



NORTHERN
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HUMAN
RIGHTS
COMMISSION

**Submission by the Northern Ireland Human Rights Commission (NIHRC)
to the UN Human Rights Council's Universal Periodic Review of the
United Kingdom (UK)**

November 2011

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1. The NIHRC is a statutory public body established in 1999 to promote and protect human rights. In accordance with the Paris Principles² the NIHRC reviews the adequacy and effectiveness of measures undertaken by the UK Government to promote and protect human rights, specifically within Northern Ireland (NI). The NIHRC is one of the three A status National Human Rights Institutions in the UK.

Introduction

2. The NIHRC wishes to highlight three general areas affecting the implementation of human rights standards. First, the UK Government has not engaged the devolved NI Executive in implementing human rights treaties to the full extent necessary. The UK Government should take steps therefore to ensure that the NI Executive assumes a greater degree of responsibility for the implementation of ratified treaties.

3. Second, the NIHRC is aware that political discourse and media coverage has often fueled a negative perception of human rights and that public confidence has been diminishing. It is important therefore that the UK Government and the NI Executive counter this trend by taking steps to actively support and promote a culture of human rights.

4. Third, there is a need to increase the pace of transitional justice in post-conflict NI. The NIHRC believes that the UK Government and the NI Executive should provide a mechanism for truth recovery to include the historical narrative. This must be grounded in a rights-based approach which accords with international standards. A particular focus should be applied to investigations into deaths, the provision of services for victims and survivors, and government lead initiatives to promote reconciliation, tolerance and mutual respect.³

Constitutional framework for implementation (U.N. Doc. A/HRC/8/25,⁴ Recommendation 19)

5. The NIHRC believes that the UK should retain its obligations under the European Convention on Human Rights in the form of the Human Rights Act 1998.⁵

6. The NIHRC notes the continued commitment of the UK to progress a Bill of Rights for NI. Action on this commitment as outlined in the Belfast (Good Friday) Agreement, has been called for by a number of UN bodies.⁶ A Bill of Rights for NI has not yet been implemented.⁷

International obligations (U.N. Doc. A/HRC/8/25, Recommendations 12, 15, 21, 22, 23, 24 & 26)

7. The NIHRC welcomes the UK withdrawal of reservations to the CRC⁸ and the ratification of the OP-CRC on the Sale of Children, Child Prostitution and Child Pornography without reservation.⁹ However, the NIHRC remains concerned that a declaration remains in place regarding art. 1 of the OP-CRC on Involvement of Children in Armed Conflict.¹⁰ The NIHRC believes that children under 18 should not take direct part in hostilities under any circumstances and recommends the UK remove its interpretative declaration.

8. The NIHRC is concerned that social, economic and cultural rights continue to be regarded as largely non-justiciable. To remedy this failing, the UK should implement a national strategy or plan of action to implement the ICESCR.¹¹ The NIHRC also notes the UK's continuing reservations to arts. 1, 2, 6, 7, 9 and 10.

9. The NIHRC continues to recommend that the UK ratify the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families.¹²

10. The NIHRC requests an update on the UK's efforts to alter and/or introduce domestic legislation to assist with bringing forward the signature and ratification of the International Convention on the Protection of All Persons from Enforced Disappearance.¹³

11. The NIHRC repeats its recommendation that the UK remove its interpretative declaration¹⁴ to the prohibition on incitement to racial hatred contained in article 4 of CERD without delay. This recommendation was echoed by the CERD Committee as recently as September 2011¹⁵ and would assist the Police Service of Northern Ireland in tackling the significant number of hate crimes.¹⁶

12. The NIHRC recommends that the UK implement art. 11 of the ICCPR in order to ensure that no one is imprisoned merely on the ground of the inability to fulfill a contractual obligation. The NIHRC urges that sec. 45 of the Criminal Justice (NI) Order 2008 be utilised to reduce imprisonment on this issue,¹⁷ especially of women who are disproportionately affected.¹⁸

13. The NIHRC welcomes the UK's ratification of the CRPD.¹⁹ However, the following reservations should be removed to give full effect to the Treaty: arts. 12.4, 24(a) & (b) and 27.

14. It remains the case that the UK does not accept the right of individual petition concerning ICCPR,²⁰ ICESCR,²¹ CAT²² and CERD²³. The NIHRC urges the UK to ratify the OP-ICCPR and OP-ICESCR, and issue the required declarations under art. 22 of CAT and art. 14 of CERD. The NIHRC further recommends that the UK commit to raising awareness of the availability of the right of individual petition for nationals under OP-CEDAW²⁴ and OP-CRPD²⁵.

Education (U.N. Doc. A/HRC/8/25, Recommendations 9 & 15)

15. The NIHRC recommends that the UK implement the 1st and 2nd phases of the WPHRE²⁶ by prioritising and sufficiently resourcing human rights training in primary and secondary education and in the civil service.²⁷

16. The NIHRC reiterates the need for parity of education provision for children held in detention in NI with that of the rest of the UK and recommends transferring such provision from the NI Prison Service to the NI Department of Education.²⁸ This would ensure that provision of education in Woodlands Juvenile Justice Centre is in accordance with art. 2 CRC and specifically that children in detention have access to the full education curriculum.

17. In keeping with the CERD Committee's 2011 recommendation,²⁹ the NIHRC recommends that the NI Department of Education introduce the promised 'action plan'³⁰ to assist with ensuring equality of achievement³¹ between children from the Travelling Community and other children in NI.

Transitional justice (U.N. Doc. A/HRC/8/25, Recommendation 12)

18. The NIHRC continues to have concerns surrounding investigations into deaths that occurred during the conflict period in NI and in regard to art. 6 ICCPR.³² Particularly, the NIHRC is concerned about the independence of any inquiry conducted under the Inquiries Act 2005 due to the control government ministers can exercise at every stage.³³

19. The NIHRC recommends that the state mechanisms established to investigate deaths that emerged from the conflict period are completed in such a way as to comply with the UK's obligations under art. 6 ICCPR.³⁴

20. The UK has consistently failed to acknowledge its obligations under UN Security Council Resolution 1325 regarding participation of women in peace building in NI. The NIHRC rejects the Government's argument that Resolution 1325 is inapplicable to the NI context and urges for its effective implementation³⁵ in accordance with CEDAW Committee recommendations.³⁶

Stop and search/question (U.N. Doc. A/HRC/8/25, Recommendations 6, 9 & 10)

21. The NIHRC notes that the UK has increased the threshold a senior police officer must meet before an authorization is granted for the use of stop and search powers to prevent an act of terrorism.³⁷ However, despite this increase, there remain inadequate safeguards to prevent this power from being exercised arbitrarily. To ensure the legislation does not infringe art. 17 ICCPR, the NIHRC recommends that the threshold a senior police officer must meet be further raised and a direct geographical restriction on authorizations be introduced.³⁸

22. The NIHRC believes that the potential for arbitrary use of stop and search and stop and question powers is greater in NI on account of the wider availability of such powers³⁹ but a continuing lack of adequate safeguards. The NIHRC has recently intervened in a case before the High Court arguing that the breadth of the stop and question legislation in NI contravenes domestic human rights obligations.⁴⁰

23. The NIHRC specifically recommends further monitoring and publication of ethnicity related data concerning the use of stop and search and stop and question powers in NI to address concerns that racial profiling is used in the exercise of these powers throughout the UK generally.⁴¹

Closed hearings (U.N. Doc. A/HRC/8/25, Recommendations 6 & 9)

24. The NIHRC welcomes that the Terrorism Prevention and Investigation Measures Bill⁴² will repeal the control order regime⁴³ but is concerned that the Bill retains the use of 'closed hearings' using the special advocate procedure.⁴⁴ In light of fair trial requirements,⁴⁵ the NIHRC urges the UK to make a decisive shift away from these practices in both a terrorism⁴⁶ and non-terrorism context.

Immediate right of access to a lawyer (U.N. Doc. A/HRC/8/25, Recommendation 8)

25. In 2008, the Human Rights Committee recommended that all detained persons on a criminal charge have immediate access to a lawyer as a fundamental safeguard to ill-treatment.⁴⁷ The NIHRC therefore recommends that as a minimum,⁴⁸ the UK reduce the time-frame for delay of the right of access to a lawyer from a maximum of 48 hours⁴⁹ to that of 36 hours.⁵⁰ This would ensure terrorism legislation is brought in line with non-terrorism legislation.

Pre-charge detention (U.N. Doc. A/HRC/8/25, Recommendations 6, 9 & 10)

26. The NIHRC continues to recommend a reduction of the maximum pre-charge detention period for terrorist suspects. The NIHRC notes with approval that the anticipated Protection of Freedoms Bill will provide for a permanent reduction to 14 days.⁵¹

Pre-trial detention (U.N. Doc. A/HRC/8/25, Recommendations 2, 7 & 9)

27. The NIHRC reiterates concern regarding the use of remand in NI. The over-use of custodial remand for children indicates that art. 37(b) CRC is still not being fully implemented.⁵² Foreign nationals are also held on remand for unacceptably long periods, often waiting resolution of

immigration issues. The NIHRC urges the Government to fully implement art. 9 ICCPR regarding pre-trial detention.

Conditions of detention (U.N. Doc. A/HRC/8/25, Recommendations 9 & 13)

28. The NIHRC advocates creation of a national programme to combat the problem of overcrowding in prisons and action to tackle high prison populations.⁵³ Despite the UK Government's comments in its Mid-Term Report regarding the creation of additional accommodation at Maghaberry and Magillan prisons, sharing cells continues to raise concerns regarding the dignity and health of prisoners under art. 10 ICCPR and art. 12 ICESCR.⁵⁴

29. The NIHRC highlights the absence of a women's prison facility and gender-appropriate services in NI and recommends this problem be remedied in order to meet international obligations under CEDAW⁵⁵ and to fulfil the Hillsborough Agreement.

30. Foreign nationals continue to be disproportionately represented in prisons.⁵⁶ These prisoners are particularly susceptible to vulnerabilities such as lack of access to specialist legal advice and language barriers. Evidence suggests that this has led to an increased risk of developing mental health problems.⁵⁷ The NIHRC urges the Government to implement a Foreign National Prison Strategy to effectively deal with such issues.⁵⁸

Immigration detention (U.N. Doc. A/HRC/8/25, Recommendation 9)

31. The NIHRC wishes to highlight two specific areas in need of review. First, individuals detained in relation to immigration issues in NI are held in a manner similar to the criminal justice system, violating art. 9 ICCPR and ensuring immigration detainees suffer from lack of access to specialist legal advice and language barriers. Second, in contrast to England & Wales there is presently no independent mechanism in NI for the review of allegations and complaints against immigration staff.⁵⁹

Children and criminal justice (U.N. Doc. A/HRC/8/25, Recommendations 2, 9 & 25)

32. The current age of criminal responsibility across the UK – 10 years in England, Wales and NI, 12 years in Scotland⁶⁰ – is too low.⁶¹ The NIHRC strongly recommends that the minimum age for criminal responsibility across the UK be raised.

33. The NIHRC has continually raised concerns regarding incarceration of children. Despite UK Mid-Term reports of decline in children sentenced to custody in NI, figures still remain comparatively high.⁶² Following withdrawal of the reservation to art. 37(c) CRC in December 2008, implementation of the Criminal Justice (NI) Order 2008 has failed to entirely prevent the detention of children alongside adult men in Hydebank Wood Young Offenders Centre.⁶³ This continuing situation is of concern to the NIHRC because of the UK's obligations under art. 6 CRC concerning the mental and physical health of children.

34. As highlighted in the UK Mid-Term Report, the rehabilitative-focused 'Youth Conference Order'⁶⁴ has increased in use over recent years. The NIHRC welcomes such diversionary developments, however urges that the Youth Justice System as a whole effectively incorporates meaningful commitment to the overarching art. 3 CRC principle of the best interest of the child.

Child poverty (U.N. Doc. A/HRC/8/25, Recommendation 16)

35. Considering the requirement on the UK Government to provide further information on its commitment to halve child poverty by 2010,⁶⁵ despite the implementation of the Child Poverty Act 2010 and the issuing of a Child Poverty Strategy, the Government has not met this target.⁶⁶ The NIHRC reiterates comments of UN Committees on the matter⁶⁷ and recommends Government should make clear how it intends to address this issue within the context of aiming to end severe child poverty by 2012.

Domestic violence (U.N. Doc. A/HRC/8/25, Recommendations 1, 3, 4 & 5)

36. Considering measures to address the problem of violence against children, a comprehensive UK strategy on this issue is still absent.⁶⁸ On the issue of corporal punishment the defence of reasonable chastisement continues to permit private corporal punishment of children in NI,⁶⁹ violating arts.19 and 37(a) CRC and the Committee on the Rights of the Child 's General Comment No. 8.

37. Notwithstanding the strategies and action plans referred to in the Government's Mid-Term Report, the prevalence of domestic and sexual violence remains high,⁷⁰ the NIHRC recommends adoption of a UK strategy to combat all forms of violence against women.

38. Establishment of a centralised Sexual Assault Referral Centre in NI is still awaited.⁷¹ The NIHRC urges for progress on opening the Centre particularly in order to prevent violations of women's rights and as recommended by the CEDAW Committee.⁷²

39. NI still lacks domestic violence specialist courts which exist in other areas of the UK.⁷³ The NIHRC calls for parity to ensure non-discrimination.

Trafficking

40. The NIHRC expresses concern over the time period victims of trafficking with no recourse to public funds are permitted to remain in the jurisdiction on the basis of reflection and recovery—currently 45 days, with possibility of extension to 90.⁷⁴ The NIHRC is concerned that extension is not based upon international human rights standards but rather upon co-operation with authorities⁷⁵ and recommends greater adherence to international law in this area.⁷⁶

Reproductive rights

41. The NIHRC reiterates its recommendation that the Government responds to direction from the CEDAW Committee to consult widely on the issue of termination of pregnancy in NI.⁷⁷

Non-discrimination (U.N. Doc. A/HRC/8/25, Recommendation 15)

42. The UK Single Equality Act does not apply to NI and the commitment in the St Andrew's Agreement to a Single Equality Bill for NI has not been implemented.⁷⁸ The NIHRC recommends that a Single Equality Bill for NI be introduced without delay.

43. The NIHRC notes discrimination in relation to access to public funds in NI for migrants. A particular problem in this area is access to housing for migrant victims of domestic violence, engaging art. 11(1) of ICESCR.⁷⁹ The NIHRC urges the Government to rectify these issues, including granting access to emergency financial assistance, to uphold the rights of victims.

44. Discriminatory treatment and attitudes still affect members of the Travelling Community in NI. The NIHRC urges Government to ensure non-discrimination for this community particularly in areas such as housing⁸⁰ and education.⁸¹

¹ Temple Court, 39 North Street, Belfast, BT1 1NA, www.nihrc.org.

² <http://www2.ohchr.org/english/law/parisprinciples.htm>

³ See, for example, the NIHRC response to the Northern Ireland Office Consultation on the Report of the Consultative Group on the Past. Available at <[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/106/Response_to_NIO_consultation_on_report_of_Consultative_Group_on_the_Past_\(September_2009\).doc](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/106/Response_to_NIO_consultation_on_report_of_Consultative_Group_on_the_Past_(September_2009).doc)> (accessed 10th November 2011).

⁴ United Nations General Assembly, Human Rights Council, Eighth session, *Report of the Working Group on the Universal Periodic Review, United Kingdom of Great Britain and Northern Ireland*, U.N. Doc. A/HRC/8/25 (23 May 2008).

⁵ For further information, see the UK Commission on a Bill of Rights established by the government on 18 March 2011. The Commission's work is available at <<http://www.justice.gov.uk/about/cbr/index.htm>> (accessed 9th November 2011).

⁶ Concluding Observations of the Committee on the Elimination of Racial Discrimination on the United Kingdom of Great Britain and Northern Ireland (14 September 2011) UN Doc. CERD/C/GBR/CO/18 at paragraph 19. Concluding Observations of the Committee on Economic, Social and Cultural Rights on the United Kingdom of Great Britain and Northern Ireland (22 May 2009) UN Doc. E/C.12/GBR/CO/5 at paragraph 10.

⁷ Since the government consultation on the content of a NI Bill of Rights in November 2009 no action has been taken to move the commitment forward. Since the establishment of the UK Commission to consider the prospect of a UK wide Bill of Rights and Responsibilities in March 2011, it is unclear whether the government intends to fulfil the international commitment to create a specific Bill of Rights pertaining to NI. The Joint Committee of the NIHRC and the Irish Human Rights Commission was also mandated by the Belfast Agreement 1998 to consider the possibility of a Charter of Rights for the Island of Ireland. The Joint Committee published its advice on the issue in June 2011 but the Government is still to make progress on this issue also.

⁸ The following reservations have been withdrawn: art. 22 (refugee children) and art. 37(c) (children in custody with adults). However, a reservation still remains in place regarding art. 32 and UK Overseas Territories and Crown Dependencies which was highlighted by the Committee on the Rights of the Child in its Concluding Observations on the United Kingdom of Great Britain and Northern Ireland (20 October 2008) UN Doc. CRC/C/GBR/CO/4 at paragraph 8.

⁹ The UK ratified the OP-CRC on the Sale of Children, Child Prostitution and Child Pornography on 20 February 2009.

¹⁰ The declaration attached to art. 1 of the OP-CRC on Involvement of Children in Armed Conflict reads, "The United Kingdom of Great Britain and Northern Ireland will take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

The United Kingdom understands that article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: -

a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and

b) by reason of the nature and urgency of the situation:-

i) it is not practicable to withdraw such persons before deployment; or

ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or the safety of other personnel."

¹¹ Such was recommended by the Vienna Declaration and Plan of Action 1993.

¹² As recommended by the Committee on the Rights of the Child in its Concluding Observations on the United Kingdom of Great Britain and Northern Ireland (20 October 2008) UN Doc. CRC/C/GBR/CO/4 at paragraph 81.

¹³ The UK stated it was making efforts toward this end in the Mid-Term Review submitted to the Human Rights Council at the 13th session. Point 9 reads,

"The UK Government continues to support the Convention and is now examining the reforms that would be needed in order to bring our domestic law in line with the requirements of the Convention.

The UK law is shaped by common law - judicial decision-making and conventions - as well as by legislation passed by Parliament. The Convention against Enforced Disappearance requires that certain offences and powers be prescribed by statute. Where the existing relevant powers in the UK context are exercised in common law, these powers may either have to be abolished or codified in statute law. Where the Convention requires the creation of new law - for example, a new criminal offence of enforced disappearance, including

elements of extraterritorial jurisdiction - we anticipate that this process will be a lengthy one, requiring a substantial amount of Parliamentary time.

So far the UK has neither signed nor ratified the Convention. The UK's approach to signing international treaties is that we only give our signature where we are fully prepared to follow up with ratification in a short time thereafter. Therefore, we will only be in a position to give the UK's signature to the Convention when we have completed our examination of the Convention's impact on UK law and the necessary reforms to our criminal justice system.”

Available at <http://www.upr-info.org/IMG/pdf/uk_mid-term_report_15_03_10.pdf> (accessed 9th November 2011).

¹⁴ The interpretative declaration states, ‘[T]he United Kingdom wishes to state its understanding of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4.’ Available at

<http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en> (accessed 9th November 2011).

¹⁵ Concluding Observations of the Committee on the Elimination of Racial Discrimination on the United Kingdom of Great Britain and Northern Ireland (1 September 2011) UN Doc. CERD/C/GBR/CO/18-20, paragraph 11.

¹⁶ A more absolute prohibition would offer clarity as to the type of prohibited speech. In 2010/11 the PSNI recorded 1,437 sectarian incidents, 842 racist incidents, 211 homophobic incidents, 38 disability incidents, 22 transphobic incidents & 21 faith/religion incidents. See Police Service of NI, Annual Statistical Report 2010/11, Statistical Press Release. Available at

<http://www.psnipolice.uk/index/updates/updates_statistics.htm> (accessed 9th November 2011). The NIHRC notes that many more incidents are likely to go unreported.

¹⁷ Government is currently consulting on the issue, and has stated that the community-based Supervised Activity Order disposal created by sec. 45 of the Criminal Justice (NI) Order 2008 is now ready to be piloted. However, the NIHRC remains concerned that repeated consultation and piloting on this issue is having the effect of delaying effective rights protection.

¹⁸ Figures for female fine default imprisonment have increased from 161 in 2007 to 226 in 2010. See Department of Justice NI, *Fine Default in NI: A Department of Justice Consultation* (DOJNI: Belfast, 2011).

¹⁹ The UK ratified the CRPD on 8 June 2009.

²⁰ OP-ICCPR.

²¹ OP-ICESCR.

²² CAT art.22 requires the State Party to issue a declaration recognising the competence of the Committee to receive individual communications.

²³ CERD art.14 requires the State Party to issue a declaration recognising the competence of the Committee to receive individual communications.

²⁴ The UK accepted the right in regard to OP-CEDAW as a ‘pilot’ scheme on 17 December 2004 which entered into force on 17 March 2005. However, the State made limited effort to raise awareness concerning the availability of the mechanism. The Ministry of Justice commissioned a review which was published in October 2008. Though the review concluded that the mechanism had done little to advance women’s rights, the NIHRC notes that Professor Murdoch began his conclusions with the undoubted ‘important symbolic value’ of a commitment to human rights achieved by recognition of the individual complaint mechanism and the NIHRC believes this trumps the current lack of petitions (two admissible cases have been directed at the UK with seventeen opinions issued in total), especially given that no significant financial burden was found to exist upon the UK (quoted in the report as £4000 per petition). The evaluation report was conducted by Professor Jim Murdoch of the University of Glasgow, School of Law and published in October 2008. It is available on the Ministry of Justice website at

<<http://webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/publications/un-optional-protocol-women.htm>> (accessed 9th November 2011).

²⁵ The UK ratified the OP-CRPD on 7 August 2009.

²⁶ World Programme for Human Rights Education, established by the United Nations General Assembly's resolution 59/113 (10 December 2004). The first phase (2005-2009) focused on human rights education in the primary and secondary school systems. The second phase (2010-2014) focuses on human rights education for higher education and on human rights training programmes for teachers and educators, civil servants, law enforcement officials and military personnel.

²⁷ In the NIHRC's advice to government on a Bill of Rights for NI, the Commission recommended that a new Bill of Rights include a provision that will ensure education promotes human rights standards and given the particular circumstances of NI, mutual respect and parity of esteem for both main communities. See NIHRC, *A Bill of Rights for NI: Advice to the Secretary of State for NI* (NIHRC: Belfast, 2008) at page 91.

²⁸ Such a recommendation is bolstered by the report of Special Rapporteur on the right to education, Vernor Muñoz, *The Right to Education of Persons in Detention* (2 April 2009) UN Doc. A/HRC/11/8. In the rest of 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. In contrast, responsibility for education in NI remains with the NI Office and the Youth Justice Agency.

²⁹ Concluding Observations of the Committee on the Elimination of Racial Discrimination on the United Kingdom of Great Britain and Northern Ireland (1 September 2011) UN Doc. CERD/C/GBR/CO/18-20, recommendation 24.

³⁰ NI Executive press release, 'Traveller children suffer educational disadvantage – Ruane' (24 March 2011). Available at <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-de/news-de-march-2011/news_-_de-240311-traveller-children-suffer.htm> (accessed 9th November 2011).

³¹ In 2009, 52.5% of traveller children attending school in NI were on the special educational needs register compared to 17.8% of the population as a whole. See NI Department of Education, *Equality Impact Assessment, 'Every School is a Good School: The Way Forward for Special Educational Needs and Inclusion'* (August 2009) page 21. Available at

<http://www.deni.gov.uk/equality_impact_assessment_on_the_review_of_special_educational_needs__sen__and_inclusion_policy_proposals__english_.pdf> (accessed 9th November 2011).

³² See General Comment No. 6 on the ICCPR art. 6 'Right to Life' (30 April 1982).

³³ Inquiries Act 2005, Clause 13 gives the Minister the power to suspend the inquiry at any time. This would be the case even though actions of the executive may be the very subject of investigation

³⁴ See the 'Police Ombudsman Response to Recommendations made in the Criminal Justice Inspection Report' Police Ombudsman for Northern Ireland (8 September 2011). Available at, <<http://www.policeombudsman.org/Publicationsuploads/Response%20to%20Recommendations%20made%20by%20CJI.pdf>> (accessed 9th November 2011).

³⁵ NIHRC, *A Bill of Rights for NI: Advice to the Secretary of State for NI* (NIHRC: Belfast, 2008) identified a number of areas in NI where post-conflict rights realisation could benefit from a more gender-sensitive approach based upon the particular circumstances of NI post-conflict, these included health rights, work rights, rights to be free from violence and democratic rights.

³⁶ Committee on the Elimination of All Forms of Discrimination Against Women, Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women on the United Kingdom of Great Britain and Northern Ireland, (July 10, 2008) UN Doc. CEDAW/C/UK/CO/6 at paragraph 285.

³⁷ In the Terrorism Act 2000 (Remedial Order) 2011 (and the mirrored provisions of the Protection of Freedoms Bill), relevant clause "47A" reads

'An officer may give an authorisation if he or she 'reasonably suspects that an act of terrorism will take place' and 'considers that –

- (i) the authorisation is necessary to prevent such an act;
- (ii) the specified area or place is no greater than is necessary to prevent such an act; and
- (iii) the duration of the authorisation is no longer than is necessary to prevent such an act.'

That the authorisation can only be made where the officer considers it 'necessary' to prevent an act of terrorism is an improvement on the former requirement that he merely consider it 'expedient'.

³⁸ According to PSNI correspondence with the NIHRC on May 17, 2010, just prior to the suspension of sec. 44 of the Terrorism Act, an authorisation was in place allowing stop and search throughout the whole of NI (approximately 14,000km²). Such amendments are more likely to address the UK's Council of Europe human rights obligations as laid out by the Court in *Gillan and Quinton v United Kingdom*, App. No. 4158/05, European Court of Human Rights (January 2010). Here, the court determined that the secs. 44-47 Terrorism Act 2000 powers to stop and search without suspicion were incompatible with art. 8 of the ECHR (right to

respect for private and family life). The court stated that the provisions were not ‘in accordance with the law’ because the legislation was not sufficiently circumscribed nor subject to adequate safeguards against abuse (paragraph 87). Specifically, the court was concerned with the breadth of discretion granted to the individual police officer because the Code of Conduct failed to lay out objective criteria upon which the police officer could base his decision to stop and search (paragraph 83). Furthermore, the court determined the legislative safeguards in place, such as the Secretary of State’s oversight powers (paragraph 80), the 28 day time limitation and the geographical boundary (paragraph 81), to be weak.

Further concerns have been expressed by the Joint Committee on Human Rights and Liberty, see the Joint Committee on Human Rights 17th Report on ‘The Terrorism Act (Remedial Order) 2011: Stop and Search without reasonable suspicion, second report’ and Liberty in its submission to the Joint Committee on Human Rights on the ‘Replacement Power to Stop and Search without Reasonable Suspicion,’ May 2011 that the legislation requires further safeguards.

³⁹ Schedule 6, paragraph 1 (2) Protection of Freedoms Bill will alter paragraph 4 of Schedule 3 (or sec. 24) of the Justice and Security (NI) Act 2007. Under the revised sec. 24 of the Justice & Security (NI) Act 2007, the armed forces have the power to stop and search for munitions and wireless apparatus in a public place in NI even in the absence of an authorization. The NIHRC notes that the new legislation will remove this power in relation to police officers. In sec. 21 of the Justice & Security (NI) Act 2007, the armed forces and the police have the power to stop and question.

⁴⁰ High Court of NI, Queen’s Bench Division, *Re. An Application by Marvin Canning* (judicial review), submission by the NIHRC, 15 June 2011. The NIHRC submission suggests that sec. 21 Justice & Security (NI) Act 2007 is not sufficiently precise to meet the demands of art. 8(2) ECHR. Given that the sec. 21 powers require substantial direct engagement with potentially any person without any requirement for reasonable grounds, the NIHRC questions whether the requirements of art. 17(2) ICCPR are also met.

⁴¹ Concluding Observations of the Human Rights Committee on the United Kingdom of Great Britain and Northern Ireland (30 July 2008) UN. Doc. CCPR/C/GBR/CO/6 at paragraph 29. From 2010, the Police Service of Northern Ireland has monitored stop and question/search powers on the basis of 12 ethnic categories but does not disclose the ethnicity information in its quarterly reports. In the quarter 1 April 1 to 30 June 2011, 4578 persons were stopped and questioned or searched under the combined provisions of the JSA secs. 21 & 24. See, Police Service of Northern Ireland *Stop and Search Statistics Quarter 1, 1 April-30 June 2011* (PSNI: Belfast, 2011).

⁴² The Terrorism Prevention and Investigation Measures Bill was introduced to Parliament on 23 May 2011.

⁴³ Terrorism Prevention and Investigation Measures Bill, Clause 1.

⁴⁴ Terrorism Prevention and Investigation Measures Bill, Schedule 4.

⁴⁵ These rights are entrenched in arts. 9, 10, 12 & 14 ICCPR.

⁴⁶ In *Secretary of State for the Home Department v AF and another* [2009] UKHL 28, the House of Lords took notice of the European Court of Human Rights judgment *A & Others v United Kingdom* [2009] ECHR 301 which instructed that for art. 5 (right to liberty and security of person) to be met, a suspect in a closed hearing must be able to give effective instructions to refute the allegations against him. On the back of this jurisprudence, the Home Office made a commitment that “the controlee must be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations”⁴⁶ and further announced that “[a] TPIM notice will not be able to be sustained on the basis of a case which is solely or decisively “closed.”” See, Terrorism Prevention and Investigation Measures Bill, European Memorandum by the Home Office, paragraph 36-38. Available at <<http://www.homeoffice.gov.uk/publications/about-us/legislation/tpim-bill-docs/echr-memorandum?view=Binary>> (accessed 9th November 2011).

⁴⁷ See Concluding Observations of the Human Rights Committee on the United Kingdom of Great Britain and Northern Ireland (30 July 2008) UN. Doc. CCPR/C/GBR/CO/6 at paragraph 19. The Committee found that the power had been rarely used in England, Wales & NI in the years just preceding the report. It is also a component of the right to a fair trial as protected under arts. 9 and 14 ICCPR.

⁴⁸ This would also be in keeping with the case-law interpreting art. 6 ECHR. Under art. 2 of the Human Rights Act 1998, the UK is obligated to ‘take into account’ the jurisprudence of the European Court of Human Rights in the *Case of Salduz v Turkey*, Appl. No. 36391/02, European Court of Human Rights (17 November 2008), which stated, ‘...the Court finds that in order for the right to a fair trial to remain sufficiently “practical and effective” Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may

exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction’ (paragraph 55).

⁴⁹ Terrorism Act 2000, Schedule 8, paragraph 8. The permitted circumstances for delay in terrorism cases are found in the Terrorism Act 2000, Schedule 8, paragraph 8(4) which states,

“(4) Those consequences are—

- (a) interference with or harm to evidence of a serious arrestable offence,
- (b) interference with or physical injury to any person,
- (c) the alerting of persons who are suspected of having committed a serious arrestable offence but who have not been arrested for it,
- (d) the hindering of the recovery of property obtained as a result of a serious arrestable offence or in respect of which a forfeiture order could be made under sec. 23,
- (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism,
- (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism, and
- (g) the alerting of a person and thereby making it more difficult to secure a person’s apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism.”

⁵⁰ In a non-terrorism context in NI the relevant legislation is the Police and Criminal Evidence (NI) Order 1989, clause 59, paragraph (5). The permitted circumstances for delay are found in the Police and Criminal Evidence (NI) Order 1989, clause 59, paragraph 8 which states,

“(8) An officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by paragraph (1) at the time when the person detained desires to exercise it—

- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.”

For the corresponding provision in England and Wales, see the Police and Criminal Evidence Act 1984, clause 58, paragraph (5).

⁵¹ Protection of Freedoms Bill, Part 4, clause 57. This includes the omission of sec. 25 of the Terrorism Act 2006 which provides that the maximum pre-charge detention period be 14 days subject to a power to raise it to 28 days. No such power of increase exists in the forthcoming legislation.

⁵² The disproportionate number of children remanded in custody in NI was recognised in the Department of Justice *Review of the Youth Justice System in NI* (DOJNI: Belfast, 2011) at page 11.

⁵³ In June 2011 the prison population in NI was 1687, compared to 1484 in June 2010. Combined capacity for the three NI prison facilities is 1775, meaning a 95% occupancy level currently exists. Indeed, since 2005 the prison population in NI has increased by 13%. Such figures do not adhere to Government’s commitment to reduce overcrowding. Figures cited in Prison Reform Trust, *Bromley Briefings Prison Factfile June 2011* (Prison Reform Trust: London, 2011).

⁵⁴ The NIHRC rejects the Government justification that doubling up of prisoners facilitates close proximity to the Courts System.

⁵⁵ See the Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women on the United Kingdom of Great Britain and Northern Ireland (10 July 2008) UN Doc. CEDAW/C/UK/CO/6 at paragraph 20.

⁵⁶ The foreign national prison population standing at 8.9% is inconsistent with the overall population of foreign nationals in the province, which stands at 0.6%. Statistics cited in NI Assembly Research and Library Service, *Briefing Paper – Foreign National Prisoners* (NIA: Belfast, 2011).

⁵⁷ Such is evidenced by the death of a Chinese national in Maghaberry prison in 2009. The Prisoner Ombudsman found that the death was impacted by anxiety regarding the uncertainty of trial dates and possible sentencing as well as communication barriers – See Prisoner Ombudsman for NI, *Report by the Prisoner Ombudsman into the Circumstances Surrounding the Death of Prisoner B Aged 36 in Maghaberry Prison on 8 March 2009* (NI Prisoner Ombudsman: Belfast, 2010).

⁵⁸ A draft Foreign National Prisoner Strategy was consulted on in 2008 but further action is yet to be taken.

⁵⁹ In NI, immigration detainees are held in Larne House which is a UK Border Agency facility that opened in July 2011. Larne House employs a private security firm to operate the centre. In England and Wales the Prison

and Probation Ombudsman investigates complaints when private contractors are involved. However, the Prisoner Ombudsman for NI does not have this power. Furthermore, UK Border Agency employees at Larne House are not subject to the same oversight as they would be in the same facility in England & Wales.

⁶⁰ Children below 12 in Scotland are now held to account through Children's Hearings following sec. 52 of the Criminal Justice and Licensing (Scotland) Act 2010, amending the Criminal Justice (Scotland) Act 1995.

⁶¹ This stands in disappointing comparison to other democratic states. The Committee on the Rights of the Child has stated that any limit below 12 is unacceptable. In its Concluding Observations to the UK in 1995, 2002 and 2008 the Committee recommended that the minimum age of criminal responsibility in the UK is raised to between 14 and 16 years. The Council of Europe's Commissioner for Human Rights made a similar recommendation following his visit to the UK in 2008 – *Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom (5-8 February and 31 March – 2 April 2008)* (Commissioner for Human Rights: Strasbourg, 2008).

⁶² In 2008/9 the maximum number of young offenders held in Hydebank Wood was 202, average being 186, in 2009/10 the maximum was 203, with an average of 178 - NI Prison Service *Annual Report and Accounts 2008/2009* and *Annual Report and Accounts 2009/10* (The Stationary Office: London, 2009, 2010).

⁶³ Although this provision has reduced the frequency of such breaches of art. 37(c).

Art. 13 of the Criminal Justice (Children) (NI) Order 1998 provides that a child aged over 15 can be remanded to the Young Offender's Centre if it is likely that he will injure himself or others. See comments of the Committee on the Rights of the Child in General Comment No. 10 (25 April 2007) UN Doc. CRC/C/GC/10 which states at paragraph 10 that "children differ from adults in their physical and psychological development, and their emotional and educational needs... These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children". Other International Standards such as the UN Standard Minimum Rules for the Administration of Juvenile Justice 1995 (The "Beijing Rules") also suggest such practice is unsuitable. NIHRC is concerned that the continuing practice of permitting 15-17 year old boys to be held in Hydebank Wood exposes them to a prison service regime which is unsuitable for children and incompatible with the CRC, regardless of whether separate living quarters are provided.

⁶⁴ Available under the Criminal Justice (Children) (NI) Order 1998, clause 36J.

⁶⁵ Outlined in NI Executive, *Improving Children's Life Chances: The Child Poverty Strategy* (NIE: Belfast, 2011) and HM Government, *A New Approach to Child Poverty: Tackling the Causes of Disadvantage and Transforming Families' Lives* (HM Stationary Office: London, 2011).

⁶⁶ NI Executive reporting under the Child Poverty Bill 2010 confirmed this -

<http://www.niassembly.gov.uk/record/committees2009/OFMDFM/100217_ChildPovertyReport.htm> (accessed 20th September 2011).

During 2009-2010 child poverty rose by 2% in NI, despite decline in the rest of the UK. This figure indicates that 110,000 children from 40,000 families are still living in poverty. See

<<http://www.savethechildren.org.uk/en/northern-ireland.htm>> (accessed 15 September 2011).

⁶⁷ Concluding Observations of the Committee on the Rights of the Child on the United Kingdom of Great Britain and Northern Ireland (20 October 2008) UN Doc. CRC/C/GB/CO/4 at paragraphs 19 and 65 and Concluding Observations of the Committee on Economic, Social and Cultural Rights on the United Kingdom of Great Britain and Northern Ireland (12 June 2009) UN Doc. E/C.12/GBR/CO/5 at paragraph 28.

⁶⁸ Such a strategy was also called for by the Committee on the Rights of the Child, see the Concluding Observations of the Committee on the Rights of the Child on the United Kingdom of Great Britain and Northern Ireland (20 October 2008) UN Doc. CRC/C/GB/CO/4 at paragraph 50.

⁶⁹ This is despite restrictions made by the Law Reform (Miscellaneous Provisions) (NI) Order 2006.

⁷⁰ The number of domestic abuse crimes in NI in 2004/5 was 9656 only dropping slightly to 9546 in 2010/11. Sexual offences have risen from 1169 recorded in 2000/01 to 1933 recorded in 2010/11 - Police Service of Northern Ireland, *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in NI 2004/5 to 2010/11* (PSNI: Belfast, 2011) and Police Service of Northern Ireland, *Trends in Police Recorded Crime in NI 1998/99 to 2010/11* (PSNI: Belfast, 2011).

⁷¹ Reduction of funding in the area of service provision for sexual assault has left significant gaps for victims. The CEDAW Committee in their 2008 Concluding Observations indeed urged the UK to provide increased and sustained funding to groups and organisations working to provide women's services. Repeated delay in opening the Sexual Assault Referral Centre (SARC) in Antrim stands in comparison with over 20 existing SARC's in the UK, the earliest established in 1986. Concerns also exist regarding the location of the only planned SARC service for the whole of the province. It is unclear whether outreach services will be provided to

prevent women from the South and West of NI having to travel considerable distances to access the provision, which may discourage reporting and treatment of sexual assault.

⁷² See CEDAW Committee, *General Comment No. 12 – Violence Against Women* (1989) UN Doc. HRC/GEN/1/Rev.7 and *General Comment No. 19 – Violence Against Women* (1992) UN Doc. HRI/GEN/1/Rev.7.

⁷³ The piloting of domestic violence specialist courts is to take place in Londonderry. However, this pilot will not provide as comprehensive a service as such courts do in other parts of the UK, focusing mainly on hearing listings structure as opposed to offering holistic support for victims.

⁷⁴ See NIHRC and the Equality Commission for NI, *The Nature and Extent of Human Trafficking in NI* (NIHRC: Belfast, 2009).

⁷⁵ Consenting to co-operate with investigations is often a decision victims do not have enough time to make in an informed manner. Additionally, the UK Borders Agency's role in determining the period of reflection granted does not encourage victims to freely disclose their circumstances without fear of immediate deportation.

⁷⁶ Including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organised Crime arts. 6 to 8 and the UN Office on Drugs and Crime Model Law Against Trafficking in Persons, Chapter VIII, art. 30(3) which outlines a recovery and reflection period of not less than 90 days.

⁷⁷ Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women on the United Kingdom of Great Britain and Northern Ireland (10 July 2008) UN Doc. CEDAW/C/UK/CO/6 at paragraph 289.

⁷⁸ Resultantly, protection against issues such as age discrimination in service provision and against discrimination on grounds of colour and nationality is protected in the rest of the UK but not in NI. Introduction of a Single Equality Bill for NI is awaited, although not identified in the NI Executive's Programme for Government 2008-2011; Northern Ireland Executive, *Building a Better Future: NI Executive Programme for Government 2008-2011* (OFMDFM: Belfast, 2008).

⁷⁹ See NIHRC, *No Home From Home: Homelessness for People with No or Limited Access to Public Funds* (NIHRC: Belfast, 2009). Victims of domestic violence with insecure immigration status are often forced to choose between facing destitution or remaining in an abusive relationship. Organisations that do provide accommodation to such women currently do so at a financial loss in a time of steady cuts in budgets and funding. See Women's Aid Federation NI, *Women with no or limited recourse to public funds: A Report of Findings* (NIWAF: Belfast, 2007). The NIHRC also notes that the lack of an integrated national strategy for homelessness in NI also affects victims of domestic violence regarding art. 11 ICESCR. This is also an issue that is relevant to NIHRC's concern regarding the UK and accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁸⁰ Development of suitable transit sites for the Travelling Community remains ad hoc. Equality Commission for Northern Ireland *Outlining Minimum Standards for Traveller Accommodation* (Equality Commission: Belfast, 2009) notes that the NI Executive's Race Equality Strategy for NI (2005-2010) did not result in sufficient, adequate or appropriate accommodation for Travellers. Additionally, the Unauthorised Encampments (NI) Order 2005 permits a police officer to direct a person to leave land and remove vehicles or other property from that land. An offence for non-compliance with the officer's direction is created and the officer may seize belongings of those directed to leave. Penalty for non-compliance is set at a maximum of three months' imprisonment, a £2500 (€2700) fine, or both. NIHRC is concerned with the effects of this legislation in terms of criminalising the traditional cultural lifestyle of the Travelling Community.

⁸¹ There are high levels of illiteracy among the Traveller community; many lack formal educational qualifications with 92% having failed to gain GCSEs or equivalents. See Equality Commission for NI, *mainstreaming Equality of Opportunity and Good Relations for Traveller Children* (Equality Commission: Belfast, 2008). Also noted in paragraph 37 of this report.