section 4(2) support for failed asylum seekers who make no effort to leave the UK at the point that their asylum claim is rejected. Support would continue to be available to those whose claim had finally been rejected but could not be expected to avoid destitution by leaving the UK because they had lodged further submissions with the Home Office that were outstanding;
- Change section 95 support arrangements so that those who have a dependent child or children with them when their asylum claim is refused and any appeal is finally rejected are no longer classed as “asylum seekers” for the purposes of eligibility for support;
- Placing the onus on those who have failed an asylum application to apply for support before a 28 day grace period demonstrating why they are unable to leave the UK and why they face destitution.

In response to the consultation, the Commission advised the Home Office that the proposals are retrogressive concerning the enjoyment of the right to an adequate standard of living and the right to social security.⁴⁸⁰ The Commission advised that given the strong presumption against retrogression, a full justification by reference to the totality of the rights provided for in the ICESCR and in the context of the full use of the maximum available resources should be given.

The Commission further advised that placing the onus on those with child dependents who have failed an asylum application to apply for support before a 28 day grace period demonstrating why they are unable to leave the UK and why they face destitution, is contrary to the best interests of the child principle. Furthermore, the Commission advised that the proposed safeguards to extend the grace period after 28 days and the possibility of an extension, on application, if there is a practical obstacle preventing the family’s departure from the UK may not be sufficient to meet human rights requirements where asylum seekers and irregular migrants fall into destitution.⁴⁸¹

In November 2015 the Home Office issued a response to the consultation, the Home Office indicated that in light of the responses received it would reflect on the length of the grace period.⁴⁸²

Crisis fund

In February and March 2015 the British Red Cross administered a Crisis Fund resourced by the OFMDFM.⁴⁸³ The Crisis Fund was intended: “to help minority ethnic individuals with no other means of support through emergency situations, such as vulnerable migrants, refugees and asylum seekers and other vulnerable groups”.⁴⁸⁴

In the two months that the fund was administered in 2015, there were 980 interventions and the fund directly assisted 440 individuals, who between them had 480 dependents.⁴⁸⁵ The majority (60%) were aged between 21-40.⁴⁸⁶ The main reasons for accessing the fund were problems with benefit entitlements (25%), domestic violence (14%) and issues around seeking employment (14%).⁴⁸⁷

480 NIHRC Correspondence to Mr James Brokenshire MP Minister of State (Minister for Immigration) 8 September 2015

481 NIHRC ‘Response to Home Office Consultation on Reforming Support for Failed Asylum Seekers and other illegal Migrants’, (September 2015)

482 Home Office ‘Reforming Support for Failed Asylum Seekers and Other Illegal Migrants : Response to Consultation’ (November 2015) Para 2.4.3

483 The Crisis Fund opened on 4 February and closed on 31 March, see AQW 40200/11-15, Ms Anna Lo

484 NI Executive ‘Junior Ministers Jennifer McCann and Jonathan Bell today outlined the benefits of the new Crisis Fund for vulnerable minority ethnic people’ (4 February 2015)

485 From February 2015 until July 2015, see Scope NI ‘Crisis Fund: can a little go a very long way’ (31 July 2015)

486 Ibid.

487 Ibid.

In July 2015, a response from OFMDFM in relation to an NI Assembly question on the Crisis Fund stated that:⁴⁸⁸

The process of tendering for the 2015-16 Crisis Fund is yet to commence. Past experience has shown that the Crisis Fund is most needed when the weather gets colder. It is, therefore, intended that it becomes operational then. There is a budget of £100,000 for the Fund.

In 2015 the Commission welcomed the find and raised this matter with the UN ICESCR Committee and asked for the Committee to enquire if there are plans for the fund to be established on a permanent basis.⁴⁸⁹



Carers

In November 2014 the Commission welcomed the fund and published a report into the human rights of carers, the report measures the recorded experiences of carers set against the international human rights obligations of the NI Executive and other relevant public authorities.⁴⁹⁰ The report specifically focused on the experiences of younger carers and older carers. The Commission made fifteen targeted recommendations relating to the rights of carers directed to the Departments of the NI Executive.

The Commission noted the additional financial burdens that families with a disabled member and carers may face and recommended that NI Executive programmes aimed at alleviating poverty, including fuel poverty, must take full account of the challenges faced by carers.⁴⁹¹ The Commission noted concerns that carers have difficulty accessing social security benefits and also assessment and access to entitlements under the health and social care system.⁴⁹² The Commission recommended that human rights considerations should be fully integrated within the process for determining what supports are to be provided to carers by HSC Trusts. In particular, the Commission recommended that decision makers should be required to consider obstacles to carers fully enjoying the right to health, the right to education, the right to work and the right to maintain an adequate standard of health and well being.⁴⁹³

Speaking at the launch of the report the Chief Commissioner stated:

*There are at least 214,000 carers in Northern Ireland providing unpaid care. We know that this includes children and older people who may themselves be vulnerable. Independent research suggests that unpaid care in Northern Ireland is valued at £4.4 billion a year. Human rights can ensure public services and policies that properly recognise, identify and support carers. This report considers how government has fulfilled its obligation towards carers and looks at the impact of proposed reforms. It makes practical recommendations needed to improve the level of support provided to carers in Northern Ireland.*⁴⁹⁴

In March 2015 the Commission provided a briefing to the NI Assembly Committee for Social Development on the human rights of carers. The Commission continues to press for implementation of the recommendations.⁴⁹⁵

488 See AQW 40200/11-15. The question was answered on 02/07/15

489 NIHRC Submission to the ICESCR Committee in relation to the Fifth Periodic Report of the UK on compliance with the ICESCR 2015 Para 18.4

490 NIHRC 'The Human Rights of Carers in Northern Ireland' (November, 2015)

491 Ibid., recommendation 3

492 Ibid.

493 Ibid., recommendation 11

494 NIHRC Press Release 'New Report Calls for Recognition of Carers Rights' (November, 2014)

495 Committee for Social Development Minutes of Proceedings Thursday 05 March 2015 Room 29, Parliament Buildings

 **Supported lodgings**

The DHSSPS consulted in 2015 on draft Standards for Supported Lodgings for Young Adults setting out standards for supported lodgings service providers to ensure the provision of high quality social care and housing support.⁴⁹⁶

The Commission provided advice to the DHSSPS on the Standards.⁴⁹⁷ The Commission welcomed the positive reference to the UN CRC included within the Standards.⁴⁹⁸ However, the Commission also recommended that further references to the UN CRC, including an explicit reference to the general principles of the treaty be included within the Standards. The Commission advised that the absence of any references to young persons with disabilities within the Standards was unacceptable.⁴⁹⁹ In addition the Commission advised that it is of critical importance that a young person in Supported Lodgings continues to fall within the ambit of the Children (NI) Order 1995, with full access to the range of services and entitlements afforded to an individual defined as a “child in need” for this purpose.⁵⁰⁰ The Commission noted that private entities may be commissioned to provide supported lodgings in NI, the Commission recommended that the finalised Standards should clearly state that service providers will deliver services in a manner that is fully compliant with domestic and international human rights standards.⁵⁰¹

At the time of writing a report of the consultation exercise has not been issued and the final Standards are awaited.

496 DHSSPS ‘Consultation on draft Standards for Supported Lodgings for Young Adults’ 2015

497 NIHRC ‘The Department of Health, Social Services and Public Safety consultation on the Draft Standards for Supported Lodgings for Young Adults (aged 16-21) in Northern Ireland’ 2015

498 *Ibid.*, para 10

499 *Ibid.*, para 31

500 *Ibid.*, para 44

501 *Ibid.*, para 11

Right to health

ICESCR	Article 12
UNCRPD	Article 25
ESC	Article 11
CFREU	Article 35

Emergency healthcare

In 2015 the Commission published its report into emergency health care in NI.⁵⁰² It was the first human rights inquiry into this issue anywhere in the world.

The Commission adopted a participatory approach to ensure a full understanding of the patient journey. The inquiry involved eleven public hearings, taking statements from 139 witnesses, in addition the Commission received 185 written and telephone submissions.⁵⁰³

The inquiry analysed in detail the arrangements put in place by the DHSSPS, the HSC Board and the HSC Trusts to deliver emergency health care and illustrated throughout the report issues identified during the course of the inquiry. Informed by the real life experiences of those who had visited accident and emergency the Commission assessed arrangements against international human rights standards, in particular the right to the highest attainable standard of health.

The NI Executive is required to provide quality facilities, goods and services that are accessible. Furthermore, the health system should meet the requirement of good governance through ensuring public involvement and participation in planning and delivery of services. The right of patients to participate in decisions regarding their health care should also be recognised.

The inquiry report included over 100 key findings. On publication of the report the Chief Commissioner stated:

The Commission considered quality, accountability and governance of the service. We visited emergency departments throughout Northern Ireland during the day and night. We heard from dedicated staff striving to maintain patient dignity in an often challenging and crowded environment. In such circumstances there were reported instances where patients did not receive assistance with personal care needs, no pain relief, and no access to food and fluids. Of particular concern were cases involving end of life care, the inappropriate transfer of older patients from nursing homes and the experiences of those presenting to A&E in mental health crisis, with dementia or disabilities.

The Commission heard individual cases which amounted to inhuman and degrading treatment but, did not discover evidence of systemic violations of human rights. The importance of human rights are most obvious when we are at our most vulnerable. The right to the highest attainable standard of health is a standard that must be strived for and the respect for dignity and other human rights principles must be adhered to.

502 NIHRC 'Human Rights Inquiry: Emergency Health Care' (May, 2015)

503 Ibid.

The Inquiry also heard of practices and experiences. Often the introduction of relatively simple measures significantly improved the human rights of patients. Many of these have been introduced with modest costs and there is a clear need to share good practices throughout the system on a more structured basis.

The report recognised that emergency care departments do not control who comes in through the doors or whether the services are in place to allow a patient to move elsewhere in the hospital or back home. The report examined how much money had been allocated to the transition to impending the Transforming Your Care following the Compton report in 2011. It is clear that the money has gone on a number of important areas of care and service but, has not focussed on implementing the earlier review. The report recommends getting Transforming Your Care on track alongside other recommendations to improve the situation in emergency care departments. The report's aim is to be constructive and show that a human rights based approach can improve emergency care department services for both patients and staff.⁵⁰⁴

The inquiry found that the emergency care function of the NI health service is heavily dependent on and influenced by policy and practice elsewhere in the health and social care system.⁵⁰⁵ During the inquiry many positive initiatives were identified. However these had not been implemented in a systematic way. An absence of robust data collection to ensure the effective monitoring and reporting on performance was noted.⁵⁰⁶

The inquiry found that Emergency Departments did not provide reasonable adjustments for persons with disabilities including those with mental health problems, in particular patients presenting with self-harm perceived the Emergency Department as a hostile environment.⁵⁰⁷

The inquiry identified a need to strengthen the link between those shaping services and the local communities they serve. A further need to enhance the inspection framework was identified.⁵⁰⁸

The Commission made 26 recommendations including a recommendation that the DHSSPS develop dedicated Emergency Department minimum care standards, rooted in human rights and providing a benchmark for patient experience within Emergency Departments. The standards should include criterion on, inter alia:

- The promotion of dignity in Emergency Departments;
- Participation by individuals, their family members and other carers in the care provided in the Emergency Department setting;
- Measures covering staff behaviour and attitude, adequate facilities;
- Accessible mechanisms to provide feedback of Emergency Department experiences including complaints;
- The policies and procedures each Emergency Department should have including a hospital wide escalation policy to address overcrowding; and,
- Ways of helping to guarantee equality of access for particular groups of patients including older people, patients with dementia, rare diseases, sensory impairments and those presenting in mental health crisis.⁵⁰⁹

504 NIHRC Press Release 'A&E Inquiry Findings Published' (May 2015)

505 NIHRC 'Human Rights Inquiry: Emergency Health Care' (May, 2015) p. 123

506 Ibid., p. 70

507 Ibid., p. 62

508 Ibid., p. 125

509 Ibid Recommendations

The Commission is tracking the progress of the Report's recommendations and is working with the Belfast HSC Trust to develop a pilot project that will develop a human rights based approach to accident and emergency. In November 2015 the Minister for Health, Social Services and Public Safety set out significant changes to the health and social care system in NI, stating:

We have too many layers in our system. I want to see the Department take firmer, strategic control of our Health and Social Care system with our Trusts responsible for the planning of care in their areas and the operational independence to deliver it.

What I am signalling is an end to the current way we commission healthcare in Northern Ireland. It has not worked and arguably is never going to work well in a small region like ours. I propose that we close down the Health and Social Care Board.⁵¹⁰

Care standards for nursing homes in NI

In April 2015 the DHSSPS published revised Care Standards for Nursing Homes in NI.⁵¹¹ The publication of the Standards implemented a recommendation within the Commission's 2012 report into the human rights of older people in nursing homes "In Defence of Dignity".⁵¹²

Speaking after publication of the Standards the Chief Commissioner stated:

We welcome that the explicit and underpinning principle of the Standards includes the protection and promotion of people's human rights. We hope that new standards on "quality of life" and "privacy, dignity and personal care" will help address concerns highlighted through our own 2012 investigation. These included the need to improve social interactions, everyday activity and respect for choice, independence and dignity, particularly in the provision of intimate personal care for residents living in nursing homes. The Commission also commends the participatory approach adopted by the Department in developing the revised standards whereby older people's views were actively sought and included in the process.⁵¹³

Termination of pregnancy

On 11 December 2014 the Commission issued judicial review proceedings against the DOJ maintaining that the law on termination of pregnancy in NI violates the rights of women and girls by criminalising them when they seek a termination of pregnancy in circumstances of fatal and serious foetal abnormality, rape or incest. As set out in previous statements the Commission has repeatedly advised the DOJ that the existing law is, in the Commission's view, a violation of human rights.

The case was heard by the Honourable Mr Justice Horner on 15th, 16th and 17th June 2015. The Attorney General for NI among others intervened in the case.

Speaking at the commencement of the case the Chief Commissioner stated:

It is appropriate for the Human Rights Commission to take this legal challenge in our own name. We recognise the particular sensitivities of the issue. It is a matter of significant public interest to ensure that the rights of vulnerable women and girls in these situations are protected. It is in everyone's interest that the law is clarified in this area.⁵¹⁴

Justice Horner ruled on the 30th November 2015 that the law in Northern Ireland breached the ECHR, Article 8 the right to private life and a women's right to personal autonomy.

510 DHSSPS Press Release 'Health Minister Simon Hamilton has today announced radical changes to the way health and social care in Northern Ireland is delivered' 4 November 2015

511 See <http://www.dhsspsni.gov.uk/sqsd-standards-care-standards>

512 NIHRC, In Defence of Dignity: The Human Rights of Older People in Nursing Homes, Belfast, 2012 Recommendation 3

513 NIHRC Press Release: Commission Welcomes Publication of Revised Care Standards for Nursing Homes (15 April 2015)

514 NIHRC Press Release 'Human Rights Commission's Review of Termination of Pregnancy Law to begin' 15 June 2015

*by the absence of exceptions to the general prohibition on abortions in the cases of: (a) FFAs [Fatal Foetal Abnormalities] at any time; and (b) pregnancies which are a consequence of sexual crime up to the date when the foetus becomes capable of existing independently of the mother.*⁵¹⁵

The Chief Commissioner commented:

The Human Rights Commission welcomes today's landmark ruling. In taking this case we sought to change the law so that women and girls in Northern Ireland have the choice of accessing a termination of pregnancy locally in circumstances of fatal foetal abnormalities, rape or incest, without being criminalised for doing so.

*We are pleased that today that the High Court has held that the current law is incompatible with human rights and has ruled in the Commission's favour.*⁵¹⁶



Mental capacity

On 8th June 2015 the Mental Capacity (NI) Bill was introduced to the NI Assembly.⁵¹⁷ The Bill will fuse mental health and mental capacity law in NI, introducing a presumption of capacity in all persons over the age of 16.

The Commission provided advice to the DHSSPS and the DOJ in relation to the draft Bill.⁵¹⁸ This advice was to a degree reflected in the Bill as introduced. The Commission welcomed the increased emphasis placed in the Bill on ensuring respect for the autonomy of persons with fluctuating capacity and on the provision of support to such persons. The Commission advised that the Bill was compliant with the ECHR and was informed by guidance provided by the Council of Europe.⁵¹⁹ However, the Commission advised that a number of contradictions exist between the CRPD and the ECHR and proposed a number of amendments to ensure the Bill was more reflective of the CRPD.

The Commission advised that by continuing to make provision for substitute decision making the Bill runs contrary to the CRPD, Article 12, as interpreted by the CRPD Committee. The Commission did highlight that there is currently a lack of legal clarity regarding the implications of Article 12 and that legal practice in this area is emerging. The Commission therefore recommended that a provision be included within the Bill for a systemic review of the implementation of the legislation to commence within three years of its operation.⁵²⁰ By this time it is anticipated that the UK's initial report on compliance with the CRPD will have been examined by the Committee. Such a review should include consideration of laws governing mental capacity throughout the UK. The implementation review should take account of any recommendations from the CRPD Committee along with any developments in international law. In addition, by then it is anticipated that some clarity will have been provided regarding the contradictions between the CRPD and the ECHR.⁵²¹

The Mental Capacity (NI) Bill will introduce a presumption of capacity in all persons over the age of 16 only.⁵²² For under 16 year olds the DHSSPS had committed to review how the current legal framework, principally the Children (NI) Order 1995, reflects the emerging capacity of children in a health and welfare context. In its previous annual statement the Commission advised that a project plan with a clearly defined timetable for this project should be developed and made publicly

515 Ref HOR97402014, No. 125661/01

516 <http://www.nihrc.org/news/human-rights-commission-welcomes-historic-termination-of-pregnancy-ruling-30.11.15>

517 Bill 49/11-16

518 See IMNI 'Response from IMNI to the Consultation on Proposals for New Mental Capacity Legislation' (September 2014)

519 NIHRC 'Submission to the Ad Hoc Committee on the Mental Capacity (NI) Bill' (September 2015)

520 *Ibid.*, paras 14 – 21

521 *Ibid.*

522 NIHRC 'The 2013 Annual Statement: Human Rights in NI' (NIHRC, 2013) p. 45

available.⁵²³ However, during the Second Stage debate on the Bill the Minister for Health stated that there are “simply no available resources and arguably no time to undertake such a wide-ranging project at this moment”.⁵²⁴ The Commission raised the need to develop a legal framework governing decisions on mental capacity for children under 16 as soon as possible in its submissions to the UN CRC and the UN ICESCR Committees.⁵²⁵



Access to healthcare for irregular migrants

In March 2015, new regulations on access to primary and secondary healthcare for migrants came into operation.⁵²⁶ These regulations will ensure that all asylum seekers, and other specified migrant groups, have access to free healthcare while they are living in NI.⁵²⁷ The regulations make provision, inter alia, for treatment in respect of infection for any Human Immunodeficiency Virus. Officials informed the Committee for Health, Social Services and Public Safety that the policy intention is that the regulations provide an exemption from charge for full treatment, bringing NI into line with the rest of the UK.⁵²⁸

In order to reflect the changes to the new regulations, DHSSPS has also amended the General Medical Services Regulations so that any visitor exempt from charges is able to access GP services. The aim of the amendments is to ensure that a person not ordinarily resident accesses healthcare at the most appropriate setting.⁵²⁹

The Commission remains concerned that there is still a potential gap in respect of undocumented or irregular migrants and their children who are not entitled to primary and secondary healthcare under the Regulation.⁵³⁰ The Commission draws attention to its research paper of 2011 in which we recommended that an amendment or policy direction may be required to ensure that the full set of GP services, including access to a GP list (subject to discretion) is genuinely available to any persons.⁵³¹

523 NIHR ‘Submission to the Consultation on Proposals for New Mental Capacity Legislation for NI’ (September 2014) para 90

524 Official Report: Tuesday 16 June 2015

525 NIHR ‘Submission to the UN Committee on the Rights of the Child on the United Kingdom’s Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child’ (August 2015)

526 The regulations were adopted in February 2015 but there was a short window in which they could be challenged, see <http://www.lawcentreni.org/news/recent-news/1-news/1172-new-rules-on-access-to-healthcare-for-migrants-in-northern-ireland.html>. The regulations revoke a number of regulations including: Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005; Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2008; Regulation 3 of The Charges for Drugs and Appliances and Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2009 and Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2013

527 See regulation 4 of the Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2015

528 Official Report of the Committee for Health, Social Services and Public Safety, Implementation of EU cross border health directive and overseas visitors policy, (27 November 2013)

529 The Health and Personal Social Services (General Medical Services Contracts) (Amendment) Regulations (Northern Ireland) 2015 amend the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004, the GMS Contract Regulations

530 The 2015 regulations specifies that general health services under Part 3 include General health services include primary medical services, general dental services, general ophthalmic services and pharmaceutical services, see Regulation 2 (1)

531 See NIHR ‘Access Denied or Paying When You Shouldn’t. Access to publicly funded medical care, residency, visitors and non-British/Irish Citizens’ (2011) p 49

Right to education

ICESCR	Article 13
CRC	Article 28
ECHR	Protocol 1, Article 2
CFREU	Article 14
CRPD	Article 24

Children in custody

In 2012 the Commission reported on the importance of ensuring access to appropriate educational facilities for children in custody.⁵³² In NI responsibility for the provision of education to children in custody rests with the Youth Justice Agency and not the DENI. Elsewhere in the UK, the Home Office Youth Crime Action Plan 2008 reallocated responsibility for delivery of education to children in detention from the prison service to the Department for Children, Schools and Families.⁵³³

In the 2013 annual statement the Commission reported that the Minister of Justice and the Minister of Education had agreed that responsibility for the education of child offenders should be transferred to the DENI.⁵³⁴ A cross-departmental working group was established to develop an options paper for delivering on this commitment which was to be completed in early 2014. The working group included the DEL to cover post primary education of 16-18 year old children. The Commission welcomed this development.⁵³⁵

In 2015 the Ministers of Education and Justice have confirmed that Woodlands Juvenile Justice Centre will be recognised under Article 86 of the Education (NI) Order 1998 as part of the Education Authority's responsibility for "Education Otherwise Than At School" and that responsibility for education of children at Woodlands will transfer from the DOJ to the Education Authority.⁵³⁶ This will facilitate children imprisoned at Woodlands having access to the same standards as any other young person taught outside of a mainstream school. The Commission welcomed the proposed transfer of responsibilities for the education of children at Woodlands Juvenile Justice Centre from the NI Prison Service to the DENI and advised that this transfer take place as soon as possible.

Integrated education

In its 2008 concluding observations the UN CRC Committee expressed concern regarding "the problem of segregation of education"⁵³⁷ in NI and recommended that measures be taken to address this. The UN CRC Committee had previously noted the low per centage of schools that were integrated and recommended the NI Executive:

*increase the budget for and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demand of a significant number of parents.*⁵³⁸

532 The 2012 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2012) p. 38

533 See Professor Laura Lundy, Ms Lesley Emerson, Dr Katrina Lloyd, Dr Bronagh Byrne, Mr Jamie Yohanis 'Education Reform in NI A Human Rights Review (NIHRC, Belfast, 2013) Chapter 3

534 NIHRC 'The 2013 Annual Statement: Human Rights in NI ' (December, 2013) p.46

535 Ibid.

536 Correspondence from the DoJ and DoE to the NIHRC Chief Commissioner Les Allamby 6 October 2015

537 UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008., para 66

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

The UN ICESCR Committee also recommended in 2002 that the NI Executive

*consider appropriate measures in Northern Ireland to facilitate the establishment of additional integrated schools in areas where a significant number of parents have indicated their desire to have their children enrolled in such schools.*⁵³⁹

In 2014/15, 7 per cent of pupils in NI attended an integrated school⁵⁴⁰ with the most common approach to achieving integrated status now being the transformation of existing schools. There have been no new integrated schools established since 2008. In examining the relatively slow growth of integrated schooling despite the statutory obligation on the DENI to “encourage and facilitate the development of integrated education”⁵⁴¹ the impact of the DENI planning policy has been identified as potentially creating barriers to the growth of integrated education.

In a judicial review in 2013, an integrated school argued that the DENI ‘area-based’ approach to planning, which restricts growth for schools located near schools in other sectors that are struggling to fill all their available places, denied them the opportunity to expand in order to meet the high demand from parents for integrated places. The judgment found that the DENI must reconcile the need to strategically plan for the most appropriate growth of the schools’ estate as a whole with their obligation under Article 64 of the Education Reform Order to facilitate the growth of the integrated sector:

*Using an analytical tool to plan for an area is of course acceptable and necessary, however the inflexibility of the projections used will have the effect of making it difficult to accommodate the A64 duty in future day to day decisions. The department need to be alive to the A64 duty at all levels, including the strategic level.*⁵⁴²

In 2015 the NI Assembly Committee for Education has reported on its inquiry into the shared and integrated education recommending that the DENI revise its approach to planning for the development of new schools :

*to recognise the increasingly diverse school population and changes to traditional designations and so as to promote increased mixing in schools.*⁵⁴³

The Education Committee recommended that the DENI:

*should accept the shortcomings of the Needs Model and revise it so as to recognise the increasingly diverse school population and changes to traditional designations and so as to promote increased mixing in schools.*⁵⁴⁴

The Commission has updated the UN CRC Committee in 2015 and invited the Committee to ask the State party what action it will take to review the schools planning policy in NI so as to increase access to integrated schools in order to “meet the demand of a significant number of parents”, in line with the Committee’s previous concluding observation.⁵⁴⁵

539 UN Committee on Economic, Social and Cultural Rights, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, E/C.12/1/Add.79, 2002, para 42

540 See http://www.deni.gov.uk/index/schools-and-infrastructure-2/schools-management/10-types_of_school-nischools_pg/16-schools-integratedschools_pg.htm

541 Education Reform Order (NI) 1989, art. 64

542 See http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/%5B2014%5D%20NIQB%2069/j_j_TRE9202Final.htm

543 NI Assembly Education Committee ‘Report on the Inquiry into Shared and Integrated Education Reference: NIA 194/11-16 01/07/2015

544 Northern Ireland Assembly Committee for Education Position Paper: Area Based Planning, 1 June 2015 See: <http://www.niassembly.gov.uk/assembly-business/committees/education/reports/position-paper-area-planning/>

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

Shared education

In 2015 the DENI introduced a Shared Education Bill to the NI Assembly.⁵⁴⁶ The Bill includes a definition of shared education and at clause 2 proposes an enabling power for the DENI to encourage and facilitate shared education.

The Commission advised that a number of human rights treaties and standards place a duty on the State (and therefore the NI Executive) to promote tolerance and respect for diversity in education, including ICESCR, Article 13 (1),⁵⁴⁷ UNCRC, Article 29(1)(c),⁵⁴⁸ FCNM, Article 6,⁵⁴⁹ UN Human Rights Council Resolution 6/37,⁵⁵⁰ and the Council of Europe's Faro Declaration.⁵⁵¹

Noting the relevant human rights standards the Commission has recommended that Clause 2 of the Bill should be consistent with the existing legislative duty on the Education Authority 'to encourage, facilitate and promote shared education'.⁵⁵²

Academic selection

In its 2008 concluding observations the UN CRC Committee recommended that the UK Government and devolved administration:

*Put an end to the two-tier culture in Northern Ireland by abolishing the 11+ transfer test and ensure that all children are included in admission arrangements in post-primary schools.*⁵⁵³

This year the Commission provided an update to the UN CRC Committee on secondary school admissions.⁵⁵⁴ The Commission advised that the DENI has abolished the 11+ transfer test and the last official transfer test took place in November 2008.⁵⁵⁵ However, due to a lack of consensus within the NI Executive, the Minister of Education was unable to bring forward proposals for a non-selective system of school admission. The DENI has declined to issue regulations allowing selection on ability or to authorise a central transfer procedure but has issued guidance for schools in 2009 under the powers provided for in the Education Order (NI) 1997. This guidance recommends that schools refrain from using academic selection but acknowledged that schools were only legally obliged to "have regard"⁵⁵⁶ to the guidance. As a result of the lack of a legislative framework for school admissions, an informal system of academic testing which is not regulated by the DENI, has emerged with most grammar schools continuing to use entrance exam results as the primary determinant for admission to school. Two different exams, both provided by private companies, are commonly used with many children completing both sets of tests.⁵⁵⁷

546 Department of Education 'Sharing Works: A Policy for Shared Education' January 2015

547 Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that state parties shall to the Covenant a recognize the right of everyone to education... agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms... further agree that education shall enable all persons to participate effectively in a free society to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups'

548 Article 29 (1)(c) of the UNCRC provides state parties agree that education shall be directed to respect for the child's parents, his or her own cultural identity, language and ...as well as civilizations different from his or her own

549 Article 6 of the FCNM says parties to the convention shall encourage a spirit of tolerance and intercultural dialogue and take effective measures in education to promote mutual respect, understanding and co-operation among all the persons living in the territory, irrespective of a person's cultural, linguistic or religious identity

550 UN Human Rights Council Resolution 6/37 urges member states to design and implement policies whereby education systems promote principles of tolerance and respect for others and cultural diversity and the freedom of religion or belief

551 The Council of Europe's Faro Declaration by Culture Ministers in 2005 made commitments to translate political will shown at the summit into action including through developing human rights, democratic citizenship and civil education programmes, as well as intercultural exchanges at secondary school and youth level

552 Contained within the Education Act (NI) 2014 section 7 NIHRC 'Advise on the Shared Education Bill' (November 2015) See UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, 2002, para 67

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

554 NIHRC Submission to the UN Committee on the Rights of the Child on the United Kingdom's Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child. (July 2015) paras 6.1 – 6.2

555 Ibid.

556 See: http://www.deni.gov.uk/final_transfer_2010_guidance_25_june_2009.pdf

557 See: <http://www.qub.ac.uk/research-centres/CentreforChildrensRights/filestore/Fileupload,485594,en.pdf>

In September 2015 the Commission advised the ICESCR Committee that the use of privately funded tutoring is extremely prevalent and that the current situation has contributed towards children from poor socio-economic backgrounds under performing and the “two tier system of education” therefore continues.⁵⁵⁸

In September 2015 in responding to a question on educational achievement the Minister of Education stated:

to raise standards across our education system we need to remove the inequalities within the system, and that means removing academic selection. Admissions decisions based on the outcome of unregulated academic testing are not consistent with the objective of treating children fairly and giving each child the opportunity to reach his/her full potential. This is consistent with views expressed by the Human Rights Commission, the United Nations Convention on the Rights of the Child, the NI Children’s Commissioner and international experts from the Organisation for Economic Co-operation and Development.

The results of the 2013 Programme for International Student Assessment (PISA) – an international comparison of school systems for 15 year olds – highlighted the remarkably wide gap between high achievers and low achievers in our education system. The use of academic selection contributes to the maintenance of that gap, resulting in our system being at best average in the PISA rankings.

*The continued use of academic selection is a barrier to addressing underachievement in disadvantaged communities. It damages children’s confidence, their motivation to learn, and lowers their expectations of themselves, all of which contributes to the high levels of underachievement we are seeking to tackle.*⁵⁵⁹



Educational needs of Traveller children

A report by the Traveller Education Task Force was published in 2011. The Task Force recommended that reasons for school absence of traveller children should be analysed, monitored and addressed.⁵⁶⁰ The Taskforce specifically recommended a review of the school attendance exemption contained in Schedule 13 of the Education and Libraries (NI) Order 1986 which allows a child to be absent for up to 100 days in circumstances where their parents are travelling for occupational reasons.

As set out in the previous annual statement the Commission understands that the DENI is considering amendments to the 1986 Order, however, these have not been published in year⁵⁶¹. The Commission has raised the need to deal effectively with this matter with the UN CRC Committee and the UN ICESCR Committee.⁵⁶²



Special educational needs

The NI Executive is required by the CRPD, Article 24, to ensure that children with intellectual impairments have access to an inclusive education system.⁵⁶³

558 ‘What do we know? Educational Opportunities and Outcomes’. Available at: www.ark.ac.uk/publications/books/fio/10_fio-education.pdf

559 AQW 48860/11-16 Ms Claire Sugden (IND - East Londonderry) 16 September 2015

560 Taskforce on Traveller Education – Report of the Taskforce to the Department of Education 7 December 2011

561 NIHRC ‘The 2014 Annual Statement: Human Rights in Northern Ireland’ December 2014 p. 53

562 NIHRC – Submission to the UN CRC Committee on the UK’s 5th Periodic Report on compliance with the UN Convention on the Rights of the Child July 2015 and NIHRC Submission to the ICESCR Committee in relation to the Sixth Periodic Report of the UK on compliance with the ICESCR 2015, pp61-62

563 In addition see UN Committee on the Rights of the Child, General Comment No. 9 on the rights of children with disabilities (27 February 2007), para. 66

Proposals for the reform of special educational needs provision were first agreed by the NI Executive in July 2012.⁵⁶⁴ At this time the Commission advised that the best interests of the child must be the primary consideration in developing these proposals. The Special Educational Needs and Disability Bill was introduced to the Assembly in March 2015.

The Bill does not address whether the reform of special educational needs provision will lead to a significant decrease in the number of children assisted, as this will be dealt with in statutory regulations and a revised statutory Code of Practice which have yet to be released. The Commission has advised that the DENI should ensure that: “there will be no retrogression in the level of SEN provision as a result of this Bill and subordinate legislation”.⁵⁶⁵ As the detail of how individualised support will be delivered to children with SEN and disabilities is to be contained within the regulations and Code of Practice, the Commission has also recommended that the statutory rules must be approved by the NI Assembly before becoming law to allow full scrutiny of the human rights implications of the revised SEN and inclusion framework as a whole before the Code of Practice can come into effect.⁵⁶⁶ In addition, the Commission has recommended that the Bill be amended to require all secondary legislation to be compliant with both the UN CRC and the UN CRPD.

The Bill proposes a power enabling the DENI to establish a pilot scheme through which children under 16 can exercise their appeal rights. The pilot could be established at any time in the 10 years following the Bill’s enactment. The Commission advised that the UN CRC Committee has recommended that children who are able to express their views should be afforded the right to appeal to special educational needs tribunals.⁵⁶⁷ Noting that this recommendation has been outstanding for seven years the Commission advised that an additional period of up to 10 years is not an appropriate length of time to allow for the establishment of the pilot scheme and advised that this was an unacceptable delay.⁵⁶⁸ The Commission has raised this matter in its submission to the UN CRC Committee.⁵⁶⁹

The Commission notes that the NI Assembly Committee for Education has now published its report.⁵⁷⁰ The Committee appreciated the need for proper scrutiny of associated secondary legislation, and, with agreement of the DENI, amended a number of regulation-making powers under the Bill to ensure enactment via the draft affirmative procedure rather than the negative procedure.⁵⁷¹ With respect to appeal rights the Committee obtained: ‘assurances that regulations will ensure that the Education Authority will be obliged to advise potential appellants of their rights to an appeal and explain how those rights can be exercised’.⁵⁷² The Committee did not amend the proposed power to a duty on DENI to establish a pilot scheme through which children under 16 can exercise their appeal rights.⁵⁷³

564 Proposals were consulted upon by means of the DoE consultation document, *Every School a Good School - The Way Forward for Special Educational Needs and Inclusion*, 2009

565 NIHRC, *Response to the consultation on the SEND Bill (2015)* para. 27; See http://www.nihrc.org/uploads/publications/NIHRC_response_to_the_consultation_on_the_SEND_Bill.pdf

566 *Ibid.*

567 UNCR Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4*, 2008, para 67

568 NIHRC, *Response to the consultation on the SEND Bill (2015)* para 46

569 *Submission to the UN Committee on the Rights of the Child on the United Kingdom’s Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child*. (July 2015) paras 51-54

570 Committee for Education ‘*Report on the Special Educational Needs and Disability Bill*’ NIA 271/11-16

571 *Ibid.*, para 67 – see in particular Clause 4 duties of Board of Governors in relation to pupils with special educational needs

572 *Ibid.*, para 93

573 *Ibid.*, para 135

Right to participate in the cultural life of the community

ICCPR	Article 27
CRC	Article 31
ICESCR	Article 15
FCNM	Article 5
CEDAW	Article 13 (c)
CRPD	Article 30
CFREU	Article 13 Article 22
European Charter for Regional or Minority Languages	

The Irish language and Ulster Scots

The Commission has consistently highlighted the need to ensure adequate legal protection for the Irish language and for Ulster Scots. In 2012 the Commission reported that the Advisory Committee on the FCNM had identified the protection and promotion of the Irish language as requiring immediate action, recommending that the UK Government and NI Executive:

*develop comprehensive legislation on the Irish language in NI and take resolute measures to protect and implement more effectively the language rights of persons belonging to the Irish-speaking community.*⁵⁷⁴

In 2012 the DCAL issued separate consultation papers in respect of strategies to promote and enhance the Irish language and Ulster Scots.⁵⁷⁵ Each consultation document referred to the UK's obligations under the Charter with respect to the Irish language and Ulster Scots. However, in 2013 the Commission reported that it had raised issues with the COMEX around continuing gaps in legislation, education needs and the responsibility of the NI Executive to promote and develop minority language protections in NI.⁵⁷⁶

In 2014 COMEX made recommendations relating to the compliance of the UK with the European Charter on Minority and Regional Languages.⁵⁷⁷ In its report the COMEX noted with regret that the NI Executive had not contributed to the State Report, the Committee further stated:

*The devolution settlement in NI presents obstacles to the promotion and the protection of regional or minority languages to the extent that there is no political consensus on the contribution to be made by the NI Government. The responsibility of competence with regard to regional or minority languages was devolved to the NI Assembly. Nevertheless, no legislation promoting the Irish language has been adopted. The Committee of Experts was informed that this is because of the need to obtain consensus within the power sharing administration.*⁵⁷⁸

574 FCNM, Third Opinion on the United Kingdom, adopted on 30 June 2011, ACFC/OP/III (2011), Issues for Immediate Action . p. 43

575 NIHRC 'Annual Statement on Human Rights in NI 2012' (December 2012) p. 39

576 NIHRC 'Annual Statement on Human Rights in NI 2013' (December 2013) p. 48

577 COMEX Application of the Charter in the UK, 4th monitoring cycle Report of the Committee of Experts on the Charter Strasbourg, 15 January 2014 ECRML. (2014) 1

578 Ibid., para 12 – 14

The COMEX urged:

*the authorities to provide an appropriate legislative base for the protection and promotion of Irish in NI.*⁵⁷⁹

In January 2015 the DCAL published strategies on both the Irish language and Ulster Scots language.⁵⁸⁰ DCAL then consulted on proposals for an Irish Language Bill, the Commission welcomed the proposal to provide statutory protections for the Irish language.⁵⁸¹

The DCAL acknowledged that the COMEX has specifically considered the Administration of Justice (Language) Act (Ireland) 1737 under Article 7(2), and in its third report stated that:

*... the prohibition of the use of Irish in courts in Northern Ireland by the 1737 Act is an unjustified restriction relating to the use of Irish, endangering the development of the language.*⁵⁸²

The Commission welcomed the proposed repeal of the Administration of Justice (Language) Act (Ireland) 1737 and highlighted the need to ensure that the use of Irish in the courts will be facilitated at an operational level.⁵⁸³

Whilst welcoming the proposal to place Irish medium education on a statutory footing the Commission noted a lack of detail within the consultation paper as to how this commitment will be realised.⁵⁸⁴ The Commission highlighted that such a proposal would require the support and agreement of DENI. The Commission highlighted that to realise many of the proposals within the Bill would require cross departmental co-operation. Officials from DCAL briefed the NI Assembly Culture, Arts and Leisure Committee in October 2015. Officials informed the Committee that the intention is that a report of the consultation will be published hopefully in the near future. Officials indicated that the Minister remains committed to an Irish Language Act and to progressing the Bill as far as possible and urged all sides of the house to support the Bill. The next stage is to bring policy proposals to the NI Executive for agreement.⁵⁸⁵

At the time of writing an Irish Language Bill has not been introduced to the NI Assembly. The Commission updated the UN ICESCR Committee in 2015 and advised of the need to bring forward policy proposals for an Irish Language Act at the earliest opportunity.⁵⁸⁶ In addition the Commission asked the UN ICESCR Committee to seek an update on the implementation of actions contained within the strategy on developing the Ulster Scots language, culture and heritage.⁵⁸⁷

579 Ibid.

580 Strategy to Enhance and Protect the Development of the Irish Language 2015-2035; Strategy to Enhance and Develop the Ulster-Scots Language, Heritage and Culture 2015-2035

581 NIHRC 'Response to the proposals for an Irish Language Bill' (May 2015)

582 COMEX, Application of the Charter in the United Kingdom, 3rd Monitoring Cycle Report of the Committee of Experts on the Charter Strasbourg, 21 Apr 2010 ECRML (2010) 4, para 121

583 NIHRC 'Response to the proposals for an Irish Language Bill' (May 2015) para 34

584 Ibid., para 66

585 Information obtained from a recording of the meeting of the Culture, Arts and Leisure Committee on 1 October 2015, available at <http://www.niassembly.gov.uk/assembly-business/committees/culture-arts-and-leisure/meetings/01-october-2015/>

586 NIHRC 'Submission to the United Nations Committee on Economic, Social and Cultural Rights: Parallel Report on the Sixth Periodic Report of the UK under the International Covenant on Economic, Social and Cultural Rights', (September 2015), p67

587 Ibid.

Constitutional Protections

A Bill of Rights for NI

As required by the Belfast (Good Friday) Agreement and the NI Act 1998, the Commission provided advice to the UK Government on a Bill of Rights for NI in 2008. On receipt of its advice the NIO sought views from the public by way of a public consultation.⁵⁸⁸

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

*considerable support from human rights and community groups for a wide-ranging Bill of Rights along the lines of that recommended by the NI Human Rights Commission.*⁵⁸⁹

Since 2010 it has been consistently stated that there has been a lack of political consensus around a Bill of Rights for NI.⁵⁹⁰ The Commission reported on the absence of any significant development to progress a Bill of Rights for NI in 2012, 2013 and 2014.⁵⁹¹

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

*about the slow progress in introducing the Bill of Rights for Northern Ireland and about the lack of a comprehensive mechanism for the review of existing gaps and inconsistencies between the domestic human rights legal framework and the rights covered in the Covenant.*⁵⁹²

The Committee recommended that the State Party:

*Ensure that the Bill of Rights for Northern Ireland incorporates all the rights enshrined in the Covenant and expedite the process of its adoption.*⁵⁹³

The Commission has continued to advise Government in support of a Bill of Rights for NI and urged the NIO to encourage dialogue amongst the political parties of NI to develop a consensus on implementation of a Bill of Rights for NI.

A UK Bill of Rights

In October 2014 the Conservative Party issued proposals for the reform of human rights protections in the UK, including the repeal of the HRA 1998 and its replacement with a “British Bill of Rights and Responsibilities”.⁵⁹⁴ These proposals were reflected in the Conservative party manifesto and in the Queen’s Speech of May 2015.

In the Queen’s speech the Government announced that it:

*will bring forward proposals for a Bill of Rights to replace the Human Rights Act. This would reform and modernise our human rights legal framework and restore common sense to the application of human rights laws. It would also protect existing rights, which are an essential part of a modern, democratic society, and better protect against abuse of the system and misuse of human rights.*⁵⁹⁵

588 NIO ‘Consultation Paper: A Bill of Rights for NI: Next Steps’ (November 2009)

589 Minister of State Hugo Swire MP, Written Ministerial Statement to Parliament, 16 December 2010

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

591 NIHR ‘The 2012 Annual Statement: Human Rights in NI’ (December, 2012) p.40-41; NIHR ‘The 2013 Annual Statement: Human Rights in NI’ (December 2013) p. 49

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

593 Ibid., Para 5(b)

594 Conservative Party ‘Protecting Human Rights in the UK: The Conservatives’ Proposals for Changing Britain’s Human Rights Laws’ 2014

595 Queen’s Speech Briefing Pack 27 May 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/OS_lobby_pack_FINAL_NEW_2.pdf

The three UK national human rights institutions issued a joint statement to the UN Human Rights Committee setting out the value of the HRA as:

*providing essential protection to everyone in the United Kingdom enabling fundamental rights to be enforced in domestic courts...the HRA is well crafted and both reflects and is embedded in the constitutional arrangements for the UK. In particular, it maintains parliamentary sovereignty, a primary role for domestic courts in the interpretation of the ECHR and is central to arrangements for devolution in NI, Wales and Scotland.*⁵⁹⁶

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

*In effect, human rights protection and compliance has been a cornerstone of the Belfast/Good Friday Agreement and subsequent agreements. Attempts to dilute the role of the European Court of Human Rights and the European Court of Human Rights jurisprudence, runs counter to the Belfast/Good Friday Agreement. The Commission believes that any legislative proposals should not undermine the commitments contained within the Belfast/Good Friday Agreement.*⁵⁹⁷

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

*Ensure that any legislation passed in lieu of the Human Rights Act 1998, were such legislation to be passed, would be aimed at strengthening the status of international human rights, including the provisions of the Covenant, in the domestic legal order and provide effective protection of those rights across all jurisdictions.*⁵⁹⁸

The Commission endorsed the recommendation in correspondence with the Secretary of State for Justice. In October 2015 UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein visited the UK and met with the Commission and the other UK NHRIs. During his visit the High Commissioner spoke on the proposed reform of the Human Rights Act 1998, he stated:

Recently, the government has announced it plans to 'scrap' the human rights act... This proposal may have a very significant impact on access to remedy for victims of human rights violations within the jurisdiction of the UK.

If Britain – a key member of the human rights council, a founding member of the UN and a privileged, permanent member of the security council – is considering a move that will potentially weaken a vital regional institution upholding fundamental human rights guarantees, this would be profoundly regrettable; damaging for victims and human rights protection; and contrary to this country's commendable history of global and regional engagement.

*Moreover, many other states, where civil society is currently threatened, may gleefully follow suit. Surely this is a legacy no British government would wish to inspire.*⁵⁹⁹

596 EHRC, SHRC, NIHRC 'Correspondence to the UN Human Rights Committee' July 2015

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

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

599 Guardian News 'Senior UN official warns against UK plans to scrap Human Rights Act' 12 October 2015

In December 2015, the Lord Chancellor and Secretary of State for Justice informed the House of Lords, Constitution Committee:

*My original intention, which was to publish a consultation document before Christmas, has been put back and I expect that any consultation document we produce will now be produced in the new year. . . The issues which require extended debate include whether we need to think in a more systemic way about what constitutes a constitutional statute and the role of the Supreme Court in considering constitutional matters.*⁶⁰⁰

A Charter of Rights for the island of Ireland

The Commission and the Irish Human Rights Commission were mandated by the Belfast (Good Friday) Agreement 1998 to consider through a joint committee:

*the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.*⁶⁰¹

This task was completed in June 2011 when the Commissions together presented advice to the Governments of the UK and Ireland, the Speaker of the NI Assembly and the Ceann Comhairle of Dáil Éireann.⁶⁰² The Speaker and Ceann Comhairle both agreed to forward the advice to political parties in their respective legislative bodies for further consideration. Since then no further communication has been received on this matter.

In year, both Commissions made a presentation to the Joint Oireachtas Committee on the Implementation of the Good Friday/Belfast Agreement the Commission.⁶⁰³ In its presentation to the Committee the Commission referred to the establishment of the North-South Parliamentary Forum and the potential for the Charter to form part of its work plan as part of an active consideration on the establishment of a Charter of Rights for the island of Ireland.

National human rights institution

Recent amendments to the NI Act 1998 provide that the functions of the Secretary of State for NI relating to the Commission may be transferred to the competency of the NI Assembly through an Order of Parliament.⁶⁰⁴ No such Order has been laid in 2015.

Prior to the laying of such an Order the Secretary of State must provide a report to the Houses of Parliament relating to the potential implications of a transfer on the effectiveness and independence of the Commission.⁶⁰⁵ The Commission remains of the view that any transfer of the responsibilities of the Secretary of State should be to the NI Assembly, in line with the Belgrade Principles.

600 Constitution Committee, House of Lords, Wednesday 2 December 2015

601 The Joint Committee of the NIHRC and the Irish Human Rights Commission 'The advice of the joint committee on a charter of rights for the island of Ireland' (June 2011)

602 See <http://www.nihrc.org/publication/category/Charter-of-Rights>

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

604 NI (Miscellaneous Provisions) Act 2014

605 NIHRC 'The 2013 Annual Statement: Human Rights in NI' (December, 2013) p.50

For 2015/16 the UK Government implemented a 9.4% reduction in its grant-in-aid for 2015/16. This will reduce the funding from the NIO by £122,000 to £1,174,000. This followed previous reductions in grant in aid of 25% cumulatively over the previous four years. The Commission raised concerns regarding its funding with the UN Human Rights Committee.⁶⁰⁶ The Committee recommended that:

*The State party should provide the Northern Ireland Human Rights Commission with adequate funding to enable it to discharge its mandate effectively and independently, in full compliance with the Paris Principles (General Assembly resolution 48/134, annex).*⁶⁰⁷

The Commission's accreditation as an 'A status' NHRI is subject to a quinquennial review by the ICC and this review will take place in 2016.⁶⁰⁸

606 NIHRC 'Submissions to the UN Human Rights Committee on the UK's Seventh Periodic Report on compliance with the ICCPR' May 2015 para 2.6

607 UN Human Rights Committee Concluding observations on seventh periodic report submitted by the UK CCPR/C/GBR/CO/7 2015 para 7

608 For details on the role of the ICC sub-Committee on Accreditation see <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>

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If you would like to know more about the work of the Commission, or any of the services we provide, please contact us.

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