



**Submission to the United Nations Committee on the
Elimination of Racial Discrimination**

**Parallel Report on the 21st to 23rd Periodic Reports of the
United Kingdom under the International Convention on the
Elimination of All forms of Racial Discrimination**

July 2016

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Executive summary

NI peace agreements, the Human Rights Act 1998 and proposed repeal

The Committee may wish to recommend that any legislation introduced to replace the Human Rights Act 1998, would be aimed at building on existing human rights and provide effective protection of those rights across all jurisdictions within the United Kingdom.

The Northern Ireland Human Rights Commission

The Committee may wish to recommend that the State Party ensures that the Northern Ireland Human Rights Commission has a stable and sufficient budget in order to discharge its functions independently and effectively.

Bill of Rights for NI

The 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 commitment to implement a Bill of Rights for Northern Ireland.

Article 1(1): Definition of Discrimination

Data collection

The Committee may wish to recommend to the State Party that ethnic monitoring in Northern Ireland be consistently integrated into the practices of all relevant departments and agencies.

Self-identification

The Committee may wish to ask the State Party for an update on workforce monitoring in Northern Ireland.

Fair employment

The Committee may wish to ask the State Party to consider reviewing expeditiously the exception for teachers under the Fair Employment and Treatment (Northern Ireland) Order 1998.

Article 2: Prohibition of discrimination

Single equality legislation

The Committee may wish to recommend that the State party takes steps to simplify and harmonise equality legislation in Northern Ireland within a Single Equality Act.

Multiple discrimination

The Committee may wish to recommend that the State party

introduces legal protection against intersectional discrimination in Northern Ireland.

Racial Equality Strategy

The Committee may wish to:

- **ask for an update on the implementation of the Racial Equality Strategy in Northern Ireland;**
- **recommend that the review of the Race Relations (Northern Ireland) Order 1997 is undertaken as envisaged;**
- **recommend the publication of an associated action plan and a clear timetable for implementation;**
- **ask for an update on the establishment of the Racial Equality Subgroup and the thematic group on Roma, Gypsies and Travellers.**

Stop and search

The Committee may wish to ask the State Party for an update on the pilot recording of community background by the Police Service of Northern Ireland and recommend that stop and search powers are monitored according to ethnicity and community background.

Refugees

The Committee may wish to ask the State Party:

- **about the future funding of the Vulnerable Person Relocation Scheme; and**
- **its long term planning for the receipt of all refugees in Northern Ireland.**

Operation Gull

The Committee may wish to ask the State Party for further information about the use of measures in Northern Ireland to identify and arrest individuals illegally entering or remaining within the UK and Ireland ('Operation Gull').

Immigration facilities

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

Article 3: Prohibition of racial segregation

Segregated and shared housing

The Committee may wish to note the success of programmes intended to promote and develop shared social housing and recommend that the State party proactively concentrates efforts to continue this work in Northern Ireland.

Article 4: Prohibition of incitement

Legislative framework in Northern Ireland

The Committee may wish to recommend that the State Party remove its interpretative declaration to the Convention.

Article 5 (a-d): Non-discrimination and equality before the law

Use of minority languages before the courts

The Committee may wish to recommend that the State Party ensures the repeal of the Administration of Justice (Language) Act (Ireland) 1737.

Domestic and gender based violence

The Committee may wish to ask the State Party:

- for an update on the implementation plan of the Stopping Domestic and Sexual Violence and Abuse Strategy 2013-2020 in Northern Ireland; and
- for an update on ratification of the Istanbul Convention and steps taken to liaise with the Northern Ireland devolved government on this issue.

Female Genital Mutilation

The Committee may wish to ask the State Party for an update on the development in Northern Ireland of an action plan to combat Female Genital Mutilation.

Child, early and forced marriage

The Committee may wish to recommend that the State Party take immediate action to repeal all legal provisions permitting the marriage of children in Northern Ireland, in line with UNCRC and CEDAW recommendations.

Effectiveness of 'hate crime' legislation: Racial hate crime

The Committee may wish to ask the State Party:

- about steps being taken by the criminal justice agencies in

- Northern Ireland to collect and disaggregate data based on race and community background; and,
- its progress in protecting victims from hate crime, including working towards the full implementation of the investigation report published by the Northern Ireland Human Rights Commission in 2013.

Sectarian hate crime

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

Participation in political and public life

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

Employment in the public sector and policing

The Committee may wish to reaffirm the importance of the representation of ethnic minorities in the public sector and law enforcement and seek further information from the State Party about specific measures being taken to address under-representation within Northern Ireland.

Deprivation of citizenship

The Committee may wish to seek an update from the State Party on how it intends to ensure powers to deprive individuals of their citizenship and to prevent the return of individuals on security grounds will not result in individuals being subjected to torture or inhuman and degrading treatment.

Article 5(e): Economic, Social and Cultural Rights

Permission to work

The Committee may wish to recommend that the State party takes measures to ensure that asylum-seekers are not restricted in their access to the labour market while their claims for asylum are being processed.

Human trafficking

The Committee may wish to ask the State party:

- for an update on progress on implementation of the Independent Guardian Regulations as provided for in the Human Trafficking and Exploitation (Criminal

Justice and Support for Victims) Act (Northern Ireland) 2015; and

- **what actions are being taking with regards children that have entered Northern Ireland, come to the attention of social services and subsequently gone missing and how this will be prevented in future.**

Forced labour

The Committee may wish to ask the State party what plans the State party has to ratify the UN International Convention on the Protection of Rights of All Migrant Workers and Members of their Families (1990) and the ILO Migrant Workers (Supplementary Provisions) Convention 1975 (No.143).

Director of Labour Market Enforcement

The Committee may wish to ask the State party:

- **to clarify what plans there are to extend the role of the Director of Labour Market Enforcement beyond the National Minimum Wage in Northern Ireland and what plans there are to get the agreement of the Northern Ireland Assembly;**
- **to ensure that the operational focus of the Director of Labour Market enforcement is on the rights of workers rather than immigration control.**

Traveller accommodation

The Committee may wish to:

- **ask what measures are being taken to increase the supply of culturally sensitive accommodation to meet gross housing need; and**
- **recommend that the State Party complies with the Housing (Northern Ireland) Order 2003 to improve basic living conditions on serviced and halting sites in Northern Ireland for Travellers.**

Unauthorised Encampments (Northern Ireland) Order 2005

The Committee may wish to recommend that the State Party repeal the Unauthorised Encampments (Northern Ireland) Order 2005.

Barriers to adequate site provision: planning permission and site licenses

The Committee may wish to recommend that the State party address the legislative anomaly and remove the need to obtain site licences from District Councils in Northern Ireland and ensures that planning rules take into account the specific needs of Travellers.

Housing inequality

The 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 Northern Ireland in the next periodic report; and,
- collects equality data to assess and monitor inequalities in housing and to allow for evaluation of Government Department actions to address inequalities in Northern Ireland.

Access to publicly funded medical care

The 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.

Welfare reform

The Committee may wish to ask the State Party about plans to monitor the impact of welfare reform on ethnic minorities, including migrant workers.

Destitute Domestic Violence rule

The Committee may wish to recommend that the State Party:

- provide an update on the implementation of the Stopping Domestic Violence and Sexual Abuse Strategy in Northern Ireland;
- take steps to extend provision for victims of domestic violence to persons who enter the United Kingdom other than on a spousal visa.

Asylum support

The 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

The Committee may wish to recommend to the State party that the Crisis Fund in Northern Ireland is continued on a more permanent basis rather than rely on a discretionary fund and that it also addresses the underlying causes of destitution in the first place.

Traveller and Roma children education

The Committee may wish to recommend that the State party:

- **ensure the effective implementation of the Traveller Education Action Framework in Northern Ireland, including the effectiveness of the Traveller Education Support Service;**
- **review Schedule 13 of the Education and Libraries Order in Northern Ireland with a view to supporting the attendance in school of Traveller children;**
- **establish a Traveller Education Monitoring Group; and,**
- **continue to review the needs of newcomer children; and**
- **take steps to monitor and address the difficulties faced by Roma children in education in Northern Ireland.**

Integrated education

The Committee may wish to ask:

- **for an update on the independent review of the planning, growth and development of integrated education; and**
- **The State Party to undertake concrete measures to significantly increase the availability of integrated schools in Northern Ireland.**

Shared education

The 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 Act (NI) 2016.**

English for Speakers of Other Languages

The Committee may wish to recommend that the State Party:

- considers designating English for speakers of other languages as an essential skill in Northern Ireland in line with the rest of the United Kingdom; and,
- ensures that the cost of 'English for speakers of other languages' courses is not a barrier to accessing provision in Northern Ireland.

Article 7: Combating prejudice, promoting tolerance and understanding

Sectarianism in Northern Ireland

The Committee may wish to ask the State Party:

- what measures are being taken in Northern Ireland 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; and to recommend
- that sectarianism in Northern Ireland is treated as form of racism and attracts the protection of the ICERD.

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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,² 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. 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 21st to 23rd Periodic Reports under the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) to the Committee on the Elimination of Racial Discrimination (CERD).

The Northern Ireland Human Rights Commission

4. 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 2010/11, the NIHRC's cash budget was £1,638,000. The NIHRC's cash budget for 2016/17 is £1,149,000. This is to decrease each year until 2019/20, which is planned to be £1,075,000. This reduction is significantly less than the 40 percent cuts applied to some other government departments.
5. The UN Human Rights Committee, in its recent concluding observations, raised concerns that the budget cuts could undermine the fulfilment of the NIHRC's mandated activities.³
6. **The Committee may wish to recommend that the State Party ensures that the Northern Ireland Human Rights Commission has a stable and sufficient budget in order**

to discharge its functions independently and effectively.

NI peace agreements, the Human Rights Act 1998 and proposed repeal

7. The Belfast (Good Friday) Agreement was signed in April 1998. It includes a treaty between the UK and Ireland and is lodged at the UN. Therein, the UK Government outlined its intention to “complete incorporation into Northern Ireland law of the European Convention on Human Rights (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”.⁴ The Human Rights Act 1998 (HRA), incorporating the ECHR, came into force in 2000 and remains the only international human rights treaty that has been given such domestic effect.
8. The subsequent St Andrews Agreement 2006 reaffirmed that human rights and equality are at the heart of the new dispensation in NI,⁵ and the recent Stormont House Agreement 2014 confirmed that future measures on parades and inquests will comply with the ECHR.⁶
9. 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].”⁷ 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.”⁸ To date, no substantive proposals have been published in relation to repeal of the HRA.
10. 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.⁹
11. In July 2015, the three UK NHRIs issued a joint statement to the UN Human Rights Committee, setting out the value of the HRA as:

“Providing essential protection to everyone in the United Kingdom enabling fundamental rights to be enforced in domestic courts ... the HRA is well crafted and both reflects and is embedded in the constitutional arrangements for the UK. In particular, it maintains parliamentary sovereignty, a primary role for domestic courts in the interpretation of the ECHR and is central to arrangements for devolution in NI, Wales and Scotland.”¹⁰

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

“Ensure that any legislation passed in lieu of the Human Rights Act 1998, were such legislation to be passed, is aimed at strengthening the status of international human rights, including the provisions of the Covenant, in the domestic legal order, and provide effective protection of those rights across all jurisdictions.”¹¹

13. The EU Justice Sub-Committee of the UK Parliament, recently reported on its ‘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.¹² The Parliamentary Under-Secretary of State for Justice has said that the UK Government’s plans do not involve withdrawal from the ECHR.¹³

14. The report of the Committee noted that:

“The proposals the Secretary of State outlined did not appear to depart significantly from the Human Rights Act—we note in particular that all the rights contained within the ECHR are likely to be affirmed in any British Bill of Rights. His evidence left us unsure why a British Bill of Rights was really necessary.”¹⁴

15. The Committee heard evidence about the vital role played by

the ECHR and HRA in the implementation of the Good Friday Agreement.¹⁵ It further commented that:

“The difficulties the Government faces in implementing a British Bill of Rights in the devolved nations are substantial. Given the seemingly limited aims of the proposed Bill of Rights, the Government should give careful consideration to whether, in the words of the Secretary of State, it means unravelling “the constitutional knitting for very little”. If for no other reason, the possible constitutional disruption involving the devolved administrations should weigh against proceeding with this reform.”¹⁶

16. Notably, the Northern Ireland Executive did not respond to the Committee’s invitation to submit evidence.¹⁷
17. Most recently, the CESCR Committee has recommended that there be a broad consultation on plans to repeal the HRA and that any new legislation is “aimed at enhancing the status of human rights ... and provide effective protection of those rights across all jurisdictions of the State Party”.¹⁸
18. **The Committee may wish to recommend that any legislation introduced to replace the Human Rights Act 1998, would be aimed at building on existing human rights and provide effective protection of those rights across all jurisdictions within the United Kingdom.**

Bill of Rights for NI

19. The Belfast (Good Friday) Agreement provided for a Bill of Rights for NI to include, together with the ECHR, rights supplementary to those in the ECHR to reflect the particular circumstances of NI. As required by the Agreement and 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 in 2008.¹⁹ On receipt of this advice the NIO sought views by way of a public consultation.²⁰
20. In the Joint Declaration by the British and Irish Governments in 2003, the British Government 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".²¹

21. There has been little progress towards enacting legislation since that advice was submitted; the NIHRC reported on the lack of progress in its previous submission²² and the CERD Committee recommended that immediate steps were taken to ensure a Bill of Rights was adopted in NI.²³ There remains a lack of consensus among the political parties on the contents of and the introduction of a Bill of Rights for NI.
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."²⁴ The Committee expressed concern about the:

"slow progress in introducing the Bill of Rights for Northern Ireland and about the lack of a comprehensive mechanism for the review of existing gaps and inconsistencies between the domestic human rights legal framework and the rights covered in the Covenant"²⁵
23. The Committee 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".²⁶
24. Furthermore, the UN Committee on the Rights of the Child and CESCR Committee have recently recommended that the State Party expedite the enactment of a Bill of Rights for Northern Ireland.²⁷
25. **The 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 commitment to implement a Bill of Rights for Northern Ireland.**

Article 1(1): Definition of Discrimination

Data collection

26. 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.²⁸
27. In NI, the 2011 Census recorded a usual population of 1,810,863 with 98.21 percent 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 percent, and 'Indian', at 0.34 percent. Of the other categories included, 0.07 percent belonged to the 'Irish Traveller' category.²⁹
28. The largest ethnic group (White) is also distinguished on the basis of religion and national identity. Under national identity, the 2011 census recorded 39.89 percent identified as 'British only', 25.26 percent as 'Irish only' and 20.94 percent as 'Northern Irish only'. Of the remaining 13.91 percent, these identified as a combination of these identities.³⁰ Under religion or the religion brought up in, 45.14 percent identified as 'Catholic', 48.36 percent 'Protestant' and 5.59 percent as having 'no religion'.³¹
29. NI has a growing Roma population but accurate numbers do not exist as this category was not included in the 2011 Census. The numbers were estimated at around 1500 in 2015.³² The Romanian Roma Community Association Northern Ireland is currently conducting a community mapping exercise; however, this may not take account of other Roma populations such as the Slovak or Hungarian Roma in NI.
30. 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.³³ It does not mandate ethnic monitoring which does not accord with the CERD Committee's previous recommendation that the State party should "develop and adopt a detailed action plan, with targets and monitoring procedures, in consultation with minority and ethnic groups, for tackling race inequality".³⁴

31. **The Committee may wish to recommend to the State Party that ethnic monitoring in Northern Ireland be consistently integrated into the practices of all relevant departments and agencies.**

Self-identification

32. 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.³⁵ As a consequence, regular reviews of workforce monitoring against the objective of securing equality were recommended.³⁶
33. This practice remains and is subject to monitoring by the Equality Commission for Northern Ireland (ECNI). In their 25th fair employment monitoring report,³⁷ 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 changes, 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."³⁸
34. **The Committee may wish to ask the State Party for an update on workforce monitoring in Northern Ireland.**

Fair employment

35. An exception under the Fair Employment and Treatment (NI) Order 1998 permits primary and post-primary schools to use religion as a factor when selecting teaching staff. Article 71 provides that the legislation does not apply to or in relation to a teacher in a school.
36. 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.³⁹ 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.⁴⁰
37. The NIHRC has previously called for an end to the present exception for the recruitment of teachers.⁴¹ This is similar to the recommendation of the ECNI to remove the exemption for secondary schools.⁴²
38. **The Committee may wish to ask the State Party to consider reviewing the exception expeditiously for teachers under the Fair Employment and Treatment (Northern Ireland) Order 1998.**

Article 2: Prohibition of discrimination

Single equality legislation

39. NI still lacks a single legislative instrument to consolidate and clarify existing protections.⁴³ This is in spite of the introduction of the Equality Act 2010 in the rest of the UK and recommendations from CERD in 2011⁴⁴ and a number of other treaty bodies.⁴⁵ To date, the NI Executive has not committed itself to introducing single equality legislation, instead favouring a step-by-step approach.⁴⁶
40. 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.⁴⁷ 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, but not extending to colour and nationality.⁴⁸
41. The NIHRC notes that the UK Government indicated, in response to the CEDAW list of issues in 2013, that the OFMDFM (since June 2016, the Executive Office) "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."⁴⁹
42. As the NIHRC has also advised, in previous submissions, there is no specific provision for protection from non-discrimination in respect of language, despite the fact that language is protected throughout the UK under the ECHR, as incorporated by the Human Rights Act 1998.⁵⁰
43. **The Committee may wish to recommend that the State party takes steps to simplify and harmonise equality**

legislation in Northern Ireland within a Single Equality Act.

Multiple discrimination

44. 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.
45. The domestic equality authority, the Equality Commission for Northern Ireland (ECNI) reports “clear evidence” that individuals experience multiple discrimination in NI.⁵¹ For example, over a twelve-month period during 2013/14, the ECNI received 113 hybrid ‘race’ discrimination enquiries/applications.⁵²
46. The NIHRC notes that there is no commitment from the NI Executive to introduce legislation providing for intersectional multiple discrimination claims in NI.⁵³ In 2013, CEDAW made a specific recommendation that NI law should recognise multiple discrimination.⁵⁴
47. The Racial Equality Strategy recognises that individuals can be vulnerable to discrimination on more than one characteristic and that “most commonly cited example of victims of ‘multiple discrimination’ are minority ethnic women”.⁵⁵ Despite identifying that “this is an issue that we need to address” the strategy explains that “much more needs to be done to identify how we can prevent and combat multiple discrimination”.⁵⁶ No firm commitments to legislative change are made, only to collect disaggregated data to enable the measurement of the impact of actions on multiple discrimination and disadvantage and an exploration of how protection against forms of multiple discrimination can be provided in a review of legislation.⁵⁷
48. **The Committee may wish to recommend that the State party introduces legal protection against intersectional discrimination in Northern Ireland.**

Racial Equality Strategy

49. NI's previous racial equality strategy came to an end in 2010. OFMDFM (since June 2016, the Executive Office) published a new 'Racial Equality Strategy for NI 2014-2024' in December 2015.⁵⁸ The Racial Equality Strategy 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 strategy, to promote good race relations and social cohesion.⁵⁹
50. The NIHRC welcomes the publication of the strategy but continues to raise areas of concern;⁶⁰ for example, the NIHRC referred to the OHCHR Guidance on National Action Plans against Racism⁶¹ 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.⁶² The strategy should also specify precise, tangible, concrete and achievable steps within a reasonable timeframe and mechanisms for monitoring progress.⁶³ The NIHRC remains concerned that the final strategy does not have a detailed action plan or associated timetable and budget.
51. Among the proposed actions under the strategy is a review of the current Race Relations (NI) Order 1997 and fair employment legislation, developing the approach to tackling race hate crime, examining where ethnic monitoring should be introduced and consult on proposals for implementation.⁶⁴
52. The NIHRC welcomes these commitments to review, with a view to legislation being in place during the 2017/18 Assembly session.⁶⁵
53. 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.⁶⁶ The NIHRC understands that invitations have been sent to key stakeholders, including the NIHRC, and the first meeting is planned for September 2016.

54. The subgroup's draft terms of reference indicate that thematic groups may also be established, with the current immigration subgroup becoming the thematic group on immigration. A thematic group on Roma, Gypsies and Travellers will also be established as soon as is practicable.⁶⁷ The NIHRC noted, in its advice on the draft strategy that the final Racial Equality Strategy should be cognisant of the particular human rights framework on Roma, but also be sensitive to the particularities of the Traveller community.⁶⁸

55. **The Committee may wish to:**

- **ask for an update on the implementation of the Racial Equality Strategy in Northern Ireland;**
- **recommend that the review of the Race Relations (Northern Ireland) Order 1997 is undertaken as envisaged;**
- **recommend the publication of an associated action plan and a clear timetable for implementation;**
- **ask for an update on the establishment of the Racial Equality Subgroup and the thematic group on Roma, Gypsies and Travellers.**

Stop and search

56. The NIHRC recalls the CERD Committee's request for the State Party to provide, in its next report, "detailed statistical data disaggregated by ethnicity and community origin on the use of stop and search powers".⁶⁹ The NIHRC notes that full detailed data disaggregated by ethnicity and community background has not been provided in respect of Northern Ireland in the State Party report.⁷⁰

57. The Justice and Security (NI) Act 2007 empowers a police officer in Northern Ireland to stop and question any person for so long as necessary to establish his or her identity and movements.⁷¹ It further empowers police officers to search persons and premises (including vehicles) for wireless apparatus or munitions.⁷² The Protection of Freedoms Act

2012 amended the 2007 Act in line with amendments made to the Terrorism Act 2000. A Code of Practice governing the exercise of powers within the Act was introduced in May 2013.⁷³

58. The most recent statistics published by the Police Service of Northern Ireland for the period 2015/16 show that there were 10,316 stop and searches under terrorism legislation in NI.⁷⁴
59. In 2013, the NI Policing Board carried out a thematic review of the use of stop and search powers by the police in Northern Ireland.⁷⁵ It noted that there is no requirement on the PSNI to record the ethnicity or community background of the person searched, as is the norm in England, Scotland and Wales.⁷⁶ The report recommended that the PSNI should as soon as reasonably practicable consider how it recorded the community background of all persons stopped and searched under powers contained within the Terrorism Act 2000 and within the Justice & Security (NI) Act 2007.⁷⁷ In December 2015, the PSNI commenced a three month pilot trialling a methodology of this recommendation.⁷⁸ The evaluation of the pilot is not yet available.
60. The UK Independent Reviewer of Justice and Security, reported in 2016 that “the PSNI have been under pressure for a number of years to record and publish details of the community background of those stopped and searched”. He noted “that there were strong arguments in favour of community monitoring. However, there were serious issues which needed to be considered – in particular how this information was to be obtained... If the purpose of this form of monitoring is to indicate any sort of inherent bias in how the PSNI operates then the real measurement should be of all stops/searches in everyday situations and not the minority of stops/searches designed to prevent acts of terrorism.”⁷⁹
61. **The Committee may wish to ask the State Party for an update on the pilot recording of community background by the Police Service of Northern Ireland and recommend that stop and search powers are monitored according to ethnicity and community background.**

Refugees

62. In response to the refugee crisis the UK Government has committed to receive 20,000 Syrian refugees over a five-year period.⁸⁰ Two groups of refugees have arrived in NI under the UK's Syrian Vulnerable Person Relocation Scheme (VPRS); the first group of 51 refugees arrived in December 2015, and the second group of 57 in April 2016. 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.⁸¹ The Department for Social Development (since June 2016, the Department for Communities) has informed the NIHRC that following the arrival of refugees in April, another group is due to arrive every eight weeks thereafter, up to approximately 1800 in total by 2020.⁸²
63. Concerns have been raised to the OFMDFM Committee (since June 2016, the Committee for the Executive Office) in relation to the future funding of the VPRS, after the one year provided for by the Home Office and the desire to avoid the creation of a two-tier system between those protected under the VPRS and other refugees.⁸³
64. 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.⁸⁴
65. A Refugee Integration Strategy remains outstanding in NI. At a recent meeting of the Immigration sub-group, officials from OFMDFM (now the Executive Office) indicated that the draft strategy is due to be consulted upon and that it may be published around summer 2016.⁸⁵
66. **The Committee may wish to ask the State Party:**
- **about the future funding of the Vulnerable Person Relocation Scheme; and**
 - **its long term planning for the receipt and management of all refugees in Northern Ireland.**

Operation Gull

67. The NIHRC previously raised concerns about the conduct of 'Operation Gull' in NI, a joint scheme run by Home Office Immigration Enforcement, the Police Service of Northern Ireland and Police Scotland, in its investigation report 'Our Hidden Borders'⁸⁶ and its previous report to the Committee.⁸⁷ 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."⁸⁸
68. 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".⁸⁹ 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 2013/14.⁹⁰
69. **The Committee may wish to ask the State Party for further information about the use of measures in Northern Ireland to identify and arrest individuals**

illegally entering or remaining within the UK and Ireland ('Operation Gull').

Immigration facilities

70. 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.⁹¹ 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.
71. In 2013, the UN Committee against Torture 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.⁹² 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.⁹³ 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.⁹⁴
72. 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.⁹⁵ 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.⁹⁶
73. 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.”⁹⁷

74. 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 elsewhere in the UK or removed.⁹⁸ The Detention Centre Rules do not apply to Larne House due to its classification as a short term holding facility.⁹⁹ Based upon a visit to the detention centre conducted by the NIHRC in 2015 it appears that measures in place for the identification of victims of torture in Larne House rely heavily on self-identification.
75. **The Committee may wish to recommend that the State Party ensure the early identification of victims of torture in immigration detention, and seek an update on proposed reforms to Rule 35 of the Detention Centre Rules and the introduction of rules governing short term holding facilities.**

Article 3: Prohibition of racial segregation

Segregated and shared housing

76. Due to the particular circumstances of NI, social housing¹⁰⁰ stock is largely segregated. Research published by the Northern Ireland Housing Executive (NIHE) in 2009 reported that based on the 2001 census, 91 percent of social housing in Belfast NIHE estates were highly polarised, defined as having more than 80 percent of one community or less than 20 percent of one community in an estate.¹⁰¹ A more recent mapping exercise has been completed but is not yet publically available.
77. 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 percent of one religion), from 55 percent to 37 percent.¹⁰² However, the report notes caution against the assumption that mixed wards are necessarily integrated and that self-segregation is still apparent.¹⁰³
78. 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 percent of respondents would prefer to live in a mixed neighbourhood and 87 percent 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.¹⁰⁴
79. 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.¹⁰⁵
80. 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 partners to bring proposals forward for ten Shared Future capital build projects of mixed housing schemes in the medium term.¹⁰⁶

81. 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.
82. The NIHE operates a twin track approach through its new build programme (under TBUC) and the Building Relationships in Communities programme (BRIC2). The NIHRC understands that the target of ten shared housing schemes has been met, thus achieving the TBUC target and that support for further projects of this nature awaits the finalising of the Programme for Government. The BRIC2 programme follows on from the previous Shared Neighbourhood and BRIC1 schemes which supported around 138 NIHE housing estates in terms of good relations and integration. The BRIC2 programme is delivered across three themes: changing minds; sharing visions and crossing borders.¹⁰⁷ It develops and delivers a bespoke good relations plan for each of the 72 estates it works across and maintains a £5,000 fund for each to assist with the delivery of events and projects.¹⁰⁸ 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 a community-led decision to transform the interface barrier, following years of relationship building and talks within and between communities in north Belfast.¹⁰⁹
83. **The Committee may wish to note the successes of programmes intended to promote and develop shared social housing and recommend that the State party proactively concentrates efforts to continue this work in Northern Ireland.**

Article 4: Prohibition of incitement

Legislative framework in Northern Ireland

84. The NIHRC recalls the Committee's previous recommendation that the State party withdraw its interpretative declaration on Article 4¹¹⁰ and notes from the State Party report the UK government's current intention to maintain this declaration.¹¹¹
85. The interpretative declaration of the UK states:
- "It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4."
86. Hate speech is not expressly defined in Northern Ireland law, but this type of behaviour is dealt with under the legal framework which protects against incitement to hatred. There are two main legislative instruments: the Public Order (Northern Ireland) Order 1987 and the Criminal Justice (No. 2) (Northern Ireland) Order 2004. The latter provides increased sentencing powers when dealing with a 'hate crime', which will be explored in more detail under the section of this report dealing with Article 5 CERD.
87. The 1987 Order creates a number of offences in relation to behaviour or acts intended or likely to stir up hatred or arouse fear against a group of persons defined by reference to religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins.¹¹² These offences include the use of threatening, abusive or insulting words or behaviour, or displaying written material which either intends to stir up hatred or arouse fear (on one of the above grounds), or which, having regard to all

the circumstances, is likely to have that effect.¹¹³ There are further similar offences of publishing or distributing written material; distributing, showing or playing a recording; broadcasting, including in a cable programme service; and possession of matter intended or likely to stir up hatred or arouse fear.

88. Offences under the 1987 Order can carry a prison term of up to six months and/or a fine on summary conviction, and up to seven years' imprisonment and/or a fine on indictment.¹¹⁴ Figures provided by the Public Prosecution Service show that in the period April 2011 to April 2016 there were 25 prosecution decisions under Articles 9-11 of the 1987 Order.
89. The Justice Act (NI) 2011 also prohibits chanting at a regulated sports match that is sectarian or indecent in nature or is threatening, abusive or insulting to a person by reason of that person's colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability.¹¹⁵
90. In May 2014 a sermon by a Christian pastor, followed by supporting comments by the (then) First Minister of Northern Ireland were reported to have caused distress among minority groups and Muslims in particular.
91. The NIHRC raised its concerns regarding the matter with the CERD Committee and sought its advice.¹¹⁶ The (then) First Minister has subsequently apologised for his remarks.¹¹⁷ The pastor was prosecuted for the sending of a message, by means of a public electronic communications network, that was grossly offensive under the Communications Act 2003 and found not guilty.¹¹⁸
92. The NIHRC has previously identified that there is no comprehensive strategy endorsed by the Northern Ireland Executive to combat negative attitudes and promote tolerance and good relations between ethnic, religious and other groups. The Together Building a United Community strategy, published in 2013, is intended to provide a framework for government action in tackling "sectarianism, racism and other forms of intolerance while seeking to address division, hate

and separation.”¹¹⁹ This is dealt with in more detail in the later section on Article 7 CERD.

93. **The Committee may wish to recommend that the State Party remove its interpretative declaration to the Convention.**

Article 5 (a-d): Non-discrimination and equality before the law

Use of minority languages before the courts

94. Under the Administration of Justice (Language) Act (Ireland) 1737, languages other than English are not permitted to be used in the Courts. This applies to all minority languages; however, additional support will be provided when an individual does not speak or understand English. The Northern Ireland Courts and Tribunals Service provides access to telephone translation services at public counters and will arrange for interpreters in certain types of court hearings; criminal matters, coroners inquests, and family and civil matters which involve domestic violence or where liberty is at risk.¹²⁰ This is based upon an individual's right to fair trial, protected under Article 6 ECHR.
95. The 1737 legislation was challenged specifically in relation to the use of the Irish language in 2010 and upheld as lawful by the NI Court of Appeal.¹²¹
96. The Committee of Experts for the European Charter for Regional Minority Languages (COMEX) has specifically considered this issue concluding that "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."¹²² The NIHRC notes that the 2015 consultation in Northern Ireland 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, rather than under the Department for Culture, Arts and Leisure (this function now falls under the Department for Communities since June 2016). 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.¹²³
97. 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.¹²⁴ The NIHRC has highlighted this omission to DCAL¹²⁵ and in its

reporting to COMEX and the Advisory Committee on the Framework Convention for the protection of National Minorities.¹²⁶

98. **The Committee may wish to recommend that the State Party ensures the repeal of the Administration of Justice (Language) Act (Ireland) 1737.**

Domestic and gender based violence

99. The Police Service of Northern Ireland recorded 28,392 domestic abuse incidents in the period April 2015 to March 2016.¹²⁷ In the same period, there were 14,073 domestic abuse crimes recorded.¹²⁸ There is no detailed data kept on the ethnicity of victims of domestic violence or abuse. In fact, the PSNI statistics indicate that ethnicity was unknown for 7 percent of all victims of domestic abuse crimes in 2014/15. Where the ethnicity was known, 98 percent of victims were white.¹²⁹
100. In NI, Women's Aid, funded by the Domestic & Sexual Violence Unit, Department of Health, the Northern Ireland Housing Executive and the Community Safety Unit, Department of Justice, provides a 24 hour Domestic and Sexual Violence Helpline service for men and women. In 2014/15, the helpline recorded 262 calls from foreign nationals, black ethnic minority and traveller women; amounting to 1 percent of all calls answered.¹³⁰
101. The Department of Health and Personal Social Services (since June 2016, the Department of Health) 'Stopping Domestic and Sexual Violence and Abuse Strategy 2013-2020' was launched in March 2016. It focuses on five key strands: leadership, prevention, support, services and justice. Within these strands, the strategy has also identified 20 priority areas, which will underpin the development of action plans within the life of the strategy.¹³¹ The Strategy further recognises research conducted into the experiences of black and minority ethnic women in Northern Ireland in relation to domestic violence¹³² and that ethnic minority women are at an increased risk of domestic abuse but less likely to report to the police.¹³³

102. An implementation plan for year one was published in May 2016, listing 13 actions across the Department of Health, Department of Justice and Department for Communities. These include: developing guidance for the implementation of Domestic Violence Protection Notices; evaluating and procuring provision of a 24 hour domestic and sexual violence helpline and consulting on the need for legislative change in such areas as domestic violence disclosure scheme and an offence of domestic abuse.¹³⁴
103. The Department of Justice has already issued a consultation on whether there should be a specific offence that captures patterns of coercive and controlling behaviour and the establishment of a Domestic Violence Disclosure Scheme in NI, which would enable individuals to find out about their partner's history of violence and abuse.¹³⁵ The Department of Justice consultation looked at four options: to continue existing arrangements under common law; a 'right to ask' national disclosure scheme; a 'right to know' national disclosure scheme; and a 'right to ask' and a 'right to know' national disclosure scheme. A domestic violence disclosure scheme was rolled out across England and Wales in 2014 and in Scotland in 2015.¹³⁶
104. The NIHRC identified that such a disclosure scheme would represent an interference with the subject's private and family life but cautioned that sufficient detail was not provided to advise on the proportionality of the proposed system.¹³⁷
105. The NIHRC recognises that the UK signed the Istanbul Convention on preventing and combating violence against women and domestic violence in June 2012 but has not yet ratified the Convention. The UK Government has indicated that it will 'only commit to such ratification when we are absolutely satisfied that we comply with all articles'.¹³⁸ The Government has further indicated that primary legislation is required to comply with the extra-territorial jurisdiction provisions in Article 44 of the Convention before ratification and that it is liaising with the devolved administrations about ratification and any further legislative steps required.¹³⁹
106. The Justice (NI) Act 2015 makes provision for Domestic Violence Protection Notices and orders aimed at ensuring the

immediate protection of victims or potential victims of domestic violence.¹⁴⁰ In a response to an Assembly question, the (then) Justice Minister stated:

“Work is ongoing with relevant agencies regarding the development of suitable and robust guidance to allow for a pilot project for the commencement and introduction of Domestic Violence Protection Notices and Orders in Northern Ireland which was introduced through the Justice Act (Northern Ireland) 2015.”¹⁴¹

107. The Committee may wish to ask the State Party:

- **for an update on the implementation plan of the Stopping Domestic and Sexual Violence and Abuse Strategy 2013-2020 in Northern Ireland; and**
- **for an update on ratification of the Istanbul Convention and steps taken to liaise with the Northern Ireland devolved government on this issue.**

Female Genital Mutilation

108. Female Genital Mutilation (FGM) is prohibited in NI under the Female Genital Mutilation Act 2003. The 2003 Act creates the offences of performing or assisting FGM both in NI and overseas.¹⁴² The penalty for such offences can be up to 14 years imprisonment.¹⁴³ The Serious Crime Act 2015 has amended the 2003 Act to ensure that the offences apply to both UK nationals and habitual residents.¹⁴⁴ It does not, however, deal with persons on a temporary stay in the UK.

109. The 2015 Act makes provision for FGM protection orders; a court order to protect a girl against the commission of a genital mutilation offence, or protecting a girl against whom any such offence has been committed.¹⁴⁵ These were commenced in NI on 17 July 2015.¹⁴⁶ Breach of a FGM protection order is a criminal offence, liable to prosecution summarily or on indictment.¹⁴⁷ There has not yet been an application for a FGM protection order in Northern Ireland.¹⁴⁸ There has not yet been a successful prosecution of FGM in the

UK.

110. In 2014, the Commission welcomed a targeted consultation on draft Multi-Agency Guidelines on Female Genital Mutilation. These guidelines provide advice and support to frontline professionals who are responsible for safeguarding children and protecting adults from the abuses associated with female genital mutilation.¹⁴⁹ The NIHRC understands that a guidance note was provided to all interested parties prior to the commencement of the FGMPO provisions and that the Health and Social Care Board is also preparing specific guidance for social workers.
111. The NI Executive approved the publication of Multi-Agency Guidelines in July 2014. The NIHRC welcomed the robust measures to combat this ongoing human rights abuse. The NIHRC considers that the practice guidelines and initiatives by the NI Executive should be supported by an implementation plan to ensure the guidelines are operationalised. In November 2015, the NIHRC wrote to the relevant NI Executive Ministers to seek assurance that a detailed action plan is developed to include: training; awareness raising; research into the prevalence of Female Genital Mutilation; implementation of regional guidance; care pathways; and actions which can be taken to identify and prosecute perpetrators.
112. The Safeguarding Board NI has established a sub group on Female Genital Mutilation and, as part of its terms of reference; an action plan will be developed for services to victims and prevention.
113. **The Committee may wish to ask the State Party for an update on the development in Northern Ireland of an action plan to combat Female Genital Mutilation.**

Child, early and forced marriage

114. The Marriage (Northern Ireland) Order 2003 provides that 18 is the minimum age at which an individual can consent to marriage, in keeping with the rest of the UK. However, under the 2003 Order, a child aged 16 or 17 years of age may be

married with the consent of their parents, legal guardians or a court.¹⁵⁰ A court may also dispense with the relevant consents if it is satisfied that the marriage is in the best interests of the young person.¹⁵¹ The NIHRC notes that in NI, 68 children were married in 2014; 42 girls and 26 boys.¹⁵² There is no information on the ethnicity of these children. The law in NI, therefore, runs contrary to the UNCRC Committee's recommendation on the minimum age for marriage.¹⁵³ In its most recent examination of the UK, in June 2016, the Committee recommended that the minimum age for marriage be raised to 18.¹⁵⁴

115. The Forced Marriage (Civil Protection) Act 2007 makes provision for protecting individuals against being forced to enter into marriage without their free and full consent and extends to NI.¹⁵⁵ A person who contravenes a Forced Marriage Protection Order (FMPO) is liable to a fine, a term of imprisonment not exceeding six months or both.¹⁵⁶ The NIHRC understands that one FMPO has been made in NI, in 2010.¹⁵⁷

116. The CEDAW Committee made recommendations in 2013 that the State Party should criminalise forced marriage and ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).¹⁵⁸ The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 introduces the offence of forced marriage and the offence of deceiving a person into leaving the UK with the intention of forcing a marriage.¹⁵⁹

117. The NIHRC has also signed up to the Kigali Declaration on 'moving from aspiration to action to prevent and eliminate child, early and forced marriage in the Commonwealth'.¹⁶⁰ This Declaration affirms commitment to advocating for and supporting national and regional policies and strategies for the prevention and elimination of child, early and forced marriage.¹⁶¹

118. The Committee may wish to recommend that the State Party take immediate action to repeal all legal provisions permitting the marriage of children in Northern Ireland, in line with UNCRC and CEDAW

recommendations.

Effectiveness of 'hate crime' legislation: Racial hate crime

119. 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 (since June 2016, the Executive Office).¹⁶²
120. 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 their Hate Crime Delivery Group.
121. 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.¹⁶³ The CERD Committee has stressed the importance of collecting data on the demographic composition of the general population¹⁶⁴ and recommends that systemic data collection should underpin strategies to combat racist hate speech.¹⁶⁵ 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".¹⁶⁶
122. The most recent police statistics on racist hate crime cover the period from April 2015 to March 2016, during which the PSNI recorded 1,221 racist incidents, of which 755 contained one or more crimes. Despite rising figures from 2011/12 to 2014/15, the current year figures represent a decrease in

both recorded incidents and crimes.¹⁶⁷

123. Since the UK referendum on membership of the EU, there has been a spike in reported hate crimes in England.¹⁶⁸ Concerns have been raised that this will follow in Northern Ireland and there have been some reported instances such as the spraying of swastika on a foreign national's home¹⁶⁹ and verbal abuse.¹⁷⁰ The First and Deputy First Minister have issued a press statement to reassure the migrant community in NI that they are welcome and valued.¹⁷¹

124. 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.¹⁷² The DOJ also supports the Hate Incident Practical Action (HIPA) Scheme in conjunction with the PSNI, NI Housing Executive and Department of the Communities, which provides personal and home protection measures to victims of hate crime (whether an owner-occupier, tenant in privately rented or social housing).¹⁷³

125. 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.¹⁷⁴

126. 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.¹⁷⁵ The Order also requires judges to 'state in open court that the offence was so aggravated'.¹⁷⁶

127. The PPSNI publishes annual statistics on cases considered by a prosecutor to have involved a hate crime 'aggravated by hostility'. During 2014/15,¹⁷⁷ 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).¹⁷⁸ Of these, there were 298 decisions to prosecute, 41 diversions,¹⁷⁹ and 210 decisions not to prosecute.¹⁸⁰
128. For the first time in 2015, the PPSNI 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.¹⁸¹
129. 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. The NIHRC has met with, and provided advice to both organisations and hosted a roundtable on hate crime in November 2015.

130. The Committee may wish to ask the State Party:

- **about steps being taken by the criminal justice agencies in Northern Ireland to collect and disaggregate data based on race and community background; and,**
- **its progress in protecting victims from hate crime, including working towards the full implementation of the investigation report published by the Northern Ireland Human Rights Commission in 2013.**

Sectarian hate crime

131. The NIHRC recognises that sectarian attitudes and violence continue in NI. The PSNI has reported 1,352 sectarian incidents and 1,001 sectarian crimes in 2015/2016.¹⁸² Despite

rising figures for sectarian crimes since 2011/12, the current figures show a slight decrease.¹⁸³ The level of crimes and incidents peaked in July 2015, which may be linked to unrest during this period; and representing the fourth highest monthly figure since the start of the data series.¹⁸⁴

132. For the period 2015/16, 48.1 percent of crimes recorded were violence against the person offences and 47.7 percent were theft and criminal damage.¹⁸⁵ The PSNI also records where a crime with a sectarian motivation is an attack on a symbolic premises; for example, a church or chapel, a GAA or Ancient Order of Hibernians Hall, an Orange Hall or Apprentice Boys Hall, or a school.¹⁸⁶
133. The PPSNI statistics for 2014/15 record a decrease in the number of prosecution decisions issued 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.¹⁸⁷
134. 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.¹⁸⁸
135. **The Committee may wish to ask the State Party what steps are being taken to ensure that sectarian hate crime in Northern Ireland is effectively dealt with through the criminal justice system on an equivalent basis to other forms of hate crime.**

Participation in political and public life

136. In 2014, Northern Ireland Council for Ethnic Minorities conducted research aimed at mapping the views of minority ethnic people on integration in NI.¹⁸⁹ One of its key areas was 'active citizenship', which considered participation in voting and involvement in the community. In respect of voting, 59 percent of respondents from Belfast said they would vote in

local elections and 52 percent at NI Assembly elections.¹⁹⁰ In the North West, this was 56 percent and 41 percent; and in Mid Ulster, the figures were 54 percent and 48 percent.¹⁹¹ Negative attitudes towards politicians existed across all three demographic areas.¹⁹²

137. Community involvement covered many forms of participation, including attending a place of worship, leisure facilities and community organisations or centres. In Belfast, 28 percent of respondents associated themselves with a community organization linked to their nationality or ethnic group; this was 36 percent in the North West and 38 percent in Mid Ulster.¹⁹³ A high percentage of respondents in each area indicated that they knew or mixed with people from other backgrounds.¹⁹⁴
138. 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”.¹⁹⁵
139. The NIHRC recognizes that there is a lack of comprehensive data on participation in political and public life across all communities, making it difficult to compare the experiences of the minority ethnic communities in this regard.
140. **The Committee may wish to ask the State Party what measures are being taken in Northern Ireland to promote ethnic minority participation in social and economic life.**

Employment in the public sector and policing

141. Comprehensive data on employment in the public sector as a whole is not produced in NI. However, it is possible to draw upon some statistics published in relation to public appointments, the NI Civil Service and policing.
142. 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.¹⁹⁶ The report also

made 26 recommendations, broadly covering awareness raising, recruitment, outreach and the role of CPANI.¹⁹⁷ The newly appointed CPANI, in May 2015, has further commented, in relation to her predecessor's 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."¹⁹⁸

143. OFMDFM also produces an annual report on public bodies and public appointments. The most recent figures available are for the year ending 31 March 2014: 1 percent of appointments made were from an ethnic minority background; this equates to one male and one female.¹⁹⁹

144. The NIHRC understands that the NI Executive has agreed targets for the equal representation of men and women on public body boards; to achieve an equal number of women as Chairs of public bodies by 2020/21 sets a new standard for the UK. While these exist in relation to gender equality, it appears that "to establish a reliable database in relation to participation by ethnic minorities, people with disabilities and young people, it is also intended to collect monitoring information on a voluntary basis from current public appointees".²⁰⁰

145. The NI Statistics and Research Agency 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 2013.²⁰¹ In respect of community background, 52.2 percent were Protestant and 47.8 percent Catholic.²⁰² Over the period 2000-2013, the increase in Catholic staff has been 6 percentage points.²⁰³ The proportion from an ethnic minority background was 0.2 percent which equates to 55 staff.²⁰⁴

146. The Advisory Committee of the Framework Convention for the Protection of National Minorities previously invited the Police Service of Northern Ireland to continue its efforts to achieve a balanced representation of Catholic and Protestant officers.²⁰⁵ The most recent PSNI statistics show that of 6827 officers, 67.28 percent are perceived Protestant, 31.16 percent are perceived Catholic and 0.54 percent are from an ethnic minority.²⁰⁶ The figure for ethnic minority officers has

marginally increased since 2012 from 0.48 percent.²⁰⁷

147. 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”.²⁰⁸
148. 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 English²⁰⁹ and to establish an Ethnic Minority Police Association.²¹⁰
149. **The Committee may wish to reaffirm the importance of the representation of ethnic minorities in the public sector and law enforcement and seek further information from the State Party about specific measures being taken to address under-representation within Northern Ireland.**

Deprivation of citizenship

150. The British Nationality Act 1981 (as amended by the Immigration Act 2014) empowers the Home Secretary to deprive a naturalised British citizen of their citizenship if they have engaged in conduct “seriously prejudicial” to the UK’s vital interests, and the Home Secretary has reasonable grounds to believe the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory.²¹¹ The UK Government may exercise powers to deprive an individual of their citizenship both when they are in the UK and when they are abroad.²¹²
151. The NIHRC raised concerns that this additional power to deprive an individual of their citizenship would be used excessively with the result that a not insignificant number of individuals may be deprived of their citizenship potentially leaving them stateless.²¹³ The NIHRC notes that the Independent Reviewer of Terrorism, David Anderson QC

reported on the use of the additional deprivation of citizenship power covering the initial year that this power has been in force in April 2016.²¹⁴ The report concludes that the power was not exercised during the period under review.²¹⁵

152. In 2015, the Westminster Parliament passed the Counter Terrorism and Security Act 2015 making provision for Temporary Exclusion Orders. These prohibit the return of an individual to the UK unless the return is in accordance with a permit to return.²¹⁶ The Act makes provision for an individual subject to a Temporary Exclusion Order to be able to apply to the court for a statutory review of the Order on their return to the UK.²¹⁷ The UK Government has stated that it is 'not possible to predict how many temporary exclusion orders will be served'.²¹⁸ During the passage of the Bill the NIHRC provided a briefing to a number of NI peers emphasising the need for appropriate judicial safeguards.²¹⁹

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

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

154. The NIHRC has also provided updates to the UN Human Rights Committee and UN Committee against Torture on legislative developments in the UK in respect of deprivation of citizenship.²²⁰ In 2015, the UN Human Rights Committee recommended:

“The State party should review its laws to ensure that restrictions on re-entry and denial of citizenship on terrorism grounds include appropriate procedural protections, and are consistent with the principles of legality, necessity and proportionality. The State party should also ensure that appropriate standards and procedures are in place to avoid rendering an individual stateless.”²²¹

155. The NIHRC has written to the Home Secretary calling for a review of restrictions on re-entry and denial of citizenship on grounds of terrorism.²²²

156. **The Committee may wish to seek an update from the State Party on how it intends to ensure powers to deprive individuals of their citizenship and to prevent the return of individuals on security grounds will not result in individuals being subjected to torture or inhuman and degrading treatment.**

Article 5(e): Economic, Social and Cultural Rights

Permission to work

158. 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.²²³
159. The NIHRC notes that the Immigration rules restrict the types of employment asylum seekers can obtain to the UK's official shortage occupation list.²²⁴ 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."²²⁵
160. The NIHRC conducted research, in 2009, on the issue of homelessness for people with limited or no access to public funds, in which it recommended that all asylum seekers should be allowed to work pending the outcome of their application.²²⁶ 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.²²⁷ A recent House of Commons research paper outlined advantages of extending asylum seekers right to work, including:²²⁸
- 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.
161. The Immigration Act 2016, which received Royal Assent in May 2016, creates the new offence of 'illegal working' for persons who are subject to immigration control.²²⁹ The

offence will carry a penalty, in NI, of up to six months imprisonment, a fine or both.²³⁰

162. The CESCR Committee has also recently raised concerns about the restrictions placed upon asylum seekers in accessing employment. In June 2016 the Committee recommended that the State Party ensure that “asylum seekers are not restricted from accessing employment while their claims are being processed”.²³¹

163. **The Committee may wish to recommend that the State party takes measures to ensure that asylum-seekers are not restricted in their access to the labour market while their claims for asylum are being processed.**

Human trafficking

164. In 2015, the UK National Referral Mechanism received 53 referrals of potential victims of trafficking first encountered in NI. This represented a 17.8 per cent increase on 2014 referrals and 1.6 per cent of all UK referrals to the National Referral Mechanism. The figures included 25 females and 28 males, with 40 referred for adult exploitation categories and 13 referred as exploitation as a minor.²³² Bulgaria, China and Hungary were the origins of the largest number of referrals to the National Referral Mechanism.²³³

165. The NI Assembly approved a Legislative Consent Motion in December 2014 to enable aspects of the Modern Slavery Act 2014 to apply in NI.²³⁴ These aspects dealt with enforcement powers in relation to ships, the establishment of an Independent Anti-Slavery Commissioner and transparency in supply chains.²³⁵ The first UK Independent Anti-Slavery Commissioner was appointed in November 2014 and his first strategic plan was published in October 2015.²³⁶

166. The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 received Royal Assent in January 2015. The Act makes provision about human trafficking and other forms of exploitation, including measures to combat and prevent such exploitation and to provide support for victims of such exploitation.²³⁷ The Department of

Justice is required to refresh the Northern Ireland Human Trafficking and Exploitation Strategy 2015/16 on an annual basis. The first annual strategy was published in September 2015.²³⁸ The Strategy has been developed around four key priorities: pursue; protect and support; prevent; and partnership.²³⁹ The Department of Justice has recently issued a consultation on the 2016/17 Strategy.²⁴⁰ It has indicated that a progress report on the current 2015/16 Strategy will be available in due course.²⁴¹

167. The 2015 Act makes provision for an Independent Guardian to be appointed for a child who is a victim or a potential victim and is determined to be a separated child.²⁴² The Department of Health, Social Services and Public Safety (since June 2016, the Department of Health) consulted on Independent Guardian Regulations in September 2015. The Committee for Health, Social Services and Public Safety were briefed on the draft regulations by department officials in March 2016. However the Committee expressed concern that there was not sufficient time for scrutiny and agreed that the Regulations would be brought back before the Committee after the Assembly elections.²⁴³

168. In response to a question to the NI Assembly, the Minister for Health has indicated that between 2006/07 and 2015/16 76 separated children entered Northern Ireland. Of these, 26 (four were later found to be adults) went missing and 20 remain missing.²⁴⁴

169. In May 2015, the National Crime Agency was given full powers in Northern Ireland, subject to scrutiny by the Policing Board.²⁴⁵ The UK Human Trafficking Centre is part of the Organised Crime Command in the National Crime Agency.²⁴⁶ The Justice Minister has recently announced that the scope of the National Referral Mechanism will be extended in Northern Ireland to all victims of modern slavery, not just those who have been trafficked.²⁴⁷

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

- **for an update on progress on implementation of the Independent Guardian Regulations as provided for in the Human Trafficking and**

Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; and,

- **what actions are being taking with regards children that have entered Northern Ireland, come to the attention of social services and subsequently gone missing and how this will be prevented in future.**

Forced labour

171. Research by the Northern Ireland Strategic Migration Partnership has shown that employment rights in NI have been bolstered by the Gangmasters' Licensing Act introduced in 2004 and the Agency Workers Regulations which came into effect in NI in 2011. Nevertheless, the evidence also suggests that exploitation of migrant labour is persistent and is prevalent among some sectors and nationalities more than others.²⁴⁸
172. One area of concern highlighted by the Northern Ireland Council for Ethnic Minorities is trafficking for forced labour or for the purposes of labour exploitation.²⁴⁹ Research conducted by the Joseph Rowntree Foundation in 2011 identified problems of forced labour in NI among migrant working in the mushroom picking, fishing and catering industries.²⁵⁰ This research was updated in 2014 and noted a diverse range of examples of exploitation, occurring in a wider range of employment sectors than previously identified: fruit-picking, shellfish-gathering and recycling sectors, in cannabis cultivation, mushroom growing and picking industry and domestic servitude.²⁵¹
173. The UK has not ratified the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990) or the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143).
174. The Human Trafficking and Exploitation Act (Criminal Justice and Support for Victims) Act (NI) 2015 creates an offence of slavery, servitude, forced and compulsory labour,²⁵² extends preparatory offences to slavery like offences²⁵³ and sets out a list of aggravating factors the courts are required to take into

account for the purposes of sentencing.²⁵⁴ The Act also imposes a minimum custodial sentence of two years where an individual is found guilty of the offences of slavery, servitude, forced labour or human trafficking.²⁵⁵

175. **The Committee may wish to ask the State party what plans the State party has to ratify the UN International Convention on the Protection of Rights of All Migrant Workers and Members of their Families (1990) and the ILO Migrant Workers (Supplementary Provisions) Convention 1975 (No.143).**

Director of Labour Market Enforcement

176. The Immigration Act 2016 makes provision for a Director of Labour Market Enforcement.²⁵⁶ The Director will oversee the relevant enforcement agencies (the Gangmasters Licensing Authority, the Employment Agency Standards Inspectorate, and the National Minimum Wage Enforcement Team in Her Majesty's Revenue and Customs) to develop a coherent enforcement strategy for approval by the Home Secretary and Business Secretary.
177. Prior to the passing of the 2016 Act, concerns were raised by a number of organisations about the conflation of immigration control and labour enforcement.²⁵⁷ A report by Focus on Labour Exploitation in 2015 cited evidence that an overlap between the two prevents identification of trafficking for labour exploitation.²⁵⁸
178. According to the UK Government policy proposals, the role of the Director would apply to NI in respect of the National Minimum Wage and the Government would consult the NI Executive as to whether it wishes the proposals to extend to NI more generally. This would require agreement of the NI Assembly.²⁵⁹
179. **The Committee may wish to ask the State party:**
- **to clarify what plans there are to extend the role of the Director of Labour Market Enforcement beyond the National Minimum Wage in Northern Ireland and what plans there are to get the**

agreement of the Northern Ireland Assembly;

- **to ensure that the operational focus of the Director of Labour Market enforcement is on the rights of workers rather than immigration control.**

Traveller accommodation

180. The NIHRC remains concerned about the inadequate provision of sites and accommodation for the Traveller Community; an issue previously identified by the CERD Committee in 2011.²⁶⁰ In 2014, the Equality Commission for Northern Ireland 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.²⁶¹
181. The Northern Ireland Council for Ethnic Minorities 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.²⁶² 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.²⁶³ 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 considering the findings of the assessment, it will draw up a programme of Traveller specific schemes over the next five years.
182. 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.²⁶⁴ 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.²⁶⁵ The CESCR Committee has also sought additional information on this provision under its list of issues for the upcoming UK examination.²⁶⁶

183. The ECNI reported, in February 2016, that limited access to accommodation for Travellers, with lack of basic amenities is a key housing inequality in NI.²⁶⁷ 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.²⁶⁸ A quarter of families considered their place of residence to be unhealthy or very unhealthy and 29 percent of NI families considered their place of residence unsafe.²⁶⁹

184. 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.²⁷⁰ Research mapping the views of Travellers in 2014 found that the need for improved site provision came out strongly from respondents and better conditions on sites.²⁷¹ 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.²⁷²

185. **The Committee may wish to:**

- **ask what measures are being taken to increase the supply of culturally sensitive accommodation to meet gross housing need; and,**
- **recommend that the State Party complies with the Housing (Northern Ireland) Order 2003 to improve basic living conditions on serviced and halting sites in Northern Ireland for Travellers.**

Unauthorised Encampments (Northern Ireland) Order 2005

186. The Unauthorised Encampments (NI) Order 2005 remains in force despite recommendations to repeal the legislation from the CESCR Committee.²⁷³ This legislation creates 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 creates an offence and a power of seizure for non-compliance with a direction.²⁷⁴ Failure to comply with a direction can result in a fine or imprisonment.²⁷⁵
187. The powers under the 2005 Order are rarely used. The Department for Social Development (since June 2016, the Department for Communities) has reviewed the 2005 Order on an annual basis since it was commenced. Figures obtained from the Department in October 2015 showed that over the previous two years there was a noticeable decrease in police involvement in relation to unauthorised encampments. One direction was issued during that monitoring period and on two occasions over a seven-year period a vehicle was confiscated. The Department's view is that the Order is therefore not having an adverse impact on Irish Travellers.
188. The NIHRC called for repeal of the provisions, advising that the 2005 Order actively contributed to the disadvantage faced by the Traveller community in NI and conflicted with equality and human rights legislation. The NIHRC continues to highlight continuing concerns about the legislation to the Committee and other monitoring bodies such as CESCR,²⁷⁶ the Advisory Committee of the FCNM²⁷⁷ and ECRI.²⁷⁸
189. 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.²⁷⁹ 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.²⁸⁰ The NIHRC welcomes the policy but advises that the measures in the 2005 Order, if applied, 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.²⁸¹

190. **The Committee may wish to recommend that the State Party repeal the Unauthorised Encampments (Northern Ireland) Order 2005.**

Barriers to adequate site provision: planning permission and site licenses

191. Existing planning rules can present delays or obstacles to the provision of culturally sensitive accommodation for Travellers.. 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.²⁸² 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.²⁸³ The Advisory Committee to the FCNM 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.²⁸⁴
192. The NIHRC previously advised of a legislative anomaly, which can create a practical difficulty in ensuring adequate site provision to the Traveller community²⁸⁵ and has continued to raise the issue with other treaty bodies.²⁸⁶ Under the Caravans Act (Northern Ireland) 1963,²⁸⁷ 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.²⁸⁸ The NIHRC called for an amendment to the 1963 Act via the Caravans Bill in 2011 to rectify the anomaly.²⁸⁹ However no amendment was made and the position remains that the NIHE is required to obtain a

site licence.²⁹⁰ The NIHRC understands that only one application has been made by the NIHE for a site but it has not yet been granted.²⁹¹

193. In 2011, the Advisory Committee of the FCNM 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.²⁹²

194. **The Committee may wish to recommend that the State party address the legislative anomaly and remove the need to obtain site licences from District Councils in Northern Ireland and ensures that planning rules take into account the specific needs of Travellers.**

Housing inequality

195. 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 housing²⁹³ and that “excess demand in one area cannot be easily met by excess supply in another.”²⁹⁴ 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.²⁹⁵ 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.²⁹⁶

196. The CESCRC 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.”²⁹⁷ 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.²⁹⁸

197. 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.”²⁹⁹ 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.”³⁰⁰

198. In May 2014, the ECNI initiated an investigation into the DSD (since June 2016, the Department for Communities) 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 Department 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’.³⁰¹

199. The ECNI made a number of recommendations including: fully complying with Equality Scheme commitments to screen and where appropriate conduct equality impact assessments 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.³⁰² The NIHRC understands that the Department is to report on the ECNI findings by August 2016.

200. 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.³⁰³ 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."³⁰⁴

201. **The 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 Northern Ireland in the next periodic report; and,**
- **collects equality data to assess and monitor inequalities in housing and to allow for evaluation of Government Department actions to address inequalities in Northern Ireland.**

Immigration Act 2016

202. The Immigration Act 2016 creates a new criminal offence of renting accommodation to a person who is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.³⁰⁵

203. A government evaluation of the right to rent scheme in England looked at its operation in five local authority areas.³⁰⁶ It identified a "small number of instances of potentially discriminatory behaviour or attitudes"; however, it was based on a small sample and so its statistics are not representative of the UK. The report noted that BME individuals were asked to provide references more frequently than their White British counterparts; 20 percent to 7 percent.³⁰⁷

204. The Joint Council for the Welfare of Immigrants also conducted an independent assessment of the 'right to rent' pilot scheme.³⁰⁸ This report looked at the impact upon both

tenants and landlords. Some of the findings were: 42% of landlords said that the Right to Rent requirements have made them less likely to consider someone who does not have a British passport; 65% of landlords are much less likely to consider tenants who cannot provide documents immediately; and 50% of respondents who had been refused a tenancy felt that discrimination was a factor in the landlord's decision.³⁰⁹

205. The Committee may wish to ask the State Party what actions are being taken to measure the impact the Immigration Act 2016 will have on minority ethnic communities.

Access to publicly funded medical care

206. In March 2015, new regulations on access to primary and secondary healthcare for migrants came into operation.³¹⁰ These regulations will ensure that all asylum seekers, and other specified migrant groups, have access to free healthcare while they are living in NI.³¹¹
207. 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.
208. 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.³¹² 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.³¹³
209. Those visitors, who are 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.³¹⁴

210. In order to reflect the changes to the new regulations, Department of Health, Social Services and Public Safety (since June 2016, the Department of Health) 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.³¹⁵

211. 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 received reports that although refused asylum seekers are entitled, that there are difficulties in getting to appointments because the support provided by the government (section 4 support) is in the form of vouchers³¹⁶ 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.

212. 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.³¹⁷

213. **The 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.

Welfare reform

214. The Welfare Reform (Northern Ireland) Act 2015 was introduced under the fast track procedure and received Royal Assent on 25 November 2015. This legislation, which provides for the introduction of broadly equivalent welfare reforms to the rest of the UK, did not initially pass successfully through the NI Assembly. A legislative consent motion was required to enable primary and secondary legislation to proceed at Westminster. The, then, 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".³¹⁸ These include provision for agreed Northern Ireland specific welfare related flexibilities and top ups, a slightly different sanctions regime,³¹⁹ and the ability for payments to be made on a fortnightly rather than monthly basis.³²⁰ The Department for Social Development is required to lay an independent report before the Assembly on the operation of the Order, not later than three years after the date the Order is made.³²¹

215. NICEM has 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'.³²² Furthermore, the language barrier may have a significant impact on the uptake of benefits.³²³

216. The Committee may wish to ask the State Party about plans to monitor the impact of welfare reform on ethnic minorities, including migrant workers.

Destitute Domestic Violence rule

217. The 'no recourse to public funds' rule prevents persons with insecure immigration status from accessing benefits such as refuge support.³²⁴ Non-nationals who are victims of domestic violence and on a spousal visa may be eligible for the Destitute Domestic Violence (DDV) concession from the effects

of the no recourse rule. The DDV concession enables a person to receive temporary leave for three months, which allows them to apply for access to public funds (including jobseeker's allowance, income support and housing benefit). During this three month period the person should make a separate application for indefinite leave to remain under the Domestic Violence Rule. There are strict eligibility criteria for the concession and so there are some groups who may not benefit from the concession.

218. Whilst immigration is a reserved matter, this issue is of relevance in the NI context. Women's Aid Federation NI highlighted, in its 2014/2015 Annual Report, that women with no recourse to public funds are not able to access safe refuges, which are dependent on government funding. This situation leaves non-UK national victims of domestic and sexual violence trapped, facing a choice between destitution and a life of violence and abuse.³²⁵

219. The CEDAW Committee has also recommended that the UK should "extend the concession under the 'no recourse to public funds' policy to all women who are subjected to gender-based violence and exploitation."³²⁶

220. **The Committee may wish to recommend that the State Party:**

- **provide an update on the implementation of the Stopping Domestic Violence and Sexual Abuse Strategy in Northern Ireland;**
- **take steps to extend provision for victims of domestic violence to persons who enter the United Kingdom other than on a spousal visa.**

Asylum support

221. 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.³²⁷ 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.³²⁸

222. 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.³²⁹ The Children's Society also highlighted that the introduction of a flat rate will have a direct impact on children, pushing families further into poverty. They argued 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.³³⁰ 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 percent of mainstream social security support rates and increase this in line with inflation annually.

223. 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;

224. 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.³³¹

225. These proposals have been taken forward in the Immigration Act 2016. The NIHRC prepared a briefing for the House of Lords stage of the legislative process, outlining the 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 putting the onus on 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.³³²

226. **The 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

227. The OFMDFM (since June 2016, the Executive Office) 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.”³³³ It was administered by the British Red Cross and other partner organisations and ran in February and March 2015.³³⁴ During this time, there were 980 interventions and the fund directly assisted 440 individuals, who between them had 480 dependents. Fifty-four percent of people received less than £50, while 78 percent received less than £100. 233 were female and 207 were male. The majority (60 percent) were aged between 21-40. The main reasons for accessing the fund were problems with benefit entitlements (25 percent), domestic violence (14 percent) and issues around seeking employment (14 percent).³³⁵
228. The 2015/16 Fund had a budget of £100,000, and continues to be administered by the Red Cross.³³⁶ 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.”³³⁷
229. The Refugee and Asylum Forum has called for the Crisis fund to be made permanent.³³⁸ 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, 768 received support related to destitution (made up of 387 individual service users and 381 dependents).³³⁹
230. 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.³⁴⁰

231. **The Committee may wish to recommend to the State party that the Crisis Fund in Northern Ireland is continued on a more permanent basis rather than rely on a discretionary fund and that it also addresses the underlying causes of destitution in the first place.**

Traveller and Roma children education

232. The NIHRC notes continuing concerns raised by the CRC Committee in relation to persistent inequalities with regard to school attainment for particular groups of children, including Roma, Gypsy and Traveller children and newcomer children.³⁴¹

233. Following the establishment of a Traveller Education Taskforce (the Taskforce) in 2008, it published a report in December 2011 recommending 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.³⁴² The response of the Department for Education was the Traveller Child in Education Action Framework, published in 2013.³⁴³ Central to the framework 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.³⁴⁴

234. 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.³⁴⁵ The NIHRC understands that the Department of Education is considering amendments to the 1986 Order; however, these have not been published to date.

235. At the launch of the Traveller Child in Education Action Framework, in 2013, the Minister also indicated that 'an independent Monitoring and Evaluation Group will be established within the next few months to monitor the Action

Framework.³⁴⁶ The Minister confirmed, in response to a question in the NI Assembly, that the Group had yet to be established.³⁴⁷

236. 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 Travellers.³⁴⁸ 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.”³⁴⁹
237. The ECNI published a report on key inequalities in education in October 2014.³⁵⁰ 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 2008.³⁵¹ The report also referenced earlier research from Queen’s University Belfast, which found that the most negative experiences of education were encountered by Traveller children.³⁵²
238. 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.”³⁵³
239. 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.³⁵⁴ The policy establishes a regional support service, the Inclusion and Diversity Service, to assess priorities, monitor areas of need and response to changing pastoral, curricular, linguistic and intercultural needs.
240. 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.³⁵⁵ 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.³⁵⁶

241. The Committee may wish to recommend that the State party:

- **ensure the effective implementation of the Traveller Education Action Framework in Northern Ireland, including the effectiveness of the Traveller Education Support Service;**
- **review Schedule 13 of the Education and Libraries Order in Northern Ireland with a view to supporting the attendance in school of Traveller children;**
- **establish a Traveller Education Monitoring Group;**
- **continue to review the needs of newcomer children; and,**
- **take steps to monitor and address the difficulties faced by Roma children in education in Northern Ireland.**

Integrated education

242. The CESCR Committee 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.”³⁵⁷

243. The CRC Committee expressed concern regarding “the problem of segregation of education” in NI and recommended that measures be taken to address this.³⁵⁸ 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.”³⁵⁹ In June 2016, the CRC Committee recommended that the NI Executive should “actively promote

a fully integrated education system and carefully monitor the provision of shared education, with the participation of children, in order to ensure that it facilitates social integration.”³⁶⁰

244. 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).³⁶¹ There has however, been relatively slow growth in the integrated sector with no new integrated schools established since 2008. In 2014/15, only 7 percent of pupils in NI attended an integrated school,³⁶² 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.
245. In 2014/15, according to the Northern Ireland schools census, there were 339,127 children attending schools. Excluding those attending integrated schools, the combined total of designated Protestants attending Catholic schools and Catholics attending controlled schools was 12,802. This equates to 3.8 percent of the school population. The statistics differ between schools, and in some cases the proportion of those attending from a minority designated Protestant or Catholic background in schools other than those formally designated as integrated can be substantial.³⁶³
246. 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”³⁶⁴ 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.”³⁶⁵

247. Following this, the Minister for Education has launched an independent review of the planning, growth and development of integrated education. 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.”³⁶⁶ The review will report by 30 June 2016.

248. **The Committee may wish to ask:**

- **for an update on the independent review of the planning, growth and development of integrated education; and,**
- **the State Party to undertake concrete measures to significantly increase the availability of integrated schools in Northern Ireland.**

Shared education

249. In recent years, the NI Executive has also pursued a commitment to shared education as an approach to addressing segregation in education.³⁶⁷ 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 2007.³⁶⁸

250. DENI commissioned a report from an independent Ministerial Advisory Group on Advancing Shared Education, which was published in April 2013.³⁶⁹ 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.³⁷⁰

251. 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.³⁷¹ 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.³⁷²
252. 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."³⁷³
253. A proposal has been made to merge two primary schools, to create the first jointly-managed faith school in NI.³⁷⁴ The schools will have to produce a development plan which will need to be approved by the Education Minister. The Department of Education published guidance on jointly managed schools in April 2015.³⁷⁵
254. The Shared Education Act (NI) 2016 received Royal Assent in May 2016. The Act provides a legislative definition of shared education³⁷⁶ confers a duty on the Department of Education to encourage, facilitate and promote shared education³⁷⁷ and a duty on education bodies to consider shared education when developing, adopting, implementing or revising policies, strategies and plans.³⁷⁸
255. The definition of shared education is restricted to socio-economic disadvantage and religious belief, although the policy underpinning the Act refers to the needs of all of the s.75 groups³⁷⁹ and socio-economic status. The Department of Education 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 standards³⁸⁰ and recommended that it be extended to all s.75 groups.³⁸¹

256. The 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 Act (NI) 2016.**

English for Speakers of Other Languages

257. The 2011 Census shows that the proportion of residents that spoke a main language other than English was 3.24 percent.³⁸² The two most common languages were Polish (at 1.02 percent) and Lithuanian (at 0.36 percent).³⁸³

258. A report commissioned by the Northern Ireland Council for Ethnic Minorities on English for speakers of other languages (ESOL) provision in 2015 identified that there were four broad categories of ESOL learner in NI: settled communities of second and third generations; refugees and asylum seekers; migrant workers and spouses/ partners of students or migrants.³⁸⁴

259. Funding for ESOL provision only extends to certain groups. The Department for Employment and Learning (DEL) provides access to ESOL and other further education courses for asylum seekers and Syrian refugees under the Vulnerable Person Relocation Scheme.³⁸⁵ 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.³⁸⁶ The classes will be provided through further education colleges and will be accredited.

260. There is no 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. The Refugee and Asylum Forum and the NICEM report recommend ESOL being designated as an essential skill in line with UK policy.³⁸⁷ The NIHRC understands that the Department for Economy considered designating ESOL as an essential skill but determined that is inappropriate as essential skills are designed for people whose first language is English.³⁸⁸ A further issue in respect of paying for classes is the policy approach that a willingness to pay fees is considered a sign of commitment.³⁸⁹

261. 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.³⁹⁰ The NICEM report identifies that course fees vary across the main colleges “the current fees for a non-EEA national will have a detrimental effect, as they are required to pay fees four times higher than an EEA national.”³⁹¹

262. The NIHRC understands that the Department for the Economy operates an Advisor Discretion Fund which is designed to contribute up to £300 towards removing a barrier to employment. The Department confirms that, in certain circumstances, this fund may be used to access ESOL and in the last financial year 69 clients were awarded such funding for ESOL at a cumulative cost of £12,693.50.³⁹²

263. **The Committee may wish to recommend that the State Party:**

- **considers designating English for speakers of other languages as an essential skill in Northern Ireland in line with the rest of the United Kingdom; and,**
- **ensures that the cost of ‘English for speakers of other languages’ courses is not a barrier to accessing provision in Northern Ireland.**

Article 7: Combating prejudice, promoting tolerance and understanding

Sectarianism in Northern Ireland

264. In 2013, OFMDFM (since June 2016, the Executive Office) 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."³⁹³
265. Following on from this, the OFMDFM Committee (since June 2016, the Committee for the Executive Office) 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."³⁹⁴ 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.³⁹⁵
266. 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."³⁹⁶ The Advisory Committee on the FCNM 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."³⁹⁷
267. The Advisory Committee has also previously noted that regional strategies which focus on mutual accommodation,

rather than mutual respect and understanding, would raise 'serious concerns'.³⁹⁸ 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.'³⁹⁹

268. The report of the inquiry was published in 2015.⁴⁰⁰ The Committee recommended that the OFMDFM produce an annual report on the TBUC strategy and lay this before the NI Assembly.⁴⁰¹ Referring to advice provided by the NIHRC and others, the Committee recognised the need for statutory definitions of both 'sectarianism' and 'good relations'.⁴⁰² This is an outstanding commitment contained within the strategy.⁴⁰³

269. 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".⁴⁰⁴ The NIHRC recommended amending and strengthening domestic legislation to address this issue.⁴⁰⁵ 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.⁴⁰⁶

270. 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 2016.⁴⁰⁷

271. An engagement forum has been established under TBUC, with the Community Relations Council acting as 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."⁴⁰⁸ The forum has met twice since its establishment; considering issues such as the attitudes of young people towards good relation and

cultural expression.

272. The NIHRC has also noted the proposal to create an Equality and Good Relations Commission⁴⁰⁹ 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.⁴¹⁰ There should be no retrogression from protections afforded by both the existing Equality Commission NI and Community Relations Council.⁴¹¹ Recent evidence to the OFMDFM Committee indicated that there is no agreed way forward on the legislation.⁴¹² 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.⁴¹³

273. The Committee may wish to ask the State Party:

- **what measures are being taken in Northern Ireland 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; and**
- **to recommend that sectarianism in Northern Ireland is treated as form of racism and attracts the protection of the ICERD.**

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 UN HRC, 'Concluding observation on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' CCPR/C/GBR/CO/7(August 2015) para 7

⁴ [Belfast \(Good Friday\) Agreement 1998](#), Annex 1

⁵ [St Andrew's Agreement 2006](#), para 3

⁶ The [Stormont House Agreement 2014](#), states that: any legislation on parades will have "proper regard for fundamental rights protected by the ECHR" (para 19); and, that "the Executive will take appropriate steps to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements." (para 31)

⁷ [The Queen's Speech](#) (27 May 2015), p75

⁸ [The Queen's Speech](#) (27 May 2015), p75

⁹ Joint Committee on the Implementation of the Good Friday Agreement, '[Briefing by the Northern Ireland Human Rights Commission](#)' (25 June 2015)

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- ¹⁰ EHRC, SHRC and NIHRC, 'Correspondence to the UK Human Rights Committee' (July 2015)
- ¹¹ UN HRC, 'Concluding Observations on 7th periodic report submitted by the UK' CCPR/C/GBR/CO/CO/7 (17 August 2015) para 5(c)
- ¹² The Select Committee on the European Union, Justice Sub-Committee, '[Inquiry on the Potential Impact on EU law of repealing the Human Rights Act](#)' (2 February 2016) pp3-4
- ¹³ House of Commons, Hansard 'Human Rights Framework: Scotland' Col 357WH (2 March 2016)
- ¹⁴ EU Justice Sub Committee, '[The UK, the EU and a British Bill of Rights](#)' 12th Report of Session 2015-16, HL Paper 139 (9 May 2016) para 46
- ¹⁵ Ibid, para 181
- ¹⁶ Ibid, para 183
- ¹⁷ Ibid, para 162
- ¹⁸ CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' E/C.12/GBR/CO/6 (24 June 2016) para 10
- ¹⁹ Section 69 (7) of the [Northern Ireland Act 1998](#) and paragraph 4 in the Rights, Safeguards and Equality of Opportunity section of the [Belfast \(Good Friday\) Agreement](#)
- ²⁰ NIO, 'A Bill of Rights for NI: Next Steps' (November 2009)
- ²¹ [Joint Declaration of the British and Irish Government](#) (April 2003) Annex 3, para 2
- ²² NIHRC, 'Parallel Report on the 18th and 19th Periodic Reports of the United Kingdom under the International Convention on the Elimination of All Forms of Racial Discrimination' (May 2011) para 65
- ²³ CERD, '[Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland](#)' CERD/C/GBR/CO/18-20 (14 September 2011) para 18
- ²⁴ Human Rights Committee 'Replies of the United Kingdom of Great Britain and Northern Ireland to the List of Issues' UN Doc. CCPR/C/GBR/Q/7/Add.1 (28 April 2015), para 11
- ²⁵ UN HRC, 'Concluding Observations on 7th periodic report submitted by the UK' CCPR/C/GBR/CO/CO/7 (17 August 2015) para 5
- ²⁶ UN HRC, 'Concluding Observations on 7th periodic report submitted by the UK' CCPR/C/GBR/CO/CO/7 (17 August 2015) para 5
- ²⁷ UNCRC, 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland' (3 June 2016) para 7(b); CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' E/C.12/GBR/CO/6 (24 June 2016) para 10
- ²⁸ The Conduct of the 2011 Censuses in the UK: [Statement of Agreement of the National Statistician and the Registrars General for Scotland and Northern Ireland](#) para 6
- ²⁹ NISRA, '[NI Census 2011: Key Statistics Summary Report](#)' (Sept 2014) p40
- ³⁰ NISRA, '[NI Census 2011: Key Statistics Summary Report](#)' (Sept 2014) p48
- ³¹ NISRA, '[NI Census 2011: Key Statistics Summary Report](#)' (Sept 2014) p91
- ³² Mediation Northern Ireland an South Belfast Roundtable, *Guesses at Inclusion: Collaborative Service Provision with Roma Communities* (2015)
- ³³ OFMDFM, '[Racial Equality Strategy 2015-25](#)' (Dec 2015) para 7.6
- ³⁴ CERD, '[Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland](#)' UN Doc. CERD/C/GBR/CO/18-20 (14 September 2011), para 17
- ³⁵ Advisory Committee on the Framework Convention for the Protection of National Minorities, '[Third Opinion on the United Kingdom for the Protection of National Minorities](#)' ACFC/OP/III (2011)006 (30 June 2011) para 44

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- ³⁶ Advisory Committee on the Framework Convention for the Protection of National Minorities, '[Third Opinion on the United Kingdom for the Protection of National Minorities](#)' ACFC/OP/III (2011)006 (30 June 2011) para 47
- ³⁷ The 25th Annual Monitoring Report presents an aggregated summary of the 3,663 valid monitoring returns received during 2014 from 126 public authorities and 3,537 private sector concerns.
- ³⁸ ECNI, '[Fair Employment Monitoring Report N.25: An Overview of High Level Trends and Aggregated Monitoring returns 2014](#)' (2015) p4
- ³⁹ NI Assembly, '[Official Report: Employment Bill Further Consideration Stage](#)' (22 February 2016)
- ⁴⁰ NI Assembly, '[Official Report: Employment Bill Further Consideration Stage](#)' (23 February 2016)
- ⁴¹ NIHRC, '[A Single Equality Bill for Northern Ireland](#)' (September 2004) para 54
- ⁴² ECNI, 'Shadow Report from the Equality Commission for Northern Ireland to the Advisory Committee for the Framework Convention for the Protection of National Minorities on the Fourth Monitoring Report of the United Kingdom.' (January 2016) para 3.16
- ⁴³ The Equality Act 2010 applies to England and Wales, with a majority also applying to Scotland. Its application to NI is limited
- ⁴⁴ CERD, '[Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland](#)' CERD/C/GBR/CO/18-20 (14 September 2011) para 19
- ⁴⁵ CESCR, 'Concluding observations on the UK', UN Doc. E/C.12/GBR/CO/5 (12 June 2009), para 16; CEDAW, 'Concluding observations on the UK' UN Doc. CEDAW/C/GBR/CO/7 (26 July 2013) para 18; Advisory Committee on the Framework Convention for the Protection of National Minorities, '[Third Opinion on the United Kingdom for the Protection of National Minorities](#)' ACFC/OP/III (2011)006 (30 June 2011)
- ⁴⁶ See also comments in the draft Racial Equality Strategy: "There are a range of views on legislation. A key stakeholder is the Equality Commission, which has written that legislation here does not provide the same level of protection as that provided in GB." Consultations questions included, "Do you think that reform of Race Relations (Northern Ireland) Order 1997 is a priority?; Do you agree with the Equality Commission's proposals?; Do you think that there are any areas of Race Relations law which require reform, additional to those identified by the Equality Commission?". See, OFMDFM, 'A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014 – 2024' (pp38 and 40), consultation period August – October 2014
- ⁴⁷ ECNI, '[Strengthening protection against racial discrimination: Recommendations for law reform](#)' (August 2014), p11
- ⁴⁸ ECNI, '[Strengthening protection against racial discrimination: Recommendations for law reform](#)' (August 2014), p12-13
- ⁴⁹ CEDAW, 'Replies of United Kingdom of Great Britain and Northern Ireland to the List of Issues to be taken up in connection with its seventh Periodic Report' CEDAW/C/GBR/Q/7/Add.1, para 17
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