

The 2013 Annual Statement

Human Rights in Northern Ireland

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NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

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About us

The primary role of the Commission is to protect and promote the human rights of everyone in Northern Ireland (NI). We do this through 4 key statutory functions: legal assistance and strategic litigation; policy and legislative scrutiny (including Treaty monitoring); investigations; and education.

The Commission's duties are:

- to keep under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights;
- to advise on other measures to be taken to protect human rights;
- to advise the NI Assembly on legislation; and
- to promote understanding and awareness of human rights.

In addition the Commission has powers:

- to assist individuals bringing legal proceedings relating to human rights;
- to intervene in legal proceedings involving human rights;
- to bring proceedings involving law or practice concerning human rights;
- to conduct such investigations and require the provision of evidence; and,
- to publish reports and information.

Our mission statement

The Commission champions the human rights of those who live in NI. The Commission is Northern Ireland'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.

Interim Chair: John Corey

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

Professor Michael O'Flaherty
(Chief Commissioner September 2011-October 2013)

Director: Virginia McVea

Deputy Director: Dr David Russell

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Foreword

In tough economic times, protecting civil, political, economic, social and cultural rights is a major challenge. For Northern Ireland that challenge deepened in 2013 as unresolved conflict related issues led to violence on the streets and inevitable abuses of human rights. However those challenges must not deflect from the goal of building a society which accepts, respects and honours the human rights of everyone.

The Commission is a small body with limited funding that therefore must focus its resources to achieve the maximum progress. To meet this challenge the Commission has expended considerable effort in developing its Strategic Plan that focuses on three areas of work: Human Rights and Good Governance; Human Rights and the Conflict; and, Protecting Human Rights in a Time of Austerity.

Human rights and good governance

The Commission is tasked with holding the UK Government and NI Executive to the obligations contained in the ratified human rights treaties. The Commission's public commitment is that it will advise the UK Government, the NI Executive and all public authorities of their human rights responsibilities without fear or favour.

In the spirit of that commitment the Commission reiterates the critical importance for Northern Ireland of having its own Bill of Rights. It is deeply disappointing that, five years after the Commission presented Government with comprehensive advice on the content of the Bill of Rights, the process appears to be stalled in the political arena. The Commission has rightly committed to do all within its power and remit, to advance implementation of the Bill of Rights.

The Commission's good governance work focuses on a wide range of specific issues and actions to enhance the enjoyment of human rights. Just two examples are the ground breaking high level engagement with the Health and Social Care sector to incorporate human rights into its policy making work and the extension of human rights training throughout the Northern Ireland Civil Service. These welcome developments help to embed a human rights based approach into the governance and delivery of public services.

The Commission continues to monitor and advise on issues in the criminal justice arena and on prison issues. Delays in the justice system, the imprisonment of children on remand for sometimes minor offences, and the imprisonment of fine defaulters are all examples where Northern Ireland needs to do better to meet human rights obligations.

The Commission acknowledges that public authorities are taking steps to bring improvements in the justice sector but the speed of progress remains slow. The over-reliance on imprisonment is a financial burden and can have detrimental implications for the imprisoned individuals and for their long term development, creating a risk of re-offending.

Human rights and the conflict

The Commission recognises that the legacy of the conflict runs deep in Northern Ireland. There remain serious gaps in accountability, justice and inter-community reconciliation. We believe that adopting a human rights based framework can provide a foundation for developing processes and resolutions that all can support. The need to take action in this area

was given a new impetus this year with the establishment of the All Party Panel under the chairmanship of Dr Richard Haass to provide a

set of recommendations by the end of 2013 on parades and protests; flags, symbols, emblems and related matters stemming from the past that will provide long-term and sustainable solutions that are in the best interests of this community and will make the peace more resilient going forward.

The Commission welcomes the leadership and initiative of the NI Executive in taking this step. The Commission rightly prioritised completing the papers - *Dealing with Northern Ireland's Past: Towards a transitional justice approach: The Display of Flags, Symbols and Emblems in Northern Ireland*: and *Parades and Protests* - for consideration by Dr Haass and the political parties participating in the talks process, the NI Executive and UK and the Irish Governments.

The papers addressed issues within a detailed international human rights framework; with respect to transitional justice mechanisms human rights calls for a victim centred approach and does not allow for any general amnesties. Another relevant report provided to Dr Haass was on the *Human Rights to Culture in Post Conflict Societies*. This pioneering report was the product of contributions from international human rights experts with important contributions from this community and completed as part of the Derry/Londonderry UK City of Culture. That city's memorable embracing of the cultures of our communities has served as a beacon of hope that the people of Northern Ireland can progress to a better future.

As the Commission identified in its 'Parades and Protests' report, resolution by dialogue and agreement can obviate the need for human rights to be restricted. The Commission has urged all parties to come to appreciate the positive role which human rights can play in society and in fostering greater understanding between communities. The Commission also represented to Dr Haass that a Bill of Rights for Northern Ireland has the potential to be an important cornerstone for building a better future.

Protecting human rights in a time of austerity

Many fear that Government's austerity policies will lead to complacency around human rights obligations and diminution of people's rights. Employment opportunities are affected and Government has less funds to meet its obligations.

This is one of the drivers behind the Government's welfare reforms. The Welfare Reform Bill, currently under consideration by the NI Assembly, is the most significant reform of the social welfare system in a generation. As one example, the changes will have significant implications for the right of persons with disabilities to live independently.

The Commission consistently advised of the need for rigorous assessment and scrutiny of the statutory regulations which will actually implement the proposals contained within the Bill. We have advised on measures to mitigate the potential adverse consequences of the proposals.

Public expenditure cut backs impact adversely on the opportunities to strengthen and enhance the enjoyment of human rights. For instance increasing parental leave entitlements on the birth of a child, have been put on hold. Reduced public funds also have implications for civil and political rights. It is the resolved view of two international human rights bodies that there is a resounding need for a separate custody facility for women prisoners in Northern Ireland. While the Minister for Justice has accepted this view, he has made clear that the funds required to construct the facility are not available.

The Annual Statement

In keeping with our responsibilities under the United Nations (UN) Paris Principles we present this Annual Statement to shine a light on the record of Government's compliance with its human rights obligations, acknowledging their actions and inactions year on year. However it would be most unfortunate if the picture was obscured by the Government or NI Executive's unwillingness or inability to progress issues such as the age of criminal responsibility, the equalising of equality laws with elsewhere in the UK, etc.

For its part the Commission will continue to promote understanding around human rights, as they are protected domestically and internationally. We will make our voice heard in every forum in which it is welcome. We do not purport to have solutions to all the challenges which society faces but human rights laws and standards have a major contribution to make.

It is an unexpected honour for me to be signing out the Foreword to this Annual Statement. It is right that I should pay tribute to our former Chief Commissioner, Professor Michael O'Flaherty who stepped down at the end of October 2013. As reflected in this report Professor O'Flaherty made a very major contribution to the work of the Human Rights Commission.

Together the people of Northern Ireland can incrementally construct a future in which the dignity of all of its people is acknowledged, respected and honoured. The Human Rights Commission will continue to stand with them in that great endeavour.



John Corey
Interim Chair

Chapter 1 Introduction

The Commission was established in 1999 following the Belfast (Good Friday) Agreement. It is a National Human Rights Institution 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 2013, the Commission publishes this annual statement, operating in accordance with the NI Act 1998, and recalling its mandate to:

keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights; and,

to advise the Secretary of State for Northern Ireland and the Executive Committee of the Northern Ireland Assembly of legislative and other measures which ought to be taken to protect human rights.¹

The Commission also recalls the United Nations (UN) Paris Principles, and, in particular, the responsibility of a National Human Rights Institution 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 2013 is premised upon the requirements of domestic human rights standards and those treaty obligations of the UN and European systems.

The treaties which the UK has ratified are:

European Convention on Human Rights (ECHR) [UK ratification 1951] – given further domestic effect by the Human Rights Act (HRA) 1998;

European Social Charter [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];

¹ See section 69, NI Act 1998.

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

Convention on the Elimination of Discrimination Against Women, (CEDAW) [UK ratification 1986];

Convention on the Rights of the Child (CRC) [UK ratification 1991];

Convention Against Torture, Inhuman or Degrading Treatment or Punishment (CAT) [UK ratification 1988];

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the UN Convention Against Transnational Organised Crime (UN Trafficking Protocol) [UK ratification 2006];

Convention on the Rights of Disabled Persons, (CRPD) [UK ratification 2009].

The Commission recalls that Ministers of the Executive Committee of the NI Assembly (NI Executive) and Government departments are required to ensure that all legislation and actions are compatible with the ECHR. In particular, the NI Act 1998 Section 24 (1) states:

A Minister or Northern Ireland 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 [ECHR] rights.³

The Commission also recalls that the NI Executive must comply with those treaty obligations of the UN and European systems that have been ratified by the UK. For this purpose the NI Act 1998, Section 26 (1) states:

If the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken.⁴

In addition, the NI Act 1998, Section 26 (2) provides that:

the Secretary of State may, by order, direct that an action be taken on a matter within the legislative competency of the Assembly as required for the purpose of giving effect to international obligations. Such action can include the introduction of a Bill into the Assembly.⁵

The ECHR is given further domestic effect in the UK as a consequence of the HRA. Subject to Section 6 (3), all public authorities in NI must ensure that their actions are compatible with the HRA. The definition of a public authority includes a 'court or tribunal, and any person certain of whose functions are functions of a public nature'.⁶ 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.

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

³ NI Act 1998, Section 24 (1).

⁴ NI Act 1998 Section 26 (1).

⁵ *ibid*, Section 26 (3).

⁶ See section 6, Human Rights Act 1998

Treaty examinations and reports issued in 2013:

CAT (see Appendix 1)

The UN Committee Against Torture examined the 5th Periodic Report of UK on compliance with the CAT in 2013.⁷ The Committee published its concluding observations in May 2013, the report contained recommendations of both specific and general relevance to NI. Issues addressed by the Committee included: the continued use of non-jury trials; the need to develop a comprehensive framework for transitional justice in NI for dealing with the past; historical abuse of children and the construction of a new custodial facility for women prisoners in NI.

The Committee has requested that the UK Government provide, by 31 May 2014, follow-up information in response to the recommendation to adopt comprehensive measures of transitional justice in NI and to conduct prompt, thorough and independent investigations.

CEDAW (see Appendix 2)

The UN Committee on the Elimination of all Forms of Discrimination against Women examined the 7th Periodic Report of the UK on compliance with the CEDAW. The Committee published its concluding observations in July 2013, the report contained recommendations of both specific and general relevance to NI. Issues addressed by the Committee included: the Historical Institutional Abuse Inquiry in NI; the need to equalise equality legislation in NI with elsewhere in the UK and to prohibit pay secrecy clauses; the participation of women in the post-conflict process in NI, in line with Security Council resolution 1325 (2000); increased protection of children from sexual exploitation and prostitution; termination of pregnancy; access to reproductive treatment without discrimination.

The Committee has requested that the UK Government provide information within one year on the steps taken to expedite the amendment of the anti-abortion law in NI with a view to decriminalizing abortion. The committee has recommended that legal abortion in NI should cover, not only cases of threats to the life of a pregnant woman but also other circumstances, such as threats to her health and in cases of rape, incest and serious malformation of the foetus.

⁷ Committee against Torture 'Consideration of reports submitted by State parties under Article 19 of the Convention: Fifth periodic report of State parties due in 2008, United Kingdom of Great Britain and Northern Ireland' CAT/C/GBR/5 21 May 2012

Chapter 2 Substantive rights and issues

Equality and non-discrimination

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

Single Equality Bill

The Commission reported in 2012 that, despite developments elsewhere in the UK, NI law does not provide a single legislative instrument to consolidate, strengthen and clarify existing equality protections.⁸ This remained the case in 2013.⁹

During this year the Committee for the Elimination of Discrimination against Women (CEDAW Committee) examined the Seventh Periodic Report of the UK on compliance with the CEDAW.¹⁰ The Commission advised the CEDAW Committee of the absence of legislation consolidating equality protections in NI and how this impacts women.¹¹ In particular, the Commission advised that, unlike elsewhere in the UK, public authorities in NI have no duty to promote good relations between the sexes.

The CEDAW Committee noted the Commission's advice and recommended:

*that the State party should revise its legislation in NI to ensure that it affords protection to women on an equal footing with other women in the State parties' administrations...*¹²

The Commission has highlighted the Committee's recommendation to the Office of First and deputy First Minister (OFMdFM) and continues to stress the need for a consolidation, strengthening and clarification of NI equality law.

⁸ NIHRC 'The 2012 Annual Statement: Human Rights in Northern Ireland' (Belfast, NIHRC, 2012) p. 11

⁹ Northern Ireland Executive 'Programme for Government 2011-15' (Belfast, OFMdFM, 2011) p. 10

¹⁰ Seventh periodic report of the United Kingdom of Great Britain and Northern Ireland submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women CEDAW/C/GBR/7 11 August 2011

¹¹ Northern Ireland Human Rights Commission 'Submission to the United Nations Committee on the Elimination of All Forms of Discrimination against Women 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 Belfast paras 3 – 4

¹² Committee on the Elimination of Discrimination against Women Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland 26 July 2013 CEDAW/C/GBR/CO/7 para 19

Travellers

Members of the Irish Traveller community continue to face significant and persistent disadvantages in areas such as health care, education, employment and housing. The NI Housing Executive has a legal duty to provide caravan sites appropriate in number and in construction for members of the Irish Traveller community.¹³

To establish the accommodation needs (for social housing, Traveller specific Group Housing, serviced sites and transit sites) of the Traveller community, the NI Housing Executive commissioned a Comprehensive Traveller Accommodation Needs Assessments in 2002 and 2008. In 2012-13 a third Traveller Needs Assessment was to be carried out.¹⁴ However, the Commission notes that the Assessment remains in its early stages.

In the absence of updated information on the accommodation needs of Travellers, the NI Executive is unable to fully assess and take effective measures to fulfil its human rights obligations. The Commission is represented on the panel overseeing the current NI Housing Executive Assessment exercise and it has advised that the process should be expedited.

Sectarianism

The Commission notes continued sectarian attitudes and violence. The PSNI has reported that sectarian incidents in the period June 2012/June 2013 had increased on the previous 12 months, with an additional 89 incidents and an additional 142 crimes recorded.¹⁵ This raises significant human rights concerns, including: individuals being subjected to 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.

In December 2012 Belfast City Council amended its policy of permanently flying the Union flag over City Hall. A decision was made to limit the display to 18 designated days. Protests followed throughout NI. Violence occurred in a number of instances and members of the public, the Police Service of NI, journalists and public transport operators were attacked. Sectarian violence also occurred. This was particularly acute at community interfaces in East Belfast and included the throwing of petrol bombs, stones and bottles.¹⁶

The Commission reported these developments to the Committee for the Elimination of Racial Discrimination (CERD Committee) which, at the time of the disturbances, was considering actions taken by the UK in follow up to its 2011 examination.¹⁷ In its submission to the CERD Committee the Commission highlighted the high numbers of children arrested for offences related to the protests.¹⁸

The Commission recalled that the CERD Committee had previously indicated a concern that sectarianism is not addressed in NI through the framework of protections provided by ICERD and the Durban Programme of Action.¹⁹ The Commission advised the Committee that

13 See Housing (NI) Order 2003. The Northern Ireland Housing Executive must provide such caravan sites as appear to it to be appropriate for the accommodation of caravans of members of the Irish Traveller community (article 28A of the Housing (NI) Order 1981, as amended by Housing (NI) Order 2003)

14 See NIHE website "Comprehensive Traveller Accommodation Needs Assessments: To establish the accommodation needs (for social housing, Traveller specific Group Housing, serviced sites and transit sites) of the Traveller Community across Northern Ireland, NIHE commissioned Comprehensive Traveller Accommodation Needs Assessments in 2002 and 2008. Plans are being progressed for the third Comprehensive Needs Assessment which will be undertaken in 2012-13" available at <http://www.nihe.gov.uk/index/corporate/strategies/travellers.htm>

15 Police Service of Northern Ireland 'Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 30 June 2013' 29 August 2013

16 Oral Statement by Chief Constable of the PSNI to the Northern Ireland Affairs Committee of the House of Commons. See Hansard Script 24 January 2012 HC 877-i.; and 'Maskey reported over stones comment' 15th January 2012 Belfast Telegraph.

17 NIHRC Submission to the Committee for the Elimination of all Forms of Racial Discrimination (February 2013). Consideration of Report submitted by the United Kingdom of Great Britain and Northern Ireland under article 9 of the Convention

18 *Ibid* para 10

19 Concluding observations of the Committee on the Elimination of Racial Discrimination on the 20th periodic report of the United Kingdom of Great Britain and NI (1 September 2011), CERD/C/GBR/CO/18-20, para. 20.

progress was lacking in the development of a Cohesion, Sharing and Integration Strategy and how this could influence the protests.²⁰

Following the Commission's submission to the CERD Committee, OFMdfM in May 2013 published 'Together: Building A United Community', a strategy containing numerous proposals aimed at resolving contentious issues.²¹ Significantly, the proposals include a commitment to define sectarianism and good relations, and to create a new Equality and Good Relations Commission. In response the Chief Commissioner stated:

The Commission welcomes the publication of a Strategy to improve community relations and the wider aim of building a united and shared society. We recall that promoting a respectful and tolerant society is a human rights obligation on the State.

The Commission is pleased to see an emphasis on working towards better integrating our community. Actions such as shared school campuses and improving economic and social conditions are important peace building measures.

As identified by the First and deputy First Minister it is now vital that progress is also made on contentious and difficult issues such as flags, parades and dealing with the past.²²

Racist hate crime

The Commission published in October 2013 its report 'Racist hate crime: human rights and the criminal justice system in Northern Ireland'.²³ The report comprises 66 findings and 29 recommendations. It examines the levels of compliance by the criminal justice agencies set against four duties emerging from international laws and standards, namely: prevention; prohibition; prosecution; and, protection. The Commission found that the domestic laws and policies relevant to addressing racist hate crimes are in general compliant with international human rights standards. However, the practical implementation of policies and laws were at times inadequate, and, in a number of instances, the practices of the criminal justice agencies had the cumulative effect of undermining the effectiveness of the human rights framework.²⁴

The Commission's report was received by the Minister of Justice. The Minister has undertaken to give the recommendations detailed consideration. The Commission met with officials in the Department of Justice, the OFMdfM, and criminal justice agencies to provide advice on the implementation of the recommendations and discuss the provision of training for staff.

Disabled persons

The UK ratified the UNCRPD in 2009. The CRPD seeks to promote, protect and ensure full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their dignity.²⁵ In 2014 the UN Committee for the CRPD will begin its examination of the UK's first report on compliance with the UNCRPD.

²⁰ Ibid pg 3

²¹ NI Executive 'Together: Building a United Community' Strategy 23 May 2013

²² NIHRC Press Statement 'Chief Commissioner Responds to the 'United Community Strategy' 24 May 2013 available at: <http://www.nihrc.org/index.php/news/item/709-chief-commissioner-responds-to-the-united-community-strategy>

²³ NIHRC 'Aggravated by Racial Hostility: Human rights and the criminal justice system' (Belfast 2013)

²⁴ Ibid pg 104

²⁵ UNCRPD Article 1

The Commission, together with the Equality and Human Rights Commission, the Scottish Commission on Human Rights and the Equality Commission for NI have been designated under the CRPD (Article 33.2) as component parts of the UK 'independent mechanism'.²⁶ We are tasked with promoting, protecting and monitoring the implementation of the CRPD. The Commission, together with the Equality Commission for NI, carries out this function with specific respect to the situation in NI.

The Commission, in conjunction with the Equality Commission for NI and other UK National Human Rights Institutions, will submit evidence to the UNCRPD Committee in advance of its examination of the UK.

In 2013 the OFMdfM published a Disability Strategy for NI. The Commission notes that the Strategy has been reportedly:

*developed on a rights based approach to fulfil obligations provided for in the United Nations Convention on the Rights of Persons with Disabilities.*²⁷

The Strategy does not record all initiatives undertaken across the NI Executive of relevance to the UNCRPD, it does, however make provision for a monitoring framework which will include indicators modelled around the UNCRPD.²⁸ The work of this monitoring framework has an enhanced relevance in light of the forthcoming examination by the UNCRPD Committee. The Commission, along with the Equality Commission and other stakeholders, is a member of the monitoring group and will be advising the OFMdfM on key indicators required to ensure the UNCRPD Committee is fully informed of the issues facing persons with disabilities in NI.

Autism strategy

The DHSSPS consulted on a draft autism strategy in April 2013.²⁹ The Commission, in conjunction with the Equality Commission for NI, responded to the consultation. The emphasis placed on the UNCRPD and the inclusion of many cross departmental matters, reflecting the need for joined up working, were welcomed.³⁰

The Commissions advised of the need to ensure appropriate support for persons with autism in both the transition from childhood to adulthood and into older life.³¹ Noting the on-going reform of the welfare system, the Commissions also advised of the need to ensure that programmes to assist people into work are appropriately calibrated to provide practical support to people with autism.

Incidents of disability hate crime in NI are not always appropriately reported. Reflecting upon this, the Commissions advised that the Strategy should set out how the NI Executive will assist persons with autism to report hate crime and support them to cope with the consequences.³² The Commissions further advised that the Strategy should make reference to the right to the highest attainable standard of health and set out how the inclusion of persons with autism in leisure and sporting activities is to be guaranteed.³³

Extension of civil marriage to same sex couples

In July 2013 the Westminster Parliament passed the Marriage (Same Sex Couples) Act 2013.

26 Ibid Article 33.2

27 OFMdfM 'A strategy to improve the lives of people with disabilities - 2012 to 2015' Belfast April 2013

28 Ibid p. 32

29 DHSSPS Consultation on Autism Strategy (2013 - 2020) and Action Plan (2013 - 2015) December 2012

30 IMNI 'Response to the Autism Strategy (2013 - 2020) and Action Plan (2013 - 2015)' April 2013

31 Ibid paras 19-21

32 Ibid paras 22-28

33 Ibid para 32

On introduction of the Bill the Commission reiterated its concern to the Minister for Equalities and Women that the enactment of a Bill permitting same sex marriage in England & Wales and not NI may have implications for the equivalency of human rights protections, provided by the Human Rights Act 1998, throughout the UK.³⁴

A Legislative Consent Motion with respect to the Marriage (Same Sex Couples) Bill was laid in the Assembly on 24 May 2013. The Motion proposed that English/Welsh same sex marriages be treated as civil partnerships in NI. The Commission advised the NI Assembly Committee for Finance and Personnel that, whilst a state may extend the right to marry to same sex couples international human rights law does not require such provision.³⁵ The Commission further advised that any requirement on religious organisations that oppose same sex marriage to conduct such marriages may violate the right to freedom of religion.³⁶

The NI Assembly passed the Legislative Consent Motion. In its report the Committee for Finance and Personnel noted that the Scottish Parliament would soon be introducing legislation providing for same sex marriages and that similar legislation was under development in Ireland.³⁷ The Committee recommended:

*careful assessment of the implications of the proposed policy, both prior to and following implementation.*³⁸

Eligibility to make blood donations

The Commission reported in 2012 that it had written to the Committee for Health, Social Services and Public Safety advising that a policy providing for the lifetime prohibition on men who have had sex with men ("MSM") from donating blood may be considered to be discriminatory.³⁹

On 11 October 2013 the NI High Court found that the policy was irrational.⁴⁰ Noting that the health service in NI imported blood from England & Wales where a life time prohibition on blood donations from MSM is not in place, the High Court ruled that:

*If there is a genuine concern about the safety of MSM donated blood such that the blood stock must be protected absolutely from such blood then the security of that blood must actually be maintained absolutely. Applying a different standard to imported blood defeats the whole purpose of permanent deferral of MSM donors. [It appears] that when blood is imported from the rest of the UK the authorities in NI do not request that such blood is not derived from the MSM community.*⁴¹

The matter has now been referred to the Health Secretary of the UK Government to ensure compliance with the judgement.

34 Correspondence from the Chief Commissioner to Minister for Equalities & Women February 2013

35 NIHRC 'Submission on the Legislative Consent Motion in respect of the Marriage (Same Sex Couples) Bill' June 2013

36 Ibid para 11

37 Committee for Finance and Personnel Report on the Legislative Consent Motion: Marriage (Same Sex Couples) Bill Wednesday 12 June 2013 NIA 118/11-15

38 Ibid para 16

39 NIHRC, Statutory Advice to the Committee for Health, Social Services and Public Safety on the Issue of deferral of blood donation for men who have sex with men (MSM), June 2012. NIHRC 'The 2012 Annual Statement' (NIHRC: Belfast) December 2012 pg15

40 JR65's Application 2013 NIQB 101

41 Ibid para 138

Right to life

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

Conflict related deaths: transitional justice

Concerns were raised in 2013 regarding the independence and effectiveness of mechanisms established to investigate deaths that occurred during the NI conflict. In May 2013 the UN Committee against Torture (CAT Committee) examined the UK. The Commission advised the Committee on the issues concerning the investigations of conflict related deaths.⁴² In particular, it referred to reported inconsistencies in the processes of the Historical Enquiries Team (HET) when investigating cases involving military personnel.⁴³

A report by HM Inspectorate of Constabulary (HMIC) confirmed that inconsistencies and shortcomings in policies, systems and practices threaten the legitimacy of the HET's work, and risk undermining the confidence of the families of those who died during the conflict in its effectiveness and impartiality.⁴⁴ The HMIC made a number of recommendations for fundamental improvements to ensure the work of the HET is consistent with the requirements of the ECHR, Article 2.⁴⁵

The Police Ombudsman re-commenced investigations into conflict related deaths in January 2013.⁴⁶ Work on sensitive historical cases ceased in September 2011 after a Criminal Justice Inspectorate report on the independence of the Police Ombudsman's Office found the way in which the Office dealt with the investigation of historical cases, had led to a lowering of its operational independence.⁴⁷ The re-commencement followed an introduction of new structures and processes for investigating and reporting conflict related deaths.

The Commission advised the CAT Committee on the need for a comprehensive approach to dealing with the past.⁴⁸

In its concluding observation the CAT Committee recommended:

*that the State party develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators. In this context, the Committee is of the view that such a comprehensive approach, including the conduct of a public inquiry into the death of Patrick Finucane, would send a strong signal of its commitment to address past human rights violations impartially and transparently. The State party should also ensure that all victims of torture and ill-treatment are able to obtain adequate redress and reparation.*⁴⁹

42 Northern Ireland Human Rights Commission 'Submission to the United Nations 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' April 2013

43 Ibid para 8.6

44 HMIC 'Inspection of the Police Service of Northern Ireland Historical Enquiries Team' 3 Jul 2013 available at: <http://www.hmic.gov.uk/media/inspection-of-the-police-service-of-northern-ireland-historical-enquiries-team-20130703.pdf>

45 Ibid

46 NI Ombudsman Press Release 'Police Ombudsman to Resume historical investigations' Wednesday, 23 January 2013 available at http://www.policeombudsman.org/modules/press/press.cfm/press_ID/329/action/detail/year/2013/month/11

47 Criminal Justice Inspectorate Press Release 'Independent review finds Police Ombudsman's Office ready to re-start investigation of historical cases' 23 January 2013 available at: <http://www.cjini.org/NewsAndEvents/Press-Releases/2013/January---March/Police-Ombudsman.aspx>

48 Ibid para 8.12

49 Committee Against Torture 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para 23

This recommendation is one of four which the CAT Committee has requested the State party to provide follow-up information on by 31 May 2014.⁵⁰

One of the key elements of the 'Together: Building A United Community' Strategy published in 2013 was the establishment of an all party panel under the chairmanship of an independent expert.⁵¹ Dr Richard Haass was appointed to Chair the panel in May 2013 and Dr Meghan L. O'Sullivan was appointed as the Vice Chairperson.⁵²

The terms of reference for the panel are to:

*Bring forward a set of recommendations by the end of 2013 on parades and protests; flags, symbols, emblems and related matters stemming from the past that will provide long-term and sustainable solutions that are in the best interests of this community and will make the peace more resilient going forward. In doing so the Group will seek the views of, and evidence from, interested stakeholders on how best to address the issues that cause community division.*⁵³

The Commission met with Dr Haass and provided advice on a number of matters.

In 2013 the Commission also published its report 'Dealing with Northern Ireland's Past: Towards a Transitional Justice Approach'.⁵⁴ The Report was informed by engagement with representatives of civil society, many of whom called for a more holistic approach to transitional justice. In the foreword to the Report, the Chief Commissioner stated:

*Our society is suffering by reason of these omissions. Some of our most vulnerable people remain at the margins, with inadequate acknowledgement of their suffering; many are dying without ever being able to share their stories of pain and loss. There is not a day that goes by without the unresolved senses of neglect and injustice triggering societal problems. The lack of a truth recovery process means that tribal myths will continue to trump actual memory.*⁵⁵

In November 2013 the Commission had cause to publicly reiterate the State's obligation to investigate conflict related deaths following a reported statement by the Attorney General that there should be "no more inquests and no more prosecutions with respect to Troubles-related deaths".⁵⁶ John Corey interim Chair of the Commission stated:

*In dealing with the past, there can be no deviation from the rule of law. At a time when sensitive political discussions led by Dr Haass are ongoing, the Attorney General's action risks undermining the human rights of the people of Northern Ireland.*⁵⁷

Conflict related deaths: individual cases

On 16th July 2013 the European Court of Human Rights (ECt.HR) issued judgment in two cases arising from NI and, in both of them, found a violation of the procedural aspect of the ECHR, Article 2.⁵⁸ In the case of McCaughey and others v UK, the ECt.HR said:

The Court considers that the carrying out of investigations, including holding inquests, into killings by the security forces in Northern Ireland has been marked by major delays. It further

50 *Ibid* para 38

51 OFMdFM 'Together: Building a United Community' Strategy, published on May 23 2013

52 NI Executive Press Release 'Dr Richard Haass to chair all-party talks' 9th July 2013

53 See The Panel of Parties of the NI Executive website <http://panelofpartiesnie.com/terms/>

54 NIHRC 'Dealing with Northern Ireland's Past: Towards a Transitional Justice Approach' 31 July 2013

55 *Ibid* see Foreword

56 Belfast Telegraph 'Attorney General John Larkin: It's time to call halt to all Troubles cases' 20 November 2013

57 NIHRC Press Release 'NIHRC responds to Attorney General's comments on dealing with the past' 20 November 2013

58 *McCaughey and others v the United Kingdom* (Application no: 43098/09) 16th July 2013 and *Collette and Michael Hemsworth v the United Kingdom* (Application no: 58559/09) 16th July 2013

*considers that such delays remain a serious and extensive problem in Northern Ireland.*⁵⁹

On 10th December 2012 Rt Hon Sir Desmond de Silva published the report of his review into state involvement in the murder of Pat Finucane. In his Report Sir Desmond states:

*My Review of the evidence relating to Patrick Finucane's case has left me in no doubt that agents of the State were involved in carrying out serious violations of human rights up to and including murder. However, despite the different strands of involvement by elements of the State, I am satisfied that they were not linked to an over-arching State conspiracy to murder Patrick Finucane.*⁶⁰

The family of Mr Finucane did not input to the review and were not content with its findings, maintaining their call for a full independent inquiry.⁶¹ The CAT Committee in a concluding observation on transitional justice in NI, inter alia, recommended that an inquiry into the death of Mr Finucane be conducted.⁶² The UK Government are required to respond to this recommendation by May 2014.

Rule of law: non-state actors

Establishing respect for the rule of law is fundamental to achieving the effective protection of human rights. The Commission notes the continued actions of paramilitary organisations throughout 2013.⁶³ Statistics provided by the PSNI for the financial year 2012/13 show that there were two security related deaths in this period, 44 bombing incidents, 27 casualties from paramilitary style shootings and 33 paramilitary style assaults.⁶⁴ The threat to life posed by paramilitaries, including from so-called 'punishment beatings' was raised with the Commission in a number of its visits to communities throughout NI. The threat from terrorism in NI continues to be designated by the UK Government as severe, meaning that the threat of imminent attack has remained highly likely.⁶⁵

Throughout the year a number of public order incidents also threatened the lives of both police officers and members of the public.⁶⁶ The UN Special Rapporteur on the Right to Peaceful Assembly and Association visited NI during a time of ongoing protests regarding the display of the Union flag at Belfast City Hall. He noted that the protests had significantly increased tensions, which would have implications for the 'marching season'.⁶⁷ This was an accurate prediction with a number of significant public order incidents during the summer.⁶⁸

The Commission notes that a protest parade to mark the one year anniversary of the decision of Belfast City Council to limit the display of the Union flag to 18 designated days was held on 30 November 2013. The parade was not compliant with a Parades Commission ruling requiring it to leave Belfast City Hall at 12 noon. Furthermore two police officers were injured in the course of the parade⁶⁹.

59 *Ibid* para 144

60 Rt Hon Sir Desmond de Silva 'The Pat Finucane Review' 2012 available at <http://www.patfinucanereview.org/report/index.html>

61 Guardian Newspaper Pat Finucane's widow calls de Silva report a 'whitewash' <http://www.theguardian.com/uk/2012/dec/12/pat-finucane-de-silva-report>

62 Committee Against Torture 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para 23

63 BBC News NI 'Police to investigate 'UVF gangsterism' 3 October 2013 <http://www.bbc.co.uk/news/uk-northern-ireland-24391243>

64 The PSNI's Statistical Report: 1st April 2012 – 31st March 2013 see http://www.psnipolice.uk/psni_12_13_stats_press_release_final.pdf

65 David Anderson Q.C. Independent Reviewer of Terrorism Legislation 'The Terrorism Acts in 2012' July 2013 para 3.10

66 Oral Statement by Chief Constable of the PSNI to the Northern Ireland Affairs Committee of the House of Commons. See Hansard Script 24 January 2012 HC 877-i.

67 Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom 23 January 2013 available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12945&LangID=E>

68 BBC News NI 'Man in court over attempted murder of police officer' 8 August 2013 <http://www.bbc.co.uk/news/uk-northern-ireland-23616229>

69 BBC News NI 'Police injured during loyalist protest march in Belfast' 30 November 2013

Deaths in Custody

Where an individual is held in custody there is a positive obligation on the state to take appropriate steps to protect their life from threats from others and from themselves.⁷⁰ Where a death in custody has occurred in suspicious circumstances there is a duty on the state to ensure the circumstances are effectively investigated.⁷¹ On 17 April 2013 an inquest into the circumstances of Mr James McDonnell's death issued a verdict.

Mr McDonnell, died in HMP Maghaberry in March 1996 following an altercation with prison officers. The cause of death was never in dispute. What was in dispute was a plausible explanation for other injuries found on Mr McDonnell's body; whether proper control and restraint procedures were used and whether any unexplained injuries or misuse of the procedure contributed to Mr McDonnell's death. The Commission assisted the family of Mr McDonnell to secure an inquest which was compliant with the ECHR Article 2. The inquest found that the Prison Service of NI had failed in its duty of care towards Mr McDonnell. Prison officers who restrained Mr McDonnell used excessive force and were not trained in aspects of the prison guidelines on using control and restraint.⁷²

⁷⁰ Keenan v UK (App. 27229/95), 3 April 2001

⁷¹ Menson and Others v UK (App. 47916/99) 6 May 2003

⁷² Verdict on Inquest into the death of James McDonnell 17 April 2013

Right to liberty and security of the person

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

Imprisonment for fine default

From April 2012-April 2013 there were 1,700 receptions into custody in NI for non-payment of a fine.⁷³ This is a 30% increase when compared to the previous twelve months.⁷⁴ The Commission has consistently highlighted the need to address the high number of persons imprisoned for fine default.⁷⁵

The Commission raised the issue with the CAT Committee and with the CEDAW Committee. It advised the CAT Committee of the detrimental impact imprisonment for fine default has on the already over-populated NI prison estate.⁷⁶ It further advised the CEDAW Committee of the disproportionate impact upon women.⁷⁷

The Department of Justice has consulted on proposals to strengthen mechanisms to assist persons who have been fined to make payments and for those who default on their fines to be dealt with by way of a community order rather than a custodial sentence. Provision for these proposals will be made in a forthcoming Justice Bill.⁷⁸ The Commission notes these initiatives and has emphasised the need to see a quantifiable reduction in the numbers of persons being sent to prison for fine default.

Women in prison

There continues to be no separate custodial facility for women prisoners in NI. This has been an outstanding matter for many years, the Commission first highlighted the need for a discrete women's custodial facility in its 2005 report *'The Hurt Inside: The imprisonment of women and girls in Northern Ireland'*.⁷⁹ On 19th March 2013 the Minister for Justice, David Ford MLA committed to establishing a new separate custodial facility for women offenders.⁸⁰

The Commission advised the CAT Committee on the impact of the absence of a separate custodial facility for women in NI and emphasised the need for a business case to be developed and for construction to commence at the first available opportunity.⁸¹ The CAT Committee in its concluding observations stated:

73 DoJNI Statistics and Research Branch 'The Northern Ireland Average Prison Population in 2012' Research and Statistical Bulletin 6/2013 pg. 2

74 Ibid

75 See NIHRC, Advice to the Office of the First Minister and Deputy First Minister on the recommendations made to the UK during the second cycle of the Universal Periodic Review, August 2012

76 Northern Ireland Human Rights Commission 'Submission to the United Nations 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' April 2013 pg 5

77 Northern Ireland Human Rights Commission 'Submission to the United Nations Committee on the Elimination of All Forms of Discrimination against Women 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 Northern Ireland paras 32-34

78 DoJNI 'Equality Consultation for a Proposed Justice Bill' 8 March 2013 paras 5.20 -5.23

79 NIHRC 'The Hurt Inside: The imprisonment of women and girls in Northern Ireland' (NIHRC Belfast: 2005). See also: NIHRC, 'Response to DoJNI Prison Estate Policy Consultation', December 2012, para 33.

80 Minister of Justice David Ford MLA Statement to the Assembly 'Northern Ireland Prison Service Estate Strategy' Tuesday 19th March 2013

81 Northern Ireland Human Rights Commission 'Submission to the United Nations Committee on the Elimination of All Forms of Discrimination against Women 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 Northern Ireland para 29-31

The Committee recommends that the State party commence without further delay the construction of the new custodial facility for women prisoners in Northern Ireland and urgently implement its new strategy for female offenders in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).⁸²

The Commission raised the issue again with the CEDAW Committee.⁸³ In October 2013 following an announced inspection of Ash House, Hydebank Wood Women's Prison, the National Preventative Mechanism, designated under the Optional Protocol to the UNCAT, recommended that women should no longer be held at Hydebank Wood, which also accommodates young offenders.⁸⁴

The Minister for Justice reiterated in October 2013 his support for the construction of a separate custodial facility for women prisoners.⁸⁵

Imprisonment of children

The Criminal Justice (Children) (NI) Order 1998, continues to make provision for a 15-17 year old offender, considered likely to injure himself or others to be detained in HM Young Offenders Centre Hydebank Wood.⁸⁶ Hydebank Wood accommodates male young offenders up to 21. The Commission has on a number of occasions advised the NI Executive that this provision and the practice which it permits are in breach of the UNCRC Article 37(c) which states that:

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

The impact of imprisonment at Hydebank Wood on child offenders was highlighted by the Independent Monitoring Board in its 2011/12 annual report, which stated:

The Board has consistently maintained that juveniles should not be held in Hydebank Wood and continues to be concerned about the establishment's ability to provide a purposeful, daily regime which meets the educational, personal and social development needs of young boys.⁸⁷

In 2012 the Minister for Justice committed to ensuring that all offenders under the age of 18 will be imprisoned in Woodlands Juvenile Justice Centre. The Department of Justice indicated in 2013 the intention to amend the 1998 Order removing the legal basis for the imprisonment of children at Hydebank Wood.⁸⁸ The Commission has advised the Department of Justice that the necessary amendments should be expedited.

82 Committee Against Torture 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para 32

83 Northern Ireland Human Rights Commission 'Submission to the United Nations Committee on the Elimination of All Forms of Discrimination against Women 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 Northern Ireland para 29-31

84 NPM 'Report on announced inspection of Ash House, Hydebank Wood Women's Prison 18 – 22 February' October 2013

85 Official Report (Hansard) Session: 2013/2014 Monday, 21 October 2013 Ministerial Statement: Prison Reform: Owers Report

86 NIHRC 'The 2012 Annual Statement: Human Rights in Northern Ireland' (NIHRC: Belfast 2012) pg 21

87 Independent Monitoring Board Annual Report 2011-12 HMP & YOC Hydebank Wood para 8.3

88 DoJNI 'Equality Consultation for a Proposed Justice Bill' 8 March 2013 para 5.32

The remand of children

The Commission has previously stated its concern at the high number of children imprisoned on remand, many of whom do not receive a custodial sentence for the offence with which they were charged.⁸⁹ It has advised that this practice is inconsistent with the CRC Article 37(b) which requires that the imprisonment of children:

*shall be used as a measure of last resort and for the shortest appropriate time period.*⁹⁰

The Commission notes that there has been a small reduction in the proportion of remand prisoners during 2013, but that they continue nonetheless to account for 31% of the total prison population.⁹¹

The Department of Justice consulted in 2013 on proposals to reform the law governing bail.⁹² The proposals include consolidating the existing laws governing bail in a new single legislative instrument. The Department has sought views on a provision to restrict the courts' discretion to remand a defendant in custody. Remand would be permissible only in circumstances where there is a real prospect that the defendant will receive a custodial sentence if convicted.⁹³

The Commission has advised the Department that this measure should be introduced as a matter of priority.⁹⁴ It has further advised that arrangements for accommodating child defendants released on bail must be developed and modernised to accommodate the diverse range of needs within this vulnerable group.

It is anticipated that legislation to update bail law will be introduced to the NI Assembly in 2014.

89 NIHRC '2012 Annual Statement: Human Rights in Northern Ireland' (NIHRC 2012) pg 20

90 See NIHRC, Advice to the Office of the First Minister and Deputy First Minister on the recommendations made to the UK during the second cycle of the Universal Periodic Review, August 2012.

91 DoJNI Statistics and Research Branch 'The Northern Ireland Average Prison Population in 2012' Research and Statistical Bulletin 6/2013 pg 2

92 DoJNI 'Consultation on NI Law Commission Report on Bail Law in Criminal Proceedings' July – October 2013

93 Ibid pg 16

94 NIHRC 'Submission to DoJNI consultation on NI Law Commission Report on Bail Law in Criminal Proceedings' November 2013

Freedom from torture, inhuman and degrading treatment

ICCPR	Article 7
CAT	
ECHR	Article 3
CRC	Article 37
CRPD	Article 15 Article 17

Prison review and conditions

In its 2013 submission to the CAT Committee the Commission provided advice on the ongoing reform of the NI prison system.⁹⁵ In 2011 a review of the conditions of detention, management and oversight of prisons reported and made a number of recommendations. Throughout 2013 the Prison Service has continued to implement the recommendations.⁹⁶

The Commission remains concerned at the inadequacy of mechanisms in place to assist prisoners at risk of suicide.⁹⁷ It has also raised with the CAT Committee the issues of support for prisoners with serious mental health problems; the adequacy of measures to address bullying; and, the adequacy of measures to address the over reliance on prescription medication amongst prisoners.⁹⁸ The Commission has continued to highlight the need for a cultural change to ensure greater emphasis on the therapeutic and reformatory role of the prison system.

In its concluding observations the CAT Committee recommended that:

*Detainees who require psychiatric supervision and treatment should be provided with adequate accommodation and psychosocial support care. The Committee also recommends that the State party step up its efforts to prevent violence and self-harm in places of detention.*⁹⁹

The Commission has discussed the CAT Committee's concluding observations with members of the Prison Reform Oversight Group which is charged with reviewing the implementation of the 2011 report.¹⁰⁰

Health and social care

The Commission's report 'In Defence of Dignity' examined the human rights of older people living in nursing homes. It identified that in certain circumstances the excessive use of restraints, routinely used in care homes, can amount and indeed had amounted to individuals being treated in an inhuman and degrading manner.¹⁰¹ The Commission identified that the absence of a statutory definition of restraint had contributed to a lack of coherent guidance on the acceptable use of restraint.¹⁰²

⁹⁵ Northern Ireland Human Rights Commission 'Submission to the United Nations 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' April 2013 para 5.1 – 5.19

⁹⁶ The Prison Review Oversight Group 'First Annual Report' March 2013

⁹⁷ Ibid para 5.5- 5.9

⁹⁸ Ibid para 5.2

⁹⁹ Committee Against Torture '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

¹⁰⁰ The Prison Review Oversight Group 'First Annual Report' March 2013

¹⁰¹ NIHRC, In Defence of Dignity: The Human Rights of Older People in Nursing Homes, Belfast, 2012.

¹⁰² Ibid Recommendation

The Commission has advised civil servants developing a statutory definition of restraint for inclusion within the Mental Capacity (Health, Finance and Welfare) Bill.¹⁰³ It has referred to the Annual Report of the UN Human Rights Council Special Rapporteur on Torture. In the Report the Special Rapporteur identified that abuses in health-care settings, including the use of restraint, may constitute torture or ill-treatment.¹⁰⁴

During the CAT Committee's examination of the UK the Commission referred to the Report 'In Defence of Dignity.' It advised of the need to ensure a robust statutory definition of restraint which provides adequate safeguards for vulnerable persons.¹⁰⁵ The CAT Committee's concluding observations acknowledged the relevance of the UNCAT to health and social care settings and recommended the establishment of:

*a structure of fundamental standards and measures of compliance in order to prevent ill-treatment of patients receiving health care services.*¹⁰⁶

Child abuse

The Inquiry into Historical Institutional Abuse Act (NI) 2013 received royal assent on 18 January 2013. The Commission provided advice to the NI Assembly during the passage of the 2013 Act.¹⁰⁷ As reported in the 2012 annual statement a number of amendments were made to the Bill to ensure the Inquiry was fully independent and effective.¹⁰⁸ Since the establishment of the Inquiry the Commission has monitored its operation.

With respect to the scope of the Inquiry the Chief Commissioner emphasised that:

All victims of child sexual abuse are entitled to justice, redress and accountability, and all perpetrators of that abuse should face the consequence.

There has been some discussion during 2013 concerning other categories of abuse victims, including those institutionalised in Magdalene Laundry type institutions and victims of sexual abuse in private scenarios.¹⁰⁹ The Commission provided briefings to the CAT Committee on developments in NI.¹¹⁰ The CAT Committee noted the various categories of victims and recommended that:

*the State party conduct prompt, independent and thorough investigations into all cases of institutional abuse that took place in Northern Ireland between 1922 and 1995, including women over 18 who were detained in Magdalene Laundries and equivalent institutions in Northern Ireland, and ensure that, where possible and appropriate, perpetrators are prosecuted and punished, and that all victims of abuse obtain redress and compensation, including the means for as full rehabilitation as possible, in accordance with the Committee's general comment No. 3 on implementation of article 14 by States parties.*¹¹¹

103 NIHRC 'The 2012 Annual Statement: Human Rights in Northern Ireland' p. 23

104 2013 - Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - A/HRC/22/53 February 2013 pg. 14

105 Northern Ireland Human Rights Commission 'Submission to the United Nations 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' April 2013 para 6.1 – 6.3

106 Committee Against Torture 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para 33

107 Northern Ireland Assembly, Committee for the Office of the First Minister and deputy First Minister, Official Report (Hansard), Inquiry into Historical Institutional Abuse Bill: Northern Ireland Human Rights Commission Briefing, 5 September 2012, p. 1. At: <http://www.niassembly.gov.uk/Documents/Official-Reports/OFMFM/2012-2013/Inquiry%20into%20Historical%20Institutional%20Abuse%20Bill%20%20Northern%20Ireland%20Human%20Rights%20Commission%20Briefing.pdf>

108 NIHRC 'The 2012 Annual Statement: Human Rights in Northern Ireland' (NIHRC, Belfast, 2012) pg 22

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

110 Northern Ireland Human Rights Commission 'Submission to the United Nations 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' April 2013 para 9.1

111 Committee Against Torture 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para 2.4

The Commission has advised the NI Assembly Committee of the OFMdfM and the NI Executive of the CAT Committee's recommendation.

Mechanisms for the identification of victims of torture for those detained in immigration facilities

Larne House continued to operate in 2013 as a short term holding facility for immigration detainees in NI. The Commission is concerned at the adequacy of mechanisms in place at Larne House to ensure that victims of torture are not detained there.¹¹² It noted that the system in place to identify whether immigration detainees bear signs of torture does not provide a role for a medical practitioner and relies extensively on self-identification by torture survivors.¹¹³ The Commission furthermore noted that the Detention Centre Rules, including Rule 35 which contains specific guidance for medical practitioners regarding the identification of torture victims, does not apply to Larne House.¹¹⁴ The Commission raised these issues with the CAT Committee.¹¹⁵ The Committee 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"*¹¹⁶

Strip searches

In October 2013 the National Preventative Mechanism under the Optional Protocol to the UNCAT reported on an announced inspection of Ash House, Hydebank Wood Women's Prison. The National Preventative Mechanism found that:

*Most prisoners reported feeling safe, but too many felt victimised by staff. All women were needlessly strip searched on arrival and randomly after visits, which was excessive.*¹¹⁷

The National Preventative Mechanism recommended that new arrivals to custody should only be strip-searched on the basis of an individual risk assessment.

The NI Prison Service has stated that it is committed to the development of a modern approach to searching and safety that is less intrusive than current methods.¹¹⁸ In September 2012 the Prison Service commenced its trial of millimetre wave scanning equipment at Hydebank Wood Prison and also at Magilligan Prison.¹¹⁹ This was trialled as an alternative to strip searching but it is understood that the equipment was not considered fit for purpose.¹²⁰ As an alternative, the NI Prison Service is preparing to pilot an x-ray scanner.

112 Report on an unannounced inspection of the short-term holding facility at: Larne House, 1-2 November 2011 by HM Chief Inspector of Prisons, at para. 1.45.

113 Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, Strasbourg, 12 September 2012, para. 229.

114 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.

115 Northern Ireland Human Rights Commission 'Submission to the United Nations 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' April 2013 para 7.1-7.12

116 Committee Against Torture '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

117 See generally: National Preventative Mechanism 'Report on an announced inspection of Ash House, Hydebank Wood Women's Prison 18 - 22 February 2013' October 2013 pg 8

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

119 Department of Justice NI, Press Release, 'Justice Minister David Ford has confirmed that a pilot of new search technology will commence at Magilligan Prison next week' 18 September 2012

120 'Scanners ruled out for NI prison searches after pilot' BBC News NI 13 February 2013

Freedom from slavery

ICCPR	Article 8
ECHR	Article 4
CRC	Article 34 and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
Convention on Action against Trafficking in Human Beings UN Trafficking Protocol	

Child prostitution and exploitation

During 2013 the Commission conducted a critical analysis of the legal framework governing prostitution to assess its effectiveness in addressing child exploitation. On conducting this analysis the Commission noted a weakness in the current legal framework.

The Commission noted that it is an offence in NI to pay for the sexual services of a prostitute that has been exploited, irrespective of whether or not the purchaser had 'knowledge' of the exploitation.¹²¹ In the absence of exploitation, it is an offence in NI: to pay for the sexual services of a child under 13 years old; and, to pay for the sexual services of a child under 18 years old where the purchaser did not reasonably believe the child to be 18 years or over.¹²² In the latter context, it is for the prosecution to prove that the purchaser does not reasonably believe the child to be 18 years old or more.¹²³ The Commission identified this as a heavy burden upon the prosecution and noted that similar legislation in Scotland and England & Wales resulted in a low number of both prosecutions and convictions.

The Commission seeks an amendment to the relevant legislation to ensure that paying for the sexual services of children is adequately criminalised and the development of the child is safeguarded. It raised this issue with the NI Executive and made representations to the NI Assembly Committee for Justice for consideration as it scrutinises the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill.

The Commission also raised this matter with the CEDAW Committee. In its concluding observations issued in July 2013 the Committee stated:

*The Committee urges the State party to revise its legislation by shifting the burden of proof from the prosecution to the purchaser of sexual services. The Committee recommends that once the prosecution proves that the child was over 13 and under 18, and the accused purchased sexual services from the child, the purchaser should be required to establish that the purchaser did not reasonably believe that the child was under 18 years.*¹²⁴

The matter has been further raised with the Committee on the Rights of the Child (CRC Committee) which is preparing to examine the UK's report in 2014 on compliance with the Optional Protocol to the Convention on the Rights of the Child concerning the Sale of Children, Child Prostitution and Child Pornography. Articles 1, 2(b) and 3(1)(b) of the Optional Protocol require the criminalisation of child prostitution, including 'obtaining' or 'procuring' a child for prostitution. The preamble to the Optional Protocol and the Convention itself recognises:

¹²¹ Sexual Offences (Northern Ireland) Order 2008, article 64A (as inserted by the Policing and Crime Act 2009, section 15).

¹²² Sexual Offences (Northern Ireland) Order 2008, article 37.

¹²³ See Explanatory Memorandum to the Sexual Offences (Northern Ireland) Order 2008, article 37.

¹²⁴ Committee on the Elimination of Discrimination against Women Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland 26 July 2013 CEDAW/C/GBR/CO/7 para 41

*[T]he right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*¹²⁵

The Commission informed the CRC Committee of the establishment of the National Crime Agency (NCA), which has responsibility across the UK for addressing serious organised crime including child exploitation.¹²⁶ The Commission advised the CRC Committee that due to the failure of the NI Assembly to agree a Legislative Consent Motion, the NCA is not empowered to deal with matters devolved to the NI Assembly, restricting its ability to tackle child exploitation in NI. The Commission has raised this issue with the NI Executive and the UK Government.

The Commission advised the CRC Committee that children in care in NI are especially vulnerable to the offences referred to in the Optional Protocol.¹²⁷ In advance of the 2014 examination of the UK's compliance with the Optional Protocol, the CRC Committee requested that the UK Government:

*provide information on the measures to develop holistic and victim-centered methods to identify children... who are, or who are at risk of becoming, victims of child trafficking, sale, prostitution and pornography.*¹²⁸

In September 2013 the details of an investigation into the sexual exploitation of children in care were reported by the PSNI.¹²⁹ Subsequently, the Minister for Health announced that the Safeguarding Board of NI would conduct a thematic review into the exploitation of children and that an independent Inquiry into child sexual exploitation, led by the former Scottish Commissioner for Children and Young People, was to be established.¹³⁰

Human Trafficking Bill

The Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill was introduced to the NI Assembly in June 2013.¹³¹ Clause 6 of the Bill aims to discourage the demand for human trafficked persons by making it a criminal offence to pay for the sexual services of a prostitute over 18 years.

The Commission has advised the NI Assembly Committee for Justice that the proposed criminalisation of payment for the sexual services of an adult is neither required nor prohibited by international human rights treaties.¹³² However if introduced a prohibition should be extended to include paying for the sexual services of a child.

¹²⁵ Convention on the Rights of the Child, Article 32.

¹²⁶ NIHRC 'Submission regarding the List of Issues concerning the Initial Report of the UK on the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (Belfast July 2013) para 4.1-4.4

¹²⁷ Ibid para 6.1

¹²⁸ CRC OP – List of issues – CRC/C/OPSC/GBR/Q/1 para 10

¹²⁹ BBC News, Major investigation into sexual exploitation of young people in care, 14 September 2013 <http://www.bbc.co.uk/news/uk-northern-ireland-24085468>

¹³⁰ NI Assembly Official Report (Hansard) Tuesday 12 November 2013 Volume 89, No 4

¹³¹ Bill 26/11-15

¹³² DHSSPS 'Who Cares? The Future of Adult Care and Support in Northern Ireland – Consultation' 15 March 2013

Right to fair trial and the administration of justice

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

Avoidable delay

Delays in the criminal justice system continued throughout 2013. In February a report by the Criminal Justice Inspectorate NI (CJINI) referred to the adverse impact which delay can have upon defendants and their families.¹³³ The CJINI has published a number of reports concluding that excessive delays in the criminal justice system are unacceptable.¹³⁴ The Department of Justice continued to consult on measures to address the problem.¹³⁵

The ICCPR, Article 14 requires that everyone charged with a criminal offence be entitled to be tried without undue delay.¹³⁶ The UN Human Rights Committee has also found that significant delays in the court system may amount to breaches of Article 14 and has recalled the Committee's General Comment 32 which states:

*The right of the accused to be tried without undue delay, provided for by article 14, paragraph 3 (c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.*¹³⁷

The Commission has noted that excessive delay can undermine the dignity of victims. It has provided advice to the Department of Justice on proposals to introduce a more robust case management system.¹³⁸ This is one of a number of measures to be provided for in a new Justice Bill, to be introduced to the NI Assembly in 2014.¹³⁹

Victim's charter

The Commission advised the Department of Justice on its proposed strategy for improving access to justice for victims and witnesses.¹⁴⁰ The Commission broadly welcomed the proposals which were brought forward, principally, to ensure compliance with EU Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime.

The Commission advised the Department to broaden the definition of a victim included in the draft Strategy to ensure it fully reflects international human rights standards.¹⁴¹ It also identified groups that require bespoke services and assistance, including persons with a disability.

133 CJINI 'The use of early guilty pleas in the criminal justice system in Northern Ireland' CJI 13 February 2013

134 CJINI 'Avoidable Delay: A Progress report' CJI January 2012 Reported an average of 289 days from an individual being informed of a prosecution to disposal by a court

135 Department of Justice Consultation 'Managing Criminal Cases' February 2013

136 Ibid para 6

137 CCPR/C/GC/32 23 August 2007 General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial

138 NIHRC 'Response on the Department of Justice Consultation 'Managing Criminal Cases'' February 2013

139 DoJNI 'Equality Consultation for a Proposed Justice Bill' 8 March 2013

140 DoJNI Consultation Making a Difference : Improving Access to Justice for Victims and Witnesses of Crime: A Five Year Strategy 'Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime A Five Year Strategy' October 2012 – January 2013. NIHRC 'Response To The Public Consultation on Making A Difference: Improving Access to Justice For Victims and Witnesses of Crime' January 2013

141 Ibid pg 10

The Strategy was launched in June 2013 and took account of the Commission's advice in a number of areas.¹⁴²

Compensation

In May 2013 the Anti-Social Behaviour, Crime and Policing Bill received its first reading in the House of Commons.¹⁴³ Clause 132 of the Bill proposes to amend section 133 of the Criminal Justice Act 1988 to redefine the test for a miscarriage of justice by limiting compensation to cases where a new or newly discovered fact(s) shows beyond reasonable doubt that a person is innocent. The proposed amendment to section 133 of the 1988 Act, requires an applicant to prove his or her innocence of a crime.

The Commission advised the Secretary of State for NI that the proposed amendment of section 133 of the Criminal Justice Act 1988 adds an additional burden on those seeking compensation, following a miscarriage of justice, which may amount to a disproportionate limitation on the right to compensation. As defined by the ICCPR, Article 14 (6):

[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.

The report on the Bill published by the Joint Parliamentary Committee on Human Rights stated:

*In our view, requiring proof of innocence beyond reasonable doubt as a condition of obtaining compensation for wrongful conviction is incompatible with the presumption of innocence, which is protected by both the common law and Article 6(2) ECHR. We recommend that clause 143 [the relevant clause] be deleted from the Bill because it is on its face incompatible with the Convention.*¹⁴⁴

The Bill is progressing through the House of Lords and the relevant clause remains without amendment.¹⁴⁵

Closed Material Proceedings

The Justice and Security Act 2013 received royal assent on 25 April 2013.¹⁴⁶ The Act makes provision for Closed Material Proceedings (CMPs) in civil cases. CMPs allow for the introduction of sensitive security evidence to proceedings by Government without their disclosure to the plaintiff.¹⁴⁷

During the passage of the Justice and Security Bill the Commission made representations to the House of Lords advising that as drafted the Bill did not ensure that CMPs are only ever used as a measure of last resort.¹⁴⁸ The House of Lords made a number of amendments to the Bill which will, to some degree, safeguard against excessive use of CMPs.¹⁴⁹ Under

142 DoJNI 'Victims Strategy 2013-15 'Making a Difference' June 2013

143 <http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill/stages.html>

144 Joint Committee on Human Rights, 'Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill'. Fourth Report of Session 2013 – 2014, HL Paper 56 HC 713 pg 6

145 Anti-social Behaviour, Crime and Policing Bill (HL Bill 52)

146 Justice and Security Act 2013 c.16

147 Ibid ss. 6 – 14

148 NIHRC, Briefing on the Justice and Security Bill 2012, for the Committee Stage, House of Lords, June 2012

149 See <http://services.parliament.uk/bills/2012-13/justiceandsecurity.html>

section 6 of the Act a court may refuse to allow use of CMPs where it is considered to be contrary to the interests of the fair and effective administration of justice.

During its examination of the UK the CAT Committee considered CMPs. It recommended that the UK Government:

Ensure that intelligence and other sensitive material be subject to possible disclosure if a Court determines that it contains evidence of human rights violations such as torture or cruel, inhuman or degrading treatment;

*Ensure that the Justice and Security Act 2013 will not become an obstacle to accountability for State party involvement or complicity in torture, cruel inhuman or degrading treatment and will not adversely impact on the right of victims to obtain redress, remedy, and fair and adequate compensation.*¹⁵⁰

Access to justice

In April 2013 the Department of Justice published a consultation paper proposing changes to the system for the grant of exceptional legal aid.¹⁵¹ Article 10A of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 allows individuals to be granted legal aid in exceptional circumstances where they would not be eligible under the ordinary legal aid scheme. In a number of instances the families of deceased persons have been granted legal aid, by way of the exceptional grant provisions, to fund legal representation at inquests.¹⁵²

The Minister of Justice has in practice taken decisions regarding the granting of exceptional legal aid. The Commission advised that the right to life enshrined in the ECHR, Article 2, has been regarded by the ECtHR as one of the most fundamental provisions of the Convention, so much so that in addition to the substantive right, there exists a procedural requirement on the part of the State to conduct an effective investigation following an alleged violation.¹⁵³

The ECtHR has recognised the importance of the involvement of the family to ensure the effectiveness of an investigation and the Commission advised that decisions on whether to grant exceptional legal aid to families in this regard should be made by an independent and impartial body.¹⁵⁴

Age of criminal responsibility

The Commission's 2012 annual statement recalled that the CRC Committee has consistently stated that legal systems which set the age of criminal responsibility below 12 are in contravention of the internationally accepted standard.¹⁵⁵ The age of criminal responsibility laid down in the Criminal Justice (NI) Order 1998 is 10 years old.

The CRC Committee has recommended on three separate occasions that the minimum age of criminal responsibility in the UK be increased to between 14 and 16 years. In May 2013 the CAT Committee recommended that:

The State party should raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards, as expressed in the General Comment No. 10 of the Committee on the Rights of the Child (paras. 32 and 33). The State party should ensure

¹⁵⁰ Committee Against Torture 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para

¹⁵¹ DoJNI 'Consultation Document: Review of the Statutory Exceptional Grant Scheme' April 2013

¹⁵² *ibid*

¹⁵³ NIHR 'Submission to the Access to Justice Review' January 2012

¹⁵⁴ *Hugh Jordan v UK* (Application no. 24746/94) 4 May 2001 para 138

¹⁵⁵ Committee on the Rights of the Child, 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 full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).*¹⁵⁶

The Commission recalls the positive commitment of the Minister of Justice to increase the age of criminal responsibility but notes that there have been no legislative or policy measures initiated in 2013 and the law in NI remains in contravention of the internationally accepted standard.¹⁵⁷

¹⁵⁶ Committee Against Torture '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

¹⁵⁷ Official Report (Hansard) Tuesday 22 October 2013 Volume 88, No 8

Right to private and family life

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

Adoption

In 2012 the High Court ruled in favour of a case taken by the Commission challenging the restrictive criteria governing the eligibility of persons who may be considered as adoptive parents as discriminatory.¹⁵⁸ The Court ruled that unmarried heterosexual couples, those in civil partnerships and same sex couples should be allowed to apply to adopt.

On 11 December 2012, the DHSSPS lodged notice of its intention to appeal against this judgment. On 27 June 2013 the Court of Appeal upheld the judgement of the High Court and ruled that:

*There is no rational basis for the proposition that the current eligibility criteria served the best interests of the child excluding persons from the whole adoption process on the sole basis of their relationship status. This only served to narrow the pool of potential adopters. The scrutiny and assessment of suitability ensures that only persons capable of providing a loving, safe and secure adoptive home will ultimately be considered. The complete ban on applications for consideration for adoption in relation to civil partners does not bear a reasonable relationship of proportionality to the legitimate aim.*¹⁵⁹

The DHSSPS made a further application to the Supreme Court of the UK seeking permission to appeal the judgement of the Court of Appeal. On 22 October 2013 the Supreme Court ordered that:

*permission to appeal be refused because the application does not raise an arguable point of law. These grounds are unarguable. The decision of the Court of Appeal was right.*¹⁶⁰

In relation to the case the Chief Commissioner stated:

*Through this case the Commission has protected basic human rights and the best interests of the child. For children who are in need of a family in Northern Ireland, the importance of this case in widening the pool of prospective parents cannot be overstated....It means that Northern Ireland law is in line with the rest of the UK and means that couples who are not married, those in civil partnerships and same sex couples will now be allowed to apply to be considered as adoptive parents.*¹⁶¹

158 The Northern Ireland Human Rights Commission, Application [2012], NIQB 77

159 In the Matter of An Application by the NIHRC 2013 NICA 37 para 21

160 In the Supreme Court of the UK, Before Lady Hale, Lord Wilson and Lord Hughes on 22 October 2013

161 NIHRC Press Release 'Chief Commissioner Welcomes Adoption Appeal Ruling' 27 June 2013

Environmental regulation and protection

The Department of Environment consulted in 2013 on proposals to rationalise the system of environmental regulation.¹⁶² It proposed the development of a consolidated system of environmental permitting and the rationalisation of the Department's powers of entry. The Commission provided advice to the Department setting out relevant human rights standards.¹⁶³

The Commission advised that the exercise of powers of search and entry interfere with the right to private and family life.¹⁶⁴ Such interferences may be justified where they are taken in the pursuit of a legitimate aim, such as the protection of the rights of others. The advice acknowledged that environmental pollution may adversely impact on the rights of individuals, including the right to private and family life and the right to health. The NI Executive has a positive duty to regulate the actions of potential polluters and to address the consequences of environmental pollution. The Commission advised that a balance must be struck to ensure that the extent of any interference with the right to private and family life is only so far as is absolutely necessary in pursuit of a legitimate aim.¹⁶⁵

The Department's reform proposals are continuing to advance. The Department is seeking unique powers to permit the amendment of legislation outside of the normal legislative processes, known as Henry VIII powers. The Commission has advised that the exercise of such powers should be appropriately circumscribed and conditional upon the amendments having no adverse implications for the protection of human rights.¹⁶⁶

Stop and search

The Commission provided advice to the NI Office on a draft Code of Practice on Powers of Stop, Search and Question contained within the Justice and Security (NI) Act 2007. The stated purpose of the Code of Practice is to:

*promote the fundamental principles to be observed by the PSNI and to preserve the effectiveness of, and public confidence in, the use of stop and question, stop and search and other powers.*¹⁶⁷

The Commission's advice acknowledged that the powers contained in the 2007 Act are important in assisting the PSNI to meet its responsibilities to the general population.¹⁶⁸ Furthermore, the Commission welcomed the clear intention to embed the powers within a human rights framework.

The Commission advised on a number of amendments to the draft Code to further ensure respect for the rights of persons subject to powers contained in the Act. The revised Code, which is now in operation, reflects the Commission's advice in a number of areas including; clarification that an explanation of the reasons for the exercise of powers will be recorded; clarification that the exercise of powers can never be on the basis of racial profiling; and the inclusion of a duty on PSNI officers to provide information cards to children and young people subject to stop and search powers.¹⁶⁹

162 DoE NI 'The Environment & Economy in Partnership 21st Century Regulatory Innovation Consultation Paper on proposals for an Environmental Better Regulation Bill' (Belfast April 2013)pg 13

163 NIHRC 'Response on the Department of Environment Consultation 'The Environment & Economy in Partnership 21st Century Regulatory Innovation' (Belfast July 2013)

164 Ibid paras 21-25

165 Ibid para 25

166 Ibid paras 31 and 32

167 Northern Ireland Office 'Consultation on a Code of Practice for the exercise of powers in the Justice and Security (Northern Ireland) Act 2007' 12 December 2013

168 Correspondence from the Chief Commissioner to the Secretary of State of Northern Ireland 10 March 2013

169 Northern Ireland Office 'Summary of responses to Public Consultation on Stop and Search Powers' 20 June 2013

Planning Bill

In 2013 a Planning Bill was introduced to the NI Assembly. The Bill proposed to limit both the grounds upon which a planning decision may be challenged by way of judicial review and to reduce the length of time in which an individual may seek a judicial review of a planning decision from three months to six weeks.¹⁷⁰ The relevant clauses were inserted to the Bill at its Consideration Stage.

The Commission advised the Minister for Environment of a potential breach of the ECHR, Article 6. The Commission advised that the right to fair trial is engaged in the planning context and referred to ECtHR jurisprudence which requires that individuals are able to effectively exercise rights of appeal and to ensure that they are not practically restricted.¹⁷¹ In addition the Commission referred to the Aarhus Convention which obligates the State to ensure that individuals are able to challenge public decisions relating to environmental protections.¹⁷² The Commission advised that restrictions on judicial review, coupled with the absence of third party rights of appeal, creates a system whereby an objector to a planning approval has limited capacity to challenge a decision which is inconsistent with the Aarhus Convention.¹⁷³

The Minister, referring to Commission advice, informed the NI Assembly that the Planning Bill would not be progressing to Further Consideration Stage.¹⁷⁴

DNA retention

The Criminal Justice Act (Northern Ireland) 2013 received royal assent in April 2013. The Act makes provision, inter alia, for the retention, use and other regulation of DNA profiles. The Act permits the indefinite retention of the DNA profiles of adults convicted of an imprisonable offence.¹⁷⁵

During the passage of the Act the Commission advised that the ECtHR, in its jurisprudence, had not considered the permissibility of the indefinite retention of DNA profiles of adults convicted of an imprisonable offence.

In 2013 this matter has not come before the ECtHR. However the matter was considered by the NI High Court. In its judgement the Court stated:

Since Strasbourg has not spoken on the issue of convicted persons and since the question of the retention of their DNA and other material raises quite separate questions to those which were raised in Marper in determining where the balance should be drawn in a case such as the present this court must approach the question without the benefit of a Strasbourg authority on point and must thus seek to determine the question of proportionality of the current policy in accordance with ordinary principles.¹⁷⁶

The Court ruled that indefinite retention of a convicted adult's DNA profile was permissible and proportionate to the legitimate aim of crime prevention.

170 Bill Number: Bill 17/11-15 See Clause 15 as amended at Consideration Stage

171 Hadjuanastassiou v Greece (1992) 16 EHRR 219

172 UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision – Making and Access to Justice in Environmental Matters (adopted 25 June 1998)

173 Ibid See Article 9(2)

174 Ministerial Statement Official Report (Hansard) Tuesday 22 October 2013 Volume 88, No 8 pg 13

175 See Schedule 2 Article 63 F of the Police and Criminal Evidence (NI) Order 1989

176 Gaughran's (Fergus) Application [2012] NIQB 88 para 43

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
CRC	Article 13 Article 14 Article 15
CEDAW	Article 3
CRPD	Article 19 Article 21 Article 29

Parades and protests

The Commission hosted the UN Special Rapporteur on Peaceful Assembly and Association. The Special Rapporteur visited when protests were ongoing regarding Belfast City Council's change of policy on flying the Union flag at City Hall.

The Commission briefed the Special Rapporteur and facilitated an exchange of views with various stakeholders from civil society.¹⁷⁷ The Special Rapporteur presented his report to the UN Human Rights Council in May 2013 and stated:

*The critical need for the political leadership in Northern Ireland to urgently find resolution on outstanding issues could not have been more evident to the Special Rapporteur than the violent riots following a decision by the Belfast City Council late 2012 to fly the British flag for only a few days in the year.*¹⁷⁸

The Special Rapporteur called for political resolution of the issues – such as parades, flags and emblems – that make the enjoyment of freedom of peaceful assembly problematic in NI.¹⁷⁹ The Commission along with the other UK National Human Rights Institutions welcomed the Report by the Special Rapporteur and endorsed his recommendation that decision making on contentious parades be further grounded in human rights, with recognition of both the right to parade and of the responsibility of those who parade to respect the rights of others.¹⁸⁰

The Commission published advice on how the human rights framework can form a basis for both resolution by dialogue, and for the adjudication of disputes on parades and protests.¹⁸¹

177 NIHRC Press Release 'UN Special Rapporteur Visits N.I.' January 2013

178 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai Mission to the United Kingdom of Great Britain and Northern Ireland 17 June 2013 A/HRC/23/39/Add.1 para 58

179 Ibid para 96

180 UK National Human Rights Institutions Intervention

181 NIHRC 'Parades and Protests' (Belfast: NIHRC) November 2013

In addition, it also published advice on the display of flags, symbols and emblems, including those associated with parades.¹⁸² The Commission shared copies of both reports with the NI Executive and those represented at the all-party talks chaired by Dr Richard Haass.

Participation of women

The Commission continues to note the low levels of participation of women in the judiciary and in elected office, with only one fifth of elected positions in NI being held by women.¹⁸³ A lack of progress in increasing the representation of women in public life was raised with the CEDAW Committee in July 2013.¹⁸⁴

In its 2008 concluding observations the CEDAW Committee recommended that there should be full implementation of UN Security Council Resolution 1325 (2000) on women, peace and security which requires measures to ensure the participation of women in post conflict societies.¹⁸⁵ The UK Government, in its submission to the CEDAW Committee during the examination in 2013, stated that it did not intend to implement the Resolution in NI.¹⁸⁶

The Committee repeated its concern at the failure to address the under representation of women in decision making positions and called upon the UK Government to:

*(a) Continue to take concrete targeted measures to improve the representation of women in Parliament and the judiciary, particularly black and ethnic minority women and women with disabilities; and, (b) Ensure the participation of women in the post-conflict process in Northern Ireland, in line with Security Council Resolution 1325 (2000).*¹⁸⁷

Defamation

The Defamation Act 2013 received royal assent in April 2013. The impact of UK defamation laws on freedom of expression both domestically and internationally has been a source of concern. In its 2008 concluding observations on the UK's Sixth Periodic Report on compliance with the ICCPR the UN Human Rights Committee stated:

*The Committee is concerned that the State party's practical application of the law of libel 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...*¹⁸⁸

The 2013 Act, to some extent, addresses the UN Human Rights Committee's recommendation. The threshold for bringing a defamation claim has been raised and a defence of publication on a matter of public interest has been introduced in England & Wales. The law governing defamation in NI remains unchanged.

Noting the comments of the UN Human Rights Committee, the Commission advised members of the NI Assembly Committee for Finance and Personnel of the need to review the

182 NIHRC 'Flags, Symbols and Emblems in NI' (Belfast: NIHRC) October 2013

183 NIHRC 'The 2012 Annual Statement: Human Rights in Northern Ireland' (NIHRC, Belfast, 2012) pg 32

184 Northern Ireland Human Rights Commission 'Submission to the United Nations Committee on the Elimination of All Forms of Discrimination against Women 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 Northern Ireland para 13

185 Report of the Committee on the Elimination of Discrimination Against Women on the 5th and 6th Periodic Reports of the United Kingdom of Great Britain and NI, Concluding Observations on the UK, UN Doc. CEDAW/C/UK/CO/6 (10 July 2008), at para. 285.

186 CEDAW, 'Reply of the UK to the List of Issues', UN Doc. CEDAW/C/GBR/Q/7/Add.1 (5 February 2013), para 301.

187 Report of the Committee on the Elimination of Discrimination Against Women on the 5th and 6th Periodic Reports of the United Kingdom of Great Britain and NI, Concluding Observations on the UK, UN Doc. CEDAW/C/UK/CO/6 (10 July 2008), para 43

188 Concluding observations of the Human Rights Committee on sixth periodic report submitted by the United Kingdom CCRP/C/GBR/CO/6 30 July 2008

law of defamation to ensure that an appropriate balance has been struck between the competing rights and to ensure that new advances in technology, such as the internet, are appropriately provided for.¹⁸⁹

The Minister for Finance and Personnel has requested that the NI Law Commission review defamation law in NI.¹⁹⁰

Press freedom

There have been a number of attacks on journalists during 2013. The UN Human Rights Committee in its General Comment 34 on the right to freedom of expression states:

*Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.*¹⁹¹

In light of the established international human rights law standard, the Chief Commissioner stated in October 2013:

There has been a disturbing number of attacks carried out on members of the press in Northern Ireland over the past few weeks, I strongly condemn these, including the most recent attack endured by Belfast Telegraph Journalist Adrian Rutherford. Such acts are intolerable and they risk the most important of all human rights, the right to life. This situation occurs alongside a worrying practice globally of journalists being killed in the course of their vital work. Figures released yesterday by Reporters Without Borders indicate that 88 journalists were killed in 2012, a third more than in 2011. It is a fact that human rights cannot thrive without a free press, and the public interest is often maintained by those on the frontline of reporting.

*United Nations human rights guidance is clear: 'A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other [human] rights. It constitutes one of the cornerstones of a democratic society'.*¹⁹²

189 Ibid see further Committee for Finance and Personnel OFFICIAL REPORT (Hansard) Defamation Act 2013: Northern Ireland Human Rights Commission Briefing 3 July 2013

190 Belfast Telegraph 'Minister's move could signal libel law U-turn' 16 September 2013

191 ICCPR General Comment 34 'Article 19: Freedoms of opinion and expression' CCPR/C/GC/34 21 July 2011 para 24

192 NIHRC Press Release 'Press Freedom Must Be Upheld' 30 October 2013

Right to work and to just and favourable conditions of work

ICESCR	Article 6 Article 7
CEDAW	Article 11

Childcare for women in employment

In 2013 the Commission raised the issue of affordable childcare provision in NI and the impact that this can have on the ability of women to exercise their right to work and seek employment.¹⁹³ There is an absence of affordable childcare provision in NI with one childcare place for every 7.4 children.¹⁹⁴ The Welfare Reform Bill makes provision for restricting access to welfare benefits where individuals are deemed to have failed to make reasonable efforts to obtain employment.¹⁹⁵

The Commission advised the NI Assembly Committee for Social Development, the Ad Hoc Committee on Equality and Human Rights and the Minister for Social Development of the need to ensure that the proposed regime takes into account those with child caring responsibilities and dependents who are unable to access employment due to their responsibilities and the absence of adequate provision. The Commission advised the CEDAW Committee of its concerns during its examination of the UK's Seventh Periodic Report.¹⁹⁶ In response the Committee urged:

*the State party to provide affordable childcare and to mitigate the impact of the proposed reforms of the welfare system on the costs of childcare for low income families and the increased burden for care on women.*¹⁹⁷

The Welfare Reform Bill is currently before the NI Assembly, it remains unclear if the relevant clauses and associated regulations will be appropriately amended and developed to ensure that those with child caring responsibilities are not unduly disadvantaged.

Parental rights

The Department for Employment and Learning consulted in 2013 on proposed measures designed to provide parents with greater flexibility over their shared childcare arrangements.¹⁹⁸ The Commission advised the Department that the European Committee of Social Rights has concluded that:

*the situation in the United Kingdom is not in conformity with Article 8 §1 of the Charter of 1961 on the ground that the standard rates of Statutory Maternity Pay (SMP), after six weeks, and Maternity Allowance (MA) are inadequate.*¹⁹⁹

193 NIHRC 'Submission to the Ad Hoc Committee on Welfare Reform' January 2013

194 According to the 2012 NI Childcare Costs Survey, there is one childcare place for every 7.4 children and 44% of a parent's net weekly earnings are allocated to childcare costs. In a family with two children, these costs would be doubled. See Employers for Childcare Charitable Group, 'Northern Ireland Childcare Cost Survey 2012' (November 2012), available at <<http://vouchers.employersforchildcare.org/media/Northern%20Ireland%20Childcare%20Cost%20Survey%202012.pdf>>

195 See Chapter 2 of the Welfare Reform Bill 'Claimants Responsibilities'

196 Northern Ireland Human Rights Commission 'Submission to the United Nations Committee on the Elimination of All Forms of Discrimination against Women 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 Northern Ireland para 19

197 Report of the Committee on the Elimination of Discrimination Against Women on the 5th and 6th Periodic Reports of the United Kingdom of Great Britain and NI, Concluding Observations on the UK, UN Doc. CEDAW/C/UK/CO/6 (10 July 2008) para 49

198 Department for Employment and Learning 'Public Consultation regarding Sharing Parental Rights, Extending Flexibility at Work'

199 European Committee of Social Rights, European Social Charter, Conclusions XIX-4 (2011) (United Kingdom), Articles 7, 8, 16, 17 and 19 of the Charter, p. 8.

The Commission further advised the Department to ensure that any new provisions must be fully compliant with the Government's obligations under the European Social Charter and other international human rights obligations.²⁰⁰

The Commission advised that any proposals which would undermine the right to return to the same or similar job following a period of parental leave would be regressive. Such a proposal would also have adverse implications on the requirement to act in the best interests of the child, as protected by the UNCRC.

The Commission noted that due to prevailing economic circumstances it was considered unaffordable by both Government and the private sector for paid paternity leave to be extended. However, the Commission advised that, in keeping with the international human rights law principle of "progressive realisation" of economic, social and cultural rights, the Department should ensure that proposed legislation makes provision for the extension of paternity leave in NI when economic circumstances permit.²⁰¹

Armed forces covenant

The House of Commons NI Affairs Committee published a report in July 2013 on the implementation of the Armed Forces Covenant in NI.²⁰² The Covenant is described by the Ministry of Defence as an agreement which sets out the relationship between the people of the UK, Her Majesty's Government and the Armed Forces Community.²⁰³ The two key principles of the Covenant are that members of the Armed Forces Community should face no disadvantage compared to other citizens, and that special consideration may be appropriate in some cases. The NI Affairs Committee was concerned that the implementation of the Covenant in NI was reported to have not been as effective as other parts of the UK. In particular, there was a concern that its implementation may be hampered by the statutory framework in NI governing equality.²⁰⁴

The Commission advised the Committee that international human rights law applies in principle to members of the armed forces as it does to citizens generally.²⁰⁵ Measures to assist individuals and their families in overcoming obstacles which they face due to membership or association with the armed forces would not breach human rights law and, in certain circumstances, may be required to ensure compliance.²⁰⁶

The Commission advised that measures ensuring that armed forces personnel on NHS waiting lists are not disadvantaged due to deployment accord with human rights law.²⁰⁷ However, measures to prioritise the provision of health services to armed forces personnel over provision to the general public, may be considered unjustified preferential treatment. The Commission also advised that the Committee seek clarity on the potential legal implications of the Covenant in NI to ensure that armed forces personnel are entitled to the same level of protection for their human rights as those living elsewhere in the UK.²⁰⁸

200 NIHRC 'Response to the Public Consultation regarding Sharing Parental Rights, Extending Flexibility at Work' August 2013

201 *Ibid* para 27

202 Ministry of Defence 'Armed Forces Covenant' 2011

203 *Ibid* page 6

204 Northern Ireland affairs Committee 'Implementation of the Armed Forces Covenant in Northern Ireland: Terms of Reference' available at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/northern-ireland-affairs-committee/inquiries/parliament-2010/armed-forces-covenant-ni/>

205 *Engel v Netherlands*, European Court of Human Rights, 8 August 1976, European Human Rights Reports, Vol. 1, 1979, p. 647

206 NIHRC 'Submission to the Northern Ireland Affairs Committee of the House of Commons on the Implementation of the Armed Forces Covenant in Northern Ireland' February 2013

207 *Ibid* para 16

208 *Ibid*

In its report the Committee states that it is reassured:

*that the Northern Ireland equality framework does not create a greater barrier to implementation of the Covenant in Northern Ireland than elsewhere in the UK.*²⁰⁹

The Report notes that in certain respects the inadequate implementation of the Covenant has disadvantaged armed forces personnel living in NI in comparison with their counterparts in Great Britain.

²⁰⁹ House of Commons Northern Ireland Affairs Committee 'Implementation of the Armed Forces Covenant in Northern Ireland' First Report of Session 2013–14 HC 51 para 22

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

Welfare Reform Bill

The Welfare Reform Bill continued to progress in 2013 through the NI Assembly. An Ad Hoc Committee on Equality and Human Rights was established to provide added legislative scrutiny, and it reported to the Assembly in January 2013.²¹⁰ This was the first occasion that the NI Assembly has availed of the procedure in its Standing Orders to establish such a Committee.

The Commission advised the Ad Hoc Committee on measures and amendments to mitigate any adverse implications for the rights of vulnerable persons.²¹¹ The proposed reduction in housing benefits entitlement for under occupancy was a matter of particular concern. The Commission advised against introducing penalties where an additional room is necessary due to a disability or is required to accommodate a child whom one of the occupant's has occasional custody of. The Commission also focused upon the proposed sanctions regime and advised that it should not apply in a manner which results in an individual or his or her dependents falling into destitution.²¹²

Overall the Commission expressed its concern at the lack of available data and information upon which to determine potential human rights implications of the Bill.²¹³ The Chief Commissioner stated:

*The equality assessments that have been done with regard to the Bill in Northern Ireland have not engaged the discrimination grounds of race or religion. Therefore, you do not have data before you to determine whether the welfare reform provisions would raise issues of discrimination on the grounds of race or religion. For example, you do not have the information before you with regard to the impact on Travellers, who have been identified by the UK Government and the United Nations as an ethnic group and, therefore, within the category of race, or of migrant workers, for example those migrant workers who do not have any competence in the English language. We are not saying there is any deliberate targeting; we are saying that you have not been delivered the material you need to make your assessment.*²¹⁴

The report of the Ad Hoc Committee and its recommendations closely reflected the advice of the Commission.²¹⁵ In accordance with Standing Order 30, a Report of the Ad Hoc Committee

210 Northern Ireland Assembly 'Welfare Reform Bill: Ad Hoc Committee on Conformity with Equality Requirements' 20 November 2012

211 NIHRC 'Submission to the Ad Hoc Committee on Welfare Reform' December/January 2013 paras 15 – 17

212 *Ibid*

213 *Ibid para 17*

214 Ad Hoc Committee on Welfare Reform Bill Minutes of Evidence — 3 December 2012 paras 315-316

215 Ad Hoc Committee 'Report on whether the Provisions of the Welfare Reform Bill are in Conformity with the Requirements for Equality and Observance of Human Rights' 21 January 2013 NIA 92/11-15 Ad-Hoc Committee

must be accepted by the NI Assembly on the basis of a cross community vote. The Commission notes with regret that the report of the Ad Hoc Committee was not accepted by the Assembly.²¹⁶

Pensions Bill

During 2013 the Public Service Pensions Bill was introduced to the NI Assembly.²¹⁷ The Commission provided advice to the NI Assembly Committee for Finance and Personnel.²¹⁸ The Bill provides for the introduction of rules governing any new pension scheme, which may be retrospective²¹⁹ The Commission expressed its concern that the Bill did not clearly set out the circumstances in which rules with a retrospective effect may be justified. It advised that any new scheme would represent an interference with the right to property, protected by the ECHR, Article 1 of Protocol 1, and that the law must be accessible and drafted in a manner which is sufficiently clear to enable foresight of its consequences. The Commission further advised that any regulations which contain retrospective provisions should be subject to the affirmative resolution procedure.

The Committee published its report on 27 November 2013, the Commission notes that the Committee has not proposed amendments to a number of relevant clauses²²⁰.

216 Northern Ireland Assembly Plenary Session Committee Business: Welfare Reform Bill: Report of the Ad Hoc Committee on Conformity with Equality Requirements 29 January 2013

217 Public Service Pensions Bill 23/11-15

218 NIHRIC 'Correspondence to Chair of NI Assembly, Finance and Personnel Committee, Public Services Bill' 5 September 2013

219 Official Report (Hansard), Session: 2013/2014, 02 October 2013 Committee for Finance and Personnel Public Service Pensions Bill: Northern Ireland Human Rights Commission Briefing

220 Committee for Finance and Personnel 'Report on Public Service Pensions Bill' 27 November 2013

Right to health

ICESCR	Article 12
UNCRPD	Article 25

Reform of health and social care

The DHSSPS has continued in 2013 to bring forward reforms to the health and social care system. The Commission provided advice on the initial consultation for proposed reform of the adult care and support system.²²¹

In its advice the Commission recalled the importance of ensuring that the consultation and reform process adopts a human rights based approach, providing opportunities for effective participation of all rights holders affected, and, in particular, vulnerable persons living in care homes.²²² The Commission advised of the need for measurable indicators to ensure accountability.²²³ It also noted that in order to comply with the UNCRPD relevant data must be gathered to benchmark, monitor and evaluate progress against the relevant human rights engaged.²²⁴ The DHSSPS published its analysis of the consultation responses and is committed to further consultation on the specific proposals for reform.²²⁵

Care Homes

A number of Health and Social Care Trusts announced in 2013 the closure of care homes within their respective areas, having had little or no consultation with persons living in or impacted by the proposed closures.²²⁶ Noting the grave hurt and distress experienced by some of those people affected, the Commission publicly reiterated the duty of public authorities to take all reasonable steps to avoid what could amount to cruel, inhuman or degrading treatment. The Chief Commissioner stated:

*The Commission is deeply concerned at the potentially inhuman and degrading treatment of people who live in our residential care homes. A heightened level of care and engagement by those responsible for their wellbeing is needed. First-hand accounts regarding how decisions have been communicated concerning the closure of care homes raises serious human rights concerns.*²²⁷

In response the Minister made a statement to the NI Assembly apologising for any unintentional stress and setting out plans for a new process of engagement to be led by the Health and Social Care Board.²²⁸ In this process the Board is to work closely with the Trusts and coordinate a regional approach, with Trusts having more time to engage with individuals, families, community and staff.

Termination of pregnancy

The DHSSPS consulted in 2013 on draft guidance on the termination of pregnancy in NI.²²⁹ The intention of the proposed Guidelines is to provide direction to health and social care

221 DHSSPS 'Who Cares? The Future of Adult Care and Support in Northern Ireland – Consultation' March 2013

222 NIHRC 'Response to consultation the future of Adult Care and Support in Northern Ireland' March 2013

223 *Ibid* para 14

224 *Ibid*

225 DHSSPS 'Who Cares? The Future of Adult Care and Support in Northern Ireland Consultation Analysis Report' August 2013

226 BBC News 'Southern trust to shut all its NHS residential care homes' 26 April 2013

227 NIHRC Press Release 'Commission Voices Concern For Residents Of Care Homes' 3 May 2013

228 Official Report (Hansard) Tuesday 7 May 2013 Volume 84, No 7 Ministerial Statement: Residential Care for Older People pg. 1 -2

229 DHSSPS 'Revised guidance for consultation on the Termination of Pregnancy: The Law and Clinical Practice in Northern Ireland; 13 April 2013

professionals on the 'limited circumstances for a lawful termination of pregnancy in Northern Ireland'.²³⁰ The Commission submitted advice to the Department.²³¹ It noted that draft proposals failed to meet international human rights standards in a number of respects, namely that they; unduly restricted health and social workers from advising patients of the availability of services outside of the jurisdiction; did not afford patients an opportunity to adequately express their opinions; and, failed to specify how adequate provision would be made where a relevant medical professional refused to undertake a termination due to a conscientious objection.²³²

The Commission noted the draft Guidelines did not provide legal certainty of the circumstances in which an individual may be criminally liable for assisting in the termination of a pregnancy outside of NI. It advised that the legal and procedural framework governing the termination of pregnancy would likely be held not to meet the requirements of the ECHR.

During 2013 the CEDAW Committee conducted its examination of the UK's Seventh Periodic Report.²³³ In its concluding observations the Committee stated:

*Recalling its previous recommendation, the Committee reiterates that, in line with general recommendation No. 24 on women and health and the Beijing Declaration and Platform for Action, the State party should expedite the amendment of the anti-abortion law in Northern Ireland with a view to decriminalise abortion. The State party should also ensure that legal abortion not only covers cases of threats to the life of a pregnant woman but also other circumstances such as threats to her health and in cases of rape, incest and serious malformation of the foetus.*²³⁴

The CEDAW Committee has invited the UK to report on developments with respect to this recommendation by July 2014.

Provision of health care to persons not ordinarily resident

The Commission has for some time raised concerns with the DHSSPS on the law governing access to healthcare for persons not ordinarily resident in the UK.²³⁵ Access to primary health care, which forms part of the minimum core of the right to health, is denied to certain groups such as failed asylum seekers.²³⁶

In January 2013 the Department published proposals for the consolidation and updating of the Provision of Health Service to Persons not Ordinarily Resident Regulations (NI) 2005.²³⁷ The Commission advised that the individuals within the jurisdiction have the right to healthcare regardless of nationality status.²³⁸ It recalled the ICESCR Committee General Comment 19 which states:

*all persons, irrespective of nationality, residency or immigration status, are entitled to primary and emergency medical care.*²³⁹

²³⁰ Ibid

²³¹ NIHRHC 'Response to DHSSPS Consultation on Revised guidance for consultation on the Termination of Pregnancy' July 2013

²³² Ibid paras 12-33

²³³ Northern Ireland Human Rights Commission 'Submission to the United Nations Committee on the Elimination of All Forms of Discrimination against Women 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 Northern Ireland para 22-24

²³⁴ Report of the Committee on the Elimination of Discrimination Against Women on the 5th and 6th Periodic Reports of the United Kingdom of Great Britain and NI, Concluding Observations on the UK, UN Doc. CEDAW/C/UK/CO/6 (10 July 2008), paras 50 – 51

²³⁵ Northern Ireland Human Rights Commission (2011) Access Denied, Or Paying When You Shouldn't: Access to publicly funded medical care: Residency, visitors and non-British/Irish citizens. (Available at: <http://www.nihrc.org/documents/research-and-investigations/health/access-to-publicly-funded-medical-care-january-2011.pdf>)

²³⁶ Ibid

²³⁷ DHSSPS 'Proposed Consolidation and Updating of the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2005' January 2013

²³⁸ Ibid para 45

²³⁹ UN Committee on Economic, Social and Cultural Rights, General Comment 19: The Right to Social Security (2008) UN Doc. E/C.12/GC/19, paras 31 and 37

The Commission advised that for some persons resident in NI the only mechanism for obtaining health care is through the emergency care system. A proposal that would exclude certain categories of persons from free access to primary health care would be non-compliant with the ICESCR, Article 12. The Commission recommended that the DHSSPS further consider the rights of additional vulnerable groups such as pregnant women and members of the Roma and Traveller communities as it develops the policy.²⁴⁰

The Commission notes that draft Regulations are under consideration by the NI Assembly Committee for Health Social Services and Public Safety.²⁴¹

Mental Capacity (Health, Finance and Welfare) Bill

The DHSSPS and the Department of Justice have continued in 2013 to develop the Mental Capacity (Health, Welfare and Finance) Bill. The Bill will reform both mental capacity and mental health law. The Commission has advised on compliance with the UNCPRD, with a particular focus on ensuring that there is sufficient support for persons with disabilities in exercising their legal capacity.

The Bill will introduce a presumption of mental capacity in all persons who are 16 and older. There have been discussions on the implications of the Bill for children and the Commission has advised on the obligation to ensure compliance with the UNCRC. All children, including those aged between 16 and 18, have the right to effective participation in decisions regarding their welfare. It is the intention of the Departments to ensure that the Mental Health (NI) Order 1986 will continue to apply to children under the age of 16 who are detained for the purposes of assessment or treatment of a mental illness. However, the Commission understands that amendments will be made to the 1986 Order to ensure adequate safeguards are in place for detained children.

The Minister for Health has committed to review how the current legal framework, principally the Children (NI) Order 1980, reflects the emerging capacity of children in a health and welfare context. The Commission has advised of the need to ensure that this commences at the earliest available opportunity and that it is centred on the obligations contained in the UNCRC.

²⁴⁰ Ibid paras 48 – 51

²⁴¹ Committee for Health, Social Services and Public Safety – Evidence Session on the implementation of EU cross border health directive & overseas visitor policy
See more at: <http://aims.niassembly.gov.uk/assemblybusiness/businessdiary.aspx#sthash.DweqZWLF.dpuf>

Right to education

ICESCR	Article 13
CRC	Article 28
ECHR	Protocol 1, Article 2
CRPD	Article 24

Children in custody

'Education Reform in NI: A Human Rights Review' was published by the Commission in 2013. The report recalls the concluding observations of the UNCRC Committee in 2008 and the fact that the current curriculum provided to child offenders is outdated and does not appropriately assist child offenders to access the labour market, were necessary, upon their release.²⁴²

The Commission recorded concerns in its 2012 annual statement that the arrangement, whereby the Youth Justice Agency NI is responsible for the provision of education to children in custody rather than the Department of Education, adversely impacts on the ability of children to access education.²⁴³ The Minister of Justice and the Minister of Education have agreed that responsibility for the education of child offenders should be transferred to the Department of Education, but the reallocation of this responsibility has not yet occurred. A cross-departmental working group has been established to develop an options paper for delivering on this commitment which is to be completed in early 2014. The Commission welcomes this development.

Travellers

In 2013 the Department of Education established the Traveller Education Support Service and published its operational plan. This regional service covers all of NI.²⁴⁴ Its operational plan contains a number of references to human rights and highlights the importance of human rights education for both children and teachers.

The Traveller Child in Education Action Framework was launched on 13 November 2013 and includes strategic aims in response to the recommendations made by the Taskforce on Traveller Education in 2011.²⁴⁵ The framework also commits to review the policy of providing Traveller specific transport in light of evidence provided by the Taskforce that this could constitute a barrier to inclusion. The Department has also committed to review para 3(3) of Schedule 13 of the Education and Libraries (Northern Ireland) Order 1986 which contains an attendance exemption for children of parents who are '*engaged in any trade or business of such nature to require him to travel from place to place*'.²⁴⁶

242 United Nations, Committee on the Rights of the Child (2008) Concluding Observations: United Kingdom of Great Britain and Northern Ireland (para 78). UN: Geneva CRC/C/GBR/CO/4.

243 NIHRC 'The 2012 Annual Statement: Human Rights in Northern Ireland' (NIHRC, Belfast, 2012) pg. 38

244 See Delivery Plan for the regional Traveller Education Support Service <http://www.selb.org/tess/documents/RegionalTESSDeliveryPlan20132014v2.pdf>

245 DENI 'Traveller Child in Education Action Framework' November 2013 <http://www.deni.gov.uk/traveller-child-in-education-action-framework.htm>

246 Ibid pg 17 and 18

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
European Charter for Regional or Minority Languages	

Derry/Londonderry City of Culture

In July 2013 the Commission hosted an international symposium on the human right to culture in post-conflict and divided societies, partnering with the UN Special Rapporteur in the field of Cultural Rights. The symposium formed part of Derry/Londonderry City of Culture 2013 celebrations.

A public event was attended by around 80 local and international cultural practitioners and those engaged in community relations. Following a keynote address by the Special Rapporteur, a range of speakers highlighted issues of commemoration, memorialisation, teaching of history, access to culture and cultural participation, and the role of artists in promoting cultural rights. The discussions which followed considered how a human rights framework might aid the understanding of cultural rights in post-conflict societies.

Following the public event a closed meeting of a group of 25 local and international experts in the field of cultural rights discussed a number of papers, two of which were forthcoming reports of the Special Rapporteur on the teaching of history and the role of memorialisation. The third was a paper drafted by the Commission which explores the application of key cultural rights instruments and standards in a post-conflict context.

With respect to the symposium the Chief Commissioner stated:

The Commission is pleased to be playing its part in the City of Culture activities. We will host a world class gathering of experts on the human right to culture, including the top UN specialist on the topic, Farida Shaheed. Today, the experts will participate in a day-long public symposium.

The focus of the event will be on the challenges of protecting and promoting our right to culture in the particular context of societies emerging from conflict. Themes to be discussed include how we teach history and memorialise our past. Speakers will also explore the role of art and culture in promoting reconciliation.²⁴⁷

The Commission's paper will be presented at the March 2014 session of the UN Human Rights Council in Geneva.²⁴⁸ The impact of this paper in the international arena is expected to be significant given the relative underdevelopment of work in the area of cultural rights, particularly with a post-conflict application. It is also intended to make a contribution to the

²⁴⁷ NIHRC Press Release 'Human Right to Culture Debated in Derry/Londonderry' 1st July 2013

²⁴⁸ At the time of writing this paper has not been published

local conversations about culture by highlighting the relevance of the international frameworks both to issues of cultural contestation and the role of culture in conflict transformation.

The Commission's work on the right to culture has been shared with the independent chair of the all-party talks Dr Richard Haass.

The Irish language and Ulster Scots

The Commission hosted the 2013 visit of the Committee of Experts for the European Charter for Regional or Minority Languages. The visit formed part of the Committee's fourth "on the spot visit" to take evidence on the UK's compliance with the provisions of the Charter.²⁴⁹ Speaking with respect to the visit the Chief Commissioner stated:

*The Commission took the opportunity to update the Committee of Experts on the lack of progress since their last monitoring visit. We outlined to members the current levels of provision for Irish Language and Ulster Scots. We raised issues around the gaps in legislation, education needs and the responsibility of the devolved administration to promote and develop minority language protections in Northern Ireland.*²⁵⁰

Following its visit the Committee adopted its evaluation report as part of the fourth monitoring cycle.²⁵¹

249 "The European Charter for Regional or Minority Languages provides a monitoring mechanism to evaluate how the Charter is applied in a State Party with a view to, where necessary, making recommendations for improvements in its legislation, policy and practice. The central element of the monitoring mechanism is a Committee of independent experts, established in accordance with Article 17 of the Charter".

250 NIHRC, Press Release, 'Committee of Experts Visit Belfast' 31 October 2013

251 This was adopted on 21/06/2013 but at the time of writing is not public http://www.coe.int/t/dg4/education/minlang/Report/default_en.asp

Constitutional Protections

A Bill of Rights for Northern Ireland

The Commission continued to highlight the need for a Bill of Rights for NI. It advised the CAT Committee on a continued lack of progress five years on from the Commission having fulfilled its duty, in accordance with the Belfast (Good Friday) Agreement, to provide advice to the Secretary of State for NI.²⁵² The Commission has continued to engage with the UK Government and the Government of Ireland. It also raised the matter with political parties in both the NI Assembly and Westminster Parliament.

On 16 July 2013 the Westminster Parliament held a short debate on the Bill of Rights for NI. During the debate the Secretary of State for NI, Theresa Villiers MP, stated:

there are few issues in Northern Ireland that have caused such divided views or that have been so thoroughly examined and debated as the subject of our debate today.

*Despite that, however, 15 years on from the Belfast agreement, it is clear that there is no consensus on how to move forward, and I am afraid that there is no sign of one emerging in the immediate future. That was the case under the previous Labour Government, and I am afraid that it has remained the case under the current Government.*²⁵³

In October 2013 the 47th plenary session of British Irish Parliamentary Assembly was held in London, Co-Chair Laurence Robertson MP said:

*This was a timely opportunity to reflect on the tremendous progress that has been made in the 15 years since the signing of the Good Friday Agreement.*²⁵⁴

During its session the Assembly agreed to further examine the case for a Bill of Rights for NI, which was referred to the Committee on Sovereignty Matters. Commenting on this commitment the Committee Chair Frank Feighan TD said:

*Our Committee, which is tasked with responsibility to explore sovereign matters, welcomes to opportunity to explore the issue of a Bill of Rights for Northern Ireland. Senator George Mitchell, speaking in Leinster House last year, said that full implementation of an agreement is often more difficult and more important than reaching an agreement in the first instance.*²⁵⁵

The Bill of Rights was also discussed by a number of those groups that met with the independent chair of the all-party talks, Dr Richard Haass. The Commission has highlighted to Dr Haass that a Bill of Rights for NI would make an important contribution to dealing with the past and promoting good community relations.

A UK Bill of Rights

On 18th December 2012 the Commission on a Bill of Rights for the UK (ICBR) reported.²⁵⁶ The ICBR was unable to reach a consensus on proposals for a Bill of Rights for the UK. The summary to the Report states:

On the key central issue of a UK Bill of Rights, seven of the Commission's nine members believe that, on balance, there is a strong argument in favour of a UK Bill of Rights on the

²⁵² Northern Ireland Human Rights Commission 'Submission to the United Nations 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' April 2013 para 3.3

²⁵³ Westminster Hall Tuesday 16 July 2013 [Mr Christopher Chope in the Chair] Column 190WH Bill of Rights (Northern Ireland)

²⁵⁴ <http://www.britishirish.org/parliamentarians-consider-how-to-secure-the-gains-from-good-friday-agreement/>

²⁵⁵ *Ibid*

²⁵⁶ ICBR 'A UK Bill of Rights? The Choice Before Us' (Volume 1) December 2012 available at <http://www.justice.gov.uk/downloads/about/cbr/uk-bill-rights-vol-1.pdf>

*basis that such a Bill would incorporate and build on all of the UK's obligations under the European Convention on Human Rights, and that it would provide no less protection than is contained in the current Human Rights Act and the devolution settlements – although some of the majority believe that it could usefully define more clearly the scope of some rights and adjust the balance between different rights.*²⁵⁷

During the ICBR's considerations the Commission, alongside the Scottish Commission on Human Rights and the Equality and Human Rights Commission, advised that:

*the UK should retain its obligations under the European Convention on Human Rights in the form of the Human Rights Act 1998.*²⁵⁸

On the launch of the Report the Chief Commissioner stated:

We welcome the statement in the report that it does not wish its conclusions to be interpreted or used in such a way as to interfere in, or delay, the separate Northern Ireland Bill of Rights process.

*We note the UK Commission has said that it is a matter of regret that the devolved administration in Northern Ireland did not nominate Advisory Panel members as occurred in Scotland and in Wales. It will be recalled that the NIHRC has repeatedly drawn attention of the Office of the First and deputy First Minister to this gap.*²⁵⁹

A Charter of Rights for the island of Ireland

The Joint Committee of the NI Human Rights Commission and the Irish Human Rights Commission was mandated by the Belfast (Good Friday) Agreement 1998 to consider the possibility of A Charter of Rights for the island of Ireland. The Joint Committee presented its advice to the UK Government and the Government of Ireland on a Charter of Rights for the island of Ireland in June 2011.

In its 2012 annual statement the Commission noted the establishment of the North-South Parliamentary Forum and the potential for the Charter to form part of its work plan. This initiative has not happened in 2013. The Commission, together with the Irish Human Rights Commission, will continue to raise this matter in 2014.

Future of the National Human Rights Institution

The Miscellaneous Provisions (NI) Bill 2013 proposes an enabling clause for the possible future devolution of the functions of the Secretary of State for NI relating to the NI Human Rights Commission. In particular, it proposes to move the legal status of the Commission from an excepted matter under the control of the UK Government and Westminster Parliament to become a reserved matter. This change would mean that at some future date the responsibility for the Commission could be transferred to the devolved NI administration.

The content of this Bill was the subject of an Inquiry by the House of Commons NI Affairs Committee.²⁶⁰ The Commission advised the Committee that it should seek assurances from the UK Government that any new arrangement would preserve the Commission's A status

²⁵⁷ See press release 18 December 2012 <http://www.justice.gov.uk/news/press-releases/cbr/the-commission-on-a-bill-of-rights-report-a-uk-bill-of-rights-the-choice-before-us>

²⁵⁸ NIHRC 'Submission to the Commission on a Bill of Rights: A Second Consultation' 2012

²⁵⁹ NIHRC Press Release 'Chief Commissioner Responds to UK Bill of Rights Report' 18 December 2012

²⁶⁰ See Northern Ireland Affairs Committee Draft Northern Ireland (Miscellaneous Provisions) Bill Terms of Reference <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmniaf/1003/100301.htm>

under the UN Paris Principles and its ability to review the adequacy and effectiveness of law and practice relating to non-devolved matters, such as counter-terrorism and immigration.²⁶¹

The Commission further advised that in line with the Belgrade Principles, any possible future transfer of the functions of the Secretary of State should be to the NI Assembly.²⁶² The Committee in its report stated:

*We recognise the importance of the NIHRC's independence and accountability. We note that it has full participation rights at the UN Human Rights Council. The Government must ensure that any proposal that affects responsibility for NIHRC must not put at risk its accreditation and compliance with the Paris Principles..... We further recommend that, if responsibility for the NIHRC is devolved to the NI Assembly, that the NIHRC should still be able to retain responsibility for the scrutiny of non-devolved matters such as national security and terrorism. The NIHRC provides valuable scrutiny of policy and protects human rights, and no proposal should inhibit its effectiveness.*²⁶³

The Committee further recommended that prior to introduction of the legislation, clauses relating to the Commission should be subject to public consultation.²⁶⁴ The UK Government in its response to the Report did not agree with this recommendation but did commit to engaging in public consultation prior to any act of devolution.²⁶⁵

The UK Government accepted the recommendations relating to the preservation of the Commission's accreditation under the UN Paris Principles and the need to ensure the Commission retains its ability to address non-devolved matters. The detail of how and to whom any possible future devolution may take place is not contained in the Bill. This uncertainty is a matter of concern to the Commission.

261 NIHRC 'Submission to the Northern Ireland Affairs Committee Inquiry on the Draft Northern Ireland (Miscellaneous Provisions) Bill' March 2013

262 The Belgrade Principles were agreed at international expert level in February 2012, the conference organised by the Office of the High Commissioner for Human Rights and ICC was attended by experts from NIHRIs, Parliaments and Universities from ten jurisdictions including the United Kingdom.

263 Northern Ireland Affairs Committee 'Report Draft Northern Ireland (Miscellaneous Provisions) Bill' 25 March 2013 para 167 – 170

264 *Ibid*

265 Government Response to the Northern Ireland Affairs Committee Pre-Legislative Scrutiny Report on the draft Northern Ireland (Miscellaneous Provisions) Bill Presented to Parliament by the Secretary of State for Northern Ireland by Command of Her Majesty May 2013 Cm 8621 p. 14 – 16

Appendices

The appendices present relevant extracts from the findings of international human rights monitoring bodies that have examined UK Government and NI Executive compliance with international human rights obligations during 2013. It contains extracts from:

- Convention against Torture, Inhuman or Degrading Treatment or Punishment: concluding observations on the 5th periodic report of the UK;
- Convention on the Elimination of Discrimination against Women: concluding observations on the 7th periodic report of the UK.

Appendix A

Convention Against Torture, Inhuman or Degrading Treatment or Punishment: concluding observations on the 5th periodic report of the UK (6-31 May 2013)

Incorporation of the Convention in the domestic legal order

The Committee recommends that the State party incorporate all the provisions of the Convention against Torture in its legislation and raise awareness of its provisions among members of the judiciary and the public at large.

The Human Rights Act 1998

The State party should ensure that public statements or legislative changes such as the establishment of a Bill of Rights do not erode the level of constitutional protection afforded to the prohibition of torture, cruel, inhuman or degrading treatment or punishment currently provided by the Human Rights Act.

Extraterritoriality

The Committee calls upon the State party to publicly acknowledge that the Convention applies to all individuals who are subject to the State party's jurisdiction or control, including to its armed forces, military advisers, and other public servants deployed on operations abroad. Recalling its General Comment No. 2 (2008), the State party reminds the State party of its obligations to take effective measures to prevent acts of torture 'not only in its sovereign territory but also in any territory under its jurisdiction', including 'all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law'.

Ambiguities in the legislation

The State party should repeal Section 134(4) and 134(5) of the Criminal Justice Act 1988 and ensure that its legislation reflects the absolute prohibition of torture, in accordance with article 2, paragraph 2, of the Convention, which states that no exceptional circumstances whatsoever may be invoked as a justification of torture.

Consolidated Guidance to Intelligence Officers and Service Personnel

The Committee urges the State party to reword the guidance in order to avoid any ambiguity or potential misinterpretation. The State party should in particular eliminate the possibility of having recourse to assurances when there is a serious risk of torture or ill-treatment, and require that intelligence agencies and armed forces cease interviewing or seeking intelligence from detainees in the custody of foreign intelligence services in any case where there is a risk of torture or ill-treatment. The State party should also ensure that military personnel and intelligence services are trained with regard to the absolute prohibition of torture and ill-treatment.

Closed Material Procedures

The Committee recommends that all measures used to restrict or limit fair trial guarantees based on national security grounds be fully compliant with the Convention. The State party should in particular:

- (a) Address the concerns raised with regard to the Justice and Security Act 2013 by the Joint Committee on Human Rights and the Special Advocates;

- (b) Ensure that intelligence and other sensitive material be subject to possible disclosure if a Court determines that it contains evidence of human rights violations such as torture or cruel, inhuman or degrading treatment;
- (c) Ensure that the Justice and Security Act 2013 will not become an obstacle to accountability for State party involvement or complicity in torture, cruel inhuman or degrading treatment and will not adversely impact on the right of victims to obtain redress, remedy, and fair and adequate compensation.

Non-Jury trials in Northern Ireland

The Committee recommends that the State party take due consideration of the principles of necessity and proportionality when deciding the renewal of emergency powers in NI, and particularly non-jury trial provisions. It encourages the State party to continue moving towards security normalisation in NI and envisage alternative juror protection measures.

National Preventive Mechanism

The Committee recommends that the State party end the practice of seconding individuals working in places of deprivation of liberty to National Preventive Mechanism' bodies. It recommends that the State party continue to provide bodies constituting the National Preventive Mechanism with sufficient human, material and financial resources to discharge their prevention mandate independently and effectively.

Inquiries into allegations of torture overseas

The Committee recommends that the State party establish without further delay an inquiry on alleged acts of torture and other ill-treatment of detainees held overseas committed by or at the instigation of or with the consent or acquiescence of British official. It should ensure that the new inquiry is designed to satisfactorily address the shortcomings of the 'Detainee Inquiry' identified by a broad range of actors. In this regard, the Committee encourages the State party to give due consideration to the report of the UN Special Rapporteur on Torture on best practices for commissions of inquiry into allegations of this nature (A/HRC/22/52). The State party should ensure that all perpetrators of torture and ill treatment which would be identified in the context of the inquiry are duly prosecuted and punished appropriately, and that effective reparation, including adequate compensation, is granted to every victim. Furthermore, the Committee urges the State party to speedily publish the fullest extent possible of the interim report of the Detainee Inquiry.

Accountability for abuses in Iraq

The Committee urges the State party to take all necessary measures, including setting up a single, independent public inquiry, to investigate allegations of torture and cruel, inhuman or degrading treatment or punishment in Iraq from 2003 to 2009, establish responsibilities and ensure accountability. In accordance with the Committee's general comment No. 3 on implementation of article 14 by States parties, the State party should also ensure that all victims of torture, cruel, inhuman or degrading treatment obtain redress and are provided with an effective remedy and reparations, including restitution, fair and adequate financial compensations, measures of satisfaction and appropriate medical care and rehabilitation.

Appropriate penalties for torture

Recalling that penalties that are commensurate with the gravity of the crime of torture are indispensable in order to have a successful deterrent effect, the Committee urges the State party to ensure that torture or complicity in torture committed by State party's officials,

members of the security services or military personnel abroad are subjected to appropriate penalties, in accordance with the seriousness of the crime, in line with article 4 of the Convention.

Reliance on diplomatic assurances

The Committee calls on the state party to ensure that no individual, including persons suspected of terrorism, who are expelled, returned, extradited or deported, is exposed to the danger of torture or cruel, inhuman or degrading treatment or punishment. It urges the State party to refrain from seeking and relying on diplomatic assurances 'where there are substantial grounds for believing that [the person] would be in danger of being subjected to torture' (art. 3). The more widespread the practice of torture or cruel, inhuman or degrading treatment is, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. Therefore, the Committee considers that diplomatic assurances are unreliable and ineffective and should not be used as an instrument to modify the determination of the Convention.

Transfer of detainees to Afghanistan

The Committee recommends that the State party adopt a clear policy and ensure in practice that the transfer of detainees to another country is clearly prohibited when there are substantial grounds for believing that he or she would be in danger of being subjected to torture. It further recommends that the State party recognize that diplomatic assurances and monitoring arrangements will not be relied upon to justify transfers when such substantial risk of torture exists.

Deportations to Sri Lanka

The Committee recommends that the State party observes the safeguards ensuring respect for the principle of non-refoulement, including consideration of whether there are substantial grounds indicating that the asylum-seeker might be in danger of torture or ill-treatment upon deportation. The Committee calls upon the State party to submit situations covered by article 3 of the Convention to a thorough risk assessment, notably by taking into consideration evidence from Sri Lankans whose post removal torture claim were found credible, and revise its country guidance accordingly.

Shaker Aamer

The Committee urges the State party to consider all possible measures to ensure the prompt release and return to the United Kingdom of Shaker Aamer, who has been detained without charges for more than eleven years. In this context, the State party should follow-up on its June 2012 request to the Secretary of Defence of the United States of America to exercise a 'waiver', as contained within the National Defence Authorisation Act 2012, to enable to release of Shaker Aamer.

Universal Jurisdiction

The Committee recommends that the State party takes all necessary steps to effectively exercise the universal jurisdiction over persons allegedly responsible for acts of torture, including foreign perpetrators who are temporarily present in the United Kingdom. In addition, the Committee recommends that the State party fill the "impunity" gap identified by the Human Rights Joint Committee in 2009 (HL 153/HC 553) in adopting the draft legislation (Torture (Damages) No. 2), that would provide universal civil jurisdiction over some civil claims.

Transitional justice in Northern Ireland

The Committee recommends that the State party develop a comprehensive framework for transitional justice in NI and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators. In this context, the Committee is of the view that such a comprehensive approach, including the conduct of a public inquiry into the death of Patrick Finucane, would send a strong signal of its commitment to address past human rights violations impartially and transparently. The State party should also ensure that all victims of torture and ill-treatment are able to obtain adequate redress and reparation.

Historical Institutional Abuse Inquiry

The Committee recommends that the State party conduct prompt, independent and thorough investigations into all cases of institutional abuse that took place in NI between 1922 and 1995, including women over 18 who were detained in Magdalene Laundries and equivalent institutions in NI, and ensure that, where possible and appropriate, perpetrators are prosecuted and punished, and that all victims of abuse obtain redress and compensation, including the means for as full rehabilitation as possible, in accordance with the Committee's general comment No. 3 on implementation of article 14 by States parties.

Use of evidence obtained by torture

The Committee calls on the State party to ensure that, where an allegation that a statement was made under torture is raised, the burden of proof is on the State. In addition, the State party should never rely on intelligence material obtained from third countries through the use of torture or cruel, inhuman, or degrading treatment.

Electrical discharge weapons (Taser)

The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons, and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons, with a view to establishing a high threshold for their use, and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide detailed instructions and adequate training to law enforcement personnel entitled to use electric discharge weapons and to strictly monitor and supervise their use.

Age of criminal responsibility

The State party should raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards, as expressed in the General Comment No. 10 of the Committee on the Rights of the Child (paras. 32 and 33). The State party should ensure the full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

Restraint of children

The Committee reiterates the recommendation of the Committee on the Rights of the Child to ensure that restraint against children is used only as a last resort and exclusively to prevent

harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished (CRC/C/GBR/CO/4). The Committee also recommends that the State party ban the use of any technique designed to inflict pain on children.

Corporal punishment

The Committee recommends that the State party prohibits corporal punishment of children in all settings in Metropolitan territory, Crown Dependencies and Overseas Territories, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.

Immigration Detention

The Committee urges the State party to:

- (a) Ensure that detention is used only as a last resort in accordance with the requirements of international law and not for administrative convenience;
- (b) Take necessary measures to ensure that vulnerable people and torture survivors are not routed into the Detained Fast Track System, including by: i) reviewing the screening process for administrative detention of asylum-seekers upon entry; ii) lowering the evidential threshold for torture survivors; iii) conducting 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; and iv) amending the 2010 UK Border Agency Enforcement Instructions and Guidance, which allows for the detention of people with mental illness unless their mental illness is so serious it cannot be managed in detention;
- (c) Introduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention.

Detention conditions

The Committee urges the State party to strengthen its efforts and set concrete targets to reduce the high level of imprisonment and overcrowding, 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). It further recommends to speedily implement the reforms undertaken with a view to reducing reoffending rate. The State party should ensure that children with mental disabilities shall in no case be detained in police custody but directed to appropriate health institutions. Detainees who require psychiatric supervision and treatment should be provided with adequate accommodation and psychosocial support care. The Committee also recommends that the State party step up its efforts to prevent violence and self-harm in places of detention.

Women offenders

The Committee recommends that the State party commence without further delay the construction of the new custodial facility for women prisoners in NI and urgently implement its new strategy for female offenders in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). The Committee recommends to the State party to pay due attention to the recommendations of the Commission on Women Offenders (Scotland) and those contained in the 'Corston Report' (England and Wales), in particular ensuring effective diversion from the criminal justice system for petty non-violent offenders, increasing the use of community

sentences, and implementing changes to the prison regime to further reduce deaths and incidents of self-harm.

'Francis Inquiry' reports

The Committee calls upon the State party to act upon its commitment to implement the recommendations found in the Mid Staffordshire NHS Foundation Trust Public Inquiries' reports, and particularly to establish a structure of fundamental standards and measures of compliance in order to prevent ill-treatment of patients receiving health care services.

Declaration under article 22

The Committee recommends that the State party reconsiders its position and make the declarations envisaged under article 22 of the Convention, in order to recognize the competence of the Committee to receive and consider individual communications.

Data collection

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, as well as on means of redress, including compensation and rehabilitation, provided to the victims. It should also provide information on educational trainings and programmes, including interrogation techniques, provided to all officials, including law enforcement, security and prison officials.

Other issues

The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations related to (a) inquiries into allegations of torture overseas; (b) observing the safeguards ensuring respect for the principle of non-refoulement; (c) ensuring the prompt release and return to the UK of Shaker Aamer; and (d) adopting comprehensive measures of transitional justice in NI and conducting prompt, thorough and independent investigations, as contained in paragraphs 15, 19, 20, 21, and 23 above.;

The State party is invited to submit its next report, which will be the sixth periodic report, by 31 May 2017. The Committee invites the State party to agree, by 31 May 2014, to follow the optional reporting procedure in preparing its report. Under this procedure, the Committee would send the State party a list of issues prior to submission of the periodic report and the State party's replies to the list of issues would constitute, under article 19 of the Convention, its next periodic report.

Appendix B

Convention on the Elimination of Discrimination Against Women: concluding observations on the 7th periodic report of the UK (30 July 2013)

Parliaments

While reaffirming that the Government has the primary responsibility and is particularly accountable for the full implementation of the obligations of the State party under the Convention, the Committee stresses that the Convention is binding on all branches of government and invites the State party to encourage its parliaments, in line with their procedures and where appropriate, to take the necessary steps with regard to the implementation of the present concluding observations between now and the next reporting process under the Convention.

Reservations

The Committee reiterates its previous recommendation and urges the State party to withdraw and narrow current reservations. It also reiterates its position that some of the reservations have the character of interpretive declarations and may no longer be necessary. It further urges the State party to provide assistance to the Isle of Man and other territories in withdrawing some reservations.

Legal status of the Convention

The Committee reiterates its previous recommendations and urges the State party to continuously review its legislation with a view to incorporating all the provisions of the Convention therein.

Application of the Convention in the overseas territories and Crown dependencies

The Committee urges the State party to extend its ratification of the Convention to include all its territories, including Guernsey and Jersey.

Constitutional framework and implementation of the Convention

The Committee urges the State party to take advantage of the review of the Equality Duty to ensure that the gender equality component of the Duty is properly prescribed for public authorities, including the application of the principle of substantive equality. In this regard, the State party should consider issuing statutory guidelines on the Duty covering England, Scotland and Wales, which would provide uniform guidance. It further urges the State party to bring into force the provisions of the Equality Act relating to the introduction of a new public sector duty on socioeconomic inequalities; the recognition of multiple forms of discrimination; and the need to publicize information on pay disaggregated by gender.

The Committee recommends that the State party revise its legislation in NI to ensure that it affords protection to women on an equal footing with other women in the State party's Administrations. The State party should therefore recognize multiple discrimination and ensure that pay secrecy clauses are prohibited.

The Committee urges the State party to mitigate the impact of austerity measures on women and the services provided to women, especially women with disabilities and older women. It should also ensure that spending reviews continuously focus on measuring and balancing the impact of austerity measures on women's rights. It should further review the policy of commissioning services wherever this may undermine the provision of specialized services for women.

Legal aid and access to justice

The Committee urges the State party:

- (a) To ensure effective access by women, in particular women victims of violence, to courts and tribunals;
- (b) To continuously assess the impact of the reforms of legal aid on the protection of women's rights;
- (c) To protect women from informal community arbitration systems, especially those that violate their rights under the Convention.

The Committee urges the State party:

- (a) To extend the mandate of the Historical Institutional Abuse Inquiry to include women who entered the Magdalene laundries at the age of 18 years and above;
- (b) To provide adequate redress to all victims of abuse who were detained in the Magdalene laundries and similar institutions.

The Committee urges the State party:

- (a) To consider implementing the recommendations made by Lord Carloway regarding the removal of the corroboration requirement in criminal cases relating to sexual offences;
- (b) To extend the limitation period for filing civil claims involving sexual abuse, especially of girls, so that victims can still initiate proceedings when they are adults.

National machinery for the advancement of women

29. The Committee recommends that the State party ensure that the Government Equalities Office has a dedicated section for the coordination of gender equality matters in all parts of the State party. It reiterates its previous recommendation that the State party develop and adopt a unified, comprehensive and overarching national strategy for the implementation of the Convention throughout its territory. The State party should also assess the impact of the new approach to engaging with women's organizations and introduce measures to mitigate the negative impact on women's ability to engage adequately.

Temporary special measures

The Committee recommends that the State party evaluate the impact of the Voluntary Search Code and consider using more prescriptive temporary special measures to improve the representation of women in the public and private sectors, in particular on company boards, and in political life.

Stereotypes

The Committee recommends that the State party:

- (a) Continue to engage with the media to eliminate stereotypical imaging of women and their objectification in the media, especially in advertising;
- (b) Implement the recommendations of the Leveson Inquiry, including those that seek to give powers to a regulator to intervene in matters of discriminatory reporting.

Violence against women

Recalling its general recommendation No. 19, on violence against women, and its previous recommendation, the Committee urges the State party:

- (a) To ratify the Istanbul Convention and criminalize forced marriage;
- (b) To increase its efforts to protect women, including black and ethnic minority women, against all forms of violence, including domestic violence, and so-called "honour killings";
- (c) To continue public campaigns to raise awareness of all forms of violence against women, including black and ethnic minority women;
- (d) To step up efforts to train police officers in order to eliminate prejudices concerning the credibility of victims of domestic violence;
- (e) To revise its legislation to prohibit corporal punishment of children in the home.

Female genital mutilation

The Committee reiterates that the State party should ensure the full implementation of its legislation on female genital mutilation. The Committee recommends that the State party ensure that the Crown Prosecution Service is provided with the support necessary to effectively prosecute perpetrators of this offence, including by supporting the action plan on improving prosecutions for female genital mutilation released by the Director of Public Prosecutions in November 2012.

Trafficking and exploitation of prostitution

The Committee urges the State party:

- (a) To adopt a comprehensive national framework to combat trafficking in women and girls;
- (b) To identify any weaknesses in the National Referral Mechanism and ensure that victims of trafficking are properly identified and adequately supported and protected.

The Committee urges the State party to revise its legislation by shifting the burden of proof from the prosecution to the purchaser of sexual services. The Committee recommends that, once the prosecution proves that the child was over 13 years of age and under 18 years of age, and that the accused purchased sexual services from the child, the purchaser should be required to establish that he or she did not reasonably believe that the child was under 18 years of age.

Participation in political and public life

The Committee calls upon the State party:

- (a) To continue to take specific targeted measures to improve the representation of women, in particular black and ethnic minority women and women with disabilities, in Parliament and the judiciary;
- (b) To ensure the participation of women in the post-conflict process in NI, in line with Security Council resolution 1325 (2000).

Education

The Committee recommends that the State party:

- (a) Consider introducing mandatory age-appropriate education on sexual and reproductive rights in school curricula, including issues such as gender relations and responsible sexual behaviour, targeting adolescent girls in particular;
- (b) Enhance measures to prevent, punish and eradicate all forms of violence against women and girls, including bullying and expressions of racist sentiments, in educational institutions;
- (c) Step up career guidance activities to encourage girls to pursue nontraditional paths and improve the gender awareness of teaching personnel at all levels of the education system;
- (d) Take coordinated measures to encourage increased participation by girls in science, technology, engineering and mathematics, and in apprenticeships;
- (e) Take appropriate measures to collect data on women in positions at all levels of academic institutions and improve the representation of women at the upper echelons.

Employment and economic empowerment

The Committee recommends that the State party:

- (a) Step up its efforts to promote the use of flexible working arrangements and introduce shared parental leave to encourage men to participate equally in childcare responsibilities;
- (b) Continue to take proactive and specific measures to eliminate occupational segregation and to narrow the gender pay gap;
- (c) Create greater opportunities for women with disabilities to gain access to employment;
- (d) Assess the effectiveness of the voluntary reporting initiative under the Think, Act, Report framework, so as to ensure transparency of salaries in enterprises;
- (e) Ensure access by women to justice in employment-related cases, including those pertaining to discrimination on the grounds of pregnancy and motherhood.

Recalling its previous recommendation, the Committee urges the State party to provide affordable childcare and to mitigate the impact of the proposed reforms of the welfare system on the costs of childcare for low-income families and the increased burden of care that this places on women.

Health

Recalling its previous recommendation, the Committee reiterates that, in line with its general recommendation No. 24, on women and health, and the Beijing Declaration and Platform for Action, the State party should expedite the amendment of the anti-abortion law in NI with a view to decriminalizing abortion. The State party should also ensure that legal abortion covers not only cases of threats to the life of a pregnant woman but also other circumstances, such as threats to her health and in cases of rape, incest and serious malformation of the foetus.

The Committee urges the State party:

- (a) To strengthen the implementation of programmes and policies aimed at providing effective access to health care for women, especially women with disabilities, older women, women seeking asylum and Traveller women;
- (b) To pay special attention to the health needs of women with disabilities, ensuring their access to prenatal care and all reproductive health services;
- (c) To provide equal access to reproductive treatment for all women in NI, without discrimination.

Women in prison

Recalling its previous recommendation, the Committee urges the State party:

- (a) To vigorously pursue efforts to implement the recommendations made in the Corston report, including those contained in the report of the House of Commons Justice Committee published on 15 July 2013;
- (b) To continue to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences;
- (c) To improve the provision of mental health care in all prisons;
- (d) To introduce measures aimed at tackling the root causes of the overrepresentation of black and ethnic minority women in prison;
- (e) To ensure that the authorities, including prison staff, are able to recognize women who may have been trafficked so as to avoid their criminalization, and to provide adequate services for their integration into society.

Disadvantaged groups of women

Recalling its previous recommendation, the Committee recommends that the State party:

- (a) Extend the concession under the “no recourse to public funds” policy to all women who are subjected to gender-based violence and exploitation;
- (b) Provide access to justice and health care to all women with insecure immigration status, including asylum seekers, until their return to their countries of origin.

The Committee urges the State party:

- (a) To continue to provide training on gender-sensitive approaches in the treatment of victims of violence to officers who are in charge of immigration and asylum applications;
- (b) To take targeted measures to facilitate the access of black and ethnic minority women to the labour market in order to alleviate their concentration in low-paid jobs.

The Committee, recalling its previous recommendation, recommends that the State party:

- (a) Step up its efforts to eliminate discrimination against ethnic minority women and improve access to social services, including health care, education and employment;
- (b) Provide adequate sites designated for use by Traveller women and members of their families.

Socioeconomic benefits

The Committee urges the State party to adopt measures to prevent the potential exploitation of the Universal Credit system by an abusive male spouse.

Economic consequences of divorce

The Committee urges the State party to expedite efforts to undertake reforms with a view to protecting the property rights of women upon the breakdown of marriage or of de facto unions, in line with general recommendation No. 29, on the economic consequences of marriage, family relations and their dissolution, and article 16 of the Convention.

Beijing Declaration and Platform for Action

The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.

Millennium Development Goals and the post-2015 development framework

The Committee calls for the integration of a gender perspective, in accordance with the provisions of the Convention, into all efforts aimed at the achievement of the Millennium Development Goals and into the post-2015 development framework.

Follow-up to concluding observations

The Committee requests the State party to provide written information on the steps taken to implement the recommendations contained in paragraphs 23 and 51 above within one and two years, respectively.

Preparation of the next report

The Committee invites the State party to submit its eighth periodic report in July 2017.

The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents.

Protecting and promoting your rights

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ISBN 978-1-909532-97-7

