

**Northern Ireland Human Rights Commission submission to the UN
Committee against Torture 57 Session on the Sixth Periodic
Report of the United Kingdom of Great Britain and Northern
Ireland on compliance with the UN Convention against Torture
and Other Cruel, Inhuman or Degrading Treatment or Punishment**



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Executive Summary

The Committee may wish to: seek an update from the State Party on plans for the reform of Human Rights Act 1998 and of its membership of the Council of Europe and its position on adherence to judgements of the European Court of Human Rights. (2.1)

The Committee may wish to: seek an update from the State Party on the use of closed material proceedings. (2.2)

The Committee may wish to: seek an update on the planned public consultation exercise relating to non-jury trial arrangements and invite the State Parties views on whether a further extension of the provisions will be sought in August 2017. (2.3)

The Committee may wish to: seek an update from the State Party on the work of the ISC Committee and on all investigations into allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas. (2.4)

The Committee may wish to: seek an update from the State Party on all measures taken to address the Committee's recommendation to 'develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators'. (2.5)

The Committee may wish to: seek an update from the State Party on all measures taken to support the Coroners court in Northern Ireland to ensure the expeditious consideration of all outstanding inquests. (2.5)

The Committee may wish to: seek an update from the State Party on investigations into the death of Patrick Finucane. (2.5)

The Committee may wish to: seek an update from the State Party on the work of the Historical Institutional Abuse Inquiry and on

any police investigations being carried out into allegations of historical abuse, including clerical abuse. (2.6)

The Committee may wish to: seek an explanation from the State Party as to why no measures have been taken to increase the age of criminal responsibility in Northern Ireland. (2.7)

The Commission recalls that the Committee recommended that the State Party "further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment", the Commission invites the Committee to: seek an update from the State Party on all measures undertaken to promote positive non-violent forms of discipline in Northern Ireland. In addition, the Commission invites the Committee to request information on the number of occasions in which the defence of reasonable chastisement has been used. (2.8)

The Committee may wish to: seek an update on the how the State Party will ensure the early identification of victims of torture in immigration detention, on proposed reforms to Rule 35 of the Detention Centre Rules and on the introduction of rules governing short term holding facilities. (2.9)

The Committee may wish to: seek information on measures taken to ensure a range of community disposals are available as an alternative to short term custodial sentences. (2.10)

The Committee may wish to: seek information from the State Party on the current arrangements for the health and social care of prisoners in NI and to provide information on measures taken to address substance misuse. (2.10)

The Committee may wish to: request an update from the State Party on the construction of a separate custodial facility for women offenders in Northern Ireland. (2.11)

The Committee may wish to: seek information from the State Party on measures taken in NI to safeguard those reliant upon others for their care and to ensure the prosecution of those who degrade or ill treat those reliant upon their care. (3.1)

The Committee may wish to: seek an update from the State Party on how it has ensured powers to deprive the citizenship of individuals and to prevent the return of individuals on security

grounds have not resulted in individuals being subjected to torture or inhuman and degrading treatment. (3.2)

The Committee may wish to: seek an update from the State Party on measures it has taken to progress the adoption of a Bill of Rights for Northern Ireland. (3.3)

The Committee may wish to: seek information from the State Party on measures taken to ensure that children in NI are detained only as a measure of last resort. (3.4)

The Committee may wish to: seek an update from the State Party on plans to amend the law governing termination of pregnancy in Northern Ireland to comply with Article 8 of the European Convention on Human Rights. (3.5)

The Committee may wish to: seek an update from the State Party on the continuing threat posed by paramilitary organisations to the general public, in particular to children, and specifically for detail on the number of individuals who have been arrested and prosecuted for their involvement in paramilitary style assaults on children. (3.6)

Introduction

1.1 The NI Human Rights Commission (the NIHRC) is a statutory public body established in 1999 to promote and protect human rights. In accordance with the Paris Principles the NIHRC reviews the adequacy and effectiveness of measures undertaken by the UK Government and NI Executive to promote and protect human rights, specifically within Northern Ireland (NI).

1.2 The NIHRC is one of the three A status National Human Rights Institutions in the United Kingdom (UK). The NIHRC's mandate extends to all matters relating to the protection and promotion of human rights in NI, both matters within the competence of the NI Assembly and those within the competence of the Westminster Parliament. This submission relates to the protection of human rights in NI.

1.3 As part of the NIHRC's engagement with the United Nations and Council of Europe treaty monitoring processes, it presents this submission regarding the UK's Sixth Periodic Report on compliance with the UN Convention against Torture (UNCAT) to the UN Committee against Torture (the Committee) 57th Session.

1.4 The Commission's report is structured in two substantive sections; the first follows the Committee's concluding observations on the fifth periodic report of the UK and the second raises a number of issues that have emerged since the previous examination occurred.

Concluding Observations on the fifth periodic report of the UK

Human Rights Act 1998

2.1.1 The Commission recalls the Committee's previous concluding observation relating to the Human Rights Act 1998 (HRA). In October 2014 the Conservative Party issued proposals for the reform of human rights protections in the UK, including the repeal of the HRA 1998 and its replacement with a "British Bill of Rights and Responsibilities".¹ These proposals were refined in the Conservative party manifesto and in the Queen's Speech of May 2015.

2.1.2 In the Queen's speech the Government announced that it:

will bring forward proposals for a Bill of Rights to replace the Human Rights Act. This would reform and modernise our human rights legal framework and restore common sense to the application of human rights laws. It would also protect existing rights, which are an essential part of a modern, democratic society, and better protect against abuse of the system and misuse of human rights.²

2.1.3 Proposals have not been published at the time of writing. The three UK national human rights institutions issued a joint statement to the UN Human Rights Committee setting out the value of the HRA as:

providing essential protection to everyone in the United Kingdom enabling fundamental rights to be enforced in domestic courts...the HRA is well crafted and both reflects and is embedded in the constitutional arrangements for the UK. In particular, it maintains parliamentary sovereignty, a primary role for domestic courts in the interpretation of the ECHR and is central to arrangements for devolution in NI, Wales and Scotland.³

2.1.4 In addition the Commission and the Irish Human Rights and Equality Commission made a joint presentation to the House of the Oireachtas Joint Committee on the Implementation of the Good Friday/Belfast Agreement relating to the proposals. In his evidence to the

¹ Conservative Party 'Protecting Human Rights in the UK: The Conservatives' Proposals for Changing Britain's Human Rights Laws' 2014

² Queen's Speech Briefing Pack 27 May 2015

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS_lobby_pack_FIN_AL_NEW_2.pdf

³ EHRC, SHRC, NIHRC 'Correspondence to the UN Human Rights Committee' July 2015

Committee the Chief Commissioner emphasised the centrality of the HRA to the Belfast (Good Friday) Agreement stating:

In effect, human rights protection and compliance has been a cornerstone of the Belfast/Good Friday Agreement and subsequent agreements. Attempts to dilute the role of the European Court of Human Rights and the European Court of Human Rights jurisprudence, runs counter to the Belfast/Good Friday Agreement. The Commission believes that any legislative proposals should not undermine the commitments contained within the Belfast/Good Friday Agreement.⁴

2.1.5 Following its examination of the UK in 2015, the UN Human Rights Committee recommended that the UK:

Ensure that any legislation passed *in lieu* of the Human Rights Act 1998, were such legislation to be passed, would be aimed at strengthening the status of international human rights, including the provisions of the Covenant, in the domestic legal order and provide effective protection of those rights across all jurisdictions.⁵

The Committee may wish to: seek an update from the State Party on plans for the reform of Human Rights Act 1998 and of its membership of the Council of Europe and its position on adherence to judgements of the European Court of Human Rights.

Closed Material Proceedings

2.2.1 The Commission recalls the Committee's concluding observation relating to closed material proceedings (Paragraph 12). The Justice and Security Act 2013 makes provision for closed material proceedings in civil cases allowing for the introduction of sensitive security evidence to proceedings involving the Government, without disclosure to the claimant. The 2013 Act requires the Secretary of State to prepare an annual report on the use of the closed material procedure under section 6 of the Act.⁶ The report on the use of closed material proceedings from 25 June 2014 to 24 June 2015 records that nine applications for closed material

⁴ Joint Statement of IHREC and NIHRC 25 June 2015 available at: <http://www.nihrc.org/news/detail/joint-statement-of-irish-human-rights-and-equality-commission-and-northern>

⁵ UN Human Rights Committee Concluding observations on seventh periodic report submitted by the UK CCPR/C/GBR/CO/7 2015 Para 5(c)

⁶ Section 12 (1) of the Justice and Security Act 2013

proceedings were made by the Secretary of State and two were made by the Chief Constable of the PSNI in the reporting period.⁷

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

Ensure that any restrictions or limitation to fair trial guarantees on the basis of national security grounds, including the use of closed material procedures, are fully compliant with its obligations under the Covenant, particularly that the use of closed material procedures in cases involving serious human rights violations do not create obstacles to the establishing of State responsibility and accountability as well as compromise the right of victims to a fair trial and an effective remedy.⁸

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

Parliament's assessment of how, in relevant civil proceedings, the balance is to be struck between the competing interests of open justice and natural justice on the one hand and the protection of national security on the other...⁹

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

Appropriate safeguards against inappropriate or excessive use of a closed material procedure are built into the provisions themselves, starting with the conditions for a section 6 declaration and encompassing the provisions for review and revocation of a declaration and those governing applications for permission not to disclose material in proceedings in relation to which a declaration is in place.¹⁰

The Committee may wish to: seek an update from the State Party on the use of closed material proceedings.

⁷ Ministry of Justice 'Report on use of closed material procedure (from 25 June 2014 to 24 June 2015)' October 2015

⁸ UN Human Rights Committee 'Concluding observations on seventh periodic report submitted by the UK' (July 2015) CCPR/C/GBR/CO/7 para 22

⁹ *McGartland & Asher v SSHD* [2015] EWCA Civ 686 para 35

¹⁰ *Ibid.*

Non-jury trials

2.3.1 The Commission recalls the Committee's recommendation relating to non-jury trials encouraging the State Party to continue moves towards security normalisation (Paragraph 13). The Justice and Security (NI) Act 2007 continues to make provision for non-jury trials. In July 2015 the House of Lords approved the Justice and Security (NI) Act 2007 extending provision for non-jury trials within the 2007 Act for a further two years until August 2017.¹¹ On introducing the Order to the House of Lords, Lord Dunlop stated:

given the understandable concerns around the repeated extension of these provisions, and mindful of previous calls for wider consultation, the Secretary of State has asked officials to prepare a public consultation ahead of the next expiry in 2017. This will inform a wider review of non-jury trials in Northern Ireland and how certificates are issued and may be challenged. This should not be perceived as the Government questioning the necessity or validity of the provisions for Northern Ireland's current situation; rather, it is a positive commitment towards openness and a desire to consider the views of the wider public on provisions that would, by 2017, have been in operation for 10 years.¹²

2.3.2 The Commission notes that in 2014 there were 18 certificates for non-jury trials issued.¹³

The Committee may wish to: seek an update on the planned public consultation exercise relating to non-jury trial arrangements and invite the State Parties views on whether a further extension of the provisions will be sought in August 2017.

Inquiries into allegations of torture overseas

2.4.1 The Commission recalls the Committee's concluding observation relating to inquiries into allegations of torture overseas

¹¹ Motion to Approve - Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2015 – in the House of Lords at 2:37 pm on 22nd July 2015.

¹² Ibid

¹³ Ibid

(Paragraph 15) and refers the Committee to follow up information provided by the three UK NHRIs in relation to this matter.¹⁴

2.4.2 In December 2013 an interim report of Sir Peter Gibson's Inquiry into the involvement of State security and intelligence agencies in "improper treatment of detainees held by other countries in counter-terrorism operations overseas" was published.¹⁵ Despite committing itself to another independent, judge-led inquiry once the criminal investigations had concluded, the UK Government subsequently 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.¹⁶

2.4.3 The Committee's work throughout 2015 was frustrated due to the resignation of the Chairman and delay in the appointments process after the UK general election.¹⁷ In June 2015 the Commission, in conjunction with the other UK NHRIs, addressed the UN Human Rights Council highlighting:

that the delay reinforces the need for a full, independent, judge-led inquiry which complies with the investigative obligation under international human rights law [into all allegations of complicity of British military personnel, security and secret intelligence services in the ill treatment of detainees overseas].¹⁸

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

Address the excessive delays in the investigation of cases dealt with by the Iraq Historical Allegations Team and consider establishing

¹⁴ 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

¹⁵ Report of the Detainee Inquiry, 19 December 2013, available at: http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf

¹⁶ 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>

¹⁷ Hansard Script House of Commons Thursday 9 July 2015 9 July 2015 : Column 460

¹⁸ UN Human Rights Council Twenty Ninth Session Agenda Item 3 Joint Oral Statement submitted by the Northern Ireland Human Rights Commission, Equality and Human Rights Commission, and the Scottish Human Rights Commission (A Status NHRIs of the United Kingdom of Great Britain and Northern Ireland). Title: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (June 2015)

more robust accountability measures to ensure prompt, independent, impartial and effective investigations.¹⁹

2.4.5 In October 2015 the newly appointed chair of the Intelligence and Security Committee made a statement to the House of Commons on its forward work plan.²⁰ The plan identified a number of immediate priorities and stated:

Our longer-term priority is the substantial Inquiry into the role of the UK Government and Security and Intelligence Agencies in relation to detainee treatment and rendition, where there are still unanswered questions.²¹

The Committee may wish to: seek an update from the State Party on the work of the ISC Committee and on all investigations into allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas.

Investigations into Conflict related deaths in NI

2.5.1 The Commission recalls the Committee's concluding observation relating to the need for a comprehensive framework for transitional justice in NI (Paragraph 23). Whilst negotiations have taken place since the Committee last examined the UK and a framework has been developed, agreement has not been reached on its implementation.²² In addition issues have arisen in relation to the existing mechanism for investigating conflict related deaths, for instance as a result of budgetary cuts the Historical Enquiries Team has been replaced by a smaller organisation within the PSNI with significantly fewer resources: the Legacy Investigations Branch.²³

¹⁹ UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 9(b)

²⁰ Intelligence and Security Committee – Work Priorities Statement The Rt. Hon. Dominic Grieve QC, MP, Chairman of the Intelligence and Security Committee of Parliament
https://b1cba9b3-a-5e6631fd-sites.googlegroups.com/a/independent.gov.uk/isc/files/20151029_Committee_priorities_statement_2.pdf?attachauth=ANoY7crExS4W-LyM88g2U45KJHxYZdGk9UUO4j3ShIF9de1ybFHQEnV6LwJ-WWGcgPhZVTA6ISDmKSNJ1a1AQZwxDFQJtISVE6py1KQCQvAwDujRqeKaBIPUhWzafTlxali8qOE-1cFbqRiNqmda8I5q5A8zFZ6XYGsMm4xaitgwxQ-ydcBPx2KfWjDc-b1tELsm_3CSrvHL96W6CWQ0eAXcfhQ2RX5Tw7JcQWIPWS1XKxLolwmxLscKqUxBllbXBS1yveo-d&attredirects=0

²¹ Ibid.

²² Official Report (Hansard) Monday 18 January 2016 Volume 111, No 3

²³ PSNI Chief Constable's formal report to Northern Ireland Policing Board Meeting 4th

2.5.2 In 2014 the NI Secretary of State announced that she would convene cross-party talks to try to solve outstanding political issues, including flags, parades and the past.²⁴ On 23 December 2014 the Stormont House Agreement was reached.²⁵

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

- promoting reconciliation;
- upholding the rule of law;
- acknowledging and addressing the suffering of victims and survivors;
- facilitating the pursuit of justice and information recovery;
- is human rights compliant; and
- is balanced, proportionate, transparent, fair and equitable.²⁶

2.5.4 Four bodies and one specific service to deal with 'The Past' are proposed within the Stormont House Agreement. These are:

- The Oral History Archive, which will 'provide a central place for peoples from all backgrounds (and from throughout the UK and Ireland) to share experiences and narratives related to the Troubles.'²⁷
- Victims and Survivors' 'Services', which will include a Mental Trauma Service, a proposal 'for a pension for severely physically injured victims', and advocate-counsellor assistance.²⁸
- The Historical Inquiries Unit, which will 'take forward investigations into outstanding Troubles-related deaths'.²⁹
- The Independent Commission on Information Retrieval, which will 'enable victims and survivors to seek and privately receive information about the (Troubles-related) deaths of their next of kin'.³⁰

December 2014.

²⁴ Speech by the Secretary of State for Northern Ireland, Rt Hon Theresa Villiers MP, to the Conservative Party Conference, September 28, 2014, available at: http://www.politicshome.com/uk/article/105468/secretary_of_state_for_northern_irelands_rt_hon_theresa_villiers_mp_conference_speech.html

²⁵ NI Office 'Stormont House Agreement' 23 December 2014

²⁶ Stormont House Agreement, 2014, para 21

²⁷ Ibid., para 22

²⁸ Ibid., para 26-29

²⁹ Ibid., 2014, para 30

³⁰ Ibid., 2014, para 41

- The Implementation and Reconciliation Group, which will 'oversee themes, archives and information recovery' and commission an academic report after 5 years analysing themes.³¹

2.5.5 The UK Government has stated that specific measures of the financial package to NI will include 'up to £150m over 5 years to help fund the bodies to deal with the past'.³² It further states that:

[t]he paper from the party leaders estimates the potential costs of the new bodies to be higher than Government estimates. The Government recognises the burden that this work puts on the PSNI and that the costs could be higher and so will provide further funding. Therefore the Government will contribute up to £30m per year for five years to pay for the institutions to help deal with the past.³³

2.5.6 The Stormont House Agreement contains proposals for a five year mandate for both the Historical Inquiries Unit and the Independent Commission on Information Retrieval.³⁴ The Implementation and Reconciliation Group is to commission a report 'on themes' after five years, the evidence for which is to be provided 'from any of the legacy mechanisms'.³⁵ In September 2015 the NI Office (NIO) published a position paper on a Stormont House Agreement Bill, providing detail on the proposed status, remit and functions of each body.³⁶ The position paper states that the Historical Inquiries Unit will carry out investigations into outstanding Troubles related deaths occurring between 1 January 1966 and 10 April 1998. The NIO proposes that the PSNI and Office of the Police Ombudsman will: "certify their existing caseloads as complete or incomplete in advance of the establishment of the Historical Inquiries Unit".³⁷ It proposes that the Historical Inquiries Unit will: "produce and publish a Statement which will set out the manner and standards by which the Historical Inquiries Unit will conduct its investigations, including how it will ensure that its investigations are compliant with Article 2 of the ECHR".³⁸ Within the Stormont House Agreement the UK Government

³¹ Ibid., 2014, para 51

³² Stormont House Agreement, Financial Annex, 2014, p1. The SHA includes a further broad financial commitment to all sections covered in the SHA; 'The total value of the Government's package is additional spending power of almost £2 billion.' Stormont House Agreement, Financial Annex, 2014, para 3

³³ Stormont House Agreement, Financial Annex, 2014, p2

³⁴ Stormont House Agreement, 2014, para 40 and 43

³⁵ Ibid., para 51

³⁶ Northern Ireland Office 'Northern Ireland (Stormont House Agreement) Bill 2015 Summary of measures September 2015

³⁷ Ibid., p. 13

³⁸ Ibid., p. 15

commit to make “full disclosure” to the Historical Inquiries Unit.³⁹ Within its position paper the NIO states that the Stormont House Agreement Bill; “will include a duty on UK Government bodies to provide the Historical Inquiries Unit with such information, documents or other material, information and documentation as it may reasonably require for the purposes of, or in connection with, the exercise of its functions”.⁴⁰ The position paper suggests a number of measures to “prevent damaging onward disclosure”.⁴¹ Disclosure is one of the key issues where agreement has not been reached.⁴²

2.5.7 The NIO state that the Independent Commission on Information Retrieval will be an international body established by the UK and Irish Government.⁴³ It is proposed that the “Independent Commission on Information Retrieval will be entirely separate from the criminal justice system” and will not prejudice ongoing criminal investigations or court proceedings.⁴⁴ The position paper states that: “the Independent Commission on Information Retrieval will not test information to an evidential standard, Independent Commission on Information Retrieval reports will not identify alleged perpetrators, or contributors”.⁴⁵

2.5.8 The Stormont House Agreement highlights that: “the integrity and credibility of this agreement is dependent on its effective and expeditious implementation. Accordingly, progress in implementing the provisions of this Agreement must be actively reviewed and monitored”.⁴⁶ The Agreement provides for review meetings between “the Northern Ireland Executive party leaders as well as the UK Government and Irish Government”.⁴⁷

2.5.9 The Commission conducted a technical legal analysis of the human rights obligations engaged by the package of measures contained within the Stormont House Agreement.⁴⁸ This analysis was primarily directed towards those responsible for giving operational effect to the bodies and services set out within the Agreement relating to ‘The Past’. It sets out a

³⁹ Stormont House Agreement, 2014, para 37

⁴⁰ Northern Ireland Office ‘Northern Ireland (Stormont House Agreement) Bill 2015 Summary of measures September 2015 p. 17

⁴¹ Ibid., p. 17

⁴² BBC News NI ‘Stormont crisis: Theresa Villiers says talks have been ‘useful and intensive’ 24 September 2015

⁴³ Ibid., p. 22

⁴⁴ Ibid., p. 25

⁴⁵ Ibid., p. 26

⁴⁶ Stormont House Agreement, 2014, para 73

⁴⁷ Ibid., para 74

⁴⁸ NIHRC ‘Technical Analysis of the Section Dealing with ‘The Past’ within the Stormont House Agreement 2014’ (September 2015)

number of recommendations for each of the bodies to be established with a particular focus on the procedural obligations arising from the ECHR, Articles 2 and 3. The Committee of Ministers continue to monitor the State's compliance with the European Court of Human Rights judgements in the McKerr group of cases on the investigation of conflict related deaths in NI.⁴⁹

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

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

(b) Ensure, given the passage of time, the sufficient funding to enable the effective investigation of all outstanding cases and ensure its access to all documentation and material relevant for its investigations⁵⁰

2.5.11 Political agreement around the establishment of the institutions envisaged by the Stormont House Agreement has not been reached and an Implementation Plan agreed in relation to the Stormont House Agreement on 17 November 2015 does not address the issue of investigations into conflict related deaths.⁵¹ The Implementation Plan states:

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

⁴⁹ See the McKerr Group of Cases, Council of Europe, Committee of Ministers, Cases No. 25, 1201st meeting – 5 June 2014, Cases against the United Kingdom

⁵⁰ UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192 para 11(b)

⁵¹ NIO 'A Fresh Start: The Stormont House Agreement and Implementation Plan' 17th November 2015 p. 6 In his foreword to the Implementation Plan the Minister for Foreign Affairs and Trade states, 'While important progress was made on taking forward aspects of the Stormont House Agreement dealing with the legacy of the past, it did not prove possible to resolve all of the key issues within the timescale of this negotiation. Nevertheless, the two Governments will persist in our efforts to secure an agreed basis for the establishment of the institutions dealing with the past envisaged in the Stormont House Agreement'.

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

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

There remains a need to resolve the outstanding issues and the UK Government and Irish Government will reflect on the options for a process to enable this.⁵²

2.5.12 In November 2015 the United Nations Special Rapporteur on transitional justice, Pablo de Greiff carried out a visit to the UK to assess the initiatives undertaken to deal with the legacies of the violations and abuses that took place during the conflict.⁵³ The Commission met with the Special Rapporteur during his visit. The Special Rapporteur issued preliminary observations and recommendations on 18 November 2015 the day following the publication of the Implementation Plan, in his observations the Special Rapporteur stated that the failure to deal with the past was:

evidenced at the ground level by the continued dissatisfaction of victims, obvious both in their self-reported suffering and in a variety of indicators that point towards unaddressed sequelae. At the social level it is manifested in abiding fractures between social groups in Northern Ireland, but also between communities there and other stakeholders, including the Republic of Ireland and, especially, the UK. At the political level, the fact that the past has not been adequately addressed is obvious not only in the way in which it continues to be an extraordinarily resilient polarizing and organizing fact of Northern Ireland politics, but also in the way in which it bursts into the political stage, often with the capacity to generate what without exaggeration can be called crises. Finally, at the level of institutions, there is no question that legacy issues impose huge burdens –of various kinds, not just economic—on a range of

⁵² NIO 'A Fresh Start: The Stormont House Agreement and Implementation Plan' 17th November 2015 pp. 34-35

⁵³ OHCHR Press Release 'Northern Ireland: "Twenty years on, the UK is yet to fully address the legacies of the past" – UN rights expert - available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16780&LangID=E#sthash.T9f5WBnS.dpuf>

institutions and on relations between citizens and official institutions.⁵⁴

2.5.13 Speaking in January 2016 in relation to the negotiations the NI First Minister stated:

We were very close to having a comprehensive agreement on dealing with the past. That is why I think that it is important to continue to engage with our own Government, with that of the Republic of Ireland and, most importantly, with the victim sector to try to move the issue forward. In doing so, we have to be honest and open about the chances of doing that at a particular time. I have been asked whether I think this will be sorted before our next election, and I have to be honest with victims and say that I think it is not going to happen before the next election because there is an election coming in the Republic of Ireland and we have an election in May. I just do not think that we are going to be able to deal with those issues in the short timescale that we have.⁵⁵

The Committee may wish to: seek an update from the State Party on all measures taken to address the Committee's recommendation to 'develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators'.

Investigations into Conflict related deaths in NI: Inquests

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

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

⁵⁴ Preliminary observations and recommendations by the Special Rapporteur on his visit to the United Kingdom of Great Britain and Northern Ireland London, 18 November 2015 – available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16778&LangID=E#sthash.hJpysiU0.dpuf>

⁵⁵ NI Assembly Official Report: Monday 18 January 2016 (AQO 9380/11-16)

to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements.⁵⁶

2.5.14 In 2015 the Commission briefed the UN Human Rights Committee and referred to comments from the Lord Chief Justice for NI Sir Declan Morgan QC that the system of inquests is currently in a 'lamentable state of affairs', and that: "If existing legacy inquests are to be brought to a conclusion under the present system someone could easily be hearing some of these cases in 2040".⁵⁷ In 2015 the senior coroner retired and his replacement has not been appointed at the time of writing.⁵⁸ However the Minister of Justice announced in May 2015 that the existing County Court judicial complement would be increased to allow County Court judges to hear inquests.⁵⁹ In addition, the Lord Chief Justice has assumed the presidency of the Coroners court.⁶⁰ On 18 January 2016 Lord Justice Weir commenced a comprehensive review of the 56 outstanding inquests into conflict related deaths, this review will report to the Lord Chief Justice within a fortnight.⁶¹

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

Ensure that the Legacy Investigation Branch [PSNI] and the Coroner's court in NI are adequately resourced and are well-positioned to effectively review outstanding legacy cases.⁶²

2.5.16 The Commission notes that the difficulty in obtaining full disclosure of documentation held by the UK Government and the PSNI has been a factor contributing to the delays in inquest proceedings.⁶³

The Committee may wish to: seek an update from the State Party on all measures taken to support the Coroners court in Northern Ireland to ensure the expeditious consideration of all outstanding inquests.

⁵⁶ NI Office 'Stormont House Agreement' 23 December 2014

⁵⁷ NICTS 'Court of Appeal suggests approach to deal with Legacy Inquests' Summary of Judgement 17 November 2014

⁵⁸ UTV News 'NI inquest system 'in chaos' without coroner' 2015

⁵⁹ NIA Official Report (Hansard) Monday 18 May 2015 Vol. 104, no. 7 p. 35

⁶⁰ The Legal Aid and Coroners' Courts (2014 Act) (Commencement No. 2) Order (Northern Ireland) 2015 19 April 2015

⁶¹ BBC News NI 'The Troubles: Judge begins review of inquests' 18.01.16

⁶² UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 11(b)

⁶³ Jordan's Applications 13/002996/1; 13/002223/1; 13/037869/1 [NICA] 2014 see further NICTS 'Court of Appeal suggests approach to deal with Legacy Inquests' Summary of Judgement 17 November 2014

Investigations into Conflict related deaths in NI: Patrick Finucane

2.5.17 The Commission recalls the Committee's 2013 recommendation to the State Party that a comprehensive framework for transitional justice should include: 'the conduct of a public inquiry into the death of Patrick Finucane' (Paragraph 23). The family of Pat Finucane maintain their call for an independent inquiry.⁶⁴ In 2015 the Finucane family unsuccessfully challenged the decision of the then NI Secretary of State for NI to instruct Sir Desmond de Silva to carry out a review of evidence into the death rather than to order a public inquiry.⁶⁵

2.5.18 The family argued that by refusing to establish a public inquiry and instead ordering a review the Secretary of State acted in a manner that is incompatible with the applicant's rights pursuant to Article 2 of the ECHR and therefore in breach of Section 6 of the HRA 1998.⁶⁶ In his judgement Stephens J ruled that the Article 2 procedural obligation does apply to the murder of Pat Finucane. Stephens J set out the nature of the Article 2 procedural obligation and noted that the form of the investigation may vary in different circumstances and that a police investigation remains ongoing. In refusing the application that a public inquiry must be held Stephens J noted in his judgement of 2015 that the Council of Europe Committee of Ministers had closed supervision of the UK's compliance with the ECtHR judgement in *Finucane v UK* 2000.⁶⁷ The Finucane family have appealed this judgement.⁶⁸

2.5.19 This issue was considered by the UN Human Rights Committee in July 2015, which subsequently recommended that the UK:

Consider launching an official inquiry into the murder of Pat Finucane.⁶⁹

The Committee may wish to: seek an update from the State Party on investigations into the death of Patrick Finucane.

⁶⁴ NIHRRC 'The 2014 Annual Statement: Human Rights in Northern Ireland' December 2014 p. 19

⁶⁵ Finucane's (Geraldine) Application 2015 NIQB 57

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ BBC News NI 'Pat Finucane murder: Widow lodges legal appeal over inquiry ruling' 14 October 2015

⁶⁹ UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 8

Historical Institutional Abuse Inquiry

2.6.1 The Commission recalls the Committee's previous concluding observation relating to the Historical Abuse Inquiry, established to investigate the experiences of abuse of children in residential institutions between 1922 and 1995. The Committee noted with regret that some victims, such as women over 18 who were confined in Magdalene Laundries and equivalent institutions, as well as clerical abuse survivors, fall outside the remit of the inquiry (Paragraph 24).

2.6.2 In 2015 the Historical Institutional Abuse Inquiry was extended by one year. The Inquiry report is now expected in January 2017.⁷⁰ The report will consider, inter alia, the: "requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims".⁷¹ Victims of abuse who have provided evidence to the inquiry have suffered with the consequences of abuse for many years and a number are of advanced age.⁷² A number of groups representing the victims of institutional abuse have raised concerns regarding this delay.⁷³ In November 2015 the Chairman of the Inquiry announced that:

... from the evidence we have heard so far we will recommend that there should be a scheme to award financial compensation to those children who suffered abuse in children's homes and other institutions in Northern Ireland between 1922 and 1995.⁷⁴

2.6.3 The Inquiry has commenced consideration of files and documents relating to Kincora Boys Home, where there are allegations of complicity of security force personnel in the abuse of children.⁷⁵ The Chair of the Inquiry has received an assurance from the UK Government that all departments and agencies will cooperate to the utmost of their ability with the Inquiry's investigations into Kincora.⁷⁶ On the basis of this

⁷⁰ Inquiry into Historical Institutional Abuse (Amendment of Terms of Reference) Order (Northern Ireland) 2015

⁷¹ Historical Institutional Abuse Inquiry - Terms of Reference

http://www.hiainquiry.org/index/acknowledgement_forum/terms-of-reference.htm

⁷² See NI Assembly debate Inquiry into Historical Institutional Abuse (Amendment of Terms of Reference) Order (Northern Ireland) 2015 Executive Committee Business – in the Northern Ireland Assembly at 11:15 am on 3rd February 2015.

⁷³ Ibid.

⁷⁴ BBC News NI 'HIA: Chairman announces a further six institutions to be investigated' 4 November 2015

⁷⁵ BBC News Kincora boys' home abuse: Files handed to HIA inquiry 23 July 2015

⁷⁶ NIHR 'Annual Statement 2014: Human Rights in Northern Ireland' (2014, Belfast) p. 25

assurance, the Chair stated that the Inquiry will have the ability and resources to carry out an effective and thorough investigation into all the Kincora allegations.⁷⁷ Some victims remain concerned that the Inquiry may not be properly constituted to review abuse allegations relating to Kincora Boys Home.⁷⁸ In particular, it lacks the power to compel production of Government documents and the attendance of certain witnesses, including British Army or MI5 personnel.

2.6.4 The Commission has highlighted the Committee's concluding observation and the duty of the state to conduct prompt, independent and thorough investigations into all cases of abuse.⁷⁹ Since the Committee's last examination, there has been some discussion concerning other categories of abuse victims.⁸⁰ However, the Inquiry has held that its remit and membership means that its work is focused on the institutional abuse of children. This position was upheld by the NI High Court.⁸¹

The Committee may wish to: seek an update from the State Party on the work of the Historical Institutional Abuse Inquiry and on any police investigations being carried out into allegations of historical abuse, including clerical abuse.

Age of criminal responsibility

2.7.1 The Commission recalls the Committee's previous concluding observation relating to the raising of the age of criminal responsibility (Paragraph 27). The age of criminal responsibility remains at ten years old in NI, as in England and Wales. The Commission has repeatedly advised that the minimum age of criminal responsibility should be raised to at least twelve in line with international human rights standards.⁸²

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

minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of

⁷⁷ Ibid.

⁷⁸ UTV News NI 'Government files prompt fresh Kincora inquiry calls' July 2015 NIHRC 'Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR' May 2015 pp. 13 -14

⁷⁹ See NIHRC 'Human Rights in Northern Ireland 2015' (NIHRC, Belfast) 2015

⁸⁰ Committee of the Office of the First and deputy First Minister minutes of proceedings 3 July 2013

⁸¹ CM's Application [2013] NIQB 145

⁸² 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

review of no more than three years, consideration should be given to raising the age to 14.

2.7.3 The Minister of Justice has publicly stated his support for increasing the age of criminal responsibility to twelve but has not brought any legislative proposals before the NI Assembly due to a lack of consensus on this matter.⁸³

The Committee may wish to: seek an explanation from the State Party as to why no measures have been taken to increase the age of criminal responsibility in Northern Ireland.

Corporal punishment

2.8.1 The Commission recalls the Committee's previous concluding observation relating to the removal of the defence of reasonable chastisement of a child (Paragraph 29). The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable chastisement of a child, and provides that this is a defence to a charge of common assault tried summarily. In 2008 the UNCRC Committee recommended that there should be a prohibition "as a matter of priority" of "all corporal punishment in the family, including through the repeal of all legal defences".⁸⁴ The UK Government has emphasised to the UNCRC Committee its belief that "parents should not be criminalised for giving a mild smack".⁸⁵

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

The Commission recalls that the Committee recommended that the State Party "further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment", the Commission invites the Committee to: seek an update from the State Party on all measures undertaken to promote positive non-violent forms of discipline in Northern Ireland. In addition, the Commission invites the Committee to request

⁸³ Belfast Telegraph 'Call to raise criminal age limit' 12 February 2015

⁸⁴ UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 42

⁸⁵ The Fifth Periodic Report of the United Kingdom to the UN Committee on the Rights of the Child United Kingdom, CRC/C/GBR/5, 2015 p. 21

information on the number of occasions in which the defence of reasonable chastisement has been used.

Immigration detention

2.9.1 The Commission recalls the Committee's concluding observation relating to immigration detention and, in particular, its recommendation for an independent review of the application of Rule 35 of the Detention Centre Rules (paragraph 30). The Immigration Detention Centre Rules make provision for the regulation and management of detention centres.⁸⁶ The Rules provide for matters such as the welfare and health care of immigration detainees. Rule 35 (3) of the Detention Centre Rules places an obligation on a medical practitioner to report to the manager of the Centre any detained person who he/she is concerned may have been the victim of torture.

2.9.2 In March 2015 the report of a Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration into immigration detention was published.⁸⁷ The report recommended that:

when completing a Rule 35 report GPs [General Practitioners] should give a clinical opinion rather than just passing on what they have been told by the detainee. Caseworkers should be properly trained in how to respond to Rule 35 reports, so that responses are in accordance with Home Office policy.⁸⁸

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

What became clear during the inquiry was the disconnect between official policy and what actually happens. The current Home Office guidance that detention should be used sparingly and for the shortest possible period is rendered ineffective by working practices and culture.⁸⁹

2.9.4 In January 2016 Stephen Shaw, the former Prisoner and Probation Ombudsman for England & Wales published a report into his review of the

⁸⁶ 2001 No. 238 IMMIGRATION The Detention Centre Rules 2001

⁸⁷ The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration 2015 available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

⁸⁸ Ibid., key recommendations

⁸⁹ House of Lords 26 Mar 2015 : Column 1574

welfare of immigration detainees, which was commissioned by the Home Office. In his report Stephen Shaw noted the absence of rules governing short term holding centres and recommended that a discussion draft of the short term holding centre rules be published as a matter of urgency.⁹⁰ In addition Stephen Shaw recommended:

that the Home Office immediately consider an alternative to the current rule 35 mechanism. This should include whether doctors independent of the IRC system (for example, Forensic Medical Examiners) would be more appropriate to conduct the assessments as well as the training implications.⁹¹

2.9.5 In responding to the report Lord Bates, the Parliamentary Under-Secretary of State, Home Office stated that the Government will 'strengthen our processes for dealing with those cases of torture'.⁹²

2.9.6 In NI irregular migrants are detained at Larne House short term holding facility. Detainees are held for a maximum period of five days or seven, if Removal Directions are in place. Detainees are then released, transferred to Immigration Removal Centres in Great Britain or removed, including to the Republic of Ireland.⁹³ The Detention Centre Rules do not apply to Larne House due to its classification as a short term holding facility.⁹⁴ Measures in place for the identification of victims of torture in Larne House appear to rely heavily on self identification.

The Committee may wish to: seek an update on the how the State Party will ensure the early identification of victims of torture in immigration detention, on proposed reforms to Rule 35 of the Detention Centre Rules and on the introduction of rules governing short term holding facilities.

Detention conditions

2.10.1 The Commission recalls the Committee's concluding observation in relation to the need to set concrete targets to reduce the high level of imprisonment and overcrowding in places of detention (Paragraph 31).

⁹⁰ Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw Presented to Parliament by the Secretary of State for Home Department by Command of Her Majesty January 2016 Cm 9186 Recommendation 7

⁹¹ *Ibid* Recommendation 21

⁹² Immigration Detention: Response to Stephen Shaw's report into the Welfare in Detention of Vulnerable Persons: Written statement - HLWS462

⁹³ Law Centre NI 'Parliamentary inquiry into the use of immigration detention in the UK' October 2014

⁹⁴ The UKBA has informed the Commission that at Larne House "*The Detention Centre Rules do not apply.*" Email correspondence between UKBA and NIHRC dated 26 March 2013.

The Commission acknowledges measures taken by the State Party to reduce imprisonment for fine default in NI, however, the Commission has developed concerns regarding the number of offenders committed to prison on short term custodial sentences.⁹⁵

2.10.2 The Prison Review Team recommended in 2011 that proposals be developed: “to ensure that effective community sentences are the preferred method of dealing with those who would otherwise get short custodial sentences”.⁹⁶ In 2014, the Prison Review Oversight Group noted that this particular recommendation had not secured political consensus and no adequate proposals were forthcoming.⁹⁷ The Oversight Group held its final meeting in 2015, the recommendation remained outstanding.⁹⁸

2.10.3 The Department of Justice has acknowledged that: “[t]he actual time served by offenders on short prison sentences provides little opportunity to address offending behaviour. Community sentences, where many offenders are under probation for a prolonged period, provide more opportunities to assist the offender to overcome the difficulties that lead the offender to reoffend”.⁹⁹ Nonetheless in 2014/15 of 1,624 adult male prisoners, 768 were serving sentences of less than 6 months and of 95 adult female prisoners, 50 were serving sentences of less than 6 months.¹⁰⁰ This represented 48% of the total number of adult prisoners.

2.10.4 In 2015 figures on reoffending rates for those convicted of criminal offences demonstrated that 46.8% of persons released from custody reoffended within one year of release. Of those who received a supervised community disposal 34.2% reoffended within one year of completion.¹⁰¹

The Committee may wish to: seek information on measures taken to ensure a range of community disposals are available as an alternative to short term custodial sentences.

2.10.5 In its previous concluding observations the Committee also raised concerns in relation to suicide rates and cases of self injury. In 2011 the Prison Review Team recommended that:

⁹⁵ See for example Justice (No. 2) Bill 57/11-16 Part 1

⁹⁶ Prison Review Team’ Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons’ Recommendation 3 October 2011

⁹⁷ Prison Review Oversight Group ‘Second Annual Report’ March 2014

⁹⁸ Prison Review Oversight Group : Justice Committee Summary Report May 2015

⁹⁹ DoJ ‘Consultation on a Review of Community Sentences’ 26 April 2011

¹⁰⁰ DOJ ‘Analytical Services Group: The Northern Ireland Prison Population 2014 and 2014/15’ (September 2015) p. 24 NB NIPS consider an adult to be over 18.

¹⁰¹ DoJ ‘Analytical Services Group: Adult and Youth Reoffending in Northern Ireland’ (2012/13 Cohort) Research and Statistical Bulletin 17/2015

a joint healthcare and criminal justice strategy, covering all health and social care trusts, with a joint board overseeing commissioning processes within and outside prisons, to ensure that services exist to support diversion from custody and continuity of care.¹⁰²

2.10.6 This recommendation has remained unaddressed.¹⁰³ Healthcare provision in prisons, in particular mental health care, has been a source of concern for a number of years.¹⁰⁴ Closely related to the issue of mental health is the issue of substance abuse, both legal and illegal.¹⁰⁵ The Prisoner Ombudsman has reported in 2015 that the abuse of legal highs and prescribed medications featured in many situations in which prisoners almost lost their lives and that: “[t]he trend of prisoners abusing illicit substances appears to be increasing and is a major concern since it poses very serious risk to life”.¹⁰⁶ In November 2015 a report on an independent inspection of Maghaberry Prison has revealed that significant failures in local leadership combined with an ineffective relationship with senior management within the NI Prison Service, has contributed to the prison becoming unsafe and unstable for prisoners and staff.¹⁰⁷

2.10.7 The Minister of Justice has indicated that the NI Prison Service and DHSSPS are continuing to work on the development of a Joint Health and Justice Strategy.¹⁰⁸ The Commission has highlighted to the Minister that it is important that this strategy also addresses the social care of prisoners alongside physical and mental health and include actions to address the misuse of both legal and illegal substances amongst prisoners.

The Committee may wish to: seek information from the State Party on the current arrangements for the health and social care of prisoners in NI and to provide information on measures taken to address substance misuse.

¹⁰² Prison Review Team ‘Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons’ October 2011 p. 44 available at: http://cain.ulst.ac.uk/issues/prison/docs/2011-10-24_Owers.pdf

¹⁰³ Prison Review Oversight Group : Justice Committee Summary Report May 2015 available at: <http://www.niassembly.gov.uk/globalassets/documents/raise/deposited-papers/2015/dp1474.pdf>

¹⁰⁴ Ibid., pp. 40 – 47

¹⁰⁵ Ibid.

¹⁰⁶ Prisoner Ombudsman for Northern Ireland Annual Report 2014-15 p. 24

http://www.niprisonerombudsman.com/publications/Annual_Report_2014-15.pdf

¹⁰⁷ CJINI ‘Inspectors find Maghaberry Prison to be unsafe and unstable’ 5 November 2015

¹⁰⁸ AQO 8899/11-16 Separately the National Preventative Mechanism has recommended the establishment of a comprehensive substance misuse strategy CJINI and RQIA ‘The Safety of Prisoners held by the Northern Ireland Prison Service’ October 2014

Women offenders

2.11.1 The Commission recalls the Committee's previous concluding observation welcoming the commitment of the NI Minister of Justice to construct a separate custodial facility for women prisoners in NI and recommending that construction commence without further delay (Paragraph 32). The Commission reports that construction is yet to commence. The Minister of Justice has emphasised that the delivery of this commitment is subject to appropriate funding.¹⁰⁹

2.11.2 In 2014 the Minister updated the NI Assembly following approval of the Strategic Outline Case by the DFP. NI Prison Service officials were in the process of appointing an Integrated Design Team, to progress the project through the business case, exemplar design and procurement processes that would lead to the construction and handover of the new facility.¹¹⁰

2.11.3 In 2015 a step-down facility for women prisoners, nearing the end of their sentence, was established at Hydebank Wood.¹¹¹ However, the construction of a new separate custodial facility for women has not commenced. The Commission has recommended that the DOJ expedite this project.

The Committee may wish to request an update from the State Party on the construction of a separate custodial facility for women offenders in Northern Ireland.

¹⁰⁹ AQO 5401/11-15 Ms Michaela Boyle (SF - West Tyrone) 16/01/2014

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

¹¹⁰ AQO 6690/11-15 Ms Bronwyn McGahan (SF - Fermanagh and South Tyrone) 18/09/2014

¹¹¹ AQO 7610/11-15

Further Issues for Inclusion in the Committee's list of issues

Preventing abuse in Health and Social Care

3.1.1 The Commission recalls that in its previous concluding observations on the UK the Committee highlighted the report of the public inquiry into the Mid Staffordshire NHS Foundation Trust which related to abuses in health and social care settings. In 2015 the Mental Capacity (NI) Bill was introduced to the NI Assembly.¹¹² The Commission welcomed the Bill which makes provision for a statutory definition of restraint in circumstances where a person lacks capacity.¹¹³

3.1.2 In its advice to the Ad Hoc Joint Committee, established to consider the Mental Capacity Bill, the Commission suggested a number of amendments to further ensure that restraint is applied only when it is a proportionate response to the risk of imminent harm in accordance with the recommendation of the Council of Europe.¹¹⁴

3.1.3 The Bill, as introduced, proposes a new offence of ill treatment or wilful neglect of a person who lacks capacity.¹¹⁵ The proposed clause broadly reflects section 44 of the Mental Capacity Act 2005, which is in force in England & Wales. The Commission has advised the NI Assembly that the House of Lords in its post legislative scrutiny of the 2005 Act raised concerns about the low number of prosecutions brought under section 44.¹¹⁶ The House of Lords noted that the "decision and time specific nature of capacity assessment, along with the presumption of capacity, are a defining feature of the Act, but appeared to create problems when applied to the question of capacity in section 44".¹¹⁷

3.1.4 The Commission notes that following a report by the National Advisory Committee on the Safety of Patients in England, the Westminster Parliament passed the Criminal Justice and Courts Act 2015 which at section 21 makes it an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully

¹¹² NIA Bill 49/11-16 Mental Capacity Bill

¹¹³ NIHRC 'Submission to the Ad Hoc Committee on the Mental Capacity (NI) Bill' 2015

¹¹⁴ Council of Europe Recommendation (2004)10, Concerning the Protection of the Human Rights and Dignity of persons with Mental Disorder. NIHRC 'Submission to the Ad Hoc Committee on the Mental Capacity (NI) Bill' 2015 Para 67.

¹¹⁵ Mental Capacity (NI) Bill - Clause 256

¹¹⁶ House of Lords Mental Capacity Act 2005: post-legislative scrutiny - Select Committee on the Mental Capacity Act 2005 HL Paper 139

¹¹⁷ Ibid., para 304

neglect that individual.¹¹⁸ In addition section 22 creates a similar corporate offence where a care provider has committed a gross breach of a relevant duty of care.

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

It is entirely possible that a situation could arise where two patients, one with full capacity and one without, are being subjected to the same type of conduct, by the same person with the same intent, but a prosecution for ill-treatment or wilful neglect could only be brought in respect of the patient without capacity. Clearly, this is a situation we would want to avoid.¹¹⁹

3.1.6 The Commission has advised that two additional clauses modelled on sections 21 and 22 on the Criminal Justice and Courts Act 2015 should be included within the Bill.¹²⁰ The Commission considers that to safeguard users of health and social care services from abuse that these amendments should be included. At the time of writing the Bill has not been amended.

The Committee may wish to: seek information from the State Party on measures taken in NI to safeguard those reliant upon others for their care and to ensure the prosecution of those who degrade or ill treat those reliant upon their care.

Deprivation of citizenship

3.2.1 In February 2015 the UK Government reported that:

Nearly 600 people from the UK who are of interest to the security services are thought to have travelled to Syria and Iraq since the start of the conflicts and we estimate that around half of those have returned; a number of these individuals have joined terrorist organisations including the Islamic State of Iraq and the Levant.¹²¹

3.2.2 The British Nationality Act 1981, as amended section 40 empowers the Home Secretary to deprive a naturalised British citizen of their

¹¹⁸ Criminal Justice and Courts Act 2015 c. 2

¹¹⁹ See proposals in England & Wales by Department of Health 'New offence of ill-treatment or wilful neglect Consultation document' (February 2014) para 15

¹²⁰ NIHRC 'Submission to the Ad Hoc Committee on the Mental Capacity (NI) Bill' 2015 p. 34

¹²¹ Title: Counter-Terrorism and Security Act 2015 - Temporary Exclusion Orders – Royal Assent IA No: HO0144 11 February 2014

citizenship if they have engaged in conduct “seriously prejudicial” to the UK’s vital interests, and the Home Secretary has reasonable grounds to believe the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory. The UK Government may exercise powers to deprive an individual of their citizenship both when they are in the UK and when they are abroad.¹²² This power came into force on 28 July 2014; the Commission was concerned that this additional power to deprive an individual of their citizenship would be used excessively with the result that a not insignificant number of individuals may be deprived of their citizenship potentially leaving them stateless.¹²³ The Commission notes that the Home Secretary has asked the Independent Reviewer of Terrorism, David Anderson QC to report on the use of the additional deprivation of citizenship power covering the initial year that this power has been in force.¹²⁴ This report, which will include detail on the number of times the power has been used, has not been published at the time of writing.

3.2.3 In 2015 the Westminster Parliament passed the Counter Terrorism and Security Act 2015 making provision for Temporary Exclusion Orders. These prohibit the return of an individual to the UK unless the return is in accordance with a permit to return.¹²⁵ The Act makes provision for an individual subject to a Temporary Exclusion Order to be able to apply to the court for a statutory review of the Order on their return to the UK.¹²⁶ The UK Government has stated that: “It is not possible to predict how many temporary exclusion orders will be served”.¹²⁷ During the passage of the Bill the Commission provided a briefing to a number of NI peers emphasising the need for appropriate judicial safeguards.¹²⁸

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

¹²² For discussion see House of Commons Library ‘Deprivation of British Citizenship and withdrawal of passport facilities’ SN/HA/6820 30 January 2015

¹²³ Home Office ‘FOI release: Individuals deprived of British citizenship since 2013’ Published 18 December 2014

¹²⁴ In December 2014, the Home Office responded to a freedom of information request indicating that no individuals had at that time been deprived of their citizenship leaving them stateless, suggesting that the new power is being used sparingly .HC Deb, 17 September 2015, CWS To cover the initial year that this power has been in force, which ended on 28 July 2015.

¹²⁵ Counter Terrorism and Security Act 2015 Section 2(1)(a)

¹²⁶ Ibid., Section 10

¹²⁷ Title: Counter-Terrorism and Security Act 2015 - Temporary Exclusion Orders – Royal Assent IA No: HO0144 11 February 2014

¹²⁸ Correspondence from the Chief Commissioner to NI Members of the House of Lords (January 2015)

The Commissions fully recognise the need to prevent individuals travelling for the purpose of the perpetration, planning of or participation in terrorist acts. Nonetheless, it is important that such powers are exercised in a manner consistent with international human rights law and these powers are subject to stringent judicial safeguards to ensure individuals are not arbitrarily deprived of the right to leave and return to their own country. An individual should not be prevented or delayed from returning to the UK where there is an imminent threat to their life or to their freedom from torture. Furthermore, the exercise of these powers must not frustrate efforts to ensure accountability for individuals suspected of committing gross abuses of international human rights.¹²⁹

3.2.5 The Commission also provided an update to the UN Human Rights Committee on legislative developments in the UK to frustrate the travel of individuals suspected of intending to commit acts of terrorism or gross abuses of human rights.¹³⁰ The UN Human Rights Committee recommended:

The State party should review its laws to ensure that restrictions on re-entry and denial of citizenship on terrorism grounds include appropriate procedural protections, and are consistent with the principles of legality, necessity and proportionality. The State party should also ensure that appropriate standards and procedures are in place to avoid rendering an individual stateless.¹³¹

3.2.6 The Commission has written to the Home Secretary calling for a review of restrictions on re-entry and denial of citizenship on grounds of terrorism.¹³²

The Committee may wish to: seek an update from the State Party on how it has ensured powers to deprive the citizenship of individuals and to prevent the return of individuals on security grounds have not resulted in individuals being subjected to torture or inhuman and degrading treatment.

¹²⁹ The Commission intervened under agenda item 3

¹³⁰ NIHR 'Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR' May 2015 para 11.1 – 11.6

¹³¹ UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 15

¹³² Correspondence from the three UK NHRIs to the Home Secretary 26 October 2015.

Bill of Rights for NI

3.3.1 As required by the Belfast (Good Friday) Agreement and the NI Act 1998, the Commission provided advice to the UK Government on a Bill of Rights for NI in 2008. On receipt of its advice the NIO sought views from the public by way of a public consultation.¹³³

3.3.2 In December 2010 the Minister of State within the NIO reported that there was:

considerable support from human rights and community groups for a wide-ranging Bill of Rights along the lines of that recommended by the NI Human Rights Commission.¹³⁴

3.3.3 Since 2010 it has been consistently stated that there has been a lack of political consensus around a Bill of Rights for NI.¹³⁵ The Commission reported on the absence of any significant development to progress a Bill of Rights for NI in its submission on the State Party's 5th Periodic Report and the position remains the same.¹³⁶

3.3.4 In 2015 the Commission updated the UN Human Rights Committee on the lack of progress in relation to a Bill of Rights for NI. The UN Human Rights Committee subsequently expressed concern:

about the slow progress in introducing the Bill of Rights for Northern Ireland and about the lack of a comprehensive mechanism for the review of existing gaps and inconsistencies between the domestic human rights legal framework and the rights covered in the Covenant.¹³⁷

3.3.5 The Committee recommended that the State Party:

¹³³ NIO 'Consultation Paper: A Bill of Rights for NI: Next Steps' (November 2009)

¹³⁴ Minister of State Hugo Swire MP, Written Ministerial Statement to Parliament, 16 December 2010

¹³⁵ Westminster Hall Tuesday 16 July 2013 [Mr Christopher Chope in the Chair] Column 190WH Bill of Rights (NI)

¹³⁶ Northern Ireland Human Rights Commission 'Submission to the United Nations Committee Against Torture Parallel Report on the 5th Periodic Report of the United Kingdom under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' April 2013

¹³⁷ UN Human Rights Committee Concluding observations on seventh periodic report submitted by the UK CCPR/C/GBR/CO/7 2015 Para 5

Ensure that the Bill of Rights for Northern Ireland incorporates all the rights enshrined in the Covenant and expedite the process of its adoption.¹³⁸

The Committee may wish to: seek an update from the State Party on measures it has taken to progress the adoption of a Bill of Rights for Northern Ireland.

Detention of Children

3.4.1 In 2011 a review of the youth justice system in Northern Ireland was published which recommended:

The development of an appropriate range of supported (and if necessary secure) accommodation, accessible at short notice, to reduce to an absolute minimum the use of Woodlands JJC as a place of safety under PACE.¹³⁹

3.4.2 Whilst this recommendation was accepted by the Department of Justice and a multi-agency and cross-departmental Bail Action Plan was agreed, an inspection of progress on implementation carried out by the Criminal Justice Inspectorate for NI (CJINI) in December 2015 found that, 'Due to the lack of progress and the uncertain nature of future proposals, this recommendation was not considered achieved'.¹⁴⁰ The CJINI further noted that the Department of Justice 'were no longer able to offer personnel support for the Bail Action Plan'.¹⁴¹

3.4.3 In 2015 the National Preventative Mechanism designated under the Optional Protocol to the UN CAT Committee published a report of an announced inspection of Woodlands Juvenile Justice Centre.¹⁴² It recorded that only 9% of children imprisoned at Woodlands in 2013-14 were there as a result of being sentenced following a conviction. Of the remainder, 47% were formally remanded to custody and 44% related to proceedings under the Police and Criminal Evidence (NI) Order 1989 (PACE).¹⁴³ The National Preventative Mechanism found that the rate of PACE admissions to the Juvenile Justice Centre has almost trebled between 2008-9 and 2013-14 and has described this as 'disproportionately high'. It

¹³⁸ Ibid., Para 5(b)

¹³⁹ DoJNI 'A Review of the Youth Justice System in Northern Ireland' 2011 Recommendation 8

¹⁴⁰ CJINI 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations' (December, 2015)

¹⁴¹ Ibid p. 29

¹⁴² National Preventative Mechanism 'An announced inspection of Woodlands Juvenile Justice Centre' May 2015. 20 statutory bodies make up the UK National Preventive Mechanism

¹⁴³ Ibid., para 2.5

recommended that the Youth Justice Agency and its statutory partners should set targets to improve the current arrangements for children who do not have a suitable bail address.¹⁴⁴

3.4.4 The Department of Justice previously committed to legislate to provide that a child would only be remanded in custody where there is a real prospect that they will receive a custodial sentence if convicted.¹⁴⁵ This commitment is yet to be realised and there continues to be a lack of suitable bail arrangements in NI, which is contributing to an overuse of custody.

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

ensure that detention on remand of child defendants is used only as a measure of last resort and for the shortest possible period of time and that suitable bail packages are available to child defendants in Northern Ireland.¹⁴⁶

The Commission invites the Committee to: seek information from the State Party on measures taken to ensure that children in NI are detained only as a measure of last resort.

Termination of Pregnancy

3.5.1 In its General Comment 2 the Committee has acknowledged that women are often subject to or at risk of torture or ill-treatment and the consequences thereof in the context of medical treatment, particularly involving reproductive decisions.¹⁴⁷ Termination of pregnancy is currently available in NI if it is necessary to preserve the life of a woman, including where there is risk of serious and adverse effect which is either long term or permanent. The punishment is life imprisonment for anyone who unlawfully performs a termination.¹⁴⁸

3.5.2 The NIHRC initiated legal proceedings in December 2014 against the NI Department of Justice arguing that the law on termination of pregnancy in instances of serious malformation of the foetus, including

¹⁴⁴ Ibid., para 2.18

¹⁴⁵ NIHRC 'The 2013 Annual Statement: Human Rights in Northern Ireland' (December, 2013) p. 22

¹⁴⁶ NIHRC 'Submission to the UN Committee on the Rights of the Child on the United Kingdom's Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child' (July, 2015) para 23

¹⁴⁷ a) General Comment No. 2: Implementation of article 2 by States parties, 2008

¹⁴⁸ The relevant law on termination of pregnancy included sections 58 and 59 of The Offences Against the Person Act 1861, Section 25 of the Criminal Justice Act (NI) 1945, Section 5 of the Criminal Law Act (NI) 1967 and *R v Bourne* [1939]

fatal foetal abnormality or pregnancy as a result of rape or incest in NI is incompatible with articles 3 (prohibition on torture, inhuman and degrading treatment), 8 (right to private, family life, home and correspondence) and article 14 (prohibition of discrimination) of the ECHR. In its affidavit the Commission referred to the General Comment and concluding observations of the Committee.

3.5.3 The High Court of Justice in NI ruled in November 2015 that the law on termination on pregnancy in NI is incompatible with Article 8 only of the ECHR in cases of fatal foetal abnormality at any time and sexual crime up to the date the foetus becomes capable of an existence independent of the mother.¹⁴⁹ The High Court in December 2015 granted a Declaration of Incompatibility, which means that the onus is now on the NI Assembly to change the law in respect of termination.

3.5.4 The Health Minister in NI has reported that he circulated guidelines on termination of pregnancy to Executive colleagues on 1 December 2015.¹⁵⁰ However these have not yet been published and this was reported before the High Court ruling in December 2015.

The Committee may wish to: seek an update from the State Party on plans to amend the law governing termination of pregnancy in Northern Ireland to comply with Article 8 of the European Convention on Human Rights.

Paramilitary Threat to Children

3.6.1 In its previous examinations the Commission has raised the matter of the continuing threat posed by paramilitary organisations in NI, in particular the threat to children.¹⁵¹ Between 2009 and 2014 12 children reported to the police that they were victims of paramilitary style shootings and 27 of paramilitary style assaults.¹⁵² In the financial year 2014/15, five children were victims of paramilitary style attacks. In

¹⁴⁹ The Northern Ireland Human Rights Commission's Application [2015] NIQB 96

[http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2015/\[2015\]%20NIQB%2096/j_j_HOR9740Final.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2015/[2015]%20NIQB%2096/j_j_HOR9740Final.htm)

¹⁵⁰ BBC News NI "NI abortion law: Health Minister Simon Hamilton issues draft guidelines"

<http://www.bbc.co.uk/news/uk-northern-ireland-34973771> 1 December 2015

¹⁵¹ NIHRC 'Submission to the UN CAT Committee on the Fifth Periodic Report of the United Kingdom under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' 2013

¹⁵² Northern Ireland NGO Alternative Report Submission to the United Nations Committee on the Rights of the Child for Consideration During the Committee's Examination of the United Kingdom of Great Britain and Northern Ireland Government Report (May 2015) Children's Law Centre and Save the Children Northern Ireland, June 2015, page 61 para. 12

relation to these attacks only one arrest has been made, which did not result in a prosecution due to insufficient evidence.

3.6.2 In 2015 the NI Secretary of State established a body to carry out an assessment: "on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process".¹⁵³ The report was published in October 2015 and concluded that all the main paramilitary groups operating during the period of the Troubles remain in existence: this includes the UVF, RHC, UDA (UFF), Provisional IRA and INLA. The assessment body also noted that all of the paramilitary groups maintain a relatively public profile in spite of being illegal organisations.¹⁵⁴ Furthermore:

The majority of paramilitary groups still have leadership structures and sub groups across NI. These groups still organise themselves along militaristic lines and use labels familiar from the Troubles e.g. 'brigades' or 'army council'. These labels makes the groups look more prepared for a campaign of violence than they are. Even in the highly unlikely event that the groups were minded to return to terrorism, we judge they would be unable to resurrect the capability demonstrated at their peak... [t]hey have continuing, albeit much reduced, capability and engage in violence and crime. They cause serious harm to the communities within which they are embedded and undermine support for policing.¹⁵⁵

3.6.3 In November 2015 the International Fund for Ireland reported that paramilitary groups continue to recruit children.¹⁵⁶ By way of the 'Fresh Start Agreement', agreed in relation to the Stormont House Agreement in November 2015, the NI Executive, UK Government and Irish Government: 'further commit to work together to achieve, the disbandment of all paramilitary organisations and their structures and to challenge paramilitary attempts to control communities.'¹⁵⁷ In accordance with the agreement a four member international body has been

¹⁵³ Paramilitary groups in Northern Ireland 20 October 2015: An assessment commissioned by the Secretary of State for Northern Ireland on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469548/Paramilitary_Groups_in_Northern_Ireland_-_20_Oct_2015.pdf

¹⁵⁴ Ibid., para 2 i.

¹⁵⁵ Ibid., para2 xi.

¹⁵⁶ Belfast Telegraph 'Terrorist groups are still recruiting children in Northern Ireland' 16th November 2015

¹⁵⁷

established to report annually on progress towards ending continuing paramilitary activity'.¹⁵⁸

The Committee may wish to: seek an update from the State Party on the continuing threat posed by paramilitary organisations to the general public, in particular to children, and specifically for detail on the number of individuals who have been arrested and prosecuted for their involvement in paramilitary style assaults on children.

¹⁵⁸ NIO 'A Fresh Start: The Stormont House Agreement and Implementation Plan' 17th November 2015 para 5.1