

The 2012 Annual Statement

Human Rights in Northern Ireland

2012



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

The 2012 Annual Statement

Human Rights in Northern Ireland

2012



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

About Us

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

The Commission's duties are:

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

In addition the Commission has powers:

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

Our vision is to bring about a society in NI where everyone is aware of his or her internationally recognised human rights and those of others and can enjoy those rights in a society which respects diversity and in which he or she can feel safe and valued.

Our mission is to promote awareness of the importance of human rights, to review existing law, policy and practice and to advise government on steps that need to be taken to fully protect human rights in NI.

The Commission is committed to carrying out its work in accordance with the following values: independence; participation; accessibility; fairness; effectiveness; and sustainability.

Chief Commissioner: Professor Michael O'Flaherty

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

Director: Virginia McVea

Deputy Director: Dr David Russell

Contents

Chief Commissioner’s Foreword	3
Chapter 1 Introduction	8
Chapter 2 Substantive rights and issues	11
Equality and non-discrimination	11
A Single Equality Bill	11
Travellers	12
Disabled persons	12
Sectarianism	13
Hate crime.....	14
Extension of civil marriage	15
Eligibility to make blood donations.....	15
Right to life.....	16
Obligation to investigate	16
Rule of law: non-state actors.....	17
Right to liberty and security of the person.....	18
Prison review.....	18
Women in prison.....	19
Imprisonment for fine default	19
Imprisonment of children	20
The remand of children.....	20
Strip searches	21
Freedom from torture and inhuman and degrading treatment.....	22
Child abuse	22
Care homes-restraint	23
Freedom from slavery	24
Human trafficking and exploitation.....	24
The right to a fair trial and the administration of justice	25
Access to justice	25
Avoidable delay	26
Age of criminal responsibility.....	27
Closed Material Proceedings	27
Right to private and family life	28
Adoption	28
DNA retention	29
Sex offender notification	30
Stop and search	30

Freedom of religion and belief, expression and association, and the right to participate in public and political life.....	31
Parades and counter-protests	31
Participation of women	32
Right to work and to just and favourable conditions of work	32
Superannuation Bill	32
Ex-combatants	33
Civil Service (Special Advisers) Bill	33
Right to an adequate standard of living and to social security	34
Welfare Reform Bill	34
Social Investment Fund	35
Right to health	35
Health and social care reform	35
Care homes	35
Role of the private sector in the provision of health care	36
Mental Capacity (Health, Finance and Welfare) Bill	36
Right to education	37
Educational needs of Travellers	37
Special Educational Needs	37
Children in custody	38
Right to participate in the cultural life of the community	38
The Irish language and Ulster Scots	39
Constitutional protections.....	39
A Bill of Rights for Northern Ireland	39
A UK Bill of Rights	40
A Charter of Rights for the island of Ireland	41
Appendices.....	42
Appendix A – Universal Periodic Review	43
Appendix B – Convention on Action against trafficking in human beings	46
Appendix C – Framework Convention on National Minorities	53
Appendix D – European Social Charter	55

Chief Commissioner's Foreword

1. Introduction

The Northern Ireland Human Rights Commission (the Commission) is delivering its first Annual Human Rights Statement in difficult times. Across Europe we face all the persistent problems of protection of civil, political, economic, social and cultural rights; problems that are exacerbated by the economic situation.

At a time when people desperately need the support of the State, it has less to offer. And the choice of where to deliver State assistance is not always made on the basis of human rights principles. In the United Kingdom (UK), often ill-informed discourse is an added complication, with some public figures disparaging and denigrating the very fundamentals of the human rights protection system. And, this is the context for a consultative process on a UK Bill of Rights that is aimed at fixing what does not seem to me to be broken.

The situation is even more troublesome in Northern Ireland (NI). Here, in addition to those problems common to the rest of the UK, we are faced with a swathe of distinct issues. These include, but are by no means limited to:

- the knock-on impact of the UK Bill of Rights debate on what needs to continue to be a discrete reflection on a Bill of Rights for NI;
- the many human rights-related challenges in dealing with the past.

This is the context in which the Commission operates and in which it must continue to deliver.

Being a small and modestly funded body, the Commission is confronted by the challenge of making difficult choices regarding the issues on which it will focus. It makes these choices on the basis of a firm adherence to principle and an ongoing process of listening.

2. Upholding the law

The Commission interprets human rights to mean no more and no less than the standards found in the international human rights treaties ratified by the UK. The rock on which the Commission secures its work is the law and nothing else.

Which law? Which treaties? As Chief Commissioner, I continue to be surprised by the extent to which only a small part of the human rights treaty base is utilised in debate in NI. Perhaps it is inevitable that, because of the part played by the Human Rights Act 1998 (HRA), the European Convention gets the lion's share of attention. But that must not be at the expense of the provisions of other United Nations (UN) treaties or the findings of their monitoring bodies.



3. Upholding all human rights

As the Commission seeks to have all legal obligations respected, it is important that sight is not lost of the cornerstones that underpin international human rights law.

The first cornerstone is that of indivisibility. To be true to human rights, the Commission must honour the co-existence and mutual relationship of civil and political rights on the one hand and economic, social and cultural rights on the other. These all have the same status in terms of international law and one group of rights is not subordinated to another. In taking this position the Commission is being true to the Universal Declaration of Human Rights and all the treaty commitments entered into by the UK. It is this understanding that underlies the approach taken by the Commission with regard to the importance for NI of the adoption of a Bill of Rights. The present Commissioners affirmed their adherence to this long standing view of the Commission with the publication in 2012 of a report that shatters many myths that have grown up around the Bill of Rights debate.

4. Ensuring all human rights for all people

The principle of universality means that there is a duty to deliver all human rights to everyone. In order to deliver human rights to all, the Commission has to continuously seek out the most invisible of right holders, namely the most vulnerable and disadvantaged people in society. These people will always be the primary clients of the Commission and it should be tested by the extent to which it has acknowledged and worked with them to address their situations. Ironically, the better the Commission does that job, the more we are likely to be criticised. The championing of the most marginal people in society always discomfits those who view themselves as more worthy.

5. Building a culture of human rights

A third cornerstone of the human rights system is the transformational nature of human rights. Human rights law is intended to empower individuals to demand and enjoy their rights and it should equip them, individually and in community, to participate meaningfully in decisions and processes that impact upon their well-being. A healthy society values and cultivates a culture of human rights. This understanding puts human rights at the heart of society and the Commission needs to be in a central position in this regard. The Commission is not a narrow sectoral body. It has no choice but to engage across the great issues of the State on the basis of an agenda that puts the human rights of people to the forefront.

6. Human rights work as partnership

As the Commission seeks to apply this principled approach to its work it engages in a continuous process of listening across society, and takes account of all the expert commentary on the state of human rights in NI. In this way, the Commission can identify who are the most vulnerable and how it can support them. It is for this reason that the Commission is investing considerable time in visiting towns across NI. Since the current team of Commissioners took up their appointment in September 2011, they have conducted extensive meetings in 11 population centres. These consultations have reaffirmed the great importance for the Commission of sustained stakeholder engagement.

As the Commission refines its priorities, it also recognises that the Human Rights Commission is just one player among many. The Commission needs to work with the human rights community to identify the complementarities, synergies and most effective division of labour. Forms of partnership need, however, to reflect the unique position and role of a human rights commission. For instance, turning first to partners of the State, the Commission must maintain good and straightforward relations with such bodies as the Police Service of NI (PSNI) and the NI Prison Service. Whenever the Commission meets with police and prison officers it emphasises that we are partners in the task of protecting human rights. The Commission stands with the NI Prison Service in unreservedly deploring the killing in November of this year of Prison Officer David Black. This crime and such other acts as this year's bombings in Derry/Londonderry, the violence following the decision on flying the Union flag at Belfast City Hall and the violation of rulings of the Parades Commission serve to seriously undermine human rights across society.

Turning to civil society, the Commission maintains excellent relations with Non-Governmental Organisations (NGOs), which constitute close friends and collaborators. I am not just referring to the major human rights bodies. I also have in mind the many hundreds, perhaps thousands, of groups working on social issues at the local level. The Commission needs their continued solidarity, and their work can be enriched by strong relations with the Commission. The Commission also actively seeks to maintain excellent relations with faith communities.

On the basis of our engagement with all stakeholders across NI, the Commission identified a number of priority areas of work in 2012. Among these has been the need to acknowledge and commit to the most marginalised people in society. On this basis the Commission will continue to address the situation of such groups as the elderly, children and prisoners. The Commission recognises the problems of older people living in institutional care and in 2012 we published a major investigation report on the topic. Another important matter for us concerns the need for a comprehensive and integrated framework to address transitional justice issues in NI. Speaking on this topic to the Community Relations Conference policy conference in 2012, I observed that:

one of the most glaring gaps in the delivery of a human rights based approach to community relations is the failure to deal comprehensively with the past – as the technical term puts it – to do 'transitional justice'. Northern Ireland's piecemeal engagement with its recent history is a cause of serious worry and it perpetuates disturbing patterns of injustice.¹

To further inform discussions around dealing with the past, the Commission has initiated a research project looking into the role which both the Commission and a human rights framework in general could play when seeking to address a number of unresolved conflict related issues. This work will be taken forward during 2013.

7. Human rights and the economic crisis

One issue that has emerged as a high priority for the Commission is that of how to address the scourge of poverty.

The statistics speak for themselves. In 2010/11 there were 335,000 in relative poverty, and 232,000 people in absolute poverty in NI². The situation for children is particularly disturbing: according to the Department for Social Development (DSD), 44% of children in Derry/Londonderry live in poverty, with the figure in Limavady being 34%. Overall the child poverty

¹ NIHRC Press Archive, '10 Years of Community Relations Week: no more them and us', May 2012.

² NI Statistics Research Agency 'Poverty in Northern Ireland 2010/11' (DSD : Summer 2012).

figure in NI is 28%, higher than elsewhere in the UK³. Fuel poverty is another disturbing indicator. According to the NI Housing Executive, over 40% of households cannot afford to heat their homes⁴. The problem is particularly acute in rural areas. The starkness of the situation, which engages a number of human rights, is being brought home to me time and time again in the meetings I have with people from across NI.

In Newry I met with abused women who cannot gain access to overcrowded shelters and, because they are unable to afford an alternative, have to return home to violent partners.

In Derry/Londonderry, people living with disability spoke to me of the inadequacy of the welfare provisions.

Here in Belfast I have met with homeless men for whom the idea of enjoying the full range of their human rights is completely meaningless.

It was also here in Belfast that I encountered a most debilitating form of poverty, that of the many communities who live in interface areas, along the 'peace walls'. It is striking that many of these groups register much lower on quality of life indices than the immediately neighbouring communities. Additionally, when the persistent harassment, intimidation and attacks are taken into account, the situation of these people is totally unacceptable. This phenomenon of interface deprivation and disadvantage illustrates clearly the extent to which the combating of poverty has civil, political, economic and social dimensions, and that people need to be empowered to participate in the shaping of their own futures.

It is within this wider understanding that the Commission is addressing the human rights dimensions of poverty through the full range of its tools. The Commission has made submissions to various international monitoring bodies. It has provided human rights analysis of the relevant policy papers and legislation to the NI Assembly and the Westminster Parliament. The Commission has also engaged consistently and widely regarding the Programme for Government and the Welfare Reform Bill. The protection of human rights in recessionary times is our principal theme for International Human Rights Day 2012.

8. The Annual Statement

You will find in this Annual Statement a detailed survey of the Commission's work in 2012 across all of the sectors in which it is active. We have presented the Statement in a standardised format that mirrors that employed by the United Nations Human Rights Council for its Universal Periodic Review procedure. This standardised approach will allow for meaningful year by year comparisons. It does, however, have the disadvantage of addressing certain systemic human rights issues in a somewhat fractured manner. For example, the reader will not find a section on the topic of transitional justice. Instead, the relevant information can be found in several sections of the statement.

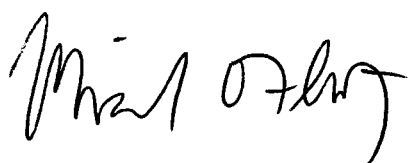
As you read the Annual Statement you will gain a sense of the true state of human rights in this jurisdiction. The Annual Statement does not, however, purport to be the last word on the situation. Nor does it provide instant or easy prescriptions and solutions. Predominantly the annual statement focuses on areas where the Commission has engaged directly. Where it

³ Department for Social Development 'Households Below Average Income, Northern Ireland, 2009-10' December 2011.

⁴ Housing Executive 'Home Energy Conservation Strategy: Sixteenth Annual Progress Report (2012).

raises other matters it is by way of acknowledgement of their importance and of the intention of the Commission to focus on them in the future. And we must never lose sight of the reality that the promotion and protection of human rights is a global and inter-generational project that engages the responsibility of all of us.

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



Professor Michael O'Flaherty

Chief Commissioner

10 December 2012

Chapter 1 Introduction

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

Having assessed developments affecting human rights protections in NI throughout 2012, the Commission publishes this annual statement, operating in accordance with the NI Act 1998, and recalling its mandate to:

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

*advise the Secretary of State for Northern Ireland and the Executive Committee of the Northern Ireland Assembly of legislative and other measures which ought to be taken to protect human rights.*⁵

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

*submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.*⁶

The Commission's assessment of developments during 2012 is premised upon the requirements of domestic human rights standards and those treaty obligations of the UN and European systems that are legally binding in NI on the basis of their ratification by the UK.

The treaties which the UK has ratified are:

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

European Social Charter [UK ratification 1962];

Framework Convention for the Protection of National Minorities (FCNM) [UK ratification 1998];

Convention on Action against Trafficking in Human Beings [UK ratification 2008];

European Charter for Regional or Minority Languages [UK ratification 2001];

International Covenant on Civil and Political Rights (ICCPR) [UK ratification 1976];

International Covenant on Economic, Social and Cultural Rights, (ICESCR) [UK ratification 1976];

Continued

⁵ See section 69, NI Act 1998.

⁶ Principles relating to the Status of National Institutions, adopted by UN General Assembly resolution 48/134 of 20 December 1993.

Convention on the Elimination of All Forms of Racial Discrimination (CERD)
[UK ratification 1969];

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

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

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

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

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

The Commission recalls that human rights law further applies by virtue of the NI Act 1998, Section 24 (1). Ministers of the Executive Committee of the NI Assembly (NI Executive) and Government departments are therefore required to ensure that all legislation and actions are compatible with the ECHR.⁷

The Commission also recalls that the NI Act 1998, Section 26, requires the same level of compliance with other international human rights obligations, and that for this purpose the Secretary of State for NI may, by direct order, prevent any proposed action by Ministers of the NI Executive and devolved Government departments.⁸

In addition, for the purpose of giving effect to binding international human rights treaties the Secretary of State may revoke legislation adopted by the NI Assembly or, by direct order, require Ministers of the NI Executive and Government departments to take any capable action.⁹

The ECHR is given further domestic effect in the UK as a consequence of the Human Rights Act 1998 (HRA). Subject to Section 6 (3), all public authorities in NI must ensure that their actions are compatible with the Human Rights Act 1998 (HRA). The definition of a public authority includes a 'court or tribunal, and any person certain of whose functions are functions of a public nature'.¹⁰ This means that private sector contractors may, at times, be subject to the requirements of the HRA. Government departments have the duty to ensure that actions carried out following public procurement exercises comply with the ECHR.

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

⁷ Section 24 of the NI Act 1998 states: 'A Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act— (a) is incompatible with any of the Convention rights'.

⁸ Section 26 of the NI Act 1998 states: 'If the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order, he may by order direct that the proposed action shall not be taken'.

⁹ Ibid.

¹⁰ See section 6, Human Rights Act 1998.

Treaty examinations and reports issued in 2012:

UPR

The UPR examination takes place every four years. It is one of the key accountability and reporting mechanisms of the UN Human Rights Council and examines how State obligations to fully respect and implement all human rights and fundamental freedoms are maintained. It was created through a UN General Assembly resolution on 15 March 2006. During 2012 the UK Government, which includes the NI Executive, was examined and reported on recommendations received during the UPR.

FCNM

Throughout the year the Advisory Committee on the FCNM continued to analyse the UK as follow up to the 3rd State report submitted in 2010. In January the UK submitted responding comments on the Advisory Committee's Opinion as adopted in June 2011.

Convention on Action against Trafficking in Human Beings

The Group of Experts on Action against Trafficking in Human Beings (GRETA) comprises 15 independent and impartial members chosen for their competence in the fields of: human rights, assistance and protection of victims, or action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. In September 2012 GRETA reported for the first time on the UK's implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings.

The European Social Charter

During 2012 the European Committee of Social Rights, charged with oversight of the European Social Charter, issued a report on the UK's compliance with the Charter. The Committee concluded that in a number of instances the UK had failed to act in accordance with the provisions of the Charter.

Chapter 2 Substantive rights and issues

Equality and non-discrimination

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

A Single Equality Bill

The UK Equality Act 2010 does not apply to NI. This Act clarified and strengthened equality protections. In NI equality protections are provided instead through a variety of legislative instruments. The Commission has advised that NI would benefit from the development of a single equality instrument consolidating all legislative instruments, providing clarity and strengthening existing protections.

Human rights committees in both the UN and the Council of Europe (CoE) have commented on this situation.¹¹ The Advisory Committee on the FCNM, in its Third Opinion on the UK's compliance with the Framework Convention published in 2012, stated:

*Existing legislation in NI remains complex and piecemeal. Consolidated legislation, such as that adopted in Great-Britain, is needed to put an end to the significant discrepancies and inconsistencies that exist between the different jurisdictions.*¹²

These comments followed representations made by the Commission.¹³

In 2012 the Commission also raised the issue of lack of progress on equality legislation during the UK's UPR examination.¹⁴ A Single Equality Bill for NI, a commitment in the St Andrew's Agreement 2006, has still not been implemented.

¹¹ Committee on Economic, Social and Cultural Rights, 42nd session (4-22 May 2009), E/C.12/GBR/CO/5, para. 31.

¹² FCNM, Third Opinion on the United Kingdom, adopted on 30 June 2011, ACFC/OP/III (2011) 006, para. 66.

¹³ NIHRC, Parallel Report to the Advisory Committee on the Third Monitoring Report of the United Kingdom, February 2011. At: <http://www.nihrc.org/documents/treaty-and-international-work/2011/parallel-report-on-framework-convention-on-national-minorities-february-2011.pdf>

¹⁴ See for example, 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. At: <http://www.nihrc.org/documents/treaty-and-international-work/2011/submission-to-un-human-rights-council-universal-periodic-review-of-uk-november-2011.pdf>

Travellers

Members of the Irish Traveller community in NI continue to face significant and persistent disadvantages in areas such as health care, education, employment and housing.¹⁵ These issues have been recognised by the CERD Committee in its concluding observations on the UK. In 2011 the Committee stated:

*While some efforts have been made by the State party to improve the well-being of Gypsies and Traveller communities, the Committee remains concerned that such efforts have not substantially improved their situation. The Committee thus regrets that these communities continue to register poor outcomes in the fields of health, education, housing and employment.*¹⁶

The absence of adequate housing provision remains a significant problem for members of the travelling community.¹⁷ The Commission has consistently advised Government of the lack of adequate accommodation sites for Travellers. The Advisory Committee on the FCNM in its Opinion on the UK's compliance with the FCNM delivered in 2012 recommended that the UK Government and NI Executive take:

*more vigorous measures to meet the accommodation needs of Gypsies and Travellers; increase the delivery of sites, including by improving the coordination of the different levels of authorities involved in sites delivery.*¹⁸

The NI Housing Executive has a legal duty to provide such sites as appear to be appropriate for the accommodation of members of the Irish Traveller community.¹⁹ The Commission continues to note that the NI authorities have failed to discharge their legal duty to provide such sites for the Irish Traveller community.²⁰

Disabled persons

The UK ratified the CRPD in 2009. The CRPD seeks to promote, protect and ensure full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their dignity.²¹

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

In 2012 the Office of the First Minister and deputy First Minister (OFMdfM) consulted on a draft Disability Strategy for NI.²² The Independent Mechanism submitted a detailed response setting out how the draft Strategy failed to comply fully with the obligations placed on the NI Executive under the CRPD.²³

¹⁵ For a full discussion, see Submission to the Committee for the Elimination of all Forms of Racial Discrimination (January 2011). At: <http://www.nihrc.org/documents/advice-to-government/2011/submission-on-international-convention-elimination-racial-discrimination-february-2011.pdf>.

¹⁶ Committee on the Elimination of Racial Discrimination, 79th session (14 February-11 March 2011), CERD/C/GBR/CO/18-20, para 27.

¹⁷ See footnote 15.

¹⁸ See FCNM, Third Opinion on the United Kingdom, adopted on 30 June 2011, ACFC/OP/III (2011), Issues for Immediate action.

¹⁹ See Housing (NI) Order 2003.

²⁰ NIHRC, Parallel Report to the Advisory Committee on the Third Monitoring Report of the United Kingdom, February 2011.

At: <http://www.nihrc.org/documents/treaty-and-international-work/2011/parallel-report-on-framework-convention-on-national-minorities-february-2011.pdf>.

²¹ See Article 1, UNCRPD: 'The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'.

²² See OFMdfM, Consultation on a disability strategy entitled 'A strategy to improve the lives of disabled people – 2012 to 2015'. At: <http://www.ofmdfmi.gov.uk/index/equality/disability/consultation-draft-disability-strategy.htm>.

²³ See IMNI, Response to OFMDFM on a Strategy to improve the lives of disabled people 2012 – 2015, August 2012.

At: <http://www.nihrc.org/index.php/advice-for-you/item/269-response-to-ofmdfm-on-a-strategy-to-improve-the-lives-of-disabled-people-2012-2015>.

Officials from the OFMdfM met with the Independent Mechanism in August 2012 and indicated that there was no intention to further develop the draft Strategy into a framework document identifying the full range of measures which the NI Executive will take to ensure full compliance with CRPD. It is understood that the associated Action Plan will relate to cross-departmental issues only.²⁴ The Commission has advised the OFMdfM to reconsider this approach.

Sectarianism

The continuation of sectarian behaviour, attitudes and violence in NI raises significant human rights concerns, which include: individuals being subjected to inhuman and degrading treatment; individuals being forced from their homes; and individuals being denied the right to express their culture.²⁵ The ICCPR, Article 20(2), requires the NI Executive to prohibit by law any advocacy of 'national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'.

The Commission has advised of the potential to develop a legal framework aimed at addressing sectarianism in accordance with international standards.²⁶ During the most recent examination of the UK's in 2011, the CERD Committee commented:

While noting the State party's legislative efforts to combat sectarianism, in Northern Ireland, the Committee is concerned that this situation, given the inter-sectionality between sectarianism and racism, is kept entirely outside the framework of protections against discrimination provided by the Convention and the Durban Programme of Action. The State party recognizes that sectarianism and racism in Northern Ireland are related, and that one cannot be tackled without the other (arts. 2 and 4).²⁷

In addition to legal initiatives the NI Executive has a duty to take positive measures to address societal views and prejudices which contribute to sectarianism. The CERD, Article 7, for example, requires State parties to:

adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.

Over the last three years there have been ongoing deliberations concerning the proposed development of a Cohesion, Sharing and Integration Strategy.²⁸ The purpose of this strategy would be to facilitate the development of a society 'in which everyone can live, work and socialise together free from intimidation and prejudice in the context of the fairness, equality, rights, respect and responsibility'.²⁹

²⁴ On the basis of representations from Departmental officials at a meeting on 10 August 2012.

²⁵ Rosellen Roche, Facts, Fears and Feelings Project: Sectarianism and Segregation in Urban Northern Ireland: Northern Irish Youth Post-Agreement, School of History and Anthropology, Queen's University Belfast, 2008, Belfast.

²⁶ See, for instance, NIHRC, Preparatory Briefing to the UN Office of the High Commissioner for Human Rights (OHCHR), 2011, Expert workshops on the prohibition of incitement to national, racial or religious hatred whilst respecting Freedom of Expression and Assembly, November 2011.

²⁷ Concluding observations of the Committee on the Elimination of Racial Discrimination on the 20th periodic report of the United Kingdom of Great Britain and NI (1 September 2011), CERD/C/GBR/CO/18-20, para. 20.

²⁸ See, for the discussion, AQO 2561/11-15, NI Assembly debates, 2 October 2012.

²⁹ The public consultation on the Programme for Cohesion, Sharing and Integration was launched on Tuesday 27 July 2010 and closed on 29 October 2010. Document available at: <http://www.ofmdfmi.gov.uk/index/equality/community-relations/csi-consultation.htm>.

The development of a Strategy would be an important measure in addressing, not only the issue of sectarianism, but also other prejudices which undermine and threaten human rights.

The Chief Commissioner, in his address to the NI Community Relations Council policy conference in 2012, spoke of the need to address gaps in delivering a human rights-based approach to community relations. He stated:

The final gap that I will refer to is very well known to all of you – the failure, as of yet, to have put in place a finalised strategy for cohesion, sharing and integration. The Human Rights Commission has been very critical of previous drafts of the strategy – in particular it has criticised the failure to integrate attention to the relevant binding human rights treaty obligations of the UK. We very much hope that the finalised strategy that has been promised to us under the Programme for Government will rectify this glaring omission. We also expect that the Executive will take due account of the recommendations that have been delivered to it by the relevant international monitoring bodies. For instance and most recently, the UN Committee on the Elimination of Racial Discrimination recommended that the UK tackle sectarianism as a form of racism. This is an important proposal – we just have to think of how society has combated racism in recent decades to appreciate how the approach might deliver so very much when focussed on the scourge of sectarianism.³⁰

The promotion of a society in which individuals are respectful and tolerant of each other's cultural, religious and national identities is a pre-requisite for the enjoyment of human rights.³¹ Throughout 2012 the Commission has, therefore, continued to advise that the development of a Cohesion, Sharing and Integration Strategy should be a priority for the NI Executive.

Hate crime

Hate crimes have continued to take place throughout 2012. These have included acts of violence being committed against members of minority communities and their families.³² After sectarianism racially motivated hate crime is the second most reported form of hate crime in NI but currently has a low rate of detection.

During 2012 the Commission commenced an investigation into the State's response to racially motivated hate crimes. The aim of the investigation is to: examine preventive measures undertaken by the NI Executive; and the response of key criminal justice agencies to incidents and crimes.

The investigation report will be published in 2013. It will provide an assessment of the extent to which the practice of the criminal justice agencies complies with relevant human rights standards. It will also make recommendations for actions, including those required of the NI Executive, to effectively address racially motivated hate crimes.

Extension of civil marriage to same sex couples

The right to marry is protected by the ICCPR, Article 23, and the ECHR, Article 12. The UN Human Rights Committee³³ and the European Court of Human Rights (ECtHR) have ruled that the right to marry does not, however, extend to same sex couples.³⁴

In 2012 the Rt Hon Theresa May MP, Secretary of State for the Home Department and Minister

³⁰ Speech of the Human Rights Chief Commissioner, Professor Michael O' Flaherty, to the Community Relations Conference: NIHRC archived press releases, 14 May 2012. At: <http://www.nihrc.org/index.php/news/item/251-10-years-of-community-relations-week-no-more-them-and-us>.

³¹ The ECtHR has elaborated that, in outlining the hallmarks of a democratic society, it has consistently 'attached particular importance to pluralism, tolerance and broadmindedness'. See *Barankevich v Russia* [2007], ECtHR (No. 10519/03) (26 July 2007), paras 30-31.

³² BBC News, 'Chinese man hurt in racist attack in Coleraine', 12 September 2012. At: <http://www.bbc.co.uk/news/uk-northern-ireland-19567827>.

³³ *Joslin v. New Zealand* (902/1999), CCPR/C/75/D/902/1999, at paras. 8.2 and 8.3.

³⁴ *Schalk and Kopf v. Austria* (2010), Application no. 30141/04.

for Women and Equalities, announced the prospect of legislative change in England and Wales, lifting the ban on same-sex couples marrying in a civil ceremony.³⁵ The Commission noted that the Scottish Government was also consulting on this issue. No similar proposal had been made by the Minister responsible in NI, Sammy Wilson MP MLA.

The Commission wrote to both the UK Government and NI Executive advising on the UK's duty to protect freedom of thought, conscience and religion under the ICCPR, Article 18, and the ECHR, Article 9. The Commission welcomed the decision not to make legislative changes to the religious form of marriage.

The Commission also advised, however, that extending access to marriage would effectively widen the right available under the ECHR, Article 12, which is guaranteed in the UK by virtue of the HRA. The Commission advised that any change to the existing law could lead to a disparity in the level of human rights protection across the jurisdictions of the UK. Since the proposal has no effect in NI there is a concern that the HRA could be applied in future with unequal force. The Commission continues to monitor legislative developments in this area.

Eligibility to make blood donations

The current rules in NI indefinitely prohibit a man who has had sex with another man from donating blood. This issue engages the prohibition of discrimination on grounds of sexual orientation which is protected by the ICCPR, Article 26, and the ECHR, Article 14. In June 2012 the Commission wrote to the Committee for Health, Social Services and Public Safety advising that the rules governing blood donation in NI may be considered to unjustifiably discriminate between donors on the basis of their sexual orientation.³⁶ Furthermore the Commission advised that retaining permanent deferral risks further stigmatisation and marginalisation for the Lesbian, Gay, Bisexual and Transgender community as a whole, with the possibility of further exposure to prejudice and discrimination.

A Ministerial decision in respect of this matter has not been taken in 2012 and it is noted that a legal challenge is being brought.

On the International Day Against Homophobia and Transphobia, the Chief Commissioner, addressed the 4th Annual Church Service, organised by Changing Attitude Ireland. In his address, the Chief Commissioner stated:

All people should enjoy the fullness of their rights not in spite of but in the fullness of their sexual orientation or whatever their gender identity happens to be. I have been encouraged that this understanding of human rights is being increasingly reflected in international standards and in the way that they are being applied by the relevant human rights courts and bodies... [we must] recall and never forget that what we are demanding when we demand equality for LGBT people is no more and no less than what they are entitled to as a matter of law. When I say law, I am referring not necessarily to the domestic law that operates in the UK, but more broadly to the human rights treaties that the UK has freely accepted.³⁷

³⁵ Equal Civil Marriage: A Consultation, March 2012. At: <http://www.homeoffice.gov.uk/publications/about-us/consultations/equal-civil-marriage/consultation-document?view=Binary>.

³⁶ NIHRC, Statutory Advice to the Committee for Health, Social Services and Public Safety on the Issue of deferral of blood donation for men who have sex with men (MSM), June 2012.

³⁷ Address by Professor Michael O'Flaherty, Chief Commissioner, NI Human Rights Commission, 20 May 2012. At: <http://www.nihrc.org/index.php/news/item/254-international-day-against-homophobia-and-transphobia>.

Right to life

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

Obligation to investigate

In its concluding observations on the UK's sixth periodic report the UN Human Rights Committee highlighted the importance of carrying out effective investigations into deaths that occurred as a consequence of the conflict in NI. The Committee concluded that the:

*State party should conduct, as a matter of particular urgency given the passage of time, independent and impartial inquiries in order to ensure a full, transparent and credible account of the circumstances surrounding violations of the right to life in Northern Ireland.*³⁸

The Commission has consistently highlighted the need for the UK Government and NI Executive to adopt holistic measures to ensure compliance with the UN Human Rights Committee's concluding observation.³⁹

The Commission raised this matter during the 25th annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. It provided an analysis of the 'package of measures' developed to investigate conflict related deaths in NI, setting out the need for a single comprehensive framework.

Throughout 2012 the UK Government has been developing its seventh periodic report to the UN Human Rights Committee on compliance with the ICCPR. This will be submitted ahead of the UK's examination, due to take place in 2013. The Commission has advised both the OFMdFM and the Ministry for Justice on the need to report on measures taken to assist investigations of violations of the right to life. In doing so the Commission has recalled the UK's obligations in respect of victims' rights drawn from international instruments, such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁴⁰

The key elements of the 'Basic Principles' include access to justice and fair treatment, restitution, compensation, and assistance. They also provide essential guidance on appropriate treatment, stating that:

*Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.*⁴¹

As regards individual cases, in 2012 the inquest into the death of Pearse Jordan commenced.⁴² Whilst the inquest ruled on the causes of Mr Jordan's death, the jury were unable reach agreement on key aspects of the case, including whether or not reasonable force was used by the Royal Ulster Constabulary.

³⁸ UN Human Rights Committee, Concluding Observations on the Report of the United Kingdom, (CCPR/C/GBR/CO/6), para. 31.

³⁹ See, for discussion, Fiona Doherty and Paul Magean, 'Investigating Lethal Force Deaths in NI: The Application of Article 2 of the European Convention on Human Rights', NIHRC (Belfast), 2006.

⁴⁰ Adopted by the UN General Assembly, Resolution 40/34 of 29 November 1985.

⁴¹ *Ibid.*, point 4.

⁴² *Hugh Jordan v UK*, 24746/94 [2001], ECHR 327, 4 May 2001.

The Commission provided legal support to the family of Mr Jordan to assist in ensuring that the inquest proceeded effectively and in compliance with the ECHR, Article 2. The Commission notes the significant contribution that legal challenges relating to the investigation of this killing have made both to domestic jurisprudence and the jurisprudence of the ECtHR.

The 'Jordan principles' identify the essential requirements for effective investigations of deaths which must: be prompt; be impartial; have hierarchical independence from those implicated; provide sufficient involvement of next of kin; and have the ability to hold those responsible to account. The Commission will continue to assess investigations relating to deaths that occurred as a consequence of the conflict in NI against these principles.

In addition to the Pearce Jordan inquest, a review took place during 2012 of the papers relating to the death of Mr Pat Finucane. The Commission has advised that this review process was not designed to meet Government's obligation under the ECHR, Article 2. On the announcement of the proposed Review, the Commission reiterated its call on the UK Government to investigate fully, through an independent public inquiry, the death of Mr Finucane. The Chief Commissioner stated that the Commission:

strongly reiterates its call on government to investigate fully, through an independent public inquiry, the death of Patrick Finucane. The Commission has previously advised successive Secretaries of State on human rights considerations in establishing an inquiry into Mr Finucane's death.

We are deeply concerned that government has not announced the establishment of such an inquiry and, given the reported proposal for a QC to review the case, the Commission reiterates governments' obligation to effectively investigate this killing.⁴³

Rule of law – non-state actors

Establishing respect for the rule of law is fundamental to achieving effective protection of human rights. The Commission is concerned therefore that the actions of paramilitary organisations continue to jeopardise the right to life of citizens of NI.

Following a bomb at the City of Derry Cultural Office the Chief Commissioner issued the following statement:

Assaults like this on the life of the City are outrageous abuses of the human rights of its people. They put at risk the most basic right of all – the right to life. They retraumatise victims of the decades of the Troubles. They threaten to undermine the human right of cultural expression.⁴⁴

During 2012 there have been a number of deaths caused by the actions of paramilitary organisations.⁴⁵ The Commission does not hesitate to condemn those who take or jeopardise the lives of others through their actions. In October a member of the NI Prison Service was murdered by dissident Republican paramilitaries. In response, the Chief Commissioner said:

I condemn without reservation this shocking killing. I recall the vital role prison officers play in upholding the human rights of society. Criminal acts of this kind strike at the crucial work of the prison service and spread fear and insecurity in the community which itself undermines human rights. I would like to extend my deepest sympathy to the victim's family.

⁴³ NIHRC Press Release 'Commission calls for independent public inquiry', 8 February 2012. At: <http://www.nihrc.org/index.php/news/item/141-commission-calls-for-independent-public-inquiry>

⁴⁴ NIHRC Press Archive, 'Bomb at Derry City of Culture Offices', 13 October 2011.

⁴⁵ BBC News Northern Ireland, 'Families welcome Police Ombudsman investigation into UVF collusion claims'. At: <http://www.bbc.co.uk/news/uk-northern-ireland-20031596>.

Right to liberty and security of the person

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

Prison review

Where an individual is held in prison, the State maintains obligations with respect to their welfare. For example the ICCPR, Article 10, states:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person...The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

In October 2011 the Prison Review Team published its final report on the NI Prison Service.⁴⁶ During 2012 the Commission met with the Prison Reform Oversight Group, the independent mechanism tasked with monitoring the implementation of the Review Team's recommendations.

The Commission continuously monitors the circumstances in which individuals are detained in prisons throughout NI. It visits prisons, meets with prison authorities, representatives of prisoners and other bodies interested in the welfare of prisoners. The Commission is encouraged by the commitment of the NI Prison Service leadership to embedding a human rights compliant culture within the organisation. During 2012 the Chief Commissioner gave an address to the NI Prison Chaplains Association, in which he stated:

At heart, human rights are about the welfare of the individual. The code that we wish to enforce derives from the idea that human rights are constructed around the dignity of the human being. It is in this that we find the natural affinity between chaplains and the defenders of human rights. What is more, there are specific articulated rights which relate very closely to the work of chaplains.

...By way of another example of human rights of direct relevance to your work is the commitment entered into by the UK as far back as 1976 (in a UN treaty) confirming that the purpose of imprisonment is rehabilitation. This remarkable affirmation, at odds with such other stated purposes as retribution or revenge, is a formal binding obligation on the UK government.⁴⁷

⁴⁶ Prison Review Team, Review of the NI Prison Service: Conditions, management and oversight of all prisons, October 2011.

⁴⁷ NIHRC Press Archive, 'Human Rights and Chaplaincy', 22 May 2012. At: <http://www.nihrc.org/index.php/news/item/253-human-rights-and-chaplaincy>.

Women in prison

In its Concluding Observations on the UK's fifth periodic report, the CEDAW Committee emphasised the need to develop bespoke measures to assist women prisoners in NI and urged the UK Government and NI Executive to:

*take further measures to increase and enhance educational, rehabilitative and resettlement programmes for women in prison and to ensure the provision of adequate health facilities and services, including mental health services, for women in prison.*⁴⁸

The Commission has conducted two investigations of the imprisonment of women in NI. These investigations found that the absence of a discrete prison facility for women and gender appropriate services undermine the reformative and rehabilitative aims which imprisonment should strive towards.⁴⁹

During 2012 a public consultation was issued on a draft Prison Estate Policy, which contained proposals to develop the prison estate. It did not make provision to address the need for a women's facility,⁵⁰ although it recognised the need for gender appropriate services. However, these plans fall short of the observations of the CEDAW Committee. The Commission's response to the consultation advised of the need for a custodial facility for women configured to comply with the full range of international human rights standards⁵¹ and providing gender appropriate services with genuine and practical links to the community and its related services.⁵²

Imprisonment for fine default

In July 2008, the CEDAW Committee expressed concern about the large number of women imprisoned for minor offences such as non-payment of TV licences and, recalling its previous recommendation made in June 1999, urged the UK Government and NI Executive to 'intensify efforts to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences'.⁵³

In 2012 the number of persons imprisoned in NI increased.⁵⁴ In its follow-up review report on 'The enforcement of fines' published on 31 July 2012, the Criminal Justice Inspection Northern Ireland (CJINI) noted an increasing trend in the overall number of people going to prison for non-payment of fines. The total number of new committals was 1,247 in 2009, 1,891 in 2010 and 2,179 in 2011.⁵⁵ The CJINI report noted that such imprisonment accounted for half of the women in Hydebank Wood in the last year.⁵⁶ The Commission has consistently advised of the need to address the high number of imprisonments for failure to pay fines and has highlighted the disproportionate impact on the female prison population.⁵⁷

⁴⁸ Report of the Committee on the Elimination of Discrimination Against Women on the 5th and 6th Periodic Reports of the United Kingdom of Great Britain and NI, Concluding Observations on the UK, UN Doc. CEDAW/C/UK/CO/6 (10 July 2008), at para. 267.

⁴⁹ The NIHR has published two investigation reports on the issue of women prisoners: NIHR, *The Prison Within: The imprisonment of women at Hydebank Wood 2004-06*, Belfast, 2007; and NIHR, *The Hurt Inside: The imprisonment of women and girls in Northern Ireland*, Belfast, 2005.

⁵⁰ NIPS, Consultation on Northern Ireland Prison Service's Outline Estate Strategy, closed 28 September 2012.

⁵¹ Including, but not confined to: CEDAW; The Bangkok Rules; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Standard Minimum Rules; Basic Principles.

⁵² See the NIHR response to NIPS, Consultation on Northern Ireland Prison Service's Outline Estate Strategy, closed 28 September 2012.

⁵³ 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 para. 267.

⁵⁴ In the week ending 3 August 2012, the prison population in NI was 1776, compared to 1676 at the same time one year earlier. The combined capacity of the three NI prison facilities is 1775, meaning that the most recent statistics show the service is exceeding capacity. See NIPS Situation Report, 3 August 2012, at: <http://www.dojni.gov.uk/index/ni-prison-service/nips-situation-reports/situation-reports-2012/nips-august-2012.htm>.

⁵⁵ Northern Ireland Prison Service, Analysis of NIPS Prison Population from 01/07/2011 to 30/06/2012. At: <http://www.dojni.gov.uk/index/ni-prison-service/situation-reports-2012.htm>

⁵⁶ Criminal Justice Inspection Northern Ireland, *The enforcement of fines: A follow-up review of inspection recommendations*, July 2012, pp. 4, 5.

⁵⁷ See NIHR, Advice to the Office of the First Minister and Deputy First Minister on the recommendations made to the UK during the second cycle of the Universal Periodic Review, August 2012.

The Commission notes positively that the Department of Justice has been piloting two Supervised Activity Order schemes which will be used as an alternative to custody for fine defaulters.⁵⁸ The Department of Justice has further indicated that it intends to establish a fine enforcement centre.

During 2012 the Commission wrote to the Minister of Justice, David Ford MLA, referring to the forthcoming examination of the UK by the CEDAW Committee, due to take place in July 2013. The Commission advised the Department to prioritise reducing the incidence of imprisonment for non-payment of fines to avoid the CEDAW Committee raising the matter as a human rights concern for a third time.⁵⁹

Imprisonment of children

Detention of a child in an adult prison, regardless of whether separate living quarters are provided, raises concerns under the CRC, Article 3, best interests of the child principle.

The CRC Committee in its General Comment Number 10, stated 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.*⁶⁰

Article 13 of the Criminal Justice (Children) (NI) Order 1998, allows a 15-17 year old offender considered likely to injure himself or others to be detained in HM Prison Hydebank Wood, which is an adult prison. Throughout 2012 a small number of young offenders have been imprisoned alongside adults in Hydebank Wood.⁶¹ The Commission raised this issue with the NI Executive in correspondence relating to the UK's UPR examination.⁶²

The Commission notes that the Minister for Justice has committed to ensuring that all offenders under the age of 18 will be imprisoned in Woodlands Juvenile Justice Centre.⁶³

The remand of children

The ICCPR and the ECHR make clear that a person charged with an offence should always be released pending trial unless there are relevant and sufficient reasons for justifying detention. In respect of children, Article 37 (b) of CRC states that the imprisonment of children 'shall be used only as a measure of last resort and for the shortest appropriate period of time'.

⁵⁸ DoJNI, Press Release, 'Justice Minister David Ford has today launched a second pilot scheme to provide a better way to deal with fine default', Monday, 15 October 2012.

⁵⁹ The Commission has become aware that, as of 1 August 2012, 8 women were imprisoned in Hydebank Wood for non-payment of fines (seven for failure to pay a TV license, one for failure to pay a dog license).

⁶⁰ Committee on the Rights of the Child General Comment No. 10: Children's Rights in Juvenile Justice, 2 February 2007, CRC/C/GC/10. Other International Standards, such as the UN Standard Minimum Rules for the Administration of Juvenile Justice 1995 (The 'Beijing Rules'), also suggest such a practice is unsuitable.

⁶¹ NI Executive, Press Release, 'Ford hails progress on detention of young offenders', 28 June 2012. Minister Ford reported that the number of children and young offenders held in Hydebank was in single figures.

⁶² 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. At: <http://www.nihrc.org/documents/treaty-and-international-work/2011/submission-to-un-human-rights-council-universal-periodic-review-of-uk-november-2011.pdf>.

⁶³ NI Executive, Press Release, 'Ford hails progress on detention of young offenders', 28 June 2012. This commitment was made from 1 November 2012.

The Commission and the CRC Committee have consistently raised concerns about the number of children and young people remanded to custody in NI.⁶⁴ However, the disproportionate imprisonment of children on remand appears to be persisting.⁶⁵ The Commission raised this issue with the Youth Justice Review and noted in 2011 that the issue had received attention in the Review Report.⁶⁶ The Report states that the imprisonment of children on remand:

*reflects a serious gap in the provision of suitable bail packages to the court at an early stage that would ensure that young defendants can safely and securely be bailed to reside in the community.*⁶⁷

In responding to the Review Report, the Commission advised that to ensure compliance with the CRC it is important that this issue is addressed and that appropriate provision to deal with young offenders is put in place. The Department of Justice's implementation plan notes that the Youth Justice Services area teams are currently exploring initiatives to address this matter.⁶⁸ The Commission will be reviewing progress and will raise this issue with the CRC Committee during its next examination of the UK.

Strip searches

Body searches of prisoners may be used as an element of prison security to protect other prisoners, prison personnel and the wider community by reducing the risk of escape from prison of potentially dangerous prisoners. However, where they are overly intrusive and disproportionate to the legitimate aim of achieving prison security, they may amount to inhuman and degrading treatment.⁶⁹ The use of strip searches at HM Prison Maghaberry has been an issue of ongoing dispute for some time, with a small number prisoners engaging in protests.

In 2011 the report of the Prison Review Team considered the issue of searches of prisoners and recommended that:

efforts should be continued to see whether there is an effective and less intrusive method than full body-searching of ensuring that prisoners leaving and entering prison are not bringing in contraband.

The Department of Justice has been piloting body scanners in HM Prison Magilligan and Hydebank Wood during 2012.⁷⁰ The NI Prison Service is also seeking to pilot other measures to assess whether or not these could reduce the need for strip searching while maintaining prison security. The Commission has monitored the situation with regular visits to the prison to meet with prison authorities and prisoners. The Commission has been apprised of the efforts made to limit the use of strip searches to those prisoners leaving and returning to prison and commends the current work being undertaken to pilot and assess new methods to reduce further strip searching to comply with the Prison Review Team recommendation "... to see whether there is an effective and less intrusive method than full body-searching...". The Commission also notes that body cavity searches are not used in prisons within NI.

⁶⁴ In 2006, the Commission published a Report entitled *Still in Our Care*. It found that the number of children and young people remanded to custody was disproportionately high compared to the number of children and young people who subsequently received a custodial sentence. Only 10% of children held on remand subsequently received a custodial sentence, raising the question as to why they were detained in the first place. Convery, U. and Moore, L., *Still In Our Care. Protecting children's rights in custody in Northern Ireland*, NIHRC (Belfast), 2006.

⁶⁵ NIHRC, *Response to a Review of the Youth Justice System in Northern Ireland*, Belfast, 2012. Information collated from the Youth Justice Agency's Annual Reports (2004 to 2010). At: http://www.youthjusticeagency.ni.gov.uk/publications_library/.

⁶⁶ Department of Justice Northern Ireland, *A Review of the Youth Justice System in NI*, 26 September 2011.

⁶⁷ *Ibid* page 13.

⁶⁸ Department of Justice Northern Ireland, *Youth Justice Review Implementation Plan*, October 2012, Recommendation 9.

⁶⁹ *Frerot v France* [2007], ECHR Application No 70204/01.

⁷⁰ Department of Justice Northern Ireland, Press Release, 'Justice Minister David Ford has confirmed that a pilot of new search technology will commence at Magilligan Prison next week', 18 September 2012.

Freedom from torture, and inhuman and degrading treatment

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

Child abuse

During 2012 the Chief Commissioner advised that a:

*human rights abuse of the child can constitute a form of human rights violation on the part of the State when the abuser is acting as an agent of the State. More widely still, regardless of who the perpetrator is and whether they are acting on behalf of the state, the State has a duty to take all reasonable steps to protect its people, particularly its most vulnerable people, among whom we would all include children. That duty extends to a procedural duty to investigate, prosecute and deliver remedies to victims of abuse.*⁷¹

The ECtHR has recognised that the long term neglect and abuse of children reaches the threshold for inhuman and degrading treatment, which is prohibited under the ECHR, Article 3.⁷² Article 3 being engaged, there is a procedural obligation upon the State to conduct an 'effective official investigation' into allegations of abuse.⁷³

The Commission, when providing evidence to the Committee of the OFMdFM on the Inquiry on Historical Institutional Abuse Bill, advised that the proposed Inquiry risked falling short of the requirements of an 'effective official investigation' which have been laid down by the ECtHR in the case of Jordan.⁷⁴ Concerns were also raised in respect of the Inquiry's independence, the involvement of victims in the process, and the remit of the Bill.

The Commission referred to the concluding observations of the CAT which has highlighted that investigations into historic cases of abuse should be:

*investigated promptly and impartially, perpetrators duly prosecuted, and the victims accorded redress, including adequate compensation and rehabilitation.*⁷⁵

⁷¹ Northern Ireland Assembly, Committee for the Office of the First Minister and deputy First Minister, Official Report (Hansard), Inquiry into Historical Institutional Abuse Bill: Northern Ireland Human Rights Commission Briefing, 5 September 2012, p. 1. At: <http://www.niassembly.gov.uk/Documents/Official-Reports/OFMdFM/2012-2013/Inquiry%20into%20Historical%20Institutional%20Abuse%20Bill%20%20Northern%20Ireland%20Human%20Rights%20Commission%20Briefing.pdf>.

⁷² Z and Others v. the United Kingdom [2001], ECHR 333, para. 74.

⁷³ McCann and Others v. the United Kingdom [1995], ECHR 31, para. 161.

⁷⁴ Jordan v. the United Kingdom [2003], 37 EHRR 53, paras. 69-73.

⁷⁵ United Nations Committee Against Torture, Concluding Observations, New Zealand (2009), CAT/C/NZL/CO/5, para. 11.

Noting the proposed scope of the inquiry, to cover the years 1945-1995 the Chief Commissioner stated:

The Commission is at a loss to understand why, for any living victim, there is a need to fix in stone the year 1945. We recognise that for dead victims, you have to draw a line somewhere, but where a victim is living, it is the commission's view that that victim's case should be embraced by the mandate of the inquiry. Therefore, for living victims, we are of the view that a date should not be set and that there should simply be an acknowledgement that if a victim is still alive, regardless of whether the abuse occurred before or after 1945, they will be given their full right of audience to the inquiry.⁷⁶

Following the Commission's advice, the Committee carried out a clause by clause scrutiny of the Bill. In a written Ministerial Statement, the First Minister and deputy First Minister announced that the terms of reference would be amended to cover the period from 1922 to 1995. The Department has advised the OFMdfM Committee that the power of the Ministers to amend the terms of reference will now be subject to an affirmative resolution of the Assembly.

Not all the changes advised by the Commission were made. However, the assurances given by the Department in respect of the granting of restriction orders and the refusal of payment of expenses have addressed a number of concerns. The Commission's advice in relation to the power afforded to the Ministers in relation to termination of members of the Inquiry and the Inquiry itself have not been addressed.

Care homes - Restraint

Those living in care homes are reliant upon others for the provision of intimate care. Adequate safeguards must be put in place, therefore, to ensure that care is provided in a manner which respects the integrity of the individual and does not subject him or her to inhuman or degrading treatment of any form.

The UN Human Rights Committee has examined the general conditions of nursing homes in the context of the ICCPR, Article 7. In assessing the situation of older people in nursing homes in Germany, the Committee noted:

the vulnerable situation of elderly persons placed in long-term care homes, which in some instances has resulted in degrading treatment and violated their right to human dignity.⁷⁷

The Committee has also identified that the excessive use of restraints, which are routinely used in care homes, can amount to inhuman and degrading treatment.⁷⁸

In light of the need to ensure adequate protection of the rights of those in care homes, the Commission reported on a significant investigation into the human rights of older people living in nursing homes in NI. The report, 'In Defence of Dignity', was published in March 2012.

In its report the Commission found that placing international human rights standards at the core of the legal and regulatory framework applicable to nursing homes can strengthen protection of residents' human rights.⁷⁹ The report highlighted the importance of ensuring that personal care, including intimate care, is provided in a dignified manner with full regard for the rights of the recipient. The report reviewed practices across a number of nursing homes in NI

⁷⁶ Northern Ireland Assembly, Committee for the Office of the First Minister and deputy First Minister, Official Report (Hansard), Inquiry into Historical Institutional Abuse Bill: Northern Ireland Human Rights Commission Briefing, 5 September 2012, p. 3. At: <http://www.niassembly.gov.uk/Documents/Official-Reports/OFMdfM/2012-2013/Inquiry%20into%20Historical%20Institutional%20Abuse%20Bill%20%20Northern%20Ireland%20Human%20Rights%20Commission%20Briefing.pdf>.

⁷⁷ UN Human Rights Committee, Concluding Observations on Germany, 4 May 2004, CCPR/CO/80/DEU, para. 17.

⁷⁸ UN Committee on the Rights of Persons with Disabilities, List of Issues: Tunisia, 10 November 2010, CRPD/C/TUN/Q/1, para. 17.

⁷⁹ NIHRC, In Defence of Dignity: The Human Rights of Older People in Nursing Homes, Belfast, 2012.

and found that residents' freedom of movement may at times be restricted in nursing homes due to physical measures of restraint, such as bedrails, or the use of medication with sedating effects. The report identified that the absence of statutory guidance on the use of restraint had led to confusion amongst care home providers and has perhaps led to the disproportionate use of restraint, both medical and physical.

Following the report's publication, the Commission held a number of meetings with officials in the Department of Health, Social Services and Public Safety (DHSSPS) who are responsible for developing the Mental Capacity (Health, Welfare and Finance) Bill, due for consultation in 2013. This Bill has implications for persons living in nursing homes. Most significantly, it will contain a statutory definition of 'restraint'. The Commission is closely monitoring the development of relevant clauses of the Bill to ensure they adequately protect individuals against the threat of inhuman and degrading treatment.

Freedom from slavery

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

Human trafficking and exploitation

During 2011 and 2012, 33 potential victims of human trafficking were recovered in NI. However, as of November 2012, there have only been two convictions for offences relating to human trafficking in NI.⁸⁰ The UN and European monitoring bodies are clear that human trafficking constitutes a modern-day form of slavery.

In May 2012 an All Party NI Assembly Working Group on Human Trafficking was established to promote effective action against human trafficking for sexual and labour exploitation and promote the provision of sufficient protection for victims. The Group will increase awareness of the issue of human trafficking in the Assembly and will facilitate political discussion of measures to address human trafficking. At a meeting of the All Party Working Group, the Chief Commissioner set out the NI Executive's international human rights obligations with respect to human trafficking.

During the year, a number of legal developments have taken place with respect to human trafficking. The Criminal Justice Bill has been introduced to the NI Assembly. It proposes the creation of two new offences relating to human trafficking.⁸¹ In addition, Lord Morrow MLA has consulted on a draft Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. It is currently not a criminal offence to pay for the sexual services of an adult

⁸⁰ Matyas Pis [2012], NICC 14; and Chen and Others [2012], NICC 26.

⁸¹ The Criminal Justice Bill is currently passing through the NI Assembly and seeks to extend the remit of the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 to include internal trafficking and trafficking offences committed by UK nationals abroad.

in NI, unless the individual providing the services has been exploited. Lord Morrow's private member's bill aims to discourage the demand for trafficking in human beings by changing this aspect of the law and by making it a criminal offence to pay for the sexual services of a sex worker.

In its advice to Lord Morrow, the Commission noted the need to discourage demand for the services of trafficked persons in all forms. The Commission advised that Lord Morrow should consider introducing within the Bill further measures to discourage the demand for domestic servitude and other forms of labour exploitation.⁸²

International human rights law not only requires the prevention, detection and prosecution of those involved in human trafficking. It also requires the State to take necessary measures to assist the victims of human trafficking. During 2012, the GRETA Report was published. This report commended a number of measures taken in NI to assist those rescued from human traffickers. GRETA noted concerns regarding the lack of reliable data on adult and child victims of trafficking in NI. It noted that, because Border Agency staff were insufficiently aware of human trafficking, victims may have been held at Larne House Short-term Holding Facility due to concerns regarding their immigration status.

GRETA acknowledged efforts undertaken to address this and stressed the need for proactive detection measures.⁸³ Disturbingly, the report identified that a number of the victims of human trafficking who have been rescued in the UK have subsequently been reported missing and may have returned to their traffickers. GRETA made a number of recommendations for actions to be taken to ensure a more holistic approach to the issue of human trafficking. The Commission will continue to monitor implementation. Victims of human trafficking are extremely vulnerable and the NI Executive must therefore keep under review provisions aimed to assist victims.

The right to a fair trial and administration of justice

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

Access to justice

The provision of legal advice and assistance free of charge may be necessary to ensure that an individual receives a fair trial.⁸⁴ Throughout 2011 a review of access to justice was undertaken at the request of the Minister for Justice.⁸⁵ During the review process the Commission advised on the importance of ensuring a human rights-based approach to the issue which looked beyond budgetary cuts and sought to maximise human rights protections.

⁸² Martynowicz A., Toucas S., and Caughey A., The Nature and Extent of Human Trafficking in NI: A Scoping Study, Institute for Conflict Research, Belfast, 2009. This report was commissioned by the NIHRC and the Equality Commission for NI.

⁸³ The Council of Europe's Group of Experts against Trafficking in Human Beings (GRETA) published its evaluation report on the United Kingdom on 12 September 2012. At: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf

⁸⁴ Benham v United Kingdom, Application 19380/92, 10 June 1996, (1996), 22 EHRR 293.

⁸⁵ Access to Justice Review Northern Ireland, The Report, August 2011.

At: http://www.ico.gov.uk/about_us/consultations/~/media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx.

In 2012 the Minister published a 'Reply to the Review' and an associated action plan. The Commission acknowledges that a number of issues raised in its advice have been addressed.⁸⁶ In particular the Commission has noted the Minister's indication that funding for judicial reviews of Government actions which raise human rights issues shall remain within the scope of legal aid. It has also noted that a further review of access to legal assistance for the family of a deceased individual during an inquest is to be undertaken.

The ECtHR has emphasised the importance of ensuring adequate legal representation for the family of a deceased person when an investigation into the circumstances of his or her death is taking place.⁸⁷ The Commission is monitoring developments with respect to the proposed review and will contribute in due course. The Commission also notes that it is proposed that a duty solicitor scheme be introduced to custody suites to ensure access to legal advice for those held in custody. This is an important development which will assist in protecting the right to access legal representation.

The Review Report emphasised the development of an alternative dispute resolution mechanism. In relation to administrative justice, it recommends an enhanced role for the office of the NI Ombudsman, which currently investigates complaints from the public relating to the fairness and efficiency of public administration. The Commission advised that the human rights of individuals must be considered in the development of alternative dispute resolution mechanisms.

Avoidable delay

It is an essential element of the right to a fair trial that in the determination of any criminal charge an individual shall be tried without undue delay, as protected by the ICCPR, Article 14, and the ECHR, Article, 6. Delay in the criminal justice system creates unnecessary stress and inconvenience for victims, defendants and witnesses. It can be particularly damaging where the defendant is a child. The CRC Committee in its General Comment No. 10, stated that:

*for children in conflict with the law the time between commission of the offence and the final response to this act should be as short as possible. The longer the period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized.*⁸⁸

The Commission is concerned at the level of delay in the administration of justice in the NI criminal justice system. It notes, for example, that the Youth Justice Review Report considered the problem of delay to be endemic and stated that:

*This is a serious problem which should concern every professional who works in the criminal justice system. It impacts on virtually every judicial process and practice, from bail and remand to sentencing and rehabilitation.*⁸⁹

The Commission notes that the Department of Justice has consulted on a range of measures being developed with the aim of 'speeding up' justice. These are to form the basis of a Bill to be introduced to the NI Assembly in 2013.⁹⁰ The Commission broadly welcomes these proposals and encourages their early implementation, in a manner consistent with the right to a fair trial. Furthermore, the proposed introduction of custody time limits will encourage all criminal justice stakeholders to address the issue of delay.⁹¹ A more efficient justice system will ensure greater levels of satisfaction among all parties, including victims.

⁸⁶ Department of Justice Northern Ireland, Access to Justice Review, Departmental Action Plan 2012-15, July 2012. At: <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/departamental-action-plan-2012-15.pdf>.

⁸⁷ Jordan v UK [2001], ECHR 327.

⁸⁸ Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007.

⁸⁹ Department of Justice Northern Ireland, A Review of the Youth Justice System in Northern Ireland, 26 September 2011. At: <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/youth-justice-review.htm>.

⁹⁰ Department of Justice Northern Ireland, Encouraging Earlier Guilty Pleas, January 2012. At: <http://www.dojni.gov.uk/consultation-on-encouraging-earlier-guilty-pleas>.

⁹¹ Department of Justice Northern Ireland, Press Release, Justice Minister David Ford today announced radical measures to speed up the justice system in NI, 6 February 2012.

Age of criminal responsibility

The CRC Committee has consistently stated that legal systems that set the age of criminal responsibility below 12 are in contravention of the internationally accepted standard.⁹² The age of criminal responsibility laid down in the Criminal Justice (NI) Order 1998 is 10. In relation to the UK, the CRC Committee has recommended on three separate occasions that the minimum age of criminal responsibility be increased to between 14 and 16 years.⁹³ The Council of Europe's Commissioner for Human Rights made a similar recommendation following his visit to the UK in 2008.⁹⁴

The Commission has consistently advised the UK Government and NI Executive to take immediate action to increase the minimum age of criminal responsibility in line with international standards and best practice.⁹⁵ The Commission notes that the Youth Justice Review Report recommends that the age of criminal responsibility be increased to 12 with immediate effect, and that, following a period of review of no more than three years, consideration should be given to increasing the age to 14.⁹⁶

The Youth Justice Review Team provided a briefing to the NI Assembly Committee for Justice in September 2012. During this briefing a number of Members expressed opposition to the recommended increase in the age of criminal responsibility.⁹⁷ The Minister of Justice in October 2012 indicated his commitment, however, to increasing the age of criminal responsibility.⁹⁸

The Commission has advised the NI Executive of the need to prioritise increasing the age of criminal responsibility to ensure that NI law is compliant with human rights standards. The Commission positively notes the Minister's commitment and will monitor its implementation.

Closed Material Proceedings

The Justice and Security Bill, progressing through the Westminster Parliament, proposes a procedure to allow the introduction of sensitive material, obtained by security and intelligence services, in civil cases by way of the Closed Material Procedure (CMP).⁹⁹ This material would only be disclosed to the judge, on the grounds that broader disclosure would be damaging to the interests of national security.

The CMP permits the Government to present evidence to a judge without having to disclose it to the whole court, including the claimant. The Secretary of State may apply to the court seised of relevant civil proceedings for a declaration that a closed material application may be made to the court. The court is required to make such a declaration where a party to the proceedings would be required to disclose material in the course of the proceedings to another person and such a disclosure would be damaging to the interests of national security.

If implemented, the Commission is of the view that these proposals would jeopardise the individual's right to a fair trial as protected by the ICCPR, Article 14, and the ECHR, Article 6. Commenting on the proposals contained in the Justice and Security Bill, the Chief Commissioner stated:

⁹² Committee on the Rights of the Child, Concluding Observations on the UK's third and fourth periodic report, 3 October 2008, CRC/C/GBR/CO/4; Concluding Observations on the UK's second periodic report, 9 October 2002, CRC/C/15/Add 188; Concluding Observations on the UK's initial report, 15 February 1995, CRC/C/15/Add 34.

⁹³ Ibid.

⁹⁴ 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). At: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1356037&Site=COE#P97_12967.

⁹⁵ NIHRC, Response to a Review of the Youth Justice System in NI, June 2011. At: <http://www.nihrc.org/documents/advice-to-government/2012/review-of-youth-justice-system-January-2012.pdf>.

⁹⁶ Department of Justice Northern Ireland, A Review of the Youth Justice System in Northern Ireland, 26 September 2011, page 104. At: <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/youth-justice-review.htm>.

⁹⁷ Committee for Justice, Official Report (Hansard), Youth Justice Review: Findings of Final Report, 29 September 2011.

⁹⁸ BBC News, 'Age of criminal responsibility could rise says David Ford', 23 October 2012. At: <http://www.bbc.co.uk/news/uk-northern-ireland-20043029>.

⁹⁹ Justice and Security Bill (HL Bill 27).

From the outset, the Commission is alarmed at the scope of the proposals. If implemented they would constitute a radical departure from the current system of adversarial trials and inquests in a manner that could only represent retrogression in human rights terms. These attempts to circumvent the role of the courts in making decisions around disclosure of evidence fail to meet the UK's human rights obligations.¹⁰⁰

The Commission submitted a response to the Ministry of Justice Green Paper proposing use of the CMP and during 2012 provided a further briefing to the House of Lords.¹⁰¹ The Commission advised that Government has not clearly demonstrated how the CMP is necessary to protect national security interests. In addition, the current clauses of the Bill do not make clear that the CMP should be used only as a measure of last resort. The Commission is monitoring developments as the Bill progresses through Parliament.

In its response to the Green Paper the Commission raised significant concerns that the proposed use of the CMP in inquests would lead to infringements of the right to an effective investigation.¹⁰² The Commission notes that the Bill, as introduced, does not make express provision for the use of the CMP during inquests. It has advised that the Bill should expressly provide that the CMP is not available in such circumstances.¹⁰³

Right to private and family life

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

Adoption

The CRC, Articles 20 and 21, provide for special protection and assistance to children who are deprived of their family environment. Such assistance includes making provision for the adoption of children.¹⁰⁴ To ensure the best interests of children who are eligible for adoption it is important that the widest pool of suitable parents is available for assessment for compatibility.

At the start of 2012 the Adoption (NI) Order 1987 made provision only for married couples and single persons to adopt. The Commission sought a declaration from the High Court that this situation was incompatible with the right to private and family life as protected by the ECHR, Article 8, because it prohibited unmarried couples and those in civil partnerships from applying to be considered eligible to adopt.¹⁰⁵

¹⁰⁰ NIHRC, Press Release, 'Commission concerned over secret trial proposals'. At: <http://www.nihrc.org/index.php/news/item/158-commission-concerned-over-secret-trial-proposals>.

¹⁰¹ NIHRC, Briefing on the Justice and Security Bill 2012, for the Committee Stage, House of Lords, June 2012.

¹⁰² The Justice and Security Green Paper, Human Rights Joint Committee, Twenty Fourth Report, March 2012.

¹⁰³ However, it is concerned that the Bill empowers the Secretary of State to amend the Bill's definition of 'relevant civil proceedings'. There is therefore a potential risk that CMP may at some point in the future extend to inquests.

¹⁰⁴ See Articles 20 and 21, Convention on the Rights of the Child.

¹⁰⁵ E.B. v France, Application no. 43546/02. 22 January 2008.

The High Court ruled in the Commission's favour. Mr Justice Treacy J ruled:

*A loving, permanent, stable home is infinitely preferable to growing up in care. The potential benefit to a child adopted in such circumstances is immeasurable. As well as a huge benefit to the child, these adopters also provide an invaluable service to the State. ... The most important consideration is that decisions are made in the best interests of the child. As the First Division of the Court of Session observed in T [T, Petitioner 1997 SLT 724, 732B-C] there can be no more fundamental principle in adoption cases than that it is the duty of the court to safeguard and promote the interests of the child. Issues relating to the sexual orientation, lifestyle, race, religion or other characteristics of the parties involved must of course be taken into account as part of the circumstances. But they cannot be allowed to prevail over what is in the best interests of the child.*¹⁰⁶

In granting relief Mr Justice Treacy ruled that the Adoption (NI) Order 1987 should be read in such a way that it does not prevent couples who are not married, or in a civil partnership, from applying to be assessed to adopt a child pursuant to the terms of that Order.

The effect of this ruling is that all individuals and couples, regardless of marriage status or sexual orientation, are eligible to be considered as an adoptive parent(s) in NI. The Commission will monitor compliance with the judgement.

DNA retention

The UK has developed a national register of DNA profiles to assist in the investigation and prevention of crimes. The retention of an individual's DNA profile engages the right to private life.¹⁰⁷ Interference with the right to private life is permissible provided it is a proportionate means to achieve a legitimate aim.¹⁰⁸ The law in NI permits the indefinite retention of DNA profiles of all persons who have been arrested, charged or convicted of an offence.

In December 2008, ECtHR in *S and Marper v UK* found that the policy of indefinitely retaining DNA samples and profiles of innocent persons who are suspected, but not convicted, of offences violated the ECHR, Article 8. In particular, the court noted the potential stigmatising effect on children. During 2012 legislation providing for the deletion of DNA profiles and fingerprints of persons not convicted of an offence except where certain prescribed circumstances exist was introduced to the NI Assembly.¹⁰⁹

The Commission broadly welcomed these proposals with some important caveats. In particular, it advised the NI Assembly Justice Committee that a blanket approach of indefinitely retaining the DNA profiles of all those convicted of an imprisonable offence may be considered disproportionate.¹¹⁰ In his opening statement the Chief Commissioner encouraged the Committee to think:

*of the difference between the woman who has been locked up for not paying her television licence and the multiple murderer. Is anyone, for one minute, suggesting that the data-retention rule should be the same for the TV licence person and the murderer? That would seem to me to be a very strange situation. In other words, it would not be proportionate. We are not asking that such data not be retained; we are not saying that the solution to indefinite retention is no retention. That would not be compatible with proper justice and policing. We are asking that there be a clear, straightforward process whereby an aggrieved person can make a complaint to a court.*¹¹¹

¹⁰⁶ The Northern Ireland Human Rights Commission, Application [2012], NIQB 77.

¹⁰⁷ *S and Marper v United Kingdom* [2008], ECHR 1581.

¹⁰⁸ *Klass v Germany*, Application 5029/71, 6 September 1978.

¹⁰⁹ Criminal Justice Bill 2012, Clause 7, Schedules 3 and 4.

¹¹⁰ NIHRC, Submission on the Criminal Justice Bill, 2012, September 2012.

¹¹¹ Committee for Justice Official Report (Hansard), Criminal Justice Bill: DNA/Fingerprint Retention Clauses — NIHRC Briefing, 4 October 2012.

The Commission advised that the Committee consider amending the Bill to provide for a right for people who have had their DNA profile retained indefinitely to apply to the court for its deletion on the ground that they no longer represent a threat to the public.

Sex offender notification

To ensure protection of the public those convicted of sexual offences in NI are subject to notification requirements on release from prison. For instance, sex offenders must inform the relevant authorities when they change their addresses.¹¹² In 2011 the Supreme Court found that the indefinite notification requirement placed on sex offenders convicted of offences of a certain gravity represented a disproportionate interference with the right to private life, because it failed to acknowledge the possibility that the risk of harm posed by a sex offender may at some point in time cease.¹¹³ During 2012 proposals to amend sex offender notification requirements were introduced to the NI Assembly.¹¹⁴

The Criminal Justice Bill currently being considered by the NI Assembly proposes that those sex offenders subject to indefinite notification requirements be entitled to apply, in the first instance to the Chief Constable of the PSNI and if unsuccessful to the Crown Court, to be released from their notification requirements on the ground that they no longer represent a threat to the public.

The Commission welcomed these proposals and provided advice to the Committee for Justice. The Commission advised that the proposed reforms appear to strike a balance between the need to protect potential victims and the need to respect the offender's right to private life.¹¹⁵ The Commission welcome the recognition of the possibility of rehabilitation, which is in accordance with the ICCPR, Article 10.

Stop and search

The exercise of stop and search powers engages human rights, including the right to private life, the right to freedom of peaceful assembly and the right to liberty and security of the person. Amended powers authorising police officers to stop and search individuals within a designated area for a specified period of time came into operation during 2012.¹¹⁶ The amendments were introduced to ensure compliance with a ECtHR judgement which found that the powers contained within the Terrorism Act 2000 were 'neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse' to prevent their exercise in an arbitrary fashion and/or their deployment in a discriminatory manner.¹¹⁷ The amendments require that stop and search powers are exercisable only by a senior police officer acting on a reasonable belief that the search is necessary to prevent an act of terrorism.

The Justice and Security (NI) Act 2006 contains powers to stop, search and question terrorist suspects. During 2012 these powers were subject to a judicial review. In contrast to the ECtHR's assessment of the Terrorism Act 2000, the powers contained within the Justice and Security (NI) Act 2006 were found to be sufficiently circumscribed and subject to adequate legal standards.¹¹⁸ Furthermore, the court noted the significant security threat in NI, and that the powers are directed to the discharge of the PSNI's obligations under the ECHR, Article 2, to ensure that reasonable operational steps are taken to avert a real and immediate risk to life.

¹¹² The Sex Offenders Act 2003 prescribes the periods of notification which attach to an offender based on the length and type of disposal.

¹¹³ R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department, [2010], UKSC 17.

¹¹⁴ Criminal Justice Bill 2012, clauses 1-4.

¹¹⁵ NIHRC, Submission on the Criminal Justice Bill 2012, September 2012.

¹¹⁶ Terrorism Act 2000 (Remedial) Order 2011.

¹¹⁷ Gillan and Quinton v UK [2010], application no. 4158/05.

¹¹⁸ Canning's (Marvin) Application and Fox (Bernard) and McNulty's (Christine) Application [2012] NIQB 49.

The Commission continues to monitor the exercise of stop and search powers in NI. It regularly meets with the Independent Reviewer of the Justice and Security (NI) Act 2007 and raises any evidence of arbitrary or discriminatory use with the Reviewer.

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

ICCPR	Article 18 Article 19 Article 20 Article 21 Article 22 Article 25	ECHR P1	Article 3
ECHR	Article 9 Article 10 Article 11	CRC	Article 13 Article 14 Article 15
CEDAW	Article 3	CRPD	Article 19 Article 21 Article 29

Parades and counter-protests

Parades and counter-protests remained an issue of contention during 2012. The Commission has consistently advised on the need to consider these matters within a human rights framework.¹¹⁹ International human rights law protects freedom of association and expression, whilst also recognising that restrictions may be placed on these freedoms to ensure respect for the rights of others.¹²⁰ Throughout the year disputes regarding parading resulted in significant violence, placing lives at risk.¹²¹

In response to disturbances, the Belfast Telegraph published an opinion piece from the Chief Commissioner in which readers were reminded that:

*the UK upholds the rights of peaceful assembly, movement and protest. But none of these are absolute rights — they need to be balanced against such considerations as respect for the rights of others to privacy, home life and religious freedom. And under no circumstances can the Government ever condone or tolerate words, or actions, that incite religious hatred. These are illegal and they should be treated as such.*¹²²

¹¹⁹ See NIHRC, Parades and Counter Protests: Briefing Paper on Human Rights Compliance and Commission Policy, June 2011.

¹²⁰ See S. Greer, The Exceptions to Articles 8 to 11 of the European Convention on Human Rights, Council of Europe Publishing, Strasbourg 1997.

¹²¹ BBC News 'Forty-seven PSNI officers are injured in Belfast parade clashes', 2 September 2012.

¹²² Belfast Telegraph, 'Rights will help fix what is wrong with our society', 11 September 2012.

Participation of women

Public life is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative power.¹²³ There is a duty on Government to involve rights holders in the development of policy, and to recognise them as 'key actors in their own development, rather than passive recipients of commodities and services'.¹²⁴

Representation of women in the NI Assembly is 19.4%, significantly lower than in other UK devolved legislatures.¹²⁵ Initiatives undertaken in England and Wales, such as section 104 of the Equality Act 2010 which provides for women only short lists in elections, have not been replicated in NI.

Women are similarly underrepresented in the judiciary in NI. There are still no women judges in the NI High court and their representation at the county court and magistrates' district court remains at a low level. In a speech marking the opening of the 2012-13 legal year, the Lord Chief Justice for NI noted that hopes that the imbalance and low levels of women in the senior judiciary would shift naturally by recruitment on merit 'did not seem to be bearing fruit'.¹²⁶

In July 2008, the CEDAW Committee expressed concern at the low representation of women in the judiciary and recommended generally that temporary special measures be introduced to strengthen efforts to promote women to positions of leadership in NI. It further recommended full implementation of UN Security Council resolution 1325 (2000) on women, peace and security.¹²⁷ The UK Government and NI Executive will be examined again by the CEDAW Committee in 2013.

Right to Work and to just and favourable conditions of work

ICESCR	Article 6 Article 7	CEDAW	Article 11
--------	------------------------	-------	------------

Superannuation Bill

The right to form and join trade unions, as protected by the ICESCR, Article 8 and the European Social Charter, Article 5, is closely associated with the right to work. Trade unions are instrumental in ensuring just and favourable working conditions.¹²⁸

The Superannuation Bill, introduced to the NI Assembly in 2012, proposed replacing a requirement to secure trade union agreement to changes to the compensation scheme for NI civil servants who lose employment, with a duty to consult. The Commission advised the Committee for Finance and Personnel which scrutinised the Bill that the proposal may be considered a regressive step with regard to human rights, because it would weaken the role of trade unions and their role in ensuring just and favourable working conditions.¹²⁹

¹²³ ICCPR General Comment No. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), CCPR/C/21/Rev.1/Add.7.

¹²⁴ Berman, G., Undertaking a human rights-based approach: a guide for basic programming, UNESCO, Bangkok, 2008.

¹²⁵ See NIHRC, Submission to the United Nations' Committee on the Elimination of Discrimination Against Women, on the List of Issues for the United Kingdom of Great Britain and Northern Ireland, to be determined by the CEDAW Committee Pre-Session Working Group on 22nd October 2012, September 2012.

¹²⁶ As of April 2011, women represented 22.4% of judges at the county court level, and 24.4% at the magistrates' district court level. See NI Statistics and Research Agency, The Judiciary in Northern Ireland: 2011 Equity Monitoring Report (figures as of 1 April 2011).

¹²⁷ Report of the Committee on the Elimination of Discrimination Against Women on the 5th and 6th Periodic Reports of the United Kingdom of Great Britain and NI, Concluding Observations on the UK, UN Doc. CEDAW/C/UK/CO/6 (10 July 2008), at para. 285.

¹²⁸ Article 8 of ICESCR protects the right of every person to form trade unions and join the trade union of his or her choice.

¹²⁹ See NIHRC, Superannuation Bill 2012: Briefing to Finance and Personnel Committee, May 2012.

At: http://www.dojni.gov.uk/index/accessni/additional-information/guidance_on_recruiting_people_with_conflict-related_convictions.htm.

The Bill was amended to require any proposed compensation scheme to be subject to the NI Assembly's negative resolution procedure. This will provide a degree of additional scrutiny, but fails to address the issue of regression regarding trade union representation.

Ex-combatants

A key issue in a post conflict society is the reintegration of ex-combatants. The UN 'Standards for Disarmament, Demobilization, and Re-integration of ex-combatants' emphasise the importance of ensuring that those involved in conflict are able to re-integrate into society.

The Commission notes that the OFMdFM has produced 'Guidance on the Recruitment of People with Conflict Related Convictions' for employers.¹³⁰ In 2012 a review of the Guidance, which has been in operation since 2007, found that a range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement and recommended amendments to the Fair Employment and Treatment (NI) Order 1998.¹³¹

The Commission welcomed the review of the OFMdFM Guidance and considers that the recommendations should be adopted to ensure barriers to reintegration are removed.

Civil Service (Special Advisers) Bill

During 2012 a Private Members Bill was introduced to the NI Assembly which proposed:

that no person shall hold the post of special adviser if they have been convicted of a criminal offence for which they received a custodial sentence of five years or more (a 'serious criminal conviction').¹³²

The Commission noted the potential impact on those convicted of a conflict related offence who may be designated as ex-combatants under the relevant international standards.¹³³ The Committee for Finance and Personnel, responsible for scrutinising the Bill, was provided with advice by the Commission.

The Commission recalled that the UN has issued relevant guidance on transitional justice and treatment of former combatants, including the 'Standards for Disarmament, Demobilization, and Re-integration (DDR) of ex-combatants'. These Standards emphasise the importance of ensuring that those involved in conflict are able to re-integrate into society. The Standards state:

DDR supports and encourages peace-building and prevents future conflicts by reducing violence and improving security conditions, demobilizing members of armed forces and groups, and providing other ways of making a living to encourage the long-term reintegration of ex-combatants into civilian life.¹³⁴

In addition the Commission recognised the potential implications for the rights of victims and survivors of the conflict in NI. The Commission recalled the importance of ensuring that public institutions are structured in such a manner as to ensure respect for the rule of law and human rights. In particular, the Commission recognised the need to address impunity and remove from appointment those implicated in gross human rights violations.

¹³⁰ OFMdFM, Guidance on the Recruitment of People with Conflict Related Convictions for Employers, May 2007. At: http://www.ofmdfmi.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf.

¹³¹ The report is to be released in early 2013.

¹³² Civil Service 'Special Advisers' Bill 2012.

¹³³ UN Department of Peacekeeping Operations, Disarmament, demobilization and reintegration of ex-combatants in a peacekeeping environment: Principles and Guidelines, December 1999. At: <http://www.somali-jna.org/downloads/DD&R%20UNPKO.pdf>.

¹³⁴ Ibid

The Commission advised the Committee to consider the range of human rights issues engaged. It advised of the need to assess the particular circumstances of the individual seeking employment as a Special Adviser.

Right to an adequate standard of living and to social security

ICESCR	Article 7 Article 9 Article 11	CRC	Article 26 Article 27
CEDAW	Article 14	CRPD	Article 28

Welfare Reform Bill

A Welfare Reform Bill, replicating legislation adopted by the Westminster Parliament, was introduced to the Assembly in 2012. The Commission advised that the proposed reforms may violate an individual's right to an adequate standard of living, including adequate food, clothing and housing, as protected by the ICESCR, Article 11.¹³⁵

The Commission stated that:

We do not challenge the need for welfare reform. However it is well known that because of NI's past it is unlike anywhere else in the UK. It has a higher proportion of disabled people in receipt of benefits, a higher proportion of recipients of Job Seekers Allowance and high numbers of single parents and carers. It is clear that if the Bill is implemented as it currently stands, parts of it will have a devastating effect on the human rights of the most vulnerable and marginalised in our society. What is more, those aspects threaten to de-stabilise the most deprived communities in NI.

*The scale and nature of NI's housing shortage, coupled with a highly segregated housing system, means that the potential for people to move home following cuts to their benefits is severely limited. If the current proposals were to be implemented many thousands of vulnerable people, including the elderly, may be forced to seek new housing away from their longstanding neighbourhoods and support networks. This is incompatible with the human right to shelter and housing. We are urging the Executive and the Assembly to take such crucial factors as these into account when the Bill comes to be introduced in NI.*¹³⁶

The Commission provided evidence to the Committee of Social Development which is scrutinising the Bill. Its advice set out a number of concerns regarding the potential implications of the sanctions regimes proposed by the Bill. The sanctions regime is intended to ensure compliance with various 'work related requirements' placed on those in receipt of welfare benefits.¹³⁷ The Commission indicated its concern that the application of the sanction regime may cause individuals financial hardship, leading to destitution, in breach of the ICCPR, Article 11, and the ECHR, Article 3. The Chief Commissioner stated:

*We have called upon the Assembly to ensure that the right to an adequate standard of living is maintained. No one as a consequence of these changes should find themselves without food, heat or shelter.*¹³⁸

¹³⁵ See NIHRC, Submission to the Committee for Social Development on the Welfare Reform Bill 2012, October 2012.

¹³⁶ See NIHRC, Press Release, 'Human rights impact of welfare reform bill'. At: <http://www.nihrc.org/index.php/news/item/161-human-rights-impact-of-welfare-reform-bill>.

¹³⁷ See Explanatory Memorandum to Welfare Reform Bill.

¹³⁸ Belfast Telegraph, 'Poverty "risk" of welfare changes', 30 October 2012.

Social Investment Fund

The Commission encourages the UK Government and NI Executive to take a human rights-based approach to programmes with direct relevance to socio-economic issues. It therefore welcomes the emphasis which the Programme for Government places on improving the health and wellbeing of those living in NI.¹³⁹

During 2012 the Commission advised the OFMdfM on the development of a Social Investment Fund (SIF), which ring fenced £80 million for programmes intended to build pathways to employment, tackle systemic issues linked to deprivation, and increase community services.¹⁴⁰ The creation of the SIF is an important contribution on the part of the OFMdfM to meeting some of the NI Executive's obligations under the ICESCR.

In responding to a public consultation on the SIF, the Commission welcomed the initiative, but highlighted the need to ensure the SIF is accessible to minorities and to marginalised groups.¹⁴¹ The Commission also advised the OFMdfM to ensure human rights considerations are integrated within the working arrangements of the SIF.

Right to health

ICESCR	Article 12	UNCPRD	Article 25
--------	------------	--------	------------

Health and social care reform

In 2011 a review of the provision of health and social care services in NI was reported to the Minister for Health, Social Services and Public Safety.¹⁴² The Commission provided advice to the Minister and the relevant NI Assembly Committee.¹⁴³ It recommended that the DHSSPS assess the human rights implications of any re-allocation of resources to ensure that no adverse impacts occurred. The Commission highlighted its concern at the possible closure of acute hospitals in low population rural areas, and noted the obligation on the NI Executive to ensure that health services are physically accessible to all sections of the population. In December 2012 the Commission agreed to engage with the Health and Social Care Board to look at the application of human rights in a number of areas affected by the proposed reform programme.

Care homes

In March 2012, the Commission published 'In Defence of Dignity', an investigation report on care homes. The report was welcomed across all sectors in NI and received the endorsement of the UN Deputy High Commissioner on Human Rights (See page 23).

Following publication of the Commission's report, the Minister for Health, Social Services and Public Safety responded positively, inviting the Commission to advise a newly appointed working group which has been charged with updating the Minimum Standards for Nursing Homes. Additionally, it has been agreed that the Commission will provide training for staff of the Regulation and Quality Improvement Authority to ensure that standard setting and inspection promote and protect human rights.

¹³⁹ See NIHRC, Response to the Northern Ireland Executive's Draft Programme for Government 2011-2015, February 2012.

¹⁴⁰ OFMdfM, Social Investment Fund: Consultation Document, September 2011.

¹⁴¹ NIHRC, Response to Consultation on the Social Investment Fund, December 2011.

¹⁴² DHSSPS, Review of the Provision of Health and Social Care services in Northern Ireland, December 2011, pp. 63 and 70, and proposal 13. The Commission notes the Review's proposals to increase independent sector involvement in the provision of health and social care, in particular through the provision of intermediate care, such as step-up/step-down beds and short-term support and through expanded support for persons with long-term conditions.

¹⁴³ NIHRC, Advice on 'Transforming Your Care: A Review of Health and Social care in Northern Ireland', June 2012.

Role of the private sector in the provision of health care

The role of the independent sector in the provision of health care has increased significantly in recent years, with involvement by both non-profit and commercial companies. The Review of Health and Social Care, completed in 2011, included a recommendation that the role of the independent sector be increased.¹⁴⁴ The Commission has advised that the growth of an independent sector in the provision of health care should not lead to a dilution in human rights protections.¹⁴⁵ The ICESCR has similarly recommended that:

*States should take appropriate steps to ensure the private business sector and civil society are aware of, and consider the importance of, the right to health in pursuing their activities.*¹⁴⁶

The Health and Social Care Act 2008, section 145, requires that private care homes are accountable for breaches of the ECHR as provided for by HRA 1998, Sections 1 and 6.

In its investigation into care homes the Commission observed that, in circumstances where a residential home is fully financed privately, the provider is not bound by the HRA. It recommended that legislation be enacted to extend the definition of 'public function' for the purpose of the HRA to include the provision of accommodation together with nursing or personal care for all residents in care homes.

The Commission is pleased to note that other independent providers of health and social care, when funded by the State, are to be treated as accountable for any breach of the ECHR. This was made clear in 2012, when the Parliamentary Under-Secretary of State for Quality, Lord Howe stated:

*The Government's view is that all providers of publicly funded health and care services should indeed consider themselves bound by the [HRA 1998] and the duty. This is the position that we expect private and third sector providers to follow...*¹⁴⁷

Mental Capacity (Health, Finance and Welfare) Bill

Persons with mental health or capacity issues have a right to be recognised as a person before the law in accordance with the CRPD, Article 12. The decision making ability of persons with mental health or capacity problems should be respected at all times and decisions should only be taken on their behalf as a measure of last resort.

The Commission advised the officials from the DHSSPS responsible for drafting the Mental Capacity (Health, Finance and Welfare) Bill to develop robust mechanisms to ensure that substitute decision making occurs only in exceptional circumstances.

The Bill will presume that those above the age of 16 have capacity to make decisions. CRC recognises that a child is anyone below the age of 18. The Commission has advised Departmental officials of the need to ensure that children affected by the Bill have their views taken into account, in line with the CRC, Article 12, which obligates the Government to:

assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Further proposals are to be consulted upon in 2013.

¹⁴⁴ See Footnote 142.

¹⁴⁵ See Footnote 143.

¹⁴⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health (Art. 12), 11 August 2000, at para. 55.

¹⁴⁷ House of Lords, Debate on 13 March 2012, at column 238, concerning proposed amendment 292A to the Health and Social Care Bill 2012.

Right to education

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

Educational needs of Travellers

Members of the travelling community face significant challenges in respect of educational provision. A human rights analysis indicates that high levels of illiteracy make this group a priority concern.¹⁴⁸ The Commission has consistently advised the NI Executive of the need to provide appropriate educational services to members of the travelling community.¹⁴⁹

The Commission was a member of the Traveller Education Taskforce established by the Department of Education (DENI).¹⁵⁰ The Taskforce submitted wide ranging recommendations to improve educational access, attainment and outcomes for Traveller children to the Minister of Education in December 2011.¹⁵¹

The Advisory Committee on the FCNM in its 3rd Advisory Opinion called on the UK Government and NI Executive to adopt a resolute and comprehensive approach to the issue of traveller education.¹⁵² A public consultation on a draft 'Traveller Child in Education Action Framework' has been launched by the DENI.¹⁵³

Special Educational Needs

The NI Executive is required by the CRPD, Article 24, to ensure that children with intellectual impairments have access to an inclusive education system. To facilitate the principle of inclusion, the CRC Committee has recommended the education of disabled children in mainstream schools, and that where special schools or units are deemed necessary, these should be linked to local schools.¹⁵⁴

Proposals for the reform of special educational needs provision were agreed by the NI Executive in July 2012.¹⁵⁵ The Commission advised that the best interests of the child must be the primary consideration in developing these proposals.

It is proposed that the current system of granting statutory statements to children who meet the definition of special educational needs, contained within the Special Educational Needs and Disability (NI) Order 2005, will be replaced by a system of Co-ordinated Support Plans (CSP). CSPs will only be for those children who face complex or multiple barriers to learning which:

*significantly or adversely affect (or could reasonably be expected to affect) their educational development in the long term and who require frequent access to a diversity of multi-agency services external to the school.*¹⁵⁶

¹⁴⁸ High levels of illiteracy in the Traveller community mean that they are unlikely to be able to participate. Similarly, those for whom English is a second language will also be unable to put their views in writing and children are also disadvantaged in this regard.

¹⁴⁹ See, for instance, the response to the NI Executive's consultation on a draft Programme for Government, available at: <http://www.nihrc.org/documents/advice-to-government/2012/Response-to-programme-for-government-february-2012.pdf>.

¹⁵⁰ For a discussion of the role of the Traveller Education Taskforce, see: http://www.deni.gov.uk/taskforce_on_traveller_education.htm.

¹⁵¹ Department of Education Northern Ireland, Recommendations from the Taskforce on Traveller Education's report to the Department of Education, December 2011.

¹⁵² FCNM, Third Opinion on the United Kingdom, adopted on 30 June 2011, ACFC/OP/III (2011).

¹⁵³ Department of Education Northern Ireland, Draft Traveller Child In Education Action Framework Consultation, October 2012.

¹⁵⁴ UN Committee on the Rights of the Child, General Comment No. 9 on the rights of children with disabilities (27 February 2007), para. 66.

¹⁵⁵ Proposals were consulted upon by means of the DoE consultation document, Every School a Good School - The Way Forward for Special Educational Needs and Inclusion, 2009.

¹⁵⁶ Ibid.

These proposals are yet to be finalised. However, it is anticipated that the threshold for obtaining a CSP will be significantly higher than the current threshold for obtaining a statutory statement.

The Commission noted that the introduction of a new system would most likely result in a significant reduction in the number of pupils at mainstream schools who will have a statutory right to provision. The Commission advised that the best interests of the child should be prioritised over the need to save public funds.¹⁵⁷

The Commission has provided further advice to the Minister for Education regarding redress within the special educational needs system. The Commission highlighted the importance of ensuring that children have access to an effective remedy where an infringement of their right to an education may have taken place. The Commission analysed current mechanisms of redress within the education system and advised as to the requirements to ensure full compliance with the procedural right of access to justice.

Children in custody

In accordance with the emphasis that the CRC places on facilitating the rehabilitation of child offenders, the Commission has consistently advised of the importance of ensuring access to appropriate educational facilities for children in custody.¹⁵⁸

In NI, responsibility for the provision of education to children in custody rests with the Youth Justice Agency NI and not the DENI. Elsewhere in the UK, the Home Office Youth Crime Action Plan 2008 reallocated responsibility for delivery of education to children in detention from the prison service to the Department for Children, Schools and Families.¹⁵⁹

The position in NI has potential adverse implications for child offenders who do not have access to the full curriculum. The Commission has advised that the position in NI must be brought into conformity with practice elsewhere in UK so as to ensure the right to an effective education.

The right to participate in the cultural life of the community

ICCPR	Article 27	CRC	Article 31
ICESCR	Article 15	FCNM	Article 5
CEDAW	Article 13 (c)	CRPD	Article 30
European Charter for Regional or Minority Languages			

¹⁵⁷ See NIHRC, Response to Department of Education Policy Proposals Consultation document: The Way Forward for Special Educational Needs and Inclusion, November 2009.

¹⁵⁸ See NIHRC, Advice to the Office of the First Minister and Deputy First Minister on the recommendations made to the UK during the second cycle of the Universal Periodic Review, August 2012.

¹⁵⁹ 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.

The Irish language and Ulster Scots

The Commission has consistently highlighted the need to ensure adequate legal protection for the Irish language and for Ulster Scots.¹⁶⁰ The European Charter for Regional or Minority Languages is designed to protect and promote regional and minority languages. In addition, as a signatory to the FCNM, the UK Government and NI Executive is obligated by Article 5 to:

promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Legislation and the development of public policies are considered necessary to protect the identity and culture of Irish language speakers. In its third opinion on the UK's compliance, the Advisory Committee on the FCNM identified the protection and promotion of the Irish language as requiring immediate action. The Committee recommended that the UK Government and NI Executive:

*develop comprehensive legislation on the Irish language in NI and take resolute measures to protect and implement more effectively the language rights of persons belonging to the Irish-speaking community.*¹⁶¹

The Committee of Experts (COMEX) for the European Charter for Regional or Minority Languages (the Charter), during both its second and third evaluation reports on the UK, concluded that 'each regional or minority language should be protected and promoted according to its own situation'.¹⁶²

In 2012 the Department of Culture, Arts and Leisure (DCAL) issued separate consultation papers in respect of strategies to promote and enhance the Irish language and Ulster Scots. Each consultation document refers to the UK's obligations under the Charter with respect to the Irish language and Ulster Scots. The Commission is advising the DCAL on specific actions that are required in the light of the findings of the Advisory Committee and Comex to ensure that speakers of the Irish language and Ulster Scots are able to fully exercise their cultural and linguistic rights.

¹⁶⁰ See NIHRC, *Minority Language Rights - The Irish language and Ulster Scots: Briefing paper on the implications of the European Charter for Regional or Minority Languages, European Convention on Human Rights and other instruments*, June 2010.

¹⁶¹ FCNM, *Third Opinion on the United Kingdom*, adopted on 30 June 2011, ACFC/OP/III (2011), *Issues for Immediate Action*. Pg 43

¹⁶² Council of Europe, *Application of the Charter in the United Kingdom*, ECRML (2007) 2, para. 32; Committee of Ministers, *Application of the Charter in the United Kingdom*, 3rd Monitoring Cycle, ECRML (2010) 4, para. 17.

Constitutional Protections

A Bill of Rights for Northern Ireland

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. On receipt of our advice in 2008 the NI Office sought views from the public by way of a public consultation.¹⁶³ In December 2010 Hugo Swire MP, then Minister of State, reported that there was:

*considerable support from human rights and community groups for a wide-ranging Bill of Rights along the lines of that recommended by the NI Human Rights Commission.*¹⁶⁴

Support for the introduction of a Bill of Rights for NI has not led to the publication of any significant proposals. The Commission continues to encourage debate and discussion on a Bill of Rights for NI. The establishment of a Bill of Rights for NI would be a significant step in developing a culture of rights within the jurisdiction.

During 2012 the Commission published 'Is that Right? Fact and Fiction on a Bill of Rights',¹⁶⁵ which was distributed to all key stakeholders and generated discussion in the media and among elected representatives.

Commenting the Chief Commissioner said:

*The Bill of Rights is unfinished business. There are many issues such as dealing with the past and promoting good community relations to which a Bill would make a crucial contribution. This potential was recognised in 1998 by the architects of the peace process. Not having a bill of rights denies the people of NI an important tool for making progress to a shared and better future for all. The onus is now on the Government to take the necessary steps to ensure that a Bill will be adopted. To avoid that responsibility would be to renege on one of the most important provisions of the Belfast (Good Friday) Agreement.*¹⁶⁶

A UK Bill of Rights

In March 2011 the UK Government established an independent Commission (ICBR) on a UK Bill of Rights. The Terms of Reference for the ICBR include the mandate to:

*investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extend our liberties.*¹⁶⁷

An advisory panel was established to provide the ICBR with advice and expertise on issues arising in relation to Scotland, Wales and NI. It is disappointing that the NI Executive failed to make any nominations to the Advisory Panel. The Commission expressed its concern on this failure throughout 2011 and 2012 to the ICBR, the OFMdfM, members of the NI Legislative Assembly, the Secretary of State for NI, and the NI Office.

¹⁶³ Northern Ireland Office, Consultation Paper: A Bill of Rights for Northern Ireland: Next Steps, November 2009.

¹⁶⁴ Minister of State Hugo Swire MP, Written Ministerial Statement to Parliament, 16 December 2010.

¹⁶⁵ At: <http://www.nihrc.org/documents/bill%20of%20rights/83554%20Bill%20of%20Rights%20Publication%202012%20Strictly%20Embargoed%20until%206%20September%202012.pdf>.

¹⁶⁶ See NIHRC, press archive, 6 September 2011. At: <http://www.nihrc.org/index.php/news?start=8>.

¹⁶⁷ For information on the role of the Commission, see: <http://www.justice.gov.uk/about/cbr>.

The Commission has engaged in debate on a possible Bill of Rights for the UK. While holding the view that the current HRA remains fit for purpose, it has, for example, pointed to the potential for increased protections by giving further domestic effect to socio-economic rights.¹⁶⁸ The Commission, alongside the Scottish Human Rights Commission and the Equality and Human Rights Commission, has also advised 'that the UK should retain its obligations under the European Convention on Human Rights in the form of the Human Rights Act 1998'.¹⁶⁹

A Charter of Rights for the Island of Ireland

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

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

This task was completed on 27 June 2011 when the Commissions together presented advice to the Governments of the UK and the Republic of Ireland, the Speaker of the NI Assembly and the Ceann Comhairle of Dáil Éireann. The Speaker and Ceann Comhairle both agreed to forward the advice to political parties in their respective legislative bodies for further consideration. In 2012 the Commission noted the establishment of the North-South Parliamentary Forum. It is hoped that the Forum will consider the Commissions' advice on a proposed Charter of Rights for the island of Ireland as part of its work plan.

¹⁶⁸ Commission on a Bill of Rights, A Second Consultation, July 2012, p.2. At: <http://www.justice.gov.uk/downloads/about/cbr/second-consultation/cbr-second-consultation.pdf>.

¹⁶⁹ NIHRC, 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, pp.1-2. At: <http://www.nihrc.org/index.php/publications/treaty-and-international-work/item/602-submission-to-un-human-rights-council-universal-periodic-review-of-uk>.

Appendices

The appendices present relevant extracts from the findings of international human rights monitoring bodies that have examined UK Government and NI Executive compliance with international human rights obligations during 2012. It contains extracts from:

- recommendations of the UN Human Rights Council emerging from the UPR;
- findings of the Group of Experts on Action against Trafficking in Human Beings on compliance with the Convention on Action against Trafficking in Human Beings;
- findings of the Advisory Committee on the FCNM relating to UK compliance;
- findings from the European Committee of Social Rights relating to the UK's compliance with the European Social Charter.

Appendix A – Universal Periodic Review

In September 2012 Lord McNally attended the UN Human Rights Council plenary session and responded to recommendations raised during the UPR process, identifying those which the UK accepts, rejects or accepts in part.

In this section recommendations are recorded and grouped by area of interest.

Protections for women

Continue efforts in the promotion of women's rights. (Indonesia, 110.40) [Accepted by UK]

Give priority attention to the questions of gender equality and discrimination against women. (Uzbekistan 110.52) [Accepted by UK]

Consider incorporating the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, otherwise known as the 'Bangkok Rules' as part of its policy on the treatment of women prisoners. (Thailand 110.88) [Accepted by UK]

Continue efforts to combat discrimination on any ground and violence against women and girls. (Cuba 110.51) [Accepted by UK]

Ethnic profiling

Take further steps to address ethnic profiling in practice. (Greece 110.54) [Rejected by UK]

Revise the policies that involve racial and ethnic profiling such as 'stop and search' practice. (Brazil 110.55) [Rejected by UK]

Investigate allegations that stop and search orders disproportionately fall on persons belonging to ethnic, religious and other minorities and introduce adequate safeguards in this regard. (Austria 110.56) [Accepted by UK]

That the law enforcement authorities put an end to stop and search practices based on religious and ethnic profiling. (Pakistan 110.57) [Rejected by UK]

Prison overcrowding

Take measures to reduce prison overcrowding and improve conditions for detainees. (Russian Federation 110.86) [Accepted by UK]

Take concrete steps to further reduce overcrowding of prisons... (Austria 110.87) [Accepted by UK]

Juvenile offending

Take concrete steps to further reduce overcrowding of prisons, including through the increased application of alternative sentencing for juvenile offenders. (Austria 110.87) [Accepted by UK]

...[R]efrain from the practice of keeping children in custody. (Belarus 110.94) [Rejected by UK]

Corporal punishment

Reconsider its position about the continued legality of corporal punishment of children. (Sweden 110.78) [Rejected by UK]

Take measures to ensure the freedom of children from physical punishment in accordance with the Convention on the Rights of the Child. (Norway 110.79) [Rejected by UK]

Introduce a ban on all corporal punishment of children as recommended by the CRC and other treaty bodies. (Finland 110.80) [Rejected by UK]

Age of criminal responsibility

Consider the possibility of raising the minimum criminal age... (Belarus 110.94) [Rejected by UK]

Consider the possibility of raising the age of criminal responsibility for minors. (Chile 110.95) [Rejected by UK]

Education

Adopt a strategy so that children of vulnerable groups are not excluded from the education system. (Costa Rica 110.106) [Accepted by UK]

Termination of pregnancy

Ensure by legislative and other measures that women in NI are entitled to safe and legal abortion on an equal basis with women living in other parts of the UK. (Finland 110.77) [Rejected by UK]

Migrants

Strengthen governmental measures to guarantee the effective implementation of the human rights of migrants in accordance with the existing international instruments in this area. (Paraguay 110.108) [Accepted by UK]

Strengthen national and local policies and measures to protect migrants, especially foreign workers. (Vietnam 110.110) [Accepted by UK]

Hate crime

Implement ECRI's recommendation to continue to monitor hate crimes and to work with the community to increase understanding of the impact of such offences, and to pursue efforts to improve the police gathering of evidence of racist motivations. (Turkey 110.60) [Accepted by UK]

Take more effective measures to ensure that the perpetrators of acts of discrimination, hate crimes and xenophobia are adequately deterred and sanctioned. (Malaysia 110.90) [Accepted by UK]

Strengthen data collection and maintain disaggregated data to better understand the scale and severity of hate crimes towards women, immigrants, religious minorities, persons with disabilities, and children. (United States of America 110.91) [Accepted by UK]

Equality

Develop appropriate policies and targeted measures in ensuring genuine equality in accordance with the recommendation of the Committee on Economic, Social and Cultural Rights. (Uzbekistan 110.39) [Accepted by UK]

Review national legislation to ensure equality and non-discrimination. (Egypt 110.49) [Accepted by UK]

Continue stepping up its efforts in tackling discrimination and inequality for all its citizens. (Indonesia 110.50) [Accepted by UK]

Strengthen measures aimed at reducing serious inequalities in access to health, education and employment, which still exist despite the adoption of the Equality Act. (Spain 110.102) [Rejected by UK]

Trafficking in human beings

Increase efforts to combat trafficking in persons, particularly to protect women and children. (Spain 110.72.) [Accepted by UK]

Continue making progress in applying the strategy on trafficking in persons adopted in July 2011. (Colombia 110.73) [Accepted by UK]

Implement the EU Directive on trafficking in human beings by April 2013... (Australia 110.74) [Accepted by UK]

Standardize anti-trafficking responses across the UK insofar as possible given the devolution of law enforcement powers, and appoint a rapporteur in each devolved authority to make critical assessments and improve the UK's overall anti-trafficking response. (United States of America 110.75) [Accepted by UK]

Appendix B – Convention on action against trafficking in human beings

The first report of GRETA in relation to the UK was published in September 2012. A list of the report's proposals is provided below.

1. GRETA considers that the competent authorities should address the consequences of having numerous pieces of legislation on THB and ensure that all types of THB are included and applied in full conformity with the Council of Europe Convention. In this context, GRETA considers that a dedicated legislation on human trafficking would provide legal status to victims of trafficking, including the right to a recovery and reflection period, as well as other provisions of the Convention which reflect the human rights-based approach to action against trafficking.
2. GRETA urges the competent authorities to ensure that all victims of trafficking for the purpose of sexual or any other type of exploitation who are under 18 years of age are to be considered as child victims of trafficking within the meaning of Article 4 of the Convention.
3. As regards Scotland, GRETA considers that the Scottish authorities should expand the scope of trafficking for the purpose of sexual exploitation to cover all the activities included in the Sexual Offences (Scotland) 2009 Act.
4. GRETA urges the British authorities to revisit the guidance given to Competent Authorities on so-called 'distant in time/historic claims', with a view to ensuring that all persons subject to THB are identified as victims of trafficking and have access to the measures included in Articles 11, 12, 13, 14, 15, 16, 26 and 28 of the Convention regardless of what the immediate assistance needs of such victims may be.

Comprehensive approach and co-ordination

5. GRETA considers that the authorities should involve additional relevant bodies in the consultation on and assessment of anti-trafficking action, such as the Gangmasters Licensing Authority, the Children's Commissioners for England, NI, Scotland and Wales, and the Anti-Trafficking Co-ordinator for Wales.
6. In addition, GRETA invites the British authorities to carry out an independent mid-term evaluation of the Human Trafficking Strategy in order to assess the implementation and impact of the actions planned, and consider whether any adjustments are necessary.
7. In order to ensure that action to combat THB is comprehensive, GRETA considers that the British authorities should:
 - increase efforts to prevent and detect THB within the UK and of British nationals abroad;
 - step up action to combat THB for the purpose of labour exploitation, in particular in domestic service, care, hospitality, agricultural, fisheries and construction sectors, including through extending the scope of action of the GLA;
 - pay increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking;
 - consider the return of victims of trafficking as an integral part of anti-trafficking policy which is critical to achieve a comprehensive framework for the protection of victims and their rehabilitation.

8. Further, GRETA considers that the British authorities should keep under scrutiny, together with NGOs, the new overseas domestic worker system to ensure that it does not increase trafficking of overseas domestic workers.

Training of relevant professionals

9. GRETA invites the competent authorities to continue ensuring that all relevant staff, including those working in NGOs contracted to provide assistance to victims of trafficking, are trained periodically in order to improve the detection of potential victims of trafficking, the formal identification of victims and the provision of assistance to them. Such training should be provided to law enforcement officers, immigration officials, staff working in immigration removal centres, staff working in shelters for victims of trafficking, local authorities staff, diplomatic and consular staff, health professionals, social workers and labour inspectors.
10. Further, GRETA invites the competent authorities to step up the training provided to prosecutors and judges on the issue of THB and the applicable legislation and case-law, by stressing the importance of applying a human rights-based approach on the basis of the Council of Europe Convention and the case-law of the ECtHR on Human Rights.

Data collection and research

11. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking legislation and policy, the British authorities as well as the authorities of the constituent UK countries, should continue developing a comprehensive and coherent data collection system on trafficking in human beings by compiling statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.
12. In addition, GRETA invites the British authorities to continue conducting and supporting research on trafficking-related issues as an important source of information for future policy measures. Areas where additional research is needed include internal trafficking in the UK and trafficking for the purpose of labour exploitation and domestic servitude, including in diplomatic households. It is also important to study the reasons why potential victims of trafficking refuse to enter the NRM and what could be done to discourage demand for the services of trafficked people.

International co-operation

13. GRETA invites the British authorities to continue developing the aspect of international co-operation with a view to preventing THB, assisting victims of trafficking, ensuring victims' safe return, and prosecuting offenders, including through exploring further possibilities for co-operation with governmental and non-governmental actors in countries of origin and transit.

Measures to raise awareness

14. GRETA considers that the competent authorities should plan future information and awareness-raising campaigns with the involvement of civil society and on the basis of previous research and impact assessment. More should be done to raise awareness of internal trafficking and the risks of trafficking of British nationals abroad, with a special emphasis on trafficking in children. More attention should also be paid to raising awareness of the risks of trafficking in men.

15. Further, GRETA invites the British authorities to continue contributing to awareness-raising prevention activities in the main countries of origin of victims of trafficking in the UK.

Measures to discourage demand

16. In addition to continuing efforts to discourage demand for sexual services, GRETA considers that the British authorities should step up their efforts to discourage demand for the services of trafficked persons for the purpose of domestic servitude and for labour exploitation, including in the agriculture, fisheries, construction, hospitality and cleaning sectors, inter alia, through strengthening the role of labour inspections.

Social, economic and other initiatives for groups vulnerable to THB

17. GRETA considers that the British authorities should take steps to address the vulnerability to trafficking of adults and children from disadvantaged groups in the UK through targeted social, economic and other initiatives, and to secure funding for such initiatives.

Border measures to prevent THB and measures to enable legal migration

18. GRETA considers that the British authorities should step up their efforts to detect potential victims of trafficking at borders and provide written information to foreign nationals planning to travel to the UK in a language that they can understand, in order to alert them about the risks of THB for sexual and labour exploitation and domestic servitude, inform them of where they can go for help and advice, and provide them with information on their rights.

Identification of victims of trafficking

19. GRETA considers that the British authorities should take further steps to secure that all victims of trafficking are properly identified and can benefit from all the assistance and protection measures contained in the Convention. To this end, the British authorities should continue to review the identification procedure and decision making process under the NRM in the light of experience gathered since its inception, analysis of NRM data and research.
20. As part of the review of the NRM, GRETA considers that the British authorities should:
- expand the list of First Responders by including more civil society organisations as well as agencies responsible for employment standards inspections, regulating domestic work and making licensing decisions;
 - entrust the identification of victims of trafficking who are illegally present in the UK to persons who are not involved in the asylum seeking procedure of the applicant, to avoid conflicts in the decision making;
 - ensure that the guidance, toolkits and criteria used for the identification of victims of trafficking by frontline staff are harmonised and that application is rigorously monitored;
 - review current practice as regards reconsidering identification decisions when new information is available;
 - improve the identification of victims of trafficking in detention centres, by giving access to such centres to specialised NGOs and enabling detained irregular migrants to have access to legal assistance;

- pursue a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation by encouraging regular and co-ordinated multi-agency inspections by organisations responsible for regulating employment, health and safety in sectors most at risk;
- ensure that following a positive reasonable grounds decision, potential victims of trafficking are speedily removed from detention and offered assistance and protection as provided in the Convention.

21. Further, GRETA invites the British authorities to:

- further develop multi-agency training for frontline staff, First Responders and Competent Authorities on the identification of victims and their protection;
- ensure that there is a regular exchange of information to enhance anti-trafficking practice across partner agencies;
- commission an independent review of the NRM.

Special provisions in the context of the identification of child victims of trafficking

22. GRETA urges the British authorities to take further steps to improve the identification of child victims of trafficking, and in particular to:

- enhance the involvement of local authorities in the decision making process in order to ensure that the special needs and circumstances of children are taken into account during identification; in this context, it would be appropriate that Local Children Safeguarding Boards (Health and Social Care Trusts in NI) act as the Competent Authority in child cases;
- ensure that unaccompanied children are not returned from entry points before being fully assessed by local authority children's services;
- conduct interviews with child victims of trafficking in a child-friendly setting;
- train all professionals working with child victims of trafficking to recognise and respond appropriately to their needs;
- ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian.

23. Further, GRETA urges the British authorities to take steps to address the problem of children going missing from local authority care, by providing suitable safe accommodation and adequately trained supervisors or foster parents.

24. GRETA also invites the British authorities to uphold their commitment to end child detention for immigration purposes and seek alternatives to detention, in line with the best interest of the child.

25. In addition, GRETA invites the British authorities to ensure full compliance with Article 10(3) of the Convention concerning age verification.

Assistance to victims of trafficking

26. GRETA considers that the authorities of the UK and the constituent countries should make further efforts to ensure that all potential and actual victims of trafficking are provided with adequate support and assistance from their identification through to their recovery. This should involve, in particular:

- adopting clear support service minimum standards for victims of trafficking and the provision of adequate funding to maintain them;
- ensuring that all children victims of trafficking benefit from the assistance measures provided for under the Convention, including appropriate accommodation and access to education (as regards accommodation for children, see paragraph 248);
- enabling victims of trafficking to have access to the labour market, vocational training and education as a form of rehabilitation;
- ensuring that victims of trafficking who need it can benefit from translation and interpretation services;
- improving the provision of legal advice or assistance to victims on various matters (NRM, asylum criminal proceedings, compensation).

27. GRETA invites the British authorities to enshrine in law the right to a recovery and reflection period and to emphasise to Competent Authorities officials the need to respect this period as defined in the Convention. Potential victims of trafficking should be systematically informed of the implications of this period, in line with Article 13 of the Convention.

Residence permits

28. GRETA invites the British authorities to further sensitise law enforcement agencies of the possibility to request temporary residence permits for victims of trafficking who co-operate in the investigation or criminal proceedings.

Compensation and legal redress

29. GRETA considers that the British authorities should adopt measures to facilitate and guarantee access to compensation for victims of trafficking, and in particular to:

- ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;
- ensure that all victims of trafficking are eligible for compensation under the existing compensation scheme;
- enable victims of trafficking to exercise their right to compensation by ensuring their effective access to legal aid;
- encourage prosecutors to request compensation orders to the largest possible extent;
- enable victims of trafficking who have left the UK to benefit from the possibilities to claim compensation.

30. Further, GRETA invites the British authorities to introduce a system for registration of compensation claims and awards to victims of trafficking regarding all forms of compensation.

Repatriation and return of victims of trafficking

31. GRETA urges the British authorities to review the appropriateness of existing assisted voluntary return programmes for victims of trafficking as a specific category and to adopt a clear legal and policy framework for the return of trafficked persons. In this context, the British authorities should take steps to:
- ensure that the return of victims of trafficking is conducted with due regard for the rights, safety and dignity of the person and the status of legal proceedings; this implies protection from retaliation and re-trafficking;
 - encourage Refugee Action to co-operate closely with support providers with a view to ensuring end-to-end services for victims of trafficking;
 - make efforts to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return of victims, as well as their effective reintegration.

Non-punishment of victims of trafficking

32. GRETA urges the British authorities to step up their efforts to adopt a victim-centred approach when implementing Article 26 of the Convention by:
- encouraging prosecution services to consider THB as a serious violation of human rights when assessing the public interest of prosecuting identified victims of trafficking;
 - ensuring that CPS, COPFS and ACPO guidance are fully applied in order to prevent imposing penalties on identified victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so;
 - ensuring that, while the identification procedure is ongoing, potential victims of trafficking are not punished for immigration-related offences;
 - conducting age assessments promptly and applying the benefit of the doubt as regards the age of child victims of trafficking who were compelled to be involved in unlawful activities.

Investigation, prosecution and procedural law

33. GRETA calls on the Public Prosecution Service to promptly issue guidance on THB offences in NI.
34. GRETA considers that the competent authorities should:
- continue efforts to train law enforcement officials to detect cases of THB and to step up proactive investigations, including through co-operation between the police, UKBA and other relevant actors and the setting up of more units of specialised investigators;
 - review the enforcement system for labour regulations and standards in the UK and address training and other relevant needs to increase detection and investigation of THB for labour exploitation, forced labour and domestic servitude across the UK;
 - encourage the prosecution services in each UK country to develop their specialism in THB with a view to improving the collection of sufficient evidence to successfully prosecute more traffickers.

Protection of victims and witnesses

35. GRETA urges the competent authorities to:

- step up efforts to protect victims and to prevent intimidation during the investigation and during and after the court proceedings, including measures to protect their private life and safety. In this context, the British authorities should take additional measures to ensure that victims of trafficking are adequately informed and assisted during the pre-trial and court proceedings;
- address the gap in victim protection at Employment Tribunals for victims of trafficking for the purpose of labour exploitation.

Appendix C – Framework Convention on National Minorities

In 2012 the Advisory Committee on the FCNM continued to analyse the UK's state report. The UK submitted comments on the Advisory Committee's initial opinion the conclusions of which are listed below.

Issues for immediate action

- Take measures to ensure that budgetary cuts are kept at a minimum and do not have a disproportionately negative impact on the situation of persons belonging to minority ethnic communities, by means of impact assessments of ongoing and planned cuts and careful monitoring.
- Take more vigorous measures to meet the accommodation needs of Gypsies and Travellers; increase the delivery of sites, including by improving the coordination of the different levels of authorities involved in sites delivery; ensure that local authorities comply with their responsibilities in sites delivery and find adequate solutions to the accommodation needs of Gypsies and Travellers.
- Develop comprehensive legislation on the Irish language in NI.
- Take resolute measures to protect and implement more effectively the language rights of persons belonging to the Irish-speaking community.

Further recommendations

- Promote the full and effective implementation of the new Equality Act, as well as monitoring of its implementation and continue to implement strategies to combat discrimination and promote equality in all areas of life; ensure that the Equality and Human Rights Commission (England?) has all the necessary resources to carry out its functions effectively and independently.
- Step up efforts to adopt a comprehensive and human rights-based antidiscrimination and equality legislation for NI.
- Take measures to ensure that the granting of planning permission and development of caravan sites are done in a way that duly takes into account the specific needs of Gypsies and Travellers, by means of effective consultation with their representatives.
- Take more resolute measures to combat the instigation and dissemination of prejudices and intolerance through the media and in the political arena; take further steps to combat Islamophobia and other manifestation of racism and intolerance; continue to pursue a proactive approach in combating hate crime.
- Ensure that 'stop and search' powers are exercised in a reasonable and non-discriminatory manner, including at all border crossings, ports and airports.
- Continue to design and implement measures to encourage speakers of minority languages to use their language in the public sphere and in relations with local administrative authorities.

- Continue to support, including financially, projects and measures tackling difficulties faced by Gypsy, Traveller and Roma pupils at school; develop more comprehensive and culturally-sensitive approaches to their education, in close cooperation with representatives of the groups concerned.
- Establish consultative mechanisms to develop communication between the authorities and representatives of national minorities on a regular basis, with a view to developing their effective and regular engagement in policy-making; continue promoting increased participation of persons belonging to minority ethnic communities in public services, particularly in the police and the judiciary.

Appendix D – European Social Charter

In 2012 the European Committee of Social Rights reported on the UK's compliance with the European Social Charter. The main conclusions are listed below:

- The Committee concludes that the situation is not in conformity with Article 7(5) of the 1961 Charter on the ground that the minimum wages of young workers between 15 and 17 are not fair.
- The Committee concludes that the situation in the UK is not in conformity with Article 7(10) of the 1961 Charter on the ground that children who are victims of sexual exploitation may be prosecuted.
- The Committee concludes that the situation in the UK is not in conformity with Article 8(1) of the Charter of 1961 on the ground that the standard rates of Statutory Maternity Pay (SMP), after six weeks, and Maternity Allowance (MA) are inadequate.
- The Committee concludes that the situation in the UK is not in conformity with Article 16 of the 1961 Charter on the ground that the right of Gypsy/Traveller families to housing is not effectively guaranteed.
- The Committee concludes that the situation in UK is not in conformity with Article 17 of the Charter of 1961 on the grounds that:
 - not all forms of corporal punishment are prohibited in the home;
 - the age of criminal responsibility is manifestly low.
- The Committee concludes that the situation in the United-Kingdom is not in conformity with Article 19(4) of the 1961 Charter, on the ground that it has not been established that migrant workers enjoy treatment which is not less favourable than that of nationals with respect to: a) remuneration, employment and other working conditions; b) membership of trade unions, enjoyment of the benefits of collective bargaining.
- The Committee concludes that the situation in the UK is not in conformity with Article 19(8) of the 1961 Charter on the ground that family members of a migrant worker who are nationals of Contracting Parties that are not members of the EEA or EU, as well as children of a migrant worker who are nationals of EU member states or parties to the EEA but are aged under 17 years of age, are liable to be expelled following a migrant worker's deportation.
- The Committee concludes that the situation in the UK is not in conformity with Article 19(10) of the 1961 Charter on the same grounds for which it is not in conformity with paragraphs 4 and 8 of the same Article.

Northern Ireland Human Rights Commission

Temple Court

39 North Street

Belfast BT1 1NA

Tel: (028) 9024 3987

Fax: (028) 9024 7844

Textphone: (028) 9024 9066

SMS Text: 07786 202075

Email: information@nihrc.org

Website: www.nihrc.org

Protecting and promoting your rights

2012

ISBN 978-1-909532-08-3



9 781909 532083