

# The 2014 Annual Statement

## Human Rights in Northern Ireland

2014



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION



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## About us

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

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

In addition, the Commission has powers to:

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

### Our mission statement

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

Chief Commissioner:	Les Allamby
Commissioners:	Christine Collins John Corey Milton Kerr QPM Grainia Long Alan McBride Marion Reynolds MBE Paul Yam MBE
Director:	Virginia McVea
Deputy Director:	Dr David Russell

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## Foreword



I am delighted to write my first foreword to the annual statement as Chief Commissioner of the Northern Ireland Human Rights Commission.

The statement is an important part of the Commission's work. It provides a benchmark of progress across wide ranging areas of public policy where human rights standards play a role. This year we have introduced a traffic lights system with the aim of making the document more accessible to readers. It does not provide a complete picture of the degree of progress. The amber category embraces a number of issues where there has been considerable progress in the last 12 months and with legislation at an advanced stage there is a strong

likelihood that a green light will appear in next year's statement. In other areas, there has been little or no progress and limited confidence that next year will see a step change in implementing the recommended changes sought by the Commission or international human rights treaty bodies.

Alongside benchmarking progress, the annual statement showcases the breadth and depth of the Commission's work in providing advice and analysis to the UK and Northern Ireland governments, Parliament and the Assembly, public authorities, the United Nations and Council of Europe. This work is done either alone or in conjunction with other national human rights institutions in these islands. It is just one part of the important statutory work undertaken by the Commission.

Against that backdrop, it is particularly disappointing that the Commission faces a 9.4 per cent (£122,000) reduction in grant aid from the Northern Ireland Office in 2015/2016. This comes on top of an earlier 25 per cent reduction in funding between 2010-2014. In effect, staffing levels are now as low as they have ever been save for the opening full year of the Commission 15 years ago.

The annual statement is one part of the good story the Commission has to tell in terms of its work promoting and protecting human rights. A strong and stable national human rights institution is a necessary safeguard in any society. It is vital in uncertain political times.

I hope you find the annual statement useful and valuable in whatever role you play in civic and public life.


A handwritten signature in black ink, which appears to read 'Les Allamby'. The signature is stylized and includes a small rectangular box at the end.


**Les Allamby**


Chief Commissioner

## Understanding the annual statement

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

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

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

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

**See Appendix C** for a list of outcomes contained in this report arranged by their traffic light designation.



## Chapter 1 Introduction

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

Having assessed developments affecting human rights protections in NI throughout 2014, the Commission publishes this annual statement, operating in accordance with the NI Act 1998, and recalling its mandate to:

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

The Commission also recalls the United Nations (UN) Paris Principles, and, in particular, the responsibility of a NHRI to:

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

The Commission's assessment of developments during 2014 is premised upon the requirements of domestic human rights standards and those treaty obligations of the UN and European systems that are legally binding in NI on the basis of their ratification by the UK.

The treaties which the UK has ratified include:

- *European Convention on Human Rights (ECHR) [UK ratification 1951] – given further domestic effect by the Human Rights Act (HRA) 1998;*
- *European Social Charter (ESC) [UK ratification 1962];*
- *Framework Convention for the Protection of National Minorities (FCNM) [UK ratification 1998];*
- *Convention on Action against Trafficking in Human Beings [UK ratification 2008];*
- *European Charter for Regional or Minority Languages [UK ratification 2001];*
- *International Covenant on Civil and Political Rights (ICCPR) [UK ratification 1976];*
- *International Covenant on Economic, Social and Cultural Rights, (ICESCR) [UK ratification 1976];*
- *Convention on the Elimination of All Forms of Racial Discrimination (CERD) [UK ratification 1969];*
- *Convention on the Elimination of Discrimination Against Women, (CEDAW) [UK ratification 1986];*
- *Convention on the Rights of the Child (CRC) [UK ratification 1991];*

1 See section 69, NI Act 1998

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

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

The Commission recalls that human rights law further applies by virtue of the NI Act 1998, Section 24 (1). Ministers of the Executive Committee of the NI Assembly (NI Executive) and Executive departments are therefore required to ensure that all legislation and actions are compatible with the ECHR.<sup>3</sup>

The Commission also recalls that the NI Act 1998, Section 26, requires compliance with other international human rights obligations, and that for this purpose the Secretary of State for NI may, by direct order, prevent any proposed action by Ministers of the NI Executive and devolved Executive departments.<sup>4</sup>

The ECHR is given further domestic effect in the UK as a consequence of the HRA. Subject to Section 6 (3), all public authorities in NI must ensure that their actions are compatible with the HRA. The definition of a public authority includes a 'court or tribunal, and any person certain of whose functions are functions of a public nature'.<sup>5</sup> This means that private sector contractors may, at times, be subject to the requirements of the HRA. Government departments have the duty to ensure that actions carried out following public procurement exercises comply with the ECHR.

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

Treaty examinations and reports issued in 2014:

#### **Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Appendix A)**

The UN CRC Committee examined the UK Initial Report on compliance with the Optional Protocol in 2014. The Committee published its concluding observations in July 2014, the report contained recommendations of both specific and general relevance to NI. Issues addressed by the Committee included: the extension of the operation of the Child Exploitation and Online Protection Centre to NI; the strengthening of sexual offences legislation including through the reversal of the burden of proof; the development of preventative programmes targeted at vulnerable children; the introduction of comprehensive measures for the recovery and reintegration of victims of crimes prohibited by the Optional Protocol.

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

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

<sup>5</sup> See section 6, Human Rights Act 1998

**European Charter for Regional or Minority Languages (Appendix B)**

The Committee of Ministers of the Council of Europe published a report in January 2014 containing recommendations of both specific and general relevance to NI. This followed an evaluation issued by the Committee of Experts. Issues included: calling for the development of an Irish Language Strategy; an expression of support for the Ulster Scots Agency and ensuring adequate funding for minority languages protected by the Charter.

## Chapter 2 Substantive rights and issues

### Equality and non-discrimination

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

#### Consolidating, strengthening and clarifying equality protections

As reported in both the 2012 and 2013 annual statements, despite developments elsewhere in the UK, NI law does not provide a single legislative instrument to consolidate, strengthen and clarify existing equality protections.<sup>6</sup> This remained the case throughout 2014. Equality legislation in NI has fallen behind in a number of areas compared to England, Scotland and Wales, for example reforms to extend age discrimination legislation in the provision of goods, facilities and services have been proposed, but are still to be introduced by the Office of the First Minister and Deputy First Minister (OFMDFM).<sup>7</sup> In addition, a consultation on the proposal to develop a sexual orientation strategy was launched in March 2014. The strategy may cover issues such as tackling homophobia, providing an environment free from harassment and promoting equality of opportunity.<sup>8</sup> A draft strategy is awaited.

The Commission has previously reported that both the UN CERD Committee and UN CEDAW Committee have called for the NI Executive to introduce necessary revisions of equality law in NI. If the law is not revised the Commission anticipates that the UN CRPD Committee will make a similar recommendation when it commences its examination of the UK in 2015/16.

6 The 2012 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2012) p.11; The 2013 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2013) p.11

7 Equality Commission NI 'Gaps in equality law between Great Britain and NI' March 2014 available at: <http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2014/Gaps-in-Equality-Law-in-GB-and-NI-March-2014.pdf?ext=.pdf> Official Report (Hansard) Session: 2013/2014 Date: Wednesday, 30 April 2014 Committee for the Office of the First Minister and deputy First Minister Age Discrimination Legislation relating to Goods, Facilities and Services: OFMDFM Briefing

8 OFMDFM 'Developing a Sexual Orientation Strategy' March 2014 available at: <http://www.ofmdfmi.gov.uk/developing-a-sexual-orientation-strategy-consultation-document.pdf>

## Travellers

In its 2013 annual statement the Commission reported that the third Comprehensive Traveller Accommodation Needs Assessment, scheduled to be completed in the financial year 2012-13 had not been published by the NI Housing Executive.<sup>9</sup> The objective of the Needs Assessment is to determine the accommodation needs (for social housing, Traveller specific group housing, serviced sites and transit sites) of the Traveller community.

In the absence of reliable updated information on the accommodation needs of Travellers, the NI Executive is unable to fully assess and take effective measures to fulfil its human rights obligations. The Commission has raised concerns regarding the methodology and expediency of the assessment process with the NI Housing Executive. A revised Traveller Accommodation Programme remains outstanding.

## Sectarianism

The Commission notes continued sectarian attitudes and violence. The PSNI has reported 1,395 sectarian incidents and 1,041 sectarian crimes in the period 30 June 2013/30 June 2014 an increase on the previous 12 months, with 14 additional incidents and 85 additional crimes recorded.<sup>10</sup> This raises significant human rights concerns, including: individuals being subjected to inhuman and degrading treatment; individuals being forced from their homes and denied the right to choose their place of residence; and individuals being denied the right to express their culture.

During 2013, the NI Assembly Committee for the OFMDFM launched an inquiry into Building a United Community. The inquiry Terms of Reference committed to consider actions by the NI Executive to “tackle sectarianism, racism and other forms of intolerance; and to make recommendations in order to support and enhance policy in uniting communities and community integration”.<sup>11</sup>

The Commission submitted evidence to the Committee advising that the categorisation of human rights law as a principle rather than as a binding legal obligation within the Together: Building a United Community strategy should not diminish their status or the corresponding duties placed on the NI Executive.<sup>12</sup> The Commission recommended that the legality of human rights be expressly acknowledged in any future legislation and in implementation initiatives relating to the strategy.

In addition the UN CERD Committee has recommended that the UK Government, including the NI Executive:

*examine whether the legislative and policy framework for dealing with the situation in NI could not benefit by being underpinned by the standards, duties and actions prescribed by the Convention and the Durban Declaration and Programme of Action.*<sup>13</sup>

Moreover the CoE European Commission Against Racism and Intolerance (ECRI) has defined racism as follows:

*the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.*<sup>14</sup>

9 The 2013 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2013) p. 8

10 PSNI 'Incidents and Crimes with a Hate Crime Motivation Recorded by the Police in NI: Quarterly Update to 30 June 2014

11 See Committee website: <http://www.niassembly.gov.uk/Assembly-Business/Committees/Office-of-the-First-Minister-and-deputy-First-Minister/Inquiries/Building-a-United-Community/>

12 The Northern Ireland Human Rights Commission (NIHRC) 'Submission to The Committee for the Office of the First Minister and deputy First Minister inquiry on Building a United Community' September 2013 para 20

13 Ibid.

14 Council of Europe CRI(2003)8 ECRI General Policy Recommendation No. 7 On National Legislation To Combat racism And Racial Discrimination Adopted On 13 December 2002

The Commission recommended to the OFMDFM Committee that any definition of sectarianism in domestic law should be premised upon the ECRI definition of racism.<sup>15</sup>

The Commission further recommended that the Committee consider the relationship between the domestic concept of good relations and the framework of intercultural dialogue set out by the CoE and UN human rights treaty bodies. Specifically the Commission advised that, the wording of the legal requirement to *'have regard to the desirability'* to promote good relations in the NI Act 1998 section 75(2) is not fully in accordance with the obligation to take *'immediate and effective measures'* required by the CERD Article 7.<sup>16</sup> The Commission further advised that the duty to promote good relations be extended to six additional protected characteristics: age; disability; gender reassignment; pregnancy and maternity; sex; and sexual orientation.<sup>17</sup>

The Commission has also noted the proposal by the OFMDFM to create an Equality and Good Relations Commission. It has advised that any structural changes must be made with the express objective of increasing the protection and promotion of equality, non-discrimination, tolerance, mutual respect and understanding in NI.<sup>18</sup> There should be no retrogression from protections afforded by the existing Equality Commission NI and Community Relations Council.



### Racial equality strategy

A racial equality strategy for NI was published in July 2005 to cover the period 2005-2010.<sup>19</sup> Since then there has been no replacement.<sup>20</sup> In 2014, however, the OFMDFM published a new draft strategy 'A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for NI 2014 - 2024'.

The Commission welcomed the publication of the draft Racial Equality Strategy but raised a number of areas of concern.<sup>21</sup> It recommended that a final version would need to be more action-orientated, making clear the desired impacts and also expressly articulate how the strategy seeks to fulfil the NI Executive's human rights obligations said to 'underpin' it.<sup>22</sup> The Commission referred the OFMDFM to the OHCHR Guidance on National Actions Plans against Racism 2014.<sup>23</sup> The Commission recommended that the strategy include an express acknowledgment that cultural diversity is a source of societal enrichment and recognise the need for human rights based education to eradicate unfounded fears.<sup>24</sup>

The Commission recognises that civil society and relevant public authorities have been calling for the development of a racial equality strategy for some time and have provided detailed guidance to the OFMDFM on the essential actions to be included in the strategy.<sup>25</sup>

15 NIHRC 'Submission to The Committee for the Office of the First Minister and deputy First Minister inquiry on Building a United Community' September 2013 para 44

16 Ibid., paras 60 and 62

17 Ibid., para 70

18 Ibid., para 74

19 OFMDFM 'Racial Equality Strategy 2005 – 2010' 2005

20 Official Report (Hansard) Session: 2013/2014 Date: Wednesday, 12 March 2014 Committee for the Office of the First Minister and deputy First Minister Racial Equality Strategy: OFMDFM Briefing

21 NIHRC 'Response of the NI Human Rights Commission to the OFMDFM consultation on 'A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for NI 2014 - 2024' October 2004

22 Ibid., para 2.7

23 OHCHR 'Developing National Action Plans against Racial Discrimination: A Practical Guide' (New York & Geneva: 2014), available at, <<http://www.ohchr.org/Documents/Publications/HR-PUB-13-03.pdf>>

24 Ibid., para 11.10

25 The Commission also notes that on the 9 September 2014, over 20 statutory bodies and civil society organisations launched a 'common platform' document calling for the final RES to include, among others: 'a meaningful assessment of the scale of the challenge'; 'a detailed robust action plan'; 'a senior official designated in each department'; 'a mechanism with a robust monitoring role'; 'a framework to deal with ... multiple identities'; 'the NI Executive's obligations under the international human rights' treaties'; and 'adequate funding'. The Commission recommended that the final Strategy demonstrates how OFMDFM has given full consideration to the collective message of the 'common platform'

## **Racist hate crimes**

The reported number of racist incidents for the financial year 2013/14 rose by 36%, from 830 to 1,132 and racist crimes increased by 51%, from 525 to 796 compared to the number of incidents and crimes in 2012/13.<sup>26</sup>

As reported in the 2013 annual statement, the Commission published an investigation report 'Racist hate crime: human rights and the criminal justice system in NI'. This includes 66 findings and 29 recommendations. Seven recommendations were to be addressed by the OFMDFM.<sup>27</sup> Correspondence received from the OFMDFM in July 2014 indicated that the relevant recommendations would be considered within the context of the Racial Equality Strategy. In November 2014, Department of Justice (DoJ) provided a progress report against each of the relevant recommendations.

In its response to the draft Racial Equality Strategy, the Commission recommended that the final strategy adopt a holistic approach to tackling racist hate crime based on the duties to prevent, prohibit, prosecute and protect.<sup>28</sup> The Commission further recommended that the OFMDFM acknowledge and commit to implementing the recommendations addressed specifically to the NI Executive within the 'Racist Hate Crime' report.<sup>29</sup>

## **Religious tolerance**

In May 2014 a sermon by a Christian pastor,<sup>30</sup> followed by comments from the First Minister was reported to have caused distress among minority groups and Muslims in particular.<sup>31</sup> The First Minister subsequently apologised for his remarks<sup>32</sup> and the pastor was questioned by the PSNI.<sup>33</sup>

The Commission raised the matter with the UN CERD Committee and sought its advice.<sup>34</sup> In addition the Commission informed the UN Human Rights Committee of these events noting that the comments were particularly disappointing given the international emphasis placed on the role of political leaders in mobilising to combat racism and racial discrimination.<sup>35</sup>

Following the comments the NI Assembly passed a motion stating:

*That this Assembly condemns the recent racial attacks and firmly opposes racism, discrimination and intolerance of any kind, wherever it occurs; embraces the growing diversity within our society; emphasises that there is no room for racism or stigmatisation...*<sup>36</sup>

## **Disabled persons**

The Commission, together with the Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission (SHRC) and the Equality Commission NI has been designated under

26 PSNI 'Incidents and Crimes with a Hate Crime Motivation Recorded by the Police in NI: Quarterly Update to 30 June 2014

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

28 Ibid., para 14.6

29 NIHRC 'Response of the NI Human Rights Commission to the OFMDFM consultation on 'A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for NI 2014 - 2024' October 2014 para 14.5

30 Sermon, Whitewell Tabernacle, 18 May 2014, available at: <<https://www.youtube.com/watch?v=UUJFIMciQA8>>.

31 BBC News, 'Peter Robinson backs Pastor James McConnell over Islamic remarks', 28 May 2014, available at: <<http://www.bbc.co.uk/news/uk-northern-ireland-27605185>>

32 The Guardian, 'NI's Peter Robinson apologises for Muslim comments', 3 June 2014, available at: <<http://www.theguardian.com/politics/2014/jun/03/peter-robinson-northern-ireland-muslims-apology-preacher>>

33 BBC News NI Police question Pastor James McConnell over Islam remarks 6 June 2014

34 NIHRC Chief Commissioner correspondence to Mr Jose Francisco Cali Tzay Chairperson UN CERD Committee 30 May 2014

35 NIHRC Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights. June 2014 Specifically referring to 'Ban Ki Moon Condemns Ideas Based on Racism' 21 March 2014

36 Official Report (Hansard) Tuesday 3 June 2014 Volume 95, No 7

the UN CRPD (Article 33.2) as component parts of the UK 'independent mechanism' (UKIM).<sup>37</sup> We are tasked with promoting, protecting and monitoring the implementation of the UN CRPD. The Commission, together with the Equality Commission for NI, carries out this function with specific respect to the situation in NI.

As reported in the 2013 annual statement it had been anticipated that the UN CRPD Committee would commence its examination of the UK's Initial Report in 2014.<sup>38</sup> However the Committee postponed the examination and it is likely now to commence in 2015. The UKIM provided the UN CRPD Committee rapporteur with initial comments on the UK State Report.<sup>39</sup> It highlighted the potential impact of the proposed changes to social security through the Welfare Reform Bill and the impact of the NI conflict on persons with disabilities.

The Commission has continued to participate in the monitoring and evaluation group for the OFMDFM Disability strategy published in 2013. In the strategy the OFMDFM committed that:

*By 2015 we will publish a report of the Actions which we will have progressed to deliver on the commitments in this Strategy.*<sup>40</sup>

The Commission together with the Equality Commission NI raised concerns regarding the absence of a timeline for implementation of key actions within the strategy and regarding the absence of terms of reference for the monitoring and evaluation group.



### **Extension of civil marriage to same sex couples**

In its 2013 annual statement the Commission highlighted that the Marriage (Same Sex Couples) Act 2013 had not been extended to NI.<sup>41</sup>

A Legislative Consent Motion on the Marriage (Same Sex Couples) Bill was laid in the Assembly on 24 May 2013. The Motion proposed that English/Welsh same sex marriages be treated as civil partnerships in NI. The Commission advised the NI Assembly Committee for Finance and Personnel that, whilst a state may extend the right to marry to same sex couples international human rights law does not require such provision.<sup>42</sup> The Commission further advised that any requirement on religious organisations that oppose same sex marriage to conduct such marriages may violate the right to freedom of religion.<sup>43</sup>

The Commission noted that the Committee for Finance and Personnel recommended:

*careful assessment of the implications of the proposed policy, both prior to and following implementation.*<sup>44</sup>

In year an attempt to pass a motion in the NI Assembly calling for equal marriage rights for same sex couples was defeated.<sup>45</sup>

37 UN CRPD Article 33.2

38 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p. 14

39 IMNI United Nations Convention on the Rights of Persons with Disabilities Jurisdictional 'Parallel' Report on Implementation in NI Working Paper (July 2014)

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

41 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p. 14

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

43 Ibid., para 11

44 Committee for Finance and Personnel Report on the Legislative Consent Motion: Marriage (Same Sex Couples) Bill Wednesday 12 June 2013 NIA 118/11-15 para 16

45 That this Assembly notes that other jurisdictions on these islands have moved forward with equal marriage rights for same-sex couples; believes that all couples, regardless of gender or sexual orientation, should have the same legal entitlement to marry and to the protections, rights, obligations and benefits afforded by the legal institution of marriage; supports freedom of religion by allowing religious institutions to define, observe and practise marriage according to their beliefs, granting them the freedom whether or not to conduct same-sex marriages; calls on the Minister of Finance and Personnel to introduce legislation to guarantee that couples of any sex or gender identity receive equal benefit; and further calls on the First Minister and deputy First Minister to ensure that all legislation adheres to the Executive's commitments to protect equality for all. OP 206/11-15 29 April 2014



### Eligibility to make blood donations

Following the High Court's judgment in October 2013 that the lifetime ban on blood donation for men who have sex with other men was irrational; both the Department of Health, Social Services & Public Safety (DHSSPS) and UK Department of Health have appealed the decision.<sup>46</sup>

In addition the applicant in the original judgement appealed the finding in that the Minister's decision was not prejudiced by his religious beliefs. The Court of Appeal directed, on 2 October 2014, that the case must be sent back for a determination on the applicant's appeal before the Court will consider the broader ground. Lord Justice Girvan said:

*The appropriate course of action to ensure finality in relation to the first instance decision, is that the matter should go back to Mr Justice Treacy to consider the question of perceived bias which he considered was not necessary to resolve.*<sup>47</sup>

46 It has been reported that the appeals will not proceed until the case of Geoffrey Léger has been heard by the European Court of Justice. In this case the applicant is challenging the permanent exclusion of men who have had, or have, sexual relations with other men from giving blood in France. See : Advocate General's Opinion in Case C-528/13 Geoffrey Léger v Ministre des affaires sociales et de la santé and Établissement français du sang <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-07/cp140111en.pdf>

BBC News NI 'Judge to decide if Edwin Poots showed 'gay blood bias' 2 October 2014

47 Ibid.

## Right to life

<b>ICCPR</b>	Article 6
<b>ECHR</b>	Article 2
<b>CRFEU</b>	Article 2
<b>CRC</b>	Article 6(1)
<b>CRPD</b>	Article 10

### Conflict related deaths: transitional justice and individual cases

The 2012 and 2013 annual statements set out the repeated calls for the UK Government and NI Executive to adopt holistic transitional justice measures aimed to address the legacy of the conflict.<sup>48</sup> Despite political negotiations since the Belfast (Good Friday) Agreement, this matter has not been resolved. The UK submitted follow up information to the UN CAT Committee in May 2014 and the Commission once again advised on the lack of progress.<sup>49</sup>

The All Party Working Group led by Dr. Richard Haass and Dr. Meghan O’Sullivan established in 2013 did not result in an agreement.<sup>50</sup> In September 2014 the Secretary of State, Ms Theresa Villiers announced that she would convene further cross-party talks to try to address outstanding issues, including flags, parades and the past.<sup>51</sup> These commenced in October 2014.

Significant concerns have been raised regarding the mechanisms already in place to investigate conflict related deaths. The work of the PSNI Historical Enquiries Team (HET) was suspended in September 2014. The suspension of the HET followed an inspection by the HM Inspectorate of Constabulary, which corroborated research by Professor Patricia Lundy identifying apparent inconsistencies in the investigation processes of the HET where State agents were implicated.<sup>52</sup> The suspension has remained in place as the HET implements the recommendations of the HM Inspectorate of Constabulary.<sup>53</sup>

In September 2014 the Chief Constable criticised the “*absence of a holistic approach to dealing with our past*” and made clear “*the significant strain that the current piecemeal approach to our history is placing on the [PSNI]*”. He explained that the status quo is not an option and that:

*to continue to ignore, hesitate or procrastinate on the past will have unpredictable and far reaching consequences. If our own politicians cannot reach consensus on the issue, then it would seem appropriate and necessary to seek and accept much more “hands on” support from the British and Irish Governments; and indeed other interested and influential observers of our peace process.*<sup>54</sup>

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

49 NIHRC, EHRC, SHRC “Follow-up regarding Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the UK” September 2014

50 Full text of a statement by Richard Haass and Meghan O’Sullivan 8 January 2014 available at: <http://panelofpartiesnie.com/>

51 Speech by the Secretary of State for NI, Rt Hon Theresa Villiers MP, to the Conservative Party Conference, September 28, 2014, available at: [http://www.politicshome.com/uk/article/105468/secretary\\_of\\_state\\_for\\_northern\\_irelands\\_rt\\_hon\\_theresa\\_villiers\\_mp\\_conference\\_speech.html](http://www.politicshome.com/uk/article/105468/secretary_of_state_for_northern_irelands_rt_hon_theresa_villiers_mp_conference_speech.html)

52 Inspection of the Police Service of NI Historical Enquiries Team HMIC 3, July 2013, pp 90 – 92. Lundy, Research Brief: Assessment of HET Review Processes and Procedures in Royal Military Police Investigation Cases, April 2012, available at: <http://eprints.ulster.ac.uk/21809/>

53 Follow-up information in response to the Concluding Observations adopted by the UNCAT Committee on the 5th periodic report of the United Kingdom of Great Britain and NI 23 May 2014 para 27

54 Chief Constable of the PSNI, Speech at British-Irish Association conference, *Dealing with the Future by Dealing with the Past*, 6 September 2014, available at: [http://www.psni.police.uk/index/news-archive/news-2014/september\\_2014/pr\\_chief\\_constable\\_s\\_speech\\_at\\_british-irish\\_association\\_conference\\_060914.htm](http://www.psni.police.uk/index/news-archive/news-2014/september_2014/pr_chief_constable_s_speech_at_british-irish_association_conference_060914.htm)

In October 2014 the Chief Constable announced that the PSNI would be terminating the contracts of 300 staff members. He stated that:

*The loss of these posts by the end of this year will effectively mean the closure of the HET.<sup>55</sup>*

The following day the Office of the Police Ombudsman issued a statement expressing concern at its ability to effectively investigate conflict related deaths due to budgetary reductions.<sup>56</sup>

The coronial process has also been subject to criticism with delays being a source of significant concern for many years.<sup>57</sup> Improvements have been made, such as the establishment of a cross agency working group,<sup>58</sup> however, on 6 May 2014 the Senior Coroner wrote to the Minister of Justice stating:

*Inquests are being funded on a drip feed basis and there is no demonstrable commitment to ensure that [conflict related] inquests are properly resourced and otherwise facilitated so that they can take place timeously. In the meantime, the families of the deceased and the witnesses age, and many have already died without these Inquests having been heard. The delay for the families of the deceased and for many of the witnesses involved must be nothing short of intolerable.<sup>59</sup>*

The Senior Coroner has highlighted the reluctance of relevant public authorities to disclose sensitive security documents as a factor leading to delay.<sup>60</sup> During 2014 the Police Ombudsman has also brought legal proceedings against the PSNI Chief Constable alleging his obstruction of the Ombudsman's investigations and seeking the disclosure of documents containing intelligence material relating to incidents that occurred during the conflict.<sup>61</sup> The matter was resolved outside of court.

In light of these ongoing concerns, Les Allamby, Chief Commissioner, stated:

*Retraumatizing of vulnerable people and the political inertia of dealing with the past is not an academic matter. These are real lives. Thousands of people deserve better than they have got since 1998. The repeated failure to respect, protect and fulfil their human rights is an indictment that cannot be ignored. As they get older, the vulnerability of victims and survivors increases. Each year that passes, evidence-recovery is harder to get and more die having been denied truth, or justice. The net effect is the transmission of a justifiable grievance to the next generation. We need a comprehensive process to address the continued denial of human rights. Anything else would be a false economy.<sup>62</sup>*

The Commission raised this matter with the UN Human Rights Committee who will be assessing the compliance of the UK with the ICCPR in 2015.<sup>63</sup> In advance of the examination the UN Human Rights Committee has asked the UK to:

55 PSNI, 'Termination of contracts for Associate Workers', 30 September 2014, available at:[http://www.psnipolice.uk/termination\\_of\\_contracts\\_for\\_associate\\_workers\\_](http://www.psnipolice.uk/termination_of_contracts_for_associate_workers_)

56 BBC News NI 'Police ombudsman: Budget cuts delay investigations into killings' 30 September 2014

57 CM/Inf/DH(2006)4 revised 2 23 June 20061 - Cases concerning the action of security forces in NI – Stocktaking of progress in implementing the Court's judgments - Memorandum prepared by the Secretariat incorporating information received up to 12 June 2006, paras 85 – 109

58 See Information submitted by the UK Government Action Plan on the McCaughey and Helmsworth judgements submitted to the Committee of Ministers of the Council of Europe, 15 April 2012

59 Correspondence provided to the NIHRC – see further Official Report (Hansard) Session: 2013/2014 14 May 2014 Committee for Justice Legal Aid and Coroners' Courts Bill: Oral Evidence Event

60 Belfast Telegraph Inquest delays 'embarrass' coroner 06 February 2014. On 4 June 2014 the Senior Coroner in open court referred to correspondence he had dispatched to the Secretary of state for NI stating: "These [historic] cases have been plagued by delay and slow progress, caused principally (but not exclusively) in the senior coroner's view by a lack of provision of appropriate resources to allow the PSNI to provide proper disclosure and the coroner to pursue other lines of inquiry in an effective and timely fashion."

61 BBC News NI 'Police ombudsman PSNI action 'couldn't be more significant' 4 June 2014

62 Les Allamby 'Victims need real process' Belfast Telegraph 16 October 2014

63 NIHRC Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights. June 2014 pp. 11 – 14

*respond to the following concerns and indicate the measures taken to address them: (a) absence of a comprehensive framework for dealing with conflict related deaths in NI; police and political interference in the work of the Police Ombudsman for NI and delays in the NI Coroner's court, and provide relevant information relating to the number of outstanding investigations into conflict related deaths; (b) about the retention in the Inquiries Act 2005 of powers to subordinate the inquiry process to the control of Government ministers at every stage.*<sup>64</sup>

#### On the Runs: Administrative Scheme<sup>65</sup>

In February 2014 John Downey was being prosecuted for offences relating to an IRA bombing in the UK in which four soldiers were killed. During the course of the trial it emerged that in September 2000 an administrative scheme was established by the UK Government to deal with individuals living outside of the UK, who believed they might face questioning or arrest in connection with terrorist or other criminal offences relating to the conflict in NI if they returned to the UK.<sup>66</sup>

John Downey had previously applied to the administrative scheme and was in receipt of a letter from senior officials within the NI Office (NIO) stating:

*The Secretary of State for NI has been informed by the Attorney General that on the basis of the information currently available, there is no outstanding direction for prosecution in NI, there are no warrants in existence nor are you wanted in NI for arrest, questioning or charge by the police. The Police Service of NI are not aware of any interest in you from any other police force in the United Kingdom. If any other outstanding offence or offences came to light, or if any request for extradition were to be received, these would have to be dealt with in the usual way.*<sup>67</sup>

As a result of the letter the presiding judge accepted an abuse of process application and the prosecution was stayed.

In commenting on the development the Commission stated:

*While recognising the government can take measures to deal with 'On The Run' (OTRs) cases' both international and domestic law place obligations on the government at Westminster and the Assembly that are clear; the right to life includes a requirement that the investigation be capable of punishing or identifying those responsible. Regrettably the reports on how the UK Government has handled this matter will have caused many families deep concern about their right to due process before the law in an accountable and transparent manner. More widely there will be concern about whether there is equality before the law of those who have been charged with offences relating to the conflict (and who still may be charged) and those who appear to have been granted immunity.*<sup>68</sup>

The Government has emphasised that the letters do "not amount to immunity, exemption or amnesty from arrest".<sup>69</sup> Prime Minister David Cameron MP established an inquiry, led by Lady Justice Hallett, to review the operation and extent of the administrative scheme. Lady Justice Hallett reported in July

64 UN Human Rights Committee List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and NI, the British Overseas Territories and Crown Dependencies October 2014 para 13

65 Lieutenant Anthony Daly, Trooper Simon Tipper, Lance Corporal Jeffrey Young; and Squadron Quartermaster Corporal Roy Bright of the Blues and Royals were killed in the Hydepark bomb

66 The Queen v John Anthony Downey 24 February 2014 Abuse of Process Application para 44 anon

67 NIO Written Ministerial Statement by Rt Hon Theresa Villiers MP following High Court Judgement on Downey Case 25 February 2013 available at <https://www.gov.uk/government/speeches/wms-high-court-judgment-on-downey-case>

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

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

2014 and concluded that the administrative scheme did not grant immunity from prosecution and that the judgement in the Downey case is non-binding.<sup>70</sup> In addition, an inquiry was launched by the NI Affairs Committee of the House of Commons.<sup>71</sup>

#### Finucane

In its 2013 annual statement the Commission reported that the family of Pat Finucane maintain their call for a full independent inquiry into the circumstances of Pat Finucane's death following the publication of the de Silva Report.<sup>72</sup> The family has applied for judicial review challenging the refusal to hold a public inquiry into Pat Finucane's death.<sup>73</sup>

#### Jordan

In its 2012 annual statement the Commission reported on the inquest into the death of Pearse Jordan.<sup>74</sup> Whilst the inquiry ruled on the causes of Pearse Jordan's death the jury were unable reach agreement on key aspects of the case, including whether or not reasonable force was used by the Royal Ulster Constabulary.<sup>75</sup> In January 2014 the High Court quashed the verdict of the inquest into the death of Pearse Jordan and ordered that a further inquest be held.<sup>76</sup> In October 2014 the NI Court of Appeal upheld this judgement.<sup>77</sup>



### Rule of law: non-state actors

Establishing respect for the rule of law is fundamental to achieving the effective protection of human rights. The Commission condemns the continued abuse of human rights by paramilitary organisations throughout 2014.

PSNI statistics for the financial year 2013/14 show that 69 bombing incidents and 54 shooting incidents occurred in NI. There were 28 casualties of paramilitary style shootings and 42 casualties of paramilitary style assaults. In addition there was one death due to the security situation in the financial year 2013/14.<sup>78</sup> The threat from NI-related terrorism remained at severe, meaning that the threat of imminent attack was highly likely.<sup>79</sup> Throughout the year a number of public order incidents also threatened the lives of both police officers and members of the public.<sup>80</sup>



### Deaths in custody

The Prisoner Ombudsman has responsibility for investigating deaths in custody in NI. During 2014 the DoJ consulted on proposals to place the Prisoner Ombudsman on a statutory footing.<sup>81</sup>

The Commission advised that the European Court of Human Rights (ECtHR) has ruled that the obligation to ensure that everyone's life is protected by law includes a procedural duty to guarantee

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

71 Terms of reference for the inquiry available at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/northern-ireland-affairs-committee/inquiries/parliament-2010/administrative-scheme-for-on-the-runs/>

72 The 2013 Annual Statement: Human Rights in NI' (Belfast, NIHRC, 2013) pp. 17 - 18

73 BBC News NI 'Pat Finucane's family win right to judicial review' 13 January 2012

74 NIHRC 'Annual Statement 2012' Belfast December 2012 pp. 16 - 17

75 Ibid.

76 Jordan's Applications (13/002996/1), (13/002223/1) (13/037869/1) [2014] NIQB 11 para 189

77 BBC News 'Pearse Jordan: Fresh inquest to take place' 14 October 2014

78 PSNI, Police Recorded Security Situation Statistics, Monthly Update; Covering the 12 month period 1st September 2013 -31st August 2014, 16 September, 2014. Available at: [http://www.psnipolice.uk/security\\_situation\\_statistics\\_to\\_august\\_2014.pdf](http://www.psnipolice.uk/security_situation_statistics_to_august_2014.pdf).

79 David Anderson Q.C. Independent Reviewer of Terrorism Legislation 'The Terrorism Acts in 2013' July 2014 para 2.4

80 BBC News NI 'East Belfast: Homes damaged in Short Strand' 23 October 2014

81 DoJ consultation on Placing the Police Ombudsman on a Statutory Footing 2014

independent scrutiny in cases where a person has died.<sup>82</sup> An 'effective' investigation must be 'independent' and the investigator's independence must be a 'practical reality'.<sup>83</sup>

Citing the jurisprudence of the ECtHR the Commission advised that placing the Ombudsman on a statutory footing will comply with the NI Executive's obligations under domestic and international human rights law particularly in respect to the right to life and to investigating allegations of torture, inhuman or degrading treatment.<sup>84</sup>

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82 McCann and Others v UK 1995 ECHR45

83 Jordan v United Kingdom App. No. 24746/94 AND Ergi v Turkey 2001 32 EHRR 18

84 NIHRC 'Submission to Department of Justice consultation on Placing the Police Ombudsman on a Statutory Footing' 2014

## Right to liberty and security of the person

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

### Alternatives to imprisonment

In its 2013 concluding observations the UN CAT Committee recommended that the UK:

*strengthen its efforts and set concrete targets to reduce the high level of imprisonment and overcrowding in places of detention, in particular through the wider use of non-custodial measures as an alternative to imprisonment...*<sup>85</sup>

The Justice (NI) Bill was introduced to the NI Assembly in 2014 making provision for prosecutorial fines as an alternative to imprisonment.<sup>86</sup>

The Commission advised the NI Assembly Committee for Justice during its examination of the Bill to ensure the proposed arrangement for prosecutorial fines is sufficiently robust to act as a practicable alternative to imprisonment.<sup>87</sup> In particular, the Commission recommended that the terms for repayment of a prosecutorial fine take account of the financial circumstances of an offender and that their impact on the number of persons being sent to prison be closely monitored.<sup>88</sup>

### Imprisonment for fine default

In February 2014, the Magistrates Courts (Amendment) Rules (NI) 2014 came into force. These provide for the Magistrates' Court to hold a 'Fine Default Hearing' before imprisonment is imposed for fine default and constituted the direct response of the DoJ to the 2013 judgment in McLarnon, in which LJ Girvan held that the previous system of imprisonment without a hearing violated the ECHR, Article 6.<sup>89</sup> After the McLarnon judgement, figures for imprisonment on the basis of fine default dramatically declined. For example, in the period between Jan - March 2013, 183 persons were imprisoned for fine default, compared to only 5 persons during the same period in 2014.<sup>90</sup> More recent, figures show 11 persons were imprisoned for fine default between July - September 2014.<sup>91</sup>

Since the introduction of the Rules, the DoJ consulted on proposals to reduce the numbers of people who go to prison for fine default.<sup>92</sup> The Commission welcomed the move and emphasised that no one should be imprisoned for fine default merely on the grounds that they cannot pay.<sup>93</sup>

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

86 Prosecutorial Fines Clauses 17 – 27

87 NIHRC 'Submission to the NI Assembly, Committee for Justice on the Justice (NI) Bill 2014' 2014 para 7

88 Ibid.

89 [2013] NIQB 40.

90 NIPS, 'Analysis of NIPS Prison Population from 01/07/2013 to 30/09/2014'. 1 October 2014

91 Ibid.

92 DoJ 'Fine Collection and Enforcement in NI' June 2014 available at:

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/fine-default-consultation-2014-report-on-responses.pdf>

93 NIHRC 'Submission to DoJNI Consultation on Fine Collection and Enforcement in NI' 2014

The Commission further advised that the imprisonment of pregnant women and mothers of young children for fine default should be reconsidered and that alternatives to custody should be prioritised over imprisonment.<sup>94</sup>

The DoJ has indicated its intention to develop a Fine Collection and Enforcement Bill, this has not yet been introduced to the NI Assembly.



### **Women in prison**

In 2012 the Commission noted that a public consultation was issued on a draft Prison Estate Policy, which contained proposals to develop the prison estate. It did not make provision to address the need for a women's facility.<sup>95</sup>

In its 2013 annual statement the Commission recalled that both the UN CAT Committee and the National Preventative Mechanism, designated under the Optional Protocol to the UN CAT, had recommended that women should no longer be held at Hydebank Wood.<sup>96</sup>

The Commission has conducted two investigations into the imprisonment of women in NI dating back to 2005.<sup>97</sup> These investigations found that the absence of a discrete prison facility for women and gender appropriate services undermines the reformative and rehabilitative aims which imprisonment should strive towards.

The Commission continues to keep the matter under review and raised concerns regarding the lack of progress to the UN Universal Periodic Review mid-term review.<sup>98</sup> The Minister of Justice has indicated his support for the construction of a separate custodial facility for women. However he has emphasised that this is subject to appropriate funding.<sup>99</sup> In September 2014 the Minister updated the NI Assembly following approval of the Strategic Outline Case by the Department of Finance and Personnel (DFP). In July Prison Service officials were in the process of appointing an Integrated Design Team, which will progress the Project through the Business Case, Exemplar Design and Procurement processes to the construction and handover of the new facility.<sup>100</sup>



### **Imprisonment of children with adults**

At present there are no children imprisoned at Hydebank Wood and Departmental officials have indicated that the practice has ceased.<sup>101</sup> However, the Criminal Justice (Children) (NI) Order 1998, continues to make provision for a 15-17 year old offender, considered likely to injure him or herself or others to be detained in HM Young Offenders Centre Hydebank Wood, which accommodates offenders up to 21 years of age.

The Commission reported in 2013 that the DoJ had indicated the intention to amend the 1998 Order removing the legal basis for the imprisonment of children at Hydebank Wood.<sup>102</sup> This commitment has not been implemented; the Minister has indicated that the introduction of proposed legislation will be paused and the matter will be re-examined.<sup>103</sup> The Commission has continued to advise that the provision should be repealed to ensure the practice cannot resume.<sup>104</sup>

94 Ibid.

95 The 2012 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2012) p. 19

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

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

98 Submission by the NIHRC to the UN Human Rights Council's Universal Periodic Review of the United Kingdom Mid-term Report September 2014 para 42

99 AQO 5401/11-15 Ms Michaela Boyle (SF - West Tyrone) 16/01/2014

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

101 Official Report (Hansard) Committee for Justice Youth Justice Review: Changes to Custodial Arrangements for Children, 7 May 2014

102 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p. 21

103 DoJ 'Sentencing arrangements for children will be reviewed – Ford' 17 November 2014

104 NIHRC, 'Response to DoJNI Custodial Arrangements for Children in NI', January 2014



## The remand of children

During 2014 a high percentage of child suspects in NI continued to be held on remand, most of whom will not go on to serve a custodial sentence.<sup>105</sup> In addition to the established grounds for pre-trial detention, a child who has been arrested may be remanded in a prison when it is deemed to be in their best interests.<sup>106</sup> In its 2012 annual statement the Commission reported that the Youth Justice Review found the imprisonment of children on remand:

*reflects a serious gap in the provision of suitable bail packages to the court at an early stage that would ensure that young defendants can be safely and securely bailed to reside in the community.*<sup>107</sup>

In its 2013 annual statement the Commission referred to proposed reforms to bail law intended to provide that remand would only be permissible in circumstances where there is a real prospect that the defendant will receive a custodial sentence if convicted.<sup>108</sup> The DoJ has been advised that a child should be held in custody only when absolutely necessary, as a measure of last resort and that suitable arrangements should be developed to accommodate child defendants who are on bail.<sup>109</sup>

Reforms to bail law have not been introduced to the NI Assembly. The Commission raised this matter with the UN Human Rights Committee who will be assessing the compliance of the UK with the ICCPR in 2015.<sup>110</sup> In advance of the examination the UN Human Rights Committee has asked the UK to report on measures taken to:

*address the overuse of remand in custody of child defendants in NI and ensure children are held in custody only when this is absolutely necessary and as a measure of last resort.*<sup>111</sup>

105 DoJ, 'Review of the Youth Justice System in NI', 2011, para 3.6.2

106 Police and Criminal Evidence (NI) Order 1989, Article 39(1)(b)(iii), (6), (8)

107 DoJ, 'Review of the Youth Justice System in NI', 2011, para 3.6.2

108 NIHRC 'Annual Statement 2013' Belfast 2013

109 NIHRC, 'Response on the Department of Justice Consultation on the NI Law Commission Report on Bail in Criminal Proceedings', 2013

110 NIHRC Submission to the UN Human Rights Committee on the UK's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights. June 2014 pp. 11 – 14

111 UN Human Rights Committee List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and NI, the British Overseas Territories and Crown Dependencies October 2014 para 25

## Freedom from torture, inhuman and degrading treatment

<b>ICCPR</b>	Article 7
<b>ECHR</b>	Article 3
<b>CFREU</b>	Article 4
<b>CRPD</b>	Article 15 Article 16 Article 17
<b>CRC</b>	Article 37  Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
<b>CAT</b>	

### Prison review and conditions

Throughout 2014 the Prison Service has continued to implement the recommendations of the 2011 review.<sup>112</sup> In June 2014 it was reported that 22 of the 40 recommendations had been either signed off by the Oversight Group or referred to the Criminal Justice Inspectorate NI and the Regulation and Quality Improvement Authority for independent assessment.<sup>113</sup> In its annual report the Oversight Group acknowledged that the recommendations will not all be achieved within the lifespan of the Oversight Group and set out potential contingency oversight arrangements.<sup>114</sup>

The Commission raised this matter with the UN Human Rights Committee who will be assessing the compliance of the UK with the ICCPR in 2015.<sup>115</sup> In advance of the examination the UN Human Rights Committee has asked the UK to report on:

*the reform of the prison service in NI and on the timeline for the full implementation of the recommendations of the NI Prison Review Team Report of 2011.*<sup>116</sup>

#### Mental health, suicide and self-harm in prison

In its submission to the UN Human Rights Committee the Commission noted that despite the reform of policies and procedures aimed at assisting prisoners with mental health problems, incidence of suicide and self-harm remained a concern.<sup>117</sup> The Commission highlighted that weaknesses in the system of support appear to consistently re-occur.<sup>118</sup>

The Commission has continued to note that the circumstances of a number of suicides reported by the Prisoner Ombudsman share similar contributory factors. These include; a failure to appropriately apply procedures and policies relating to prisoners at risk; ineffectiveness in dealing with the trade of illicit substances and prescribed medications; failures in the provision of healthcare and ineffective approaches to address bullying.<sup>119</sup>

112 Prison Review Team, Review of the NI Prison Service: Conditions, management and oversight of all prisons, October 2011

113 Prison Review Oversight Group Summary Report for Justice Committee June 2014 para 12

114 Prison Review Oversight Group 'Second Annual Report' March 2014

115 NIHRC Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights. June 2014 pp. 11 – 14

116 UN Human Rights Committee List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and NI, the British Overseas Territories and Crown Dependencies October 2014 para 22

117 See Prisoner Ombudsman for NI Annual Report 2012 - 13

118 Ibid., -13 Key Issues at p. 10 available at: <[http://www.niprisonerombudsman.com/publications/NIPO\\_Annual\\_Report\\_2012-2013.pdf](http://www.niprisonerombudsman.com/publications/NIPO_Annual_Report_2012-2013.pdf)>.

119 See latest report into the circumstances surrounding the death of "Mr F" in Maghaberry Prison [21 March 2014] available at: [http://www.niprisonerombudsman.com/publications/WEB\\_VERSION\\_-\\_Mr\\_F\\_Report.PDF](http://www.niprisonerombudsman.com/publications/WEB_VERSION_-_Mr_F_Report.PDF)



## Health and social care

In 2014 the DHSSPS and the DoJ consulted on the draft Mental Capacity Bill, the draft Bill contains a proposal to introduce a criminal offence of ill-treatment or wilful neglect of an over 16 year old who lacks mental capacity in NI.<sup>120</sup> In addition the Bill makes provision for the introduction of a statutory definition of restraint in circumstances where the individual lacks capacity.<sup>121</sup>

The Commission submitted to the public consultation on the Bill advising that the proposed criminal offence of ill-treatment or wilful neglect was unduly limited in scope as it would not protect under 16 year olds or over 16 year olds who have capacity.<sup>122</sup> The Commission advised that the Department of Health in England & Wales is proposing to introduce a new general offence of ill-treatment or wilful neglect to apply in all health and social care settings.<sup>123</sup> The offence is being proposed as the Department considers a gap exists in the law in England & Wales, the consultation document states:

*It is entirely possible that a situation could arise where two patients, one with full capacity and one without, are being subjected to the same type of conduct, by the same person with the same intent, but a prosecution for ill-treatment or wilful neglect could only be brought in respect of the patient without capacity. Clearly, this is a situation we would want to avoid.*<sup>124</sup>

To avoid a similar gap developing in NI the Commission recommended that a new offence of wilful or reckless neglect or mistreatment of any individual in a health and social care setting should be introduced.<sup>125</sup> This offence should apply in both public and private health and social care settings. Reforms to the criminal law should be underpinned by robust standards governing health and social care settings, in particular residential homes.



## Historical abuse of children and adults

Allegations of historical abuse in a variety of settings remained a concern for the Commission throughout 2014. In year, the Historical Institutional Abuse Inquiry has continued to receive evidence. In June 2014 the Chair of the Inquiry, Mr Justice Hart requested a one year extension to allow sufficient time for the Inquiry to receive and consider all of the evidence.<sup>126</sup>

In the 2013 annual statement the Commission reported that the UN CEDAW Committee had recommended that the remit of the Inquiry should be extended to include adult residents of Magdalene laundry type institutions.<sup>127</sup> In addition, the UN CAT Committee noted that clerical abuse survivors who were abused in private settings were not included within the scope of the inquiry.<sup>128</sup> Since then, there has been some discussion concerning other categories of abuse victims.<sup>129</sup> However, no public commitment has been made by the OFMDFM to either extend the existing inquiry or to establish a separate process. Attempts to have cases considered outside of institutional settings have been rejected.<sup>130</sup>

120 Department of Health Social Services and Public Safety NI 'Draft Mental Capacity Bill (NI): Consultation Document' May 2014

121 Ibid., para 2.34 – 2.38

122 NIHRC 'Submission to DHSSPS/DoJ Consultation on Draft Mental Capacity Bill (NI)' September 2014

123 See proposals in England & Wales by Department of Health 'New offence of ill-treatment or wilful neglect Consultation document' February 2014

124 Ibid., para 15

125 See proposals in England & Wales by Department of Health 'New offence of ill-treatment or wilful neglect Consultation document' February 2014

126 Press Release from Chairman - Sir Anthony Hart - 18 June 2014. Chairman requests extension to the Inquiry

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

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

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

130 CM's Application [2013] NIQB 145

During 2014 the Chair of the Historical Institutional Abuse Inquiry raised concerns regarding the ability of the Inquiry to fully investigate issues relating to the alleged involvement of Army or MI5 personnel in child abuse that took place at Kincora Boy's Home.<sup>131</sup> In July, the Home Secretary separately announced the establishment of an inquiry into allegations that evidence of the sexual abuse of children was suppressed by people in positions of power, the Child Sex Abuse Inquiry.<sup>132</sup> The Commission wrote to the Home Secretary highlighting Mr Justice Hart's statement on Kincora Boy's Home advising that the UK may not have fulfilled its human rights obligations. It requested that consideration be given in this regard to the scope of the Child Sex Abuse Inquiry.<sup>133</sup>

In October 2014 the Secretary of State for NI announced that the terms of reference for the Child Sex Abuse Inquiry would not be amended to include Kincora Boys Home. However, the Secretary of State indicated that the ability of the Historical Institutional Abuse Inquiry to investigate allegations relating to Kincora Boys Home would be addressed.<sup>134</sup>

Welcoming the statement from the Secretary of State Mr Justice Hart stated:

*given assurances that all Departments of HM Government and its agencies will co-operate to the utmost of their ability with the HIA Inquiry into Kincora. ... it now provides our Inquiry with the means to investigate the activities of non-devolved Government Departments and agencies.*

*We are satisfied that the assurance of full co-operation by all Government Departments and agencies, and the satisfactory resolution by HM Government of the other issues the Inquiry has raised with it, will provide our HIA Inquiry with the ability and financial resources to carry out an effective and thorough investigation into all the Kincora allegations.*

*However, should it become apparent during our work that it is necessary to have powers under the Inquiries Act 2005 then we will ask OFMDFM and HM Government to confer such powers on our Inquiry.*<sup>135</sup>



### **Violence against women and girls**

In 2012/13 domestic abuse accounted for approximately one quarter of all violence against the person offences, 20.9% of all sexual offences and 29.4% of all murders recorded in NI,<sup>136</sup> in that year approximately 70% of the victims of domestic violence were women.<sup>137</sup> In 2013/14 the PSNI recorded 27,628 domestic abuse incidents.<sup>138</sup>

In March 2014, the Commission responded to the Joint Committee on Human Rights (JCHR) Inquiry on Violence against Women and Girls.<sup>139</sup> The JCHR was informed of the progress regarding measures to address domestic violence, but the Commission also raised a number of concerns including the absence of domestic violence specialist courts and the unavailability of abortions "in cases of rape, incest and serious malformation of the foetus".<sup>140</sup> The Commission highlighted the UN CEDAW Committee's repeated calls for the implementation of UN Security Council Resolution 1325 in NI and the work of the Associate Parliamentary Group on Women, Peace and Security.<sup>141</sup>

131 BBC News NI 'Colin Wallace: Any Kincora inquiry 'must have full access' 20 July 2014 <http://www.bbc.co.uk/news/uk-northern-ireland-28390411>

132 See: <https://childsexualabuseinquiry.independent.gov.uk/>

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

134 The Rt Hon Theresa Villiers MP Written statement to Parliament 'Kincora Boys' Home: HM Government co-operation with the Historical Institutional Abuse Inquiry' October 2014

135 Historical Institutional Abuse 21 October 2014 <http://www.hiainquiry.org/index/latest-news.htm>

136 PSNI, Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in NI 2004/05 to 2012/13, pp. 8-10

137 In 2012/13, the PSNI recorded 10,217 domestic abuse crimes where there was a person victim. Men accounted for 30% of victims Breaches of non-molestation orders are considered as state-based offences and are therefore not disaggregated by gender. Ibid., p. 14

138 PSNI, Domestic Abuse Incidents and Crimes Recorded by the Police in NI: Quarterly Update to 31 March 2014, 8 May 2014, p. 2

139 See <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2010/violence-against-women-and-girls/>

140 CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and NI, 30 July 2013, para 51. See further discussion under Right to Health

141 NIHRC Submission to the JCHR Violence Against Women and Girls: Call for Evidence March 2014

In December 2013 the DoJ and DHSSPS launched a public consultation “Stopping Domestic and Sexual Violence and Abuse in NI, 2013-2020”.<sup>142</sup> The Commission responded, advising the Department that the binding nature of relevant international human rights standards was not recognised in the draft strategy.<sup>143</sup> The UK Government has signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) and the Home Office is working with the devolved administrations and other government departments to develop a timeframe for ratification.<sup>144</sup> The Commission advised that the DHSSPS and the DoJ should take cognisance of the Istanbul Convention and consider the role of the strategy in ensuring the NI Executive fulfils its obligations.

The Commission welcomed the DFP targeted consultation on draft Multi-Agency Practice Guidelines on Female Genital Mutilation.<sup>145</sup> The Guidelines provide advice and support to frontline professionals who are responsible for safeguarding children and protecting adults from the abuses associated with female genital mutilation.

The Commission advised the DFP that the CEDAW obliges the NI Executive to “*modify social and cultural patterns which see women as subordinate to men*”.<sup>146</sup> Female genital mutilation is “*a severe form of child abuse and a violation of human rights*”, as well as a “*manifestation of deeply entrenched gender inequality and patriarchal cultural norms*”.

The NI Executive approved the publication of the Multi-Agency Practice Guidelines in July 2014. The Commission welcomes the robust action initiated to combat this ongoing human rights abuse.



### Domestic Violence Protection Orders

In 2010 the Criminal Justice Inspectorate NI recommended the introduction of Domestic Violence Protection Orders (DVPOs); this recommendation has not yet been implemented.<sup>147</sup>

DVPOs would allow the police to prevent the suspected perpetrator from entering the victim’s residence for a set period of time. In a follow up review in 2013 the DoJ stated they were awaiting the outcome of a pilot of DVPOs in England & Wales.<sup>148</sup> Following a successful pilot DVPOs are now available throughout England & Wales and similar systems have been found to be successful throughout Europe.<sup>149</sup> In its evidence to the NI Assembly Committee for Justice, the Commission questioned why provision for DVPOs had not been included within the Justice (NI) Bill.<sup>150</sup>

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

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

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

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

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

147 CJINI ‘Domestic Violence and Abuse: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in NI’ December 2010 Recommendation 2

148 CJINI ‘Domestic Violence and Abuse - A follow up review’ 29/10/13 p. 9

149 The Rt Hon Theresa May MP Written statement to Parliament ‘Domestic violence protection orders and domestic violence disclosure scheme’ 25 November 2013. It was first piloted in Austria in 1997. See, European Institute for Gender Equality, ‘Review of the implementation of the Beijing Platform for Action in the EU Member States: Violence Against Women - Victim Support: Main findings’ EU (2013), para 1.3.3

150 NIHRC ‘Submission to the Committee for Justice on the Justice (NI) Bill’ September 2014



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

During 2014 the UK Government submitted follow up information to the UN CAT Committee in relation to the investigation of allegations of torture and cruel, inhuman or degrading treatment or punishment in Iraq from 2003 to 2009.<sup>151</sup>

The UK Government informed the Committee of the work of the Iraq Historic Allegations Team (IHAT), which is currently investigating at least 169 different allegations, from a total of around 1,000 allegations.<sup>152</sup> The Commission, in conjunction with the other two UK National Human Rights Institutions, raised concerns that the progress of the IHAT in investigating allegations of abuse has been very slow.<sup>153</sup> The Commissions noted that the IHAT had completed investigations into only eight cases, as of May 2014.<sup>154</sup> They advised that they:

*do not believe this is consistent with the prompt investigative duty under Articles 2 and 3 of the ECHR, (as confirmed by the European Court of Human Rights in its Al Skeini judgment) and the UK Government's obligations under Article 12 of the UN Convention against Torture.*<sup>155</sup>

The UK Government provided follow up information on investigations into the ill-treatment of detainees held overseas, informing the UN CAT Committee of the work of the Detainee Inquiry established to look at whether the UK was implicated in the improper treatment of detainees, held by other countries, in the aftermath of 9/11.<sup>156</sup>

The UK Government decided to conclude the Detainee Inquiry in January 2012, before it had formally launched, due to the commencement of criminal investigations into the rendition of individuals to Libya.<sup>157</sup> A report of the preparatory work undertaken by Sir Peter Gibson's Inquiry was subsequently published. It highlighted eight issues where further detailed investigation is required.<sup>158</sup>

The UK Government referred the matter to the Intelligence and Security Committee of Parliament to:

- inquire into the eight issues raised by the Detainee Inquiry;
- take further evidence; and
- report to the UK Government and Parliament on the outcome of its inquiry.<sup>159</sup>

Noting the absence of a public inquiry the Commissions advised that while the UK Government has accepted the credibility of a number of allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas, its investigations into these allegations have not, to date, satisfied the investigative duty under Articles 2 and 3 of the ECHR, nor its obligations under the UN CAT.<sup>160</sup>

<sup>151</sup> CAT/C/GBR/CO/5/Add.1, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5%2fAdd.1&Lang=en)

<sup>152</sup> More information about the Iraq Historic Allegations Team is available here: <https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat>

<sup>153</sup> See NIHRC, EHRC and SHRC 'Follow-up regarding Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the UK' September 2014

<sup>154</sup> MoD. IHAT Work Completed as at 16 May.: <https://www.gov.uk/government/publications/ihat-work-completed>

<sup>155</sup> Al Skeini v. United Kingdom, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105606>

EHRC intervention in R(Ali Zaki Mousa and others v. Secretary of State for Defence [2010] EWHC 3304 (Admin) available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2010/3304.html>

<sup>156</sup> CAT/C/GBR/CO/5/Add.1, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5%2fAdd.1&Lang=en) para 5

<sup>157</sup> Joint Statement by the Director of Public Prosecutions and the Metropolitan Police Service, 12 January 2012, available at: <http://content.met.police.uk/News/Joint-statement-by-MPS-and-DPP/1400005902978/1257246741786>

<sup>158</sup> The Report of the Detainee Inquiry December 2013 available at: [http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100\\_Trafalgar-Text-accessible.pdf](http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf)

<sup>159</sup> Statement to the House of Commons by the Minister without Portfolio, 13 December 2013, available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131219/debtext/131219-0002.htm>

<sup>160</sup> See NIHRC, EHRC and SHRC 'Follow-up regarding Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the UK' September 2014 p. 3

## Deprivation of citizenship

The Immigration Act 2014 amended the British Nationality Act 1981 to empower the Secretary of State to deprive a naturalised British citizen of their citizenship status if s/he is satisfied that the deprivation is conducive to the public good because the person, after gaining British citizenship, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the UK.<sup>161</sup>

During the passage of the Immigration Bill the Commission, in conjunction with the other two UK National Human Rights Institutions, briefed the House of Lords supporting an amendment proposed by Lord Pannick the effect of which would have been to remove the relevant power from the Bill and replace it with the establishment of a joint Parliamentary Committee to consider and report on the grounds for granting the Secretary of State the power.<sup>162</sup>

The Commissions advised that the power to strip a naturalised British national (who is not a national of another country) of their citizenship would render them stateless. Making a person stateless is a draconian power with potentially severe consequences for the individual concerned and their family and dependents. The Commissions challenged the Home Office ECHR memorandum which advised that a decision to deprive a naturalised citizen of their citizenship while they are outside of the UK does not engage the individual's ECHR rights as they are physically outside of the UK's jurisdiction for the purposes of the ECHR.<sup>163</sup>

Whilst the amendment proposed by Lord Pannick was passed in the House of Lords it was not accepted in the House of Commons and the clause as introduced by Government was passed into law.<sup>164</sup>

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

In its 2013 annual statement the Commission reported on the recommendation of the UN CAT Committee to the UK Government to:

*conduct an immediate independent review of the application of Rule 35 of the Detention Centre Rules in immigration detention, in line with the Home Affairs Committee's recommendation and ensure that similar rules apply to short term holding facilities.*<sup>165</sup>

The purpose of Rule 35 is to:

*ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case.*<sup>166</sup>

During 2014 a Parliamentary inquiry into the use of immigration detention in the UK has commenced.<sup>167</sup> The Inquiry was launched by the All-Party Parliamentary Group on Refugees and the All-Party Parliamentary Group on Migration.

<sup>161</sup> Immigration Act 2014 2014 c. 22 section 66

<sup>162</sup> UK NHRIs 'The Government's deprivation of citizenship proposal – joint briefing on clause 64 of the Immigration Bill' 2014

<sup>163</sup> Home Office Supplementary ECHR Memorandum, 29 January 2014, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/276660/Deprivation\\_ECHR\\_memo.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276660/Deprivation_ECHR_memo.pdf) para 16

<sup>164</sup> House of Commons Immigration Bill Consideration of Lords amendments 7 May 2014 : Column 191

<sup>165</sup> UN CAT Committee 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para 30

<sup>166</sup> Section 55.8A Rule 35 – Special illnesses and conditions, Enforcement Instructions and Guidance

<sup>167</sup> See <http://detentioninquiry.com/about/>

 **Strip searches**

In its 2013 annual statement the Commission recalled that the NI Prison Service had committed to the development of a modern approach to searching of persons that is less intrusive than current methods.<sup>168</sup> The Commission reported that a trial of millimetre wave scanning equipment had proved unsuccessful and preparation was being made to pilot an x-ray scanner. The piloting of the x-ray scanner has been delayed due to the need to obtain statutory approvals.<sup>169</sup> Whilst the DoJ has indicated that it remains committed to the ongoing review of search technologies the matter is still to be finally resolved.<sup>170</sup>

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

169 A Justification Application to conduct a trial of Transmission X-Ray search technology was submitted to the UK Department of Energy and Climate Change (DECC) in 2013

170 See Prison Review Oversight Group 'Second Annual Report 2014' para 2.34



## Freedom from slavery

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

### Child prostitution and sexual exploitation

In the 2013 annual statement, the Commission reported that the Minister of Health announced three separate actions in relation to child sexual exploitation in NI.<sup>171</sup>

A Police Service of NI (PSNI) investigation (Operation Owl) focused on a number of children mostly from care settings. The investigation initially identified 22 children, aged between 13 and 18, who have been the subject of a police investigation related to allegations of sexual exploitation.<sup>172</sup>

In 2014 the NI Policing Board reported that the investigation had “*exposed serious lacunae in respect of the protection of children from sexual exploitation*”.<sup>173</sup> In addition to the PSNI investigation the Safeguarding Board for NI is carrying out a thematic review of 22 cases.<sup>174</sup> This is intended to identify key learning points and opportunities for improvement and is expected to report in 2015.

Separate to these investigations an Independent Inquiry into Child Sexual Exploitation in NI was ongoing throughout 2014 and reported to the DHSSPS Minister in November 2014.<sup>175</sup> The Commission contributed to the Inquiry’s call for evidence in March 2014 identifying a number of areas of concern, including oversight of private fostering arrangements.<sup>176</sup>

The Commission also advised the Independent Inquiry into Child Sexual Exploitation in NI,<sup>177</sup> the UK Government, the Houses of Parliament, the JCHR,<sup>178</sup> and the UN CRC Committee that the law in NI should be amended in order to provide effective protection for children between the ages of 13 and 18 who are exploited through prostitution, pornography and the payment for sexual services of such children. In particular, the Commission raised concerns regarding the robustness of the Sexual Offences (NI) Order 2008 to ensure the effective prosecution of individuals responsible for certain forms of sexual abuse.

Reflecting the Commission’s advice the UN CRC Committee in its concluding observations stated:

*The Committee is concerned that, under the Sexual Offences Act 2003, applicable in England and Wales, and the Sexual Offences (NI) Order 2008, for certain grave offences of sexual exploitation of children between 13 and 16 years of age, such as meeting a child following*

171 NIHRC ‘The 2013 Annual Statement: Human Rights in NI’ 2013 pp. 26 – 17 See further <http://www.niassembly.gov.uk/Documents/Official-Reports/Written-Ministerial-Statements/2013-2014/HSSPS%20WMS%2025%20September%2013.pdf>

172 See Policing Board ‘Board Members Questions to Chief Constable – October 2013 Meeting’ p. 17 available at: [http://www.nipolicingboard.org.uk/written\\_questions\\_to\\_chief\\_constable\\_\\_8211\\_\\_october\\_2013\\_meeting.pdf](http://www.nipolicingboard.org.uk/written_questions_to_chief_constable__8211__october_2013_meeting.pdf)

173 NI Policing Board, Human Rights Annual Report 2013, p. 11, fn 17

174 For information on the Review see <http://www.safeguardingni.org/thematic-review-child-sexual-exploitation>

175 See <http://www.rqia.org.uk/cseinquiry/> Further: Kathleen Marshall ‘Child Sexual Exploitation in NI Report of the Independent Inquiry’ November 2014 Recommendation 14 [http://www.rqia.org.uk/cms\\_resources/CSE%20Inquiry%20Report%20Final\\_for\\_Publication.pdf](http://www.rqia.org.uk/cms_resources/CSE%20Inquiry%20Report%20Final_for_Publication.pdf)

176 NIHRC ‘Submission to the Independent Inquiry into Child Sexual Exploitation in NI’ March 2014

177 NI Human Rights Commission submission to the Independent Inquiry into Child Sexual Exploitation in NI, March 2014, pp. 2-3

178 NIHRC Submission to the Joint Committee on Human Rights, Violence Against Women and Girls: Call for Evidence, March 2014, pp. 2-3

*sexual grooming, engaging in sexual activity with a child, arranging or facilitating a child sex offence, the defendant may claim that he/she believed the victim to be above 16 years. The Committee is also concerned that it is then for the prosecution to prove that the defendant "did not reasonably believe" this, with the risk of further cross-examinations of child victims and their consequent re-victimization.*<sup>179</sup>

The Committee recommended that the UK, including the NI Executive:

*ensure that, in the rebuttable presumptions in the Sexual Offences Act 2003, it includes a provision that, for child victims, the burden of proof will be reversed.*<sup>180</sup>

The Commission raised this matter with the Minister of Justice in May 2014 and, jointly with the EHRC wrote to the Home Secretary to share the concerns expressed to the UN CRC Committee. The Home Secretary responded in August 2014 stating that '*the Government has no plans to reverse the burden of proof onto the defendant in such circumstances*'.<sup>181</sup>

The Minister of Justice has informed the Commission that the burden of proof issue '*reflects a structure which is incorporated in the entire body of sexual offence law against those aged 13 to 17, both in England and Wales and here. It is not therefore something that can be looked at as an isolated change to the law in this regard as it may have broader consequences for other offences*'.<sup>182</sup> However the Minister has undertaken to consider the matter with relevant agencies and respond substantively to the Commission in due course. Furthermore the Inquiry into Child Sexual Exploitation in NI recommended that the DoJ lead on a project to examine and bring forward proposals on legislative issues relating to the exploitation of children. Matters to be considered include ensuring compliance with international standards by extending protection to children up to the age of 18 and reversing the rebuttable presumption in the 2008 Order in relation to "*reasonable belief*" as regards the age of a child.<sup>183</sup>



### National crime agency

The Commission notes that the UK Government has established a National Crime Agency (NCA) with responsibility for gathering, storing, processing, analysing, and disseminating information that is relevant to activities to combat organised crime or serious crime.<sup>184</sup> The NI Assembly has not passed a motion of legislative consent to permit the NCA to operate with respect to matters within its competence.<sup>185</sup> The Commission has raised concerns regarding this matter in the context of child sexual exploitation. It raised this matter with the Independent Inquiry into Child Sexual Exploitation in NI,<sup>186</sup> the UN CRC Committee,<sup>187</sup> and the DoJ and DHSSPS.<sup>188</sup>

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

180 Ibid.

181 Correspondence Home Secretary Rt. Hon Theresa May MP to Interim Chair NIHRC John Corey and Chair EHRC Baroness Onora O'Neill 7<sup>th</sup> August 2014

182 Correspondence Minister of Justice David Ford MLA to Interim Chair John Corey 8<sup>th</sup> July 2014

183 Kathleen Marshall 'Child Sexual Exploitation in NI Report of the Independent Inquiry' November 2014 Recommendation 14 [http://www.rqia.org.uk/cms\\_resources/CSE%20Inquiry%20Report%20Final\\_for\\_Publication.pdf](http://www.rqia.org.uk/cms_resources/CSE%20Inquiry%20Report%20Final_for_Publication.pdf)

184 Crime and Courts Act 2013 c.22 Part 1 section 5

185 Official Report (Hansard) Monday 4 February 2013 Volume 81, No 5 pg 61 available at <http://www.niassembly.gov.uk/Documents/Official-Reports/Plenary/2012-13/Microsoft%20Word%20-%20@%20@%20aims-hansard-20130204210834577.pdf>

186 NIHRC submission to the Independent Inquiry into Child Sexual Exploitation in NI, March 2014, pp. 3-4

187 NIHRC, Follow-up submission to the Committee on the Rights of the Child concerning the examination of the United Kingdom's initial report on the Optional Protocol on the Sale of Children, Child Prostitution and Child pornography, May 2014, pp. 1-2

188 NIHRC, Response to the Public Consultation on the Draft Strategy on Stopping Domestic and Sexual Violence and Abuse in NI, 2013-2020, May 2014, pp. 26-28

The UN CRC Committee in its concluding observations noted:

*the Committee is strongly concerned that, in the absence of a legislative consent motion, NCA does not have powers in the devolved sphere in NI and therefore CEOP, which is part of NCA, is not fully operational in NI.*<sup>189</sup>

The Committee urged:

*the State party to establish safeguards to ensure that devolution does not lead to discrimination in the enjoyment of rights by children in different regions and that mechanisms such as the Child Exploitation and Online Protection Centre are extended to NI, to ensure the full implementation of the Optional Protocol throughout the State party's jurisdiction.*<sup>190</sup>

In summer 2014 the PSNI Chief Constable advised the Policing Board NI that:

*...the absence of a Legislative Consent Motion has created a significantly reduced capability for NCA reducing the operational resources working to tackle serious and organised crime in NI. PSNI resources are increasingly stretched in filling the void created by the lack of a Legislative Consent motion and in supporting NCA operations. ... The National Crime Agency remains an important operational and strategic partner and continues to share information with the PSNI. We are experiencing an increased level of international crime... yet the agency set up to provide that international reach is unable to operate inside NI and unfortunately the consequence of NCA not having a full complement of operational powers in NI means that they are legally unable (whilst willing) to support the PSNI effort to frustrate, disrupt and dismantle Organised Crime Groups. Neither can they surge to support PSNI in relation to Child Sexual Exploitation investigations... In essence NI does not have access to the same level of resources and expertise in relation to serious and organised crime investigations as the rest of the United Kingdom and PSNI does not have the resource capacity to fill this void.*<sup>191</sup>

In September 2014 the Minister of Justice provided a revised proposal for strengthening the operation and accountability of the NCA.<sup>192</sup> Speaking in relation to the proposal the Minister stated:

*This dire situation needs to be resolved. I have listened to comments that the parties have made on earlier proposals surrounding the accountability of the NCA and I believe that this paper, which builds on the earlier proposals, provides an appropriate structure for this jurisdiction and, critically, respects police primacy and gives the Policing Board an important role.*<sup>193</sup>

At the time of writing a resolution remains outstanding.



## Human Trafficking

The Human Trafficking and Exploitation (Further Provisions and Support) Bill continued to progress through the NI Assembly in 2014. In January 2014 the Commission provided oral evidence to the Committee for Justice. It once again advised that criminalising purchasers of sex is neither required nor prohibited by international human rights law.<sup>194</sup> The Commission referred the Committee for Justice to the UN CEDAW Committee 2012 report into Norway, in which it welcomed an amendment

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

190 Concluding observations on the report submitted by the United Kingdom of Great Britain and NI under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography CRC/C/OPSC/GBR/CO/1 8 July 2014 para 26

191 Policing Board Members Questions to Chief Constable – September 2014 Meeting, available at: [http://www.nipolicingboard.org.uk/written\\_response\\_to\\_questions\\_for\\_september\\_\\_2014\\_meeting.pdf](http://www.nipolicingboard.org.uk/written_response_to_questions_for_september__2014_meeting.pdf)

192 DoJ 'National Crime Agency – Proposals for Operation in NI' 8 September 2014

193 DoJ Press Release 'Decision Time on the NCA' Monday, 8 September 2014

194 NI Assembly, Committee for Justice, Official Report (Hansard), 16 January 2014

to the Penal Code in Norway prohibiting the purchase of sexual services and providing a criminal sanction of up to 6 months imprisonment.<sup>195</sup>

The Commission noted that the UN CEDAW Committee had called upon Norway to study the effects of the amendment:

*on the type and extent of prostitution and trafficking, as well as on social perceptions on prostitution and on the purchase of sex services, as well as on women who engage in prostitution.*<sup>196</sup>

The Commission further advised that the Bill in its original form would make it easier to prosecute paying for the sexual services of an adult than a child, albeit that each offence would have different tariffs.<sup>197</sup> The Bill was then amended to extend clause 6 to paying for the sexual services of persons of all ages and thereby removed the anomaly.

The DoJ consulted during the year on proposed measures to strengthen the response of the criminal law to human trafficking, including consolidating the human trafficking offences into one single offence.<sup>198</sup> The Commission advised that consolidating the two existing offences into a single offence will provide an opportunity for greater harmonisation with international human rights standards.<sup>199</sup> It also recommended that the new definition should encompass all the abuse of power and vulnerability scenarios envisaged by human rights law.<sup>200</sup> The Commission advised that the UK Anti-Slavery Commissioner should be accountable to the NI Assembly for devolved matters.<sup>201</sup>

On 13 November 2014 Kevin Hyland was appointed as the Designate Anti-slavery Commissioner.<sup>202</sup> The Minister of Justice has laid a Legislative Consent Memorandum in the NI Assembly, seeking the extension of the Commissioner to NI.<sup>203</sup>

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195 Concluding Observations of the Committee on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/NOR/CO/8 (23 March 2012), para 25

196 Ibid., para 26

197 See Sexual Offences (NI) Order 2008, Article 37

198 Department of Justice consultation on 'Human trafficking and slavery: strengthening NI's response' 2014

199 Response of the NIHRC to the DoJ consultation on 'Human trafficking and slavery: strengthening NI's response' April 2014 para 9

200 Ibid., para 17

201 NIHRC response to the DOJ consultation 'Human trafficking and slavery: strengthening NI's' (April 2014)

202 DoJ 'Ford welcomes appointment of Designate Anti-slavery Commissioner' 13 November 2014

203 Ibid.

## Right to fair trial and the administration of justice

<b>ICCPR</b>	Article 14 Article 15 Article 16
<b>ECHR</b>	Article 6 Article 7
<b>CFREU</b>	Article 47

### Avoidable delay

In its 2012 and 2013 annual statements the Commission highlighted the extent of avoidable delay in the criminal justice system.<sup>204</sup> During 2014 improvements have been reported in processing times for the disposal of cases involving adult defendants.<sup>205</sup> The Minister of Justice has introduced a Bill to the NI Assembly which will empower the DoJ to place a general duty on persons exercising functions in relation to criminal proceedings in the Crown Court or the Magistrates' Court to reach a just outcome as swiftly as possible.<sup>206</sup> In addition, the Bill empowers the DoJ to regulate the management and conduct of criminal proceedings in the Crown Court or Magistrates' Court.<sup>207</sup>

The Criminal Justice Inspectorate NI has recommended that statutory custodial time limits restricting the period which a defendant can wait from charge to commencement of trial or final disposal should be introduced.<sup>208</sup> The DoJ consulted on the proposed introduction of custodial time limits in 2014, but legislative reforms necessary to ensure their implementation were not included within the Justice (NI) Bill.<sup>209</sup>

### Victim charter

The Commission reported in 2013 on the proposed DoJ strategies for improving access to justice for victims and witnesses.<sup>210</sup> The Justice (NI) Bill introduced to the NI Assembly in 2014 makes statutory provision for the introduction of both a Victim Charter and Witness Charter.<sup>211</sup>

In its engagement with the Committee for Justice, the Commission advised that the definition of victim included in the Bill, reflected the Commission's earlier advice to the Department on the essential components of the definition of a victim in line with UN Basic Principles on the Treatment of Victims of Crime.

### Compensation

In 2014 the Anti-social Behaviour, Crime and Policing Act 2014<sup>212</sup> redefined the test for a miscarriage of justice to require an applicant who has been wrongfully imprisoned to prove his or her innocence of a crime in order to obtain compensation.<sup>213</sup> This new test applies for all offences in England and Wales and for offences related to terrorism in NI.

204 The 2012 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2012) p.26; The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p. 28

205 Minister of Justice response to AQO 5957/11-15

206 Justice (NI) Bill Clause 79

207 Justice (NI) Bill Clause 80

208 CJINI, 'Avoidable Delay', June 2010, available at: <<http://www.cjini.org/CJINI/files/c0/c0243f51-1e73-47e8-a6fa-344d5f0063c5.PDF>>

209 NIHRC 'Response on the Department of Justice Consultation on Time Limits in the Youth Court' March 2014

210 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p.28

211 Justice (NI) Bill clause 28

212 2014 c. 12

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

As reported in the 2013 annual statement during the passage of the Anti-social Behaviour, Crime and Policing Bill the Commission advised that this approach was a disproportionate limitation of the ICCPR, Article 14(6), which states:

*[w]hen a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributed to him.*<sup>214</sup>

During the passage of the Bill the JCHR expressed the same view as the Commission and advised that:

*In our view, requiring proof of innocence beyond reasonable doubt as a condition of obtaining compensation for wrongful conviction is incompatible with the presumption of innocence, which is protected by both the common law and Article 6(2) ECHR. We recommend that clause 143 [the relevant clause] be deleted from the Bill because it is on its face incompatible with the Convention.*<sup>215</sup>

The Commission raised this matter with the UN Human Rights Committee who will be assessing the compliance of the UK with the ICCPR in 2015.<sup>216</sup> In advance of the examination the UN Human Rights Committee has asked the UK to provide information on measures taken:

*to ensure the compatibility of the legislative changes introduced in 2014, which provide for a new test for miscarriage of justice, with article 14, paragraph 6, of the Covenant.*<sup>217</sup>

### **Closed Material Proceedings**

In its 2012 and 2013 annual statements the Commission reported on Closed Material Proceedings (CMPs).<sup>218</sup> The Justice and Security Act 2013 made provision for CMPs in civil cases allowing for the introduction of sensitive security evidence to proceedings by Government without disclosure to the claimant.

Under section 12(1) of the 2013 Act the Secretary of State for Justice must prepare a report on the use of CMPs. In accordance with section 12(4) this report was laid before Parliament on 22 July 2014.<sup>219</sup> The report states that five applications for a declaration that CMPs were made in proceedings from 25 June 2013 to 24 June 2014. In the same period two applications were granted. It is reported that one application relates to a case emanating from NI.<sup>220</sup>

The UN CAT Committee has recommended that the UK Government:

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

<sup>214</sup> The 2013 Annual Statement: Human Rights in NI' (Belfast, NIHRC, 2013) p. 29

<sup>215</sup> JCHR, 'Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill'. Fourth Report of Session 2013 – 2014, HL Paper 56 HC 713 p. 6

<sup>216</sup> NIHRC Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights. June 2014 pp. 11 – 14

<sup>217</sup> UN Human Rights Committee List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and NI, the British Overseas Territories and Crown Dependencies October 2014 para 23

<sup>218</sup> The 2013 Annual Statement: Human Rights in NI' (Belfast, NIHRC, 2013) p. 29

<sup>219</sup> Ministry of Justice 'Annual report on the use of the closed material procedure under s.6 Justice and Security Act 2013' 8 August 2014

<sup>220</sup> The case in question is Terence McCafferty v Secretary of State for NI (2012 No 360) See further: Guardian Newspaper 'Government seeks closed hearing in case against dissident republican' 2 July 2014

*Ensure that the Justice and Security Act 2013 will not become an obstacle to accountability for State party involvement or complicity in torture, cruel inhuman or degrading treatment and will not adversely impact on the right of victims to obtain redress, remedy, and fair and adequate compensation.*<sup>221</sup>

## Access to justice

The Legal Aid and Coroners' Courts Bill has progressed through the NI Assembly in 2014.<sup>222</sup> This makes provision, inter alia, for the dissolution of the NI Legal Services Commission, the body responsible for legal aid, and for this role to be performed by a Director of Legal Aid Casework as part of a Legal Aid Agency.<sup>223</sup>

The Commission advised the NI Assembly Committee for Justice to assure itself that the Bill provides sufficient institutional guarantees of the independence of the Director.<sup>224</sup> It also recommended that the Committee further assure itself that procedural guarantees within any new agency are sufficiently robust.<sup>225</sup>

Amendments made to the Bill ensured the selection of a Director of Legal Aid Casework on the basis of merit through fair and open public competition and further circumscribed the ability of the Minister of Justice to issue directions to the Director.<sup>226</sup>

As reported in the 2013 annual statement the Commission previously advised that the provision of legal aid funding by way of an exceptional grant authorised by the Minister of Justice was inappropriate.<sup>227</sup> In a number of instances the families of deceased persons have been granted legal aid by way of the exceptional grant provisions, to fund legal representation at inquests.<sup>228</sup> The Legal Aid and Coroners' Courts Bill proposes that the Director of Legal Aid Casework be empowered to make an exceptional case determination in circumstances where a failure to do so would result in a breach of an individual's human rights.

The right to life has been regarded by the ECtHR as one of the most fundamental provisions of the Convention, so much so that in addition to the substantive right, there exists a procedural requirement on the part of the State to conduct an effective investigation following an alleged breach.<sup>229</sup> What will amount to an "*effective investigation*" in a particular case will depend upon the circumstances.<sup>230</sup> One of the five essential elements of an effective investigation is the involvement of the next-of-kin of the victim in the procedure to the extent necessary to safeguard his/her justifiable interests.<sup>231</sup> The involvement of the next of kin of the victim may in certain circumstances require the provision of legal assistance to ensure their effective participation in an inquest's procedures.<sup>232</sup>

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

222 NIA Bill 33/11-15 Legal Aid and Coroners' Courts Bill Currently awaiting royal assent

223 Part 1 of Bill

224 NIHRC 'Submission to the Committee for Justice on the Legal Aid and Coroners' Courts Bill' April 2014 p. 3

225 Ibid., p. 4

226 Official Report (Hansard) Tuesday 30 September 2014 Volume 97, No 8 Amendment No. 1 and 2 to Clause 2 (*Designation of Director of Legal Aid Casework*)

227 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p. 30

228 DoJ 'Consultation Document: Review of Statutory Exceptional Grant Scheme' April 2013

229 *Hugh Jordan v the United Kingdom*, European Court of Human Rights, Application No 24746/94 (4 May 2001)

230 *R Humberstone (on the application of) v Legal Services Commission* [2010] EWHC 760 (Admin) (13 April 2010)

231 See *Hugh Jordan v the United Kingdom*, European Court of Human Rights, Application No 24746/94 (4 May 2001)

232 *R Humberstone (on the application of) v Legal Services Commission* [2010] EWHC 760 (Admin) (13 April 2010) paras 61 and 62

Noting the ECtHR jurisprudence the Commission advised the NI Assembly Committee for Justice to seek an assurance that the requirement on a family member to seek legal aid by way of an exceptionality mechanism will not place unnecessary burdens on the individuals. The DoJ informed the Committee that the categorisation of funding decisions would be considered as part of governance arrangements within the new Agency.<sup>233</sup>

#### Access to Justice Review 2

In June 2014 the Minister of Justice announced a further review of access to justice.<sup>234</sup> This will consider; delivery models, complementary reforms to the justice system and will seek to identify the irreducible minimum level of provision of publicly funded legal services required to meet the State's human rights obligations. The Review Team issued a public consultation on matters for inclusion within the review in August 2014.<sup>235</sup>

The Commission responded to the consultation emphasising that the provision of legal assistance and representation is fundamental to the enjoyment of many human rights.<sup>236</sup> The Commission has referred to the adverse impact on access to justice of the minimum level approach which has been taken in England & Wales. It has recommended that the review consider whether existing and proposed arrangements for the provision of legal advice in a police station afford sufficient independence to ensure compliance with Article 6 of the ECHR. The Commission also highlighted that many family reunion issues under immigration law give rise to human rights issues under Article 8 of the ECHR.



#### **Age of criminal responsibility**

The Commission's 2012 and 2013 annual statements recalled that the UN CRC Committee has consistently stated that legal systems which set the age of criminal responsibility below 12 are in contravention of the internationally accepted standard.<sup>237</sup> The age of criminal responsibility laid down in the Criminal Justice (NI) Order 1998 is 10 years old.

In 2013 the UN CAT Committee also called for the age of criminal responsibility to be raised.<sup>238</sup> In 2014 there have again been no legislative or policy measures initiated by the DoJ to address the current position and the law in NI remains therefore in contravention of the internationally accepted standard.

The UN CRC Committee will commence its examination of the UK's Fifth Periodic Report on compliance with the UN CRC in October 2015 and the Commission will advise that age of criminal responsibility in NI should be raised.<sup>239</sup>

233 Report on the Legal Aid and Coroners' Courts Bill (NIA 33/11-15) para 108

234 DoJ 'Ford announces further review of Access to Justice' 17 June 2014

235 Mr Jim Daniell 'Access to Justice Review (2) The Agenda' September 2014

236 NIHRC 'Submission to the Access to Justice Review II' November 2014

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

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

239 The Fifth Periodic Report to the UN CRC Committee United Kingdom CRC/C/GBR/5



## Right to private and family life

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

### Adoption

As reported in the 2013 annual statement following a NIHRC legal challenge and the judgement of the High Court unmarried heterosexual couples, those in civil partnerships and same sex couples are allowed to apply to adopt under the Adoption (NI) Order 1987.<sup>240</sup> The DHSSPS has updated information for potential applicants on its website to read:

*As a consequence of the recent court judgments, if you are applying to adopt as a couple, the term couple extends to unmarried couples (including same sex couples) and those in a civil partnership. The term couple does not extend to two people, one of whom is the other's parent, grandparent, sister, brother, aunt or uncle.*<sup>241</sup>

Links to the relevant judgements are provided and it is stated that: *"The Court of Appeal judgment [2013] NICA 37 is the final decision in this case"*.

### Stop and search

In 2013 the Policing Board NI carried out a thematic review of the use of stop and search powers exercised by the PSNI. In its Report the Policing Board recommended that the PSNI should, as soon as reasonably practicably, consider how it records the community background of all persons stopped and searched under powers contained within the Terrorism Act 2000 and within the Justice & Security (NI) Act 2007.<sup>242</sup>

In March 2014 the PSNI informed the Performance Committee of the Policing Board that they were not in a position to either accept or reject this recommendation.<sup>243</sup>

240 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p. 32

241 See: [http://www.dhsspsni.gov.uk/index/hss/child\\_care/adoption/adoption\\_faqs.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/adoption/adoption_faqs.htm)

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

243 NI Policing Board – Minutes of the Performance Committee Meeting Held on 20 March 2014



## Criminal records

The ECtHR case of *M.M. v UK* concerned the indefinite retention and disclosure of data regarding a police caution for child abduction received by the applicant following a family dispute.<sup>244</sup> The applicant lived in NI. In light of various shortcomings in the legal framework in place, the ECtHR found that there were insufficient safeguards in the system for retention and disclosure of criminal record data to ensure that data relating to the applicant's private life had not been, and would not be, disclosed in violation of her right to respect for private life.<sup>245</sup> With respect to the statutory framework in NI the ECtHR stated:

*No distinction is made based on the seriousness or the circumstances of the offence, the time which has elapsed since the offence was committed and whether the caution is spent. In short, there appears to be no scope for the exercise of any discretion in the disclosure exercise. Nor, as a consequence of the mandatory nature of the disclosure, is there any provision for the making of prior representations by the data subject to prevent the data being disclosed either generally or in a specific case. The applicable legislation does not allow for any assessment at any stage in the disclosure process of the relevance of conviction or caution data held in central records to the employment sought, or of the extent to which the data subject may be perceived as continuing to pose a risk such that the disclosure of the data to the employer is justified.*<sup>246</sup>

In 2014 the UK Government submitted an action plan to the Committee of Ministers setting out measures to be taken to ensure compliance with the ECtHR judgement.<sup>247</sup> This action plan contains information on measures to be taken in NI. To address the need for some distinction between criminal records the DoJ introduced a filtering scheme for criminal record disclosures, this measure was approved by the NI Assembly on 24 March 2014.<sup>248</sup>

The Justice (NI) Bill makes provision for the relevancy test which is referred to when determining details for inclusion in an enhanced criminal record disclosure to be amended, to require a chief officer to have a reasonable belief in the relevancy of the information.<sup>249</sup> This provision increases the scope for discretion. In addition the Bill provides that individuals will be able to apply to the Independent Monitor to question the relevancy of information to be provided in an enhanced criminal record certificate.<sup>250</sup>

244 (Application no. 24029/07) 13 November 2012

245 See Council of Europe Case descriptor available at: [http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases\\_en.asp?CaseTitleOrNumber=&StateCode=UK.&SectionCode=](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=UK.&SectionCode=)

246 *M.M v UK* (Application no. 24029/07) 13 November 2012 para 204

247 Council of Europe DH-DD(2014) 770 13/06/2014

248 See DoJ Press Release <http://www.northernireland.gov.uk/news-doj-270314-ford-introduces-filtering>

249 Amendments to section 113B(4) Police Act 1997

250 See clause 39

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

<b>ICCPR</b>	Article 18 Article 19 Article 20 Article 21 Article 22 Article 25
<b>ECHR</b>	Article 9 Article 10 Article 11 Protocol 1 Article 3
<b>CFREU</b>	Article 10 Article 11 Article 12
<b>CRC</b>	Article 13 Article 14 Article 15
<b>CEDAW</b>	Article 8
<b>CRPD</b>	Article 19 Article 21 Article 29

### Parades and protests

In its 2013 annual statement the Commission highlighted the UN Special Rapporteur on Peaceful Assembly and Association's call for political resolution of issues, such as parades, flags and emblems – that make the enjoyment of freedom of peaceful assembly problematic in NI.<sup>251</sup> The Commission notes that all party talks chaired by Dr Richard Haass did not result in political resolution of the issues of parades or flags and emblems. The Secretary of State for NI has convened further cross-party talks to try to address outstanding issues, including flags, parades and the past.<sup>252</sup>

In the absence of a political resolution, parades and protests during 2014 have continued to result in disturbances. A high profile protest at Twadell Avenue related to a Parades Commission decision to restrict an Orange Order parade on 12 July 2013 on the Crumlin Road Belfast has continued throughout 2014.<sup>253</sup> This ongoing protest underscores the importance of achieving a political resolution.

The Commission has continued to promote its publication on Parades and Protests, which considers the human rights framework for decision-making and the resolution of disputes.<sup>254</sup>

251 The 2013 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2012) pp. 35 – 36

252 Speech by the Secretary of State for NI, Rt Hon Theresa Villiers MP, to the Conservative Party Conference, September 28, 2014, available at: [http://www.politicshome.com/uk/article/105468/secretary\\_of\\_state\\_for\\_northern\\_irelands\\_rt\\_hon\\_theresa\\_villiers\\_mp\\_conference\\_speech.html](http://www.politicshome.com/uk/article/105468/secretary_of_state_for_northern_irelands_rt_hon_theresa_villiers_mp_conference_speech.html)

253 Belfast Telegraph 'Twaddell organiser Gerald Solinas: 'We shall not be moved until brethren get down that road' 28 April 2014

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



## Participation of women

The Assembly and Executive Review Committee issued a call for evidence in 2014 regarding its: 'Review into Women in Politics and the NI Assembly'.<sup>255</sup> The Commission welcomed the commitment illustrated by the Review to analyse the barriers facing women and noted the potential for the process and its recommendations to contribute to ensuring compliance with human rights obligations.<sup>256</sup>

The UN CEDAW Committee has recommended that the UK:

*(a) Continue to take concrete targeted measures to improve the representation of women in Parliament and the judiciary, particularly black and ethnic minority women and women with disabilities; and, (b) Ensure the participation of women in the post-conflict process in NI, in line with Security Council Resolution 1325 (2000).*<sup>257</sup>



## Defamation

As stated in the 2013 annual statement, the Minister of Finance and Personnel, Simon Hamilton MLA, asked the NI Law Commission to examine whether the Defamation Act 2013 should extend to NI.<sup>258</sup>

In its 2008 concluding observations on the UK's Sixth Periodic Report on compliance with the ICCPR the UN Human Rights Committee stated:

*The Committee is concerned that the State party's practical application of the law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as "libel tourism." ... The State party should re-examine its technical doctrines of libel law, and consider the utility of a so-called "public figure" exception, requiring proof by the plaintiff of actual malice in order to go forward on actions concerning reporting on public officials and prominent public figures. ...*<sup>259</sup>

The 2013 Act, to some extent, addressed the UN Human Rights Committee's recommendation. The threshold for bringing a defamation claim has been raised and a defence of publication on a matter of public interest has been introduced in England & Wales. However, the law governing defamation in NI has remained unchanged throughout 2014. An initial consultation document from the NI Law Commission is awaited.

255 See: Assembly and Executive Review Committee's Terms of Reference for and approach to this Review at <http://www.niassembly.gov.uk/Assembly-Business/Committees/Assembly-and-Executive-Review/Reviews/Women-in-Politics-and-the-Northern-Ireland-Assembly/Terms-of-Reference/>

256 NIHRC 'Response to the Assembly and Executive Review Committee's Call for Evidence in relation to the Review into 'Women in Politics and the NI Assembly' September 2014

257 UN CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and NI, 30 July 2013, para 43(a)

258 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p. 37

259 Concluding observations of the Human Rights Committee on sixth periodic report submitted by the UK CCPR/C/GBR/CO/6 30 July 2008

## Right to work and to just and favourable conditions of work

<b>ICESCR</b>	Article 6 Article 7
<b>CEDAW</b>	Article 11
<b>CRPD</b>	Article 27
<b>ESC</b>	Article 1 Article 2 Article 3 Article 4 Article 5 Article 6 Article 19
<b>CFREU</b>	Article 15 Article 31

### **Childcare for women in employment**

In 2013 the Commission raised the issue of affordable childcare provision in NI and the impact that this can have on the ability of women to exercise their right to work and seek employment.<sup>260</sup>

During 2014 the OFMDFM published a Programme for Affordable and Integrated Childcare Strategic Framework and Key First Actions.<sup>261</sup> This sets out objectives for inclusion within a child care strategy. It acknowledges the link between affordable childcare and gender equality, stating:

*The provision of affordable childcare will mark an important step forward in terms of equality of opportunity. It will empower women who wish to join the workforce, or who wish to train or study to improve their workplace skills and earning potential.*<sup>262</sup>

The strategy refers to the CRPD and the CRC but does not refer to the CEDAW. The Commission considers that this is an oversight as the UN CEDAW Committee has specifically urged the UK to:

*provide affordable childcare and to mitigate the impact of the proposed reforms of the welfare system on the costs of childcare for low income families and the increased burden for care on women.*<sup>263</sup>

The OFMDFM document states:

*The Executive is committed to publishing and implementing a Childcare Strategy in 2014. The Strategy will address the developmental needs of children and it will help the many parents who want to work, train, or study, to do so.*<sup>264</sup>

A final strategy is yet to be published.

260 NIHR 'Submission to the Ad Hoc Committee on Welfare Reform' January 2013

261 OFMDFM Programme for Affordable and Integrated Childcare Strategic Framework and Key First Actions 2014

262 Ibid., para 1.12

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

264 OFMDFM Programme for Affordable and Integrated Childcare Strategic Framework and Key First Actions 2014 para 2.1



## Parental rights

In its 2013 annual statement the Commission referred to proposed measures by the Department of Employment and Learning (DEL) to provide parents with greater flexibility over their shared childcare responsibilities.<sup>265</sup> A Work and Families Bill was introduced in 2014 to the NI Assembly to operationalise the proposed measures.<sup>266</sup>

The Bill makes provision for regulations to be introduced by DEL. These regulations will address some of the specific issues raised by the Commission in its 2013 report. For example, they will provide *“that an employee who is absent on leave... is entitled to return from leave to a job of a kind that may be specified...”*<sup>267</sup>

As noted in 2013, the Commission advised the DEL that any proposals which would undermine the right to return to the same or a similar job following a period of parental leave may negatively affect the best interests of the child and could constitute retrogression.

The explanatory memorandum to the Bill states that regulations could be made to enable paternity pay to be taken in non-consecutive periods of not less than one week and that this may allow for potential future changes to the way in which the system operates.<sup>268</sup> The Commission has advised the DEL to ensure that powers are established to allow for the extension of paternity leave in NI when government and employer finances permit.

In 2013 the Commission advised DEL that the European Committee of Social Rights had concluded that:

*the situation in the United Kingdom is not in conformity with Article 8 §1 of the Charter of 1961 on the ground that the standard rates of Statutory Maternity Pay (SMP), after six weeks, and Maternity Allowance (MA) are inadequate.*<sup>269</sup>

During 2014 the DEL published a report following its public consultation which stated:

*the Department will implement measures to facilitate the extension of the right to request flexible working to all employees.*<sup>270</sup>

The Commission notes that the report did not consider or respond to the conclusion of the European Committee of Social Rights and the Bill does not propose to increase the rate of maternity pay.<sup>271</sup>



## Armed forces covenant

In 2013 the NI Affairs Select Committee reported that in certain respects the inadequate implementation of the Armed forces covenant has disadvantaged personnel living in NI in comparison with their counterparts in Great Britain.<sup>272</sup>

265 The 2013 Annual Statement: Human Rights in NI' (Belfast, NIHRC, 2013) p. 38.

266 Bill 34/11-15

267 See clause 107K

268 Work and Families Bill - Explanatory and Financial Memorandum as Introduced See explanation of Article 107F: Entitlement to leave under Article 107E: further provision

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

270 DELNI 'Departmental Response to Public Consultation: - Sharing Parental Rights, Extending Flexibility at Work' April 2014

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

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

The Covenant is described by the Ministry of Defence as an agreement which sets out the relationship between the people of the UK, HM Government and the Armed Forces community.<sup>273</sup> The two key principles of the Covenant are that members of the Armed Forces Community should face no disadvantage compared to other citizens, and that special consideration may be appropriate in some cases.

The Commission advised the NI Affairs Committee that international human rights law applies in principle to members of the armed forces as it does to citizens generally.<sup>274</sup> Measures to assist individuals and their families in overcoming obstacles which they face due to membership or association with the armed forces would not breach human rights law and, in certain circumstances, such measures may be required to ensure compliance.<sup>275</sup>

The Commission advised that ensuring that armed forces personnel on NHS waiting lists are not disadvantaged due to deployment is in accord with human rights law.<sup>276</sup> However, measures to prioritise the provision of health services to armed forces personnel over provision to the general public, may be considered unjustified preferential treatment.

The Commission also advised that the Committee seek clarity on the potential legal implications of the Covenant in NI to ensure that armed forces personnel are entitled to the same level of protection for their human rights as those living elsewhere in the UK.<sup>277</sup>

In October 2014 the House of Commons agreed the below motion:

*That this House notes the First Report of Session 2013-14 from the NI Affairs Committee on the Implementation of the Armed Forces Covenant in NI, HC 51; further acknowledges the recommendations of Lord Ashcroft in his report on The Veterans Transition Review; and calls on the Government to ensure the full implementation of the Military Covenant throughout the UK, including in NI.*<sup>278</sup>

The full implementation of the Armed Forces Covenant in NI remains outstanding.

273 Ministry of Defence 'Armed Forces Covenant' 2011 p. 6.

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

275 NIHRC 'Submission to the NI Affairs Committee of the House of Commons on the Implementation of the Armed Forces Covenant in NI' February 2013

276 Ibid., para 16

277 Ibid.

278 HC Deb, 22 October 2014, c971

## Right to an adequate standard of living and to social security

<b>ICESCR</b>	Article 9 Article 11
<b>CRC</b>	Article 26 Article 27
<b>CEDAW</b>	Article 13
<b>CRPD</b>	Article 28
<b>ESC</b>	Article 12 Article 13 Article 14
<b>CFREU</b>	Article 34

### Social security

In its 2012 and 2013 annual statements the Commission reported on the advice provided to the NI Assembly in relation to the Welfare Reform Bill.<sup>279</sup> Throughout 2014 the Bill has not progressed beyond Committee Stage. Other reforms to the social security system, for instance on freezing or restricting the uprating of certain means tested benefits, have been implemented.<sup>280</sup>

As the Welfare Reform Bill and proposed amendments have not progressed it is not yet clear if the concerns raised by the Commission during the Committee Stage will be addressed. As the NI Assembly did not introduce the reforms in 2014, the UK Government indicated that there would be financial penalties imposed on the devolved administration through a reduction in the block grant. The Minister of Finance and Personnel informed the NI Assembly that:

*The UK Government have confirmed that the NI block allocation will be reduced by £87 million in 2014-15 for non-adherence to the welfare reform initiative. Should the stalemate on welfare reform continue, this cost will be £114 million next year and will quickly escalate to over £200 million a year. Of course, this does not include the substantial costs of securing an IT system to deliver welfare payments in NI.*<sup>281</sup>

The Minister has emphasised the impact this reduction will have on other public services.<sup>282</sup> Opponents to the Welfare Reform Bill, including Sinn Féin, have highlighted the view that the proposals would have disproportionate impact in NI. For example, Daithi McKay MLA stated that the reductions:

*would take hundreds of millions of pounds out of the pockets of the most vulnerable and least able to pay. These cuts would plunge more children into poverty and take money from hard-pressed working families, people on benefits and from people with disabilities.*<sup>283</sup>

279 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013)

280 HM Treasury – Autumn Statement 2012 paragraphs 1.155 – 1.158

281 NI Assembly 23rd September 2014 Minister of Finance and Personnel Oral Answers to Questions Welfare Reform: Financial Cost available at: <http://www.theyworkforyou.com/ni/?id=2014-09-23.3.0>

282 Ibid.

283 Daithi McKay MLA 'Tory welfare cuts would devastate thousands' Sinn Fein 22 September 2014



The Commission notes that both welfare reform and any reduction in the block grant will have potential consequential impacts on the protection of human rights. The Welfare Reform Bill and associated reductions to the block grant have been included in the agenda of talks convened by the Secretary of State for NI.<sup>284</sup>



### Social housing

In June 2014, the Commission received a request from Sinn Féin to investigate the: *'current and proposed policy on the provision of social housing and allocation of social housing by the Department for Social Development (DSD) and the NI Housing Executive (NIHE) with particular reference to the International Covenant on Economic, Social and Cultural Rights.'* A principal basis of the complaint was alleged: *'longer waiting times, higher levels of housing stress and greater homelessness within Catholic and nationalist communit[ies]'*.<sup>285</sup>

The Commission was aware that the Equality Commission NI had commenced an investigation into the DSD's compliance with its Equality Scheme in relation to four DSD policies/programmes and decided that providing advice to the Equality Commission NI to its investigation would be an appropriate use of resources.<sup>286</sup> In August 2014, the Commission submitted advice to the Equality Commission NI and shared this with both the DSD and Sinn Féin.<sup>287</sup> The Commission considered which procedural requirements should be examined during the course of any domestic assessment of equality to determine whether the right to adequate housing and right to non-discrimination have been complied with. The Equality Commission NI's investigation is ongoing.

### UN Special Rapporteur on Housing

In March 2014 the UN Special Rapporteur presented a report on the UK to the UN Human Rights Council.<sup>288</sup> While recognising the efforts of the NI Executive to address housing challenges in NI, she emphasised that the *"long-standing issues related to inequality continue to require concerted efforts"*. She recommended that additional efforts be made to:

*address challenges to overcome persistent inequalities in housing in North Belfast. For this purpose, active, free and meaningful participation of all in decisions made about housing should be promoted, including in relation to the collection of official data, that should be disaggregated, open and accessible to all.*<sup>289</sup>

The Commission, in conjunction with the EHRC and the SHRC, provided its views on the Report to the UN Human Rights Council stating:

*The Special Rapporteur's report is a very timely contribution to addressing the need for a sufficient and adequate supply of housing in times of austerity. The UK's NHRIs will follow up on her recommendations in our ongoing work, including through the UPR mid-term report.*<sup>290</sup>

284 Speech by the Secretary of State for NI, Rt Hon Theresa Villiers MP, to the Conservative Party Conference, September 28, 2014, available at: [http://www.politicshome.com/uk/article/105468/secretary\\_of\\_state\\_for\\_northern\\_irelands\\_rt\\_hon\\_theresa\\_villiers\\_mp\\_conference\\_speech.html](http://www.politicshome.com/uk/article/105468/secretary_of_state_for_northern_irelands_rt_hon_theresa_villiers_mp_conference_speech.html)

285 Sinn Féin, 'Sinn Féin Submission to the Human Rights Commission, Re: Allocation of Social Housing' (June 2014). See also, F. McCann, 'DSD housing complaint lodged with Human Rights Commission' (11 June 2014), Available at, <http://www.sinnfein.ie/contents/30597>

286 ECNI News Archive 'Commission to investigate DSD Equality Scheme compliance' 15/05/2014 - See more at: <http://www.equalityni.org/Footer-Links/News/Delivering-Equality/Investigation-DSD-Equality-Scheme-compliance#sthash.6KZqnaNB.dpuf>

287 NIHRC submission to the Equality Commission for NI's investigation into the DSD's compliance with the approved Equality Scheme September 2014

288 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik A/HRC/25/54/Add.2 30 December 2013

289 Ibid., para 80(i)

290 Joint Oral Statement submitted by the EHRC, the SHRC and the NIHRC (A Status NHRIs of the United Kingdom of Great Britain and NI) 10 March 2014

## Proposed Housing (Anti-Social Behaviour) Bill

The DSD consulted during 2014 on measures to tackle anti-social behaviour in social housing.<sup>291</sup> In particular, it proposed the introduction of legislation through which social landlords could convert secure tenancies to short secure tenancies if a tenant was convicted of a crime involving the dwelling or received an anti-social behaviour order. A short secure tenancy would provide tenants with support but would also make it easier for landlords to evict anti-social tenants and their family members.

The Commission responded emphasising that the procedural rights of individuals to receive a fair hearing and the right to an effective remedy had to be guaranteed.<sup>292</sup> Tenants should be able to present their case in court, contest evidence brought against them and courts must be able to examine this substantively.<sup>293</sup> This should be clearly stated in any legislation brought forward, in accordance with the principle of legal certainty. Furthermore, any decision to evict a household would have to consider the impact on all members, and particular attention given to any vulnerability that they may have.<sup>294</sup>



### Tackling Poverty

In 2014 it was reported that there were approximately 338,000 people (19% of the population) in relative poverty before housing costs and approximately 368,000 people (20% of the population) in absolute poverty before housing costs.<sup>295</sup> There were approximately 89,000 children (20%) in relative poverty before housing costs and 96,000 children (22%) in absolute poverty before housing costs.<sup>296</sup>

The Commission notes that whilst it had been anticipated that a child poverty strategy to cover the period 2014-2017 would be laid before the NI Assembly in autumn of 2014 this has not occurred.<sup>297</sup> The OFMDFM has subsequently informed the NI Assembly that the Child Poverty Strategy 'Improving Children's Life Chances' which was to end in March 2014 would be extended by two years.<sup>298</sup> It stated:

*Following consultation with stakeholders we took the decision in July to move forward separately the work on the Child Poverty Strategy 2014-2017 and Delivering Social Change for Children and Young People. The Ten Year Strategy for Children and Young People will continue until 2016.*

*We propose to work with stakeholders using a co-design process to develop a new strategy for Children and Young People post 2016, and this work will begin shortly.*<sup>299</sup>

Separately the Commission notes that the Committee on the Administration of Justice was granted leave to "judicially review the NI Executive over its alleged failure to adopt an anti poverty strategy based on objective need".<sup>300</sup> Under the NI Act 1998 section 28 (e) the NI Executive is obligated to adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need and to keep this strategy under review .

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

292 NIHRC 'Response to the consultation on the proposed Housing (Anti-Social Behaviour) Bill (NI)' March 2014

293 Ibid., para 29

294 Ibid., para 20

295 NI Statistics and Research Agency, 'Poverty in NI: 2012/2013' (Department for Social Development, 1 July 2014), p. 1

296 Ibid.

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

298 NI Executive 'Improving Children's Life Chances: The Child Poverty Strategy' March 2011

299 AQO 6745/11-15 Mr Barry McElduff (SF - West Tyrone) 25/09/2014

300 CAJ 'Court gives CAJ leave to challenge Stormont over legal duty to adopt anti-poverty strategy' 29 September 2014

## Right to health

<b>ICESCR</b>	Article 12
<b>CRPD</b>	Article 25
<b>ESC</b>	Article 11
<b>CFREU</b>	Article 35

### Care homes

The Commission's 2012 report 'In Defence of Dignity' examined the human rights of older people living in nursing homes.<sup>301</sup> In its report, the Commission recommended that:

*The Nursing Homes Regulations (NI) 2005 are amended to require that nursing homes are conducted so as to promote and protect residents' human rights.*<sup>302</sup>

During 2014 the DHSSPS consulted on draft revised Nursing Home Minimum Standards.<sup>303</sup>

The Commission provided advice on the draft standards both prior to and subsequent to the consultation exercise.<sup>304</sup> It advised on the human rights engaged in the context of nursing home care, including the right to privacy and family life, the right to food, and the right to the highest attainable standard of physical and mental health, the rights to personal autonomy and independence.<sup>305</sup> The Commission recommended that the standards make clear that restraint should never be applied in a damaging manner and should regulate the use of chemical restraints.<sup>306</sup> The Commission advised that the regulations should ensure the management of continence issues in a manner which respects the dignity of the individual.<sup>307</sup>

The Commission submitted advice in November 2014 and is continuing to engage with officials on the final content of the Regulations.

### Termination of pregnancy

In 2013 the Commission responded to the DHSSPS' public consultation on Draft Guidance on Termination of Pregnancy in NI.<sup>308</sup> The revised guidance has not yet been published by the DHSSPS.

In July 2014 the Commission sent a letter to the DHSSPS Minister expressing concern at the lack of progress in issuing guidance and requesting a timeframe regarding the publication of the guidance.<sup>309</sup> The Commission did not receive a response to its letter.

In September 2014 the Commission responded to a consultation on the draft Justice (NI) Bill, which included a proposed amendment entitled "*The right to life of the unborn child.*"<sup>310</sup> The Commission advised that the protection of the right to privacy would be engaged and outlined that any interference with this right must be justified as being "*in accordance with the law*" and "*necessary in a democratic*

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

302 Ibid., Recommendations 2 and 3

303 DHSSPS 'Review of Minimum Standards of Nursing Homes' July 2014

304 NIHRC 'Response to the DHSSPS 'Review of Minimum Standards for Nursing Homes' November 2014

305 Ibid., paras 10 – 14

306 Ibid., paras 23 – 25

307 Ibid., para 9

308 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p. 43

309 NIHRC Correspondence John Corey Interim Chair to Minister of Health Social Services and Public Safety July 2014

310 NIHRC 'Submission to the Committee for Justice on the Justice (NI) Bill' September 2014

*society*” for one or more of the legitimate aims listed.<sup>311</sup> It also noted that the proposed amendment would constitute a further significant restriction on the right to privacy in NI and advised that it is likely that the amendment as introduced would not satisfy the requisite criteria. The Commission noted that the right to life would be engaged in certain circumstances covered by the proposed amendment and advised that it would likely not be compatible with the NI Executive’s positive obligations.

#### Legal action on termination of pregnancy

During 2013 and 2014 the Commission corresponded with the Minister of Justice advising on the need to legalise termination of pregnancy in cases of serious malformation of the foetus, rape and incest. The Minister wrote to the Commission on 4th August 2014 indicating his intention to consult on the proposal to *“change the law on abortion to allow women to choose to terminate their pregnancy if there has been a diagnosis that the foetus is suffering from a lethal abnormality”*.

In November 2014 the Commission notified the DoJ that it was issuing legal proceedings. It decided to take this action as a last resort. The Commission seeks a change in the law so that women and girls in NI have the choice of accessing a termination of pregnancy in circumstances of serious malformation of the foetus, rape or incest.

Termination of pregnancy is currently available in NI if it is necessary to preserve the life of a woman where there is a risk of a serious and adverse effect on her physical or mental health.

The consultation published by the DoJ in 2014 did not commit to making the changes that are necessary. It deals with cases of lethal foetal abnormality while seeking public opinion on cases of sexual crime including rape and incest.<sup>312</sup>

The issues raised by this challenge are of public interest and the Commission recognises the sensitivities of the case. Given the vulnerability of women and girls in these situations, the Commission considers it appropriate to use its powers and bring this legal challenge in its own name. It also reiterates the human rights obligation of the NI Executive to provide adequate services to care for and support women and girls who choose to continue with a crisis pregnancy.



#### **Mental Capacity**

In 2012 and 2013 the Commission reported on proposals to introduce a Mental Capacity (Health, Finance and Welfare) Bill.<sup>313</sup> The DHSSPS and DoJ issued a joint public consultation in 2014 on a draft Bill.<sup>314</sup> The Commission responded to the consultation independently and jointly with the Equality Commission NI as the independent mechanism to review compliance with the UN CRPD.<sup>315</sup>

The Commission welcomed that the proposals represent substantial progress in developing greater recognition of adult capacity.<sup>316</sup> The Commission advised that the draft Bill and proposals were broadly compliant with the ECHR but identified a number of matters where refinement was required.<sup>317</sup> The Commission also advised that continuing to make provision for substitute decision making as proposed would not comply with the right to legal capacity as protected by the UN CRPD, Article 12.<sup>318</sup> The UN CRPD Committee has set out its interpretation of Article 12 by way of General Comment 1, which requires the replacement of substitute decision making regimes with supported decision making regimes.<sup>319</sup>

311 *P. and S. v. Poland*, ECt.HR, no. 57375/08, 30 January 2013, §94; *A, B and C v. Ireland*, ECt.HR, [GC], no. 25579/05, 16 December 2010, § 218

312 DoJ ‘The criminal law on abortion: lethal foetal abnormality and sexual crime, a consultation on amending the law by the Department of Justice’ November 2014

313 The 2012 Annual Statement: Human Rights in NI’ (Belfast, NIHRC, 2012) p. 36; The 2013 Annual Statement: Human Rights in NI’ (Belfast, NIHRC, 2013) p.45

314 DoJ, DHSSPS ‘Consultation on Proposals for New Mental Capacity Legislation for NI’ May 2014

315 See IMNI ‘Response from IMNI to the Consultation on Proposals for New Mental Capacity Legislation’ September 2014

316 NIHRC ‘Submission to the Consultation on Proposals for New Mental Capacity Legislation for NI’ September 2014 para 6

317 *Ibid.*

318 *Ibid.*, para 10 anon

319 UN CRPD Committee General comment No. 1 (2014) Article 12: Equal recognition before the law CRPD/C/GC/1

The Commission acknowledged that supported decision making is an emerging area of law and practice, which makes the task of ensuring compliance complex. It informed the DHSSPS and the DoJ that it had raised concerns with the UN CRPD Committee regarding the disparity between the ECHR and the UN CRPD, as interpreted by the Committee.<sup>320</sup>

As first noted in the 2012 annual statement the Bill will introduce a presumption of capacity in all persons over the age of 16.<sup>321</sup> With respect to under 16 year olds the DHSSPS has committed to review how the current legal framework, principally the Children (NI) Order 1995, reflects the emerging capacity of children in a health and welfare context.

The Commission has advised that a project plan with a clearly defined timetable for this project should be developed and made publicly available.<sup>322</sup> A resolution of this issue should be identified as early as possible, mindful that the UN CRC Committee will most likely consider the matter during its next UK examination.

320 Joint submission from the EHRC, the Equality Commission NI, NIHRC and the SHRC UN CRPD Committee, Draft General Comment on Article 12 28 February 2014

321 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p. 45

322 NIHRC 'Submission to the Consultation on Proposals for New Mental Capacity Legislation for NI' September 2014 para 90

## Right to education

<b>ICESCR</b>	Article 13
<b>CRC</b>	Article 28
<b>ECHR</b>	Protocol 1, Article 2
<b>CFREU</b>	Article 14
<b>CRPD</b>	Article 24
<b>CEDAW</b>	Article 10

### Children in custody

In 2012 the Commission reported on the importance of ensuring access to appropriate educational facilities for children in custody.<sup>323</sup> In NI responsibility for the provision of education to children in custody rests with the Youth Justice Agency NI and not the Department of Education (DE). Elsewhere in the UK, the Home Office Youth Crime Action Plan 2008 reallocated responsibility for delivery of education to children in detention from the prison service to the Department for Children, Schools and Families.<sup>324</sup>

In the 2013 annual statement the Commission reported that the Minister of Justice and the Minister of Education had agreed that responsibility for the education of child offenders should be transferred to the DE. A cross-departmental working group was established to develop an options paper for delivering on this commitment which was to be completed in early 2014. The working group included the Department of Employment and Learning. The Commission welcomed this development.<sup>325</sup>

Throughout 2014 education provision for children held in detention in NI has, however, continued to be provided by the Youth Justice Agency NI. The Commission raised this matter with the UN Human Rights Council during its mid term review.<sup>326</sup>

### Integrated and shared education

In 2014 the NI Assembly Committee for Education launched an inquiry into shared and integrated education.<sup>327</sup> The Commission advised the Committee that human rights law places a duty on the NI Executive to promote inclusion, tolerance and respect for diversity in and through education.<sup>328</sup> As one of the purposes of education, there is considerable direction in a number of human rights instruments as to how this can be achieved.

In making its submission to the Committee, the Commission noted the commitment of the DE to advance shared education through the Shared Education Campuses Programme. This programme, alongside the financial support provided through the OFMDFM, is intended to:

<sup>323</sup> The 2012 Annual Statement: Human Rights in NI' (Belfast, NIHRC, 2012) p. 38

<sup>324</sup> See Professor Laura Lundy, Ms Lesley Emerson, Dr Katrina Lloyd, Dr Bronagh Byrne and Mr Jamie Yohanis 'Education Reform in NI A Human Rights Review (NIHRC, Belfast, 2013) Chapter 3

<sup>325</sup> The 2013 Annual Statement: Human Rights in NI' (Belfast, NIHRC, 2013) p.46

<sup>326</sup> Submission by the NIHRC to the UN Human Rights Council's Universal Periodic Review of the United Kingdom, Mid-term Report September 2014 para 21

<sup>327</sup> NI Assembly Committee for Education Inquiry into Shared and Integrated Education terms of reference available at: <http://www.niassembly.gov.uk/Assembly-Business/Committees/Education/Calls-for-Evidence/Inquiry-into-SharedIntegrated-Education/>

<sup>328</sup> NIHRC 'Submission of the NIHRC to the Committee for Education Inquiry into Shared and Integrated Education' November 2014

*[e]nhance the quality and extent of shared education provision, thus ensuring that sharing in education becomes a central part of every child's educational experience' and to '[c]reate ten Shared Educational Campuses' within the next 5 years. The strategy includes this commitment as an action that will 'lead to sustainable improvements in good relations.'*<sup>329</sup>

While human rights standards are clear about the duty to promote inclusion, tolerance and respect for diversity through education, there is no requirement to support any particular school structure in order to achieve this. The Commission therefore advised the Committee that both integrated schools and shared education programmes may be considered methods supported by DE to fulfil its obligations in this regard.

In providing its advice the Commission was, however, mindful of the 2014 judgment in the judicial review application by Drumragh Integrated College which examined the definition of integrated education. In addressing whether or not the duty on DE *'is capable of being owed to any school in which Protestant and Roman Catholic children are educated together'* the judgment considered the potential that the definition might extend to schools providing shared education programmes. The conclusion of Treacy J was that *'Integrated Education is a standalone concept'* and *'[t]he provision plainly envisages education together at the same school.'*<sup>330</sup>

The judgment in the Drumragh case also emphasised that a constitution and governance structure that reflects integration must be present in order for a school to be defined as integrated:

*As against this, an integrated school strives to achieve an equal balance in relation to worship, celebration and exposure to both faiths. This is reflected in its constitution and the board must strive in its ethos to achieve this. For these reasons it must be the case that the integrated education referred to in the article is education that is integrated throughout and not education that is delivered by a partisan board.*<sup>331</sup>

The Commission recommended that the Committee seeks the opinion of the DE on their understanding of the definition and scope of integrated education in accordance with the Drumragh judgment.<sup>332</sup> It further suggested that the Committee examine whether integrated schools in NI, in the opinion of the DE, fall within the ambit of a philosophical conviction as protected by the ECHR.<sup>333</sup> In undertaking this examination, there should be a strong presumption of non-retrogression in the enjoyment of the right to parental choice.



### **Educational needs of Traveller children**

The Commission has previously reported on the establishment of the Traveller Education Support Service (TESS) in 2013 as the main vehicle for implementing the commitments in the Department of Education's Traveller Child in Education Action Framework.<sup>334</sup> The TESS has now engaged with 155 schools providing support services to children, families and staff and has delivered 'whole school' traveller awareness training to 100 staff in two schools. A review of the operational delivery plan in August 2014 identified attendance, attainment and parental participation as key priority areas.<sup>335</sup>

329 <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf> p. 29

330 Re: Drumragh Integrated College (citation no. [2014] NIQB) (2014) par. 50

331 Ibid., para 53

332 NIHRC 'Submission of the NI Human Rights Commission to the Committee for Education Inquiry into Shared and Integrated Education' November 2014 para 3.5

333 Ibid., para 3.6

334 The 2013 Annual Statement: Human Rights in NI' (Belfast, NIHRC, 2013) p. 36

335 Ibid.

The Commission also highlighted in 2013 the commitment in the framework to review the policy of providing Traveller specific transport in light of evidence provided by the Taskforce that this could constitute a barrier to inclusion.<sup>336</sup> This issue was given consideration in the Independent Review of Home to School Transport which was completed in August 2014 but is yet to be made public.<sup>337</sup> The Department has also committed to review para 3(3) of Schedule 13 of the Education and Libraries (NI) Order 1986 which contains an attendance exemption for children of parents who are *'engaged in any trade or business of such nature to require him to travel from place to place'*. The Commission understands that draft changes to this exemption are being considered by the Department but there is currently no timeframe for implementation of any amendments.



### Special educational needs

In the 2012 annual statement the Commission reported on the proposal to replace the current system of granting statutory statements to children who meet the definition of special educational needs, contained within the Special Educational Needs and Disability (NI) Order 2005, with a system of Co-ordinated Support Plans (CSP).<sup>338</sup> Proposals have not been brought forward since then. However in September 2014 the Minister of Education informed the NI Assembly that:

*I hope shortly to bring a draft special education Bill to the Executive for consideration. I am committed to working with colleagues in order to achieve the introduction of the Bill to the Assembly, where it can be progressed and debated. I firmly believe that the Bill, the associated regulations and a revised statutory code of practice, will bring forward a rounded and considered package of proposals to improve the management, by both schools and education and library boards, of children's special educational needs.*<sup>339</sup>

The Minister indicated that a draft Bill would reduce the statutory timeframe for education and library boards to complete a statement from 26 to 20 weeks, subject to the existing statutory exceptions, in order to provide earlier assessment and intervention.<sup>340</sup>

The Commission has highlighted to the DE the importance of including children's UN CRC Article 12 participation rights in the legislation and regulations. This includes consideration of the introduction of a statutory right for children to appeal decisions in respect of special educational needs provision. The Commission understands that this measure is one a number of reforms under consideration by the Department.<sup>341</sup> The inclusion of this right would reflect developments in England & Wales where a pilot scheme has been introduced under the Children and Families Act 2014.<sup>342</sup>

336 Ibid.

337 DoE NI 'Minister receives the Independent Review of Home to School Transport report' 29 August 2014

338 'Annual Statement on Human Rights in NI 2012' NIHRC (Belfast December 2012) p. 37

339 AQO 6581/11-15 04/09/2014

340 Ibid.

341 Private Correspondence from Department of Education 'Human Rights Commission Update – November 2014: Review of SEN & Inclusion' November 2014

342 c. 6 Part 3



## Right to participate in the cultural life of the community

<b>ICCPR</b>	Article 27
<b>CRC</b>	Article 31
<b>ICESCR</b>	Article 15
<b>FCNM</b>	Article 5
<b>CEDAW</b>	Article 13 (c)
<b>CRPD</b>	Article 30
<b>CFREU</b>	Article 13 Article 22
<b>European Charter for Regional or Minority Languages</b>	

### The Irish language and Ulster Scots

The Commission has consistently highlighted the need to ensure adequate legal protection for the Irish language and for Ulster Scots. In 2012 the Commission reported that the Advisory Committee on the FCNM had identified the protection and promotion of the Irish language as requiring immediate action recommending that the UK Government and NI Executive:

*develop comprehensive legislation on the Irish language in NI and take resolute measures to protect and implement more effectively the language rights of persons belonging to the Irish-speaking community.*<sup>343</sup>

In 2012 the Department of Culture, Arts and Leisure (DCAL) issued separate consultation papers in respect of strategies to promote and enhance the Irish language and Ulster Scots.<sup>344</sup> Each consultation document referred to the UK's obligations under the Charter with respect to the Irish language and Ulster Scots. However, in 2013 the Commission reported that it had raised issues with the Committee of Experts for the European Charter for Regional or Minority Languages around continuing gaps in legislation, education needs and the responsibility of the NI Executive to promote and develop minority language protections in NI.<sup>345</sup>

In 2014 the Committee of Ministers of the Council of Europe made recommendations relating to the compliance of the UK with the European Convention on Minority and Regional Languages. It recommended that the UK Government take account of all the observations and recommendations of the Committee of Experts as a matter of priority.<sup>346</sup> In its report the Committee of Experts noted with regret that the NI Executive had not contributed to the State Report, the Committee further stated:

*The devolution settlement in NI presents obstacles to the promotion and the protection of regional or minority languages to the extent that there is no political consensus on the contribution to be made by the NI Government. The responsibility of competence with regard to regional or minority languages was devolved to the NI Assembly. Nevertheless, no legislation promoting the Irish language has been adopted. The Committee of Experts was informed that this is because of the need to obtain consensus within the power sharing administration.*<sup>347</sup>

343 FCNM, Third Opinion on the United Kingdom, adopted on 30 June 2011, ACFC/OP/III (2011), Issues for Immediate Action. p. 43

344 Annual Statement on Human Rights in NI 2012' NIHRC (Belfast December 2012) p. 39

345 Annual Statement on Human Rights in NI 2013' NIHRC (Belfast December 2013) p. 48

346 See Appendix B

347 Application of the Charter in the UK, 4th monitoring cycle Report of the Committee of Experts on the Charter Strasbourg, 15 January 2014 ECRML (2014) 1 para 12 – 14

The Committee of Experts urged:

*the authorities to provide an appropriate legislative base for the protection and promotion of Irish in NI.*<sup>348</sup>

The Commission notes that whilst it had been reported that an Irish language strategy would be published in mid 2014 this has not happened.<sup>349</sup>

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348 Ibid.

349 In response to an oral question on 29 April 2014, the Minister of Culture, Arts and Leisure indicated that the Irish language strategy has been revised and is awaiting responses from some Departments. The Minister anticipates that it will be published before the summer recess

## Constitutional Protections



### Bill of rights for NI

As required by the Belfast (Good Friday) Agreement and the NI Act 1998, the Commission provided advice to the UK Government on a Bill of Rights for NI in 2008. On receipt of our advice the NIO sought views from the public by way of a public consultation.<sup>350</sup>

In December 2010 Hugo Swire MP, then Minister of State, reported that there was:

*considerable support from human rights and community groups for a wide-ranging Bill of Rights along the lines of that recommended by the NI Human Rights Commission.*<sup>351</sup>

The Commission reported on the absence of any significant development to progress a Bill of Rights for NI in 2012 and 2013.<sup>352</sup> In July 2013 the Westminster Parliament held a debate on the subject during which the Secretary of State for NI, Theresa Villiers MP, stated:

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

*Despite that, however, 15 years on from the Belfast agreement, it is clear that there is no consensus on how to move forward, and I am afraid that there is no sign of one emerging in the immediate future. That was the case under the previous Labour Government, and I am afraid that it has remained the case under the current Government.*<sup>353</sup>

In 2014, Dr Richard Haass published a proposed agreement among parties of the NI Executive on Parades, Select Commemorations, and Related Protests: Flags and Emblems; and Contending with the Past. In this, it was suggested that a commission could be created “to launch and sustain a conversation about the role of identity, culture, and traditions in the life of the citizens of NI”.<sup>354</sup> Part of the envisaged role of a Commission would have been to consider the Bill of Rights for NI.<sup>355</sup>

The Commission raised this matter with the UN Human Rights Committee who will be assessing the compliance of the UK with the ICCPR in 2015.<sup>356</sup> In advance of the examination the UN Human Rights Committee has asked the UK to:

*report on the progress made in implementing a Bill of Rights for NI in accordance with the Belfast (Good Friday) Agreement and recommendations from the NI Human Rights Commission.*<sup>357</sup>



### UK bill of rights

In its 2012 and 2013 annual statements the Commission reported on proposals to repeal the HRA 1998 and replace it with a UK Bill of Rights. In September 2014, in a joint statement with the EHRC and the SHRC, the Commission reported to the UN Human Rights Council that:

*the Human Rights Act is well-crafted and both reflects and is embedded in our constitutional arrangements. We oppose any reduction to legal human rights protections in the UK.*<sup>358</sup>

350 NIO, Consultation Paper: A Bill of Rights for NI: Next Steps, November 2009

351 Minister of State Hugo Swire MP, Written Ministerial Statement to Parliament, 16 December 2010

352 The 2012 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2012) pp. 40-41; The 2013 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2013) p. 49

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

354 Proposed agreement among the parties of the NI Executive on Parades, Select Commemorations and related protests, flags and emblems and contending with the past <http://www.northernireland.gov.uk/haass.pdf> p.17

355 Ibid.

356 NIHRC Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights. June 2014 pp. 11 – 14

357 UN Human Rights Committee List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and NI, the British Overseas Territories and Crown Dependencies October 2014 para 3

358 UK NHRI Oral Statement for the Universal Periodic Review October 2014

In October 2014 the Conservative Party published proposals for reform of human rights protections in the UK. The Party is suggesting the repeal of the HRA 1998 and its replacement with a "British Bill of Rights and Responsibilities".<sup>359</sup> The paper states that the:

*reforms will mean that the European Court of Human Rights is no longer binding over the UK Supreme Court. The European Court of Human Rights is no longer able to order a change in UK law and becomes an advisory body only. There is a proper balance between rights and responsibilities in UK law.*<sup>360</sup>

The Chief Commissioner has responded to the most recent proposals reiterating the Commission's opposition to any reduction in legal human rights protections in the UK and recalling that:

*The UK has always prided itself on upholding human rights standards internationally and these proposals and the proposals announced by the Minister for Justice are likely to undermine influence and standing abroad. For anyone who wishes to tamper with current human rights mechanisms a strong message must be sent namely, that nowhere in the world has the repeal of existing human rights protections been the starting point for improving the lives of ordinary people.*<sup>361</sup>



### **Charter of rights for the island of Ireland**

The Commission and the Irish Human Rights Commission were mandated by the Belfast (Good Friday) Agreement 1998 to consider through a joint committee:

*the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.*<sup>362</sup>

This task was completed in June 2011 when the Commissions together presented advice to the Governments of the UK and Ireland, the Speaker of the NI Assembly and the Ceann Comhairle of Dáil Éireann.<sup>363</sup> The Speaker and Ceann Comhairle both agreed to forward the advice to political parties in their respective legislative bodies for further consideration. Since then no further communication has been received on this matter.

In its 2012 annual statement the Commission noted the establishment of the North-South Parliamentary Forum and the potential for the Charter to form part of its work plan. However, in 2013 the Commission reported that this initiative did not occur.<sup>364</sup> Again, in 2014 there is nothing to report regarding the fulfilment of this aspect of the Belfast (Good Friday) Agreement.



### **National human rights institution**

The Paris Principles provide the international benchmarks against which NHRIs can be accredited by the International Coordinating Committee of NHRIs. They were adopted in 1993 by the United Nations General Assembly.<sup>365</sup>

359 Conservative Party 'Protecting Human Rights in the UK: Proposals for changing Britain's Human Rights Laws' October 2014

360 Ibid.

361 NIHRC Press Release 'Chief Commissioner Responds To Human Rights Act Proposals' 8 October 2014

362 The Joint Committee of the NIHRC and the Irish Human Rights Commission 'The advice of the joint committee on a charter of rights for the island of Ireland' June 2011

363 See <http://www.nihrc.org/publication/category/Charter-of-Rights>

364 The 2013 Annual Statement: Human Rights in NI (Belfast, NIHRC, 2013) p.50

365 General Assembly A/RES/48/134 4 March 1994

The Paris Principles state:

*A national institution shall be vested with competence to promote and protect human rights . . . The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*<sup>366</sup>

The NI (Miscellaneous Provisions) Act 2014 amended the NI Act 1998 to provide that the functions of the Secretary of State for NI are transferable to the competency of the NI Assembly.<sup>367</sup> For a transfer of responsibilities to occur the Secretary of State must lay an Order before Parliament.

During its passage the 2014 Act was amended to require that three months before laying an Order in Parliament providing for the transfer of responsibilities relating to the Commission the Secretary of State must provide a report outlining:

*the effect (if any) that the Order would have on —(a) the independence of the NI Human Rights Commission; (b) the application of internationally accepted principles relating to national human rights institutions; and (c) the relationship between the NI Human Rights Commission and the Assembly.*<sup>368</sup>

This amendment was made to address concerns raised by the Commission and echoed by the House of Commons NI Affairs Committee relating to the potential implications of a transfer on the effectiveness and independence of the Commission.<sup>369</sup>

The Commission notes that the amendment does not specify the institution to which the responsibilities of the Secretary of State for NI would actually be transferred to and the Commission's resolved view is that this should be to the NI Assembly.<sup>370</sup>

In 2014 the Commission received notification from the UK Government confirming a 9.4% reduction in its grant-in-aid for 2015/16. In effect, this will reduce the funding from the NIO by £122,000 to £1,232,000 in 2015/2016.

The Commission has raised concerns regarding the budget reductions with the UN Human Rights Council on two separate occasions in 2014.<sup>371</sup> Following the Commission's representations both members of the Westminster Parliament and NI Executive, including all political parties represented in the devolved administration, have raised concerns with the Secretary of State for NI regarding the effect this will have on the Commission's effective operation.<sup>372</sup>

366 Ibid.

367 Section 11

368 Ibid.

369 The 2013 Annual Statement: Human Rights in NI ' (Belfast, NIHRC, 2013) p.50

370 See NIHRC ' Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights' 2014

371 Submission by the NIHRC to the UN Human Rights Council's Universal Periodic Review of the UK Mid-term Report September 2014

372 See further Official Hansard Script Committee for the Office of the First Minister and deputy First Minister: NIHRC Session: 2013/2014 28 May 2014

## Appendices

The appendices present relevant extracts from the findings of human rights monitoring bodies that have examined UK Government and NI Executive compliance with human rights obligations during 2014. It contains extracts from:

### Appendix A

- Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: concluding observations on the initial report of the UK;

### Appendix B

- European Charter for Regional or Minority Languages: Recommendations of the Committee of Ministers.

In addition a summary of the traffic light system is provided

### Appendix C

- List of outcomes categorised by traffic light system

## Appendix A

### **Concluding observations on the report submitted by the United Kingdom of Great Britain and NI under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography CRC/C/OPSC/GBR/CO/I 8 July 2014 (extracts).**

#### **Data Collection**

The Committee recommends that the State party develop and implement a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment for all the areas covered by the Optional Protocol throughout its jurisdiction, including in NI and Scotland. The data should be disaggregated by, inter alia, sex, age, national and ethnic origin, geographical location, and socioeconomic status, with particular attention to children in the most vulnerable situations. Data should also be collected on the number of child victims provided with recovery assistance and the number of prosecutions and convictions, disaggregated by the nature of the offence. The Committee also recommends that the State party coordinate data collection throughout its jurisdiction and establish a system of common indicators when collecting data for different regions.

#### **Legislation**

The Committee strongly recommends that the State party ensure that all types of offences covered by the Optional Protocol, including the sale of children, child trafficking, child prostitution and child pornography are covered under a comprehensive piece of legislation and that it ensure consistent application of all the obligations under the Optional Protocol throughout its jurisdiction, including in NI and Scotland. The Committee specifically recommends that:

- (a) The definition of sale of children, which is similar but not identical to that of trafficking in persons, be amended in all national legislation of England, Wales, Scotland and NI in order to adequately implement the provision on sale of children contained in the Optional Protocol;
- (b) The existing legislation, particularly the Sexual Offences Act 2003, the Sexual Offences (NI) Order 2008 and the proposed Modern Slavery Bill for England and Wales be amended and harmonized to ensure that all children under the age of 18 years of age are protected against all types of offences covered by the Optional Protocol.

#### **National Plan of Action**

The Committee recommends that the State party develop and adopt a unified, comprehensive and overarching national plan of action and a strategy for the implementation of the Optional Protocol throughout its jurisdiction, and that that national plan of action be provided with adequate human, technical and financial resources for its implementation. To that end, the State party should pay particular attention to the implementation of all the provisions of the Optional Protocol, taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the First, Second and Third World Congresses against the Commercial Sexual Exploitation of Children, held in Stockholm in 1996, in Yokohama, Japan, in 2001 and in Rio de Janeiro, Brazil, in 2008.

## **Coordination and Evaluation**

The Committee recommends that the State party designate a unit with high-level authority and the capacity to provide leadership and effective general oversight for the monitoring and evaluation of activities under the Optional Protocol across sectoral ministries and from the central to local levels of government, and provide it with adequate human, technical and financial resources to function effectively. The Committee also recommends that the State party ensure better coordination among the various governments across the four jurisdictions while developing and implementing legislation and policies for the implementation of the Optional Protocol, to ensure consistency in their approach.

## **Independent Monitoring**

The Committee recommends that the State party ensure that the proposed Anti-Slavery Commissioner is provided with sufficient resources and a robust mandate and is fully independent, in order to effectively fulfil the role and ensure the protection of children's rights under the Optional Protocol. The Committee further recommends that the State party include a provision in the draft modern slavery bill which would allow the Anti-Slavery Commissioner to report directly to the relevant parliaments.

## **Dissemination and awareness-raising**

The Committee recommends that the State party step up its efforts to make the provisions of the Optional Protocol widely known to the public at large, including to children, in a child-friendly manner, their families and communities. The Committee also urges the State party:

- (a) To systematically incorporate issues related to the Optional Protocol into the curricula of primary and secondary schools; and secondary schools;
- (b) To develop, in close cooperation with civil society organizations, the media, the private sector, communities and children, awareness-raising programmes including campaigns on issues covered by the Optional Protocol. The programmes should be made available in all jurisdictions of the State party and in forms that are accessible to children.

## **Training**

The Committee urges the State party to strengthen its multidisciplinary training on the Optional Protocol, especially for members of the police, health professionals, judges, prosecutors and social workers at all levels of the governments in the State party. The Committee further urges the State party to earmark the necessary resources to conduct such training and systematically plan and evaluate its impact.



## Allocation of resources

The Committee recommends that the State party take all possible measures to ensure that sufficient resources are allocated equitably throughout the State party for the implementation of all areas covered by the Optional Protocol, by providing, in particular, the necessary human, technical and financial resources for the development and implementation of programmes aimed at prevention and at the protection, physical and psychological recovery and social integration of victims, as well as the investigation and prosecution of the offences covered by the Optional Protocol. The Committee also recommends that the State party provide information about the steps taken in this area in its next periodic report under the Convention.

## Measures adopted to prevent offences prohibited under the Protocol

The Committee urges the State party to continue its efforts to provide effective protection to children in vulnerable situations from all forms of exploitation, and ensure effective local collaboration, strategic planning and training to implement the programme of reforms initiated in England and Wales. The Committee also urges the State party to establish safeguards to ensure that devolution does not lead to discrimination in the enjoyment of rights by children in different regions and that mechanisms such as the Child Exploitation and Online Protection Centre are extended to NI, to ensure the full implementation of the Optional Protocol throughout the State party's jurisdiction. The Committee specifically recommends that the State party:

- (a) Immediately stop any further closures of Sure Start children's centres and take all necessary measures to increase the budget and provide adequate resources for accessible and high-quality services in those centres;
- (b) Put in place measures tailored to target potential abusers of children;
- (c) Provide more resources and systematic training on investigations for law enforcement agencies, to improve prosecution and conviction rates for crimes covered by the Optional Protocol;
- (d) Develop prevention programmes targeting children in the most vulnerable situations, such as children in street situations, children in contact with or linked to gang members or groups (particularly in England), irregular migrant children and children living in residential institutions. Particular attention should be given to preventing them from becoming victims of physical and sexual abuse;
- (e) Ensure that unaccompanied asylum-seeking children, irregular migrant children and child victims of trafficking are entitled to special protection and care and that they are provided with safe and adequate accommodation. The State party should also ensure that care arrangements made for such children are regularly supervised and assessed by qualified persons to ensure the child's physical and psychosocial health, and protection against violence or exploitation.

## Existing criminal or penal laws and regulations

The Committee reminds the State party that, under the Optional Protocol, the term "child" applies to all persons under the age of 18 years and therefore urges the State party to revise its legislation to ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol. Furthermore, the Committee urges the State party:

- (a) To ensure that, in the rebuttable presumptions in the Sexual Offences Act 2003, it includes a provision that, for child victims, the burden of proof will be reversed;

- (b) To thoroughly review the draft modern slavery bill to ensure that it includes all the types of crime defined in articles 2 and 3 of the Optional Protocol, such as forced labour, transfer of organs of a child for profit, adoption of a child for profit and the sale of children, and addresses the particular vulnerabilities and needs of child victims.

### **Child trafficking**

The Committee urges the State party to strengthen the capacity of law-enforcement authorities and the judiciary to detect and prosecute the trafficking of children for labour, sexual and other forms of exploitation, including for religious rituals. The Committee further recommends that the State party enact specific legislation on child trafficking in accordance with the Optional Protocol and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol) and ensure that the crime of child trafficking is defined consistently and prosecuted throughout the State party.

### **Child sex tourism**

The Committee urges the State party:

- (a) To urgently implement the recommendations of the Davies Report and review its legislation, including the Sexual Offences Act 2003, to prevent sexual exploitation of children abroad by British sex offenders;
- (b) To establish a single specialized police unit directed at extraterritorial sexual offending against children to investigate such offences; and provide adequate training and resources to investigate and prosecute such offences;
- (c) To take all necessary measures, legal and institutional, to strengthen the identification, investigation and prosecution of nationals of the State party involved in the sexual exploitation of children abroad, and take all necessary measures to restrict the movements of convicted or alleged child sex abusers and/or prevent them from leaving the State party, including by imposing stricter travel bans;
- (d) To conduct advocacy with the tourism industry on the harmful effects of child sex tourism, widely disseminate the World Tourism Organization Global Code of Ethics for Tourism to travel agents and tourism agencies, and encourage them to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism and to report publicly on their efforts to prevent child sex tourism.

### **Extraterritorial jurisdiction**

The Committee recommends that the State party take steps to ensure that domestic legislation throughout the State party, including in its devolved administrations, enables it to establish and exercise extraterritorial jurisdiction, without the dual criminality criterion, over all the offences covered by the Optional Protocol.

## Extradition

The Committee recommends that the State party withdraw the dual criminality requirement for extradition for all crimes covered by the Optional Protocol. The Committee also recommends that the State party invoke the Optional Protocol as a legal basis for extradition, including in Scotland, even where there is no bilateral agreement.

## Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol

In the light of article 9, paragraph 3, of the Optional Protocol, the Committee recommends that the State party provide child victims of offences prohibited under the Optional Protocol with adequate free legal aid and psychological, medical and social support. The Committee specifically recommends that the State party:

- (a) Establish mechanisms and procedures to protect the rights of child victims of offences covered by the Optional Protocol, including establishing a clear obligation of non-prosecution in the criminal justice system, and ensure that they are treated as victims rather than criminals by the law enforcement and judicial authorities;
- (b) Establish a nationwide system to ensure a clear and comprehensive assessment of the identity of child victims, including for child victims of trafficking and at major ports as planned by the State Party, in a friendly, safe atmosphere by qualified professionals trained in gender- and age-sensitive interviewing techniques;
- (c) Prioritize the appointment of a competent and statutory guardian as expeditiously as possible to safeguard the best interests of the child during the criminal justice process and ensure that a child victim is referred to asylum-seeking or other procedures only after the appointment of a guardian and that they are entitled to access, free of charge, to a qualified legal representative;
- (d) Ensure that the entry clearance process (including in family reunification cases) for child victims of trafficking includes an assessment of the best interests of the child with a view to protecting the rights and interest of child victims and that statutory guidance on age assessments is adopted to ensure consistencies in the methods for assessing age and that such assessment is conducted in a scientific, safe, child- and gender-sensitive, and fair manner;
- (e) Ensure that all jurisdictions, including NI and Scotland, facilitate and guarantee access to compensation to child victims for violations of their rights, including through the provision of systematic information on their right to receive compensation.

## Recovery and reintegration of victims

The Committee urges the State party to adopt comprehensive measures throughout its jurisdiction for the recovery and reintegration of child victims of all offences covered by the Optional Protocol, including their full social reintegration and physical, psychological and psychosocial recovery. The Committee recommends in particular that the State party:

- (a) Allocate adequate human, financial and technical resources to increase access to child-centred services for child victims of offences covered by the Optional Protocol and continue to develop specialized medical, psychosocial and psychological care services, including by providing access to child mental health professionals and psychological support services throughout the jurisdiction

of the State party, where necessary;

- (b) Adopt clear measures to guide the rescue, repatriation, rehabilitation and reintegration of child victims of trafficking, prostitution and pornography, including clear procedures for special assistance and repatriation for foreign child victims based on the “best interests determination” and follow-up;
- (c) Seek technical assistance from the Office of the United Nations High Commissioner for Refugees in the implementation of these recommendations.

### **Multilateral, bilateral and regional agreements**

In the light of article 10, paragraph 1, of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures for, and mechanisms to coordinate, the implementation of such arrangements, with a view to improving prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences covered by the Optional Protocol.

### **Ratification of the Optional Protocol on a communications procedure**

The Committee recommends that the State party, in order to further strengthen the fulfilment of children’s rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

## Appendix B

### **Recommendation CM/RecChL(2014)3 of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by the United Kingdom (extracts)**

*(Adopted by the Committee of Ministers on 15 January 2014 at the 1188th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Recommends that the authorities of the United Kingdom take account of all the observations and recommendations of the Committee of Experts and, as a matter of priority;

2. adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation providing statutory rights for the Irish speakers; and
4. strengthen its support for the work done by the Ulster Scots Agency and take measures to establish the teaching of Ulster Scots.

## Appendix C

### List of outcomes categorised by traffic light system



#### Red

Conflict related deaths: transitional justice and individual cases  
Deprivation of citizenship  
Compensation  
Age of criminal responsibility  
Termination of pregnancy



#### Amber

Consolidating, strengthening and clarifying equality protections  
Travellers  
Sectarianism  
Racial equality strategy  
Racist hate crimes  
Religious tolerance  
Disabled persons  
Extension of civil marriage to same sex couples  
Eligibility to make blood donations  
Rule of law: non-state actors  
Deaths in custody  
Alternatives to imprisonment  
Imprisonment for fine default  
Women in prison  
Imprisonment of children with adults  
The remand of children  
Prison review and conditions  
Health and social care  
Historical abuse of children and adults  
Violence against women and girls  
Domestic violence protection orders  
Allegations of torture and cruel, inhuman or degrading treatment or punishment overseas  
Mechanisms for the identification of victims of torture for those detained in immigration facilities  
Strip Searches  
Child prostitution and sexual exploitation  
National crime agency

Human Trafficking

Avoidable delay

A victim charter

Closed Material Proceedings

Access to justice

Stop and search

Parades and protests

Participation of women

Defamation

Childcare for women in employment

Parental rights

Armed forces covenant

Social security

Social housing

Tackling Poverty

Care homes

Mental Capacity

Children in custody

Integrated and shared education

Educational needs of Traveller children

Special educational needs

The Irish language and Ulster Scots

Bill of rights for NI

UK bill of rights

Charter of rights for the island of Ireland

National human rights institution



Adoption

Criminal records











# Protecting and promoting your rights

## Contact us

If you would like to know more about the work of the Commission, or any of the services we provide, please contact us.

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