



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the Advisory Committee on the Framework
Convention for the protection of National Minorities**

**Parallel Report to the Advisory Committee on the Fourth
Monitoring Report of the United Kingdom**

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Executive Summary

The Northern Ireland Human Rights Commission (NIHRC) NIHRC is one of the three A status National Human Rights Institutions in the United Kingdom (UK). In accordance with the UN Paris Principles the NIHRC reviews the adequacy and effectiveness of measures undertaken by the UK Government and NI Executive to promote and protect human rights, specifically within Northern Ireland (NI).

With respect to the UK's Fourth Periodic Report on compliance with the Framework Convention for the Protection of National Minorities, the Advisory Committee may wish to ask the State party:

- what steps it is taking to ensure that OFMDFM is consistently engaged at the earliest possible stage in the reporting process;
- how it will ensure the NIHRC has a stable and sufficient budget in order to discharge its functions independently and effectively, and maintain its accreditation status;
- how the commitments within NI's peace agreements will be ensured if the Human Rights Act 1998 is repealed and replaced by a British Bill of Rights;
- how it intends to work towards developing a consensus among the political parties on a Bill of Rights and meet its obligation emerging from the Belfast (Good Friday) Agreement to implement a Bill of Rights for NI;
- about the impact a UK exit from the EU will have on the domestic law which gives effect to the FCNM;
- about ensuring that ethnic monitoring be consistently integrated into the practices of all relevant departments and agencies;
- about its last review of workforce monitoring and the basis for continuing with this practice;
- if it intends to review the exemption for teachers under the Fair Employment and Treatment (NI) Order 1998;
- what steps it will take to simplify and harmonise equality legislation in NI within a Single Equality Act and seek an update on the timeline for the review of the Race Relations Order 1997;
- what steps it will take to introduce a legal protection for multiple and intersectional discrimination in NI;
- for further information about the use of 'Operation Gull';
- on how they will ensure the early identification of victims of torture in immigration detention, on proposed reforms to Rule 35 of the Detention Centre Rules and on the introduction of rules governing short term holding facilities;
- about plans to monitor the impact of welfare reform on ethnic minorities, including migrants workers;
- what steps have been taken to ensure that asylum-seekers are not restricted in their access to the labour market while their claims for asylum are being processed;

- how it will ensure that the proposed changes to the law concerning failed asylum seekers and irregular migrants do not, as a consequence, lead to individuals falling into destitution;
- what plans are there to ensure long term planning and the continuation of the migrant crisis fund on a permanent basis in NI;
- for more information about the implementation of the Racial Equality Strategy, in particular the publication of a clear timetable and action plan for implementation;
- about its long term planning for the receipt of all refugees in NI;
- for an update on the development of the programme for Traveller specific schemes in NI and recommend the improvement of basic living conditions on serviced and halting sites in NI;
- what review has taken place of the Unauthorised Encampments (Northern Ireland) Order 2005 and what are the reasons for the legislation remaining in force in NI;
- how it will ensure that planning rules in NI take account of the specific needs of Travellers;
- what steps will be taken to amend legislation which requires the NI Housing Executive to obtain site licences from local councils;
- about proactively concentrating efforts to promote the development of shared social housing to improve community relations in NI;
- to report on implementation of the recommendations of the investigation and on compliance with Equality Scheme commitments in respect of housing policies in NI in the next periodic report;
- to collect robust equality data to assess and monitor inequalities in housing and to allow for evaluation of Government Department actions to address inequalities in NI;
- to monitor and review the operation of the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 to identify any barriers for asylum seekers and other groups, such as irregular migrant children in accessing healthcare;
- about the long term planning for the MEDF to ensure that the administration arrangements do not impact upon the groups accessing the fund;
- for further information from the State Party on the timetable for establishment of the new Commission on Flags, Identity, Culture and Tradition;
- what measures are being taken to progress the commitments under the Together Building a United Community Strategy, in particular the Equality and Good Relations Commission and a definition of sectarianism;

- for further information as to measures being taken to ensure that tolerance and intercultural dialogue are protected in the naming of public spaces;
- about its progress in protecting victims from hate crime, including working towards the full implementation of the NIHRC's investigation report;
- what steps are being taken to ensure that sectarian hate crime is effectively dealt with through the criminal justice system on an equivalent basis to other forms of hate crime;
- about the progress of the Irish Language Bill;
- about measures being taken to overcome the politicization of the language; and,
- how it will fulfil its obligations to promote the Irish language in the absence of political consensus in NI;
- to seek assurances from the DOJ in relation to their commitment to the repeal of the 1737 Act;
- to provide an update on the implementation of actions contained within the strategy on developing the Ulster Scots language, culture and heritage;
- what measures are being taken to overcome the politicisation of language issues in NI; and
- how it will fulfil its obligations to promote the use of all minority languages in street names and other topographical indicators in the absence of political consensus in NI;
- what measures have been put in place to monitor the impact of the Traveller Education Action Framework, including the effectiveness of the Traveller Education Support Service (TESS);
- what action it has taken to review Schedule 13 of the Education and Libraries Order with a view to supporting the attendance in school of Traveller children;
- if it intends to establish a Traveller Education Monitoring Group;
- what measures are being taken to monitor and address the difficulties faced by Roma children in education;
- to provide an update following the publication of the review of the planning, growth and development of integrated education due in June 2016;
- what mechanisms it will put in place to evaluate the effectiveness of recent developments in shared education in NI;
- to update on the implementation of the provisions of the Shared Education Bill;
- what measures are being taken to promote ethnic minority participation in social and economic life;
- to reaffirm the importance of the representation of ethnic minorities in the public sector and law enforcement and seek further information about specific measures being taken to address under-representation.

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Introduction

1. The Northern Ireland Human Rights Commission (NIHRC) is a statutory public body established in 1999¹ to promote and protect human rights. In accordance with the UN Paris Principles, the NIHRC reviews the adequacy and effectiveness of measures undertaken by the UK Government and NI Executive to promote and protect human rights, specifically within Northern Ireland (NI).²
2. The NIHRC is one of the three A status National Human Rights Institutions (NHRIs) in the United Kingdom (UK). The NIHRC's mandate extends to all matters relating to the protection and promotion of human rights in NI, both matters within the competence of the NI Assembly and those within the competence of the Westminster Parliament. This submission relates to the protection of human rights in NI.
3. As part of the NIHRC's engagement with the United Nations (UN) and Council of Europe treaty monitoring processes, it presents this submission regarding the UK's Fourth Report on the Framework Convention for the Protection of National Minorities (FCNM) to the Advisory Committee on the Framework Convention on National Minorities (Advisory Committee) in advance of its visit to Northern Ireland in March 2016.

Involvement of NI Executive in treaty reporting

4. The NIHRC advises the Advisory Committee that the Office of the First Minister and Deputy First Minister (OFMDFM) is the responsible department for matters concerning the response of the NI administration to external relationships,³ including the compliance and realisation of international human rights obligations through interaction with the UK Government.
5. The NIHRC notes that the Advisory Committee has previously commented on the lack of involvement of the NI authorities in the reporting process, which also led to a lack of involvement from NGOs and affected individuals.⁴ It appears from the UK State report for the fourth monitoring round that the NI Executive has not inputted into the process.

6. This issue is not unique to the FCNM, with the NI Executive also having limited involvement in other treaty reporting processes, to include reporting under the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵ and the European Charter for Regional and Minority Languages (ECRML).⁶
7. **The Advisory Committee may wish to ask the State party what steps it is taking to ensure that OFMDFM is consistently engaged at the earliest possible stage in the reporting process.**

Northern Ireland Human Rights Commission

8. The Advisory Committee previously raised concerns about the budget cuts faced by the NIHRC, noting that it “is an important part of the institutional architecture of the Belfast (Good Friday) Agreement”.⁷
9. Since the last monitoring round, the NIHRC has faced a number of cuts to its budget, in line with other government departments and agencies. In 2009/2010, the NIHRC’s cash budget was £1,702,000. The NIHRC’s budget for 2016/17 is to be £1,149,000 and this is to decrease by £25,000 each year until 2019-20, which is planned to be £1,075,000. This reduction is significantly less than the 40% cuts applied to some other government departments. However, over the past ten years, this amounts to an overall percentage reduction of 36.8%.
10. The NIHRC is currently seeking reaccreditation, as an A status institution, with the International Coordinating Committee of National Human Rights Institutions and the application raised concerns about the continuing cuts to its budget. The NIHRC has found it necessary to expend resources in mitigating the impact of these funding cuts by seeking other sources of funding. The UN Human Rights Committee, in its 2015 Concluding Observations on the UK, raised concerns that the budget cuts may undermine the fulfilment of the NIHRC’s mandated activities.⁸
11. **The Advisory Committee may wish to ask the State Party how it will ensure the NIHRC has a stable and sufficient budget in order to discharge its functions**

independently and effectively, and maintain its accreditation status.

Human Rights Act and proposed repeal

12. The Human Rights Act 1998 (HRA) remains the key mechanism in NI through which international human rights standards are incorporated. The HRA gives domestic effect to the European Convention on Human Rights (ECHR). The ECHR is the only international human rights treaty that has been given such domestic effect.
13. In the 2015 Queen's Speech, the UK Government set out its intention over the period of the current Parliament to "bring forward proposals for a [British] Bill of Rights to replace the [HRA]."⁹ According to the UK Government, "[t]his would reform and modernise our human rights legal framework and restore common sense to the application of human rights laws."¹⁰ To date, no substantive proposals have been published in relation to repeal.
14. The EU Justice Sub-Committee is currently conducting an Inquiry into the potential impact of repealing the HRA on EU Law. The Lord Chancellor and Secretary of State for Justice gave evidence to the Committee in February 2016 and indicated a number of the underlying reasons for seeking to repeal the HRA. These included the status of the jurisprudence of the European Court of Human Rights in domestic courts, the extra-territorial effect of human rights and, although the rights under the ECHR will be affirmed by a new Bill of Rights, the desire to be able to emphasise the importance of one right over another.¹¹

Relationship of Human Rights Act to NI peace agreements

15. The Belfast (Good Friday) Agreement was agreed in April 1998. It is a treaty between the UK and Ireland and is lodged at the UN. Therein, the UK Government outlined its intention to incorporate into NI the ECHR "with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule [NI] Assembly legislation on grounds of inconsistency".¹² The HRA, incorporating the ECHR, came into force in October 2000.

16. The subsequent St Andrews Agreement 2006 reaffirmed that human rights and equality are at the heart of the new dispensation in NI,¹³ and the recent Stormont House Agreement 2014 confirmed that future measures on parades and inquests will comply with the ECHR.¹⁴
17. As demonstrated, human rights protection and compliance has been the cornerstone of the Belfast (Good Friday) Agreement and subsequent agreements. Any attempt to dilute the role of the ECHR and the ECtHR jurisprudence within proposals to repeal the HRA and replace it with a British Bill of Rights would run counter to the Belfast (Good Friday) Agreement. The NIHRC believes that any legislative proposals should not undermine the commitments contained within the Belfast (Good Friday) Agreement.¹⁵
18. In June 2015, the NIHRC gave a joint briefing with the Irish Human Rights and Equality Commission (IHREC) to the 'Joint Oireachtas Committee on the Implementation of the Good Friday Agreement' in which both NHRIs raised concerns about the impact of the proposed repeal of the HRA on Northern Ireland's peace agreements.¹⁶
19. **The Advisory Committee may wish to ask the State Party how the commitments within NI's peace agreements will be ensured if the Human Rights Act 1998 is repealed and replaced by a British Bill of Rights.**

NI peace agreements and a 'Bill of Rights for NI'

20. In 2008, pursuant to its mandate under the Northern Ireland Act 1998, the NIHRC provided advice on a proposed Bill of Rights for NI to the UK Government.¹⁷ There has been little progress towards enacting legislation since the advice was submitted.
21. In 2003, the UK Government, stated that "[a] Northern Ireland Human Rights Commission has been established and has, among other tasks, undertaken significant work towards a Bill of Rights for Northern Ireland. At the conclusion of that process, and after consultation with the parties, the British Government is committed to bringing forward legislation at Westminster where required to give effect to rights supplementary to the ECHR to reflect the particular circumstances of Northern Ireland."¹⁸

22. In 2015, the UK Government informed the UN Human Rights Committee that it is "committed to progressing this issue on the basis of an overall consensus among the Northern Ireland parties."¹⁹ The Committee then recommended that the UK should "ensure that a Bill of Rights for Northern Ireland incorporates all the rights enshrined in the Covenant and expedite the process of its adoption".²⁰
23. The NIHRC informs the Advisory Committee that it has consistently stated that there is a lack of consensus among the political parties on the contents of and the introduction of a Bill of Rights for NI.
24. **The Advisory Committee may wish to ask the State party how it intends to work towards developing a consensus among the political parties on a Bill of Rights and meet its obligation emerging from the Belfast (Good Friday) Agreement to implement a Bill of Rights for NI.**

UK referendum on membership of the European Union

25. A referendum will be held on 23 June 2016 on whether the UK should remain in the European Union. A decision to leave the UK (termed Brexit) would mean that the EU Treaties would no longer be in force in the UK, including the Charter on Fundamental Rights and the relevant EU directives on race.
26. The question of a Brexit has been linked to proposals to repeal the Human Rights Act and a move away from recognising the European Court of Human Rights. While the EU and Council of Europe are separate entities, it calls into question the status of the relationship with the Council of Europe and its associated human rights mechanisms. It is unclear the full impact that a Brexit will have on human rights protections and the NIHRC would be concerned at any possible retrogression in protections.
27. **The Advisory Committee may wish to ask the State Party about the impact a UK exit from the EU will have on the domestic law which gives effect to the FCNM.**

Article 3: National Minorities

Scope of application

28. The UK has previously indicated it ratified the FCNM on the understanding that it would be applied with reference to "racial groups" within the meaning of Section 3(1) of the Race Relations Act 1976, which is to say any groups defined by "colour, race, nationality or national or ethnic origins". The Equality Act 2000 has since replaced this legislation and the UK has also extended coverage of the FCNM to the Cornish.²¹
29. The definition of 'racial groups' in Northern Ireland falls under the Race Relations (NI) Order 1997 which includes members of the Irish Traveller community.²² This is further discussed in sections below.

Data collection

30. The most recent census in the UK was carried out in 2011 and so the numbers may be substantially different in 2016. In a change to the previous census, it included questions about 'national identity' in addition to 'ethnic group'. There was an agreement that the questions of the census be harmonised across the jurisdictions of the UK, diverging only where necessary. Of the 43 questions that were asked, 33 were common across the UK. Of the ten, which differed in wording or possible responses, seven of these could be aggregated to provide UK statistics.²³
31. In NI, the 2011 Census recorded a usual population of 1,810,863 with 98.21% belonging to the ethnic group 'White'. Therefore, approximately 32,414 people identified as something other than white; the two largest groups being 'Chinese', at 0.35%, and 'Indian', at 0.34%. Of the other categories included, 0.07% belonged to the 'Irish Traveller' category.²⁴
32. In respect of the two largest ethnic groups in NI, the Census records these on the basis of religion and national identity. Under national identity, the 2011 census recorded 39.89% identified as 'British only', 25.26% as 'Irish only' and 20.94% as 'Northern Irish only'. Of the remaining 13.91%, these

identified as a combination of these identities.²⁵ Under religion or the religion brought up in, 45.14% identified as 'Catholic', 48.36% 'Protestant' and 5.59% as having 'no religion'.²⁶

33. NI has a growing Roma population but accurate numbers do not exist due to this not being a category included in the 2011 Census. The numbers were estimated at around 1500 in 2015.²⁷ The Romanian Roma Community Association Northern Ireland (RRCANI) is currently conducting a community mapping exercise that will be available towards the end of March 2016; however, this may not take account of other Roma populations such as the Slovak or Hungarian Roma in NI.
34. A common theme across the commentary in this submission is a lack of data and/or monitoring. One area of progress is the recently published Racial Equality Strategy which recognises the importance of ethnic monitoring and has committed government departments, in association with OFMDFM and the NI Statistics and Research Agency to examine where ethnic monitoring should be introduced and implement proposals.²⁸
35. **The Advisory Committee may wish to recommend to the State Party that ethnic monitoring be consistently integrated into the practices of all relevant departments and agencies.**

Self-identification

36. In previous monitoring cycles the Advisory Committee had noted that the possibility for employers to determine the community background of an employee, where no information was provided, was a restriction on the right to free self-identification.²⁹ As a consequence, regular reviews of workforce monitoring against the objective of securing equality were recommended.³⁰
37. This practice remains and is subject to monitoring by the Equality Commission for Northern Ireland (ECNI). In their 25th fair employment monitoring report,³¹ the ECNI noted that "Northern Ireland is a very different place now than when fair employment monitoring was introduced in 1990 – not just politically, but in the nature and makeup of the Northern

Ireland workplace. Despite these significant chances, the original purpose of the legislation - promoting and securing equality of opportunity and fair participation in employment for members of the Protestant and Roman Catholic communities within Northern Ireland - still has a value and relevance for Northern Ireland today."³²

38. **The Advisory Committee may wish to ask the State Party about its last review of workforce monitoring and the basis for continuing with this practice.**

Fair employment

39. Under the Fair Employment and Treatment (NI) Order 1998, there is an exemption which permits schools to use religion as a factor when selecting teaching staff; Article 71 of provides that the legislation does not apply to or in relation to a teacher in a school.
40. This issue was recently debated in the NI Assembly on 22 February 2016 following an attempt to table an amendment to remove the exemption through the Employment Bill.³³ A petition of concern was tabled meaning that the amendment would require cross community support. In a vote on 23 February, the amendment did not pass.³⁴
41. The NIHRC has previously called for an end to the present exception for the recruitment of teachers.³⁵ This is similar to the recommendation of the ECNI to remove the exemption for secondary schools.³⁶
42. **The Advisory Committee may wish to ask the State Party if it intends to review the exemption for teachers under the Fair Employment and Treatment (NI) Order 1998.**

Article 4(1): Equality/Equal Protection before the Law

Single Equality legislation

43. Despite the introduction of the Equality Act 2010 in the rest of the UK, NI still lacks a single legislative instrument to consolidate and clarify existing protections.³⁷ This is in spite of recommendations from the Advisory Committee in 2012³⁸ and a number of other UN treaty bodies.³⁹ To date, the NI Executive has not committed to single equality legislation, instead favouring a step-by-step approach.⁴⁰
44. The NI legislative framework is complex and made up of a number of pieces of legislation. In respect of race, the ECNI has raised specific concerns that the law in NI affords less protection against racial discrimination, harassment and victimisation than under the Equality Act in the rest of the UK.⁴¹ It notes that there is less protection on the grounds of colour and nationality as the Regulations introduced in NI to give effect to the Race Directive did not amend the Race Relations (NI) Order 1997 in respect of these grounds. This has led to, inter alia, the statutory definition of harassment and the prohibition on public bodies from discriminating on the grounds of race, ethnic or national origins when exercising their public functions not extending to colour and nationality.⁴²
45. The NIHRC notes that the UK Government indicated, in response to the CEDAW list of issues in 2013, that the OFMDFM “are undertaking a scoping of equality legislation to identify gaps in provision and how existing legislation would be harmonised, simplified and streamlined without any loss of the protections already available in law.”⁴³
46. The NIHRC notes that the recently published Racial Equality Strategy includes a review of the current Race Relations (NI) Order 1997; however, it is unclear when a detailed action plan or a timeline for the associated actions will be published.⁴⁴
47. As the NIHRC has also advised, in previous submissions, there is no specific provision for discrimination in respect of

language, despite the fact that language is protected under the ECHR, as incorporated by the Human Rights Act 1998.⁴⁵

48. **The Advisory Committee may wish to ask the State party what steps it will take to simplify and harmonise equality legislation in NI within a Single Equality Act and seek an update on the timeline for the review of the Race Relations (NI) Order 1997.**

Multiple Discrimination

49. NI discrimination law does not recognise intersectional multiple discrimination. Each ground of discrimination must be considered and adjudicated on separately, whether or not they may be linked.
50. The ECNI reports "clear evidence" that individuals experience multiple discrimination in NI.⁴⁶ For example, over a twelve-month period during 2013/14, the ECNI received 113 hybrid 'race' discrimination enquiries/applications.⁴⁷
51. The NIHRC notes that there is no commitment from the NI Executive to introduce legislation providing for intersectional multiple discrimination claims in NI.⁴⁸ In 2013, CEDAW made a specific recommendation that NI should recognise multiple discrimination.⁴⁹ The Advisory Committee previously noted that the inclusion of multiple discrimination in the UK's Equality Act was a "significant development".⁵⁰
52. **The Advisory Committee may wish to ask the State party what steps it will take to introduce legal protection against intersectional discrimination in NI.**

Operation Gull

53. The NIHRC previously raised concerns about the conduct of 'Operation Gull', a joint scheme run by Home Office Immigration Enforcement, the Police Service of Northern Ireland (PSNI) and Police Scotland, in its investigation report 'Our Hidden Borders'⁵¹ and its previous report to the Advisory Committee.⁵² Operation Gull is intended to "identify and arrest illegal immigrants transiting Northern Ireland ports, having attempted to abuse or facilitate abuse of the land border as a means of entering the UK and Ireland."⁵³

54. In 2009, the NIHRC recommended, in relation to Operation Gull, that "the practice of singling out particular nationalities and people visibly from a minority ethnic background should be ceased immediately".⁵⁴ However, the NIHRC remains concerned that this practice continues. Although no official statistics or information is published in relation to the scheme, the Organised Crime Task Force statistics indicate that it is still being used. In 2014/15, 468 people were detained under Operation Gull, including 30 who had been previously deported for criminal offences. These figures represent an increase of 20% from 2013/14.⁵⁵
55. **The Advisory Committee may wish to ask the State Party for further information about the use of 'Operation Gull'.**

Immigration facilities

56. The Immigration Detention Centre Rules make provision for the regulation and management of detention centres, providing for matters such as welfare and healthcare of immigration detainees.⁵⁶ Rule 35(3) places an obligation on a medical practitioner to report to the manager of the Centre any detained person who he/she is concerned may have been the victim of torture.
57. In 2013 the UN CAT Committee had recommended that the UK Government conduct an immediate independent review of the application of Rule 35 of the Detention Centre Rules in immigration detention, in line with the Home Affairs Committee's recommendation and ensure that similar rules apply to short term holding facilities.⁵⁷ In March 2015, the report of a Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration into immigration detention was published.⁵⁸ The report recommended that: when completing a Rule 35 report GPs [General Practitioners] should give a clinical opinion rather than just passing on what they have been told by the detainee. Caseworkers should be properly trained in how to respond to Rule 35 reports, so that responses are in accordance with Home Office policy.⁵⁹

58. In January 2016 Stephen Shaw, the former Prisoner and Probation Ombudsman for England & Wales, published a report into his review of the welfare of immigration detainees, which was commissioned by the UK Home Office.⁶⁰ The report noted the absence of rules governing short term holding centres and recommended that a discussion draft of the short term holding centre rules be published as a matter of urgency.⁶¹
59. In addition, the report recommended "that the Home Office immediately consider an alternative to the current rule 35 mechanism. This should include whether doctors independent of the IRC system (for example, Forensic Medical Examiners) would be more appropriate to conduct the assessments as well as the training implications."⁶²
60. In NI, irregular migrants are detained at Larne House short term holding facility. Detainees are held for a maximum period of five or seven days, if Removal Directions are in place. Detainees are then released, transferred to Immigration Removal Centres in Great Britain or removed, including to the Republic of Ireland.⁶³ The Detention Centre Rules do not apply to Larne House due to its classification as a short term holding facility.⁶⁴ Measures in place for the identification of victims of torture in Larne House appear to rely heavily on self-identification.
61. **The Advisory Committee may wish seek an update on the how the State Party will ensure the early identification of victims of torture in immigration detention, on proposed reforms to Rule 35 of the Detention Centre Rules and on the introduction of rules governing short term holding facilities.**

Welfare Reform

62. A Welfare Reform Bill was introduced into the NI Assembly in 2012 to make provision in NI for the corresponding legislation in Great Britain (GB). In 2014, the Stormont House Agreement set out a package of measures which was agreed by the NI political parties, including the 2015/16 budget and welfare reform. However, the Welfare Reform Bill did not pass the final legislative stage of the process.

63. Following the Implementation Plan agreed in relation to the Stormont House Agreement, in November 2015, the NI Assembly passed a legislative consent motion to enable primary and secondary legislation to make changes to the welfare system to proceed at Westminster. In a debate on the motion, the Minister for Social Development confirmed that the Welfare Reform (NI) Order 2015 will reflect the amendments and provisions that were agreed by the Assembly at Consideration stage".⁶⁵
64. The Welfare Reform (NI) Act 2015 was introduced under the fast track procedure and received royal assent on 25 November 2015. The NIHRC understands that the secondary legislation, approximately 900 individual items, has been finalised and will be in place by the end of March 2016.⁶⁶ The NIHRC would have concerns about the effective scrutiny of such a large number of regulations in such a short space of time.
65. The NIHRC remains concerned by number of provisions in the legislation which treat EEA nationals, in particular migrant workers, differently to those from NI. Paragraph 7 of Schedule 1 provides that those exercising their treaty rights cannot be exempted from the work-related requirements under Articles 24-26. These allow certain categories, such as those with limited capacity or those with caring responsibilities, from work related requirements. Such requirements take the form of a work-focused interview, work preparation, work search and work availability.⁶⁷
66. NICEM has also raised concerns in relation to the barriers that affect migrants in accessing social security; highlighting problems such as the 'lack of local knowledge, difficulty in navigating the administration system and access to interpreters'.⁶⁸ Furthermore, the language barrier may have a significant impact on the uptake of benefits.⁶⁹
67. **The Advisory Committee may wish to ask the State Party about plans to monitor the impact of welfare reform on ethnic minorities, including migrants workers.**

Permission to work

68. In the UK, asylum seekers are not allowed to work while awaiting a decision on their asylum application. However, if it has taken longer than 12 months for a decision on asylum to be made, a person can request permission to work. The Secretary of State will only consider an application if, in the Secretary of State's opinion, any delay in reaching a decision at first instance cannot be attributed to the applicant.⁷⁰
69. The NIHRC notes that the Immigration rules restrict the types of employment asylum seekers can obtain to the UK's official shortage occupation list.⁷¹ The Law Centre NI, in its submission to a Parliamentary inquiry on asylum support, has expressed concerns that "the policy is so restrictive it is almost meaningless."⁷²
70. The NIHRC conducted research in 2009 on the issue of homelessness for people with limited or no access to public funds. The NIHRC recommended that all asylum seekers should be allowed to work pending the outcome of their application.⁷³ Similar calls have been made in research in the UK by Still Human Still Here and by the British Red Cross who have called for asylum seekers to be granted permission to work after six months.⁷⁴ A recent House of Commons research paper outlined suggested advantages of extending asylum seekers right to work, including:⁷⁵
- alleviat[ing] some of the difficulties that asylum seekers can face during the asylum determination process, such as social and economic exclusion, deskilling, low self-esteem, poor mental health, and improve asylum seekers integration and employment prospects in the event of a positive asylum decision; and,
 - reduc[ing] asylum seekers vulnerability to exploitation through working illegally.
71. The Immigration Bill, which is currently before the UK Parliament, proposes to create the new offence of 'illegal working' for persons who are subject to immigration control.⁷⁶ The offence will carry a penalty, in NI, of up to 6 months imprisonment, a fine or both.⁷⁷

72. **The Advisory Committee may wish to ask the State party what steps have been taken to ensure that asylum-seekers are not restricted in their access to the labour market while their claims for asylum are being processed.**

Asylum support

73. Individuals who claim asylum are not permitted to work while they are waiting on their claim being processed, but can access asylum support under section 95 of the Immigration and Asylum Act 1999. In July 2015, the UK government brought in regulations introducing a flat rate in asylum support. From August 2015, the standard rate is now £36.95 per week provided to each supported person of all ages.⁷⁸ This cash amount is in addition to free accommodation and free medical care; dental care and free education for children from age 5 to age 17. Under the new system:
- a single parent with 1 child will receive £73.90 as opposed to £96.90 in the previous system;
 - a single parent with two children will receive £110.85 as opposed to £149.86 under the previous system;
 - a couple with one child will receive £110.85 as opposed to £125.48 under the previous system; and
 - a couple with two children will receive £147.80 as opposed to £178.44 under the previous system.⁷⁹
74. The Refugee Council called on the government to abandon the planned cuts until it had commissioned an independent review into the fairness of current support levels.⁸⁰ The Children's Society also highlight that the introduction of a flat rate will have a direct impact on children, pushing families further into poverty. They argue that in some cases, families on asylum support are getting just half of what they would get in the mainstream system and the cuts will push families onto rates 60% below the poverty line.⁸¹ The Children's Society called for a reversal to proposed cuts to section 95 asylum support to ensure that children within the asylum support system are able to meet their essential living needs. The Society also called for the application of a cost of living rise to asylum

support rates so that they reflect at least 70% of mainstream social security support rates and increase this in line with inflation annually.

75. The NIHRC further advises that the UK Home Office consulted on proposals to reform existing support to failed asylum seeker and other “illegal migrants” in August 2015. The proposals included:

- Repealing section 4(1) of the Immigration and Asylum Act, which provides support to those on temporary admission, and those temporarily or otherwise released from immigration detention. Section 95 support will be available for those who are destitute;
- Closing off section 4(2) support for failed asylum seekers who make no effort to leave the UK at the point that their asylum claim is rejected. Support would continue to be available to those whose claim had finally been rejected but could not be expected to avoid destitution by leaving the UK because they had lodged with the Home Office further submissions that were outstanding;
- Change section 95 support arrangements so that those who have a dependent child or children with them when their asylum claim is refused and any appeal is finally rejected are no longer classed as “asylum seekers” for the purposes of eligibility for support;
- Transfer of onus from Home Office to those in receipt of state support to make the application before the 28 day grace period expired and to demonstrate why they could not leave the UK and that they would in their circumstances otherwise be destitute.⁸²

76. These proposals have been taken forward in the Immigration Bill, which is currently before Parliament. The NIHRC prepared a briefing for the House of Lords stage of the legislative process, outlining the same concerns that the proposals are retrogressive concerning the enjoyment of the right to an adequate standard of living and the right to social security. Furthermore, the removal of section 95 support for failed asylum seekers with dependents and thereby putting the onus upon parents and guardians to demonstrate after a grace

period, why they cannot leave the UK and would otherwise become destitute before support can be continued, is contrary to the UNCRC best interests of the child principle. Finally, the proposed safeguards to extend the grace period to 28 days and the possibility of an extension on application if there is a practical obstacle preventing the family's departure from the UK may not be sufficient to meet human rights requirements.⁸³

77. **The Advisory Committee may wish to ask the State party how it will ensure that the proposed changes to the law concerning failed asylum seekers and irregular migrants do not, as a consequence, lead to individuals falling into destitution.**

Crisis fund

78. The OFMDFM established a Crisis Fund to "to help minority ethnic individuals with no other means of support through emergency situations, such as vulnerable migrants, refugees and asylum seekers and other vulnerable groups."⁸⁴ It was administered by the British Red Cross and other partner organisations and ran in February and March 2015.⁸⁵ During this time, there were 980 interventions and the fund directly assisted 440 individuals, who between them had 480 dependents. Fifty-four per cent of people received less than £50, while 78% received less than £100. 233 were female and 207 were male. The majority (60%) were aged between 21-40. The main reasons for accessing the fund were problems with benefit entitlements (25%), domestic violence (14%) and issues around seeking employment (14%).⁸⁶
79. The 2015/16 Fund has now become active, with a budget of £100,000, and continues to be administered by the Red Cross.⁸⁷ OFMDFM has further clarified that the Fund is not limited to asylum seekers and refugees but "is intended to support migrants who lack a support network including vulnerable migrants (EU and non-EU nationals), destitute refugees and asylum seekers and other identifiable vulnerable groups such as Roma".⁸⁸
80. The Refugee and Asylum Forum has called for the Crisis fund to be made permanent.⁸⁹ The Red Cross has continued to

provide support when the fund is not accessible; from 1 Jan to 31 Dec 2015, 877 people were recorded as presenting to Refugee Support (made up of 441 individual service users and 436 dependents). Of the 877 people, 798 received support related to destitution (made up of 387 individual service users and 381 dependents).⁹⁰

81. The OFMDFM referenced the Crisis Fund as a very positive initiative in the Racial Equality Strategy, without further specifying what role it will play in the future.⁹¹
82. **The Advisory Committee may wish to ask the State party what plans are there to ensure long term planning and the continuation of the fund on a permanent basis in NI.**

Article 4(2): Measures to promote full and effective equality

Racial equality strategy

83. NI's previous racial equality strategy came to an end in 2010. OFMDFM published a new 'Racial Equality Strategy for NI 2014-2024' in December 2015.⁹² The Racial Equality Strategy (RES) establishes a framework for action to tackle racial inequalities and to open up opportunity for all, to eradicate racism and hate crime and, along with the Together: Building a United Community policy, to promote good race relations and social cohesion.⁹³
84. The NIHRC welcomes the publication of the RES but continues to raise areas of concern, indicated to OFMDFM during the consultation process.⁹⁴ For example, the NIHRC referred to the OHCHR Guidance on National Action Plans against Racism⁹⁵ and recommended that the final strategy would need to be more action-oriented, making clear the desired impact and articulating how the strategy seeks to fulfil the NI Executive's human rights obligations.⁹⁶ The strategy should also specify precise, tangible, concrete and achievable steps within a reasonable timeframe and mechanisms for monitoring progress.⁹⁷ The NIHRC remains concerned that the final RES does not have a detailed action plan or associated timetable and budget.
85. The strategy proposes a Racial Equality subgroup, which will fall under the Ministerial Panel on Together: Building a United Community. One of the tasks of the subgroup is to work with government departments to develop an implementation plan and monitoring and reviewing progress on implementation.⁹⁸ The subgroup has not yet been established but is anticipated that it will be in the near future. Its draft terms of reference indicate that thematic groups may be established, with the immigration subgroup becoming the thematic group on immigration.
86. A thematic group on Roma, Gypsies and Travellers will also be established as soon as is practicable.⁹⁹ The NIHRC noted, in its advice on the draft strategy that the final RES should be cognisant of the particular human rights framework on Roma, but also be sensitive to the particularities of the Traveller community.¹⁰⁰

87. **The Advisory Committee may wish to ask the State Party for more information about the implementation of the Racial Equality Strategy, in particular the publication of a clear timetable and action plan for implementation.**

Refugees

88. In response to the refugee crisis the UK Government has committed to receive 20,000 Syrian refugees over a five year period.¹⁰¹ The first group of refugees arrived in Northern Ireland in December 2015, under the UK's Syrian Vulnerable Person Relocation Scheme (VPRS). This included 51 refugees from Syria, inclusive of 10 families and 11 children under the age of five. Those admitted under the scheme will be granted five years of humanitarian protection; including access to public funds, entitlement to work, eligibility for housing, education and healthcare.¹⁰² The Department for Social Development (DSD) has informed the NIHRC that another group of refugees is due to arrive in April 2016 and every eight weeks thereafter, up to approximately 1800 in total by 2020.¹⁰³
89. Concerns have also been raised to the OFMDFM Committee in relation to the future funding of the VPRS, post the one year provided for by the Home Office and also the desire to avoid the creation of a two-tier system between those protected under the VPRS and other refugees.¹⁰⁴
90. The Refugee and Asylum Forum, an informal network of organisations with experience of providing support and services to asylum seekers and refugees, has identified five key actions that could be delivered by the NI Executive. These include:
- a refugee integration strategy to co-ordinate and monitor interventions and develop initiatives to ensure refugees from Syria, or elsewhere, do not face destitution;
 - a long-term commitment to funding the Syrian refugee settlement as the UK Government is only guaranteeing funds for the first year;

- a mechanism to ensure that no person experiences destitution;
 - providing access to free accredited English language classes for those who need it; and
 - making the OFMDFM crisis fund a permanent arrangement.¹⁰⁵
91. The Department for Employment and Learning (DEL) is providing access to ESOL provision (English for speakers of other languages) and other further education courses to those under the VPRS scheme.¹⁰⁶ From 1st February 2016, DEL has also agreed to provide free English classes for all refugees, bringing arrangements into line with provisions for asylum seekers and those with humanitarian protection.¹⁰⁷ The classes will be provided through further education colleges and will be accredited.
92. There does not appear to be an associated strategy for the provision of language classes and concerns have been raised to the NIHRC that ESOL is not designated as an essential skill, causing disparity compared to the rest of GB. Although the extension of access noted above is to be welcomed, migrants not falling within the scheme will have to pay for such courses, which may be financially prohibitive.¹⁰⁸
93. A Refugee Integration Strategy remains outstanding in NI. At a recent meeting of the Immigration sub-group, officials from OFMDFM indicated that the draft strategy is due to be consulted upon and that it may be published around summer 2016.¹⁰⁹
94. **The Advisory Committee may wish to ask the State Party about its long term planning for the receipt of all refugees in NI.**

Traveller Accommodation

95. The NIHRC remains concerned about the inadequate provision of sites and accommodation for the Traveller Community. In 2014, the ECNI reported concerns that the lack of identification and development of sites had led to a dramatic

shift in the number of Travellers moving to 'bricks and mortar' housing.¹¹⁰

96. The Northern Ireland Council for Ethnic Minorities (NICEM) published research in 2014 in which Traveller respondents were asked to highlight priority issues affecting them. Accommodation was cited as the second highest priority after education, and priorities included better sites (both permanent and transit) alongside better homes and conditions on existing sites.¹¹¹
97. The NI Housing Executive (NIHE) published the Traveller Accommodation Needs Assessment in 2014. The analysis showed a gross need for 18 units of grouped accommodation, 28 serviced site pitches, two transit site pitches, 51 units of social housing and 13 units of other accommodation forms: accommodation for 112 households in total.¹¹² The needs assessment highlighted that the net housing need was a much more complex calculation outside the scope of the research project and which will be undertaken by strategic partnerships in consultation with the Traveller community, because if one type of accommodation is provided, this may affect the need for another type of accommodation. The NIHE has said that, in giving consideration to the findings of the assessment, it will draw up a programme of Traveller specific schemes over the next five years.
98. The UN Special Rapporteur on the Right to Adequate Housing raised concerns, after a country visit to the UK, on the lack of appropriate and culturally adequate residential and transit accommodation which is often at the root of discrimination faced by Gypsies and Travellers in the UK.¹¹³ She noted that many Gypsies and Travellers are often caught between an insufficient support of accommodation on one hand and the insecurity of unauthorized encampments on the other.¹¹⁴ The CESCR Committee has also sought additional information on this provision under its list of issues for the upcoming UK examination.¹¹⁵
99. The ECNI reported in February 2016, that limited access to accommodation for Irish Travellers, with lack of basic amenities is a key housing inequality in NI.¹¹⁶ The All Ireland Traveller Health Survey in 2010 reported that considerable

number of families who lived in Group Housing or sites reported a lack of footpaths, public lighting, fire hydrants and safe play areas.¹¹⁷ A quarter of families considered their place of residence to be unhealthy or very unhealthy and 29% of NI families considered their place of residence unsafe.¹¹⁸

100. Concerns were raised by NICEM in 2014 noting that a lack of plumbing and washing facilities is common and that frequently there is no electricity provided and inadequate or non-existent refuse management.¹¹⁹ Research mapping the views of Irish Travellers in 2014 found that the need for improved site provision came out strongly from respondents and better conditions on sites.¹²⁰ Recommendations from both reports called for the NIHE to comply with the Housing (NI) Order 2003 to ensure the improvement of socio-economic conditions and basic living conditions on serviced and halting sites to guarantee access to electricity, clean water and adequate sanitation, and washing facilities in line with the right to an adequate standard of living.¹²¹

101. The Advisory Committee may wish to ask the State Party for an update on the development of the programme for Traveller specific schemes in NI and recommend the improvement of basic living conditions on serviced and halting sites in NI.

Unauthorised Encampments (Northern Ireland) Order 2005

102. The Unauthorised Encampments (NI) Order 2005 remains in force.¹²² This legislation created a power for a police officer to direct a person to leave land and remove any vehicle or other property with him, or her, on that land. It also created an offence and a power of seizure for non-compliance with a direction.

103. The CESCR Committee raised concerns about the discriminatory effect of the legislation, urging a review of the legislation.¹²³ The NIHRC understands that the powers under the 2005 Order have rarely been used but continues to highlight continuing concerns about the legislation to the Advisory Committee¹²⁴ and other monitoring bodies such as CESCR¹²⁵ and ECRI.¹²⁶

104. The NIHRC also notes NIHE operates a co-operation policy, which permits Travellers to set up an unauthorised encampment on public land for which there is no current or immediate use and permits them to occupy the land provided it does not create a public health or traffic hazard and the land is maintained in a reasonable and orderly manner.¹²⁷ The NIHE emphasises that the policy is not a substitute for permanent or transit sites but is intended to act as a way of dealing with a humane requirement.¹²⁸ The NIHRC welcomes the policy but advises that the measures in the 2005 Order potentially have a chilling impact; these measures enable a national minority to become liable to criminal prosecution for following their traditional lifestyle in a context of inadequate site provision.¹²⁹

105. The Advisory Committee may wish to ask the State Party what review has taken place of the Unauthorised Encampments (Northern Ireland) Order 2005 and what are the reasons for the legislation remaining in force in NI.

Barriers to adequate site provision: planning permission and site licenses

106. Planning permission has provided a stumbling block in building facilities. For example, the NIHE is appealing a decision by a local council to stop it building a temporary facility for Travellers in Antrim. The appeal has been lodged with the Planning Appeals Commission and two grounds of refusal are being contested: that the development would adversely affect the setting of a monument; and, that it was not in keeping with the local area.¹³⁰ This temporary accommodation was for an extended family who were living on an unauthorised site in North Belfast and were displaced following legal action by the landowner.¹³¹ The Advisory Committee has previously expressed concern on the difficulties facing Gypsies and Travellers in all regions of the UK when seeking to obtain planning permission for private sites, calling for planning rules to be applied in a manner that takes into account the specific needs of Gypsies and Travellers and that does not lead to discriminatory practice.¹³²

107. The NIHRC previously informed the Advisory Committee of a legislative anomaly, which can create a practical difficulty in ensuring adequate site provision to the Traveller community.¹³³ Under the Caravans Act (Northern Ireland) 1963,¹³⁴ Traveller sites had been among a number of caravan sites exempt from licensing requirements, but no consequential amendment was introduced when the power to provide sites was transferred from local councils to the NIHE.¹³⁵ The NIHRC called for an amendment to the 1963 Act via the Caravans Bill in 2011 to rectify the anomaly.¹³⁶ However no amendment was made and the position remains that the NIHE is required to obtain a site licence.¹³⁷ In 2011, the Advisory Committee expressed concern that the NIHE had not met its objectives in providing additional sites, and identified the need for the NIHE to obtain licences from local councils in order to deliver new sites seemed to be one of the reasons for a lack of delivery.¹³⁸

108. **The Advisory Committee may wish to ask the State party:**

- **how it will ensure that planning rules in NI take account of the specific needs of Travellers; and,**
- **what steps will be taken to amend legislation which requires the NI Housing Executive to obtain site licences from local councils.**

Segregated and shared housing

109. Due to the particular circumstances NI, social housing¹³⁹ stock is segregated. Research published by the NIHE in 2009 reported that based on the 2001 census, 91% of social housing in Belfast NIHE estates were highly polarised, defined as having more than 80% of one community or less than 20% of one community in an estate.¹⁴⁰

110. The 2014 Peace Monitoring Report noted from census data that there was a steep decline in the proportion of 'single identity' wards (above a threshold of 80 per cent of one religion), from 55% to 37%.¹⁴¹ However, the report notes caution against the assumption that mixed wards are necessarily integrated and that self-segregation is still apparent.¹⁴²

111. One of the key priorities under the Together Building a United Community Strategy (TBUC) is the creation of shared communities as the NI Life and Times Survey indicates that 82% of respondents would prefer to live in a mixed neighbourhood and 87% believed that better relations will come about through more mixing. Two of the commitments under TBUC are the creation of ten 'Shared Neighbourhood Developments' and conducting a review of housing to bring forward recommendations on how to enhance shared neighbourhoods.¹⁴³
112. In February 2016, the NIHE formally launched its Community Cohesion Strategy 2015-20 which is delivered across five themes including: segregation/integration; race relations; communities in transition; interface areas; flags, emblems and sectional symbols.¹⁴⁴ In relation to residential segregation and integration, the strategy contains a number of actions, including: supporting research into segregated and shared housing including updating the Mapping Segregation report; facilitate and encourage mixed housing schemes in the social and affordable sector; and work with OFMDFM TBUC, DSD, Housing Associations and others to bring proposals forward for ten Shared Future capital build projects of mixed housing schemes in the medium term.¹⁴⁵
113. The Strategy also commits to developing programmes of action to address issues of residential segregation and integration within three years, as well as developing legacy programmes targeting young champions in neighbourhoods. The NIHRC understands that at the time of writing, five shared housing schemes were currently on site and the remaining five have been selected and are due to commence in the coming year, thus achieving the TBUC target which was not time bound.¹⁴⁶
114. In February 2016, the NIHE has also commenced works to remove an interface wall in North Belfast, 30 years after it was erected. It is seen as one of the most contentious interface areas and this action was the result of community-led decision to transform the interface barrier, following years of relationship building and talks within and between communities in north Belfast.¹⁴⁷

- 115. The Advisory Committee may wish to recommend that the State party proactively concentrates efforts to promote the development of shared social housing to improve community relations in NI.**

Housing inequality

116. The segregated nature of housing has led to difficulties and barriers in respect of managing need. Recent research, carried out for the ECNI, has noted that residential segregation is particularly pronounced in social housing¹⁴⁸ and that “excess demand in one area cannot be easily met by excess supply in another”.¹⁴⁹ It further notes that Catholic households comprised the largest proportion of the waiting list, were the largest group in terms of ‘housing stress’ and wait longer for social housing than Protestant households.¹⁵⁰ The report notes the complexity of the issues at stake in NI and suggests that a more comprehensive needs analysis is required in respect of the demand for and the barriers to meeting social housing need.¹⁵¹
117. The CESCR Committee has previously noted the “chronic shortage of housing, in particular social housing for the most disadvantaged and marginalised individuals and groups, such as ... Catholics in Northern Belfast”.¹⁵² It recommended an intensification of efforts to ensure everyone has access to housing, aimed at increasing the levels of affordable housing, including social housing. In addition, the Committee recommended that the equality impact assessment framework in NI be “effectively implemented” by ensuring the participation of affected populations and the development of adequate policies and targeted measures to promote substantive equality ... and adequate housing programmes for the poor, and in particular, Catholic families.¹⁵³
118. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living visited NI in September 2013. Her report notes “long-standing issues related to inequality” and “concerns about differences in the way information is collected, disaggregated and presented”.¹⁵⁴ She recommended that the State should “put place additional efforts to address challenges to overcome persistent inequalities in housing in North Belfast. For this purpose,

active, free and meaningful participation of all in decisions made about housing should be promoted, including in relation to the collection of official data, that should be disaggregated, open and accessible to all".¹⁵⁵

119. In May 2014, the ECNI initiated an investigation into the DSD on whether it failed to comply with its approved Equality Scheme in four areas, namely (1) Facing the Future: Housing Strategy for Northern Ireland 2012-2017; (2) Facing the Future: Housing Strategy for Northern Ireland, Action Plan 2012-2017; (3) Social Housing Reform Programme; and (4) Building Successful Communities Initiative. The ECNI found that the DSD failed to comply with a number of its Equality Scheme commitments in relation to two housing policy proposals 'Facing the Future: Housing Strategy for Northern Ireland, 2012-2017' and 'Building Successful Communities'.¹⁵⁶
120. The ECNI made a number of recommendations, including: fully complying with Equality Scheme commitments to screen and where appropriate conduct equality impact assessments (EQIA) in respect of ongoing development and implementation of revised housing policies; timely consideration of high level strategies; robust screening and equality impact assessments as part of development process; and that DSD reports to the ECNI within 9 months of receipt of the investigation report with regards to compliance with recommendations.¹⁵⁷ The NIHRC understands that the DSD is to report on the ECNI findings by August 2016.
121. In its 2016 statement on 'Key Inequalities in Housing and Communities', the ECNI notes that there are specific data gaps in relation to equality grounds such as religion, race and political opinion, and also a lack of disaggregated data in relation to ethnicity.¹⁵⁸ The ECNI concludes that the lack of data "significantly impacts not only the degree to which overall inequalities in housing and communities are assessed and monitored, but also impacts on the ability to monitor and evaluate individual actions taken by Government Departments and others to address these inequalities."¹⁵⁹
122. **The Advisory Committee may wish to recommend that the State Party:**

- **reports on implementation of the recommendations of the investigation and on compliance with Equality Scheme commitments in respect of housing policies in NI in the next periodic report; and,**
- **collects robust equality data to assess and monitor inequalities in housing and to allow for evaluation of Government Department actions to address inequalities in NI.**

Access to healthcare

123. In March 2015, new regulations on access to primary and secondary healthcare for migrants came into operation.¹⁶⁰ These regulations will ensure that all asylum seekers, and other specified migrant groups, have access to free healthcare while they are living in NI.¹⁶¹
124. The new regulations provide significant improvements so, that in certain cases, no charge for health services will be imposed on a person not ordinarily resident in Northern Ireland, called 'visitors' in the regulations. Certain services are exempt from charge, and certain groups of visitors are exempt from charges.
125. Services exempt from charge include accident and emergency services, family planning services, treatment for specified diseases, treatment of sexually transmitted diseases, and treatment under mental health powers.¹⁶² The regulations also make provision for treatment in respect of infection for any Human Immunodeficiency Virus. Officials informed the Committee for Health, Social Services and Public Safety that the policy intention is that the regulations provide an exemption from charge for full treatment, bringing NI into line with the rest of the UK.¹⁶³
126. Visitors not required to pay for their healthcare treatment include: visitors who have lawfully resided in the UK for the previous 12 months; students who are present for full time study that is substantially funded in the UK and is of at least six months duration; persons who are employed, self-employed or volunteering; visitors exercising EU rights; refugees, asylum seekers and children in care; victims of

human trafficking; where treatment is required for exceptional humanitarian reasons; diplomats, NATO forces, long term visits by UK pensioners, war pensioners, missionaries, pensioners and detainees, employees on ships and family members of visitors.¹⁶⁴

127. In order to reflect the changes to the new regulations, Department of Health, Social Services and Public Safety (DHSSPS) has also amended the General Medical Services Regulations so that any visitor exempt from charges is able to access GP services. The aim of the amendments is to ensure that a person not ordinarily resident accesses healthcare at the most appropriate setting.¹⁶⁵
128. The NIHRC welcomes the changes as a positive development, but remains concerned that there are practical barriers impeding refused Asylum Seekers accessing healthcare. For example, the NIHRC has heard reports that although refused asylum seekers are entitled, that there are difficulties in getting to appointments because section 4 is voucher only support¹⁶⁶ creating a financial obstacle to accessing transportation. The NIHRC has also heard reports of instances in which pregnant women are not receiving section 4 support until quite late in their pregnancy; due to delays in both decision making and processing. Again, voucher only support precludes access to transport to attend prenatal appointments.
129. The NIHRC also notes that there is a potential gap in respect of undocumented or irregular migrants and their children who are not entitled to primary and secondary healthcare under the regulations.¹⁶⁷ The NIHRC understands that the DHSSPS was to issue further guidance; however, to date this has not been published.
130. **The Advisory Committee may wish to recommend that the State party monitors and reviews the operation of the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 to identify any barriers for asylum seekers and other groups, such as irregular migrant children in accessing healthcare.**

Article 5: Promote conditions to maintain culture

Minority Ethnic Development Fund

131. The Advisory Committee has previously raised concerns that attention and efforts are directed at the two main communities in NI and that the needs of persons belonging to minority ethnic communities are not adequately catered for. It recommended that the needs of all minorities are taken into account when allocating support and funding.¹⁶⁸
132. The Minority Ethnic Development Fund (MEDF) provides support for voluntary and community organisations working with minority ethnic people and groups to promote good relations. The 2016/17 Fund, with a budget of £1.1million, has now opened and is accepting applications for a three week period. With the intention that offers and funds will be available in April 2016. The delay in administering the funding 2015/16 caused serious difficulties for small organisations, leading to a loss of staff and organisations across the sector.
133. The First Minister has indicated, in a NI Assembly debate that support for the MEDF will continue into 2016/17 and beyond, recognising the need for a seamless transition from one funding round to the next.¹⁶⁹
134. The NIHRC is aware of concerns regarding the lack of strategic delivery of the fund and recommendations by the Refugee and Asylum Forum that a comprehensive needs analysis would ensure that the funding is spread across the sector.¹⁷⁰ A needs analysis would ensure that those key services are protected. For example, this year two organisations which provide immigration advice lost their funding, leaving a gap in advice services which is not filled by any other agency.
135. There also appears to be a disparity in the level of funding that is available under the MEDF (currently £45,000 for an individual organisation) and that which can be applied for under good relations funding.¹⁷¹ The Forum has also suggested that OFMDFM ring fence some of the MEDF (and

other funds) for organisations directly supporting refugees and asylum seekers.¹⁷²

- 136. The Advisory Committee may wish to ask the State Party about the long term planning for the MEDF to ensure that the administration arrangements do not impact upon the groups accessing the fund.**

Parades, protests and flags, symbols and emblems

137. The NIHRC notes the comments made by the UN Special Rapporteur on Peaceful Assembly, Parades and Association in his report to the UN Human Rights Council in 2013 on his country visit to the UK. The Special Rapporteur called for “political resolution of the issues – such as parades, flags and emblems – that still make the enjoyment of freedom of peaceful assembly problematic in Northern Ireland”.¹⁷³
138. The Stormont House Agreement (SHA) proposed that responsibility for parades and related protests should, in principle, be devolved to the NI Assembly.¹⁷⁴ It also proposed that the Office of Legislative Counsel, working in conjunction with the OFMDFM, should produce a range of options on how the remaining key issues which include the Code of Conduct, criteria and accountability could be addressed in legislation. The OFMDFM was to bring forward proposals to the NI Executive by June 2015.¹⁷⁵
139. The Parades Commission for Northern Ireland noted that the 2014/15 period was “a relatively stable parading environment” and that the majority of parades did not face restriction.¹⁷⁶ However, there have been a number of notable exceptions, such as the continuing protest at the Crumlin Road in response to route restrictions in 2014 and 2015 and significant public disorder in the summer of 2015.¹⁷⁷ There has been significant public disorder in Belfast on occasions when the police have enforced Parades Commission determinations relating to an Orange Order parade on 13 July 2015¹⁷⁸ and an anti-internment parade in August 2015.¹⁷⁹
140. The NIHRC has consistently advised all those participating or responsible for the regulation of parades and protests that a broad range of human rights and state obligations are engaged. Human rights law, in particular the jurisprudence of

the European Court of Human Rights, is a valuable resource for resolving disputes relating to parades, protests and related adjudicative processes. Furthermore, it is sufficiently flexible to accommodate alternative mechanisms for resolution, which seek to develop innovative compromise agreements.¹⁸⁰

141. The participants to the SHA agreed that a Commission on Flags, Identity, Culture and Tradition would be established by June 2015 and to report within 18 months of being established.¹⁸¹ Under a Fresh Start (SHA Implementation Plan), the timetable has been pushed back to March 2016. There will be 15 members, 8 non-political members selected through open recruitment and 7 nominated by the political parties.¹⁸² The recruitment exercise was advertised in December and has now closed. It is unclear if members have been appointed yet or if the intended timescale for March 2016 is on track.
142. Queens University Belfast published research, in February 2016, looking at the policy options for the unresolved issues associated with the flying of flags in NI.¹⁸³ The report suggested two possible approaches to making progress on the flying of unofficial street flags: legislative and voluntary approaches.¹⁸⁴ Legislative approaches cover using existing legislation, introducing new legislation or a re-working of NI's hate crime laws.¹⁸⁵ The suggested voluntary approaches consider using existing protocols or a new agreed protocol.¹⁸⁶
143. **The Advisory Committee may wish to request further information from the State Party on the timetable for establishment of the new Commission on Flags, Identity, Culture and Tradition.**

Article 6(1): Tolerance and intercultural dialogue

Together Building a United Community

144. The Advisory Committee has previously noted that regional strategies which focus on mutual accommodation, rather than mutual respect and understanding, would raise 'serious concerns'.¹⁸⁷ The Advisory Committee has stated that in NI 'the concept of 'good relations' [has] apparently [developed] to substitute the concept of intercultural dialogue and integration of society.'¹⁸⁸

145. In 2013, OFMDFM published 'Together: Building: A United Community' (TBUC); a strategy which "outlines a vision based on equality of opportunity, the desirability of good relations and reconciliation. It provides the framework for government action in tackling sectarianism, racism and other forms of intolerance while seeking to address division, hate and separation."¹⁸⁹

146. Following on from this, the OFMDFM Committee launched an inquiry into Building a United Community. The inquiry Terms of Reference committed to consider actions to "tackle sectarianism, racism and other forms of intolerance; and to make recommendations in order to support and enhance policy in uniting communities and community integration".¹⁹⁰ The NIHRC submitted evidence to the OFMDFM Committee recommending that the legality of human rights be expressly acknowledged in any future legislation and in implementation initiatives relating to the strategy.¹⁹¹

147. As with previous strategies (including the Cohesion, Sharing and Integration strategy), the concepts of sectarianism and racism are discussed as separate issues. This has led to international criticism of this approach from the CERD Committee, which expressed its concern that "given the intersectionality between sectarianism and racism, is kept entirely outside the framework of protections against discrimination provided by the Convention and the Durban Programme of Action".¹⁹² The Advisory Committee has also raised concerns that "the approach in the CSI Strategy to treat sectarianism as a distinct issue rather than a form of racism problematic,

as it allows sectarianism to fall outside the scope of accepted anti-discrimination and human rights protection standards".¹⁹³

148. The OFMDFM Committee published a report into its inquiry in 2015.¹⁹⁴ The Committee recommended that the OFMDFM produce an annual report on the TBUC strategy and lay this before the NI Assembly.¹⁹⁵ Referring to advice provided by the NIHRC and others, the Committee recognised the need for statutory definitions of both 'sectarianism' and 'good relations'.¹⁹⁶ This is an outstanding commitment contained within the strategy.¹⁹⁷

149. The NIHRC also advised the Committee that the current legal requirement on NI public authorities to 'have regard to the desirability' to promote good relations is not fully in accordance with the human rights obligation to take 'immediate and effective measures'.¹⁹⁸ The NIHRC recommended amending and strengthening domestic legislation to address this issue.¹⁹⁹ The NIHRC further recommended that the Committee consider the relationship between the domestic concept of good relations and the framework of intercultural dialogue set out by the CoE and UN human rights treaty bodies.²⁰⁰

150. Evidence provided to the OFMDFM Committee in February 2016 identified that there have only been two Ministerial Panel meetings in three years, neither of which has occurred within the last 16 months. Officials also confirmed that an annual report on the strategy is intended for September 2016.²⁰¹

151. An engagement forum is to be established under TBUC, with the Community Relations Council acting a secretariat. The forum will meet four times per year and discuss thematic issues; providing an opportunity for awareness raising of TBUC, but also "encourage innovation and identify and embed best practice. It will inform delivery direction and will support an outcome-based approach to delivery."²⁰² The forum is due to first meet in March 2016 and will consider the attitudes of young people towards good relations.²⁰³

152. The NIHRC has also noted the proposal by the OFMDFM to create an Equality and Good Relations Commission²⁰⁴ and has

advised that any structural changes must be made with the express objective of increasing the protection and promotion of equality, non-discrimination, tolerance, mutual respect and understanding in NI.²⁰⁵ There should be no retrogression from protections afforded by both the existing Equality Commission NI and Community Relations Council.²⁰⁶ Recent evidence to the OFMDFM Committee indicated that there is no agreed way forward on the legislation.²⁰⁷ This legislation was intended to also bring forward a definition of sectarianism, and so OFMDFM continues to work to the definition suggested in the TBUC strategy.²⁰⁸

- 153. The Advisory Committee may wish to ask the State Party what measures are being taken to progress the commitments under the Together Building a United Community Strategy, in particular the Equality and Good Relations Commission and a definition of sectarianism.**

The naming of public facilities

154. The issue of the naming of public facilities has also become problematic in NI. A consultation was issued by Tom Elliott (then MLA) of the UUP in April 2015 on 'The Naming of Public Facilities/entities after Ineligible People'.²⁰⁹ This sought to ensure that public facilities and entities are not named after ineligible people, where an ineligible person is anyone who has been convicted of a terrorist offence and is a member of a proscribed organization (as defined in the Terrorism Act, 2000). No Bill was ever introduced to the NI Assembly on this issue.
155. One example of this issue is the naming of a children's playpark by Newry and Mourne District Council. In 2001 the decision was taken to name a park after Raymond McCreesh, a member of the IRA who was imprisoned for the attempted murder of two British soldiers and died on hunger strike in prison. In 2009, the Council received a complaint and conducted an equality impact assessment with a view to reconsidering the name. The Council decided on 3 December 2012 to retain the name.

156. The ECNI carried out an investigation²¹⁰ into the Council's decision and held that there had been a breach of the requirement to have due regard to the need to promote equality of opportunity across the s.75 groups and regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.²¹¹ The ECNI recommended that the Council review its decision to name the park in a transparent manner taking proper account of its legal obligation under s.75.²¹² The Council was required to report on its progress within 12 months.²¹³
157. The ECNI considered the report received from the Council and its Chief Commissioner stated that "while the Commission accepts the report from the Council in completion of our recommendation to review the decision, the Commission is disappointed that the opportunity was not taken to find a name for the play park that would have positive resonances with all those in the Council area and that would be more conducive to good relations between communities".²¹⁴ A further vote on whether to retain the name was taken at an equality committee meeting at Newry and Mourne District Council on 12 February 2015; it was passed by 15 votes to four.
158. **The Advisory Committee may wish to ask the State Party for further information as to measures being taken to ensure that tolerance and intercultural dialogue are protected in the naming of public spaces.**

Article 6(2): Protection against discrimination, hostility, and violence

Racial hate crime

159. In 2013, the NIHRC conducted an investigation into racist hate crime in the criminal justice system in NI, looking at how race hate crime was dealt with by the police, prosecution authorities, courts and probation. The report culminated in 66 findings and 29 recommendations; seven of which were to be addressed by the OFMDFM.²¹⁵
160. Correspondence received from the OFMDFM in July 2014 indicated that the relevant recommendations would be considered within the context of the Racial Equality Strategy. In October 2015, the OFMDFM and DOJ met with the NIHRC to discuss which department was best placed to lead on the recommendations directed towards the NI Executive. The DOJ has accepted the NIHRC's report and has worked towards implementing the recommendations through the Hate Crime Delivery Group.
161. One concern raised by the NIHRC was the lack of any statutory duty to require criminal justice agencies to collect, disaggregate or publish data on performance regarding racial equality or hate crime.²¹⁶ The CERD Committee has stressed the importance of collecting data on the demographic composition of the general population²¹⁷ and recommends that systemic data collection should underpin strategies to combat racist hate speech.²¹⁸ Although the Police Service for NI (PSNI), Public Prosecution Service for NI (PPSNI) and NI Courts and Tribunals System (NICTS) publish some data, the NIHRC recommended that "criminal justice agencies should ensure that the collection and disaggregation of data is integrated consistently into the practices".²¹⁹
162. The most recent police statistics on racist hate crime cover the period from October 2014 to September 2015, during which the PSNI recorded 1279 racist incidents, of which 796 contained one or more crimes. Although racist incidents increased, the number of crimes with a racist motivation decreased compared to the previous 12 months.²²⁰

163. A 'Regional Advocacy Service for Victims of Hate Crime' exists to support individuals who are victims of a hate crime during the police investigation, improve services and tackle under-reporting. Under the Northern Ireland Community Safety Strategy, the PSNI has funded and managed five advocates from the race, LGBT and disability sector (depending on the form of hate crime involved). A Victim Support NI advocate coordinator also assists and provides support.²²¹ The DOJ also supports the Hate Incident Practical Action (HIPA) Scheme in conjunction with the PSNI, NI Housing Executive and DSD, which provides personal and home protection measures to victims of hate crime (whether an owner-occupier, tenant in privately rented or social housing).²²²
164. The Good Practice Plus project is an EU funded joint initiative between the Northern Ireland Council for Ethnic Minorities (NICEM), Migrant Centre NI, PSNI and the Finland Ministry of the Interior. It shares good practice around the support for victims of racist hate crime and has showcased the NI framework for advocacy across Europe.²²³
165. The PPSNI publishes annual statistics on cases considered by a prosecutor to have involved a hate crime 'aggravated by hostility'. During 2014/15, prosecutorial decisions were issued in respect of 549 persons in cases considered to have involved hate crime 'aggravated by hostility'. This was lower than the total issued during 2013/14 (566).²²⁴ Of these, there were 298 decisions to prosecute, 41 diversions,²²⁵ and 210 decisions not to prosecute.²²⁶
166. For the first time in 2015, the PPS statistics included whether or not the judge accepted the 'aggravated by hostility' element and imposed an enhanced sentence. For the period 2014/15, 53 people received an enhanced sentence on the basis that the offence was aggravated by hostility under the 2004 Order. This amounted to 13 out of 46 convictions in the Crown Court and 40 out of 195 convictions in the Magistrates and Youth Courts.²²⁷
167. The primary prosecutorial tool for the hate element of a crime in NI is the 'aggravated by hostility' sentencing legislation, namely, the Criminal Justice (No. 2) (NI) Order 2004. This legislation can be applied in conjunction with a base offence,

such as criminal damage or assault, and covers hostility based on the grounds of race, religion, disability and sexual orientation. Where an offence is found to have been motivated by hostility, the courts must treat that fact as an aggravating factor.²²⁸ The Order also requires judges to “state in open court that the offence was so aggravated”.²²⁹

168. Throughout 2015 the NI Policing Board has been carrying out a human rights thematic review on how the PSNI are addressing hate crime. In addition, the Criminal Justice Inspectorate NI has been conducting an inspection of the Criminal Justice Response to Hate Crimes. Both these agencies are due to report in Spring 2016. The NIHRC has met with, provided advice to both organisations and hosted a roundtable on hate crime in November 2015.

169. The Advisory Committee may wish to ask the State Party about its progress in protecting victims from hate crime, including working towards the full implementation of the NIHRC’s investigation report.

Sectarian hate crime

170. The NIHRC recognises that sectarian attitudes and violence continue in NI. The PSNI has reported 1,517 sectarian incidents and 1,043 sectarian crimes in 2014/15 an increase on the previous year, with 82 additional incidents and 333 additional crimes recorded.²³⁰ These are the highest figures since 2009/10.²³¹ For the period 2014/15, the crime types recorded with a sectarian motivation were: 42% criminal damage, 30% violence (without injury), 17% violence (with injury), 5% theft, 2% public order and 3% all other offences.²³²

171. The PPSNI statistics for 2014/15 record a decrease in the number of prosecution decisions issues in respect of sectarian motivations, from 364 in 2013/14 to 330 in 2014/15. Of the 330 decisions in 2014/15, 169 resulted in prosecution (12 on indictment), 22 for diversion and 139 resulted in no prosecution.²³³

172. Sectarian motivation does not have a related category under the Criminal Justice (No. 2) (NI) Order 2004, meaning it cannot be aggravated by hostility for the purposes of an

enhanced sentence. An offence that has a sectarian motivation must fall under race or religion in order for the courts to be able to impose an enhanced sentence.²³⁴

173. **The Advisory Committee may wish to ask the State Party what steps are being taken to ensure that sectarian hate crime is effectively dealt with through the criminal justice system on an equivalent basis to other forms of hate crime.**

Article 10: Minority languages rights

174. The St Andrews Agreement 2006 committed the Government to introduce an Irish Language Act, reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language.²³⁵ The Northern Ireland (St Andrew's Agreement) Act 2006 required the Executive Committee to adopt strategies relating to the Irish language and Ulster-Scots.²³⁶
175. The Stormont House Agreement (SHA) recalled commitments from previous Agreements, and "recognising the importance of understanding, tolerance and respect in relation to linguistic diversity, endorse the need for respect for and recognition of the Irish language in Northern Ireland, consistent with the Council of Europe Charter on Regional or Minority Languages".²³⁷ This remains outstanding in the 'Fresh Start: Stormont Agreement and Implementation Plan'.²³⁸

Legislative framework for the use of the Irish language

176. Since the last report of the Advisory Committee, 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, with strategies for each being published for the period 2015-35.
177. A consultation was issued in 2015 in respect of proposals for an Irish Language Bill; containing provisions on the official status of the Irish language, Irish in the courts and the Assembly, the creation of an Irish Language Commissioner, the inclusion of provisions for public bodies to promote the Irish language, Gaeltacht (Irish language speaking) areas, place names and education.²³⁹
178. In its report on the consultation, DCAL noted that of the 12,911 responses received, 94.7% were in favour of Irish language legislation.²⁴⁰ Officials from DCAL briefed the NI Assembly Culture, Arts and Leisure Committee in October 2015; indicating that the Minister remains committed to an Irish Language Act and to progressing the Bill as far as

possible. The next stage is to bring policy proposals to the NI Executive for agreement.²⁴¹ At the time of writing, an Irish Language Bill has not been introduced to the NI Assembly.

179. The NIHRC has raised concerns with the protection and promotion of minority language in NI with COMEX in 2013 and with ICESCR in 2015.²⁴² Both COMEX and ICESCR have made recommendations with respect to the compliance of the NI Executive with language rights in respect of its failure to bring forth legislative protection for the Irish language.²⁴³

180. In 2011, the Advisory Committee expressed concern about the failure to adopt Irish language legislation due to a lack of political consensus in NI.²⁴⁴

181. The NIHRC welcomes the proposals to place the protection of the Irish language on a statutory footing. However, it notes the politicization of the issue and that an absence of consensus between the political parties in NI could stymie further progress on this issue.²⁴⁵ Unionist politicians have indicated that they would oppose the introduction of an Irish Language Act.²⁴⁶ In a recent question to the Minister, a DUP MLA confirmed his party position that they would not be supporting legislation.²⁴⁷

182. **The Advisory Committee may wish to seek further information from the State Party on:**

- **the progress of the Irish Language Bill;**
- **measures being taken to overcome the politicization of the language; and,**
- **how it will fulfil its obligations to promote the Irish language in the absence of political consensus in NI.**

The Use of Minority Language in the Courts

183. Under the Administration of Justice (Language) Act (Ireland) 1937, languages other than English are not permitted to be used in the Courts. The legislation was challenged but upheld as lawful by the NI Court of Appeal in 2010.²⁴⁸

184. COMEX has specifically considered this issue concluding, "the prohibition of the use of Irish in courts in Northern Ireland by the 1737 Act is an unjustified restriction relating to the use of Irish, endangering the development of the language."²⁴⁹ The NIHRC notes that the DCAL consultation on an Irish Language Bill proposed the repeal of the Administration of Justice (Language) Act (Ireland) 1737 but that this would fall within the responsibility of the Department of Justice (DOJ). The NIHRC further cautioned that further consideration will need to be given to how the use of Irish in the courts will be facilitated at an operational level.²⁵⁰
185. A related issue is the availability of statutory texts in minority languages. The proposals for an Irish Language Bill did not provide for this and the lack of information provided to COMEX by the NI authorities has drawn criticism. The NIHRC has highlighted this omission to DCAL²⁵¹ and in its reporting to COMEX.
186. **The Advisory Committee may wish to seek assurances from the DOJ in relation to their commitment to the repeal of the 1737 Act.**

Ulster Scots language, culture and heritage

187. The publication of the strategy for Ulster Scots language, culture and heritage in 2015 sets out, across a 20-year time frame, a number of key areas for action including education, media, Ulster-Scots language, public services, culture research and development.²⁵²
188. The NIHRC notes that the Strategy's implementation will be taken forward by a Strategy Delivery Group, a Strategy Unit within DCAL and an Advisory Forum.²⁵³ The NIHRC understands from DCAL that these are not yet operational but that progress reports on actions taken since the commencement of the strategies will be published in March 2016.
189. The Ministerial Advisory Group for the Ulster Scots Academy (MAGUS), established in 2011, was the subject of a review announced by the Minister for Culture, Arts and Leisure in

March 2015. The report of the review has not yet been published.²⁵⁴ The responsibility for the delivery of the Ulster-Scots Academy has now been transferred to the Ulster-Scots Agency.²⁵⁵

190. **The Advisory Committee may wish to seek an update from the State Party on the implementation of actions contained within the strategy on developing the Ulster Scots language, culture and heritage.**

Article 11: Traditional names

Street Names

191. The provision of traditional local names and street signs in a minority language remains a contentious issue in NI. Although there are examples of street signs in both Irish and Ulster Scots, there does not appear to be a consistent approach to dealing with requests for bilingual signage. The Local Government (Miscellaneous) Order 1995 permits the erection of bilingual street signs.
192. The consultation on an Irish Language Bill contains proposals to include place-names and also bilingual road signs.²⁵⁶ The NIHRC advised, in its response to the consultation, that the Bill should make provision for a broad range of topographical indicators.²⁵⁷ It should be noted that this is only in relation to the Irish language and does not include other minority languages.
193. In 2014, a judicial review of a Belfast City Council decision not to erect a street sign in Irish was unsuccessful, with all grounds of challenge being dismissed.²⁵⁸ The matter was appealed and the Court of Appeal heard the matter in November 2015; the parties agreed that the matter be sent back to the Council for re-consideration without any further order.²⁵⁹ To date, this issue has not been resolved.²⁶⁰
194. Public authorities are under a s.75 duty to promote 'good relations' between ethnic groups and the main communities in NI²⁶¹ and are required to conduct an equality impact assessment to determine whether a policy will have an adverse impact on a particular group. COMEX has previously raised concerns at a number of reported instances whereby measures to promote the Irish language were not taken forward amid concerns that it would contravene s.75.²⁶²
195. The Advisory Committee has also previously raised concerns about how the promotion of the Irish language is often viewed as discriminating against the majority population and confirmed that "the implementation of minority rights protected under the Framework Convention are not considered as discriminating against other persons".²⁶³ This

issue persists in NI, with the responses to the DCAL consultation on an Irish Language Bill including concerns about the place-name aspect that was described as serving to “alienate”, “discriminate”, “cause division” and be used as a “cultural weapon”.²⁶⁴

196. The NIHRC is aware of concerns that bilingual signage, of with Irish or Ulster-Scots, can be viewed as a territorial marker. This raises the broader issue of the politicisation of language, which was also raised under Article 10 (above).

197. In 2014, COMEX noted the “persisting difficulties” and “delay and obstruction” in dealing with requests for bilingual street names by local councils and the refusals by the Northern Ireland Tourist Board (NITB).²⁶⁵ COMEX concluded a decision by the Minister for the Department of Regional Development and NITB not to introduce bilingual signage may be an infringement of the Charter.²⁶⁶

198. **The Advisory Committee may wish to ask the State Party:**

- **What measures are being taken to overcome the politicisation of language issues in NI; and**
- **how it will fulfil its obligations to promote the use of all minority languages in street names and other topographical indicators in the absence of political consensus in NI.**

Article 12: Education

Traveller and Roma children

199. The NIHRC notes concerns raised by the Committee on the Rights of the Child in relation to persistent inequalities with regard to school achievement for certain groups of children, including Travellers. Since then the Department of Education (DENI) has taken steps to improve access to the right to an effective education for Traveller children as a “marginalised” or “school-distant” group.²⁶⁷
200. The DENI established a Traveller Education Taskforce (the Taskforce) in 2008, a cross-sectoral body tasked with developing an action plan on Traveller education. The terms of reference included a commitment to “ensure that recommendations for improvements are underpinned by the Convention on the Rights of the Child (UNCRC) and other relevant equality and human rights legislation.”²⁶⁸ The Taskforce report, published in December 2011, recommended a broad range of measures, including legislative ones, to improve engagement with Traveller families and promote attendance, attainment and inclusion of Traveller children in education.²⁶⁹
201. In response to the Taskforce recommendations, DENI published the Traveller Child in Education Action Framework in 2013.²⁷⁰ Central to the DENI’s response was the establishment of the Traveller Education Support Service (TESS), which was identified as the vehicle by which many of the Taskforce recommendations would be implemented. The TESS annual delivery plan for 2015/16 has set targets for their key priority areas: attendance, attainment and parental engagement.²⁷¹
202. The Taskforce specifically recommended a review of the school attendance exemption contained in Schedule 13 of the Education and Libraries (NI) Order 1986 which allows a child to be absent for up to 100 days in circumstances where their parents are travelling for occupational reasons. The NIHRC understands that the DENI is considering amendments to the 1986 Order; however, these have not been published to date.

203. At the launch of the Traveller Child in Education Action Framework, the Minister also indicated that "an independent Monitoring and Evaluation Group will be established within the next few months to monitor the Action Framework."²⁷² The Minister confirmed, in response to a question in the NI Assembly, that the Group had yet to be established.²⁷³
204. The NIHRC further notes concerns from CESCR on the significant disparities in terms of school performance and dropout rates that continue to exist between pupils belonging to ethnic, religious or national minorities, including Roma/Gypsies and Irish Travellers.²⁷⁴ CESCR has further requested information about the "measures taken to ensure equal access to primary and secondary education by all children, especially children belonging to ethnic minorities, or the Gypsy or Traveller communities".²⁷⁵
205. The ECNI published a report on key inequalities in education in October 2014.²⁷⁶ One of the findings was that children from the Traveller community and Roma children have some of the lowest levels of attainment of all equality groups a persisting trend since at least 2008.²⁷⁷ The report also referenced earlier research from Queen's University Belfast, which found that the most negative experiences of education were encountered by Irish Traveller children.²⁷⁸
206. There is little formal data on the experiences of Roma children in the education system. The ECNI report notes that "anecdotal evidence suggests exceptionally high levels of educational disadvantage, exacerbated by a low level of English language proficiency, social exclusion and poverty".²⁷⁹
207. The DENI policy on 'Supporting Newcomer Pupils' seeks to assist children who need support in settling into a new school, community and culture, especially where there are language barriers.²⁸⁰ The policy establishes a regional support service, the Inclusion and Diversity Service (IDS), to assess priorities, monitor areas of need and response to changing pastoral, curricular, linguistic and intercultural needs.
208. A more recent review of the integration of newcomer children, in 2014, identified that many of the educational needs remain the same as when the newcomer pupil policy was published.

However, new challenges have arisen and in respect of Roma these relate to the limited formal educational experiences.²⁸¹ Some further issues raised were the distance required to travel to school, fear of racist attacks as well as the failure of some families to attend scheduled interviews at prospective schools.²⁸²

209. The Advisory Committee may wish to ask the State party:

- **what measures have been put in place to monitor the impact of the Traveller Education Action Framework, including the effectiveness of the Traveller Education Support Service (TESS);**
- **what action it has taken to review Schedule 13 of the Education and Libraries Order with a view to supporting the attendance in school of Traveller children;**
- **if it intends to establish a Traveller Education Monitoring Group; and,**
- **what measures are being taken to monitor and address the difficulties faced by Roma children in education.**

Integrated education

210. CESCR has also recommended that the State party “consider appropriate measures in Northern Ireland to facilitate the establishment of additional integrated schools in areas where a significant number of parents have indicated their desire to have their children enrolled in such schools.”²⁸³

211. The CRC Committee expressed concern regarding “the problem of segregation of education” in NI and recommended that measures be taken to address this.²⁸⁴ The Committee had previously noted the low percentage of schools that were integrated and recommended the NI Executive “increase the budget for and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demand of a significant number of parents.”²⁸⁵ The Committee has asked, in its 2016 list of

issues, for further information on the efforts to end the segregation in education in schools in Northern Ireland.²⁸⁶

212. There exists a statutory obligation upon the Department for Education NI (DENI) to “encourage and facilitate the development of integrated education” (the Article 64 duty).²⁸⁷ There has however, been relatively slow growth in the integrated sector with no new integrated schools established since 2008. In 2014/15, only 7% of pupils in NI attended an integrated school,²⁸⁸ with the most common approach to achieving integrated status now being the transformation of existing schools. There have been no new integrated schools established since 2008.
213. In examining the relatively slow growth of integrated schooling despite the Article 64 duty on the DENI to “encourage and facilitate the development of integrated education”²⁸⁹ the impact of the DENI planning policy has been identified as potentially creating barriers to the growth of integrated education. In a judicial review in 2013, an integrated school argued that the DENI ‘area-based’ approach to planning, which restricts growth for schools located near schools in other sectors that are struggling to fill all their available places, denied them the opportunity to expand in order to meet the high demand from parents for integrated places. The judgment found that the DENI must reconcile the need to strategically plan for the most appropriate growth of the schools’ estate as a whole with their obligation under Article 64 of the Education Reform Order to facilitate the growth of the integrated sector. The Court stated “[u]sing an analytical tool to plan for an area is of course acceptable and necessary, however the inflexibility of the projections used will have the effect of making it difficult to accommodate the A64 duty in future day to day decisions. The department needs to be alive to the A64 duty at all levels, including the strategic level.”²⁹⁰
214. Following this, the Minister for Education has launched an independent review of the planning, growth and development of integrated education, appointing President Colm Cavanagh (NI Council for Integrated Education) and Professor Margaret Topping (Queen’s University of Belfast). The aim of the review

is to “make recommendations for structures and processes that support the effective planning, growth and development of a more integrated education system within a framework of viable and sustainable schools”.²⁹¹ The review will report by 30 June 2016.

215. The Advisory Committee may wish to ask the State party to provide an update following the publication of the review in June 2016.

Shared education

216. In recent years, the NI Executive has also pursued a commitment to shared education as an approach to addressing segregation in education.²⁹² Shared education encompasses a continuum of practice from children attending classes in other schools, to shared campuses and even shared management. The School of Education at Queen’s University Belfast began piloting shared education programmes in 2007.²⁹³

217. DENI commissioned a report from an independent Ministerial Advisory Group on Advancing Shared Education, which was published in April 2013.²⁹⁴ The report highlighted the need for significant financial investment to support the delivery of shared education programmes by teachers and youth workers and in the school’s estate to enable schools to share facilities. The Minister welcomed all 20 of the report’s recommendations, accepting some in full and deferring others for further debate by the NI Assembly.²⁹⁵

218. The NI Executive’s ‘Together: Building a United Community Strategy’ published in May 2013 contains a further commitment to shared education with a concrete target of establishing ten new shared education campuses within five years.²⁹⁶ This led to the development of the Shared Education Campuses Programme, jointly funded by OFMDFM, DENI and the Atlantic Philanthropies Fund, which has now undertaken two rounds of applications from interested schools.²⁹⁷

219. The NI Education Committee has more recently criticised the DENI’s application of a ‘needs model’ of analysis in its planning policy as it assumes no growth in the integrated sector. The Education Committee recommended that the DENI

“should accept the shortcomings of the Needs Model and revise it so as to recognise the increasingly diverse school population and changes to traditional designations and so as to promote increased mixing in schools.”²⁹⁸

220. The Shared Education Bill was introduced to the Northern Ireland Assembly in 2015. The Bill proposed to provide a legislative definition of shared education, confer a power on the DENI and arms-length bodies to encourage and facilitate shared education and commence a duty on the Education Authority to encourage, facilitate and promote shared education.²⁹⁹ The NIHRC has welcomed the proposed legislative changes and has engaged both with DENI and the Committee for Education.
221. The proposed definition of shared education is restricted to socio-economic disadvantage and religious belief, although the policy underpinning the Bill refers to the needs of all of the s.75 groups and socio-economic status. The DENI has explained that these two groups are the minimum essential and are not a ceiling for shared education initiatives. The NIHRC advised that the justification for limiting the definition to two groups may not be sufficient to meet the reasonable and objective justification test required under human rights standards³⁰⁰ and recommended that it be extended to all s.75 groups.³⁰¹ The Committee for Education made a recommendation to insert a new clause requiring the DENI to report on the impact of Shared Education on educational attainment, good relations between participating children and attitudes of participating children from backgrounds other than their own.³⁰²
222. The NIHRC further wrote to the Minister for Education in January 2016 advise the Minister, as a minimum to support the Committee’s amendment; or, as an alternative put in place monitoring and reporting arrangements, making explicit the frequency of these and where responsibility lies.³⁰³
223. **The Advisory Committee may wish to ask the State party:**

- **what mechanisms it will put in place to evaluate the effectiveness of recent developments in shared education in NI; and**
- **seek an update on the implementation of the provisions of the Shared Education Bill.**

Article 15: Conditions necessary for participation in social and economic life

Participation

224. In 2014, NICEM conducted research aimed at mapping the views of minority ethnic people on integration in NI.³⁰⁴ One of its key areas was 'active citizenship', which considered participation in voting and involvement in the community. In respect of voting, 59% of respondents from Belfast said they would vote in local elections and 52% at NI Assembly elections.³⁰⁵ In the North West, this was 56% and 41%; and in Mid Ulster, the figures were 54% and 48%.³⁰⁶ Negative attitudes towards politicians existed across all three demographic areas.³⁰⁷

225. Community involvement covered many forms of participation, including attending a place of worship, leisure facilities and community organisations or centres. In Belfast, 28% of respondents associated themselves with a community organization linked to their nationality or ethnic group; this was 36% in the North West and 38% in Mid Ulster.³⁰⁸ A high percentage of respondents in each area indicated that they knew or mixed with people from other backgrounds.³⁰⁹

226. Another feature of this report was the experiences of hate crime and less favourable treatment that people from ethnic minority communities face. One specific concern that was raised was the "attitudes of indigenous Northern Ireland people are changing with some becoming less welcoming in their attitudes".³¹⁰

227. The Advisory Committee may wish to ask the State Party what measures are being taken to promote ethnic minority participation in social and economic life.

Employment in the public sector and policing

228. In 2014, the Commissioner for Public Appointments in NI (CPANI) published a report on the under-representation and lack of diversity in NI public appointments.³¹¹ The report also made 26 recommendations, broadly covering awareness raising, recruitment, outreach and the role of CPANI.³¹² The

newly appointed CPANI, in May 2015, has further commented, in relation to her predecessors criticism that "the criticism is correct, it is too slow. The figures if anything are going backwards in some areas. We just do not have diverse representation on our public boards."³¹³

229. OFMDFM also produces an annual report on public bodies and public appointments. The most recent figures available is for the year ending 31 March 2014: 1% of appointments made were from an ethnic minority background; this equates to one male and one female.³¹⁴
230. NISRA collects equality statistics on the question of employment within the NI Civil Service and analyses the composition of the service. The 2014 report looks at its 27,969 staff, in post as of 1 January 2013.³¹⁵ In respect of community background, 52.2% were Protestant and 47.8% Catholic.³¹⁶ Over the period 2000-2013, the increase in Catholic staff has been 6 percentage points.³¹⁷ The proportion from an ethnic minority background was 0.2% which equates to 55 staff.³¹⁸
231. The Advisory Committee previously invited the Police Service of Northern Ireland (PSNI) to continue its efforts to achieve a balanced representation of Catholic and Protestant officers.³¹⁹ The most recent PSNI statistics show that of 6827 officers, 67.28% are perceived Protestant, 31.16% are perceived Catholic and 0.54% are from an ethnic minority.³²⁰ These figures have marginally increased since 2012 from 0.48%.³²¹
232. The NIHRC recommended, in its investigation into Hate Crime, that the criminal justice agencies and in particular the PSNI, "should implement strategies to increase the level of representation from members of ethnic minority communities".³²²
233. The PSNI's Equality, Diversity and Good Relations Strategy expressly indicates a commitment to underrepresentation issues. Notably, it has committed to the delivery of programmes to encourage greater applications from underrepresented groups whose first language is not English³²³ and to establish an Ethnic Minority Police Association.³²⁴

234. The Advisory Committee may wish to reaffirm the importance of the representation of ethnic minorities in the public sector and law enforcement and seek further information about specific measures being taken to address under-representation.

¹ Northern Ireland Act 1998, Section 68

² UN, [Principles relating to the Status of National Institutions](#) (The Paris Principles) GA Res 48/134 (20 December 1993)

³ [Belfast \(Good Friday\) Agreement 1998](#), para 18

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