



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

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

**List of Issues**

**January 2020**

# Table of Contents

<b>1.0 Introduction.....</b>	<b>6</b>
<b>2.0 Article 1 – Self-determination .....</b>	<b>7</b>
National Human Rights Institution.....	7
Human Rights Act .....	8
Bill of Rights for Northern Ireland .....	9
Membership of the EU .....	9
<b>3.0 Article 2 – Non-discrimination .....</b>	<b>11</b>
Equality protections .....	11
Intersectional discrimination .....	11
Equal marriage and civil partnerships .....	11
Age discrimination .....	12
Sexual orientation.....	13
Hate crimes .....	13
Racial equality.....	14
Sectarianism .....	15
Intersex .....	16
<b>4.0 Article 3 and SDG Goal No 5 – Gender equality .....</b>	<b>16</b>
Gender Equality Strategy .....	17
Participation in public life .....	17
Childcare .....	18
Gender recognition .....	19
UN Security Council Resolution 1325 .....	20
<b>5.0 Article 6 – Right to life .....</b>	<b>21</b>
Conflict-related investigations: Death .....	21
Statute of Limitations .....	23
Inquiries Act 2005 .....	24

Pat Finucane .....	25
<b>6.0 Article 7 – Torture.....</b>	<b>26</b>
Conflict-related investigations: Torture .....	26
Victims payments .....	26
Rule of law: Non-State actors.....	27
Abuse in health and social care settings.....	28
Female genital mutilation (FGM) .....	29
Intersex genital mutilation .....	30
Domestic and sexual violence and abuse .....	30
Termination of pregnancy .....	35
Historical abuse .....	36
Identifying torture .....	38
<b>7.0 Article 8 – Freedom from slavery .....</b>	<b>39</b>
Child sexual exploitation .....	39
Children missing from care .....	39
Modern slavery .....	40
<b>8.0 Articles 9, 10 and 11 – Liberty and security of person .....</b>	<b>40</b>
Definition of terrorism .....	41
Powers of arrest .....	41
Fine default.....	41
Imprisonment of children with adults .....	42
Remand of children .....	42
Prison conditions .....	43
<b>9.0 Article 12 – Freedom of movement .....</b>	<b>45</b>
Racial profiling .....	45
<b>10.0 Article 13 – Non-refoulement.....</b>	<b>45</b>
Refugees .....	45

<b>11.0 Articles 14, 15, 16 and 26 – Fair trial rights.....</b>	<b>46</b>
Access to justice .....	46
Age of criminal responsibility.....	47
Avoidable delay .....	47
Closed material procedures.....	48
Miscarriage of justice .....	49
Non-jury trials.....	49
 <b>12.0 Article 17 – Right to family, home and correspondence .....</b>	<b>50</b>
Access to financial support.....	50
Biometric data.....	50
Stop and search .....	52
 <b>13.0 Article 18 – Right to freedom of thought, conscience and religion .....</b>	<b>53</b>
Blasphemy .....	53
 <b>14.0 Article 19 – Right to freedom of expression .....</b>	<b>53</b>
Defamation .....	53
Journalists’ Freedom of expression.....	54
 <b>15.0 Article 21 – Right to peaceful assembly .....</b>	<b>54</b>
Parades and protests.....	55
 <b>16.0 Article 23 – Right to marry .....</b>	<b>55</b>
Child, early and forced marriage .....	56
 <b>17.0 Article 24 – Children’s rights.....</b>	<b>56</b>
Physical punishment of children .....	56
Children in armed forces.....	57
Anonymity .....	58

**18.0 Article 25 – Right to vote and to be elected .....58**

Participation of women in political life ..... 58

## 1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC) is one of three A-status National Human Rights Institutions in the United Kingdom (UK). Established in 1999, the NIHRC reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI).<sup>1</sup> This submission considers the protection of human rights in NI in the context of the International Covenant on Civil and Political Rights (ICCPR). In this submission, the NIHRC proposes questions that the Committee may wish to ask the UK.
- 1.2 In January 2017, the NI Executive and Assembly collapsed. Previous political talks had failed to re-establish the devolved government. On 10 January 2020, a deal was reached and the devolved institutions have been restored.<sup>2</sup> Nonetheless, there has been little progress on a number of issues raised by the Human Rights Committee's 2015 Concluding Observations on the UK.<sup>3</sup> In the absence of elected ministers, government departments have been run by civil servants who are unable to make major policy decisions or introduce legislation. The NI Civil Service head has spoken of the "slow decay and stagnation" in public services.<sup>4</sup> The NIHRC Chief Commissioner has warned of the "stark implications of the political impasse... with ongoing violations of human rights needing immediate remedy".<sup>5</sup> The agreement reached contains ambitious aims alongside some concrete proposals.<sup>6</sup> Restoration of the NI Assembly and Executive is does not guarantee that the required ICCPR recommended actions will be implemented expeditiously, if at all.

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<sup>1</sup> The NIHRC was established pursuant to Section 69(1) the Northern Ireland Act 1998.

<sup>2</sup> The deal is between the UK Government, Government of Ireland and the five main political parties in Northern Ireland (Democratic Unionist Party, Sinn Féin, Social Democratic and Labour Party, Ulster Unionist Party and Alliance). The deal includes a commitment to develop a new Programme for Government. The NI Civil Service's Outcomes Delivery Plan, which is based on the 2016 draft Programme for Government is to "provide the basis for... [a NI] Executive work programme of priority actions to be taken in the coming months". See NI Office, 'New Decade, New Approach' (NIO, 2020).

<sup>3</sup> CCPR/C/GBR/CO/7, UN Human Rights Committee, 'Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland', August 2015.

<sup>4</sup> 'David Sterling: No ministers could become new normal', *BBC News*, 13 February 2019.

<sup>5</sup> NI Human Rights Commission, 'The 2018 Annual Statement, Human Rights in Northern Ireland' (NIHRC, 2018), at 8.

<sup>6</sup> NI Office, 'New Decade, New Approach' (NIO, 2020).

- 1.3 The Committee may wish to ask the UK to acknowledge that, in line with Article 27 of the Vienna Convention on the Law of Treaties, the recent absence of devolved institutions or delays in implementing human rights obligations due to re-establishing the devolved institutions are not a basis for the UK failing to meet its international treaty obligations in NI.**

## **2.0 Article 1 – Self-determination**

### **National Human Rights Institution**

- 2.1 In 2015, the Committee recommended that the UK provides adequate funding for the NIHRC to discharge its mandate effectively and independently, in full compliance with the Paris Principles.<sup>7</sup> The Global Alliance of National Human Rights Institutions has also called for the NI Office to provide NIHRC with sufficient funding to carry out its mandate effectively.<sup>8</sup>
- 2.2 This situation remains unaddressed – NIHRC’s budget has been reduced by one third over the last decade from £1,702,000 in 2009/10 to £1,142,500 in 2019/20.
- 2.3 In 2018, the UK Supreme Court ruled that the NIHRC does not have the relevant standing to bring a legal challenge to primary legislation without a victim.<sup>9</sup> This impacts the NIHRC’s ability to act in accordance with the UN Paris Principles.<sup>10</sup>
- 2.4 The European Union (Withdrawal Agreement) Bill 2019 contains provisions that will restore the NIHRC’s powers.<sup>11</sup> The restoration of

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

<sup>8</sup> Global Alliance of National Human Rights Institutions, ‘Sub Committee on Accreditation Report’ (GANHRI, 2016), at para 3.8.

<sup>9</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion)* [2018] UKSC 27, at para 73.

<sup>10</sup> The current situation, whereby the NIHRC cannot act without a victim, has been described as a “serious error” by the House of Commons Women and Equalities Committee. The Women and Equalities Committee noted, “the situation of a woman or girl who became pregnant as a result of rape or incest having to pursue a court case highlights precisely why it should not depend on an individual victim to take a case to court. This issue of the NIHRC’s standing needs rectifying urgently so that victims do not have to take a case”. See House of Commons Women and Equalities Committee, ‘HC 2595 10th Special Report - Abortion Law in Northern Ireland: Government Response to the Committee’s Eighth Report of Session 2017–19’ (WEC, 2019), at 4.

<sup>11</sup> European Union (Withdrawal Agreement) Bill 2019, Schedule 3.

the NIHRC's powers is contingent on the Bill receiving Royal Assent. This is likely to happen in January 2020.

**2.5 The Committee may wish to ask the UK what effective measures it is taking to ensure NIHRC is adequately resourced to fulfil its statutory functions?**

**Human Rights Act**

2.6 In 2015, the Committee expressed concerns about a plan to repeal the Human Rights Act 1998 and replace it with a UK Bill of Rights.<sup>12</sup>

2.7 In 2017, the UK Government stated that it:

remains committed to reforming the domestic human rights framework. We will consider further the Bill of Rights once we know the arrangements for the EU exit and consult fully on our proposals in the full knowledge of the new constitutional landscape that will create.<sup>13</sup>

2.8 In 2019, the Parliamentary Under-Secretary of State for Justice indicated that the UK Government has not ruled out repealing the Human Rights Act after Brexit.<sup>14</sup>

2.9 On Armistice Day 2019, the Prime Minister pledged to reform the legislation so that it does not apply to issues predating 2000.<sup>15</sup> In the Queen's Speech, the UK Government announced it will establish a Constitution, Rights and Democracy Commission.<sup>16</sup>

**2.10 The Committee may wish to ask the UK what plans, if any, it has to reform the Human Rights Act and seek reassurance**

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<sup>12</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 5.

<sup>13</sup> Ministry of Justice, 'Universal Periodic Review, UK, British Overseas Territories and Crown Dependencies, National Report' (MoJ, 2017), at 6.

<sup>14</sup> The letter stated, "our manifesto committed to not repealing or replacing the Human Rights Act while the process of EU exit is underway. It is right that we wait until the process of leaving the EU concludes before considering the matter further". See Letter from Edward Argar, Parliamentary Under-Secretary of State for Justice, to Lord Boswell, Chair of House of Lords EU Committee, 4 January 2019.

<sup>15</sup> Conservatives, 'Conservatives in general election manifesto pledge to end 'unfair trials' for Northern Ireland veterans', 13 November 2019.

<sup>16</sup> Gov.UK, 'Press Release: Queen's Speech December 2019', 19 December 2019.



**that any plans do not regress the promotion and protection of human rights in NI?**

## **Bill of Rights for Northern Ireland**

2.11 In 2015, the Committee recommended that the UK expedite the process of the Bill of Rights for NI.<sup>17</sup> There is no substantive progress on this recommendation.

2.12 A Bill of Rights for NI is the “missing piece in the jigsaw” of the implementation of the Belfast (Good Friday) Agreement 1998<sup>18</sup> and is “a way of preventing a diminution of rights in the Brexit process”.<sup>19</sup> The recent deal commits to establishing an Ad Hoc Assembly Committee to consider the creation of a Bill of Rights in line with the Belfast (Good Friday) Agreement.<sup>20</sup>

2.13 The UK Government has committed to not retaining the EU Fundamental Charter of Rights as a 'Convention plus' approach, while maintaining the principles of the Charter albeit not in a justiciable form. The loss of the EU Fundamental Charter of Rights means some rights additional to the ECHR will be lost.<sup>21</sup>

**2.14 The Committee may wish to ask the UK what progress has been made to:**

- **implement a Bill of Rights for NI, including developing consensus among political parties?**
- **ensure the rights contained within the EU Charter of Fundamental Rights will be comprehensively maintained and the impact of any loss of rights monitored in NI?**

## **Membership of the EU**

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<sup>17</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 5.

<sup>18</sup> Colin Murray *et al*, 'Discussion Paper on Brexit' (IHREC and NIHRC, 2018), at vii and xii.

<sup>19</sup> Colm Kelpie, 'UK could breach Good Friday Agreement with U-turn over human rights, says Flanagan', *Irish Independent*, 14 February 2017.

<sup>20</sup> NI Office, 'New Decade, New Approach' (NIO, 2020), at Part 2, para 28.

<sup>21</sup> The Belfast (Good Friday) Agreement envisages that a Bill of Rights for NI would have a 'Convention plus' approach.

2.15 The UK is due to leave the EU on 31 January 2020.

2.16 The Protocol on Ireland and NI<sup>22</sup> commits to a non-diminution of rights due to the UK leaving the EU, in the context of the rights, safeguards and equality of opportunity section in the Good Friday (Belfast) Agreement 1998 and EU law on non-discrimination.<sup>23</sup> There is a commitment to implement this through a “dedicated mechanism”, which is to include the NIHRC. In addition, the Protocols set out six EU law directives where the non-diminution commitment would be put into effect.

**2.17 The Committee may wish to ask the UK what effective measures it is taking to ensure that:**

- **any future trade deal with the EU ensures the protection of rights in NI, including in circumstances where an agreed trade deal is not reached?**
- **domestic legislation in NI, at a minimum, keeps pace with progress on rights in the EU?**
- **the dedicated mechanism is established without delay with effective powers and resources?**
- **members of the public in NI have access to individual redress in respect of the no diminution commitment?**
- **the loss of funding from the EU does not lead to gaps in support and services in NI, particularly those for the most vulnerable and marginalised?**
- **there is effective independent judicial oversight equivalent to the Court of Justice of the EU and measures for justice co-operation (including continued Council of**

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<sup>22</sup> TF50(2018) 55 Commission to EU 27, 'Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community', 14 November 2018; HM Government, 'Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community', 19 October 2019.

<sup>23</sup> Article 4(1), Protocol on Ireland and Northern Ireland of the Draft Withdrawal Agreement 2018; Article 2(1), Protocol on Ireland and Northern Ireland of the Withdrawal Agreement 2019.

**Europe membership) in place in NI to enable maximum participation in all EU tools?**

## **3.0 Article 2 – Non-discrimination**

### **Equality protections**

3.1 Unlike the rest of the UK, NI does not have a single legislative instrument to consolidate equality protection. A piecemeal approach has been adopted to updating the current framework.<sup>24</sup>

**3.2 The Committee may wish to ask the UK what effective measures it is taking to prioritise and enable political consensus towards the introduction of a Single Equality Act for NI?**

### **Intersectional discrimination**

3.3 NI's equality legislation does not recognise intersectional discrimination, which particularly affects minority women.<sup>25</sup>

**3.4 The Committee may wish to ask the UK what effective measures it is taking to ensure that legislation providing for intersectional multiple discrimination is introduced in NI?**

### **Equal marriage and civil partnerships**

3.5 In 2015, the Committee welcomed legislative measures to provide for same-sex marriage in England and Wales.<sup>26</sup> There is similar provision in Scotland and Ireland.<sup>27</sup>

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<sup>24</sup> The Single Equality Act 2010. In NI, equality legislation includes Employment Equality (Age) Regulations (NI) 2006; Disability Discrimination Act 1995; Special Educational Needs & Disability (NI) Order 2005; Equal Pay Act (NI) 1970; Sex Discrimination (NI) Order 1976; Race Relations (NI) Order 1997; Fair Employment & Treatment (NI) Order 1998; Employment Equality (Sexual Orientation) Regulations (NI) 2003; Equality Act (Sexual Orientation) Regulations (NI) 2006; Northern Ireland Act 1998.

<sup>25</sup> In particular, disabled women, migrant women, older women and LGBTI women.

<sup>26</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 3.

<sup>27</sup> The relevant legislation is the Marriage (Same Sex Couples) Act 2013 (England and Wales), Marriage and Civil Partnership (Scotland) Act 2014 and Constitution (Marriage Equality) Act 2015 (Ireland).

- 3.6 In NI, the NI Office has introduced regulations that commenced on 13 January 2020, which provide for the extension of civil marriage to same sex couples and civil partnerships to opposite sex couples.<sup>28</sup>
- 3.7 Extending these regulations to religious same-sex marriages and the right to convert a civil partnership to marriage (and vice versa) are to be consulted on,<sup>29</sup> consequently leading to a delay in implementing the respective regulations and disparity with the rest of the UK. Love Equality has launched legal proceedings challenging this delay.<sup>30</sup>
- 3.8 The Committee may wish to ask the UK what effective measures it is taking to ensure that religious same-sex marriage and the right to convert civil partnerships to marriage (or vice versa) are expeditiously introduced in NI?**

## Age discrimination

- 3.9 There is currently no prohibition on discrimination in the provision of goods, facilities and services in NI based on age. In 2015, the NI Executive Office published a consultation document proposing to extend age discrimination legislation.<sup>31</sup> The NIHRC welcomed the initiative, but expressed concern that the proposals excluded children under 16 years of age.<sup>32</sup> Ministers responded that the aim was to eventually extend protection to those under 16 years.<sup>33</sup> The recent deal commits the NI Executive to bring forward an Age Goods, Facilities and Services Bill.<sup>34</sup>

<sup>28</sup> Section 8, NI (Executive Formation etc) Act 2019. The Marriage (Same-sex Couples) and (Civil Partnership) (Opposite-sex Couples) (Northern Ireland) Regulations 2019.

<sup>29</sup> Section 8, NI (Executive Formation etc) Act 2019.

<sup>30</sup> Owen Bowcott, 'Couples to sue over NI same-sex marriage delays', *The Guardian*, 14 November 2019.

<sup>31</sup> Office of First Minister and Deputy First Minister, 'Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services) Consultation Document' (OFMDFM, 2015).

<sup>32</sup> NI Human Rights Commission, 'Response to consultation on Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services)' (NIHRC, 2015). See also NI Commission for Children and Young People, 'Don't Exclude Us! Strengthening Protection for Children and Young people when Accessing Goods, Facilities and Services' (NICCY, 2013); NI NGO Alternative Report, 'Submission to the UN Committee on the Rights of the Child for Consideration During the Committee's Examination of the UK of Great Britain and NI Government Report, Children's Law Centre and Save the Children NI' (CLC, 2015), at 14.

<sup>33</sup> Hansard, 'Committee for the Office of the First Minister and Deputy First Minister: Age Discrimination Legislation: OFMDFM Junior Ministers and Officials', 15 April 2015.

<sup>34</sup> The basis for this Bill is to ensure "no one is discriminated against because of their age". See NI Office, 'New Decade, New Approach' (NIO, 2020), at Appendix I, para xxii.

3.10 In 2016, the UN CRC Committee recommended that the UK consider the possibility of expanding legislation to provide protection of all children under 18 years of age against discrimination on the grounds of their age.<sup>35</sup>

**3.11 The Committee may wish to ask the UK what progress is being made to ensure protections against age discrimination in the provision of goods, facilities and services in NI?**

## **Sexual orientation**

3.12 In 2014, there was a public consultation on the development of a Sexual Orientation strategy, but it was never implemented<sup>36</sup> The recent deal outlines that the new “Programme for Government could be underpinned by key supporting strategies, including... sexual orientation strategy”.<sup>37</sup>

3.13 In 2018, the UK Supreme Court ruled that the refusal of a bakery to make a cake with a slogan supporting extension of civil marriage to same sex couples was not discriminatory.<sup>38</sup> The claimant has made an application to the ECt.HR on the grounds that the Supreme Court failed to give appropriate weight to his ECHR rights.<sup>39</sup>

**3.14 The Committee may wish to ask the UK what effective measures it is taking to ensure that a robust sexual orientation strategy and action plan for NI is promptly published and implemented?**

## **Hate crimes**

3.15 In 2018/19, 2,459 hate motivated incidents and 1,613 hate crimes were recorded.<sup>40</sup> The number of hate crimes recorded in this same

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<sup>35</sup> CRC/C/GBR/CO/5, ‘UN Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 22.

<sup>36</sup> Office of the First Minister and Deputy First Minister, ‘Developing a Sexual Orientation Strategy - Consultation Document and Questionnaire’ (OFMdfM, 2014).

<sup>37</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020), at Annex D, para 4.6.2.8

<sup>38</sup> *Lee v Ashers Baking Company and Others* [2018] UKSC 49.

<sup>39</sup> ‘Ashers ‘gay cake’ row referred to European Court’, *BBC News*, 15 August 2019.

<sup>40</sup> There are six hate motivated categories that are recorded in NI – racist, homophobic, sectarian, transphobic, disability and faith/religion. See Police Service NI, ‘Trends in Hate Motivated Incidents and Crimes Recorded by the Police in NI 2004/05 to 2018/19’ (PSNI, 2019), at Table 1.1.

period increased from the previous year across racism (15 per cent increase), homophobia (23 per cent increase), sectarianism (8 per cent increase), and disability (10 per cent), with the exception of faith/religion (43 per cent decrease) and transphobic (29 per cent decrease).<sup>41</sup> Additionally, the number of hate motivated incidents recorded increased across racism (10 per cent increase) and homophobia (5 per cent increase), excluding sectarian (2 per cent decrease), faith/religion (38 per cent decrease), disability (1 per cent decrease) and transphobia (13 per cent decrease).<sup>42</sup> Racist motivation accounts for 46 per cent of hate motivated incidents recorded and 44 per cent of hate crimes recorded.<sup>43</sup>

3.16 In June 2019, the Department of Justice launched a review of hate crime legislation chaired by Judge Marrinan. The review will consider if existing hate crime law is effective, including enhanced sentencing. The review will also consider whether statutory aggravated offences should be introduced.<sup>44</sup> A consultation document was issued in January 2020.<sup>45</sup> The final report is due by August 2020.

**3.17 The Committee may wish to ask the UK what effective measures it is taking to ensure the review outcomes that prevent, prohibit and prosecute hate motivated incidents and crimes will be implemented in NI, and that effective support for victims in NI will be provided?**

## Racial equality

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<sup>41</sup> In 2018/19, there were 702 racist hate crimes recorded (compared to 609 in 2017/18), 201 homophobic hate crimes recorded (compared to 163 in 2017/18), 622 sectarian hate crimes recorded (compared to 576 in 2017/18), 23 faith/religion hate crimes recorded (compared to 40 in 2017/18), 53 disability hate crimes recorded (compared to 48 in 2017/18), and 12 transphobic hate crimes recorded (compared to 17 in 2017/18). See Police Service NI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in NI 2004/05 to 2018/19' (PSNI, 2019), at Table 1.1.

<sup>42</sup> In 2018/19, there were 1,124 racist hate incidents recorded (compared to 1,025 in 2017/18), 281 homophobic hate incidents recorded (compared to 267 in 2017/18), 865 sectarian hate incidents recorded (compared to 879 in 2017/18), 56 faith/religion hate incidents recorded (compared to 90 in 2017/18), 100 disability hate incidents recorded (compared to 101 in 2017/18), and 33 transphobic hate incidents recorded (compared to 38 in 2017/18). See Police Service NI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in NI 2004/05 to 2018/19' (PSNI, 2019), at Table 1.1.

<sup>43</sup> Police Service NI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in NI 2004/05 to 2018/19' (PSNI, 2019), at Table 1.1.

<sup>44</sup> Department of Justice, 'Hate Crime Legislation Review – Terms of Reference', 6 June 2019.

<sup>45</sup> Hate Crime Review NI 'Hate Crime Legislation in NI An Independent Review: Consultation Paper' (Hate Crime Review NI, 2020).

- 3.18 In 2015, the Committee recommended that the UK strengthened its efforts to address racism and xenophobia.<sup>46</sup> The UN CERD Committee and the Special Rapporteur on contemporary forms of racism have also called for the adoption of comprehensive legislation prohibiting racial discrimination in NI.<sup>47</sup>
- 3.19 Following the enactment of the Equality Act 2010,<sup>48</sup> “a significant gap has opened up between the protections offered in Great Britain and NI”.<sup>49</sup>
- 3.20 The Racial Equality Strategy 2015-2025 committed to reviewing the current Race Relations (NI) Order 1997.<sup>50</sup> This review is due to be completed in May 2020. It will take into account UN treaty body recommendations and develop policy options for the incoming Minister.
- 3.21 The Racial Equality Strategy 2015-2025 also committed to ethnic monitoring.<sup>51</sup> A study determining the feasibility of introducing ethnic monitoring to the public sector in NI has not been published.
- 3.22 The Committee may wish to ask the UK how it is ensuring the findings of the review of the Race Relations (NI) Order 1997 and ethnic monitoring are comprehensively implemented in NI, including ensuring data collected on racial equality is consistent, extensive and disaggregated?**

## Sectarianism

- 3.23 Flags, cultural symbols and emblems continue to be a source of dispute in NI. The Stormont House Agreement provided for the establishment of a Commission on Flags, Identity, Culture and Tradition. The Commission was established in June 2016, with its

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<sup>46</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 10.

<sup>47</sup> A/HRC/41/54/Add.2, ‘Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Visit to the United Kingdom of Great Britain and Northern Ireland’, 27 May 2019, at para 74(f); CERD/C/GBR/CO/21-23, ‘UN CERD Committee Concluding Observations on the Combined Twenty-first to Twenty-third Periodic Reports of the UK of Great Britain and NI’, 3 October 2016, at para 8(c).

<sup>48</sup> This Act does not extend to NI.

<sup>49</sup> The Executive Office, ‘Racial Equality Strategy 2015-2025’ (TEO, 2015), at para 5.9.

<sup>50</sup> Ibid, at para 5.11.

<sup>51</sup> Ibid, at para 11.1.

first report due in December 2017. To date, it has not published any reports.<sup>52</sup>

3.24 The 'Together: Building a United Community' strategy contains a commitment to develop a statutory definition of 'sectarianism' and 'good relations'. There has been no substantive progress on this.<sup>53</sup>

**3.25 The Committee may wish to ask the UK what effective measures it is taking to:**

- **ensure the NI Commission on Flags, Identity, Culture and Tradition effectively completes its work?**
- **introduce statutory definitions of 'sectarianism' and 'good relations' in NI?**

## **Intersex**

3.26 The law in NI does not provide for the recognition of intersex persons. There is no provision in the UK to register the birth of a child with unspecified or indeterminate sex.

**3.27 The Committee may wish to ask the UK what effective measures it is taking to ensure legal recognition of intersex individuals in NI, including through the expeditious provision of birth certificates, civil registration documents, identity papers, passports and other official personal documentation in a way that respects an individual's autonomy?**

## **4.0 Article 3 and SDG Goal No 5 – Gender equality**

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<sup>52</sup> One of the Chairs has indicated that the breadth of issues to be considered is too big and that the process has been frustrated by the lack of a NI Assembly. Jayne McCormack, 'Dr Dominic Bryan: NI flags commission's brief 'too big'', *BBC News NI*, 27 June 2019.

<sup>53</sup> In 2018, there was a public consultation on the draft NI (Stormont House Agreement) Bill, which proposed the establishment of an Implementation and Reconciliation Group. This group is intended to promote reconciliation and anti-sectarianism. However, neither the draft Bill nor consultation document contained a definition of sectarianism. See NI Office, 'Consultation Paper, Addressing the Legacy of NI's Past' (NIO, 2018); NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past', (NIHRC, 2018).



## Gender Equality Strategy

- 4.1 In 2015, the Committee referred to the NI Gender Equality Strategy.<sup>54</sup> This strategy expired in 2016 and has not been renewed.
- 4.2 In December 2016, it was proposed that gender equality would be subsumed within a broader, gender-neutral Social Strategy, which risks ignoring the intricacies and gender-sensitive elements of this issue. The recent deal states “the Programme for Government could be underpinned by key supporting strategies, including... [a] Gender Strategy”.<sup>55</sup>
- 4.3 The Committee may wish to ask the UK what effective measures it is taking to ensure that a robust up-to-date and gender-specific equality strategy and action plan is introduced and implemented in NI?**

## Participation in public life

- 4.4 In 2015, the Committee expressed concerns about the low proportion of women in the civil service and judiciary in NI.<sup>56</sup>
- 4.5 In 2019, 50.5 per cent employed by NI Civil Service were women, an increase from 47.9 per cent in 2000.<sup>57</sup> However, only 38.2 per cent of NI senior civil servants are women, an increase from 11.3 per cent in 2000.<sup>58</sup> Currently, three of the nine (33 per cent) NI permanent secretaries were women, the first women appointments to such roles.
- 4.6 In 2019, two (25 per cent) NI High Court judges, one (33 per cent) Coroner, and no NI Justices of Appeal were women.<sup>59</sup> In 2018, 27.1 per cent of all judicial office holders in the NI courts were women.

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<sup>54</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 17 August 2015, at para 12.

<sup>55</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020), at Annex D, para 4.6.2.7.

<sup>56</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 17 August 2015, at para 12.

<sup>57</sup> NI Statistics and Research Agency, ‘Equality statistics for Northern Ireland Civil Service’ (NISRA, 2019), at 6.

<sup>58</sup> Ibid.

<sup>59</sup> Judiciary NI, ‘Judiciary of NI’. Available at: <https://judiciaryni.uk/about-judiciary/judicial-members>

This is significantly lower than 45.7 per cent of members of the legal profession that are women and eligible to apply for judicial office.<sup>60</sup> For non-legal positions in NI Tribunals, 49 per cent were women.<sup>61</sup> Of NI Lay Magistrates, 60.4 per cent were women.<sup>62</sup>

**4.7 The Committee may wish to ask the UK what effective measures it is taking to effectively address the barriers hindering NI women’s access to high positions in the civil service and in the judiciary?**

## **Childcare**

4.8 Unlike the rest of the UK, there is no statutory duty to provide childcare in NI.<sup>63</sup> In 2015, a new Childcare Strategy was consulted on, but there has been no updated strategy implemented since 1992.<sup>64</sup> The inability to access affordable childcare is a barrier to women exercising their civil and political rights. The recent deal commits the NI Executive to publish a Childcare Strategy.<sup>65</sup>

**4.9 The Committee may wish to ask the UK what effective measures it is taking to ensure:**

- **the implementation of a Childcare Strategy and action plan that recognises non-traditional working patterns and provides for affordable and accessible childcare facilities and/or arrangements in NI?**
- **a statutory duty to provide adequate and effectively resourced childcare provision in NI, in line with the rest of the UK?**

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<sup>60</sup> NI Statistics and Research Agency, 'The Judiciary in NI: 2018 Equality Monitoring Report' (NISRA, 2019), at Section 2.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> In England and Wales, qualifying children can receive up to 30 hours of free childcare over 38 weeks of the year; in Scotland, qualifying children can receive up to 600 hours (approximately 16 hours per week) over a year. There is no comparable provision on NI. There is a statutory duty to secure childcare provision free of charge for qualifying children in England (Childcare Act 2016), Scotland (Children and Young People (Scotland) Act 2014) and Wales (Childcare Act 2006). There is no comparable duty in NI.

<sup>64</sup> NI Executive Office, 'Delivering Social Change Through Childcare: A Ten Year Strategy for Affordable and Integrated Childcare 2015-2025' (NIEO, 2015).

<sup>65</sup> The recent deal also commits the NI Executive to identify resources to deliver extended, affordable and high quality provision of early education and care initiatives for families with children aged between three and four years. See NI Office, 'New Decade, New Approach' (NIO, 2020), at 9.

## Gender recognition

- 4.10 Eligibility criteria<sup>66</sup> for a Gender Recognition Certificate<sup>67</sup> requires an applicant is diagnosed with gender dysphoria. Transgender representatives consider the self-declaration model more appropriate.<sup>68</sup>
- 4.11 Consultations on possible amendments to the gender recognition process have been conducted in England, Wales and Scotland, but not NI.<sup>69</sup> There are concerns that any change to the process for the rest of the UK, without making provision to accommodate applicants from NI seeking gender recognition, could in effect deny transgender individuals in NI from accessing a legal gender recognition process.
- 4.12 Transgender representatives reported that reasonable adjustments are not made for applicants with mental disabilities<sup>70</sup> and that assumptions based on the clothing of applicants contribute to a panel's decision.<sup>71</sup>

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<sup>66</sup> Other criteria includes requiring that the applicant is over 18, has lived in the acquired gender for more than two years and intends to do so permanently.

<sup>67</sup> The relevant law is the Gender Recognition Act 2004. A panel considers each application. If the application is successful, the panel will issue a full or interim Gender Recognition Certificate. If the successful applicant's birth was originally registered in NI, the panel will inform the Registrar General for NI when it issues the Gender Recognition Certificate and the Registrar will contact the successful applicant to arrange re-registration of their birth. Once agreed, a new registration showing the successful applicant's new name and gender will be created and a replacement birth certificate (both long and short) will be available showing the new name and acquired gender. A short birth certificate will be issued free of charge. If a successful applicant is adopted, a new extract from the Adopted Children Register will be issued. If an applicant is unsuccessful, the panel will inform them in writing with their reasons. An unsuccessful applicant has a right of appeal. See NI Direct, 'Gender Recognition'. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>

<sup>68</sup> Transgender civil society representatives highlighted that the self-declaration model is a more appropriate approach, than the mental health model that is currently used in the UK. The self-declaration model places the decision regarding treatment choice with the patient alone, following appropriate education and advisement about the treatment in question. See Roundtable discussion with civil society representatives, November 2018.

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

<sup>70</sup> Transgender civil society representatives reported that the Gender Identity Service does not provide reasonable adjustments for transgender women and girls with mental health issues or learning disabilities. See Roundtable discussion with civil society representatives, November 2018.

<sup>71</sup> The eligibility criteria requires that an applicant has lived in the acquired gender for more than two years and intends to do so permanently. Transgender civil society representatives reported that judgments will be made on the basis of what a transgender woman or girl is wearing. For example, if they wear male clothing this is used as evidence to show that they have not lived in the acquired gender for more than two years. See Roundtable discussion with civil society representatives, November 2018.

4.13 Application fees are high and the process is “bureaucratic, stressful, intrusive and demeaning”.<sup>72</sup>

**4.14 The Committee may wish to ask the UK what effective measures it is taking to:**

- **amend the gender recognition process in NI to reflect the self-declaration model?**
- **ensure the gender recognition process in NI is affordable, respectful and accessible, including effectively training staff?**

## **UN Security Council Resolution 1325**

4.15 Paramilitary activity remains prevalent throughout NI. Since 1 April 2019, “there has been a worrying increase in the frequency of paramilitary style attacks”.<sup>73</sup>

4.16 In practice, this intimidation (which can include threats to life) is preventing women from accessing funding, to engage with peace initiatives and to be empowered.<sup>74</sup>

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<sup>72</sup> In December 2018, the application fee for a Gender Recognition Certificate was £140. Assistance may be available to individuals on certain benefits or a low income. Within NI, the waiting list to transition is three years and the assessment for eligibility can take between six and 18 months. It was reported that doctors in NI have refused to provide the required medical report to prove gender dysphoria due to their own personal beliefs. There was one doctor in NI that would provide the required medical report for free on the National Health Service, but since 2018 has no longer been able to due to time constraints. As a result, individuals must pay privately to receive the required report, which costs £4,000. Transgender civil society representatives highlighted that barriers in the process can affect mental health and cause poverty, homelessness and trauma. It was also raised that if transgender children are not provided with hormone blockers early that it can lead to them being forced into major surgery in adulthood. It was reported that hormone blockers are provided for children in NI that are deemed not ready for puberty, but are not provided for transgender children. The Gender Equalities Office recently consulted on how to reform the Gender Recognition Act to address these issues. The proposed reform is limited to England and Wales. There are no plans to consider this issue in the context of NI. See NI Direct, ‘Gender Recognition’. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>; Focus: The Identity Trust, ‘Response to the Government’s Consultation on the Reform of the Gender Recognition Act 2004’ (Focus, 2018), at para 3.1; Roundtable discussion with civil society representatives, November 2018; Gov.UK, ‘Reform of the Gender Recognition Act 2004’. Available at: <https://www.gov.uk/government/consultations/reform-of-the-gender-recognition-act-2004>

<sup>73</sup> Independent Reporting Commission, ‘Second Report’ (IRC, 2019), at para 2.15.

<sup>74</sup> Research from the Institute for Conflict Research has found that there is a “distinct lack of legitimate leadership within many NI communities which is filled by paramilitary groups”. Research from the Women’s Support Network found that there is “endemic paramilitary ‘bullying’ and intimidation at the level of the community”. The NIHRC’s engagement with civil society organisations as part of the CEDAW process indicated that for women, paramilitary intimidation means women’s community groups feel unable to access funding and to engage with particular peacebuilding initiatives. It was highlighted that there is a historical and ongoing fear of paramilitaries (including paramilitaries from within their own communities) that is causing women to feel threatened, which is preventing the empowerment of women in NI. It was raised that women feel displaced by paramilitaries taking leadership roles. It was reported that this is closely linked to drug feuds and domestic violence. See Caroline Walsh, ‘Consortium for the Regional Support for Women in Disadvantaged and Rural

4.17 The draft NI (Stormont House Agreement) Bill does not specifically provide for women's involvement. Furthermore, Ireland's National Action Plan on Women, Peace and Security makes specific provision for NI,<sup>75</sup> but the UK's National Action Plan does not.<sup>76</sup>

4.18 Academics have developed Gender Principles for Dealing with the Legacy of the Past in NI.<sup>77</sup>

**4.19 The Committee may wish to ask the UK what effective measures it is taking to:**

- **ensure and comprehensively monitor the participation of NI women in peace building and political processes, including effectively implementing UNSCR 1325, Legacy Gender Integration Group's gender principles and the Stormont House Agreement?**
- **address paramilitary intimidation as a barrier to women's participation in NI?**

## **5.0 Article 6 – Right to life**

### **Conflict-related investigations: Death**

5.1 In 2015, the Committee recommended that the UK take urgent steps to ensure independent, impartial, prompt and effective

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Areas: Policy Prioritisation for Disadvantaged Women – Women's Perspectives' (Women's Support Network, 2017), at 34; Claire Pierson and Katy Radford, 'Peacebuilding and the Women's Sector in NI: An Overview of Reports and Programmes (Institute for Conflict Research, 2016), at 31; Margaret Ward, 'Excluded and silenced: Women in Northern Ireland after the peace process', *Open Democracy*, 12 June 2013; Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018; National Crime Agency, 'Press Release: Paramilitary Crime Taskforce launched in NI', 27 September 2017; Emma Vardy, 'Adverts bid to end paramilitary-style attacks in NI', BBC News, 18 October 2018; Department of Justice, 'Executive Programme for Tackling Paramilitary Activity and Organised Crime'. Available at: <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>

<sup>75</sup> Government of Ireland, 'Women, Peace and Security: Ireland's Third National Action Plan for the Implementation of UNSCR 1325 and Related Resolutions 2019-2024' (Government of Ireland, 2019)

<sup>76</sup> HM Government, 'UK National Action Plan on Women, Peace and Security 2018-2022' (HM Government, 2018).

<sup>77</sup> These principles have been developed from research conducted by the Legacy Gender Integration Group. These principles provide guidance on how to embed a gendered lens and sustained inclusion of women on dealing with the past in NI. See Legacy Gender Integration Group, 'Gender Principles for Dealing with the Legacy of the Past' (LGIG, 2015).

investigations into conflict-related human rights violations in NI and to identify, prosecute and punish the perpetrators and provide appropriate remedies to victims.<sup>78</sup>

- 5.2 The Stormont House Agreement 2014 commits to a number of mechanisms aimed at dealing with the past, including a Historical Investigations Unit.<sup>79</sup> In May 2018, the NI Office consulted on the draft NI (Stormont House Agreement) Bill, which aimed to establish these mechanisms.
- 5.3 The draft provisions are not fully human rights compliant in law and practice, specifically the limited remit, resourcing and independence of the proposed Historical Investigations Unit, and the use of closed material procedures.<sup>80</sup>
- 5.4 In July 2019, a summary of the 17,000 consultation responses was published. The NI Office reaffirmed its commitment to implementing the Stormont House Agreement and noted that the overarching message from the majority of respondents was that the “current system needs to be reformed”.<sup>81</sup> The recent deal commits the UK Government, within 100 days, to “publish and introduce legislation in the UK Parliament to implement the Stormont House Agreement, to address NI legacy issues”.<sup>82</sup> Thus, the UK continues to fail to implement ECt.HR judgements stipulating measures to achieve effective investigations into ‘troubles-related’ deaths since 2001.<sup>83</sup> This failure is itself resulting in further findings of violations against the UK.<sup>84</sup>

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<sup>78</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 17 August 2015, at para 8.

<sup>79</sup> The Historical Investigations Unit will take forward investigations into over 1,200 outstanding Troubles-related deaths.

<sup>80</sup> NI Human Rights Commission, ‘Submission to NIO’s Consultation on Addressing the Legacy of NI’s Past’ (NIHRC, 2018).

<sup>81</sup> NI Office, ‘Addressing the Legacy of Northern Ireland’s Past: Analysis of the Consultation Responses’, (NIO, 2019), at 4.

<sup>82</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020), at Annex A, para 16.

<sup>83</sup> The Council of Europe Committee of Ministers has expressed deep regret that the implementation of the judgments has not occurred. In March 2019, the Committee of Ministers reiterated that the existing mechanisms for conducting investigations into legacy cases required to implement the present judgments are not working effectively and a new approach is required. The current system is not delivering for victims, their families and for wider society. See CoE Committee of Ministers, ‘McKerr Group v UK (Application No 28883/95) – Supervision of the Execution of the Court’s Judgments’, 1259th Meeting, 7-8 June 2016.

<sup>84</sup> *Hemsworth Collette and Michael v UK* (2013) ECHR 683.

## 5.5 The Committee may wish to ask the UK what effective measures it is taking to ensure:

- **implementation of the Stormont House Agreement is promptly and effectively implemented in NI, in full compliance with human rights law?**
- **prompt implementation of ECt.HR judgements stipulating measures to achieve effective investigations into 'Troubles-related' deaths?**

## Statute of Limitations

5.6 In 2019, the UN CAT Committee recommended that the UK Government refrain from enacting amnesties or statutes of limitations for torture or ill-treatment.<sup>85</sup>

5.7 There have been numerous calls for the introduction of a statute of limitations to protect from prosecution members of the Armed Forces who served in NI.<sup>86</sup> These calls have been supported by a previous Secretary of State for NI<sup>87</sup> and the current Prime Minister.<sup>88</sup> The Queen's Speech in December 2019 also referenced

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<sup>85</sup> CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 6 May 2013, at para 41.

<sup>86</sup> In April 2017, the Defence Select Committee recommended the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces. In November 2017, Richard Benyon MP introduced a Private Members' Bill, the Armed Forces (Statute of Limitations) Bill, which would create statutory limitations on court proceedings against current and former members of the Armed Forces for certain alleged offences committed during military operations or similar circumstances. However, this Bill failed to complete its legislative passage in the parliamentary session 2017-19 and therefore cannot progress further. In July 2018, the Secretary of State for Defence announced that a dedicated team within the Ministry of Defence had been established to consider whether serving and former personnel are receiving adequate legal protection and certainty. In May 2019, the Secretary of State for Defence stated that her Department would share with the Secretary of State for NI its considerable experience of the practical difficulties of investigating historical allegations from Iraq and Afghanistan and the unintended consequences that resulted from it, and the impact this has had on Armed Forces personnel. Veterans' voices need to continue to be heard and the lessons of Iraq Historical Allegations Team need to be learned. See House of Commons Defence Select Committee, 'Investigations into Fatalities in NI involving British Military Personnel: Seventh Report of Session 2016-17 – HC 1064', 26 April 2017; Hansard, 'Armed Forces Veterans: Historic Allegations Oral Answers to Questions – Defence – in the House of Commons', 9 July 2018; 'Legal Protections and Support for Armed Forces Personnel and Veterans: Written Statement – HCWS1575: Penny Mordaunt', 21 May 2019.

<sup>87</sup> Hansard, 'The Secretary of State for Northern Ireland (Karen Bradley) Point of Order – Volume 655, Col 946', 6 March 2019.

<sup>88</sup> Conservatives, 'Press Release: Conservatives in general election manifesto pledge to end 'unfair trials' for Northern Ireland veterans', 13 November 2019.



bringing “forward proposals to tackle vexatious claims that undermine our Armed Forces”.<sup>89</sup>

- 5.8 The issue of a statute of limitations was not included in the draft NI (Stormont House Agreement) Bill consultation. However, it was raised by a number of respondents, the majority of whom agreed that a statute of limitations would be inappropriate for ‘Troubles-related’ matters.<sup>90</sup>

**5.9 The Committee may wish to ask the UK what progress is being made to ensure that amnesties, including a statute of limitations, for gross human rights violations and abuses are prohibited within NI?**

## **Inquiries Act 2005**

- 5.10 In 2015, the Committee recommended that the UK reconsider its position on the broad mandate of government ministers to suppress the publication of inquiry reports under the Inquiries Act 2005.<sup>91</sup> There has been no substantive progress on this issue.
- 5.11 In 2017, the UK intended to bring forward legislation to address some of the recommendations issued by the House of Lords Select Committee on the Inquiries Act.<sup>92</sup> In May 2018, the National Audit Office expressed concerns that the Cabinet Office and the Ministry of Justice have not fulfilled their commitment to improve the efficiency and effectiveness of inquiries.<sup>93</sup> In June 2018, the Cabinet Office intended to draft and publish guidelines on the Inquiries Act 2005.<sup>94</sup> In 2019, the House of Lords Committee Office confirmed

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<sup>89</sup> The speech continued that the UK Government committed to continuing “to seek better ways of dealing with legacy issues that provide better outcomes for victims and survivors”, though no further detail was provided. See Gov.UK, ‘Press Release: Queen’s Speech December 2019’, 19 December 2019.

<sup>90</sup> NI Office, ‘Addressing the Legacy of NI’s Past: Analysis of the Consultation Responses’, (NIO, 2019), at 4.

<sup>91</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 8.

<sup>92</sup> House of Lords Select Committee on the Inquiries Act 2005, ‘Report of Session 2013–14, The Inquiries Act 2005: Post legislative Scrutiny’ (HoL, 2014).

<sup>93</sup> Commitments included updating and publishing its inquiry guidance for Inquiry Chairs, secretaries and sponsor departments; reviewing the Inquiry Rules relating to the Representations Process which allows individuals criticised in inquiries to review and comment on extracts from the report; and requesting and sharing lessons learned reports from inquiries. None of these commitments have been fulfilled. See Ministry of Justice, ‘Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005’ (MoJ, 2014).

<sup>94</sup> Parliamentary Business, ‘Inquiries Act 2005 – House of Lords, Vol 792’, 28 June 2018.



that these actions were not completed and no legislative developments were underway.<sup>95</sup>

**5.12 The Committee may wish to ask the UK what effective measures it is taking to promptly review and introduce the necessary legislative amendments in NI to guarantee the independence of inquiries established under the Inquiries Act 2005?**

**Pat Finucane**

5.13 In 2015, the Committee recommended that an official inquiry should be launched into the murder of Patrick Finucane.<sup>96</sup> This remains undelivered.

5.14 In 2018, the UK Supreme Court unanimously made a declaration that there has not been an Article 2 compliant inquiry into the death of Mr Finucane.<sup>97</sup> It identified the lack of ability to compel the attendance of or cross-examine witnesses on the veracity of their evidence as limitations of the De Silva review.<sup>98</sup> The UK Supreme Court did not prescribe the form of an Article 2 compliant inquiry, noting that “it is for the State to decide... what form of investigation should take place”.<sup>99</sup>

5.15 The UK has not set out how it will proceed following the judgment. As a result, the Finucane family has commenced further legal proceedings.<sup>100</sup>

**5.16 The Committee may wish to ask the UK what effective measures it is taking to promptly conduct an Article 2 right to life compliant investigation into the death of Patrick Finucane, reflecting the UK Supreme Court judgment?**

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<sup>95</sup> Email correspondence from the House of Lords Committee Office to the NI Human Rights Commission, 25 July 2019.

<sup>96</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 17 August 2015, at para 8.

<sup>97</sup> *In the matter of an application by Geraldine Finucane for Judicial Review (NI)* [2017] UKSC58.

<sup>98</sup> *In the Matter of an Application by Geraldine Finucane for Judicial Review (NI)* [2019] UKSC 7.

<sup>99</sup> *Ibid*, at para 153.

<sup>100</sup> Julian O’Neill, ‘Pat Finucane: Family to launch legal action to public inquiry’, *BBC News*, 26 September 2019.

## 6.0 Article 7 – Torture

### Conflict-related investigations: Torture

- 6.1 The UN Special Rapporteur on the Promotion of Truth recognises that the focus on fatalities means that “persons physically or psychologically injured as a result of life threatening attacks, torture or ill-treatment, including sexual violence, are excluded from historical investigations. The majority of violations and abuses relating to the Troubles therefore remain largely unaddressed”.<sup>101</sup>
- 6.2 The draft NI (Stormont House Agreement) Bill does not provide for the investigation of non-fatal conflict-related human rights violations.
- 6.3 The Committee may wish to ask the UK what effective measures it is taking to promptly develop and implement a mechanism to provide effective investigation into allegations of torture, inhuman and degrading treatment in NI?**

### Victims payments

- 6.4 The Secretary of State for NI is required to make regulations before end of January 2020 that come into force before end of May 2020, which “establish a scheme under the law of NI which provides for one or more payments to be made to, or in respect of, a person who has sustained an injury as a result of a Troubles-related injury”.<sup>102</sup>
- 6.5 In November 2019, the proposed Victims Payment Scheme, which is narrow in scope, was consulted on.<sup>103</sup> The UK Government confirmed the regulations are on target.<sup>104</sup> In December 2019, the head of the NI Civil Service confirmed that the application process should open at the end of March 2020.

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<sup>101</sup> A/HRC/34/62/Add.1, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI’, 17 November 2016, at para 39.

<sup>102</sup> Sections 10(1) and 10(2), NI (Executive Formation etc) Act 2019.

<sup>103</sup> Letter from NI Human Rights Commission to NI Office, 26 November 2019.

<sup>104</sup> NI Office, ‘Report Pursuant to Section 3(5) of the NI (Executive Formation etc) Act 2019: 18 December 2019’ (NIO, 2019), at 6.

**6.6 The Committee may wish to ask the UK what effective measures it is taking to ensure that victims outside the NI Victims Payment Scheme's remit are effectively remedied and all victims are effectively and sensitively supported?**

**Rule of law: Non-State actors**

6.7 In 2018/19, two security-related deaths, 59 paramilitary style assaults (including three children), 38 shooting incidents, 15 bombing incidents and 19 paramilitary-style shootings were recorded.<sup>105</sup>

6.8 In December 2019, the Police Service NI's Chief Constable, Simon Byrne, stated that paramilitary-style attacks and intimidation conducted by Republican, Loyalist and organised criminal groups "remain a significant issue in many communities in NI".<sup>106</sup>

6.9 In 2016, the NI Executive introduced an action plan on tackling paramilitary activity.<sup>107</sup>

6.10 In November 2019, the Independent Reporting Commission reported that:

although there has been a downward trend in paramilitary violence over the last ten years, the number of deaths linked to paramilitary organisations and the number of paramilitary style attacks carried out between October 2018 and September 2019 increased. The situation, therefore, remains serious and concerning.<sup>108</sup>

6.11 Ending paramilitarism is "immeasurably more difficult" due to the ongoing political vacuum and Brexit.<sup>109</sup> The recent deal states

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<sup>105</sup> Police Service NI, 'Police Recorded Security Statistics: 1 April 2018 to 31 March 2019' (PSNI, May 2019).

<sup>106</sup> Michael McHugh, 'Paramilitary assaults increase to 60', *Irish News*, 19 December 2019.

<sup>107</sup> NI Executive, 'Tackling Paramilitary Activity, Criminality and Organised crime – Executive Action Plan' (NIEO, 2016).

<sup>108</sup> Independent Reporting Commission, 'HC 131 Second Report' (ICR, 2019), at 8.

<sup>109</sup> *Ibid.*

“ending the harm done by paramilitarism will be a priority in the new Programme for Government”.<sup>110</sup>

**6.12 The Committee may wish to ask the UK what effective measures it is taking to promptly and effectively address paramilitary style assaults in NI, in particular those perpetrated against children?**

**Abuse in health and social care settings**

6.13 The Mental Capacity (NI) Act 2016, section 267, makes it an offence to ill-treat, or wilfully neglect a person who lacks capacity. This provision has not been commenced.

6.14 There are plans to develop adult safeguarding legislation to reflect developments in England and Wales,<sup>111</sup> but it requires Ministerial approval.<sup>112</sup> NI remains the only part of the UK without such legislation.<sup>113</sup>

6.15 In 2018, the Commissioner for Older People NI published its investigation report on Dunmurry Manor care home,<sup>114</sup> found evidence of physical and sexual assaults and multiple instances of inhuman and degrading treatment.<sup>115</sup> Allegations of physical and mental abuse at Muckamore Abbey Hospital also became public. The use of a seclusion room at the hospital, which provides inpatient care for persons with severe learning disabilities, raised concerns about deprivation of liberty.<sup>116</sup>

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<sup>110</sup> NI Office, 'New Decade, New Approach' (NIO, 2020), at 9.

<sup>111</sup> The Criminal Justice and Courts Act 2015 creates two new offences in England and Wales, following the identification of a lacuna in the law. The Department of Health (England and Wales) considered "a situation could arise where two patients, one with full capacity and one without, are being subjected to the same type of conduct, by the same person with the same intent, but a prosecution for ill-treatment or wilful neglect could only be brought in respect of the patient without capacity. Clearly, this is a situation we would want to avoid". See Department of Health, 'New Offence of Ill-treatment or Wilful Neglect: Consultation Document', (DoH, 2014), at para 15.

<sup>112</sup> Meeting between Department of Health officials and NI Human Rights Commission, 21 January 2019.

<sup>113</sup> ITV news, 'Adult safeguarding in NI 'not fit for purpose', 27 November 2019.

<sup>114</sup> This report was initiated following concerns of the standard of care and safety for residents with dementia.

<sup>115</sup> Commissioner for Older People NI, 'Home Truths: A Report on the Commissioner's Investigation into Dunmurry Manor Care Home' (COPNI, 2018).

<sup>116</sup> The Belfast Health and Social Care Trust initiated a serious adverse incident investigation, the report of which remains confidential. The Department of Health NI has indicated, "action is urgently needed by the HSC system as a whole in response to the recommendations of the Serious Adverse Incident (SAI) review". There are ongoing investigations by the Police Service of NI in relation to allegations of physical and mental abuse. The Belfast Health and Social Care Trust is also conducting an investigation, through which 19 staff members have now been suspended. See Department of Health NI, 'Press Release: Permanent Secretary apologises to

## **6.16 The Committee may wish to ask the UK what effective measures it is taking to:**

- **commence and effectively implement the Mental Capacity (NI) Act 2016 without further delay?**
- **promptly introduce adult safeguarding legislation in NI that makes it an offence for a care worker to ill treat or wilfully neglect the individual they are caring for?**
- **effectively investigate, address and remedy abuses in health care settings within NI, including effectively supporting victims?**

## **Female genital mutilation (FGM)**

6.17 FGM is an offence in NI, but statistics are lacking.<sup>117</sup> The NI Maternity Information System now records FGM identified during pregnancy and childbirth, but only a small number of cases have been reported.<sup>118</sup>

6.18 It is thought most FGM procedures take place outside NI. A Guardian Project<sup>119</sup> and Operation Limelight<sup>120</sup> have been established in other parts of the UK to tackle such instances.

## **6.19 The Committee may wish to ask the UK what effective measures it is taking to:**

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Muckamore families', 17 December 2018; 'Muckamore: Health chief Richard Pengelly 'shocked and appalled'', BBC News, 16 Jan 2019.

<sup>117</sup> FGM is illegal in the UK (including NI) under the FGM Act 2003. The Serious Crimes Act 2015 provides for FGM Protection Orders.

<sup>118</sup> The National Society for the Prevention of Cruelty against Children is working with the Safeguarding Board NI's Female Genital Mutilation Sub-group to develop statistics and data collection on female genital mutilation in NI. In July 2018, the BBC reported that a freedom of information request to the Belfast Trust recorded that between April 2017 and January 2018, 17 victims of female genital mutilation presented themselves to the Belfast Trust. See Safeguarding Board NI, Committees and Sub-groups'. Available at: <http://www.safeguardingni.org/committeessub-groups>; 'Seventeen women with FGM attended Belfast Hospital', BBC News, 25 July 2018.

<sup>119</sup> The Manchester Guardian Project is a pilot across Greater Manchester to coordinate care and support for girls and young women (up to 21 years old) affected by or at risk of female genital mutilation. It draws from the knowledge of specialist female genital mutilation organisations to provide a bridge between professional services and potential victims, and address the gap in support and service provision for young girls around female genital mutilation. See Manchester Safeguarding Board, 'The Guardian Project', (MSB, 2017).

<sup>120</sup> Safeguarding Hub, 'Female Genital Mutilation - Operation Limelight'. Available at: <https://safeguardinghub.co.uk/female-genital-mutilation-operation-limelight/>

- **adopt and implement a FGM Action Plan for NI, including systematically collecting, publishing and effectively monitoring data on FGM in NI?**
- **ensure specialised, accessible support for victims or potential victims of FGM in NI is sufficiently and promptly available and adequately funded?**
- **introduce initiatives, such as the Guardian Project and Operation Limelight, to NI?**

## **Intersex genital mutilation**

6.20 In 2016, the UN CRC Committee recommended that, in the UK, “no one is subjected to unnecessary medical or surgical treatment during infancy or childhood”.<sup>121</sup> In 2017, the UN CRPD Committee recommended the UK “repeal all types of legislation, regulations and practices allowing any form of forced intervention or surgery, and ensure that the right to free, prior and informed consent to treatment is upheld”.<sup>122</sup>

6.21 Civil society representatives are concerned about non-consensual medical intervention for intersex children.<sup>123</sup> There is a lack of intersex-specific policy or statistics regarding this in NI.<sup>124</sup>

**6.22 The Committee may wish to ask the UK what effective measures it is taking to protect NI intersex children’s right to autonomy and bodily integrity and that all medical interventions in NI have informed consent?**

## **Domestic and sexual violence and abuse**

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<sup>121</sup> CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 12 July 2016, at para 47.

<sup>122</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding observation on the Initial Report of the United Kingdom of Great Britain and Northern Ireland’, 3 October 2017, at para 41.

<sup>123</sup> Roundtable discussion with civil society representatives, November 2018.

<sup>124</sup> Ibid.

- 6.23 In 2015, the Committee recommended that NI introduce as a matter of priority domestic violence protection orders as envisaged in the new Justice Bill.<sup>125</sup> The orders have not been commenced.
- 6.24 Domestic violence and abuse in NI is significantly underreported.<sup>126</sup> Nonetheless, in 2018/19, domestic abuse incidents and crimes in NI represented the highest 12-month period recorded since such statistics were first collated.<sup>127</sup>
- 6.25 A Domestic Abuse (NI) Bill was being developed, but could not progress without a functioning devolved government.<sup>128</sup> In its absence, the UK Parliament's Domestic Abuse Bill aimed to introduce the offence of coercive and controlling behaviour to NI.<sup>129</sup> Progress of this Bill was prevented by the general election.<sup>130</sup> Plans to introduce Domestic Violence Protection Notices and Orders<sup>131</sup> require legislative change, which cannot happen without a

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<sup>125</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 13.

<sup>126</sup> Department of Justice, 'Press Release: Over 80 domestic violence and abuse incidents every day in NI - working together we can help stop it', 4 July 2018.

<sup>127</sup> There were 31,682 domestic abuse incidents recorded in 2018/19 (an increase of 51 per cent since 2004/05). There were 16,182 domestic abuse crimes recorded in 2018/19 (an increase of 68 per cent since 2004/05). During 2018/19, 69 per cent of all domestic abuse crime victims were women and 31 per cent were male. During this same period, there has been increasing proportions of 0-19 year old (22 per cent) and 50 years and older (18 per cent) experiencing domestic abuse, particularly in relation to victims under the age of 15 (14 per cent). Of all offenders dealt with by police during 2018/19 in connection with domestic abuse crimes that resulted in an outcome, 86 per cent of perpetrators were male and 12 per cent were women. The majority of offenders (94 per cent) were aged 18 and over. See Police Service NI, 'Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 and 2018/19: Annual Bulletin', (DoJ, 2019).

<sup>128</sup> This Bill is being developed by the Department of Justice. It aims to introduce a coercive behaviour offence, which captures patterns of psychological abuse, violence, and/or coercion of a partner, ex-partner or close family member. It also includes a statutory aggravation of domestic abuse, which may attract enhanced sentencing for other offences. In the interim, the Attorney General for NI issued guidance in April 2018 that provides a definition of coercive behaviour with the aim of criminal justice organisations in NI exercising "their respective functions diligently in order to prevent, investigate and prosecute acts of stalking and domestic abuse". See Attorney General for NI, 'No 13 Human Rights Guidance for the Police Service of NI, the Public Prosecution Service, the Probation Board for NI and the NI Courts and Tribunals Service: Domestic Abuse and Stalking' (AGNI, 2018).

<sup>129</sup> In addition to the coercive control offence, the Bill provides for extra territoriality and measures to reduce the potential for further victimisation. See Parliament UK, 'Domestic Abuse Bill 2017-19 to 2019'. Available at: <https://services.parliament.uk/Bills/2019-19/domesticabuse.html>

<sup>130</sup> In October 2019, it was stated that the Bill would be carried over to the 2019-2020 session and would continue its progress through the UK Parliament from the start of the next session (after the December 2019 election). In November 2019, this was changed to a statement that "the Bill failed to complete its passage through [the UK] Parliament before dissolution. This means the Bill will make no further progress". See Parliament UK, 'Domestic Abuse Bill 2017-19 to 2019'. Available at: <https://services.parliament.uk/Bills/2019-19/domesticabuse.html>

<sup>131</sup> A Protection Notice is an emergency non-molestation and eviction notice, which can be issued to a perpetrator by the police when attending a domestic abuse incident. It is effective from the point of issue, and can be issued without the victim's consent. Within 48 hours of a Protection Notice being served, the police can apply to the Magistrates' Court for a Protection Order. This can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. See COR-1076-2017, 'Permanent Secretary of Department of Justice: Letter from Department of Justice to NIHR', 22 September 2017; COR-0021-2018, 'Permanent Secretary of Department of Justice: Letter from Department of Justice to NIHR', 15 March 2018.



functioning devolved government. The UK has committed to ratifying the Istanbul Convention, but cannot do so without addressing these lacunae.<sup>132</sup> It is unclear what will happen now devolution has been restored.

6.26 A domestic Violence Perpetrators' Programme has been piloted<sup>133</sup> and a local Domestic Homicide Review Model is being developed.<sup>134</sup>

6.27 In November 2018, a thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in NI found that avoidable delays in the criminal justice process for such cases remains an issue that requires addressing.<sup>135</sup>

6.28 In January 2019, an independent review into how the NI criminal justice system handles cases of serious sexual assault was published.<sup>136</sup> Consequently, a Sexual Violence Reduction Group was established.<sup>137</sup> The recent deal commits to delivering “the necessary changes in case conduct and management”.<sup>138</sup>

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<sup>132</sup> Home Office, 'Ratification of the Council of Europe Convention on Combating Violence against Women and Girls and Domestic Violence (Istanbul Convention) - 2019 Report on Progress', (HO, 2019).

<sup>133</sup> The Department of Justice also launched a pilot Domestic Violence Perpetrators' Programme in Derry/Londonderry during March 2018. This pilot adopts a problem solving justice approach, aimed at changing behaviours of convicted offenders. It was subject to monthly judicial monitoring. In November 2019, the Department of Justice reported that the court mandated programme in Foyle had been paused. In 2019, the Trust programme continued with up to 60 participants and funding was secured for a similar number in 2020. The evaluation of the Trust programme was completed in 2018, but has not been published. See Email from Department of Justice Officials to NI Human Rights Commission, 27 November 2019; Permanent Secretary of Department of Justice, 'COR-1076-2017: Letter from Department of Justice to NI Human Rights Commission, 22 September 2017.

<sup>134</sup> The Department of Justice is developing a local Domestic Homicide Review Model, where a person has died as a result of domestic violence. The model will seek out and share opportunities for learning, identify what worked well and inform the development of practice to improve services. This is with a view to preventing domestic violence and abuse and domestic homicide happening in the future. In 2018, a consultation of the proposed model was conducted. The Department of Justice has committed to implementing this mechanism in the 2019/20 Domestic and Sexual Violence and Abuse Action Plan. Recruitment of a Chair and associated establishment of a panel for this purpose was to be completed by September 2019, but this was delayed by the December 2019 general election. In November 2019, the Department of Justice reported that it was intended that the chairs would be in place by April 2020 and the model will further be revised by the Chairs and Panel using historic cases. See Department of Justice, 'Domestic Homicide Reviews – Consultation' (DoJ, 2018); Department of Health and Department of Justice, 'Stopping Domestic and Sexual Violence and Abuse Strategy: Draft Year 4 Action Plan' (DoH and DoJ, 2019); Email from Department of Justice Officials to NI Human Rights Commission, 27 November 2019.

<sup>135</sup> Criminal Justice Inspection NI, 'Without Witness Public Protection Inspection I: A Thematic Inspection of the Handling of Sexual Violence and Abuse Cases by the Criminal Justice System in NI' (CJINI, 2018).

<sup>136</sup> The review, inter alia, included consideration of support for victims and witnesses, pre-charge anonymity for the accused and measures to ensure the permanent anonymity of the claimant. See Sir John Gillen, 'Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland - Part 1', (DoJ, 2019)

<sup>137</sup> This was announced in May 2019 by the Department of Justice Permanent Secretary Peter May. This group oversees implementation of the Gillen Review's recommendations. It is comprised of senior officials from the Department of Justice, Prison Service NI, Probation Board NI, NI Courts and Tribunals Service, Office of the Lord Chief Justice, Police Service NI and Public Prosecution Service NI.

<sup>138</sup> NI Office, 'New Decade, New Approach' (NIO, 2020), at 8.



- 6.29 Applying a statutory prohibition on cross-examination in person in certain circumstances and giving the court a discretionary power to prevent such cross-examination is being considered in NI.<sup>139</sup>
- 6.30 In immigration law, women with no recourse to public funds cannot access refuge support. The Destitute Domestic Violence concession aims to mitigate this.<sup>140</sup> There are delays in accessing this<sup>141</sup> and strict eligibility criteria, which excludes EEA women.
- 6.31 Civil society representatives reported lack of training for front of house staff (receptionists, call handlers, security) on how to support domestic violence victims.<sup>142</sup>
- 6.32 Unlike the rest of UK, stalking and upskirting are not specific crimes in NI.<sup>143</sup> Protection orders for stalking are unavailable.<sup>144</sup> Data on

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<sup>139</sup> In 2019, this was consulted on. It may be possible that the outcome of the consultation can be included in the Westminster Domestic Abuse Bill, after a new UK Government is elected following the general election. However, otherwise progression will be subject to restoration of the NI Executive and NI Assembly. See Department of Justice, 'Protecting Victims of Domestic Abuse from being Cross-examined by Perpetrators in Person in Family Proceedings: A Consultation on Options for Legislation', (DoJ, 2019).

<sup>140</sup> The Domestic Violence Concession, introduced in 2012, aims to help non-nationals who are victims of domestic violence and allows for the issues of a spousal visa to leave their partner safely and secure their immigration status in the UK. The concession offers those who meet the eligibility criteria temporary leave for three months, enabling them to apply for access to public funds. During this three-month period, the person should make a separate application for indefinite leave to remain under the Domestic Violence rule. See No Recourse to Public Funds Network, 'The Destitution Domestic Violence (DDV) Concession' (NRPF Network, 2013).

<sup>141</sup> Nisan Zerai Kesete, 'Destitution Domestic Violence Concession – Monitoring Research Report' (Unbound Philanthropy, 2013), at 37.

<sup>142</sup> Meeting with civil society representatives, 30 November 2018; Roundtable discussion with civil society representatives, November 2018.

<sup>143</sup> The Department of Justice has consulted on measures to address stalking in NI, including introducing legislation and Stalking Protection Orders. Regardless of the outcome of the consultation, any progress is subject to a functioning devolved government. Criminal Justice and Licensing (Scotland) Act 2010, section 39, creates two stalking-related offences. It creates an offence of stalking, which requires a course of conduct (over at least two occasions and incidents) and carries up to five years imprisonment and/or fine. It also creates an offence of threatening and abusive behaviour, which does not require a course of conduct. Civil society representatives have raised the Scottish law as an example of good practice. The Protection from Harassment Act 1997, sections 2A and 4A (as amended by Protection of Freedoms Act 2012) provides for two stalking-related offences. The first offence of stalking allows for up to 6 months' imprisonment and/or an unlimited fine. The second offence of stalking involving fear of violence or serious alarm or distress carries up to 10 years' imprisonment and/or an unlimited fine. See Meeting with civil society representatives, 30 November 2018; Department of Justice, 'Consultation: Stalking – A Serious Concern' (DoJ, 2018).

<sup>144</sup> Stalking Protection Orders are being introduced to England and Wales, which aim to improve the safety of all stalking victims by giving police the authority to address the danger that perpetrators pose while they gather more evidence. Civil society representatives in NI have expressed support for the introduction of Stalking Protection Orders to NI. See Meeting with civil society representatives, 30 November 2018; Department of Justice, 'Consultation: Stalking – A Serious Concern' (DoJ, 2018).

the prevalence of stalking<sup>145</sup> and upskirting,<sup>146</sup> and support for NI victims is lacking.<sup>147</sup>

### **6.33 The Committee may wish to ask the UK what effective measures it is taking to ensure:**

- **ratification and implementation of the Istanbul Convention without further delay?**
- **all forms of domestic abuse and violence, stalking and upskirting in NI are criminalised, thoroughly investigated and effectively remedied without further delay?**
- **implementation of all the recommendations of the Gillen Review and Criminal Justice Inspection NI's report on handling of sexual violence and abuse cases by the criminal justice system in NI?**
- **specialised, gender-sensitive, accessible support for victims of domestic abuse and violence in NI is sufficiently and promptly available and adequately funded, particularly refuge places?**
- **asylum-seeking and migrant victims of domestic abuse and violence in NI can seek effective protection and**

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<sup>145</sup> This is affected by the lack of a statutory definition of 'stalking' in NI. The Protection from Harassment (NI) Order 1997 deals with the criminal offence of harassment. Stalking in NI is generally dealt with under this legislation. In November 2016, the Committee for Justice reviewed and consulted on introducing specific stalking legislation in NI. The aim of the review was "to assess whether the current legislation in place in NI to deal with stalking is appropriate and effective, identify any gaps and consider the need for and potential benefits of introducing specific stalking legislation". The Committee was unable to report to the NI Assembly before its dissolution in January 2017 and any development is impossible without functioning NI devolved institutions. In the interim, the Attorney General for NI issued guidance in April 2018 providing a definition of stalking with the aim of criminal justice organisations in NI exercising "their respective functions diligently in order to prevent, investigate and prosecute acts of stalking and domestic abuse". See RaISE, 'Paper 19/17, NIAR 462-16 - Briefing Paper: Incidence and Prevalence of Stalking in Northern Ireland' (RaISE, 2017), at 15; NI Assembly, 'Review of the Need for Stalking Legislation in NI'. Available at: <http://www.niassembly.gov.uk/assembly-business/committees/2016-2017/justice/inquiries--reviews/review-of-the-need-for-stalking-legislation-in-northern-ireland/>; Attorney General NI, 'No 13 Human Rights Guidance for the Police Service of NI, the Public Prosecution Service, the Probation Board for NI and the NI Courts and Tribunals Service: Domestic Abuse and Stalking' (AGNI, 2018).

<sup>146</sup> Voyeurism under the Sexual Offences (NI) Order 2008, Article 71, focuses on a person observing another person doing a private act without consent. It does not include voyeurism that takes place when a victim is in a public place, such as upskirting. In February 2019, the Voyeurism (Offences) Act received Royal Assent. The Act amends the Sexual Offences Act 2003 to include certain acts of voyeurism, including upskirting. This Act does not apply to NI.

<sup>147</sup> The Hampshire Stalking Clinic has been highlighted as an example of good practice. This clinic aims to improve responses to stalking across the criminal justice system and the health sector through rehabilitative treatment for stalkers, in a bid to make victims of stalking safer. The clinic is a forum for identification, referral, consultation, case formation and risk assessment of stalking cases. It has a multi-agency panel that reviews high risk stalking cases within the Hampshire area using the stalking risk profile assessment process. See Meeting with civil society representatives, 30 November 2018; Police and Crime Commissioner, 'Press Release: Stalking Clinic highlighted as best practice by HMC', 5 July 2017.

**support services without fear of having their immigration status reported to authorities?**

- **extensive disaggregated data on different types of domestic abuse and violence in NI is collected, published and effectively monitored, including on the number of domestic abuse and violence complaints, investigations, prosecutions, convictions and sentences?**

## **Termination of pregnancy**

6.34 In 2015, the Committee recommended that NI's legislation on termination of pregnancy is amended as a matter of priority to provide access to terminations in cases of rape, incest and fatal foetal abnormality.<sup>148</sup> In March 2019, the UN CEDAW Committee recommended that, given the lack of functioning government in NI, Westminster Parliament should legislate to ensure the UK's international obligations are met in NI.<sup>149</sup> The UN CAT Committee also called for legislative change and for safeguards to ensure that neither patients nor doctors face criminal sanctions for providing post-abortion healthcare.<sup>150</sup>

6.35 Through legislation in the UK Parliament, the Secretary of State for NI is required to ensure the UN CEDAW Committee's Inquiry recommendations are implemented.<sup>151</sup> As of 22 October 2019, termination of pregnancy is decriminalised in NI and a moratorium on criminal investigation and prosecutions came into effect.<sup>152</sup>

6.36 The NI Office has also issued interim guidance for healthcare professionals, confirming there will be no routine services

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<sup>148</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 17.

<sup>149</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 47.

<sup>150</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic report of the UK of Great Britain and NI', 7 June 2019, at para 47.

<sup>151</sup> The NI (Executive Formation etc) Act 2019, section 9, provided that if the NI Executive was not restored by 21 October 2019, a number of legal duties would arise for the Secretary of State for NI. This included a requirement that the Secretary of State for NI would ensure that the recommendations in paragraphs 85 and 86 of the UN CEDAW Committee's report are implemented in respect of NI and that any changes to the law by regulation are passed by 31 March 2020. Section 9 requires the repeal of sections 58 and 59 of the Offences against the Person Act 1861 in NI and a moratorium on investigation and prosecution under these provisions.

<sup>152</sup> In October 2019, a mother for procuring abortion medication on behalf of her 15 year old daughter under the Offences against the Person Act 1861 was formally acquitted following these developments. In a separate case, the NI High Court also held that the current law is contrary to ECHR, Article 8, in cases of fatal foetal abnormality. See *Ewart's (Sarah Jane) Application* [2019] NIQB 88.

concerning the new arrangements available in NI, between 22 October and 31 March 2020.<sup>153</sup> However, it does permit a health professional to treat a woman in NI where a fatal or serious foetal anomaly has been detected.<sup>154</sup> In all cases, the Central Booking Service in England will continue to provide advice, support and counselling and all travel and accommodation will be funded, irrespective of financial means.<sup>155</sup>

6.37 In November 2019, the NI Office consulted on the new legal framework for abortion services in NI, which is due to be in place by 31 March 2020.<sup>156</sup>

**6.38 The Committee may wish to ask the UK how it will ensure the UN CEDAW Committee's recommendations are comprehensively implemented and monitored for women in NI?**

## **Historical abuse**

6.39 In 2017, an inquiry report on historical institutional abuse of children within residential settings in NI was published.<sup>157</sup>

6.40 In 2019, the NI High Court and Court of Appeal ruled that the failure of Secretary of State NI to introduce a redress scheme, as recommended by the Hart Inquiry, was not unlawful.<sup>158</sup>

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<sup>153</sup> NI Office, 'UK Government Guidance for Healthcare Professionals in NI on Abortion Law and Termination of Pregnancy in the period 22 October 2019 to 31 March 2020 in relation to the NI (Executive Formation etc) Act 2019' (NIO, 2019), at 4.

<sup>154</sup> Ibid, at 5.

<sup>155</sup> Ibid.

<sup>156</sup> NI Office, 'A New Legal Framework for Abortion Services in NI – Implementation of the Legal Duty Under Section 9 of the NI (Executive Formation etc) Act 2019' (NIO, 2019).

<sup>157</sup> The Inquiry into Historical Institutional Abuse in NI investigated abuse of children under 18 who were living in children's homes, borstals, training schools, juvenile justice centres, hospitals and orphanages in NI between 1922 and 1995. It investigated 22 institutions, as well as the circumstances surrounding the sending of child migrants from NI to Australia, and the activities of Fr Brendan Smyth, and issues of finance and governance between 1922 and 1995. See Sir Anthony Hart, 'Historical Institutional Abuse Inquiry' (NI Executive, 2017).

<sup>158</sup> The Court of Appeal ruled that although the Secretary of State for NI had no power to set up a redress scheme, the Executive Office could exercise the common law prerogative powers to set up such a scheme. The Court of Appeal also noted that the Secretary of State for NI should consider giving a direction to the Executive Office to do so. See *In the Matter of an Application by JR80 for Judicial Review* [2018] NIQB 65; Judiciary NI, 'Press Release: Court finds that The Executive Office can set up an ex gratia redress scheme for historical institutional abuse victims,' 4 November 2019.

- 6.41 In July 2019, an interim advocate for victims and survivors of historical institutional abuse was appointed.<sup>159</sup>
- 6.42 In November 2019, the Historical Institutional Abuse (NI) Act received Royal Assent and a President of the Redress Board was announced.<sup>160</sup> It is planned the application process will open at end of March 2020, the Redress Board will sit from end of April 2020 and the first approved payments “will follow shortly thereafter”.<sup>161</sup>
- 6.43 The Inquiry’s remit did not extend to adult residents of Magdalene laundry type institutions or those abused in private settings. An inter-departmental Working Group has been established to work on such issues.<sup>162</sup> The first Chair of the Working Group resigned in March 2018; a new Chair was appointed in June 2019.<sup>163</sup>
- 6.44 Regarding historical abuse in the home, NI’s compensation scheme does not permit victims to claim criminal injuries compensation if she/he had been living together with the assailant as members of the same family and the crime was committed before 1 July 1988.<sup>164</sup> In November 2018, the NI Court of Appeal ruled that the ‘same roof’ rule is unlawful in NI.<sup>165</sup> However, this rule has not been abolished in NI to date.

**6.45 The Committee may wish to ask the UK what effective measures are being taken to ensure:**

- **effective implementation of the Historical Institutional Abuse (NI) Act?**

<sup>159</sup> The advocate will operate in post until the statutory Commissioner for Victims and Survivors of Historical Institutional Childhood Abuse is appointed. See The Executive Office, ‘Press Release: Sterling appoints Interim Advocate for Victims and Survivors of Historical Institutional Abuse’, 2 July 2019.

<sup>160</sup> The Act provides for the establishment of a redress board<sup>160</sup> and a Commissioner for Survivors of Institutional Childhood Abuse. Parliament UK, ‘Historical Institutional Abuse (NI) Act 2019’. Available at: <https://services.parliament.uk/Bills/2019-20/historicalinstitutionalabuseinireland.html>.

<sup>161</sup> The Executive Office, ‘Press Release: Sterling outlines timetable for HIA victims and survivors’, 17 December 2019.

<sup>162</sup> Department of Health, ‘Mother and Baby Homes - Magdalene Laundries’. Available at: <https://www.health-ni.gov.uk/articles/mbh-ml>

<sup>163</sup> Department of Health, ‘Press Release: New Independent Chair to Inter-Departmental Working Group’, 6 June 2019.

<sup>164</sup> An equivalent ‘same roof’ scheme in England was found unlawful on human rights grounds in 2018. In 2019, the ‘same roof’ rule was abolished in England, Wales and Scotland. See The Court of Appeal of England and Wales found the provision to violate Article 14 ECHR in conjunction with Article 1 of Protocol 1. See *JT v First-tier Tribunal and CICA* [2018] EWCA Civ 1735; Department of Justice, ‘NI Criminal Injuries Compensation Scheme 2009’ (DoJ, 2009), at paragraph 7(c); Ministry of Justice, ‘Press release: access to compensation scheme for victims who lived with their attacker’, 28 February 2019.

<sup>165</sup> *In the Matter of an Application by JR80 for Judicial Review* [2018] NIQB 65.

- **victims of historical abuse in NI, outside the remit of the Historical Institutional Abuse Inquiry, have an effective remedy, including expedited access to thorough and effective independent investigations that offer effective redress (including compensation) and are subject to public scrutiny and meaningful victim participation?**
- **that the 'same roof' rule for compensation of historical abuse is abolished in NI?**

## **Identifying torture**

6.42 Detainee custody officers at Larne House<sup>166</sup> are not aware of the safeguarding adults policy or the process to identify and support victims of trafficking.<sup>167</sup> There are concerns that detention staff are not effectively trained.<sup>168</sup>

6.43 The private company that manages the facility employs the nurse in Larne House, which may be inhibiting the independence of health assessments within the facility.<sup>169</sup>

### **6.44 The Committee may wish to ask the UK what effective measures it is taking to ensure:**

- **Larne House staff can effectively identify, report and support victims of torture?**
- **the independence of healthcare professionals in Larne House?**

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<sup>166</sup> NI only has one short-term holding facility for immigration and detainees called Larne House. Larne House can hold up to 19 male and female detainees for a maximum period of 7 days.

<sup>167</sup> In March 2018, the Secretary of State for the Home Department laid the Short-term Holding Facility Rules 2018 before Parliament and these became law on 2 July 2018. The Rules provide "where a health care professional has concerns that a detained person may have been a victim of torture this must be reported to the manager". See Short-term Holding Facility Rules 2018; HM Chief Inspector of Prisons, 'Report on an Unannounced Inspection of the Short-term Holding Facility at Larne House' (HMIP, 2018), at para 1.8.

<sup>168</sup> Roundtable discussions with civil society representatives on UNCAT, November 2018; Meeting between civil society representatives, 11 April 2018.

<sup>169</sup> Ibid.

## 7.0 Article 8 – Freedom from slavery

### Child sexual exploitation

7.1 In cases involving serious sexual offences against children, the onus is on the prosecution to prove that the defendant did not reasonably believe that the victim was 16 years and above. In 2014, an Independent Inquiry into Child Sexual Exploitation recommended, inter alia, the need for legislative reform including to address a gap in protection under the Sexual Offences (NI) Order 2008.<sup>170</sup> This issue was consulted on in 2019,<sup>171</sup> but to date the required legislation has not progressed.

**7.2 The Committee may wish to ask the UK what effective measures it is taking to promptly implement legislation in NI to reverse the burden of proof to protect child victims of sexual offences?**

### Children missing from care

7.3 In 2018/17, Police Service NI received 2,871 missing person's reports from children's homes.<sup>172</sup> There is a 'revolving door' effect where a young person is returned to residential care, after which they subsequently abscond again. There are concerns that children going missing from care are being sexually exploited.<sup>173</sup>

7.4 The Health and Social Care Board and Police Service NI is developing a definition of a missing person and is consulting on a revised Missing Children Protocol and prevention measures being put in place across the NI Trusts.<sup>174</sup>

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<sup>170</sup> Kathleen Marshall, 'Child Sexual Exploitation in NI Report of the Independent Inquiry' (RQIA, 2014), at Recommendation 14.

<sup>171</sup> NI Human Rights Commission, 'Submission to Department of Justice Review of the law on Child Sexual Exploitation' (NIHRC, 2019).

<sup>172</sup> According to data provided to the Commission by the Police Service NI, these reports related to 197 children. During 2016/17, 21 children were reported missing more than 50 times and 2 were reported missing 95 or more times.

<sup>173</sup> Safeguarding Board for Northern Ireland, 'Getting Focussed and Staying Focussed, Looked After Children, Going Missing, Child Sexual Exploitation', (QUB, 2015), at 45.

<sup>174</sup> Correspondence from Department Health to NI Human Rights Commission, 16 July 2019.

- 7.5 In 2018, the Department of Health and the Department of Education consulted on a draft strategy for Looked After Children.<sup>175</sup> Outcomes from this consultation are subject to Ministerial approval.
- 7.6 The NIHRC is publishing its report on children missing from care in early 2020.
- 7.7 The Committee may wish to ask the UK what effective measures it is taking to ensure children in care in NI are not going missing and are protected from sexual exploitation?**

## **Modern slavery**

- 7.8 In 2018, 52 potential victims of human trafficking were identified in NI, an increase of 44 per cent from 2017.<sup>176</sup> In 2018/19, there were 15 arrests for modern slavery/human trafficking and/or related offences, with two persons charged, three reported to the Public Prosecution Service and 30 investigations ongoing at any one time.<sup>177</sup>
- 7.9 The Committee may wish to ask the UK what effective measures it is taking to ensure:**
- **the root causes of human trafficking in NI are effectively addressed?**
  - **that specialised, accessible support in NI is sufficiently and promptly available for victims, including effective access to social security benefits?**

## **8.0 Articles 9, 10 and 11 – Liberty and security of person**

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<sup>175</sup> Department of Health and Department of Education, 'Strategy for Looked After Children: Improving Children's Lives' (DoH, DoE, 2018).

<sup>176</sup> In 2017, there were 36 potential victims of human trafficking identified. See National Crime Agency, 'National Referral Mechanism – End of Year Summary 2018', (NCA, 2019).

<sup>177</sup> Organised Crime Task Force, 'Annual Report and Threat Assessment 2018-19' (OCTF, 2019), at 25.



## Definition of terrorism

8.1 In 2015, the Committee recommended the UK revise its “broadly formulated definition of terrorism” and implement the Independent Reviewer’s recommendations.<sup>178</sup> There has been no significant progress on this issue.<sup>179</sup>

**8.2 The Committee may wish to ask the UK what prompt and effective measures it is taking to revise its broad definition of terrorism, including in NI?**

## Powers of arrest

8.3 In 2015, the Committee recommended the UK ensure that principles of necessity and proportionality are strictly embedded within arrest powers under section 41 of the Terrorism Act 2000.<sup>180</sup> There has been no progress in relation to recommended review.

8.4 In 2018/19, 170 persons were arrested in NI under this provision and only 18 (11 per cent) were subsequently charged.<sup>181</sup>

**8.5 The Committee may wish to ask the UK what effective measures it is taking to ensure that principles of necessity and proportionality are strictly embedded within arrest powers under section 41 of the Terrorism Act 2000, including in NI?**

## Fine default

8.6 The imprisonment of persons for fine default has historically contributed significantly to the prison population in NI. In 2017/18,

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<sup>178</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 17 August 2015, at para 14.

<sup>179</sup> In 2019, the UK Government responded to the Independent Reviewer of Terrorism Legislation 2017 report, but made no comment on the issue of the definition of terrorism. See UK Government, ‘Response to the Annual Report on the Operation of the Terrorism Acts in 2017 by the Independent Reviewer of Terrorism Legislation’ (UK Gov, 2019); Max Hill QC, ‘Independent Reviewer of Terrorism Legislation: The Terrorism Acts in 2017’, (UK Gov, 2018).

<sup>180</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 17 August 2015, para 14.

<sup>181</sup> Between November 2017 and October 2018, there were 142 arrested and 17 charged. See Police Service NI, ‘Police recorded security situation statistics: 1 November 2018 to 31 October 2019’, (PSNI, 2019).

prison receptions for fine default was 611.<sup>182</sup> In 2018/19, this decreased by 39 per cent to 371.<sup>183</sup>

- 8.7 In 2018, the Fine Collection Service became operational within NI Courts and Tribunal Services.<sup>184</sup> It has a range of powers to collect and enforce outstanding financial penalties. However, imprisonment for fine default continues.

**8.8 The Committee may wish to ask the UK what effective measures it is taking to end imprisonment for fine default in NI?**

## **Imprisonment of children with adults**

- 8.9 An administrative scheme prevents offenders aged 15 to 17 being detained with young adults aged 18 to 21. However, it is legally permissible.<sup>185</sup> The commitment to remove this legal provision<sup>186</sup> is hindered by suspension of the devolved institutions.<sup>187</sup>

**8.10 The Committee may wish to ask the UK what effective measures it is taking to promptly repeal provisions of the Criminal Justice (Children) (NI) Order 1998 that permit the imprisonment of children with adults in NI?**

## **Remand of children**

- 8.11 In 2015, the Committee recommended that the remand of children is a measure of last resort.<sup>188</sup> In 2016, this was supported by the UN CRC Committee.<sup>189</sup> Legislation ensuring this is lacking.

**8.12 The Committee may wish to ask the UK what effective measures it is taking to ensure remand of children in NI is a**

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<sup>182</sup> NI Prison Service, 'The NI Prison Population 2017/18' (NIPS, 2018), at 10 and Table 7.

<sup>183</sup> Analytical Services Group, 'The Northern Ireland Prison Population 2018/19', (DoJ, 2019), at 10 and Table 7.

<sup>184</sup> Justice (2016 Act) (Commencement No.2) Order (NI) 2018.

<sup>185</sup> Criminal Justice (Children) (NI) Order 1998.

<sup>186</sup> The reforms to the 1998 Order would be implemented by way of a proposed Children's Bill.

<sup>187</sup> Declan McGeown, 'Scoping Study Stakeholder Update' (DoJ, 2017).

<sup>188</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 23.

<sup>189</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 79.

**last resort and that suitable accommodation is provided within a reasonable time, if released on bail?**

## **Prison conditions**

8.13 NI prisons can accommodate 1,903 prisoners. The male population increased from 1,382 during 2017/18 to 1,384 in 2018/19.<sup>190</sup> The female population increased from 57 during 2017/18 to 65 during 2018/19.<sup>191</sup> The remand population increased by 18.5 per cent from 368 in 2017/18 to 436 in 2018/19 and is at its highest level since reporting by financial year began in 2014/15.<sup>192</sup>

8.14 Despite commitments to remedy this, there is still no separate women's prison in NI.<sup>193</sup>

8.15 In 2018/19, the NI Prisoner Ombudsman received 408 individual complaints from prisoners.<sup>194</sup> Of these complaints, 338 were received from integrated prisoners in Maghaberry and 138 were upheld or partially upheld.<sup>195</sup> The NI Prisoner Ombudsman made 140 recommendations, of which 124 were accepted.<sup>196</sup>

8.16 There are concerns about mental healthcare for prisoners in NI.<sup>197</sup> A survey of Maghaberry found 66 per cent of prisoners said they had a mental health problem, but only 24 per cent received assistance.<sup>198</sup>

8.17 Bullying, drug use and the hygiene of older parts of the NI prison estate are concerns.<sup>199</sup>

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<sup>190</sup> Analytical Services Group, 'The Northern Ireland Prison Population 2018/19', (DoJ, 2019), at 1.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Women prisoners are accommodated in Ash House block within Hydebank Wood prison, which also accommodates young male prisoners aged 18 to 21.

<sup>194</sup> Prisoner Ombudsman for NI, 'Prisoner Ombudsman for NI: Annual Report 2018-19', (PONI, 2019), at 4.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Regulation and Quality Improvement Authority, 'Baseline Audit of Forensic Mental Health and Learning Disability Services – Adult Services', (RQIA, 2018), at 32.

<sup>198</sup> National Preventative Mechanism, 'Report on an Unannounced Inspection of Maghaberry Prison: 9-19 April 2018' (CJINI, 2018), at Recommendation 10.

<sup>199</sup> Ibid, at Recommendation 5; National Preventative Mechanism, 'Report on an Unannounced Inspection of Ash House Women's Prison Hydebank Wood: 9-19 May 2016', (CJINI, 2016), at 6.

- 8.18 During 2017/2018, there were 55 prisoner assaults on prison staff and 100 prisoner assaults on other prisoners. Such assaults have been decreasing since 2015.<sup>200</sup>
- 8.19 Between 2014 and 2019, 23 people died in NI prisons and 23 people died within a fortnight of being released from a NI prison.<sup>201</sup> The Post-Release Deaths Project has been established to consider the cause of death of former prisoners.<sup>202</sup>
- 8.20 In 2018/19, eight prison deaths were investigated by the NI Prisoner Ombudsman.<sup>203</sup> Five deaths were self-inflicted and three due to natural causes.<sup>204</sup> Two incidents of serious self-harm and two post release deaths were also investigated.

**8.21 The Committee may wish to ask the UK what effective measures it is taking to ensure:**

- **the prompt development of a separate custodial facility for NI women?**
- **all prisoners in NI have access to effective mental healthcare and support?**
- **address bullying, drug use and poor hygiene in NI prisons?**
- **prisoner violence and prisoner deaths during and shortly after leaving a NI prison are effectively investigated and remedied?**

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<sup>200</sup> During 2015/2016, there were 95 prisoner assaults on prison staff and 221 prisoner assaults on other prisoners. During 2016/2017, this decreased to 73 prisoner assaults on prison staff and 122 prisoner assaults on other prisoners. See Email from Department of Justice officials to NI Human Rights Commission, 6 February 2019.

<sup>201</sup> Niall McCracken, 'Prisoners' 'lives at risk' after jail release', *BBC News*, 8 September 2019.

<sup>202</sup> This is a collaboration between the Prison Service, Probation Service, Court Services and South Eastern Health Trust. This initiative has been set up to provide further details on the cause of death of former prisoners to "better inform custodial interventions". See Niall McCracken, 'Post-custody deaths in NI to be investigated', *BBC News*, 11 December 2019.

<sup>203</sup> Prisoner Ombudsman for NI, 'Prisoner Ombudsman for NI: Annual Report 2018-19', (PONI, 2019), at 3.

<sup>204</sup> Ibid.

## 9.0 Article 12 – Freedom of movement

### Racial profiling

9.1 Racial profiling during custom checks have been reported when travelling between NI and other parts of UK and Ireland.<sup>205</sup> There are concerns that such checks will become more common post-Brexit.<sup>206</sup>

**9.2 The Committee may wish to ask the UK what effective measures it is taking to ensure measures are in place to prohibit racial profiling in immigration checks in the UK, including along the border between NI and Ireland?**

## 10.0 Article 13 – Non-refoulement

### Refugees

10.1 Between December 2015 and October 2019, 1,637 Syrian refugees have been welcomed to NI under the Syrian Vulnerable Persons Relocation Scheme.<sup>207</sup> In 2019, it was confirmed refugee resettlement will continue beyond the conclusion of this scheme in 2020.<sup>208</sup>

10.2 Despite a legislative duty that requires the Government to make arrangements to relocate unaccompanied refugee children from other countries in Europe,<sup>209</sup> no child has been accommodated in NI under the Immigration Act 2016, section 67(1).<sup>210</sup>

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<sup>205</sup> For example, Jules Gnezekora alleges he was singled out four times in queues on one journey by ferry to and from Scotland to Northern Ireland because he is black. See Lisa O'Carroll, 'Black lawyer accuses Northern Ireland immigration of racial profiling', The Guardian, 11 June 2018; Committee on the Administration of Justice, 'EU Withdrawal Bill, Clause 13 – New Border Arrangements' (CAJ, 2018).

<sup>206</sup> Roundtable discussions with civil society representatives, November 2018.

<sup>207</sup> Department for Communities, 'Syrian Vulnerable Persons Relocation Scheme: Briefing Document – October 2019', (DfC, 2019), at 2.

<sup>208</sup> The Home Office announced that the UK plans to resettle in the region of 5,000 of the world's most vulnerable refugees in the first year of the new scheme, once the flagship Vulnerable Person's Resettlement Scheme concludes in 2020. See Home Office, 'Press release: the UK will continue to resettle thousands of refugees under a new scheme set to start in 2020, the Home Secretary announced today', 17 June 2019.

<sup>209</sup> Email from The Executive Office to NI Human Rights Commission, 7 January 2020.

<sup>210</sup> This provision requires the UK Government to make arrangements to relocate to the UK and support a specific number of unaccompanied refugee children from other countries in Europe. Under Section 67(2) of the 2016 Act, the number of children to be resettled shall be determined by the Government in consultation with local authorities. Section 67(3) of the 2016 Act confirms the determined number is in addition to the

10.3 There is no NI Refugee Integration Strategy.

**10.4 The Committee may wish to ask the UK what effective measures it is taking to ensure:**

- **NI accommodates a proportionate number of unaccompanied asylum seeking children and refugees, under section 67 of the Immigration Act 2016?**
- **effective resources to support all refugees resettled in NI?**
- **prompt introduction and implementation of a NI Refugee Integration Strategy?**

## **11.0 Articles 14, 15, 16 and 26 – Fair trial rights**

### **Access to justice**

11.1 In 2015, the Committee expressed concerns about the impact of reforms to the legal aid system on access to justice.<sup>211</sup>

11.2 Barriers in accessing justice are prominent for litigants in person<sup>212</sup> and persons with disabilities, particularly deaf people.<sup>213</sup>

**11.3 The Committee may wish to ask the UK what effective measures it is taking to ensure barriers to justice are**

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resettlement of children under the Vulnerable Persons Relocation Scheme. These provisions extend to NI. Lord Dubs, who introduced these provisions, had hoped 3,000 of the most vulnerable unaccompanied refugee children would benefit from section 67 of the 2016 Act. However, the UK Government announced that the specific number of children to be transferred under section 67 will be 480.

<sup>211</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 22.

<sup>212</sup> There are over 5,000 people going unrepresented, mainly in the family courts and bankruptcy. This does not include underrepresented applicants at social security, employment and other tribunals. See Gráinne McKeever et al, 'Litigants in Person in NI: Barriers to Legal Participation' (UU, NIHRC and Nuffield Foundation, 2018).

<sup>213</sup> Bronagh Byrne et al, 'Implementing Article 13 of the UNCRPD: Enhancing Deaf People's Access to Justice in NI' (BDA, 2019).

**removed for all in NI, particularly litigants in person and persons with disabilities?**

## **Age of criminal responsibility**

11.4 In 2015, the Committee recommended that the UK raise the minimum age of criminal responsibility in accordance with international standards.<sup>214</sup> The age of criminal responsibility remains ten years in NI and there is no cross-party support to raise this,<sup>215</sup> despite changes in Scotland<sup>216</sup> and UN CRC Committee's General Comment No 24's recommendation.<sup>217</sup>

**11.5 The Committee may wish to ask the UK what effective steps it is taking to ensure the minimum age of criminal responsibility in NI is raised to fourteen?**

## **Avoidable delay**

11.6 In 2015, the Committee recommended the UK introduce custodial time limits to reduce avoidable delays in NI's criminal justice system.<sup>218</sup> The Criminal Justice Inspector for NI supports this.<sup>219</sup> In 2016, there was a commitment to establish a statutory time limit for criminal cases,<sup>220</sup> but no concrete measures have been adopted.<sup>221</sup>

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<sup>214</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 23; CRC/C/GBR/CO/5, 'UN Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 79; UN CRC/C/GBR/CO/4, 'UN Committee on the Rights of the Child, Concluding Observations on the Third and Fourth Period Reports of the UK of Great Britain and NI', 17 October 2008; CRC/C/15/Add 188, 'UN Committee on the Rights of the Child, Concluding Observations: UK of Great Britain and NI', 9 October 2002; CRC/C/15/Add 34, 'UN Committee on the Rights of the Child, Concluding Observations on the UK of Great Britain and NI's Initial Report', 15 February 1995; A/HRC/36/9/Add.1, 'Human Rights Council Report of the Working Group on the Universal Periodic Review: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review', 7 September 2017, at Recommendation 134.205.

<sup>215</sup> Email from the Executive Office to NI Human Rights Commission, 7 January 2020.

<sup>216</sup> The Age of Criminal Responsibility (Scotland) Act 2019 raises the age of criminal responsibility in Scotland to 12 years old.

<sup>217</sup> CRC/C/GC/24, 'UN CRC Committee General Comment No 24 on Children's Rights in the Child Justice System', 18 September 2019, at para 21.

<sup>218</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, para 22.

<sup>219</sup> Hansard, 'Official Report (Hansard) Session: 2013/2014', 25 June 2014.

<sup>220</sup> NI Executive, 'Draft Programme for Government Framework 2016-21' (NI Executive, 2016), at 107.

<sup>221</sup> The Executive Office, 'Outcomes Delivery Plan 2018-19' (TEO, 2018), at 51.

11.7 In 2018/19, the median time for a criminal case was 167 days,<sup>222</sup> an increase of 3.1 per cent from 2017/18 and the highest recorded in the last five years.<sup>223</sup> Public order offences had the shortest median time of 138 days and sexual offences had the longest median time of 667 days.<sup>224</sup>

**11.8 The Committee may wish to ask the UK what effective measures it is taking to promptly introduce and implement statutory custodial time limits to reduce avoidable delay in NI?**

## **Closed material procedures**

11.9 In 2015, the Committee expressed concerns about the use of closed material procedures in civil cases<sup>225</sup> provided for by the Justice and Security Act 2013.<sup>226</sup>

11.10 In 2017/18, there were 13 applications for a closed material procedure,<sup>227</sup> five declarations to allow a closed material procedure,<sup>228</sup> and one substantive judgment made through the closed material procedure.<sup>229</sup>

11.11 The draft NI (Stormont House Agreement) Bill provides for closed material procedures to prevent the disclosure of information on national security grounds within a family report.<sup>230</sup> Respondents to

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<sup>222</sup> Department of Justice, 'Case Processing Time for Criminal Cases Dealt with at Courts in NI 2018/19' (DoJ, 2019).

<sup>223</sup> The 2018/19 figure is higher than the figure of 143 days recorded in 2014/15, which is baseline year for this indicator under the Northern Ireland Civil Service Outcomes Delivery Plan. See Department of Justice, 'Case Processing Time for Criminal Cases Dealt with at Courts in NI 2018/19' (DoJ, 2019).

<sup>224</sup> Department of Justice, 'Case Processing Time for Criminal Cases Dealt with at Courts in NI 2018/19' (DoJ, 2019).

<sup>225</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 22.

<sup>226</sup> Section 12(1), Justice and Security Act 2013 makes provision for closed material procedures in civil cases meaning that sensitive security evidence can be introduced without disclosure to the claimant. It also requires the Secretary of State for Justice to lay before Parliament an annual report on the use of closed material procedures.

<sup>227</sup> Ministry of Justice, 'Report on Use of Closed Material Procedures (from 25 June 2017 to 24 June 2018)', (MoJ, 2018).

<sup>228</sup> Three declarations were made in response to applications made by the Secretary of State during the reporting period and two declarations related to previous reporting periods. Ministry of Justice, 'Report on Use of Closed Material Procedures (From 25 June 2017 to 24 June 2018)', (MoJ, 2018), at 5.

<sup>229</sup> Ministry of Justice, 'Report on Use of Closed Material Procedures (From 25 June 2017 to 24 June 2018)', (MoJ, 2018), at 7.

<sup>230</sup> Section 21 (1), Draft NI (Stormont House Agreement) Bill.



a consultation on the bill are concerned whether this approach is compliant with the right to a fair trial.<sup>231</sup>

**11.12 The Committee may wish to ask the UK what effective measures it is taking to ensure closed material procedures in cases of serious human rights violations do not create obstacles to accountability or the rights to a fair trial and effective remedy in NI?**

## **Miscarriage of justice**

11.13 In 2015, the Committee recommended that the test for miscarriage of justice is reviewed to ensure its compatibility with ICCPR, Article 14(6).<sup>232</sup> There have been no substantive developments on this issue.

11.14 In 2019, the UK Supreme Court found the test for a miscarriage of justice was not incompatible with ECHR, Article 6(2). One of the applicants is considering an appeal to the ECtHR.<sup>233</sup>

**11.15 The Committee may wish to ask the UK what effective measures it is taking to review the test for a miscarriage of justice to ensure it is human rights compliant in NI?**

## **Non-jury trials**

11.16 Provision for non-jury trials in NI has been extended for the sixth time until 31 July 2021.<sup>234</sup>

11.17 In 2019, the UK Supreme Court dismissed an appeal by a former soldier against a decision by the Belfast Crown Court to try him

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<sup>231</sup> NI Office, 'Addressing the legacy of Northern Ireland's Past: Analysis of the Consultation Responses', (NIO, 2019), at 17.

<sup>232</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 22(b).

<sup>233</sup> Anti-social Behaviour, Crime and Policing Act 2014 redefined the test for a miscarriage of justice. Applicants who allege wrongful imprisonment must prove their innocence of the crime in order to obtain compensation. This test applies to all offences in England and Wales and for offences related to terrorism in NI. See *R (On the Application of Hallam) v Secretary of State for Justice* [2019] UKSC 2.

<sup>234</sup> The Justice and Security (NI) Act 2007 provides for non-jury trials in NI. Non-jury trials provisions are temporary and must be renewed every two years by both Houses of Parliament. See The Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2019.

without a jury. The Court held that non-jury trial arrangements do not violate ECHR, Article 6.<sup>235</sup>

**11.18 The Committee may wish to ask the UK what effective measures it is taking to ensure that the principles of necessity and proportionality are fully reflected within the arrangement for authorising non-jury trials in NI?**

## **12.0 Article 17 – Right to family, home and correspondence**

### **Access to financial support**

12.1 In 2018, the UK Supreme Court declared the requirement that couples must be married to access Widowed Parent's Allowance is incompatible with ECHR, Articles 8 and 14.<sup>236</sup> The law remains unchanged.

12.2 The Work and Pensions Committee has urged the UK Government to promptly consult on options to address the inaccessibility of bereavement benefits for unmarried partners.<sup>237</sup>

**12.3 The Committee may wish to ask the UK what effective measures it is taking to ensure that bereavement benefits are promptly made accessible to unmarried couples in NI?**

### **Biometric data**

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<sup>235</sup> In June 2019, the Supreme Court dismissed an appeal by former soldier Dennis Hutchings against a decision by the Belfast Crown Court to try him without a jury. Mr Hutchings is due to be tried for attempted murder in connection with the fatal shooting of John Pat Cunningham near Benburb, County Tyrone in 1974. In June 2019, the UK Supreme Court dismissed the appeal. While recognising that the powers available to the Director of Public Prosecutions are 'unquestionably far-reaching', the UK Supreme Court recalled that caselaw has confirmed that ECHR Article 6 does not require a jury trial. Further, the UK Supreme Court held that for security reasons, the Director Public Prosecutions is not required to provide reasons for the decision to issue a non-jury trial certificate and confirmed that appellants have an opportunity to make representations on the issuing of such certificate. See *In the Matter of An Application by Dennis Hutchings for Judicial Review (NI)* [2019] UKSC 26, at para 35.

<sup>236</sup> *In the Matter of an Application by Siobhan McLaughlin for Judicial Review (NI)* [2018] UKSC 48.

<sup>237</sup> House of Commons Work and Pensions Committee, 'Bereavement Support Payment - First Report of Session 2019–20' (WPC, 2019), at para 64.

- 12.4 In 2008, the ECtHR found that UK laws on retention of biometric data violated ECHR, Article 8.<sup>238</sup> The Criminal Justice Act (NI) 2013 aimed to rectify this. However, the section on DNA retention was not commenced pending political agreement on its effect on legacy investigations.
- 12.5 In 2012, an applicant claimed that the indefinite retention of his DNA profile (distinct from his DNA sample) breached ECHR, Article 8. The NI Divisional Court noted that the applicant had pleaded guilty to a recordable offence and ruled that the retention was proportionate.<sup>239</sup> The applicant's appeal to the UK Supreme Court was unsuccessful.<sup>240</sup> The case has been appealed to the ECtHR and a hearing is awaited.
- 12.6 In 2017, the NIHRC instituted judicial review proceedings concerning retention of biometric data by the Police Service NI. In January 2019, the case was settled and the police agreed to produce a public policy on biometric data retention, which will be published shortly.<sup>241</sup> The Independent Commissioner for the Retention and Use of Biometric Material's role does not extend to NI, save in national security circumstances. There is no equivalent oversight in NI.

**12.7 The Committee may wish to ask the UK what effective measures it is taking to ensure that:**

- **the DNA retention sections of the Criminal Justice Act (NI) 2013 are commenced and implemented without further delay?**
- **Police Service NI's policy on biometric data retention is human rights compliant, effectively implemented and expeditiously published in accessible formats?**

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<sup>238</sup> *S and Marper v UK* (2008) ECHR 1581.

<sup>239</sup> *Gaughran, Re Judicial Review* [2012] NIQB 88.

<sup>240</sup> *Gaughran v Chief Constable of the Police Service of NI* [2015] UKSC 29.

<sup>241</sup> The policy will take into account human rights and will provide guidance to the public on how they can find out if their DNA or fingerprints have been retained, why this is so, and how to challenge the decision if necessary. The Police Service NI has confirmed to the NI Human Rights Commission that it holds around 240,000 people's fingerprints and around 180,000 people's other biometric data.

- **there is independent oversight of Police Service NI's retention and use of biometrics in criminal matters?**

## **Stop and search**

12.8 In 2015, the Committee recommended the Police Service NI record the community background of persons stopped and searched under the Justice and Security (NI) Act 2007.<sup>242</sup> The UN CRC has made detailed recommendations on this topic.<sup>243</sup> However, "little progress" has been made on this issue.<sup>244</sup>

12.9 In 2018/19, 28,116 individuals were stopped in NI under all legislative stop, search and questioning powers. 3,629 (13 per cent) were minors and 57 were aged 12 years and under.<sup>245</sup>

12.10 A 15 year old boy is taking legal action against Police Service NI after being stopped and searched under Terrorism powers.<sup>246</sup> A challenge is also being brought against the Secretary of State for NI on an alleged failure to issue a code of practice for the stop and search powers that adequately protects the best interests of the child.

### **12.11 The Committee may wish to ask the UK what effective measures it is taking to ensure:**

- **all stop and search powers in NI have a statutory footing?**
- **suitable methodology for recording the community background of individuals stopped and searched under**

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<sup>242</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 11.

<sup>243</sup> The UN CRC Committee has recommended that the NI Executive: prohibit the use of non-statutory stop and search checks against children; ensure that the statutory use of stop and search checks is proportionate; and that data relating to the stop and search of children is regularly collected and published. See CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI', 12 July 2016, at para 38.

<sup>244</sup> David Seymour, 'Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007: Eleventh Report - 1 August 2017-31 July 2018', (UK Government, 2019), at para 2.8

<sup>245</sup> Police Service NI, 'Stop and Search Statistics: Financial Year 2018/19' (PSNI, 2019), at Section 1 and Tables 3 and 4.

<sup>246</sup> Alan Erwin, 'Belfast Boy 15 taking legal action over 'stop and search'', *Belfast Telegraph*, 10 September 2019.

**the Terrorism Act 2000 and Justice and Security (NI) Act 2007 throughout NI?**

## **13.0 Article 18 – Right to freedom of thought, conscience and religion**

### **Blasphemy**

12.12 In NI, blasphemy and blasphemous libel remain common law offences,<sup>247</sup> although it is noted that no prosecution has occurred since 1855.<sup>248</sup>

**12.13 The Committee may wish to ask the UK what effective measures it is taking to promptly abolish the common law offence of blasphemy and blasphemous libel in NI?**

## **14.0 Article 19 – Right to freedom of expression**

### **Defamation**

14.1 In 2008, the Committee expressed concerns about the practical application of the law of libel in the UK in 2008.<sup>249</sup> This was addressed in England and Wales by the Defamation Act 2013.

14.2 NI chose not to implement the Defamation Act 2013 on the basis that there is no evidence of libel tourism.<sup>250</sup> However, the disparity enables this to be a possibility.

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<sup>247</sup> The common law offence of blasphemy and blasphemous libel has been abolished in England and Wales. In 2018, the Constitution of Ireland was amended to remove blasphemy as an offence. See Section 79, Criminal Justice Act 2008; Thirty-seventh Amendment of the Constitution (Repeal of offence of publication or utterance of blasphemous matter) Act 2018.

<sup>248</sup> BJAC Valentine, 'Booklet of Criminal Offences in NI' (LSNI, 2016).

<sup>249</sup> CCPR/C/GBR/CO/6, 'UN Human Rights Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 25 July 2008, at para 25.

<sup>250</sup> NI Office, 'Report pursuant to section 3 (17-20) of the NI (Executive Formation, etc) Act 2019: 21 October 2019 (NIO, 2019).

**14.3 The Committee may wish to ask the UK what effective measures it is taking to introduce legal measures to NI's defamation law to ensure it strikes a fair balance between the right to freedom of expression and the right to private life?**

## **Journalists' Freedom of expression**

14.4 In 2018, two journalists were arrested as part of an investigation into the suspected theft of confidential documents from the Police Ombudsman NI, relating to a police investigation into the 1994 murder of six men at Loughinisland, Co Down.<sup>251</sup>

14.5 In 2019, the journalists challenged the legality of the search warrant. The NI High Court ruled that the search warrants issued were unlawful.<sup>252</sup> The Police Service NI subsequently dropped the case against the two journalists.<sup>253</sup>

**14.6 The Committee may wish to ask the UK what effective measures it is taking to ensure that:**

- **information allegedly establishing the involvement of State agents in non-human rights compliant conduct is not arbitrarily withheld from the public and that journalists and human rights defenders do not face intimidation or reprisals for disclosing such information in NI?**
- **the right to a fair trial and right to an effective remedy for journalists in NI facing allegations are fulfilled, respected and protected?**
- **journalists in NI have effective protection to report on issues of public importance?**

## **15.0 Article 21 – Right to peaceful assembly**

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<sup>251</sup> 'Loughinisland: Journalists arrested over documents investigation', *BBC News*, 31 August 2018.

<sup>252</sup> 'Loughinisland: Police drop case against two journalists', *BBC News*, 3 June 2019.

<sup>253</sup> *Ibid.*

## Parades and protests

15.1 In 2013, the UN Special Rapporteur on peaceful assembly, parades and association recommended “political resolution of the issues – such as parades, flags and emblems – that still make the enjoyment of freedom of peaceful assembly problematic in NI”.<sup>254</sup>

15.2 The Stormont House Agreement proposed that responsibility for parades and related protests is devolved<sup>255</sup> and that the Office of Legislative Counsel produces legislative options for addressing the remaining key issues.<sup>256</sup> The Executive Office was to bring forward proposals to the NI Executive by June 2015.<sup>257</sup> However, this not happened.

15.3 In 2018/2019, the Parades Commission was notified of 2,523 loyalist/unionist, 107 nationalist/republican and 1,599 other parades. Of these, 177 loyalist/unionist, four nationalist/republican, and two other were considered “sensitive” and had the potential to raise concerns and community tensions.<sup>258</sup>

### **15.4 The Committee may wish to ask the UK what effective measures it is taking to:**

- **devolve responsibility for parades and protests to the NI Assembly, in line with the Stormont House Agreement?**
- **ensure a range of options underpinned by human rights aimed at resolving disputes relating to parades and protests in NI are addressed in legislation?**

## 16.0 Article 23 – Right to marry

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<sup>254</sup> A/HRC/23/39/Add.1, ‘Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, on his Mission to the UK (14-23 January 2013)’, 17 June 2013, at para 96.

<sup>255</sup> NI Office, ‘Stormont House Agreement’, 23 December 2014, at para 17.

<sup>256</sup> Remaining issues include the Code of Conduct, criteria and accountability.

<sup>257</sup> NI Office, ‘Stormont House Agreement’, 23 December 2014, at para 18.

<sup>258</sup> Parades Commission for NI, Annual Report and Financial Statements for the Year Ended 31 March 2019’ (HoC, 2019), at 9.

## **Child, early and forced marriage**

16.1 The Marriage (NI) Order 2003 permits the marriage of a child aged 16 or 17 years, with the consent of their parents or legal guardians or the courts. The UN CRC has advised that the minimum age of marriage should be raised to 18 years.<sup>259</sup>

16.2 In 2018, 35 girls and 14 boys were married in NI.<sup>260</sup>

16.3 The UK Government does not cover repatriation costs in cases of forced marriage.

### **16.4 The Committee may wish to ask the UK what effective measures it is taking to:**

- **increase the minimum age for marriage to 18 years, for girls and boys in NI?**
- **strengthen efforts to combat forced marriages in NI?**
- **pay all costs for repatriation of victims of forced marriage in NI, when it is in the victim's best interest to be repatriated?**

## **17.0 Article 24 – Children's rights**

### **Physical punishment of children**

17.1 In 2015, the Committee recommended legislative measures to put an end to corporal punishment in all settings.<sup>261</sup> In 2016, the UN CRC recommended abolition of corporal punishment of children and

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<sup>259</sup> CRC/C/GC/20, 'UN Committee on the Rights of the Child General Comment No 20 on the Implementation of the Rights of the Child during Adolescence', 6 December 2016, at para 40; CRC/C/GBR/CO/5, 'UN Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 19.

<sup>260</sup> Statistics provided to NI Human Rights Commission by NI Statistics and Research Agency, 8 November 2019.

<sup>261</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, at para 20.



the repeal of all legal defences such as “reasonable chastisement”.<sup>262</sup>

17.2 The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable punishment of a child in NI. Unlike other devolved administrations in the UK,<sup>263</sup> there is no intention to remedy this issue in NI.<sup>264</sup> No statistics are collated on the number of cases where the defence of reasonable chastisement is pleaded.<sup>265</sup>

### **17.3 The Committee may wish to ask the UK what effective measures it is taking to:**

- **repeal the defence of reasonable chastisement of a child in NI?**
- **devise and implement a NI strategy to effectively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, and to eliminate the use of physical punishment in child-rearing?**

## **Children in armed forces**

17.4 In 2016, the UN CRC Committee recommended raising the minimum age for recruitment to the armed forces to 18 years.<sup>266</sup> The UK is the only country in Europe that routinely recruits minors aged between 16 and 18 years into the armed forces.

17.5 There are concerns that children from vulnerable groups are disproportionately represented in the UK’s Armed Forces.<sup>267</sup>

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<sup>262</sup> CRC/C/GBR/CO/5, ‘UN Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 40.

<sup>263</sup> In November 2019, the Scottish Parliament enacted the Children (Equal Protection) (Scotland) Act. In Wales, a Bill which would abolish the common law defence of reasonable chastisement was introduced in March 2019. The Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill has commenced Stage 3 before the Welsh Assembly.

<sup>264</sup> Meeting between Department of Justice officials and NI Human Rights Commission, 29 November 2018.

<sup>265</sup> Ibid.

<sup>266</sup> CRC/C/GBR/CO/5, ‘UN Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 84.

<sup>267</sup> NI Human Rights Commission, ‘The 2018 Annual Statement, Human Rights in Northern Ireland’ (NIHRC, 2018), at 127.

**17.6 The Committee may wish to ask the UK what effective measures it is taking to promptly raise the minimum age of recruitment to the Armed Forces from 16 to 18 years to ensure the protection of children, including in NI?**

## **Anonymity**

17.7 The Youth Justice and Criminal Evidence Act 1999, Section 44, prevents anyone under 18 allegedly involved in an offence from being named in the media.<sup>268</sup> However, unlike in England and Wales, application of this law in NI limits this protection to post-charge and post-summons and does not include pre-charge and pre-summons stages. This is currently being challenged before the NI courts concerning a child who was named during legal proceedings.<sup>269</sup>

**17.8 The Committee may wish to ask the UK what effective measures it is taking to ensure all children allegedly involved in an offence are granted anonymity at every stage of the legal process in NI?**

## **18.0 Article 25 – Right to vote and to be elected**

### **Participation of women in political life**

18.1 Women, particularly minority women, remain under-represented in political life in NI. Women account for 22 per cent of NI's 18 MPs, 30 per cent of MLAs and 26 per cent of Councillors.<sup>270</sup>

18.2 The Sex Discrimination (NI) Order 1976, section 43A allows political parties to take positive measures to reduce inequality between men and women elected to Parliament, the NI Assembly, District

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<sup>268</sup> This provision applies to England, Wales and NI.

<sup>269</sup> 'TalkTalk teen hacker in legal challenge over Press identification', *Belfast Telegraph*, 7 January 2020.

<sup>270</sup> Four of 18 Northern Ireland's MPs, 27 of 90 MLAs and 122 of 426 local councillors are women. In November 2019, three of Northern Ireland's five main political parties had women leaders.

Councils and the European Parliament. This provision has not been utilised.

**18.3 The Committee may wish to ask the UK what effective measures it is taking to adopt specific targeted measures, including temporary special measures, to improve the representation of women, including in particular, Black, Asian and Minority Ethnic women and women with disabilities in NI local government, NI Assembly, and UK Parliament?**

**Transgender**

18.4 There are concerns that transgender persons are experiencing undue delays in registering to vote, due to issues with how gender identity is recorded.<sup>271</sup>

**18.5 The Committee may wish to ask the UK what effective measures it is taking to ensure transgender persons in NI are able to promptly register to vote and to effectively exercise their vote without discrimination?**

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<sup>271</sup> Trans Ally Session, NI Human Rights Festival, 12 December 2019.

## Contact us

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